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**THE APPROPRIATE CRIMINALISATION
FOR THE PETROL USED IN DRUG
TRAFFICKING**

THE APPROPRIATE CRIMINALISATION FOR THE PETROL USED IN DRUG TRAFFICKING

Summary: 1. INTRODUCTION. 2. WHAT IS "PETAQUEO"? 3. POSSIBLE CRIMINAL OFFENCES FOR "PETAQUEO". 3.1 Crime against public health. 3.2 Crime of smuggling. 3.3 Crime of belonging to a criminal organisation. 3.4. Crime of havoc. 3.5. Crime of creating a serious risk to road safety. 3.6. Crime of possession or holding of explosives. 3.7. Crime against natural resources and the environment. 4. COMPARATIVE LAW BETWEEN THE COLONY OF GIBRALTAR AND THE KINGDOM OF SPAIN. 5. SHOULD "NARCO-PETROL AND "PETAQUEO" BE CRIMINALISED? 6. CONCLUSIONS. 7. PROPOSAL. 8. BIBLIOGRAPHY

Resumen: El artículo versa sobre el suministro ilegal de combustible “gasolina” destinado a ser empleado en embarcaciones semirrígidas de alta velocidad. Estas embarcaciones, policial y periodísticamente han sido bautizadas como “narcolanchas¹”. Dicha gasolina, igualmente bautizada como “narcogasolina”, es parte vital de la logística necesaria para el tráfico de hachís desde el norte de África. Además, también es la desencadenante de una serie de peligros, en especial, aquellos que afectan a bienes jurídicos tan importantes como la vida de las personas, el propio hábitat, y por ende el medio ambiente.

En el trabajo se ha estudiado si el Derecho Penal Sustantivo español tiene capacidad y estructura suficiente para constituirse en una herramienta jurídica adecuada y facilita que Fiscales, Jueces, y Fuerzas y Cuerpos de Seguridad (FCS), puedan combatir el fenómeno de la “narcogasolina”, o, por el contrario, resulta necesario que el poder legislativo prevea una modificación del derecho penal para reprimir dicha conducta peligrosa e ilícita.

Abstract: The present work deals with the illegal supply of fuel, “gasoline”, intended to be used in high-speed rigid inflatable boats. These boats have been commonly referred to as "narco-boats" in both law enforcement and journalism contexts. This gasoline, known as "narco-gasoline," is a vital part of the logistical operations involved in the trafficking of hashish from North Africa. Additionally, it poses a series of risks and dangers, particularly those affecting important legal assets such as human life, the natural habitat, and consequently, the environment.

The study examines whether Spanish substantive law “criminal code” has the necessary capacity and structure to serve as an adequate legal tool that enable prosecutors, judges, and law enforcement services to combat the phenomenon of "narco-gasoline, “or

¹ These are "high-speed inflatable and semi-rigid vessels used by smuggling mafias." Vessels that have been causing alarm and social impairment in different areas of the national coastline, such as the Campo de Gibraltar. A problem that justified Royal Decree-Law 16/2018 of 26 October adopting certain measures to combat the illicit trafficking of persons and goods, in relation to the vessels used, with the aim of improving efficiency in preventing and fighting against smuggling using this type of vessel.

it is the opposite and our penal law requires to be amended by the legislative authorities in order to repress this dangerous and illicit conduct.

Palabras clave: gasolina, estragos, seguridad vial, riesgos, narcotŕfico.

Keywords: gasoline, havoc, traffic safety, risks, drug trafficking.

1 INTRODUCTION

This article arises from a situation that has arisen in the Campo de Gibraltar, but which has spread to other provinces other than Cadiz, or even autonomous regions, as will be demonstrated later on.

Figure 1.

A van with a hundred jerry cans found in Isla Cristina



Note: "The problem is sprading throughout southern Spain."
Taken from (Huelvahoy.com, 2021).

It concerns the fuel named as "narco-petrol",² i.e. large quantities of petrol³ stored in places with a high population rate, without even the minimum of safety conditions, and also "transported in private vehicles of individuals not designed for that purpose, and with absolute disregard for safety regulations, mainly those contained in the European Agreement on the Carriage of Dangerous Goods by Road (ADR) (Arcas Ruiz, 2022, p. 8).

Private individuals who carry out such transport are also not authorised to carry out this activity." (Arcas Ruiz, 2022, pág. 8).

² The concept of "narco-petrol" is that of fuel destined for distribution to drug trafficking vessels, which transport large quantities of hashish from the coasts of North Africa to the Spanish coast, as reported in the media, following large seizures by National Police, Guardia Civil, Local Police, etc. (Arcas Ruiz, 2022, pág. 9).

This petrol is related to the supply of the "narco-boats", as named in the media. These are "high-speed inflatable and semi-rigid vessels used by smuggling mafias." Vessels that have been causing alarm and social impairment in different areas of the national coastline, such as the Campo de Gibraltar. A problem that justified Royal Decree-Law 16/2018 of 26 October adopting certain measures to combat the illicit trafficking of persons and goods, in relation to the vessels used, with the aim of improving efficiency in preventing and fighting against smuggling using this type of vessel.

³ According to the Royal Spanish Academy, petrol is a "mixture of volatile and flammable liquid hydrocarbons obtained from crude oil, which is used as fuel in various types of engines" (RAE).

Figure 2.

Rear of a three-engined boat with 425 horsepower (hp) per engine.



Note. Photograph taken by the author of the rear of a boat with 425 hp per engine. (Own production).

This fuel is used to power the engines of "narco-boats", also known as "rubber dinghies",⁴ or their acronym in English *Rigid inflatable boat*, (*RIB*). The latest versions of these "RIBs", as they are also known, come in four- or three-engine versions, each with up to 425 hp.

The aforementioned hydrocarbon is also sometimes even found inside private homes in densely populated inhabited places.

⁴ These boats have a rigid hull and pneumatic structure or inflatable floats that are propelled by outboard engines. They are equipped with radar, navigation systems, satellite communication telephones and up to four powerful engines to be able to transport up to four tonnes of hashish and move very quickly in order to escape from Guardia Civil and Customs patrol boats. They measure between 8 and 14 metres. They sail without complying with all maritime regulations, they do not have the required registration or hull number (they are usually built in illegal shipyards), at night they sail without lighting so as not to be detected, they do not carry compulsory elements such as life jackets, flares, etc. All these characteristics make these boats easily distinguishable from other regular vessels.

The boats are usually equipped with engines of around 300-350 hp, the purchase price of which is between 25,000-35,000 euros each. When Yamaha was asked about the fuel consumption data for these engines, they also reported that the maximum power consumption of an engine on a test bench is: 96.6 litres/hour at 5500 r/m. In a rubber dinghy with three engines we would then be talking about 96.6 x 3 engines for a total of 289.8 litres/hour at maximum power. The sum of all the elements mentioned above ranges from 140,000-192,000 euros, depending mainly on the number of engines (three- or four-engine) and their power (300 or 350 hp). In either case, the price is well above the 50,000 euro limit set by Law 12/1995 on the Repression of Smuggling.

