

The indeterminate nature of article 612-bis of the Italian Criminal Code: ambiguity as a psycho-crime

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Abstract

This article aims to provide an interpretation of the offense of stalking, starting from the concept of relationship as an unstable cooperative bond, not constrained by any financial ties or legal obligations. The abandonment of such an indirect relationship by one party must be accepted by the other in this cooperative game. Otherwise, according to the jurisprudence of the Court of Cassation, repeated, harassing, and threatening behaviours that cause a severe and lasting state of anxiety and fear can constitute the offense under Article 612-bis of the Italian Criminal Code. Naturally, while this norm has a character of determinacy due to the protection of the legal good of self-determination, it lacks interpretive determinacy. Therefore, it is up to the judge to interpret, on a case-by-case basis, the conformity of Article 612-bis of the Italian Criminal Code with the concrete facts that have occurred.

Keywords: *legality, determinacy, offensiveness, scientific laws, psychic causality*

I. Introduction

The application in legal and interpretive contexts of the principle of determinacy and the issues of creative normative jurisprudence influence the offense in question.

Article 612-bis of the Italian Criminal Code² (c.p.) is considered by legal scholars to be a psycho-crime, meaning it is an offense that punishes attacks on the psychological integrity of others³.

It is understood as an obstacle crime aimed, through criminal law, at preventing an escalation of violence (where the victim is sometimes the harasser, the persecutor of the persecutor): in some cases, the persecutory act leads to injuries, disfigurement, and homicides⁴. A sociological reading of Article 612-bis of the Italian Criminal Code leads to an interpretation of the legal type that does not conform to

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² Art. 612-bis c.1 c.p.: “*Unless the act constitutes a more serious crime, a penalty of imprisonment from one year to six years and six months shall be imposed on anyone who, through repeated conduct, threatens or harasses someone in such a way as to cause a persistent and serious state of anxiety or fear or to generate a well-founded fear for the safety of oneself or of a close relative or of a person linked to the same by an emotional relationship or to force the same to alter one's life habits[...]*”.

³ L. Pistorelli, Il reato di “stalking” e le altre modifiche al codice penale nel d.l. n. 11/2009 conv. in l. n. 30/2009, in penale.it (accessed on 23.6.2026) : “*Threats and harassment are, however, flexible notions, capable of provoking some tension in the principles of specificity and determinacy, but the legislator's selection of a terminology that boasts a robust interpretative tradition can be considered, all things considered, a reassuring barrier against dangerous extensions of the scope of the incriminating provision in application practice. Ultimately, confining such a vast and complex criminology reality, such as the one the new indictment seeks to refer to, in more detailed but also more rigid formulas would have risked rendering it ineffective, and therefore the balance reached between constitutional principles and protection requirements seems reasonable. Moreover, the comparative perspective demonstrates how even foreign legal systems that have decided to adopt similar incriminations have encountered similar difficulties in preparing completely satisfactory regulatory summaries from the perspective reported*”.

⁴ F. Macri, Modifiche alla disciplina delle circostanze aggravanti dell'omicidio e nuovo delitto di “atti persecutori”, in *Dir. Pen. Proc.*, 2009, n. 7, p. 816 ss.

the text of the provision. See the literal wording of Article 612-bis of the Italian Criminal Code and the phrase "*repeated and aggravated harassment*."

2. The relationship between Article 612-bis of the Italian Criminal Code and Article 660 of the Italian Criminal Code

The term "*harassment*" appears in the contraventions of Article 660 of the Italian Criminal Code and provides for punishment in cases where a person causes disturbance for unacceptable reasons subject to criticism and censure according to the legal system.

In this context, however, there is a "reprehensible motive" that expresses the legal concept of indeterminacy⁵.

In relation to Article 612-bis of the Italian Criminal Code, in social life, one cannot punish with a criminal sanction the simple fact that a person manages to relate to another person who does not want that contact⁶.

