

'Stalking' as a form of 'interpersonal panopticism' - A different approach of the transforming 'surveillance society' in the light of 'virtual criminology' and 'e-victimology'

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The real power, the power we have to fight for night and day, is not power over things, but over men." [...] "How does one man assert his power over another, Winston?" Winston thought. "By making him suffer", he said. "Exactly. By making him suffer. Obedience is not enough. Unless he is suffering, how can you be sure that he is obeying your will and not his own? "The real power is in inflicting pain and humiliation [...]"

G. Orwell, 1984(Secker&Warburg), 1949: 336

Introduction

The financial crisis that the international community goes through, provokes multilevel turbulence that drifts every aspect of human life. The crackles of the social structure at national, European and global level, force –amongst others– the Legislator, the Lawyer and the Criminologist¹ to face a reality that is in many ways particular finan-

¹ N. Courakis, 'Die Rolle des Kriminologen bei der Gestaltung der Kriminalpolitik', in: *Volume (Festschrift) in Honour of Professor Klaus Tiedemann*, Carl Heymanns

cially, socially, judicially, politically, technologically and, by extension, psychologically. The international situation is significantly different from the one that existed a few years ago and it therefore requires a fast and effective confrontation of both the apparent and the lurking perils.

There is no doubt that the deriving from crisis deregulation does not only affect the economy, but it is multidimensional –social, institutional and humanitarian– and its legal extends are directly connected not only to the Criminal Law, but also to Crime Policy and Victimology. Besides, the currently adverse economic climate facilitates the *criminogenesis* and as a result, the *victimogenesis*, by operating as a victimising factor. Furthermore, it cannot be overlooked, the fact that this drastic change of facts, in combination with the rapid technological progress and –above all– the extensive use of social media, consist the stepping stone for the rising crime rates of some invisible forms of criminality, victimisation and antisocial or deviant behaviour. Despite the fact that up till now, these forms have remained on the dark side of criminality, constituting the dark (or hidden) figure of crime² or the so-called “base of the iceberg”, they gradually emerge on the surface.

The Double Face of Janus: Crisis as a dystopia and as a Chance to Reveal the Hidden Victimisation and Highlight the New Forms of Criminality

Trying to see the issue from a broader perspective, it could be noticed that crisis –as another Janus– provides, from its tenebrous aspect, a fertile ground for each prospective offender to deploy his/her criminal activity. Simultaneously, from its bright aspect, crisis indirectly gives every legal order the opportunity to trace any latent criminality and unseen victimisation, in order to detect every institutional default or inefficiency and remedy them. In view of the above considerations, it is obvious that crisis’ dystopia can, possibly, operate –even in an

Verlag, 2008, S. 1577-1581.

² A. Walsh and C. Hemmens (eds.), *Introduction to Criminology*, 2nd edn, 2011, Sage Publications, pp. 41 *et seq.*

oxymoron way— as a development tool for a planned and rational Crime Policy.³

Such a form of *unseen victimisation* is born by the behaviour of “stalking” in its both forms: traditional (conventional)⁴ and cyber (cyberstalking).⁵ The term “stalking” –which is a synonym for “haunt”–

³ N. Courakis, 'Strafrecht und Utopie', Contribution to the *Volume (Festschrift) in Honour of Professor Manfred Seebode*, De Gruyter Verlag, 2008, S. 3 – 13 = 'Diritto penale e utopia', in: *Diritto Penale XXI secolo*, anno X – 1/2011, pp. 161-171.

⁴ See, inter alios, J. R. Meloy, 'Thepsychologyofstalking', in: J. R. Meloy (ed.), *ThePsychologyofStalking: Clinicalandforensicperspectives*, NewYork: AcademicPress, 2001, pp. 2-27; P. E. Mullen, M. Pathé & R. Purcell, 'Stalking', *Crime and Justice* 29 (2002), 273-318; L. P. Sheridan, E. Blaauw & G. M. Davies, 'Stalking – knowns and unknowns', *Trauma, Violence and Abuse* 4 (2003), 148-162; B. Spitzberg & W. Cupach, 'The state of the art of stalking: taking stock of the emerging literature', *Aggression and Violent Behavior* 12 (2007), 64-86 (64-65); G. Löhr, *Zur Notwendigkeit eines spezifischen Anti-Stalking-Straftatbestandes in Deutschland. Eine rechtsvergleichende Untersuchung unter besonderer Berücksichtigung der australischen Rechtsentwicklung*, Duncker & Humblot, Berlin, 2008, S. 77.

⁵ See, inter alios, J. M. Deirmenjian, 'Stalking in cyberspace', *Journal of American Academy of Psychiatry and Law* 27 (1999), 407-413; J. Mersmann, 'The dark side of the web: cyberstalking and the need for contemporary legislation', *Harvard Women's Law Journal* 24 (2000), 255-292; E. Ogilvie, 'Cyberstalking', *Crime & Justice International* 17(50): 2001, 26-29; B. H. Spitzberg & G. Hoobler, 'Cyberstalking and the technologies of interpersonal terrorism', *New Media & Society* 4 (2002), 71-92; H.T. Tavani & F.S. Grodzinsky, 'Cyberstalking, personal privacy and moral responsibility', *Ethics and Information Technology* 4 (2002), 123–132; P. Bocij, M. Griffiths & L. McFarlane, 'Cyberstalking: a new challenge for criminal law', *The Criminal Lawyer* 122: 2002, 3-5 (3); P. Bocij & L. McFarlane, 'Online harassment: towards a definition of Ccyberstalking', *Prison Service Journal* 139 (2002), 31-38; P. Bocij & L. McFarlane, 'Seven fallacies about cyber stalking', *Prison Service Journal* 149(1): 2003, 37-42 (37); P. Bocij & L. McFarlane, 'Cyberstalking: a matter for community safety but the numbers do not add up', *Journal of Community Safety* 2 (2): 2003, 26-34; P. Bocij, *Cyberstalking: Harassment in the Internet Age and How to Protect Your Family*, Westport, CT: Greenwood Publishing Group, 2004, *passim*; E. Huber, 'Cyberstalking und Cybercrime'. *Kriminalsoziologische Untersuchung zum Cyberstalking – Verhalten der Österreicher*, Springer, 2012, *passim*; M. Katsogiannou, 'Cyberstalking: the dystopic reality of crisis as the occasion of antisocial behaviour and the rise of unseen victimisation', in: *Essays in Honour of Professor Dr. Nestor Kourakis*

must be interpreted in the light of its origin, that draws from huntsmen sociolect (jargon). Furthermore, at a semiotic level, the deliberate use of this term is obvious, since it reflects the way in which the perpetrator treats the observee and, above all, the stalker's effort to prevail upon the life of his/her victim, a fact that automatically attributes a victimising dimension to stalking behaviour.

Stalking is recognized as a crime by the majority of the foreign legal orders⁶ –both in civil (continental Europe) and common law countries–

(in Greek), Ant. Sakkoulas Publ., 2016, 1422-1521.

⁶ For the legislative frame related to "stalking", see, indicatively, the legislative provisions of the *United States of America* [38 out of 50 states – see for instance, *California* (Cal. Penal Code § 646.9); *Washington* (Wash. Rev. Code §§ 9A.46.110, 9.61.260); *New York* (Penal Law § 120.45); *Florida* (Fla. Stat. § 784.048); *Massachusetts* (Mass. Gen. Laws Ch. 265 § 43), *Michigan* (Mich. Comp. Laws §§ 750.411h, 750.411i); *Minnesota* (Minn. Stat. § 609.749), *Mississippi* (Miss. Code §§ 97-45-15, 97-45-17, 97-3-107); *Missouri* (Mo. Rev. Stat. § 565.225); *Ohio* (Rev. Code § 2903.211), *Oklahoma* (Stat. tit. 21 § 1173); *Oregon* (Or. Rev. Stat. §§ 163.730 – 163.732); *Pennsylvania* (Pa. Cons. Stat. tit. § 18 2709.1); *Virginia* (Va. Code § 18.2-60); *Tennessee* (Tenn. Code § 39-17-315)], as well as the provisions of *United Kingdom* [Protection from Harassment Act 1997 (Sections 4, 4A, amend. 11.2012), in conjunction with a regulatory nexus based on Act 1984 (s. 43, amend. s. 92 Criminal Justice and Public Order Act 1994 and also Communications Act 2003, s. 127, to wit the Electronic Communications Code, 25.7.2003, amend. 15.10.2010); Interception of Communications Act 1985 (amend. 2.10.2000); The Malicious Communications Act 1988 (c. 27, amend. s. 43 Criminal Justice and Police Act 11.5.2001); Criminal Justice & Public Order Act 1994 (c. 33); Criminal Justice Act 2003 (c. 44); Wireless Telegraphy Act 2006; The Regulation of Investigatory Powers Act 2000 (RIP ή RIPA), (c. 23); Communications Act 2003, Section 127(1)(a), (2); Equality Act 2010 (c. 15); Protection of Freedoms Act 2012], *Australia* [Criminal Code Stalking Amendment Act 1999, art. 359B(c)(ii)], *Austria* (§ 107aStGB), *Germany* (§ 238 StGB), *Italy* (612-bis), *Canada* [Criminal Codes. 264 § 2(b)], *New Zealand* [Harassment Act 1997, Part 1 s. 4(1) (d), (ea)], *Belgium* (art. 442bis Criminal Code), *Netherlands* (art. 285b Criminal Code), *Poland* [PenalCodeart. 190a § 1, 2, 3, 4 (6.6.2011)], *Turkey* (Nr. 6284/2012, Law to prevent Family and Violence Against Women, 8.3.2012), *Philippines* [PenalCode, s 282A-282C, as amended by the "Anti-Stalking Act of 2003"], *India* (s. 354D PC), *South Africa* (Anti-gender based Violence ACT 1/2011), *Israel* (5762-2001), *Japan* (Law: "Stökākoinado no kiseinado ni kansuru hōritsu", 24.11.2000, amend. 2013).

whereas in Greece, up till now at least, it does not constitute an offence, as an *ad hoc* criminal conduct.⁷ As a behaviour that is on the borderline between "offence" and "offensive nuisance" –and by extension, in the latter case, harassment– stalking is also connected with the so-called "grey areas" of criminality or "quasi-criminological phenomena", to wit behaviours that are not necessarily defined as criminal but they may reach the threshold of harm and become extreme nuisances. Many of the acts that constitute the stalking behaviour –as a course of conduct– lie at the interface between a "mere nuisance" and an "offensive nuisance",⁸ but, actually, stalking as a criminal act, is an extreme nuisance that reaches the threshold of harm. The subject in question is related to the fine distinction between a behaviour that harms other's interests⁹ (*harm principle*) and an offending conduct that just produces unpleasant or uncomfortable experiences¹⁰ (*offence principle*). In the latter case, if the offended party cannot escape the offence without incurring unreasonable inconvenience, expense or harm,¹¹ then this form of nuisance (offensive nuisance) is a kind of harassment. The latter justifies, as a legal ground, the limitation of the offender's liberty only under a variety of circumstances that have to be considered: for instance, the extent, the duration, the character of the interference, the offender's

⁷ In Greece the victim of stalking is currently protected through a legislative scheme, based on the provisions of Penal Code (art. 216, 292A, 308-311, 330, 333, 334, 337, 361-363, 370, 370A, 370 B, 370Γ, 381, 389 Greek Penal Code) and special penal laws e.g. Law-Nr. 2472/1997 (art. 22 – Protection of individuals with regard to the Processing of Personal Data), Law-Nr. 3115/2003 (art. 10 – Communication-Security and Privacy), Law-Nr. 3471/2006 (art. 15 – Protection of Personal Data and Privacy in the Electronic Communications Sector and amendment of Law-Nr. 2472/1997), Law-Nr. 3500/2006 (Combating Domestic Violence).

