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# List of abbreviations

CFR Charter of Fundamental Rights of the European Union

CoE Council of Europe

CRC Convention on the Rights of the Child

DPD Data Protection Directive

ECHR European Convention on Human Rights

ECJ European Court of Justice

ECtHR European Court of Human Rights

EU European Union

GDPR General Data Protection Regulation

TEU Treaty on the European Union

TFEU Treaty on the Functioning of the European Union

# Chapter 1 Introduction

Jonathan and Anna Saccone-Joly and their five children, better known as ‘The Shaytards’, have been giving 5 million subscribers on YouTube a daily glimpse into their lives for the past ten years. From shopping for new school supplies to bathing the children, every aspect of their private lives is depicted. In a video from 2014 titled: ‘DAD! CUT THAT PART OUT!’ Jonathan films his nine-year old daughter as she talks about her crush on a classmate. Afterwards she begs her father to delete that part from the video. Jonathan refuses as he says it will make good footage.[[1]](#footnote-1)

A phenomenon that has developed with the rise of social media: Sharenting. Sharenting connotes the many ways parents share details about their children’s lives online.[[2]](#footnote-2) The term is so broad that it stretches from sharing an ultrasound of a fetus on Instagram with merely friends and family to ‘vlogging’ a family holiday with millions of viewers on YouTube. As sharenting is a concept that emerged with the rise of social media, it is a new practice which is growing rapidly. Recent research suggests the average parent will share their child’s image online nearly 1000 times by the time they are five years old.[[3]](#footnote-3)

Through sharenting, parents become the narrators of their children’s lives and stories online and the curators of their children’s personally identifiable information. A parent’s right to share online might lead to a conflict with a child’s right to privacy, once a child becomes aware of its online persona or evolves from how he was once portrayed on the internet and starts to object to his parent’s disclosure of him. Whether a child’s claim to protection of his or her right to respect for private life and right to the protection of personal data in European law holds, depends on the outcome of the balance with a parent’s competing right to respect for family life and right to freedom of expression.

In light of the foregoing, the main research question reads as follows:

*Does a parent’s right to share content of his child online interfere with a child’s right to privacy in European law and, if so, can the interference be justified?*

In order to be able to answer the main research question, the following sub research questions will be answered:

1. *What does the phenomenon ‘sharenting’ entail?*
2. *Does a child’s freedom from sharenting fall within the scope of the right to respect for private life and right to the protection of personal data in European law?*
3. *Does sharenting constitute an interference with a child’s right to respect for private life and right to the protection of personal data and, if so, can the interference be justified?*
4. *Does sharenting fall within the scope of a parent’s right to respect for family life and right to freedom of expression in European law?*
5. *Does a prohibition on sharenting constitute an interference with a parent’s right to respect for family life and right to freedom of expression and, if so, can the interference be justified?*

## 1.1 Delineation

Concepts that form part of the main research question:

*European law*

By referring to ‘European law’ the focus in this research will be on primary and secondary sources of law (treaties, secondary legislation and case law) introduced by the EU, the ECJ, the ECHR and the ECtHR. Although the EU and CoE are entirely separate organisations, the EU is under an obligation to accede to the ECHR.[[4]](#footnote-4) For now though, every member state of the EU is a party to the ECHR, this means that parents and children from EU member states will be able to retrieve rights from both the CFR and the ECHR. Article 52(3) CFR stipulates that where the rights in the CFR correspond with the rights in the ECHR, their meaning and scope shall also correspond.

*Child*  
Article 1 of the CRC defines a ‘child’ as: ‘every human being below the age of eighteen years’. This definition is currently also used in EU law, as there is no single definition of ‘child’ laid down in the EU treaties, EU secondary legislation or case law of the ECJ.[[5]](#footnote-5) The ECHR does not contain a definition of ‘child’ either. The ECtHR has also accepted the CRC’s definition of ’child’ in its case law.[[6]](#footnote-6) Therefore, in this research the CRC’s definition will be used.

*Sharenting*  
The concept of ‘sharenting’ will be explained in Chapter 2. Firstly, section 2.1 provides a working definition of the concept of sharenting. Hereafter, section 2.2 discusses the reasons for sharenting. Lastly, section 2.3 examines the consequences of sharenting.

## 1.2 Method

In order to answer the main and sub research questions a descriptive legal research is conducted. In order to determine what the phenomenon sharenting entails, (legal) sources that specifically relate to sharenting were analysed. Moreover, in order to determine the scope of a child’s right to privacy and a parent’s right to share online, case law of the ECJ and ECtHR have been examined, as well as relevant literature. In order to draw further conclusions as to whether sharenting constitutes an interference with these rights and whether the interference can be justified, case law of the ECJ and ECtHR relating to these conflicting rights have been analysed. Furthermore, in order to make sense of the doctrines and principles that follow from the case law of the ECJ and ECtHR, European law handbooks were consulted. The search methods employed to find relevant sources were the systematic method as well as the snowball method. The systematic method involves searching on the basis of (combined) search terms in legal search engines. The snowball method involves searching on the basis of relevant sources found earlier. For example, by searching for other works from a previously consulted author or consulting the bibliography of the source in question.[[7]](#footnote-7)

## 1.3 Academic relevance

Sharenting is a ‘hot item’ in the media. At the time of writing this research, various newspaper articles, documentaries and TV programmes dedicated to the issue of sharenting were released.[[8]](#footnote-8) However, specific literature, legislation or case law on the issue of sharenting is scarce. Only a few academics have published articles focused on the balance between a child’s right to respect for private life and a parent’s right to freedom of expression and right to respect for family life.[[9]](#footnote-9) However, the few that there are only analyse the problem from a national law perspective, not a European law point of view. For example, Steinberg’s article is from US law perspective and Bessant’s article is from a UK law perspective.[[10]](#footnote-10) In addition, the dangers and remedies of (over)sharing on social media are topics which have been extensively debated.[[11]](#footnote-11) However, this is mostly done from the point of view of children harming their own digital footprint, instead of focusing on parents’ decisions to share information about their children online and the possible consequences thereof.

The issue of sharenting highlights the contradiction that exists in (European) legislation, case law and literature. On the one hand, children hold rights from birth, such as the right to respect for private life. On the other hand, parents are considered to be the (legal) guardians of their children’s (private) life, for example with regard to their role in providing consent to the use of information society services.[[12]](#footnote-12) In the case of sharenting, the guardians of a child’s privacy are simultaneously the culprits of the invasion of that privacy. This research will analyse the judicial conflict between the conflicting rights of the parent and the child.

## 1.4 Structure

The overall structure of this research takes the form of six chapters, including this introduction (Chapter 1). Chapter 2 begins with a discussion of the phenomenon ‘sharenting’. It provides a working definition of the concept of sharenting, the reasons why parents share information, pictures or videos about their children online and the consequences of sharenting. Chapter 3 examines whether a child’s freedom from sharenting falls within the scope of the right to respect for private life and the right to the protection of personal data in European law and, if so, whether sharenting constitutes an interference with these rights or whether states have a positive obligation to act against sharenting and an interference takes places when they fail to act. Chapter 4 examines whether sharenting falls within the scope of a parent’s right to freedom of expression and right to respect for family life in European law and, if so, whether a prohibition on sharenting constitutes an interference with these rights. Whether the possible interferences that follow from Chapter 3 and 4 can be justified, will be examined in Chapter 5 by balancing a child’s right to respect for private life against a parent’s right to respect for family life and right to freedom of expression. Finally, Chapter 6 will answer the research question whether a parent’s right to share online interferes with a child’s right to privacy in European law and, if so, whether the interference can be justified.

# Chapter 2 The phenomenon ‘sharenting’

To understand the conflict between a child’s right to privacy and a parent’s right to share online it is important to examine the phenomenon and rising trend of sharenting. Therefore, this chapter will answer the question what the phenomenon ‘sharenting’ entails. In order to do this, section 2.1 will first define and elaborate on the term sharenting. Section 2.2 will explore the reasons why parents decide to share about their children online. Section 2.3 will examine the consequences of sharenting.

## 2.1 A twofold definition: Sharing & Parenting

Many parents share information about their children online. According to research, 73% of the children in the EU have an online presence before reaching the age of two.[[13]](#footnote-13) This phenomenon has led to the introduction of the term sharenting.[[14]](#footnote-14) Sharenting is a fabricated term composed of the words ‘sharing’ and ‘parenting’. There is no formal definition of sharenting. Steinberg defines sharenting as: ‘the ways many parents share details about their children’s lives online’.[[15]](#footnote-15) Bessant uses the definition from Collins dictionary: ‘the habitual use of social media to share news, images, etc of one's children'.[[16]](#footnote-16) Both definitions are composed of different elements: who shares (‘parents’), where they share (‘online’/’on social media’), what they share (‘details’/’news, images, etc’), how they share (‘the many ways’), how often they share (‘habitual) and about whom they share (‘children’).

As Bessant uses the term social media in her definition, the question arises which online platforms the term social media includes. According to the Cambridge dictionary, social media can be defined as: ‘websites and computer programs that allow people to communicate and share information on the internet using a computer or mobile phone’.[[17]](#footnote-17) As messaging platforms, such as WhatsApp and iMessage, allow people to communicate and share on the internet using a computer or mobile phone, they can be considered as social media according to this definition. However, information shared on messaging platforms is not publicly available as it is shared privately with users selected from one’s contact list via one-on-one chats or group chats. Information shared on platforms, such as Facebook, Instagram, Snapchat, Pinterest, Flickr, Blogspot and Twitter on the other hand, can be available to the whole world to see if parents do not adjust their privacy settings.[[18]](#footnote-18) For the purpose of this research, the definition of sharenting confines itself to information shared on publicly accessible social media platforms. If ‘private’ social media platforms such as WhatsApp and iMessage are also taken into account completely different questions arise that are not necessary in order to answer to the main research question. However, I am aware that comparable issues may arise in ‘private’ WhatsApp or Facebook groups, depending on the size of the group and the group’s composition.

Moreover, according to this research sharenting includes the sharing of images, videos and stories of a child, as long as the child can be identified directly or indirectly through the image, video or story. To clarify what an identified or identifiable natural person is we can use the definition of the term ‘personal data’ in the GDPR. According to the GDPR the term ‘personal data’ means:

‘information relating to an identified or identifiable natural person (‘data subject’); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person’.[[19]](#footnote-19)

Although parents do not stop sharing about their children once they reach adulthood,[[20]](#footnote-20) this research will focus on children below the age of eighteen years, as follows from the definition of child given in section 1.1.[[21]](#footnote-21) Until children reach adulthood, parents are considered to be the (legal) guardians of their children’s (private) life, for example with regard to their role in providing consent to the use of information society services.[[22]](#footnote-22) However, in the case of sharenting, parents can constitute possible threats to this right to respect for private life. Moreover, children are granted special protection in international human rights law under the CRC. Sharenting also includes sharing about unborn babies, for example by uploading a prenatal sonogram or writing online about pregnancy struggles.

To sum up, according to this research sharenting entails: the sharing of publicly available images, videos and stories by parents on social media by which their child, that has not reached the age of eighteen years, can be identified directly or indirectly.

## 2.2 Reasons for sharenting

Parents can have different motives to share online about their children. Firstly, sharenting enables parents to keep (long-distance) relatives and friends up to date about their children’s day-to-day lives and accomplishments.[[23]](#footnote-23) Sharenting also enables parents to connect with others, to receive social and emotional support and to prevent social isolation.[[24]](#footnote-24) Parents of children with mental or physical disabilities can feel supported by sharing their stories, hereby also raising awareness and breaking down stereotypes*.*[[25]](#footnote-25)For example, Liza Long wrote about the hardship of having a mentally ill child with violent tendencies in the aftermath of the Sandy Hook elementary school shooting.[[26]](#footnote-26)

Sharenting can also be practical as it allows parents to exchange parenting experiences or search for help with regard to parenting.[[27]](#footnote-27) Moreover, it allows parents to receive validation for their parenting skills and enables parents to advocate a certain type of parenting practice or theory.[[28]](#footnote-28) Furthermore, parents may be able to generate income by means of sharenting.[[29]](#footnote-29) For instance, Stacey Woodham earns around 420 euros for every sponsored picture she posts of her two-year-old son on his Instagram and has recently announced a collaboration with Porsche.[[30]](#footnote-30) Parents can also share online for the benefit of their children, as it can improve their children’s (online) reputation and offer them a positive network.[[31]](#footnote-31)

## 2.3 Consequences of sharenting

Parents may have their reasons to share online about their children, but the consequences of establishing children’s online identities and digital footprints for them should not go unnoticed. From the moment children are born they can be depicted on social media in various ways, from opening presents on Christmas Eve[[32]](#footnote-32) to throwing tantrums in Ikea.[[33]](#footnote-33) But sharenting can start even prior to a child’s birth by, for example uploading a prenatal sonogram or writing online about pregnancy struggles. At the time of writing this research the hashtag #ultrasound was used for 587.292 shared photos on Instagram. Remarkable is the fact that most foetal ultrasounds shared on Instagram include personally identifiable information, such as the predicted date of birth, the mother’s name and date of birth and the name of the medical facility.[[34]](#footnote-34) Other photos, videos or stories can include personally identifiable information of children, such as a child’s home address, school or location. Even if there is no such information, a lot can be derived from metadata behind photos and videos, for example by user tagging or automated facial recognition.[[35]](#footnote-35) As a result, children could be the victim of stalking or online grooming, a practice whereby a predator looks for vulnerabilities or information to exploit or manipulate a child.

The company ‘Koppie Koppie’ demonstrated the consequences of sharenting by selling mugs with pictures of stranger’s children obtained through Flickr.[[36]](#footnote-36)This is an example of how personal data can be used by companies for economic purposes.Another problem isdata mining, whereby data brokers build profiles of children using information shared by the parent and sell these profiles to, for example spammers, advertising companies and distributors of malware.[[37]](#footnote-37)Moreover, sharenting can result indigital kidnapping, a practice whereby pictures of a child shared online are copied and reused by the virtual thieve who passes the pictures off as its own as a form of roleplaying.[[38]](#footnote-38) Furthermore, sharenting can result in public shame, embarrassment and anxiety. Sharenting can incite bullying not just by other children,[[39]](#footnote-39) but also by other adults through for example, Facebook groups.[[40]](#footnote-40) Risqué pictures of children, for example with the hashtag #bathtime and #pottytime, can fall in the hands of predators. Recently, millions of social media photos where found on child exploitation sharing sites.[[41]](#footnote-41)

Sharenting can also cause implications for children when they reach adulthood. As stated above, the vast majority of children growing up today will have an online presence by the time they are two-years-old,[[42]](#footnote-42) meaning by the time they start applying for jobs their digital footprint will be well-established and traceable for future employers.[[43]](#footnote-43) It should also be mentioned that as a result of Liza Long’s article, in which she shared very intimate details about her child’s mental health, Liza lost temporary custody of her two other children as a judge determined they were unsafe.[[44]](#footnote-44)

## 2.4 Conclusion

While parents have always shared information, pictures and videos of their children with relatives and friends, online sharing leads to a digital footprint with many possible implications for the child. How the reasons for and positive benefits of sharenting and the consequences thereof balance out, will be discussed in the next chapters.

# Chapter 3 Child’s right to respect for private life and right to the protection of personal data

The right to respect for private life and the right to the protection of personal data are laid down in Article 7 CFR, Article 8 CFR and Article 8 ECHR. In order to assess whether sharenting violates a child’s right to respect for private life and right to the protection of personal data, three cumulative steps have to be considered. Namely, in order to attract the protection of these articles, a child’s freedom from sharenting must fall within the scope of these rights. Therefore, this chapter first examines whether being free from sharenting falls within the scope of a child’s right to respect for private life and a child’s right to the protection of personal data (section 3.1). Subsequently, this chapter examines whether sharenting constitutes an interference with these rights or whether states have a positive obligation to act against sharenting and an interference takes places when they fail to act (section 3.2). The third stage, whether a possible interference can be justified, will be discussed in Chapter 5 by balancing a child’s right to respect for private life and right to the protection of personal data against a parent’s right to freedom of expression, which will be discussed in Chapter 4.

## 

## 3.1 Scope

The scope of the right to respect for private life laid down in Article 8 ECHR and Article 7 CFR will be discussed separately from the scope of the right to the protection of personal data laid down in Article 8 CFR, as the CFR protects the right to the protection of personal data separately from the right to respect for private life, contrary to Article 8 ECHR.

### 3.1.1 The scope of the right to respect for private life

Article 8 ECHRreads as follows:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

Article 7 CFRreads as follows:

1. Everyone has the right to respect for his or her private and family life, home and communications.

The right to respect for private life is a fundamental right protected in Europe under both Article 7 CFR and Article 8 ECHR. The CFR is the main human rights document within the EU. It has the same legal value as the EU Treaties since the Lisbon Treaty’s entry into force.[[45]](#footnote-45) The ECHR is the main human rights document within the CoE. Although the EU and the CoE are entirely separate organisations, the EU is under an obligation to accede to the ECHR.[[46]](#footnote-46) For now though, every member state of the EU is a party to the ECHR, meaning a child from an EU member state will be able to retrieve rights from both the CFR and the ECHR.

Both provisions protect four interest, namely private life, family life, home and communication/correspondence. Their wording is the same, except for the terms correspondence and communications, as the CFR replaced the term correspondence with communications to take into account developments in technology.[[47]](#footnote-47) To decide whether sharenting falls within the scope of these fundamental right provisions, we have to determine what the notion of private life entails. Article 52(3) CFR stipulates that where the rights in the CFR correspond with the rights in the ECHR, their meaning and scope shall also correspond.[[48]](#footnote-48)

The notion of private life within the meaning of these articles is broad and has expanded over the years to accommodate social and technological developments.[[49]](#footnote-49) According to the ECtHR, there is no all-encompassing definition of private life.[[50]](#footnote-50) However, the ECtHR has provided some guidance as to the extent of the meaning and scope of Article 8 ECHR. According to the case law of the ECtHR, the notion of private life extends to, for example a person’s name,[[51]](#footnote-51) gender,[[52]](#footnote-52) sexual orientation,[[53]](#footnote-53) picture,[[54]](#footnote-54) physical and psychological integrity,[[55]](#footnote-55) personal autonomy[[56]](#footnote-56) and reputation.[[57]](#footnote-57) According to the ECtHR, the notion of private life should not be regarded as constrained to an inner circle in which a person may do so as he pleases without outside interference, but private life also extends to a person’s right to form relationships with other persons.[[58]](#footnote-58)

According to the definition set out by this research in Chapter 2, sharenting entails the sharing of publicly available images, videos and stories by parents on social media by which their child, that has not reached the age of eighteen years, can directly or indirectly be identified. As previously mentioned, the scope of private life extends to a person’s name. It is apparent from case law of the ECtHR that the publication of a person’s name without consent has regularly constituted an interference with the right to respect to private life.[[59]](#footnote-59) The scope of private life protects not just the publishing of a person’s full name, as even the publishing of only a person’s first name has constituted an interference if the person could be identified through the context in which the name was published or when it was published for advertising usage.[[60]](#footnote-60) When parents share their child’s name online, for example in a YouTube video, in a Facebook post or in a blog post this falls within the scope of private life.[[61]](#footnote-61)

Moreover, the scope of private life includes aspects relating to the right to one’s image.[[62]](#footnote-62) This means that pictures or videos depicting a person fall within the scope of private life. The ECtHR affirms that ‘a person’s image constitutes one of the chief attributes of his or her personality, as it reveals the person’s unique characteristics and distinguishes the person from his or her peers’.[[63]](#footnote-63) The right to the protection of one’s image means that a person has control over the use of his or her image. It covers a person’s right to object to the publishing, recording, saving and duplicating of their image by other persons.[[64]](#footnote-64) Sharenting can entail the publishing of pictures or videos by parents of their child on social media. This practice falls within the scope of private life.

The right to respect for private life also entails the protection of one’s reputation.[[65]](#footnote-65) Sharenting can form an attack on a child’s honour and reputation. To illustrate, Dutch blogger Shirley Visser writes about motherhood on her blog. In 2017 she writes about the struggle of potty training her oldest child in a detailed blog post. In this blog post she shares intimate details about her child’s tendency to ‘urinate and defecate all over the place’.[[66]](#footnote-66) In 2019 she writes about curing her youngest child’s eczema. The blog post includes pictures of the child’s face during different stage of his eczema.[[67]](#footnote-67) By sharing embarrassing stories and pictures of her children, Shirley Visser attacks their honour and reputation. In order for Article 8 ECHR to come into play, the attack must be significant and performed in such a way that a child’s personal enjoyment of the right to respect for private life is harmed.[[68]](#footnote-68) Additionally, there must be a direct link between the child and the attack on his or her reputation. This means that a child’s reputation must directly be affected by sharenting, not only in a marginal and indirect manner.[[69]](#footnote-69) If parents share information, pictures or videos of their child on social media which are harmful to their child’s reputation, for example by writing about their child’s history with bullying or by sharing nude bathing pictures of their child, this falls within the scope of private life.[[70]](#footnote-70)

Under Article 8 ECHR a person’s right to the protection with respect to the processing of personal data also forms a part of the right to respect for private life.[[71]](#footnote-71) The ECtHR has decided many cases concerning data protection issues. These cases concerned for example, the interception of communications[[72]](#footnote-72) and different types of surveillance by both private and public actors.[[73]](#footnote-73) In a number of cases the ECtHR held that the collection and storage of personal data relating to an identified or identifiable individual falls within the scope of application.[[74]](#footnote-74) Sharenting can entail the dissemination of personal data about child, such as his location or address, which falls within the scope of private life. Another example, in the case of *S and Marper v. the United Kingdom* the ECtHR regarded the storage and retention of DNA samples and fingerprints as falling within the scope of the respect for private life.[[75]](#footnote-75) Parents sharing their children’s fingerprint crafts on social media entails the storing and retention of personal data and can therefore also fall within the scope of Article 8 ECHR.[[76]](#footnote-76)

### 3.1.2 The scope of the right to the protection of personal data

Article 8 CFR reads as follows:

1. Everyone has the right to the protection of personal data concerning him or her.

Article 8 CFR is the exception to the otherwise overall correspondence of the notion of private life protected under Article 7 CFR and Article 8 ECHR. Article 8 CFR protects personal data specifically and independently from the right to respect for private life, whereas the protection of personal data is a subset of the right to respect for private life under Article 8 ECHR.[[77]](#footnote-77) However, it should be noted that the ECJ has stressed that Article 8 CFR is closely connected with the right to respect of private life protected under Article 7 CFR.[[78]](#footnote-78) With regard to personal data cases the ECJ therefore generally applies Article 7 CFR in conjunction with Article 8 CFR, without indicating which aspects of the case pertain to which article.[[79]](#footnote-79) Articles 7 and 8 CFR are, especially with regard to the exemption clauses, very different though. Article 8(2) includes specific exceptions in addition to the exemptions listed under Article 52(1) CFR.

We have seen that the ECtHR took the lead with regard to the interpretation of the notion of private life under Article 8 ECHR. However, with regard to the notion of personal data the ECJ has set the standard. According to the ECJ personal data concerns any information relating to an identified or identifiable individual.[[80]](#footnote-80) Something qualifies as personal data if the data ‘objectively contains unique information about individuals which allows those individuals to be identified with precision’.[[81]](#footnote-81) The scope of data protection is wider than that of private life, as private life does not necessarily include all information relating to an identified or identifiable individual.[[82]](#footnote-82)

Personal data shared by parents online could allow ‘very precise conclusions to be drawn concerning the private lives of the persons whose data has been retained, such as the habits of everyday life, permanent or temporary places of residence, daily or other movements, the activities carried out, the social relationships of those persons and the social environments frequented by them’.[[83]](#footnote-83) Sharenting can entail the publication of a number of ‘identifiers’, such as a child’s name and location data and aspects specific to his physical, psychological, cultural, economic or social identity.[[84]](#footnote-84) For example, sonograms posted online often include personally identifiable information, such as the predicted date of birth, the mother’s name and date of birth and the name of the medical facility. Accordingly, being free from sharenting falls within the scope of data protection as protected by Article 8 CFR.

## 3.2 Interference

We have established that a child’s freedom from sharenting falls within the scope of the right to respect for private life and the right to the protection of personal data laid down in Article 7 CFR, Article 8 CFR and Article 8 ECHR. Subsequently, this section examines whether sharenting constitutes an interference with these rights or whether states have a positive obligation to act against sharenting and an interference takes places when they fail to act. Article 8 ECHR will be discussed separately from Articles 7 and 8 CFR as the legal doctrines of the ECHR and CFR with regard to horizontal direct and indirect effect differ. Article 7 CFR and Article 8 CFR will be discussed together, as the ECJ stresses that these articles are closely connected and therefore generally applies Article 7 CFR jointly with Article 8 CFR in determining possible interferences.[[85]](#footnote-85)

### 3.2.1 Interference with Article 8 ECHR

The main aim of Article 8 ECHR is to protect against arbitrary interferences by public authorities with a person’s private life.[[86]](#footnote-86) This is a so-called negative obligation, as it requires states to abstain from interfering with this right. If we assess sharenting from the perspective of negative obligations, a state would be obliged to abstain from limiting the right to respect for private life. Meaning that if a state would engage in sharenting this would directly interfere with this right. However, it is practically impossible that states engage in sharenting, as they are not parents. It is clear from our definition of sharenting that it is the parent that shares about their child online, not the state. It is, therefore, harder to find an interference of these rights caused by the state. Certain indirect interferences are imaginable, for example a Dutch public school participated in a six-part ‘real-life’ documentary series depicting the day-to-day lives of teenagers in high school.[[87]](#footnote-87) Another example is a public school allowing parents to ‘vlog’ inside the child’s classroom.[[88]](#footnote-88) However, any direct interference with Article 8 ECHR as a result of states engaging in sharenting is impossible and would fall outside the definition.

Moreover, horizontal direct effect of provisions of the ECHR is excluded. This means that it is impossible for Article 8 ECHR to be directly applicable in relations between private parties.[[89]](#footnote-89) Parents engaging in sharenting can, therefore, not be held accountable for interferences with a child’s private life under Article 8 ECHR. It follows from Article 34 ECHR that a child can only invoke Article 8 before the ECtHR when the possible interference with his private life concerns actions or omissions of states, not actions or omissions of his parents.

