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**THE PROTECTION OF THE CHILDREN ON SOCIAL MEDIA:**

**FINE AS A POSSIBLE SOLUTION TO PERSONAL INFORMATION OVERSHARING**

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I hereby declare that the I have compiled the paper independently and all works, important standpoints and data by other authors have been properly referenced and the same paper has not been previously been presented for grading.

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## **ABSTRACT**

Many parents (over)share personal details regarding their children without thinking about the consequences. Private information about their children enters the digital space even before their birth. Furthermore, parents forget that they are not owners of their children's data and if they want to use a picture of a child on their social media, they need to have a consent of a child because child also has his/her own right to privacy.

Privacy laws are respected, but at the end of the day, the new General Data Protection Regulation does not offer a penalty or possibility to turn to Estonian Data Protection Inspectorate if a dispute is family-oriented. Therefore, when parents share information about their kids on social media, they risk creating unwanted digital future for them. There is no doubt that parents do have a say in their children lives, but obligation to keep them safe should always overweight that. So what to do if this social media freedom is too overpowering? Should there be additional rules or penalties to stop parents with itching fingers?

The thesis aims to figure out whether parents who overshare personal information about their children can be stopped by using existing legal possibilities or penalty in the form of a fine could be a better solution.

The thesis uses a qualitative research method and for the most part examines various academic articles. It evaluates the following hypothesis: Specific legal solutions in the form of the fines will improve the protection of the privacy of the Estonian children from overexposure on social media by their parents.

**KEYWORDS:** parents, personal information, rights of the child, penalty, fine as motivator

## INTRODUCTION

Securing the child's rights and well-being places the responsibility to safeguard the child from any danger primarily on the parent's shoulders. However, state and local government should also back them up as much as possible.<sup>1</sup> Usage of social media does not change that fact; on the contrary, it makes it even more actual. Various reports reveal that online offenses against children are on the rising.<sup>2</sup> Therefore, it is discussed that publishing too much personal information about the child on social media creates many legal and moral questions and has various impacts on a child's life.<sup>3</sup>

EU highly respects the rights of the child as part of human rights. Protection and promotion of the rights of the child are essential. Moreover, all EU countries are bound to United Nations Convention on the rights of the child.<sup>4</sup> General Data Protection Regulation, also obligates to protect the right of the child and ensure, among other things, their data safety.<sup>5</sup> However, Article 8 of the GDPR,<sup>6</sup> which should protect the privacy of the children online, may complicate the situation, because there are concerns that such provision will give even more power to decide about the child's digital future into the hands of the parents.<sup>7</sup> Considering that each parent's morals and boundaries are different, author of this thesis believes that it is important to research if the existing legal framework is enough to protect privacy and future of the Estonian children in the realm of

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<sup>1</sup> Lastekaitseadus RT I, 12.12.2018, 49, §7.

<sup>2</sup> INTERPOL (2017). *Crimes against children*. Retrieved from <https://www.interpol.int/en/News-and-Events/News/2017/INTERPOL-backing-Safer-Internet-Day-to-promote-online-safety>, 10 May 2020.

<sup>3</sup> Steinberg, S.B. (2017). Sharenting: Children's Privacy In The Age Of Social Media. – *Emory Law Journal*, Vol. 66, No. 4, 846-877.

<sup>4</sup> *EU action on the rights of the child*. European Commission. Retrieved from [https://ec.europa.eu/info/policies/justice-and-fundamental-rights/rights-child/eu-action-rights-child\\_en#legalbasis](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/rights-child/eu-action-rights-child_en#legalbasis), 10 May 2020; UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3.

<sup>5</sup> Lambert. P. (2017). *Understanding the New European Data Protection Rules*. (1st ed.) New York, Auerbach Publications, 26.

<sup>6</sup> 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, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 4.5.2016, p. 1–88, art 8.

<sup>7</sup> Savirimuthu, J. (2016). *EU General Data Protection Regulation Article 8: Has Anyone Consulted the Kids?* Retrieved from <https://blogs.lse.ac.uk/mediapolicyproject/2016/03/01/eu-general-data-protection-regulation-article-8-has-anyone-consulted-the-kids/>, 10 May 2020.

social media. In addition, it is fascinating to analyse if a specific penalty could halt excessive online exposure.

The thesis's hypothesis is the following: **Specific legal solutions in the form of the fines will improve the protection of the privacy of the Estonian children from overexposure on social media by their parents.**

It is observed that parents may forget that the less personal data is out there, the lower the chances are that someone can use it against them or their children.<sup>8</sup> Therefore, the author finds that parents fail to understand that it is not entirely justified to handle their kids' personal information as they see it fit. As a result, this thesis aims to analyse if there are legal solutions that could stop parents from the oversharing personal information about their children. The thesis also examines whether there should be fines similarly to France in the cases where parents are the ones who instead of the protection and guidance, overshare child's personal information online. Hence, not only inflict danger on their children but also forgetting about their children privacy rights.

The thesis is based on a qualitative research method. The author uses the legislation of the international, EU and national law to analyse the situation around concerned issues. For the most part, sources of this thesis are peer-reviewed articles about children and their connections to social media and parents' role in the digital future of their children. Articles will also include topics about the essence of privacy and legal problems concerning the protection of a child's privacy. Furthermore, the author examined relevant articles of the General Data Protection Regulation.<sup>9</sup> In addition, the thesis will consider and analyse court cases and use current news to examine the problems and attitude of the society concerning the topic.

The author will firstly introduce how children are connected to the internet and social media. According to various researches, electronic devices are not something alien or undesirable for children. Pre-schoolers and even toddlers use them on a day-to-day basis.<sup>10</sup> In many cases, children will sway parents towards being on track with the new developments in this field.<sup>11</sup> Therefore, it is not surprising that kids will not remain strangers to social media. Also, it is noted that that

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<sup>8</sup> Steinberg, *supra nota* 3, 847.

<sup>9</sup> Regulation (EU) 2016/679, *supra nota* 6, art 8.

<sup>10</sup> Chaffey, D. (2019). *Global social media research summary 2019*. Retrieved from <https://www.smartinsights.com/social-media-marketing/social-media-strategy/new-global-social-media-research/>, 10 May 2020.

<sup>11</sup> Correa, T. (2016). Acquiring a New Technology at Home: A Parent-Child Study About Youths' Influence on Digital Media Adoption in a Family. – *Journal of Broadcasting & Electronic Media*, Vol. 60, No. 1, 123-124.

increased use of the internet facilitates crimes against children.<sup>12</sup> Examination of online materials and space showed that offenders distribute and access child abuse material with great ease. Safety specialists pointed out that criminals can also come into direct contact with children through chatrooms and social media.<sup>13</sup>

The second chapter will examine the legal issues and viewpoints connected with this matter. Various articles about privacy, consent, and the right to be forgotten do not argue with the existence of those rights for children.<sup>14</sup> European Commission, leaning on the essential legislation, greatly contributes to the protection of the rights of the child. EU countries do the same, showing their willingness by implementing the EU law in this area.<sup>15</sup> However, it is noted that there are no direct laws which prohibit parents from sharing too much about their children online.<sup>16</sup>

The third chapter compares Estonian and French attitudes towards the same problem and derives the possible solution from that difference. It is specified that states may regulate penalties for breaking the privacy laws on their own accord. For example, French law foresees fines up to 45,000 euros or even a year in prison if a parent is guilty of publicising intimate details of their children without their consent.<sup>17</sup> In contrast, current laws in Estonia do not include such penalty for the parents. It is noted that GDPR and Article 8 does handle the topic of consent. However it is not enough because it specifies the topic of the children's consent "in relation to information society services", but it does not have any indications on immediate solution or answer in the cases where parents themselves share private information about their children.<sup>18</sup>

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<sup>12</sup> INTERPOL (2017), *supra nota* 2.

