

CUSTOMS AND THE ILLICIT TRADE IN ENDANGERED SPECIES¹

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ABSTRACT

The main role and competence of the Customs are collecting customs duties and revenues. Throughout the years, the role and competencies of the Customs have evolved and besides their traditional tasks, the Customs expanded the scope of operations and the range of tasks in easing the trade, improving economic competitiveness, securing the borders and protecting the society from illicit trade. However, despite the effort of the law enforcement agencies, trafficking and crime are often the preferred way of gaining illegal profits. Criminal organizations exploiting differences in the legal systems, cultures, and nations, reach for all kinds of abuses. Psychotropic substances, excise goods, weapons, migrants and similar goods are most commonly smuggled, whereas the latest trend on a global scale is wildlife crime. Rare and protected species of plants and animals are also smuggled. Therefore, the fight against illicit trade in plants and animals in the world has been strengthened. In the past years, the cooperation between the Customs Administrations and the role of the Customs in this area of expertise has been increased and improved. In order to effectively combat this type of crime, mutual operations are needed against it. In order to protect wildlife, priority must be given on national and international level. The authors of this paper make an analysis of the current situation in the Republic of Macedonia regarding the implementation of the CITES Convention which regulates this topic, the criminal offences related to the illegal trade of the endangered species, as well as the analysis of statistical data on the activities of

¹ Professional article

the Customs Administration during customs control on the border crossings in the Republic of Macedonia.

KEY WORDS: customs, criminal acts, endangered species, etc.

INTRODUCTION

Although illegal international trafficking of wild species for decades has devastating consequences for them and the economy of many countries, this problem has been paid special attention in the last few years. This area is a priority for a number of countries, seeing that illegal trafficking of wild species globally leads to a direct link to organized crime, financing of terrorism, and etc. Today, most states incriminate illegal international trade and trade of endangered wild species, which in fact means that now the penalties are not only pecuniary but also imprisonment.²

Smuggling of endangered species in the world is common. The International Criminal Police Organization, INTERPOL, estimated that the total annual amount of illegally acquired assets from illegal trade in endangered wildlife globally is between 8 and 10 billion US dollars. Illegal trade in wild species is one of the five most abusive illegal activities, such as smuggling and illegal trafficking in narcotics, weapons, people and counterfeit goods.³

Countries face a major problem trying to raise citizens' awareness on the one hand, as well as to prevent illegal trade in plants and wildlife, on the other.

The trade routes in the world are grouped as follows:

- Main export areas: South America, Central America, Africa and Asia
- Main import areas: North America, Europe, and East Asia
- Main import and export areas: Asia, South Africa, the Middle East, Oceania and Eastern Europe

²http://www.ekologija.gov.rs/wpcontent/uploads/razno/3._mart_2018_Svetski_dan_divljih_vrsta_informativni_materijal.pdf, accessed on 19.3.2018.

² Ibid

The Republic of Macedonia, with its geographical location, is usually a transit country, but in some cases, it is the last destination for smuggled plants and animals. For that purpose, the national legislation is adapted to the international laws, and the Republic of Macedonia is a signatory of the Convention for Protection of Wild Animals – CITES.

International protection of wild species

For the purpose of international protection of these endangered species, the Convention on International Trade in Endangered Species of Fauna and Flora was adopted by the Washington Convention (CITES). The Convention was signed on March 3, 1973, and entered into force on July 1, 1975. The aim of CITES is to ensure that wild fauna and flora in international trade are not exploited to an unsustainable level.

On the proposal of the signatory countries, the endangered species are identified and are part of the annexes. The Convention covers more than 33,000 species of which 28,000 are plants. The reasons for the adoption of the Convention, contained in the preamble are: preservation of wild flora and fauna for today's and future generations; their value is rising; international cooperation is necessary due to excessive exploitation through international trade, etc.⁴

The Convention provides regulation of trade in species (from Annex I) by issuing an export license, which is granted under certain conditions. As, import requires prior approval and presentation of an import license, export license or a re-export certificate. Similar are the conditions for trade with the species provided in Annex II and Annex III.

