

## THE INITIAL STAGE OF ANIMAL ABUSE INVESTIGATION

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The article outlines the specificity of initial stage of investigation. Based on the analysis of investigative practice, a system of urgent investigative (search) actions is presented, which must be carried out at the initial stage of animal abuse investigation. An algorithm of actions to be taken during the inspection of the scene, the corpse of the animal, the interrogation of suspects, victims, witnesses during the investigation of animal abuse is proposed. The tactical features of investigative (search) actions performance at the initial stage of the investigation of animal abuse are highlighted.

**Keywords:** *animal abuse, stages of crime investigation, initial stage of investigation, investigative (search) actions, investigation of animal abuse.*

### ПОЧАТКОВИЙ ЕТАП РОЗСЛІДУВАННЯ ЖОРСТОКОГО ПОВОДЖЕННЯ З ТВАРИНАМИ

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В статті розглянуто особливості початкового етапу розслідування жорстокого поводження з тваринами. На підставі аналізу слідчої практики подано систему невідкладних слідчих (розшукових) дій, які необхідно провести на початковому етапі розслідування жорстокого поводження з тваринами. Запропоновано алгоритм дій при проведенні огляду місця події, трупа тварини, допиту підозрюваних, потерпілих, свідків в ході розслідування жорстокого поводження з тваринами. Виокремлено тактичні особливості проведення слідчих (розшукових) дій на початковому етапі розслідування жорстокого поводження з тваринами.

**Ключові слова:** *жорстоке поводження з тваринами, етапи розслідування злочинів, початковий етап розслідування, початкові слідчі (розшукові) дії, розслідування жорстокого поводження з тваринами.*

### ETAPA ÎNȚĂLĂ A INVESTIGĂRII INFRAȚIUNILOR FAȚĂ DE ANIMALELOR

Articolul examinează caracteristicile etapei inițiale a anchetei asupra cruzimii față de animale. Pe baza analizei practicii de investigație, este prezentat un sistem de acțiuni urgente de investigație (căutare), care ar trebui efectuate în etapa inițială a anchetei. Este propus un algoritm de acțiuni în timpul inspecției locului, a cadavrului animalului, a interogării suspectilor, victimelor, martorilor în timpul anchetei de cruzime. Sunt evidențiate caracteristicile tactice ale acțiunilor de investigație (căutare) din stadiul inițial al investigării.

**Cuvinte-cheie:** *cruzimea animalelor, etapele anchetei criminalității, etapa inițială a investigației, acțiunile inițiale de investigație (percheziție), investigarea cruzimii animalelor.*

**Statement of the problem.** The effectiveness of crime investigation depends on its implementation stages, proper planning of all necessary measures for the investigation, compliance with its step-by-step implementation algorithm. Forensic science defines such criminal proceeding components as stages of investigation.<sup>1</sup>

Therefore it is appropriate to divide the process of animal abuse investigation into separate elements, which will include initial and subsequent measures that must be taken to establish all the circumstances of the crime and hold the perpetrators liable.

According to the results of recent survey, initial stage of the animal abuse investigation is the most problematic for the investigator (procedural and forensic issues usually arise). In particular, these are: imperfection of the criminal procedure legislation (37,1%); insufficient professional training of investigators, operative staff, specialists and experts (25,9%); insufficient forensic equipment supply (14,8%); insufficient amount of evidentiary information to prove the person's involvement in the commission of a crime (22,2%).

**The relevance of the research topic.** As at the initial stage investigator chooses the investigation direction, methods, means, and methods of investigative actions, mistakes, incorrect assessment of the investigative situation and other gaps are likely to

<sup>1</sup> Пчеліна О.В. Етапізація процесу розслідування злочинів у сфері службової діяльності. Підприємництво, господарство і право. 2016 р. Вип. № 3. с. 167-170.

negatively affect the establishment of the criminal proceeding circumstances. In addition, delays with urgent measures may lead to disturbances, destruction of crime traces or loss of its individual features, distortion of information about the crime in the memory of victims, witnesses, and other adverse consequences. In addition, the development of methods for animal abuse investigation is impossible without considering the specificity of the initial measures determining the relevance of this topic.