⁸ For further details, see J. Feinberg, *The Moral Limits of the Criminal Law – Offense to Others*, Vol. 2, Oxford University Press, 1985, pp. 5 *et seq.*, 277 *et seq.*

⁹ For the meaning of harm, see J. Feinberg, *The Moral Limits of the Criminal Law – Harm to Others*, Vol. 1, Oxford University Press, 1984, pp. 31-36.

¹⁰ The offended party may feel a sense of embarrassment, annoyance, shame, fear, anxiety, anger, disgust, humiliation.

¹¹ It depends mainly on the quality, quantity, intensity, duration of the offence. See J. Feinberg, 1985, *op. cit.*, p. 278.

motives, the extent to which the offended part can avoid this conduct or reduce the inconvenience without undue burden. The Anglo-Saxon law has long been engaged with the differences between the above notions as well as with the definitions of liberty-limiting principles and especially with the sense of harm principle and offence principle.

Unfortunately, there does not exist a commonly accepted definition of “stalking”¹² at international level and, as a result, the term is frequently used as a “procrustean bed”. In this way, its content is unacceptably expanded and also, many contiguous and relative –yet explicitly distinctive– types of behaviour¹³ are consequently and mistakenly subsumed under this term. However, despite the above remark, this vague term crystallized into some definite conduct requirements (stalking behaviour – actus reus), that constitute the wrongful act (criminal behaviour) as an element of criminal responsibility.¹⁴ The comparative review of the foreign legislative regulations¹⁵ as well as the findings of surveys conducted at international level,¹⁶ evince that “stalking” or

¹² A noteworthy exception, however, is provided by the Istanbul Convention (11.5.2011) on “preventing and combating violence against women and domestic violence” (CETS No. 210, 2011). According to article 34 of the above Convention stalking is “the intentional conduct of repeatedly engaging in threatening conduct directed at another person, causing her or him to fear for her or his safety”.

¹³ L. De Fazio & C. Sgarbi, ‘Stalking: la diffusione del fenomeno, gli autori, le vittime’, in: Forum Associazione donne Giuriste (ed.), *Stalking e violenza alle donne. Le risposte dell’ordinamento, gli ordini di protezione*, Milano: Angeli, 2009, pp. 36-46. See, also, H. Ege, *Oltre il mobbing, straining, stalking e altre forme di conflittualità sul posto di lavoro*. Milano: Franco Angeli, 2005, passim.

¹⁴ *Mens rea* must occur simultaneously. For further details see below, footnotes 24, 25.

¹⁵ See above, footnote 7. For a review of Anglo-American criminal law in regard to stalking behaviours, until the early 1990s, see K. G. McAnane, / L. A. Curliiss & C.E. Abeyta-Price, ‘From imprudence to crime: anti-stalking laws, *Notre Dame L. Rev.* 68 (1993), pp. 819-909 (862 *et seq.*).

¹⁶ K.E. Davis, ‘Research on stalking: What do we know and where do we go?’, *Violence Vict.* 15 (2000), pp. 473-487; T. Budd, J. Mattinson & A. Myhill, *The Extent and Nature of Stalking: Findings from the 1998 British Crime Survey*, London: Home

more precisely –from the writer’s perspective– “obsessive harassing surveillance”¹⁷ (see Figure 1 below) describes the perpetrator’s *unpro-*

Office Research, Development and Statistics Directorate, U.K., 2000; R. Purcell, M. Pathé & P. Mullen, ‘The prevalence and nature of stalking in the Australian community’, *Australian and New Zealand Journal of Psychiatry* 36 (2002), pp. 114-120; R. D’Ovidio & J. Doyle, *A study on cyberstalking: understanding investigative hurdles*, *FBI Law Enforcement Bulletin* 72(3): 2003, pp. 10-17; K. C. Basile, M. H. Swahn, J. Chen & L.E. Saltzman, ‘Stalking in the United States: recent national prevalence estimates’, *Am J. Prev.Med.* 31 (2006), pp. 172-175; H. Dressing, C. Kuehner & P. Gass, ‘Prevalence of stalking in Germany’, *Psychiatr Prax* 32 (2005), pp. 73-78; H. Dressing, P. Gass & C. Kuehner, ‘What can we learn from the first community-based epidemiological study on stalking in Germany?’, *Int J Law and Psychiatry* 2007, pp. 10-17; W. Chik, ‘Harassment through the digital medium: a cross-jurisdictional comparative analysis on the law of cyberstalking’, in: S. Mercado-Kierkegaard (ed.), *Cyberlaw, Security and Privacy*, Ankara Bar Association, 2007, pp. 159-182; S. Rusch, *Stalking in Deutschland. Ein Handbuch für alle Praxisbereiche*, Göttingen 2005, S. 64 *et passim*; L. Stadler, ‘Zur Epidemiologie des Stalking in Deutschland: Erkenntnisse der ersten national-repräsentativen Dunkelfeldstudie zu Formen und Verbreitung’, *Praxis der Rechtspsychologie* 23 (2013), S. 187-213; D. Hellmann & S. Kliem, ‘The prevalence of stalking: Current data from a German victim survey’, *European Journal of Criminology*, 12 (2015), 700-718.

¹⁷ According to the writer’s opinion, even the periphrastic interpretative rendering of “stalking” through the term “obsessive (persistent) surveillance” does not *per se* express neither the notional content nor the indisputable semiological function of “stalking”. The core of the crime is also constituted by the element of the *harassing behaviour* (see figure 1). In this case, the term “obsessive” is used in order to attribute the *persistence, to wit the annoying, the repeated and the intensesature* of the offender’s conduct, that is – in principle – dissociated from any psychopathological features relating to psychiatric morbidity. The concept of psychopathology of stalking that correlates the intention to harass and surveil with a mental disturbance is not the rule, and the concept is related to individual phenomena and particular categories of mentally ill stalkers. See, *inter alios*, M.A. Zona, R. E. Palarea & J. C. Lane, ‘Psychiatric diagnosis and the offender-victim typology of stalking’, in: J. R. Meloy (ed.), *The Psychology of Stalking: Clinical and forensic perspectives*, San Diego, CA: Academic Press, 1998, pp. 69-84; R. L. Goldstein, ‘More forensic romances: De Clérambault’s syndrome in men’, *Bull. Am. Acad. Psychiatry Law* 15 (1987), 267-74; J. A. Silva, D. V. Derecho, G. B. Leong & M. M. Ferrari, ‘Stalking behaviour in delusional jealousy’, *J. Forensic Sci.* 45 (2000), 77-82; M. A. Zona, K. K. Sharma & J. Lane, ‘A comparative study of erotomaniac and obses-

voked, consistent, intense, repeated and systematic effort to approach a person –either by physical contact or by using any means of telecommunication or any other means– that takes place against the opposite will of the latter.¹⁸In general terms, stalking refers to the –*persistent, constant and unseen*¹⁹– *arbitrary*²⁰ pursuit of communication and to the *intentional, deliberate* contact with the victim even from a distance.²¹ The above behaviour that is usually accompanied by the launch of threats, is reasonably leading –when viewed in its entirety– to the *breach of privacy, and furthermore it –justifiably– provokes intimidation* to the victim, regarding his/her own safety or that of his/her family. More specifically, the crime consists of *a series of acts, a continuous course of conduct that poses a credible threat*. The perpetrator intrudes into the victim’s private sphere and upsets his/her life balance, namely the victim’s *psychological equilibrium*, by tumbling the *normal course of the latter’s life* as

sional subjects in a forensic sample’, *J. Forensic Sci.* 38 (1993), 894–903; R. Harmon, R. Rosner & H. Owens, ‘Obsessional harassment and erotomania in a court population’, *J. Forensic Sci.* 40 (1995), 378–85. Furthermore, the term “harassment”, indicates – apart from the course of conduct that constitutes the activity –the annoying way the victim perceives the culprit’s actions, to wit *the particular way the offender’s behaviour is experienced by the offended part and, more specifically, that the impression the latter forms is – at least – that of annoyance*. Despite the fact that this feature belongs to crime’s material elements, it resonates simultaneously with the victim’s personal experience, namely how the certain conduct is interpreted by the latter. This remark also strengthens the *victim-oriented* nature of the crime.

¹⁸ E. Finch, *The Criminalisation of Stalking: Constructing the problem and evaluating the solution*, Cavendish Publishing, 2001, p. 80, underlines that there are three central characteristics of stalking: *repeated conduct* that is *unwanted* and which *provokes an adverse reaction in the recipient* (emphasis added).

¹⁹ The conduct takes place “*bystealth*”, “*surreptitiously*”. See the entry ‘Stalking’ in: B. Garner (ed.), *Black’s Law Dictionary*, 3rd edn, Thomson/West, 2006, p. 671.

²⁰ The term is used in the sense of the “*unwanted*” communication, from the victim’s perspective. The conduct takes place without authorization. Cf. the term „*unbefugt*”, which the German Legislator used to the relevant provision of the German Penal Code (§ 238 StGB [„*Nachstellung*”).

²¹ One of the most common stalker’s method is to follow the victim closely or to observe him/her from a distance (“*traditional*” stalking).

well as his/her *self-determination*. Actually, stalking is a sort of *psychological intrusion*, which gradually leads the victim, to *constant anxiety* and *strong intimidation*. Through the intense emotional stress that is exercised upon the victim, the latter lives under a regime of "psychological terrorism" ("Psychoterror").²² The above-mentioned main descriptive features of the term "stalking" constitute the *minimum* required distinctive behavioural attributes of the conduct and they compose the hard core firstly of the stalker's act, as a physical element (*actus reus*) and secondly of his/her psychical connection with his/her act, as a mental element, to wit the criminal intent (*mens rea*),²³ that they both create criminal liability.²⁴ Stalker's *modus operandi*, as it has been

²²N. Gazeas, 'Der Stalking-Straftatbestand (Nachstellung)', 238 *StGB, JR* 2007, S. 497 ff. (498); K. Mitsch, 'Strafrechtsdogmatische Probleme des neuen „Stalking“-Tatbestands', *JURA* 2007, S. 401 ff. (403); K. Mitsch, 'Der neue Stalking-Tatbestand im Strafgesetzbuch', *NJW* 2007, S. 1237 ff. (1237); F. Meyer, 'Strafbarkeit und Strafwürdigkeit von „Stalking“ im deutsche Recht', *ZStW* 115 (2003), S. 249-293 (261 ff.); F. Knauer, 'Der Schutz der Psyche im Strafrecht', Mohr Siebeck, 2013, S. 60; S.-A. Meier, § 238 StGB *Nachstellung/Stalking: Eine polizeiliche Sicht nach 6 Jahren*, Hamburg, Diplomica Verlag GmbH 2015, S. 53-54. See also E. Finch, *op.cit.*, who describes stalking as "psychological rape".

