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Sharenting and Children's Privacy Protection in International, EU, and Czech Law: Parents, Stop Sharing! Thank You, Your Children

- **ABSTRACT:** *The digitalization of social relations has brought some new and hitherto unknown phenomena. Real life has been extended, into the world of cyberspace. This world is often referred to as the virtual world, but in reality, by its consequences for our lives and the legal sphere, it is no less real than the physical world.*

A significant part of family life has been affected by this phenomenon. Photos, videos and other information that used to be available only to immediate family members are now shared publicly on the internet through social networks.

Young children are particularly affected, with parents publicly sharing information from their private lives. This practice is referred to as sharenting.

As a result of sharenting, children in the Internet environment often effectively lose their status as subjects and become mere objects. This object is then handled by the child's closest relatives – parents, i.e. the people who should naturally look after and defend the child's best interests.

The problem is that parents are not aware of both the legal framework and the possible factual negative consequences that sharenting can have for a child's life and childhood.

The key question that I seek to answer in this article is to what extent the current legal framework can respond to sharenting. The aim is also to assess to what extent is such sharing information about children legal and where the boundaries of permissible or justifiable disclosure of information about a child on the Internet lie. Finally, the question is also how the child affected by sharing can defend him/herself against its negative consequences.

Sharenting is addressed by the EU, international and national law. As far as national law is concerned, in my article I focus primarily on Czech civil and family law. Sharenting concerns the protection of privacy as a fundamental

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human right, but also freedom of expression, which is why the European Convention and the Convention on the Rights of the Child (international dimension), the EU Charter of Fundamental Rights (EU dimension) and the Czech Charter of Fundamental Rights and Freedoms (national constitutional dimension) are explored as well.

- **KEYWORDS:** sharenting, child's best interest, privacy protection, social networks, parental responsibility, representation of the child in cyberspace

1. Introduction

The digitization and “internetization” of social relations has created new phenomena and challenges with the transfer or extension of real life into the world of cyberspace. This world is often referred to as the virtual world, but in reality, by its nature and consequences for our lives and the legal sphere, it is no less real than the physical world in which we live. We have become accustomed to the fact that these consequences are not necessarily positive.

A certain specificity of cyberspace is that direct access to it is effectively and often legally forbidden to certain groups of people. These people include, among others, the youngest (and also the most vulnerable) of us – children. However, they are routinely and unfortunately also increasingly present in cyberspace vicariously through their parents. Therefore, children do not have full control over how they are presented in cyberspace. They cannot influence the information published about them on the Internet, not only in terms of what they do or say but also in terms of photographs or videos of their likeness. Their parents are in full control and do not seek their children's opinions, and in many cases, given their young age, this is not even possible.

Consequently, children in the Internet environment often effectively lose their status as subjects and become mere objects. This object is then handled by the child's closest relatives, that is, the people who have the closest ties to them and who should naturally look after and defend the child's best interests. It may be legitimately asked whether this is indeed the case.

The phenomenon about which I am writing has already acquired its own name—professional literature refers to it as “sharenting” from a combination of the words sharing and parenting. It is understood as a situation in which a parent shares information about his or her child, typically photos or videos. From

the point of view of public law,¹ the information shared typically belongs to the category of personal data, and, given the fact that it concerns a child, even to the category of sensitive personal data.

The key question that I seek to answer in this article is to what extent the current legal framework is able to respond to this still relatively new social phenomenon. I not only cover extreme examples, but also situations of ordinary, “everyday” sharenting. The aim is to assess the extent to which such sharing of information about children is legal and where the boundaries of permissible or justifiable disclosure of information about a child on the Internet lie. The ultimate question is how children affected by sharing can defend themselves against its negative consequences.

Legislation regulating sharenting is multilayered and is contained in EU, international, and national law. As far as national law is concerned, I focus primarily on Czech law. Sharenting concerns the protection of privacy as a fundamental human right, but also freedom of expression, which is why the European Convention and the Convention on the Rights of the Child (international dimension), the EU Charter of Fundamental Rights (EU dimension), and the Czech Charter of Fundamental Rights and Freedoms (national constitutional dimension) are relevant. At the same time, sharenting is an issue that is regulated by the GDPR (the EU dimension) and the protection of privacy or, more broadly, the protection of personality rights in national law, that is, the Czech Civil Code in the case of the Czech Republic. Equally important is the regulation of the relationship between parents and children by family law, which defines the extent to which a parent can act on behalf of a child. This issue is also regulated by the Civil Code of Czech law. As the scope of this article is limited, I do not address legal regulation-related issues, such as the issue of contractual relations between information society service providers on the one hand and parents or children on the other.

2. Definition of sharenting

Sharenting is typically associated with the dissemination of information on children through social networks. However, information about children can also be shared by parents in other, more traditional means of data transmission. The fact that the dissemination of this information takes place electronically via the Internet is not in my opinion what defines sharenting. However, the Internet and social networks have brought this phenomenon to existence; without them, it could not exist to the present extent.

1 The issue is regulated by GDPR, which has been supplemented and implemented in the Czech Republic by Act No. 110/2019 Coll., the Act on the Processing of Personal Data (zákon č. 110/2019 Sb. Zákon o zpracování osobních údajů).

What defines sharenting as a phenomenon is precisely the fact that information about children is shared by their parents. The form in which the information is transmitted is, in my opinion, secondary, or directly irrelevant. I have therefore deliberately left out the Internet and social networks from the definition of sharenting I use in this article so that the definition is technologically neutral.

The essence of sharenting involves the public sharing of information about a child. Therefore, it is necessary to distinguish the private sphere from the public sphere. There are three possible ways of examining this distinction depending on whether the dividing criterion is (1) territorial, (2) personal, or (3) one that makes distinctions according to the nature of the information shared, that is, whether it is private or public.

