

HYDROCARBONS CRIMES: AN ANALYSIS OF THE LAW

Erika BARDALES LAZCANO*

To my mother with love

SUMMARY: I. *Introduction*. II. *Federal Law to Prevent and Punish Hydrocarbons Crimes*. III. *Criminal-legal analysis of hydrocarbons crimes*. IV. *Hydrocarbons crimes in the Accusatory Criminal System*. V. *Conclusions*. VI. *Bibliography*.

I. INTRODUCTION

The issue of energy in Mexico is one of the most sweeping reforms in the country. So, to understand the implications of this issue, it is necessary to move away from the prevailing idea that *it privatizes oil* and replace it with the idea that *it maximizes the profitability of Mexican oil*. This is not easy, but private industry, in one way or another, has actually always collaborated with the government in the use and extraction of hydrocarbons. For example, the energy issue was initially included in the 1917 Constitution in the form of the Nation's ownership of all minerals. However, secondary legislation of this provision empowered the Federal Government to grant concessions, allowing private parties to extract oil and other hydrocarbons for their use.¹

In 1938, State ownership and control of hydrocarbons was guaranteed, but the private sector was also allowed to participate in various industry activities, though not under the concept of concession but under

* Academic at the Universidad Nacional Autónoma de México and the Instituto Nacional de Ciencias Penales.

¹ Article 27 of the Constitución Política de los Estados Unidos Mexicanos of 1917, regarding Ley Reglamentaria del Artículo 27 Constitucional en el Ramo del Petróleo published on December 31, 1925. The possibility of granting concessions to individuals can be deduced from these concordant ordinances.

contract.² It was not until 1958 when a new law regulating Article 27 of the Constitution was issued in the oil industry, one that would eliminate the possibility of entering into contracts with private parties and restrict all oil industry activities to Petróleos Mexicanos (Pemex).³

With the 1958 reform, all responsibility for exploration and extraction of oil was entrusted to Pemex, a situation that brought to the organization an endless number of obligations and responsibilities that would later overwhelm it. This situation led to the constitutional reform of February 3, 1983, which established that the State could rely on the agencies and companies required for the efficient management of strategic areas and priority activities; that is, Pemex could get help from private parties.⁴

In this vein came the most recent reform in this field, that of December 20, 2013, which is the one that currently takes center stage as regards hydrocarbons.⁵ Accordingly, the obligation of the Mexican Congress to legislate the secondary laws regulating the constitutional statutes was established as a natural consequence. As a result, 12 laws were modified and nine were created, which implies an unprecedented and completely new system in energy law—from types of contracts, international laws, public administration and, regarding the topic of this paper, criminal definitions and the creation of the Federal Law to Prevent and Punish Hydrocarbons Crimes of January 12, 2016.⁶

Thus, with the Constitutional reform and the secondary reforms, the Mexican energy sector is being organized, created and consolidated from an avant-garde and innovative perspective. Among the most important changes, it is worth noting that an Energy Sector Coordinating Council (CCSE) was created on September 6, 2016.⁷ Its purpose is to bring together the

² Presidencia de la República, Ley Reglamentaria del Artículo 27 Constitucional en Materia de Petróleo, *Diario Oficial de la Federación*, November 9, 1940.

³ Presidencia de la República, Ley Reglamentaria del Artículo 27 Constitucional en Materia de Petróleo, *Diario Oficial de la Federación*, November 29, 1958.

⁴ Presidencia de la República, Decreto de reforma constitucional que reforma y adiciona los artículos 16, 25, 26, 27, fracciones XIX y XX; 28, 73, fracciones XXIX-D; XXIX-E; y XXIX-F de la Constitución Política de los Estados Unidos Mexicanos, *Diario Oficial de la Federación*, February 3, 1983. Specifically, Article 25 establishes the possibility of having the private sector participate in strategic areas.

⁵ Presidencia de la República, Decreto por el que se reforman y adicionan diversas disposiciones de la Constitución Política de los Estados Unidos Mexicanos, en Materia de Energía, *Diario Oficial de la Federación*, December 20, 2013.

⁶ Presidencia de la República, Ley Federal para Prevenir y Sancionar los Delitos Cometidos en Materia de Hidrocarburos, *Diario Oficial de la Federación*, January 12, 2016.

⁷ Article 20 of the Ley de los Órganos Reguladores Coordinados en Materia Energética. Its duties include issuing sector policy recommendations to be integrated into the annual

Coordinated Energy Regulatory Bodies, the Ministry of Energy and other federal government agencies to facilitate coordination between the national and international industrial sector with the public policy objectives of the hydrocarbons sector, the National Development Plan, and the Energy Sector Program (PROSENER).

In the hierarchical structure, the coordinated regulatory agencies for the energy sector subordinate to the Council are the National Hydrocarbons Commission (CNH) and the National Energy Commission (CNE), which assist the Federal Executive branch in exercising its technical and economic regulatory authority over electricity and hydrocarbons. The agencies have technical, operational and procedural autonomy, as well as their own legal personality, and can avail themselves of the revenues derived from the fees and charges established for the services they provide based on their attributions and powers.⁸

The CNH is in charge of regulating, overseeing and evaluating hydrocarbon exploration and extraction activities in the country. To do so, it may sign and handle hydrocarbon exploration and extraction contracts on behalf of the Mexican State. It is also responsible for establishing and managing the National Hydrocarbon Information Center.⁹

The CRE is charged with transparently, impartially and efficiently managing the activities of the energy industry under its jurisdiction in order to generate certainty that stimulates productive investment, fosters healthy competition, provides adequate coverage and ensures the reliability, quality and security of supply and the provision of services at competitive prices that will benefit society.

With this new energy framework in Mexico, along with the Five-Year Plan that contains strategic information on the areas for tendering, new investment opportunities for the Mexican hydrocarbons industry will arise. Therefore, it is important to provide legal certainty and security in the field of criminal law by means of the Federal Law to Prevent and Punish Hydrocarbons Crimes.

work programs of the Energy Regulatory Commission (CRE) and the National Hydrocarbons Commission (CNH).

⁸ Presidencia de la República, Ley de los Órganos Reguladores Coordinados en Materia Energética, *Diario Oficial de la Federación*, August 11, 2014.

⁹ The National Hydrocarbons Information Center will consist of, at least, information on seismic surveys and rock cores obtained from exploration and extraction work. The Center will also safeguard, preserve and handle rock cores, drill cuttings and hydrocarbon samples deemed necessary for the historical and future knowledge of Mexico's hydrocarbons production.

II. FEDERAL LAW TO PREVENT AND PUNISH HYDROCARBONS CRIMES

In view of the need to respond to criminal issues potentially arising from the energy reform, the Federal Law to Prevent and Punish Hydrocarbons Crimes was published in the Federal Official Gazette on January 12, 2016. This law effectively deals with various criminal behaviors so as to truly prevent them from happening and punish them if they do.