In light of the foregoing, if Article 8 ECHR would only impose negative obligations on states this would exempt them from taking any responsibility if, such as in our case, the interference with private life was caused by an individual.[[90]](#footnote-90) Therefore, in addition to a negative obligation, Article 8 ECHR can also give rise to a positive obligation, meaning that a state has to actively guarantee the protection of this right.[[91]](#footnote-91) Generally, positive obligations do not explicitly follow from the text of the ECHR, such as negative obligations, but follow from case law of the ECtHR.[[92]](#footnote-92) According to the ECtHR, the principle of effective protection of fundamental rights justifies the acceptance of positive obligations under ECHR provisions.[[93]](#footnote-93) The ECtHR considers that ECHR rights must be ‘practical and effective’, not ‘theoretical and illusory’.[[94]](#footnote-94) According to the ECtHR, the general legal basis for the recognition of positive obligations can be found in Articles 1 and 13 ECHR.[[95]](#footnote-95) Article 1 ECHR is a binding obligation upon states to always secure fundamental rights laid down in the ECHR.[[96]](#footnote-96) Article 1 ECHR must always be read jointly with another ECHR right.[[97]](#footnote-97) Article 13 ECHR requires states to provide for an effective remedy at national level. A further basis for the recognition of positive obligations can be found in the fundamental right provisions of the ECHR itself.[[98]](#footnote-98) With regard to Article 8 ECHR, the ECtHR held that the wording of that article implies positive obligations, as the term ‘respect for’ was intentionally chosen instead of, for example, the term ‘take into account’.[[99]](#footnote-99)

The judgements of the ECtHR do not provide a clear classification of all developed positive obligations, as the ECtHR generally only formulates positive obligations in specific cases in relation to specific ECHR rights.[[100]](#footnote-100) However, the ECtHR did develop two types of positive obligations in its case law: substantive and procedural positive obligations.[[101]](#footnote-101) Whether a positive obligation qualifies as substantive or procedural, depends on the content of the desired action.[[102]](#footnote-102) There are a number of substantive positive obligations recognized by the ECtHR, such as the obligation to adopt a legislative and administrative framework to ensure the right to respect for private life or the obligation to adopt measures to ensure the enjoyment of the right to respect for private life is not interfered with in relations between individuals themselves.[[103]](#footnote-103) For example, in *Söderman v. Sweden* the state had a positive obligation to have a measure in place that prohibited the filming of another person without his or her consent.[[104]](#footnote-104) In *Von Hannover v. Germany* there was a positive obligation on the state to protect a person’s picture against abuse by other people.[[105]](#footnote-105) It follows from case law of the ECtHR that, where a state has a positive obligation in regard to the conduct of private persons, the state has a burden to ensure individuals comply with the law.[[106]](#footnote-106)

It is not very clear yet what the content of a state’s positive obligation under Article 8 ECHR entails, as the ECtHR acknowledged the burden on a state differs depending on the circumstances of the case.[[107]](#footnote-107) Circumstances which can be of relevance pertain either to the applicant or to the state. Circumstances that concern the applicant are the significance of the applicant’s interest, whether fundamental values of the applicant’s private life are at stake and the effect on an applicant of a conflict between the social reality and the law. Circumstances that concern the state are whether the positive obligation is set or undetermined and the degree of intensity of the burden on the state.[[108]](#footnote-108) Moreover, different conditions limiting the scope of positive obligations can be found in the case law of the ECtHR.[[109]](#footnote-109) Firstly, a state only incurs a positive obligation if it knew or could have known of fundamental rights violations by private parties.[[110]](#footnote-110) This condition can be met on the basis of knowledge a state is generally considered to possess or on the basis of knowledge which is the result of specific materials, such as reports on these violations.[[111]](#footnote-111) Secondly, there has to be a direct and immediate link between the desired action of the state and the ECHR right that the applicant relies on.[[112]](#footnote-112) Thirdly, the desired positive obligation of the state may not be an impossible or disproportionate burden to bear.[[113]](#footnote-113) With regard to the content of positive obligations, states may enjoy a margin of appreciation. This means that states can have discretion in the fulfilment of their positive obligations.[[114]](#footnote-114) In most cases, this discretion is wide when an ECHR right can be actively protected through different measures and states have not agreed on the specific type of positive obligation that follows from an ECHR right.[[115]](#footnote-115) The discretion is relatively narrow when an important facet of a person’s existence or identity is at stake.[[116]](#footnote-116)

To determine whether a positive obligation applies, the ECtHR employs a fair balance test. This test entails the balancing of the general interest of the community with the interests of the individual. [[117]](#footnote-117) In striking this balance, the aims ‘pursues a legitimate interest’ and ‘the interests of a democratic society’ specified in Article 8(2) ECHR can be of relevance.[[118]](#footnote-118) The fair balance test determines whether a right exists, as well as whether an infringement by the state can be justified.[[119]](#footnote-119) The ECtHR exercises the fair balance test in different ways. Generally, the ECtHR firstly determines the different interests involved and thereafter determines whether the state has balanced these interests reasonably.[[120]](#footnote-120) However, every so often the ECtHR takes a different approach and firstly determines which positive obligation can be derived from an ECHR provision.[[121]](#footnote-121) Hereafter, the ECtHR determines whether the state fulfilled that positive obligation. If the state failed to do so, the ECtHR determines whether this failure can be justified pursuant to the criteria for justifying interferences of fundamental rights.[[122]](#footnote-122) Taking into account the structure of this research, which first examines whether there is an interference and thereafter examines the possibility of justification, the second approach taken by the ECtHR will be followed. The following paragraph will determine whether there is a positive obligation to protect children from sharenting and whether an interference takes places if a state fails to act upon this obligation. Whether a possible failure to fulfil a positive obligation can be justified will be discussed in Chapter 5.

As previously mentioned, there are certain factors relevant for the assessment of the content of positive obligations on states. [[123]](#footnote-123) With regard to the significance of the child’s interest, being free from sharenting and thereby being protected from the possible serious consequences thereof can be regarded as a significant interest. Certain fundamental values of a child’s private life are at stake, such as his name, image, reputation and data. Additionally, because we are talking about a child here, much protection is warranted. According to the ECtHR, children as vulnerable individuals are entitled to particular protection.[[124]](#footnote-124) The ECtHR holds that when striking a balance ‘between the interests of the child and those of the parent particular importance must be attached to the best interests of the child which, depending on their nature and seriousness, may override those of the parent’.[[125]](#footnote-125) Furthermore, a state’s lack of legal framework protecting a child from sharenting can significantly impact a child’s private life as the social reality and the law clash. The degree of intensity of the burden on a state to protect a child from sharenting, by for example adopting a legal framework, is not disproportionate to the significance of the child’s interest to be protected from sharenting.[[126]](#footnote-126)

Furthermore, a state only incurs a positive obligation if it had knowledge of the fundamental rights violations, if there is a direct and immediate link and the positive obligation is not an impossible or disproportionate burden to accept.[[127]](#footnote-127) The first condition is met, because states can generally be considered to have knowledge about the practice of sharing on social media and the dangers thereof. The second condition is met, when a child is the victim of a violation of Article 8 ECHR on the ground that a state does not have effective and practical domestic laws in place protecting a child from sharenting, which directly affects his or her private life. The third condition is met, as the ECtHR has held that a positive obligation

‘may involve the adoption of specific measures, including the provision of an effective and accessible means of protecting the right to respect for private life. Such measures may include both the provision of a regulatory framework of adjudicatory and enforcement machinery protecting individuals’ rights and the implementation, where appropriate, of these measures in different contexts’.[[128]](#footnote-128)

Thus, by the recognition of the ECtHR of such a positive obligation in its case law, it cannot be regarded as an impossible or disproportionate burden for a state. This means that a state presumably incurs a positive obligation to protect children from sharenting.

As previously mentioned, with regard to the content of positive obligations states may enjoy a margin of appreciation. The ECtHR uses a variety of factors in its case law to determine the scope of the margin of appreciation, which will be discussed in more detail in section 5.1.1 and which will be applied to the issue of sharenting in section 5.1.2.[[129]](#footnote-129)

All things considered, a lack of legal framework in a state concerning the practice of sharenting and, therefore, not affording children sufficient protection from sharenting can constitute an interference with a state’s positive obligation. In the case of *Von Hannover v. Germany*, Princess Caroline complained about a lack of adequate state protection of her private life and her image by failing to provide adequate redress for publication of paparazzi photographs depicting her day-to-day life. [[130]](#footnote-130) The photographs revealed the princess horse riding, shopping, riding a bicycle, visiting a market, eating in a restaurant, skiing on a holiday, leaving her house, playing tennis and falling over at a beach club.[[131]](#footnote-131) Pictures shared by parents on social media can depict children in the same way, going about their daily lives. If a state would not have a legal framework in place that affords children sufficient protection from sharenting or national courts do not protect children against sharenting this could breach the positive obligation imposed by Article 8 ECHR.

To conclude, sharenting entails a horizontal relationship between a parent and his child, meaning an interference with a child’s right to respect for private life is generally the result of parents engaging in sharenting, not states. As horizontal direct effect of ECHR provisions is excluded, parents engaging in sharenting cannot be held accountable for interferences with a child’s private life under Article 8 ECHR. However, the ECtHR has allowed for the indirect horizontal effect of Article 8 ECHR through the recognition of positive obligations. If states fail to act on their positive obligations inherent to the right to respect for private life laid down in Article 8 ECHR to protect children from sharenting, this constitutes an interference.

### 3.2.2 Interference with Articles 7 and 8 CFR

Corresponding to Article 8 ECHR, the main aim of Articles 7 and 8 CFR is to require states to abstain from interfering with private life and personal data. If we assess sharenting from the perspective of negative obligations, a state would be obliged to abstain from limiting the right to respect for private life and the right to the protection of personal data. However, as previously mentioned, it is practically impossible that states engage in sharenting, as they are not parents. Therefore, any direct interference with Articles 7 and 8 CFR as a result of states engaging in sharenting is impossible and would fall outside the definition.

To determine whether sharenting constitutes an interference with Articles 7 and 8 CFR we also have to consider their possible horizontal direct effect. Article 51(1) CFR stipulates that the CFR applies to the institutions of the EU and to the member states when they are implementing EU law. It fails to address whether individuals are required to comply with certain provisions of the CFR.[[132]](#footnote-132) This had led to a debate concerning the interpretation of this article.[[133]](#footnote-133) Recently, the ECJ settled this dispute, as it held Article 51(1) CFR cannot be interpreted to preclude a possible horizontal direct effect of certain provisions. [[134]](#footnote-134) To determine the extent of the horizontal direct effect of the CFR we have to analyse the case law of the ECJ. Initially, the ECJ decided in the cases of *Mangold* and *Kücükdeveci* that the principle of non-discrimination on grounds of age applied in horizontal relationships.[[135]](#footnote-135) According to the ECJ, the principle of non-discrimination could be regarded as a general principle of EU law, which was given concrete effect by Directive 2000/78/EC.[[136]](#footnote-136) The ECJ required national courts to set aside any provision of national legislation if necessary to comply with the principle of non-discrimination.[[137]](#footnote-137)

As previously mentioned, following the entry into force of the Lisbon Treaty in 2009, the CFR attained the same legal value as the EU Treaties.[[138]](#footnote-138) This raised the question whether the fundamental rights laid down in the CFR could also be regarded as having horizontal direct effect. The ECJ shed some light on this question in the *AMS* case.[[139]](#footnote-139) The ECJ decided that Article 27 CFR protecting workers’ right to information and consultation within the undertaking, alone and in conjunction with Directive 2002/14/EC, could not be regarded as having horizontal direct effect.[[140]](#footnote-140) According to the ECJ, Article 27 CFR had to be given more specific expression in EU or national law to be fully effective as it provides that ‘workers must be guaranteed information and consultation in the cases and under the conditions provided for by EU law and national laws and practices’.[[141]](#footnote-141) Thereby the case differs from *Kücükdeveci*, as the principle of non-discrimination from that case was capable in itself to confer on private parties an individual right which they can invoke as such.[[142]](#footnote-142) According to the ECJ, the finding that Article 27 CFR cannot be invoked in a dispute between private parties does not change when this article is read in conjunction with the corresponding and more concrete directive.[[143]](#footnote-143) Nevertheless, the ECJ did not explicitly rule out the possibility of horizontal direct effect of other provisions of the CFR in other types of cases.[[144]](#footnote-144)

The *Mangold*, *Kücükdeveci* and *AMS* cases left many questions unanswered. Primarily, the ECJ had still not explicitly ruled whether and, if so, which provisions of the CFR have horizontal direct effect. Furthermore, the possibility of horizontal direct effect of the CFR in the case of purely private acts remained unsolved, as these cases entailed the review of national legislation in a dispute between private parties, i.e. government conduct.[[145]](#footnote-145) The ECJ gave more clarity on these questions in the recent cases of *Egenberger*, *IR*, *Max-Planck*, *Bauer* and *Cresco Investigation*.[[146]](#footnote-146) In these cases, the ECJ definitively recognized the horizontal direct effect of some provisions of the CFR, namely of Articles 21, 31(2) and 47 CFR.[[147]](#footnote-147) This means that it is possible in disputes between private parties to rely on the prohibition of all discrimination on grounds of religion or belief laid down in Article 21(1) CFR, as well as the right to effective judicial protection laid down in Article 47 CFR and the right to a period of paid annual leave affirmed by Article 31(2) CFR. In its judgements, the ECJ points out the mandatory and unconditional nature of these provisions.[[148]](#footnote-148) As they do not refer, such as Article 27 CFR in the *AMS* case,[[149]](#footnote-149) to ‘the cases and conditions provided for by EU law and national laws and practices’.[[150]](#footnote-150)

It should be noted that in all of these cases the subject of debate is still national legislation, not private conduct.[[151]](#footnote-151) But, the ECJ does state in *Bauer* that Article 51(1) CFR, as previously mentioned, does not preclude the possibility that individuals are directly bound to comply with certain provisions of the CFR.[[152]](#footnote-152) This opens up the possibility of horizontal direct effect of the CFR in cases of purely private conduct.[[153]](#footnote-153)

All in all, the ECJ has recognized the horizontal direct effect of Articles 21, 31(2) and 47 CFR, but it remains unclear whether the same applies to the other provisions of the CFR, especially in the case of private conduct. Regardless, in any case the provision has to be mandatory and unconditional. Article 7 CFR could be regarded as ‘sufficient in itself .. to confer on individuals a right which they may rely on as such’,[[154]](#footnote-154) as Article 7 CFR does not refer to ‘the cases and conditions provided for by EU law and national laws and practices’. [[155]](#footnote-155) Article 7 CFR may only be derogated from in compliance with the strict conditions laid down in Article 52(1) CFR, which according to *Bauer* suffices as mandatory.[[156]](#footnote-156)Article 7 CFR could therefore by regarded as mandatory and unconditional. Article 8 CFR, on the other hand, does refer to certain conditions provided for by EU law and national laws and practices. According to Article 8(2) CFR personal data

‘must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law’ and ‘everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.’

Furthermore, according to Article 8(3) CFR, compliance with these rules shall be subject to control by an independent authority. Clearly, Article 8 CFR cannot be regarded as mandatory and unconditional.

Ultimately, these findings do not change the fact that as long as the ECJ does not resolve the question whether the remaining CFR provisions have horizontal direct effect, parents engaging in sharenting cannot directly be held accountable by a child for interferences with his right to respect private life and right to the protection of personal data under Articles 7 and 8 CFR.

Furthermore, we have to determine whether states incur positive obligations on the basis of Articles 7 and 8 CFR and whether an interference takes place when they do not act. The ECtHR has made it clear that when states fail to act on a positive obligation inherent to a fundamental right laid down in the ECHR this can constitute an interference. Can the same be said for fundamental rights laid down in the CFR? Article 51(2) CFR holds that: ‘The Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power for the Union or modify powers and tasks as defined in the Treaties.’ This provision seems to indicate there is no room for accepting positive obligations under the CFR. Nevertheless, the ECJ has imposed obligations on EU institutions or member states to take certain active measures to protect fundamental rights.[[157]](#footnote-157) For example with regard to EU institutions, in the case *Schrems,* the ECJ imposed an active obligation on the Commission to check periodically whether the level of protection ensured by a third country was susceptible to change.[[158]](#footnote-158) This can be categorized as a procedural positive obligation. Up to now, the obligations imposed on EU institutions in case law of the ECJ have all appeared to be procedural in nature.[[159]](#footnote-159) Except for the case of *T. Port*, where the ECJ decided that the EU institutions were required to adopt measures in order to protect the fundamental rights of traders in the transition to the common market.[[160]](#footnote-160) In cases, such as *Kadi*,[[161]](#footnote-161) *LTTE v. Council*,[[162]](#footnote-162) *Schrems,[[163]](#footnote-163)* and *Gascogne,[[164]](#footnote-164)* the ECJ formulated obligations which required particular procedures to be set up and followed.[[165]](#footnote-165) With regard to states, the ECJ has imposed some positive obligations, but they are often of a procedural nature as well.[[166]](#footnote-166) Exceptional is the case of *Chatzi*, where the ECJ imposed a legislative positive obligation on the state to guarantee compliance with the principle of equal treatment.[[167]](#footnote-167)

All in all, the positive obligations established by the ECJ are generally procedural in nature, rather than substantive. The ECJ hardly ever formulates positive obligations to adopt legislation. Therefore, it does not seem likely that the ECJ will develop substantive positive obligations, such as to introduce legislation, with regard to Articles 7 and 8 CFR.

Additionally, we have to determine whether private parties incur positive obligations on the basis of Articles 7 and 8 CFR and whether an interference takes place when they do not act. The ECJ has accepted indirect horizontal effect in the area of privacy and data protection.[[168]](#footnote-168) In the case of *Google Spain* the ECJ held that Articles 7 and 8 CFR in conjunction with secondary legislation created an obligation on search engine Google to protect the right to private life and data protection and to weigh it up against the freedom of expression. [[169]](#footnote-169) Hereby, the ECJ read the right to private life and data protection into the DPD.[[170]](#footnote-170) It should be noted that the DPD and its successor, the GDPR,[[171]](#footnote-171) do not apply to ‘the processing of personal data by a natural person in the course of a purely personal or household activity’.[[172]](#footnote-172) According to the Preamble of the GDPR, personal or household activities could include social networking and online activity when exercised in a non-commercial manner.[[173]](#footnote-173) Sharenting entails a personal or household activity and therefore falls outside of the scope of the DPD and the GDPR, as long as the parent does not generate income from sharenting. It is therefore unlikely that a parent incurs a positive obligation on the basis of Articles 7 and 8 CFR read in conjunction with either the DPD or the GDPR, as they generally do not apply in the case of sharenting.

To conclude, Articles 7 and 8 CFR do not apply with regard to sharenting, due to the horizontal nature of the issue and the unwillingness of the ECJ to accept direct or indirect horizontal effect of these articles.

## 

## 3.3 Conclusion

If a parent acts in a manner consistent with the definition of sharenting from this research, being free from sharenting falls within the scope of the right to respect for private life and the right to the protection of personal data laid down in Articles 7 CFR, 8 CFR and 8 ECHR. As sharenting entails a horizontal relationship between a parent and his child, it is impossible that a state will directly interfere with a child’s right to respect for private life or right to the protection of personal data by sharenting. As the horizontal direct effect of Articles 7 CFR, 8 CFR and 8 ECHR is not recognized by the ECJ or the ECtHR, a child will not be able to rely on these articles for interferences caused by its parents. However, the recognition of positive obligations by the ECtHR expands the protection of Article 8 ECHR in relationships between individuals. States do not only have the obligation to abstain from limiting this right themselves, but also have the active obligation to protect an individual’s fundamental right from violations caused by other individuals. It is likely that a state incurs a positive obligation on the basis of Article 8 ECHR, meaning that a lack of legal framework in a state concerning the practice of sharenting and, therefore, not affording children sufficient protection from sharenting, can constitute an interference with a state’s positive obligation. However, it is unlikely that a state incurs a positive obligation on the basis of Articles 7 and 8 CFR, as the ECJ has not explicitly recognized this in its case law. Moreover, it also seems improbable that a parent will incur a positive obligation on the basis of Articles 7 and 8 CFR read in conjunction with the DPD or GDPR, as sharenting falls under the household exception. We can see that the ECtHR and ECJ take two totally different approaches with regard to the protection they afford to individuals in private relationships. The ECtHR clearly affords more protection in cases such as ours, where the dispute concerns two individuals. The ECJ, on the other hand, offers practically no protection to a child in the case of sharenting. Articles 7 and 8 CFR seem to not apply to this horizontal relationship, and are therefore of no further relevance for this research.

# Chapter 4 Parent’s right to freedom of expression and right to respect for family life

In contrast to a child’s right to privacy, a parent’s right to respect for family life and right to freedom of expression exist. The right to respect for family life is laid down in Article 8 ECHR and Article 7 CFR. The right to freedom of expression is laid down in Article 10 ECHR and Article 11 CFR. It follows from the previous chapter that Articles 7 and 8 CFR do not apply with regard to a child’s freedom from sharenting. As the purpose of this research is to balance the conflicting rights of the parent and the child, conducting this balance will be impossible when the rights of the child do not apply. This research will therefore not further discuss the right to respect for family life and the right to freedom of expression as laid down in Articles 7 and 11 CFR, but will only focus on Articles 8 and 10 ECHR.

In order to assess whether a prohibition on sharenting violates a parent’s right to respect for family life and right to freedom of expression, three cumulative steps have to be considered. First, the scope of the right to respect for family life and the right to freedom of expression laid down in Articles 8 and 10 ECHR will be discussed and the question will be answered whether sharenting falls within the scope of these rights (section 4.1). Subsequently, this chapter examines whether a prohibition on sharenting constitutes an interference with the right to respect for family life and the right to freedom of expression (section 4.2). The third stage, whether a possible interference can be justified, will be discussed in Chapter 5 by balancing a child’s right to respect for private life against a parent’s right to respect for family life and right to freedom of expression.

## 

## 4.1 Scope

In order to attract the protection of Articles 8 and 10 ECHR, sharenting must fall within the scope of these articles. The meaning of the concepts ‘family life’ and ‘expression’ are not self-explanatory and often fact-sensitive. Therefore, sections 4.1.1 and 4.1.2 explain the interpretation of the ECtHR with regard to the meaning of these concepts more precisely through an analysis of the case law of the ECtHR and the specific features of sharenting. First the scope of the right to respect for family life will be discussed (section 4.1.1). Thereafter, an examination of the scope of the right to freedom of expression follows (section 4.1.2).

### 4.1.1 The scope of the right to respect for family life

Article 8 ECHRreads as follows:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

Article 8 ECHR has already been discussed in section 3.1.1, where the focus was on the notion of private life. This chapter focuses on the notion of family life. Family life in the sense of Article 8 ECHR is an individual attribute, as it protects an individual’s family life, not the family as such.[[174]](#footnote-174) Since the authors of the ECHR did not define the concept of family life, it is up to the ECtHR to determine whether something qualifies as family life on a case-by-case basis. First of all, the ECtHR indicates that a lawful and genuine marriage constitutes family life, even if certain elements of family life have not (yet) occurred, such as children or a joint home.[[175]](#footnote-175) Nevertheless, the concept of family life may also encompass relationships where the parties cohabite outside of marriage.[[176]](#footnote-176)

The relationship that exists between partners or parents should be distinguished from the relationship between parents and their children.[[177]](#footnote-177) Namely, the bond that exists between a parent and his child also constitutes family life, from the moment of the child’s birth and by the very fact of it.[[178]](#footnote-178) If a child is born out of wedlock or if at the time of birth the parents are no longer co-habiting, the relationship between a child and his parents still amounts to family life.[[179]](#footnote-179) However, from the perspective of the right of a parent to respect for family life, the ECtHR holds that a mere kinship between parent and child does not suffice to create family life within the meaning of Article 8 ECHR.[[180]](#footnote-180) Accordingly, the ECtHR holds that the question whether something constitutes family life is factual and depends upon ‘the real existence in practice of close personal ties’.[[181]](#footnote-181) Factors that can be of relevance are, for example, whether the parent has demonstrated interest in the child and whether the parent has demonstrated commitment to the child, both before and after its birth.[[182]](#footnote-182) To illustrate, even if there is a geographical distance between the parent and the child, the bond of family life is not broken if there is regular visitation by the parent.[[183]](#footnote-183) Moreover, the ECtHR holds that notion of family life also amounts to the bond between adoptive parents and their adoptive children.[[184]](#footnote-184) Accordingly, the relationship between parents and their children amounts to family life for the purpose of Article 8 ECHR. Thus, the relationship between a ‘sharenting’ parent and his child constitutes family life within the meaning of Article 8 ECHR, if close personal ties between them have been established.

Subsequently, the question arises what the content of family life in practice consists of. Different elements of family life can be derived from case law of the ECtHR, which are either of a procedural or substantive nature.[[185]](#footnote-185) Procedural elements pertain to, for example, the right to be heard promptly in family law proceedings.[[186]](#footnote-186) An example of a substantive element, on the other hand, is the right to mutual enjoyment by parent and child of each other’s company.[[187]](#footnote-187) With regard to sharenting, an important substantive element is the care and upbringing of the child by the parents.[[188]](#footnote-188) Moreover, the ECtHR recognizes the exercise of parental authority as a fundamental part of family life.[[189]](#footnote-189) Therefore, sharenting falls within the freedom that is accorded to parents under Article 8 ECHR in bringing up their children and exercising parental authority over their children, without outside interference.

### 4.1.2 The scope of the right to freedom of expression

Article 10 ECHR reads as follows:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

Article 10(1) ECHR lays down the different components of the right to freedom of expression, namely the freedom to hold opinions, the freedom to receive information and ideas and the freedom to impart information and ideas. With regard to the substance of the information and ideas expressed, Article 10 ECHR does not only apply to ‘information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb’.[[190]](#footnote-190) According to the ECtHR, ‘these are the demands of pluralism, tolerance and broadmindedness without which there is no democratic society’.[[191]](#footnote-191)According to the case law of the ECtHR, Article 10 ECHR does not solely protect the substance of the information and ideas expressed, but also the form in which they are expressed.[[192]](#footnote-192) Article 10 ECHR is not limited to the spoken or written word, but includes all forms of expression through any medium, such as films,[[193]](#footnote-193) photographs,[[194]](#footnote-194) paintings,[[195]](#footnote-195) television programmes,[[196]](#footnote-196) and books.[[197]](#footnote-197) As any restriction imposed on the medium of transmission necessarily interferes with the right to receive and import information.[[198]](#footnote-198)

Notably, the ECtHR affirms the internet as a medium for freedom of expression in its case law, regardless of the type of message conveyed and even when the objective is of a commercial nature.[[199]](#footnote-199) According to the ECtHR, the internet comprises the main method for individuals to receive and impart information and ideas and to exercise their right to freedom of expression.[[200]](#footnote-200) The ECtHR holds that

‘in the light of its accessibility and its capacity to store and communicate vast amounts of information, the internet plays an important role in enhancing the public’s access to news and facilitating the sharing and dissemination of information in general’.[[201]](#footnote-201)

In addition, ‘user-generated expressive activity on the internet provides an unprecedented platform for the exercise of freedom of expression’.[[202]](#footnote-202) The ECtHR recognizes the many shapes these online freedoms take, for example as mobile phone applications or blogs.[[203]](#footnote-203) Moreover, the ECtHR holds that YouTube is an important medium in the exercise of the freedom to receive and impart information and ideas, as any person can upload, watch and share videos.[[204]](#footnote-204) Social media platform Instagram has also been recognized as a medium for freedom of expression.[[205]](#footnote-205)

The ECtHR holds that Article 10 ECHR protects freedom of expression to everyone, as it makes no distinction with regard to the role played by natural or legal persons in the exercise of that freedom or with the type of aim pursued.[[206]](#footnote-206) This means that even if a parent’s aim with regard to sharenting is to make profit, the freedom of expression still applies.[[207]](#footnote-207)

It can be derived from the above-mentioned, that the sharing of pictures, videos and stories by parents on online social media platforms falls within the scope of the freedom of expression laid down in Article 10 ECHR.

## 4.2 Interference

It follows from the previous sections that the right to respect for family life laid down in Article 8 ECHR and the right to freedom of expression laid down in Article 10 ECHR are applicable to parents sharing about their children online. Consequently, we have to establish whether an interference exists. In order to do so, we have to assume that a prohibition on sharenting exists that is provided for by law. An example of such a situation could be a state’s prohibition on images of children shared on the internet, of which the result is social media platforms deleting all pictures shared by parents which depict children.

### 4.2.1 Interference with Article 8 ECHR

The obligations on the state with regard to the right to respect for family life are both negative and positive in nature.[[208]](#footnote-208) The ECtHR holds that the primary goal of Article 8 ECHR is to protect individuals against arbitrary action by public authorities. However, this does not only mean that a state has a negative obligation to refrain from such interference, as a state may also incur a positive obligation*,* requiring it to protect individuals from infringements of their right to respect for family life that are attributable to others.[[209]](#footnote-209) As we are dealing with a prohibition on sharenting provided for by law, this restriction is attributable to the state. Therefore, the obligation on the state is of a negative nature.

A state measure prohibiting sharenting hinders a parent’s right to exercise parental authority, which forms a part of his right to respect for family life. A parent will no longer able to make his own decisions with regard to what he wants to share about his family online. As Article 8 ECHR imposes a negative obligation upon states to refrain from any action which would interfere with the family, a prohibition on sharenting interferes with a parent’s right to respect for family life.

### 4.2.2 Interference with Article 10 EHCR

Similarly to Article 8 ECHR, states do not only have the negative obligation to refrain from interfering with the right to freedom of expression laid down in Article 10 ECHR, but may also incur a positive obligation to ensure that Article 10 ECHR is adequately protected between private parties.[[210]](#footnote-210) As a prohibition on sharenting can be directly attributed to the state and not a private party, the obligation upon the state is negative and not positive. Accordingly, a prohibition on sharenting by a state amounts to an interference by a public authority with a parent’s right to freedom of expression, ‘of which the freedom to receive and impart information and ideas is an integral part’.[[211]](#footnote-211)

## 

## 4.3 Conclusion

Sharenting falls within the scope of the right to respect for family life and the right to freedom of expression laid down in Articles 8 and 10 ECHR. If a state would enact a measure prohibiting sharenting this would interfere with both of these rights. Whether this interference can be justified will be discussed in Chapter 5 by balancing a child’s right to respect for private life against a parent’s right to respect for family life and right to freedom of expression.