Figure 3.

Fuel found by Guardia Civil in a storage room in the port of La Atunara – La Línea de la Concepción.



Note. This is one example of many that can be found on the internet. Taken from (Fernández S. , 2018).

The "narco-boats no longer dare approach the coast except to unload the goods." Since being made illegal in 2018, narco-boats entering Spanish waters can be directly seized. Faced with this situation, they use auxiliary boats to bring them supplies, petrol, and for crew changes, explains Encinas - Asociación Unificada de Guardias Civiles - AUGC.(García Serrano, 2019)"

In this context, the "narco-boats" remain at sea for weeks. Because they have to travel long distances to avoid police surveillance and pursuit, they need large quantities of petrol. The suppliers of this fuel have been called and are known in popular, police and journalistic jargon as "petaqueros".

Figure 4.

Narco-boat loaded with jerry cans of petrol.



Note. It shows a semi-rigid vessel loaded with a multitude of petrol containers. Taken from (El Faro de Melilla, 2021).

This logistical activity, "known as (petaqueo), has resulted in the seizure of large quantities of petrol by the (FCS) which have led to the charging of crimes such as: against public health, other high-risk crimes caused by explosives and other agents," (Europa

press, 2021) and against road safety, with the result of these police proceedings in the judicial process being certainly unsuccessful.

In the paper, a normative analysis will be carried out on how these logistical "narco-petrol supply" actions could be qualified. This is from a criminal point of view, and the administrative route is not the object of study, although it is mentioned briefly.

Finally, it will be seen whether Spanish substantive criminal law is adequate to criminalise and prevent the "petaqueo", or, on the contrary, it is not; whether or not legislative reform is advisable, and whether the "petaqueo" can be successfully combated outside the Criminal Code (CC).

2 WHAT IS "PETAQUEO"?

The definition or the name by which journalistic and police jargon has dubbed the action of supplying "narco-petrol" to "narco-boats".

Figure 5.
Mother ships - tankers



Note. The picture shows "mother ships - tankers", and petrol jerry cans destined for "narco-boats". Taken from (Gabinete de prensa de la Guardia Civil, 2021).

The activity is carried out from the petrol stations⁵ to the high-speed boats that remain at sea without touching land except for the purpose of smuggling. Those who carry

⁵ "Service stations engaged in the sale to the public (retail) of motor and petroleum fuels in bulk by means of pumps."

it out are known in police and journalistic jargon as "petaqueros",⁶ being considered a "quarry"; "the new occupation of the apprentice drug trainees in the Campo de Gibraltar" (Fernández F. , 2020).

The Deputy Directorate of Customs Surveillance (DAVA) reports that the number of people supplying fuel by sea to drug traffickers is on the rise, and says that "petaqueo" alone is not a crime, and can earn a few thousand euros in one night for people with no income, no job and no assets. As of today, there is already a large infrastructure of recreational vehicles supplying fuel to the "narco-boats" (Pressreader, 2021).

Figure 6.

Narco-boats waiting to load or unload drugs



Note. A group of drug dealers waiting for instructions to load or unload hashish.
Taken from (M, 2021).

Figure 7.

People loading jerry cans of petrol on "petaqueras" boats.



Note. Operational photograph taken by Guardia Civil. Taken from (Gómez Fuster, 2021).

⁶ A word that in Ubrique (Cádiz) is identified with the leather industry, but "paradoxes of life and survival, it is used to name those who carry jerry cans of petrol to refuel, like tiny "mother ships", the narco-boats". (Téllez, 2021).

In short, "petaqueo" is a practice that is part of the logistical apparatus of drug trafficking operations. According to the press, they could be considered "floating petrol stations".

The "petaqueros", as is well known, are found in the lower echelons and are easily replaceable (Almoguera, 2021).

At the Conference on Analysis and Prospects of Drug Trafficking in the province of Cadiz, held at the Menéndez Pelayo International University, in the town of La Ĺnea de la Concepci3n (Cadiz), on Wednesday afternoon, 10 May 2023, which the present author had the pleasure of attending, the Commander of the Civil Guard (GC) Acting Head of the Regional Centre for Analysis and Intelligence against Drug Trafficking (CRAIN), of Guardia Civil Zone of Andalusia, indicated that the fight against the phenomenon of "narco-petrol and Petaqueo", are absolutely vital, in fact, since the beginning of the Carteia Plan,⁷ 870,457 litres of fuel have been seized⁸ (Villag3mez Mu1oz, y otros, 2023).

To this should be added the litres seized by the National Police (PN), various local police forces, and the DAVA, plus those seized by the GC and for various reasons not linked to the Carteia Plan managed by the CRAIN.

In this conference, the PN, the GC, the DAVA, the Anti-drugs Prosecutor's Office, the University world and the Social Platform of Campo de Gibraltar⁹ participated, both on the part of the GC with the Colonels at its head, of the Cadiz and Algeciras Commanders respectively, as well as on the part of the Deputy Anti-drugs Prosecutor of the Cádiz-Ceuta Public Prosecutor's Office and Andalusia Coordinator, underlined the need to criminalise "petaqueo" (Villag3mez Mu1oz, y otros, 2023).

⁷ This plan was born within the GC as a tool for the implementation and materialisation of the Special Security Plan of the Secretary of State for Security for Campo de Gibraltar. Guardia Civil creates the Carteia Plan to fight drug trafficking mafias. https://cadenaser.com/emisora/2019/09/23/radio_huelva/1569250134_478818.html

⁸ Of those registered and linked to the Plan, the reality is higher.

⁹ Ms Ana Villag3mez Mu1oz. Deputy Anti-drug Prosecutor of the Provincial Public Prosecutor's Office of Cádiz-Ceuta and Coordinator of Andalusia.

Mr Francisco Mena de Mira. President of the Coordinadora Alternativas.

Mr Francisco L3pez Matesanz. Local Chief Commissioner of the National Police in Algeciras.

Mr Santiago Villalba Sanz. Head of the Combined Customs Surveillance Unit in Cadiz.

Mr Jes1s N1ñez Calvo. Colonel Commander of the Cadiz Command.

Mr Francisco Almansa Aguilar. Colonel Commander of the Algeciras Command.

Ms Felicidad Rodr3guez S1nchez. Director of the UIMP headquarters in Campo de Gibraltar.

Mr Ernesto Segura Iglesias. Commander of the Civil Guard, Acting Head of the Regional Centre for Analysis and Intelligence against Drug Trafficking (CRAIN).

Figure 8.*Petrol jerry cans seized by Guardia Civil*

Note. Image used during the aforementioned day by the CRAIN. Taken from (Villagómez Muñoz, y otros, 2023).