<sup>13</sup> INTERPOL (2018). *Study finds boys and very young children at greater risk of severe online sexual abuse*. Retrieved from <https://www.interpol.int/en/News-and-Events/News/2018/Study-finds-boys-and-very-young-children-at-greater-risk-of-severe-online-sexual-abuse>, 10 May 2020.

<sup>14</sup> Steinberg, *supra nota* 3, 839-884.

<sup>15</sup> European Commission, *supra nota* 4.

<sup>16</sup> Steinberg, *supra nota* 3, 869.

<sup>17</sup> Orlando, J. (2016). *Social media: Think again before you post those pics of your kids*. Retrieved from <https://www.abc.net.au/news/2016-12-27/think-again-before-you-post-those-pics-of-your-kids/8149392>, 10 May 2020.; Chazan, D. (2016). *French parents 'could be jailed' for posting children's photos online*. Retrieved from <https://www.telegraph.co.uk/news/worldnews/europe/france/12179584/French-parents-could-be-jailed-for-posting-childrens-photos-online.html>, 10 May 2020.

<sup>18</sup> Regulation (EU) 2016/679, *supra nota* 6, art 8.

# 1. CHILDREN AND SOCIAL MEDIA

## 1.1 Internet as inseparable part of children's life

European Commission expressed the necessity of “creating better internet for the kids”, confirming that a considerable part of internet users are children who among other things, spend a significant amount of time on social media. Additionally, the Commission noted that the internet provides numerous possibilities for development of the child.<sup>19</sup>

Technology surrounds everything and everyone, it is acknowledged that it is impossible to avoid it. Children are also stimulated to use all available sources of information.<sup>20</sup> It is pointed out that EU supports and actively encourages the idea that children need to obtain access to information, but their safety and privacy should also be considered.<sup>21</sup> Article 17 of the CRC, affirms that children should get access to all necessary and advantageous information.<sup>22</sup>

It is predicted that the development of the technologies will have an essential role in a child's life. Hence, it is not surprising that involvement in “digital culture” impacts, if not the whole life of the child, then at least parts of it.<sup>23</sup> It is concluded that the online future of children depends on the actions of the schools and parents.<sup>24</sup> It is stipulated that parents should overlook their knowledge

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<sup>19</sup> *Creating a Better Internet for Kids*. European Commission. Retrieved from <https://ec.europa.eu/digital-single-market/en/policies/better-internet-kids>, 30 April 2020.

<sup>20</sup> Globokar, R. (2018). Impact of digital media on emotional, social and moral development of children. – *Gulhane Medical Journal*, Vol. 60, No. 4, 546.

<sup>21</sup> Savirimuthu, J. (2016) The EU, Online Child Safety and Media Literacy. - *International Journal of Children's Rights*, Vol. 19, No. 3, 567.

<sup>22</sup> Convention on the Rights of the Child, *supra nota* 4, Art 17.

<sup>23</sup> Yust, K. M. (2014). Digital power: exploring the effects of social media on children's spirituality. – *International Journal of Children's Spirituality*, Vol. 19, No. 2, 141.

<sup>24</sup> Globokar, R. (2018), *supra nota* 20, 555-556.

about (social) media because rapidly changing online environment, demands informed and conscious parental participation.<sup>25</sup>

The author of this thesis agrees that the internet already plays a significant role in children's existence. It is evident that the internet is and will remain an integral part of children's lives, and it is unlikely that it will vanish from their life. Need for their safety and privacy is also recognized and regarded highly. Consequently, parents should also contribute to the protection of the privacy and online safety of their children. Nevertheless, there are cases where parents are the ones who put their children at risk. Thus, it is essential to analyse social media dangers and whether parental actions result in privacy and online safety violations.

## 1.2 Children and dangerous sides of social media

There are many threats connected to social media. Every internet user falls under the possibility to encounter various risks, but it is highlighted that children are frequently initial targets of online criminals.<sup>26</sup> Research shows that popularity and usage of the internet and social media grows with each passing year.<sup>27</sup> That, in turn, could be the reason why crimes against children are facilitated even more. It is reported that ill-intentioned persons already gained easy access to data connected to children, but various social media platforms also provide them with a possibility to get in touch with their future victims directly.<sup>28</sup> Consequently, it is instructed that when dealing with questions of social media and children, it is fundamental not to overlook all the associated dangers.<sup>29</sup>

The pattern of online crimes against children has always been similar. Different surveys depict similar results. For example, a study about online threats encountered by children showed that one

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<sup>25</sup> Shin, W. et al. (2012). Tweens' online privacy risks and the role of parental mediation. – *Journal of Broadcasting and Electronic Media*, Vol. 56, No. 4, 632-649.

<sup>26</sup> INTERPOL (2017). *Backing Safer Internet Day to promote online safety*. Retrieved from <https://www.interpol.int/en/News-and-Events/News/2017/INTERPOL-backing-Safer-Internet-Day-to-promote-online-safety>, 10 May 2020

<sup>27</sup> Chaffey, (2019), *supra nota* 10.

<sup>28</sup> INTERPOL (2017), *supra nota* 2.

<sup>29</sup> INTERPOL (2017). *Keeping children safe online*. Retrieved from <https://www.interpol.int/en/Crimes/Crimes-against-children/Keeping-children-safe-online>, 10. May 2020.

of the occurring problems is connected to the strangers who tried to approach children.<sup>30</sup> Moreover, it is stated that such crimes are rising in numbers because of the development of technology.<sup>31</sup> Already in 1997, it was noted that new appliances in the form of chunky desktop computers opened new possibilities for online predators, who used new technology to contact the children.<sup>32</sup> Some surveys conducted in EU affirmed that crimes did make a jump from the physical world to the cyber world. However, that research also noted that it is not possible to grasp the real magnitude of the problem.<sup>33</sup>

Those children who do not use social media personally are still connected to online dangers through the behaviour of their parents. It is stipulated that mothers and fathers all over the world strip their children from privacy by oversharing personal information about their kids. Consequently, pushing them to face the same dangers as everyone else on social media does.<sup>34</sup> It was found that sharing of a child's personal information on social media offers easy access to not only photos of the minors, but also allows the searcher to obtain detailed and personal information about the kid. That, in turn, makes them face the harmful side of social media more easily.<sup>35</sup>

### **1.3 Parental sharing on social media: The good, the bad, the dangerous?**

Social media usage increases every year; it indeed is an integral part of our lives. Reports show that billions of people utilize internet every day.<sup>36</sup> Therefore, it is not surprising that many parents

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<sup>30</sup> Nair, A. (2016). Mobile Phones and the Internet: Legal Issues in the Protection of Children. – *International Review of Law, Computers & Technology*, Vol. 20, No. 1, 180.

<sup>31</sup> *Ibid.*, 178.

<sup>32</sup> Cobb, J.A. (1996-1997). An Examination of Venue Issues concerning Online Crimes against Children: What Happens When Cyberspace is Used to Lure Children into Sexual Relations - A Look at Federal Venue Provisions. – *Journal of Family Law.*, Vol. 35, No. 3, 537-554.

<sup>33</sup> Caneppele, S, Aebi, M. (2019). Crime Drop or Police Recording Flop? On the Relationship between the Decrease of Offline Crime and the Increase of Online and Hybrid Crimes. – *Policing: A Journal of Policy & Practice*, Vol. 13, No. 1, 66-79.