**Status of research.** Numerous scholars specializing in forensic science presented publications on fundamentals of crime investigation methodology including A. Ishchenko, V. Kuzmichov, M. Pohoretskyi, D. Serheieva, L. Udalovala, S. Cherniavskyi, Y. Chornous, V. Shepitko etc.

As for the study of the animal abuse problem, from the standpoint of criminal law this issue was studied by I. Golovko<sup>2</sup>, and criminological aspects of cruelty towards animals have been studied by O. Shumilo<sup>3</sup>. However, domestic science still lacks research on the methodology of animal abuse investigation which determines the relevance of the paper's topic.

**The Object and Purpose of the Article** is to reveal the content of initial stage of animal abuse investigation.

**Presentation of the main material.** In the process of investigating any type of crime organization of priority activities is important. Such priority measures, which should be taken immediately by the investigator at the initial stage of animal abuse investigation, include: 1) analysis of information contained in the statement or report on animal abuse; 2) preliminary planning of measures to be taken for establishment of the crime circumstances; 3) the formation of an investigative team to carry out all necessary initial actions aimed at search, identification, collection and evaluation of animal abuse evidence; 4) organization and direct conduct of urgent investigative (search) actions; 5) generalization and analysis of data obtained in the course of investigative (search) actions performance for its use as foundation to formulate the investigative leads and further planning of the following investigation stage.

As we know investigation of animal abuse starts with the petition filing or notification on crime commission and entering the relevant data to the Unified Register of Pre-Trial Investigations. This clause is

<sup>2</sup> Головки І.А. Кримінальна відповідальність за жорстоке поводження з тваринами: автореф. дис. канд. юрид. наук: 12.00.08 / Головки Ірина Анатоліївна; Київ. нац. ун-т внутр. справ. - К., 2010. - 20 с.

<sup>3</sup> Шуміло О. О. Кримінологічна характеристика та запобігання жорстокому поводженню з тваринами: автореф. дис. ... канд. юрид. наук: 12.00.08 / О. О. Шуміло; кер. роботи В. В. Голіна; Клас. прив. ун.-т. – Запоріжжя, 2016. – 20 с.

contained in Article 214 (2) of the Criminal Procedure Code of Ukraine (hereinafter referred to as the CPC). Relevant data must be immediately (within 24 hours) entered into the Unified Register of Pre-Trial Investigations with pre-trial investigation launched after the petition has been filed or notification on crime commission or after having independently revealed the information which may suggest that a crime has been committed from any kind of source<sup>4</sup>.

Taking into account the results of the survey data analysis conducted for the investigative bodies of the pre-trial investigation, the main sources of information on animal abuse cases are: the statement of the victim (40,8%); notification received from the applicant (24,4%); from public associations or animal rights organizations (22,3%); from the media (11,4%); from veterinary facilities or veterinarians (1,1%). In addition, the CPC of Ukraine provides for the possibility of initiating a pre-trial investigation in case the investigator or prosecutor independently discovers circumstances that may indicate the commission of a crime from any source. After the notification or petition regarding animal abuse is filed the head of appropriate pre-trial investigation body evaluates the circumstances of committed crime and is obliged to form an investigative team out of search and operative staff properly selected for further involvement in procedural actions performance.

In accordance with the Regulation on the organization of pre-trial investigation bodies' interaction with other units of the National Police of Ukraine to prevent, detect and investigate crimes, approved by the Order of the Ministry of Internal Affairs of Ukraine №575 dd. 07.07.2017 this team includes: investigator (team leader), an employee of the operational unit, a forensic inspector (forensic expert), as well as (if necessary) a dog handler with a service dog. In addition, taking into account the peculiarities of this type of crime, the investigator should involve a relevant specialist in its conduct. Also, taking into consideration the peculiarities of this type of crimes, it is feasible for the investigator to involve a specialist to teamwork. Investigator is delegated with certain powers to supervise the actions taken by other team members and he/she is responsible for the quality of crime scene examination<sup>5</sup>. Before going to the crime