²³ The mental element requires that the perpetrator commits the material elements of the act with intention, knowledge, recklessness or negligence. In the case of stalking, the defendant *knows* or *ought to know* that the course of conduct would amount to harassment. See, J. Herring, *Criminal Law. Text, cases and materials*, Oxford University Press, 2004, p. 386; D. Keenan, *Smith & Keenan's English Law*, 14th edition, Longman, 2004, pp. 664-666; M. Allen, *Textbook on Criminal Law*, 13th edition, 2015, Oxford University Press, p. 110; E. Finch, 'Stalking the perfect stalking law: an evaluation of the efficacy of the protection from the Harassment Act 1997', *Criminal Law Review* 703 (2002), 705-709.

²⁴ The "test of liability" under the Anglo-Saxon Criminal Law can be made according to the following three-pronged scheme: 1. Material (or physical) elements of the offence (*actus reus*), 2. Mental (or fault) elements (*mens rea*), 3. Lack of grounds that exclude criminal responsibility [defences excluding the wrongfulness of the act (justificatory defences) and defences excluding the attribution of the perpetrator's act (exculpatory defences)]. See, *inter alios*, N. Courakis, 'Struktur- und Auslegungsaspekte des angelsächsischen Strafrechts', *Goltdammer's Archiv für Strafrecht* (GA), 1981, S. 533-557; J. Herring, *op. cit.*, pp. 81 *et seq.*, 140 *et seq.*, 385 *et*

already set forth, points out that stalking is not regarded as a series of unstable acts, but –on the contrary– it is about a *behavioural sequence*, in which the criminal incidents are related and each separate criminal act, as a part of a *single whole, constitutes an ensemble*. Stalker repeatedly commits criminal acts toward the other person.²⁵ The incidents that take place, *since they have been set in order to serve the same scope* –that is the stalker’s criminal intent– constitute the elements of the whole behaviour and are engaged *in the course of conduct that amounts to stalking*. *These acts could –theoretically– individually and in themselves constitute a violation*. But, in the light of stalking, that is nothingless than a calculated course of action, the crime consists not only in an isolated act but also in a series of acts or –precisely– in a course of conduct. Therefore, the whole is not analyzed into elements, but it has to be seen as such. So, it is a single charge for a single offence.

There is a wide variety of stalker’s primary motives: intense attraction, one-sided or unfulfilled love, rejection, envy, revenge. The research findings show that anyone can be an offender²⁶ as well as a vic-

seq.; D. Ormerod, *Smith and Hogan’s Criminal Law*, 13th edn, OUP Oxford, 2011, pp. 46 *et seq.*, 284 *et seq.*

²⁵ The consequences of the stalking behaviour may vary: the “obsessive harassing surveillance” can lead from annoyance to fear and even to depression, trauma and stress related disorders, trauma-related distress, posttraumatic stress disorder (PTSD). See, *inter alios*, G. Flatten, U. Gast, A. Hofmann, C. Knaevelsrud, A. Lampe, P. Liebermann, A. Maercker, L. Reddemann & W. Wöller, S3 – ‚Leitlinie Posttraumatische Belastungsstörung‘, *Trauma & Gewalt* 5 (3): 2011, pp. 202-210; L. Levi, ‘Introduction: Spice of life or kiss of death?’, in: C. Cooper (ed.), *Handbook of Stress, Medicine and Health*, CRC Press, 1996, pp. 1-10.

²⁶ Regarding stalking from the angle of the perpetrator’s motives, stalkers – known or unknown to their victims– can be classified into seven general categories: *rejected / love scorned stalker; domestic; intimate; incompetent; resentful/ vindictive stalker; composed; predator*. Whereas, in reference to the victim’s characteristics, the typology of stalkers includes the *celebrity/star/public figure stalker* (here fall the sub-categories of *political and presidential stalker*), the *campus stalker*, the *workplace* and the *clinician stalker*. For an analysis of stalking typologies and classifications, see, *inter alios*, P. E. Mullen, M. Pathé & R. Purcell, *Stalkers and Their Victims*, Cambridge University Press, 2nd edn, 2008, pp. 58 *et seq.*, with further references; J. A.

tim.²⁷ This is one of the reasons why the research on risk factors and the evaluation of threat assessment is a complicated undertaking.

Wright, A. G. Burgess, A. W. Burgess, A. T. Laszlo, G. O. McCrary & J. E. Douglas, 'A typology of interpersonal stalking', *Journal of Interpersonal Violence* 11: 1996, 487-502; P. E. Mullen, M. Pathé, R. Purcell & G.W. Stuart, 'Study of stalkers', *Am. J. Psychiatry* 1999, 1244-1249; K. Mohandie, J. R. Meloy, M. Green McGowan & J. R. Williams, 'The RECON typology of stalking: reliability and validity based upon a large sample of North American stalkers', *J. Forensic Sci.* 51 (2006), 147-55.

²⁷ D.M. Hall, 'The victims of stalking', in: J. R. Meloy (ed.), *The Psychology of Stalking. Clinical and forensic perspectives*, San Diego, CA: Academic Press, 1998, pp. 115-135; P. Tjaden, N. Thoennes & C. J. Allison, 'Comparing stalking victimization from legal and victim perspectives', *Violence Vict.* 15 (2000), pp. 7-22; L. Sheridan, G. M. Davies & J. C. W. Boon, 'The course and nature of stalking: a victim perspective', *Howard Journal of Criminal Justice* 40 (2001), 215-234; M. Pathé & P. Mullen, 'The victim of stalking', in: J. Boon & L. Sheridan (eds.), *Stalking and Psychosexual Obsession: Psychological perspectives for prevention, policing and treatment*, J. Wiley & Sons, 2002, pp. 1-22; C. M. Englebrecht, 'Gender differences in acknowledgment of stalking victimization: results from the NCVS stalking supplement', *Violence Vict.* 26 (2011), 560-579; S. Gerhold, *Das System der Opferschutzes im Bereich des Cyber- und Internetstalking. Rechtliche Reaktionsmöglichkeiten der Betroffenen*, Nomos 2009, S. 17 et seq.

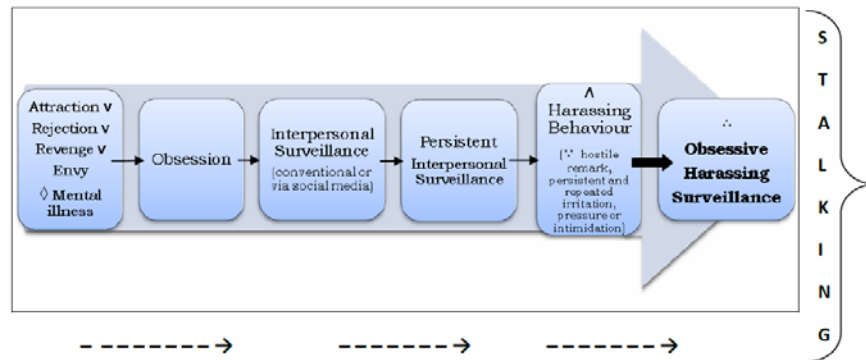


Figure 1: Schematic depiction of stalking behaviour – The interpersonal surveillance (“interpersonal panopticism”) in the context of stalking *

[Figure created by the author - originally published herein]

* Symbol Explanation: \rightarrow consequence; $---\rightarrow$ process; \diamond possibility; v or; \wedge and; \because because; \therefore therefore

Cyberstalking in the Context of ‘Virtual Criminology’ and ‘E-Victimology’ – The Lives of Others in the Heterotopia of Social Media

In the late twentieth century, thanks to the major technological breakthrough and the rise of the “network society”,²⁸ a new wave in criminological theory emerged: the so-called “virtual Criminology”,²⁹ that analyses criminality from a different angle, dealing with the –

²⁸ M. Castells, *The Rise of the Network Society*, Blackwell, 1996, pp. 10 et seq., 412; M. Castells, ‘Materials for an explanatory theory of the network society’, *British Journal of Criminology* 51 (1998), 5-24; B. W. Schermer, ‘Surveillance and privacy in the ubiquitous network society’, *Amsterdam Law Forum* 1 (2009), pp. 63-76.

²⁹ The term was introduced in 1994 by US lawyer Curtis Karnow, who pointed out that “we are leaving the physical world behind, and with it the touchstone of physical and natural laws, together with the [legal] notion of irreducible limits”, see C. Karnow, ‘Recombinant culture: crime in the digital network’, July 1994, DEF CON Hacking Conference 22-24.7.1994, Las Vegas, available at: <http://www.defcon.org/html/text/2/KARNOW-2.txt> and at: http://www.cpsr.org/cpsr/computer_crime/net.crime.karnow.txt

remained unseen for years— crimes that are committed in cyberspace.³⁰ Also, there is a new direction in Victimology, that handles the new faces of victimhood, to wit the specific theme of victimisation and victim protection in cyberspace, the so-called “e-Victimology”.³¹ Besides, the criminological and victimological dimensions of cyberspace, are – inter alia– the most radical manifestation of globalization.³²

Internet abolishes all natural boundaries and it guarantees anonymity, thus rendering the commitment of crime more attractive and easier for the prospective offender. *Cyberstalking* (or “online stalking”) is mainly based on communication achieved through the intervention of a computer [“Computer-Mediated Communication (CMC)”]³³ or that of mobile phones (polyphones), which can perform a communicational

³⁰ M. Williams, ‘Virtually criminal: Discourse, deviance and anxiety within virtual communities’, *International Review of Law Computers and Technology* 14 (2000), 11-24; P. Grabosky, ‘Virtual criminality: old wine in new bottles?’, *Social and Legal Studies* 10 (2001), 243-249; W. Capeller, ‘Not such a neat net: some comments on virtual criminality’, *Social and Legal Studies* 10 (2001), 243-249; S. Brown, ‘Virtual criminology’, in: E. McLaughlin & J. Muncie (eds.), *The Sage Dictionary of Criminology*, 3rd edition, 2013, Sage Publications, pp. 486-488.

³¹ The term “e-Victimology” was coined by Corien Prins, ‘Digital tools: risks and opportunities for victims: explorations in e-victimology’, in: R. Letschert & J. van Dijk (eds.), *The New Faces of Victimhood. Globalization, Transnational Crimes and Victim Rights*, Springer, 2011, pp. 215-230 (215-217).

³² R. Letschert & J. van Dijk, *New Faces of Victimhood: Reflections on the unjust sides of globalization, op.cit.*, p. 3-14 (12); N. Courakis, ‘The future of criminality and the criminology of the future, under the shadow of globalization’, in: *Essays in Honour of Professor James Farsedakis*, Athens: Law Library Publications (Nomiki Vivliothiki) 2011, pp. 1873-1887.

