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INTERNATIONAL SCIENTIFIC CONFERENCE “ARCHIBALD REISS DAYS”  
THEMATIC CONFERENCE PROCEEDINGS OF INTERNATIONAL SIGNIFICANCE



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## PROVING THE CRIME OF ANIMAL CRUELTY – KEY CHARACTERISTICS AND PRACTICAL DIFFICULTIES

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**Abstract:** Judicial practice and available official statistics indicate that discovering, proving and sanctioning the crime of animal cruelty, i.e. criminal offence of killing and torture of animals prescribed by Paragraph 269 of Criminal Code of the Republic of Serbia seems to be connected with numerous obstacles and complications. This could be considered as one of the circumstances that contribute to the fact that the number of persons accused of or convicted for this criminal offence in Serbia appears to be rather small in comparison to the actual number of committed and reported cases of animal cruelty. Additional concern is caused by the fact that similar misbalance, showing the presence of so-called “dark figure of crime” follows other criminal offences against environment. In attempt to contribute to more efficient suppression of this type of criminality, the author of this paper discusses fundamental features of criminal offence of killing and torture of animals, draws attention to its most frequent forms (including killing of animals by using firearms or other weapons, animal poisoning, animal neglect, animal hoarding, sexual abuse of animals and causing unnecessary fear and distress to animals) and points out the most acceptable ways to provide valid, relevant and complete evidence against their perpetrators. Moreover, the author highlights the most common practical difficulties that might occur while attempting to provide evidence for each of the aforementioned types of animal cruelty and offers possible solutions that would improve the speed, quality and efficiency of evidentiary proceedings in such cases.

**Keywords:** animal cruelty, criminal offence, criminal proceedings, evidence, proving.

### CRIMINAL OFFENCE OF KILLING AND TORTURE OF ANIMALS IN CRIMINAL CODE OF THE REPUBLIC OF SERBIA

Criminal offence of killing and torture of animals was introduced to criminal legislation of the Republic of Serbia for the first time in 2006, when current Criminal Code came into force. A more severe punishment for basic form of this criminal offence was prescribed in 2009, when amendments and alterations of Criminal Code were adopted. On that same occasion, another form of this criminal offence, incriminating animal fighting, was provided. This criminal offence is placed in Chapter 24 of the Criminal Code, among criminal offences against environment. According to Paragraph 269 of the Criminal Code of the Republic of Serbia,<sup>2</sup> killing and torture of animals is committed by a person who illegally kills, hurts, tortures or abuses an animal in any other way. The punishment for this criminal offence consists either of a fine or of imprisonment up to one year. A more serious form of this criminal offence exists if the basic form of the offence resulted in death, torture or hurting of a larger number of animals or of the basic form of the offence has been committed against an animal that belongs to especially protected species. For this form, a fine or imprisonment up to three years can be imposed. A specific form of this criminal offence refers to animal fights. It is committed by a person who, with the intention to obtain financial benefit, organizes, finances or acts as a host of animal fight between animals of the same or different species. The same offence can also be committed by a person who organizes betting or participates in betting on these fights. The law provides a cumulative punishment for this form of animal cruelty, including imprisonment between three months and three years and a fine.

Animal cruelty can be committed either by active commission of certain activities such as stabbing, shooting, kicking, beating, strangling, breaking limbs of an animal, animal poisoning, or by failing to act,<sup>3</sup> i.e. to fulfil certain duties and responsibilities. This criminal offence exists only if the perpetrator has been acting with premeditation as the form of guilt (either direct or indirect). Animal cruelty or abuse committed with negligence shall not be treated as a criminal offence but as a misdemeanour in accordance with the Law on Animal Cruelty. Anyone can appear as the perpetrator of this criminal offence. It can be the owner

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<sup>2</sup> Paragraph 269, Criminal Code of the Republic of Serbia, „Official Gazette of the Republic of Serbia“ No. 85/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/2012, 104/2013 and 108/2014

<sup>3</sup> Storey, T., Lindbury, A.: Criminal Law, Fifth Edition, Willan Publishing, Devon, UK, 2009., pp. 26-27.



of the animal, but also a “third party”. The precondition for the existence of this criminal offence is the illegal character of perpetrator’s activities by which he caused animal’s pain, suffering, injury or death. This means that the legislator has provided punishment only for those who cause animal’s death or suffering in an illegal, prohibited manner, i.e. in a way that, at the same time, represents the violation of other legal provisions dealing with animal treatment or welfare such as, for example: Law on Animal Welfare,<sup>4</sup> Law on Gem and Hunting,<sup>5</sup> Law on the Protection and Sustainable Use of Fish Fund<sup>6</sup> and Law on Veterinary Medicine.<sup>7</sup> Another condition for criminal responsibility for animal cruelty refers to the intensity of the pain and suffering caused to the animal. The level of pain, suffering, discomfort, fear or other conditions that can be considered torture has to be extremely high. The intensity of these sensations on the behalf of the victim is supposed to be estimated on the basis of expert analysis made by veterinarians.

