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Veterinary defects as a subject of forensic veterinary investigation

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Abstract

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Defects in veterinary activities often cause epizootics that pose a threat to animal and human life and cause economic losses to livestock facilities. To prove the guilt of a veterinary practitioner in the occurrence of professional defects, forensic veterinary examination is essential. The study aims to formulate and characterise the conceptual and categorical apparatus of the phenomenon of defects in veterinary practice, to identify the signs of these defects in terms of forensic veterinary examination, and to propose amendments to the criminal, administrative and veterinary national legislative framework. The methodological basis of the study includes a systematic approach which uses general and special scientific methods: analysis and synthesis, induction and deduction, analogy; logical-semantic and system-structural methods; modelling method and comparative legal method. It is argued that it is appropriate to distinguish two groups of offences related to veterinary activities, including criminal offences (misdemeanours and crimes), administrative offences and civil torts. The author's definitions are proposed: “crime in veterinary activity”, “fault in veterinary activity”, “non-performance or improper performance of professional duties by a veterinary practitioner”, “engaging in illegal veterinary activity”, “illegal issuance of a veterinary prescription”, “illegal conduct of veterinary biological or other

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experiments on animals” and their features are outlined. The features of the objective side of criminal, administrative and civil law offences in the field of veterinary medicine are outlined. The author identifies the problematic aspects of defects in veterinary activities which should be emphasised by scientists and practitioners and suggests ways to solve them. The study became the basis for the development of a methodology for forensic veterinary research of defects in veterinary activities in criminal and administrative proceedings and civil cases

Keywords: forensic veterinary medicine; veterinary professionals; non-performance and improper performance of professional duties; expert animals; professional offence; crime; guilt; civil tort

Introduction

The issue of improper performance of professional duties by veterinary practitioners, which causes negative consequences during the provision of veterinary services, is an acute one for practical veterinary medicine. This problem is relevant both in Ukraine (Zapara *et al.*, 2019) and in other countries (Low & Wu, 2022; Daly, 2023). According to leading scientists in the field of veterinary medicine, including K. Whipple *et al.* (2020), P. Mosedale and K. Blackie (2021), A. Woolrich (2021), various shortcomings in the provision of veterinary care are rarely discussed in scientific publications, and little is known about their nature and frequency, but they are a significant cause of animal patient mortality, ending in claims and complaints from dissatisfied animal owners, lawsuits against veterinary professionals, and may be accompanied by insurance payments.

The arguments of J. Wallis *et al.* (2019), R. Munro (2022) and J. Cohen *et al.* (2023) regarding the defects in veterinary care and the specifics of their expert assessment are extremely important for forensic veterinary examination as a scientifically sound and justified means of proof in legal proceedings. This is because the expert’s opinion provides answers to the questions posed to the forensic expert by the pre-trial investigation body or the court to clarify the facts and

circumstances of the offence in the field of veterinary activities, and helps to correctly qualify the offence (Yatsenko, 2022). However, research activity in this area of veterinary medicine is insufficient. Currently, the issues of criminal offences and crimes, administrative offences, and civil torts in the field of veterinary medicine remain unexplored. A significant organisational and legal problem of forensic veterinary expertise is the lack of a developed theoretical basis in cases of “veterinary cases”, which significantly reduces the quality of expertise.

Thus, there is a pressing need to develop unified methodological approaches to the organisation and conduct of forensic veterinary examination of professional offences by veterinary specialists, since improving the quality of expert practice is possible if a holistic scientific and methodological concept of organising and conducting forensic veterinary research on the improper performance of professional duties by veterinary specialists is developed. Only a comprehensive scientific study will solve this important problem to ensure pre-trial investigation of offences relating to defects in veterinary activities. The aforesaid determines the research relevance.

The study aims to develop a doctrinal and epistemological construction of the phenomenon

of veterinary practice defect for use in forensic veterinary examination as a means of proof in the course of investigation of criminal offences, crimes, administrative offences and civil law torts; to formulate the author's definitions of the conceptual and categorical apparatus and characterize them, and also to propose amendments to the criminal, administrative and veterinary national legislative framework.