<sup>4</sup> Кримінальний процесуальний кодекс України від 13.04.2012 № 4651-VI URL: <http://zakon.rada.gov.ua/laws/show/4651-17>

<sup>5</sup> Інструкцію з організації взаємодії органів досудового розслідування з іншими органами та підрозділами Національної поліції України в запобіганні кримінальним правопорушенням, їх виявленні та розслідуванні. Затверджено Наказом Міністерства внутрішніх справ України 07.07.2017 № 575. URL: <https://zakon.rada.gov.ua/laws/show/z0937-17>.

scene investigator must prioritize urgent investigative (search) actions to be taken initially with relevant forensic support.

In accordance with Part 1 of Article 223 of the CPC of Ukraine, investigative (search) actions are defined as actions aimed at obtaining (collecting) evidence or verification of previously obtained evidence in a particular criminal proceeding<sup>6</sup>.

Scholars claim that selection of any investigative (search) action depends on the established information source and type of trace representation of actual or potential evidentiary value<sup>7</sup>.

The sequence of such actions will depend on the particular circumstances of the crime presented in the statement or report on cruel treatment of animals. Empirical data (survey conducted for investigators of the National Police of Ukraine) showed that urgent investigative (search) actions taken at the initial stage of the animal abuse investigation involve: inspection of the scene – 96,3%; examination of an animal or its carcass – 92,6%; interrogation of victims (51,9%) witnesses (85,2%), suspects (11,1%); examination of the suspect – 29,6%; presentation of the animal for identification – 11,1%.

Let's analyze each of the abovementioned actions in detail. In particular, the most common investigative action taken at the initial stage of investigation is the crime scene examination. As for the specificity of examination tactics, it depends on where exactly the animal had been treated with cruelty. Based on the analysis of court practices in cases related to animal abuse, in 82,6% of cases criminal activities were committed outside, in 17,4% - indoors.

If a crime has been committed outside the premise we deem it necessary to apply the concentric or linear examination method, in premises – junctional or eccentric. In cases when animal corpse has been found the examination procedure starts with its inspection. The reason for that is possibility to identify the cause of death in the course of corpse examination and recreate the mechanism of crime commission. Further establishment of examination borders and inspection of other items and objects will depend on specificity of environment.

During the inspection of crime scene special attention should be paid to detection and removal of animal traces. In particular, on the basis of the survey, during the inspection of the scene, the following tra-

ces were found: the corpse of an animal – 85,2% of cases; parts of an animal carcass – 48,1% of cases; footprints (paws, hooves), teeth – 22,2% of cases; blood, vomit, brain matter – 59,3% of cases; skin, traces of fur, wool, feathers, etc. – 44,4% of cases.

Typical places for animal corpses or their parts detection are: apartments, entrances of residential buildings, basements – 4,7%; adjacent territories, fenced yards – 48,1%; parks, forested areas – 77,8%; roadsides, landfills – 70,4%; garbage containers, boxes, pellets, bags, sacks – 63,5%.

Regarding the search and detection of other animal traces with consideration of the survey data, traces left by animal's teeth are often found on the tools used to commit the crime while inspecting the scene (sticks, batons) (70,4% of cases); food stuffed with poisonous substances (40,8% of cases). Animal hair may often remain on the tools, devices used to tie the animal (ropes, wire, adhesive tape, etc.) (in 59,3% of cases); on carpets, sofas, kitchen utensils (in 33,2% of cases). Footprints left by hooves, paws can be superficial, which may be found on the floor in rooms, on curbs, car interiors, and tridimensional – fixed on a clay surface, soil, snow. Traces of blood, saliva, vomit can often be found in the cabin, on clothes, shoes belonging to suspect (in 59,3% of cases); on tools of crime (in 63% of cases); on the ground, floor, walls (traces of splashes) (in 62,8% of cases); on the hood, car bumper and elsewhere (in 51,9% of cases).

