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CITES crimes in Poland – causes, manifestations, counteracting

Introduction

Natural heritage, next to cultural heritage, is an element of national heritage for individual states (on the local scale) and human heritage (on the global scale)¹. Its protection and preservation for future generations has attracted the interest of researchers representing multiple academic fields, including criminologists².

In the general view of criminal offences, crimes involving trafficking protected species of fauna and flora are less significant and less harmful for the society than other forms of organized cross-border crimes, such as narcotics, human or arms trafficking³. This paper attempts to demonstrate that the so-called CITES crimes, contrary to popular belief, pose an increasing serious criminal threat, bringing significant profits for criminals. Additionally, it presents a general description of the illegal market of protected flora and fauna species in Poland, from the green criminology perspective.

The author of the study sets the following research aims: diagnosing the cause of the illegal trade in protected wildlife species (aetiology), describing symptomatic forms of pathologies in this area (phenomenology), formulating methods for efficient prevention and combating undesirable phenomena

¹ W. Plywaczewski, B. Gadecki, *Od redaktorów*, [in:] W. Plywaczewski, B. Gadecki (eds.), *Ochrona dziedzictwa kulturowego i naturalnego. Perspektywa prawna i kryminologiczna*, Warszawa 2015, p. XI–XIII.

² W. Plywaczewski, J. Narodowska, M. Duda, *Assessing the Viability of Environmental Projects for a Crime Prevention-Inspired Culture of Lawfulness*, [in:] H. Kury, S. Redo (eds.), *Crime Prevention and Justice in 2030. The UN and the Universal Declaration of Human Rights*, Cham 2021, p. 275–292.

³ W. Plywaczewski, *Nielegalny rynek chronionych gatunków dzikiej fauny i flory. Geneza, przejawy, przeciwdziałanie*, Szczytno 2016, p. 13–14.

(counteracting) as well as presenting principles concerning legal liability for smuggling CITES species in the Polish law.

A complex analysis of the subject matter requires the application of various research methods. The author used a dogmatic analysis of international law regulations, European Union law and Polish criminal law, an analysis of crime statistics and a critical analysis of the literature.

Criminology, as a science dealing with the issues of crime, delinquency, perpetrators, crime victims and crime control, is an appropriate tool for examining the problem of the illegal market of protected wildlife species. In particular, this is an area investigated by experts in so-called “green criminology”.

Genesis, development and subjects of interest in green criminology

Green criminology is one of the pioneering unconventional multidisciplinary branches of criminology. The term was used for the first time in the 1990s by M.J. Lynch⁴. A broader interest in this subject matter arose after a publication devoted to green criminology in a special issue of the “Theoretical Criminology” journal in 1998⁵. Other English terms with a similar meaning in the literature include eco-global criminology⁶, green-cultural criminology⁷ and conservation criminology⁸.

A controversial topic is whether green criminology should be described as a new paradigm/discipline within criminology. Opponents of this view emphasize that green criminology has not yet developed concise, uniform theoretical foundations, sufficient terminology and commonly accepted internationally acknowledged definitions⁹. However, this research area, unquestionably drawing on the previous achievements in criminology (e.g. radical criminology, economic

⁴ J.M. Lynch, *The Greening of Criminology: a Perspective for the 1990's*, “Critical Criminologist” 1990, no. 2(3), p. 1–4.

⁵ N. South, P. Beirne, *Editors Introduction*, “Theoretical Criminology” 1998, vol. 2, no. 2, p. 147–148.

⁶ R. White, *Researching Transnational Environmental Harm: Toward an Eco-Global Criminology*, “International Journal of Comparative and Applied Criminal Justice” 2009, vol. 33, issue 2, p. 229–248; idem, *Transnational environmental crime. Toward an eco-global criminology*, London 2011; R. Ellefsen, G. Larsen, R. Sollund (eds.), *Eco-global Crimes. Contemporary Problems and Future Challenges*, Ashgate Publishing 2012.

⁷ A. Brisman, N. South, *A green-cultural criminology. An exploratory outline*, “Crime, Media, Culture” 2013, vol. 9, issue 2, p. 115–135.

⁸ C. Gibbs, M.L. Gore, E.F. McGarrell, L. Rivers, *Introducing conservation criminology towards interdisciplinary scholarship on environmental crimes and risks*, “British Journal of Criminology” 2010, vol. 50, no. 1, p. 124–144.