The methodological basis of the study employs general and special scientific methods: analysis and synthesis, induction and deduction, analogy to determine the essence of the categorical apparatus of defects in veterinary practice; logical and semantic method to formulate the terms: "non-performance or improper performance of professional duties by a veterinary worker", "fault in veterinary activity", "crime in veterinary activity", "performance of professional duties by a veterinary worker" for use in forensic veterinary examination, removing gaps in the current legislation of Ukraine, and providing proposals for its improvement; the structural and systemic method was used to complete and build tasks for a forensic veterinary expert to assess the quality of veterinary activities and determine the type of defect; the modelling method was used to predict and develop the issues of forensic veterinary determination of defects in veterinary activities; the comparative legal method was used to consider and compare legal provisions that accurately define the professional activities of veterinary workers.

Types and signs of professional veterinary offences under Ukrainian law

If a causal link is confirmed between the improper performance of professional duties by a veterinary practitioner and bodily injury, maiming or even death or the public interest in the field of veterinary medicine, the question of legal liability

of veterinary practitioners may arise. The algorithm for assessing defects in veterinary activities is to determine the type of defect, outline the legal consequences and establish legal liability (criminal, administrative, civil).

From the personal practice of conducting forensic veterinary examinations in cases of professional offences by veterinary practitioners, it is known that they mostly have superficial knowledge of legal liability. However, awareness of veterinary professionals of the predictors, types, and consequences of legal liability for their professional offences disciplines them, and on the other hand, reduces the likelihood of unjustified accusations and prosecution. Veterinary medicine specialists can perform both professional and official functions and therefore may be subjects of offences in the field of veterinary activity, which may also affect its organisation. Therefore, it is appropriate to distinguish two groups of offences related to the provision of veterinary care, including criminal offences, i.e. misdemeanours and crimes under the Criminal Code of Ukraine (CC) (2001), administrative offences under the Code of Ukraine on Administrative Offences (CAO) (1984), and civil torts under the Civil Code of Ukraine (2003).

Veterinary offences in the course of veterinary activity, including professional offences in the field of veterinary activity, are separate types of offences. Therefore, it is necessary to characterise possible professional offences in the field of veterinary practice. To do this, it is first necessary to define the concepts of "fault in veterinary activity" and "crime in veterinary activity". In this regard, "crime in veterinary activity" should be understood as a socially dangerous, unlawful, guilty, punishable offence caused by a veterinary practitioner intentionally or negligently, provided for by criminal law and consisting of a breach of their

professional duties, requirements of veterinary regulatory documents, which cause deterioration of veterinary, sanitary and epizootic welfare, or bodily injury or other health disorder, mutilation, death of an animal or cause significant damage to the state interests in the field of veterinary medicine and animal husbandry.

A crime differs from misconduct in veterinary activities by the degree of public danger. In this regard, misconduct in veterinary activities is a socially harmful, unlawful, culpable, punishable, intentional or negligent act of a special subject of misconduct – a veterinary professional – provided for by law, which consists of deviating from the requirements stipulated by regulatory documents, including veterinary ones, which results in violation of animal quarantine procedures, failure to comply with any other established veterinary rules provided for by the Law of Ukraine “On Veterinary Medicine” (1992), as well as failure to comply with decisions of local authorities on the prevention and control of contagious animal diseases.

The following are characteristic features of professional offences in the field of veterinary activity: 1) an unlawful act as an active form of behaviour of a veterinary professional, active deed or unlawful inaction as a passive form of behaviour (passive act); 2) acts of a special subject of a crime from the point of view of criminal or administrative law – a veterinary worker whose official or official duty is to provide veterinary care; 3) a socially dangerous (criminal) or socially harmful (administrative) act is a legally significant act that occurs under the control of the consciousness of a veterinary professional (volitional act) and is prohibited by law; 4) unlawful – means the mandatory provision of a socially dangerous act in the Special Part of the CC (2001) or a socially harmful act in the CAO (1984). Thus, only a veterinary