Territoriality usually fails when sharing. Therefore, this is not a suitable dividing criterion. I have noted above that while sharenting is by definition not tied to the Internet, it *de facto* in most cases happens through it. The Internet is in this case merely a “tool” and due to its characteristics, it makes little sense to distinguish between private and public spaces in the environment of the Internet – it is ubiquitous. Rather than a place, it is possible to talk about the fact that the information it contains is only available to certain people. Therefore, a more appropriate criterion is the personal one.²

Nevertheless, the territorial aspect has some relevance. There is a qualitative difference if a parent shares, for example, a photo taken in a public place (e.g., a picture of a child on the podium after winning a race) or at school, from a situation in which a parent shares a photo of a child together with, for example, the child’s room. In the latter case, the parent reveals another layer of the child’s privacy by showing the conditions under which the child lives. The physical private world meets the virtual public world.

Definitions of sharenting do not usually work with the target group, that is, with people who are the actual or potential recipients of information about children that has been shared by their parents. Yet, this personal perspective seems to me the most appropriate for defining sharenting. Information dissemination usually occurs within several circles. First, this sharing is most intense within

2 The limits of this distinction are also highlighted by the case law of the Czech Constitutional Court and the ECtHR. Although it does not concern sharenting, it is relevant to the case at hand. See the reasoning of the Czech Constitutional Court in Pl. Constitutional Court 3/09, in which the Court stated that ‘in today’s times, when the autonomous fulfilment of private life and work or leisure activities are closely related, it is not possible to make a sharp spatial separation of privacy in places used for living from privacy created in places and environments used for work or business activities or for satisfying one’s own needs or leisure activities, even if the activities take place in areas open to the public, respectively. Such activities, which are not enclosed, such as business activities, may be subject to certain restrictions which may constitute a certain interference with the right to privacy.’ The Constitutional Court drew inspiration from the case law of the ECtHR. See, for example, the ECtHR’s reasoning in *Niemietz v. Germany* (Application no. 13710/88), Judgement, 16 December 1992.

the family in the atomic sense, that is, between the partners/parents themselves. Second, the target group may be a wider family. Third, information may be shared not only with the family but also with a varyingly broadly defined circle of friends. Fourth, information may be shared directly with the public, that is, people who do not fall into any of the previous categories. As a rule, the first and second variants of sharing information about a child are not considered sharenting in the true sense. The third and fourth variants, however, usually are.

Regardless of the variant described above, the crucial problem with the Internet and information sharing through social networks is the limited ability to control further dissemination of the information shared. Thus, the information may initially be shared by the parent within a narrow circle of recipients, but this circle may later be expanded by secondary sharing by another person to new, unintended, and unwanted recipients not originally intended by the parent. This form of sharing is no longer considered sharenting, but is a secondary consequence of sharenting.

The third aspect, which is based on the nature of the information, also does not represent an optimal criterion for defining sharenting. In particular, the fact that information may be publicly available (regardless of whether we define it as public geographically or personally) does not necessarily mean that it is public information; it may still be private.³

Sharenting is understood as a situation in which a parent shares information about their child. According to Czech law, only biological⁴ or adoptive parent exercise parental responsibility. Thus, a step-parent, foster parent, spouse, or anyone else (e.g., a grandparent) to whom the child has been entrusted by the parent are not holders of obligations and rights arising out of parental responsibility.⁵ I believe that sharenting is not an issue in this case, as these people represent third parties and not the legal representative of the child.

In terms of time, sharenting is a phenomenon that is typical of a relationship between a parent and their minor child. The legal quality of the relationship between the child and parent changes as soon as the child acquires full legal capacity.⁶ The essence of this change lies in the fact that the child is able, not only *de facto* but also *de jure*, to make decisions about their rights and obligations and to defend themselves if others interfere with their rights. The issue of the majority will be addressed later in this article. Regarding lower age limits, the first solution is to link the beginning of life to the moment of birth. In reality, however, sharenting can occur even earlier – from the moment of conception. Indeed, parents

3 See Bónová, 2022, p. 178.

4 I use the term “biological parent” here for simplicity. In fact, a parent in this sense may not only be a biological parent, but also one to whom one of the legal presumptions of parenthood applies.

5 Králíčková, 2021, p. 102.

6 The exception may be applied to infrequent cases of people with limited legal capacity.

can and frequently do share visual information about the fetus.⁷ The difference between a situation that concerns the fetus and the child lies in the fact that the fetus does not yet exist as a subject of Czech law until birth. Legislation does not provide for or protect the fetus in relation to sharenting.⁸ However, this does not preclude the possibility that children may defend themselves legally against the disclosure of such information in the future.⁹

Sharenting, if done to a reasonable extent and if the content of the information is also reasonable, is not necessarily a negative social phenomenon. However, it can easily become one. Typically, the systematic and excessive sharing of information or the sharing of potentially problematic and sensitive information that directly interferes with a child's personal rights is problematic. Such a phenomenon is referred to as oversharenting¹⁰ and its negative impact on the child is obvious.¹¹

At first glance, it may seem that the problem of sharenting is artificially exaggerated. After all, it is normal for parents to be proud of their children, share information about their children, and show them in photos or other means of transmitting information. No visible harm is done in such situations. However, the problem can be viewed differently from different perspectives. Fortunately, I do not have personal experience with sharenting, as I grew up at a time when the Internet was not available to the public and we did not use it in my family. However, this was not the case with social networking. I ask myself how I would feel if someone else shared information about me. The fact that this other person was one of my parents would be irrelevant to me at that moment. Nor is social convention, and thus the fact that it is basically common on social media, relevant. What is relevant is the fact that I am not (the child is not) the master of my privacy as the law presumes. The fact that I do not know or feel it at the time is also irrelevant. It will or may happen one day, and I will feel the consequences of such an action.

I also feel it is necessary to stress that social convention is a dynamic concept that evolves over time. Something that was "normal" at a certain time may seem bizarre decades later. This is in the best case. In the worst case, because of shifting social standards, what was once normal becomes forbidden. An example involving children is the successful Czech film "S tebou mne baví svět," which contains scenes of naked children bathing. It would be impossible to film a similar scene today, and I personally would not allow it with my children as a parent.

