

# Health and Social Issues Related to Confidential Births

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## Abstract

*Introduction:* The article describes the current Czech legal regulation of the area of confidential births with respect to actions that must be taken by healthcare providers, covering all phases including adoption, foster care or institutional care of the child, with an emphasis placed on the social and legal protection of children. Furthermore, the paper describes the controversy concerning real maternal anonymity.

*Objective:* The aim of the article is to describe the current Czech health and social legislative theory and practice in the field of confidential births and subsequent care.

*Method:* With regards to the theoretical nature of the article, the methods of analysis and compilation of expert texts were used.

*Results:* The current Czech legal regulation allows women to give a so-called confidential birth. Healthcare institutions have specific procedures in place, respecting the relevant legal regulations concerning the subject matter. Nevertheless, the mother continuously faces a disclosure of her identity in the course of guardianship-related proceedings regarding placing the child for adoption, into foster care or institutional care. Under the existing legal regulation, comprehensive legal approaches to confidential births and aftercare are set to protect the anonymity of the mother, but not entirely.

*Conclusion:* The current system of law enables women to give confidential births in official healthcare facilities. However, real anonymity is not guaranteed due to the disclosure of the mother's identity while reporting the provided health care to the health insurance company and in the course of legal guardianship proceedings concerning the child.

**Keywords:** confidential birth, mother's identity, social and legal protection of children

## Introduction

The legal institution of confidential birth only became part of the Czech system of laws in 2004, namely by adopting Act No. 422/2004 Coll., amending Act No. 20/1966 Coll., Public Healthcare Act, as amended (Czech). This problem area is further regulated in detail by Act No. 301/2000 Coll., on Offices of Vital Records, Names and Surnames and on the Amendment to Some Other Related Acts (Czech), as amended, and Act No. 48/1997 Coll., on Public Health Insurance (Czech), as amended (Act No. 422/2004 Coll.).

As explained by the preamble of the above-stated act, the purpose of accepting a new legal regulation was especially the protection of children's health and life and the creation of conditions for reducing the number of abortions (Act No. 422/2004 Coll.).

Although the legislator's intention was certainly positive, the regulation of confidential births is rather confusing, lacks a solid concept and shows a number of imperfections and ambiguities. It is also still questionable whether the said legal regulation actually fulfilled the original intention of reducing the number of abortions as many women in the Czech

Republic do not even know about the possibility of confidential birth or have only incomplete information.

## **Objective**

The aim of the present paper is to describe the current health and social legislative theory and practice in the area of confidential births and subsequent care for children in the Czech Republic.

## **Methodology**

With respect to the theoretical nature of the present paper, we chose the method of analysis and compilation of expert texts, also called desk research. The principle of this method is searching, collecting, processing and evaluating already existing data. In the present paper, this involved work mainly with legislative documents (Soukup, 2009).

## **Results**

The current regulation of confidential births is based on the provisions of Sections 37 and 56, Act No. 372/2011 Coll., on Healthcare Services and Conditions of Their Provision (Healthcare Services Act) (Czech). The Healthcare Services Act substituted the Act No. 20/1966 Coll., on Public Healthcare (Czech), which originally included the term of confidential birth under Section 67b Para 20 (Act No. 372/2011 Coll.).

The wording of the Healthcare Services Act implies that a confidential birth takes place in the mother's interest and based upon her written request to hide her identity during childbirth. The woman makes such a request to the provider of the corresponding healthcare service and is at the same time required to expressly declare that she has no intention to take care of the child (Act No. 372/2011 Coll.).

The legal system provides the option to give confidential birth to women with permanent residence on the territory of the Czech Republic. Logically, the woman must be fully legally competent not only to complete the application for hiding her identity during the delivery but also in general in order to provide informed consent, which always required from all patients. Another substantial requirement is that the woman must be single (not married). In cases of divorced women, there must be no presumption of their former husband's paternity, meaning that a legally required period of 300 days must have elapsed since the termination of the marriage (divorce). To prove this fact, a divorce judgement including the date of legal effect must be presented. Without meeting the above-mentioned conditions, the woman cannot be allowed to give a confidential birth (Act No. 89/2012 Coll., Civil Code, Czech; Act No. 372/2011 Coll.).

Apart from the legal preconditions for a confidential birth, Section 56 of the Healthcare Services Act also regulates the principles of maintaining medical records in cases of confidential births. As implied by Paragraph 1 of the above-stated provision, the name and surname of the woman provided to the healthcare facility concerning the pregnancy and confidential birth, as well as her written application for hiding her identity during delivery, her date of birth and date of delivery, are all kept separate from the medical records (Act No. 372/2011 Coll.).