The bill stated that one of the biggest problems the theft of hydrocarbons posed was that they could be stolen very easily through the so-called “illegal taps” along the approximately 68,000 kilometers of pipelines owned by Petróleos Mexicanos.¹⁰ Proof of this were the alarming figures reported and which have increased over the years. The bill noted that in addition to theft by means of “illegal tapping”, theft was also carried out in the oil extraction and distribution in oil fields, storage and distribution facilities, maritime terminals, refineries and in the loading of large vessels by tampering with gauges, weights, invoices and seals, among others.¹¹

In light of criminal law, these behaviors yielded data indicating that 95% of these cases did not result in arrests and only 5% reflected acts of detention *in flagrante delicto* at the time of transporting the illegally obtained product. The offense of possession was considered meriting a caution, but not a serious crime. In the few cases of arrests of persons *in flagrante*, the main issue was the operatively complex situation for an arrest since illegal tapping generally takes place in isolated areas.¹²

Given this scenario, it was imperative for the State to act severely against behavior related to the theft, as well as the unlawful storage, trans-

¹⁰ Senado de la República, *Gaceta Parlamentaria del Senado*, November 11, 2014, No. LXII/3PPO-50/51278. Iniciativa con proyecto de decreto por el que se expide la Ley General para Prevenir y Sancionar los Delitos Cometidos en contra del Patrimonio Nacional en materia de Hidrocarburos, se adiciona la fracción XXIII, se deroga el inciso 19 y se reforma el inciso 25 de la fracción I, todos del artículo 194 del Código Federal de Procedimientos Penales, se reforma el artículo 254 ter, se adiciona la fracción VI y se derogan el inciso j de la fracción I del artículo 253, las fracciones VII y VIII del artículo 254, y el artículo 368 Quater del Código Penal Federal y se reforma la fracción I y adiciona la fracción VIII al artículo 2o. de la Ley Federal contra la Delincuencia Organizada. Del senador Omar Fayad Meneses del grupo parlamentario del Partido Revolucionario Institucional (suscrita también por el senador Miguel Romo Medina), available at: <http://www.senado.gob.mx/index.php?ver=sp&mn=2&sm=2&id=51278>, p. 7.

¹¹ Morales, Alberto and Zavala, Misael, “Detectan robo de combustible en buque tanques”, *El Universal*, January 31, 2019, available at: <https://www.eluniversal.com.mx/nacion/seguiridad/detectan-robo-de-combustible-en-buques>.

¹² *Ibidem*, p. 8.

portation, sale, supply and distribution, of hydrocarbons and other associated behaviors.

In addition to this, at the time it was said that Mexico had had a limited legal framework to punish the various behaviors related to the theft of hydrocarbons. This was because only the Federal Criminal Code (CPF) contemplated crimes committed against national consumption and wealth; the description of these, however, was very basic and the punishment minimal.¹³

Thus, the review committees decided that passing an additional law on the matter and the above-mentioned amendments would provide greater legal certainty to the productive companies, permit holders and assignees in carrying out their activities.

The bill was passed in the Senate on March 10, 2015, with 87 votes in favor.¹⁴ It was sent to the Chamber of Deputies where it was approved by 340 votes on December 14, 2015,¹⁵ and was finally published in the Federal Official Gazette on January 12, 2016.¹⁶

The first title of the Federal Law to Prevent and Punish Hydrocarbons Crimes (LFPSDCMH)¹⁷ establishes the generalities about jurisdiction, origin and proceedings, stressing that the object is to establish the crimes and punishment applicable regarding offenses involving hydrocarbons, oil derivatives or petrochemicals and other assets. The second title specifically regulates criminal offenses, penalties and fines. The third title provides for increased penalties depending on the nature of the active subject who com-

¹³ Senado de la República, *Gaceta Parlamentaria*, Tuesday, March 10, 2015, No. LXII/3SPO-100/53343. Dictamen de las Comisiones Unidas de Justicia, Seguridad Pública y de Estudios Legislativos que aprueba con modificaciones la iniciativa con proyecto de decreto por el que se expide la Ley para Prevenir y Sancionar los Delitos cometidos en Materia de Hidrocarburos, se adiciona la fracción XXIII, se deroga el inciso 19 y se reforma el inciso 25 de la fracción I, todos del artículo 194 del Código Federal de Procedimientos Penales, se reforma el artículo 254 Ter, se adiciona la fracción VI del artículo 254 y se derogan el inciso j de la fracción I del artículo 253, las fracciones VII y VIII del artículo 254 y el artículo 368 Quater del Código Penal Federal y se reforma la fracción I y se adiciona la fracción VIII al artículo 2o. de la Ley Federal contra la Delincuencia Organizada, available at: <http://www.senado.gob.mx/index.php?ver=sp&mn=2&sm=2&id=53343>.

¹⁴ Senado de la República, *Gaceta Parlamentaria*, March 12, 2015, No. LXII/3SPO-102/534, available at: <http://www.senado.gob.mx/index.php?ver=sp&mn=2&sm=2&id=53431>, accessed in August 2018.

¹⁵ Cámara de Diputados, *Gaceta Parlamentaria*, año XIX, núm. 4423, LXIII Legislatura. Versión estenográfica de la sesión ordinaria del 10 de diciembre de 2015.

¹⁶ Presidencia de la República, Ley Federal para Prevenir y Sancionar los Delitos Cometidos en Materia de Hidrocarburos, *Diario Oficial de la Federación*, January 12, 2016.

¹⁷ Presidencia de la República, Ley Federal para Prevenir..., *op. cit.*

mits the crime, and the fourth title regulates the law's second main purpose: the prevention of the act which the law establishes as a hydrocarbon's crime.

In terms of prevention, it regulates federal coordination with local and municipal institutions, public security institutions, energy sector authorities, assignees, permit holders, contractors or distributors to prevent and detect related acts or operations, for which any of the following public policies might exist:

- To design and implement permanent programs to ensure the proper surveillance of pipelines, facilities and the equipment belonging to assignees, permit holders, contractors or distributors.
- To conduct studies on structural causes, crime mapping,¹⁸ statistics, historical trends and behavioral patterns that enable updating and improving preventive measures.
- To obtain, process and interpret crime mapping information by analyzing the factors that produce the behaviors described in this law with the aim of identifying high-risk areas, sectors and groups, as well as associated protection factors.
- To provide and exchange information.
- To carry out campaigns aimed at preventing and averting the factors and causes that give rise to this type of crime.
- To enter into general and specific collaboration agreements to enforce preventive measures.

One example of this is that President Andrés Manuel López Obrador presided over the presentation of the Mexican government's Joint Plan to Combat the Theft of Hydrocarbons from Pemex. This strategic plan involves the participation of 15 Mexican government agencies, including the Ministries of the Interior, of Public Security, of Public Administration, of Labor and Social Welfare, of Finance and Public Credit, and of Energy; the Legal Counsel of the Federal Executive Branch, the Office of the Federal Attorney General, the Tax Administration Service, and the Federal Consumer Protection Agency.¹⁹ Additionally, every public policy concerning this

¹⁸ This is understood as the relationship between geography and crime rates based on situational indicators like location, population and social needs.