The jurisprudence of legitimacy observes that, for the compensation of non-pecuniary damage, the violation of a fundamental right and a trivial damage are required: the interference in another's legal sphere must not represent a circumstance within a consortium between public administration and citizens and businesses that are commonplace, but a threshold of offensiveness is required to restore the legal order⁷.

Offensiveness is a legal concept present in harassment: if the harassment is aimed at a purpose that the legal system is intended to satisfy, the author's interest is positively appreciated by the legal system, and this activity is not sanctioned⁸.

In relation to the uninterrupted sequence of events, when the conduct of someone who causes disturbance is criminalized, the act of disturbing is necessarily criminalized⁹.

Therefore, in harassment, not in the case of attempt, the event exists and is evidenced by the phrase "*causes disturbance and harassment*".

Another matter concerns the consequences of hearing the intercom at a certain time in the middle of the night: a state of anxiety is felt, and there is an uninterrupted causal series in conformity with the principle "*natura non facit saltus*" as an expression of the principle of energy conservation. Death, on the other hand, does not interrupt a causal series, but it interrupts life, but then living matter transforms, enters the circuit, and continues the chemical-physical process¹⁰.

Similarly, the legislator does not "*break*" reality, but like the scientist, isolates a segment.

The attempt to harass is not a pure conduct crime because it would punish the anticipated endangerment compared to someone who hears the sound (e.g., the intercom), but the event would always occur because it is always possible to "detach" the act performed by the disturber from its effect (e.g., if the intercom is broken, it is impossible for someone inside the house to hear, even if the author presses the button, the sound is not heard inside the house).

⁵ F. Resta, Il delitto di stalking. Verso un nuovo habeas corpus per la donna?, in Corr. merito, 2009, 7, p. 771 ss.

⁶ A. Luini, Il reato di stalking o atti persecutori ex art. 612-bis c.p. Brevi note, in Riv. Penale, 2009, p. 941 ss.

⁷ I. Peccioli, Il delitto di stalking: prime applicazioni nella giurisprudenza di legittimità, in Dir. Pen. Proc., 2010, p. 1308 ss., in which "*even in the case law consolidated in relation to the similar case of domestic abuse (art. 572 of the Criminal Code), it can be stated that conduct that, although threatening or harassing in itself, presents itself as sporadic episodes, small in number, not sufficiently repeated over time and not linked by a unified criminal intent, does not take on criminal relevance*".

⁸ T.A.R. (Regional administrative court) Lombardia, sez. III, 6 maggio 2011, n. 1205; T.A.R. (Regional administrative court) Lombardia, sez. III, 28 giugno 2010, n. 2639.

⁹ G.M. Flick, Molestia o disturbo alle persone, in Enc. dir., XXVI, Milano, Giuffrè, 1976, p. 711 ss. (*i.e. in the action of ringing the doorbell at night for a reprehensible reason, the sound of the intercom heard by the tenant implies the configuration of art. 660 of the Criminal Code, because there is the conduct of causing, with the action of disturbing, a harassment or disturbance to someone as an effect*)

¹⁰ M. Bunge, La causalità. Il posto del principio causale nella scienza moderna, Boringhieri, Torino, 1970, p. 58 ss.

The last segment is the transmission of the impulse that at a certain point encounters a physical barrier. That is where the endangerment occurs, the last useful moment¹¹.

Therefore, physically, there is no crime without an event. See Article 40 of the Italian Criminal Code, according to which the material event always exists, but it is necessary to analyse whether the legal system criminalizes it; furthermore, if there is no incriminating or dangerous event or one that is extremely remote in the causal chain, there can be no offense¹². At most, when the event is so close to the condition and does not express a certain degree of offensiveness, of harm to the protected legal good, or the offense is unconstitutional for violation of the principle of offensiveness, Article 49 of the Italian Criminal Code (non-existent crime, impossible crime) is applicable¹³.