A more serious form of this criminal offence is present if several animals have been killed or tortured. The law is not specific about the number of animals neither it offers criteria for its estimation. So, it is up to the court to decide when this condition is met. When it comes to its second form, referring to the cases of killing and torture of specimens of rare and protected animal species, the legislator is actually setting a blank provision and redirecting to the Law on Nature Protection<sup>8</sup> and some administrative legal acts where protected and strictly protected animal species are defined. The most serious form of this criminal offence comprises the cases of animal fighting, and can be committed by performing one or more activities, including the organization, financing, being a host of these events, organizing or participating in betting. The prerequisite for the existence of this criminal offence is perpetrator’s intention to obtain financial benefit through performing some of the aforementioned activities, which means that the lack of this condition would exclude his criminal responsibility. Hence, not only premeditation but a specific subjective element – the intention on the behalf of the perpetrator to use animal fights as a means to gain material (financial) benefits is required. It is up to the court to estimate whether this precondition is met in each individual case in the light of all other relevant circumstances.<sup>9</sup>

## JUDICIAL STATISTICS ON ANIMAL CRUELTY IN THE REPUBLIC OF SERBIA

Judicial statistics related to the number of persons who have been reported, accused and convicted for killing and torture of animals in the Republic of Serbia between 2006 and 2012 might be helpful when it comes to drawing conclusions on the attitude of state bodies and general public towards animal cruelty in our country. An obvious disproportion between the number of animal cruelty cases, the number of reported ones and the number of persons who have been accused of and punished for this criminal offence might indicate that animal cruelty is or is considered rather difficult to prove. Lack of evidence or presumption that this crime can hardly be proven should not be treated as the only reason for the “dark figure of crime”.<sup>10</sup> But, it could be taken into consideration as one of the factors, which, together with some other circumstances leads to rather a small number of discovered cases of animal cruelty and accused and punished perpetrators of this criminal offence.

According to Statistical Bulletin for 2006, 32 persons were reported for animal cruelty, and only one was punished – with conditional sentence. In 2007, there were 80 reported cruelty cases, and 13 persons were sentenced: 3 to fine, 9 to conditional sentence and 1 was given judicial admonition. During 2008, there were 115 reported cases, and 27 persons were sentenced – 4 to imprisonment, 10 to fine, 6 to conditional sentence, 1 to community service, 3 were given judicial admonition and 3 declared as guilty but deliberated. In 2009, 116 persons were reported for animal cruelty and 28 were sentenced – 1 to prison, 11 to fine, 15 to conditional sentence and 1 was given judicial admonition. In 2010, there were 123 reported cases and 22 persons were convicted – 9 to fine, 12 to conditional sentence, whereas 1 was declared guilty but deliberated. The number of reports for animal cruelty in 2011 was 196, and the number of convictions 27 – 1 was prison, 7 fines, 18 conditional sentences and 1 judicial admonition. The number of reported persons in 2012 was 178 and the number of convicted was 23. Imprisonment was imposed on 1 perpetrator, fine on 7, conditional sentence on 11 and judicial admonition on 1. Some juvenile offenders have also been reported for and accused of animal cruelty in this period, but none of them has been sentenced.<sup>11</sup>

4 Law on Animal Welfare, “Official Gazette of the Republic of Serbia”, No. 41/2009.

5 Law on Gem and Hunting, “Official Gazette of the Republic of Serbia”, No. 18/2010.

6 Law on the Protection and Sustainable Use of Fish Fund, “Official Gazette of the Republic of Serbia”, No. 36/2009 and 32/2013.

7 Law on Veterinary Medicine, “Official Gazette of the Republic of Serbia”, No. 91/2005, 30/2010 and 93/2012.

8 Law on Nature Protection, “Official Gazette of the Republic of Serbia”, No. 36/2009, 88/2010 and 91/2010.

9 Batrićević, A.: Borbe pasa kao teži oblik krivičnog dela ubijanja i zlostavljanja životinja, Zbornik Instituta za kriminološka i sociološka istraživanja, vol. 29., No. 1-2/2010, pp. 211-227.