³³ B. Spitzberg & W. Cupach, *The Dark Side of Relationship Pursuit. From Attraction to Obsession and Stalking*, 2nd edn, 2014, Routledge, p. 100 et seq.; J. Hoffmann, *Stalking*, Springer, 2006, S. 201-204; G. Löhr, *Zur Notwendigkeit eines spezifischen Anti-Stalking-Straftatbestandes in Deutschland. Eine rechtsvergleichende Untersuchung unter besonderer Berücksichtigung der australischen Rechtsentwicklung*, Duncker & Humblot, Berlin, 2008, 2008, S. 75-79; E. Ogilvie, ‘Cyberstalking’, *Crime & Justice International* 17 (50): 2001, 26-29. Cf. D. Lyon, ‘Cyberspace sociality: controversies over computer-mediated communication’, in: B. Loader (ed.), *The Governance of Cyberspace*, Routledge, pp. 23-37.

operation, similar to the computer's (smartphones, iPhones), via internet. *Cyberstalking* is performed within *cyberspace environment*,³⁴ through three ways, which actually consist its *tripartite behavioral structure* and more precisely, it consists of *e-mail stalking, computer stalking and internet stalking*.³⁵ So, the crime is committed with the assistance of, or by means of computers, computer networks, internet and, in general, communications technologies (ICTs).

The perpetrator may approach the victim either through a single-method, by using only one of the above-mentioned ways or through a multi-method *modus operandi*, by using a combination or an alternation of the above methods³⁶. In contrast to the direct, personal interaction (or "face-to-face" – "FTF") –namely the interaction that takes place in physical environment, without the interference of electronic devices–the electronic interaction refers to the communication that provides the opportunity of "indirect pursuit" or the so-called "indirect interactional pursuit", which takes place in virtual environment and con-

³⁴ For cybercrimes, see, G. Stephens, 'Crime in cyberspace', *The Futurist* 29 (5): 1995, 24-29; D. Wall (ed.), *Cyberspace Crime*, Dartmouth: Ashgate, 2003, *passim*; Y. Jewkes, 'Cybercrime', in: E. McLaughlin & J. Muncie (eds.), *The Sage Dictionary of Criminology*, 3rd edition, 2013, Sage Publications, pp. 112-114 (112). For surveillance and cybercrime, cf. S. Leman-Langlois, 'Privacy as currency: crime, information and control in cyberspace', in: S. Leman-Langlois (ed.), *Technocrime. Technology, Crime and Social Control*, Willan Publishing, 2008, pp. 112-138 (132-135).

³⁵ G. Barton, 'Taking a byte out of crime: e-mail harassment and the inefficacy of existing law', *Washington Law Review* 70 (1995), 465 *et seq.* (465-467); E. Ross, 'E-mail stalking: is adequate legal protection available?', *Journal of Computer & Information Law* 1995, 405-432 (406, 412, 424); N. Swartz, 'Google's new e-mail service sparks privacy concerns', *The Information Management Journal* 38 (4): 2004, 6-7; V. von Pechstaedt, *Stalking: Strafbarkeit nach englischem und deutschem Recht (Eine Rechtsvergleichende Untersuchung unter Berücksichtigung des niederländischen Stalking-Gesetzentwurfs 25 768)*, Göttingen: Hainholz, 1999, S. 38-41.

³⁶ P. Bocij, 2004, *op.cit.*, pp. 21 *et seq.*, 29-30; N. Hochman, 'The social media image', *Big Data & Society*, July–December 2014, 1-15 (4-5). See also, the *Recommendation CM/Rec (2010)13* of the Committee of Ministers to member states on the protection of individuals with regard to automating processing of personal data in the context of profiling (23.11.2010).

stitutes a logical extension of the direct interaction, by serving as the latter's supplement or by standing in for it, as a substitute.³⁷

Therefore, besides its undoubted positive contribution³⁸ to information and communications technology (ICT), the internet provides the culprit the opportunity for the *indirect penetration of person's sphere of autonomy* or, in other words, it allows the *panopticism of privacy* (see below). Interpersonal surveillance over social network sites (SNSs) is stalker's common technique.

Thus, there has emerged the phenomenon of "digital person" or the so-called "data double",³⁹ and as a matter of fact, the "lives of others" have become penetrable. Under these circumstances, crime commitment, through self-disclosure⁴⁰ and *visibility of privacy*, is easier and there comes out not only electronic victimisation but also *self-victimisation* that is facilitated via social media.⁴¹

³⁷ Cf. the legislative provision of stalking under Canada's CriminalCode [s. 264 § 2(b)–"CriminalHarassment"].

³⁸ See J. Slevin, *The Internet and Society*, Wiley, 2000; M. Castells ('The internet galaxy: reflections on the internet', *Business and Society*, Oxford University Press, 2002), who declares that the Internet is indeed a technology of freedom (p. 1).

³⁹ The term refers to every user's electronic profile, that consists of personal data and electronic traces. See M. Los, 'Looking into the future: surveillance, globalization and the totalitarian potential', in: D. Lyon (ed.), *Theorizing Surveillance: The panopticon and beyond*, Willan Publishing, 2006, pp. 69-94; T. Mathiesen, *On Globalization of Control: Towards an integrated surveillance system in Europe*, Statewatch Publication, 1999, p. 1.

⁴⁰ A. Joinson/C. Paine, 'self-disclosure, privacy and the internet', in: A. Joinson, K. McKenna, T. Postmes & U.-D. Reips (eds.), Oxford University Press, 2007, pp. 237-252 (239-241); F. Panagopoulou-Koutnatzi, 'Facebook as a challenge to privacy', in: M. Bottis (ed.), *Privacy and Surveillance. Current aspects and future perspectives*, Law Library Publications (Nomiki Vivliothiki), 2013, pp. 215-233 (226, 228).

⁴¹ R. Tokunaga, 'Social networking site or social surveillance site? Understanding the use of interpersonal electronic surveillance in romantic relationships', *Computers in Human Behavior* 27 (2011), 705-713; A. Marwick, 'The public domain: social surveillance in everyday life', *Surveillance & Society* 9 (2012), 378-393; M. Chiang, *Networked Life – 20 Questions and Answers*, Cambridge University Press, 2012, p. 194 *et seq.*; D. M. Boyd & N.B. Ellison, 'Social network sites: definition, history, and scholarship', *Journal of Computer-Mediated Communication* 13(1): 2007, available at:

The victimisation risk in the heterotopia⁴² of social media is clearly analysed and interpreted through the combined application of two theories of criminal victimisation that are applied in stalking: the “Lifestyle Exposure Theory” (LET)⁴³ and the “Routine Activity Theory” (RAT)⁴⁴, that examine how individuals’ online lifestyles affect their vic-

<http://jcmc.indiana.edu/vol13/issue1/boyd.ellison.html>; C. N. Gunawardena, M.B. Hermans, D. Sanchez, C. Richmond. M. Bohley&R. Tuttle, ‘A theoretical framework for building online communities of practice with social networking tools’, *Education Media International* 46(1): 2009, 3-16 (4-5, 8); A. Kaplan&H. Michael, ‘Users of the world unite! The challenges and opportunities of social media’, *Business Horizons* 53(1): 2010, 59-68 (59-60); D. Gritzalis, M. Kandias, V. Stavrou&L. Mitrou, ‘History of information: the case of privacy and security in social media’, available at: <http://www.cis.aueb.gr>; D. Gritzalis, M. Kandias, V. Stavrou&L. Mitrou, ‘The social media in the history of information: privacy violations and security mechanisms’, in: M. Bottis (ed.), *The History of Information: From papyrus to electronic document*, Greece, Law Library Publications (Nomiki Vivliothiki) 2014, pp. 283-310.

⁴² Heterotopia is a compound word that is composed of two Greek words: «ἕτερος» which stands for “another”/“different” and «τόπος» that means “place”. The concept was introduced by Michel Foucault [‘Les mots et les choses’, éd. Flammarion et Cie, 1966 = *The Order of Things: An archaeology of the human sciences*, Tavistock Publications, 1970 (Engl. transl.)], in order to describe the manner in which defined spaces that surround the subject in social existence can reduce his/her autonomy and even his/her sense of identity and, simultaneously, the manner in which the subject is defined through his/her differentiation from general society. Following the template established by the notions of “utopia” and “dystopia”, “heterotopia” is an ambiguous space where things are different; a place that is both nowhere (*outopia*) and a good place (*eutopia*). Initially, the term was used by Foucault to describe non real places only, but later, it included the physical as well as the non-physical space. See also B. Smart(ed.), *Michel Foucault. Critical assessments*, Routledge, 1994.

⁴³ M. J. Hindelang, M. R. Gottfredson & J. Garofalo, *Victims of Personal Crime: An empirical foundation for a theory of personal victimization*, Cambridge, MA: Ballinger, 1978.

⁴⁴ L. E. Cohen & M. Felson, ‘Social change and crime rate trends: a routine activity approach’, *American Sociological Review* 44 (1979), 588-608; E. E. Mustaine & R. Tewksbury, ‘A routine activity theory explanation for women’s stalking victimizations’, *Violence Against Women* 5 (1): 1999, 43-62.

timisation risk.⁴⁵ Both these theories⁴⁶ are critical developments of *crime opportunity theory*⁴⁷ and are trying to explain in what ways the habits, lifestyles, and behavioral patterns of ordinary people in their daily lives create the opportune environment for predatory crime. *Lifestyle Exposure Theory* provides an explanation for the connection between an individual's lifestyle and the risks of criminal victimisation. Variations in lifestyles are also related to the differential exposure to dangerous places and time. The implementation of the above theory is obvious in the case of the social network users, who expose their personal life details and indistinctly divulge any fact that takes place in the sphere of their private life. The sharing of photographs and videos as well as the posting of personal details and family moments, through the potentials that are provided by the active social networking websites (especially Instagram, Twitter, Facebook, MySpace and Vine), are constantly drawing the stalker's interest and they facilitate the collection of personal information about the victim, his/her family members, circle of friends, colleagues and in general the victim's social environment.⁴⁸

⁴⁵ B.W. Reyns, B. Henson & B. S. Fisher, 'Being pursued online: applying cyber-lifestyle-Routine Activities Theory to cyberstalking victimization', *Criminal Justice and Behavior* 38 (2011), 1149-1169; T. J. Holt & A. M. Bossler, 'Examining the applicability of lifestyle-Routine Activities Theory for cybercrime victimization', *Deviant Behavior* 30 (1): 2008, 1-25; K.-S. Choi, 'Cyber-Routine activities: empirical examination of online lifestyle, digital guardians and computer-crime victimization', in: K. Jaishankar (ed.), *Cyber Criminology. Exploring internet crimes and criminal behavior*, CRC Press, Taylor & Francis Group, 2011, pp. 229-252.

⁴⁶ The acronym 'LRAT' stands for both theories.

⁴⁷ Crime Opportunity Theory suggests that offenders make rational choices and choose targets that offer a high reward with little effort and risk. So, the occurrence of a crime depends on these factors. See L. E. Cohen & M. Felson, *op.cit.*, p. 589.

⁴⁸ See also, M. Yar, 'The novelty of "cybercrime" – an assessment in light of Routine Activity Theory', *European Journal of Criminology* 2 (4): 2005, 407-427; Z. Tufekci, 'Grooming, gossip, facebook and myspace: what can we learn about these sites from those who won't assimilate?', *Information, Communication, and Society* 11 (2008), 544-564; D. Boyd, 'Facebook's privacy trainwreck: exposure, invasion, and social convergence', *Convergence: The International Journal of Research into New Media Technologies*, 14 (2008), 13-20.