The Acting Head of the CRAIN stressed that police pressure has meant that criminal organisations need much more "narco-petrol" to be able to operate and bring hashish into Spain, leaving one of his images "Illustration number 08" of his intervention exclusively to highlight the problem. The President of the Coordinadora Alternativas, also lamented that he has proposed the criminalisation of narco-petrol on many occasions, and that this has not been put into effect (Villagómez Muñoz, y otros, 2023).

Both Guardia Civil and National Police are aware that the origin of "narco-petrol" is to be found in petrol stations, and for this reason, actions are being carried out in this sense. The following news item published in the press serves as an example: "One of the most important 'petrol stations' for narco-boats in Andalusia has been dismantled in Granada, with 14 people arrested" (El Independiente de Granada, 2020).

With a certain vindictive literature, the press echoes the activity of the petaqueo and publishes the following: "Narco-petrol stations: more than 5,000 euros in one trip and it is not a crime in Spain. This is a parallel and indispensable business for criminal organisations to make their hashish shipments" (Europasur Campo de Gibraltar, 2021).

Such is the importance of "narco-petrol" for drug trafficking that on 21 February of this year, after Guardia Civil had seized sixteen thousand litres of "narco-petrol", it was subsequently stolen in the town of Estepona. See headline below: "The impunity of the narco: stealing 16,000 litres of petrol seized two days earlier by Guardia Civil" (Sempere, 2024).

In fact, the author of the article had the opportunity to present the problem, among other related issues, at the Council of the European Union in October 2023,¹⁰ within the context of the Horizontal Working Party on "Drugs".¹¹

¹⁰ <https://www.instagram.com/guardiacivilalgeciras/p/CynAZ6sMZwV/>

¹¹ The Horizontal Working Party on Drugs was set up in 1997 and is responsible for directing and managing the Council's work on drugs. It carries out its tasks, both of a legislative and policy nature, in two main areas: drug supply reduction and drug demand reduction. This work focuses on three cross-cutting themes: coordination, international cooperation, and research, monitoring and evaluation. <https://www.consilium.europa.eu/es/council-eu/preparatory-bodies/horizontal-working-party->

3 POSSIBLE CRIMINAL OFFENCES FOR "PETAQUEO".

The legal types of crimes under the current version of the Criminal Code (CC) that will be explored are the following: against public health, smuggling, criminal damage, belonging to a criminal organisation, against road safety, possession of inflammable substances and against the environment.

3.1 CRIME AGAINST PUBLIC HEALTH.

It is important to note that in this type of criminal offence and for the matter in question, "it is not possible to apply the figure of the necessary cooperator, given that any person who collaborates with an act without which the act would not have been carried out will be considered a co-perpetrator¹² for the purposes of the conduct typified in Article 368¹³ CC", Article 27 of the CC also recognises the criminal liability of accomplices. Thus, Article 29 defines complicity as any cooperation in the execution of the act by prior or simultaneous acts (Lluch Ramírez, 2016, págs. 13,14).

But, "it seems to be widely affirmed by the jurisprudence,¹⁴ that, in order to obtain convictions for crimes against public health, narcotic substances linked to the alleged perpetrators of the crime must be seized" (Gómez Fuster, 2021, pág. 21).

Therefore, an individual who carries out a logistical activity to a drug boat from which drugs are seized is the author of a crime against public health, which is included in the crime of promoting, favouring or facilitating the illegal consumption of intoxicating drugs.

The problem lies in the fact that it is difficult to link "narco-petrol" with drugs, as the Chief Prosecutor of Algeciras, Jacobo Cisneros Prado, reports.¹⁵ In fact, at the beginning of 2019, Guardia Civil¹⁶ began operations called Manilvagas and Líneagas, centred on the border area of the provinces of Málaga and Cádiz and the municipality of La Línea de la Concepción respectively, with the aim of investigating the "petaqueo" (Gómez Fuster, 2021, págs. 44, 45).

Regarding Manilvagas, in Marbella, the prosecutor considered the police report to be complete and had no doubt that the semi-rigid vessels under investigation were involved in drug trafficking, and that the individuals who carried out the logistical actions were co-participants in the crime. However, the prosecutor also considered that, in order to sustain the charge of the crime against public health, the seizure of drugs was necessary.

drugs/#:~:text=El%20Grupo%20Horizontal%20C2%ABDrogas%C2%BB%20fue,de%20la%20demand a%20de%20droga.

¹² STS 1276/2009 of 21 December 2009, FJ 1º and 2º.

¹³ "Art. 368.- Those who carry out acts of cultivation, processing or trafficking, or otherwise promote, encourage or facilitate the illegal consumption of toxic drugs, narcotic drugs or psychotropic substances, or possess them for those purposes..."

¹⁴ The author of the academic study, who has direct knowledge of what is set out in his work, and due to the responsibility held as Chief Captain of the Judicial Police Organic Unit of Guardia Civil Command in Algeciras. This is also corroborated by the interviews presented in the article.

¹⁵ Jacobo Cisneros del Prado, (7 March 2022). Chief Prosecutor of the Algeciras Public Prosecutor's Office, (V. M. Arcas Ruiz, Interviewer) Algeciras.

¹⁶ Company of Guardia Civil of Marbella. Judicial Police Organic Unit of the Algeciras Command.

The Lineagas operation,¹⁷ met the same fate as Manilvagas (Gómez Fuster, 2021, pág. 39).

It is not a problem of the "CC, nor of guidelines," points out Juan Cisneros, Chief Prosecutor of the Algeciras Area. It is a problem of evidence; it would have to be proved that this petrol is destined for drug trafficking. So it would be a crime, but proving it is difficult. So much so that, he claims, there are no drug trafficking cases based solely on a supply of "narco-petrol" (García Serrano, 2019).

In 2020, Jesús Narciso Núñez was asked by a journalist if he considered it appropriate that possession and/or possession of fuel intended to supply drug traffickers was a drug trafficking offence, and not a mere administrative offence, to which he replied "we have presented a proposal in this regard to the Ministry of Home Affairs" (Chaparro, 2020).

"Asked whether the Ministry of Home Affairs was receptive, the Colonel replied that "the Minister [Fernando Grande-Marlaska] is a jurist, and is aware of the problem." He added that "there is the difficulty of legislating at a national level on an issue that only exists in one part of Spain" (Chaparro, 2020).

The anti-drugs coordinator also claims that the "narco-market for petrol supports a fundamental part of the activity of illegal networks with large profits in black money and minimal legal repercussions" (Rodríguez, 2021).

As mentioned in the introduction, the Deputy Anti-drug Prosecutor of the Provincial Public Prosecutor's Office of Cádiz-Ceuta and Coordinator of Andalusia is working along the same lines with regard to proposing a possible criminalisation of "petaqueo" through the annual reports of the Attorney General's Office (FGE), something which, due to circumstances, has not yet borne fruit (Villagómez Muñoz, y otros, 2023).