There are certain exceptions and other specific trade-related provisions regarding this trade. For example, the exception is the transit or transport of samples through the territory of one or both of the Contracting Parties, as long as they remain under Customs control. An exception is the case of samples that are personal property or under household ownership, as well as in cases of non-commercial loan, donation or exchange between scientists or scientific institutions registered by the State authorities, of herbarium samples, other protected, dried or embedded museum samples, as well as live plant material with a mark that is issued or approved by the State authorities.⁵

⁴ See more MalishSazdovska, M, International Environmental Protection, Skopje, 2014, p. 17

⁵ Article 6 of the Convention.

In order to implement the provisions of this Convention and to prohibit trade in the species which are endangered, the contracting parties shall also take measures to penalize the trade in these samples or their possession. Measures are also taken to confiscate or return the samples to the exporting country. In case of confiscation of live samples, the foster care center is used.

When a State which is not a Contracting Party to this Convention is engaged in export, re-export or import, any Contracting Party may accept comparative documentation issued by the competent authorities of that State, in which case such documentation should agree with the conditions in the Convention regarding the licenses and certificates.

In case of a dispute that may arise between two or more Contracting Parties concerning the interpretation or application of the provisions of the Convention, it shall be the subject of negotiations between the parties involved in the dispute. If the dispute can't be resolved, the parties may, by mutual consent, submit the arbitration dispute, specifically to the Permanent Court of Arbitration in The Hague, whereby the contracting parties submitting the dispute will be bound by the arbitration decision.

The experience of applying the provisions of this Convention is positive, given the enormously large amounts of earnings that are acquired by organized crime groups by the illegal trade in endangered species. Today, this is one of the most extreme types of environmental crime that is present worldwide, and for which prevention numerous international organizations and institutions are engaged.

In the 2001 UN Resolution, the Convention on Transnational Organized Crime, illegal trade in flora and fauna is defined as an organized crime.

In most cases, it is a matter of illegal trade in protected animal and plant species, which are realized by international organized criminal groups. Most often this type of crime is cross-border, with perpetrators from different countries and with many countries involved in the chain of illegal trade. In that sense, the role of the Customs services in the detection of illegal trade in animal and plant life, especially due to high amounts of earnings from this illegal trade, is significant.⁶ Approximately \$10 million in wildlife items are seized at the US border each year due to noncompliance with the US or international law, an amount that "probably only scratches the surface," of the illegal trade in this country alone. The illegal wildlife trade is frequently a low risk and high-profit endeavor.

⁶One kilogram of elephant ivory in Africa cost \$ 15, and in Japan \$ 850. ECENA, Interactive DVD, Regional Environmental Center, 2007

Wildlife commodities acquired at nominal cost in a source country can yield hundreds or even thousands of dollars at the point of sale.⁷

In the United States, trade in protected species of wildlife is considered as a security problem and not an environmental problem. It is suggested that US intelligence teams follow poachers in Africa and Asia. The intelligence community in the United States is ordered to monitor poachers as part of a new global fight against illicit trade in elephant bones and horns of the rhinoceros. This illegal trade generates \$ 15 billion annually from a sophisticated smuggling network that has been elevated to the status of a security threat rather than marginalized in the area of environmental protection.⁸

Apart from the world experiences of illegal trade in endangered species, especially with an exotic origin, there are cases of trade in similar species in the Balkan region too.⁹

Criminal legal aspect

The amendments of the national legislation of the Republic of Macedonia largely correspond to the European legislation, which is also supported by the transposition of provisions, such as the harmonization of environmental criminal acts of the Criminal Code of the Republic of Macedonia with the CITES Convention, published in the Official Gazette of the Republic of Macedonia , No. 27 dated 5.2.2014.