Every medical facility should have a recommended procedure in place, based on the guideline of the Ministry of Healthcare of the Czech Republic for medical facilities when providing healthcare related to confidential births (Guideline of January 1, 2005, Ministry of Health).

The expectant mother is admitted to the delivery room under a fictitious surname “Undisclosed” and name corresponding to the serial number of the confidential birth in the given medical facility in the relevant calendar year and under a generated birth number.

As well as his/her mother, the newborn is most frequently admitted under surname “Undisclosed” and is systematically linked to the mother. It is desirable that the mother chooses a name for the child. If she does not, the court will do so. After hospitalization, the child will bear his/her mother’s surname; however, the mother’s surname is not specified in the records during hospitalization.

Actual data are entered into medical records only after the end of the woman’s hospitalization. They must be inserted into a corresponding cover, sealed and provided with a security code that will be handed over to the client.

Such sealed medical records can be opened only upon the court’s decision unless the woman who has delivered in confidentiality (Act No. 372/2011 Coll.) applies for opening of the medical records.

However, the law does not specify who may place an application for opening at the court or under what conditions the court may approve of unsealing the envelope. Due to a lack of relevant judicial practice in the given area, it may be assumed that one of the reasons might be the relevant child’s interest to learn the identity of his/her biological mother e.g. due to a health condition (Act No. 372/2011 Coll.).

It can be generally stated that the institute of confidential birth puts higher demands on the medical and healthcare personnel, exceeding the general confidentiality requirements as a fundamental principle of medical law.

The question of confidential births is also addressed by Act No. 301/2000 Coll., on Offices of Vital Records, Names and Surnames and on the Amendment to Some Other Related Acts, as amended (Act No. 301/2000 Coll.).

It addresses this problem area in regards to obligatory data entered into the Birth Log Book. As implied by Section 17 of the Act on Offices of Vital Records, a born child is recorded in the Birth Log Book based on a written communication by the healthcare services provider, in whose facility the delivery was completed. Such communication also specifies that the specific birth is confidential (under Act No. 301/2000 Coll.).

However, unlike in cases of regular births, in cases of confidential births, only child-related data is entered into the Birth Log Book – i.e. the child’s name(s) and surname, the day, month and year of birth, birth number, place of birth and gender. Respecting the essence of confidential births, no information on the child’s mother is provided. This practically means that the child’s birth certificate and all subsequent documents include no personal information on the biological mother. Moreover, the data on the father is missing and the father is reported as unknown (Act No. 89/2012 Coll., Act No. 422/2004 Coll.).

For the sake of completeness, it should be noted that the set of records maintained on the child's birth, whose mother applied for hiding her identity during delivery, may be consulted

only by the child's mother and only once the child has achieved the age of 12 years (Act No. 301/2000 Coll.).

Based on the relevant standards, the mother is separated from the child at the healthcare facility and hospitalized at the gynaecology ward for an indispensable period of time, unless she wishes to care for the child. If the operation and building layout of the ward allow so, she is offered a single-bed room. It is also desirable to facilitate her contact with a psychologist, social worker and a lawyer after delivery.

Subsequently, the obstetrician in charge will contact a health and social worker who then reports the confidential birth case to the authority for social-law protection of children and to the vital records office. The vital records office will inform the court about a birth of a child with no mother specified in the birth certificate and the court will initiate the proceeding for unsealing the envelope containing birth documentation and the mother's identification data (Act No. 89/2012 Coll., Act No. 301/2000 Coll., Act No. 372/2011 Coll.).

The financing of confidential births by the health insurance system is dealt with by Act No. 48/1997 Coll., on Public Health Insurance and the Change and Amendment of Some Related Acts. Health care related to pregnancy and to a birth of a child, whose mother applied for hiding her identity concerning the delivery, is covered by a health insurance company that is requested to do so by the relevant healthcare services provider based on the identification data of the insured person (Act No. 48/1997 Coll.).

With regards to numerous interpretational ambiguities related to the introduction of confidential births as a legal institution, the Ministry of Healthcare of the Czech Republic issued a Guideline regulating the procedures for healthcare facilities when providing health care related to confidential births (Guideline of January 1, 2005).

This document sets forth that confidential data are merely the mother's name, surname, date of birth, and the date of childbirth and that the data protection does not apply to the insured person's registration number and number (or name) of the relevant health insurance company. Health care provided in regards to a confidential birth is then covered by the mother's health insurance, who specifies in writing her insurance registration number and the number (or name) of the relevant health insurance company. If the mother is not willing or able to give this information, the healthcare facility will treat her as a private patient with no payment from the health insurance system. The same billing rules will apply to health care provided to the newborn child - i.e. through his/her mother's registration number – the insured person (Guideline of January 1, 2005).

