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Animal Smuggling in Poland

Przemyt zwierząt w Polsce

Abstrakt

Od kilku lat obserwuje się wysoki poziom skali przemytu zwierząt. Dane statystyczne Ministerstwa Finansów za poprzedni rok wskazują, że w 2018 roku w Polsce zatrzymano 13 811 okazów CITES. Rozmiar oraz charakter zjawiska przesądzają o tym, że problem ma globalny zasięg. Ogromne znaczenie w fazie reagowania na zjawisko mają krajowe, międzynarodowe oraz unijne regulacje prawne. Zwrócić należy także uwagę na niehumanitarne traktowanie zwierząt podczas przemytu. W pracy zaprezentowano teoretyczne ujęcie problemu, skalę zjawiska oraz działania, które mogą przyczynić się do jego zwalczania.

Słowa kluczowe: handel, przemyt, zwierzęta, fauna, wyginięcie

Контрабанда животных в Польше

Абстракт

Высокий уровень контрабанды животных уже несколько лет наблюдается в Польше. Согласно статистике Министерства финансов за предыдущий год в Польше в 2018 году было перехвачено 13 811 видов животных, считающихся редкими согласно Конвенции о международной торговле видами дикой фауны и флоры, находящимися под угрозой исчезновения (CITES). Масштаб и характер явления свидетельствуют о глобальной проблеме в этой области. Большое значение на этапе реагирования на это явление имеют отечественные, международные и правовые нормы ЕС. Следует также обратить внимание на бесчеловечное обращение с животными во время перевозки контрабандой. В статье предлагается теоретический подход к проблеме, масштаб явления и действия, которые могут способствовать его борьбе.

Ключевые слова: сбыт, контрабанда, животные, фауна, вымирание

Introduction

Despite the broad scale of the phenomenon and its character, the problem of wildlife trafficking has not been the object of a wide dispute in Poland. The amount of crime against animals seems to be immense, but such misdeeds often remain undetected and the perpetrators are not prosecuted, whereas wildlife trafficking, apart from natural environment transformations and the loss of habitats, is one of the main causes of various species becoming extinct. A report titled *Living Planet*, published by World Wildlife Fund in 2018, indicates that 60% of wild animals have become extinct since 1970.¹ Occurring on a global scale, illegal wildlife trade brings enormous financial benefits to the culprits. Organizations involved in combating this crime point out that the annual profit from the trade in endangered species amounts to more than 10 billion USD. The range of this illegal activity allows to presume that every fourth species of mammals, every eighth species of birds and every third species of amphibian may disappear from the surface of our planet.² The causes of this phenomenon enumerated as most common include keeping exotic species, manufacturing medical products and food. Animal smuggling is one of the cross-border crimes which are fought against, for instance, by the Customs, Border Guard, Border Veterinary Officers and Police.

The Scale of the Problem

Figures 1 and 2 present the scale of the phenomenon of wildlife smuggling in the recent decade. The analysis of the statistical data below allows one to make a conclusion that the range of wildlife trafficking decreases. Nevertheless, the signals coming from bodies involved in combating the criminal offence are, unfortunately, quite the opposite. Customs authorities believe that smuggling the species endangered with extinction does not decrease, and the indicated statistical data result from the necessity to control other areas. The problem is also caused by a complex process related to the organization of specialist train-

¹ Julia Karasiewicz, *Living Planet* (World Wildlife Fund 2018), accessed October 2, 2019, <https://gazetawroclawska.pl/tych-zwierzat-juz-nie-spotkasz-gatunki-ktore-wyginely-w-ciagu-twojego-zycia/ar/c11-13806732>.

² *Pozwólmy zwierzętom żyć tam, gdzie się urodziły. Kompendium wiedzy dla nauczycieli* [Let Animals Live Where They Were Born. A Compendium of Knowledge for Teachers] (Warszawa: WWF, Narodowy Fundusz Ochrony Środowiska i Gospodarki Wodnej, 2012), 2, <https://docplayer.pl/3805292-Kompendium-wiedzy-dla-nauczycieli.html>.

ings aiming at implementation of goals included in the Washington Convention and other regulations related to the wildlife species protection.³