According to the Criminal Code of the Republic of Macedonia for the protection of wild species, the following crimes are foreseen:

1. Unauthorized hunting, keeping, and expropriation of wild animals and birds, Article 228-a

⁷Shennie Patel, Trial Attorney, Environmental Crimes Section, Environmental and Natural Resources Division, What Is CITES and How Does It Work for Prosecutors? Environmental Crimes–2012, July 2012 Volume 60 Number 4, page 4 (UNITED STATES ATTORNEYS' BULLETIN JULY 2012)

⁸<http://www.cites.org/eng/disc/sec/intern.php> accessed on 17.11.2012

⁹Serbian Customs discovered a case of smuggling six monkeys and four wild ducks at their border crossing, species protected under the CITES convention. After the detection of the animals and after the control conducted in cooperation with the border police, criminal and misdemeanor charges will be brought against the perpetrator. <http://www.upravacarina.rs/cyr/Stranice/Vest.aspx?ListItemID=500> accessed on 30.10.2012.

The essence of this act is that one who unauthorized hunt, transport, transfer, conceal, store, grow, buy, sell, or in any way acquire, expropriate or stuff (taxidermy) wild animals and birds in larger quantities or of greater value that is prohibited. This article also provides organization of a network for committing the offense or if the crime is committed within a group or other association or for the export of wild animals or birds abroad.

2. Killing or destroying endangered species of wild flora or fauna, Article 232 - a

This article provides punishable behavior of a person who kills, destroys, holds or takes samples of endangered species of wild flora or fauna in an amount that has a significant impact on their protection. Also, the one who should not comply with the provisions of this law, undertakes actions that will shoot, cut, excavate or destroy samples or populations of autochthonous wild species and thus cause the extermination of an autochthonous wild species on the territory of the Republic of Macedonia, shall be punished for the criminal act of extermination of an autochthonous wild species.

3. Unauthorized release of wild species in nature, Article 232 - b

The act refers to a person who, contrary to the law, releases wild species in the nature on the territory of the Republic of Macedonia without permission, especially if the offense referred to paragraph (1) of this Article resulted in serious disturbances of the natural balance or disorders in the biological diversity of the Republic of Macedonia. The conduct of the perpetrator who did not follow the measures for preventive protection in certain activities is also punishable.

4. Unauthorized trading, importation or transport of wild flora or fauna, Article 232 - c

The perpetrator of this criminal act is the person who illegally trades, imports, exports or transports live or dead endangered species of wild flora or fauna in an amount that has a significant impact on their protection.

In this way, by transposing the provisions of the CITES Convention, the Macedonian national legislation provides protection of wild species, taking specific measures for the protection of the environment and nature, especially taking into account the endangered species in the country. The seriousness of the approach is also perceived in the amount of the penalties for these crimes ranging from a fine to imprisonment of five years for various crimes.

Competencies of the Customs Administration and customs control

The role of the Customs is "to link and ease the legitimate goods and serve as the first line of defense against the cross-border movement of banned or controlled goods. Modern Customs procedures use technology and risk management techniques to integrate dual Customs functions to ease trade and to protect the society."¹⁰

Trade in plants and animals on a global scale is the everyday activity and the value of the legal market for plants and animals is very high. It is usually greater than the value of illegal trafficking. For these reasons, the control over the legal trade in plants and animals is prescribed by law and provides strict procedures for their legal trade. The control means the involvement of all relevant institutions, which implement it in accordance with the prescribed competencies. The Ministry of Environment is the competent institution responsible for the control and protection of flora and fauna in the Republic of Macedonia. The same, in accordance with the Law on Environment, besides the obligation for preservation, protection, renewal and improvement of the quality of the environment; protection of life and health of people; rational and sustainable use of natural resources and the implementation and improvement of measures for solving regional and global environmental problems, it should be emphasized that it is also responsible for the protection of biodiversity in the Republic of Macedonia.