Furthermore, *Routine Activity Theory*,⁴⁹ being developed within the theoretical framework of environmental criminology,⁵⁰ has many similarities with the Lifestyle-Exposure theory. RAT emphasizes how patterns of routine activities provide an opportunity structure for crime. Moreover, the frequently repeated activities of potential victims, that usually take place within the virtual environment of the internet, and notably on specific days and times, assist the offender into creating a complete profile of the person who is stalked⁵¹. This phenomenon is also part of the general concept of the so-called “ritualized media use”.⁵²

Therefore, it is obvious that the “society of information”,⁵³ being at

⁴⁹ Structural changes in routine activity patterns influence crime rates by affecting the convergence in time and space of three elements of direct-contact predatory crimes: the presence of a motivated offender, who is willing to engage in a crime; the opportunities for crime, namely the conditions of the environment in which the offender is situated and, more specifically, the absence of capable guardians and, also, the suitable target. See, L. E. Cohen & M. Felson, *op.cit.*, p. 589.

⁵⁰ P. J. Brantingham & P. L. Brantingham (eds.), *Environmental Criminology*, Prospect Heights: Waveland Press, 1981; R. H. Burke, *An Introduction to Criminological Theory*, Willan Publishing 2009, pp. 211 *et seq.*

⁵¹ N. Rose had pointed out in 1999 (*Powers of Freedom: Reframing political thought*, Cambridge University Press, p. 234) that “surveillance is ‘designed in’ to the flows of everyday life”.

⁵² N. Couldry, *Media Rituals: A critical approach*, London: Routledge, 2002, *passim*; T. Liebes & J. Curran (eds.), *Media, Ritual and Identity*, London: Routledge, 1998, *passim*; B. Debatin, J. Lovejoy, A.-K. Horn & B. Hughes, ‘Facebook and online privacy: attitudes, behaviors, and unintended consequences’, *Journal of Computer-Mediated Communication* 1 (15), 2009, 83–108.

⁵³ T. Allmer, ‘Critical surveillance studies in the information society, tripleC’, *Cognition, Communication, Co-operation* 9(2): 2011, 566-592, with a critical analysis of the foundations of surveillance theories [panoptic and non-panoptic theories of surveillance (567 *et seq.*, 578). Cf. also the European Research Program ‘LiSS’ (‘Living in Surveillance Societies’), designed to increase and deepen knowledge about living and working in the surveillance age, in order to better understand the consequences and impacts of enhanced surveillance and subsequently to make recommendations about its future governance and practice (<http://www.liss-cost.eu>).

the same time a "Risk Society" ("Risikogesellschaft")⁵⁴, can become a source of victimisation, which nevertheless and mostly due to its unseen nature –guaranteed through the anonymity of the online environment– becomes more and more unsafe.⁵⁵

The Rise of the 'Interpersonal Panopticism' Phenomenon –From Bentham's 'Panopticon' to Orwellian 'Big Brother' and from the State Surveillance to interpersonal Omniveillance

It would not be excessive to say that especially cyberstalking consists a type of *electronic panopticon*, an *advanced form of panoptic control* that takes place on an *interpersonal level*. There is an *omnipresent omniveillant perpetrator* in stalking behaviour. From the writer's perspective, it is *not just* a recent characteristic feature of surveillance or an innovation in panopticism's nature: it is also *a new form of criminality that is implied in this transformation*.

The "lives of others" have always drawn interest for several reasons: simple curiosity, public order, crime prevention, crime repression, policing and community safety. With the passage of time, the "art of surveillance" has experienced multiple alterations⁵⁶ and has, also,

⁵⁴ R.V. Erikson & K. Haggerty, *Policing the Risk Society*, University of Toronto Press, 1997, pp. 23, 449. For the relation between 'Risk Society' and the conducts that are on the limits of criminal liability, such as stalking, see F. Neubacher, 'An den Grenzen des Strafrechts – stalking, graffiti, Weisungsverstöße', *ZStW* 118 (2006), S. 855-877 (855).

⁵⁵ There is a rapid rise in the incidence of stalking, due to economic crisis and extensive use of social media. According to Reuters, charges handed out by UK police forces for stalking offences have increased by 33% since 2012 (24.6.2015, <http://www.rt.com>). More specifically, statistics from 40 police forces across England, Wales and Northern Ireland revealed a total of 13.348 charges made under the Harassment Act in 2014, up from 10.059 in 2012. Moreover, convictions and the number of restraining orders have risen (<http://www.theguardian.com>). However, it also coincides with the amendment of the Protection from Harassment Act (1997, Sections 4, 4A, amend. 11.2012 – <http://www.legislation.gov.uk>).

⁵⁶ See, *inter alios*, G. Marx, 'What's new about the "new surveillance"? Classifying for change and continuity', *Surveillance and Society* 1 (2002), 9-29 = in: S. P. Hier & J. Greenberg (eds.), *The Surveillance Studies Reader*, Open University Press, 2007,

gone through quantitative and qualitative evolution⁵⁷ that signaled the

pp. 83-103; D. Lyon, 'Resisting surveillance', *idem*, 368-377 = in: D. Lyon (ed.), *Resisting Surveillance, Surveillance after September 11*, Cambridge: Policy Press, 2003, pp. 142-166; C. Dandeker, *Surveillance, Power and Modernity: Bureaucracy and discipline from 1700 to the present day*, Polity Press, 1990, pp. 12 *et seq.*, 200 *et seq. et passim*; C. Marvin, *When Old Technologies Were New: Thinking About electric communication in the late nineteenth century*, Oxford University Press, 1990, pp. 3-8. Cf. O.H. Gandy, *The Panoptic Sort: A political economy of personal information* (Critical Studies in Communication & in Cultural Industries), Westview Press, 1993, pp. 15 *et seq.*, 53 *et seq.*; K. Haggerty, 'Tear down the walls: on demolishing the panopticon', in: D. Lyon (ed.), *Theorizing Surveillance: The panopticon and beyond, op.cit.*, pp. 23-45, who cites new proposals for the Panopticon phenomenon, e.g. "post-panopticon", "neo-panopticon", "fractal panopticon", in order to highlight the proliferation of opticons (p. 23 *et seq.*). Likewise, M. Poster (*The Mode of Information: Poststructuralism and social sciences*, University of Chicago Press, 1990, p. 94 *et seq.* [repr. 2013, J. Wiley & Sons]) deploys the term "superpanopticon" to indicate the convergence of panoptic observation with the simulation of human behaviour, constructed via the collection of data pertaining to individuals. Cf. the terms "hypersurveillance" and "hypercontrol", in: W. Bogard, *The Simulation of Surveillance. Hypercontrol in Telematic Societies*, Cambridge University Press, 1996, pp. 25 *et seq.*, 114 *et seq.*; D. Lyon, *Surveillance Society: Monitoring everyday life*, Open University Press, 2001, pp. 114 *et seq.* See also, M. Yar, 'Panoptic power and the pathologisation of vision: critical reflections on the Foucauldian thesis', *Surveillance & Society* 1 (2003), 254-271 (258); B. W. Schermer, 2009, *op.cit.*, pp. 67-68. However, see the term "synopticon", which was used by sociologist Thomas Mathiesen ('The viewer society: Michel Foucault's "panopticon" revisited', *Theoretical Criminology* 1 (1997), 215-234 [218-219]) to denote the situation where the many watch the few (e.g. celebrities) and, also the term "sousveillance", which is an inverse panopticon, a counter to organizational surveillance and implies the use of wearable computing devices that offer private individuals the opportunity to observe those in authority. For a broad understanding of surveillance and not –necessarily– negatively, see J. Rule, *Privacy in Peril. How We Are Sacrificing a Fundamental Right in Exchange for Security and Convenience*, Oxford University Press, 2007, p. 14.

⁵⁷ See A. Giddens, *The Nation-State and Violence: Contemporary Critique of Historical Materialism*, Vol. 2, Cambridge: Polity Press, 1985, pp. 181, 294 *et seq.*; A. Giddens, *A Contemporary Critique of Historical Materialism*, Stanford University Press, 1995, p. 169. A. Giddens, who made the issue of surveillance a central problem in modern social theory and linked it with violence, sees surveillance as a phenomenon of the nation-state. In a similar vein, C. Dandeker, 1990, *op.cit.*, pp. vii, de-

end of privacy.⁵⁸ The phenomenon of society's panopticism (or "panopticanization") that turned it into a "surveillance society",⁵⁹ and also led to the *qualitative transformation* of the "surveillant – supervisor" to the "omniveillant" and, consequently, to an "identity alteration" of the

scribes surveillance as a form of information gathering and administrative organization of modernity.

⁵⁸ C. Sykes, *The End of Privacy*, New York: St Martin's Press, 1999, p. 3 *et seq. et passim*; A. Etzioni, *The Limits of Privacy*, New York: Basic Books, 1999, pp. 183-197; G. Billen, 'Meine Daten gehören mir', in: J.-H. Schmidt & T. Weichert (Hrsg.), *Datenschutz – Grundlagen, Entwicklungen und Kontroversen*, Bonn: Bundeszentrale für politische Bildung, CPI, 2012, S. 172-177 (173-175); F. Bluhn, 'Privatsphärenverlust in digitalen Alltag', *idem*, S. 237-242 (239-241); I. Rubinstein, 'Big data: the end of privacy or a new beginning?', New York University (NYU) School of Law, Public Law & Legal Theory Research Paper Series, Workingpaper no. 12-56 (2012), International Data Privacy Law 2013, pp. 1-14.; R. Whitaker, *The End of Privacy: How total surveillance is becoming a reality*, New Press, 1999, p. 5 *et seq. et passim*; C. Bennett, *Regulating Privacy. Data protection and public policy in Europe and the United States*, Cornell University Press, 1992, pp. 12 *et seq.*, 45 *et seq.*, 95-115. For the surveillance in the American society in the early '90s, see S.L. Nock, *The Costs of Privacy: Surveillance and reputation in America*, Walter de Gruyter, 1993, *passim*. For the history of police surveillance in Britain, see J. Rule, *Private Lives and Public Surveillance: Social control in the computer age*, Schocken Books, 1974, pp. 19 *et seq.*, 51 *et seq.*

⁵⁹ G.T. Marx, 'The surveillance society: the threat of 1984-style techniques', *The Futurist* 1985, pp. 21-26; D. Lyon, *Surveillance Society: Monitoring everyday life*, 2001, *op.cit.*, pp. 51 *et seq.*, 107 *et seq.*; 141 *et seq.*; D. Lyon, *The Electronic Eye: The rise of surveillance society*, Minneapolis, MN: University of Minnesota Press & Blackwell Publ., 1994, pp. 57-80; D. Lyon, 'The search for surveillance theories', in: D. Lyon (ed.), *Theorizing Surveillance: The panopticon and beyond*, *op.cit.*, pp. 3-20 (9-12); D.H. Flaherty, *Protecting Privacy in Surveillance Societies*, London: The University of North Carolina Press, 1989; D. Murakami-Wood & C.W.R. Webster, 'Living in surveillance societies: the normalisation of surveillance in Europe and the threat of Britain's bad example', *Journal of Contemporary European Research* 5 (2009), pp. 259-273; H. Strub, 'The theory of panoptical control: Bentham's panopticon and Orwell's 1984', *The Journal of the History of the Behavioral Sciences* 25: 1989, pp. 40-59; W. Bogard, *The Simulation of Surveillance. Hypercontrol in telematic societies*, Cambridge University Press, 1996, pp. 9, 16; G. T. Marx, 'What's new about the "new surveillance"? Classifying for change and continuity', *Surveillance & Society* 1 (1): 2002, 9-29; M. Kandias, L. Mitrou, V. Stavrou & D. Gritzalis, 'Which side are you on? A new panopticon vs. privacy', available at: <http://www.infosec.aueb.gr>

involved parties, is rooted in the previous century, under different forms.⁶⁰ The surveillance practices were used by the secret services and the oligarchic regimes in order to defend the status quo, surveil the citizens or impose centralized control and exercise power respectively. Moreover, they were employed, even in a democratic society,⁶¹ by the lawfully elected representatives of the state power, on the grounds of public security and crime control, policing, restoration of law and order, consolidation of public security and also as a proactive policy (preventive measure)⁶² or a repressive policy (crime investigation).⁶³

⁶⁰ The unbroken line of development of the surveillance is depicted in the gradual transition from the simplest to the most complex form of observation techniques e.g. drones (UAVs [unmanned aerial vehicles]), see Opinion 01/2015 on Privacy and Data Protection Issues relating to the Utilisation of Drones, Adopted on 16 June 2015, 01673/15/EN WP 231.

