

**The Cour de Cassation - 6 February 2008, Appeal No 06-16498**

On the first argument put forward on the sole ground of appeal, the Court had regard to Article 79-1, paragraph 2 of the Civil Code.

It followed from this provision that when a child died before birth had been declared to have civil status without there being a medical certificate confirming that the child was born alive; a state official provided a certificate for a child born dead stating the day, hour and place of giving birth. This was then entered into the registry of deceased persons.

On 20 March 1996 Mrs Y, wife X, gave birth to a stillborn male foetus, weighing 400 grammes, 21 weeks into the pregnancy. Not having been able to obtain a declaration, Mr and Mrs X had in a request dated 13 May 2003 moved the Tribunal de Grand Instance to order the relevant officer to issue a certificate for a child born without life conformably with the provisions of sub-paragraph 2 of article 79-1 of the Civil Code, such certificate to state that the child had the surname Z and the Christian name Y. By judgment of 9 December 2003 Mr and Mrs X were granted this order.

In arriving at this decision the decision under appeal stated that it relied on article 79-1 of the Civil Code in that a certificate for a stillborn child was required because it was necessary to acknowledge the existence of the child so that its loss could be mourned, and such certificate could be granted if the child had sufficiently developed so as to be recognisable as a child, namely whether the foetus had achieved a degree of autonomous life before death, and that as there was scientific research on this topic, it was appropriate to have regard to the World Health Organisation definition of viability of the foetus at 22 weeks and 500 grammes, which in this case had not been reached.

In so holding, when article 79-1 sub-paragraph 2 of the Civil Code did not subordinate the establishment of a certificate for a stillborn child either to the weight of the foetus or the length of the pregnancy, the court of appeal; which had added conditions not provided for by the legislation, had erred,

**FOR THESE REASONS**

**SETS ASIDE AND ANNULS** in all its findings the judgment n°253 RG 04/00192 handed down on 17 May 2005 between the parties by the Court of Appeal at Nimes; remits, in consequence; the cause of action and the parties to the positions they were in before the judgment and returns the proceedings to a differently composed bench of the Court of Appeal at Nimes.