<sup>34</sup> Steinberg, *supra nota* 3, 839-884.

<sup>35</sup> Choi, G.Y., Lewallen, J. (2018). "Say Instagram, Kids!": Examining Sharenting and Children's Digital Representations on Instagram. – *Howard Journal of Communications*, Vol. 29, No. 2, 159-160.

<sup>36</sup> Kemp, S. (2020). DIGITAL 2020: GLOBAL DIGITAL OVERVIEW. Retrieved from <https://datareportal.com/reports/digital-2020-global-digital-overview>, 10 May 2020.

will use it not only for themselves but also for their kids. It is not something extraordinary when a couple of mothers' chat about their children. However, this simple conversation may obtain a different shape after being relocated to social media. One study shares that it is a constant struggle for parents to partake in social media activities without sharing too much about their children.<sup>37</sup>

The author finds that on the surface, it does not seem like a big problem. The author also believes that it is relatively innocent and natural to be proud of being a parent of the new-born. Moreover, it is not usually frowned upon when a happy mother reveals her new-born on social media. Nevertheless, it is pointed out by the authorities that innocent potty- training photo may have a more profound impact than just a cute reaction from the family and friends. In fact, there are no guarantees that innocent photo will not end up in the hands of the online predator. Furthermore, it is emphasized that many photos end up in the hands of the wrong individuals.<sup>38</sup>

Another, complicated problem lies in the fact that contrary to some parents beliefs, children do have right to privacy.<sup>39</sup> Therefore author believes that they have the right to decide if they even want to have a social media account, not to mention one with the hundreds of baby photos. It does not seem like a big problem, but analysis of one of the internet security companies demonstrated that majority of children appear on social media right after their birth and in some cases even before because some parents create accounts and e-mails for children who are not even born yet. Absence of pictures is resolved with the help of "sonogram scans".<sup>40</sup> It is possible that parents forget that the internet is the vast and unapologetic place. Every shared photo and phrase will stay there forever. Consequently, such children can never be absolutely sure where, why and what images from their past will someday resurface.

There are many observations which note that there are more and more children whose social media presence is so strong and influential that they obtain status similar to that of a celebrity. There are many successful social media platforms, where parents use their kids as models; alarmingly such accounts have thousands and millions of followers. Usually, such channels are managed under the name of a child by their parents.<sup>41</sup> However, it was found that such openness attracts not only

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<sup>37</sup> Bartels Supple, J. (2015). Parents' Growing Pains on Social Media: Modeling Authenticity. – *Character and... Social Media*, Vol. 1, 51-70.

<sup>38</sup> INTERPOL (2017), *supra nota* 24.

<sup>39</sup> Steinberg, *supra nota* 3, 839-884.

<sup>40</sup> *Digital Birth: Welcome to the Online World*. (2010) Business Wire. Retrieved from <https://www.businesswire.com/news/home/20101006006722/en/Digital-Birth-Online-World>, 10 May 2020.

<sup>41</sup> Ninan, R., Brown, J., Efron, L. (2016). *Mini Insta-Models: These Stylish Tots Are Already Famous on Instagram*. Retrieved from <https://abcnews.go.com/Lifestyle/mini-insta-models-stylish-tots-famous-instagram/story?id=37823227>, 10 May 2020.

positive attention, hence is capable of having unpleasant stand towards the child.<sup>42</sup> It was discussed that the impact on child's development in such situations could be unpredictable and affect them negatively.<sup>43</sup>

On the other hand, every problem has several sides. In this case, it is argued that numerous parents use social media not only for enjoyment, fun and profits, but they also need to have a connection with other moms and dads. Revealing of the child's personal information happens in the process.<sup>44</sup> It does not mean that they share private information about their kids having bad intentions. In fact, many of them indeed need support or do not have other choices. For example, it was analysed by Children's Hospital that many new parents, especially fathers, need and seek help through social media. As a result, they share many details about their new-borns.<sup>45</sup>

An even better illustration of this is the study which explored families who are raising children with special needs. For such parents, social media was not only an excellent venting place or source for advice but also an essential place for support. There are many situations where parents need encouragement from other caregivers facing similar problems in order to deal with their difficult situations. It was found that various parental support groups which share their experiences through social media provide needed knowledge and support.<sup>46</sup>

Author of this thesis agrees that sharing personal information about their children on social media has many different sides and outcomes. It is not possible to declare that every post on social media will cause harm to the child. In some instances, it may be even beneficial for the child or the parent. However, there is enough evidence to claim that by doing so, children are losing their privacy and most importantly, the opportunity to choose whether they even want digital identity in the first place. Besides, children who are not using social media themselves should not be connected to online dangers through the actions of their parents.

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<sup>42</sup> Choi, G.Y., Lewallen, J. (2018), *supra nota*, 35, 159- 160.

<sup>43</sup> Globokar, R. (2018), *supra nota*, 20.

<sup>44</sup> Steinberg, *supra nota* 3, 841- 842.

<sup>45</sup> C.S. Mott Children's Hospital National Poll on Children's Health. (2015). *Parents on social media: Likes and dislikes of sharenting*. Retrieved from <https://mottpoll.org/reports-surveys/parents-social-media-likes-and-dislikes-sharenting>, 10 May 2020.

<sup>46</sup> Cole, L. *Et al.* (2017). Caregivers of School-aged Children with Autism: Social Media as a Source of Support. – *Journal of Child & Family Studies*, Vol. 26, No. 12, 3469 -3470.

## 2. EXISTANCE OF LEGAL SOLUTIONS WHICH SHOULD STOP PARENTS FROM OVERSHARING PERSONAL INFORMATION ABOUT THEIR CHILDREN

### 2.1 Privacy

Presently, the privacy of the children is still a timely topic, which is steadily brought up because of the fast development of technology and the risks it poses.<sup>47</sup> Actions of the adults also have a significant role in shaping the future of privacy in children's life.<sup>48</sup> European Commission likewise keeps it actual with its policies towards making online space safer for children.<sup>49</sup>

Review of the topic about online privacy and children brought out several things. UNCRC (1989) Article 16 does call for the protection of the privacy of the child, but at the same time, it does not touch the topic of online privacy of children. GDPR is the instrument which is involved with both, but it is noted that the online privacy of the children in the online realm needed and still needs modifications, new ideas and deeper analyse.<sup>50</sup>

Children's right to privacy has been recognized for a long time.<sup>51</sup> Article 16(1) of the Treaty on the Functioning of the European Union and Article 8(1) of the Charter of Fundamental Rights<sup>52</sup> of the European Union brings forth the idea that their "personal data" should be protected<sup>53</sup>. UNCRC Article 16, also states the same necessity.<sup>54</sup>

It is essential to note that the right to privacy, even for children, will always be in opposition to other rights (such as freedom of expression or parental rights).<sup>55</sup> In some cases, it will be justified

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<sup>47</sup> Nair, *supra nota*, 30, 177–185.

<sup>48</sup> Steinberg, *supra nota* 3.

<sup>49</sup> European Commission, *supra nota* 19.

<sup>50</sup> Macenaite, M. (2017). From universal towards child-specific protection of the right to privacy online: Dilemmas in the EU General Data Protection Regulation. –*New Media & Society*, Vol. 19, No. 5, 766.; Convention on the Rights of the Child, *supra nota* 4.

<sup>51</sup> Standley, K. (1990). Children and privacy. – *Journal of Child Law*, Vol. 3, No. 1, 12.

<sup>52</sup> Charter of Fundamental Rights of the European Union, OJ C 202, 7.6.2016, p 389-405.

