

THE PROTECTION OF PRIVACY IN THE SPANISH CRIMINAL CODE. A CRITICAL ANALYSIS OF THE REFORM OF 2015

*La protección de la intimidad en el código penal español. Un
análisis crítico de la reforma de 2015*

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Abstract

The increase in the use of new technologies and their incorporation into everyday forms of communication has led to the appearance of new risks associated to the transfer of personal data and the publication of sensitive material on social networks. The concern for the protection of privacy in postmodern societies intensifies when the persons involved in this growing traffic of personal information are vulnerable people, such as minors, who also make a particularly intensive use of these new means of communication. After addressing in the first place the evolution of the right to privacy from a jurisprudential and supranational point of view, this research has questioned the decision of the Spanish legislator to criminalize sexting in 2015.

Keywords

privacy, Spanish criminal code, sexting, penal reform

Resumen

El incremento del uso de las nuevas tecnologías y su incorporación a las formas cotidianas de comunicación ha supuesto la aparición de nuevos riesgos asociados a la

transferencia de datos personales y la publicación de material sensible en las redes sociales. La preocupación por la protección de la intimidad en las sociedades posmodernas se intensifica cuando las personas involucradas en este creciente tráfico de información personal son vulnerables, como los menores de edad, que además hacen un uso particularmente intenso de estos nuevos medios de comunicación. Tras estudiar en primer lugar la evolución del derecho a la intimidad desde un punto de vista jurisprudencial y supranacional, esta investigación analiza la decisión del legislador español de tipificar el sexting en 2015.

Palabras clave

intimidad, código penal español, sexting, reforma penal

SUMMARY: I. INTRODUCTION AND BACKGROUND. II. PRIVACY AS A LEGAL ASSET. THE EVOLUTION OF THE CONCEPT FROM A SUPRANATIONAL POINT OF VIEW. III. THE NEW CRIME OF SEXTING. A CRITICAL ANALYSIS OF ARTICLE 197.7 SPANISH CRIMINAL CODE. IV. CONCLUSIONS. REFERENCES.

I. INTRODUCTION AND BACKGROUND

New technologies have become widespread in recent years, generating a change in the way people communicate. This implies the emergence of new risks related to the growing tendency to share personal information on social networks. The holder of data risks losing control over them, especially when information is published or communicated to a third party. The unauthorized diffusion of private material previously received from the owner (sexting) has been recently incorporated to the Spanish Criminal Code. These conducts can also lead to committing crimes of blackmail, pornography, harassment, etc., and there is a high risk for the victim to be subject to humiliation and threats, affecting his or her social reputation, and even leading to mental health problems.

All this has necessarily influenced the configuration of the concept of privacy as an object of penal protection. In the present research, the evolution of the right to privacy in the jurisprudence of the European Court of Human Rights, the Court of Justice of the European Union and the Spanish Constitutional Court has been studied. It is interesting to analyze the influence of this concept in the regulation of some new behaviors such as the unauthorized dissemination of private material obtained with the consent of the victim, commonly known as sexting, and typified for the first time in Spain in 2015. Before this reform only the disclosure of private information obtained without the consent of the owner was criminalized. Now the central element lies in the fact that it is the victim who first reveals the private contents to the author. It is interesting to analyze whether this initial cession may constitute a limit to the protection of this right, on the understanding that someone who freely decides to share certain areas of his or her intimate life is accepting the risk that such sensitive information will come to the attention of third persons. Although it was necessary to cover a punitive gap, and therefore the decision to criminalize these behaviors could be considered appropriate, this research has attended to the principles of criminal law, and has criticized the legislative technique used, as there are numerous aspects to improve. Consequently, the approach to this subject seems to be complex and should be carried out from different perspectives (criminal policy, criminology, jurisprudence and penal dogmatic).

