

# WILDLIFE TRAFFICKING AS CATALYST OF (COVID 19) PANDEMIC<sup>1</sup>

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**Abstract:** The global problem of wildlife trafficking has once again been put in the center of attention during the ongoing Covid19 crisis. Regardless of the origin of the virus, whether coming from an animal or stemming from a laboratory accident, and regardless if we will ever be able to establish the facts on this question, the issue of illegal trade with animals, whether being alive or dead, whether their transport as live stock or only their selected body parts, has become topical. Even before the current pandemic, it was well known that SARS, Ebola, Bird Flu, and MERS were caused by pathogens that have spread from animals to humans (zoonotic diseases). At the same time, the wildlife market is one of the biggest black markets in the world. Here is the intersection with the criminal justice system.

Therefore, this paper will deal with wildlife trafficking as a crime in general, then put it in the context of pandemics, as well as analyze the most relevant and/or specific international and national legal solutions on this issue.

**Keywords:** wildlife, trafficking, pandemics, crime, CITES, Covid 19

## INTRODUCTION – WILDLIFE TRAFFICKING IN GENERAL AND AS A CRIME

Humans relied on wildlife for various purposes (consumption, clothing, etc.) through history, so trade with it should not be regarded as a new phenomenon. What indeed is new is the scope of exploitation of species, leading to their endangerment or extinction.<sup>3</sup> We are in fact facing the sixth big extinction

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<sup>3</sup> The World Wildlife Foundation (WWF) states that the Earth is experiencing the biggest mass-extinction since the dinosaurs 65 million years ago. 58% of vertebrae populations have died since 1970, while about 75%



wave in geological history. What makes it distinct from the prior ones is that this is the first one where not natural disasters, but the activities of humans are causing it (FAZ 2020: March, 2). Deforestation, pollution and overexploitation, especially due to (human) overpopulation, have accelerated this process. Along with this development, wildlife trafficking has increased as well. It is not limited to remote regions or areas with high biodiversity and endemic species; it has become a ubiquitous activity with supply, transfer and demand effects (Wyatt 2013: 17). Likewise, the categories of demand are wide-ranging and include food, traditional medicines,<sup>4</sup> processed commodities – clothing, accessories, furniture, cosmetics, collectors' items, including hunting trophies, exotic pets and zoos and cross-over objects that fall under more than one category (i.e. rhino horn, pangolin scales,<sup>5</sup> turtle meat, ivory, etc).

The illegal trafficking of wildlife, along with poaching, is the central form of 'wildlife crime' when it comes to animals. Wildlife crime, as a broader term, can be defined as "taking, trading (supplying, selling or trafficking), importing, exporting, processing, possessing, obtaining and consumption of wild flora and fauna, including timber and other forest products, in contravention of national or international law."<sup>6</sup> Wildlife and forest crime are in brief "the illegal exploitation of the world's wild flora and fauna."<sup>7</sup> Yet, this is only one possible terminological determination. A universally accepted definition or even a comprehensive legal framework for its prohibition does not exist. Hence, the elements and scope of wildlife crime vary between jurisdictions.

This reflects the fragmented character of the legal protection of wildlife, which is divided between different sources: conservation or wildlife management laws, species protection law and criminal law (Ege & Howe 2020: 246). Further diversification takes place within specific statutes (in connection to protection of the environment, wildlife, forests, endangered species, biodiversity and conservation, protected areas) (Ege & Howe 2020: 247). The direct criminalization in penal codes remains an exception.

The absence or minimal and/or rare criminalization of wildlife trafficking reflects the anthropocentric approach, oriented towards human interests and positioning human beings as fundamentally superior to all non-human nature (Ege & Howe 2020: 248). Wildlife is seen as a natural resource (Waytt 2013: 106). Whether pursuing the harm principle or the principle of "legally protected interests" (*Rechtsgutstheorie*) (Hefendehl & von Hirsch & Wohlers 2003), the common feature with regard to this crime is the existence or threat of damage to a resource a person is entitled to (Ege & Howe 2020: 251). The illegal trade of animals is, hence, penalized only when it violates the interests of people. Victimization is reserved for human beings, meaning that wildlife crimes are generally considered to be victimless crimes (Ege & Howe 2020: 250). Low enforcement rates of these victimless crimes re-curb the incentives for wildlife trafficking (low risk) and diminish deterrent effects of criminalization.