¹⁹ López Obrador, Andrés Manuel, "Anuncia presidente plan contra robo de hidrocarburos" at *Sitio Oficial de Andrés*, December 27, 2018, available at: <https://lopezobrador.org.mx/2018/12/27/plan-conjunto-del-gobierno-de-mexico-para-combatir-el-robo-de-hidrocarburos-de-pemex/>.

issue is regulated by a corresponding law and is considered national security information for its effective implementation.

III. CRIMINAL-LEGAL ANALYSIS HYDROCARBONS CRIMES

For imposing punishment on criminal behaviors related to hydrocarbons crimes, it is important to professionalize the prosecuting authorities in substantive criminal law; that is, for them to perfectly identify how hydrocarbons crimes are analyzed. This would prevent impunity resulting from poorly prepared arguments by the defense.

Moreover, it should be noted that with the oral criminal system, accusations regarding hydrocarbons issues will not only be the responsibility of the Office of the Public Prosecutor, but also of the affected individuals who may participate in the process through the victims' legal counsel (lawyers of assignee companies or contractors).²⁰ Therefore, a dogmatic analysis of the relevant criminal types is urgent as a way for academia to participate in the prevention, prosecution and administration of justice in this area.

Such dogmatic analysis²¹ would be based on the legal definition as the first part of the criminal legal analysis; illegality understood as contrary to the law; culpability in its concept of blameworthiness;²² the forms of criminal intervention; the degrees of perpetrating the act, and the concurrent offenses to be punished.

Analysis of behaviors regulated by the General Law to Prevent and Punish Hydrocarbons Crimes

The law regulates a variety of criminal scenarios in Articles 8 to 21, each of which has unique elements in the classification of criminal behavior. Therefore, a general analysis of the different behaviors is given below, followed by a specific opinion of each type of regulated offense.

²⁰ The criminal justice system reform created the role of Legal Counsel for Victims, who becomes party to the process on behalf of the victim and can therefore participate in the proceedings, take part in the trial and file any appeals deemed necessary. *Cfr. Constitución Política de los Estados Unidos Mexicanos*, Article 20, Section C.

²¹ Quintino Zepeda, Rubén, "Dogmática penal para principiantes", *Cuaderno de Trabajo*, Mexico, MaGister, 2006, pp. 7-11.

²² Reinhard, Frank, *Sobre la estructura del concepto de culpabilidad*, Buenos Aires, Julio César Faira, 2000, p. 19.

Regarding the typology, the behavior in most of these crimes is that of action,²³ as specifically stated in Articles 8-20, and of omission,²⁴ as mentioned in Articles 13, 15 and 17. The active subject is the one who engages in the behavior and the passive subject is the one who recently engaged in the behavior, which could be the assignees, contractors, permit holders, distributors or whoever may have access to the hydrocarbons, according to the law. These are entitled to legal counsel to be represented in a proceeding with the individual or collective claims deemed appropriate.

As to the qualities of the subjects required by law,²⁵ an analysis of the various descriptions shows that only Article 13 refers to a specific quality for the active subject of the crime, establishing that they must be a public servant.

The issue of legally protected interests is one of the most difficult because the possibility of a diversity of victims means that the legal interests can be diverse. For instance, if the victim is Pemex, a productive State enterprise, then the legal interests would be supra personal because it affects the natural resources of society at large, but if the victim is a contractor, the legal interests would be personal because it affects its assets.²⁶

On the other hand, in the study of the material object, this depends on the result of the behavior, given that it can be determined by the amount of the petroleum hydrocarbons or petrochemicals stolen, exploited, modified, or sold, among others.²⁷ The above gives way to one more element of

²³ Action is a voluntary body movement. *Cfr.* Porte Petit Candaudap, Celestino, *Apuntes de la parte general de derecho penal*, 17a. ed., Mexico, Porrúa, 1998, p. 237.

²⁴ *Ibidem*, p. 239. Both theory and criminal legislation differentiates between simple inaction that fails to comply with a given rule and inaction that by failing to comply with a rule is associated with an actual outcome attributed to the perpetrator. This is precisely why crimes are classified into: crimes of omission (in which only the terms of the rule are breached) and crimes of commission by omission (in which non-compliance with the rule is also linked to the attribution of a corresponding material outcome).

²⁵ Certain criminal behaviors require the subject to have a specific capacity, like a public servant. These behaviors are referred to as special crimes. *Cfr.* Mir Puig, Santiago, *Derecho penal. Parte general*, 7th ed., Barcelona, Reppertor, 2004, p. 206.

²⁶ Birnbaum may have introduced the concept of “interests” into criminal-legal issues in 1834, but it was Binding who gave rise to the concept of “legal interest” in our field. Hence, the term legal interest stems from Binding’s contribution that a legal interest is “anything that the legislature considers and the undisturbed retention of which it therefore must ensure through norms”. *Cfr.* Cancio Meliá, Manuel, *El bien jurídico en los análisis dogmáticos y políticos criminales*, Argentina, Facultad de Ciencias Jurídicas y Sociales, Universidad Nacional del Litoral, 1999, p. 33.

²⁷ The material object is the person or thing upon which the legal action is based.

analysis, which are circumstances of place, manner or time. In the case at hand, Article 10 of the law establishes a specific circumstance by stating that to establish the criminal offense, it is necessary for it to be committed on platforms and other offshore facilities; and Article 11 refers to the commission of the act in a vessel exclusion zone. Therefore, in order to determine criminal behavior under these hypotheses, it is necessary to consider the verification of the specific place required by the provision.

The means of commission²⁸ are regulated only in Article 12, which states that if the behavior is carried out with violence, rules of accumulation will be applied, but they are not established as an aggravating circumstance. The casual nexus is the legal element closely tied to the proof since the active and passive subject should determine whether or not there was a right for the extraction or use, thereby achieving a result which in any case will be material.²⁹

Following the analysis of the behaviors regulated by law, the different descriptions yield willful misconduct and a strong need to resort to the interpretation of the regulatory elements in legal or cultural interpretations of the law since typical descriptions uses concepts like hydrocarbons, oil products, petrochemicals, platform, assignee, contractor, permit holder, distributor, exclusion area on board a vessel, markers, measuring systems, pipelines, and damage to natural resources, among others.³⁰

A second level of the study concerns unlawfulness, a criminal legal category that in the light of the defense is quite complicated because proving justifiable grounds is not very likely. However, the Office of the Public Prosecutor and/or the victim's legal counsel must perform the analysis *ex officio* to avoid due process violations.³¹ A viable example is that "if the ac-

²⁸ These involve the way in which the behavior is performed, which can be expressed as physical or moral violence.

²⁹ Offenses defined by their result are subdivided into proper and improper offenses. To use a different terminology, proper and improper offenses are known as: material crimes (when they cause a change in the outside world) and formal crimes (when they do not produce a change in the real world), respectively. *Cf.* Hirsch, Hans-Joachim, "La problemática de los delitos cualificados por el resultado", trans. Leire Escajedo San Epifanio, *Derecho Penal, Obras Completas, Libro Homenaje*, t. II, Argentina, Rubinzal-Culzon, 2000, p. 319.