# 

# Chapter 5 Justification

It follows from Chapter 3 that a state has a positive obligation inherent to the right to respect for private life laid down in Article 8 ECHR to protect a child from sharenting. If a state fails to act on this positive obligation, an interference takes place. Furthermore, it follows from Chapter 4 that, if a state would enact a measure prohibiting sharenting, this would interfere with both a parent’s right to respect for family life and right to freedom of expression laid down in Articles 8 and 10 ECHR. The purpose of this chapter is to examine whether these interferences can be justified, by balancing a child’s right to respect for private life against a parent’s right to respect for family life and right to freedom of expression.

When considering the justification of an interference, it makes a difference for the approach of the ECtHR’s examination under Articles 8-11 ECHRwhether a case is analysed from the perspective of positive or negative obligations.[[212]](#footnote-212)

With regard to negative obligations, three separate sub-tests exist.Limitations are allowed on condition that they are in accordance with the law or prescribed by law, serve one or more of the second paragraph legitimate aims and are necessary in a democratic society for the aforesaid aim or aims.[[213]](#footnote-213)

With regard to positive obligations, the threefold test has collapsed into a single fair balance test.[[214]](#footnote-214) This test requires a fair balance to be struck between the competing rights and interests of the individual and of the community as whole.[[215]](#footnote-215) In positive obligations cases, any mention of the conditions ‘in accordance with, or prescribed by, the law’ and ‘serves a legitimate aim’ are absent.[[216]](#footnote-216) The ECtHR holds that, with regard to positive obligations, these conditions are not separate and decisive tests, but may be relevant factors to be taken into account when considering whether a state has struck a fair balance.[[217]](#footnote-217) Moreover, the ECtHR does not turn to the closed list of legitimate aims in the second paragraphs of Articles 8-11 ECHR with regard to positive obligations, as it does in the case of negative obligations. The ECtHR merely holds that the aims mentioned there can be ‘of certain relevance’.[[218]](#footnote-218) Nonetheless, the ECtHR considers that the principles applicable in cases of positive and negative obligations under Articles 8-11 ECHR are ‘broadly similar’.[[219]](#footnote-219) In both contexts the fair balance test and margin of appreciation doctrine apply.[[220]](#footnote-220)

In light of the foregoing, it is important to delineate the structure of this chapter. Firstly, the three different sub-tests that apply with regard to negative obligations under Articles 8 and 10 ECHR will be discussed (section 5.1.1). Thereafter, this test of justification will be applied to the issue of sharenting (section 5.1.2). As we have seen, the fair balance test that forms part of the third sub-test corresponds with the fair balance test applicable with regard to positive obligations cases, apart from the greater importance attached to the legality and legitimacy tests in negative obligations cases.[[221]](#footnote-221) Therefore, the fair balance test will be discussed in a separate section with regard to both positive and negative obligations (section 5.2.1). Hereafter, this fair balance test will be applied to the issue of sharenting (section 5.2.2).

## 

## 5.1 Test of justification for interferences with negative obligations

Articles 8 and 10 ECHR impose negative obligations on states to refrain from any action, which would interfere with the right to respect for family life and the right to freedom of expression. It follows from Chapter 4, that if a state would enact a measure prohibiting sharenting, this would interfere with both of these rights. These interferences would entail violations of Articles 8 and 10 ECHR, if they cannot be justified pursuant to the conditions laid down in the second paragraphs of these articles.

Firstly, section 5.1.1 sets out the general aspects of the test of justification, laid down in the second paragraphs of Articles 8 and 10 ECHR that apply with regard to negative obligations cases. Section 5.1.2 analyses whether the conditions of the test of justification are met with regard to a state’s prohibition on sharenting provided for by law.

### 5.1.1 Test of justification

With regard to Article 8(2) and Article 10(2) ECHR, the same conditions must be satisfied for an interference, or limitation to be allowed: the interference must be prescribed by law or in accordance with the law (A); must pursue one or more of the second paragraph aims (B); and must be necessary in a democratic society for the aforesaid aim or aims (C).[[222]](#footnote-222)

1. **Prescribed by, or in a accordance with, the law**

First of all, it must be noted that Article 8(2) ECHR reads ‘in accordance with the law’, whereas Article 10(2) reads ‘prescribed by law’. This difference in language is immaterial, since the ECtHR credits the two phrases with the same meaning, as the French text is identical in both paragraphs: ‘prévues par la loi’.[[223]](#footnote-223)

The ECtHR has established a fourfold-test to determine whether an interference is prescribed by, or in accordance with, the law.[[224]](#footnote-224) Firstly, it must be established that the interference with the ECHR right has a specific legal basis.[[225]](#footnote-225) Secondly, the law must be adequately accessible.[[226]](#footnote-226) Thirdly, the law must be foreseeable;[[227]](#footnote-227) and fourthly, the law must provide adequate safeguards against arbitrary interferences with the respective substantive rights.[[228]](#footnote-228)

With regard to the specific legal basis, the ECtHR holds that this comprises not only statute law, but also unwritten law.[[229]](#footnote-229) According to the ECtHR, case law, EU regulations and international treaties can be a sufficient basis.[[230]](#footnote-230) The remaining requirements are the so-called ‘quality of law’ requirements.[[231]](#footnote-231) The first quality of law requirement entails that the law must be adequately accessible, meaning that ‘the citizen must be able to have an indication that is adequate in the circumstances of the legal rules applicable to a given case’.[[232]](#footnote-232) The second quality of law requirement entails that the law must be sufficiently precise to enable the citizen to reasonably foresee the consequences which a given action may entail, if necessary with the help of advisors.[[233]](#footnote-233) According to the ECtHR, the level of precision required depends on the substance of the instrument at issue, the field it is intended to encompass and the number and status of its addressees.[[234]](#footnote-234) As absolute certainty of the foreseeability of the consequences is practically impossible, this is not necessary.[[235]](#footnote-235) With regard to the final requirement, the ECtHR holds that the law must clearly specify the scope of the legal discretion awarded to the competent authorities and the mode of exercise, as it would be contrary to the rule of law for this discretion to be unlimited.[[236]](#footnote-236)

1. **Legitimate aim**

If the legality of the interference is established, the next step is to examine the legitimacy of the aim pursued. Article 8(2) and Article 10(2) ECHR each contain a list of possible legitimate aims of the state:

Article 8(2) ECHR: ‘(…) national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health and morals,

or for the protection of the rights and freedoms of others’

Article 10(2) ECHR: ‘(…) national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary’

The aims listed in these paragraphs are widely formulated and belong to a closed list.[[237]](#footnote-237) However, every now and then the ECtHR considers aims different from those that form part of the close list.[[238]](#footnote-238) The ECtHR recognizes that in most cases its practice when verifying the existence of a legitimate aim is rather succinct.[[239]](#footnote-239) It is up to the state to assert that the interference pursued a legitimate aim.[[240]](#footnote-240) In general, the ECtHR easily finds the aims put forward by the state sufficient to justify the restriction. The ECtHR itself rarely analyses the nature of the restriction comprehensively to satisfy that it pursues one of the legitimate aims, because applicants rarely contest states’ claims.[[241]](#footnote-241)

1. **Necessary in a democratic society**

The ECtHR excludes an excessively stringent or lenient interpretation of the term ‘necessary’ in its case law.[[242]](#footnote-242) It holds that ‘necessary’ is neither synonymous with the terms ‘indispensable’ or ‘absolutely necessary’, nor has the flexibility of terms, such as ‘admissible’, ‘useful’, ‘reasonable’, ‘ordinary’ or ‘desirable’.[[243]](#footnote-243) According to the ECtHR, the term ‘necessity’ implies that the interference corresponds to a pressing social need in order to be compatible with the ECHR and that it is proportionate to the legitimate aim pursued.[[244]](#footnote-244) Furthermore, the reasons put forward by a state to justify an interference must be relevant and sufficient.[[245]](#footnote-245)

The ECtHR uses the notions of proportionality and fair balance interchangeably in its case law.[[246]](#footnote-246) For example, in *Nada v. Switzerland*, the ECtHR held that the limitations in question ‘did not strike a fair balance’ and, consequently, the interference was ‘not proportionate and therefore not necessary in a democratic society’.[[247]](#footnote-247) As previously mentioned, with regard to positive obligations a single fair balance test applies, instead of the threefold test that applies with regard to negative obligations.[[248]](#footnote-248) Thus, with regard to both negative and positive obligations under Articles 8 and 10 ECHR, a fair balance test applies.[[249]](#footnote-249) A comprehensive discussion of this type of proportionality, or fair balance, follows in section 5.2.1.

According to the ECtHR, it is the initial responsibility of states to determine the pressing social need and proportionality in a case.[[250]](#footnote-250) Therefore, a margin of appreciation is left to them.[[251]](#footnote-251) Accordingly, the margin of appreciation doctrine does not only play a role with regard to the scope of positive obligations, as we have seen in Chapter 3.[[252]](#footnote-252) It also plays a role with regard to negative obligations, to determine whether an interference with one of the rights laid down in Articles 8-11 ECHR is justifiable on the grounds laid down in the second paragraph of the article concerned.[[253]](#footnote-253) With regard to the scope of a state’s margin of appreciation, the ECtHR distinguishes between a ‘wide margin’, a ‘certain margin’ and a ‘narrow margin’.[[254]](#footnote-254) A wide margin results in a restrained review by the ECtHR, whereas a narrow margin results in a strict review.[[255]](#footnote-255) If the ECtHR leaves a state ‘a certain’ or ‘a’ margin of appreciation, the degree of intensity of its review will be an intermediate form of the former two.[[256]](#footnote-256) This usually means that the ECtHR will apply a more or less neutral approach.[[257]](#footnote-257) Thus, the degree of discretion left to a state determines the intensity of the ECtHR’s review.[[258]](#footnote-258) In any case, the margin of appreciation is not unlimited, as the state’s decision remains subject to review by the ECtHR.[[259]](#footnote-259)

The ECtHR uses a variety of factors in its case law to determine the scope of the margin of appreciation.[[260]](#footnote-260) From this last of factors, Gerards singled out the three main factors with the most effect on the scope of the margin of appreciation: the ‘common ground’ factor, the ‘better placed’ factor and the ‘nature and importance of the ECHR issue at stake’.[[261]](#footnote-261) The first factor requires the assessment of the level of consensus between states.[[262]](#footnote-262) If there is little or no common ground between states on the necessity or proportionality of a restriction of a fundamental right, the ECtHR generally leaves a wide margin of appreciation for states.[[263]](#footnote-263) Contrariwise, if it seems that there is consensus between states on a certain matter, the margin of appreciation will be restricted.[[264]](#footnote-264) To determine the degree of consensus between states, the ECtHR often has regard to national law, EU or international legal instruments and soft law.[[265]](#footnote-265)

The second ‘better placed’ factor calls for a wide margin of appreciation when a state is in a better position to determine the necessity or proportionality of the restriction of a fundamental right.[[266]](#footnote-266) This is usually the case in matters concerning moral and ethical issues, such as same-sex relationships and abortion and social and economic issues, such as healthcare and social benefits.[[267]](#footnote-267) Furthermore, the special context of a case must also be taken into account.[[268]](#footnote-268) For example, with regard to matters of national security or military, the scope of the margin of appreciation may be wider due to the special context of the case.[[269]](#footnote-269) Also, if a case deals with competing ECHR rights, a broad margin of appreciation is usually afforded to a state, which according to the ECtHR is better placed to assess the necessity and proportionality of the restriction of one of these rights.[[270]](#footnote-270)

Lastly, the ‘nature and importance of the ECHR issue at stake’ are of relevance to determine the scope of the margin of appreciation.[[271]](#footnote-271) According to the ECtHR, four core values underlie the ECHR: ‘human dignity, democracy, pluralism and autonomy’.[[272]](#footnote-272) If an ECHR right is closely related to these core values, the ECtHR considers that the margin of appreciation should be narrow, as European supervision is necessary.[[273]](#footnote-273) For example, the freedom of expression is considered to be one of the essential foundations of a democratic society, therefore the margin of appreciation will generally be narrow.[[274]](#footnote-274) The margin of appreciation will be wider in the case of an ECHR right which is not considered to be closely related to one of the core values.[[275]](#footnote-275) Furthermore, the gravity and nature of the limitation should be taken into account.[[276]](#footnote-276) If a limitation makes it impossible to exercise an ECHR right, the margin of appreciation will generally be narrow.[[277]](#footnote-277)

### 5.1.2 Application of the test of justification

The purpose of this section is to examine whether the interference with a parent’s right to respect for family life and right to freedom of expression as a result of a state prohibiting sharenting can be justified, pursuant to the ECtHR’s test of justification as set out in section 5.1.1.

1. **Prescribed by, or in accordance with, the law**

Firstly, we have to determine whether the restriction on a parent’s right to respect for private life and right to freedom of expression laid down in Articles 8 and 10 ECHR is prescribed by, or in accordance with, the law. In section 4.2, it was assumed that a prohibition on sharenting exists, provided for by law, in order to determine whether there was an interference with Articles 8 and 10 ECHR. An example of such a situation was given, namely a state’s prohibition on images of children shared on the internet, of which the result is social media platforms deleting all pictures shared by parents which depict children. This prohibition on sharenting is purely hypothetical, in order to pass through the three cumulative stages, which determine whether a fundamental rights violation exists. Accordingly, a comprehensive evaluation of the first condition of the test of justification, which requires the interference to be prescribed by, or in accordance with, the law is not appropriate. We can suffice with the remark that a prohibition on sharenting provided for by (domestic) law, will fulfil this first condition, if it meets the four-fold test established by the ECtHR, as discussed in section 5.1.1.

1. **Legitimate aim**

If it can be established that the prohibition on sharenting has a legal basis, which meets the ‘quality of law’ requirements, we have to consider whether this prohibition pursues one or more of the legitimate aims specified in the second paragraphs of Articles 8 and 10 ECHR.[[278]](#footnote-278) There are some differences and some overlaps between the aims listed in these articles. Both articles list as aims: the interests of national security, the interests of public safety, prevention of disorder or crime, protection of health or morals and protection of the rights and freedom of others. The interests of territorial integrity, protection of the reputation of others, preventing the disclosure of information received in confidence and maintaining the authority and impartiality of the judiciary are listed in Article 10(2) ECHR, but omitted from Article 8(2) ECHR. Protection of the economic well-being of the country is only mentioned in Article 8(2) ECHR. Most of these aims are in the public interest, whereas the aims protection of the rights and freedom of others and protection of the reputation of others concern private interests, as they are able to benefit specific groups or individuals.[[279]](#footnote-279) A prohibition on sharenting benefits children subject to sharenting, by protecting their right to respect for private life and reputation.

We can conclude that a prohibition on sharenting serves the protection of the rights and freedoms of others as listed in Articles 8(2) and 10(2) ECHR and the protection of the reputation of others as listed in Article 10(2) ECHR.

1. **Necessary in a democratic society**

A restriction on sharenting will only be deemed necessary in a democratic society if the restriction corresponds to a pressing social need; is proportionate to the legitimate aim pursued; and, the reasons given by the national authority to justify the interference are relevant and sufficient.[[280]](#footnote-280) The requirement of a pressing social need implies that the interest pursued by an interference with Article 8 and Article 10 ECHR should not only be legitimate, but should also carry weight and importance.[[281]](#footnote-281) A prohibition on sharenting serves the protection of the rights and freedoms of others as listed in Articles 8(2) and 10(2) ECHR and the protection of the reputation of others as listed in Article 10(2) ECHR. A measure prohibiting sharenting seems to corresponds to its aims, namely that of protecting a child’s right to respect for private life and reputation. Additionally, as a prohibition on sharenting will likely contribute to the achievement of protecting a child’s right to respect for private life and reputation, the reasons given by the national authority to justify the interference will be relevant and sufficient. With regard to the remaining proportionality requirement, a comprehensive discussion of its application follows in section 5.2.2.

It follows from section 5.1.1 that a margin of appreciation is left to states to determine the pressing social need and proportionality in a case.[[282]](#footnote-282) The ECtHR has developed a variety of factors that may alter the scope of this margin and, thereby, the intensity of its review.[[283]](#footnote-283) As previously mentioned, Gerards singled out the three main factors with the most effect on the scope of the margin of appreciation.[[284]](#footnote-284)

Firstly, the common ground factor requires a determination of the level of consensus between states.[[285]](#footnote-285) Within the CoE, the protection of individuals’ personal data is regarded as important as all CoE member states are party to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.[[286]](#footnote-286) However, this Convention does not cover the particular issue of (protecting children from) sharenting. As sharenting is such a new phenomenon, legislation specifically aimed at protecting a child from sharenting is rare. A comparative law study of all 47 CoE member states goes beyond the purpose of this research. In general, certain states have legislation in place which afford protection to a person’s private life. However, this legislation has not progressed as far as to cover the issue of sharenting. For example, French law explicitly affords protection to a person’s private life and image and a French child can request the removal of their information, photos or videos through an independent administrative regulatory body.[[287]](#footnote-287) Moreover, in France sharenting can lead to a fine of up to 45,000 euro or up to a year’s imprisonment, if a parent’s photograph affects a child’s private life; if it is taken in a private place; and, without a child’s consent.[[288]](#footnote-288) In the United Kingdom, on the other hand, there is no domestic law which explicitly affords protection to a person’s image and there is no criminal law penalizing photographs shared without consent.[[289]](#footnote-289) In general, there does not seem to be an emerging common ground on protecting a child from sharenting when comparing national laws of the CoE member states. However, with regard to EU legal instruments, the GDPR underlines that children merit particular protection of their personal data.[[290]](#footnote-290) Moreover, with regard to international law, Article 16 of the United Nations Convention on the Rights of the Child (UNCRC), which is ratified by all CoE member states, sets out a child’s right to privacy. Nonetheless, it seems rather far-fetched to draw from the UNCRC and the GDPR to substantiate a European common ground with regard to the protection of children from sharenting, as this particular issue is not addressed. Thus, national laws and international and European legal instruments do not disclose a full European consensus with regard to the protection of children from sharenting. This factor points to a wide margin of appreciation for states.[[291]](#footnote-291)

Secondly, we have to determine whether national authorities are better placed to determine the necessity or proportionality of a restriction on a parent’s right to freedom of expression and right to respect for family life.[[292]](#footnote-292) The ECtHR generally leaves a wide margin of appreciation in cases concerning morally or ethically sensitive matters.[[293]](#footnote-293) The issue of sharenting could be regarded as a morally and ethically sensitive matter, but it is not as sensitive as matters such as abortion or euthanasia. Heavily debated questions surround the issue of sharenting, for example whether children’s digital footprints should be established without their knowledge and whether children should be used to generate income, such as in the case of family vlogging, or whether this constitutes child labour.[[294]](#footnote-294) A video posted by the New York Times, in which children confront their parents with sharenting, shows how differently people can perceive sharenting.[[295]](#footnote-295) Although the issue of sharenting is not a very complex ethical issue, it is a very sensitive one, as the subject of the publication is a child and involves the question what a parent can and cannot do in the parent-child relationship.

Furthermore, the special context of a case should be taken into account.[[296]](#footnote-296) Sharenting concerns a horizontal relationship between private parties. The ECtHR holds that in this particular context, the state’s margin of appreciation is slightly wider than in vertical relations.[[297]](#footnote-297) Also, if a case deals with competing ECHR rights, a broad margin of appreciation is usually afforded to a state.[[298]](#footnote-298) For example, in *Von Hannover v. Germany (no. 2)* the state was required to strike a balance between the right to respect for private life (Article 8 ECHR) and the right to freedom of expression (Article 10 ECHR). The ECtHR indicated that where ‘the balancing exercise has been undertaken by the national authorities in conformity with the criteria laid down in the case law of the ECtHR, the ECtHR would require strong reasons to substitute its view for that of the domestic courts’.[[299]](#footnote-299) As the issue of sharenting concerns a conflict between a parent’s right to freedom of expression and right to respect for family life and a child’s right to respect for private life, this points to a broad margin of appreciation.

Thirdly, we have to determine the ‘nature and importance of the ECHR issue at stake’.[[300]](#footnote-300) If the core values of democracy, pluralism, human dignity and autonomy have been affected, the ECtHR often leaves a narrow margin of appreciation.[[301]](#footnote-301) With respect to the freedom of expression, the type of expression is of importance. The ECtHR generally affords a narrow margin of appreciation in the case of political expressions or expressions which contribute to a debate of public interest.[[302]](#footnote-302) Whether a parent’s publication on social media contributes to a debate of public interest, depends on the substance of each publication. Generally, parents will share matters of personal rather than public significance. Consequently, a restriction of a parent’s freedom of expression in that respect does not result in one of the core values being affected. The ECtHR holds that ‘where a particularly important facet of an individual’s identity or existence is at stake, the margin allowed to the state will be restricted’.[[303]](#footnote-303) Sharenting is a broad concept which affects a number of aspects relating to a child’s identity, such as his name, image, reputation and data. Thus, through sharenting, the core aspects of a child’s human dignity and personal autonomy may be affected. The ECtHR generally leaves a narrow margin of appreciation in such cases. Furthermore, the gravity and nature of the limitation should be taken into account.[[304]](#footnote-304) If a limitation makes it impossible to exercise an ECHR right, the margin of appreciation will generally be narrow.[[305]](#footnote-305) It will depend to a large extent on the facts of a specific case, whether it is impossible to exercise a parent’s right to share content of his child online or, on the contrary, whether a child’s right to privacy can no longer be effectively enjoyed.

In conclusion, there is no European consensus on how the moral and ethical issue of sharenting should be regulated. This points to a wide margin of appreciation. However, the nature and importance of Articles 8 and 10 ECHR, point to a narrow margin of appreciation. The question is how these factors should be balanced in order to determine the scope of the margin of appreciation. The ECtHR does not apply a single standard to determine the outcome of the balancing of these different factors.[[306]](#footnote-306) Generally, the ECtHR settles such issues by affording a state ‘a certain’ margin of appreciation.[[307]](#footnote-307) As a consequence, the degree of intensity of the ECtHR’s review will be somewhere in-between very strict and very restrained.[[308]](#footnote-308) This usually means that the ECtHR will apply a more or less neutral approach.[[309]](#footnote-309) For our analysis this means that a state has some room to decide the necessity and proportionality of an interference, but the choices made by the state will still be carefully examined by the ECtHR.[[310]](#footnote-310)

## 5.2 Fair balance test for interferences with negative and positive obligations

It follows from section 5.1.1 that three different sub-tests apply with regard to negative obligations under Articles 8 and 10 ECHR when considering the justification of an interference with a fundamental right. A proportionality test forms part of the third sub-test ‘necessary in a democratic society’.[[311]](#footnote-311) It follows from section 3.2.1 that the ECtHR uses a fair balance test to determine whether a state is subject to implied positive obligations under the ECHR, as well as whether an infringement by the state can be justified.[[312]](#footnote-312) We have seen that the ECtHR uses the notions of proportionality and fair balance interchangeably.[[313]](#footnote-313) Thus, with regard to both negative and positive obligations under Articles 8 and 10 ECHR, it is necessary to consider whether a fair balance has been struck ‘between the competing interests of the individual and of the community as a whole’.[[314]](#footnote-314)

Firstly, section 5.2.1 sets out the general aspects of the fair balance test under Articles 8 and 10 ECHR that apply with regard to both positive and negative obligations cases. In section 5.2.2, the fair balance test will be applied to the issue of sharenting. Section 5.2.3 will give a short conclusion.

### 5.2.1 Fair balance test

For the application of the fair balance test, the interests at stake have to be determined and a fair balance between them has to be struck.[[315]](#footnote-315) The application of the fair balance test by the ECtHR generally has a rather open-ended character and the outcome of the balancing test is therefore often hard to predict.[[316]](#footnote-316) However, some predictability comes from lists of factors it has developed in different areas, which it takes into account when determining whether a state has struck a fair balance.[[317]](#footnote-317) For instance, the ECtHR has developed a list of factors that may be of relevance when determining whether a fair balance has been struck between the right to respect for private life (Article 8 ECHR) and the right to freedom of expression (Article 10 ECHR) in cases where aspects of a person’s private life are made public by the media.[[318]](#footnote-318) It should be noted that the ECtHR applies these factors in cases where aspects of a person’s private life are made public by the media.[[319]](#footnote-319) In contrast, in the case of sharenting aspects of a child’s private life are made public by the parent, not the media. Although the list of factors is established for publications from media outlets, the ECtHR holds that the list of factors may be transposed to the particular circumstances of a case, and that consequently, certain factors may have more or less relevance.[[320]](#footnote-320) Furthermore, although the cases in which these factors were developed related to public figures, it follows from *Haldimann v. Switzerland* that these factors also apply to private individuals.[[321]](#footnote-321)

In general, the factors are as follows: contribution to a debate of public interest (A); how well-known the person concerned is and the subject of the impugned publication (B); previous conduct of the person concerned (C); the content, form and consequences of the publication (D); and, where appropriate, the circumstances in which the photographs were taken (E). When the ECtHR examines a cases lodged under Article 10 ECHR, it additionally examines the manner in which the information was obtained and its accuracy (F), and the severity of the sanctions imposed on the journalists or publishers (G).[[322]](#footnote-322) A discussion of these different factors follows in the next paragraphs.

**A. Contribution to a debate of public interest**

It matters for the ECtHR’s balancing exercise whether a publication contributes to a debate of public interest or not. The ECtHR attaches more weight to a publisher’s freedom of expression in the balancing exercise, when a publication is of the type that contributes to a debate on public issues. In contrast, the ECtHR attaches less weight if the publication does not contribute to a debate of public interest.[[323]](#footnote-323) According to the ECtHR, the definition of a matter of public interest depends on the circumstances of the case at hand.[[324]](#footnote-324) To determine whether a publication exposing aspects of a person’s private life contributes to a debate of public interest, the ECtHR considers the significance of the subject for the public and the nature of the information exposed.[[325]](#footnote-325) The ECtHR frequently stresses that it is the public’s fundamental right to be informed in a democratic society, and that this may even stretch to information concerning a public figure’s private life. However, if the sole purpose of the impugned publication is to entertain and fulfil the public’s curiosity, it cannot be considered to contribute to a debate of general interest.[[326]](#footnote-326) In order to determine whether a publication relates to a matter of public interest, and is not just intended to quench the public’s thirst for insight into other people’s private lives, the publication as a whole must be evaluated and the context of the publication must be analysed.[[327]](#footnote-327) Generally, the public interest pertains to matters which affect or concern the public to a considerable degree, such as its safety and health.[[328]](#footnote-328)

**B. How well-known the person concerned is and the subject of the impugned publication**   
It is important to determine how well-known the person concerned is, because the degree of a person’s notability decreases the degree of the protection that may be provided to him.[[329]](#footnote-329) For this purpose, it is necessary to differentiate between private persons on the one hand, and persons with a public profile on the other.[[330]](#footnote-330) In order for a person to be a public figure, it is not necessary that the public at large knows his picture. What matters is that the person has entered the public arena.[[331]](#footnote-331) Examples of public figures are politicians,[[332]](#footnote-332) business magnates[[333]](#footnote-333) and political extremists.[[334]](#footnote-334) Moreover, if a person exercises a public function, certain ‘private’ actions can impact the public at large, and therefore the protection of the person’s private life may be reduced.[[335]](#footnote-335) Nevertheless, even if a person can be qualified as a public figure, this does not legitimise every intrusion into his private life.[[336]](#footnote-336)

Furthermore, the subject of the publication must be determined. Where the publication solely relates to intimate details about a public figure’s private life and is only intended to fulfil the public’s curiosity, the public does not have a right to be informed.[[337]](#footnote-337)

**C. Prior conduct of the person concerned**

If a person, prior to the impugned publication, appeared tolerant or accommodating with regard to publications concerning his private life, this is an element that has to be taken into account. However, a person’s accommodating conduct with regard to prior publications does not suffice as an argument to deprive the person of all protection against publications affecting his private life.[[338]](#footnote-338)

**D. Content, form and consequences of the publication**

The manner in which the information or photograph is published and the way the person in question is depicted in the publication may also be elements that have to be taken into account. [[339]](#footnote-339) Furthermore, the impact of the publication, in the sense of the degree of dissemination of the publication may also be of relevance. With regard to print media, indicators could be whether the newspaper is national or regional and its distribution scale.[[340]](#footnote-340) With regard to the internet, indicators could be the number of websites on which the information or photograph was published, the amount of views on each of these websites and the degree of publicness or closeness of these websites.[[341]](#footnote-341)  
  
**E. Circumstances in which the photographs were taken**

Where it arises, the context in which published photos are taken must be considered. It may be of relevance whether the person consented to the photograph and its publication or whether this was done without the person’s knowledge or by illegal means. Furthermore, the gravity and nature of the interference with a person’s private life must be taken into account, as well as the consequences of the publication for the person in question.[[342]](#footnote-342)

**F. Manner in which the information was obtained and its accuracy**

According to the ECtHR, the protection afforded to journalists by Article 10 ECHR is conditional upon the exercise of their work in good faith and the factuality of the publication.[[343]](#footnote-343)

**G. The severity of the sanctions imposed on the journalists or publishers**

When determining the proportionality of an interference with a person’s freedom of expression, the nature and gravity of the sanctions imposed on the journalists or publishers are also elements that may be of relevance.[[344]](#footnote-344)

**Vulnerability**

Apart from the factors A-G discussed above, the concept of vulnerability is also a factor to be weighed in the balance.[[345]](#footnote-345) When considering alleged violations of ECHR rights, the ECtHR regards certain (groups of) persons as vulnerable, such as asylum seekers,[[346]](#footnote-346) people with mental disabilities,[[347]](#footnote-347) and children.[[348]](#footnote-348) According to the ECtHR, such groups are in need of special protection.[[349]](#footnote-349) The ECtHR does not specify the amount of weight that should be attached to a person’s vulnerability. Nevertheless, the ECtHR indicates as a bottom line that if a state does not show it has taken a person’s vulnerability into consideration, it will not pass the proportionality test.[[350]](#footnote-350)

### 5.2.2 Application of the fair balance test

In the case of sharenting, a fair balance has to be struck between a parent’s right to respect for private life and right to freedom of expression laid down in Articles 8 and 10 ECHR and a child’s right to respect for private life laid down in Article 8 ECHR.