3. The principle of offensiveness contained in Article 612-bis of the Italian Criminal Code

In Article 612-bis of the Italian Criminal Code, the threshold of offensiveness is not produced by eliminating an intrusive activity that is criminally relevant and has a reprehensible destination (the direction of the harassing activity), but the reference is to the event.

In fact, the crime of harassment is a pure conduct crime (*"Whoever harasses for a reprehensible motive... is punished..."*) because it is the conduct that is sanctioned, not the effects on the subject's psyche¹⁴.

It does not constitute a crime of danger, if the abstract event is not identified, nor a concrete danger event¹⁵.

Pure conduct crimes do not exist, because according to the principle *"natura non facit saltus"*, it is not possible for the legislator to identify such a minimal fragment of reality and immobilize it in the norm, thereby excluding the relevance of a consequence, of a fact¹⁶.

Article 612-bis of the Italian Criminal Code deals with what happens after harassment has been received: the state of anxiety or fear (canonical event for the charge) which is the consequence of receiving harassing, obsessive, intrusive activity in one's legal sphere. If the antisocial direction of the conduct is eliminated, the circumstance that the harassing activity can generate a state of anxiety or fear can reasonably lead to a punishment of such magnitude (up to 6 years and 6 months). Therefore, offensiveness concerns the severe and lasting state of anxiety or fear, but also an offense to the mere legal interest. Harassment, on the other hand, disregards the effect, because the contravention protects a different legal good.

¹¹ Cass. sez. I, 16 dicembre 2008, n. 46231: *"The objective element of the crime referred to in Article 660 of the Criminal Code is used as a credible jurisprudential lesson when, as in the case in question, insistent and inappropriate interference with another's sphere of freedom is proven, resulting in annoying interference in the victim's private life. Nor can the legal situation referred to in the incriminating provision be considered non-recurring unless the only element of petulance is proven or motivated by the judge without specific reference to its consequences ("the harassment" and "the disturbance" contemplated by the provision) since the harassment or disturbance are a consequence connected to the petulant conduct, the latter cannot be conceived in the absence of the disorder perceived by its recipient"*.

¹² F. Stella, *Etica e razionalità del processo penale nella recente sentenza sulla causalità delle Sezioni unite della Suprema Corte di Cassazione*, in Riv. it. dir. e proc. pen., 2002, p. 787 ss.

¹³ A. Fiorella, *Le strutture del diritto penale. Questioni fondamentali di parte generale*, Torino, Giappichelli 2018, p.132 ss.; F. Palazzo, R. Bartoli, *Corso di diritto penale, Parte generale*, Torino, Giappichelli 2023, p. 89 ss.

¹⁴ P. Rivello, *Il processo e la scienza*, in Riv. it. dir. proc. pen., 2010, p. 1726 ss.

¹⁵ Cass. S.U. n. 36958/2021, *"since the "making available" cannot be considered, like the conservation and potential strengthening of the association, an "event" objectively detectable in light of its undeniable connotation of immateriality, for the purposes of its evaluation the "parameter" of causality cannot be used and instead the "relevance" parameter must be used in concrete terms"*.

¹⁶ O. Di Giovine, *Vedere e immaginare (controfattuali). Il ragionamento causale nella sentenza Franzese*, in Riv. it. med. leg. 2022, p. 1023 ss.; E. Mezzetti, *Autore del reato e divieto di regresso nella società del rischio*, Napoli, Jovene, 2021, p 114 ss.; A. Vallini, *"Cause sopravvenute da sole sufficienti" e nessi tra condotte. Per una collocazione dell'art. 41, comma 2, c.p. nel quadro teorico della causalità "scientifica"*, in Studi in onore di Franco Coppi, vol. I, Torino, Giappichelli, 2011, p. 344 ss.