Besides the Ministry of Environment, crucial institutions for protection, as well as prevention of illicit trade in plants and animals, within their competences are¹¹ the Ministry of Interior, the State Inspectorate for Forestry and Hunting, the National Border Management Coordination Center, and the Customs Administration of the Republic of Macedonia, which is in fact the most

¹⁰World Customs Organization "Illicit Wildlife Trade and the Role of Customs", p. 2, 2016

¹¹Government of the Republic of Macedonia, *Decree on the manner of handling the trade in endangered and protected wild species of plants, fungi, animals and their parts by the customs authorities, other competent authorities and services at the border crossings and scientific and expert institutions, as well as authorized depositors of confiscated samples in illicit circulation*, Official Gazette no. 177, p. 3-4, 2011.

pronounced in the part of the cross-border control of the legal, but also the illegal trade in flora and fauna in the Republic of Macedonia.¹²

In accordance with national and international legislation, legal import, export, and transit of plants and animals imply the possession of appropriate licenses and certificates issued by relevant institutions, and in the Republic of Macedonia, it is the Ministry of Environment. The legal customs procedure can be implemented only and exclusively if the required documents meet the prescribed and envisaged conditions. They must be mandatory for exit and entry from/in the country. In addition, one of the most important conditions in international trade is that it is not to be harmful to the survival of the species innature.

Customs Administration not only controls the legal trade of protected species of plants and animals, but it is responsible to control the products derived from them (musical instruments, coral and ivory artifacts, clothing, footwear and fashion accessories, etc.)¹³

Within its competencies, the Customs officials check the validity of the submitted documents, prevent the frauds and check whether the measures for prohibition and restriction are respected, carry out operational intelligence activities and investigations and other activities in order to detect and prevent the illegal trade of protected species of flora and fauna. Customs officers are usually the first, and sometimes the only control of shipments with CITES samples. This also imposes a great responsibility and responsibility on the part of the Customs that the national trade complies with the CITES Convention, and at the same time obliges and actively works on detection of frauds and illegal trade of protected plants and animals. Legal trade should be sustainable and favorable for the conservation of wild species and not pose a threat to the species. The CITES Convention regulates the international trade with samples of wild species of plants and animals and lists all species that are affected and for which it is necessary to submit appropriate documentation, i.e. permits, approvals and certificates for the issuance of which are required for export or import and prescribed appropriate conditions.

¹²Customs officers, police officers or inspectors will seize illegal shipments, and the offender besides paying fines will also cover all other expenses for the temporary care or storage of such shipments.

¹³<http://www.customs.gov.mk/index.php/mk/patnici/patnici-mk/zagrozeni-zivotni-i-rastenija>, accessed on 21 March 2018.

In order to strengthen the cooperation between the Customs Administration within the Ministry of Finance and the Ministry of Environment and Physical Planning in the area of integrated border management, a Memorandum of Cooperation was signed. This Memorandum defines the forms and manner of cooperation¹⁴ between these two institutions in:

1. Trade (export, import, and transit) of endangered wild animal and plant species, their parts, and derivatives.
2. Trade with hazardous waste.
3. Trade with certain groups of hazardous substances and substances that destroys the ozone layer.¹⁵

These two bodies cooperate and inspect the documentation for export, import, and transit of shipments with wild endangered plant and animal species, their parts and derivatives, whereby the shipments with plants, fungi or animals are checked, i.e. whether there is valid supporting documentation. In case of transit through the Republic of Macedonia, the customs authorities at the border crossings check whether the licenses contain the name of the last destination of the shipment, as well as all other data. Attention is drawn to the CITES license. In case of mismatching the data from the CITES license and the shipment or they are not satisfactorily filled, the Customs authorities will not accept the document. Furthermore, the Customs authorities are obliged to temporarily keep the shipment and immediately inform the Ministry of Environment and Physical Planning, in particular, the Directorate for Environment and the State Environmental Inspectorate. Upon receipt of the notification, the competent bodies from the Ministry of Environment and Physical Planning are obliged to consult an authorized scientific institution and within a deadline of not more than two days to decide¹⁶ for the further procedure with such shipment, i.e. whether it should be:

- returned, after consulting the exporting country, or
- sent to an authorized depositary or elsewhere that the Ministry of Environment and Physical Planning considers it's appropriate.