To start with a criminal policy perspective, it is interesting to study the motivation of the legislator to criminalize these behaviours. As it usually happens with criminal reforms a high media event triggered a public debate about this subject¹. The General Council of the Judiciary (Consejo General del Poder Judicial) agreed with the legislator in the convenience of introducing this new crime. Its report stated the existence of a gap of impunity, as only the publication of information obtained without the consent of the victim was criminalized before 2015. On the other hand, the Public Prosecutor Council report (Consejo Fiscal) considered that most serious behaviors were already covered by art. 173.1 CC (Criminal Code) as an offense against moral integrity. The legislator, however, agreed on the need to criminalize these conducts and in the preamble of the law just describes the new offense, without undertaking its possible concurrence with a crime against moral integrity².

Regarding jurisprudential analysis, it is true that there was an insufficient criminal judicial response before 2015, as article 197.3 CC (disclosure of secrets) requires the absence of consent in the access to information. This requirement implied acquittal sentences in most cases, and only some convictions via article 173.1 CC.

From a criminological point of view these conducts can lead to committing other crimes as blackmail, pornography, harassment, etc. In general, when private contents are disseminated affecting the privacy of a person there is a high risk of being subject of ridicule, humiliation and threats, affecting social reputation and maybe leading to mental health problems in the most serious cases. A relationship with suicide has been also found in young people³. In short, these behaviours fundamentally affect the right to privacy but also other related legal rights, such as honour and dignity, and indirectly, sexual freedom and indemnity.

From a dogmatic perspective, it is necessary to analyse whether the criminalisation of sexting could represent a possible conflict with some criminal law principles. On the one hand, a review of the options of protection to new social needs already offered by our legal system has been carried out. It is considered possible to satisfactorily protect privacy from the civil sphere, at least when these conducts are committed among adults with full capacity or

¹ A public officer (Olvido Hormigos) sent an erotic video to her extramarital partner, and then he forwarded it to his friends. More details can be found at: https://elpais.com/sociedad/2013/04/26/actualidad/1367001448_404152.html

² https://www.boe.es/diario_boe/txt.php?id=BOE-A-2015-3439

³ Concerning the relationship with suicide in adolescents, see Noelia Navarro Gómez, “El suicidio en jóvenes en España. Cifras y posibles causas. Análisis de los últimos datos disponibles”, in *Clinica y Salud*, vol. 28, issue 1, march, 2017, 25-31.

when it comes to mild behaviours. The use of criminal law in these cases could infringe the principle of fragmentary character of penal law (as very different behaviours are included in new article 197.7 CC and not only particularly vulnerable subjects are protected), or the principle of subsidiarity (as protection of the legal asset through civil law⁴ could be enough, at least regarding less serious behaviours).

Regarding the legislative technique, the research addresses issues such as the concept of “seriousness” of the impairment of privacy, and aspects that should be included in the configuration of the legal asset; the possible repercussion of the initial behaviour, sometimes neglected, of those who give their own private images to third parties; the possibility or not of sanctioning participation in these conducts; the affection to other legal assets such as sexual freedom and indemnity, and a possible concurrence of crimes, etc.

II. PRIVACY AS A LEGAL ASSET. THE EVOLUTION OF THE CONCEPT FROM A SUPRANATIONAL POINT OF VIEW

As established by civil law (article 2.1 of the OL 1/1982), the scope of protection of privacy is defined by laws and social costumes, attending to what each person decides to keep reserved. The configuration of privacy as a legal asset has evolved due to these social practices and also to various supranational instruments that seek to protect the subjects involved in the growing traffic of personal information and, especially, the most vulnerable people, such as minors, who are also making a more intensive use of these new means of communication.

These interpretations have had a decisive influence on the configuration of the concept of privacy as a protected legal asset, to the extent that they overcome and complement the traditional, negative point of view, which conceives privacy as the sphere of life that remains protected from external intrusions. Thus, the positive conception is based on the ability of the subject to decide on what he or she wants to show or share with others. The dynamic concept of privacy implies that the holder has the ability to control what others know and can also decide to prevent or limit the subsequent dissemination of it. In this sense, the protection of privacy, traditionally based on delimiting the specific contents that should be protected in any case (material aspect), is completed with the recognition of the ability of the subject itself to share some of those contents (formal aspect).