³⁰ Strictly legal concepts, as well as terms referring to an assigned value and those referring to a certain meaning, are regulatory criminal elements. *Cf.* Jakobs, Günther. "Sobre el tratamiento de las alteraciones volitivas y cognitivas", *Crónicas Extranjeras*, Italy, Facultad de Derecho de la Universidad de Siena, 1989, p. 215 *et ss.*

³¹ Unlawfulness implies a behavior that goes against the law, and this is precisely what the Public Prosecutor must prove. On the other hand, the defense can argue causes for justification. *Cf.* López Betancourt, Eduardo, *Teoría del delito*, Mexico, Porrúa, 2001, p. 149.

tive subject demonstrates that they have the corresponding right or permission, the exercise of a right or the fulfillment of a duty could be argued”.

As the analysis is being done from the angle of the Office of the Public Prosecutor and/or the victim’s attorney, the elements of guilt will thus be addressed, but not their mitigating or excluding circumstances. Therefore, it could be said that if the active subject is of legal age and is aware of their unlawful act, the subject merits punitive judgment from a judge and consequently the deserved and necessary punishment.³²

Thus, at the time of studying the form of criminal intervention, it would seem that it depends on the specific case to determine whether they are the author or participant of the act that the law defines as a crime. However, the first premise of Article 10 regulates the punishment of the behavior of a participant, instigator or accomplice of the criminal act; and Articles 18 and 19 regulate the actions and punishment in cases of perpetration-by-means to prevent the crime from being considered self-inflicted, which seems an exceptional and plausible move on the part of legislators.³³

Lastly, concurrent crimes depend on each specific case since it must be analyzed whether diverse or combined behaviors produce different results and thus determine punishability, mentioned in each description and increased depending on the specific case. But this is independent of the corresponding punishment under the Federal Law of Administrative Responsibilities of Public Servants, when said law is applicable, the revocation of the respective permit, and if necessary, the dissolution and liquidation of the company will be imposed as punishment if the responsible party is a franchisee, assignee, contractor, permit holder, or distributor.³⁴

³² Guilt includes both blameworthiness and deservedness, as well as the need for punishment; all this according to the political-criminal decisions of general prevention and special prevention. This way of explaining guilt currently has greater consensus. For instance, Jescheck has said, “guilt is not reproach; guilt is responsibility”. Jescheck, Hans-Heinrich, “El significado de don Luis Jiménez de Asúa en el desarrollo de la dogmática española en el campo de la teoría jurídica del delito”, *Revista de la Facultad de Derecho de la Universidad Complutense Madrid*, 1986, p. 406.

³³ In self-inflicted crimes, it is the perpetrator himself who performs the typified action; these crimes cannot be committed by a third party.

³⁴ There is actual concurrence when several crimes are committed through multiple behaviors. Ideal concurrence exists when several crimes are committed through a single behavior. There is no concurrence in the case of a continuing offense under the terms of the applicable legislation. *Cfr.* Código Nacional de Procedimientos Penales, Article 30.

IV. HYDROCARBONS CRIMES IN THE ACCUSATORY CRIMINAL SYSTEM

The creation of the Law to Prevent and Punish Hydrocarbons Crimes is not the only new element in the field; we also must analyze the so-called accusatory and oral criminal system in the prosecution and administration of these crimes, as the system which regulates alternative justice in a way that resolves disputes without going to trial.

In other words, when there is a case related to a hydrocarbon's crime, in addition to an oral trial, there is also the possibility of solving the dispute by means of alternative justice. This must be regulated by law under diverse possibilities, but in criminal matters it is always a requirement to ensure the redress of damage and to establish the cases of legal supervision.

Alternative justice solves the conflict by different means than the traditional one. This is the basis on which the accusatory system works since it is anticipated that only a small percentage of cases will reach an oral trial. It has even been estimated that only 10% of the cases should be resolved at this stage.³⁵ With the above information, where is the remaining percentage? Precisely in the various options for alternative justice.

To understand alternative justice as a way to solve controversies related to the criminal legal analysis of hydrocarbons crimes, I will use a highway as a metaphor.³⁶ Hence, it is necessary to imagine that there are possible off-ramps for resolving disputes in a different way, in addition to the fact that in order to take such off-ramps, it is necessary to know the minimum required elements of the legal classification of the crime, for instance, whether it is intentional, negligent, perpetrator, participant, consummated or instantaneous. A comparative and imaginative exercise is presented below.

Alternative justice

In the adversarial criminal system, our metaphorical highway has many off-ramps, such as: criteria of opportunity; reparatory agreements; conditional suspension of the proceedings, and the abbreviated procedure. On

³⁵ Fromow Rangel, María de los Ángeles, head of the Secretaría Técnica del Consejo de Coordinación para la Implementación del Sistema de Justicia Penal (SETEC), de la Secretaría de Gobernación, *El asalto a la razón*, September 24, 2015, available at: <https://www.milenio.com/policia/uno-de-cada-10-casos-llegara-a-juicio-oral>.

³⁶ Bardales Lazcano, Erika, *Medios alternos de solución de las controversias vs justicia restaurativa*, 2a. ed., Mexico, Flores Editor, 2017, Chap. 1.

this imaginary highway, each of the off-ramps implies a toll which depends on the type of crime and the consequences for the parties. Each one will be explained below in ascending order in the decision-making process.

A. *Criteria of opportunity*

These criteria are the first off-ramp on the highway. They imply discretionary powers of the Office of the Public Prosecutor to preside totally or partially over criminal prosecution. These may be granted from the beginning of the investigation and even before the order to open an oral trial is decreed. For them to be granted, the conditions of each case must be evaluated. These would never proceed in cases of crimes against the free development of the personality, domestic violence or tax crimes, or those that seriously affect public interest, and we even believe that they should not proceed in hydrocarbons crimes.³⁷

In this case, the *toll* implies three requirements: 1) the consent of the public prosecutor as the social representative; 2) the reparation of damage, whenever applicable, and 3) the analysis of each specific case, since it does not proceed for certain crimes, but rather for legislative assumptions; that is, for the specific circumstances of the act. For instance, in cases of hydrocarbons, it could be granted if the accused provides essential and effective information for the prosecution of a more serious crime than the one of which they are accused, and commits to appear in court, as long as the victim agrees.³⁸ In these cases, even when there is a complete analysis of the crime of the prohibited behavior, it can be granted when it is intentional, a direct perpetrator and consummated instantaneously.

But what happens if the Public Prosecutor does not want to grant a criterion, or the specific case does not allow it? Nothing, we continue driving along the highway and the next exit would be:

³⁷ Article 21 of the Constitución Política de los Estados Unidos Mexicanos, 2019, available at: <http://www.diputados.gob.mx/LeyesBiblio/index.htm>.

³⁸ Article 256 of the Código Nacional de Procedimientos Penales, 2019, available at: <http://www.diputados.gob.mx/LeyesBiblio/index.htm>. “Casos en que operan los criterios de oportunidad: Iniciada la investigación y previo análisis objetivo de los datos que consten en la misma, conforme a las disposiciones normativas de cada Procuraduría, el Ministerio Público podrá abstenerse de ejercer la acción penal con base en la aplicación de criterios de oportunidad, siempre que, en su caso, se hayan reparado o garantizado los daños causados a la víctima u ofendido. La aplicación de los criterios de oportunidad será procedente en cualquiera de los siguientes supuestos... V. Cuando el imputado aporte información esencial y eficaz para la persecución de un delito más grave del que se le imputa, y se comprometa a comparecer en juicio...”.