⁹ A. Cao Ngoc, T. Wyatt, *A Green Criminological Exploration of Illegal Wildlife Trade in Vietnam*, “Asian Journal of Criminology” 2013, vol. 8, no. 2, p. 129–142.

analysis of crime, crime opportunity theories) is creatively developing and enhancing this branch of studies¹⁰. Green criminologists also emphasize that it is more important to solve practical criminological problems than to build theoretical justifications proving the academic independence of green criminology¹¹.

Experts in this research area have been studying ecological damage, crimes against the natural environment and environmental protection law. Over the last 20 years, green criminologists have carried out research covering an increasingly broader spectrum. The major areas include the following issues: deforestation, global warming, soil, water and air pollution, poaching, illegal trade in endangered species, cruelty to animals, illegal trade in waste, food fraud, genetically modified food, biodiversity loss, consequences of natural disasters and ecological wars¹².

Working groups gathering green criminologists have been established at the American Society of Criminology and European Society of Criminology. At present, this green criminological trend is represented in criminology e.g. by M.J Lynch, R. White, R. Walters, A. Brisman, N. South, T. Benton, R. Sollund, T. Spapens, D. van Uhm, T. Wyatt, J. Maher, G. Pink, D. Siegel and G. Meško.

In Poland, the first publications concerning green criminology emerged at the end of the first decade of the twenty-first century. An unquestionable pioneer in green criminological research in Polish criminology is W. Pływaczewski. Under his supervision, a team of criminologists of the Department of Criminology and Forensic Science of the Faculty of Law and Administration of the University of Warmia and Mazury in Olsztyn have been researching general issues of crimes against natural heritage. The research group specializes, first of all, in crimes against the environment, and its achievements in this field have led it to be described (with some degree of caution and modesty), the Olsztyn School of Ecocriminology¹³.

¹⁰ E. Drzazga, *Związki zielonej kryminologii z kryminologią tradycyjną*, "Archiwum Kryminologii" 2019, vol. XLI, no. 1, p. 9–29.

¹¹ W. Pływaczewski, *Zielona kryminologia – spór o zakres kryminalizacji*, [in:] S. Pikulski, M. Romańczuk-Grącka (eds.), *Granice kryminalizacji i penalizacji*, Olsztyn 2013, p. 568–579.

¹² Parallel to green criminology, a new scientific sub-discipline known as green (environmental) forensic science is also taking shape. See more: E. Zębek, D. Solodov, *Environmental Forensic Examinations in Poland: a Case Study*, "Journal for European Environmental & Planning Law" 2021, vol. 18, issue 1–2, p. 103–123; D. Solodov, E. Zębek, *Environmental forensic inquiries in investigating environmental crimes in Poland and Russia*, "Environmental Forensics" 2020, p. 1–10; M. Dębska, *Bieżące kierunki w kryminalistycznych badaniach dotyczących identyfikacji zwierząt należących do gatunków zagrożonych wyginięciem*, "Problemy Kryminalistyki" 2013, no. 280(2), p. 28–38.

¹³ In 2019, Wiesław Pływaczewski was awarded the scientific prize of the Polish Academy of Sciences for the founding and achievements of the Olsztyn School of Ecocriminology (OSE). Additionally, members of OSE (W. Pływaczewski, J. Narodowska, M. Duda) are experts at Green

Nowadays, there is no doubt that criminologists have increasingly become involved and interested in environmental issues to the extent that the term green criminology is now recognized as a distinct subgenre of criminology¹⁴.

Trade-in protected wildlife species under the Washington Convention, European Union law and Polish law

A key act in international law regulating this subject matter is the Convention on International Trade in Endangered Species of Wild Fauna and Flora¹⁵. It was adopted on 3 March 1973 in Washington and is commonly referred to as the Washington Convention, or the CITES Convention. Currently, 183 countries from all over the world are party to the convention.

The aim of the Washington Convention is the protection of wild animals and plants against excessive exploitation caused by international trade. Three appendices to the Convention list different groups of species: Appendix I – species threatened with extinction, Appendix II – species which may become threatened with extinction in the future as a result of unsustainable trade in those species, and Appendix III – species reported by the parties to the Convention as currently requiring protection. At present, Appendix I lists 1,045 taxa, Appendix II – 34,608 taxa, and Appendix III lists 217 taxa. According to the provisions of the Convention, the trade-in species listed in Appendices can only be conducted based on an export permit, a model of which is attached as Appendix IV to the Convention. Any trade in CITES species without a permit or violating the provisions of the permit is prohibited by the Convention. According to Art. 8 of the Convention, its parties are obliged to take relevant measures aimed at prohibiting trade in specimens of animals and plants that violates the provisions of the Convention. According to the Convention, such measures include penal sanctions for trading in or keeping such species and confiscation or sending back such specimens to the export state¹⁶.