Regarding supranational jurisprudence, several judgments of the European Court of Human Rights have filled in the concept of private life with

⁴ Organic Law (OL) 1/1982, May 5, of civil protection of the right to honour, privacy and self-image.

aspects related to sexual habits and identity, physical and moral integrity, health, etc. In this sense, privacy has a broad and not exhaustive definition related to the right to identity (*Wisse v. France*, 2005), the right to personal development, personality and autonomy (*Christine Goodwin v. United Kingdom*, 2002; *Evans v. United Kingdom*, 2007); honour and reputation, and moral integrity (*Sánchez Cárdenas v. Norway*, 2007), etc. Of course, the right to privacy is violated when holder does not consent to image capture (*Reklos and Davourlis v. Greece*, 2009), or its publication (*Schüssel v. Austria*, 2002; *Sciacca v. Italy*, 2002; *Von Hannover v. Germany*, 2004).

There are two important rulings that mean a relevant evolution of the concept of privacy. In *Niemitz against Germany* (1992), the court states that it would be too restrictive to limit the notion of privacy to an “inner circle” or private sphere protected from third-parties and that is why respect for private life must also include the right to establish and develop relationships with other human beings. A more recent sentence goes further, placing the emphasis on the fact that authorising the capture of an image, even in a public place, does not imply that its publication is authorised. Therefore, consent cannot be presumed, nor of course can an express will against it be required. This reasoning, in a context of images took in a public place, can also be applied, with even greater restrictions, to the context of sexting, in which capture usually takes place in a private space.

The Court of Justice of the European Union has also accepted a dynamic conception of privacy. In 2014 (case C131/12), expressly stated that sharing private information in a context of trust does not imply shared confidentiality or generalized consent about access to other aspects of private sphere. In this sense, a positive and dynamic side has been added to the negative perspective of the protection of privacy.

The Spanish Constitutional Court considers that the right to privacy is closely linked to one’s personality and derives from the dignity of a person, being necessary to maintain a reserved sphere out of knowledge of others in order to guarantee a minimum quality of life. Although initially the court followed a concept of privacy in its negative side, as the faculty to demand non-interference by third parties in specific aspects of private life (sentence 231/1988), subsequently the constitutional court recognised a positive side as the ability to avoid dissemination of contents shared with third parties (sentence 134/1999). Regarding the images published on social networks, in Spain both the Constitutional Court and the Supreme Court have declared that consent to publish with a purpose does not imply other uses and/or purposes (sentences of Spanish Supreme Court 1225/2003, 1024/2004, 1184/2008, 746/2016, and 363/2017, among others). However, it must be pointed out that up to 2015 (before the reform that introduced article 197.7 in the criminal code), these two courts have also indicated that who shares a

secret with anyone assumes the risk of an unfair behaviour (sentences of Constitutional Court 114/1984 and 56/2003; and Supreme Court 27/11/1997 and 8/6/2001). Even if it was in the context of the crime of disclosure of secrets (article 197.1), this point of view should be considered in order to interpret the new conducts of sexting of article 197.7.

Concerning international regulations, a frequent argument of legislator to carry out penal reforms is that there are some supranational commitments to accomplish. As a matter of fact, these supranational instruments not always require a penal reform, but a legal reform, that could be of civil or administrative nature. In the European context, for instance, the Recommendations and Agreements of the Council of Europe, and some Directives of the European Union stand out. Most of the regulations of the first one that seek to provide guidelines to regulate behaviours that may affect the right to privacy address this issue from the perspective of the protection of minors, with particular relevance to the Budapest Convention on Cybercrime (2001), the Lanzarote Convention on the protection of children against sexual exploitation and abuse (2007), the Declaration on the protection of the dignity, security and privacy of children on the Internet (2008), the Recommendation on measures to protect children from harmful content and behaviour and to promote their active participation in the new information and communications technologies (2009), and the Recommendation on the protection of human rights in social networks, also referred to adults (2012). In the context of the European Union, the Directive on the protection of individuals with respect to the processing of personal data and the free movement of data (1995), and the Directive on the fight against sexual abuse and sexual exploitation of children and child pornography (2011) stand out.