3.2 CRIME OF SMUGGLING.

It should be noted that "Organic Law 12/1995 of 12 December, on the Suppression of Smuggling" is a special criminal law, and Article 2 lists the different conducts that are considered a crime of smuggling.

Point two states that the crime of smuggling is committed when the value of the goods, merchandise or effects is equal to or greater than 150,000 euros; 50,000 euros in the case of prohibited or stalled goods, by those who carry out any of the following: import, export, trade, possession and circulation operations, without complying with the requirements established by law." (Official State Gazette)

There is no precedent known to the author of this paper in which "the petaqueo activity" has been convicted as a crime of smuggling offence, unless it is related to another activity. In fact, in the electronic publishing house "Sepelin", one can read an article with the following text: "it is common to find sentences that punish for crimes of smuggling,

¹⁷ In Operation Lineagas, searches were requested in the Court of La Línea de la Concepción for the same investigated facts, which were denied by the judicial authority, appealed by the anti-drugs prosecutor and the denial was confirmed by the Provincial Court of Cadiz.

for example, of tobacco or petrol," to which the following question was left in the article's forum: "Do you have any convictions for the crime of petrol smuggling?", and a communication was received indicating that in fact they are not aware of any convictions for petrol smuggling" (Guimerá Ferrer-Sama & Arcas Ruz, 2020).

There are police prosecutions where "petaqueo" is criminalised as a crime of smuggling, but so far they have little prospect of success. See a footnote article.¹⁸ As indicated by different prosecutors and police commanders who, after the operations, follow up on the final result of these police actions, in the judicial phase these proceedings do not bear fruit and end up being shelved, unless there are other related crimes.

3.3 CRIME OF BELONGING TO A CRIMINAL ORGANISATION

"A criminal organisation is understood to be a group formed by more than two persons on a stable basis or for an indefinite period, who in a concerted and coordinated manner divide up various tasks or functions with the aim of committing crimes. "Petaqueo", as discussed in chapter two, is a practice that is part of the logistical apparatus of drug trafficking operations." Pursuant to Article 570 bis.¹⁹ 1. of the current CC, "petaqueo", could perfectly well be subsumed under the criminal offence of belonging to a criminal organisation.

But for this to happen, the petrol must be part of a related crime and the prior existence "in this case" of the drug, related to the organisation in charge of the "petaqueo" logistics, must be proven. While it is not normally difficult to prove the principal offence of drug trafficking,²⁰ "when the drugs are seized", it is a different matter to charge a crime against public health or belonging to a criminal organisation, for "petaqueo", without a direct link to a drug seizure having been proven.

3.4 CRIME OF HAVOC - OTHER RISKY CRIMES CAUSED BY EXPLOSIVES AND OTHER AGENTS

Continuing with the dynamics of the work, another option would be to include the illicit act of "petaqueo" within "other crimes of havoc", included in Article 348 of the current CC, something that the author of this article has discussed with different prosecutors, and none of them²¹ has considered that there is a specific case of danger, since the danger that occurs during the "petaqueo" is a general or abstract danger, and while an episode of

¹⁸ The following is an episode that has been reported in the press: "The National Police in Almeria have arrested three men accused of an alleged crime of smuggling, consisting of supplying fuel to several narco-boats" (D.A., 2021).

¹⁹ "Those who promote, constitute, organise, coordinate or direct a criminal organisation shall be punished by ... if its purpose or object is committing serious crimes, and by ... in other cases; and those who actively participate in the organisation, form part of it or cooperate economically or in any other way with it shall be punished by ..."

²⁰ STS 4252/2013 - ECLI:ES:TS:2013:4252

²¹ Some of the prosecutors interviewed are quoted in the article: Jacobo Cisneros del Prado (7 March 2022). Chief Prosecutor of the Algeciras Public Prosecutor's Office (V. M. Arcas Ruiz, Interviewer), and Juan Bosco Anet Rodríguez (24 February 2022). Deputy Prosecutor for Road Safety in the province of Cadiz.

specific danger is not accredited, this criminal type²² (STS 538/2000) could not be applied (Jiménez Díaz, 2017).

We are talking about the illegal handling and storage of fuel, without even the slightest respect for any safety standards, risking the population in the areas or surrounding the places where this accumulation and storage of potentially dangerous substances takes place, says the specialist in criminal law (Comendador García, 2021), when advocating for the application of Article 348 to the phenomenon in question.

The media and society in general echo the situation, producing publications of the type described below: "Narco-petrol as a crime: the eternal claim remains unresolved," adding the president of the Coordinadora Comarcal Alternativas,²³ Francisco Javier Mena de Mira as follows: A way out has to be found, "Before there is a misfortune on a road with a van loaded with jerry cans or in a house in the Comarca. One day we will regret it, when he refers to the danger posed by the petaqueo" (Rodríguez, 2021).

During an interview with Chief Inspector David Sánchez Blázquez, Head of the Police Brigade of the La Línea de la Concepción Police Station (CA), he reported that all the arrests made for these acts, charging the crime of destruction, have been shelved in the Courts, so it can be determined that the application of this type of crime to the conducts studied is not effective (Gómez Fuster, 2021, pág. 24).

Chief Inspector Carlos Hernández Alonso²⁴, assigned to the Local Police Station of the National Police in La Línea de la Concepción (CA), with the function of Head of the Local Citizen Security Brigade, stated that numerous actions had been carried out and that he had been charged with the crime of havoc due to the storage of large quantities of petrol in homes, with the risk posed by the storage of petrol in closed places without ventilation and in blocks of flats where a large number of neighbours live. However, the judicial process has been short, as although the cases have been followed up in the investigating courts, once the report has been submitted to the Public Prosecutor's Office for prosecution, the proceedings have been shelved and dismissed.

During an interview with the Hon. Mr Deputy Prosecutor for Road Safety (FDSV) of the province of Cádiz²⁵, on the viability of including the conduct of "petaqueo" in the criminal offence of "havoc", informs the author of the article and interviewer that: "The conduct fits better into Art. 385 CC (crime against road safety) as it is a criminal offence of abstract risk.

²² "It refers to offences against collective security and, therefore, without the need to provide details of specific persons, it is sufficient that the danger threatens indeterminate persons, members, such as all citizens of the social collective – judgment of the 2nd Chamber of the Supreme Court 538/2000 of 25 April."

²³ <https://www.coordinadoraalternativas.es/contacto/>

²⁴ Hernández Alonso, C. (17 February 2022). Chief Inspector assigned to the Local Police Station of the National Police in La Línea de la Concepción (CA), with the function of Head of the Local Citizen Security Brigade (V. M. Arcas Ruiz, Interviewer).

²⁵ Juan Bosco Anet Rodríguez (24 February 2022). Deputy Prosecutor for Road Safety in the province of Cadiz.

