

A FEW MORE COMMENTS ON THE ESTABLISHMENT AND OPERATION OF BABY BOXES IN THE CZECH REPUBLIC

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Abstract

The purpose of this article is to respond to the recommendation set by the UN Committee on the Rights of the Child on 22 June 2011. The UN Committee invited the Czech Republic to follow the given initiative and terminate the operation of baby boxes. The author's article defines the issues related to the subject of baby boxes in the Czech Republic in 2010. It is necessary to emphasize that several years before this; experts in family law had also shown their interests and expressed opinions on the issue in question.

Until now, the legislative bodies of the Czech Republic have not considered the given matter, despite the fact that baby boxes have been established and in operation since 2004. This situation has led to strong criticism on the part of the UN.

The first and last reaction to the establishment of baby boxes, where new-borns can be left, came from the Ministry of Labour and Social Affairs of the Czech Republic in 2006. The observation was published in the form of an article with a specific methodological guideline. The aforesaid Ministry is the central body of public administration for a number of areas, e.g., the area of social care, children and family care. The most important area of responsibilities includes the preparation of draft bills on matters under the competence of the Ministry and the monitoring and implementation of tasks resulting from international conventions and treaties.

In my opinion, at this moment in time, the Ministry of Labour and Social Affairs of the Czech Republic owes a great deal to the amendment of legislation on the abandonment of children in baby boxes and to the protection of their rights.

Key words: *baby box; Ministry of Labour and Social Affairs of the Czech Republic; Convention on Human Rights in Biomedicine; UN Committee on the Rights of the Child*

INTRODUCTION

The specialized scientific magazine entitled "*Prevention of injuries, poisoning and violence*" No. 2/2010 published my article called 'BABY BOXES' which did not deal with the fundamental question of whether baby boxes for "abandoned children" should be established or not

but rather it focused on the question of whether they can be established or operated in the Czech Republic in absence of any applicable legislative regulations (Attl 2010).

The article juxtaposed the favourable position given by the Institute of State and Law of the Academy of Science of the Czech Republic of 27 January 2005

(Zachariáš 2005), issued in response to an application made by the Foundation for Abandoned Children (STATIM), based in Prague, established in 2004 and registered at the Foundation Registry, the principle activity of which was to find the Institute to be in conformity with the Czech law, and an unfavourable position on the so-called baby-boxes, developed by prof. JUDr. Michaela Zuklínová, CSc., from the department of Civil Law at the Faculty of Law of the Charles University in Prague (Zuklínová 2005). Her position was supported by three more renowned specialists in family law from faculties of law throughout the Czech Republic.

In the following part of the article I made a fairly detailed analysis of the legal issues relating to the registration of foundation funds in the Foundation register, and I dealt with the issue of the so-named baby boxes from the viewpoint of the Convention of the Rights of the Child, Charter of Fundamental Rights and Freedoms, socio-legal protection of children, criminal law issues as well as formulating the potential for misuse of baby boxes in the absence of their legal regulation.

The materials published at that time by the above-mentioned foundation fund showed substantial differences in how baby boxes are viewed in European countries and in the US: from the benevolent approach to their operation in some countries to their illegality in the Netherlands, or criminalization of any abandonment of a child under 2 years of age in Great Britain.

From the legal point of view, the most controversial aspect in this respect is the expression “abandoned child” because “maternity is based on the objective fact of the child delivery and, as such, it is established once and for good and therefore cannot be renounced, waived or contractually assigned to another woman” (Frintová 2009). The maternity status may effectively change only by adoption under the terms specified by law.

The Ministry of Labour and Social Affairs of the Czech Republic responded to the establishment of baby boxes on 16 March 2006 by issuing a methodology for cases of children left in baby boxes (Beránková 2006). The methodical instruction was intended for bodies in charge of the socio-legal protection of children and its main purpose was to return

an abandoned child to its own family as soon as possible, or to place the child into a substitute family in the shortest time possible; further content of the instruction, however, was based on an erroneous assumption of the issuing authority that the identity of children left in baby boxes would be known (e.g., the baby will have its certificate of birth in the baby box or the mother will contact the department of social care for children). If the identity of the child is not known then the instruction states that the case should fall into the local competence of the municipal authority in which the baby box is located and it also mentions the obligation to submit a motion to the court to issue a preliminary measure to put the child in the custody of a physical person-applicant for the adoption or foster care of the respective childcare institution for children in need of immediate care or infant and neonatal care.