The European Union ratified the Washington Convention on 9 April 1995, and it became effective for the EU on 8 July 1995. Provisions of the Convention were implemented into European law by Council Regulation (EC) No. 338/97

Criminology Working Group, European Crime Prevention Network, Institute for European Environmental Policy and Union for Conservation of Nature.

¹⁴ M.J. Lynch, M.A. Long, P.B. Stretesky, *Green Criminology and Green Theories of Justice. An Introduction to a Political Economic View of Eco-Justice*, Palgrave Macmillan 2019, p. II.

¹⁵ Convention on International Trade in Endangered Species of Wild Fauna and Flora (Journal of Laws 1991, No. 27, item 112).

¹⁶ R. Reeve, *Wildlife trade, sanctions and compliance: lessons from the CITES regime*, "International Affairs" 2006, vol. 82, no. 5, p. 881–897.

of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein¹⁷. In practice, EU law regulations are even more restrictive than the regulations provided in the CITES convention¹⁸.

Poland ratified the Washington Convention on 12 December 1989, and it became effective on 12 March 1990. Provisions of the Convention were implemented in Polish law through the Law on Conservation of Nature of 16 April 2004¹⁹. This law came into force on 1 May 2004, i.e. simultaneously with Poland's accession to the European Union. The provisions of the Act also implement Council Regulation (EC) No. 338/97, in particular Art. 16 thereof concerning sanctions for violation of the rules of international trade in plant and animal species subject to international protection.

Under its Art. 128, this act penalizes the cross-border transport of species covered by the protection without a permit or in violation of permits. This provision, through Art. 61 paragraph 1 of the Law on Conservation of Nature, refers to the provisions of Council Regulation (EC) No. 338/97. The good protected by this provision is the conservation of protected plant and animal species. Under this provision, it is prohibited to transport specimens of protected species across the border of the European Union without the required document or in breach of its conditions (paragraph 1) and infringing European Union legislation on the conservation of wild animal and plant species by regulating trade therein (paragraph 2). It is a formal offence, no material effect is part of its constituent elements. Moreover, it is a common offence, the perpetrator can be anyone capable of criminal responsibility. The offence can only be committed intentionally, with either direct or alternative intent. This deed is punishable by imprisonment from 3 months to 5 years. Representatives of the doctrine note that such a criminal threat is disproportionately severe compared to other environmental crimes penalized in Polish criminal law²⁰.

Under its Art. 128a, this act penalizes any trade in protected species. This provision was introduced into the Law on Conservation of Nature by an amendment of 25 March 2011. From a criminological perspective, it is therefore an example of neo-criminalization. It also constitutes the implementation of Directive 2008/99/EC of the European Parliament and of the Council of

¹⁷ Council Regulation (EC) No. 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein (Official Journal of the European Communities 1999, No. L 61/1).

¹⁸ European Commission, *Wildlife Trade Regulations in the European Union. An Introduction to CITES and its*

Implementation in the European Union, Luxembourg 2010, p. 13.

¹⁹ Law on Conservation of Nature of 16 April 2004 (Journal of Laws 2020, item 55, with amendments).

²⁰ W. Radecki, *Pozakodeksowe przestępstwa przeciwko środowisku*, [in:] M. Bojarski (ed.), *Szczególne dziedziny prawa karnego. Prawo karne wojskowe, skarbowe i pozakodeksowe*, seria: *System prawa karnego*, t. 11, Warszawa 2014, p. 797.

19 November 2008 on the protection of the environment through criminal law, in particular Art. 3 thereof²¹. The good protected by this provision is the appropriate conservation status of species, which may be threatened by trade in their specimens. It is a formal offence, no material effect is part of its constituent elements. Moreover, it is a common offence, the perpetrator can be anyone capable of criminal responsibility. The offence can be committed intentionally or unintentionally. If the deed is committed intentionally, it shall be punishable by terms of imprisonment from 3 months to 5 years (paragraph 1). If committed unintentionally, it shall be punishable by a fine, penalty of restriction of liberty or imprisonment up to 2 years (paragraph 2).

Additionally, under Art. 129, the court can (but doesn't have to) order the penal measures for the offences under Art. 128 and 128a. The first is the forfeiture of objects used in the commission of an offence and objects, plants, animals or mushrooms derived from the offence, even if they are not the property of the perpetrator. The second is the obligation to restore the previous state of affairs, and if such an obligation would not be feasible – a compensation of up to PLN 10,000 to the social organization acting in the field of nature protection or to the Regional Fund for Environmental Protection and Water Management. In the light of the above provision, both *instrumenta sceleris* and *producta sceleris* are therefore subject to forfeiture. The Minister of the Environment or the Regional Director of Environmental Protection may order, by administrative decision, at the expense of the convicted person, the sending back of forfeited species to the country from which they were imported. In the case of alien species, the Regional Director for Environmental Protection may order, by administrative decision, at the expense of the convicted person, the killing of animals owned by the offender²².

