

Anonymous Births: A Conflict of Three Rights – Which Prevails?

**Adéla Lemrová
Ivana Olecká
Ester Hladíková
Kateřina Ivanová**

Abstract

The aim of the text is to describe the possibilities of solving the predicament related to unwanted pregnancy and subsequent childbirth under the legislation in several European countries. The paper presents a case study, which portrays a typical situation that indicates that the possibilities of solving such a situation are not sufficient in the Czech Republic. A secret birth was not possible for the woman due to the presumption of paternity; she did not see any other legal way and the child died due to unprovided medical care. Based on the case analysis, the introduction of anonymous births, which allow complete confidentiality of the mother's identity without any other obstacles, appears to be an alternative option for the presented situation. However, anonymous births cause a debate about the conflict of three rights: the child's right to know his or her parents, the mother's right to choose to be a mother, and the child's right to life. As is clear in the examples of solutions to similar situations across Europe, there is no consensus on an ideal solution, but there is a tendency to protect the child's life in the first place.

Keywords

childbirth, anonymity, secret birth, child rights, women's rights, violent deaths, baby box

Legislative framework of mother anonymity in the Czech Republic

Under the current legislation in the Czech Republic, there are two options for a woman who decides to conceal the fact that she has given birth. The first option is to give birth in a hospital facility in a secret mode. The other alternative is to give birth outside the medical facility and place the baby in a baby box after delivery. However, both alternatives carry significant limitations and risks.

According to Act No. 422/2004 Coll.¹ and §37 of the Health Services Act (Act No. 372/2011 Coll., The Act on Health Services and Conditions for their Provision), a secret birth is allowed only to women with permanent residence in the Czech Republic, and it cannot be a woman whose husband is evidenced by the presumption of paternity (according to §776 and following, Act No. 89/2012 Coll., Civil Act). Any negation of the presumption of paternity must be proved by a court decision on divorce in the case of a divorced woman or by presenting the death certificate of the husband. The wording of the law thus determines that the possibility of a secret birth is available to only some pregnant women. If the woman meets the specified conditions and is interested in a secret birth, she submits a written request to the provider of the medical service to keep her identity confidential during the birth and fills in a declaration that she does not intend to care for the child. The woman's identity is registered separately from the medical records related to the pregnancy and secret birth. After the hospitalization, the medical documentation and information about the woman are placed in a sealed file. The opening of such sealed medical documentation is possible only on the basis of a court decision; this does not apply if a woman who has given birth secretly requests the opening of the medical records. If we thus take a closer look at the confidentiality processes, it can be assumed that the steps that need to be taken may seem complicated to women, and the subsequent administration may not seem reliable to keep the information secret.

The other alternative, placing the child in a baby box, carries especially social and health risks for women. If a woman gives birth to a child in a medical facility, or if her surroundings learn in any way that she has given birth, it seems difficult to put the child in a baby box, as the absence of the child raises a number of unpleasant questions for the woman. The delivery outside a medical facility also poses significant risks of health complications. Moreover, both of these options assume women's awareness of these alternatives, which may seem problematic, especially for women with low health literacy. In view of these facts, it is evident that there is a risk that women, in an effort to conceal their pregnancy and childbirth, will opt for conduct that is illegal (e.g. leaving a child in a public place) and may lead to the death of the child, whether committed intentionally or as a result of failure to provide care² (Olecká, Ivanová, Lemrová, 2017).

¹ Act amending the Act No. 20/1966 Coll., on public health care, as amended, Act No. 301/2000 Coll., on registries, name and surname and on the amendment of some related laws, as amended, and Act No. 48/1997 Coll., on Public Health Insurance, as amended

² In UZIS statistics (2021), the apparent violent deaths of children are included under Chapter XIX.- Injuries, poisonings and some other consequences of external causes. About 11 children die this way each year in infancy (2019, 16; 2018, 12; 2017, 6; 2016, 13; 2015, p. 9). Naturally, statistics do not record any latent crime, which may be hidden in cases of a child's death, for example, under the diagnosis of SIDS (Olecká et al., 2018). The Sudden Infant Death Syndrome (SIDS) is an unexpected death of a baby within one year of age that occurs in sleep and cannot be explained by autopsy or laboratory results (Busuttill, 2009; Enid Gilbert-Barness, 2013; Krous, 2004). Based on the available data, it is also not possible to determine the number of unwanted and intentionally abandoned children. Only records of the number of children placed in baby boxes are available (a total of 228 children from 2006 to 3 November 2021), but surprisingly the statistics in the Czech Republic do not record the number of secret births.