10 Konstantinović-Vilić S., Kostić, M. and Nikolić-Ristanović V.: Kriminologija, Pelikan Print, Niš, 2009., pp. 70-71.

11 Batrićević, A., Batanjski, V.: Zaštita životinja u Srbiji-kaznenopravni i ekološki aspekti, Institut za kriminološka i sociološka istraživanja, Beograd, 2014., pp.169-171.

## THE MOST COMMON TYPES OF ANIMAL CRUELTY

Animal cruelty is defined as any premeditated or negligent acting or failure to act by which an animal is exposed to pain, suffering, stress, injury or which causes the violation of genetic integrity of an animal or its death. The most common types of animal cruelty consist of: physical abuse, neglect, animal hoarding, sexual abuse and psychological abuse. If other conditions prescribed by the Criminal Code are met, each of them can lead to criminal liability for criminal offence of killing and torture of animals. Physical abuse of animals represents violation of animal's physical integrity. It usually consists of damaging animal's tissues or organs by hitting, kicking, whipping, sexual abuse, forcing to labour or training that surpass animal's physical endurance, applying inappropriate methods of catching and constraining, performing illegal medical interventions and intentional reproduction of specimens that suffer from inherited diseases unless the latter is done with experimental purpose and in accordance with the law.<sup>12</sup>

Neglect is the most common form of animal abuse. Neglect consists of failure to act, which constitutes a specific form of criminal liability for omission.<sup>13</sup> It consists of the failure to provide adequate food, water, and shelter, i.e. the failure to provide for an animal's needs including proper medical care, adequate space, and appropriate food, maintaining the animal's hair coat and nails, and providing sanitary conditions. Neglect can also apply to any situation that has a negative impact on the animal, such as embedded collars, short tie-outs, and heavy chains.<sup>14</sup> This form of animal cruelty can be committed only by a person who is considered responsible for taking care of the animal, which is usually its owner or the person that the animal has been entrusted to.<sup>15</sup>

Animal hoarding is a serious form of animal cruelty and often comprises acting and failure to act. It is followed by social isolation, self-neglect, addictive behaviour, clandestine lifestyle, tendency to deny reality, recidivism and numerous psychological and health problems.<sup>16</sup> Hoarding of Animals Research Consortium defines an animal hoarder as "an individual who accumulates a large number of animals, who fails to provide the animals with adequate food, water, sanitation, and veterinary care, and who is in denial about this inability to provide adequate care".<sup>17</sup> It is important to mention that "the phenomenon of animal hoarding transcends the number of animals in a household".<sup>18</sup> Namely, possessing a large number of animals becomes a concern "when the number overwhelms the ability of the hoarder to provide acceptable care".<sup>19</sup>

Psychological abuse involves the violation of animal's psychological integrity, which may cause behavioural disorders. It can be done by not allowing an animal to satisfy its basic behavioural needs or to use space for rest and shelter, by teasing an animal by using force, other animals or other unusual sensations, by causing fear, suffering, boredom or insecurity or by preventing an animal from interacting with animals of the same species.<sup>20</sup> It usually includes one or more of the following types of emotional abuse: rejecting: an active refusal to provide emotional support; terrorizing: the creation of a "climate of fear" or an unpredictable threat or hostility, preventing the victim from experiencing a sense of security; taunting: teasing, provoking, harassing; isolating: active prevention of social interactions and companionship; abandonment: desertion and termination of care; over-pressuring: placing excessive demands or pressure to perform and achieve. When caring for an animal is concerned, the question how exactly to determine "emotional abuse" is tricky and often open to disagreement.<sup>21</sup>

## THE MOST RELEVANT EVIDENCE OF ANIMAL CRUELTY

When it comes to the provisions of Criminal Procedure Code of the Republic of Serbia regulating crime scene investigation,<sup>22</sup> gathering of evidence, evidentiary procedure, evaluation of evidence, testimony of expert witnesses<sup>23</sup> there is no difference between criminal offence of killing and torture of animals and other criminal offences. Evidence is often defined as "information – whether in the form of personal testimony,

12 Paragraph 5, Subparagraph 18, Law on Animal Welfare, "Official Gazette of the Republic of Serbia", No. 41/2009.

13 Storey, T., Lindbury, A.: Criminal Law, Op.cit., pp. 26-27.

14 Merck, M. (Ed.): Veterinary Forensics: Animal Cruelty Investigations, Blackwell Publishing, Oxford, UK, 2007., p. 201.