III. THE NEW CRIME OF SEXTING. A CRITICAL ANALYSIS OF ARTICLE 197.7 SPANISH CRIMINAL CODE.

Once analysed the supranational and Spanish constitutional jurisprudence it is clear that privacy must also be protected when the subject initially gives consent to the capture of intimate images or recordings. The current dynamic and positive concept of privacy implies taking into account situations that could emerge from the relationship with others. It is evident that the harmful potential of sexting behaviours has been increased by the use of social networks, as the possibilities of dissemination and circulation of intimate images are exponentially multiplied. However, it is doubtful whether criminal intervention is always necessary to protect this legal asset. In this sense, the penal reform of 2015 could violate principles of subsidiarity and fragmentarity.

Regarding the former, civil regulation through the aforementioned Organic Law 1/1982 could cover most cases, so only very serious behaviours

should be criminalised. It is however necessary to consider whether the response from the civil sphere could be sufficient to address at least conducts of the basic offense, or whether a slight modification of the existing provisions could be enough to cover the more serious cases.

Civil compensation could already have an adequate reparation effect for the victim, making criminal intervention unnecessary. But it is also true that for more serious dissemination behaviours it may be appropriate to obtain an additional preventive effect from a penal level. In any case, it is still early to assess the preventive impact of the application of this crime, as there is still no jurisprudence of the Spanish Supreme Court in this regard, nor is there enough criminological studies to analyse this aspect⁵.

With regard to the principle of fragmentarity, new article 197.7 CC requires violation of privacy to be serious, but this not seem to guarantee that criminal intervention will be limited to the most serious behaviours. As will be analysed later, the concrete object of crime is not specified, so it could be very varied provided that the violation of privacy is considered serious. Understanding privacy in a dynamic way (based on what the holder of the legal right decides to leave outside of third parties intromissions) could lead to leave the victim the decision about the seriousness of the conduct. Rather, maybe the most serious behaviours should be only those involving vulnerable victims (as minors or disabled) and when the hard core of privacy is affected in a way that means a very important damage.

Beyond the possible violation of principles of fragmentarity and subsidiarity, the analysis of the legislative technique used at the reform of 2015 shows some other important issues that could be problematic.

⁵ Among others, Carolina Villacampa Estiarte, “Sexting: prevalencia, características personales y conductuales y efectos en una muestra de adolescentes en España”, in *Revista General de Derecho Penal*, n. 25, 2015; María Isabel Fajardo Caldera, Marta Gordillo Hernández, y Ana Regaladao Cuenca, “Sexting: Nuevos usos de la tecnología y la sexualidad en adolescentes”, in *International Journal of Development and Educational Psychology*, n. 1, vol. 1, 2013, 531-532; José R. Agustina, “¿Menores infractores o víctimas de pornografía infantil?”, in *Revista Electrónica de Ciencia Penal y Criminología*, 12-11 (2010), 27-29, and also José R. Agustina, y Esperanza Luisa Gómez Durán, “Factores de riesgo asociados al sexting como umbral de diversas formas de victimización. Estudio de factores correlacionados con el sexting en una muestra universitaria”, in *Revista de Internet, Derecho y Política*, n. 22, junio 2016, 42.; Deborah GARCÍA MAGNA, Palmira, EXPÓSITO CAMACHO, “El nuevo delito de sexting. Análisis exploratorio sobre su incidencia en adolescentes y posibles medidas para su prevención”, XII Congreso Español de Criminología (SEIC), Oviedo, junio 2018; Cinthia Tomasa Mercado Contreras, Francisco Javier Pedraza Cabrera, y Kalina Martínez Martínez, “Sexting: su definición, factores de riesgo y consecuencias”, in *Revista sobre la infancia y la adolescencia*, n.10, abril, 2016.