CITES crimes and other criminological categories of offences

Regarding criminal behaviours related to the species protected by the Washington Convention, the term of so-called “CITES crimes” was formulated. Criminal behaviours related to operations in the illegal market of protected wildlife species belong to a broader criminological category of crimes against the environment.

²¹ Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law (Official Journal of the European Communities 2008, No. L 328/28).

²² M. Kulik, *Komentarz do niektórych przepisów ustawy o ochronie przyrody*, [in:] M. Mozgawa (ed.), *Pozakodeksowe przestępstwa przeciwko zasobom przyrody i środowisku. Komentarz*, Warszawa 2017, p. 35; K. Gruszecki, *Ustawa o ochronie przyrody. Komentarz*, Warszawa 2017, p. 760.

The classification applied in Poland to illustrate the structure of criminal activity follows the methods of presenting criminal statistics, with a division into criminal (common) offences and economic crimes. Crimes related to smuggling, including the smuggling of protected wildlife species, are classified as economic crimes. However, CITES crimes can be committed by perpetrators described as both “white collar” and “blue-collar” criminals.

The smuggling of CITES species as a cross-border crime demonstrates close relationships with organized crime. Although individual specimens of wild fauna and flora are smuggled by individual perpetrators (most often tourists unaware of the illegality of this practice), mass-scale smuggling requires the cooperation of trafficking gangs with a global network of links. Therefore, CITES crimes fit into the concept of “globalization of crime”²³. For participation in an organized criminal group, Art 258 of the Polish Penal Code provides for a penalty of imprisonment from 3 months to 5 years.

In recent research, criminologists have emphasized the so-called “virtualization of crime”²⁴. This phenomenon involves the use of modern technology tools, particularly the Internet, by criminals. An increasing number of crimes are being committed in the so-called illegal e-commerce markets. Given the modus operandi of the perpetrators, crimes of this type are classified as a form of cybercrime. Traditionally, trade-in wild flora and fauna species were conducted in animal markets or pet shops. Currently, most transactions take place through online auction services, such as Allegro, eBay, Amazon, AliExpress or other Chinese-speaking auction websites²⁵. The trading activity also takes place on closed or open social media forums, chats and thematic websites intended for animal or plant collectors. The above-mentioned e-commerce tools make it possible for traders to advertise, communicate with clients and carry out transactions concerning wild animals and plants. Illegal CITES species’ markets are also possible through auction websites operating on the Darknet, such as Silk Road. The anonymity of transaction participants is additionally facilitated through the use of cryptocurrencies, such as bitcoin²⁶.

²³ UNODC, *The Globalization of Crime A Transnational Organized Crime Threat Assessment*, Vienna 2010, p. 149–169.

²⁴ J. Narodowska, M. Duda, *New Forms of Crimes Connected with Cyberspace in Poland: Legal and Criminological Perspective*, [in:] E. Bani, E. Rutkowska-Tomaszewska, B. Pachuca-Smulska (eds.), *Public and Private Law and the Challenges of New Technologies and Digital Markets. Volume 1. Regulatory Challenges*, Warszawa 2020, p. 277–293.

²⁵ J. Wu, *World Without Borders: Wildlife Trade on the Chinese-language Internet*, “TRAFFIC Bulletin” 2007, vol. 21, no. 2, p. 75–84.

²⁶ W. Pływaczewski, M. Duda, *Незаконная торговля видами животных и растений, подпадающих под действие CITES в сети «Интернет»: криминологические аспекты (Незаконная торговля видами животных и растений, подпадающих под действие CITES в сети «Интернет»: криминологические аспекты)*, [in:] В.В. Зайцев, О.А. Серова (eds.), *Цифровая экономика: проблемы правового регулирования (Cifrová ekonomika: problémy pravovogo regulirovaniá)*, Moskau 2019, p. 180–189.

On one hand, the Internet can facilitate illegal activity, but on the other, it also provides the authorities with the possibilities to monitor and respond to criminal activities related to trade in wild fauna and flora. Proof of the significance of the problem of illegal internet trade in CITES species is the establishment in 2009 of the “Working group on e-commerce of specimens of CITES-listed species” at the Regular Committee of the Washington Convention. A study carried out by the International Fund for Animal Welfare indicated that the United States is responsible for 70% of illegal online trade in CITES-protected species²⁷.

