



E12 End of Wrongful Life in France After the Law of March 2002

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The court ruled that Nicolas Perruche could sue his mother's physicians because they had failed to detect that she had caught rubella, a virus similar to the measles, during her pregnancy 17 years before. As a result of his mother's infection, Perruche was born blind, deaf and has a mental disability. Perruche's parents claimed that they would have aborted him as a fetus had they known he would have those disabilities. The controversial French landmark case became known as a "wrongful life" claim.

However, a firestorm of controversy by the religious leaders, philosophers as well as medical and legal ethicists sought to overturn the French Supreme Court. Consequently, in March of 2002, the French Parliament enacted a law prohibiting liability for wrongful life claims and apparently overruled the French High Court by stating that "No one may claim to have been prejudiced by the simple fact of their birth." This presentation will demonstrate how the wrongful life action was created in France and how it was changed in view of the French legislation prohibiting such claims. A study was performed at the University of Nantes to study how, if at all, this changed the liability of French physicians.

The special law prohibiting wrongful life actions established that there must exist a direct link of causality between the medical malpractice and the injury in order to award monetary damages to the child. However, this law has accepted the liability of the physician in specific cases of medical fault. The purpose of this study is to define those professional faults.

French judges now employ the *sine qua non* (indispensable condition or thing) theory of causality and have abandoned the "but for" rule that causation would not have occurred without the party's conduct. Now a physician's failure to properly terminate a pregnancy, which was requested by the mother or failure to utilize the available diagnostic test during a pregnancy or the failure to detect an immune antibody in the fetus, which results in injury to the newborn are now typical acts of medical malpractice, which will hold the physician at fault.

Wrongful Life, Professional's Faults, Sine Qua Non Causality