Trafficking may occur before or after the illegal processing of wildlife (slaughtering; manufacturing products from them), and surely after poaching. In some cases, processing serves as a way of disguising the origin of the animal. Trafficking can be broadly defined as "illegal acts by a person for their own benefit or that of someone else that may involve dispatching, transporting, distributing, brokering, offering, keeping for offer, dealing, processing, purchasing, selling, supplying, or storing" (UN-

of land and 66% of ocean areas have been "significantly altered" and up to one million plant and animal species are facing extinction by human activity. Tollefson 2019: 171.

4 For example in China, this includes deer musk, snake bile, tiger bone wine, bear bile, etc.

5 Pangolins are considered to be the most trafficked mammals in the world.

6 UNODC, Wildlife and Forest Crime: Overview, <https://www.unodc.org/unodc/en/wildlife-and-forest-crime/overview.html>, August 21, 2021. In this paper we will focus on animals, as they are crucial in the pandemics context.

7 *Ibid.*





ODC 2018: 13). Illegal export and import (trafficking in a narrow sense) underline the trans-border component of the crime and can be further sub-divided into: export/import without authorization, proper documents or with fraudulent documents; export/import of illegally obtained wildlife and forest products; export/ import of protected species; false classification and labeling of exports and imports, as well as export and imports with illegally obtained documents (UNODC 2012: 41, 42; Ege & Howe 2020: 257).

What is equally or even more significant is the next phase in the trafficking process: the acquisition, possession and consumption of the trafficked animal or its parts/products. Should they be criminalized as well, then the main driver – the demand, would be tackled (UNODC 2012: 41, 42). Yet, countries hesitate to broaden the criminal zone and to include this phase of wildlife trafficking. In the context of pandemics and the problems over closing exchange platforms (wet markets, markets, etc.) and its monitoring, this has gained more significance. An additional challenge in this regard is the transition to digital communication and exchange mediums that can be even less controlled and traced than before (especially the dark web).

The interests/legal goods that are endangered or violated are usually of economic nature. Until the current Covid19 crisis, the problem of wildlife trafficking was primarily perceived as an economic one, because diseases from the traded animals could infect production animals (Spapens 2021: 205). Even when environmental aspects play a role, they are built upon negative effects the illegal activity has for the living conditions of humans (their surrounding, available resources and quality of life). What came into the center of attention due to the Covid19 crisis is particularly the aspect of danger to health (or formulated as legal good: the right to physical integrity/life and limb).

## WILDLIFE TRAFFICKING IN THE CONTEXT OF (COVID19) PANDEMIC

The ongoing Covid19 pandemic has ubiquitously and very vividly illustrated that the excesses of globalization are almost impossible to localize and restrain to certain areas. The concepts of “local” (local outbreak of disease) and “global” (spread of the disease globally) have merged. The origin of the virus in this case was probably<sup>8</sup> the wet market of Wuhan (Huanan seafood wholesale market), in the Chinese Province of Hubei. Bats, a natural reservoir for a range of SARS-like corona viruses, are regarded as the potential initial reservoir of the SARS-CoV-2 (Zhou et al. 2020: 270 – 273), which was then over another animal as an intermediary transmitted to humans.