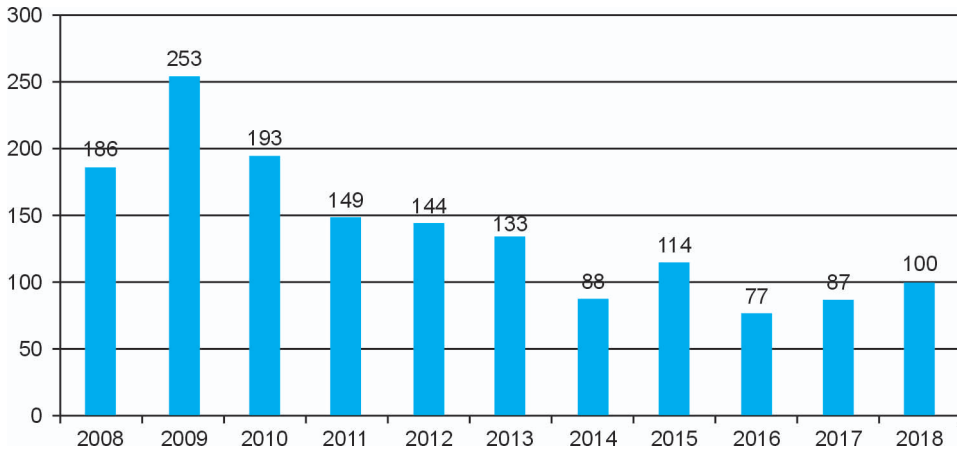


Figure 1. Number of interceptions of CITES specimens in the years 2008–2018

Source: the author's own study based on statistical data, <https://www.podatki.gov.pl/clo/informacja-dla-osob-fizycznych/towary-objete-ograniczeniami-i-zakazami/cites-gatunki-zagrozone-wyginieciem/>, accessed: October 13, 2019.

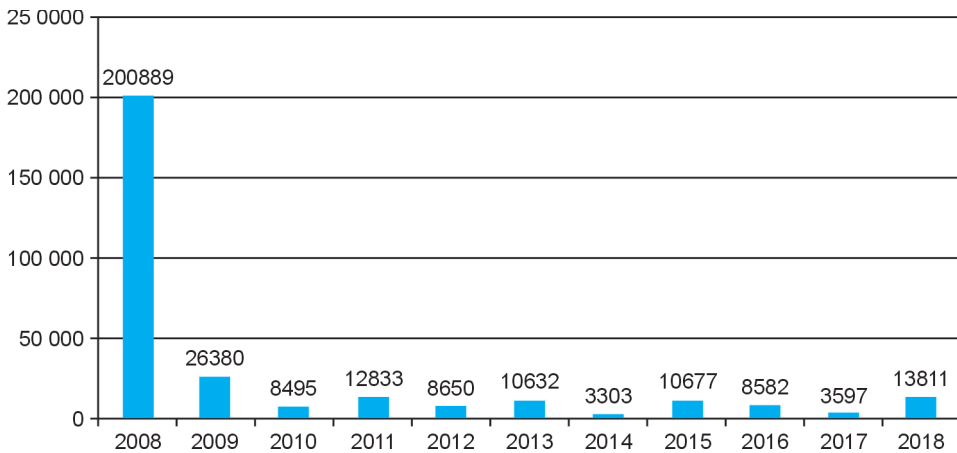


Figure 2. Number of intercepted CITES specimens in the years 2008–2018

Source: the author's own study based on statistical data, <https://www.podatki.gov.pl/clo/informacja-dla-osob-fizycznych/towary-objete-ograniczeniami-i-zakazami/cites-gatunki-zagrozone-wyginieciem/>, accessed: October 13, 2019.

³ Izabela Nowicka and Anna Świerczewska-Gąsiorowska, "Przemysł roślin i zwierząt globalnym problemem współczesnego świata w perspektywie polskiego prawa karnego" [Plant and Animal Trafficking as a Global Problem of the Modern World from the Perspective of Polish Criminal Law], in *Prawo i Proces Administracyjny*, no. 1 (7) (2014): 273.

Selected Legal Regulations

The problem of animal trafficking was regulated in legal resolutions on a domestic, international and European level.

The basic act regulating the wide-ranging registration of protected wildlife species and trade in them in Poland is the Nature Conservation Act of 16 April 2004.⁴ According to art. 46, section 2 of the Act, the aim of the protection of species is to

to ensure the survival and proper protection status of the species of rare, endemic, vulnerable and endangered plants, animals and fungi, protected on the basis of the provisions of international agreements to which the Republic of Poland is a party, living in the wild in the country or other Member States of the European Union, and their habitats and refuges, as well as to preserve the species and genetic diversity.