The problem of the offensiveness of Article 612-bis of the Italian Criminal Code lies in the necessity and reasonableness of the criminal sanction. If someone engages in harassing activity that causes psychological distress to the victim, but does so for antisocial purposes, is it punishable? Are justification causes applicable? The interference of massive legislation, even if the purpose is lawful, highlights criminal behaviour, a crime¹⁷.

Such harassing activity, not threatening but annoying, could constitute stalking, because it was not done for reprehensible motives.

However, if it does not constitute the crime of harassment, how can it constitute stalking? Article 612-bis of the Italian Criminal Code disregards the direction of the purpose, because if the activity is such as to cause a severe and lasting state of fear, then it is still qualified as antisocial, because even if the agent's ignorance is legitimate, it becomes illegitimate when it is such as to cause harm to a legal good that is relevant in any case (self-determination)¹⁸.

4. The reasonableness of the offense

The offense under Article 612-bis of the Italian Criminal Code poses problems regarding the reasonableness of criminalization in some situations where the activity is not inherently unlawful or antisocial.

The problems of offensiveness are averted by the clarification that these are psychological states of a certain significance, even if psychological damage from a medico-legal point of view is not required, because otherwise the offense of personal injury could be contested under the aspect of causing mental illness¹⁹.

In this case, determinacy, the reasonableness of criminalization, and offensiveness are linked because the determination of the offense, when it comes to causally oriented crimes (it is because behaviours are identified and those behaviours) can occur in any way.

The first aspect concerns repeated behaviours (a quantitative term, a measurable segment of a factor).

The legislator is satisfied with repetitiveness; it is a literal habitual crime. According to the Court of Cassation, when faced with indeterminate terms, an interpretation that is not only literal, but also logical-systematic and functional is necessary: persecution is a "*nomen iuris*" that identifies the legal type (the model, the figure)²⁰.

Persecution is a substantial activity from a quantitative point of view, and is it compatible with two phone calls an hour apart? And what if the activity then ceases?

The Court of Cassation states that two phone calls can constitute persecution: on the one hand, there is an extremely small number, on the other hand, the time interval is short. On a functional level, is self-determination compromised with that threshold of offensiveness that the norm requires when there are two phone calls an hour apart? The problem is left open to the legislator, but it is up to the Judge to interpret.

¹⁷ G. Amato, Amianto: il giudice deve motivare la sua scelta in caso di tesi scientifiche in contrasto tra loro, in Guida dir., 2011, n. 6, p. 96 ss.

¹⁸ Cass. sez. V, 25 maggio 2011, n. 20895, "*the phrase repeated conduct means that we are dealing with a complex crime, whose "criminal conduct", that is, the action or omission resulting from the event on which the existence of the crime depends (art. 40 of the Criminal Code), is, in this case, integrated with acts that in themselves constitute conduct of threat or harassment. Therefore, the decisive character of the criminal conduct consists in the "repetition" of qualified "persecutory" "acts", as their whole causes the further absorbing event of the above-mentioned crime*".

¹⁹ L. Sammiceli, G. Sartori, Neuroscienze e processo penale, in Cass. pen., n. 9, 2010, p. 3302 ss.

²⁰ M.G. Sandrini, Filosofia dei metodi induttivi e logica della ricerca, Firenze, FUP, 2009, p. 34 ss.

Article 612-bis of the Italian Criminal Code has been subjected to constitutional review and passed by the Constitutional Court's ruling, rejecting the objections of the referring judge on the grounds of determinacy because the issues in the referral order were not well-grounded²¹.