Wet markets are locations where fresh meats, products, derivatives and live animals are frequently stored in close proximity, with little or no health safety precautions or sanitary measures, to be (legally or illegally) sold open-air (Aguirre et al. 2020: 258). Species that normally in nature do not come in contact with each other are transported and stored (jammed) together or close to each other in cages or nets on top of each other. Furthermore, rare animals that are in demand are often trafficked from remote areas and can carry viruses humans usually never come in contact with (Hemley 2020). In addition, panicking animals eject more viruses, are already physically debilitated and are more prone to infections. These circumstances combined facilitate the exposure and transference of diseases from

<sup>8</sup> An investigative team was sent by the World Health Organization (WHO) to Wuhan from 14 January until 10 February 2021 to retrospectively determine what wildlife was sold in local wet markets in the region. Their findings were inconclusive. Xiao et. al. 2021: 168.



animal to animal and later to human, virus mutations included. Live meat markets have become “perfect laboratories for creating new viruses” (Nuwer 2020), with wildlife trafficking being their catalyst.

Out of 1.415 human pathogens, 61% are zoonotic (Taylor & Latham & Woolhouse 2001: 983 – 989). According to the World Health Organization, around 75 per cent of new or emerging infectious diseases that have affected humans over the past three decades originated in animals (UNODC 2020: 35). Ebola, Middle East respiratory syndrome (MERS), bird flu, severe acute respiratory syndrome (SARS), swine flu are examples of diseases that have in recent years transferred from animals to humans. It is estimated that there are at least over 1 billion direct and indirect contacts between animals, humans and domestic animals from wildlife trade every year (Karesh et al. 2005: 1000). Cross-species transmission is accelerated by intensified global trade, rapid transportation and markets that function rather as network hubs than as merely product endpoints. Hence, a rational approach would be to diminish the risk of disease transmission by decreasing the contact among species (Karesh et al. 2005: 1001). Decreasing the scope of wildlife trafficking as source/trade platform of products is one way to achieve that. It is more workable to regulate and/or criminalize wildlife trafficking than to prohibit consumption of such animals and their by-products, as this often has a cultural origin and needs more time and informal instruments to show effect.

## WILDLIFE TRAFFICKING AND INTERNATIONAL LAW

The United Nations Office on Drugs and Crime (UNODC) has declared the trafficking of illegal wildlife, next to production and trafficking of narcotics, human trafficking, maritime piracy, and small arm trafficking as transnational organized crime; which is heading up since the early 2000s (World Bank Group 2020: 21, 26). As the UNODC defines wildlife and forest crimes as crimes that are related to any possession, consumption, trade, import, or export of fauna and flora in violation of national or international law,<sup>9</sup> the United Nations Convention against Transnational Organized Crime (UNTOC) from 2000, the United Nations Convention against Corruption (UNCAC) from 2003, but above all the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) from 1975 are the most relevant international instruments for the suppression of this kind of illegal activity.

### CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA

CITES was the result of a growing interest for a multilateral convention on the protection of endangered species. It was agreed upon in 1973 and came into force two years later. Its goal is to regulate and control a sustainable trade ensuring the preservation of today roughly 5.950 species of animals and 32.800 species of plants.<sup>10</sup> They are enlisted in three separate Appendices of protected species, setting out control and reporting mechanisms (permit and certificate system) applicable for them. It has one of the largest memberships of conservation agreements, with now 183 Parties.<sup>11</sup>

9 United Nations Office on Drugs and Crime, Wildlife and Forest Crime Overview, <https://www.unodc.org/unodc/en/wildlife-and-forest-crime/overview.html>, last accessed on July 1, 2021.

10 <https://cites.org/eng/disc/species.php#:~:text=Over%2038%2C700%20species%20%E2%80%93%20including%20roughly,over%2Dexploitation%20through%20international%20trade>, last accessed August 15, 2021.

11 <https://cites.org/eng/disc/parties/index.php>, last accessed on August 15, 2021.





In Article VIII – “Measures to Be Taken by the Parties”, it is stipulated that “the Parties shall take appropriate measures to enforce the provisions of the (...) Convention and to prohibit trade in specimens in violation thereof.” One of the measures mentioned is, beside confiscation and return to the State of export of such specimens (b), penalization of trade or possession of such specimens or both (a). CITES does not deal directly with illegal trade as such (and hence wildlife trafficking), but it does demand from the Parties to prohibit trade that contravenes its rules (Lelliott 2020: 133).