Anonymous childbirth as a conflict of three rights

In discussions about the possibilities of concealing the mother's identity, we come across an effort to comply with three rights at the same time: the child's right to know his or her parents, the mother's right to choose to be a mother, and the child's right to life.

The right to life is a fundamental human right in our (Western) civilization today and is included in the Universal Declaration of Human Rights. The woman's right to decide on her motherhood is embedded in the Act of the Czech National Council on Abortion (Act No. 66/1986 Coll.), which defines the conditions under which a woman may request an abortion. The right of the child to know his or her parents is included in the Convention on the Rights of the Child (1989), Article 7 (*"Every child is registered immediately after birth and has the right to a name, the right to a nationality, and, if possible, the right to know and be cared for by his or her parents."*) as well as in the European Convention on Human Rights (1950), specifically Article 8, which states that *"everyone has the right to respect for his or her private and family life, home and correspondence"*. The right to respect for private life also applies to mothers, who, for various reasons, are in favor of this possibility. Despite the available contraceptive options, women may still find themselves in a situation where they become pregnant unintentionally or find it impossible during pregnancy for them to take care of a child. Fearing the reaction of the community, they decided to keep the pregnancy and subsequent birth secret.

If the mother is prevented from maintaining full confidentiality of the birth in the medical facility, she feels compelled by the circumstances to give birth outside the facility. This poses several risks for both the mother and the baby. The first one, that is generally discussed and evident, is the absence of professional medical care, which leads to the fact that the child and the mother may be endangered for health and life. Another risk lies in the mother's attempt to conceal the existence of the newborn child, which she may do by putting it in a baby box, leaving it in a public place, but also committing murder.³ In the context of the above-mentioned, it can be assumed that the possibilities for abandoning the baby anonymously after giving birth so as not to endanger the health

³ Infanticide, the killing of a child, most often a newborn, is a crime going back to the roots of humanity. The crime is gender-specific, the murderer is the mother of the child (Tinková, 2003). The motivations that lead women to such extreme solutions have been the same for centuries - fear of not being able to take care of the child, lack of social support, poor living conditions, and the impossibility of terminating the pregnancy in time. Efforts to care for and protect illegitimate and unwanted children have existed in our culture since antiquity (Olecká et al. 2017). Outlines that are similar to those we still know today then this system acquired during the Enlightenment, when anonymous births were allowed in the St. Apollinaris Hospital in Prague. The degree of anonymity was determined by the financial possibilities of the woman. The maternity hospital also provided a spiritual and educational service to these women. For many women, however, this option was unfeasible, especially outside of large cities. A woman in the village was often known to be pregnant and in a critical situation. Because of the well-known negative attitude of society at the time towards illegitimate children, help could often not be expected from either the family or the village. Thus, for many women, infanticide may have seemed the only option. (Lenderova et al., 2009). The Czech Criminal Code (Act No. 40/2009 Coll.) also deals with this specific situation, in Section 142 (Murder of a newborn child by a mother) states that *"a mother who, in the excitement caused by childbirth, intentionally kills her newborn child during or immediately after childbirth shall be punished by imprisonment for three to eight years"*. However, both of these conditions must be met simultaneously. The state of agitation is examined by an expert. (Šámal et al., 2012).

of the baby and the mother should be expanded. The option of anonymous childbirth is one of the possibilities. Anonymous births are an accentuated mother's right to her anonymity and at the same time a disclaimer of the child's rights to know its biological parents. However, the current European legislation and case law in neighboring countries seek to find a balance between these rights, with an emphasis on the right to life. This option is not legally anchored in our country (and is not practically possible). However, in other European countries, this alternative is more or less established.