Criminologists have also recorded cases of illegal trade in CITES-listed species providing a source of income used later to finance other serious criminal acts, such as terrorism, rebel groups and wars. A good example was the Liberian dictator, Charles Taylor, who sold exotic timber in exchange for weapons²⁸, or the operation of “shifta” hit squads in Kenya and Tanzania, who engage in the illegal acquisition and sale of ivory for the same purpose²⁹.

Aetiology of CITES crimes

A criminological analysis of smuggling CITES-listed specimens should begin with a presentation of aetiological factors determining this pathology. The literature of the subject indicates that the cause of the natural heritage smuggling is due to the limited resources of wild fauna and flora species, higher prices in western countries than in eastern countries, increased cross-border traffic, relative inefficiency of customs control, the smugglers’ feeling of impunity, relative ease of hiding the smuggled CITES-listed species, the focus of the customs authorities on preventing the smuggling of high-excite goods (alcohol, cigarettes, fuel), lack of awareness of customs services as to the scale of the threat and the lack of social awareness of the illegality of the trade-in CITES-listed species³⁰.

²⁷ J. Morgan, S. Chng, *Rising internet-based trade in the Critically Endangered ploughshare tortoise *Astrochelys yniphora* in Indonesia highlights need for improved enforcement of CITES*, “Oryx” 2018, vol. 52, issue 4, p. 744–750.

²⁸ Global Witness, *Bankrolling brutality. Why European timber company DLH should be held to account for profiting from Liberian conflict timber*, London 2010, p. 6; A.G Blundell, *Implementing CITES Regulations for Timber*, “Ecological Applications” 2007, vol. 17, no. 2, p. 323–330.

²⁹ W. Pływaczewski, *Combating organized poaching in Africa: activities of the Kenya Wildlife Service*, [in:] W. Pływaczewski (ed.), *Organized Crime and Terrorism. Reasons. Manifestations. Counteractions*, Olsztyn 2011, p. 49–64; idem, *Organised Trafficking in Protected Species of Wild Flora and Fauna as a Means of Supporting Armed Conflicts and Terrorism*, “Białostockie Studia Prawnicze” 2011, no. 10, p. 189–206.

³⁰ See more: W. Pływaczewski, *Nielegalny rynek chronionych gatunków dzikiej fauny i flory. Geneza, przejawy, przeciwdziałanie*, Szczytno 2016; W. Pływaczewski, A. Nowak, M. Porwisz (eds.), *Przeciwdziałanie międzynarodowej przestępczości przeciwko środowisku naturalnemu z perspektywy organów ścigania*, Szczytno 2017.

Discussion of criminological theories explaining the reasons for crimes related to smuggling exceeds the limits of this study, but the concepts that should be mentioned here include routine activity theory (M. Felson), social learning theory (A. Bandura), differential association theory (E. Sutherland), anomie theory (R. Merton), subcultural theory (A. Cohen), neutralization theory (G. Sykes & D. Matza), theory of economic conflicts (J. Reiman) and the economic theory of crime (G. Becker)³¹.

CITES crimes, as one of the manifestations of economic crimes, are characterized by the specific motivation of perpetrators, which is the desire for profit. The crimes of this category generate high profits with a relatively low risk of punishment. Additionally, penalties for smuggling CITES-listed species are much lower than penalties for other types of smuggling. For comparison, in the Polish criminal law, drug trafficking carries a prison sentence of up to 15 years, arms trafficking is penalized by up to 10 years of prison and human trafficking – up to 15 years of prison. The smuggling of wildlife species is therefore a profitable and less risky activity for the perpetrators.

Phenomenology of CITES crimes

In the area of smuggling crime phenomenology, the attention is primarily put on a very broad spectrum of smuggled objects, which include live animals, dead animals (bushmeat), stuffed animals (taxidermy) and goods made from animal skin and bones (clothes, shoes). Endangered fauna species are purchased by laboratories (e.g. buying monkeys, frogs and leeches), private collectors (e.g. buying snakes, parrots, spiders, turtles or tropical fish), zoological gardens (e.g. buying predatory birds, tigers), restaurant owners (e.g. buying shark fins and bushmeat), manufacturers of natural medicine preparations (buying, among others, rhinoceros horns or elephant tusks). As regards smuggled endangered flora species, the most frequently include orchids, sundews, cacti and rare timber, e.g. ebony, mahogany or cedar³². It must be also emphasized that the demand for smuggled CITES-listed species generates huge destruction in the natural environment and causes the extinction of endangered species³³.