7 That this problem indeed exists is confirmed, for example, by this article Karlík, 2019.

8 See Zuklínová, 2014.

9 Karlík, 2019.

10 Choi and Lewallen, 2018, p. 5.

11 Concerning harm, Cordeiro distinguishes between tangible harm, children's rights, digital citizenship violations, and intangible harm. See Cordeiro, 2021.

Sharenting (including oversharenting) has not received the attention it deserves in the literature. This is surprising given how common the phenomenon is. It is also surprising in view of the consequences that sharenting can have on a child's psychological development and their later personal and professional life. Let us not forget that the downside of the Internet is that its content is eternal. Despite the existence of the right to be forgotten, the real possibility of deleting something once it is on the Internet is rather theoretical.

There are many practical examples of sharenting. It can take the form of sharing photos or videos of a child, or it can be a situation in which funny stories from a child's life, or a child's misspoken words, humorous catchphrases, or accidents are shared.

Some parents often do not share anything of their own private lives on their social network profiles. However, they systematically publish details of their child's life, as if the child's privacy is something that does not deserve protection.

As a rule, sharenting is not performed for profit. Nevertheless, cases in which the motive for sharenting is financial gain are no exception. In an example of such a situation, in which a child was systematically exploited economically on the Internet, is the pair Misha and Methadone. Two siblings, one aged nine and the other aged twenty-two, became famous YouTubers with the knowledge and support of their parents.¹² Their fame crossed the borders of the Czech Republic, as a result of which their work included both Czech and English production. They became famous mainly because they produced very bizarre songs, often containing vulgarity, where not only the lyrics were often "crazy" but also the way in which they were performed. In their production, they also revealed a part of their private life – the household in which they lived. The main performer was the younger of the brothers, the older one created and directed the content. The extent to which the nine-year-old Misha was able to assess the implications that his actions might have on his future life and professional career is highly questionable. However, at his age, he was undoubtedly already able to read, so he could have read the hateful comments on the Internet from users who found his work too unconventional.¹³

An example of a similar situation in which the child's activity is organized by the parents and is most likely also for profit, but in which none of the negative signs of sharenting appear, is the YouTube channel of Karolina Protsenko, whose violin performances are broadcast without revealing the sphere of her home or anything that is not related to her musical performances.¹⁴ In this case, the

12 See Mishovy šílenosti [Online]. Available at: https://cs.wikipedia.org/wiki/Mishovy_š%C3%ADlenosti (Accessed: 8 June 2022).

13 Misha z Kuřimi je youtuberským fenoménem. Jeho videa sledují miliony lidí [Online]. Available at: https://www.impuls.cz/regiony/jihomoravsky-kraj/michal-florian-kurim-youtuber-metadon-misha-mishovy-silenosti.A161105_080205_imp-jihomoravsky_kov/tisk (Accessed: 8 June 2022).

14 Karolina Protsenko Violin [Online]. Available at: <https://www.youtube.com/c/KarolinaProtsenkoViolin>. (Accessed: 8 June 2022).

Internet serves as a medium similar to TV or radio. However, the same can no longer be said of her other videos on another YouTube channel that she shares with a friend.¹⁵

The above examples illustrate that sharenting is a diverse practice. I would like to stress that the issue of sharenting cannot be reduced to the Internet alone. Exposing a child's privacy to other multimedia may have the same negative consequences. Therefore, we can talk about sharenting in narrow or broad senses. Prime examples of the broader concept are reality television shows such as "Výměna manželek" (Wife Swap), which allow the public to see into the home and family relationships of a child who is a passive participant in such a program.¹⁶ From the child's point of view, the voluntary and conscious involvement of parents in such an activity cannot be considered reasonable. The parents' aim is profit or to solve their private problems. The child's interests and benefits are completely secondary.¹⁷ Another example might be the "modern" services offered to parents by kindergartens that allow parents to monitor online what children are doing in the nursery. Strangers can thus gain access not only to the child's image and video data (with the trivial possibility of saving it) but also to information about how the child reacts within the collective.

If we systematize this phenomenon, the following variants of sharenting are typical: 1) Direct sharenting under the identity of the parent. 2) Direct sharenting is implemented by the parent under the identity of the child. The child therefore has no access to his profile and the information disseminated, and the parent acts essentially as his manager. 3) Indirect sharenting in which parents actively create the conditions for the child to share information about themselves and actively collaborate with the child on this sharing. 4) Indirect sharing in which the parent does not intend to disseminate information about the child but creates conditions under which this de facto occurs.

Sharenting does not apply, however, if the child shares the information without the parents' knowledge, even though he or she is not yet contractually entitled to use the relevant social network, nor is it possible because the child may not yet have the necessary degree of legal capacity under Czech law.

15 Barvina Show [Online]. Available at: <https://www.youtube.com/c/BarvinaShow> (Accessed: 8 June 2022).

16 In this show, two families participate in each episode for a fee of CZK 100,000 (app. EUR 4,200). The wives of the two families are exchanged for ten days. The camera documents their cohabitation in the new environment. At the end of the show, the performing couples confront each other and exchange their views. Výměna manželek [Online]. Available at: https://cs.wikipedia.org/wiki/Výměna_manželek (Accessed: 8 June 2022).

17 The child may benefit from the correction of a pathological condition in their family, but such a gain is speculative and unlikely, the price paid for this hypothetical benefit in the area of privacy is too high, and the help can be implemented through traditional counseling methods.

There is no difference in principle between the first and second options.¹⁸ However, the first option, if established appropriately, may lead to less interference with a child's personal rights.¹⁹ This assumes that the parent is restrained and shares the data, for example, in such a way that it is not possible to trivially link the child's name to the shared image and sound material. In the latter case, the child is identified and relatively easy to trace. The third option may be legally different from previous options. The child participates; therefore, it is clear that he or she is aware of the situation and provides consent. This situation is further discussed later in the article, as the factor of the child's informed consent (in relation to his age) is legally significant. The fourth option is just as dangerous as the first two. This can be demonstrated by the example of the aforementioned Wife Swap. In the case of this program (which, incidentally, is available online), children are not the primary concern, but they are part of the program.