5. The interpretation of the Supreme Courts

The Constitutional Court provides interpretive guidelines according to which it can be considered that "repeated conduct" means a minimum of 2 actions, but it must be accepted that the legislator has minimized the text, as well as the indication of the idea of persecution as an obsessive, not harassing, activity. The interpreter, however, must evaluate the conditions under which 2 behaviours can, over time, actually constitute persecutory activity. If there is substantial contemporaneity of the acts, a habitual link can be considered, connecting the 2 acts into a single action, thus it would not be a habitual crime, but a multi-subsistent crime, because the action is unitary: the theory of action implies that when there are multiple identical acts with the same level of typicality linked to the same incriminating offense of aggression against the same protected legal good, which occur in a space-time condition and in a homogeneous manner (e.g., multiple stab wounds over time), one is faced with a single crime, albeit multi-subsistent (the action is composed of multiple acts)²²; therefore, one can have harassing activity that occurs through 2 phone calls with identical modalities in a short period of time and for which the habitual link is missing, because there is only 1 action and the hermeneutic problem can be overcome: if there are 2 threatening acts 1 day apart with different modalities, then reiteration can be appreciated. It should be noted that the order of hermeneutic activity cannot be reversed: one cannot deduce the nature of the conduct from the effect, because the conduct must be as described by the norm itself.

For the legislator, the crime exists when the psychological disturbance derives from repeated acts of harassment or threat; one cannot infer from the event that repeated harassing or threatening conduct can cause psychological disturbance and a state of anxiety-fear.

The conduct must cause the event, and not the event in the way it manifests itself to qualify the conduct.

The conduct of harassment-threat is generic in Article 612-bis of the Italian Criminal Code: in these terms, the problem of determinacy and reasonableness for harassment arises.

The psychic event of anxiety and fear implies that there should be no problems of determinacy, despite psychic events being internal to the subject's mind and therefore less graspable (they are known indirectly through external signs and there are no diagnostic tools like brain resonance imaging to objectively identify such significant alterations of anxiety and fear) compared to the material event²³.

The Court of Cassation does not deem such an assessment necessary (technical consultancy in the trial) nor a medical certificate²⁴.

On the other hand, the substantive moment and the procedural moment are always together, because the principle of determinacy is not only that of precision (identification of the precise language of the crime), but also empirical verifiability in the trial (the problem of the state of anxiety and fear has substantial repercussions because it is definable but not required; determinacy in an empirical sense)²⁵.

²¹ L. Fascio La sentenza della Corte costituzionale, 23 maggio 2007, n. 171: una pronuncia realmente innovativa? , in *Amministrazione in Cammino*, 03.09.2007, p. 1-15; [La sentenza della Corte costituzionale, 23 maggio 2007](#), access on 23.6.2026.

²² C. Parodi, *Stalking e tutela penale*, Milano, Giuffrè, 2009, p. 54 ss.

²³ M. Billi, *La causalità psichica nei reati colposi. Il caso del processo alla Commissione Grandi Rischi*, Aracne, Roma, 2017, p. 103 ss.

²⁴ P.P. Rivello, *La prova scientifica*, Milano, Giuffrè, 2014, p. 18 ss.

²⁵ S. Lorusso, *La prova scientifica*, in A. Gaito (diretto da), *La prova penale*, vol. I, Utet, 2008, p. 298 ss.;

For the Supreme Court, the prerequisite for such recognizable events, without medico-legal consultancy, lies in the declarations of the injured party, in the type of conduct, even if the injured party has not described it in the complaint or report (if the crime is prosecutable “*ex officio*”), in the severe and lasting state of anxiety and fear, if the conduct proves to be particularly pervasive such as to cause emotional upheaval to an average person; in this case, then, the event is considered proven: in fact, it is circumstantial evidence because the unknown fact is derived from the known fact²⁶.

This circumstantial evidence is curious because usually such are abductions.

The known fact is the effect, the unknown fact is the cause.

The antecedent is what caused it: if this effect occurs, then this cause can be identified; in this case, article 612-bis of the Italian Criminal Code is not derived from a prognostic judgment as the Judge does not have declarative or medico-legal evidence such as the description of the state of anxiety and fear, but presumes such a state of anxiety and fear because that conduct would be capable of producing it²⁷.