⁶¹ T. Monahan, 'Surveillance as governance. Social inequality and the pursuit of democratic surveillance', in: K. Haggerty and M. Samatas (eds.), *Surveillance and Democracy*, Routledge, 2010, pp. 91-110 (92, 95, 101 *et seq.*).

⁶² See, *inter alios*, J. Pradel, *De l'Enquête Pénale Proactive. Suggestions pour un statut légal*, Recueil Dalloz-Sirey, 1998, 6^{ème} cahier, chronique A-6, pp. 57-60; C. de Valkeneer, 'Les opérations sous-couvertures et la recherche proactive dans les instruments internationaux', in: F. Tulkens/H. Bosly (eds.), *La Justice Pénale et l'Europe*, Bruxelles, Bruylant, 1996, pp. 368 *et seq.*

⁶³ M. Hansen, 'Überwachungstechnologie', in: J.-H. Schmidt & T. Weichert (Hrsg.), *Datenschutz – Grundlagen, Entwicklungen und Kontroversen*, Bonn: Bundeszentrale für politische Bildung, CPI, 2012, S. 78-87 (82-86); M. Samatas, *Surveillance in Greece*, NY: Pella, 2004, pp. 155 *et seq.*, *et passim*; M. McGuire, 'Online surveillance and personal liberty', in: Y. Jewkes & M. Yar (eds.), *Handbook of Internet Crime*, Routledge, 2011, pp. 492-519; B. H. Spitzberg and G. Hoobler, 'Cyberstalking and the technologies of interpersonal terrorism', *New Media & Society* 4: 2002, 71-92; J. A. Wright, A. G. Burgess, A. W. Burgess, A. T. Laszlo, G. O. McCrary & J. E. Douglas, 'A typology of interpersonal stalking', *Journal of Interpersonal Violence* 11: 1996, 487-502. For the mass surveillance phenomenon, see, *inter alios*, D. Lyon, 'Surveillance, Snowden, and big data: capacities, consequences, critique', *Big Data & Society* July–December 2014, 1–13 (4-5); L. Besselink, 'Public security and fundamental principles of criminal law', in: J. Iliopoulos-Strangas, O. Diggelmann & H. Bauer (eds.), *Rechtsstaat, Freiheit und Sicherheit in Europa/Rules of Law, Freedom and Security in Europe/État de Droit, liberté et sécurité en Europe*, Societas Iuris Publici Europaei (SIPE), Ant. Sakkoulas/NOMOS Verlagsgesellschaft/ Bruylant, 2010, pp. 247-275.

Especially in the last decade, there has been widespread use of electronic surveillance as a preventive and repressive measure against terrorism and organized crime. However, surveillance reaches a climax during the last few years –especially from the 1990s onwards– a new trend of panopticism is evident and depicted in the emergent behaviour of stalking. The progress in the transition from the Orwellian “Big Brother”⁶⁴ to the –based on Bentham’s “Panopticon”⁶⁵– Foucauldian “Panoptic Society”,⁶⁶ reached the apex with the *interpersonal panopticism*: a type of private surveillance that appeared and developed during the last years, arising from social media use and taking place on an interpersonal level. This form of surveillance is even more underground and unseen, surreptitious, hardly noticeable by the offended party and all this behind-the-scenes activity exacerbates the diffused sense of insecurity and leads to a latent victimisation by means of a disguised *psychological violence* that is exercised upon the victim. It has therefore become evident, through the form of surveillance that is depicted in stalking, that the threats against private life do not just stem from the state any more, but also from private individuals. The latter

⁶⁴ G. Orwell, 1984, Secker & Warburg, 1949.

⁶⁵ J. Bentham, ‘Panopticon: Or, the Inspection-House’, 1787, Dublin = London: T. Payne, 1791 = in: M. Bozovic (ed.), *The Panopticon Writings*, London: Verso, 1995, pp. 29-95; J. Bentham, *Panoptique: Mémoire sur un nouveau principe pour construire des maisons d’inspection et nommément des maisons de force*, éd. Étienne Dumont, Paris, 1791 (repr. 2002, éd. MilleetUneNuits, Paris). See, also, D. Lyon, ‘Bentham’s panopticon: from moral architecture to electronic surveillance’, *Queen’s Quarterly* 98 (3): 1991, 597 *et seq.*

⁶⁶ M. Foucault, *Surveiller et Punir: Naissance de la prison*, Gallimard, 1975 = *Discipline and Punish: The birth of the prison* (transl. A. Sheridan), Pantheon, 1977; G. Caluya, ‘The post-panoptic society? Reassessing Foucault in surveillance studies’, *Social Identities* 16 (2010), 621-633 (622-623); T. Mathiesen, ‘The viewer society’, 1997, *op.cit.*, pp. 215-234, who highlights that a new kind of society is implied in the transformed panoptical form and also coins the term “synopticon”, in order to describe the panopticon’s opposite surveillance phenomenon, in which the many watch the few and that expands at an accelerating rate via mass media (p. 217). Cf. P. Froissart, ‘Archivage du panoptisme. La télé-réalité sur internet’, *MédiaMorphoses* 1 (2003), 13-17.

form is far more dangerous⁶⁷ than the others, due to its unseen nature that renders it untraceable. The situation is further complicated by the fact that the motivation of the offender cannot be convincingly understood and as a result, it hinders risk management⁶⁸ and makes the power of the observer over the observed scale up.

It is obvious that this new surveillance trend sprang from stalking, and its nature and methods indicate that there is a new, different and more complicated direction⁶⁹ in the concept of panopticism. So, we could argue that, besides the transition from traditional to electronic panopticon, there is depicted in both forms of the obsessive harassing surveillance –conventional and online– a further shift to *interpersonal* omnipticon⁷⁰, that provides a different orientation to the “omniveil-

⁶⁷ See, for instance, the Amy Lynn Boyer case (1999). B. Lucks, ‘Electronic crime, stalkers and stalking: relentless pursuit, harassment and terror online in cyberspace’, in: J. Davis (ed.), *Stalking Crimes and Victim Protection: Prevention, intervention, threat assessment and case management*, CRC Press, 2001, pp. 161-203 (182).

⁶⁸ For the contemporary practices in risk management, in the light of the changing socioeconomic conditions, see K. Yeager & A. Roberts, ‘Bridging the past and the present to the further crisis intervention and crisis management’, in: K. Yeager & A. Roberts (eds.), *Crisis Intervention Handbook: Assessment, treatment and research*, 4th edn, Oxford University Press, 2015, pp. 3-35; Y. Eaton-Stull & M. Miller, ‘Models for effective crisis intervention’, *idem*, pp. 681-692; S. Dziegielewski & G. Jacinto, ‘Designs and procedures for evaluating crisis intervention’, *idem*, pp. 711-750.

⁶⁹ This form of surveillance is significantly different even from the other type of observation, which is conducted by a private investigator, but in return for payment. It takes place on individual level and not by public entities, but it has a profound financial nature, since the assistance is provided on a reimbursement basis.

⁷⁰ The “omnipticon” is a form of surveillance in which the many watch the many. Everyone can observe and be observed. See, N. Jurgenson, ‘Review of Ondi Timoner’s *We Live in Public*’, *Surveillance & Society* 8 (2010), pp. 374-378; L. Mitrou, M. Kandas, V. Stavrou & D. Gritzalis, ‘Social media profiling: a panopticon or omnipticon tool?’, available at <http://www.infosec.aueb.gr>; A. Feenberg, ‘Great refusal or long march: how to think about the internet’, *Journal of Engineering Studies* 6 (2014), 146-155 = in: C. Fuchs & S. Sandoval (eds.), *Critique, Social Media and the Information Society*, Routledge, 2014, pp. 109-124; N. Friesen, A. Feenberg, G. Smith & S. Lowe, ‘Experiencing surveillance: a phenomenological approach’, in: A. Feenberg & N. Friesen (eds.), *(Re)Inventing the Internet: Critical case studies*, Rotterdam: Sense Publishers, 2012, pp. 85-108.

lance phenomenon".⁷¹ The interpersonal omnipticon has distinctive features and nature from the previous one and it meets the conditions for further evolution through the use of internet (cyberstalking). Therefore, *stalking introduces a new trend in observation, by giving an evolutionary breath to the "art of surveillance" and by inaugurating the era of interpersonal panopticism, in which we are currently living.*

It is common knowledge that crime evolves with society.⁷² Apart from that, it is a self-evident truth that the evolution of the panopticon phenomenon is not only connected with the great progress in the communications technology, but also with the complex dynamics of human relationships, which as has been previously mentioned is directly influenced by the radical changes of society. The *sociology of panopticism or the "sociology of surveillance"*⁷³ is on the threshold of a new reality, which disconnects it from the traditional meaning of the sociology of control⁷⁴ and indicates simultaneously a *transformation in the na-*

⁷¹ J. Blackman, 'Omniveillance, Google, Privacy in public, and the right to your digital identity: a tort for recording and disseminating an individual's image over the internet', *Santa Clara Law Review*, 49 (2009), 313-392 (314-316, 327-341, 362). The author highlights that the predatory behaviour becomes as facile as clicking around the internet and that in this way, cybestalking can take on a whole new meaning (p. 350).

⁷² J. Roach & K. Pease, *Evolution and Crime*, Routledge, 2013, pp. 3 *et seq.*, 74 *et seq.* See, for instance, the empirical data about criminality in Greece in the early nineties, in N. Courakis, 'Crime in modern-day Greece: an overview (National Report)', in review "*Chronics*" of the *Laboratory of Criminology and Forensic Psychiatry* at the University of Thrace, 8 (1993), pp. 61-80; N. Courakis, 'Rapport concernant l'évolution récente de la criminalité en Grèce', dans: *Volume commémoratif a propos du 20ème anniversaire de la Section Hellénique de la Société Internationale de Défense Sociale*, Thessalonique, 1992, pp. 237-244; C. Spinellis, *Crime in Greece in Perspective*, Ant. Sakkoulas, 1997, p. 291 *et seq.* For the increasing trends in criminality rates during the last decade, with special reference to cybercrime, see V. Artinopoulou, 'Victims of crime in contemporary Greece', in: A. Pitsela (ed.), *Criminology: Searching for Answers – Essays in Honour of Professor Stergios Alexiadis*, pp. 71-90 (81-82).