Regarding the specific content of the dissemination, article 197.7 does not expressly mention what type of audio-visual images or recordings can be the object of the crime. The precedents in supranational instruments and the events that triggered the legislative process, as well as the majority of the sentences passed before 2015, relate to the sexual life of the victim. However, the Spanish legislator has not specified what aspects of privacy should be embodied in the material object of the conduct. It seems that, at least, they should be part of the hard core of private life, as it happens in the aggravation circumstance of article 197.5 (when it comes to disclosure and dissemination of secrets). In any case, intimate information described in text messages could not be included⁶.

When a comparison is made between the various typical modalities found throughout article 197, it is clear the central role of the fact that the offender has initially obtained the private images “with the consent” of the victim. It is of course more serious the conduct of the person who disseminates them knowing that the material was obtained without authorisation (article 197.3 and 5). Thus, the penalty for the conduct of dissemination of private data not having taken part in its discovery but knowing its illicit origin is 2 to 3 years of prison and fine of 18 to 24 months (for the aggravated circumstance of section 5, that is to say, when it comes to hard core of privacy: ideology, sex life, religion, etc.). However, when the dissemination occurs after having received the material from the victim, the penalty is imprisonment from 3 months to 1 year or a fine of 6 to 12 months. Therefore, even if the dissemination of the material obtained with consent can be as damaging to privacy as the one referred to in section 3 (after a conduct of disclosure, which will be less frequent in practice), the difference of penalty seems to place all the weight on the initial will of the victim. Besides the fact that the neglected conduct of the victim could deserve less criminal protection, this initial behaviour may have repercussions on issues such as the objective imputation of the result, and a possible error of perception on the offender.

With regard to the latter, as the precept requires that the offender disseminates images received from the victim or captured with his or her authorisation, it could be difficult to punish the successive recipients that receive and disseminate the images but don't know whether there is an initial consent or not.

⁶ It is remarkable that the General Attorney, in its report on the reform of 2015 (Circular 3/2017), includes also intimate contents that can be perceived by the auditory sense (for instance, noises or recorded conversations), as it has not been expressly excluded by the legislator. I think that this extensive interpretation violates the principle of legality. In this sense, also Asunción Colás Turégano, “Los delitos de género entre menores en la sociedad tecnológica”, en María Luisa Cuerda Arnau y Antonio Fernández Hernández (dirs.), 2016, ob.cit., pp. 98 y ss.

Indeed, especially among adolescents in groups or chats of mobile applications or on the Internet, it is common that people forward messages without worrying about their contents. Obviously, the harmful potential of these behaviours is very intense in these cases. For this reason, it is necessary to examine if the new crime allows to sanction also the person who forwards the material without having received it directly from the victim, but knowing that there is no authorization to do it. Given the wording of the provision, it seems complicated to consider these persons as offenders, since they have not obtained the material with the consent of the victim. Nor would it be correct to consider them participants of the offender, except in those cases in which there is really an agreement on dissemination between the author and the following subjects who are sending the material. In the end, it would not be possible to sanction the person who simply receives the images and forwards them without knowing the victim or the perpetrator (something which is very common in the context of social networks). This is also the interpretation of the General Attorney in the aforementioned report of 2017. Thus, one could only participate as an abettor or an essential cooperator of said perpetrator, and it would be complicated to punish the third parties who receive the image and disseminate it in turn (*extranei*). These people could be committing a crime against the moral integrity of art. 173.1, although it would be difficult to punish them more severely, by 173.1, than the one who reveals the images in the beginning, by 197.7. In both cases it is possible to reach the same number of people and, therefore, be the conduct equally serious. In this sense, it would be contradictory to punish the stranger more severely than the one who has violated the victim's trust.