<sup>53</sup> TFEU Article 16 (1). „Everyone has the right to the protection of personal data concerning them“. CFR: Article 8 (1). „Everyone has the right to the protection of personal data concerning him or her“.

<sup>54</sup> Convention on the Rights of the Child, *supra nota* 4.

<sup>55</sup> Steinberg, *supra nota* 3, 839.

if the privacy of the child will be pushed on the background in order to ensure the best interests of the child.<sup>56</sup> In other cases it is brought out that for example, the press should avoid exposing the identity of the child.<sup>57</sup> Moreover, in the cases concerning freedom of speech and press, the best interest of the child should always prevail.<sup>58</sup>

This thesis does not argue that parental rights always triumph over the privacy of the children and author agrees that rights of the parents should weight more in situations where life or well-being of the child is in jeopardy. Also, most of the literature which was reviewed by the author supports the idea that children rights should and do override other rights.

Nevertheless, the idea of this work is motivated by the argument that "no legal scholar has yet published an article centred at the intersection of a parent's right to share online with a child's right to privacy on the Internet"<sup>59</sup>. It is beyond dispute that there are laws which protect the interest of the children in this question. However, there are no direct laws which are prohibiting parents from posting data which concern their children online. The author finds it interesting that press, as discussed above, honours the privacy of the child and many parents, on the contrary, do not concern deeply over this question.

The right to privacy should, in theory, protect the child not only from strangers but also from the danger which may be inflicted by parents due to oversharing personal information. At the same time, it is demonstrated that more and more photos from parent social media accounts end up on child exploitation sharing sites.<sup>60</sup> It may be safe to state that posting pictures of one's child will cause more harm than parents could imagine.<sup>61</sup>

The problem is that infringement of confidentiality because of strangers and violations because of parents create different legal problems. By authors view, it is easier to see, understand and stop the possible harmful actions against the child when a stranger creates it. It is not so easy to prohibit or claim that a mother who is posting potty training photo of her toddler create similar harm and breach of privacy.

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<sup>56</sup> Steinberg, *supra nota* 3, 856-857.

<sup>57</sup> Standley, *supra nota* 52.

<sup>58</sup> *Ibid.*

<sup>59</sup> Steinberg, *supra nota* 3, 856.

<sup>60</sup> Staufenberg, J. (2016). *French parents 'could face prison' for posting photos of their children on Facebook*. Retrieved from <https://www.independent.co.uk/news/world/europe/french-parents-told-their-children-might-sue-them-for-pictures-put-on-facebook-a6906671.html>, 10 May 2020.

<sup>61</sup> Battersby, L. *Millions of Social Media Photos Found on Child Exploitation Sharing Sites* (2012). Retrieved from <http://www.smh.com.au/national/millions-of-socialmedia-photos-found-on-cild-exploitation-sharing-sites-20150929-gjxe55.html>, 10 May 2020.

Currently, there is no doubt that the privacy of the child is an actual topic. Furthermore, it would be a lie to announce that there are no laws which regulate it or that no one was or is interested in it. Such examples as UNCRC Article 16, which prove the opposite by forbidding unlawful meddling with the child's privacy.<sup>62</sup> Moreover, new Data Protection Regulation has shifted it “from universal towards child-specific protection of the right to privacy online”.<sup>63</sup>

However, as disputed above, the role, which fell from the UNCRC (1989) and its Article 16<sup>64</sup>, upon new Data Protection Regulation, is still not a solution to the problem.<sup>65</sup> After the updates of previous Data Protection Directive (95/46/EC)<sup>66</sup>, it is an essential tool for data protection, and it should grant people more control over their online data.<sup>67</sup> However, it is not quite, it tool, in the cases connected to the home affairs, because it is not designed for that.<sup>68</sup> In addition it is explained that at the end of the day, the General Data Protection Regulation does not offer a penalty or possibility to turn to Data Protection Inspectorate if the dispute is family oriented (in Estonia).<sup>69</sup>

Furthermore, GDPR rules, which are design to protect the privacy of individuals, may harm the children. Officials warned that new laws would ban the software which is capable of catching various abuse images involving the children because it will be unlawful to scan huge amount of data uploaded on different platforms.<sup>70</sup> Consequently, the author of this thesis believes that it is even more crucial to stop parents from (over)sharing personal information about their kids.

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<sup>62</sup> Convention on the Rights of the Child, *supra nota* 4.

<sup>63</sup> Macenaite, *supra nota* 50, 766.

<sup>64</sup> Convention on the Rights of the Child, *supra nota* 4.

<sup>65</sup> Regulation (EU) 2016/679, *supra nota* 6.

<sup>66</sup> Directive 95/46/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, OJ L 281, 23.11.1995, p. 31–50.

<sup>67</sup> Regulation (EU) 2016/679, *supra nota* 6.

<sup>68</sup> *What does the General Data Protection Regulation (GDPR) govern?* European Commission. Retrieved from [https://ec.europa.eu/info/law/law-topic/data-protection/reform/what-does-general-data-protection-regulation-gdpr-govern\\_en](https://ec.europa.eu/info/law/law-topic/data-protection/reform/what-does-general-data-protection-regulation-gdpr-govern_en), 10 May 2020.

<sup>69</sup> Sirje Biin, vaneminspektor peadirektori volitusel, Estonian Data Protection Inspectorate 04.09.2017 nr 2.1.-5/17/1725 e- mail.: “Vanemad peavad oma laste huve kaitsma ning teistest inimesest võib pilte avaldada inimese nõusolekul. Inimese privaatsust kaitseb isikuandmete kaitse seadus, mille § 10 lõige 1 sätestab, et igasugune isikuandmete töötlemine (s.o ka piltide sotsiaalmeedias avaldamine) on lubatud üksnes isiku nõusolekul, kui seadus ei sätesta teisiti. See säte käib ka laste kohta, kelle seaduslikeks esindajateks on tema vanemad. Alaealise lapse õigusi teostavad üldjuhul lapsevanemad ühiselt. Kui ema ja isa ei jõua omavahel kokkuleppele, kas ja kus lapse pilte avalikustada, saab vaidluse lahendada kohtus. Inspektsioon ei sekku pereprobleemidesse, mille inimesed saavad lahendada omavahel või kohtu abil.”

<sup>70</sup> Sculthorpe, T. (2018). *New EU rules on data protection are a 'gift to paedophiles', government officials warn*. Retrieved from <https://www.dailymail.co.uk/news/article-6454521/New-EU-rules-data-protection-gift-paedophiles.html?fbclid=IwAR3QOX-HKs26izCZemyuRzoa8MSbrnGoSX7S0vbWv5MeryZOV42CPXXnIIA> , 10 May 2020.

## 2.2 Consent and children

It is explained that by having the possibility to consent instead of a child, the parent will choose the best option for the child.<sup>71</sup> However, it may result in the belief that the consent of a child is not necessary when the parent posts an image or any other data about their child, because the parent is the one who should make a choice.<sup>72</sup>

GDPR affirms that personal data of the children must be protected and that “they may be less aware of the risks, consequences and safeguards concerned and their rights concerning the processing of personal data”.<sup>73</sup> That, by authors view, should include the situations where the child has his own social media account which was created by his/her parents. However, the issue which is highlighted by several studies, show that GDPR is designed for conditions where marketing is targeting, or services are offered directly to a child and where the parent is then the one who must give consent instead of a child.<sup>74</sup> It is noted that the topic of consent was not evaluated deeply enough, and the EU did not consider that in many cases, parental consent does not produce any significant or desired effects.<sup>75</sup> Therefore, the author of this thesis affirms one more time that the protection of the children is in high regard, but at the same time, it is not possible to use consent as an effective legal solution. In situations where a child under specific age limitation do not wish to have a social media account, parents may still create it, without asking the opinion of the child.