3. Aspects of national sub-constitutional regulation – privacy protection, parental responsibility, and representation of the child

Two main areas of regulation in civil law address the issue of sharing. The first is the protection of personality, which includes the protection of likeness and privacy. Czech law provides for Sections 81 et seq. of the Civil Code.²⁰ The addressees of this regulation are all people, regardless of their age. Therefore, the protection of image and privacy is also granted to children.

It is essential that the protection of image and privacy be conceptually based on the fact that any interference, such as in the form of the dissemination

18 These are not the same: it always depends on the contractual conditions of the service the parent uses. The first option usually corresponds to the expectations of the operators of these services – the profile belongs to the person who is presented through it. The second case, from this point of view, may represent a breach of contractual terms.

19 This option can be practical in situations in which the child him or herself has the intention to be active on social networks for profit or for artistic reasons. In this way, the parent has the advantage of being able to control and filter what the child shares. At the same time, this option is in line with the contractual terms of social network providers, as the profile belongs to the parent. See Heitner, 2018.

20 The protection of privacy is ensured in Czech private law by means of the general clause of protection of personality rights and the specific provisions of the Civil Code. Key provisions are contained in Section 81 of the Civil Code. This provision serves as a general clause according to which 'the personality of a person, including all his natural rights, is protected. Everyone is obliged to respect a person's free decision to live according to his own.' This general provision is followed in the same clause by a demonstrative enumeration of human values, according to which 'the life and dignity of the human being, his health and right to live in a favorable environment, his dignity, honor, privacy and his expressions of his personal nature shall, in particular, enjoy protection.' Human privacy is specified among these values in that a violation of any other value that is protected by the cited provision will also result in an invasion of privacy. See Ondřejová, 2016, p. 199.

of a person's image or interference with their privacy by making an audio or visual recording of them, which is subsequently disseminated, presupposes either the existence of the consent of the person concerned (that is, the person disseminates the information himself or herself, or a third party does so with his or her consent) or justification based on a statutory license.

As previously discussed, the essence of sharenting is the dissemination of information about a child. This information may include both the child's image and other information that concerns their privacy. The legislation in the Civil Code reflects the reality and fact that children are only capable of making limited decisions about their own affairs. Until a certain age, children are *de facto* unable to act on their own and share information about their privacy. Similarly, they are not able to give consent envisaged by the legislation protecting image and privacy.²¹

The answer to the question of who can act and under what conditions, and if necessary, grant consent, is given by the second relevant area of regulation. This area is the regulation of the relationship between parents and children under Czech law, contained in Sections 855 et seq. of the Civil Code. The provision of Section 858 of the Civil Code is particularly crucial, as it regulates parental responsibility as follows:

Parental responsibility includes rights and duties of parents consisting in caring for the child, including, without limitation, care for his health, his physical, emotional, intellectual and moral development, the protection of the child, maintaining personal contact with the child, ensuring his upbringing and education, determining the place of his residence, representing him and administering his assets and liabilities; it is created upon the child's birth and extinguished upon the child acquiring full legal capacity. The duration and extent of parental responsibility may only be changed by a court.

An important fact follows from this regulation. Regarding sharenting, in most cases, the parent does not need the child's consent under Czech law. Parents disseminate information about the child in their capacity as 'representatives of the child;' therefore, consent to such actions is already given by law, namely the above-quoted Section 858 of the Civil Code. However, this does not lead to the conclusion that sharenting is permissible, which would be an oversimplification.

From the perspective of sharenting, the quality of the relationship between parents and children, as provided for in the Civil Code, is of particular importance. This legislation has historically evolved to place increasing emphasis on

21 In the Czech legal system, children acquires legal capacity gradually, at the latest when they reach the age of 18.

the legal status, benefits, and interests of the child. This development has been completed since the adoption of the current Civil Code, which came into force in 2014. In defining the role of parents in the exercise of parental responsibility, the current Czech legislation emphasizes that they should care for the child, which means, *inter alia*, taking care of the child's health, emotional, intellectual, and moral development, and protecting the child.²²

The use of the term "care" affects the quality of the relationship and suggests that the parent does not have the position of an absolutist ruler over the child.²³ On the contrary, the wording of the law makes it clear that rights and duties are reciprocal and, above all, that 'the purpose of duties and rights towards the child is to ensure the moral and material well-being of the child.'²⁴ These premises materialize in the legislation in the provision of Section 875(1), according to which 'Parents exercise parental responsibility in the best interests of the child.' I believe that this is the area in which parents most frequently make mistakes when sharing information about their children on the Internet. They fail to understand the quality of their relationship with the child and the fact that the child is not an object, not their property, and therefore cannot be arranged, photographed, and shared publicly in the same way that they photograph and share lunches in restaurants, a new car, or snapshots from an exotic holiday.

The Civil Code also provides that, to the extent that the child is not competent, parents represent the child either jointly or separately.²⁵ Therefore, the consent to a third party (typically the provider of the relevant social network service) with the invasion of privacy provided for in the above-mentioned legislation is not given by the child but by the parent (or both of them) parents until the child acquires the capacity to act independently. Even in the case of sharenting, there is no *a priori* conflict between the interests of the child and the parent. It would therefore be absurd to suggest that it is necessary for the court to appoint a guardian for the child that has been potentially or actually affected by sharenting.²⁶ When considering whether to disclose information about the child and whether to grant consent to third parties to share that information, the parent is bound by the above considerations, which are in the best interests of the child. I emphasize that the mere posting of information about a child on social media indicates that the parent has consented on behalf of the child to the further use of the child's information by a third party. In fact, the parent has given consent as part of the contract they have entered into to use the service in the first place.