These measures, on the other hand, do not need to be in form of criminal offences. The wording “penalization” is a broader term, and can come along in different legal shapes (criminal, contractual, administrative). Also, it does not specifically address the risk of diseases. In other words, CITES lacks mechanisms to criminalize wildlife trafficking (Lelliott 2020: 126). Due to that, many Parties have not enacted specific legislation, but rely on general wildlife and forest laws, or on their customs or foreign trade legislations (UNODC 2012: 15). This further means that these laws do not necessarily comply with CITES requirements, especially when they were passed before CITES was enacted (UNODC 2012: 15).

Due to this absence of specific instruments that target wildlife trafficking, the next best thing(s) in addition to CITES are the United Nations Convention against Transnational Organized Crime (Palermo Convention) and the United Nations Convention against Corruption with the general frameworks they set up.

## UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME

With regard to organized crime, this has become topical itself as criminal organizations have deployed themselves in the illicit markets for wild flora and fauna, enticed by high profits and low risks. The framework UNTOC creates includes measures against transnational organized crime, including the formulation of domestic criminal offences, rules for extradition, mutual legal assistance and law enforcement cooperation.

UNTOC and its Protocols do not explicitly cover wildlife trafficking. However, the Convention does apply to all “serious crime” with a transnational organized criminal aspect. “Serious crime” is defined as a conduct that constitutes an offence punishable by a maximum deprivation of liberty of at least four years of imprisonment or a more serious penalty (Art. 2, para. b). Seriousness of crime refers to the penalty that is foreseen for the respective crime, meaning that if wildlife trafficking is punishable by at least four years of imprisonment, it falls under UNTOC. Given the characteristics and typology of wildlife crimes, they fall under the definition of an organized criminal group.<sup>12</sup> The transnational character of the crime will also be fulfilled, as both perpetration and effect of wildlife trafficking are cross-border by nature. The General Assembly of the United Nations has confirmed this orientation of UNTOC, affirming that it “constitutes an effective tool and the necessary legal framework for international cooperation in combating such criminal activities as the illegal trafficking of protected species

<sup>12</sup> “Organized criminal group” is defined in Art. 2(a) UNTOC as “a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit.” See Strydom (2016): 265, 278.



of wild flora and fauna, in furtherance of the principle of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)”<sup>13</sup>

Besides, the particular set of offences UNTOC refers to (participation in an organized criminal group [Art. 5], money-laundering [Art. 6], corruption [Art. 8], and obstruction of justice [Art. 23]) can also become relevant, as they constitute typical offences related to wildlife trafficking (along with animal cruelty).

## UNITED NATIONS CONVENTION AGAINST CORRUPTION

Corruption is a major enabler of wildlife crime (Nellemann et al. 2014: 23). It can occur at various points of the trafficking chain – bribes for the government official to overlook poaching, to ignore fraudulent paperwork or to forge CITES permits or certificates to enable illicit trade, etc. (Lelliott 2020: 141). Corruptive activities serve to allow wildlife trafficking or to proceed unchecked or unbalanced (Callister 1999: 8); ranging from low-ranking game wards to top level government officials (Schloenhardt 2020: 24). Hence, UNCAC requirement to criminalize certain activities (bribery of national public officials [Art. 15], bribery of foreign public officials and officials of public international organizations [Art. 16], embezzlement [Art. 17], money-laundering [Art. 23]) can contribute to combat wildlife trafficking (Lelliott 2020: 142).

Like UNTOC, UNCAC does not establish an explicit link between wildlife crime and corruption; it has to be deducted from the respective provisions and the overall aim of the Convention.<sup>14</sup> The UNCAC framework on corruption is different from the available regime regarding wildlife trafficking, but it complements the international instruments on wildlife crime.