The ECtHR holds that, in cases which require the right to respect for private life to be balanced against the right to freedom of expression, it should not matter whether the case is brought before it under Article 8 ECHR by the subject of the publication, or under Article 10 ECHR by the publisher.[[351]](#footnote-351) The outcome of the balancing exercise should coincide in both cases, as the rights merit equal respect.[[352]](#footnote-352) Consequently, the ECtHR considers that the margin of appreciation should also be uniform in both cases.[[353]](#footnote-353) It follows from section 5.1.2 that in the case of sharenting ‘a certain’ margin of appreciation should be afforded to a state. Consequently, the degree of intensity of the ECtHR’s review will be somewhere in-between very strict and very restrained.[[354]](#footnote-354) This means that a state has some leeway to make its own decisions regarding the necessity and proportionality of an interference, but the ECtHR will still carefully examine the choices made by the state.[[355]](#footnote-355)

It follows from the previous section that the ECtHR has developed a list of factors which can be of relevance when balancing the competing rights to respect for private life (Article 8 ECHR) and freedom of expression (Article 10 ECHR). The next paragraphs will apply these factors to the issue of sharenting.

**A. Contribution to a debate of public interest**

Whether a photo, video or story shared by a parent on social media contributes to a debate of public interest, depends on the substance of each publication. According to the ECtHR, if a publication has a great information value for the public, the protection of a person’s private life may be reduced. For example, it is possible that certain stories, such as Liza Long’s, who wrote about the hardship of having a mentally ill child with violent tendencies in the aftermath of the Sandy Hook elementary school shooting, contribute to a debate of public interest.[[356]](#footnote-356) Stories about children with mental or physical disabilities have great information value, may instigate public debate, raise awareness and break down stereotypes.[[357]](#footnote-357) Furthermore, sharing about new parenting techniques may instigate public debate and have significant value for the public. To give an example, Francis Kenter stirred up public debate in the Netherlands about the benefits and risks of veganism, when she shared about her child’s vegan raw food diet on her blog and Facebook.[[358]](#footnote-358) According to Francis Kenter, it cured her child’s asthma. Media outlets on the other hand, started reporting about the child’s malnourishment.[[359]](#footnote-359) The public debate concerning the child and his mother started in 2008, when a vegan diet was the exception, nowadays Francis Kenter is still making headlines, and the number of vegans in the Netherlands is estimated at 120.000 people, and counting.[[360]](#footnote-360)

However, according to the ECtHR, if a publication has minimal information value and is merely intended to quench the public’s thirst for insight into other people’s private lives, a greater protection is warranted.[[361]](#footnote-361) For example, the information value of family vloggers’ videos depicting their day-to-day lives is minimal and mainly intended to satisfy other people’s curiosity. Furthermore, the purpose of toddler fashion bloggers on Instagram, who are not yet capable of dressing themselves, is mainly to entertain.[[362]](#footnote-362) In *Von Hannover v. Germany (no. 1)*, the ECtHR concluded that paparazzi photographs of Caroline von Hannover, going about her daily life, made no contribution to a debate of public interest.[[363]](#footnote-363) Firstly, because the photographs solely show details of her private life, such as ‘engaging in sport, out walking, leaving a restaurant or on holiday’.[[364]](#footnote-364) Secondly, because the applicant exercises no official function ‘within or on behalf of the State of Monaco or any of its institutions’.[[365]](#footnote-365)

Thus, it will depend on the significance and nature of the text, photo or video shared by parents, whether a particular form of sharenting contributes to a debate of public interest.[[366]](#footnote-366) In most sharenting cases, parents will share matters of personal rather than public significance. Details shared about a child’s day-to-day life will generally have less information value for the public than sharing, for example, about new parenting techniques, such as Tom Briggs blog post on ‘panda parenting’.[[367]](#footnote-367)

**B. How well-known the person concerned is and the subject of the impugned publication**  
As previously noted, the degree of a person’s notability decreases the degree of the protection that may be provided to him.[[368]](#footnote-368) It depends on the circumstances of a particular case, whether a child that is subject to sharenting, is well known or not. Children unknown to the public may claim particular protection of their right to respect for private life.[[369]](#footnote-369) Whereas, the protection of a public figure’s private life may be reduced.[[370]](#footnote-370) It could be argued, that as result of an abundance of sharenting, a child may become a public figure. For example, five-year-old Anastasia Radzinskaya has 107 million subscribers across her seven YouTube channels. In sum, her videos have been watched 42 billion times.[[371]](#footnote-371) In that sense, sharenting is a sort a self-fulfilling prophecy, as a child only becomes a public figure because of the sharenting. However, in any case, children who are the subject of their parent’s publications do not ‘knowingly lay themselves open to close scrutiny by both journalists and the public at large’, as, for example, politicians do.[[372]](#footnote-372) According to the ECtHR, a distinction has to be made between publications which can contribute to a public debate, for example a publication relating to a politician in the exercise of its official function, and publications which contain details about a private individual, who does not exercise such an official function.[[373]](#footnote-373) It goes without saying that children do not exercise official functions and generally are not aware that they enter the public arena through their parents’ publications.

Furthermore, the subject of the publication must be determined. Stories, photos or videos shared by parents for the purpose of keeping relatives and friends up to date about their children’s lives and accomplishments, such as a video of a child’s first steps, solely relate to intimate details about a child’s private life. Thus, the question is whether the publication is only intended to fulfil the public’s curiosity or also to inform them. If the latter is not the case, the protection of a child’s right to respect for private life is warranted.[[374]](#footnote-374)

**C. Prior conduct of the person concerned**

Whether a child, prior to the impugned publication, appeared tolerant or accommodating with regard to sharenting depends on the circumstances of the case. The question is whether this factor, in the case of children, should be taken into account. For example, in a video posted by YouTuber Noor de Groot, her two-year-old daughter grabs the camera and starts filming herself.[[375]](#footnote-375) It is hard to conclude whether the toddler actively seeks the spotlight, such as in cases like *Axel Springer*, and that therefore the protection of her private life should be reduced.[[376]](#footnote-376) Until a certain age, a child will not consciously comprehend the concept of social media platforms and the consequences of having a digital footprint. Research shows that awareness of digital footprints increases in parallel with the increase of age.[[377]](#footnote-377) Thus, in the case of children, this factor will be of less relevance. However, it could be argued that a teenager’s understanding of sharenting is greater than that of toddler, and that this factor therefore increases in relevance in parallel with the increase of a child’s age.

In any case, according to the ECtHR, a person’s tolerance or accommodating conduct with regard to prior publications does not suffice as an argument to deprive the person of all protection against publications affecting his private life.[[378]](#footnote-378)

**D. Content, form and consequences of the publication**

The manner in which children are depicted on social media by their parents depends on the circumstances of the case.[[379]](#footnote-379) The spectrum of sharenting is very wide. It ranges from videos of a child’s first ballet lesson, to pictures of child’s face during different stages of his eczema and videos in which a child is publicly disciplined, such as forcing a 2-year-old to take a cold shower after wiping the contents of her diaper on her parent’s bed.[[380]](#footnote-380)

As the substance of parent’s publications varies in gravity, the weight attached to it must vary accordingly. According to the ECtHR, a publisher must take into account the impact of the story, photo or video on another person’s private life prior to their publication.[[381]](#footnote-381)

With regard to the form of sharenting, the ECtHR recognizes the valuable role of the internet, as it is an easy tool for the public to distribute and access information. However, the ECtHR also notes that the internet presents greater risks to privacy rights than print media.[[382]](#footnote-382) For example, search engines can ‘index and cache the information, providing an opportunity for infinite rediscovery’.[[383]](#footnote-383) The degree of dissemination and impact of sharenting depends on the number of social media platforms a parent uses to share about its child, the amount of views on each of these platforms and the degree of publicness or closeness of the platforms.[[384]](#footnote-384) Social media platforms vary in the extent of their accessibility. On Facebook, for example, there is the possibility for the publisher to alter who can access a published text, photo or video. This can range from options, such as ‘only me’, ‘friends’, ‘specific friends’ and ‘public’.[[385]](#footnote-385) In the case *Perrin v. the UK*, the ECtHR takes the degree of accessibility of a particular web page into account.[[386]](#footnote-386) This case concerned the publication of pornographic photographs on a web page freely available for anyone surfing the internet, without any age checks. In this case the ECtHR argued that the applicant responsible for the webpage could have avoided harm by securing none of the photographs were available on the web page, but instead chose the opposite, hoping to lure more customers.[[387]](#footnote-387) Sharenting cannot be compared to knowingly and wilfully publishing pornographic content, but the ECtHR’s considerations with regard to the offender’s possibilities to avoid the harm can. Namely, with regard to sharenting, a parent has to possibility to change his or her settings to private instead of public.

The possible consequences of sharenting, already highlighted in section 2.3, are that a child becomes the victim of stalking, online grooming, data mining or digital kidnapping. Furthermore, sharenting may give rise to bullying and harassment and can have future implications for the child. Moreover, nude or partially nude pictures or videos of children can fall in the hands of predators. In its case law, the ECtHR emphasises the vulnerability of children in a digital environment.[[388]](#footnote-388) The ECtHR demands a high level of protection in cases concerning a child’s online privacy.[[389]](#footnote-389) For example, in *K.U. v. Finland*, an unknown person placed an advertisement of a child on an internet dating site, without his knowledge. According to the ECtHR, this advertisement threatened the child’s physical and mental welfare and the ECtHR referred to the child’s vulnerability due to his young age.[[390]](#footnote-390)

On the other hand, sharenting may have many positive consequences for the child and the parent. Sharenting may improve children’s (online) reputation and offer them a positive network.[[391]](#footnote-391) Moreover, it enables parents to share their parenting experiences and family life, to advocate a certain type of parenting practice or theory and to generate income.[[392]](#footnote-392)

**E. Circumstances in which the photographs were taken**

In the case of photographs, the context in which they are taken must be taken into account. If a photograph is taken and published without a person’s consent or knowledge, this may be a factor that has to be taken into account.[[393]](#footnote-393) The question is, whether the presence or absence of consent is of relevance, in the case of children. For instance, Article 8(1) GDPR stipulates that when information society services are provided directly to a child that needs to give consent, the processing of his personal data can only be considered lawful if the child is at least 16 years old. If a child is younger than 16 years, the parent or legal guardian of the child must give consent in order for the processing to be considered lawful. [[394]](#footnote-394) The GDPR allows member states to lower this threshold to a minimum of 13 years.[[395]](#footnote-395) It thus seems that according to the GDPR, children below the age of 13 years are not yet capable of giving consent. Instead, it is the responsibility of the child’s parent to give consent for the child, which in the context of sharenting can be potentially problematic as it is also the parent that is responsible for posting the content. In this regard, Recital 38 notes that children merit particular protection of their personal data, as they may be less conscious of the dangers, consequences and safeguards involved and their rights in relation to the processing of personal data.[[396]](#footnote-396)

Furthermore, the ECtHR holds that the gravity and nature of the interference with a person’s private life must be taken into account, as well as the consequences of the publication for the person in question.[[397]](#footnote-397) A person’s right to respect for private life carries more weight if, for example, the photograph reveals aspects of a person’s private life that are not normally the subject of public debate; if the person was in a private location and could therefore not expect a photograph to be taken; or, if the person was enjoying some leisure time.[[398]](#footnote-398) For example, in the case of ‘family vlogging’, a child is filmed during his most private moments, at home, a place where one can normally relax and unwind without any prying eyes. Thus, due to its nature, ‘family vlogging’ may point to a severe interference with a child’s private life.

Moreover, the ECtHR holds that for private persons, unknown to the public at large, the publication of a photograph may result in a more fundamental interference than a written article.[[399]](#footnote-399)

**F. Manner in which the information was obtained and its accuracy**

This factor examines the veracity of the publication and whether the means used to obtain the information and reproduce it for the public are fair. [[400]](#footnote-400) This factor seems mainly of relevance when examining information published by media outlets.[[401]](#footnote-401) As sharenting relates to information published by parents, a comprehensive discussion of this factor does not seem appropriate. We can suffice with the remark that the veracity of a parent’s publication depends on the particular circumstances of each case. A parent will generally obtain the information it publishes directly from the source, namely his or her child. Whether the information published by the parent remains truthful to this first-hand information, depends on the circumstances of the case.

**G. The severity of the sanctions imposed on the journalists or publishers**

As previously mentioned, for the purpose of this research, we assume the existence of a prohibition on sharenting provided for by law. How such a prohibition would be sanctioned determines the seriousness of the violation with a parent’s right to freedom of expression or right to respect for family life. For instance, it matters whether the sanction would be regulated by criminal or by civil law. Namely, under French criminal law sharenting can lead to a fine of up to 45,000 euro or up to a year’s imprisonment.[[402]](#footnote-402) Such a sanction seems to be more severe, than if, for example, a parent would be ordered to delete a photograph under penalty of a fine.

**Vulnerability and the principle of the best interests of the child**

Apart from the factors A-G discussed above, a child’s vulnerability is also a factor to be weighed in the balance.[[403]](#footnote-403) For example, in the cases of *Kurier Zeitungsverlag und Druckerei GmbH (no. 2) v. Austria* and *Krone Verlag GmbH v. Austria* two newspaper companies reported on the conflict between parents over the custody of their child.[[404]](#footnote-404) In several of these articles the child’s identity was revealed. Moreover, photographs of the child accompanied these articles, depicting him in a state of pain and despair.[[405]](#footnote-405) According to the ECtHR ‘the preservation of the most intimate sphere of life of a juvenile who had become the victim of a custody dispute and had not himself stepped into the public sphere deserves particular protection on account of his or her vulnerable position’.[[406]](#footnote-406) In two other cases, the newspaper companies reported on the sexual abuse and ill treatment of a child by her parents.[[407]](#footnote-407) In these articles the circumstances of the case were reported in detail and the child’s identity was revealed, through the publication of her name. [[408]](#footnote-408) In these cases, the ECtHR also stressed the particular protection that must be afforded to children.[[409]](#footnote-409) As previously mentioned, the ECtHR does not specify the amount of weight that should be attached to a child’s vulnerability. However, in any case, a state has to show it has taken a child’s vulnerability into consideration, in order to pass the proportionality test.[[410]](#footnote-410)

Next to the concept of vulnerability, the ECtHR often refers to the principle of the best interests of the child in its case law involving children.[[411]](#footnote-411) The ECtHR holds that when striking a balance ‘between the interests of the child and those of the parent particular importance must be attached to the best interests of the child which, depending on their nature and seriousness, may override those of the parent’.[[412]](#footnote-412) Thus, whether the rights of the child trump those of the parent, or the other way around, depends on the facts of the case. The best interests of the child will likely prevail when sharenting compromises a child’s safety or leads to a child’s humiliation. For example, in 2015 a Christmas card posted on Facebook went viral as it depicted a mother and her daughters with tape placed over their mouths, the son with his thumbs up, and the father holding a sign that said ‘peace on earth’.[[413]](#footnote-413) Critics decried the photo as sexist and as a promotion of violence against women.[[414]](#footnote-414)

### 5.2.3 Conclusion

We have seen that different factors play a role when striking a balance between a child’s right to respect for private life and a parent’s right to respect for family life and freedom of expression. Most of these factors are from the perspective of the child’s interest, rather than the parent’s. However, the parent’s interest should not be overlooked. As stated in section 2.2, parents benefit from sharenting in many ways. Parents are not just able to connect with (long-distance) relatives and friends, they can also find comfort and support, create connections, search for help and give advice as social media platforms connect parents from different parts of the globe.[[415]](#footnote-415) Furthermore, not just the parent benefits from sharenting, as it can improve a child’s (online) reputation and offer him a positive network.[[416]](#footnote-416) Parents are often considered to be the guardians of their children’s (private) life, for example with regard to their role in providing consent to the use of information society services.[[417]](#footnote-417) Sharenting concerns the private and family life of both the parent and the child. In that context a restriction on sharenting would interfere with a parents’ autonomy concerning their family life. Moreover, silencing parents in what they can and cannot share online significantly impacts their freedom of expression.

All in all, different aspects may be of relevance when balancing the competing rights of the parent and the child in the case of sharenting. A conclusion with regard to these different factors follows in section 5.3.

## 5.3 Conclusion

The limits of a parent’s right to freedom of expression and right to respect for family life lie where protection of a child’s right to respect for private life begins, and vice versa. Sharenting can lead to competing claims to protection of a parent’s right to freedom of expression and right to respect for family life, on the one hand, and protection of a child’s right to respect for private life, on the other. Which of these two claims is to be upheld, will depend on the outcome of the three-pronged test in the case of negative obligations with respect to parents and on the single fair balance test in the case of positive obligations with respect to the child. Both tests require a balance to be struck between the competing interests of the parent and the child. The ECtHR has identified a number of factors, which may be of guidance in the context of balancing the competing rights to freedom of expression and respect for private life. The outcome of the assessment of these different factors will always depend on the specific type of sharenting at issue.

In order to concretize, specific elements can be deduced from section 5.2.2 that have be taken into consideration in the case of sharenting. First of all, the nature of sharented content is of importance. When a parent shares a video of a child being publicly disciplined or potty trained, a child’s right to respect for private may carry more weight, than when a child is pictured, fully clothed, at his basketball match, which is a public event anyway. In this context, the nature of the medium is also of relevance, as the publication of a photograph may result in a more fundamental interference than a written article. Secondly, the degree of dissemination by a parent is of relevance. Thus, the amount of social media platforms a parent uses, the amount of followers or friends a parent has accumulated on the platform(s), and the parent’s privacy settings are of relevance. In this regard, the intensity and duration of sharenting also play a role. Does a parent only rarely publish pictures of the child on Facebook or is the parent’s full-time job ‘family vlogging’? Thirdly, the child’s age is of significance. Younger children are less aware, or totally unaware, of the consequences of sharenting and will be unable, until a certain age, to object to sharenting. Finally, the consequences of sharenting must be taken into account. On the one hand, sharenting may improve a child’s (online) reputation and lead to a positive network, on the other hand, it can put children at risk, as they may become the victim of (digital) stalking or bullying.

In conclusion, it follows from the different elements discussed, that the weight attached to each of the conflicting rights of the parent and the child, depends on the circumstances of the case at issue. However, in any sharenting case, the subject of publication is a child and therefore great weight must be attached to his or her vulnerability and best interests. States have a certain margin of appreciation to decide about the necessity and proportionality of interferences with each of these conflicting rights. However, these choices are still subjected to close scrutiny by the ECtHR.

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# Chapter 6 Conclusion

Children born in the age of social media possibly have two dates of birth. Obviously, one of them being the moment they see the light of day. The other one, less obvious, is the moment parents establish their (unborn) child’s digital footprint. For example, Calihan Gee’s official date of birth is 10 February 2018. However, one week prior, his parents Garrett and Jessica Gee already claimed the Instagram name @caligee and uploaded an ultrasound image as his profile photo. Within 48 hours the account amassed 70,000 followers.[[418]](#footnote-418)

The creation of Calihan Gee’s Instagram account is an example of a practice that falls under the broad notion of sharenting. According to this research, sharenting can be defined as the sharing of publicly available images, videos and stories by parents on social media by which their child, that has not reached the age of eighteen years, can be identified directly or indirectly. The content, frequency and accessibility of what parents share and the reasons for doing so vary. Nevertheless, sharenting may pose several risks to children as they are, often unknowingly and unwillingly, left with a (indelible) digital footprint. This may lead to a conflict between a parent’s right to share online and a child’s right to privacy.

My main research question is whether sharenting constitutes an interference with a child’s right to respect for private life and right to the protection of personal data and whether or not this is justified in light of the gain in the protection for the competing right to respect for family life and right to freedom of expression in the case of sharenting*.*

Article 7 CFR, Article 8 CFR and Article 8 ECHR protect the right to respect for private life and the right to the protection of personal data. In order to invoke the right to respect for private life and right to the protection of personal data, a child must show that his or her freedom from sharenting falls within the scope of these articles. The ECJ and ECtHR define the scope of the notions of private life and personal data broadly, as they cover aspects relating to a person’s name, location, image and reputation.

Article 8 ECHR imposes a negative obligation on states to abstain from interfering with the right to respect for private life. However, in the case of sharenting, the interference with Article 8 ECHR is not caused by a public authority, but it is effected by the acts of private individuals. Moreover, as horizontal direct effect of provisions of the ECHR is excluded, it is impossible for children to hold parents accountable for interferences with their private life under Article 8 ECHR. Nevertheless, a child still enjoys a strong degree of protection due to the ECtHR’s recognition of positive obligations under Article 8 ECHR. If states fail to fulfil their positive obligation under Article 8 ECHR to afford children sufficient protection from sharenting this constitutes an interference with Article 8 ECHR.

Corresponding to Article 8 ECHR, Articles 7 and 8 CFR require states to abstain from interfering with the right to respect for private life and the right to the protection of personal data. In the case of sharenting, any direct interference by states with these articles is impossible, as they do not engage in sharenting. Furthermore, the ECJ has not accepted horizontal direct effect of Articles 7 and 8 CFR in its case law. Therefore, children cannot directly hold their parents accountable for interfering with their right to respect for private life and right to the protection of personal data laid down in Articles 7 and 8 CFR. In contrast with the ECtHR, the ECJ has not recognized substantive positive obligations for states with regard to Articles 7 and 8 CFR. It also seems improbable that parents engaging in sharenting will incur positive obligations on the basis of Articles 7 and 8 CFR read in conjunction with the GDPR. The GDPR does not apply to social networking by a natural person in the course of a purely personal or household activity.

Thus, a child can only rely on Article 8 ECHR, as Articles 7 and 8 CFR do not apply to the issue of sharenting. In light of this, Articles 7 and 11 CFR, which protect a parent’s right to respect for family life and right to freedom of expression, have not be taken into consideration when determining whether a prohibition on sharenting constitutes an interference with a parent’s right to respect for family life and right to freedom of expression and, if so, whether the interferencecan be justified.

Article 8 ECHR protects the right to respect for family life and Article 10 ECHR protects the right to freedom of expression. Sharenting falls within the freedom that is accorded to parents under Article 8 ECHR in bringing up their children and exercising parental authority over their children, without outside interference. Moreover, the sharing of pictures, videos and stories by parents on online social media platforms also falls within the scope of Article 10 ECHR as the ECtHR affirms the internet as a medium for freedom of expression in its case law. If a state would enact a measure prohibiting sharenting, this would interfere with both the parent’s right to respect for family life and right to freedom of expression laid down in Articles 8 and 10 ECHR.

Whether an interference with a parent’s right to respect for family life and right to freedom of expression can be justified depends on the outcome of the three-pronged test of justification laid down in the second paragraphs of Articles 8 and 10 ECHR. Whether an interference with a child’s right to respect for private life can be justified depends on the outcome of the fair balance test. Both tests require a balance to be struck between the competing interests of the parent and the child. The ECtHR has developed a list of factors which can be of relevance when balancing the right to respect for private life and the right to freedom of expression. However, these factors are developed in the context of media publications and may therefore be of less relevance in the context of sharenting. The outcome of the assessment of these different factors will always depend on the specific type of sharenting at issue. Moreover, in any sharenting case a state’s margin of appreciation must be borne in mind, as they have a certain margin of appreciation to decide about the necessity and proportionality of interferences with each of these conflicting rights.

Although the amount of weight to be attached to the competing rights of the parent and the child depends on the circumstances of the case at issue, various viewpoints may be taken into consideration. The nature of the publication, the degree of dissemination, the child’s age and the consequences of the publication are all elements that are of particular relevance in the case of sharenting. Moreover, sufficient weight must be attached to the capacity of the subject of the publication. The ECtHR regards children as a category of vulnerable people. Therefore, their private lives deserve particular protection. According to the ECtHR, special importance must be attached to the best interests of the child which, depending on their nature and seriousness, may override those of the parent.

Due to the broadness of the concept of sharenting, many practices fall within the phenomenon’s definition. As the intrusiveness of the different forms of sharenting varies, the outcome of the balancing exercise will be different in each sharenting case.

In light of this, for further research I suggest a case-by-case analysis of the different forms of sharenting in order to set a threshold of what is and is not allowed in light of the competing rights and interests of the parent and the child. Furthermore, as a comparative law study goes beyond the purpose of this research, I was unable to sufficiently determine whether a consensus exists between the CoE member states with regard to (protecting a child from) sharenting. For further research, I suggest the comparison of national laws in order to determine the scope of a state’s margin of appreciation and the intensity of the ECtHR’s review in the case of sharenting.