The Act specifies, among others, the duties of the animal keeper in terms of registration of animals listed in the EU limitations. Art. 64 of the Act imposes the duty of notification to the registry of keepers of live animals and breeders of species listed in annexes A and B of Council Regulation (EC) No. 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein, including amphibians, reptiles, birds and mammals. List A includes animals threatened with extinction. International trade of these species is only allowed in a limited scope, as it is prohibited as a general rule. List B includes species which are not threatened with extinction; however, their uncontrolled trade may result in such a threat. The registration duty does not refer to zoos, entities conducting business activity in the scope of trade in protected species of wildlife and, in the case of temporary detention of animals, in order to treat and heal them. Criminal responsibility for failure to comply with contractual obligations was set out in art. 127 item 3 of the Act. According to this provision, the person who intentionally fails to register kept or bred animals shall be subject to a fine or the penalty of restriction of liberty. Art. 128 of the Nature Conservation Act, in turn, refers to the failure to comply with the rules on the carriage of protected species across EU border, such as the lack of required documents, violations of the provisions of European Union law on marketing of species of wild animals, by means of, for instance, offering any form of disposal or acquisition of specimens of particular species of plants or animals for the purpose of gaining profit. The person whose behaviour bears the attributes of crime set out

⁴ The Act of 16 April 2004 on Nature Conservation (Journal of Laws of 2018, item 1614, as amended).

in art. 128 shall be punishable by imprisonment from 3 months to 5 years.⁵ Legal means available to be ordered by the Court in the case of conviction for offences and crimes set out in the Nature Conservation Act are specified in art. 129 of the Act. These include forfeiture of items used to commit the offence or crime as well as of objects and animals originating from the offence or crime, as well as the obligation of *restitutio in integrum* (i.e. restoration to original condition), and if such an obligation is not enforceable, a fine in the amount of up to 10,000 PLN for the benefit of a social organization acting for nature protection or regional fund for environmental protection and water management applicable to the place of committing offences or crimes. Implementing acts of the Nature Conservation Act are applicable resolutions issued by the minister responsible for environmental issues, such as:

- the Regulation of the Minister of the Environment of 16 December 2016 on the species of wild animals (Journal of Laws, item 2183),
- the Regulation of the Minister of the Environment of 9 September 2011 on the list of non-native species of plants and animals, which in the case of release into the environment can threaten native species or natural habitats (Journal of Laws, item 1260),
- the Regulation of the Minister of the Environment of 3 August 2011 on the species of animals dangerous to life and health of people (Journal of Laws, item 1037).

While analysing Polish penal regulations, it is also necessary to point to art. 270 of criminal code⁶ in conjunction with art. 16 of Council Regulation (EC) No. 338/97, based on which the member states shall take appropriate measures to ensure the imposition of sanctions for the infringements of this Regulation (such as introduction into, or export or re-export from, the European Community of specimens without the appropriate permit or certificate or with a false, falsified or invalid permit or certificate, shipment of live specimens not properly prepared so as to minimize the risk of injury, damage to health or cruel treatment, etc.).⁷

Apart from the local legal provisions regarding the protection of species, what constitutes a fundamental act of international law in this respect is CITES, that is, the Convention on International Trade in Endangered Species of Wild Fauna and Flora. Currently, 183 members are parties to this international agreement (including all member states of the European Union). The text of the Convention was finalized at a meeting of representatives of 80 countries in Washington, D.C.; however, CITES entered into force no sooner than on 1 July

⁵ Art. 127–128 of the Act of 16 April 2004 on Nature Conservation (Journal of Laws of 2018, item 1614, as amended).

⁶ The Act of 6 June 1997, the Penal Code (Journal of Laws of 2018, items 1600, 2077).

⁷ Izabela Nowicka and Anna Świerczewska-Gąsiorowska, “Przemysł roślin i zwierząt globalnym problemem”, 273.