A particularly interesting issue is the *modus operandi* of CITES-listed species smugglers. It is very highly differentiated and generally limited only by the creativity of the smugglers. In retail volumes, small specimens of plants and animals are hidden in hand luggage or the clothes of passengers at airports.

³¹ S.G. Tibbets, *Criminological Theory*, SAGE Publications, Thousand Oaks 2019.

³² M. Duda, *Zjawisko „forest crime” z perspektywy ekokryminologii*, [in:] R. Górecki (ed.), *Człowiek a środowisko*, Olsztyn 2020, p. 127–146.

³³ P. Listos, M. Dylewska, M. Gryzińska, *Sprzecznym z Konwencją Waszyngtońską (CITES) przemyt zwierząt do Polski*, „Życie Weterynaryjne” 2016, no. 91(4), p. 238–243.

Larger specimens or higher amounts are transported in containers together with legal goods or using specially prepared double bottoms in lorries and cars crossing road border crossings. The largest specimens and the highest amounts are transported by sea in freight containers (e.g. ivory). At present, increasingly more often protected fauna and flora species are smuggled through postal and courier shipment, so crimes are increasingly frequently being detected in warehouses inside the country and not at the borders. It should be emphasized that, in Poland, cases of trafficking CITES-listed species over the so-called "green border" do not occur in practice. Smugglers transport plants and animals without permits, transport species other than those declared in transport documents, transport a higher amount of species than declared in transport documents, declare a false country of origin and even change the appearance of animals, e.g. by painting them³⁴.

In analyzing the destination of trafficking in CITES-listed species, it should be noted that Poland is mainly a so-called transit country, and less often the final destination country. This results mainly from the relatively low purchasing capabilities of Polish society. The countries of origin, also referred to as source countries, are the countries of South and Central America, Africa, Asia and Eastern Europe (former Soviet republics). Destination countries also referred to as market countries, are located in North America, Western Europe and the Far East. One of the main smuggling routes runs through Poland, from eastern to Western Europe³⁵.

The most frequently revealed cases of CITES-listed species smuggling at Polish borders include black caviar, medical leeches, eels, parrots, turtles, snakes, corals, ivory, products of traditional Asian medicine (TAM/TCM), e.g. ginseng roots, musk, bear bile, powdered seahorses³⁶.

In Poland, the number of detected CITES-listed specimen trafficking cases a year amount to, on average, from 100 to 250. This is only 0.025% of the total number of crimes detected in Poland. Of course, this is only the figure showing detected crimes, while the number of non-revealed crimes (dark figure) is difficult to estimate. Every year between 3.000 and 300.000 specimens of wild fauna and flora are disclosed to be smuggled into Poland. 90% of these are TCM products. Smuggling of CITES species is most common on the border with Ukraine (Podkarpackie Province and Lubelskie Province). Between 30 and 100 people a year are finally convicted of CITES crimes. 3/4 of the

³⁴ M. Chackiewicz, *CITES a międzynarodowy obrót towarowy*, Warszawa 2013, p. 53–82.

³⁵ M. Duda, *Przemyt dziedzictwa kulturalnego i naturalnego – wyzwanie dla kryminologii w XXI wieku*, [in:] E.W. Pływaczewski, D. Dajnowicz-Piesiecka, E. Jurgielewicz-Delegacz (eds.), *Przestępczość XXI wieku. Szanse i wyzwania dla kryminologii*, Warszawa 2020, p. 105–119.

³⁶ W. Pływaczewski, M. Duda, *Azjatycka medycyna ludowa i jej związki z nielegalnym rynkiem chronionych gatunków fauny i flory*, [in:] W. Pływaczewski, A. Dobies (eds.), *Przeciwdziałanie patologiom na rynku medycznym i farmaceutycznym*, Warszawa 2019, p. 1–14.

perpetrators are male and 1/4 of the perpetrators are female. These crimes are most often committed by perpetrators aged between 30 and 50³⁷.

Illegal transfer of raw amber is another typical form of smuggling at the Polish-Russian border. This particularly concerns the Kaliningrad District, where 90% of the total resources of this raw material are located. It is extracted by the Kaliningrad Amber Combine in the town of Jantarnyj (Янтарный), and according to the Russian law, the transport of raw amber across the board is illegal. At the same time, in the Polish city of Gdańsk, situated 160 km from Kaliningrad, 70% of total world amber jewellery is produced. Therefore, it is obvious that there is an illegal amber market in this region of Europe worth about EUR 1.000.000.000³⁸.