# Bibliography

**Table of literature**

Beijer M, *The Limits of Fundamental Rights Protection by the EU. The Scope for the Development of Positive Obligations* (Intersentia 2017)

**Bessant C ‘Parental rights to publish family photographs versus children's rights to a private life’ (2017) 28** Entertainment Law Review

Bessant C, ‘Sharenting: balancing the conflicting rights of parents and children’ (2018) 23 Communications Law

Blum-Ross A and Livingstone S, ‘Sharenting, parent blogging, and the boundaries of the digital self’ (2017) 15 Popular Communication

Brosch A, ‘When the child is born into the Internet: Sharenting as a growing trend among parents on Facebook’ (2016) 43 The New Educational Review

Colombi Ciacchi A, ‘The Direct Horizontal Effect of EU Fundamental Rights’ (2019) 15 European Constitutional Law Review

De Mol M, ‘De horizontale directe werking van de grondrechten van de Europese Unie’ (2016) 11 Tijdschrift voor Europees en economisch recht SEW

Duggan M and others, ‘Parents and social media’ [2015] Pew Research Center

Eleveld A, 'Rechtstreekse horizontale werking van grondrechten van de Europese Unie' (2019) 3-4 Nederlands tijdschrift voor Europees recht

Frantziou E, *The Horizontal Effect of Fundamental Rights in the European Union* (Oxford University Press 2019)

Gerards J, ‘How to improve the necessity test of the European Court of Human Rights’ (2013) 11 International Journal of Constitutional Law

Gerards J, *General Principles of the European Convention on Human Rights* (Cambridge University Press 2019)

Gerards J and Senden H, ‘The Structure of Fundamental Rights and the European Court of Human Rights’ (2009) 7 International Journal of Constitutional Law

Grabenwarter C, *The European Convention on Human Rights: Commentary* (Beck/Hart 2014)

Greer S, Gerards J and Slowe R, *Human rights in the Council of Europe and the European Union: achievements, trends and challenges* (Cambridge University Press 2018)

Groothuis M, ‘The Right to Privacy for Children on the Internet: New Developments in the Case Law of the European Court of Human Rights’ in Simone Van der Hof and others (eds), *Minding Minors Wandering the Web: Regulating Online Child Safety* (Asser Press 2014)

Harris D and others, *Law of the European Convention on Human Rights* (Oxford University Press 2018)

Lagoutte S, ‘Surrounding and Extending Family Life: The Notion of Family Life in the Case-Law of the European Court of Human Rights’ (2003) 21 Mennesker og Rettigheter

Lavrysen L, *Human Rights in a Positive State: Rethinking the Relationship between Positive and Negative Obligations under the European Convention on Human Rights* (Intersentia 2016)

Leaver, T ‘Born digital? Presence, privacy, and intimate surveillance’ in John Hartley and

Weiguo Qu (eds), *Re-Orientation: Translingual Transcultural Transmedia. Studies in narrative, language, identity, and knowledge* (Fudan University Press 2015)

Lynskey O ‘Deconstructing Data Protection: The ‘added-value’ of a right to data protection in the EU legal order’ (2014) 63 International and Comparative Law Quarterly

Moreham N, ‘The right to respect for private life in the European Convention on Human Rights: a re-examination’ [2008] European Human Rights Law Review

Mowbray A, ‘A Study of the Principle of Fair Balance in the Jurisprudence of the European Court of Human Rights’ (2010) 10 Human Rights Law Review

Peroni L and Timmer A, ‘Vulnerable groups: The promise of an emerging concept in European Human Rights Convention Law’ (2013) 11 International Journal of Constitutional Law

Rainey B, Wicks E, and Ovey C, *Jacobs, White, and Ovey:* *The European Convention on Human Rights* (Oxford University Press 2017)

Roagna I, *Protecting the right to respect for private and family life under the European Convention on Human Rights* (Council of Europe 2012)

Rudolf B, ‘Council of Europe: Von Hannover v. Germany*’* (2006) 4 International Journal of Constitutional Law

Sánchez Abril P, L Avner and Del Riego A, ‘Blurred boundaries: Social media privacy and the twenty‐first‐century employee’ (2012) 49 American Business Law Journal

Schabas W, *The European Convention on Human Rights: A Commentary* (Oxford University Press 2015)

Smyth C, ‘The Best Interests of the Child in the Expulsion and First-entry Jurisprudence of the European Court of Human Rights: How Principled is the Court’s Use of the

Principle?’ (2015) 17 European Journal of Migration and Law

Steinberg S, ‘Sharenting: Children's Privacy in the Age of Social Media’ (2017) 66 Emory Law Journal

Souris R, ‘Parents, Privacy, and Facebook: Legal and Social Responses to the Problem of Over-Sharing’ in Cudd A and Navin M (eds), *Core Concepts and Contemporary Issues in Privacy* (Springer 2018)

Surmelioglu Y and Sadi Seferoglu S, ‘An examination of digital footprint awareness and digital experiences of higher education students’ (2019) 11 World Journal on Educational Technology: Current Issues

Timmer A, ‘A Quiet Revolution: Vulnerability in the European Court of Human Rights’ in

Martha Fineman and Anna Grear (eds), *Vulnerability: Reflections on a New Ethical Foundation for Law and Politics* (Ashgate 2013)

Vlaardingerbroek P and others, *Het hedendaags personen- en familierecht* (8th edn Wolters Kluwer 2017)

Xenos D, *The Positive Obligations of the State under the European Convention of Human Rights* (Routledge 2012)

**Table of case law**

**European Court of Human Rights**

*A, B and C v. Ireland* App no 25579/05 (ECtHR 16 December 2010)

*Abdulaziz, Cabales and Balkandali v. the United Kingdom* App nos 9214/80, 9473/81 and 9474/81 (ECtHR 28 May 1985)

*Ahmet Yildrim v. Turkey* App no 3111/10 (ECtHR 18 December 2012)

*Airey v. Ireland* App no 6289/73 (ECtHR 9 October 1979)

*Al-Nashif v. Bulgari* App no 50963/99 (ECtHR 20 June 2002)

*Alajos Kiss v. Hungary* App no 38832/06 (ECtHR 20 May 2010)

*Amann v. Switzerland* App no 27798/95 (ECtHR 16 February 2000)

*Appleby and others v. United Kingdom* App no 44306/98 (ECtHR 6 May 2003)

*Ashby Donald and Others v. France* App no 36769/08 (ECtHR 10 January 2013)

*Autronic v Switzerland* App no 12726/87 (ECtHR 22 May 1990)

*Axel Springer v. Germany* App no 39954/08 (ECtHR 7 February 2012)

*B. v. France* App no 13343/87 (ECtHR 24 January 1992)

*Barbulescu v. Romania* App no 61496/08 (ECtHR 5 September 2017)

*Bohlen v. Germany* App no 53495/09 (ECtHR 19 February 2015)

*Botta v. Italy* App no 153/1996/772/973 (ECtHR 24 February 1998)

*Brauer v. Germany* App no 3545/04 (ECtHR 28 May 2009)

*Burghartz v. Switzerland* Appno 16213/90 (ECtHR22 February 1994)

*Campbell and Cosans v. the United Kingdom* App nos 7511/76 and 7743/76 (ECtHR 25 February 1985)

*Casado Coca v. Spain* App no 15450/89 (ECtHR 24 February 1994)

*Cengiz and Others v. Turkey* App nos 48226/10 and 14027/11 (ECtHR 1 December 2015)

*Centro Europa 7 S.r.l. and Di Stefano v. Italy* App no 38433/09 (ECtHR 7 June 2012)

*Cetin and Others v. Turkey* App nos 40153/98 and 40160/98 (ECtHR 13 February 2003)

*Chassagnou and Others v. France* App nos 25088/94, 28331/95 and 28443/95 (ECtHR 29 April 1999)

*Couderc and Hachette Filipacchi Associés* *v. France* App no 40454/07 (ECtHR 10 November 2015)

*Delfi AS* *v. Estonia*App no 64569/09 (ECtHR 16 June 2015)

*Dichand and others v. Austria* App no29271/95 (ECtHR 26 February 2002)

*Dickson v. the United Kingdom* App no 44362/04 (ECtHR 4 December 2007)

*Dubetska and others v. Ukraine* App no 30499/03 (ECtHR 10 February 2011)

*Dudgeon v. the United Kingdom* App no 7525/76 (ECtHR 22 October 1981)

*Egeland and Hanseid v. Norway* App no 34438/04 (ECtHR 16 April 2009)

*Egill Einarsson v. Iceland* App no 24703/15 (ECtHR 7 November 2017)

*Elsholz v. Germany* App no 25735/94 (ECtHR 13 July 2000)

*Evans v. the United Kingdom* App no 6339/05 (ECtHR 10 April 2007)

*Fadeyeva v. Russia* App no 55723/00 (ECtHR 9 June 2005)

*Gül v. Switzerland* App no. 23218/94 (ECtHR 19 February 1996)

*Güveç v. Turkey* App no 70337/01 (ECtHR 20 January 2009)

*Haldimann and Others v. Switzerland* App no 21830/09 (ECtHR 24 February 2015)

*Hamalainen v. Finland* App no. 37359/09 (ECtHR 16 July 2014)

*Handyside v. the United Kingdom* App no 5493/72 (ECtHR 7 December 1976)

*Hatton and Others v. the United Kingdom* App no 36022/97 (ECtHR 8 July 2003)

*Hokkanen v Finland* App no 19823/92 (ECtHR 23 September 1994)

*Hristozov and Others v. Bulgaria* App nos 47039/11 and 358/12 (ECtHR 13 November 2012)

*Huvig v. France* App no 11105/85 (ECtHR 24 April 1990)

*Ilbeyi Kemaloğlu and Meriye Kemaloğlu v. Turkey* App no 19986/06 (ECtHR 10 April 2012)

*Ireland v. the United Kingdom* App no 5310/71 (ECtHR 18 January 1978)

*Jakóbski v. Poland* App no 18429/06 (ECtHR 7 December 2010)

*Jehovah’s Witnesses of Moscow and Others v. Russia* App no 302/02 (ECtHR 10 June 2010)

*K.U. v. Finland* App no 2872/02 (ECtHR 2 December 2008)

*Kaplan v. Austria* App no 45983/99 (ECtHR 18 January 2007)

*Keegan v. Ireland* App no 16969/90 (ECtHR 26 May 1994)

*Klass and others v. Germany* App no 5029/71 (ECtHR 6 September 1978)

*Krone Verlag GmbH & Co KG and Krone Multimedia GmbH & Co KG v. Austria* App no 33497/07 (ECtHR 17 January 2012)

*Krone Verlag GmbH v. Austria* App no27306/07 (ECtHR 19 June 2012)

*Kroon and Others v. The Netherlands* App no 18535/91 (ECtHR 27 October 1994)

*Kruslin v. France* App no 11801/85 (ECtHR 24 April 1990)

*Kurier Zeitungsverlag und Druckerei GmbH (no. 1) v. Austria* App no 3401/07 (ECtHR 17 January 2012)

*Kurier Zeitungsverlag und Druckerei GmbH (no. 2) v. Austria* App no 1593/06 (ECtHR 19 June 2012)

*Leander v. Sweden* App no 9248/81 (ECtHR 26 March 1987)

*M.S.S. v. Belgium and Greece* App No 30696/09 (ECtHR 21 January 2011)

*Magyar Kétfarkú Kutya Párt v. Hungary* App no 201/17 (ECtHR 20 January 2020)

*Magyar Tartalomszolgáltatók Egyesülete and Index.hu Zrt* *v. Hungary* App no 22947/13 (ECtHR 2 February 2016)

*Malone v. the United Kingdom* App no 8691/79 (ECtHR 2 August 1984)

*Marckx v Belgium* App no 6833/74 (ECtHR 13 June 1979)

*McCann and others v. the United Kingdom* App no 18984/91 (ECtHR 27 September 1995)

*Monnat v. Switzerland* App no 73604/01 (ECtHR 21 September 2006)

*Mosley v. the United Kingdom* App no 48009/08 (ECtHR 10 May 2011)

*Müller v. Switzerland* App no 10737/84 (ECtHR 24 May 1988)

*Nada v. Switzerland* App no 10593/08 (ECtHR 12 September 2012)

*News Verlags GmbH & Co. KG v. Austria* App no 31457/96 (ECtHR 11 January 2000)

*Nielsen v. Denmark* App no 10929/84(ECtHR 28 November 1988)

*Niemietz* *v. Germany* App no 13710/88 (ECtHR 16 December 1992)

*Nnyanzi v. the United Kingdom* App no 21878/06 (ECtHR 8 April 2008)

*Observer and Guardian v. the United Kingdom* App no 13585/88 (ECtHR 26 November 1991)

*Okkali v. Turkey* App no 52067/99 (ECtHR 17 October 2006)

*Oliari and others v. Italy* App nos 18766/11 and 36030/11 (ECtHR 27 July 2015)

*Öneryildiz v. Turkey* App no 48939/99 (ECtHR 30 November 2004)

*Opuz v. Turkey* App no 33401/02 (ECtHR 9 June 2009)

*Otto-Preminger Institute v. Austria* App no 13470/87 (ECtHR 20 September 1994)

*P.G. and J.H. v. the United Kingdom* App no. 44787/98 (ECtHR 25 September 2001)

*Palomo Sánchez and Others* v. Spain App nos 28955/06, 28957/06, 28959/06 and 28964/06 (ECtHR 12 September 2011)

*Perrin v. the United Kingdom* App no 5446/03 (ECtHR 18 October 2005)

*Pini, Bertani and Others v. Romania* App nos 78028/01 and 78030/01 (ECtHR 22 June 2004)

*Popov v. France* App nos 39472/07 and 39474/07 (ECtHR 19 January 2012)

*Pretty v. the United Kingdom* App no 2346/02 (ECtHR 29 April 2002)

*Putistin v. Ukraine* App no 16882/03 (ECtHR 21 November 2013)

*R v. the United Kingdom* App no 10496/83 (ECtHR 8 July 1987)

*Rees v. the United Kingdom* App no 9532/81 (ECtHR 17 October 1986)

*Reklos and Davourlis v. Greece* App no 1234/05 (ECtHR 15 January 2009)

*Rotaru v. Romania* App no 28341/95 (ECtHR 4 May 2000)

*S. and Marper v. the United Kingdom* App nos 30562/04 and 30566/04 (ECtHR 4 December 2008)

*S.A.S. v. France* App no 43835/11 (ECtHR 1 July 2014)

*Satakunnan* *Markkinaporssi Oy and Satamedia Oy v. Finland* App no 931/13 (ECtHR 27 June 2017)

*Savva Terentyev v. Russia* App no 10692/09 (ECtHR 28 August 2018)

*Schalk and Kopf* App no 30151/04 (ECtHR 24 June 2010)

*Schneider v Germany* App no 17080/07 (ECtHR 15 September 2011)

*Sciacca v. Italy* App no 50774/99 (ECtHR11 January 2005)

*Silih v. Slovenia* App no 71463/01 (ECtHR 9 April 2009)

*Silver and Others v. the United Kingdom* App nos 5947/72; 6205/73; 7052/75; 7061/75; 7107/75; 7113/75; 7136/75 (ECtHR 25 March 1983)

*Smith and Grady v. the United Kingdom* App nos 33985/96 and 33986/96 (ECtHR 27 September 1999)

*Söderman v Sweden* App no 5786/08 (ECtHR 12 November 2013)

*Sunday Times v. the United Kingdom* *(no. 1)* App no 6538/74 (ECtHR 26 April 1979)

*Switzerland* App no 27798/95 (ECtHR 16 February 2000)

*Times Newspapers Ltd v. the United Kingdom* (nos. 1and2) App nos 3002/03 and 23676/03 (ECtHR 10 March 2009)

*TV Vest AS and Rogaland Pensjonistparti v. Norway* App no 21132/05 (ECtHR 11 December 2008)

*United Communist Party of Turkey v. Turkey* App no 19392/92 (ECtHR 30 January 1998)

*Verlagsgruppe News GmbH v. Austria (no. 2)* App no 10520/02 (ECtHR 14 December 2006)

*Vogt v. Germany* App no 17851/91 (ECtHR 26 September 1995)

*Von Hannover v. Germany (no. 1)* App no 59320/00 (ECtHR 24 June 2004)

*Von Hannover v. Germany (no. 2)* App nos 40660/08 and 60641/08 (ECtHR 7 February 2012)

*W. v. the United Kingdom* App no 9749/82 (ECtHR 8 July 1987)

*X and Y v. the Netherlands* App no 8978/80 (ECtHR 26 March 1985

*Yordanova v. Bulgaria* App no 25446/06 (ECtHR 24 April 2012)

**Court of Justice of the European Union**

Case C‑176/12 *AMS* [2014] ECLI:EU:C:2014:2

Case C‑149/10 *Chatzi* [2010] ECLI:EU:C:2010:534

Case C-193/17 *Cresco Investigation* [2019] ECLI:EU:C:2019:43

Case C-414/16 *Egenberger* [2018] ECLI:EU:C:2018:257

Case C‑58/12 P *Gascogne* [2013] ECLI:EU:C:2013:770

Case C-366/04 *Georg Schwarz v. Bürgermeister der Landeshauptstadt Salzburg* [2005] ECLI:EU:C:2005:719

Case C‑68/17 *IR v. JQ* [2018] ECLI:EU:C:2018:696

Case C‑555/07 *Kücükdeveci* [2010] ECLI:EU:C:2010:21

Case C-144/04 *Mangold* [2005] ECLI:EU:C:2005:709

Case C‑684/16 *Max-Planck* [2018] ECLI:EU:C:2018:874

Case C‑362/14 *Schrems* [2015] ECLI:EU:C:2015:650

Case C-68/95 *T. Port* [1996] ECLI:EU:C:1996:452

Joined Cases C-569/16 and C-570/16 *Bauer* [2018] ECLI:EU:C:2018:871

Joined Cases C‑293/12 and C‑594/12 *Digital Rights Ireland* [2014] ECLI:EU:C:2014:238

Joined Cases C-402/05 P and C-415/05 P *Kadi* [2008] ECLI:EU:C:2008:461

Joined Cases T‑208/11 and T‑508/11 *LTTE v. Council* [2014] ECLI:EU:T:2014:885

Joined Cases C-92/09 and C-93/09 *Volker und Markus Schecke GbR and Hartmut Eifert v. Land Hessen* [2010] ECLI:EU:C:2010:662

**Table of legislation**

Charter of Fundamental Rights of the European Union [2012] OJ C326/02

Council of Europe, Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, CETS No. 108, 1981

Council of Europe, European Convention on Human Rights, CETS No. 005, 1950

Directive (EU) 1995/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data [1995] OJ L281/31

Directive (EU) 2000/78/EC of the Council of 27 November 2000 establishing a general framework for equal treatment in employment and occupation [2000] OJ L303

Directive (EU) 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community [2002] OJ L80

Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data [2016] OJ L119/1

Treaty on the European Union

Treaty on the Functioning of the European Union

United Nations, Convention on the Rights of the Child of 20 November 1989

**Table of electronic documents**

Battersby L, ‘Millions of social media photos found on child exploitation sharing sites’ <[www.smh.com.au/national/millions-of-social-media-photos-found-on-child-exploitation-sharing-sites-20150929-gjxe55.html](https://www.smh.com.au/national/millions-of-social-media-photos-found-on-child-exploitation-sharing-sites-20150929-gjxe55.html)> accessed 26 July 2019

Becker D and Jolicoeur L, ‘I Am Adam Lanza's Mother' Blogger Reveals Regrets, Hopes for Mental Health Care’, WBUR (May 30, 2014) <www.wbur.org/2014/05/30/i-am-adam-lanzas-mother-blogger-mental-health> accessed 29 July 2019

Briggs T, ‘The year of the Panda Parent?’ <www.diaryofthedad.co.uk/2019/06/the-year-of-the-panda-parent/> accessed 14 January 2020

Business Wire, ‘Digital Birth: Welcome to the Online World’ <[www.businesswire.com/news/home/20101006006722/en/Digital-Birth-Online-World](https://www.businesswire.com/news/home/20101006006722/en/Digital-Birth-Online-World)> accessed 24 July 2019

C.S. Mott Children’s Hospital, ‘Sharenting trends: Do parents share too much about their kids on social media?’ <www.mottchildren.org/news/archive/201503/“sharenting”-trends-do-parents-share-too-much-about-their> accessed 26 July 2019

Cambridge dictionary, ‘Social media’ <<https://dictionary.cambridge.org/dictionary/english/social-media>> accessed 5 August 2019

Cocozza P, ‘’I was so embarrassed I cried’: do parents share too much online?’ <www.theguardian.com/lifeandstyle/2016/nov/05/parents-posting-about-kids-share-too-much-online-facebook-paula-cocozza> accessed 21 August 2019

Collins dictionary, ‘Sharenting’ <[www.collinsdictionary.com/dictionary/english/sharenting](https://www.collinsdictionary.com/dictionary/english/sharenting)> accessed 20 June 2019

Effting M, ‘Rauwjongen Tom Watkins: 'Als ik in een pleeggezin kom, dan loop ik gewoon weg' <www.volkskrant.nl/nieuws-achtergrond/rauwjongen-tom-watkins-als-ik-in-een-pleeggezin-kom-dan-loop-ik-gewoon-weg~bf803c4e/> accessed 10 January 2020

European Agency for Fundamental Rights and Council of Europe, ‘Handbook on law relating to the rights of the child’ <https://fra.europa.eu/sites/default/files/fra\_uploads/fra-ecthr-2015-handbook-european-law-rights-of-the-child\_en.pdf> accessed 18 June 2019

European Court of Human Rights, ‘Guide on Article 8 of the European Convention on Human Rights’ <www.echr.coe.int/Documents/Guide\_Art\_8\_ENG.pdf> accessed 23 January 2019, 8; Moreno Gómez v. Spain App no 4143/02 (ECtHR 16 November 2004)

European Court of Human Rights, ‘Guide on Article 8 of the European Convention on Human Rights’ <www.echr.coe.int/Documents/Guide\_Art\_8\_ENG.pdf> accessed 12 August 2019

European Union Agency for Fundamental Rights, ‘Article 7 - Respect for private and family life’ <https://fra.europa.eu/en/charterpedia/article/7-respect-private-and-family-life> accessed 12 August 2019

European Union Agency for Fundamental Rights, ‘Handbook on European Data Protection Law’ <<https://fra.europa.eu/sites/default/files/fra_uploads/fra-coe-edps-2018-handbook-data-protection_en.pdf>> accessed 20 August 2019

Europol, ‘How to set your privacy settings on Social Media’ <https://www.europol.europa.eu/how-to-set-your-privacy-settings-social-media> accessed 9 August 2019

Fisher L, ‘15 Kids Who Are Already Pro Fashion Bloggers’ <www.harpersbazaar.com/fashion/trends/g4536/fashionable-kids-on-instagram/> accessed 10 January 2020

Greer S, ‘The exceptions to Articles 8 to 11 of the European Convention on Human Rights’ <www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-15(1997).pdf> accessed 28 December 2019

Hawken L, ‘YouTubers accused of child abuse after punishing daughter, 2, with a cold shower – but they claim trolls are trying to destroy their lives’ <www.thesun.co.uk/fabulous/9777415/saccone-joly-backlash-child-abuse-claims-punish-daughter-shower/> accessed 12 January 2020

Huffington Post, ‘Angry Mom Uncovers Toddler Bashing Facebook Group that Makes Fun of Ugly Babies’ <www.huffingtonpost.com/2013/11/08/toddler-bashing-facebook-group-ugly-babies\_n\_4241706.html> accessed 26 July 2019

Kenter F, ‘Ik lust je rauw: Dagboek van een moeder’ <http://iklustjerauw.nl/home/> accessed 10 January 2020

Koelma G, ‘This unborn baby has 100K Instagram followers’ <https://www.kidspot.com.au/parenting/parenthood/parenting-style/this-unborn-baby-has-100k-instagram-followers/news-story/fb0e2c1994609315cefe96d3d1b6698b> accessed 6 February 2020.

Long L, ‘I Am Adam Lanza's Mother’ <https://www.huffpost.com/entry/i-am-adam-lanzas-mother-mental-illness-conversation\_n\_2311009> accessed 26 July 2019

McDermott K, ‘Britain’s youngest Instagram Influencer’ <www.dailymail.co.uk/femail/article-6454005/Britains-youngest-Instagram-influencer.html> accessed 29 July 2019

Minkus T, Liu K and Ross K, ‘Children seen but not heard: When parents compromise children’s online privacy (2015) <http://cse.poly.edu/~tehila/pubs/WWW2015children.pdf> accessed 26 July 2019

New York Times, ‘Why Kids Are Confronting Their Parents About 'Sharenting’ <www.youtube.com/watch?v=YRPUZ3pufAg&frags=pl%2Cwn> accessed 28 January 2020

Nominet, ‘Parents ‘oversharing’ family photos online, but lack basic privacy know-how’ <www.nominet.uk/parents-oversharing-family-photos-online-lack-basic-privacy-know> accessed 20 June 2019

NOS, ‘Middelbare school wordt hoofdrolspeler in BNN-serie ‘ <https://nos.nl/artikel/478883-middelbare-school-wordt-hoofdrolspeler-in-bnn-serie.html> accessed 20 August 2019

O'Neill J, ‘The Disturbing Facebook Trend of Stolen Kid Photos’ <www.yahoo.com/parenting/mom-my-son-was-digitally-kidnapped-what-112545291567.html> accessed 26 July 2019

Roberts A, ‘Instagram star aged TWO bags his mum a brand-new Porsche – as she says ‘he’s a business’ <www.thesun.co.uk/fabulous/9088234/boy-two-who-is-one-of-britains-youngest-instagram-influencers-has-now-bagged-his-parents-a-porsche/> accessed 29 July 2019

Steinberg S, ‘Growing up under the watchful eyes of his mother’s newsfeed’ <www.washingtonpost.com/news/parenting/wp/2017/05/04/growing-up-under-the-watchful-eyes-of-his-mothers-newsfeed/> accessed 28 January 2020

Swist T and others, ‘Social media and the wellbeing of children and young people: A literature review’ <www.uws.edu.au/\_\_data/assets/pdf\_file/0019/930502/Social\_media\_and\_children\_and\_young\_people.pdf> accessed 5 February 2020

Tokmetzis D, Vanaf nu te koop: Mokken met foto’s van andermands kinderen en misschien wel die van jou’ <<https://decorrespondent.nl/2338/vanaf-nu-te-koop-mokken-met-fotos-van-andermans-kinderen-en-misschien-wel-die-van-jou/178067008504-d023b469>> accessed 26 July 2019

Universiteit Utrecht, ‘Search Strategy’ <https://libguides.library.uu.nl/c.php?g=369173&p=2494385> accessed 24 February 2020.

Valache C, ‘The Perils of Sharenting and How to Protect Your Kids Online’ <https://interestingengineering.com/the-perils-of-sharenting-and-how-to-protect-your-kids-online> accessed 28 January 2020

Van Erp L, ‘Zo gaat het nu met Tom (20), die alleen maar rauw voedsel eet’ <www.libelle.nl/lekker-in-je-vel/tom-rauw-voedsel-francis/> accessed 10 January 2020

Van Leeuwen M, ‘Anastasia (5) verdient ruim 16 miljoen euro per jaar met Youtuben’ <www.gelderlander.nl/buitenland/anastasia-5-verdient-ruim-16-miljoen-euro-per-jaar-met-youtuben~ab738561/> accessed 10 January 2020

Van Loenen L, ‘Francis (62) eet slechts rauw voedsel: En donderdags eet ik niets’ <www.telegraaf.nl/vrouw/1201795298/francis-62-eet-slechts-rauw-voedsel-en-donderdags-eet-ik-niets> accessed 10 January 2020

Visser S, ‘Hoera, Skyler is zindelijk!’ <https://mommytobe.nl/personal/hoera-skyler-is-zindelijk/> accessed 20 August 2019

Visser S, ‘Maddox’ eczeem onder controle!’ <https://mommytobe.nl/personal/maddox-eczeem-onder-controle/> accessed 20 August 2019

VPRO, ‘Mijn dochter de vlogger’, <www.vpro.nl/programmas/mijn-dochter-de-vlogger.html> accessed 8 February 2020

Wagner A and Gasche L, ‘Sharenting: making decisions about other’s privacy on social networking sites’ *<*http://mkwi2018.leuphana.de/wp-content/uploads/MKWI\_81.pdf> accessed 30 July 2019

YouTube, ‘DAD! CUT THAT PART OUT’ <https://www.youtube.com/watch?v=JdboPfhrXBg> accessed 20 June 2019.