B. *Reparatory agreements*

The reparatory agreements are those celebrated between the victim or offended party and the accused that, once approved by the Office of the Public Prosecutor or the due process judge and their terms fulfilled, have the effect of dismissing criminal charges. They are the second highway off-ramp and can be made from the beginning of the investigation until the order to open a trial is issued. They can be presented:

Pretrial. These take place before the proceedings, that is, during the investigation stage, during the initial phase, prior to the indictment. These agreements are in the hands of the Public Prosecutor who may invite the parties as of the first intervention, in applicable cases.

During the trial. These take place during the process, that is, from the initial hearing until the moment before issuing the order to open an oral trial and are implemented by the due process judge at a hearing.

Out-of-court. These are agreements made outside the procedural sphere, “outside” understood as referring to the Center for Alternative Justice before a mediator. They can be made from the moment charges or complaints are filed until the order to open a trial is issued.

Mediation, conciliation and restoration boards are the most appropriate means to reach a reparatory agreement, which, once approved and fulfilled in its terms, have the effect of dismissing the criminal lawsuit.³⁹

The *toll* at this off-ramp is: 1) the will of the parties to resolve the controversy, which can be for individuals or legal entities, verbally or in writing, and 2) the type of crime. In this case, they only apply to crimes that can be prosecuted by complaint, with an equivalent requirement of the offended party, that admit the forgiveness of the victim or the offended party, crimes of negligence and property crimes committed without violence against persons, with the exception of domestic violence. In the case of hydrocarbons crimes, a large number of them could be solved thus since they are generally property crimes committed without violence against persons, regardless of whether the dogmatic analysis of the crime has been proven, because the main consideration is the will of the parties.

What happens if either party does not want or accept an agreement, or it does not proceed due to the type of crime? Nothing, we continue down the highway and the next off-ramp would say.

³⁹ Presidencia de la República, Ley Nacional de Mecanismos Alternativos en Materia Penal, *Diario Oficial de la Federación*, December 29, 2014.

C. *Conditional suspension of proceedings*

Conditional suspension of proceedings is a new legal practice in Mexican law that consists of allowing persons accused of a criminal act to suspend proceedings, as long as the following requirements are met: 1) the payment of damages, and 2) an obligation to do or not to do the preventive or disciplinary measure ordered by the due process judge, provided that effective protection of the rights of the victim or the offended party is ensured since the above may result in the dismissal of the criminal case.⁴⁰

At the third off-ramp on our metaphorical highway, the *toll* consists of: 1) a payment plan for the reparation of damage; 2) the commitment to comply with an obligation to do or not to do the preventative or disciplinary measure imposed by the due process judge, and 3) the issuance of the criminal indictment for a crime for which the arithmetic mean of the prison sentence does not exceed five years.⁴¹

The possibility of the conditional suspension of proceedings depends on each specific case; this off-ramp is used for several hydrocarbons cases as a right of the accused, given the issue of punishment and their arithmetic mean. In this way of solving controversies, we observe that punishment for hydrocarbons issues is very low, so the defense could solve a significant percentage of cases this way.

Thus, in its resolution, the due process judge will establish the conditions under which the process is suspended, approve the plan proposed to repair the damage, notify the accused of the possibility of revoking the suspension if they fail to comply and prohibit the use of the information generated from the agreements if the criminal proceedings were to continue.⁴²

Let us continue imagining this highway and the possibility of not exiting at any of the aforementioned off-ramps. What possibility is left? Yet another off-ramp is explained below.

⁴⁰ Article 191 of the Código Nacional de Procedimientos Penales, 2019, available at: <http://www.diputados.gob.mx/LeyesBiblio/index.htm>. Conditional suspension of proceedings should be understood as the proposal presented by the Office of the Public Prosecutor or by the accused, which must contain a detailed plan for the payment of reparations for the damage and the accused's compliance with one or more of the conditions referred to in this Chapter, that guarantee the effective protection of the rights of the victim or offended party and which, if complied with, may lead to the dismissal of the criminal lawsuit.

⁴¹ *Ibidem*, Articles 192 and ss.

⁴² Valadez Díaz, Manuel, *Acuerdos reparatorios y suspensión condicional del proceso*, Mexico, Flores Editor, 2018, p. 60.

D. *Abbreviated procedure*

The form of early termination contemplated in the National Code of Criminal Procedures is the abbreviated procedure, which is a non-standard way of terminating an ordinary proceeding. For this to occur, the accused must acknowledge their participation in the crime before the judicial authority, voluntarily and with knowledge of the consequences. In addition, the Office of the Public Prosecutor must have sufficient evidence to justify a judge's summons to a hearing.

In this procedure, the accused will have the benefits granted by law, such as a reduction of the sentence.⁴³

This is the last exit on the highway before the off-ramp to the oral trial. It comes when the defendant is indicted until the order to open the oral trial is decreed. It should be mentioned that this off-ramp is the widest of all since it applies to all crimes. In other words, in hydrocarbons-related issues, all behaviors can opt for an abbreviated procedure and thus reduce a sentence, even to the extent of commuting the sentence.

The *toll* is: 1) that the accused persons expressly waive the oral trial; 2) that they admit their responsibility for the crimes for which they have been charged; and 3) that the person accepts to be judged based on the means of conviction presented by the Office of the Public Prosecutor on filing the indictment. But, in exchange for this, the sentence will be reduced according to the following rules:

⁴³ Article 202 of the Código Nacional de Procedimientos Penales..., *op. cit.* The Office of the Public Prosecutor shall be able to request the opening of the abbreviated procedure after the indictment has been issued and until before the order to open an oral trial has been issued. All the parties must be summoned to the hearing. The failure of the victim or the affected party to appear after having been duly summoned shall not prevent the due process judge from ruling on the matter. When the accused has not been previously convicted of an intentional crime and the crime for which the abbreviated procedure is punishable by a prison sentence whose arithmetic mean does not exceed five years, including its mitigating or aggravating circumstances, the Office of the Public Prosecutor may request a reduction of up to half of the minimum sentence for intentional crimes and up to two thirds of the minimum sentence for non-intentional crimes, of the prison sentences corresponding to the crime in question. In either case, the Office of the Public Prosecutor may request a prison sentence reduction of up to one third of the minimum sentence for intentional crimes and up to half of the minimum sentence for non-intentional crimes. If at the time of said request there is already a written accusation, the Office of the Public Prosecutor may verbally change it at the hearing where the abbreviated procedure is being decided and, if applicable, request a reduction of the sentence so as to allow the case to be processed under the rules set forth in this Chapter. In requesting the sentence under the terms provided for in this article, the Office of the Public Prosecutor shall observe the Agreement issued to that effect by the Prosecutor.