At the margin of the main discussion, some interesting and atypical cases of smuggling can be mentioned as a curiosity. One example is the smuggling of mammoth tusks by Russians, obtained during an illegal search in Siberia and sold further on as ivory. Legal qualification of the smuggling was a problem in this case, since mammoths, like extinct animals, are not subject to protection under the Washington Convention. Eventually, the mammoth tusks were defined as cultural objects.

Counteracting CITES crimes

CITES crimes are combated on three planes – legislative (penalization of CITES crimes), institutional (operation of law enforcement authorities and services), and social (increasing legal awareness).

Under Polish criminal law, the provisions of the Washington Convention were implemented in the above-discussed provisions of the Natural Conservation Act. It is prohibited in Poland to transport abroad or to trade in CITES-listed species without a permit or in violation of the permit conditions. Additionally, the Polish Penal Code provides for higher penalties for participation in an organized criminal group, for making crime a regular source of income and for recidivism.

There is no specialist service in Poland responsible for preventing the smuggling of CITES-listed species. These tasks are assigned to the Customs Service, the Border Guard and the Police. Designated officers, referred to as “CITES coordinators” operate within the police and customs structures. They

³⁷ R. Tusiński, *Statystyki, statystyki, statystyki... i jeszcze trochę statystyk*, „Wiadomości Celne” 2016, no. 8, p. 5–8.

³⁸ Scientific paper entitled “The Illegal Trade in Amber in Eastern Europe – A Green Criminology Perspective” presented by author at the international scientific conference “Green Criminology in a Changing World”, British Society of Criminology & Green Criminology Research Network, 27-28th January 2021, Nottingham (Great Britain).

have an appropriate educational background, are prepared and competent and are involved, first of all, in the training of other officers in CITES-related issues³⁹.

A significant question is also the cross-border and international cooperation of law enforcement authorities (Interpol, Europol). This is a consequence of the fact that the illegal market of CITES species is controlled by international smuggling gangs. As criminologists observe, routes used for trafficking CITES-listed species are also used by organized crime groups to check the possibility of using a given smuggling route for future drug trafficking⁴⁰.

Because of the virtualization of crime, law enforcement authorities should pay particular attention to international auction websites, where the trade in smuggled specimens is carried on. One of the most important elements in counteracting the illegal online trade in CITES-listed species is, therefore, the cooperation of law enforcement authorities with owners and administrators of auction portals⁴¹.

As regards social policy, it is necessary to increase legal awareness of the society as regards the penalties for purchasing and transporting CITES-listed species across borders. Media campaigns have been organized to make citizens aware that specific species of animals or plants are protected by law and keeping them is illegal. With this aim in view, exhibitions of CITES-listed specimens confiscated by officers are often placed at air border crossings. The intention is to show tourists that exotic plants or animals are not the best holiday souvenirs⁴².

Conclusions

To summarize, it should be emphasized that CITES crimes are an element of the crime against global natural heritage. Examination of the causes, manifestations and methods to counteract this pathology is one of the research interest areas investigated by green criminologists. In Poland, this subject matter is explored, first of all, by the researchers at the Olsztyn School of

³⁹ On 22–23rd October 2019, the author gave a lecture as part of a specialised training course for CITES coordinators from the Customs Service on the enforcement of the Washington Convention.

⁴⁰ W. Pływaczewski, *Międzynarodowa współpraca policyjna w zakresie przeciwdziałania przestępczości związanej z nielegalnym handlem chronionymi gatunkami fauny i flory*, „Przegląd Policyjny” 2010, no. 4(100), p. 71–94.

⁴¹ W. Pływaczewski, *Ekokryminologia wobec zjawiska nielegalnego handlu chronionymi gatunkami dzikich gatunków fauny i flory w Internecie*, [in:] E.W. Pływaczewski, J. Bryk (eds.), *Meandry prawa – teoria i praktyka. Księga jubileuszowa prof. zw. dr. hab. Mieczysława Goettela*, Szczytno 2017, p. 403–420.

⁴² W. Pływaczewski, *Organizacje pozarządowe na tle problematyki nielegalnego handlu chronionymi gatunkami dzikiej fauny i flory*, „Studia Prawnoustrojowe” 2011, no. 13, p. 265–288.