⁷³ D. Lyon, 'The search for surveillance theories', in: D. Lyon (ed.), 2006, *op.cit.*, pp. 12, 18.

⁷⁴ D. Garland, *The Culture of Control*, University of Chicago Press, 2001, *passim*; G. Deleuze, 'Postscript on the societies of control', [JSTOR] *Oktober* 59 (1992), pp. 3-

ture of interpersonal relationships. At the same time, the practice of surveillance is presenting a different aspect, which is not yet noticeable: it experiences a *transition from the state panopticism to the interpersonal one*. This expands the panoptic control and provides it with a new dimension which has some *substantially different qualitative characteristics*, it is more shadowy and underground and therefore it is particularly dangerous. The above surveillance attitude is based on the *interpersonal psychological domination that refers to the control and discipline of the soul* and it is being developed like a play of visibility and power. It could be therefore assumed that the sociology of surveillance and the emerging interpersonal “omniveillance” are already found before the era of *cyber interpersonal panopticism*⁷⁵, to wit the era in which the dataveillance,⁷⁶ data mining, matching and sorting –the so-called “*surveillance assemblage*”⁷⁷–takes already place amongst private individuals and in which

7 = in: I. Szeman & T. Kaposy (eds.), *Cultural Theory. An Anthology*, Wiley-Blackwell, 2011, pp. 139-142; C. Norris & G. Armstrong, *The Maximum Surveillance Society: The rise of CCTV*, Berg, 1999, passim; C. Norris, ‘From personal to digital. CCTV, the panopticon, and the technological mediation of suspicion and social control’, in: D. Lyon (ed.), *Surveillance as Social Sorting. Privacy, risk, and digital discrimination*, Routledge, 2003, pp. 249-281 (250 *et seq.*, 274 *et seq.*); T. Newburn & S. Hayman, *Policing, Surveillance and Social Control. CCTV and police monitoring of suspects*, Willan Publishing, 2002, p. 55 *et seq.*; T. Brignall, ‘The new panopticon: the internet viewed as a structure of social control’, *Theory and Science* 3 (2002), 335–348.

⁷⁵ The term “cyber interpersonal panopticism” is newly introduced herein, in order to highlight the alteration of the nature and form of the panoptic phenomenon in the course of time. It denotes the online collection of personal data practice, which is not supported by external factors, to wit it takes place without any interference from state authorities or private entities and it is independent of public security, law enforcement or commercial purposes or other political or financial interests. Furthermore, it refers to the surveillance that takes place for personal and – mostly – for domestic use only.

⁷⁶ R. Clarke, ‘Information technology and dataveillance’, *Communications of the ACM* 31 (1988), pp. 498-512; R. Clarke, ‘Introduction to dataveillance and information privacy and definitions of terms’, 1997 (revised 2006), available at: <http://www.anu.edu.au/people/Roger.Clarke/DV/Intro.html>

⁷⁷ The term was coined by K. Haggerty & R. V. Ericson, ‘The surveillant assemblage’, *British Journal of Sociology* 51(2000), 605-622 = in: S. P. Hier & J. Greenberg

the panoptic phenomenon is accomplished on a level of interpersonal relationships and mainly via internet. A distinctive feature of this form of surveillance compared to the previous ones is that the above-mentioned behaviour *does not take place under the pressure or the influence of any external factors and that is also disconnected and independent from any public, political, social or financial interests*. Furthermore, it is mostly characterized by an intense emotional involvement of the perpetrator,⁷⁸ as long as the surveillant is driven by motives which are strictly traced to the emotional level and they vary (e.g. passionate love, rejection, obsession, envy, revenge). As a result, in this case at issue, surveillance is not conducted by a public or a private entity (e.g. agencies, organizations, individuals⁷⁹) for different reasons and legitimate or illegitimate purposes and it neither plays the role of an operational instrument for the furtherance of national interests nor takes it place on financial or political-related grounds. It is an expression of a more dangerous and disguised form of *interpersonal domination*, to wit power exercised from

(eds.), *The Surveillance Studies Reader*, Open University Press, 2007, pp. 104-116. See also S. Chakrabarti, *Data-mining: Know it all*, New York: Morgan Kaufmann, 2009, *passim*; T. Vukov & M. Sheller, 'Border work: surveillant assemblages, virtual fences and tactical counter-media', *Social Semiotics* 23 (2013), 225-241; B. Schermer, 'The limits of privacy in automated profiling and data mining', *Computer Law and Security Review* 27 (2011), 45-52.

⁷⁸ Only the "predator stalker" is disconnected from emotional involvement. Furthermore, predatory stalkers are to be found among a range of sex offenders. This type is characterized by lack of emotional responding, since in the predatory stalking the project of violence per se initiates the stalking behaviour. When emotion is absent, aggression becomes predatory, see, *inter alios*, K. Lorenz, *Das sogenannte Böse: Zur Naturgeschichte der Aggression*, Wien: Borotha-Schoeler Verlag, 1963, S. 15 *et seq. et passim* = *On Aggression*, New York, Harcourt, Brace & World, 1966; D. Nussbaum, J. Saint-Cyr & E. Bell, 'A biologically derived, psychometric model for understanding, predicting and treating tendencies toward future violence', *American Journal of Forensic Psychiatry* 18 (1997), 35-50.

⁷⁹ For instance, surveillance in the workplace. See, *inter alios*, D. Flaherty, 'Controlling surveillance: can privacy protection be made effective?', in: P. Agre & M. Rotenberg (eds.), *Technology and Privacy: The new landscape*, Boston: MIT Press, 1997, pp. 167-172 (171); C. Fazekas, '1984 is still fiction: electronic monitoring in the workplace and US privacy law', *Duke Law & Technology Review* 2004, 15-25.

an individual upon another individual, which implies the observee's major *breach of privacy*, the acquisition of control and the consequent *manipulation* on a personal level that embitters the interpersonal relationships.⁸⁰ Basically, the problem of *interpersonal omniveillance* does not only concern the inability of privacy protection, but also the difficulty "netizens" face in *maintaining control* over personal data, that have been disclosed, communicated or diffused mostly via social networks in Web 2.0. However, this has direct consequences for the victim's self-determination and his/her further self-orientation, given that he/she has unwittingly facilitated the intrusion into his/her privacy sphere. So, having the observee him/herself set the sufficient condition for the deconstruction of his/her privacy –that is *self-disclosure*–the latter's boundaries seem to be unstable⁸¹ and a new pattern of self-victimisation emerges within such a framework. This *visibility of privacy* that enables the intrusion into an individual's personal life without just cause, by rendering it *vulnerable*⁸² and by *instrumentalizing* in this way

⁸⁰ See also, M. Andrejevic, 'The work of watching one another: lateral surveillance, risk, and governance', *Surveillance & Society* 2 (2005), 479-497.

⁸¹ For the threat to privacy, due to Information Technology, see, *inter alios*, M. Ziegele & O. Quiring, 'Privacy in social network sites', in: S. Trepte/L. Reinecke (eds.), *Privacy Online: Perspectives on privacy and self-disclosure in the social web*, Springer, 2011, pp. 175-189; E. Sofge, 'Who's spying on you? The looming threat to your privacy, identity and family in the digital age', *Hearst Communications Pub.*, 2012, *passim*; A. Beyer, M. Kirchner, G. Kreuzberger & J. Schmeling, 'Privacy im Social Web – Zum kompetenten Umgang mit persönlichen Daten im Web 2', *Datenschutz und Datensicherung* 9/2008, pp. 597-600; A. Roßnagel, 'Modernisierung der Datenschutzrechts', in: J.-H. Schmidt & T. Weichert (Hrsg.), *Datenschutz – Grundlagen, Entwicklungen und Kontroversen*, Bonn: Bundeszentrale für politische Bildung, CPI, 2012, S. 331-344; H. T. Tavani & F. S. Grodzinsky, 'Cyberstalking, personal privacy and moral responsibility', *Ethics and Information Technology* 4 (2002), pp. 123-132; L. Mitrou, 'Privacy challenges and perspectives in Europe', in: M. Bottis (ed.), *An Informational Law for the 21st Century*, Law Library Publications (Nomiki Vivliothiki) 2010, pp. 220-236. For the intrusion in psychological privacy, see P. Regan, *Legislating Privacy: Technology, surveillance and public policy*, The University of North Carolina Press, pp. 144-173. For the information and communication privacy, see *idem*, pp. 69 *et seq.*, 109 *et seq.*

⁸² For the relation between visibility and vulnerability, see M. Yar, *Surveillance*

the observee (see figure 2 below), defines a new dimension in the fear of crime⁸³. In a similar vein, a vague feeling of insecurity makes its appearance. Under these circumstances, the surveillant of the lives of others, as a *digital tracer of their privacy*, marks the transition from the surveillance that is conducted by national or supranational centers, to the one that takes place *within private individuals* in the contemporary society of the *online interpersonal panopticism*.

Stalker, as an *unseen omnipresent and omniscient perpetrator*, apart from the offense of invasion of privacy, that he commits, he breaches, first of all, the victim's right to personal freedom and security –also in the sense of psychological security– that derives from the inalienable personality rights, as an expression of human dignity. Privacy –either electronic (e-Privacy)⁸⁴ or not– is strongly connected to autonomy and

*& Society*1 (2003), *op.cit.*, 254-271 (255). Cf. *mutatis mutandis*, M. Foucault (*Discipline and Punish*, Harmondsworth: Penguin, 1991 p. 200), who asserted that "The panoptic mechanism arranges spatial unities that make it possible to see constantly and to recognize immediately. In short, it reverses the principle of the dungeon [...] – to enclose, to deprive of light and to hide – it preserves the first and eliminates the other two. Full lighting and the eye of a supervisor capture better than darkness. [...] *Visibility is a trap.*" (emphasis added).

⁸³ For the existing perceptions of the fear of crime see, in great detail, Ch. Zarafonitou, 'Fear of crime and victimisation: the Greek experience', in: Helmut Kury (ed.), *Fear of Crime – Punitivity. New Developments in Theory and Research*, Universitätsverlag, Dr. N. Brockmeyer, Bochum, 2008, pp. 159-172; Ch. Zarafonitou/A. Tseloni, 'Fear of crime and victimisation: a multivariate multilevel analysis of competing measurements', *European Journal of Criminology* 5 (2008), 387-409; Ch. Zarafonitou, 'Criminal victimisation in Greece and the fear of crime: a "paradox" for interpretation', *International Review of Victimology* 16 (3), 2009, pp. 277-300; Ch. Zarafonitou, 'Les dimensions de l'insécurité en Grèce et leur impact sur la punitivité du public', dans: M. Cranidiotis (ed.), *Criminologie et Politique Criminelle Européenne, Mélanges à l'honneur de Aglaia Tsitsoura*, Sakkoulas Publ., Athens-Thessalonique, 2009, pp. 267-281; Ch. Zarafonitou, 'Punitiveness, fear of crime and social views', in: H. Kury/E. Shea (eds.), *Punitiveness – Worldwide Perspectives*, Bochum: Universitätsverlag Dr. Brockmeyer, 2011, pp. 269-294; Ch. Zarafonitou (ed.), 'Fear of crime: a comparative approach in the European context', *CRIMINOLOGY – Special Issue*, Law Library Publications (Nomiki Vivliothiki) 2011, pp. 1-93.