In the EU, parental consent in an online environment is still a novel area, and it is suggested that it needs in-depth analysis.<sup>76</sup> Moreover, it is noted that Article 8 of the new GDPR is one of the most important, but at the same time most disputed provision.<sup>77</sup> It deals with the situations where the child (or the company) needs to ask the permission of the parent for using social media services if the child is below a certain age.<sup>78</sup> However, as stated above, the issues about a parent asking the consent of a child are not part of that regulation. One can only assume, that parent keeps in mind the best interest of the child, but it is not possible to state that with 100% certainty.

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<sup>71</sup> Steeves, V. (2006) It's Not Child's Play: The Online Invasion of Children's Privacy. - *University of Ottawa Law & Technology Journal*, Vol. 3, 181- 182

<sup>72</sup> Steinberg, *supra nota* 3, 850-851.

<sup>73</sup> Regulation (EU) 2016/679, *supra nota* 6, recital 38.

<sup>74</sup> Macenaite, M., Kosta, E. (2017). Consent for processing children's personal data in the EU: following in US footsteps? – *Information & Communications Technology Law*, Vol 26, Issue 2, p 193- 195.

<sup>75</sup> *Ibid.*

<sup>76</sup> *Ibid.*, 194- 195.

<sup>77</sup> Savirimuthu, *supra nota* 7.

<sup>78</sup> Regulation (EU) 2016/679, *supra nota* 6.

Although this thesis will not dive deep into the European Convention on Human Rights and its articles, court case such as “Söderman v. Sweden”, will be discussed below. This lawsuit demonstrated what will happen if the law itself does not prohibit filming without consent. Swedish court decided that the man, filming naked 14- year old was not guilty of filming a minor without the permission. It was explained that, at that time Swedish law did not prohibit filming without the other persons’ consent. Therefore, regarding the filming without the knowledge of the child, the man was acquitted.<sup>79</sup> Later the European Court of Human Rights found that, the state has positive obligations to ensure that provisions which prohibit filming without consent are in place, especially in case of minors. Moreover, importance of the consent was pointed out.<sup>80</sup> The author believes that despite recognizing the importance of consent, there are still no laws which stop parents from posting personal information, including photos, on social media, without the consent of their children.

The author also agrees with the statement that there are no instruments which are capable of putting an end to information oversharing by parents.<sup>81</sup> It is also pointed out that in most cases, parents do not take into account the wishes of their children regarding the questions of posting on social media.<sup>82</sup> Therefore, existing practice and legal framework are possibly not enough to protect the privacy of the children in the age of social media. From their parents, that is.

### **2.3 Right to be forgotten**

In many instances, the right to be forgotten is seen by researchers as even more critical element for children than for adults. Children need the possibility to request the removal of personal data because it is scientifically proven that they “are different from adults in many developmental, psychosocial and behavioural respects.” It was stipulated that, they are most likely to post online something that they will regret later, or they allow parents to do so, without understanding the consequences. Therefore, it is crucial to have some way out of the situation which was once created by parents or childhood immaturity.<sup>83</sup> Moreover, analyse of this right guided author of this thesis

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<sup>79</sup> SÖDERMAN v. SWEDEN, no. 5786/08, ECHR 2013, point 23, 38,39.

<sup>80</sup> *Ibid.*, point 117.

<sup>81</sup> Cheung, H. (2019). *Can you stop your parents sharing photos of you online?* Retrieved from <https://www.bbc.com/news/world-47722427>, 10 May 2020.

<sup>82</sup> Lipu, M., Siibak, A. (2019). ‘Take it down!’: ‘Take it down!’: Estonian parents’ and pre-teens’ opinions and experiences with sharenting. – *Media International Australia*, Vol 170, No. 1, 63- 65.

<sup>83</sup> Li-Reilly, Y. (2017). Remembering, Forgetting, Reinvention and Freedom: Social Media and Children’s Right to Be Forgotten. – *Advocate*, Vol. 75, No. 5, 664- 665.

towards the realisation that oblige parents to ask consent from children before posting something about them, will not be fruitful. Works of other authors confirm it by pointing out that infants, toddlers and small children, are not able to (fully) realise their actions.<sup>84</sup>

Spain vs Google case demonstrated that it is reasonable to change “digital footprints” of the individual when information about the individual does not serve its purpose or is incorrect.<sup>85</sup> GDPR gives all “data subjects”, the possibility to demand to correct false or to wipe off all information, which no longer serves the intended purpose.<sup>86</sup>

The case itself was about the man who discovered upon internet search that there are a couple of newspaper articles which show him in an unfavourable light. Therefore, he wanted to remove those articles.<sup>87</sup> Such actions against Google helped to confirm that search engines do have an obligation to remove inadequate, inaccurate, irrelevant or excessive data<sup>88</sup>, in accordance with the right to be forgotten.<sup>89</sup>

As a result, all individuals gained the possibility to remove specific information about themselves. Statistics show that from May 2014 to May 2019 Estonia requested more than 22 000 URL deletions, France more than a half million. For now this number is even bigger.<sup>90</sup> However, removal of the search result can be deleted following the European data protection laws, and that will bring us back to two things. Firstly, children will be able to request the removal of the unwanted information personally, earliest at ages 13 in Estonia<sup>91</sup> and 15 in France.<sup>92</sup> Secondly, even if the Google will erase the unwanted material, the source (FB page of the parent etc.), will still remain.<sup>93</sup> Most importantly, new court case demonstrated that even for adults, this right may

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<sup>84</sup> *Ibid.*, 665.

<sup>85</sup> Court Decision, 13.05.2014, Google Spain and Google, C-131/12, EU:C:2014:317.

<sup>86</sup> Regulation (EU) 2016/679, *supra nota* 6, art 17.

<sup>87</sup> Google Spain and Google, *supra nota* 86, point 14-15.

<sup>88</sup> *Ibid.*, point 92- 94.

<sup>89</sup> *Ibid.*, point 91.

<sup>90</sup> Search removals under European privacy law. (GOOGLE) Retrieved from [https://transparencyreport.google.com/eu-privacy/overview?hl=en&requests\\_over\\_time=country:FR&lu=requests\\_over\\_time](https://transparencyreport.google.com/eu-privacy/overview?hl=en&requests_over_time=country:FR&lu=requests_over_time), 10 May 2020.

<sup>91</sup> Isikuandmete kaitse seadus RT I, 04.01.2019, 11, § 8.

<sup>92</sup> Loi n° 78-17 du 6 janvier 1978 relative à l'informatique, aux fichiers et aux libertés Version consolidée au 01 juin 2019

<sup>93</sup> Satariano, A. (2019). Right to Be Forgotten' Privacy Rule Is Limited by Europe's Top Court. Retrieved from <https://www.nytimes.com/2019/09/24/technology/europe-google-right-to-be-forgotten.html>, 10 May 2020.

be quite hard to obtain outside the EU. Will it be possible to erase something that is posted on Russian domain? Most probably, no.<sup>94</sup>

The author believes that the right to be forgotten is not able to protect small children because they cannot, or they do not have enough knowledge to request the erasure of unwanted information. That is the part where they should get the needed support from adults. However, problems begin if it turns out that parents are the ones, who are making the wrong decision and overshare personal information about their children. As a result, it may be too late to use that right later in life because for that time their undesired information could wander around the internet for years and it is not so easy to eliminate all sources containing that data. Thus, there should be something else that could affect the parents and grant better protection to the children.