On the date of discharge from the hospital, the IT department will replace the generated birth number by the actual birth number so that the provided health care can be billed to the health insurance company. In other cases, the healthcare facility will enforce the payment from the client directly. This practice raises numerous doubts if confidential births actually give the mother in her life situation the required anonymity when all care is covered by the health insurance of the woman delivering in hiding.

At the same moment, the electronic form of medical records is converted into a paper form and the electronic form is deleted from the system. The woman's medical records are further maintained under a symbol, for instance based on the date of delivery (20. 6. 2013 – 2006/2013). This numerical code is communicated to the woman in the event that she decides for disclosure in the future.

According to the interpretation of social-law protection of children, a child born in a confidential birth is considered a child at risk and thus is subject to interventions by employees of the authority for social-law protection of children. The basic intervention in cases of a child abandoned by the mother and left at the maternity clinic consists in filing an application for temporary injunction to a guardianship court, on the basis of which the child may be put into custody of a future adopter, fosterer for a temporary period, future fosterer or another caring person or placed into a children's centre, which is an alternative actually chosen only in extreme cases (Act No. 359/1999 Coll., on Social and Legal Protection of Children, Czech).

After a six-week period, starting on the date of the childbirth, the mother may give her consent to adoption. For all this time, the mother is the child's legal guardian, the child bears even her surname, the envelope with the mother's childbirth records has already been opened and the mother's identity is no longer confidential. After the sixth week since the date of birth, the caring person (adopter, fosterer) may file an application for foster care or adoption to the court. If the child is not in the custody of a caring person, the relevant authority for social-law protection of children will file an application for institutional care. A three-month period starts as of this moment, during which the mother may decide if she does or does not wish to become the child's parent. If she shows no interest in the child, all her parental rights and obligations towards the child are suspended. The mother is a participant to all the above-stated proceedings, her identity is no longer confidential and she must be present at the proceedings along with the adopters or fosterers (Act No. 89/2012 Coll., Act No. 359/1999 Coll.).

## **Discussion**

The aim of the present paper was to describe the current health and social legislative theory and practice in the area of confidential births and subsequent care for the child in the Czech Republic. Following this objective, we have presented the problem area within the interpretation of the currently applicable legislation and arrived at the conclusion that women in the Czech Republic do have the chance to deliver in anonymity but the actual level of anonymity regarding the childbirth is very low, especially with regards to the reporting of medical procedures related to the childbirth to the health insurance company and also with regards to securing the future of their children. In 2012, only 11 pregnant mothers in the Czech Republic applied to have their identity hidden in regards to delivery (Zpráva o rodiče 2012, 2013).

For instance, Dvořáková (2015) arrives at the same conclusion in her master's thesis, trying to clarify the substance of the Czech legislative regulation of confidential births, as well as Řezábek (2005).

From the perspective of possible further research, we consider it principally important to observe the level of obstetricians' and gynaecologists' awareness of how a confidential birth is to be pursued but also how any subsequent care of the child is regulated. A sufficient level of awareness in these professions may correlate, to a certain extent, with the level of awareness of the mothers, which is surely insufficient and, without sufficient information, mothers are in our opinion not able to objectively judge the consequences of a confidential birth for their lives.

## Conclusion

The current legal situation gives the women in the Czech Republic the option to deliver at healthcare facilities in a confidential birth mode. Although this option exists, it should be acknowledged that its practical application is very uneasy under the current legal conditions. A woman may deliver anonymously at healthcare facilities, but her identity is disclosed even at this point while billing the provided health care to the health insurance company. Her identity and subsequent “encounters with the child” occur especially while securing the future of her child born in a confidential birth. The woman participates in all guardianship-related court proceedings concerning her child, which means she can be repeatedly exposed to contact with the child and his/her future parents or fosterers, which must be psychologically highly demanding and exhausting for her. In compliance with the routines of guardianship courts, she is repeatedly interrogated on her consent to adoption (unless she signs the consent herself), foster care or institutional care. With respect to all these facts we conclude that the institution of confidential birth is too complicated, does not secure the mother’s actual anonymity anyway, and hence we assume that the woman who does not wish to be the child’s mother will more probably prefer putting the child into a baby box, avoiding numerous complications related to a confidential birth.

## Ethical aspects and conflict of interest

From the perspective of possible conflict of interests, we did not identify any circumstances that would threaten the fundamental publication principles.

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