22 See Sec. 858 of the Civil Code.

23 Neither parent has the status of *pater familias* anymore, with a very broad, even unlimited *patria potestas*.

24 See Sec. 855(2) of the Civil Code.

25 Sec. 892 of the Civil Code.

26 See Sec. 892(3) of the Civil Code.

To summarize, the regulations contained in the Civil Code imply that a parent can decide that certain information about their child, for example, photographs of the child or a video of the child, can be shared publicly. However, the limitation here is the best interest of the child. A parent may only share information consistent with the child's interests.²⁷ I question whether situations exist in which sharing information about a child on the Internet is in accordance with the child's interests. Claire Bessant provides an answer to this question in her article.²⁸ She lists a number of benefits, which I would personally divide into two groups. The first category includes those who directly benefit the child. Second, I would include benefits for the parents, which also indirectly benefit the child. The first group includes motivating children by broadcasting their achievements; sharenting can help children develop positive networks of family and friends and learn about themselves.²⁹ Sharenting thus allows parents to build a positive social media image for children and counteract negative behaviors they might themselves engage in as teenagers.

The second group includes avoiding isolation; obtaining emotional, practical, and social support;³⁰ and sharing parenting advice. Sharenting enables parents to enact and validate their parenting style.³¹

The intensity of sharenting also matters. "Moderate" sharenting will not be problematic. This refers to situations in which sharing information about a child is neutral, meaning that it does not harm the child in any way. This would include, for example, the sharing of shared family photos with minimal informational value about the child within a limited circle of friends or sharing a photo from school reporting some success the child has achieved. Here too, however, restraint and caution are appropriate, as the problem is time. Something that was standard at one time may be laughable at another – we can think here of the proliferation of photographs from the 1980s. Hair or dress styles from this era look bizarre nowadays and are often the subject of ridicule on social media.

Even in situations in which the consequences of sharenting are harmless or even beneficial, it is necessary to respect the child's opinion within the scope of Czech law if they are already capable of formulating and expressing it reasonably. The Czech Civil Code provides that

before making a decision that affects the interests of the child, parents shall inform the child of everything that is necessary for the child to form his own opinion on a given matter and communicate it to the parents; this does not apply if the child is unable to properly

27 See Sec. 875 of the Civil Code.

28 Bessant, 2018.

29 Ibidem.

30 Ibidem.

31 Ibidem.

receive the message, or form his own opinion or communicate it to his parents. Parents shall pay due attention to the child's opinion and take the child's opinion into account when making a decision.³²

It is crucial to determine the age at which the obligation to consult the child arises, though the law does not explicitly set such an age. The determination of a specific age will be individual and will always depend on the maturity of the individual child. In any event, the age limit of thirteen years, at which many social networks allow children to engage, is too high, as children become aware of the existence of social networks much earlier. Therefore, the age of eight or nine seems more realistic from this point of view. Parents should obtain the child's consent with skepticism. As the Misha case mentioned in the Introduction demonstrates, children at young ages may not be able to fully appreciate the consequences of their actions in the future. Therefore, refusal to share information should be respected and consent should be subjected to critical evaluation.

In the previous paragraph, I discussed the child's consent implied by the exercise of parental responsibility. It is necessary to distinguish from this consent: (1) the consent given to third parties (typically social network operators), on the basis of which these parties may, in private law, interfere with the child's privacy, and (2) the consent provided for by EU public law, contained in the GDPR, on the basis of which personal data may be processed.

I will start with the latter, which is more systematic and the interpretation of which will be clearer. The specific legislation on this issue is not contained in the GDPR but in the national implementing legislation. In the Czech Republic, Act No. 110/2019 Coll. Act on personal data processing provides in Section 7 that 'A child shall enjoy capacity to grant consent to personal data processing in relation to an offer of information society services addressed directly to the child from fifteen years of age.' Thus, public consent is clearly established.

The situation is more complicated in the case of the first option because there is no explicit regulation. Under Czech law, a person acquires legal capacity gradually. However, I am convinced that Act No. 110/2019 Coll. Act on personal data processing can be used here and consider the age of fifteen years to be a general threshold in a broader sense at which parents should not disclose anything that may interfere with their child's privacy without the child's consent. However, in practice, parents should also respect the wills of younger children. Depending on the mental and physical development of the child, this age limit may be higher or lower in individual cases.

Parents' views on sharing information about their children can vary considerably. The Civil Code presumes that parents exercise responsibility in mutual

³² See Sec. 875(2) of the Civil Code.

accord.³³ In Czech law, the positions of the father and mother are comparable; neither is preferred. In the absence of an agreement between the two, the interests of the child should be given priority. Unless there is a clear and compelling reason for sharing information, in my opinion, a rather restrictive approach should prevail in the event of a difference in opinion between parents.

I have stated that children are the subject of privacy law. Parents can deal with their privacy but are limited by law in this possibility. However, many parents do not consider the consequences of their actions on the Internet. They are clearly unaware of their role as the child's legal representative and act for themselves. It is not uncommon for a parent to set up a profile on social media on which all of the posts are about their children, with the parent not even appearing in posts. This may be because the parent does not want to disrupt the parent's own privacy because they value it, or are uncomfortable with it, or out of simple modesty. These are understandable and relevant reasons. However, the paradox is that the parent in question strictly protects their own privacy but does so at the expense of the immediate family member, the child, who often has no way of defending him or herself. In doing so, the parent receives the benefits of joining the social network in question but pays for it not with his or her own data but with the child's.

4. Human rights dimension – protection of privacy, freedom of expression, and the best interests of the child

The legislation contained in the Civil Code must be interpreted and applied in a broader context. The human rights standard influences its value and also limits it. The relevant factors were 1. protection of privacy, 2. freedom of expression, and 3. the rights of the child, particularly their best interests.

The protection of privacy is ensured in Czech constitutional law primarily in Article 10 of the Charter of Fundamental Rights and Freedoms, which states that

- 1) Everybody is entitled to protection of his or her human dignity, personal integrity, good reputation, and his or her name.
- 2) Everybody is entitled to protection against unauthorized interference in his or her personal and family life.
- 3) Everybody is entitled to protection against unauthorized gathering, publication or other misuse of his or her personal data.