3.5 CRIME OF CREATING A SERIOUS RISK TO ROAD SAFETY

The case in question may also involve a crime against road safety subsumed under Article 385 of the CC "crime of creating a serious risk to road safety,"²⁶ "Whoever creates a serious risk to traffic by placing unforeseeable obstacles on the road, ... or by any other means." This result is none other than to make the circulation seriously unsafe, that is to say, to introduce elements of danger in the circulation of vehicles for other road users" (Wolters Kluwer) "considering, the crime of endangering, as set out in Article 385 CC to be a crime of abstract danger" (Sánchez Álvarez, 2017) "in this precept that punishes conduct which seriously endangers road safety, without the need for an injurious result"²⁷ (Wolters Kluwer). On the legal nature,²⁸ concurrence with other offences,²⁹ etc., (see footnote). "In this case, it would be used when "narco-petrol" is transported, not only in violation of, but in total disregard of safety measures," and thus damaging the road system. Indications provided during the interview to the FDSV in Cadiz.

Article 385 of the CC effectively fulfils a residual function of subsuming behaviours that cannot be included in the other crimes against traffic safety.³⁰ (Iberley, 2021b)

On the other hand, the opinion of the Chief Prosecutor of the Algeciras Area, Juan Cisneros, was sought in relation to the legal efficacy on the indictment-investigation of providing a series of technical reports,³¹ with the following assessment being given: "Being able to calculate the effects of a risk does not add a plus. Such an interpretation

²⁶ "In addition to road safety, people's health and physical integrity are protected. Behaviours or omissions that pose a risk to other road users, without requiring any specific result. The result is none other than to seriously endanger the flow of traffic, i.e. to introduce elements of danger into the flow of vehicles for other road users. It is an intentional offence, requiring knowledge and awareness of impairing road safety with the typical behaviour" (Iberley, 2020).

²⁷ When the acts punished therein cause, in addition to the specific risk, a harmful result constituting a crime, whatever its seriousness, the legislator understands that what is produced is a concurrence of norms and Article 8.3 of the CC will be applicable.

²⁸ Legal nature: As far as the legal nature of this offence is concerned, it is important to begin by pointing out that it is obviously a dangerous offence, as it creates a serious risk to traffic, both for road safety and for individual legal interests (Iberley, 2020).

²⁹ "Concurs with other crimes: The crimes provided for in Article 385 must be understood as alternative crimes, so that if one of them is found, it is not possible to convict the subject for the other. In the event that, as a consequence of the creation of a serious risk, a result harmful to the life or integrity of persons is occasioned, this will be resolved by means of an ideal concurrence of crimes between the precept of the crime against road safety and this one, by virtue of the provisions of Art. 77 CC. It is possible to apply the optional reduction foreseen in Art. 385 ter CC to this type of crime in view of the lesser risk caused and other circumstances of the act".

³⁰ Provincial Court of Barcelona in its judgment, no. 793/2015 of 9 October.

³¹ - "A report by the Andalusian Emergency Group (GREA). Accident consequence study on the transport of dangerous goods, signed by a graduate in chemistry or other discipline, using the ALOHA software.

- A report made by any fire brigade or other similar group of professionals.
- A report drawn up by a graduate in Road Freight Transport Inspection from the Traffic School of Guardia Civil (Mérida), explaining the dangerous situations generated, their possible consequences and the safety measures legally established and not complied with.
- A report prepared by an International Dangerous Goods Road Transport Safety Adviser.
- A technical report by the Specialists in Attestados and reports from the Traffic Group of Guardia Civil."

would require a return to the configuration of imprudence that existed in the 1973 CC,³² where an abstract type of imprudence was provided for, in which any behaviour that violated the basic rules of care could be included. Today, however, it is not possible to make such a reproach without breaching the principle of legality.

Something that encouraged some hope about the criminal type dealt with, was the following contribution to the author by the FDSV, "The application of Art. 385.1 CC for the case of "petaqueo", was raised at the December 2019 meeting of Prosecutors of Andalusia,³³ and caught the attention of the Prosecutor of the Road Safety Court, Bartolomé Vargas."

Mr FDSV adds, following a question³⁴ during the interview, that: "under certain conditions, the transport of fuel with a complete absence of the safety measures established by the rules governing such activity and those affecting the people who carry out the transport and the vehicle used, may constitute a criminal offence that fits into Art. 385.1 CC when a serious risk to road safety is created; the conduct may also constitute a crime of reckless driving under Art. 380 CC if a person is specifically endangered, since the creation of such a risk involves an attack on the protected legal right³⁵ in the criminal field – collective safety and through it the life and physical integrity of people – and in such a case, the behaviour is criminal."

On another question, the FDSV suggests that "for the requirements of the principle of culpability, as Art 385 is not a crime that admits recklessness, it is necessary that the active subject is aware and willing of the serious risk created by the transport of petrol

³² "This type of recklessness is what was defined as reckless in the 1973 Criminal Code. It refers to the infringement of rules characterised by the high incidence caused, i.e. lacking the most fundamental rules of care and prudence."

³³ The author of this work raised this issue at the beginning of the problem of smuggling and narco-petrol, when he held the post of Chief Captain of the Cadiz Traffic Subsector, and the FDSV showed itself to be pleasantly interested and reactive. In fact, it was planned that the student would be able to present the situation to the prosecutor during the day, something that the service at the time prevented.

³⁴ Could transporting large quantities of petrol, in tanks not approved for that purpose, using vehicles not built for that purpose, driven by persons not authorised for that activity, and in contravention of the extensive safety regulations in force for the transport of dangerous goods by road, constitute a criminal offence under Article 385(1)(A) against road safety of creating a serious risk to traffic? This, under the precept of: Perform any other action that produces the same result.

All this, considering that the concurrence of a "concrete danger" is not required, but a "serious risk" is sufficient, without the intervention in the typical action of any subject being necessary.

ANSWER: From my point of view, there is no doubt that, under certain conditions, the transport of fuel with a total absence of the safety measures established by the rules governing such activity and those affecting the persons carrying out the transport and the vehicle being used, may constitute a criminal offence that falls under Art. 385.1 CC when a serious risk to road safety is created; the behaviour may also constitute an offence of reckless driving under Art. 380 CC, if a person is specifically endangered. The behaviour will generally be an administrative offence; however, if it is carried out in circumstances that cause a serious risk to traffic, without the need for the risk to be specific to a particular person, the creation of such a risk represents an attack on the legal right protected in the criminal field – collective safety and through it the life and physical integrity of the person – and in such a case, the behaviour is criminal.

³⁵ In this regard, "Circular 10/2011 of 17 November on criteria for the specialised action unit of the Public Prosecutor's Office in matters of Road Safety of the FGE" clarifies that:

The expression "disrupting traffic safety" has been deleted as unnecessary, and the typical behaviours have been expanded by means of the new verbs in number 1. Transforming or damaging signalling has been replaced by transforming, theft or removal. The amendment is coherent from the perspective of the protected legal right (road safety) and clarifies the inclusion of cases such as tearing off the sign, which are more serious than the strict material damage projected onto the sign." (Iberley, 2021b)

under these conditions. The criminal offence allows its commission by fraudulent intent."³⁶

The FDSV of Cádiz was asked whether it was aware of any guilty verdicts in relation to the phenomenon of "petaqueo", and stated that: "After examining the jurisprudence of the Supreme Court and Provincial Courts and discussing it with fellow prosecutors, he has been unable to find any judgment or order that addresses this problem from the point of view of road safety offences."