The instruction lacked extensive substantiation, it had many shortcomings and it did not address the heart of the matter as it actually could not do that; the heart of the matter could have been addressed only by a legal regulation, either for the establishing and operation of baby boxes in the necessary scope or for their prohibition; however, no such regulation has been adopted so far.

Baby boxes – the current situation

So far, the legislative bodies have obviously not found it necessary to adopt any legal regulation for baby boxes, despite a relatively high amount of new legislation adopted in various fields of law. By now fifty children have been “left” in baby boxes in the Czech Republic under various circumstances and one may assume that the baby boxes are not used only by mothers who are in a difficult economic and social situation or who are worried about the response of their family and friends to their maternity, as it has been reported for long. This may be documented by the most recent case known to the author, which happened in 2011, when an 18-month-old boy was brought to, and left, in a baby box, while physicians concluded that the child had been taken care of properly and had suffered no harm. The true reason of the abandonment may only be speculated upon.

The UN Committee on the Rights of the Child criticized the Czech Republic for a

number of shortcomings in the protection of children's rights and, among other things, it also requested that the Czech Republic close down the baby boxes as they are in conflict with the Convention of the Rights of the Child, particularly in respect of the child's right to know its identity, to know its parents and to know its origin. More precisely, the Committee on the Rights of the Child is seriously concerned about the "Baby box" programme, which is considered as being in violation of articles 6, 7, 8, 9 and 19 of the Convention of Children's Rights. This fact has often been highlighted in professional essays before that. In recent times, an extensive legal analysis related to the issue of "baby boxes" in an article entitled "Legal difficulties related to "baby boxes" in light of recommendations stipulated by the Committee on the Rights of the Child from June 2011, was published in the following periodicals: *Gynekolog* No. 5/2011 and *Neonatologické listy* No. 1/2012 (Jílek 2011).

"According to the UN, the state should, instead of baby boxes, focus on addressing the causes of the abandonment of these children. The state should support family planning, counselling or social assistance in the case of unwanted pregnancy. Currently, there are 44 baby boxes in the Czech Republic. So far 50 children have been left in them. The Committee also recommended a review of the legislation and to modify it in favour of children. The state should create an integrated plan of measures to be taken. It should include for example the prohibition of corporal punishment in families, the right of the child to be heard by a court or other institutions and the right of the child to appeal. Also the child's opinion should always be considered" (Novinky.cz 2011).

"Members of the Committee criticized the Czech Republic for standing by and only watching children being abandoned by their parents. We are not trying to reduce the number of abandoned children and not supporting any alternative to baby boxes. We are only passively watching the problem. The UN therefore proposes that we introduce programs that provide education in family planning and establish sufficient social consulting services for women whose pregnancy was not planned. UN proposes educational programs similar to those of early

care for children with special needs. No such services are currently available for prospective parents who are not prepared for their parenting role. And because of baby boxes, it is impossible to investigate the reasons for the mother abandoning the child" (Procházková 2011).

CONCLUSION

The recommendation by the UN Committee on the Rights of the Child challenged the Czech Republic in respect of the fulfilment of its commitments under international law dealing with the rights of the child. In this context it is totally irrelevant that the country is "not under the threat of sanction" because the UN Charter and other documents regulating the competences of its bodies obviously do not make it possible to impose any sanctions.

However, as a member for many years of this international organization, the Czech Republic should be bothered by the fact that it has failed to fully respect the old legal adage that "commitments should be honoured". There have been many papers written on the fulfilment of commitments relating to the rights of the child, however to no avail.

In my opinion it is absolutely necessary to give up the persisting opinion that the institutional care of children from dysfunctional families is the best solution. This particularly means changing financial flows from the establishments that provide institutional care, towards substitute families; it seems that the current government is planning to do so. I also consider it necessary (not only with regard to the Committee's recommendations) to immediately remove the option for a person leaving a child in a baby box to do so in absolute anonymity; the person should actually be given a certain period of time (after the child is abandoned) to think and if the person insists on his/her decision then an approval for the adoption should be requested.

On one side it is very easy to leave a child in a baby box, on the other side it is fairly difficult to legally return the child to this person's custody (if he/she changes their mind) due to the absolute anonymity of the person who abandoned the child.

Both the general and professional public will eagerly anticipate the response of the competent bodies of the Czech Republic to the recommendations made by the UN Committee on the Rights of the Child. A large

number of legal analyses related to the baby box issue have been written. The references quoted in the given article are only a part of them. However, they clearly have not been heard by the authorities in charge.

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