YouTube, ‘Her first ballet class’ <www.youtube.com/watch?v=NB-BGdvDo88&frags=pl%2Cwn> accessed 15 September 2018

YouTube, ‘Kindvloggers doen aan kinderarbeid en #BOOS gaat undercover’ <www.youtube.com/watch?v=gkWVaXvOUHM> accessed 8 February 2020

YouTube, ‘Olivia’s vlog takeover’ <www.youtube.com/watch?v=gy0QmJNKRkU> accessed 12 January 2020

**Cover image**

Savage T, ‘Man Wearing Black Zip-up Jacket Near Beach Smiling at the Photo’ <www.pexels.com/photo/man-wearing-black-zip-up-jacket-near-beach-smiling-at-the-photo-736716/ credits> accessed 9 February 2020

Public Domain Pictures, ‘Baby Belly Body Child Expectant’ <https://pixabay.com/photos/baby-belly-body-child-expectant-18937/> accessed 9 February 2020

1. YouTube, ‘DAD! CUT THAT PART OUT’ <https://www.youtube.com/watch?v=JdboPfhrXBg> accessed 20 June 2019. [↑](#footnote-ref-1)
2. Stacey Steinberg, ‘Sharenting: Children's Privacy in the Age of Social Media’ (2017) 66 Emory Law Journal, 839. [↑](#footnote-ref-2)
3. Nominet, ‘Parents ‘oversharing’ family photos online, but lack basic privacy know-how’ <https://www.nominet.uk/parents-oversharing-family-photos-online-lack-basic-privacy-know> accessed 20 June 2019. [↑](#footnote-ref-3)
4. Article 6(2) TEU. [↑](#footnote-ref-4)
5. European Agency for Fundamental Rights and Council of Europe, ‘Handbook on law relating to the rights of the child’ <https://fra.europa.eu/sites/default/files/fra\_uploads/fra-ecthr-2015-handbook-european-law-rights-of-the-child\_en.pdf> accessed 18 June 2019, 17. [↑](#footnote-ref-5)
6. European Agency for Fundamental Rights and Council of Europe, ‘Handbook on law relating to the rights of the child’ <https://fra.europa.eu/sites/default/files/fra\_uploads/fra-ecthr-2015-handbook-european-law-rights-of-the-child\_en.pdf> accessed 18 June 2019, 19; *Güveç v. Turkey* App no 70337/01 (ECtHR 20 January 2009). [↑](#footnote-ref-6)
7. Universiteit Utrecht, ‘Search Strategy’ <https://libguides.library.uu.nl/c.php?g=369173&p=2494385> accessed 24 February 2020. [↑](#footnote-ref-7)
8. See for example: VPRO, ‘Mijn dochter de vlogger’, <www.vpro.nl/programmas/mijn-dochter-de-vlogger.html> accessed 8 February 2020 and YouTube, ‘Kindvloggers doen aan kinderarbeid en #BOOS gaat undercover’ <www.youtube.com/watch?v=gkWVaXvOUHM> accessed 8 February 2020. [↑](#footnote-ref-8)
9. For example: Stacey Steinberg, ‘Sharenting: Children's Privacy in the Age of Social Media’ (2017) 66 Emory Law Journal, 839, Renee Souris, ‘Parents, Privacy, and Facebook: Legal and Social Responses to the Problem of Over-Sharing’ in Ann Cudd and Mark Navin (eds), *Core Concepts and Contemporary Issues in Privacy* (Springer 2018), 183; Claire Bessant, ‘Parental rights to publish family photographs versus children's rights to a private life’ (2017) 28 Entertainment Law Review. [↑](#footnote-ref-9)
10. Stacey Steinberg, ‘Sharenting: Children's Privacy in the Age of Social Media’ (2017) 66 Emory Law Journal, 839. [↑](#footnote-ref-10)
11. See for example: Teresa Swist and others, ‘Social media and the wellbeing of children and young people: A literature review’ <www.uws.edu.au/\_\_data/assets/pdf\_file/0019/930502/Social\_media\_and\_children\_and\_young\_people.pdf> accessed 5 February 2020. [↑](#footnote-ref-11)
12. Article 8 GDPR. [↑](#footnote-ref-12)
13. AVG, ‘Digital Birth: Welcome to the Online World’ <[www.businesswire.com/news/home/20101006006722/en/Digital-Birth-Online-World](https://www.businesswire.com/news/home/20101006006722/en/Digital-Birth-Online-World)> accessed 24 July 2019. [↑](#footnote-ref-13)
14. For example, in: Stacey Steinberg, ‘Sharenting: Children's Privacy in the Age of Social Media’ (2017) 66 Emory Law Journal, 839; Claire Bessant, ‘Sharenting: balancing the conflicting rights of parents and children’ (2018) 23 Communications Law. [↑](#footnote-ref-14)
15. Stacey Steinberg, ‘Sharenting: Children's Privacy in the Age of Social Media’ (2017) 66 Emory Law Journal, 839. [↑](#footnote-ref-15)
16. Collins dictionary, ‘Sharenting’ <[www.collinsdictionary.com/dictionary/english/sharenting](https://www.collinsdictionary.com/dictionary/english/sharenting)> accessed 20 June 2019; Claire Bessant, ‘Sharenting: balancing the conflicting rights of parents and children’ (2018) 23 Communications Law, 7. [↑](#footnote-ref-16)
17. Cambridge dictionary, ‘Social media’ <<https://dictionary.cambridge.org/dictionary/english/social-media>> accessed 5 August 2019. [↑](#footnote-ref-17)
18. Example of how privacy settings can be adjusted on social media: Europol, ‘How to set your privacy settings on Social Media’ <https://www.europol.europa.eu/how-to-set-your-privacy-settings-social-media> accessed 9 August 2019. [↑](#footnote-ref-18)
19. Article 4(1) GDPR. [↑](#footnote-ref-19)
20. For example, a mother tweeted about her adult son not going on solo dates as a reaction to the #metoo movement <https://qz.com/1425746/sharenting-when-parents-posting-about-their-kids-hurts-them/> accessed 5 August 2019. [↑](#footnote-ref-20)
21. Article 1 CRC defines a child as: ‘every human being below the age of eighteen years’. [↑](#footnote-ref-21)
22. Article 8 GDPR. [↑](#footnote-ref-22)
23. Amina Wagner and Lisa Alina Gasche, ‘Sharenting: making decisions about other’s privacy on social networking sites’ *<*http://mkwi2018.leuphana.de/wp-content/uploads/MKWI\_81.pdf> accessed 30 July 2019. [↑](#footnote-ref-23)
24. Maeve Duggan and others, ‘Parents and social media’ (2015) Pew Research Center, 2; Claire Bessant, ‘Sharenting: balancing the conflicting rights of parents and children’ (2018) 23 Communications Law, 8. [↑](#footnote-ref-24)
25. Stacey Steinberg, ‘Sharenting: Children's Privacy in the Age of Social Media’ (2017) 66 Emory Law Journal, 852. [↑](#footnote-ref-25)
26. Liza Long, ‘I Am Adam Lanza's Mother’ <https://thebluereview.org/i-amadam-

    lanzas-mother> accessed 29 July 2019. [↑](#footnote-ref-26)
27. Maeve Duggan and others, ‘Parents and social media’ (2015) Pew Research Center, 3-4. [↑](#footnote-ref-27)
28. Claire Bessant, ‘Sharenting: balancing the conflicting rights of parents and children’ (2018) 23 Communications Law, 8; Alicia Blum-Ross and Sonia Livingstone, ‘Sharenting, parent blogging, and the boundaries of the digital self’ (2017) 15 Popular Communication, 113. [↑](#footnote-ref-28)
29. Claire Bessant, ‘Sharenting: balancing the conflicting rights of parents and children’ (2018) 23 Communications Law, 8. [↑](#footnote-ref-29)
30. # Daily Mail, ‘Britain’s youngest Instagram Influencer’ <www.dailymail.co.uk/femail/article-6454005/Britains-youngest-Instagram-influencer.html> accessed 29 July 2019; The Sun, ‘Instagram star aged TWO bags his mum a brand-new Porsche – as she says ‘he’s a business’ <www.thesun.co.uk/fabulous/9088234/boy-two-who-is-one-of-britains-youngest-instagram-influencers-has-now-bagged-his-parents-a-porsche/> accessed 29 July 2019.

    [↑](#footnote-ref-30)
31. Stacey Steinberg, ‘Sharenting: Children's Privacy in the Age of Social Media’ (2017) 66 Emory Law Journal, 856. [↑](#footnote-ref-31)
32. Various pictures can be found on Instagram through hashtags, such as #christmaseve #babiesfirstchristmas and #picturesbythetree. [↑](#footnote-ref-32)
33. Various videos are uploaded on Youtube, for example: <[www.youtube.com/watch?v=qxfm4DNEknY](https://www.youtube.com/watch?v=qxfm4DNEknY)>, <[www.youtube.com/watch?v=HGuLrnxRtkc](https://www.youtube.com/watch?v=HGuLrnxRtkc)> and <[www.youtube.com/watch?v=EUzue-K4kGE&frags=pl%2Cwn](https://www.youtube.com/watch?v=EUzue-K4kGE&frags=pl%2Cwn)>. [↑](#footnote-ref-33)
34. Tamara Leaver, ‘Born digital? Presence, privacy, and intimate surveillance’ in John Hartley and Weiguo Qu (eds), *Re-Orientation: Translingual Transcultural Transmedia. Studies in narrative, language, identity, and knowledge* (Fudan University Press 2015), 155-156. [↑](#footnote-ref-34)
35. Claire Bessant, ‘Sharenting: balancing the conflicting rights of parents and children’ (2018) 23 Communications Law, 8; Alicia Blum-Ross and Sonia Livingstone, ‘Sharenting, parent blogging, and the boundaries of the digital self’ (2017) 15 Popular Communication, 110-125. [↑](#footnote-ref-35)
36. De Correspondent, Vanaf nu te koop: Mokken met foto’s van andermands kinderen en misschien wel die van jou’ <<https://decorrespondent.nl/2338/vanaf-nu-te-koop-mokken-met-fotos-van-andermans-kinderen-en-misschien-wel-die-van-jou/178067008504-d023b469>> accessed 26 July 2019. [↑](#footnote-ref-36)
37. Tehila Minkus, Kelvin Liu and Keith Ross, ‘Children seen but not heard: When parents compromise children’s online privacy (2015) <http://cse.poly.edu/~tehila/pubs/WWW2015children.pdf> accessed 26 July 2019. [↑](#footnote-ref-37)
38. Anna Brosch, ‘When the child is born into the Internet: Sharenting as a growing trend among parents on Facebook’ (2016) 43 The New Educational Review, 225-235;  
    Jennifer O'Neill, ‘The Disturbing Facebook Trend of Stolen Kid Photos’ <www.yahoo.com/parenting/mom-my-son-was-digitally-kidnapped-what-112545291567.html> accessed 26 July 2019. [↑](#footnote-ref-38)
39. C.S. Mott Children’s Hospital, ‘Sharenting trends: Do parents share too much about their kids on social media?’ <www.mottchildren.org/news/archive/201503/“sharenting”-trends-do-parents-share-too-much-about-their> accessed 26 July 2019. [↑](#footnote-ref-39)
40. Huffington Post, ‘Angry Mom Uncovers Toddler Bashing Facebook Group that Makes Fun of Ugly Babies’ <www.huffingtonpost.com/2013/1 1/08/toddler-bashing-facebook-group-ugly-babies n 4241706.html> accessed 26 July 2019. [↑](#footnote-ref-40)
41. Lucy Battersby, ‘Millions of social media photos found on child exploitation sharing sites’ <[www.smh.com.au/national/millions-of-social-media-photos-found-on-child-exploitation-sharing-sites-20150929-gjxe55.html](https://www.smh.com.au/national/millions-of-social-media-photos-found-on-child-exploitation-sharing-sites-20150929-gjxe55.html)> accessed 26 July 2019. [↑](#footnote-ref-41)
42. AVG, ‘Digital Birth: Welcome to the Online World’ <[www.businesswire.com/news/home/20101006006722/en/Digital-Birth-Online-World](https://www.businesswire.com/news/home/20101006006722/en/Digital-Birth-Online-World)> accessed 24 July 2019. [↑](#footnote-ref-42)
43. Patricia Sánchez Abril, Avner Levin and Alissa Del Riego, ‘Blurred boundaries: Social media privacy and the twenty‐first‐century employee’ (2012) 49 American Business Law Journal, 86. [↑](#footnote-ref-43)
44. Deborah Becker and Lynn Jolicoeur, ‘I Am Adam Lanza's Mother' Blogger Reveals