15 Paragraph 6, Law on Animal Welfare, "Official Gazette of the Republic of Serbia", No. 41/2009.

16 Animal Hoarders, a NYSHA Fact Sheet, <http://www.nyshumane.org/manual/factSheets/hoarder.htm>, 01.12.2014.

17 Berry, C., Patronek, G., Lockwood, R. : Long-Term Outcomes in Animal Hoarding Cases, *ANIMAL LAW* Vol.11:167, 2005, p. 168.

18 Patronek, G.: Hoarding of Animals: An Under-Recognized Public Health Problem in a Difficult-to-Study Population, *Public Health Reports*, January-February 1999, Vol 114., No.1/1999, p. 82.

19 Ibid.

20 Paragraph 5, Subparagraph 18, Law on Animal Welfare, "Official Gazette of the Republic of Serbia", No. 41/2009.

21 Pierce, J. Emotional Pain in Animals: An Invisible World of Hurt - Recognizing the psychological effects of animal abuse in: "All Dogs Go to Heaven", April 24, 2012, <http://www.psychologytoday.com/blog/all-dogs-go-heaven/201204/emotional-pain-in-animals-invisible-world-hurt>, 30.11.2012.

22 Škulić, M., Krivično procesno pravo, Pravni fakultet Univerziteta u Beogradu, Beograd, 2009. pp. 236-237.

23 Škulić, M., Krivično procesno pravo, Op.cit., p.242.

the language of documents, or the production of material objects – that is given in a legal investigation to make a fact or proposition more or less likely<sup>24</sup>. During the investigation, the following evidence are gathered and examined: the evidence and information necessary for making a decision on raising criminal charges or stopping the criminal procedure evidence necessary for identifying the perpetrator; evidence that for some reasons might not be presented during the trial and other evidence that could be useful for criminal procedure.<sup>25</sup> The facts that are to be proved throughout the course of criminal procedure include those circumstances that are considered key characteristics of a criminal offence as well as the facts upon which depends the application of some other provision of criminal law.<sup>26</sup>

“Without a crime scene, nothing would happen in a forensic laboratory. The scene of the crime is the centre of the forensic world, where everything starts, and the foundation upon which all subsequent analyses are based.”<sup>27</sup> Some authors even claim that the scene of crime may be the most important aspect of the investigation in crimes of violence.<sup>28</sup> Since most cases of animal cruelty include some form of violence, crime scene investigation should be treated as one of the most important steps. In order to make sure that vital information is not lost, the police officer and the investigator need to take the following preliminary actions: identify the person who reported the crime, attempt to determine the perpetrator if that can be done, detain everyone who is present at the scene, including eyewitness, secure the scene by issuing necessary orders and physical isolation of the area, separate the witnesses, secure and investigate any additional crime scene and refrain from moving or touching any object at the scene.<sup>29</sup> The veterinarian's role at a crime scene is to assist investigators and examine any animals at the scene. He should assist in the collection of evidence, examine the evidence, and assess the evidence and the crime scene. It is suggested that the veterinarian meets the lead investigator, discuss the situation, and develop a plan for investigating the scene.<sup>30</sup> Animal cruelty crime scenes, especially hoarding cases, can sometimes appear chaotic and the evidence is often overwhelming. Therefore, photographic preservation of evidence is important because it diminishes the possibility of overseeing relevant information. So the veterinarian may need to take additional photographs, especially close-ups, of evidence and individual animals and injuries. It is also significant to take pictures of the general area, the animals, the housing, all areas the animal could have access to, any insects on the animals, any fluids, weapons, and other objects and locations related to the case.<sup>31</sup>

Forensic Science is familiar with various types of evidence and their classifications. However, it appears that the majority of evidence could be described as real, i.e. “generated as a part of the crime and recovered at the scene or a place where the suspect or victim had been before or after the crime”<sup>32</sup>. For example, hairs, fingerprints, paint, blood and shoeprints all represent real evidence. On the other hand, some items of evidence may be created with the purpose to augment or explain real evidence and are called demonstrative evidence because they actually help “to explain the significance of real evidence”<sup>33</sup>.