The interpretation of the Court of Cassation reduces the determinacy of the event; when the legislator specifies “severe” and “lasting” as attributes of the psychic event, it indicates that the psychic event emerges clearly for the interpreter (Prosecutor, Judge), but if one disregards the declarations of the injured party and medico-legal consultancy or expert opinion, how can the severity and temporal persistence of the event be ascertained?

The Constitutional Court has overcome the objections regarding conduct and event, but the problem of causality remains.

Let us assume that the event was reached appropriately without making a probabilistic, prognostic judgment based on the type of conduct where it appears that the victim suffered this lasting and severe state of fear: how does the causal relationship connect to the conduct and the event?

The covering laws are those of neurosciences, which, however, are not sufficient for certain answers in this matter, and psychology (a human science) is resorted to²⁸.

The Court of Cassation affirms the non-necessity of medical consultancy, but conforms to maxims of experience to establish whether, given a certain conduct and a given event, there is a connection between them²⁹.

The problem is that if the event is devalued, so that “severe and lasting” is downsized in interpretation, then it may be that the state of psychological distress is determined by factors that occurred concurrently with the persecutor's conduct to which the injured party attributes the psychological distress to the conduct in question³⁰.

The principle of equivalence of causality is configured: the “*condicio sine qua non*” under the coverage of the defendant's conduct is sufficient, even if internal/external factors to the victim coexist in causing the event³¹; however, in court, the defendant can argue that these factors are not concomitant, but are alternative to the conduct. Then, in the use of scientific laws in explaining human events, the risk is not being able to identify the role of these alternative factors. In fact, causality is neither only individual nor general: a conduct that causes psychological distress to that person is not sufficient, but

²⁶ S. Lorusso, La prova scientifica, in E.M. Catalano-D. Curtotti Nappi-G. Della Monica-S. Lorusso- M. Montagna-A. Procaccino, Prova penale e metodo scientifico, Utet, 2009, p. 3 ss.

²⁷ P. Tonini, Progresso tecnologico, prova scientifica e contraddittorio, in L. DE CATALDO NEUBURGER (a cura di), La prova scientifica nel processo penale, Cedam, 2007, p. 57 ss.;

²⁸ P. Tonini., La prova scientifica, in A. SCALFATI (a cura di), Prove e misure cautelari, in G. SPANGHER (diretto da), Trattato di procedura penale, vol. II, parte I, Le prove, Utet, 2009, p. 88 ss.

²⁹ Cass. sez. VI, n. 5300 del 2011.

³⁰ P. Pietrini, La macchina della verità alla luce delle recenti acquisizioni delle neuroscienze, in Cass. pen., 2008, p. 419 ss.

³¹ O. Di Giovine, Lo statuto epistemologico della causalità penale tra cause sufficienti e condizioni necessarie, in Riv. it. dir. proc. pen., 2002, p. 681 ss..

the conduct must have been a condition according to a general paradigm; otherwise, the particular sensitivity of that person will be decisive for the occurrence of the event³².

If that conduct does not produce that state of anxiety and fear in the rest of the human population, but only produced it in that person, the criminal responsibility of the subject in question cannot be affirmed, because the causal relationship is missing.

6. Psychic causality and scientific laws

Scientific laws are important, and not just the maxims of experience of the Court of Cassation. Consider the case of the L'Aquila earthquake in 2009.

The Deputy Head of Civil Protection was convicted because a short time before he had sent a reassuring message to the population that the ongoing seismic swarm was not dangerous (they were aftershocks...), there was no risk of a fatal shock causing damage to property and people. When the warning shock occurred, which preceded the fatal one, part of the population was reassured by that message and did not do what should have been done (leave their homes...). An hour later, the fatal shock occurred.

The Deputy Head of Civil Protection was convicted of negligent homicide by virtue of this reasoning: *"his message was a condicio sine qua non for the victims remaining in their homes, which remaining was a condition of death."*³³

The reassuring message was considered a necessary condition (psychic causality), because the final event is not psychic as in Article 612-bis of the Italian Criminal Code, but there is an intermediate psychic event (the decision of some inhabitants to stay inside their homes) which was a co-cause, a condition of death³⁴.