Similarly, the European Convention in Article 8 provides for the right to respect private and family life, and the EU Charter of Fundamental Rights in Article 7

³³ Sec. 876(2) of the Civil Code.

provides for the same in matters falling within the scope of EU law. Beyond the protection of privacy, the EU Charter provides protection for personal data.

In the case of sharenting, parents may be entitled to the right to freedom of expression guaranteed by Article 11 of the EU Charter, Article 17 of the Charter of Fundamental Rights and Freedoms, and Article 10 of the European Convention. However, this right is not absolute and may be limited both on grounds relating to expression as such and on grounds of conflict with other rights that take precedence in the value balance. In the case of sharenting, conflict with the child's right to privacy is obvious.

From the perspective of the right to freedom of expression, sharenting could be permissible if it falls within the concept of citizen journalism. Within the framework of freedom of expression, protection is granted to all persons who are active in the field of journalism (journalistic exception). Journalism is broadly understood in the case law of the CJEU.³⁴ It is likely that Czech courts would respect the opinion of the CJEU when interpreting the Charter of Fundamental Rights and Freedoms, even if it were an issue falling outside the framework of EU law.³⁵ Nevertheless, in my opinion, journalistic exceptions are inapplicable in most cases of sharenting. Information about a child is typically not in the nature of journalistic material or information that would previously have been published elsewhere. However, I can imagine that this exception could be testified by a third party who further disseminates information about a child that was previously shared by that child's parent.

Therefore, in practice, the right to freedom of expression clashes with the right to privacy. The child is the addressee of this provision and should therefore be protected from sharenting, since the very nature of sharenting is that it reveals something that is and should be private. However, the matter is more complicated. Earlier in this article, in analyzing the sub-constitutional provision, I described the role parents play with respect to the child in the exercise of parental responsibility. Unsurprisingly, the mechanism is similar when it comes to protecting children's privacy at the human rights level. For example, the UK Court of Appeal, in interpreting the European Convention in the *Weller* case,³⁶ concluded that

it is parents who usually exercise this decision-making for young children. Thus, if parents choose to bring a young child onto the red carpet at a premiere or awards night, it would be difficult to see how the child would have a reasonable expectation of privacy or Article 8 would be engaged. In such circumstances, the parents have made a choice about the child's family life and the types of interactions

³⁴ See case C-73/07 *Satamedia Oy*.

³⁵ See *Sehnálek*, 2021, p. 276.

³⁶ *Weller v Associated Newspapers* [2015] EWCA Civ 1176.

that it will involve. A child's reasonable expectation of privacy must be seen in the light of the way in which his family life is conducted. "Professor Bessant refers to this decision as" a striking example of the judiciary's acceptance that parents are entitled to decide what happens to their children's information (especially but not necessarily when they are young).³⁷

The Czech national legislation described above fully corresponds to this concept. If we consider that, in the case of sharenting, children need protection from their own parents, then we can unfortunately conclude that in light of the above decision, the provisions protecting children's privacy will not in themselves be of much help to children in defending themselves. However, that conclusion is not sufficient, and, in fact, I do not find it satisfactory.

At the human rights level, children are further protected by the Convention on the Rights of the Child, which enshrines the principle of the best interests of children in Article 3.³⁸ According to this Convention, 'the best interests of the child shall be a primary consideration.' This can be understood in several ways. First, children's best interests are a substantive right,³⁹ which stands on its own alongside the aforementioned rights to privacy and freedom of expression. Any conflicts between these rights would have to be resolved by balancing them against each other using the principle of proportionality.⁴⁰

However, this is typically not necessary in the case of sharenting. The child's best interests is also 'a fundamental, interpretative legal principle: If a legal provision is open to more than one interpretation, the interpretation which most effectively serves the child's best interests should be chosen.'⁴¹ Therefore, I consider that the best interests of the child must already be considered in the interpretation of the other fundamental rights concerned, regardless of whether the child or the parent is the direct addressee of these provisions. This interpretation occurs before there is a conflict with the best interests of the child as a substantive right.

I am therefore of the opinion that when interpreted correctly, the needs of the child should be directly considered. This means, therefore, that a parent, in representing a child in matters relating to the protection of the child's privacy, must have regard for the child's interests, and those interests must take precedence over

37 Bessant, 2018.

38 In EU law, this principle is enshrined in Art. 24 of the EU Charter, but the Czech Charter lacks an equivalent.

39 General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (Art. 3 para. 1), p. 4 [Online]. Available at: https://www2.ohchr.org/english/bodies/crc/docs/gc/crc_c_gc_14_eng.pdf (Accessed: 21 August 2022).

40 For a more in-depth analysis of the application of the proportionality principle, including an assessment of the legal situation in the Czech Republic, see Hofschneiderová, 2017.

41 Ibid.

any conflicting interests of the parent or third parties.⁴² The degree of freedom that parents enjoy under privacy provisions is therefore different when they make decisions for themselves than when they make decisions for children. The implications for the possibilities of sharing information on the Internet are obvious. The scope of information that parents are entitled to share about themselves is not the same as the scope of information that they are entitled to share about their children.

It follows from the above that a parent is, after all, sometimes entitled to invade a child's privacy by sharing information. As noted above, in certain cases, sharenting can be beneficial to the child, either directly or indirectly. However, more often, it will have a neutral or even harmful impact. In fact, empirical data suggest that the top ten reasons for using social networking sites include: 1. to stay in touch with friends (42%), 2. to stay up-to-date with news and current events (41%), 3. to fill spare time (39%), 4. to find funny or entertaining content (37%), 5. general networking with other people (34%), 6. because friends were already on such sites (33%), 7. to share photos or videos with others (32%); 8. to share opinions (30%); 9. to research new products to buy (29%), and 10. meeting new people (27%).⁴³ It is also important to consider that social networking use is typically unpaid. It is not free, however, as the 'payment' is made with the user's own data.⁴⁴ This is how networks are built. Thus, sharenting allows parents to 'pay' with someone else's data.

