The Perruche judgment and the “right not to be born”

M Spriggs, J Savulescu

Overruling of law said to establish the “right not to be born”

The French government has given in to public pressure and overturned a controversial legal ruling which recognised the right of a disabled child to seek damages. Most notably, the ruling, widely described as establishing a child’s right “not to be born”, had provoked “outrage” amongst groups defending the rights of the disabled and led to a ban on prenatal scans by French gynaecologists. Once again, only parents will be able to seek damages but some people think the ruling has been misinterpreted.

The Perruche judgment, a controversial ruling which has been said to establish the “right not to be born”, has now been overruled by a majority of the National Assembly of the French Parliament. A bill has been put forward which states “no one can sue for damages for the sole fact of their birth”. It was considered by the senate until January 22, 2002.

In 1982, Josette Perruche discovered red spots covering her four year old daughter. The child was diagnosed with German measles. Mrs Perruche told her doctor that if she was infected, she should have an abortion rather than risk giving birth to a severely handicapped child.

Mrs Perruche underwent two blood tests, two weeks apart. Mrs Perruche’s doctor assured her that it was safe to go on with the pregnancy. In fact, the test had been contradictory. Instead of pursuing the question, Mrs Perruche’s doctor reassured her. A later blood test would show that the lab had made a mistake.

Nicholas Perruche was born in 1983 deaf, part-blind and with severe brain damage. Within two years, Mrs Perruche had suffered a “nervous breakdown”, requiring psychiatric care. Today the boy is cared for by a government institution. He spends alternate weekends with his divorced parents.

In 2000, France’s highest appeals court awarded compensation to 17 year old Nicholas Perruche. The significance of the Perruche ruling was that it recognised the child’s right to seek damages allegedly for being born. Prior to that only parents could seek damages. Perruche’s parents were compensated in February 1997 and then Nicholas himself was granted compensation in November 2000. The court considered there were risks in compensating only the patents because of the possibility of separating the “right to life” from the “right to health.”

Debate about the Perruche judgment and whether a child has the “right not to be born” was reawakened on November 28 last year when a French court ruled that Down’s syndrome—for “being born” some are saying—was a “blatant error” by doctors: “In other words, only if the doctor caused the disability or overlooked something obvious.”

Some people think the Perruche ruling has been misinterpreted: “The court never said there should be damages for the mere fact of being alive. It said there should be damages for suffering”, said Gilles-Jean Portejoie, a lawyer for one of the families who have benefited from the ruling. “And the child suffers not from being born—but from the disability.”

Not everyone is happy with the overturning of the Perruche ruling and the new law which means that disabled children will not be able to seek damages. It does not address the “original problem” recognised by the Perruche ruling—the lack of state provision for disabled people, particularly those who have reached adulthood.

**REFERENCES**


4. FAN.html?ex=1011713450&ei=1&en=9694d9011796d6

M Spriggs, J Savulescu, Ethics Program, Murdoch Childrens Research Institute, Royal Childrens Hospital, Flemington Road, Parkville, Victoria, 3052, Australia; spriggsm@murdoch.rch.unimelb.edu.au; savulescj@cryptic.rch.unimelb.edu.au

**Authors’ affiliations**

M Spriggs, J Savulescu, Ethics Program, Murdoch Childrens Research Institute, Royal Childrens Hospital, Flemington Road, Parkville, Victoria, 3052, Australia; spriggsm@murdoch.rch.unimelb.edu.au; savulescj@cryptic.rch.unimelb.edu.au

**Motivation**

The Perruche judgment, a controversial ruling which has been said to establish the “right not to be born”, has now been overruled by a majority of the National Assembly of the French Parliament. A bill has been put forward which states “no one can sue for damages for the sole fact of their birth”. It was considered by the senate until January 22, 2002.

In 1982, Josette Perruche discovered red spots covering her four year old daughter. The child was diagnosed with German measles. Mrs Perruche told her doctor that if she was infected, she should have an abortion rather than risk giving birth to a severely handicapped child.

Mrs Perruche underwent two blood tests, two weeks apart. Mrs Perruche’s doctor assured her that it was safe to go on with the pregnancy. In fact, the test had been contradictory. Instead of pursuing the question, Mrs Perruche’s doctor reassured her. A later blood test would show that the lab had made a mistake.

Nicholas Perruche was born in 1983 deaf, part-blind and with severe brain damage. Within two years, Mrs Perruche had suffered a “nervous breakdown”, requiring psychiatric care. Today the boy is cared for by a government institution. He spends alternate weekends with his divorced parents.

In 2000, France’s highest appeals court awarded compensation to 17 year old Nicholas Perruche. The significance of the Perruche ruling was that it recognised the child’s right to seek damages allegedly for being born. Prior to that only parents could seek damages. Perruche’s parents were compensated in February 1997 and then Nicholas himself was granted compensation in November 2000. The court considered there were risks in compensating only the patents because of the possibility of separating the “right to life” from the “right to health.”

Debate about the Perruche judgment and whether a child has the “right not to be born” was reawakened on November 28 last year when a French court ruled that Down’s syndrome—for “being born” some are saying—was a “blatant error” by doctors: “In other words, only if the doctor caused the disability or overlooked something obvious.”

Some people think the Perruche ruling has been misinterpreted: “The court never said there should be damages for the mere fact of being alive. It said there should be damages for suffering”, said Gilles-Jean Portejoie, a lawyer for one of the families who have benefited from the ruling. “And the child suffers not from being born—but from the disability.”

Not everyone is happy with the overturning of the Perruche ruling and the new law which means that disabled children will not be able to seek damages. It does not address the “original problem” recognised by the Perruche ruling—the lack of state provision for disabled people, particularly those who have reached adulthood.

**REFERENCES**


**Authors’ affiliations**

M Spriggs, J Savulescu, Ethics Program, Murdoch Childrens Research Institute, Royal Childrens Hospital, Flemington Road, Parkville, Victoria, 3052, Australia; spriggsm@murdoch.rch.unimelb.edu.au; savulescj@cryptic.rch.unimelb.edu.au

www.jmedethics.com

New JME online submission and review system

The Editors of the Journal of Medical Ethics are pleased to inform authors and reviewers of its new online submission and review system. Bench>Press is a fully integrated electronic system which utilizes the web to allow rapid and efficient submission of manuscripts. It also allows the peer review process to be conducted entirely online.

Authors can submit their manuscript in any standard word processing software. Standard graphic formats acceptable are: .jpg, .tiff, .gif, and eps. The text and graphic files are automatically converted to PDF for ease of distribution and reviewing purposes. Authors are asked to approve their submission before it formally enters the reviewing process.

To access the system click on “SUBMIT YOUR MANUSCRIPT HERE” on the JME homepage: http://www.jmedethics.com/, or you can access Bench>Press directly at http://submit-jme.bmjjournals.com/.

We are very excited with this new development and I would encourage authors and reviewers to use the online system where possible. It really is simple to use and should be a big improvement on the current peer review process. Full instructions can be found on Bench>Press http://submit-jme.bmjjournals.com/, and JME online at http://www.jmedethics.com/. Please contact Natalie Davies, Project Manager, ndavies@bmjgroup.com for further information.