Due to the fact that animal cruelty comprised of killing or severely injuring an animal may and often is committed by the use of firearms, ballistics expertise and firearms examination have particular importance in resolving these cases. Internal ballistics studies the forces that set the bullet in motion and help it to overcome the inertia as well as the movement of the bullet through the firearm. Exterior ballistics deals with the bullet's trajectory from the time it leaves the barrel until it impacts the target. Terminal ballistics is concerned with how the projectile interacts with the target, including striking energy, penetration and ricochet.<sup>34</sup> The science of firearms, on the other hand, is primarily concerned with the issues of identification in the sense of making a link between the bullets found in victim's body to the suspect in the crime.<sup>35</sup> This is most commonly achieved via bullet comparison, shell comparison, serial number restoration, gunshot residue analysis, and powder pattern deposits.<sup>36</sup>

As a violent crime, animal cruelty may often include injuries (either deadly or not) causing victim's blood spill, product of which are bloodstains that can be found at crime scene as well as on items in its near surroundings. That is the reason why bloodstain pattern analysis plays an especially important role in the reconstruction of animal cruelty cases. The examination of bloodstain and their physical characteristics

24 Houck, M., Siegel, J.: Fundamentals of Forensic Science, Second Edition, Academic Press, Elsevier Ltd., Burlington, USA, 2010., pp. 49-50.

25 For more detailed explanation see: Paragraph 295, Subparagraph 2., Criminal Procedure Code of the Republic of Serbia, Official Gazette of the Republic of Serbia, No.72/2011, 101/2011, 121/2012, 32/2013 and 45/2013.

26 Paragraph 133, Subparagraphs 1 and 2., Criminal Procedure Code of the Republic of Serbia, Official Gazette of the Republic of Serbia, No.72/2011, 101/2011, 121/2012, 32/2013 and 45/2013.

27 Houck, M., Siegel, J.: Fundamentals of Forensic Science, Op.cit., p. 29.

28 Nickell, J., Fischer, J.: Crime Science: Methods of Forensic Detection, University Press of Kentucky, Lexington, Kentucky, USA, 1999., p. 23.

29 Nickell, J., Fischer, J.: Crime Science: Methods of Forensic Detection, Op.cit., p. 24.

30 Merck, M. (Ed.): Veterinary Forensics: Animal Cruelty Investigations, Blackwell Publishing, Oxford, UK, 2007., p. 20.

31 Merck, M. (Ed.): Veterinary Forensics: Animal Cruelty Investigations, Op.cit., p. 21.

32 Houck, M., Siegel, J.: Fundamentals of Forensic Science, Op.cit., p. 50.

33 *Ibid.*

34 Nickell, J., Fischer, J.: Crime Science: Methods of Forensic Detection, Op.cit., p. 90.

35 Nickell, J., Fischer, J.: Crime Science: Methods of Forensic Detection, Op.cit., p. 91.

36 Nickell, J., Fischer, J.: Crime Science: Methods of Forensic Detection, Op.cit., pp. 92., 96, 98 and 100.

provides information specific to the events that occurred during the incident. The dispersion, shape features, volume, pattern number and size of bloodstains as well as their relationship to the surroundings are valuable sources of information and may help the investigator to define an objective history of an event. Bloodstain pattern analysis dwells on a simple theory that blood as a fluid has to react to external forces in a predictable manner, which makes bloodstain patterns reproducible phenomena.<sup>37</sup> This suggests that each type of bloodstains corresponds to a specific set of events that could have caused them.

The conventional classification of bloodstains is based upon the correlation between the velocity of the force influencing the blood source to drop that governed the characteristics and size or diameters of the resulting bloodstains. It is familiar with three basic categories of bloodstains.<sup>38</sup> Low-Velocity Impact Spatters are created when the source of blood is subject to a force with a velocity that is more or less equal to the force of gravity. They tend to have a larger scope (around 3 mm) and usually come from open wounds or a surface that has been filled with blood as the consequence of blood dropping from a body. In case of these bloodstains, the blood is usually falling under the angle of 90 degrees forming a circular bloodstain at the moment when it hits a flat perpendicular surface.<sup>39</sup> Medium-velocity blood spatters are created when the source of blood is subjected to a force with velocity in the range between 5 and 25 ft/sec. The diameters of these stains are between 1 and 3 mm, but larger ones may also be present. They are usually formed as the consequence of beating or stabbing of the victim.<sup>40</sup> High Velocity Impact Spatter refers to bloodstains created when the source of blood is exposed to a force with a velocity that overpasses 100 ft/sec. They are small, with diameter that does not surpass 1 mm and are commonly associated with gunshot injuries.<sup>41</sup> For example, the walls and flooring of dog fighting pit are frequently covered in blood spatter. If the flooring is made of absorbent material, the amount of blood loss can easily be estimated. There is usually blood from several dogs on the surfaces. Hence, in order to decrease the chance of getting a mixed DNA profile, it is important to look for any discrete blood drops as well.<sup>42</sup>