    Regrets, Hopes for Mental Health Care’, WBUR (May 30, 2014) <www.wbur.org/2014/05/30/i-am-adam-lanzas-mother-blogger-mental-health> accessed 29 July 2019. [↑](#footnote-ref-44)
45. Article 6(1) TFEU. [↑](#footnote-ref-45)
46. Article 6(2) TFEU. [↑](#footnote-ref-46)
47. European Union Agency for Fundamental Rights, ‘Article 7 - Respect for private and family life’ <https://fra.europa.eu/en/charterpedia/article/7-respect-private-and-family-life> accessed 12 August 2019. [↑](#footnote-ref-47)
48. However, the ECJ does not always refer to the ECtHR with regard to the interpretation of Articles 7 and 8 CFR. See for example, Joined Cases C‑293/12 and C‑594/12 *Digital Rights Ireland Ltd*[2014] ECLI:EU:C:2014:238 and Case C‑362/14 *Schrems* [2015] ECLI:EU:C:2015:650. [↑](#footnote-ref-48)
49. European Court of Human Rights, ‘Guide on Article 8 of the European Convention on Human Rights’ <www.echr.coe.int/Documents/Guide\_Art\_8\_ENG.pdf> accessed 12 August 2019, 19. [↑](#footnote-ref-49)
50. *P.G. and J.H. v. The United Kingdom* App no. 44787/98 (ECtHR 25 September 2001), para 26. [↑](#footnote-ref-50)
51. *Burghartz v. Switzerland* Appno 16213/90 (ECtHR22 February 1994), para 24. [↑](#footnote-ref-51)
52. *B. v. France* App no 13343/87 (ECtHR 24 January 1992), para 63. [↑](#footnote-ref-52)
53. *Dudgeon v. the United Kingdom* App no 7525/76 (ECtHR 22 October 1981), para 41. [↑](#footnote-ref-53)
54. *Von Hannover v. Germany (no. 2)* App nos 40660/08 and 60641/08 (ECtHR 7 February 2012), para 95. [↑](#footnote-ref-54)
55. *X and Y v. the Netherlands* App no 8978/80 (ECtHR 26 March 1985), para 22. [↑](#footnote-ref-55)
56. *Pretty v. the United Kingdom* App no 2346/02 (ECtHR 29 April 2002), para 61. [↑](#footnote-ref-56)
57. *Magyar Tartalomszolgáltatók Egyesülete and Index.hu Zrt* *v. Hungary* App no 22947/13 (ECtHR 2 February 2016), para 57. [↑](#footnote-ref-57)
58. *Niemietz* *v. Germany* App no 13710/88 (ECtHR 16 December 1992), para 29. [↑](#footnote-ref-58)
59. *Burghartz v. Switzerland* App no16213/90 (ECtHR 22 February 1994), para 24. [↑](#footnote-ref-59)
60. *Bohlen v. Germany* App no 53495/09 (ECtHR 19 February 2015), para 45. [↑](#footnote-ref-60)
61. For example, in this video the child’s name ‘Micah’ is disclosed in the title of the video and is repeatedly mentioned throughout the video <www.youtube.com/watch?v=HCpDY3HIC6g> accessed 15 August 2019. [↑](#footnote-ref-61)
62. *Sciacca v. Italy* App no 50774/99 (ECtHR11 January 2005), para 29. [↑](#footnote-ref-62)
63. *Reklos and Davourlis v. Greece* App no 1234/05 (ECtHR 15 January 2009), para. 40. [↑](#footnote-ref-63)
64. *Reklos and Davourlis v. Greece* App no 1234/05 (ECtHR 15 January 2009), para. 40. [↑](#footnote-ref-64)
65. *Axel Springer v. Germany* App no 39954/08 (ECtHR 7 February 2012), para 83. [↑](#footnote-ref-65)
66. Mommyhood, ‘Hoera, Skyler is zindelijk!’ <https://mommytobe.nl/personal/hoera-skyler-is-zindelijk/> accessed 20 August 2019. [↑](#footnote-ref-66)
67. Mommyhood, ‘Maddox’ eczeem onder controle!’ < https://mommytobe.nl/personal/maddox-eczeem-onder-controle/> accessed 20 August 2019. [↑](#footnote-ref-67)
68. *Delfi AS* *v. Estonia*App no 64569/09 (ECtHR 16 June 2015), para 137. [↑](#footnote-ref-68)
69. *Putistin v Ukraine* App no 16882/03 (ECtHR 21 November 2013), para 40. [↑](#footnote-ref-69)
70. For examples of embarrassing forms of sharenting see: The Guardian, ‘’I was so embarrassed I cried’: do parents share too much online?’ <www.theguardian.com/lifeandstyle/2016/nov/05/parents-posting-about-kids-share-too-much-online-facebook-paula-cocozza> accessed 21 August 2019. [↑](#footnote-ref-70)
71. European Union Agency for Fundamental Rights, ‘Handbook on European Data Protection Law’ <<https://fra.europa.eu/sites/default/files/fra_uploads/fra-coe-edps-2018-handbook-data-protection_en.pdf>> accessed 20 August 2019, 17. [↑](#footnote-ref-71)
72. *Malone v. The United Kingdom* App no 8691/79 (ECtHR 2 August 1984), para 64. [↑](#footnote-ref-72)
73. *Klass and others v. Germany* App no 5029/71 (ECtHR 6 September 1978), para 41. [↑](#footnote-ref-73)
74. See for example, *Leander v. Sweden* App no 9248/81 (ECtHR 26 March 1987), para 48; *Amann v. Switzerland* App no 27798/95 (ECtHR 16 February 2000), para 65-67; *Rotaru v. Romania* App no 28341/95 (ECtHR 4 May 2000), para 42-44. [↑](#footnote-ref-74)
75. *S. and Marper v. the United Kingdom* App nos. 30562/04 and 30566/04 (ECtHR 4 December 2008). [↑](#footnote-ref-75)
76. For example, <www.instagram.com/explore/tags/fingerprintart/> accessed 19 August 2019. [↑](#footnote-ref-76)
77. See section 3.1.1. [↑](#footnote-ref-77)
78. Joined Cases C-92/09 and C-93/09 *Volker und Markus Schecke GbR and Hartmut Eifert v. Land Hessen* [2010] ECLI:EU:C:2010:662, para 47. [↑](#footnote-ref-78)
79. Steven Greer, Janneke Gerards and Rose Slowe, *Human rights in the Council of Europe and the European Union: achievements, trends and challenges* (Cambridge University Press 2018), 332. [↑](#footnote-ref-79)
80. Joined Cases C-92/09 and C-93/09 *Volker und Markus Schecke GbR and Hartmut Eifert v. Land Hessen* [2010] ECLI:EU:C:2010:662, para 52. [↑](#footnote-ref-80)
81. Case C-366/04 *Georg Schwarz v. Bürgermeister der Landeshauptstadt Salzburg* [2005] ECLI:EU:C:2005:719, para 27. [↑](#footnote-ref-81)
82. Orla Lynskey ‘Deconstructing Data Protection: The ‘added-value’ of a right to data protection in the EU legal order’ (2014) 63 International and Comparative Law Quarterly, 3. [↑](#footnote-ref-82)
83. Joined Cases C‑293/12 and C‑594/12 *Digital Rights Ireland* [2014] ECLI:EU:C:2014:238, para 27. [↑](#footnote-ref-83)
84. European Union Agency for Fundamental Rights, ‘Handbook on European Data Protection Law’ <<https://fra.europa.eu/sites/default/files/fra_uploads/fra-coe-edps-2018-handbook-data-protection_en.pdf>> accessed 20 August 2019, 88-89. [↑](#footnote-ref-84)
85. Joined Cases C-92/09 and C-93/09 *Volker und Markus Schecke GbR and Hartmut Eifert v. Land Hessen* [2010] ECLI:EU:C:2010:662, para 47; Steven Greer, Janneke Gerards and Rose Slowe, *Human rights in the Council of Europe and the European Union: achievements, trends and challenges* (Cambridge University Press 2018), 332. [↑](#footnote-ref-85)
86. *Kroon and Others v. The Netherlands* App no 18535/91 (ECtHR 27 October 1994), para 31. [↑](#footnote-ref-86)
87. NOS, ‘Middelbare school wordt hoofdrolspeler in BNN-serie ‘ <https://nos.nl/artikel/478883-middelbare-school-wordt-hoofdrolspeler-in-bnn-serie.html> accessed 20 August 2019. [↑](#footnote-ref-87)
88. For example, <www.youtube.com/watch?v=MLf4HPvftok> accessed 21 August 2019. [↑](#footnote-ref-88)
89. Malu Beijer, *The Limits of Fundamental Rights Protection by the EU. The Scope for the Development of Positive Obligations* (Intersentia 2017), 34. [↑](#footnote-ref-89)
90. David Harris and others, *Law of the European Convention on Human Rights* (Oxford University Press 2018), 511. [↑](#footnote-ref-90)
91. *Marckx v Belgium* App no 6833/74 (ECtHR 13 June 1979), para 31. [↑](#footnote-ref-91)
92. For example: *Marckx v Belgium* App no 6833/74 (ECtHR 13 June 1979), para 31; *X and Y v. the Netherlands* App no 8978/80 (ECtHR 26 March 1985), para 23. [↑](#footnote-ref-92)
93. Malu Beijer, *The Limits of Fundamental Rights Protection by the EU. The Scope for the Development of Positive Obligations* (Intersentia 2017), 46. [↑](#footnote-ref-93)
94. *Airey v. Ireland* App no 6289/73 (ECtHR 9 October 1979), para 24. [↑](#footnote-ref-94)
95. *McCann and others v. the United Kingdom* App no 18984/91 (ECtHR 27 September 1995), para 161; *Öneryildiz v. Turkey* App no 48939/99 (ECtHR 30 November 2004), para 92; Dimitris Xenos, *The Positive Obligations of the State under the European Convention of Human Rights* (Routledge 2012), 21. [↑](#footnote-ref-95)
96. *Ireland v. the United Kingdom* App no 5310/71 (ECtHR 18 January 1978), para 239. [↑](#footnote-ref-96)
97. *Ireland v. the United Kingdom* App no 5310/71 (ECtHR 18 January 1978), para 238. [↑](#footnote-ref-97)
98. Dimitris Xenos, *The Positive Obligations of the State under the European Convention of Human Rights* (Routledge 2012), 21. [↑](#footnote-ref-98)
99. *Campbell and Cosans v. The United Kingdom* App nos 7511/76 and 7743/76 (ECtHR 25 February 1985); Malu Beijer, *The Limits of Fundamental Rights Protection by the EU. The Scope for the Development of Positive Obligations* (Cambridge: Intersentia 2017), 50. [↑](#footnote-ref-99)
100. Malu Beijer, *The Limits of Fundamental Rights Protection by the EU. The Scope for the Development of Positive Obligations* (Cambridge: Intersentia 2017), 55. [↑](#footnote-ref-100)
101. *Silih v. Slovenia* App no 71463/01 (ECtHR 9 April 2009), para 158. [↑](#footnote-ref-101)
102. Malu Beijer, *The Limits of Fundamental Rights Protection by the EU. The Scope for the Development of Positive Obligations* (Cambridge: Intersentia 2017), 55. [↑](#footnote-ref-102)
103. David Harris and others, *Law of the European Convention on Human Rights* (Oxford University Press 2018), 511. [↑](#footnote-ref-103)
104. *Söderman v Sweden* App no 5786/08 (ECtHR 12 November 2013), para 117. [↑](#footnote-ref-104)
105. *Von Hannover v. Germany (no. 1)* App no 59320/00 (ECtHR 24 June 2004), para 72. [↑](#footnote-ref-105)
106. *Hokkanen v Finland* App no 19823/92 (ECtHR 23 September 1994); David Harris and others, *Law of the European Convention on Human Rights* (Oxford University Press 2018), 511-512. [↑](#footnote-ref-106)
107. *Abdulaziz, Cabales and Balkandali v UK* App no 9214/80; 9473/81; 9474/81 (ECtHR 28 May 1985), para 67; David Harris and others, *Law of the European Convention on Human Rights* (Oxford University Press 2018), 512. [↑](#footnote-ref-107)
108. *A, B and C v. Ireland* App no 25579/05 (ECtHR 16 December 2010), para 248. [↑](#footnote-ref-108)
109. Malu Beijer, *The Limits of Fundamental Rights Protection by the EU. The Scope for the Development of Positive Obligations* (Intersentia 2017), 64. [↑](#footnote-ref-109)
110. Dimitris Xenos, *The Positive Obligations of the State under the European Convention of Human Rights* (Routledge 2012), 75. [↑](#footnote-ref-110)
111. Malu Beijer, *The Limits of Fundamental Rights Protection by the EU. The Scope for the Development of Positive Obligations* (Intersentia 2017), 65-66. [↑](#footnote-ref-111)
112. *Botta v. Italy* App no 153/1996/772/973 (ECtHR 24 February 1998), para 34. [↑](#footnote-ref-112)
113. *Opuz v. Turkey* App no 33401/02 (ECtHR 9 June 2009), para 129. [↑](#footnote-ref-113)
114. Malu Beijer, *The Limits of Fundamental Rights Protection by the EU. The Scope for the Development of Positive Obligations* (Intersentia 2017), 30-31. [↑](#footnote-ref-114)
115. Malu Beijer, *The Limits of Fundamental Rights Protection by the EU. The Scope for the Development of Positive Obligations* (Intersentia 2017), 54. [↑](#footnote-ref-115)
116. *X and Y v. the Netherlands* App no 8978/80 (ECtHR 26 March 1985), para 24 and 27; *Pretty v. the United Kingdom* App no 2346/02 (ECtHR 29 April 2002), para 71. [↑](#footnote-ref-116)
117. *Rees v. the United Kingdom* App no 9532/81 (ECtHR 17 October 1986), para 37. [↑](#footnote-ref-117)
118. Malu Beijer, *The Limits of Fundamental Rights Protection by the EU. The Scope for the Development of Positive Obligations* (Intersentia 2017), 52. [↑](#footnote-ref-118)
119. Janneke Gerards and Hanneke Senden, ‘The Structure of Fundamental Rights and the European Court of Human Rights’ (2009) 7 International Journal of Constitutional Law, 634. [↑](#footnote-ref-119)
120. Malu Beijer, *The Limits of Fundamental Rights Protection by the EU. The Scope for the Development of Positive Obligations* (Intersentia 2017), 53. [↑](#footnote-ref-120)
121. Malu Beijer, *The Limits of Fundamental Rights Protection by the EU. The Scope for the Development of Positive Obligations* (Intersentia 2017), 53. [↑](#footnote-ref-121)
122. *Dubetska and others v. Ukraine* App no 30499/03 (ECtHR 10 February 2011), paras 105 ff; Malu Beijer, *The Limits of Fundamental Rights Protection by the EU. The Scope for the Development of Positive Obligations* (Intersentia 2017), 53. [↑](#footnote-ref-122)
123. *A, B and C v. Ireland* App no 25579/05 (ECtHR 16 December 2010), para 248. [↑](#footnote-ref-123)
124. *Kurier Zeitungsverlag und Druckerei GmbH (no. 1) v. Austria* App no 3401/07 (ECtHR 17 January 2012), para 53; *Krone Verlag GmbH & Co KG and Krone Multimedia GmbH & Co KG v. Austria* App no 33497/07 (ECtHR 17 January 2012), para 58. [↑](#footnote-ref-124)
125. *Elsholz v. Germany* App no 25735/94 (ECtHR 13 July 2000), para 50. [↑](#footnote-ref-125)
126. *A, B and C v. Ireland* App no 25579/05 (ECtHR 16 December 2010), para 248. [↑](#footnote-ref-126)
127. Malu Beijer, *The Limits of Fundamental Rights Protection by the EU. The Scope for the Development of Positive Obligations* (Intersentia 2017), 64. [↑](#footnote-ref-127)
128. *Hamalainen v. Finland* App no. 37359/09 (ECtHR 16 July 2014), para 63. [↑](#footnote-ref-128)
129. *S. and Marper v. the UK* App nos 30562/04 and 30566/04 (ECtHR 4 December 2008), para 102. [↑](#footnote-ref-129)
130. *Von Hannover v. Germany (no. 1)* App no 59320/00 (ECtHR 24 June 2004), para 44. [↑](#footnote-ref-130)
131. Nicole Moreham, ‘The right to respect for private life in the European Convention on Human Rights: a re-examination’ [2008] European Human Rights Law Review, 8. [↑](#footnote-ref-131)
132. Joined cases C-569/16 and C-570/16 *Bauer* [2018] ECLI:EU:C:2018:871, para 87. [↑](#footnote-ref-132)
133. For a discussion of the different interpretations of Article 51 CFR see: Eleni Frantziou, *The Horizontal Effect of Fundamental Rights in the European Union* (Oxford University Press 2019), 84-87. [↑](#footnote-ref-133)
134. Joined cases C-569/16 and C-570/16 *Bauer* [2018] ECLI:EU:C:2018:871, para 88. [↑](#footnote-ref-134)
135. Case C-144/04 *Mangold* [2005] ECLI:EU:C:2005:709; Case C‑555/07 *Kücükdeveci* [2010] ECLI:EU:C:2010:21. [↑](#footnote-ref-135)
136. Directive (EU) 2000/78/EC of the Council of 27 November 2000 establishing a general framework for equal treatment in employment and occupation [2000] OJ L303; Case C-144/04 *Mangold* [2005] ECLI:EU:C:2005:709, para 74-75; Case C‑555/07 *Kücükdeveci* [2010] ECLI:EU:C:2010:21, para 20-21. [↑](#footnote-ref-136)
137. Case C-144/04 *Mangold* [2005] ECLI:EU:C:2005:709, para 77; Case C‑555/07 *Kücükdeveci* [2010] ECLI:EU:C:2010:21, para 51. [↑](#footnote-ref-137)
138. Article 6(1) TFEU. [↑](#footnote-ref-138)
139. Case C‑176/12 *AMS* [2014] ECLI:EU:C:2014:2. [↑](#footnote-ref-139)
140. Directive (EU) 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community [2002] OJ L80; Case C‑176/12 *AMS* [2014] ECLI:EU:C:2014:2, para 51. [↑](#footnote-ref-140)
141. Case C‑176/12 *AMS* [2014] ECLI:EU:C:2014:2, para 44-45. [↑](#footnote-ref-141)
142. Case C‑176/12 *AMS* [2014] ECLI:EU:C:2014:2, para 47. [↑](#footnote-ref-142)
143. Case C‑176/12 *AMS* [2014] ECLI:EU:C:2014:2, para 48-49. [↑](#footnote-ref-143)
144. Mirjam De Mol, ‘De horizontale directe werking van de grondrechten van de Europese Unie’ (2016) 11 Tijdschrift voor Europees en economisch recht SEW, 465. [↑](#footnote-ref-144)
145. Anja Eleveld, 'Rechtstreekse horizontale werking van grondrechten van de Europese Unie' (2019) 3-4 Nederlands tijdschrift voor Europees recht, 90. [↑](#footnote-ref-145)
146. Case C-414/16 *Egenberger* [2018] ECLI:EU:C:2018:257; Case C‑68/17 *IR v. JQ* [2018] ECLI:EU:C:2018:696; Case C‑684/16 *Max-Planck* [2018] ECLI:EU:C:2018:874; Joined Cases C-569/16 and C-570/16 *Bauer* [2018] ECLI:EU:C:2018:871; Case C-193/17 *Cresco Investigation* [2019] ECLI:EU:C:2019:43. [↑](#footnote-ref-146)
147. Case C-414/16 *Egenberger* [2018] ECLI:EU:C:2018:257, para 82; Case C‑68/17 *IR v. JQ* [2018] ECLI:EU:C:2018:696, para 71; Joined Cases C-569/16 and C-570/16 *Bauer* [2018] ECLI:EU:C:2018:871, para 92; Case C‑684/16 *Max-Planck* [2018] ECLI:EU:C:2018:874, para 81; Aurelia Colombi Ciacchi, ‘The Direct Horizontal Effect of EU Fundamental Rights’ (2019) 15 European Constitutional Law Review, 1. [↑](#footnote-ref-147)
148. Case C-414/16 *Egenberger* [2018] ECLI:EU:C:2018:257, para 76-77; Case C‑68/17 *IR v. JQ* [2018] ECLI:EU:C:2018:696, para 69; Joined Cases C-569/16 and C-570/16 *Bauer* [2018] ECLI:EU:C:2018:871, para 85. [↑](#footnote-ref-148)
149. Case C‑176/12 *AMS* [2014] ECLI:EU:C:2014:2, para 44-45. [↑](#footnote-ref-149)
150. Joined Cases C-569/16 and C-570/16 *Bauer* [2018] ECLI:EU:C:2018:871, para 85. [↑](#footnote-ref-150)
151. Anja Eleveld, 'Rechtstreekse horizontale werking van grondrechten van de Europese Unie' (2019) 3-4 Nederlands tijdschrift voor Europees recht, 92-93. [↑](#footnote-ref-151)
152. Joined cases C-569/16 and C-570/16 *Bauer* [2018] ECLI:EU:C:2018:871, para 88. [↑](#footnote-ref-152)
153. Anja Eleveld, 'Rechtstreekse horizontale werking van grondrechten van de Europese Unie' (2019) 3-4 Nederlands tijdschrift voor Europees recht, 93. [↑](#footnote-ref-153)
154. Case C-414/16 *Egenberger* [2018] ECLI:EU:C:2018:257, para 78. [↑](#footnote-ref-154)
155. Joined Cases C-569/16 and C-570/16 *Bauer* [2018] ECLI:EU:C:2018:871, para 85. [↑](#footnote-ref-155)
156. Joined Cases C-569/16 and C-570/16 *Bauer* [2018] ECLI:EU:C:2018:871, para 84. [↑](#footnote-ref-156)
157. Steven Greer, Janneke Gerards and Rose Slowe, *Human rights in the Council of Europe and the European Union: achievements, trends and challenges* (Cambridge University Press 2018), 320. [↑](#footnote-ref-157)
158. Case C‑362/14 *Schrems* [2015] ECLI:EU:C:2015:650, para 76. [↑](#footnote-ref-158)
159. Malu Beijer, *The Limits of Fundamental Rights Protection by the EU. The Scope for the Development of Positive Obligations* (Intersentia 2017), 267. [↑](#footnote-ref-159)
160. Case C-68/95 *T. Port* [1996] ECLI:EU:C:1996:452, para 40. [↑](#footnote-ref-160)
161. Joined Cases C-402/05 P and C-415/05 P *Kadi* [2008] ECLI:EU:C:2008:461, para 336-337. [↑](#footnote-ref-161)
162. Joined Cases T‑208/11 and T‑508/11 LTTE v. Council [2014] ECLI:EU:T:2014:885, para 139. [↑](#footnote-ref-162)
163. Case C‑362/14 *Schrems* [2015] ECLI:EU:C:2015:650, para 76. [↑](#footnote-ref-163)
164. Case C‑58/12 P *Gascogne* [2013] ECLI:EU:C:2013:770, para 83. [↑](#footnote-ref-164)
165. Malu Beijer, *The Limits of Fundamental Rights Protection by the EU. The Scope for the Development of Positive Obligations* (Intersentia 2017), 269. [↑](#footnote-ref-165)
166. Malu Beijer, *The Limits of Fundamental Rights Protection by the EU. The Scope for the Development of Positive Obligations* (Intersentia 2017), 303. [↑](#footnote-ref-166)
167. Case C‑149/10 *Chatzi* [2010] ECLI:EU:C:2010:534, para 68. [↑](#footnote-ref-167)
168. Malu Beijer, *The Limits of Fundamental Rights Protection by the EU. The Scope for the Development of Positive Obligations* (Intersentia 2017), 123. [↑](#footnote-ref-168)
169. Eleni Frantziou, *The Horizontal Effect of Fundamental Rights in the European Union* (Oxford University Press 2019), 110. [↑](#footnote-ref-169)
170. Directive (EU) 1995/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data [1995] OJ L281/31. [↑](#footnote-ref-170)
171. Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data [2016] OJ L119/1. [↑](#footnote-ref-171)
172. Article 3(2) DPD; Article 2(2)(c) GDPR. [↑](#footnote-ref-172)
173. Recital 18 GDPR. [↑](#footnote-ref-173)
174. Stephanie Lagoutte, ‘Surrounding and Extending Family Life: The Notion of Family Life in the Case-Law of the European Court of Human Rights’ (2003) 21 Mennesker og Rettigheter, 294. [↑](#footnote-ref-174)
175. *Abdulaziz, Cabales and Balkandali v. the United Kingdom* App nos 9214/80, 9473/81 and 9474/81 (ECtHR 28 May 1985), para 62. [↑](#footnote-ref-175)
176. *Keegan v. Ireland* App no 16969/90 (ECtHR 26 May 1994), para. 44. [↑](#footnote-ref-176)
177. Christoph Grabenwarter, *The European Convention on Human Rights: Commentary* (Beck/Hart 2014), 194. [↑](#footnote-ref-177)
178. *Keegan v. Ireland* App no 16969/90 (ECtHR 26 May 1994), para. 44. [↑](#footnote-ref-178)
179. *Keegan v. Ireland* App no 16969/90 (ECtHR 26 May 1994), para. 44. [↑](#footnote-ref-179)
180. *Schneider v Germany* App no 17080/07 (ECtHR 15 September 2011), para 81. [↑](#footnote-ref-180)
181. *Brauer v. Germany* App no 3545/04 (ECtHR 28 May 2009), para 30. [↑](#footnote-ref-181)
182. *Brauer v. Germany* App no 3545/04 (ECtHR 28 May 2009), para 30. [↑](#footnote-ref-182)
183. *Gül v. Switzerland* App no. 23218/94 (ECtHR 19 February 1996), para 33. [↑](#footnote-ref-183)
184. *Pini, Bertani and Others v. Romania* App nos 78028/01 and 78030/01 (ECtHR 22 June 2004), para 146-148. [↑](#footnote-ref-184)
185. Paul Vlaardingerbroek and others, *Het hedendaags personen- en familierecht* (8th edn Wolters Kluwer 2017), ch. 1.4.2.B. [↑](#footnote-ref-185)
186. *Kaplan v. Austria* App no 45983/99 (ECtHR 18 January 2007), para 32. [↑](#footnote-ref-186)
187. *W. v. the United Kingdom* App no 9749/82 (ECtHR 8 July 1987), para 59. [↑](#footnote-ref-187)
188. Paul Vlaardingerbroek and others, *Het hedendaags personen- en familierecht* (8th edn Wolters Kluwer 2017), ch. 1.4.2.B. [↑](#footnote-ref-188)
189. *R v. the United Kingdom* App no 10496/83 (ECtHR 8 July 1987), para 64; *Nielsen v. Denmark* App no 10929/84(ECtHR 28 November 1988), para 61. [↑](#footnote-ref-189)
190. *Handyside v. the United Kingdom* App no 5493/72 (ECtHR 7 December 1976), para 49. [↑](#footnote-ref-190)
191. *Handyside v. the United Kingdom* App no 5493/72 (ECtHR 7 December 1976), para 49. [↑](#footnote-ref-191)
192. *Dichand and others v. Austria* App no29271/95 (ECtHR 26 February 2002), para 41. [↑](#footnote-ref-192)
193. *Otto-Preminger Institute v. Austria* App no 13470/87 (ECtHR 20 September 1994), para 43. [↑](#footnote-ref-193)
194. *Mosley v. the United Kingdom* App no 48009/08 (ECtHR 10 May 2011), para 115. [↑](#footnote-ref-194)
195. *Müller v. Switzerland* App no 10737/84 (ECtHR 24 May 1988), para 27. [↑](#footnote-ref-195)
196. *Monnat v. Switzerland* App no 73604/01 (ECtHR 21 September 2006), para 33. [↑](#footnote-ref-196)
197. *Handyside v. United Kingdom* App no 5493/72 (ECtHR 7 December 1976), para 43. [↑](#footnote-ref-197)
198. *Autronic v Switzerland* App no 12726/87 (ECtHR 22 May 1990), para 47. [↑](#footnote-ref-198)
199. *Ashby Donald and Others v. France* App no 36769/08 (ECtHR 10 January 2013), para 34. [↑](#footnote-ref-199)
200. *Cengiz and Others v. Turkey* App nos 48226/10 and 14027/11 (ECtHR 1 December 2015), para 49. [↑](#footnote-ref-200)
201. *Times Newspapers Ltd v. the United Kingdom (nos. 1 and 2)* App nos 3002/03 and 23676/03 (ECtHR 10 March 2009), para 27. [↑](#footnote-ref-201)
202. *Delfi AS v. Estonia* App no 64569/09 (ECtHR 16 June 2015), para 110. [↑](#footnote-ref-202)
203. *Magyar Kétfarkú Kutya Párt v. Hungary* App no 201/17 (ECtHR 20 January 2020), para 91; *Savva Terentyev v. Russia* App no 10692/09 (ECtHR 28 August 2018), para 79. [↑](#footnote-ref-203)
204. *Cengiz and Others v. Turkey* App nos 48226/10 and 14027/11 (ECtHR 1 December 2015), para 52. [↑](#footnote-ref-204)
205. *Egill Einarsson v. Iceland* App no 24703/15 (ECtHR 7 November 2017), para 46. [↑](#footnote-ref-205)
206. *Cetin and Others v. Turkey* App nos 40153/98 and 40160/98 (ECtHR 13 February 2003), para 57. [↑](#footnote-ref-206)
207. *Casado Coca v. Spain* App no 15450/89 (ECtHR 24 February 1994), para 35. [↑](#footnote-ref-207)
208. William A. Schabas, *The European Convention on Human Rights: A Commentary* (Oxford University Press 2015), 388. [↑](#footnote-ref-208)
209. *Marckx v Belgium* App no 6833/74 (ECtHR 13 June 1979), para 31; William A. Schabas, *The European Convention on Human Rights: A Commentary* (Oxford University Press 2015), 368. [↑](#footnote-ref-209)
210. *Appleby and others v. United Kingdom* App no 44306/98 (ECtHR 6 May 2003), para 39. [↑](#footnote-ref-210)
211. *Ahmet Yildrim v. Turkey* App no 3111/10 (ECtHR 18 December 2012), para 55. [↑](#footnote-ref-211)
212. Laurens Lavrysen, *Human Rights in a Positive State: Rethinking the Relationship between Positive and Negative Obligations under the European Convention on Human Rights* (Intersentia 2016), 237. [↑](#footnote-ref-212)
213. Steven Greer, ‘The exceptions to Articles 8 to 11 of the European Convention on Human Rights’ <www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-15(1997).pdf> accessed 28 December 2019, 7. [↑](#footnote-ref-213)
214. Laurens Lavrysen, *Human Rights in a Positive State: Rethinking the Relationship between Positive and Negative Obligations under the European Convention on Human Rights* (Intersentia 2016), 222. [↑](#footnote-ref-214)
215. European Court of Human Rights, ‘Guide on Article 8 of the European Convention on Human Rights’ <www.echr.coe.int/Documents/Guide\_Art\_8\_ENG.pdf> accessed 23 January 2019, 8; Moreno Gómez v. Spain App no 4143/02 (ECtHR 16 November 2004), para 55. [↑](#footnote-ref-215)
216. Laurens Lavrysen, *Human Rights in a Positive State: Rethinking the Relationship between Positive and Negative Obligations under the European Convention on Human Rights* (Intersentia 2016), 222-223. [↑](#footnote-ref-216)
217. Laurens Lavrysen, *Human Rights in a Positive State: Rethinking the Relationship between Positive and Negative Obligations under the European Convention on Human Rights* (Intersentia 2016), 223; *Fadeyeva v. Russia* App no 55723/00 (ECtHR 9 June 2005), para 98. [↑](#footnote-ref-217)
218. *Hatton and Others v. the UK* App no 36022/97 (ECtHR 8 July 2003), para 98. [↑](#footnote-ref-218)
219. *Fadeyeva v. Russia* App no 55723/00 (ECtHR 9 June 2005), para 94. [↑](#footnote-ref-219)
220. Laurens Lavrysen, *Human Rights in a Positive State: Rethinking the Relationship between Positive and Negative Obligations under the European Convention on Human Rights* (Intersentia 2016), 222; *Hatton and Others v. the UK* App no 36022/97 (ECtHR 8 July 2003), para 98; *Jakóbski v. Poland* App no 18429/06 (ECtHR 7 December 2010), para 47; *Palomo Sánchez and Others* v. Spain App nos 28955/06, 28957/06, 28959/06 and 28964/06 (ECtHR 12 September 2011), para 62. [↑](#footnote-ref-220)
221. Laurens Lavrysen, *Human Rights in a Positive State: Rethinking the Relationship between Positive and Negative Obligations under the European Convention on Human Rights* (Intersentia 2016), 222-223; *Fadeyeva v. Russia* App no 55723/00 (ECtHR 9 June 2005), para 96 and 98. [↑](#footnote-ref-221)
222. Steven Greer, ‘The exceptions to Articles 8 to 11 of the European Convention on Human Rights’ <www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-15(1997).pdf> accessed 28 December 2019, 7. [↑](#footnote-ref-222)
223. *Sunday Times v. the UK (no. 1)* App no 6538/74 (ECtHR 26 April 1979), para 48. [↑](#footnote-ref-223)
224. Steven Greer, ‘The exceptions to Articles 8 to 11 of the European Convention on Human Rights’ <www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-15(1997).pdf> accessed 28 December 2019, 9; *Kruslin v. France* App no 11801/85 (ECtHR 24 April 1990), para 27 et seq; *Huvig v. France* App no 11105/85 (ECtHR 24 April 1990), para 26 et seq. [↑](#footnote-ref-224)
225. David Harris and others, *Law of the European Convention on Human Rights* (Oxford University Press 2018), 510. [↑](#footnote-ref-225)
226. *Sunday Times v. the UK (no. 1)* App no 6538/74 (ECtHR 26 April 1979), para 49. [↑](#footnote-ref-226)
227. *Sunday Times v. the UK (no. 1)* App no 6538/74 (ECtHR 26 April 1979), para 49. [↑](#footnote-ref-227)
228. *Malone v. UK* App no 8691/79 (ECtHR 2 August 1984), para 67. [↑](#footnote-ref-228)
229. *Sunday Times v. the UK (no. 1)* App no 6538/74 (ECtHR 26 April 1979), para 47. [↑](#footnote-ref-229)
230. Steven Greer, ‘The exceptions to Articles 8 to 11 of the European Convention on Human Rights’ <www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-15(1997).pdf> accessed 28 December 2019, 10. [↑](#footnote-ref-230)
231. *Al-Nashif v. Bulgari* App no 50963/99 (ECtHR 20 June 2002), para 121. [↑](#footnote-ref-231)
232. *Sunday Times v. the UK (no. 1)* App no 6538/74 (ECtHR 26 April 1979), para 49. [↑](#footnote-ref-232)
233. *Sunday Times v. the UK (no. 1)* App no 6538/74 (ECtHR 26 April 1979), para 49. [↑](#footnote-ref-233)
234. *Vogt v. Germany* App no 17851/91 (ECtHR 26 September 1995), para 48. [↑](#footnote-ref-234)
235. *Sunday Times v. the UK (no. 1)* App no 6538/74 (ECtHR 26 April 1979), para 49. [↑](#footnote-ref-235)
236. *Malone v. the UK* App no 8691/79 (ECtHR 2 August 1984), para 68. [↑](#footnote-ref-236)
237. Ivana Roagna, *Protecting the right to respect for private and family life under the European Convention on Human Rights* (Council of Europe 2012), 42. [↑](#footnote-ref-237)
238. Ivana Roagna, *Protecting the right to respect for private and family life under the European Convention on Human Rights* (Council of Europe 2012), 42; See for example, *Nnyanzi v. the United Kingdom* App no 21878/06 (ECtHR 8 April 2008), para 76. [↑](#footnote-ref-238)
239. *S.A.S. v. France* App no 43835/11 (ECtHR 1 July 2014), para 114. [↑](#footnote-ref-239)
240. Ivana Roagna, *Protecting the right to respect for private and family life under the European Convention on Human Rights* (Council of Europe 2012), 42. [↑](#footnote-ref-240)
241. Bernadette Rainey, Elizabeth Wicks, and Clare Ovey, *Jacobs, White, and Ovey:* *The European Convention on Human Rights* (Oxford University Press 2017), 347. See for example, *Couderc and Hachette Filipacchi Associés* *v. France* App no 40454/07 (ECtHR 10 November 2015), para 79. [↑](#footnote-ref-241)
242. David Harris and others, *Law of the European Convention on Human Rights* (Oxford University Press 2018), 510. [↑](#footnote-ref-242)
243. *Handyside v. the UK* App no 5493/72 (ECtHR 7 December 1976), para 48. [↑](#footnote-ref-243)
244. *Handyside v. the UK* App no 5493/72 (ECtHR 7 December 1976), para 48-49; *Silver and Others v. the UK* App nos 5947/72; 6205/73; 7052/75; 7061/75; 7107/75; 7113/75; 7136/75 (ECtHR 25 March 1983), para 97. [↑](#footnote-ref-244)
245. *Handyside v. the UK* App no 5493/72 (ECtHR 7 December 1976), para 50. [↑](#footnote-ref-245)
246. Laurens Lavrysen, *Human Rights in a Positive State: Rethinking the Relationship between Positive and Negative Obligations under the European Convention on Human Rights* (Intersentia 2016), 166. [↑](#footnote-ref-246)
247. *Nada v. Switzerland* App no 10593/08 (ECtHR 12 September 2012), para 198. [↑](#footnote-ref-247)
248. Laurens Lavrysen, *Human Rights in a Positive State: Rethinking the Relationship between Positive and Negative Obligations under the European Convention on Human Rights* (Intersentia 2016), 222. [↑](#footnote-ref-248)
249. *Dickson v. the UK* App no 44362/04 (ECtHR 4 December 2007), para 70. [↑](#footnote-ref-249)
250. *Handyside v. the UK* App no 5493/72 (ECtHR 7 December 1976), para 48; *Sunday Times v. the UK (no. 1)* App no 6538/74 (ECtHR 26 April 1979), para 59. [↑](#footnote-ref-250)
251. *Sunday Times v. he UK (no. 1)* App no 6538/74 (ECtHR 26 April 1979), para 59. [↑](#footnote-ref-251)
252. David Harris and others, *Law of the European Convention on Human Rights* (Oxford University Press 2018), 14. [↑](#footnote-ref-252)
253. Steven Greer, ‘The exceptions to Articles 8 to 11 of the European Convention on Human Rights’ <www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-15(1997).pdf> accessed 28 December 2019, 15. [↑](#footnote-ref-253)
254. Janneke Gerards, *General Principles of the European Convention on Human Rights* (Cambridge University Press 2019), 165. [↑](#footnote-ref-254)
255. Janneke Gerards, *General Principles of the European Convention on Human Rights* (Cambridge University Press 2019), 172. [↑](#footnote-ref-255)
256. Janneke Gerards, *General Principles of the European Convention on Human Rights* (Cambridge University Press 2019), 194. [↑](#footnote-ref-256)
257. Janneke Gerards, *General Principles of the European Convention on Human Rights* (Cambridge University Press 2019), 167 and 172. [↑](#footnote-ref-257)
258. Janneke Gerards, *General Principles of the European Convention on Human Rights* (Cambridge University Press 2019), 167 and 172. [↑](#footnote-ref-258)
259. European Court of Human Rights, ‘Guide on Article 8 of the European Convention on Human Rights’ <www.echr.coe.int/Documents/Guide\_Art\_8\_ENG.pdf> accessed 29 December 2019, 12. [↑](#footnote-ref-259)
260. *S. and Marper v. the UK* App nos 30562/04 and 30566/04 (ECtHR 4 December 2008), para 102. [↑](#footnote-ref-260)
261. Janneke Gerards, *General Principles of the European Convention on Human Rights* (Cambridge University Press 2019), 172; Concurring opinion of Judge Malinverni in the case of *Egeland and Hanseid v. Norway* App no 34438/04 (ECtHR 16 April 2009), para 6; *Handyside v. the UK* App no 5493/72 (ECtHR 7 December 1976), para 48; *S. and Marper v. the UK* App nos 30562/04 and 30566/04 (ECtHR 4 December 2008), para 102. [↑](#footnote-ref-261)
262. Janneke Gerards, *General Principles of the European Convention on Human Rights* (Cambridge University Press 2019), 173. [↑](#footnote-ref-262)
263. Janneke Gerards, *General Principles of the European Convention on Human Rights* (Cambridge University Press 2019), 175; *TV Vest AS and Rogaland Pensjonistparti v. Norway* App no 21132/05 (ECtHR 11 December 2008), para 67. [↑](#footnote-ref-263)
264. Janneke Gerards, *General Principles of the European Convention on Human Rights* (Cambridge University Press 2019), 176; *Oliari and others v. Italy* App nos 18766/11 and 36030/11 (ECtHR 27 July 2015), para 178. [↑](#footnote-ref-264)
265. Janneke Gerards, *General Principles of the European Convention on Human Rights* (Cambridge University Press 2019), 94-95; *TV Vest AS and Rogaland Pensjonistparti v. Norway* App no 21132/05 (ECtHR 11 December 2008), para 67; *Brauer v. Germany* App no 3545/04 (ECtHR 28 May 2009), para 40. [↑](#footnote-ref-265)
266. Janneke Gerards, *General Principles of the European Convention on Human Rights* (Cambridge University Press 2019), 177; *Handyside v. the UK* App no 5493/72 (ECtHR 7 December 1976), para 48. [↑](#footnote-ref-266)
267. Janneke Gerards, *General Principles of the European Convention on Human Rights* (Cambridge University Press 2019), 177-178; *Schalk and Kopf* App no 30151/04 (ECtHR 24 June 2010), para 27-30, 92, 105; *A, B and C v. Ireland* App no 25579/05 (ECtHR 16 December 2010), para 233; *Hristozov and Others v. Bulgaria* App nos 47039/11 and 358/12 (ECtHR 13 November 2012), para 119. [↑](#footnote-ref-267)
268. Janneke Gerards, *General Principles of the European Convention on Human Rights* (Cambridge University Press 2019), 181. [↑](#footnote-ref-268)
269. Janneke Gerards, *General Principles of the European Convention on Human Rights* (Cambridge University Press 2019), 182; *Smith and Grady v. the UK* App nos 33985/96 and 33986/96 (ECtHR 27 September 1999), para 89. [↑](#footnote-ref-269)
270. Janneke Gerards, *General Principles of the European Convention on Human Rights* (Cambridge University Press 2019), 187-188; *Chassagnou and Others v. France* App nos 25088/94, 28331/95 and 28443/95 (ECtHR 29 April 1999), para 113. [↑](#footnote-ref-270)
271. Janneke Gerards, *General Principles of the European Convention on Human Rights* (Cambridge University Press 2019), 188; *S. and Marper v. the UK* App nos 30562/04 and 30566/04 (ECtHR 4 December 2008), para 102. [↑](#footnote-ref-271)
272. Janneke Gerards, *General Principles of the European Convention on Human Rights* (Cambridge University Press 2019), 61; *Pretty v. the UK* App no 2346/02 (ECtHR 29 April 2002), para 65 and 67; *United Communist Party of Turkey v. Turkey* App no 19392/92 (ECtHR 30 January 1998), para 45; *Centro Europa 7 S.r.l. and Di Stefano v. Italy* App no 38433/09 (ECtHR 7 June 2012), para 129-130; *Jehovah’s Witnesses of Moscow and Others v. Russia* App no 302/02 (ECtHR 10 June 2010), para 135-136. [↑](#footnote-ref-272)
273. Janneke Gerards, *General Principles of the European Convention on Human Rights* (Cambridge University Press 2019), 188; *Dickson v. the UK* App no 44362/04 (ECtHR 4 December 2007), para 78. [↑](#footnote-ref-273)
274. Janneke Gerards, *General Principles of the European Convention on Human Rights* (Cambridge University Press 2019), 189; *United Communist Party of Turkey v. Turkey* App no 19392/92 (ECtHR 30 January 1998), para 45-46. [↑](#footnote-ref-274)
275. Janneke Gerards, *General Principles of the European Convention on Human Rights* (Cambridge University Press 2019), 188 and 192; *Evans v. the UK* App no 6339/05 (ECtHR 10 April 2007), para 77. [↑](#footnote-ref-275)
276. Janneke Gerards, *General Principles of the European Convention on Human Rights* (Cambridge University Press 2019), 193. [↑](#footnote-ref-276)
277. Janneke Gerards, *General Principles of the European Convention on Human Rights* (Cambridge University Press 2019), 193; *Observer and Guardian v. the UK* App no 13585/88 (ECtHR 26 November 1991), para 60. [↑](#footnote-ref-277)
278. David Harris and others, *Law of the European Convention on Human Rights* (Oxford University Press 2018), 347. [↑](#footnote-ref-278)
279. Steven Greer, ‘The exceptions to Articles 8 to 11 of the European Convention on Human Rights’ <www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-15(1997).pdf> accessed 28 December 2019, 18. [↑](#footnote-ref-279)
280. *Sunday Times v. the UK (no. 1)* App no 6538/74 (ECtHR 26 April 1979), para 62. [↑](#footnote-ref-280)
281. Janneke Gerards, ‘How to improve the necessity test of the European Court of Human Rights’ (2013) 11 International Journal of Constitutional Law, 467. [↑](#footnote-ref-281)
282. *Sunday Times v. the UK (no. 1)* App no 6538/74 (ECtHR 26 April 1979), para 59. [↑](#footnote-ref-282)
283. Janneke Gerards, *General Principles of the European Convention on Human Rights* (Cambridge University Press 2019), 194. [↑](#footnote-ref-283)
284. Janneke Gerards, *General Principles of the European Convention on Human Rights* (Cambridge University Press 2019), 172. [↑](#footnote-ref-284)
285. Janneke Gerards, *General Principles of the European Convention on Human Rights* (Cambridge University Press 2019), 173. [↑](#footnote-ref-285)
286. Council of Europe, Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, CETS No. 108, 1981 [↑](#footnote-ref-286)
287. Article 9 of the French Civil Code, Article 226 of the French Criminal Code and Law 78-17 of 6th January 1978 **relating to information, files and liberties; Claire Bessant ‘Parental rights to publish family photographs versus children's rights to a private life’ (2017) 28** Entertainment Law Review, 44. [↑](#footnote-ref-287)
288. Article 226(1) of the French Criminal Code; **Claire Bessant ‘Parental rights to publish family photographs versus children's rights to a private life’ (2017) 28** Entertainment Law Review, 44. [↑](#footnote-ref-288)
289. **Claire Bessant ‘Parental rights to publish family photographs versus children's rights to a private life’ (2017) 28** Entertainment Law Review, 44. [↑](#footnote-ref-289)
290. Recital 38 GDPR. [↑](#footnote-ref-290)
291. Janneke Gerards, *General Principles of the European Convention on Human Rights* (Cambridge University Press 2019), 175. [↑](#footnote-ref-291)
292. Janneke Gerards, *General Principles of the European Convention on Human Rights* (Cambridge University Press 2019), 177. [↑](#footnote-ref-292)
293. Janneke Gerards, *General Principles of the European Convention on Human Rights* (Cambridge University Press 2019), 177. [↑](#footnote-ref-293)
294. See for example: Interest Engineering, ‘The Perils of Sharenting and How to Protect Your Kids Online’ <https://interestingengineering.com/the-perils-of-sharenting-and-how-to-protect-your-kids-online> accessed 28 January 2020. [↑](#footnote-ref-294)
295. New York Times, ‘Why Kids Are Confronting Their Parents About 'Sharenting’ <www.youtube.com/watch?v=YRPUZ3pufAg&frags=pl%2Cwn> accessed 28 January 2020. [↑](#footnote-ref-295)
296. Janneke Gerards, *General Principles of the European Convention on Human Rights* (Cambridge University Press 2019), 181. [↑](#footnote-ref-296)
297. Janneke Gerards, *General Principles of the European Convention on Human Rights* (Cambridge University Press 2019), 183. [↑](#footnote-ref-297)
298. Janneke Gerards, *General Principles of the European Convention on Human Rights* (Cambridge University Press 2019), 187-188. [↑](#footnote-ref-298)
299. *Von Hannover v. Germany (no. 2)* App nos 40660/08 and 60641/08 (ECtHR 7 February 2012), para 107. [↑](#footnote-ref-299)
300. Janneke Gerards, *General Principles of the European Convention on Human Rights* (Cambridge University Press 2019), 188. [↑](#footnote-ref-300)
301. Janneke Gerards, *General Principles of the European Convention on Human Rights* (Cambridge University Press 2019), 191. [↑](#footnote-ref-301)
302. Janneke Gerards, *General Principles of the European Convention on Human Rights* (Cambridge University Press 2019), 191-192. [↑](#footnote-ref-302)
303. *Evans v. the UK* App no 6339/05 (ECtHR 10 April 2007), para 77. [↑](#footnote-ref-303)
304. Janneke Gerards, *General Principles of the European Convention on Human Rights* (Cambridge University Press 2019), 193. [↑](#footnote-ref-304)
305. Janneke Gerards, *General Principles of the European Convention on Human Rights* (Cambridge University Press 2019), 193; *Barbulescu v. Romania* App no 61496/08 (ECtHR 5 September 2017), para 113 and 119. [↑](#footnote-ref-305)
306. Janneke Gerards, *General Principles of the European Convention on Human Rights* (Cambridge University Press 2019), 195. [↑](#footnote-ref-306)
307. Janneke Gerards, *General Principles of the European Convention on Human Rights* (Cambridge University Press 2019), 195-196. [↑](#footnote-ref-307)
308. Janneke Gerards, *General Principles of the European Convention on Human Rights* (Cambridge University Press 2019), 167. [↑](#footnote-ref-308)
309. Janneke Gerards, *General Principles of the European Convention on Human Rights* (Cambridge University Press 2019), 167 and 172. [↑](#footnote-ref-309)
310. Janneke Gerards, *General Principles of the European Convention on Human Rights* (Cambridge University Press 2019), 166-167. [↑](#footnote-ref-310)
311. *Handyside v. the UK* App no 5493/72 (ECtHR 7 December 1976), para 49; *Silver and Others v. the UK* App nos 5947/72; 6205/73; 7052/75; 7061/75; 7107/75; 7113/75; 7136/75 (ECtHR 25 March 1983), para 97. [↑](#footnote-ref-311)
312. Alastair Mowbray, ‘A Study of the Principle of Fair Balance in the Jurisprudence of the European Court of Human Rights’ (2010) 10 Human Rights Law Review, 289. [↑](#footnote-ref-312)
313. Laurens Lavrysen, *Human Rights in a Positive State: Rethinking the Relationship between Positive and Negative Obligations under the European Convention on Human Rights* (Intersentia 2016), 166. [↑](#footnote-ref-313)
314. *Dickson v. the UK* App no 44362/04 (ECtHR 4 December 2007), para 70. [↑](#footnote-ref-314)
315. Steven Greer, ‘The exceptions to Articles 8 to 11 of the European Convention on Human Rights’ <www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-15(1997).pdf> accessed 28 December 2019, 40. [↑](#footnote-ref-315)
316. Laurens Lavrysen, *Human Rights in a Positive State: Rethinking the Relationship between Positive and Negative Obligations under the European Convention on Human Rights* (Intersentia 2016), 168. [↑](#footnote-ref-316)
317. Laurens Lavrysen, *Human Rights in a Positive State: Rethinking the Relationship between Positive and Negative Obligations under the European Convention on Human Rights* (Intersentia 2016), 170. [↑](#footnote-ref-317)
318. *Von Hannover v. Germany (no. 2)* App nos 40660/08 and 60641/08 (ECtHR 7 February 2012), para 108-113; *Axel Springer v. Germany* App no 39954/08 (ECtHR 7 February 2012), para 89-95. [↑](#footnote-ref-318)
319. *Von Hannover v. Germany (no. 2)* App nos 40660/08 and 60641/08 (ECtHR 7 February 2012), para 108-113; *Axel Springer v. Germany* App no 39954/08 (ECtHR 7 February 2012), para 89-95. [↑](#footnote-ref-319)
320. *Satakunnan* *Markkinaporssi Oy and Satamedia Oy v. Finland* App no 931/13 (ECtHR 27 June 2017), para 166. [↑](#footnote-ref-320)
321. *Haldimann and Others v. Switzerland* App no 21830/09 (ECtHR 24 February 2015), para 52. [↑](#footnote-ref-321)
322. *Von Hannover v. Germany (no. 2)* App nos 40660/08 and 60641/08 (ECtHR 7 February 2012), para 108-113; *Axel Springer v. Germany* App no 39954/08 (ECtHR 7 February 2012), para 89-95; *Satakunnan* *Markkinaporssi Oy and Satamedia Oy v. Finland* App no 931/13 (ECtHR 27 June 2017), para 165. [↑](#footnote-ref-322)
323. Beate Rudolf, ‘Council of Europe: Von Hannover v. Germany*’* (2006) 4 International Journal of Constitutional Law, 536. [↑](#footnote-ref-323)
324. *Couderc and Hachette Filipacchi Associés* *v. France* App no 40454/07 (ECtHR 10 November 2015), para 97. [↑](#footnote-ref-324)
325. *Satakunnan* *Markkinaporssi Oy and Satamedia Oy v. Finland* App no 931/13 (ECtHR 27 June 2017), para 168. [↑](#footnote-ref-325)
326. *Satakunnan* *Markkinaporssi Oy and Satamedia Oy v. Finland* App no 931/13 (ECtHR 27 June 2017), para 169. [↑](#footnote-ref-326)
327. *Couderc and Hachette Filipacchi Associés* *v. France* App no 40454/07 (ECtHR 10 November 2015), para 102. [↑](#footnote-ref-327)
328. *Couderc and Hachette Filipacchi Associés* *v. France* App no 40454/07 (ECtHR 10 November 2015), para 103. [↑](#footnote-ref-328)
329. *Couderc and Hachette Filipacchi Associés* *v. France* App no 40454/07 (ECtHR 10 November 2015), para 117. [↑](#footnote-ref-329)
330. *Couderc and Hachette Filipacchi Associés* *v. France* App no 40454/07 (ECtHR 10 November 2015), para 118. [↑](#footnote-ref-330)
331. *Krone Verlag GmbH & Co KG and Krone Multimedia GmbH & Co KG v. Austria* App no 33497/07 (ECtHR 17 January 2012), para 37. [↑](#footnote-ref-331)
332. *Krone Verlag GmbH & Co KG and Krone Multimedia GmbH & Co KG v. Austria* App no 33497/07 (ECtHR 17 January 2012), para 37. [↑](#footnote-ref-332)
333. *Verlagsgruppe News GmbH v. Austria (no. 2)* App no 10520/02 (ECtHR 14 December 2006), para 36. [↑](#footnote-ref-333)
334. *News Verlags GmbH & Co. KG v. Austria* App no 31457/96 (ECtHR 11 January 2000), para 54. [↑](#footnote-ref-334)
335. *Couderc and Hachette Filipacchi Associés* *v. France* App no 40454/07 (ECtHR 10 November 2015), para 120. [↑](#footnote-ref-335)
336. *Couderc and Hachette Filipacchi Associés* *v. France* App no 40454/07 (ECtHR 10 November 2015), para 122. [↑](#footnote-ref-336)
337. *Von Hannover v. Germany (no. 2)* App nos 40660/08 and 60641/08 (ECtHR 7 February 2012), para 110. [↑](#footnote-ref-337)
338. *Von Hannover v. Germany (no. 2)* App nos 40660/08 and 60641/08 (ECtHR 7 February 2012), para 111. [↑](#footnote-ref-338)
339. *Von Hannover v. Germany (no. 2)* App nos 40660/08 and 60641/08 (ECtHR 7 February 2012), para 112. [↑](#footnote-ref-339)
340. *Von Hannover v. Germany (no. 2)* App nos 40660/08 and 60641/08 (ECtHR 7 February 2012), para 112. [↑](#footnote-ref-340)
341. Marga Groothuis, ‘The Right to Privacy for Children on the Internet: New Developments in the Case Law of the European Court of Human Rights’ in Simone Van der Hof and others (eds), *Minding Minors Wandering the Web: Regulating Online Child Safety* (Asser Press 2014), 154. [↑](#footnote-ref-341)
342. *Von Hannover v. Germany (no. 2)* App nos 40660/08 and 60641/08 (ECtHR 7 February 2012), para 113. [↑](#footnote-ref-342)
343. *Axel Springer v. Germany* App no 39954/08 (ECtHR 7 February 2012), para 93. [↑](#footnote-ref-343)
344. *Axel Springer v. Germany* App no 39954/08 (ECtHR 7 February 2012), para 95. [↑](#footnote-ref-344)
345. Alexandra Timmer, ‘A Quiet Revolution: Vulnerability in the European Court of Human Rights’ in Martha Fineman and Anna Grear (eds), *Vulnerability: Reflections on a New Ethical Foundation for Law and Politics* (Ashgate 2013), 147-170; *Yordanova v. Bulgaria* App No 25446/06 (ECtHR 24 April 2012), para 129. [↑](#footnote-ref-345)
346. Lourdes Peroni and Alexandra Timmer, ‘Vulnerable groups: The promise of an emerging concept in European Human Rights Convention Law’ (2013) 11 International Journal of Constitutional Law, 1057; *M.S.S. v. Belgium and Greece* App No 30696/09 (ECtHR 21 January 2011), para 251. [↑](#footnote-ref-346)
347. Lourdes Peroni and Alexandra Timmer, ‘Vulnerable groups: The promise of an emerging concept in European Human Rights Convention Law’ (2013) 11 International Journal of Constitutional Law, 1057; *Alajos Kiss v. Hungary* App No 38832/06 (ECtHR 20 May 2010), para 42. [↑](#footnote-ref-347)
348. *Popov v. France* App nos 39472/07 and 39474/07 (ECtHR 19 January 2012), para 91; *Okkali v. Turkey* App no 52067/99 (ECtHR 17 October 2006), para 70; *Ilbeyi Kemaloğlu and Meriye Kemaloğlu v. Turkey* App no 19986/06 (ECtHR 10 April 2012), para 35; *Kurier Zeitungsverlag und Druckerei GmbH v. Austria* App no 3401/07 (ECtHR 17 January 2012), para 53. [↑](#footnote-ref-348)
349. *M.S.S. v. Belgium and Greece* App No 30696/09 (ECtHR 21 January 2011), para 251. [↑](#footnote-ref-349)
350. Alexandra Timmer, ‘A Quiet Revolution: Vulnerability in the European Court of Human Rights’ in Martha Fineman and Anna Grear (eds), *Vulnerability: Reflections on a New Ethical Foundation for Law and Politics* (Ashgate 2013), 147-170; Lourdes Peroni and Alexandra Timmer, ‘Vulnerable groups: The promise of an emerging concept in European Human Rights Convention Law’ (2013) 11 International Journal of Constitutional Law, 1080. [↑](#footnote-ref-350)
351. *Satakunnan* *Markkinaporssi Oy and Satamedia Oy v. Finland* App no 931/13 (ECtHR 27 June 2017), para 163. [↑](#footnote-ref-351)
352. *Satakunnan* *Markkinaporssi Oy and Satamedia Oy v. Finland* App no 931/13 (ECtHR 27 June 2017), para 163. [↑](#footnote-ref-352)
353. *Satakunnan* *Markkinaporssi Oy and Satamedia Oy v. Finland* App no 931/13 (ECtHR 27 June 2017), para 163. [↑](#footnote-ref-353)
354. Janneke Gerards, *General Principles of the European Convention on Human Rights* (Cambridge University Press 2019), 167. [↑](#footnote-ref-354)
355. Janneke Gerards, *General Principles of the European Convention on Human Rights* (Cambridge University Press 2019), 166-167. [↑](#footnote-ref-355)
356. Liza Long, ‘I Am Adam Lanza's Mother’ <https://thebluereview.org/i-amadam-