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<sup>94</sup> Court Decision, 24.09.2019, CNIL v. Google, C-507/17, EU:C:2019:772, point 63.

### **3. FINDING THE SOLUTION WHICH COULD STOP PARENTS FROM OVERSHARING PERSONAL INFORMATION ABOUT THEIR CHILDREN**

#### **3.1 Comparing Estonia to France: Is French attitude and laws a possible solution?**

Estonian studies about “sharenting”<sup>95</sup> demonstrated that Estonian mothers also actively use social media accounts for posting personal data about their children, they do it quite liberally, without thinking about the privacy or dangers it may cause.<sup>96</sup> Such surveys demonstrated that kids responded very differently on such actions. In most cases, they did not oppose it if shared information portrayed them in a positive light.<sup>97</sup> However, it was brought out that even in situations where parents realized that they should obtain their kids` approval regarding the subject, they hardly ever did so.<sup>98</sup>

Estonian Child Protection Act § 7 states that parents are responsible for protecting the best interest of their children.<sup>99</sup> Previous Personal Data Protection Act § 10 (1) confirmed that it is possible to publish someone’s else photos only with the consent of that person.<sup>100</sup> Uploading the picture of a child by a parent on social media was also included in those requirements.<sup>101</sup>

New Personal Data Protection Act is meant to be in conformity with the GDPR<sup>102</sup>, which in turn brings us back to the aforementioned Article 8(1) of the CFR of the European Union<sup>103</sup> and Article

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<sup>95</sup> Sharenting- the habitual use of social media to share news, images, etc of one’s children. Retrieved from <https://www.collinsdictionary.com/dictionary/english/sharenting>, 10. May 2020.

<sup>96</sup> Lipu, M., Siibak, A., supra nota 82, 57- 67.

<sup>97</sup> *Ibid.*

<sup>98</sup> *Ibid.*, 63.

<sup>99</sup> Lastekaitse seadus, supra nota 1, § 7 (1).

<sup>100</sup> Isikuandmete kaitse seadus RT I, RT I 2007, 24, 127, § 10.

<sup>101</sup> Iro, M. (2019). LAPSED JA ANDMEKAITSE. MILLISEID MUUDATUSI TOOB KAASA EL-I ISIKUANDMETE KAITSE ÜLDMÄÄRUS? Retrieved from <http://ajakiri.lastekaitseliit.ee/2018/02/05/lapsed-ja-andmekaitse-milliseid-muudatusi-toob-kaasa-el-i-isikuandmete-kaitse-uldmaarus/>, 10 May 2020.

<sup>102</sup> Isikuandmete kaitse seadus RT I, 04.01.2019, 11, (1)

<sup>103</sup> Charter of Fundamental Rights of the European Union, OJ C 202, 7.6.2016, art 8.

16(1) of the Treaty on the Functioning of the European Union<sup>104</sup>, which affirms that everyone (including Estonian parents and children) do have a right to the protection of personal data.

In the case of “information society services” the new General Data Protection Regulation, gives parents the right to provide consent to collect or use the personal information of their children.<sup>105</sup> The only difference is that a child who is at least 13, can provide such consent himself/herself.<sup>106</sup> Therefore, the author confirms that existing laws and overall practice in Estonia is not enough to stop parents from the oversharing personal information about their children, in fact, some parents could interpret this as an approval to do so, because decisions over the use of social media is granted to the parents.

Kadri Levand, the chief inspector of the Data Protection Inspectorate, clarified that GDPR and Personal Data Protection Act allow individuals to photograph and film for personal purposes, but the disclosure of such photos without the consent of all parties is prohibited.<sup>107</sup>

Nevertheless, Estonian Data Protection Inspectorate informed that they do not intervene if the dispute is family oriented, therefore even if the child is against such actions conducted by his/her parents and parents will not go along with the child’s wishes, only the court can settle the dispute.<sup>108</sup> DPI has clarified on several occasions that by Article 4 of the Estonian Law Enforcement Act<sup>109</sup>, inspectorate does not resolve issues concerning the rights and freedoms of individuals.<sup>110</sup>

Therefore, it is possible to note that Estonia and France have different viewpoints towards this topic. There are many warnings from the French authorities about being careful with social media.<sup>111</sup> Especially in cases involving children. They notify that personal data of the child should not be posted on social media without the consent of the child.<sup>112</sup> Moreover, it is brought up that

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<sup>104</sup> Treaty on the Functioning of the European Union, OJ C 326, 26.10.2012, p. 47- 390.

<sup>105</sup> Regulation (EU) 2016/679, *supra nota* 6.

<sup>106</sup> *Ibid.*

<sup>107</sup> Ottender-Paasma, S. (2018). *Lasteaed keelas andmekaitse seadusest tulenevalt laste pildistamise*. Retrieved from <https://www.err.ee/887558/lasteaed-keelas-andmekaitse-seadusest-tulenevalt-lastepildistamise>, 10 May 2020.

<sup>108</sup> Sirje Biin, *supra nota* 70.

<sup>109</sup> Korrakaitse seadus RT I, 22.03.2011, 4.

<sup>110</sup> Andmekaitse Inspeksioon.(2020) Vaideotsused 2016: VAIDEOTSUS avaliku teabe asjas nr 2.1-3/16/2 [E-database]. Retrieved from <https://www.aki.ee/et/inspeksioon-kontaktid/menetlusotsused/vaideotsused/vaideotsused-2016>, 10 May 2020.

<sup>111</sup> Gendarmerie nationale (2016). [PRÉVENTION] Préservez vos enfants ! Retrieved from <https://www.facebook.com/gendarmerienationale/posts/pr%C3%A9vention-pr%C3%A9servez-vos-enfants-si-vous-avez-suivi-facebook-une-cha%C3%A9ne-de-publi/1046288785435316/>, 10 May 2020.

<sup>112</sup> Hortense, N. (2015). Poster des photos de ses enfants sur Facebook n'est pas sans danger. Retrieved from <http://madame.lefigaro.fr/societe/pourquoi-il-faut-cesser-de-poster-des-photos-de-ses-enfants-mineurs-sur->

it does not matter how old the child is. For some, it seems bizarre, but parents who will (over)share personal information about their children may face real jail time or hefty fines.<sup>113</sup>

France brought their national legislation in conformity with the GDPR. In contrast to Estonia, they did not replace their original Data Protection Act, instead, they amended parts of it. As a result, they did create bridge between their national law and GDPR, but only some provisions of the GDPR are used in the new version.<sup>114</sup>

However, similarly to Estonia, the French Data Protection Act alone does not prohibit or stop parents from dispensing personal information about their children. It still is considered as a fundamental law, which is designed to protect against infringements connected to personal data<sup>115</sup>, but French attitude towards privacy plays a bigger role in this question. For example, French courts have acknowledged that photos (especially images which are taken at persons home) are tightly connected with individuals privacy, therefore publishing or sharing them without the consent could be seen as an intrusion on the privacy, which in turn may result in hefty fine.<sup>116</sup> French law foresees fines up to 45, 000 euros or even a year in prison if a parent is guilty of publicising intimate details of their children without their consent.<sup>117</sup> In addition, it has been noted that French Law is quite restrictive towards the breaches on privacy, it supports the point that in order to capture someone or something with your camera, permission is needed. Nevertheless, one's enthusiasm to be in the picture does not show the intention or desire to share it with the others.<sup>118</sup>

As explained by various studies, French privacy laws changed noticeably in 1970 after introduction of clearly stated offences into Penal Code<sup>119</sup> and the Article 9 into the French Civil Code<sup>120</sup>, which regulates right to privacy in general.<sup>121</sup> Under the French Penal Code (Article 226-

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[facebook-011215?fbclid=IwAR2R-8FaEXsQLgdOtoJxfDtztU9xlADwvLiwJENcJRUIfAZiQ58Lt\\_QsFQ](https://www.facebook.com/101571215/?fbclid=IwAR2R-8FaEXsQLgdOtoJxfDtztU9xlADwvLiwJENcJRUIfAZiQ58Lt_QsFQ) , 10 May 2020.