The animal itself is also considered a part of the crime scene: as such, the body of an animal or a live animal has to be treated as evidence. It can be said that the animal's body actually "tells the story of what happened and it is the veterinarian's job to find it".<sup>43</sup> Prior to examining a suspected victim of animal cruelty, the veterinarian has to gather all the available crime scene and investigation information - all the evidence from the animal in context with the history, crime scene, and investigation findings. The veterinarian should give his opinion on whether an injury of the animal was accidental or non-accidental, and try to reconstruct the animal's behaviour (defence reactions) in response to the assault to determine what evidence may be found on a suspect.<sup>44</sup>

If there is reasonable doubt that an animal has been poisoned, a forensic toxicologist (usually a veterinarian) is expected to give his opinion as expert witness.<sup>45</sup> Similarly to the cases in which the victim of poisoning is human, forensic toxicologist has to determine: the identity of all drugs and poisons found in the body, the quantities of all drugs and poisons<sup>46</sup> present at the time of death and what metabolites (secondary products of drugs as they are acted on by the liver) of these drugs can be found. The identification of the drugs and determination of their quantities are considered the hardest of the enumerated tasks.<sup>47</sup>

Hoarding cases are considered "procedurally cumbersome, time consuming, and costly to resolve".<sup>48</sup> The most disputable issue in these cases is proving the premeditation of the perpetrator, i.e. the intention of the hoarder to harm the animals. The reason for that is the fact that the majority of animal hoarders claim that they love their animals and are actually extremely emotionally attached to them. As Patronek states, "hoarders are by definition oblivious to the extreme suffering, obvious to the casual observer, of their animals" and although "they claim to have a special connection with animals, they are totally indifferent to their suffering".<sup>49</sup> The hoarders are even sometimes sincerely convinced that they are doing a great service for their animals.<sup>50</sup> There are several possible psychological models for animal hoarding: focal delusional

37 Bevel, T., Gardner, R. *Bloodstain Pattern Analysis with an Introduction to Crime Scene Reconstruction* Third Edition, Tylor and Francis Group, London, New York: CRC Press, 2008., p. 1.

38 James, S., Kish, P., Sutton, P.: *Principles of Bloodstain Pattern Analysis – Theory and Practice*, Taylor and Francis Group, New York, USA, 2005., p. 7.

39 Akin, L.L.: *Blood Spatter Interpretation at Crime Scenes*. *The Forensic Examiner*, vol. 14 No.2/2005, pp. 6–10

40 James, S., Kish, P., Sutton, P.: *Principles of Bloodstain Pattern Analysis – Theory and Practice*, Op.cit., p. 7.

41 James, S., Kish, P., Sutton, P.: *Principles of Bloodstain Pattern Analysis – Theory and Practice*, Op.cit., p. 8.

42 Merck, M. (Ed.): *Veterinary Forensics: Animal Cruelty Investigations*, Op.cit., p. 26.

43 Merck, M. (Ed.): *Veterinary Forensics: Animal Cruelty Investigations*, Op.cit., p. 31.

44 Merck, M. (Ed.): *Veterinary Forensics: Animal Cruelty Investigations*, Op.cit., p. 36.

45 See also: Aleksić J, Batrićević A, Jovašević D., Aleksić Z., *Trovanje životinja –veterinarsko medicinski i krivično pravni aspekti*, *Veterinarski glasnik*, vol. 68, No. 3-4/2014, pp. 251 - 263

46 Škulić, M., *Krivično procesno pravo*, Pravni fakultet Univerziteta u Beogradu, Beograd, 2009, p.245.

47 Houck, M., Siegel, J.: *Fundamentals of Forensic Science*, Op.cit., p. 344.

48 Patronek, G.: *The Problem of Animal Hoarding*, *Municipal Lawyer Magazine*, May/June 2001., pp. 6-9.

49 *Ibid.*

50 "No Room to Spare" *Ottawa's Community Response to Hoarding Plan Prepared for The Ottawa Community Response to Hoarding Coalition, National Homelessness Initiative, Government of Canada*. May, 2006., p. 28. <http://hoarding.ca/wp-content/uploads/2014/08/no-room-to-spare-report.pdf>, 01.12.2014.