Regarding the cooperation in checking shipments of wild species of plants, fungi, and animals, the Customs officials perform it with representatives of the

¹⁴Memorandum of cooperation between the Ministry of Finance, the Customs Administration and the Ministry of Environment and Physical Planning, 2007
http://www.igu.gov.mk/files/pdf/nacionalna_komisija/MF_ZSPP.pdf

¹⁵Malis Sazdovska, M. International protection of the environment, Skopje, 2014, p.99

¹⁶http://www.igu.gov.mk/files/pdf/nacionalna_komisija/MF_ZSPP.pdf

Veterinary Directorate and the Plant Protection Directorate. If there is a certain irregularity in the condition of the shipment, they are obliged to notify the Ministry of Environment and Physical Planning and the State Environmental Inspectorate. This Inspectorate is obliged to immediately engage in the further verification of the shipment and documentation on the spot.¹⁷

According to international regulations, there are species of flora and fauna that are rare or endangered. But, on the other hand, the less they are or banned, they are more demanded on the market. That for organizers and traders is just a challenge because their value on the black market is high and there are people who are willing to pay huge amounts of money for them. This encourages the illegal trade and smuggling of endangered, rare and protected species of plants and animals.

In accordance with its competences, the Customs daily seeks to contribute to their protection and illegal trade, but despite this, the Customs and other border services more often face smuggling of endangered species of plants and animals.

Contrary to legal trade, the situation with the illegal trade is drastically different. The smuggling of plants and animals has become a trend that is increasingly worrying for states and institutions. The experience so far has shown that the most common way of crimination of live animals is in sacks, boxes, cages, plastic bags, suitcases, bags and etc. Then, they are hiding them in vehicles in purpose-built bunkers, and also are smuggled under and into parts of clothing and on their bodies. The last way of smuggling is specific when it comes to small and small numbers of animals, and most often they are birds, reptiles, amphibians and small mammals. Due to the conditions in which they are concealed and transported, due to the stress they go through, smuggling of live animals is usually extremely inhuman.

In the archives of the Customs Administration, there are data on prevented attempted smuggling of different types of pigeons¹⁸ concealed under the front seats of the vehicle. The customs experience also shows attempts at smuggling pigeons wrapped in newspapers and concealed in the spare tire of the vehicle. Then, smuggling snakes and turtles in bags in the bumper of the vehicle, and other similar cases.

¹⁷Malis Sazdovska, M. International protection of the environment, Skopje, 2014, p. 102

¹⁸<http://oldweb.customs.gov.mk/ShowNews.aspx?ItemID=3270&mid=1099&tabId=1&tabindex=0>

But in recent years, the Customs Administration has also managed to detect and prevent several attempts of smuggling live animals, including endangered species of animals.

In 5 actions in 2012, the Customs Administration seized about 2,264 live animals, of which were 1,350 red turtles, about 900 ornamental aquarium fish and 20 exotic animals, 6 of them protected by CITES - the Convention on International Trade in Endangered Species of Wild Flora and Fauna,¹⁹ 4 leopard geckos and 4 chameleons.

In 2014, 8 attempts of smuggling of 1,748 live animals, ornamental fish and turtles were prevented.²⁰

In 2015, at the border crossing Tabanovce an attempt for smuggling of 3,300 aquarium fish, 600 small turtles and 10 kilograms of turtle food detected at the entrance to Skopje in a car that had previously entered the country from Bulgaria was successfully prevented.²¹

In all cases, the Customs Administration, in accordance with its competencies and the positive legislation of the Republic of Macedonia, initiated appropriate procedures against the perpetrators. The animals are seized and placed in appropriate conditions.