What is common for all of the mentioned international sources is that due to the complex nature and global occurrence of wildlife crime, as well as the need to implement them in national legislation, they always have to be seen in conjunction with national laws.

## WILDLIFE TRAFFICKING IN NATIONAL LEGISLATIONS

The protection of wildlife is established either by imposing bans on poaching and trade or by regulating the trade in the form of catch-quotas (i.e. for lobsters and whales) (Pires & Moreto 2016). Wildlife trafficking is only of secondary importance for national criminal legislation. The focus lies on administrative laws and their system of permits and certificates (see CITES). Seldom are the national criminal legislations that prescribe this offence explicitly in their criminal codes, like Portugal (Art. 278 [2] Portuguese Criminal Code) or Mexico (Art. 420 Federal Penal Code); both countries being entry/transit points for the illicit trade.

<sup>13</sup> United Nations General Assembly Resolution 55/25 of 15 November 2000.

<sup>14</sup> Art. 1 UNCAC lists its purposes: (a) To promote and strengthen measures to prevent and combat corruption more efficiently and effectively; (b) To promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery; (c) To promote integrity, accountability and proper management of public affairs and public property.





## AUSTRALIA

Due to the unique nature of the region and its close proximity to Southeast Asia (with major demand markets) and criminal networks, Australia is highly impacted by wildlife crimes (Wilson-Wilde 2010: 222). Over 80 percent of Australia's flora and fauna are endemic, with the country having the highest extinction rate in the world (Purtill 2020: 333).

On federal level, the most important source of law is the Environment Protection and Biodiversity Conservation Amendment (Wildlife Protection) Act (Amendment to EPBC) from 2001. Part 13A deals with the international movement of wildlife specimens. Sections 303 CC and 303 DD criminalize the unauthorized export of certain species out of Australia. The offense is committed if a person exports a specimen in a manner that is not authorized by the Act and if that specimen belongs to a CITES-listed species (303 CC) or is a regulated native specimen (303 DD). Criminalized is the unauthorized import of CITES specimens (303CD) and of regulated live specimen from outside of Australia (303 EK). All offences are punishable with up to 10 years of imprisonment and up to 1000 penalty units.<sup>15</sup> Section 303GQ regulates imports of specimens contrary to the laws of a foreign country, where the export has to be founded on CITES and is depending on the request of the relevant CITES authority. Maximum penalty for this offense is imprisonment for five years.<sup>16</sup>

While the transnational movement of wildlife specimens and products is regulated on federal level, when it comes to movement within Australia, State and Territory offences become relevant. Out of numerous offences, noteworthy are illegal capture offences (mostly criminalizing unlawful acquisition of a listed or otherwise prohibited specimen) and illegal trade offences (prescribed as unauthorized buying, selling and dealing in listed wildlife).

It is criticized that criminal law protection was not given adequate attention by the Australian executive, that they are not implemented fully, while at the same time the legislative network was overly complex with conflicting laws in different jurisdictions (Purtill 2020: 333, 334). A country as large and ecologically diverse as Australia needs customized legislation, which retrospectively bears lack of uniformity (Purtill 2020: 345). At national level, the legislative framework is more satisfactory and functional, provided by the EPBC Act, including higher penalties. The downside at this level is the rare utilization of the available instruments by law enforcement and judiciary (Purtill 2020: 356).

## CHINA

The Wildlife Protection Law (WPL) of the People's Republic of China divides the level of protection of all wildlife (harsher punishments, more barriers to obtain special license hunting, etc.), based on their risk of extinction into class I (approx. 100), class II (approx. 200) and species of terrestrial wildlife that are beneficial or of important economic or scientific value (approx. 1600), while in general following the CITES categorization. Besides, every province has a list of locally protected wildlife species.