In relation to this, the strict interpretation of the express wording of the precept could also exclude the cases in which it is the victim who sends the intimate images to the offender, since article 197.7 expressly says that the material has to be obtained "at the victim's domicile or in any other place beyond the reach of the eyes of third parties". In any case, this does not seem to be the intention of the legislator, as the criminalisation of this behaviour was precisely triggered by the media impact of a case in which it was the victim herself who sent the material in the first place. However, for some authors⁷, receiving the images from the victim should exclude the application of this offense.

Concerning the place where the images are captured, the report of the General Attorney of 2017 cites the jurisprudence of the Supreme Court⁸ to

⁷ For Fermín Morales Prats, "La proyectada reforma de los delitos contra la intimidad: a propósito del caso Hormigos", in *Revista Aranzadi de Derecho y Proceso Penal*, n. 31, 2013, 13, criminalising these behaviours would mean "the generalization of a broad-spectrum obligation" (translated from Spanish) for the offender who receives the images from the victim without having asked this kind of trust.

⁸ Sentence of the Supreme Court n. 731/2013, October 7, among others.

state that the concept of domicile has to be understood broadly and flexible as it seeks to defend the areas in which the individual's private life develops. In this sense, it must be interpreted in the light of the principles that tend to extend the protection of dignity and the development of privacy through which the holder projects his or her "psychic self" in multiple directions. Understood in this context, the domicile is the shelter of personal and family privacy, and, to that end, it is indifferent whether is the victim, the offender or a third party who owns it. Due to the imprecision of the concept, it could include any closed place, or even an open-air site, although in this case it would be necessary to prove that it has sufficient privacy guarantees to ensure that the scenes or images are captured or recorded in a context of strict intimacy. In this sense, the concept of "third parties" should be understood as referring to persons alien to the act or situation recorded.

It is also interesting the question of whether the consent given initially by a minor or person with disability in need of special protection is valid and, therefore, whether this penal provision is applicable in those cases. In effect, if the consent is not valid, as happen in other areas such as sexual abuse with children under 16, the conduct could not be framed in article 197.7, but neither in any of the other figures of that same precept, since it can't be understood that a conduct of disclosure of secrets has been carried out. In this case, the aggravating circumstance of the second paragraph of article 197.7 would not make sense, insofar as the basic conduct is not given. It is also usual that in some groups or chats in which many young people participate, a hostile or exclusionary environment is created towards those who refuse to share photos or videos of intimate content. In these cases, the pressure of the group can reach such an entity that the consent given (or the publication by the owner of the intimate material) could be considered invalid⁹.

Regarding concurrence of offenses, especially in the case of aggravated circumstances, there can be some problems. If the material has sexual content the conduct of sexting may be overlapping with other figures such as the child-grooming of article 183.ter, the possession or access to child

⁹ Regarding the valid age to consent, some authors (Beatriz Ogando Díaz, y César García Pérez, "Consentimiento informado y capacidad para decidir del menor maduro", in *Pediatría Integral*, 2007, XI (10), pp. 878-880) point that child below 12 years old have not yet acquired the ability to foresee the consequences of their actions, but from 12 years old can already be considered mature in some areas. The legislation recognises their right to privacy, honour, own image and confidentiality of communications (Organic Law 1/1996 of protection of minors), the right to decide about health (over 16 years old, in Law 41/2002, of autonomy of patients), and establishes limitations to the legal representation of minors in acts related to personality rights, among which are sexuality and privacy, which according to the laws and their conditions of maturity can be carried out for themselves (article 162 Civil Code).

pornography of article 189.5, and coercion and threats (if the dissemination of the material is conditioned on the victim performing some behaviour or paying any economic amount). When one of the conducts is a preparatory act of others, as happens with child-grooming, the *ne bis in idem* principle could be violated. It should also not be forgotten that the criminalisation of this behaviour can't be an obstacle to the fact that in cases where dissemination occurs under conditions that seriously affect the moral integrity of the person, article 173.1 must be applied, and not the milder of article 197.7, as different legal assets are affected.