disorder, delusional levels of paranoia, an attachment disorder or obsessive-compulsive disorder (OCD). Some similarities have been discovered between hoarders, substance abusers, gamblers, and others with impulse control problems.<sup>51</sup> In view of that, it becomes obvious that psychiatric expertise is of crucial importance in these specific cases of animal cruelty. Namely, the expert witness, a psychiatrist is supposed to estimate whether the perpetrator suffers from some of the aforementioned disorders as well as to explain whether and how these disorders influenced his awareness of the consequence of his actions, his general behaviour and psychological attitude towards the commission of animal cruelty. Apart from psychiatric expertise of the accused, an opinion of expert witness of veterinarian profession is also very important for the outcome of animal hoarding cases. In these cases, the veterinarian is expected to give his expert opinion on general physical and mental condition of the animals, to estimate whether their living conditions could be treated as cruel and inhumane, to examine if the animals show symptoms of diseases, to discover the link between living conditions and deterioration of animal's health, etc. In a word, a veterinarian should estimate whether the conditions in the place where hoarder had been keeping his animals were appropriate or not to provide at least the necessary minimum of animal welfare.

When it comes to neglect, the issue of intent is a vital criterion in deciding on appropriate charges and sentences. As it has been described, neglect often represents a continuum of action or lack of action by the owner, i.e. a state that exists over a prolonged period of time. The most important question in these cases of animal cruelty is at what point in this continuum the owner must have become aware of the problem and regardless of that awareness failed to take appropriate action. This can be defined as implied malice. Another important question that has to be answered in these cases is the level of animal's suffering. This is where the role of the veterinarian as an expert witness is essential since court's decision will most probably depend on his assessment of the animal's condition and environmental findings.<sup>52</sup>

Psychological abuse of animals is generally considered difficult to prove. However, it has been confirmed that some emotional pains may induce more suffering than physical pain. As a result, the veterinary profession should stop viewing emotional pains as less important and less worthy of diligent treatment efforts. Although physical pain is high on the list of causes of suffering, it is not necessarily the highest. Hypoxia, for example, probably ranks higher, and some emotional pains also rank higher than physical pain. This implies that animals with unalleviated fear, anxiety, isolation distress, and boredom should be regarded as inadequately treated as we now view animals with inadequately treated physical pain.<sup>53</sup> Accordingly, psychological i.e. emotional pain should be given a sufficient amount of attention in the evidentiary procedure, which, primarily depends on the veterinarian who appears as an expert witness. To recognize stress, the veterinarian must have an understanding and appreciation of the physical, psychological, and behavioural needs of the animal. There are physiological and behavioural manifestations of suffering as well: increased corticosteroid levels (stress), respiratory rate, heart rate, or blood pressure; vocalizing; and the sudden release of urine or bowels (fear reaction). These findings have to be put in context with the situation, as some of these same responses can result from pleasurable experiences. Consideration should also be given to the distress and boredom of animals as a form of suffering, all of which can be recognized according to external signs and behavioural patterns.<sup>54</sup> All these signs should be noted by the veterinarian and included into his expert finding in order to be used as evidence.

## CONCLUSION

Although criminal offence of killing and torture of animals has been present in Serbian criminal legislation for more than eight years and despite of the fact that our Law on Animal Welfare was adopted more than five years ago, obtaining relevant evidence and successful proving of animal cruelty is still followed by numerous difficulties. This could be considered as one of the reasons why the number of perpetrators who have been punished for this criminal offence is still rather insignificant in comparison to the number of reported and committed crimes of animal cruelty in Serbia. The fact that this kind of criminal offences is usually considered less serious, the lack of awareness of the connection between animal cruelty and inter human violence, the fact that the perpetrator of these offences is often the owner of the animal, the specific type of victim that is completely incapable of being a witness and protecting its interests, and weak cooperation between state bodies and civil sector in the area of animal protection appear as key factors that contribute to such state in this field of criminal law. Apart from these general reasons, there seem to be some specific ones that are related only to evidentiary procedure for cases in which animal cruelty comprises sexual abuse of animals, animal abuse committed by veterinarians, animal abuse committed for experimental purposes and psychological abuse of animals. The problems that appear during evidentiary procedure in

51 Patronek, G.: The Problem of Animal Hoarding, *Municipal Lawyer Magazine*, May/June 2001., pp. 6-9.

52 Merck, M. (Ed.): *Veterinary Forensics: Animal Cruelty Investigations*, Op.cit., p. 201.

53 McMillan, F.: A world of hurts—is pain special?, *Journal of the American Veterinary Medical Association*, Vol 223, No. 2/2003, p. 186.