1975. Poland ratified accession to CITES on 12 December 1989, whereas the Convention entered into force on 12 March 1990. CITES accords varying degrees of protection to more than 35,000 species of animals and plants, regardless of the form of trading these specimens. The aim of the Convention is to ensure the survival of the species in danger of extinction by means of strict limitation on the trade in these species as it must be authorized through a licensing system.⁸ The provisions of the Convention also stipulate that each Party to the Convention must designate one or more management authorities in charge of administering the licensing system as well as authorities to advise them on the effects of trade on the status of the species. The administering authority of CITES in Poland is the Minister of the Environment, whereas the advisory body is the State Council for Nature Conservation. The execution of the CITES Convention and other EU resolutions concerning the protection of species of plants and animals as well as the domestic and international trade is controlled primarily by the Police, Customs and Border Guard. In 2006, the Working Group for CITES was established and has been functioning ever since under the supervision and support of the Commission for CITES representing the State Council for Nature Conservation. The Working Group coordinates the actions of entities involved in combating the wildlife trafficking by means of organizing regular meetings, during which the most important issues are discussed, increasing the efficiency of adherence to the provisions of the Convention and other regulations in this regard.⁹

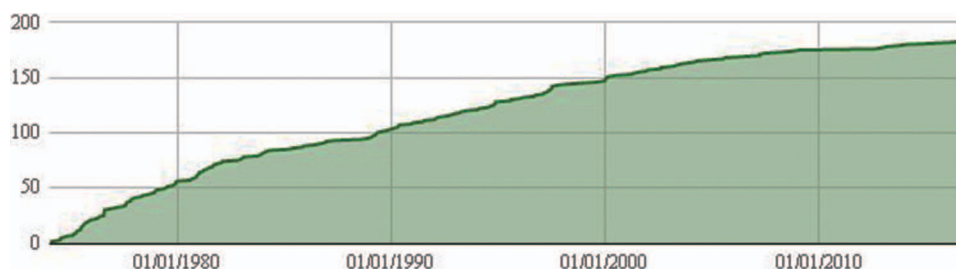


Figure 3. The number of CITES members

Source: <https://www.cites.org/eng/disc/parties/index.php>, accessed: October 7, 2019.

The European Union has also expressed an opinion on the wildlife species protection. Initially, only countries which ratified the Convention were allowed to be CITES members, therefore the European Community could not become

⁸ List of Parties to the Convention, accessed October 7, 2019, <https://www.cites.org/eng/disc/parties/index.php>.

⁹ Andrzej Kepel, Borys Kala, *CITES w Polsce i Unii Europejskiej. Podręcznik dla praktyków [CITES in Poland and the European Union. Handbook for Practitioners]*, 2nd ed. (Poznań: PTOP "Salamandra," 2016), 35.

a party to this agreement. Currently, all EU member states are signatories of CITES.¹⁰ Taking into account the free movement of goods as well as the limitations imposed by customs control, the adherence to the resolutions of the Convention was impossible in practice. In order to ensure the adherence to the resolutions of the Convention, applicable legal acts were adopted.

These include:

- Council Regulation (EC) No. 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein (Journal of Laws, item 61 of 3.3.1997),
- Commission Regulation (EC) No. 865/2006 of 4 May 2006 laying down detailed rules concerning the implementation of Council Regulation (EC) No. 338/97 on the protection of species of wild fauna and flora by regulating trade therein (Journal of Laws, item 166 of 19 June 2006),
- Commission Implementing Regulation (EU) No. 792/2012 of 23 August 2012 laying down rules for the design of permits, certificates and other documents provided for in Council Regulation (EC) No. 338/97 on the protection of species of wild fauna and flora by regulating trade therein and amending Commission Regulation (EC) No. 865/2006 (Journal of Laws, item 242 of 7.9.2012),
- Council Decision (EU) 2015/451 of 6 March 2015 concerning the accession of the European Union to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (Journal of Laws, item 75 of 19.3.2015),
- Commission Implementing Regulation (EU) 2015/736 of 7 May 2015 prohibiting the introduction into the Union of specimens of certain species of wild fauna and flora (Journal of Laws, item 117 of 8.5.2015),
- Communication from the Commission to the Council and the European Parliament on the EU Approach against Wildlife Trafficking (COM(2014) 64 final of 7 February 2014),
- Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – EU Action Plan Against Wildlife Trafficking (COM/2016/087 final of 26 February 2016).¹¹

From among all of the above, the key act is the Council Regulation (EC) No. 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein. Its aim was uniform implementation of provi-

¹⁰ Dorota Polak-Hawranek, "Prawnokarne aspekty przemytu fauny i flory w świetle międzynarodowego i polskiego ustawodawstwa" [Criminal Aspects of Flora and Fauna Trafficking in the Light of International and Polish Legislation], *Państwo i Społeczeństwo*, no. 4 (XIV) (2014): 28.