So, the reassuring message caused an intermediate event, which, together with the collapse of the buildings caused by the earthquake, caused death.

In the merits judgment, the sociological law was identified according to which the reassuring message from a ministerial authority was the effect of a conduct of the decision to remain in the homes, because, if the covering law of relationship, which explains on the intellectual-volitional level the relationship between the declaration of a person holding a public office and the decision to do something against the instinct of self-preservation, had not been identified, the defendant could not have been convicted.

The Court of Cassation observes that this law does not exist, has not been proven, and therefore identifies maxims of experience that allow reaching the same conclusion through a counterfactual judgment: if that reassuring message had not existed, the inhabitants would have left their homes and would not have died; through a process of mental elimination, the reassurances of the state authority are hypothetically eliminated, and what would the inhabitants have done?

They would have left their homes.

This is said not because there are injured people, then the trust that the individual places in the state authority is decisive, it is the person's choice. The Supreme Court continues by stating that there are general rules that have not yet been defined by scientific laws (neurosciences and psychology), but which are nevertheless rules, knowledge that arises by induction, through observations of constant cases:

³² G.P. Accinni, Criteri di imputazione per colpa tra leggi scientifiche e accertamenti giudiziari, in Riv. it. dir. proc. pen., 2006, p. 934 ss.

³³ K. Popper, La logica della scoperta scientifica (1934), trad. it., Torino, Einaudi, 1970, in which *"The principle of causality is the assertion that any event can be explained causally. If... it is meant that 'can' means that the world is governed by strict laws and is constructed so that each specific event represents the particular case of a regularity, or a universal law, then the assertion is clearly synthetic. But in this case... it's not falsifiable"*.

³⁴ F. Barresi Neuroscienze sociali, comportamenti collettivi e diritto penale: appunti per una rieditazione della causalità psichica sulle orme del processo "Grandi Rischi" in Archivio Penale 2019, n. 2, pp.1-41.

"every time there is an earthquake, people go out," and the Court has identified a series of elements for which this phenomenon occurs³⁵.

Without the identification by the Court of Cassation of such maxims of experience, a conviction could not have been made.

7. The relationship between maxims of experience and Article 612-bis of the Italian Criminal Code

Maxims of experience can support a judgment of psychic causality also for Article 612-bis of the Italian Criminal Code, connecting the conduct and event, i.e., the persecutory activity to this psychic regression of the victim.

However, maxims of experience leave room for alternative probabilities because they are valid in some cases (as for all maxims derived from induction), as they do not have the support of scientific proof, not even an experiment. When relying on this type of investigation, a rigorous reading of the event is necessary, otherwise the causal relationship is expanded, because only the harassing conduct and the psychic phenomenon as a severe and lasting state of anxiety and fear will be supported, but in reality, this state is modest if it refers to the agent's conduct.

The offense under Article 612-bis of the Italian Criminal Code can be resolved by interpreting repeated conduct: the state of anxiety and fear and the medico-legal assessment and the certification or declaration of the injured party are diminished due to the intensity required by the norm³⁶. Then there is the problem of the causal relationship, because Article 612-bis of the Italian Criminal Code is read as an obstacle crime and an improper legal function and objectification are attributed to it, as it protects self-determination (a vast area of application)³⁷.

In Article 612-bis of the Italian Criminal Code, the legal type is not sociologically framed, despite the aggravating circumstance being in the affective relationship between the parties, thus selecting the most serious hypothesis.

If the Judge interprets Article 612-bis of the Italian Criminal Code based on the real type, it remains outside the legal type and inevitably forces an extensive reading of the textual data on which an extensive interpretation of the offense is based.

In the case of quantifying episodes, harassment is specified, the psychic event is clarified with more effective formulations of "severe and lasting" from a qualitative point of view³⁸.