An overview of the individual reasons clearly shows that the child's interest is not one of the main reasons for using social networks. On the contrary, the predominant reasons are those oriented towards the parent's own ego or needs, that is, essentially selfish reasons. Therefore, if I start from the premise that the privacy of the individual, and therefore of the child, is to be protected *a priori*, and that the international standard contained in the Convention on the Rights of the Child requires the state to reflect the best interests of the child in its actions, I conclude that standard cases of sharenting on the basis of the parent's freedom of expression will not be defensible, and in most cases, without the need to carry out a proportionality test to resolve the conflict between the two rights.

Nevertheless, there are cases in which sharenting can indeed be useful and beneficial. For example, this can occur in situations in which sharenting represents a way for disabled children who have no other contact with the world due to their physical or mental conditions to use this form of interaction. However, these are likely to be exceptions.

42 Including the state. 'The principle is designed to ensure that decision-making for children is not captured by the interests of others (such as the parents and the State) but undertaken from a child-centred point of view.' See Cowden, 2016.

43 Desreumaux 2018. I stress that this source is not a scientific study, yet it is suggestive of the intentions of social network users, with the results of the study being broadly in line with what I myself assumed on entry.

44 Polčák, 2018.

5. Child defense options

The nature of sharenting *de facto* excludes the possibility that children can defend themselves against this phenomenon. This conclusion is all the more true when children are younger. Therefore, a third party must be involved in their protection. However, the question is who this third person should be. The second parent is obviously an option, as their influence can be invaluable to the child. The traditional statutory defenses against the invasion of the right of privacy therefore fail and cannot satisfactorily fulfil their function in this case.

In borderline cases in which the other parent fails in their role as a protector of the child's best interests, we must look elsewhere for protection. The State seems to be a primary option.

The protection of the interests of the child in the Czech Republic is primarily ensured by the State through its own bodies, referred to by the abbreviation "OSPOD" – 'Body for Social and Legal Protection of Children.' Municipal and regional authorities perform this role. OSPOD has extensive competences, which conceptually include the problem of sharenting. I believe, however, that in practice, this authority is not able to fulfil the role of a child's protector against the publication of data on his or her person.

Paradoxically, the disadvantage of municipal authorities as child protection bodies is that they operate at the local level. While knowledge of the local environment (which is illusory in larger municipalities anyways) is a potential benefit in dealing with "traditional" children's problems, the clear disadvantage is the considerable decentralization of protection and, as a result, the low possibility of specialization and the chance that real expert help will be provided. It is therefore unlikely that these bodies will be able to identify the problem, and even if they do, they will not be professionally prepared to deal with it satisfactorily.

In some countries, the interests of the child are promoted and protected by a "children's ombudsman."⁴⁵ Slovak law, which is closest to Czech law, has established such an office.⁴⁶ However, a closer look at the regulations of this body's competencies shows that it has considerable limits. This is understandable since the task of the ombudsman has traditionally not been to act in private law relations. Similarly, the Children's Ombudsman in Slovakia serves to protect the

45 Wikipedia lists under the heading "Children's ombudsman" approximately four dozen countries in which children's interests are protected by special bodies [Online]. Available at: https://en.wikipedia.org/wiki/Children%27s_ombudsman#Slovakia (Accessed: 31 August 2022).

46 Act No. 176/2015 Coll., the Act on the Commissioner for Children and the Commissioner for Persons with Disabilities and on Amendments to Certain Acts (Zákon č. 176/2015 Z. z. Zákon o komisárovi pre deti a komisárovi pre osoby so zdravotným postihnutím a o zmene a doplnení niektorých zákonov).

interests of children in the public sector.⁴⁷ While it can deal with all complaints, it has no power of injunction against parents or social network operators.

I therefore do not see a child's ombudsman as a solution to the problem, although there is no doubt that it could at least contribute to the cultivation of relations in society.

Should such an institution be established, it would in principle be irrelevant whether it would be a completely independent office or whether the competences of the existing ombudsman would be extended. Between the two, I consider the first option preferable from the child's point of view. Indeed, the protection of a child's interests and the tendency to expand its own activities to achieve the objective pursued would be part of the genetic make-up of such a new office.⁴⁸ It is precisely this activity that justifies its existence.

In my opinion, however, this problem should not be solved by the state. It is costly and potentially damaging, as it weakens the role of parents within the family. Indeed, solutions can be provided in other manners, without an outside authority inappropriately entering into the relationship between the parent and child. Defining standards of behavior for stakeholders – in this case, the social network operators through which sharenting is implemented – offers a solution. In fact, codes of conduct can define socially and legally acceptable standards for sharenting. Technically, it should no longer be a problem for these networks to filter shared content and warn of possible excesses or actively prevent them by making the problematic account in question inaccessible online. These standards can easily be legally addressed privately in the contracts that users of these networks enter. If the system detects a problem, it can automatically warn the user that they are sharing potentially problematic content and explain why. Indeed, I believe that in most cases, sharenting and oversharenting simply involve a failure to think through the implications they may have for the child.

6. Conclusion

The aim of this article was to determine the extent to which the current legal framework responds to the problem of sharenting. I believe that the legal framework is sufficient for defining the rights of the child. It emphasizes the child's interest and does not place the child in the role of a subordinate object of parents. This applies to all areas of legislation examined – Czech statutory law, constitutional law, and international public law. The problem lies outside of the content of the legislation:

47 See the definition of competence in Section 3 of Act No. 176/2015 Coll.

48 It can be assumed that the newly established body (this applies to anybody) will want to establish itself among the existing institutions and define its competences, so a proactive approach can be expected. The downside, however, is the further expansion of an already "big state" that employs more and more people in the non-productive sphere.

the essence of the problem is parents' low awareness of children's rights. Parents often seem to be unaware of the risks that their actions may pose to their children. This is surprising, because if there was an element of decency in the relationship with the child – and it is indeed decent to treat the other person with respect and to respect their privacy – then there would be no problem in the area of law. Therefore, I believe that the solution to sharenting should lie at the private law level through codes of conduct that social network operators voluntarily commit to respect. The solution also lies in the gradual education of children and parents.