However, there is no doubt that this activity constitutes a real threat to public security, as the following case study has shown: "A minor was arrested in Los Barrios who was driving a van loaded with petrol for drug traffickers. He crashed into a wall while fleeing at high speed from the GC and the local police; the participation of minors in the logistical apparatus of the drug traffickers in the Campo de Gibraltar continues to increase" (Fernández S. , 2021).

At this point, when questioning whether Spanish substantive law has sufficient capacity and structure to constitute an adequate legal tool for prosecutors, judges, and FCSs to combat the phenomenon of "petaqueo and narco-petrol", the FDSV interviewed agreed that Article 385 CC could be applied to transport in motor vehicles, something not shared by the majority of his colleagues, which is why it seemed more appropriate for the legislator to consider the introduction of a criminal offence that contemplates such conduct.

3.6 CRIME OF POSSESSION OR DEPOSIT OF EXPLOSIVES – FLAMMABLE SUBSTANCES

Article 568³⁷ of the CC deals with a type of crime which, although it may be similar, in terms of the actions it describes, to Article 348 of the same legal text, given that both refer, among others, to the possession, manufacture and transport of explosive, flammable and asphyxiating substances, the former presents a note that makes it different, and that is the absence of prior authorisation to carry out such activities. (Audiencia Provincial Madrid - Sentencia: 00574, 2009, pág. 15). It is an abstract danger, different from Article 380 of the CC, which is a type of concrete danger, like Article 348 of the CC.

Although this is something that the author had never considered; taking into account the large quantities of fuel involved in the "petaqueo", its storage conditions, level of danger, etc., some authors do understand that the behaviour could be a clear violation of Art. 568 CC, (Comendador García, 2021) which, under the principle of proportionality, Mr FDSV, mentioned above, considers inapplicable.³⁸ Similarly, the

³⁶ That is, although it does not expressly and directly seek to create the risk, it is aware that transport creates it and assumes that it is creating it.

³⁷ "The possession or deposit of explosive, flammable, incendiary or asphyxiating substances or devices, or their components, as well as their manufacture, trafficking or transport, or supply in any form, not authorised by law or by the competent authority, shall be punishable by a penalty of..."

³⁸ Is there the belief that the possession of four thousand litres of petrol in a block of flats in unsafe conditions is a criminal offence of a sufficiently low criminal value?

ANSWER: In principle, for the application of Art. 568 CC, in its transport modality, I believe that, given the serious penalties that are assigned, and in accordance with the doctrine of the SC which considers restrictive application and under the principle of proportionality, it would not be applicable to these cases,

Chief Prosecutor of the Algeciras Area did not see it as viable either "due to its systematic location."

Notwithstanding the above, the FGE, in its 2022 report, which was published in 2023, has finally proposed as a legislative reform, the criminalisation of the transport and storage of liquid fuels predetermined for drug trafficking (Fiscalía General del Estado, 2023, págs. 1209, 1210), with the proposal to include it in Article 568 CC, with the corresponding amendments, such as the introduction of the phrase "with manifest recklessness," as in Article 380 of the current CC.

With regard to the reference in Article 568 to "blank criminal law", the FGE proposes replacing the current reference consisting of "not authorised by law or the competent authority" with another, a priori more effective one, used in other criminal offences – contravention of laws or other general provisions – and advocates incorporating a new heading in which a single transport or storage of petrol in excess of legal limits is considered manifestly reckless, as often as deemed appropriate (Fiscalía General del Estado, 2023, págs. 1209, 1210).

In fact, the Deputy Anti-drug Prosecutor of Cádiz-Ceuta and Coordinator of Andalusia, Ana Villagómez, in an interview³⁹, testified to the author of this article that, after the implementation of the corresponding change in legislative wording, she is committed to including these conducts in the text of Article 568, and indicated that the initiative shows signs of viability and that it is currently under study by the Ministry of Justice itself.

The Public Prosecutor is in favour of introducing a specific criminal offence, which has been demanded for years, but in the meantime, the inclusion of these behaviours in the text is being studied.

When asked whether she was aware of any judgments which had been charged with the phenomenon of "petaqueo" where the investigation of the case had been approached through this type of criminal offence, she indicated that to date and with the current wording of Article 568, she was not aware that this had happened, but currently charges have already been brought in four recent cases, which are being investigated.⁴⁰

3.7 CRIME AGAINST NATURAL RESOURCES AND THE ENVIRONMENT – CRIME OF WASTE SHIPMENT

It has to be considered that "narco-petrol", when transported without an invoice, unknown origin, octane number, etc., is no longer marketable and therefore becomes waste. In this case a hazardous waste according to the European Waste List (EWL). This was agreed in an interview with Joaquín Caballero Valcárcel, who in 2020 was in charge of the Waste and Land Quality Service in the province of Cádiz, and who in 2021 provided official

unless the quantities of petrol transported were enormous; on the other hand, it also seems that the offence would consist more of the deposit with a certain permanence in time of these substances and their transport in this context, which I understand would not be applicable to these cases.

³⁹ Interview conducted on Friday 26 February 2024.

⁴⁰ Date 09/03/2024.

communication as head of that service, but now in charge of Andalusia, a position he still holds today.⁴¹

Article 326.2 of the CC⁴² punishes those who: "in contravention of laws or other general provisions, collect, transport, recover, process, dispose of or use waste..., requires the shipment of a not inconsiderable amount of waste⁴³. The Ministry for Ecological Transition and the Demographic Challenge (MITERD) accepts the criterion issued by the Austrian Federal Ministry of Agriculture and Forestry, Environment and Water Management,⁴⁴ consulted on the matter by the Central Operational Environmental Unit (UCOMA) of the Seprona Headquarters, of the General Directorate of Guardia Civil, indicates that this criterion is not applicable⁴⁵ only for waste exported to third countries.

The FDSV of Cádiz, which was interested in the applicability of this type of criminal offence to the subject under discussion, stated that it considered that: "it is too much of a stretch for petrol to be a waste product for these purposes. It seems that the consideration of this petrol as waste is given a posteriori, when it is not possible to determine its exact composition and therefore it cannot be given a legal destination," something which was also shared by the aforementioned Chief Prosecutor of the Algeciras Area.