One of the problems of the successful cases of detected and prevented smuggling of protected species in which the perpetrators were detected and the investigation successfully completed are small penalties. Compared to the illegal trafficking of psychotropic substances, for example, where the sentences are up to 10 years imprisonment, in cases of preventing the smuggling of protected species, there is sometimes no prison sentence. There are cases where only a request for taking a legal action against the perpetrators and they are only fined.

Customs Administration of the Republic of Macedonia also contributes to the international level in the fight against illegal trade in protected species. It regularly takes part and actively participates in various international operations and actions such as ORION 2 and ORION 3, organized by the SELEC, Prevention of Nature and Environment Prevention Working Group. In addition to the Customs Administration, the Ministry of the Interior and the State Inspectorate for Forestry and Hunting also actively participated in these operations. In such operations and within its competencies, the Customs

¹⁹ Annual report on the work of the Customs Administration in 2012, p. 43, 2013.

²⁰ Annual report on the work of the Customs Administration in 2014, p. 38, 2015.

²¹ Annual report on the work of the Customs Administration in 2015, p. 32, 2016.

Administration implements strengthen customs controls in the operational phases of the operations.

Regarding the implementation of the CITES convention, the World Customs Organization has also played an important role in organizing the action GAPIN, which was carried out through a transregional operation in January and February 2011 in order to combat illegal cross-border trafficking of large monkeys and other animal species, including their derivatives. The aim of this project is to suppress the illegal trade in wild animals. The increase of wildlife crime and the correlation with corruption is a serious issue of concern for governments and the international community. Given the fact that Customs is on the first line of the "front" of the international border crossings, it provides an important role in the fight against transnational organized crime, which is often associated with the smuggling of endangered species.²²

The project continues in Brussels, Belgium with GAPIN II, which consists of training customs officers from nine African countries - Burkina Faso, Ethiopia, Kenya, Mozambique, Nigeria, Tanzania, Uganda, Zambia, and Zimbabwe. The training consists of applying the CITES Convention, legal and illegal wildlife trade, detection and investigation techniques, risk analyzes and X-ray analyzes of photos. During the practical exercise, two postal shipments of a total 17 kg of ivory from Congo to Turkey were discovered and seized.

Conclusion

The protection of wild flora and fauna in the world and in our country is not only a duty of the society and institutions, but also an obligation to today's, and also to future generations. By uncontrolled exploitation and destruction of entire ecosystems, not only the survival of animals and plants, but also humanity is endangered because it depends on the diversity of species and purity of the environment (food, water, air, and soil). Hence, the prevention, but also the control of the legal, and especially the illegal trade in animals and plants is of exceptional importance. In this context, and on the basis of the facts presented in this paper, we can conclude that in the Republic of Macedonia, the national legislation in the area of protection of wild flora and fauna is fully in line with international legislation. On the basis of this, the competences of the institutions are prescribed for handling illegal trade, transport, transfer, concealment, storage, cultivation, purchase, sale, an

²²http://www.wcoomd.org/files/1.%20Public%20files/PDFandDocuments/Reports/Annual_Report_2011-12_en.pdf accessed on 21.11.2012.

introduction of new wild species, as well as trade in plants and animals. Also, we have to mention the competences and the role of the Customs Administration in the area of border control and undertaking activities and activities for detection, prevention, and clarification of criminal acts related to the illegal trade of protected species of flora and fauna. For this purpose, the Customs Administration continuously works on educating the customs officers for acquiring knowledge and skills for identifying potential perpetrators, detecting and preventing illegal trade in animals and plants. Of particular importance is the cooperation of the Customs Administration with the competent institutions at the national and international level.

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