Alternative legislation of European countries

Germany

Since the late 1990s, it has been possible in Germany to give up children without providing information about the mother under the concept of anonymous births. However, according to opponents, the legality of submitting the child anonymously to adoption is legally problematic because it damages the children's rights to know where they come from (Convention on the Rights of the Child, 1989). Advocates of anonymous births state that they help women who would otherwise give birth alone and subsequently kill their children. If they need to hide their pregnancy from their parents or violent spouses, it is often out of the question for them to identify themselves in a medical facility when giving birth. The Central Committee of German Catholics said that anonymous births in hospitals had saved children's lives and offered mothers safety and a sheltered space for childbirth. Despite the tolerated existence of anonymous births, pregnant women who tried to conceal their condition did not have many options available. Only about 130 hospitals offer anonymous births in Germany (Isenson, 2009; Bleiker, 2017).

Another option for mothers occurred after 1999, when two dead newborns were found in Hamburg. It provoked new debates about the possibilities of protecting children whose mothers, for various reasons, are afraid or do not want to give birth in public. Thus, in Germany the first boxes where it has been possible to leave the baby safely, Babyklappe. Since 1999, more than 500 babies have been anonymously submitted for adoption in hospitals or baby boxes (Babyklappe), which are run mainly by church groups (Schmollak, 2010). The first hospital in Germany with a baby box (opened in 2000) was the Waldfriede clinic in Berlin. Among other things, this clinic offers women the possibility of a completely anonymous birth.

To expand the assistance to women in need, in May 2014 the German government introduced the possibility of the so-called confidential births. According to the law, a woman can anonymously call a toll-free helpline available 24/7, where the professionals refer her to the nearest counselor. The counselor will administratively go with her through the confidential birth. The information about the mother is known to the counselors. Both the mother and the baby are provided with medical care at birth, and the baby can later find out where he or she came from. The mother's identity will not be revealed to anyone else during pregnancy or after giving birth. However, when the child reaches the age

of 16, he or she can access the mother's personal data and contact her. Between 2014 and 2016, there were 335 confidential births in Germany – more than 100 per year. Experts say that the measure will not help all women in need. The Association of Midwives also stated that the Confidential Birth Act should not fully replace other options such as placing a child in a baby box or a fully anonymous birth. Confidential childbirth requires women to go through a specific process, which involves disclosing their identity when registering with their counselor, which could discourage some women. One of the chaplains of the Waldfriede clinic in Berlin, Gerhard Menn, compares his work at the clinic with that of a priest receiving a confession: *„Some women who come to us are ashamed to be pregnant. If they come from a Muslim background, the issue of honor killings should also be considered. Some experience domestic violence or rape. They do not want a government agency to have their information so that they know they are pregnant. This does not work for a confidential birth.“* (Isenson, 2009).

Italy and Belgium

In Italy and Belgium, the Civil Code allows for birth in anonymity, but this does not prevent the mother or child from seeking each other later on. (Maratou-Alipranti, 2009). In Italy, there is a debate as to whether a mother's right to confidentiality is higher than a child's right to know his or her background. This is a contradiction between the adopted person's right to know his or her biological background and the mother's right to anonymity, which also appeared in the Strasbourg court decisions. In the Godelli case (2012), the European Court of Justice condemned the Italian legal system, which does not include the right balance between competing rights and unconditionally favors the mother who wishes to remain anonymous. According to the judicial decision, this preference for the mother's right to anonymity should be revoked in case of her death. Therefore, it can be said that after the death of a mother who gave birth anonymously, the mother's interest should give way to the adopted child's right to know his or her biological origin (Coscarelli, 2021).

France

One of the aims of the French system is the right to respect life, to protect the health of the mother and child during childbirth, to avoid abortions, especially the illegal ones, and abandonment of a child. The term "Childbirth under X" – (l'accouchement sous X) is used for childbirth in a medical facility where the mother asks for her identity to be kept secret. §326 of the Civil Code guarantees the mother the right to request the birth in an anonymous manner. Furthermore, according to §57 of this Act, a woman should state the first names she wishes to be given to the child (Légifrance: Code Civil, 2006). At the same time, however, since 2002 the mother has been allowed to provide her data in a sealed envelope, which can be passed on to the child later, but always only with the mother's consent. It is a concept somewhere between anonymous and secret birth. If the staff knows the mother's identity, they are bound by confidentiality.

Therefore, the identity of the mother cannot be revealed in France without her consent (Accouchement sous X, 2021).