There must be a loss of tranquillity, but it is necessary to identify the threshold according to the Judge's interpretation: the norm is poorly determined and therefore there is an extensive interpretation.

The principle of determinacy serves to contain extensive interpretation: if the legislator remains within the bounds of determinacy, but there are offenses for which it allows the Judge to interpret the norm so that it is sufficiently determined, then Article 612-bis of the Italian Criminal Code is not about extreme protection of the injured party from harassing conduct, according to extra-normative reasons³⁹.

³⁵ A. Galluccio, Comunicazione (scientifica) e responsabilità penale: riflessioni sulla causalità psichica a margine della sentenza "Grandi Rischi", in *Terremoti, comunicazione, diritto. Riflessioni sul processo alla "Commissione Grandi Rischi"*, a cura di Amato, Cerase, Galadini, Milano, FrancoAngeli, 2015, p.299 ss.

³⁶ Cass., sez. I, 28 maggio 2008, Sepe: "*the new scientific evidence is suitable to overwhelm the criminal judgment only if it reaches new results, different and contrary to those that led to the guilty judgment*".

³⁷ Cass. sez. un., 11 settembre 2002 n. 30328; G. Losappio, Vincoli di realtà e vizi del tipo nel nuovo delitto di "atti persecutori". "Stalking the Stalking", in *Dir. Pen. Proc.*, 2010, n. 7, p. 875 ss; cfr altresì F.Stella, *Leggi scientifiche e spiegazione causale nel diritto penale*, Milano, Giuffrè 1975, p. 105 ss.

³⁸ M. Ronco *Le interazioni psichiche nel diritto penale: in particolare sul concorso psichico*, in *Ind. Pen.*, 2004, p. 838 ss.

³⁹ T. Padovani, *La concezione finalistica dell'azione e la teoria del concorso di persone nel reato*, in *RIDPP* 2003, 1, p. 399 ss.

Article 612-bis of the Italian Criminal Code goes beyond the protection of the legal good protected as an objective index of the principle of offensiveness, which not only concerns the typification of an offense sufficient to trigger criminal law, but must also reflect on the validity and necessity of the principle of necessity, of criminal intervention for the legal system. In fact, criminal intervention is necessary for the progress of human society.

8. Conclusion

Article 612-bis of the Italian Criminal Code postulates a reference to relationship models where one seeks dialogue with another who does not desire it: a dialogue that does not exist and is sought by one party and rejected by the other, and sought again by the first and again rejected by the other in a continuum that can create psychological distress for the interested party. It may be that the person seeks dialogue with another person for a reason that is not antisocial; however, if one seeks someone unknown, they will have a certain number of attempts: if they then insist and if they have a right/duty, they must limit themselves to the final communication, in order to stop the behaviour. From a functional point of view, Article 612-bis of the Italian Criminal Code establishes that a cooperative relationship that is not desired cannot be established without consent, except for legislative provisions for which the cooperative relationship must be established. When it comes to a relationship that involves aggravating circumstances, the norm does not work very well, because the behaviour of someone who disappears can in turn cause psychological trauma to the person who suffers it to combat the intrusive person, and therefore harassment is justifiable; when the relationship is ongoing, the person who suffers the unilateral interruption of the relationship seeks and tries to restore it, and reiterates such behaviours and such systematically rejected contacts. If it is not legitimate, an antisocial model must be identified. Article 612-bis of the Italian Criminal Code is therefore not an obstacle to crime, i.e., a norm to avoid escalation: it is not correct to hypothesize that by combating the persecutory phenomenon, violence will consequently be defeated, because it has naturalistic origins. Nor is there any legitimacy for a technical interpretation according to jurisprudential directives and the prevention norm, nor a scientific interpretation for the socio-criminal use of the offense in question. In fact, when faced with phenomena where there is a law of nature, social laws are not very suitable for interpretation to govern and understand them⁴⁰.

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