¹¹ Protection of wild fauna and flora against extinction caused by their trade, accessed October 8, 2019, <https://eur-lex.europa.eu/legal-content/PL/TXT/?uri=LEGISSUM%3A111023>.

sions of the Washington Convention to national laws of EU member countries. Through it, the Council imposes an obligation of implementing instruments which would allow executing the CITES regulations by means of the requirement of obtaining applicable licenses for purchase or sales of specimens on external markets, prohibition of trading specific group of specimens (Annex A of the Regulation), carriage of specified species in appropriate conditions (Annex B and C of the Regulation), etc. The Regulation imposes on member states an obligation to create authorities whose objective is to control the adherence to convention regulations and imposes sanctions for the infringement of CITES provisions.¹² The aforementioned regulations are of immense importance in the system of wildlife species protection and they are supplemented by the Commission Recommendation of 13 June 2007 identifying a set of actions for the enforcement of Council Regulation (EC) No. 338/97 on the protection of species of wild fauna and flora by regulating trade therein. In this document, the Commission recommends member states to undertake widely understood actions aiming at combating the illegal trade in wildlife species, mainly by means of close cooperation with administrative authorities of CITES and other member states. An important element of the act is the recommendation to consult signatories concerning the applied regulations of criminal law in order to uniform the penalties in cases of infringement of convention provisions.¹³ The regulations of the Council and of the Commission indicated above are directly applicable within the area of all EU member countries, and the obligation of EU members is to adjust the domestic legal systems to the provisions indicated by the regulations.

Forms of Trafficking

Actions of smugglers can take a variety of forms. The literature on the subject distinguishes the following forms of trafficking wildlife and animal parts:

- carriage of specimens in places other than border crossings designated for the purpose;
- carriage of specimens without required documents or failure to declare the specimens to customs control at the designated border crossings;

¹² Protection of wild fauna and flora against extinction caused by their trade, accessed October 8, 2019, <https://eur-lex.europa.eu/legal-content/PL/TXT/?uri=LEGISSUM%3A111023>.

¹³ Wiesław Pływaczewski, *Nielegalny rynek chronionych gatunków dzikiej fauny i flory. Geneza, przejawy, przeciwdziałanie* [Illegal Market for Protected Species of Wildlife. Genesis, Manifestations, Prevention] (Szczytno: Wydawnictwo Wyższej Szkoły Policji w Szczytnie, 2016), 42.

- submitting falsified or forged documents during customs control;
- submitting documents issued for another specimen during customs control;
- carriage of the number of specimens other than indicated in the documents;
- carriage of specimens other than indicated in the documents;
- carriage of specimens in the number exceeding the norms set out by applicable regulations.¹⁴

The most commonly smuggled specimens in Poland include corals, turtles, snakes, medicinal leeches, as well as predatory birds and wild cats.¹⁵ Particular attention should also be paid to the inhumane treatment of animals during smuggling. Trafficking the endangered species takes place in horrendous conditions (e.g., in lockers or very tight cages). In the photo 1, there are live parrots smuggled in an abhorrent way in PET bottles and turtles covered with insulating tape. Some of the smuggled specimens do not survive this kind of transport or die within the next few days. An example here might be an unsuccessful attempt of smuggling ten tigers in a truck across the border in Koroszczyń, foiled by Belarussian customs officers. The animals were transported from Italy to Dagestan (in the Russian Federation) and were allowed through the border by Polish border authorities. Documentation concerning carried specimens was forged and the carrier did not have required certificates. Due to the conditions of the transport (the cages were so small that the tigers could not even stretch), insufficient amount of water and food the animals were provided, one of the tigers died.¹⁶ Frequently, attempts to smuggle drugs using animals are also revealed. At Miami airport, officers foiled the smuggling of more than 300 Columbian boas. A thorough inspection revealed 35 kg of cocaine hidden inside the snakes. Most of the animals did not survive this transport.¹⁷

¹⁴ Małgorzata Chackiewicz and Joanna Kostecka, “Zatrzymania zasobów różnorodności biologicznej chronionych Konwencją Waszyngtońską (CITES) dokonywane przez polską Służbę Celną” [Interceptions of Biodiversity Resources Protected by the Washington Convention (CITES) Effected by the Polish Customs Service], *Inżynieria Ekologiczna*, no. 3 (2017): 134–135.