When there are precedents of the accused having previously been convicted of an intentional crime or the crime for which the abbreviated procedure is punishable by a prison sentence whose arithmetic mean does not exceed five years, including its mitigating or aggravating circumstances, the reduction can be up to half of the minimum sentence for intentional crimes and up to two thirds of the minimum sentence for non-intentional crimes.

When the accused has no prior record, the sentence reduction will be up to one third of the minimum sentence for intentional crimes and up to half of the minimum sentence for non-intentional crimes.

Now let us imagine a case in which the accused citizen did not want to take any of the alternatives to the oral trial but wants to defend their innocence. Here it is important to highlight the right to taking the last off-ramp on this procedural highway, which is the oral trial, the moment that determines a person's guilt or not, and consequently, if applicable, the punishment and reparation of damages.

In this sense, our metaphor of a highway shows that the off-ramps and tolls must work in order to consolidate the criminal justice system reform. If estimates calculate that 80% or 90% of the cases are resolved by alternatives to the oral trial, indicators are needed to measure the proper functioning of each of the possibilities for streamlining the process to prevent them from turning into mechanisms for impunity.

Analysis of each type of crime

With that stated in the above paragraphs regarding the new energy law framework, the creation of a law that contains the types of related crimes, the dogmatic analysis of the crimes contained in the law and the various possibilities of resolving disputes in the procedural system, the following describes each type of crime in the law in question so that the reader may form an opinion based on their description, punishability and relationship with an accusatory criminal justice system:

Article 8. A sentence of 15 to 25 years of prison and a fine of 15,000 to 25,000 days of minimum wage in force at the place of the acts will be imposed on whoever:

I. Steals petroleum or petrochemical hydrocarbons from pipelines, vehicles, equipment, facilities or assets, without the right to do so and the consent of assignees, contractors, permit holders, distributors or whoever may dispose of them in accordance with the law.

II. Makes use of petroleum or petrochemical hydrocarbons without the right to do so and without the consent of assignees, contractors, permit holders, distributors or whoever may dispose of them in accordance with the law.⁴⁴

In this provision, the behavior is mainly one of action; the active subject is the one who engages in the behavior and the passive subject is the assignees, contractors, permit holders, distributors and whoever may dispose of them in accordance with the law. The typical description does not stipulate a specific condition for the active subject, but it does for the passive subject because in order to be a victim or offended party, it is necessary to determine who has the right.

The legal good protected is the right of the nation over oil or petrochemical hydrocarbons and the patrimonial right of assignees, contractors, permit holders, distributors or whoever may have access to them in accordance with the law. It must be stressed that the legal right is supra-personal.

The material object is the amount of petroleum or petrochemical hydrocarbons stolen or exploited. The description does not require a specific circumstance of time, place or situation, nor does it mention means of physical or moral violence.

The causal nexus is the legal aspect closely linked to the evidence since the active and passive subjects must determine whether or not there is a right to the extraction or exploitation. The result is deemed material because of the change in the factual world.

Lastly, it would be a behavior of a mainly intentional nature. It would be necessary to interpret what a hydrocarbon, oil or petrochemical is, as well as the place required by the criminal offense, such as pipelines, vehicles, equipment, facilities or assets, by means of the regulatory elements.

As to the accusatory criminal system, this behavior can be judged through an abbreviated procedure⁴⁵ or an oral trial:

Article 9. Punishment shall be imposed on whoever:

I. Purchases, disposes of, receives, acquires, sells or negotiates hydrocarbons, oil products or petrochemicals without the right to do so and the consent of assignees, contractors, permit holders, distributors or whoever may have access to them in accordance with the law.

II. Safeguards, transports, stores, distributes, possesses, supplies, or conceals hydrocarbons, oil products or petrochemicals without the right to do so

⁴⁴ Article 8, Ley Federal para Prevenir..., *op. cit.*

⁴⁵ Article 202 of the Código Nacional de Procedimientos Penales..., *op. cit.*

and without the consent of assignees, contractors, permit holders, distributors or whoever may have access to them in accordance with the law.

III. Alters or adulterates hydrocarbons, oil products or petrochemicals without the right to do so and without the consent of assignees, contractors, permit holders, distributors or whoever may have access to them in accordance with the law.

The behaviors described in these articles shall be punished as follows:

a) When the amount is less than or equal to 300 liters, 2 to 4 years of prison and a fine of 2,000 to 4,000 days of minimum wage in force at the place of the facts shall be imposed.

b) When the amount is greater than 300 liters, but less than or equal to 1,000 liters, 4 to 8 years of prison and a fine of 4,000 and 8,000 days of minimum wage in force at the place of the facts shall be imposed.

c) When the amount is greater than 1,000 liters but less than 2,000 liters, 8 to 12 years of prison and a fine of 8,000 to 12,000 days of minimum salary in force at the place of the facts shall be imposed.

d) When the amount is equal or greater to 2,000 liters, a prison sentence of 10 to 15 years and a fine of 10,000 to 15,000 days of minimum wage in force in the place of the facts shall be imposed.

For the purpose of the conditions indicated in Section II, paragraphs a), b) and c) this article, a complaint must be filed by the regulating agency or the injured party.

If it is not possible to quantify the volume of hydrocarbons, oil products or petrochemicals, object of the behaviors described in Sections I, II and III, a prison sentence of 10 to 15 years and a fine of 10,000 to 15,000 days of minimum wages in force at the place of the facts shall be imposed, provided that it is proven that given the conditions in which said volume is contained, it is presumed that it is a matter of quantities greater than 2,000 liters.⁴⁶

Article 9 has a list of several qualifying verbs that defines the behavior, in addition to specific procedural requirements, such as a complaint filed by the victim or *ex officio*. In this crime, the punishment is directly related to the number of hydrocarbons, oil products or petrochemicals.

This description shares the main analysis of the crime, but it is worth noting that it is considered a procedural requirement for filing a complaint, including the premises contained in Section III and paragraphs a, b and c, which implies that in the accusatory criminal system, they can be resolved

⁴⁶ Article 9, Ley Federal para Prevenir..., *op. cit.*

by means of a reparatory agreement;⁴⁷ a conditional suspension of proceedings if the sentence does not exceed the arithmetic means of five years of the punishment;⁴⁸ an abbreviated procedure;⁴⁹ or an oral trial:

Article 10. Whoever aids, facilitates or assists, by any means, in engaging in the behaviors provided for in Articles 8 and 9 of this Law, shall be subject to up to three quarters of the corresponding punishments.

Likewise, up to one half more of the corresponding sentence shall be imposed on whoever commits such behaviors when:

a) It is carried out on platforms or other offshore facilities owned or used by assignees, contractors, permit holders or distributors, or

b) It uses illegally obtained information or data on the operations, facilities, activities, personnel movements or vehicles of assignees, contractors, permit holders or distributors.⁵⁰

Article 10 specifically regulates the issue of participants, instigators and accomplices, to identify the distinctive elements that allow the Office of the Public Prosecutor or the legal counsel of the victims to make any type of indictment or investigation of the act established by law as a crime related to oil and petrochemical hydrocarbons. The analysis of this crime is similar to that of Articles 8 and 9, its distinctive feature is that in this description of the crime circumstances of place are required, thus aggravating the punishment.