<sup>113</sup> Chapo, R. (2016). *French Privacy Law – Parents Shall Not Post Kid Photos On Facebook*. Retrieved from <https://www.socalinternetlawyer.com/france-enters-the-world-of-the-absurd-on-privacy/>;

<sup>114</sup> Proust, O. (2019). French legislator amends French Data Protection Act. Retrieved from <https://privacylawblog.fieldfisher.com/2019/french-legislator-amends-french-data-protection-act>, 10 May 2020.

<sup>115</sup> Code pénal Version à venir au 1 juin 2019; Saarinen, M., Ladousse, J. (2017) France. Retrieved from <https://uk.practicallaw.thomsonreuters.com/qacompare/report/country/77dc7938a221434790c27e8279595915?comp=pluk&transitionType=Default&contextData=%28sc.Default%29>, 10 May 2019.

<sup>116</sup> Trouille, H. (2000). Private Life and Public Image: Privacy Legislation in France. – *International and Comparative Law Quarterly*, Vol. 49, No. 1, 203-205.

<sup>117</sup> Orlando, J., Chazan, D. (2016), *supra nota* 17.

<sup>118</sup> Trouille, *supra nota* 116, 201.

<sup>119</sup> Code pénal Version à venir au 1 juin 2019

<sup>120</sup> Code civil Version consolidée au 14 février 2020, Des droits civils, art 9.

<sup>121</sup> Logeais, E., Schroeder, J.B. (1998). The French Right of Image: An Amiguous Concept Protecting the Human Persona. – *Loyola of Los Angeles Entertainment Law Journal*, Vol. 18, No. 3, 515- 516;

Deringer, K. F. (2003). Privacy and the Press: The Convergence of British and French Law in Accordance With the European Convention of Human Rights. – *Penn State International Law Review*, Vol. 22, No. 1, 196

1)<sup>122</sup> everyone who intentionally breaches the privacy of others, may be punished<sup>123</sup> and that could potentially mean a fine or prison sentence for the parents who post pictures or other information about their children<sup>124</sup>. Article 226-1 and topic overall, gained higher attention after the French “Gendarmerie Nationale” gave parents an official warning about dangers of social media and recommended not to disclose personal information, including photos, about their children.<sup>125</sup> French police forces agreed with the worries of the experts on French privacy laws who predicted that it is inevitable that kids will sue their parents for breaching their privacy.<sup>126</sup>

Author concludes that here are those who believe that French privacy laws are too much. However, it is understandable that having better control over the own image is necessary and it may be beneficial if minors can also decide who can take or use their images. Author also believes that French attitude towards this topic could also help to stop Estonian parents from oversharing data of their kids on social media.

### 3.2 Fines as answer

It is warned that fines as a penalty is not a flawless method and may have little or no effect among poor communities or in the cases where the reason behind such penalty remain misunderstood or unexplained.<sup>127</sup> In fact, it is pointed out that if the reason behind the punishment will stay unclear to the offenders, they will interpret it their own way.<sup>128</sup> It is even argued that without the additional stimuli, fines alone are not the cure for inappropriate actions.<sup>129</sup> However, there are aspects which have proven that economic sanctions may be a good solution. It is highlighted that fines use an easy system of measurement, and they may be modified in accordance with the situation.<sup>130</sup>

Studies on successful sanctions demonstrated amongst other things that favourable outcome is possible in the situations where determination to punish and clear intentions to implement the

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<sup>122</sup> Code penal, art 226-1.

<sup>123</sup> Trouille, *supra nota* 116, 203.

<sup>124</sup> Staufenberg, *supra nota* 60.

<sup>125</sup> Gendarmerie nationale (2016), *supra nota* 111.

<sup>126</sup> Hortense, N. (2015), *supra nota* 112.

<sup>127</sup> Ruback, R. B. (2015). The Benefits and Costs of Economic Sanctions: Considering the Victim, the Offender, and Society. – *Minnesota Law Review*, Vol. 99, No. 5, 1784-1835

<sup>128</sup> Bögelein, N. (2018). ‘MONEY RULES’: EXPLORING OFFENDERS’ PERCEPTIONS OF THE FINE AS PUNISHMENT. – *British Journal of Criminology*, Vol. 58, No. 4, 820-821.

<sup>129</sup> Critelli, J. W., Crawford, R. F. (1980). The Effectiveness of Court-Ordered Punishment: Fines Versus No Punishment. – *Criminal Justice and Behavior*, Vol. 7, No. 4, 469-470.

<sup>130</sup> Ruback, R. B. (2015), *supra nota* 127, 1782- 1783.

penalty was shown.<sup>131</sup> Some studies speculate that punishment in the form of the fines may have the same results as imprisonment.<sup>132</sup> In addition, it is proven that sizable fine will affect the behaviour of the offender. Moreover, it has the potential to decrease the occurrence of undesired actions.<sup>133</sup>

Author of this thesis agrees that fines alone are not capable of changing the behaviour of the individuals.<sup>134</sup> Concrete definitions, clear rules and explanations are needed; otherwise, there is a risk that reason behind penalty, will remain misunderstood and fine will not serve its purpose.<sup>135</sup> Suggestions and recommendations could be part of the new Strategy of Children and Families. Last Strategy of Children and Families 2012–2020 was conducted in 2011.<sup>136</sup> Therefore, new proposals could be actual. By bringing this topic on the desk of the Ministry of Social Affairs, the process of helping parents to understand the dangers of social media and rights of the children in that field could be activated. Additionally, it is also necessary to put in place when sanctions in the form of a fine, for breaking those rules should be applied. Nevertheless, they should stay in the realm of misdemeanours and not regarded as criminal offences.

The author proposes the following:

1) Give Local Government units responsible for the well-being of the child possibility to fine parents in the cases where<sup>137</sup>:

- Parents fail to comply with the wishes of a child to remove all data concerning him/her, which was posted by them.
- Share potentially harmful information about their children (naked photos).

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<sup>131</sup> Kim, H. M. (2013). Determining the Success of Economic Sanctions. – *Australian Journal of Political Science*, Vol. 48, No 1, 96–97.

<sup>132</sup> Garoupa, N., Mungan, M. (2019). Optimal imprisonment and fines with non-discriminatory sentences. – *Economics Letters*, Vol. 128, 105-108; Polinsky, A., Shavell, M., Shavell, S. (2000) *The Economic Theory of Public Enforcement of Law*. – *Journal of Economic Literature*, Vol. 38, No. 1, 45-76.

<sup>133</sup> Pradiptyo, R. (2007). Does Punishment Matter: A Refinement of the Inspection Game. – *Review of Law and Economics*, Vol. 3, No. 2, 206-208.

<sup>134</sup> Critelli, J. W., Crawford, R. F. (1980), *supra nota* 129.

<sup>135</sup> Bögelein, N. (2018), *supra nota* 128.