On the basis of the judgment in the case of *Odièvre v. France* (2003), relationships with adoptive parents are as important as those with the biological parent, and not knowing one's biological mother is not a violation of Article 8 of the Convention on Human Rights. Thus, a mere biological bond cannot be considered sufficient to claim that the knowledge of a biological mother is guaranteed by the right to know one's family. The family in this case is represented by the complainant's adoptive parents, with whom the complainant has close personal, family relations. The complainant had never met her biological mother and her mother had not shown any interest in her in the past.

Austria and Luxembourg

As in France, Luxembourg and Austria distinguish between biological and legal motherhood. In this case, an unmarried woman first needs to recognize the child to become a mother, and this does not happen automatically. The law allows a woman to remain officially unknown even though she is the biological mother of the child. The law protects the right of a woman to give birth in a maternity hospital (Maratou-Alipranti, 2009).

Since 2001, it has been possible to give birth to a child in a hospital anonymously in Austria, and medical care can be provided to the mother anonymously even before the birth. Anonymous childbirth is designed to ensure the health of the mother and child through medical care and social counseling. It is necessary to ensure that expectant mothers who wish to give birth anonymously are not unintentionally encouraged to disclose personally identifiable information. A child with the status of a foundling is usually placed by the Child and Youth Care Agency with the adoptive parents. However, the facilities that provide such care have to cooperate with the agency. After the birth, the child is first taken over by the Social Welfare Authority. The mother has six months after giving birth to report herself. If the mother remains anonymous, the adoption becomes final (Rechtsinformationssystem des bundes, 2001).

Case study

As demonstrated above, the Czech Republic does not offer an option corresponding to anonymous childbirth for women. Its introduction is contradicted by arguments about the impossibility of repressing the child's right to know his or her parents. However, as can be seen from various rulings of the European Court of Human Rights, this option is not legally inadmissible. We demonstrate the arguments for its introduction in a case that depicts a model situation.

The case was identified within the project Retrospective analysis of mortality of children under 5 years of age who died suddenly, unexpectedly, and violently (IGA_LF_2018_023).

A young 20-year-old mother of Roma origin, who lived in a small apartment with her husband and his entire family, a total of about 8-9 people, became unintentionally pregnant for the fourth time. She was an experienced mother, the mother of three older children. She gave birth for the first time at the age of 16 while still living in an orphanage. She gave up her two older children for adoption, the third one remained in her own care. The overall housing, economic, and social situation of the family was below average, unsatisfactory. These conditions apparently had a great influence on the mother's decision-making: during the interrogation, the mother repeatedly talked about her fear of having another child and of the care that the child would require and would not receive. In poor housing conditions, she was unable to provide the baby with proper care. She was also afraid of her husband's mother, who forbade her to have more children. She did not consider the abortion but could not state any reason for that. According to her own statement, she planned to provide the child for adoption, thus using the same solution that had worked for her in the past. She kept the pregnancy secret, which, according to her, was not difficult, because apart from the weight gain, no other changes were noticeable. She did not go to the gynecologist. The woman stated that she had no contractions until the last moment. During the last 4 days before the birth, her amniotic fluid began to leak and she was in moderate pain. The day before she was taken to the hospital, she went to the bathroom, where a child's hand came out of her vagina when pushed. Probably in panic, she tried to put the hand back in her vagina. However, she still said nothing to anyone about the ongoing birth and went to bed. Only when the contractions became unbearable, she asked the family for a transfer to the hospital. She cited rectal pain as the reason. After being transported to a medical facility, she admitted the pregnancy to paramedics. The baby died during delivery because of asphyxia. According to the conclusions of forensic medicine, the death was violent, in direct causal and time connection with the long-lasting birth. If provided with timely professional medical care, the newborn could most likely be saved.

When asked by the police whether she had been aware that the child could die, she answered that she had, but that she had been scared. Was fear so paralyzing for her that it prevented her from seeking timely medical care when her amniotic fluid began to leak, which she probably recognized as an experienced mother? The woman evidently, under the weight of the situation, thought that she could not afford another child. It is a question why she did not consider the possibility of abortion. Was such a solution culturally / morally / religiously or financially feasible for her, for example? What were the crucial concerns that she decided to keep her pregnancy a secret? Was she so afraid of her mother-in-law that she could get the impression that she and her newborn would be forced to leave the family and would suffer?