The accusatory criminal system could be used to resolve the complaints filed by means of a reparatory agreement;⁵¹ a conditional suspension of proceedings if the sentence does not exceed the arithmetical mean of five years;⁵² an abbreviated procedure;⁵³ or an oral trial.

Article 11. A prison sentence of 5 to 10 years and a fine of 5,000 to 10,000 days of minimum wage in force at the place of the facts shall be imposed on whoever invades the exclusion areas on board a vessel and uses an apocryphal flag or registration simulating ownership by an assignee, contractor, permit holder, distributor or shipowner.⁵⁴

⁴⁷ Article 187 of the Código Nacional de Procedimientos Penales..., *op. cit.*

⁴⁸ *Ibidem*, Article 192.

⁴⁹ *Ibidem*, Article 202.

⁵⁰ Article 10 of the Ley Federal para Prevenir..., *op. cit.*

⁵¹ Article 187 of the Código Nacional de Procedimientos Penales..., *op. cit.*

⁵² *Ibidem*, Article 192.

⁵³ *Ibidem*, Article 202.

⁵⁴ Article 11 of the Ley Federal para Prevenir..., *op. cit.*

Article 11 describes the course of action, but it is necessary to point out the circumstances of place for the crime to be committed, which are the exclusion areas on board a vessel. The provision also describes the use of an apocryphal flag or registration. At the time of performing the dogmatic study of the crime, the above will be complicated since the requirements will be a matter of proof and concurrence of crimes.

The general analysis of the classification of the crime coincides with that indicated in the above articles regarding classification, unlawfulness, blameworthiness, type of intervention, concurrence of crimes and punishability.

The accusatory criminal system could be used to resolve them by means of a reparatory agreement;⁵⁵ a conditional suspension of proceedings if the sentence does not exceed the arithmetic means of five years;⁵⁶ an abbreviated procedure;⁵⁷ or an oral trial.

Article 12. Whoever steals without the right to do so or without the consent of whoever may dispose of them in accordance with the law, movable property essential and specific to the operation of the oil industry, susceptible of being used in any of the behaviors classified by this law, property of assignees, contractors, permit holders or distributors, shall be subject to the following punishment:

I. A prison sentence of up to 3 years and a fine of up to 150 days of minimum wage in force in the place of the facts when the value of what was stolen does not exceed 100 times minimum wage.

II. A prison sentence from 3 to 6 years and a fine of 150 up to 270 days of minimum wage in force in the place of the facts when the value of what was stolen exceeds 100 times minimum wage, but not 500.

III. A prison sentence from 6 to 15 years and a fine of 270 up to 750 days of minimum wage in force in the place of the facts when it exceeds 500 times minimum wage.

If committed with violence, the rules of accumulation shall apply.⁵⁸

This article clearly regulates the theft of various types of movable assets that serve or may serve to commit the behaviors indicated by law. However, it seems to us that the punishment is quite lenient since under the new accusatory criminal justice system the accused could get out through a repara-

⁵⁵ Article 187 of the Código Nacional de Procedimientos Penales..., *op. cit.*

⁵⁶ *Ibidem*, Article 192.

⁵⁷ *Ibidem*, Article 202.

⁵⁸ Article 12 of the Ley Federal para Prevenir..., *op. cit.*

tory agreement;⁵⁹ a conditional suspension of proceedings if the sentence does not exceed the arithmetic means of five years;⁶⁰ or an abbreviated procedure,⁶¹ which implies not having a criminal record and therefore not having any type of crime prevention under this hypothesis.

The analysis will continue examining the legal good of the asset in terms of theft, the behaviors of willful misconduct, with the material result of what was stolen and with clear evidence of unlawfulness of the act, so that the determination of guilt and punishability is imminent.

Article 13. Any public servant who, in the performance of their duties or in connection therewith, becomes aware of the probable commission of a crime covered by this Law and does not report it to the competent authority, shall be subject to a sentence of 1 to 5 years of prison and a fine of 4,000 to 7,000 days of minimum wage in force at the place of the facts.

The foregoing, regardless of the punishment applicable under the Federal Law of Administrative Responsibilities of Public Servants.⁶²

This article regulates the possible punishment for public servants who, in performing their duties, do not report any of the crimes covered by this law to the authorities. In other words, it regulates a specific characteristic of the active subject of the criminal act. Legislators clearly wanted to regulate good government services, but they were very condescending since the sentence is a maximum of 5 years. In our opinion, this is a mockery because a public servant is the person who should be penalized the most, on one hand, for their special status and, on the other, for not allowing acts of corruption in behaviors of commission by omission.

Under this characterization of the crime, public servants would be allowed a conditional suspension of proceedings,⁶³ as long as the arithmetic mean does not exceed 5 years, in addition to the fact that it would not go on their record and could thereby continue exercising their functions. These public servants are also allowed the option of an abbreviated procedure.⁶⁴

In a dogmatic analysis, we would specifically see behaviors of action or commission by omission, both of which are premeditated, and the type of crime requires the active subject to meet specific characteristics.

⁵⁹ Article 187 of the Código Nacional de Procedimientos Penales..., *op. cit.*

⁶⁰ *Ibidem*, Article 192.

⁶¹ *Ibidem*, Article 202.

⁶² Article 13 of the Ley Federal para Prevenir..., *op. cit.*

⁶³ Article 192 of the Código Nacional de Procedimientos Penales..., *op. cit.*

⁶⁴ *Ibidem*, Article 202.

Article 14. A sentence of 6 to 10 years in prison and a fine of 6,000 to 10,000 days of minimum wage in force at the place of the facts shall be imposed on whoever sells or transports hydrocarbons, oil products or petrochemicals that do not have the markers or other specifications established by the competent authority for such products, as determined in the corresponding documentation.

The same punishment shall be imposed on whoever without the right to do so or the consent of assignees, contractors, permit holders, distributors or whoever may have access to them in accordance with the law steals, alters, modifies or destroys the markers referred to in the preceding paragraph.⁶⁵

The article contains two typical classifications. The first contains the words selling or transporting while the second has the words stealing, altering, modifying and destroying markers. In this classification, the regulatory elements used to describe the type of crime are required to define what a marker is and then consider the unlawfulness of the act.

As to the other elements of the legal analysis, these are mainly through willful misconduct, but it depends on each specific case.

In the accusatory criminal justice system, these cases can be resolved through an abbreviated procedure⁶⁶ or an oral trial.

Article 15. A sentence of 4 to 6 years of prison and a fine of 4,000 to 6,000 days of minimum wage in force at the place of the facts shall be imposed on the lessee, owner or possessor, or whoever claims to be such, of any property where there is a clandestine bypass or tapping and has knowledge of this situation and does not report it to the corresponding authorities.

A sentence of 9 to 16 years of prison and a fine of 9,000 to 16,000 days of minimum wage in force shall be imposed on whoever, with knowledge that a crime covered by this Law is being committed, facilitates, collaborates or consents to it being committed on their property or does not report it to the corresponding authorities.⁶⁷

This article expressly addresses the behavior of citizens who knowingly allow a clandestine tap on their property, but why punish a citizen with a more severe punishment than the authority? This gives way to corruption since public servants should be more severely punished for being a representative of society.