Various activities are prescribed and sanctioned by WPL - trade in wildlife or the products thereof (Art. 44); illegal hunting or catching (Art. 45, 46); illegal breeding (Art. 47), illegal selling, purchasing, utilizing, transporting, carrying or mailing (Art. 48); illegal production or trade (Art. 49); advertising the illegal sale, purchase or utilization (Art. 50); providing a trading platform for the illegal sale,

<sup>15</sup> The current value of one penalty unit is 210 AUD.

<sup>16</sup> Additional offences are Contravening conditions of a permit (Section 303 GF), Contravening of illegally imported specimens (Section 303 GN), and cruelty (Section 303 GP).





purchase or utilization (Art. 51); illegal import or export (Art. 52); introducing non-native wildlife species from abroad (Art. 53); releasing wildlife introduced from abroad (Art. 54) and forging, modifying, selling, purchasing, transferring, borrowing or lending relevant certificates, special marking or other relevant permission document (Art. 55). Typical sanctions are fines between two and ten times the value of wildlife or the products thereof (if property is seized), confiscation, revocation of hunting licenses, fines with fixed ranges (between 2.000 and 200.000 yuan), if property is not seized.<sup>17</sup> Where a crime is constituted, criminal responsibility is to be investigated in accordance with the law.

China's decision from February 24, 2020, a consequence of the emerging pandemic, was to ban the illegal trade and consumption of all wild animals protected under WPL (Koh, Li & Lee 2021). Yet, there are still several critical points. To begin with, the initial scope of protection of the WPL is not sufficient. It does not apply to about 1100 species that are not listed as rare or endangered, but which are in high demand (Huang et al. 2021). 62% of the mammalian species in China are left unprotected; including all bat species, the natural reservoirs of SARS-like corona viruses (Huang et al. 2021). The next issue is that commercial trade and utilization of endangered species are not prohibited for all purposes. Wildlife or products thereof can be sold, purchased or utilized for "scientific research, captive breeding, public exhibition or performances, heritage conservation or other special purposes" (Art. 27 [2] WPL). The range of exceptions is broad enough to allow potential (grey market) loopholes from the prohibition. Further, the commercial captive breeding of endangered species is still allowed. An example for both: bear farms that harvest bile from caged live animals are legal, while the products of poached and illegally trafficked black bears can be disguised as products of farmed bears (Huang et al. 2021). Also, "other special purposes" as a general clause can broaden the interpretation. Trafficking may decrease because of criminalization, but the risk for zoonotic disease transmission remains immanent, as the sources for exotic animals can simply be found locally or regionally, while the loss of biodiversity affects the resilience of wildlife and humans against infections (Keesing et al. 2010: 647 – 652). Lastly, the possession of illegally obtained wildlife and their products is not criminalized,<sup>18</sup> which restricts the possibilities to combat illegal wildlife trade.

When it comes to the core penal law, relevant is Art. 341 of the Criminal Law of the People's Republic of China (CL), from Section 6 (Crimes of Undermining Protection of Environmental Resources). The crime from paragraph 1 commits "whoever illegally catches or kills the species of wildlife under special state protection which are rare or near extinction, or illegally purchases, transports or sells the species of wildlife under special state protection which are rare or near extinction and their products". The sanction for that is fixed-term imprisonment of not more than five years or criminal detention and concurrently a fine. If the circumstances are serious, the offender shall be sentenced to fixed-term imprisonment of not less than five years and not more than ten years and concurrently be sentenced to a fine. If the circumstances are especially serious, the offender shall be sentenced to fixed-term imprisonment of not less than ten years and concurrently be sentenced to a fine or confiscation of property.

Paragraph 2 contains a related, lighter offence, which exists when "whoever, in violation of the law or regulations on hunting, hunts wildlife in an area or during a season closed to hunting or uses prohibited hunting gear or methods for the purpose, thus damaging wildlife resources." If the circumstances are serious, the perpetrator shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention, public surveillance or a fine.

<sup>17</sup> This is between 263 € and 2.632 €.