A secret birth was not possible for her as an alternative due to the valid presumption of paternity, she could not give birth at home or in the maternity hospital due to her efforts to keep it secret. So, what other options did the woman have?

The first option for a timely resolution of the situation in the Czech Republic is the possibility of abortion, the conditions of which are regulated by law. Such a step would preserve

the woman's right to decide about her motherhood but would violate the child's right to life. From the point of view of Czech legislation, abortion is not a criminal offense if the legal restrictions are met.

Another option is to give birth in a medical facility with subsequent permission to provide the child for adoption. However, this alternative does not offer the woman the necessary anonymity, either during childbirth and hospitalization or after the birth. A woman is also allowed to choose a medical facility far away from her permanent residence, which would reduce the risk of disclosure. However, for some women, this option is not feasible in practice for various reasons.

Given her family situation, anonymous childbirth seems to be another possible optimal solution in this case. Of course, it is debatable whether the woman would subsequently use this option; however, in similar cases, it can be assumed that this alternative could be a suitable solution. It is probable that if the rescue system were in place and the woman received at least basic health and social care, the woman would get rid of some of her fears and, with more information provided, find a medical facility in time.

Conclusion

In the Czech Republic, there are legal and relatively accessible options for protection against unplanned pregnancies, as well as several ways to deal with unwanted pregnancies. However, these solutions will always bring an inevitable conflict among some of these rights: the child's right to know his or her parents, the mother's right to choose to be a mother, and the child's right to life.

The practical realization of the available variants may also seem to be a problem. A pregnant woman cannot always travel to a remote medical facility without informing her surroundings about the pregnancy. The possibility of a covert birth is currently denied to women with partners for the presumption of paternity (married women, women 300 and fewer days since divorce etc.), as in the case study described above. Therefore, these women are in a situation where they are afraid to inform their own family about the pregnancy. The inability to keep one's distance or reasonably view the situation is linked with the lack of knowledge of all available and legal solutions. The terms „secret“ and „anonymous“ birth are misinterpreted by the general public. For women who are considering such a birth, the information about the illegality of an anonymous birth and the rules and restrictions of a secret birth may be surprising (Švecová, 2012). Education of the lay and professional public would improve the situation (Kümmel, 2007). In the case study depicted, the result was a fundamental and irreversible violation of the child's right to life, the conviction and imprisonment of the mother, the reduction of the care of the older child, and possibly even the breakdown of the family. In this particular case, the rights of no party at all have been fulfilled.

Allowing secret births to women who are currently not allowed to give birth under this regime due to the presumption of paternity could motivate women in difficult life situations to give birth in secret, safely, and in a hospital setting.

If a woman could give birth anonymously, the child's right to life would be fulfilled, the woman's right to decide on her parenthood would be fulfilled, but the child's right to know his or her biological parents would remain denied.

It is clear that the option used in neighboring countries to help the mother safely deal with unwanted pregnancy and abandonment of a baby should be extended, either by revising the secret birth legislation and its extensive promotion or by introducing anonymous births.

Anonymous births expand the possibilities of creating a safe environment for mothers, which will provide them with the appropriate help during pregnancy. The doctor's knowledge of the history and course of pregnancy is more important to the child than whether the child knows his or her biological parents, no matter how important such information is.

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Authors

Mgr. Adéla Lemrová
Department of Public Health
Faculty of Medicine and Dentistry, Palacký University Olomouc
Hněvotínská 3, 775 15 Olomouc, Czech Republic
adela.lemrova01@upol.cz

PhDr. et. Mgr. Ivana Olecká, Ph.D.
Assistant Professor
Department of Christian Social Work
Sts Cyril and Methodius Faculty of Theology
Palacký University Olomouc
Na Hradě 5, 779 00 Olomouc, Czech Republic
ivana.olecka@upol.cz

MUDr. Mgr. Ester Hladíková
Department of Public Health
Faculty of Medicine and Dentistry, Palacký University Olomouc
Hněvotínská 3, 775 15 Olomouc, Czech Republic
ester.kleparnikova01@upol.cz
ester.hladikova@nemkp.cz

doc. PhDr. Kateřina Ivanová, Ph.D.
Department of Public Health
Faculty of Medicine and Dentistry, Palacký University Olomouc
Hněvotínská 3, 775 15 Olomouc, Czech Republic
katerina.ivanova@upol.cz