IV. CONCLUSIONS

Although in the criminal law literature there are authors who consider that it was not necessary to criminalise the conduct of dissemination of private images received directly by the owner or obtained with his or her consent, the truth is that these behaviours have a great harmful potential that has been increased by new technologies and social networks. There is no doubt that sending a picture on paper with sexual content to someone, or writing certain things in a letter, when the recipient shows it to third parties, does not have the same effect on privacy, honour and dignity that they may have in a virtual context. Furthermore, once the new concepts of privacy based on the jurisprudence of the European Court of Human Rights and the Court of Justice of the European Union have been analysed, it is evident that legal protection cannot be denied to a subject who is simply exercising his or her right to privacy on the positive or dynamic point of view of controlling which aspects of private life are shared with other people. The consideration that a subject who shares some intimate information loses the legitimacy of being criminally protected, it is a narrow-minded approach based on a static concept of privacy.

After addressing in the first place the evolution of the configuration of the legal asset from the supranational jurisprudence and instruments and its reception by the Spanish Constitutional Court, this research has analysed whether the decision of the legislator of 2015 to criminalise sexting is correct. To do this, it has been studied, first, whether it respects the principles of fragmentarity and subsidiarity and, later, the concrete manner in which it has been done, attending to the analysis of specific aspects of the new criminal type.

The legislative technique causes some problems and has been criticised. However, it was necessary to cover a punitive gap at least regarding the most serious conducts (concerning minors and disabled people, and only when the dissemination causes a great damage to privacy). Therefore, the decision to criminalise these behaviours is considered appropriate in these cases. Of

course, there are many aspects of the precept that need improvement, and more empirical studies must be carried out in order to assess the effects of this new regulation.

REFERENCES

- AGUSTINA, José R., “¿Menores infractores o víctimas de pornografía infantil?”, *Revista Electrónica de Ciencia Penal y Criminología*, 12-11, 2010
- y Gómez Durán, Esperanza Luisa; “Factores de riesgo asociados al sexting como umbral de diversas formas de victimización. Estudio de factores correlacionados con el sexting en una muestra universitaria”, *Revista de Internet, Derecho y Política*, n. 22, June 2016
- COLÁS TURÉGANO, Asunción, “Los delitos de género entre menores en la sociedad tecnológica”, Cuerva Arnau, María Luisa (dir.) y Fernández Hernández, Antonio (dir.), 2016
- FAJARDO CALDERA, María Isabel, GORDILLO HERNÁNDEZ, y Marta, REGALADO CUENCA, Ana, “Sexting: Nuevos usos de la tecnología y la sexualidad en adolescentes”, *International Journal of Development and Educational Psychology*, n. 1, vol. 1, 2013
- GARCÍA MAGNA, Deborah, y EXPÓSITO CAMACHO, Palmira, “El nuevo delito de sexting. Análisis exploratorio sobre su incidencia en adolescentes y posibles medidas para su prevención”, XII Congreso Español de Criminología (SEIC), Oviedo, June 2018
- MERCADO CONTRERAS, Cinthia Tomasa, PEDRAZA CABRERA, Francisco Javier; MARTÍNEZ MARTÍNEZ, Kalina, “Sexting: su definición, factores de riesgo y consecuencias”, *Revista sobre la infancia y la adolescencia*, n.10, April 2016.
- MORALES PRATS, Fermín, “La proyectada reforma de los delitos contra la intimidad: a propósito del caso Hormigos”, *Revista Aranzadi de Derecho y Proceso Penal*, n. 31, 2013
- NAVARRO GÓMEZ, Noelia, “El suicidio en jóvenes en España. Cifras y posibles causas. Análisis de los últimos datos disponibles”, *Clínica y Salud*, vol. 28, issue 1, March, 2017.
- OGANDO DÍAZ, Beatriz, y GARCÍA PÉREZ, César, “Consentimiento informado y capacidad para decidir del menor maduro”, *Pediatría Integral*, 2007, XI (10)
- VILLACAMPA ESTIARTE, Carolina, “Sexting: prevalencia, características personales y conductuales y efectos en una muestra de adolescentes en España”, *Revista General de Derecho Penal*, n. 25, 2015

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