Ecocriminology (OSE). Fauna and flora species threatened with extinction are protected by international legal regulations (Washington Convention), the European Union regulations (Council Regulation No. 338/97) and Polish law (Law on Conservation of Nature). CITES crimes are considered a separate criminological category, as part of a broader category of crimes against the environment. Consequently, those crimes are sometimes wrongly classified as so-called victimless crimes. The dark figure of transnational crime against natural heritage is conservatively estimated at 90% of crimes. The detection of such crimes is also low, as they remain outside the main focus of law enforcement authorities. Additionally, criminologists also note the phenomenon of the so-called “virtualization of crime” as the trade-in of smuggled goods is mostly conducted not through the traditional distribution channels, but auction portals, both on the Internet and the Darknet. With the emergence of an illegal online market, a shift has been observed from traditional common crime to cybercrime and economic crime. Concerning the above, CITES offenders should be considered as being both white-collar criminals (typically involving economic crimes) and blue-collar criminals (responsible for common crimes). CITES crimes show close links with economic crimes, organized crimes and cybercrimes, and even with financing terrorism and armed conflicts. The fact that criminal networks engaged in CITES crimes operate globally confirms the “globalization of crime” concept. Criminologists estimate that, at present, the illegal market in wildlife species brings profits only slightly lower than drugs, firearms or human trafficking. Thus, contrary to popular belief, the discussed category of crime poses a significant threat to both global and national security.

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Summary

CITES crimes in Poland – causes, manifestations, counteracting

Key words: green criminology, natural heritage, Washington Convention, environmental crimes, CITES crimes.

The term “CITES crime” refers to crimes related to illegal trade in wild species of fauna and flora protected by the Washington Convention (1973). They are one of the manifestations of crime against the environment. A subgenre of criminology that researches in this area is the so-called ecocriminology/green criminology. The aim of the article is to discuss the legal framework of criminal liability for CITES offences and criminological analysis of this social pathology. The previous achievements of ecocriminology are also presented and the relations between CITES crimes and other criminological categories of crime are indicated. In the legal part, the author discusses the relevant provisions of international law, European Union law and Polish criminal law with particular emphasis on articles 128, 128a and 129 of the Law on Conservation of Nature. In the criminological part, the author diagnoses the causes of these phenomena (aetiology), characterizes the symptomatic forms of pathologies occurring in this area (phenomenology), and proposes methods to prevent and combat these undesirable phenomena (counteraction). Criminal statistics data on the phenomenon were also presented. The conclusions indicate that CITES crime is a dynamically developing branch of crime against the environment. It is sometimes wrongly identified with the so-called victimless crime and at the same time is characterized by a high dark figure of crimes. It can take the form of both criminal and economic crime. It has close links to organized crime and cybercrime.

Streszczenie

Przestępstwa CITES w Polsce – przyczyny, przejawy, przeciwdziałanie

Słowa kluczowe: ekokryminologia, dziedzictwo naturalne, Konwencja Waszyngtońska, przestępstwa przeciwko środowisku, przestępstwa CITES.

Pojęciem „przestępstwa CITES” określa się przestępstwa związane z nielegalnym handlem dzikimi gatunkami fauny i flory chronionymi przepisami Konwencji waszyngtońskiej (1973). Są one jednym z przejawów przestępczości przeciwko środowisku naturalnemu. Subdyscypliną kryminologii, która

podejmuje badania w tym obszarze, jest tzw. ekokryminologia (zielona kryminologia). Celem artykułu jest omówienie prawnych ram odpowiedzialności karnej za przestępstwa CITES oraz kryminologiczna analiza tej patologii społecznej. Przybliżono również dotychczasowy dorobek ekokryminologii oraz wskazano relacje pomiędzy przestępstwami CITES a innymi kryminologicznymi kategoriami przestępczości. W części prawnej autor omawia relewantne przepisy prawa międzynarodowego, prawa Unii Europejskiej oraz polskiego prawa karnego ze szczególnym uwzględnieniem art. 128, 128a i 129 ustawy o ochronie przyrody. W części kryminologicznej autor diagnozuje przyczyny tych zjawisk (etiologia), charakteryzuje formy objawowe występujących w tym obszarze patologii (fenomenologia) oraz proponuje metody zapobiegania i zwalczania niepożądanych zjawisk (przeciwdziałanie). Zaprezentowane zostały również statystyki kryminalne dotyczące omawianego zjawiska. W konkluzjach wskazano, że przestępczość CITES jest dynamicznie rozwijającą się gałęzią przestępczości przeciwko środowisku. Bywa błędnie utożsamiana z tzw. przestępstwa bez ofiar, a jednocześnie charakteryzuje się wysoką ciemną liczbą przestępstw. Przyjmować może postać zarówno przestępczości kryminalnej, jak i przestępczości gospodarczej. Wykazuje bliskie relacje z przestępczością zorganizowaną oraz cyberprzestępczością.