     lanzas-mother> accessed 29 July 2019. [↑](#footnote-ref-356)
357. Stacey Steinberg, ‘Sharenting: Children's Privacy in the Age of Social Media’ (2017) 66 Emory Law Journal, 852. [↑](#footnote-ref-357)
358. Volkskrant, ‘Rauwjongen Tom Watkins: 'Als ik in een pleeggezin kom, dan loop ik gewoon weg' <www.volkskrant.nl/nieuws-achtergrond/rauwjongen-tom-watkins-als-ik-in-een-pleeggezin-kom-dan-loop-ik-gewoon-weg~bf803c4e/> accessed 10 January 2020; Francis Kenter, ‘Ik lust je rauw: Dagboek van een moeder’ <http://iklustjerauw.nl/home/> accessed 10 January 2020. [↑](#footnote-ref-358)
359. Libelle, ‘Zo gaat het nu met Tom (20), die alleen maar rauw voedsel eet’ <www.libelle.nl/lekker-in-je-vel/tom-rauw-voedsel-francis/> accessed 10 January 2020. [↑](#footnote-ref-359)
360. Telegraaf, ‘Francis (62) eet slechts rauw voedsel: En donderdags eet ik niets’ <www.telegraaf.nl/vrouw/1201795298/francis-62-eet-slechts-rauw-voedsel-en-donderdags-eet-ik-niets> accessed 10 January 2020. [↑](#footnote-ref-360)
361. *Satakunnan* *Markkinaporssi Oy and Satamedia Oy v. Finland* App no 931/13 (ECtHR 27 June 2017), para 169. [↑](#footnote-ref-361)
362. Harpers Bazaar, ‘15 Kids Who Are Already Pro Fashion Bloggers’ <www.harpersbazaar.com/fashion/trends/g4536/fashionable-kids-on-instagram/> accessed 10 January 2020. [↑](#footnote-ref-362)
363. *Von Hannover v. Germany (no. 1)* App no 59320/00 (ECtHR 24 June 2004), para 76. [↑](#footnote-ref-363)
364. *Von Hannover v. Germany (no. 1)* App no 59320/00 (ECtHR 24 June 2004), para 61, 76. [↑](#footnote-ref-364)
365. *Von Hannover v. Germany (no. 1)* App no 59320/00 (ECtHR 24 June 2004), para 62, 76. [↑](#footnote-ref-365)
366. *Satakunnan* *Markkinaporssi Oy and Satamedia Oy v. Finland* App no 931/13 (ECtHR 27 June 2017), para 168. [↑](#footnote-ref-366)
367. Diary of the dad, ‘The year of the Panda Parent?’ <www.diaryofthedad.co.uk/2019/06/the-year-of-the-panda-parent/> accessed 14 January 2020. [↑](#footnote-ref-367)
368. *Couderc and Hachette Filipacchi Associés* *v. France* App no 40454/07 (ECtHR 10 November 2015), para 117. [↑](#footnote-ref-368)
369. *Von Hannover v. Germany (no. 2)* App nos 40660/08 and 60641/08 (ECtHR 7 February 2012), para 110. [↑](#footnote-ref-369)
370. *Couderc and Hachette Filipacchi Associés* *v. France* App no 40454/07 (ECtHR 10 November 2015), para 120. [↑](#footnote-ref-370)
371. Gelderlander, ‘Anastasia (5) verdient ruim 16 miljoen euro per jaar met Youtuben’ <www.gelderlander.nl/buitenland/anastasia-5-verdient-ruim-16-miljoen-euro-per-jaar-met-youtuben~ab738561/> accessed 10 January 2020. [↑](#footnote-ref-371)
372. *Satakunnan* *Markkinaporssi Oy and Satamedia Oy v. Finland* App no 931/13 (ECtHR 27 June 2017), para 180. [↑](#footnote-ref-372)
373. *Von Hannover v. Germany (no. 2)* App nos 40660/08 and 60641/08 (ECtHR 7 February 2012), para 110. [↑](#footnote-ref-373)
374. *Von Hannover v. Germany (no. 2)* App nos 40660/08 and 60641/08 (ECtHR 7 February 2012), para 110. [↑](#footnote-ref-374)
375. YouTube, ‘Olivia’s vlog takeover’ <www.youtube.com/watch?v=gy0QmJNKRkU> accessed 12 January 2020. [↑](#footnote-ref-375)
376. *Axel Springer v. Germany* App no 39954/08 (ECtHR 7 February 2012), para 101. [↑](#footnote-ref-376)
377. Yesim Surmelioglu and Suleyman Sadi Seferoglu, ‘An examination of digital footprint awareness and digital experiences of higher education students’ (2019) 11 World Journal on Educational Technology: Current Issues, 58. [↑](#footnote-ref-377)
378. *Von Hannover v. Germany (no. 2)* App nos 40660/08 and 60641/08 (ECtHR 7 February 2012), para 111. [↑](#footnote-ref-378)
379. *Von Hannover v. Germany (no. 2)* App nos 40660/08 and 60641/08 (ECtHR 7 February 2012), para 112. [↑](#footnote-ref-379)
380. YouTube, ‘Her first ballet class’ <www.youtube.com/watch?v=NB-BGdvDo88&frags=pl%2Cwn> accessed 15 September 2018; Mommyhood, ‘Maddox’ eczeem onder controle!’ <https://mommytobe.nl/personal/maddox-eczeem-onder-controle/> accessed 20 August 2019; The Sun, ‘YouTubers accused of child abuse after punishing daughter, 2, with a cold shower – but they claim trolls are trying to destroy their lives’ <www.thesun.co.uk/fabulous/9777415/saccone-joly-backlash-child-abuse-claims-punish-daughter-shower/> accessed 12 January 2020. [↑](#footnote-ref-380)
381. *Couderc and Hachette Filipacchi Associés* *v. France* App no 40454/07 (ECtHR 10 November 2015), para 140. [↑](#footnote-ref-381)
382. *Egill Einarsson v. Iceland* App no 24703/15 (ECtHR 7 November 2017), para 46. [↑](#footnote-ref-382)
383. Stacey Steinberg, ‘Sharenting: Children's Privacy in the Age of Social Media’ (2017) 66 Emory Law Journal, 844. [↑](#footnote-ref-383)
384. Marga Groothuis, ‘The Right to Privacy for Children on the Internet: New Developments in the Case Law of the European Court of Human Rights’ in Simone Van der Hof and others (eds), *Minding Minors Wandering the Web: Regulating Online Child Safety* (Asser Press 2014), 154. [↑](#footnote-ref-384)
385. Marga Groothuis, ‘The Right to Privacy for Children on the Internet: New Developments in the Case Law of the European Court of Human Rights’ in Simone Van der Hof and others (eds), *Minding Minors Wandering the Web: Regulating Online Child Safety* (Asser Press 2014), 153. [↑](#footnote-ref-385)
386. *Perrin v. the UK* App no 5446/03 (ECtHR 18 October 2005). [↑](#footnote-ref-386)
387. *Perrin v. the UK* App no 5446/03 (ECtHR 18 October 2005). [↑](#footnote-ref-387)
388. Marga Groothuis, ‘The Right to Privacy for Children on the Internet: New Developments in the Case Law of the European Court of Human Rights’ in Simone Van der Hof and others (eds), *Minding Minors Wandering the Web: Regulating Online Child Safety* (Asser Press 2014), 154; *K.U. v. Finland* App no 2872/02 (ECtHR 2 December 2008), para 40 and 46. [↑](#footnote-ref-388)
389. Marga Groothuis, ‘The Right to Privacy for Children on the Internet: New Developments in the Case Law of the European Court of Human Rights’ in Simone Van der Hof and others (eds), *Minding Minors Wandering the Web: Regulating Online Child Safety* (Asser Press 2014), 155. [↑](#footnote-ref-389)
390. *K.U. v. Finland* App no *2872/02* (ECtHR 2 December 2008), para 40 and 46. [↑](#footnote-ref-390)
391. Stacey Steinberg, ‘Sharenting: Children's Privacy in the Age of Social Media’ (2017) 66 Emory Law Journal, 856. [↑](#footnote-ref-391)
392. Maeve Duggan and others, ‘Parents and social media’ (2015) Pew Research Center, 3-4; Alicia Blum-Ross and Sonia Livingstone, ‘Sharenting, parent blogging, and the boundaries of the digital self’ (2017) 15 Popular Communication, 113; Claire Bessant, ‘Sharenting: balancing the conflicting rights of parents and children’ (2018) 23 Communications Law, 8. [↑](#footnote-ref-392)
393. *Von Hannover v. Germany (no. 2)* App nos 40660/08 and 60641/08 (ECtHR 7 February 2012), para 113. [↑](#footnote-ref-393)
394. Article 8(1) GDPR. [↑](#footnote-ref-394)
395. Article 8(1) GDPR. [↑](#footnote-ref-395)
396. Recital 38 GDPR. [↑](#footnote-ref-396)
397. *Von Hannover v. Germany (no. 2)* App nos 40660/08 and 60641/08 (ECtHR 7 February 2012), para 113. [↑](#footnote-ref-397)
398. *Von Hannover v. Germany (no. 2)* App nos 40660/08 and 60641/08 (ECtHR 7 February 2012), par 43. [↑](#footnote-ref-398)
399. *Von Hannover v. Germany (no. 2)* App nos 40660/08 and 60641/08 (ECtHR 7 February 2012), para 113. [↑](#footnote-ref-399)
400. *Couderc and Hachette Filipacchi Associés* *v. France* App no 40454/07 (ECtHR 10 November 2015), para 132. [↑](#footnote-ref-400)
401. *Egill Einarsson v. Iceland* App no 24703/15 (ECtHR 7 November 2017), para 28. [↑](#footnote-ref-401)
402. Article 226(1) of the French Criminal Code**; Claire Bessant ‘Parental rights to publish family photographs versus children's rights to a private life’ (2017) 28** Entertainment Law Review, 44. [↑](#footnote-ref-402)
403. Alexandra Timmer, ‘A Quiet Revolution: Vulnerability in the European Court of Human Rights’ in Martha Fineman and Anna Grear (eds), *Vulnerability: Reflections on a New Ethical Foundation for Law and Politics* (Ashgate 2013), 147-170; *Yordanova v. Bulgaria* App No 25446/06 (ECtHR Apr. 24 2012), para 129. [↑](#footnote-ref-403)
404. *Kurier Zeitungsverlag und Druckerei GmbH (no. 2) v. Austria* App no 1593/06 (ECtHR 19 June 2012), para 52; *Krone Verlag GmbH v. Austria* App no27306/07 (ECtHR 19 June 2012), para 50. [↑](#footnote-ref-404)
405. *Kurier Zeitungsverlag und Druckerei GmbH (no. 2) v. Austria* App no 1593/06 (ECtHR 19 June 2012), para 52; *Krone Verlag GmbH v. Austria* App no27306/07 (ECtHR 19 June 2012), para 50. [↑](#footnote-ref-405)
406. *Kurier Zeitungsverlag und Druckerei GmbH (no. 2) v. Austria* App no 1593/06 (ECtHR 19 June 2012), para 59; *Krone Verlag GmbH v. Austria* App no27306/07 (ECtHR 19 June 2012), para 57. [↑](#footnote-ref-406)
407. *Kurier Zeitungsverlag und Druckerei GmbH (no. 1) v. Austria* App no 3401/07 (ECtHR 17 January 2012), para 47; *Krone Verlag GmbH & Co KG and Krone Multimedia GmbH & Co KG v. Austria* App no 33497/07 (ECtHR 17 January 2012), para 52. [↑](#footnote-ref-407)
408. *Kurier Zeitungsverlag und Druckerei GmbH (no. 1) v. Austria* App no 3401/07 (ECtHR 17 January 2012), para 47; *Krone Verlag GmbH & Co KG and Krone Multimedia GmbH & Co KG v. Austria* App no 33497/07 (ECtHR 17 January 2012), para 52. [↑](#footnote-ref-408)
409. *Kurier Zeitungsverlag und Druckerei GmbH (no. 1) v. Austria* App no 3401/07 (ECtHR 17 January 2012), para 53; *Krone Verlag GmbH & Co KG and Krone Multimedia GmbH & Co KG v. Austria* App no 33497/07 (ECtHR 17 January 2012), para 58. [↑](#footnote-ref-409)
410. Alexandra Timmer, ‘A Quiet Revolution: Vulnerability in the European Court of Human Rights’ in Martha Fineman and Anna Grear (eds), *Vulnerability: Reflections on a New Ethical Foundation for Law and Politics* (Ashgate 2013), 147-170; Lourdes Peroni and Alexandra Timmer, ’Vulnerable groups: The promise of an emerging concept in European Human Rights Convention Law’ (2013) 11 International Journal of Constitutional Law, 1080. [↑](#footnote-ref-410)
411. Ciara Smyth, ‘The Best Interests of the Child in the Expulsion and First-entry Jurisprudence of the European Court of Human Rights: How Principled is the Court’s Use of the Principle?’ (2015) 17 European Journal of Migration and Law 17, 70. [↑](#footnote-ref-411)
412. *Elsholz v. Germany* App no 25735/94 (ECtHR 13 July 2000), para 50. [↑](#footnote-ref-412)
413. BBC News, ‘Christmas cards that shocked the web’ <www.bbc.com/news/blogs-trending-35128683> accessed 25 January 2020. [↑](#footnote-ref-413)
414. ABC News, ‘Louisiana Family Attacked on Social Media Over Christmas Card’ <abcnews.go.com/Lifestyle/louisiana-family-attacked-social-media-christmas-card/story?id=35804529> accessed 28 January 2020; The Atlantic, ‘The Perils of 'Sharenting' <www.theatlantic.com/technology/archive/2016/10/babies-everywhere/502757/> accessed 28 January 2020. [↑](#footnote-ref-414)
415. Stacey Steinberg, ‘Growing up under the watchful eyes of his mother’s newsfeed’ <www.washingtonpost.com/news/parenting/wp/2017/05/04/growing-up-under-the-watchful-eyes-of-his-mothers-newsfeed/> accessed 28 January 2020. [↑](#footnote-ref-415)
416. Stacey Steinberg, ‘Sharenting: Children's Privacy in the Age of Social Media’ (2017) 66 Emory Law Journal, 856. [↑](#footnote-ref-416)
417. Article 8 GDPR. [↑](#footnote-ref-417)
418. Grace Koelma, ‘This unborn baby has 100K Instagram followers’  
     <https://www.kidspot.com.au/parenting/parenthood/parenting-style/this-unborn-baby-has-100k-instagram-followers/news-story/fb0e2c1994609315cefe96d3d1b6698b> accessed 6 February 2020. [↑](#footnote-ref-418)