<sup>18</sup> Environmental Investigation Agency, "China's Wildlife Protections Law", <https://eia-international.org/wildlife/saving-tigers/tiger-farming/chinas-wildlife-protection-law/>, last accessed on August 29, 2021.





The CL, passed in 1979, and fully revised in 1997, has been further amended 10 times. The latest modification (Amendment XI to the PCR Criminal Law) was adopted on December 2020, and took effect on March 1, 2021. As a reaction to the ongoing pandemic, a third paragraph was added to Art. 341, namely that “violating regulations on the protection and management of wildlife by illegally hunting, purchasing, transporting, or sale of terrestrial wildlife bred and raised in the wild as provided for in the first paragraph for the purpose of eating, where the circumstances are serious, is to be punished” in line with the provisions of the preceding (second) paragraph.

With this amendment, the criminal legislation on wildlife trafficking was broadened, together with the changes to the WPL. Yet, also here, it focuses only on terrestrial wildlife bred and raised in the wild, and only for the purpose of consuming it as food. Captive-bred species (that also come in contact with other species they in the wild would not come to) are not included, as well as other purposes beyond eating. In addition, only land animals are covered by the provision.

## SERBIA

Wildlife protection, including the ban of trafficking with certain species is regulated by various laws and offences. The Law on Environmental Protection (LEP, Official Gazette of RS, 135/2004) prescribes in Art. 28 (1) that transboundary movement and trade in specimens of wild flora and fauna (import, export, introduction, shipment, re-export) and their developing forms and parts, shall be carried out under the condition that the import, i.e. export is not prohibited, and that the quantity or number of wild flora and fauna specimens transported across the border will not endanger the survival of that species, as well as under other conditions prescribed by law. This transboundary movement and trade are based upon a permit and/or document issued by the relevant ministry (Art. 28 (2)). Violation of these provisions results in commercial offences for legal persons (Art. 116 lit. (4) (5)) with fines from 1.500.000 to 3.000.000 RSD or misdemeanour for entrepreneurs (Art. 117a lit. (4) (5)) with fines from 250.000 to 500.000 RSD or for natural persons (Art. 118 lit. (3) (4)) with fines from 5.000 to 50.000 RSD or imprisonment for up to 30 days.

The Law on Nature Protection (LNP, Official Gazette of RS, 36/2009) contains numerous provisions on wildlife protection and a separate Section V on Protection and Conservation of Wild Species. For wildlife trafficking particularly relevant are Art. 36 (defining strictly protected and protected wild species); Art. 90 (trade in strictly protected and protected wild animal species); Art. 94 (transboundary movement, trade and breeding of strictly protected, protected and allochthonous wild species) and Art. (notification system). Economic offences of legal entities are listed in Art. 125 (lit. 5a – 7) and are sanctioned with a fine from 1.500.000 to 3.000.000 RSD. The fine will be proportionate to the value of goods, the maximum amount not exceeding twentyfold amount of the value of goods (Art. 126 (2)). In addition to those specific offences, the penalty will mandatorily be accompanied by a protective action of permanent confiscation of the specimens stated in invalid permits and certificates, as well as of objects used or intended for or developed through commitment of the offense (Art. 126 (5)).

Criminal offences with regard to wildlife trafficking also exist. Aside from the connected offences relating to corruption, organized crime, etc.; the crime with its protected legal good being closest to the trafficking of wild species is the crime of Destroying, Damaging, Taking out of and into Serbia Protected Natural Assets from Art. 265 Criminal Code (CC, Official Gazette of RS, 85/2005). In the third paragraph of the Article, it is prescribed that the offence is committed by “whoever contrary to regulations exports or takes abroad a protected or specially protected plant or animal species, or imports



or brings into Serbia foreign plants or animals protected by international treaty or documents". The activities mentioned are conducted unlawfully, contrary to regulations. Here is Art. 28 ("Movement and trade in specimens of wild flora and fauna") LEP relevant. Beside living, dead animals should be regarded as objects of the crime as well. Processed animals (i.e. as food) are not included in this offence (Stojanović 2018: 840). It is questionable whether Art. 265 (3) CC is applicable to prepared animals. Art. 72 of the Law on Wild Animals and Hunting (LWAH, Official Gazette of RS, 18/2010) prohibits taking abroad trophies of wild animals. Although violation of this provision is prescribed as a misdemeanor, it should be regarded as a possible object of Destroying, Damaging, Taking out of and into Serbia Protected Natural Assets as well (Stojanović 2018: 840).