⁴¹ Junta de Andalucía, Department of Sustainability, Environment and Blue Economy. Directorate General for Environmental Sustainability and the Circular Economy
Waste and Soil Quality Service
Head: Joaquín Caballero Valcárcel.
<https://www.juntadeandalucia.es/organismos/sostenibilidadmedioambienteconomiaazul/consejeria/sgm/accea/dgsaec.html>

⁴² Article 326. 1. "whoever, contrary to law or other general provisions, collects, transports, recovers, transforms, disposes of or makes use of waste, or does not adequately control or monitor such activities in a way that causes or is likely to cause substantial damage to the quality of air, soil or water, or to animals or plants, death or serious injury to persons, or that may cause serious damage to the balance of the natural systems."

2. "Whoever, other than in the case referred to in the previous paragraph, ships a non-negligible quantity of waste, whether in the case of one or several shipments that appear to be linked, in one of the cases referred to in European Union law on waste transfers, shall be punished by a prison sentence of three months to one year, or a fine of six to eighteen months and special disqualification from holding a profession or trade for a period of three months to one year."

⁴³ "Whoever, outside the case referred to in the preceding paragraph, transfers a non-negligible quantity of waste, whether in the case of one or more shipments which appear to be linked, in one of the cases referred to in European Union law on shipments of waste, shall be punished by a penalty of...."

The Subdirectorate General for the Circular Economy, as the competent authority for the transboundary shipment of waste to third countries outside the European Union, takes into account as a reference the implementation of European policies for the prevention and fight against environmental crime in Austria, where the concept of non-negligible quantity in the illicit shipment of waste has been analysed. The document mentions general limits set by the Federal Ministry of Agriculture and Forestry, Environment and Water Management, for which a non-negligible quantity is considered.

⁴⁴ <https://data.consilium.europa.eu/doc/document/ST-10079-2019-REV-1/en/pdf>

in the absence of specific regulation under EU law, (Council of the European Union, 2019), which considers as such a quantity of more than 25 kilograms in the case of hazardous waste under the European Agreement on the Transport of Dangerous Goods, and more than 1,000 kilograms in the case of non-hazardous waste covered by this agreement or a quantity of more than 10,000 kilograms in the case of non-hazardous waste" (Barea, 2021).

⁴⁵ INSTRUMENT of ratification of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal done at Basel on 22 March 1989.

Figure 9.

Containers of "narco-petrol". One of the closed containers that appeared on the coastline of Torre de Benagalbón. SOUTH



Note. An example of how this activity is truly a threat to the marine and coastal environment.
Taken from (Quirante, 2022).

It is the only one of all the criminal offences described above that has not been applied by the FCS. At least as far as the author of this article is aware, however, an illustrative headline at the bottom of the page⁴⁶ illustrates the environmental problems posed by this phenomenon, which is a clear example of how "petaqueo" is spreading along the southern coast of Andalusia and how it is a threat to the environment, among other things.

⁴⁶ In Bajondillo, and in Torremolinos, five containers were found. "at least eight drums of petrol were found on the beach of Torre del Benagalbón. The Malaga Local Police also recovered another 30 containers on the beaches of El Palo and Pedregalejo" (Quirante, 2022).

4 COMPARATIVE LAW BETWEEN THE COLONY OF GIBRALTAR AND THE KINGDOM OF SPAIN.

Figure 10.
Jerry cans seized by the Royal Gibraltar Police.



Note. The article indicates that the aim is to put an end to "petaqueo", a key element in the supply of drug traffickers crossing the Strait with their boats. Taken from (Moreno, 2021).

In the context of an interview with the Royal Gibraltar Police command staff,⁴⁷ it is known that: they suffer the same problem with "narco-petrol" as the national territory, and they are tackling it with regulation number 4830 of 4 March 2021, link available at the foot of the page.⁴⁸

No more than 20 litres of petrol may be held or transported, although with a special authorisation a maximum of 100 litres may be held in a warehouse. Since 2021, non-compliance with this rule has been classified as a criminal offence.⁴⁹ Quantities, which the Special Anti-drug Public Prosecutor's Office proposed to criminalise through Article 568 in its annual report for 2022, (Fiscalía Especial Antidroga, 2022, págs. 37, 38) which the author of the present article has already advanced in a publication (Arcas Ruiz, 2022, pág. 31).

⁴⁷ Interviewed by the author on 23/04/2021.

⁴⁸ <https://www.gibraltarlaws.gov.gi/legislations/gibraltar-merchant-shipping-maritime-labour-convention-amendment-regulations-2021-5974/version/04-03-2021/download> Date of consultation: 15/08/2021.

⁴⁹ The Government of Gibraltar amended the law in early 2021 to criminalise the possession of fuel in the quantities and under the security conditions described above. Further information related to the article is available at the bottom of the page (Noticias Gibraltar, 2021).

As an example of Gibraltar's determination in the face of the phenomenon that is the subject of this article, the press articles are set out below.

Figure 11.

The Government of Gibraltar proposes tougher penalties for possession of fuel drums



Note. The article is shown as an example of the situation in the British colony of Gibraltar.
Taken from (Noticias Gibraltar, 2021)

In Gibraltar, they are in no doubt that by attacking "petaqueo", they hit drug trafficking. "It is clearly linked," the government of the Colony argues (Europasur Gibraltar, 2022).

In Spain, the jurist Manuel Rodríguez Monserrat, researcher and professor of Criminal Law at the University of Cadiz, believes that it is going too far to "criminalise 'petaqueo' without a direct link to drug seizures." The researcher and professor argues that "having large quantities of fuel can be an indication of another crime, supplying petrol and thus facilitating drug trafficking, but he believes that turning this indication into a criminally prosecutable act in itself entails a risk to individual liberties" (Almoguera, 2021).

The Coordinadora Comarcal Alternativas points out, as it has been repeatedly claiming and making a comparison, that in Spain the "narco-boats" were banned, and this was done after more than twenty years of being carried out in the Colony of Gibraltar. It is well known that the banning of "narco-boats" in Spain in 2018 was an important change in the fight against drug trafficking, which did not go unnoticed on social media⁵⁰ (Quino López., 2018).

⁵⁰ "The Government is putting a stop to narco-boats. The Council of Ministers has approved a Royal Decree-Law banning high-speed vessels commonly used by drug trafficking and tobacco smuggling

It would seem that it would take more than 20 years for Spain to adopt the measures that were adopted in the colony of Gibraltar in 2021 with regard to "narco-petrol", something that has already happened with the narco-boats.

5 SHOULD "NARCO-PETROL" AND "PETAQUEO" BE CRIMINALISED?

Manuel Rodríguez Monserrat, researcher and professor of Criminal Law at the University of Cadiz, considers the proposal to criminalise "narco-petrol" to be controversial, and believes that it should not go beyond the condition of "criminal evidence," arguing that Royal Decree-Law 16/2018 of 26 October criminalised the semi-rigid vessels used by drug traffickers, and that an attempt was already made to criminalise the possession of petrol with the same strategy, and to bring forward the action of Criminal Law through the so-called possession offences (Rodríguez Monserrat, 2021).