While examining the crime scene it is recommended not only to inspect the spot where the corpse has been detected, but also the adjacent territory – it will give you a better picture of what could possibly happen during the crime commission. Expansion of examined area will ensure detection of not only the traces of direct influence but also understand the conditions and environment where animal was kept. We speak about the level of damage regarding the place it was held in, any violations of zootechnical and veterinary hygiene regulations and maintenance procedures.

In addition, there may be traces of the offender's feet, tools of the crime left elsewhere, the remains of packaging materials, poisonous substances, lost personal belongings, and so on. Traces left by the perpetrator's hands can be found on items used for inhumane treatment, packaging material (plastic bags, films, bags), belts, collars, leashes. Traces of shoes remain mainly in the places where criminal was staying - on a ground surface, garden sites, yard territories, the road; on the surface of chairs, floor. In addition, traces of shoes can be found on the corpse of the animal. If the animal died as a result of a car accident, attention should be paid to traces of vehicles, traces of fuel and lubricants that may remain on the animal's

<sup>6</sup> Кримінальний процесуальний кодекс України від 13.04.2012 № 4651-VI URL: <http://zakon.rada.gov.ua/laws/show/4651-17>.

<sup>7</sup> Халупенко Д. М. Слідчі (розшукові) дії як пізнавальні засоби слідчого й прокурора за чинним КПК України. Часопис Академії адвокатури України. – 2013. – № 2. Веб-сайт. URL: [http://nbuv.gov.ua/UJRN/Chaau\\_2013\\_2\\_30](http://nbuv.gov.ua/UJRN/Chaau_2013_2_30).

corpse and the offender's clothing, as well as at the actual crime scene.

Thus, the results of crime scene inspection in the course animal abuse investigation, carried out in compliance with procedural requirements, with use of necessary forensic techniques and tactics, taking into account the specificity of this crime, allows us to use the obtained facts to build versions and plan the next stage of crime investigation. As during the animal abuse investigation inspection of the crime scene is the most valid source of information about the crime circumstances, the completeness and tactical correctness of its implementation are very important for the whole process of animal abuse investigation.

During the pre-trial investigation of animal abuse there is a need to conduct another urgent investigative (search) action - examination of animals or their corpses. The purpose of such an examination is to identify the features that allow to establish the affiliation of the animal to a particular person, as well as features ensuring the identification of animal. That is the moment when investigator presenting the pre-trial investigation body must involve a specialist. In order to adequately identify these features and correctly describe it in the inspection report, it is recommended to involve veterinarian or zootechnician as a specialist.

Specialist is involved to investigative (search) actions performance or in other cases when special knowledge is required to identify: a) the species; b) breed, color, sex and, if possible, animal's age; c) any identifying features/insignia confirming that animal belongs to a certain person (earmarks (including special ones like holes of specific shape in ears), shoeing mode, presence of individual items on animal e.g. collar with inscription); d) identifying characteristics – scars left by injuries, anatomic features, specific coloring etc.

Examination of animals and their corpses is carried out as an independent investigative action when it is impossible to conduct an inspection at the crime scene. The inspection is carried out in order to identify and record traces of injuries on the animal's body as well as other traces that are important for the criminal proceeding. In the course of animal corpse examination the following data must be entered in the report in addition to general information provided for in Article 104 of the CPC of Ukraine: 1) the exact location of the corpse being discovered with reference to two fixed landmarks; 2) species of animal; breed, color; sex, if possible age; 3) individual characteristics of the animal (earmarks, scars after injuries, etc.); 4) the position of the corpse (the animal lies on its side or back, position of snout and paws, etc.); 5) secondary objects found on the body of the animal (collar, muz-

zle, leash, etc.); 6) foreign objects found on and near the corpse; 7) injuries present on the body, its location, number, characteristics of wound edges; 8) methods of fixation (photo- and video recording, schematic drawing, drafting plans, schemes, drawings).