54 Merck, M. (Ed.): *Veterinary Forensics: Animal Cruelty Investigations*, Op.cit., pp. 71-73.

cases of animal cruelty could be prevented or diminished through synchronized efforts of several entities including: the police (particularly the so called-communal police), the representatives of the judicial system (judges, prosecutors and attorneys), the members of non-governmental organizations dedicated to protection and promotion of animal welfare and veterinarians who deliver their expertise to the court.

The police officers should be given more information on how to recognize the cases of animal cruelty and how to act if such a case has been reported. When it comes to the representatives of the judiciary, their consciousness on etiology and phenomenology of animal cruelty and abuse should be increased. The same refers to their knowledge about some comparative legal solutions in this specific field of criminal law, especially when it comes to understanding the link between animal abuse and domestic violence and the potential social hazard of the perpetrators of this criminal offence, the minimum and maximum of punishment that is usually imposed for some specific cases of animal cruelty and the accurate interpretation of some legal provisions and expressions specific for these cases. They should also be familiar with the provisions of environmental laws, since they contain the definitions of some terms that are essential for accurate interpretation and application of the incrimination of animal cruelty prescribed by the Criminal Code. Furthermore, these professionals should also be familiar with some international documents relevant for animal protection that are implemented on both universal (adopted by the United Nations) and European level (adopted either by the Council of Europe<sup>55</sup> or by the bodies of the European Union). The Republic of Serbia has ratified the majority of international legal sources pertinent to animal welfare and protection and their application represents its obligation in accordance with the Constitution and basic principles of international law.

Another recommendation for state bodies would be to develop closer cooperation with non-governmental organizations dedicated to animal welfare protection. The representatives of these organizations often possess valuable information and sometimes even photo documentation, videos and witness statements, which can be used as or lead to relevant and useful means of evidence in criminal procedure. In that context, the representatives of humane associations should, therefore, not be perceived as external controllers or opponents but as associates.

Veterinarians' expert knowledge should be more appreciated and relied on while resolving the cases of animal cruelty. Their expertise is irreplaceable in cases of: animal poisoning (post mortem toxicology analysis), sexual abuse of animals (particularly for internal injuries that are not so obvious at first glance) and neglect of animals with deadly consequences due to starvation and dehydration. The role of veterinarians should also be considered of key importance in cases of psychological abuse of animals because they are the only experts capable of estimating whether the animal is showing signs of fear, discomfort or mental pain. However, the role of the veterinarian's expertise should be taken into consideration from another point of view. Similarly to the cases that are sometimes reported in human medicine, proving of inadequate providing of veterinary assistance or performing veterinary profession without possessing adequate academic knowledge and professional qualifications, is often difficult. In both, human and veterinary medicine, proving of these criminal offences requires that veterinarians (or doctors) appear as witnesses or experts who would provide evidence against their colleagues who have not been acting in accordance with the rules of their profession. Unfortunately, the practice has shown that there are very few professionals who are ready and willing to appear in front of the court and criticize the work of their colleagues in public, although they had reasonable arguments to do so.

In spite of the fact that there are numerous practical obstacles suggesting that prosecuting and proving animal cruelty is rather difficult, there are some enthusiastic foreign experts who defend a completely opposite standpoint. For example, Geoff Fleck, an attorney specialized in animal cruelty points out several prosecutorial advantages of these cases, including the following arguments: 1) the victims are particularly vulnerable and defenceless and are, therefore, sympathetic; 2) the victims are usually (a lot) smaller than the abuser and are never armed; 3) the victims do not recant their accusations (like some domestic violence victims are sometimes prone to do); 4) the victims do not have their own agendas and, finally, 5) the victims are blameless and will never be impeached.<sup>56</sup> What this author basically suggests is turning those characteristics of animal cruelty cases that are usually treated as obstacles into advantages for the prosecuting party. We should be aware of the fact that some of them are more relevant in common law systems, where the role of the jury is far more important than here, but, this should not prevent us from taking his standpoint as a role model.

55 Batričević, A.: Uloga konvencija saveta Evrope u krivičnompravnoj zaštiti životinja, Zbornik Instituta za kriminološka i sociološka istraživanja, Vol. 30, No. 1 – 2 /2011, pp 137 – 158.

56 Fleck, G.: Prosecuting Animal Cruelty Cases is Not (That) Hard, Animal Legal Defenses Fund, 2014, p. 1., <http://aldf.org/blog/prosecuting-animal-cruelty-cases-is-not-that-hard/>, 25.11.2014.

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