<sup>136</sup> Ministry of Social Affairs (2011) STRATEGY OF CHILDREN AND FAMILIES 2012–2020. Retrieved from [https://www.sm.ee/sites/default/files/content-editors/Lapsed\\_ja\\_pered/lpa\\_fulltxt\\_eng\\_83a4\\_nobleed.pdf](https://www.sm.ee/sites/default/files/content-editors/Lapsed_ja_pered/lpa_fulltxt_eng_83a4_nobleed.pdf), 10 May 2020.

<sup>137</sup> To be exact local governments already have power to fine as they are the „body conducting extra-judicial proceedings“ in accordance to § 47 (Fine) Penal Code RT I 2001, 61, 364. Since it is their function to „ensure the rights and well-being of children“ according to Child Protection Act RT I, 06.12.2014., therefore it would possible to fine the parents.

- Refusing to communicate and work with respective authority (Ministry of Social Affairs, Local Government, Estonian Union for Child Welfare) regarding the oversharing personal information about their children.

2) The Ministry of Social Affairs should include all necessary recommendations and guidance's into a new strategic objective which should work towards the increasing the awareness of parents about dangers of social media and rights of the children regarding this topic.

Conclusively, author of this thesis proposes economic sanctions in the form of the fines as a possible solution to stopping Estonian parents from overexposing their children on social media. Fines could act as a new motivator for changing deeply rooted behaviour. The author does not suggest that sharing photos or other information about their children should be banned entirely to the point where parents should feel like criminals for wanting to share a family photo. However, if warnings and even the pleas of the children are not working, the punishment should be available. Therefore, the author sees fines as a sensible way of stopping the parents from overexposing their children on social media. In addition, author of this thesis believes that the French approach could resolve or at least relieve the problem of overexposing children on social media because it has potential to force parents to overthink their behaviour on social media.

## CONCLUSION

Social media became an integral part of our existence. Various social networking sites help everyone to feel connected, to show the world their best moments or to access more information than ever before. Consequently, kids also dive in or are pushed into the depths of the social media realm. Therefore, it is crucial to remember that there are many risks connected to those platforms and everyone may fall victim to social media dangers.

Furthermore, social media invaded all aspects of our work and personal lives. Thus, it is essential to know that posting online may have significant and lasting consequences. Parents should understand that better than anyone else. However, more than ever, they are the ones who overshare private information about their children. Due to this, children are losing the possibility to choose if they even want to create digital identity in the first place and they are forced to deal with the outcomes of such generous disclosure of their personal information.

As a result, there are many legal and moral issues surrounding the privacy of the children in the age of social media. The attention of the thesis was directed towards the problems connected to parents who disclose too much personal information about their children and towards the existing legal framework and practice regarding this matter. Although parental rights may overweight the child's right to privacy, it is still clear that parent must protect the best interest of the child. Therefore, issues arising from oversharing child's personal information brings out the need to find the best way of stopping the parents from oversharing personal information about their children.

The author tried to find out about the reasons behind such behaviour. As mentioned previously, social media has a high importance in our lives. Parents share information about their kids because of various reasons. Some mothers wish to express and share their happiness or funny moments regarding her kids. Others, feel the need to show or even create success and fame through social media.

Furthermore, some parents and caretakers need social media to ask for help or advice regarding the new-borns or children with special needs. Therefore, the author concluded that there are many reasons behind it and issue is rarely black and white. Nevertheless, situations, where kids cannot be sure about their digital past, is not healthy. Children not only have the right to privacy but also have the right to decide about their online presence.

Author analysed the problems, legal issues and existing laws regarding the issue of oversharing personal information of a child by a parent. The section focused on various problems regarding the privacy of the children. For example, privacy is one of the fundamental rights for everyone, but it may be in opposition to other rights. However, there should be a difference between breaching the privacy of the child because of the need to ensure his best interest and absolutely another is when a parent puts the child and his privacy in danger because of the online oversharing.

Currently, there are laws which require the protection of the privacy of the child, but there are several problems with that. The UNCRC Article 16, is not designed for online purposes. New GDPR does obligate to protect the right of the child and ensure among other things their (online) data safety, but that is not the solution to the oversharing. Parents do have the upper hand in this question, and that is reasonable because in most cases there are no parents who wish to harm their children. Nevertheless, when parents do want to share too much information about their kids, there are no immediate solutions for blocking them.

Therefore, if the child is against such actions by the parents, there are not too many options. One possibility is to implement the right to be forgotten. As Google Spain case demonstrated, this concept is indeed essential and the needed tool. However, in connection with oversharing child's personal data, it will mean that the child needs to ask the parent or wait for the appropriate age to be able to request the removal of data concerning them. Moreover, even after the removal of the URL, the source of information will remain. Consequently, if the parent does not wish to comply with the wishes of the child, turning to court is the only possibility.

Issues revolving around consent were also examined. For example, since children are unfamiliar with all the risks in connection to data processing, it is reasonable that parents of the minors under the specific age will provide the content if necessary, instead of them. However, the tool which protects children from the risks and dangers also assures parents that approval of a child is not

required. Moreover, more and more believe that for sharing personal information about their children, permission from the child is not necessary.

Furthermore, the author found out that even the possibility to request the removal of personal data (right to be forgotten) is not a solution which will repair this situation. It is an excellent tool for fixing the aftermath, but it does not stop parents from the oversharing personal information about their children, and it does not delete accounts or photos from the all sources.

In order to find the solution for stopping the parents from oversharing, Estonia and France were compared. Although both are EU Member States and should have similar instruments, they have different approaches and practise regarding this matter. Both states brought their national data protection acts in conformity with the GDPR, but if Estonia entirely changed out the old act, then France created a new version, which still is connected with their Civil and Penal Codes.

The author concentrated on France and Estonia because they have different approaches towards this situation. For example, French law foresees a hefty fines or even a year in prison if a parent is guilty of publicising intimate details of their children without their consent. Moreover, their privacy laws allow even a minor to decide who and for what purpose can use their photo. It is the standpoint of the authority, which differs the most, their police officially warn parents against revealing too much about their kids, explains all the risks and informs about the punishments. Estonia also does not approve of such behaviour, but lack of specific fines and overall lighter approach is noticeable in comparison with France. As a result, stopping the overexposure of children on social media relies on morals and beliefs of each parent.

Estonian laws do confirm that publication of someone else's photos requires the consent of that person. Moreover, that also includes permission from a child in cases where parents are the ones who upload the picture and other personal information online. However, even if the child is against such actions conducted by his/her parents and they will not go along with the child's wishes, only the court can settle the dispute. French authorities officially warned parents against posting pictures of their children on social media. Moreover, it anyone who will (over)share personal information about their children may face jail time up to one year or weighty fine. As a result, Estonia differs greatly in this question with France.

The author analysed the following hypothesis: Specific legal solutions in the form of the fines will improve the protection of the privacy of the Estonian children from overexposure on social media by their parents.

The author did confirm that the overexposure of children on social media by their parents is currently a controversial issue. The controversy stems from the law itself. Rights of the child are protected and respected. Children have the same privacy rights as everyone else. Moreover, children need even more security. Nevertheless, parents may use their power to decide what is better for their child as an overpowering tool. On the one hand, parents should have this right, on the other, morals and boundaries of each parent are different, and practice of posting too much about their children should be explicitly regulated. Therefore, some kind of stopping or motivating mechanism should exist. Fines are a good warning method and could potentially stop or make parents consider deeper if they should post something about their child online.

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### **E- mail**

73. Sirje Biin, vaneminspektor peadirektori volitusel, Estonian Data Protection Inspectorate 04.09.2017 nr 2.1.-5/17/1725 e- mail.

## APPENDICES

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