Parts of the animal's carcass, with traces found on them, must be removed completely and packed in clean cloth bags or cardboard, plywood boxes and stored in a cool room or refrigerator until they are sent for examination.

The CPC of Ukraine does not envisage a special procedure for animal carcass inspecting, as a result investigator must rely on the general provisions of Article 238 of the Criminal Procedure Code of Ukraine. However, it is necessary to take into account the specificity of this type of crime, and to supplement the current criminal procedure legislation, namely Article 238-1 "Examination of the corpse of an animal" by highlighting its specific features in addition to the general rules of corpse examination. These include the need to determine the participants in process of the the animal's corpse examination, in particular, indicating the range of specialists subject to potential involvement in this procedural investigative (search) action.

Therefore we offer to complement the Article 238-1 of the CPC of Ukraine "Examination of the corpse of an animal" and present it in the following version: "1. Animal's corpse is examined by the investigator, prosecutor with mandatory presence of veterinary specialist or, if impossible to involve, veterinarian. 2. Inspection of an animal carcass may be carried out simultaneously with an inspection of the scene, dwelling or other property of a person in compliance with the rules of this Code on inspection of a dwelling or other property of a person. 3. After inspection the animal's carcass is subject to mandatory referral for forensic veterinary examination with aim to determine the cause of death".

Another equally important investigative (search) action at the initial stage of animal abuse investigation is interrogation. At the same time investigator must interrogate the victim (if crime was committed against a pet), witnesses, and suspects in a timely manner.

The interrogation of a witness, victim, suspect is an investigative (search) action, which is used to capture the non-material traces of the crime (information reflected in people's conscience). In the course of pre-trial investigation in criminal proceedings on animal abuse it is necessary to use both techniques which include a set of organizational and psychological methods of interrogation, and technical methods of information recording (audio and video). The use

of certain tactical and forensic interrogation methods depends on the investigative situation having evolved during the pre-trial investigation and available evidence.

Based on the analysis of criminal proceedings, pet abuse is in most cases carried out by a person against one's own animal, or as a result of a sudden conflict between a suspect and a victim, as well as revenge or hostility between them.

If certain act of cruelty was performed towards a pet owned by a person this person is deemed a victim. During the interrogation of a victim investigator obtains the following data: 1) individual characteristics of an animal having suffered from cruel treatment and owned by this person; 2) whether the animal had any diseases and whether it had injuries in the past; 3) whether the veterinary passport has been issued - if so, require this document; 4) when and under what circumstances the animal was abused; 5) was the victim present in the course of crime commission – if no, how exactly and when was the fact of animal abuse detected; 6) does the victim know the suspect – if yes, what is the nature of their relations.

With regard to the interrogation of witnesses who are usually present at the moment of crime commission, given the specifics of the crime, it is important to establish accurately: when, where and under what circumstances the animal was abused; in what way were criminal actions or inaction exactly expressed by the person in relation to an animal; if there several criminals were involved, it is necessary to clarify the specificity of their participation in the crime, i.e. what actions were taken and who did it; where exactly the witness was at the moment of crime commission and if any other person was observing the process; whether remarks were made and how the criminals responded to the demands of bystanders to stop the criminal actions; whether minors were present at the moment of crime commission.

Before preparing for the interrogation of a suspect it is important to find out whether he/she admits one's guilt in committing a crime under Article 299 of the Criminal Code of Ukraine, because, depending on this circumstance, the investigator chooses certain interrogation tactics.

According to the analysis of court practice in animal abuse proceedings, in 89% of cases the person fully admitted one's guilt. This situation is most favorable for the pre-trial investigation body, but does not relieve the investigator from the obligation to clarify such important aspects as: what circumstances preceded the suspect's intent to commit animal abuse; place and time of crime commission; the sequence of criminal acts or inaction (if cruel treatment was com-

mitted against two or more animals, the sequence of criminal acts against each animal is determined separately); motive and purpose of the crime; who, in addition to the suspect, took part in crime commission and in what way were the criminal actions exactly expressed by other participants; whether the suspect knew with the owner of the animal which suffered from cruel treatment, nature of their relations; whether minors or adults were present at the moment of crime commission.