⁶⁵ *Ibidem*, Article 14.

⁶⁶ Article 202 of the Código Nacional de Procedimientos Penales..., *op. cit.*

⁶⁷ *Ibidem*, Article 15.

However, under the rules of the accusatory process, this type of behavior could be resolved in the first case by means of a conditional suspension of proceedings⁶⁸ and in the second by means of an abbreviated procedure⁶⁹ or an oral trial.

Article 16. A sentence of 3 to 6 years in prison and a fine of 3,000 to 6,000 days of minimum wage in force at the place of the facts, shall be imposed on whoever:

I. Distributes or supplies gasoline or diesel fuel with the knowledge of delivering an amount less than 1.5 percent of the amount registered by the metering instruments used for its sale or supply.

II. Distributes or supplies liquified petroleum gas with the knowledge of delivering an amount less than 3.0 percent of the amount registered by the metering instruments used for its sale or supply.

III. Distributes or supplies natural gas with the knowledge of delivering an amount less than 3.0 percent of the amount registered by the metering instruments used for its sale or supply.

For the purposes of the cases described in this article, a complaint must be filed by the regulatory body or the offended party.⁷⁰

Article 16 contains three hypotheses: knowingly selling or supplying a smaller amount of gasoline, diesel, liquified petroleum gas and natural gas hydrocarbons than the amount sold (it is a kind of theft or fraud) would be subject to a sentence of 3 to 6 years, which is absurd since this kind of crime mainly applies to gas stations. However, the article also regulates the admissibility of a lawsuit, thus making it impossible for citizens to file a complaint since it would be much easier to change gas stations. Therefore, it is considered that the procedure should be done *ex officio* or by an equivalent requirement from the competent authority.

This type of behavior in the accusatory criminal system can be resolved by means of a reparatory agreement,⁷¹ a conditional suspension of proceedings if the sentence does not exceed the arithmetic mean of five years,⁷² an abbreviated procedure,⁷³ or an oral trial.

⁶⁸ Article 192 of the Código Nacional de Procedimientos Penales..., *op. cit.*

⁶⁹ *Ibidem*, Article 202.

⁷⁰ *Ibidem*, Article 16.

⁷¹ Article 187 of the Código Nacional de Procedimientos Penales..., *op. cit.*

⁷² *Ibidem*, Article 192.

⁷³ *Ibidem*, Article 202.

Article 17. A sentence of 10 to 18 years of prison and a fine of 10,000 to 18,000 days of minimum wage in force at the place of the facts shall be imposed on whoever:

I. Tamper with the metering systems owned by or at the service of assignees, contractors, permit holders or distributors, knowing that this will cause damage or affect the normal operations of said systems.

The same punishment shall apply to whoever engages in the behavior set forth in the preceding paragraph and causes risk of damage or impairs the normal operation of the metering systems.

II. Allows or carries out the exchange or substitution of other substances for hydrocarbons, oil products or petrochemicals without the corresponding authorization of assignees, contractors, permit holders or distributors.

III. Removes or tampers with oil industry pipelines, equipment, facilities or assets without the right to do so or the consent of the person who can legally authorize it.⁷⁴

This behavior is primarily aimed at the workers of assignees, contractors, permit holders or distributors since they are the ones who can tamper with the metering systems or allow or carry out the substitution of the substances.

The third hypothesis is more general because anyone could remove or tamper with industry pipelines, equipment or facilities. The punishment here is considerable and can therefore only be prosecuted through an abbreviated procedure⁷⁵ or an oral trial in the accusatory criminal system:

Article 18. A sentence of 15 to 25 years of prison and a fine of 15,000 to 25,000 days of minimum wage in force at the place of the facts shall be imposed on whoever directly or indirectly receives, collects or contributes financial funds or resources of any kind knowing that they shall be used to commit any behavior typified by this Law.⁷⁶

This article is a masterpiece, dogmatically speaking, because it regulates the responsibility of the perpetrator-by-means or the perpetrator behind regardless of whether the perpetrator uses another person to commit the crime. In other words, it regulates the fact that the crimes are not by direct perpetration.

According to the accusatory criminal system, the established punishment can be reached through an abbreviated procedure⁷⁷ or an oral trial.

⁷⁴ *Ibidem*, Article 17.

⁷⁵ Article 202 of the Código Nacional de Procedimientos Penales..., *op. cit.*

⁷⁶ *Ibidem*, Article 18.

⁷⁷ Article 202 of the Código Nacional de Procedimientos Penales..., *op. cit.*

Article 19. A sentence of 10 to 14 years of prison and a fine of 10,000 to 14,000 days of minimum wage in force at the place of the facts shall be imposed on whoever forces or intimidates by means of coercion, threat or any type of violence anyone who renders their services or performs an activity for assignees, contractors, permit holders, distributors or regulatory bodies, for the purpose of carrying out any behavior described in this law.⁷⁸

Once again, it regulates the perpetrator-by-means when a person's will is manipulated in order to commit a crime. "Article 20. The punishment corresponding to the crime in question shall be increased by up to one half for whoever willfully commits any of the behaviors described in this law and thereby cause damage to natural resources, flora, fauna, ecosystems, water quality, soil, subsoil or environment".⁷⁹

The type of crime regulates concurrent crimes where the protected legal good is nature, with which the punishment shall be increased.

In the accusatory criminal system, the corresponding increase in the punishment would be one solution; however, in general, it can be resolved through an abbreviated procedure⁸⁰ or an oral trial.

As seen, this law is not easy to analyze, but it is essential to know so as to be able to fulfill its purpose of preventing and punishing hydrocarbons crimes.

V. CONCLUSIONS

The Federal Law for the Prevention and Punishment of Hydrocarbons Crimes was created to address crimes related to the energy reform and one of its greatest challenges is to effectively achieve protection through geopolitical projects.

I deem it a wise move that the accusatory criminal system creates the figure of legal counsel for the victims to represent them as parties in the proceedings, namely the assignees, contractors, permit holders, distributors or whoever may dispose of resources in accordance with the law since it is now not only the Office of the Public Prosecutor that will investigate and punish these crimes.

On the issue of punishment, i believe the creation of alternative justice has been a good way to streamline the process, but we must ask ourselves

⁷⁸ *Ibidem*, Article 19.

⁷⁹ *Ibidem*, Article 20.

⁸⁰ Article 202 of the Código Nacional de Procedimientos Penales..., *op. cit.*

about the punishments and whether they address the general and special prevention of the law since it seems that the law fails in one of its objectives, which is prevention, especially if the punishment for public servants is so low that it encourages corruption.

As a public policy, it is proposed that the law be revised from the standpoint of a dogmatic analysis of the crime to further the punitive powers of the State and avoid impunity, specifically by regulating the objective, subjective and statutory elements clearly since the way it is drafted does not even espouse the name of the law, which is to prevent and punish hydrocarbons crimes.

Regarding the accusatory system, although it is true that the system regulates outlets to streamline the process, it is also true that these outlets must ensure the general and special prevention of the provision, which is why more severe punishments have been proposed, especially when public servants are involved.

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