¹⁵ Piotr Listos, Małgorzata Dylewska, and Magdalena Gryzińska, “Sprzeczny z Konwencją Waszyngtońską (CITES) przemyt zwierząt do Polski” [Animal Smuggling to Poland in Violation of the Washington Convention (CITES)], *Życie Weterynaryjne*, no. 91 (4) (2016): 238–239.

¹⁶ “Tygrysy wiezione do Rosji na śmierć – uratowane” [Tigers Brought to Russia to Die – Rescued], *Angora*, no. 45 (1534) (2019): 12.

¹⁷ Małgorzata Chackiewicz, “Niehumanitarne traktowanie zwierząt podczas przemytu” [Inhumane Treatment of Animals When Smuggling], *Monitor Prawa Celnego i Podatkowego*, no. 4 (2009): 135.



Photo 1. Method of smuggling live parrots

Source: Rafał Tusiński, "Konwencja Waszyngtońska czyli CITES" [The Washington Convention (CITES)], *Wiadomości Celne*, no. 10–11 (2009): 4.



Photo 2. Immobilization of turtles by means of the insulating tape

Source: Rafał Tusiński, "Konwencja Waszyngtońska czyli CITES" [The Washington Convention (CITES)], *Wiadomości Celne*, no. 10–11 (2009): 4.

Counteracting the Phenomenon

Animal trafficking is one of the main causes why some species have become – and others are still becoming – extinct. It should be indicated, however, that this is not only a problem of environmental protection. Uncontrolled transport

may be related to transferring many contagious diseases by animals, and consequently pose a threat to people's health and even lives. The extent and range of the problem require constant improvement of methods counteracting the phenomenon. Unfortunately, the measures adopted by the state in order to combat as well as to prevent the occurrence are still inadequate. The problem seems to be trivialized, even if it is hazardous not only for animals, but also for people.

The signing of Washington Convention (CITES) constituted a breakthrough in the protection of wildlife endangered with extinction. The implementation of its regulations is only possible in the case of respecting these provisions by both the citizens and the institutions involved in environmental protection. Unfortunately, the lack of education concerning the extent of the phenomenon and legal regulations as well as ignorance of negative consequences of wildlife trafficking for natural environment cause the lack of awareness of an average citizen about the problem. Actions aiming at protection of species on the verge of extinction should, therefore, include raising the social awareness and intensive training of groups professionally related to the phenomenon. Knowledge of the regulations both by potential perpetrators and by law enforcement authorities should decrease the extent of the phenomenon.

Inspections of international trade are fundamental in the phase of revealing and combating wildlife trafficking. In Poland, the market is controlled primarily by the Customs, Police, and Border Guard. Many countries from which the specimens are transported are less developed, devoid of appropriate means to reveal the phenomenon, such as African countries. Consequently, the key tool to prevent smuggling are through inspections at border crossings.

Literature on the subject also points to industrial technologies as a possible way to limit the phenomenon. Currently, technologies provide the possibility of replacing goods made of animal skin with substitutes (such as ecological leather), the quality of which may satisfy clients' requirements.¹⁸

The role of CITES coordinators in customs chambers also seems invaluable in combating the phenomenon, as well as the actions of Veterinary Inspection or non-governmental organizations, such as WWF Poland or the Polish Society for Nature Protection.

Translated by Dominika Pieczka

¹⁸ Małgorzata Chackiewicz, "Ekologiczne i społeczne aspekty przemytu ginących gatunków roślin i zwierząt" [Ecological and Social Aspects of Trafficking Endangered Plant and Animal Species], *Monitor Prawa Celnego i Podatkowego*, no. 12 (2008): 444.

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Patrycja Mencel – mgr, doktorantka w Katedrze Kryminalistyki na Wydziale Prawa, Administracji i Ekonomii Uniwersytetu Wrocławskiego; przygotowuje rozprawę doktorską poświęconą osobom zaginionym. Bierze aktywny udział w wielu wydarzeniach naukowych dotyczących problemów społecznych. Jest prawniczką w kancelarii adwokackiej we Wrocławiu.