In 3% of cases, according to the analysis of court practice, the person partially admitted one's guilt. If the suspect partially admits one's guilt in crime commission, in addition to the abovementioned circumstances, it is necessary to clarify what actions one thinks he/she is responsible for and what not, with strong justification provided. In 8% of cases, according to the analysis of court practice, the person did not admit one's guilt in animal abuse commission – these situations require the investigator to invite this person to present one's version of events.

In some cases, during the pre-trial investigation of animal abuse, if the suspect is identified, the investigator must examine the suspect to find and identify traces of the crime. Examination procedure is carried out under provisions of Article 241 of the Criminal Procedure Code of Ukraine. Thus, when inspecting certain parts of the suspect's body, the investigator must pay attention to traces left by teeth, scratches, blood, vomit, hair, etc. In this case, the question arises regarding the involvement of the relevant specialist in the examination procedure to ensure that investigator's attention is drawn to individual traces, as well as assess them, and determine whether they belong to the animal or not. Given the specifics of this type of crime, we consider it necessary to supplement Part 2 of Article 241 of the CPC of Ukraine with "an expert in veterinary medicine or a veterinarian", and present it as follows: "Examination is carried out on the basis of a prosecutor's decision and, if necessary, with the participation of a forensic expert or doctor; a specialist in veterinary medicine or a veterinarian."

The investigator may also inspect items, namely the clothes of the victim, a vehicle that was used as a tool to commit the crime or in which the animal may have been located at the moment of abuse or after its commission.

In some cases, when animal dies as a result of a crime committed under Article 299 of the Criminal Code, there is a need to present its body to the owner for identification. Such an investigative action is often carried out at the initial stage of investigation, but after the owner testifies and indicates what specific features one may use to recognize the pet, i.e. indivi-

dual characteristics such as: atypical color, anatomical features, congenital or acquired pathologies, the presence of scars or traces of injuries, etc. The CPC of Ukraine does not currently regulate the procedure for presenting an animal for identification, so the process of such identification is carried out in compliance with the same forensic tools used to present objects for identification.

However, the peculiarities of animals' presentation for identification are determined by the nature of the identified object and the purpose of this procedure, which is why we propose to present amendments to the Criminal Procedure Code of Ukraine by adding Article 229-1 "Presentation of animals for identification", defining the procedure for its implementation, with all specificity considered.

**Conclusions.** Thus, it should be noted that planning of the initial stage of animal abuse investigation is very important, as at this stage the investigator assesses all the circumstances and determines the future algorithm of the entire investigation process of this type of crime, which should be flexible and change depending on the discovery of new circumstances.

In particular, such specific features include the examination of an animal carcass - currently this procedure is not properly regulated by the CPC of Ukraine. As a result, the investigator must proceed from the general provisions of Art. 238 of the Criminal Procedure Code of Ukraine, but take into account the specifics of this type of crime. That is why we propose to supplement the current criminal procedure legislation, namely Article 238-1 "Examination of the animal's corpse" - in addition to the general rules of corpse examination, to highlight its specific features.

Gaps in the criminal procedure legislation were also revealed concerning the procedure of suspect examination. In this case, the question arises regarding the involvement of specialist in the examination process to ensure that investigator's attention is drawn to individual traces, as well as assess them, and determine whether they belong to the animal or not. In this regard, we propose to supplement Part 2 of Article 241 of the Criminal Procedure Code of Ukraine with "a specialist in veterinary medicine or a veterinarian."

Another investigative (search) action in the process of animal abuse investigation currently not regulated by applicable CPC of Ukraine is the presentation of the animal for identification. In this regard,

we propose to make appropriate changes to the CPC of Ukraine by adding Article 229-1 "Presentation of animals for identification".

Thus, the timely and correct organization of prioritized investigative (search) actions in the process of animal abuse investigation will allow to use the obtained facts to construct investigative versions and conduct the next stage of the investigation.

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