⁸⁴ See the "e-Privacy Directive" (2002/58/EC) of the European Parliament and of

personal freedom. More precisely, personal freedom encapsulates privacy and consequently the right to protection of personal data, self-regulation and informational self-determination⁸⁵.

Even the feeling *per se* that somebody's personal life is constantly being surveilled or that someone is collecting information about him/her –despite the fact that data collection may be exclusively intended for the surveillant's personal use– *constitutes a sufficient condition* for the loss of autonomy, since it automatically marks a change in his/her lifestyle with a subsequent restriction of his/her personal freedom.⁸⁶ Besides, it is only then, that privacy has a meaning, when eve-

the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) [OJ (Official Journal) L 201, 31.7.2002, pp. 37-47, also available at: <http://eur-lex.europa.eu> and <http://data.europa.eu>. The above Directive was amended in 2009 by the Directive 2009/136/EC) of the European Parliament and of the Council of 25.11.2009 (OJ L 337, 18.12.2009, pp. 11-36) known as «Cookies Directive». See also the recent 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, pp. 1-88]. Cf. B. Goold, 'Building it in: the role of privacy enhancing technologies in the regulation of surveillance and data collection', in: B. Goold & D. Neyland (eds.), *New Directions in Surveillance and Privacy*, Willan Publishing, 2009, p. 18-38 (19 et seq., 30).

⁸⁵ J.-H. Schmidt, 'Persönliche Öffentlichkeiten und informationelle Selbstbestimmung', in: J.-H. Schmidt & T. Weichert (Hrsg.), *Datenschutz – Grundlagen, Entwicklungen und Kontroversen*, Bonn: Bundeszentrale für politische Bildung, CPI, 2012, S. 215-225 (218-222); S. Simitis, 'Die informationelle Selbstbestimmung – Grundbedingung einer verfassungskonformen Informationsordnung', *NJW* 1984, S. 402 et seq. Cf. S. M. Scott, 'The hidden First Amendment values of privacy', *Wash. L. Rev.* 71 (1996), pp. 683-723.

⁸⁶ See also, J. Cohen, 'Examined lives: informational privacy and the subject as object', *Stanford Law Review* 52 (2000), 1373-1438; H. Humphrey, 'Foreword' to: E. Long, *The Intruders: The invasion of privacy by government and industry*, Praeger, 1967, p. viii, who points out that "we act differently if we believe we are being observed. If we can never be sure whether or not we are being watched and listened to, all our actions will be altered and our very character will change". Cf. the results of a survey on data retention (sample size of 1002 individuals), that was conducted in

ryone is able, on the one hand to *consciously choose* which of those personal information will be rendered accessible to other persons, and on the other hand to *control* the information's further use, including the opportunity of changing or deleting it.⁸⁷ The problem revolves around the intangible harms of data processing.⁸⁸ The last factor meets with

Germany in May 2008 (27/5-28/5), by the German Forsa institute and was commissioned by the 'Arbeitskreis Vorratdatenspeicherung' (a network of civil rights and privacy activists), NULL, eco (German ISP and Internet Association), Deutscher Fachjournalisten-Verband (German Association of Specialized Journalists) and JonDos GmbH. Despite the fact that the survey focused on government and not private surveillance, its results proved that data retention effectively influences the actual behaviour of citizens: 11% had already abstained from single telecommunication acts, 52% would not use phone or e-mail for confidential contacts, 6% believed to receive less communication since the beginning of the data retention. People under surveillance behaved differently than people who were not monitored – differently than free people. However, a percentage of 48% declared that data retention was a necessary step for crime prevention (The survey is available at: <http://www.kreativrauschen.com/blog/2008/06/04/dataretention-effectively-changes-the-behavior-of-citizens-in-germany/>).

⁸⁷ Therefore, comes up – *inter alia* – the concept of the "right to oblivion" ("right to be forgotten"/"droit à l'oubli"/"diritto all'oblio"). See V. Mayer-Schönberger, *Delete. The Virtue of Forgetting in the Digital Age*, Princeton University Press, 2009, pp. 16 et seq., 119 et seq., 192 et passim; P. Bellia, *The Memory Gap in Surveillance Law*, University of Chicago Law Review 75 (2008), pp. 137-179; L. Bannon, 'Forgetting as a feature, not a bug: the duality of memory and implications for ubiquitous computing', *CoDesign* 2 (2006), 3-15; J. Cohen, 'What privacy is for', *Harvard Law Review* 126 (2013), 1904-1933; D. Lindsay, 'The "right to be forgotten" in European data protection law', in: N. Witzleb, D. Lindsay, M. Paterson & S. Rodrick (eds.), *Emerging Challenges in Privacy Law. Comparative Perspectives*, Cambridge University Press, 2014, pp. 290-337. See also the recent Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 of the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties and on the free movement of such data and repealing Council Framework Decision 2008/977/JHA (OJ 119, 4.5.2016, pp. 89-131).

⁸⁸ O. Lynskey, *The Foundations of EU Data Protection Law*, Oxford University Press, 2015, p. 219 et seq.; F. Berman, 'Got data? A guide to data preservation in the

great difficulties, since in the heterotopia of social media the information is accessible to an indefinable group of people.⁸⁹ More precisely, the main subject matter is the inherent inability of the above act, regarding the *consequences of digital self-exposure*.⁹⁰

Especially in stalking conduct, in which the *interpersonal surveillance* takes place with the further purpose of *harassing* the victim or –in many cases– the latter behaviour occurs simultaneously, it is obvious that the first stands for as the connecting factor between the other two basic elements that compose stalking, to wit persistence (or obsession) and harassment. Specifically, the “interpersonal panopticism” constitutes on the one hand this bridging factor through which the transmission from the field of the surveillant’s intense motives (e.g. passionate love, revenge, envy) to that of stalking occurs. On the other hand, interpersonal surveillance is –on a pragmatic level– the implementation means of “persistence” (or “obsession”), as far as it also renders easier the accomplishment of the harassing behaviour, which is –from the writer’s point of view– a constituent part of stalking (see above).

information age’, *Communications of the ACM* 51 (2008), 50-56.

⁸⁹ See also, D. Trottier, ‘Interpersonal surveillance on social media’, *Canadian Journal of Communication* 37 (2012), 319-332 (320 et seq.); R. Tokunaga, ‘Interpersonal surveillance over social network sites. Applying a theory of negative relational maintenance and the investment model’, *Journal of Social and Personal Relationships* 33 (2016), 171-190; L. Winner, ‘A future of philosophy of technology – yes, but on which planet?’, *Journal of Engineering Studies* 6 (2014), 141-145.

⁹⁰ It is related to the phenomenon of the “function creep”, to wit when data originally intended for certain purposes are linked to other systems or data having a different function. See, *inter alios*, C. Benett, ‘The public surveillance of personal data’, in: D. Lyon & E. Zureik (eds.), *Computers, Surveillance and Privacy*, University of Minnesota Press, 1996, pp. 237-259 (249); M. Andrejevic & K. Gates, ‘Big data surveillance: introduction’, *Surveillance & Society* 12 (2014), 185-196 (189). Cf. D. Lyon, ‘Everyday surveillance. Personal data and social classifications’, *Information, Communication & Society* 5 (2002), 242-257 (249-251) = in: S. P. Hier & J. Greenberg (eds.), 2007, *op.cit.*, pp. 136-146; W. G. Staples, *Everyday Surveillance: Vigilance and visibility in postmodern life*, 2nd edition, Rowman & Littlefield, 2014, pp. 1-16, 199-208.

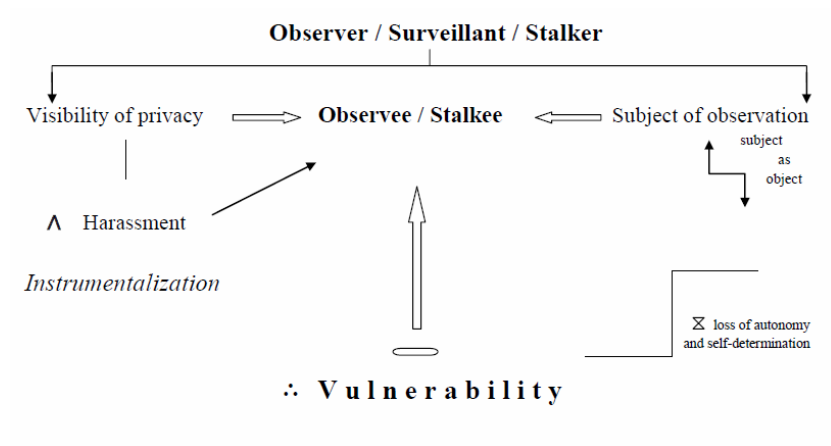


Figure 2: Schematic depiction of the vulnerability process and the instrumentalization stages the victim goes through via interpersonal surveillance in stalking behaviour *

[Figure created by the author - originally published herein]

* Symbol Explanation: → consequence; Λ and; ∴ therefore; Σ flow diagram (patchwork)

Conclusion

The interpersonal relationships and the unsolved mystery that covers the inherent contradictions of human nature, will always be the focal point for every society. Deviation and aggressiveness constitute a basic part of the organized social living. However, their form and extent differ in the course of time. The vacillation between the contradictory human needs and the limitless potential of social media have strengthened the area of tension between autonomy and the inherent tendency of human nature to interact with other people. Moreover, internet's potential role depends on how it is going to be used. Relatively speaking, crisis has two aspects: it is an endurance test for human beings and democratic institutions as well as a chance for every

society to surmount the legislative inadequacies and to bring the hidden depths of the unseen victimisation to the surface.

The transformations of surveillance evince that it is an inherently multilevel phenomenon. During the initial stage, took place the transition from the traditional to electronic surveillance, to wit from the direct visual observation to the remote digital, enriched with new methods and techniques. Afterwards, the state surveillance gave way to the one that takes place by private entities for legitimate or illegitimate purposes and gradually emerged a more unseen form: the *interpersonal surveillance (interpersonal panopticism)*, which is conducted by individuals against individuals, *regardless of economic benefits*, but as an exercise of *psychological domination and power on an interpersonal level* (“stalking”). The above stages prove that panopticism runs a long course. The qualitatively transformed nature of the phenomenon in combination with the rapid technological progress, sound now –more than ever– a note of warning to the Legislator over the unpredictable consequences for human rights. Undoubtedly, this is of great importance for crime policy planning.

In this context, it is obvious that the apparent as well as the latent threats to individual rights and freedoms, will constantly emerge in a new form. In the light of the above considerations, there shall always be proved the timelessness of Professor Dr. Nestor Courakis: remark that “Security must become the freedom’s content and its extreme limit again. [...] Besides, a penal repression that is subordinated to humanitarian-oriented rules and principles, is the only proper one for the legal civilization of those (European) states that regard it as a title of honour to be based upon the rule of law”.⁹¹

⁹¹Nestor Courakis, ‘Security and freedom. The static and the dynamic boundaries between them’, *Nomiko Vima* 54 (2006), 1217-1226 (1226) [in Greek].