Another goal of the article was to identify possible defenses against sharenting. In the article, I deliberately avoided addressing the issue of the statute of limitations on the child's potential claims – the question of when they are time-barred. In fact, I believe that sharenting (especially oversharenting) should be prevented in light of its possible consequences on children's development and health. Prevention is therefore crucial, as the harm that may be caused to the child may be irreversible. Moreover, empirical experience from advocacy shows that in the Czech legal system, it is difficult to address issues of compensation for non-material damages. In the case of sharenting, the situation is further complicated by the fact that it would presuppose a long-lasting judicial dispute between parents and children. Therefore, it is difficult to defend a child against sharenting under the current circumstances. At the same time, I do not think that the state should actively intervene in the issue by establishing new institutions. In contrast, the office of the Children's Ombudsman, if established, could be useful by providing a platform for the formulation of standards for the treatment of children and for education.

The last objective was to assess the extent to which instances of sharenting are legal and where the boundaries of the permissible disclosure of information about a child lie. In formulating this goal, I had not expected that in the course of writing this article I would reach such a radical change in my own perspective. If the defining standard is the best interests of the child, then in my personal opinion, there are not many situations in which sharing information about a child could be beneficial to that child. Such a stark conclusion does not apply to the traditional exchange of information within a close family circle. Similarly, sharing a child's success in sports is not problematic. However, there is no support in the law for the systematic sharing of information about a child's inner life.

Bibliography

- Bessant, C. (2018) 'Sharenting: balancing the conflicting rights of parents and children', *Communications Law*, 23(1), pp. 7–24 [Online]. Available at: <https://researchportal.northumbria.ac.uk/en/publications/sharenting-balancing-the-conflicting-rights-of-parents-and-childr> (Accessed: 26 August 2022).
- Bónová, K. (2022) 'Ochrana soukromí ve veřejném prostoru', *Revue pro právo a technologie*. 13(25), pp. 157–225; <https://doi.org/10.5817/RPT2022-1-4>.
- Choi, G. Y., Lewallen, J. (2018) "Say Instagram, Kids!": Examining Sharenting and Children's Digital Representations on Instagram', *Howard Journal of Communications*, 29(2), pp. 144–164; <https://doi.org/10.1080/10646175.2017.1327380>.
- Cowden, M. (2016) 'A Right to Medical Decision-Making' in Cowden, M. (ed.) *Children's Rights*. New York: Palgrave Macmillan; https://doi.org/10.1057/9781137492296_8.
- Cordeiro, V. C. (2021) 'Children's Rights and Digital Technologies: Children's Privacy in the Age of Social Media – The Perils of "Sharenting"', Humanium [Online]. Available at: <https://www.humanium.org/en/childrens-rights-and-digital-technologies-childrens-privacy-in-the-age-of-social-media-the-perils-of-sharenting/> (Accessed: 8 August 2022).
- Desreumaux, G. (2018) *The 10 Top Reasons Why We Use Social Networks* [Online]. Available at: <https://wersm.com/the-10-top-reasons-why-we-use-social-networks/> (Accessed: 21 August 2022).
- Hofschneiderová, A. (2017) 'O konceptu nejlepšího zájmu dítěte', *epravo.cz* [Online]. Available at: <https://www.epravo.cz/top/clanky/o-konceptu-nejlepsiho-zajmu-ditete-106509.html> (Accessed: 21 August 2022).
- Karlík, M. (2019) 'Co je nový trend „sharenting“? Pokud dáváte fotky svých dětí na internet, může jim to ublížit', *Radiožurnál* [Online]. Available at: <https://radiozurnal.rozhlas.cz/co-je-novy-trend-sharenting-pokud-davate-fotky-svych-deti-na-internet-muze-jim-7727931> (Accessed: 22 July 2022).
- Heitner, D. (2018) 'Your child wants to start a YouTube channel? Here are some points to consider', *The Washington Post* [Online]. Available at: <https://www.washingtonpost.com/news/parenting/wp/2018/07/19/your-child-wants-to-start-a-youtube-channel-heres-what-to-consider/> (Accessed: 22 August 2022).
- Králíčková, Z. (2021) 'On the Family and Family Law in the Czech Republic' in Barzó, T., Lenkovics, B. (eds.) *Family Protection from a Legal Perspective. Analysis on Certain Central European Countries*. Budapest–Miskolc: Ferenc Mádl Institute of Comparative Law–Central European Academic Publishing, pp. 77–109; https://doi.org/10.54237/profnet.2021.tbblf1_3.
- Ondřejová, E. (2016) *Ochrana osobnosti v common law a českém právu. Teoretik*. Praha: Leges.
- Polčák, R. (2018) 'Pojem a metoda práva informačních technologií' in Polčák, R., Kasl, F., Míšek, J., Stupka, V., Kyselovská, T., Myška, M. (eds.) *Právo informačních technologií*. Praha: Wolters Kluwer, pp. 1–28.
- Sehnálek, D. (2021) 'Interpretation of Fundamental Rights in the Czech Republic' in Tóth, J. Z. (ed.) *Constitutional Reasoning and Constitutional Interpretation*.

Analysis on Certain Central European Countries. Budapest–Miskolc: Ferenc Mádl Institute of Comparative Law–Central European Academic Publishing, pp. 245–300; <https://doi.org/10.54237/profnet.2021.zjtcrcl>.

- Zúklínová, M. (2014) '§ 858 (Vymezení rodičovské odpovědnosti)' in Švestka, J., Dvořák, J., Fiala, J., Zúklínová, M. (eds.) *Občanský zákoník: komentář. Svazek II. (§ 655 až 975)*. Praha: Wolters Kluwer (E-book).