The sanction for this is imprisonment from three months to three years and a fine. Not meeting the threshold of four years of prison, it means that wildlife trafficking is not recognized as a serious crime<sup>19</sup> in Serbia.

In accordance with the general provision on culpability for attempt (Art. 30 (1) CC), an explicit provision on the criminalization of the attempted offence was prescribed in the article (paragraph 4). The legislator has obviously identified the necessity to provide legal protection in the phase previous to the completed offence, increasing the risk for the offenders. In addition, protected or specially protected plants and animals which have been illegally exported, taken abroad or imported will be seized (paragraph 5).

## CONCLUSION

Wildlife trafficking has been treated as a peripheral problem until the outbreak of the Covid19 pandemic. The reasons for that are manifold (anthropocentric approach, low risk, high profit, executive inactivity, legislative loopholes, complex jurisdictions, etc.).

CITES, as the most important international document, is widely accepted and implemented, yet does not constitute deterrent effects for the offenders with its permit system. In addition, it applies only on the listed endangered species and cannot be extended to every aspect of illegal trade. For example, the horseshoe bat, regarded as the possible origin of SARS-CoV-2, is not endangered. Also, CITES has no jurisdiction over domestic trade.

Another important legal document, UNTOC, becomes effective only if the respective crime is set as a serious crime, meeting the threshold of four years of imprisonment (i.e. not the case in Serbian CC). Organized criminal groups adapt quickly to changes and are expected to go even deeper underground (from surface web [publicly available information] to deep web [information that is access-controlled] to dark web [can be reached only with special software]; different methods of transportation) Corruption and its various forms, as related offences, are rarely prosecuted; even less when it comes to wildlife trafficking, as this is not prosecuted in the first place.<sup>20</sup>

Although their effects might be disastrous, wildlife trafficking can be perfectly legal; it is regulated as a normal economic activity. Consequently, administrative agencies are the competent authorities for enforcement at first. They usually have limited powers of investigation, with low prison sentences and fines, though.<sup>21</sup> Sanitary rules, for example, may be as extensive as possible; yet traffickers will circum-

19 According to UNTOC.

20 Schloenhardt, p. 24.

21 Spapens, p. 206.





vent health checks and transportation requirements.<sup>22</sup> If the country is vast in size, has inadequately controlled borders and numerous species that are in demand, the issue becomes more complex. Apathetic law enforcement meets then a lucrative and low risk market.<sup>23</sup>

This leads us to the field of criminal law, which indeed is the *ultima ratio* for combating wildlife trafficking. National legislation does not naturally entail criminal offences, as it is the case with other legal goods. If crimes exist, they are often prescribed in a narrow way (i.e. only endangered species). After the Covid19 outbreak, elements like increased danger for public health or similar, could be added to the respective offences.

What also has to be taken into account, is the swift adaptation to changed circumstances by the organized criminal groups that usually perform trafficking. Illicit markets could then go even deeper underground,<sup>24</sup> on the internet or in the dark web. Medium-term, this would shift the market and the transportation means, and deem necessary new adjustments of the legislative and the enforcement.

The overall legal protection of wildlife from trafficking is fragmented, inconsistent and mild. On the other hand, the silver lining of wildlife trafficking is that, compared to other global risks, this problem could be managed very fast. It could start with reducing the demand for contraband.

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<sup>22</sup> Spapens, p. 205.

<sup>23</sup> Linzi Wilson-Wilde, p. 222.

<sup>24</sup> WWF, p. 35.



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