The researcher and professor argues that the possession of large quantities of petrol may be circumstantial evidence, but in relation to the above-mentioned proposals, in no case should a new offence of possession be constituted (Rodríguez Monserrat, 2021); a line of argument is based on the fact that it must be borne in mind that criminal law does not protect all legal assets in an absolute manner, but forms part of a harmonised and cohesive set of rules that makes life in society possible.

In an interview with the Chief Prosecutor of the Algeciras Public Prosecutor's Office, Juan Jacobo Cisneros, he clarifies that the difficulty in linking "narco-petrol" with the criminal activity of promoting illegal drug consumption is very simple. His reply was as follows: "Petrol is a legal commodity, its trafficking is permissible, and it is present in many aspects of everyday life. When this happens, the criminalisation of behaviours targeting it is complicated.

On the other hand, opinions in favour of criminalisation have already been expressed by actors other than those mentioned in this chapter.⁵¹

6 CONCLUSIONS.

In order to bring in hashish via so-called 'narco-boats', large quantities of petrol are required. This fuel is transported by sea and by road in containers of thousands of litres, under non-existent safety conditions, without the slightest respect for any regulatory standards. Similarly, it is stored in homes, garages, premises, etc., thereby creating a risk that is difficult to find criminally reprehensible. This lack of value should be a criminal offence, surpassing the administrative offence.

networks in the Strait of Gibraltar. In recent months, moreover, the security forces had detected that these vessels were also being used for the irregular trafficking of people from North Africa. The prohibition of narco-boats, one of the basic links on which the activity of drug trafficking networks is based, is a long-standing demand of anti-drug groups that was launched at the beginning of the year by the former Minister for Home Affairs, Juan Ignacio Zoido. In Gibraltar, these boats have been banned since 1995" (Quino López, 2018).

⁵¹ The Chief Anti-drugs Prosecutor of Cádiz-Ceuta and Coordinator of Andalusia as well as the Deputy Prosecutor for Road Safety of Cádiz.

The press is aware of the situation and the lack of reproach by the various public administrations, and publishes the following: "Arrests are resolved with the payment of a fine for a mere administrative penalty" (Europasur Campo de Gibraltar, 2021), which in most cases cannot be paid, as the accused are usually insolvent and the premises for their storage or the means used for their transport by land or sea are usually in the name of third parties.

Gibraltar was a pioneer in "banning narco-boats in 1995. In Spain, the Council of Ministers approved a Royal Decree-Law in 2018 banning these high-speed vessels, but 23 years later" (Rodríguez, 2021). In this case, "with regard to petaqueo", the British colony has again been one step ahead.

"In Spain, the FCS observes with a certain "envy" the Gibraltarian legislative initiatives" (Moreno, 2021), "as does the Coordinadora Comarcal Alternativas"⁵² (Rodríguez, 2021).

The report of the FGE 2022, presented in 2023, highlights the difficulties for the FCS as well as for the Public Prosecutor's Office in prosecuting "petaqueo", and points out the two main obstacles:

1. How complicated it is to link narco-petrol to drug trafficking.
2. The almost absolute impossibility of incorporating these behaviours into the current articles of the CC (Fiscalía General del Estado, 2023, pág. 1209).

As NIUS publishes,⁵³ "narcos like petrol", "This need for petrol is currently one of the keys to the fight against drugs" (García Serrano, 2019).

"The bottom line is that, if it cannot be reliably proven that the seized fuel – narco-petrol – is going to be or has been used for a narco-boat loaded with drugs, it is not currently a criminal offence. For the 'petaqueros', it means earning thousands of euros in a short time, and as they have no income, no job, no assets, they go unpunished when administrative channels are used" (Pressreader, 2021).

Legislating to criminalise "petaqueo" finds opposing opinions between those who favour effectiveness in the fight against drug trafficking, and those who consider the maxim of "minimum intervention of criminal law," also known as the principle of the last resort. Moreover, it seems that legislating at the national level, on a phenomenon that is only suffered in a part of the national territory, and with respect to a legal good of daily and general use such as "petrol", makes it difficult for this to happen.

The reasons for a possible regulatory change would focus on two objectives:

First: taking action before what has already been reported and published in the press as "a disgrace" with "narco-petrol" stored in premises in an irregular manner and with a high rate of surrounding dwellings, or on the road transporting it on a stretch of road with high occupancy.

⁵² <https://www.coordinadoraalternativas.es/contacto/>

⁵³ Mediaset España's digital newspaper NIUS (Nueva Información Útil y Sencilla).

Second, providing essential logistics to the organisations responsible for smuggling hashish into Europe via the Spanish coast.

7 PROPOSAL

It is the opinion of the author of this article to make "petaqueo—narco-petrol" an autonomous crime.

This autonomous crime could be classified as a crime of smuggling, in this case, a crime of possession, and avoid the concurrence of rules or absorption of the crime of "petaqueo" into the drug trafficking crime, as is the case with the proceedings instituted for smuggling of prohibited goods with respect to "narco-boats", this being an autonomous crime included in "Organic Law 12/1995 of 12 December on the Suppression of Smuggling, in relation to Royal Decree-Law 16/2018.⁵⁴ The amount of fuel to be considered an offence should be studied. The author of this article chooses to establish the limit of petrol that would be typified by the limit set out in various administrative regulations cited in the scientific article "Narco-petrol, a challenge for public safety. Policing from an administrative perspective. Notebooks of Guardia Civil (67), 7–37" (Arcas Ruiz, 2022). Namely: 240 litres in the Land Transport Ordination,⁵⁵ or 200 litres in the law on Excise Duty⁵⁶. All of this, taking into account the risk to human life and the environment, and assessing the devaluation exercised against the current risk prevention regulations in the transport, possession, etc., of dangerous goods and in general.

Such a legislative reform could further complicate not only the trafficking of hashish from North Africa, but also the fact that this infrastructure is used for human trafficking⁵⁷ and cocaine trafficking.⁵⁸ These facts are not subject to opinion or the result of privileged information, as they are available in open sources, such as the following: (Canal Sur Radio y Televisión, 2018), (La Vanguardia, 2021), (Almagro Duro, 2023), etc.

⁵⁴ Royal Decree-Law 16/2018 of 26 October adopting certain measures to combat the illicit trafficking of persons and goods in relation to the vessels used."

⁵⁵ Law 16/1987 of 30 July on the Land Transport Ordination.

⁵⁶ Law 38/1992 of 28 December on Excise Duties.

⁵⁷ Mafias also use "narco-boats" for smuggling migrants. <https://www.canalsur.es/noticias/andalucia/cadiz/las-mafias-tambien-usan-las-narcolanchas-para-el-trafico-de-inmigrantes/1321376.html>

⁵⁸ Drug traffickers use southern hashish route to smuggle cocaine, <https://www.lavanguardia.com/vida/20210211/6239830/narcotraficantes-ruta-hachis-sur-introducir-cocaina.html>

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