professional who has committed a socially dangerous or socially harmful act may be subject to criminal or administrative liability and punishment; 5) culpable act (committed intentionally or negligently) means a conscious, volitional act of a veterinary professional by choosing and carrying out an unlawful course of conduct among possible other options; 6) punishability of an act means that the sanction of the relevant article or paragraph of the article of the CC (2001) or CAO (1984) provides for punishment or other measures of a criminal or administrative law nature (based on the results of legal qualification) to be applied for the commission of a socially dangerous or socially harmful act; 7) committed intentionally (with direct or indirect intent) or negligently (through overconfidence or negligence); 8) provided for exclusively by criminal or administrative law; 9) the consequence of professional offences in the field of veterinary medicine is the deterioration of veterinary and epizootic welfare, injuries, mutilation or death of an animal, violation of the rules for conducting veterinary and sanitary measures following the Law of Ukraine “On Veterinary Medicine” (1992), other regulatory legal acts on the control of contagious animal diseases; causing significant damage to the state interests in the field of veterinary medicine and animal husbandry.

Crimes and misdemeanours in veterinary activity differ in the amount of damage caused, which is an evaluative concept. crimes in veterinary activity are socially dangerous and have severe consequences, while misdemeanours in veterinary activity entail socially harmful and less severe consequences. Based on the analysis of expert practice, it is possible to conclude that the main causes of professional misconduct by veterinary practitioners are bad faith (negligence), personal disorganisation and carelessness. However, the highest degree of responsibility of veterinary

professionals for professional offences is moral responsibility for the negative consequences of veterinary care.

Crimes committed by veterinary professionals in the course of their professional activities

The Criminal Code of Ukraine provides for the most severe legal liability for the commission of a crime by a veterinary professional in the course of professional activity – criminal liability, which is based on the obligation of the person who committed the criminal offence to suffer restrictions on rights. The criminal significance of professional offences by veterinary practitioners is determined by the fact that they cause or may cause a significant danger to the health and life of animals, the food security of Ukraine and other countries, as well as state interests.

A crime in professional veterinary activity is a violation of veterinary rules, as provided for in Article 251 of the CC of Ukraine. On the objective side, this offence is characterised by its material composition, which includes an act (action or inaction), negative consequences, and the relationship between them. Its external side is characterised by acts that are antithetical to Article 4 of the Law of Ukraine “On Veterinary Medicine”, in particular in the following: violation of the development, approval and application of veterinary and sanitary measures, which led to serious consequences; failure to eliminate or ensure veterinary and sanitary measures to reduce the risk of human infection with contagious diseases common to humans and animals; poor provision or failure to provide veterinary and sanitary measures to prevent the penetration of infectious agents into the territory of Ukraine from other countries; poor provision or failure to protect people and animals from contagious diseases,

which led to serious consequences; failure to ensure reliable veterinary and sanitary measures against exotic animal diseases, which led to serious consequences; failure to implement or insufficient implementation of veterinary and sanitary measures to eliminate animal disease outbreaks, especially to minimise the risk to humans; failure to monitor animal feed and water for their suitability for animal consumption and to prevent the transmission of animal diseases through them; violation of the established rules for the production, storage, transportation, sale and use of veterinary medicines and control over compliance with these rules; violation of the established requirements for the use of veterinary medicines; violation of the animal identification procedure; violation of state control requirements for the protection of animals, production and circulation of veterinary medicines, strains of microorganisms, pathological material, and by-products of animal origin; failure to perform or poor performance of veterinary and sanitary measures during the quarantine of animals, which led to serious consequences; the emergence and spread of an epizootic, as well as other serious consequences, depending on the specific circumstances of the crime; allowing animals with contagious diseases to be sold; allowing the sale of animal feed without veterinary documents certifying its quality and safety.

In the context of research on defects in veterinary practice, serious consequences are considered to include the illness of at least one person due to a violation of veterinary rules. Furthermore, it is worth noting that violations of veterinary regulations may be manifested in the following: failure to perform or improper performance of professional duties by a veterinary officer; engaging in illegal veterinary activities; and illegal conduct of experiments on vertebrates. However, no provision in the CC of Ukraine would provide

for criminal liability for such an act. In this regard, Article 251 “Violation of Veterinary Rules” should be supplemented with new parts of the following content:

- ✓ paragraph 2: “failure to perform or improper performance of professional duties by a veterinary officer as a result of negligence or dishonesty, if this led to the emergence and spread of epizootics or entailed any other serious consequences”;
- ✓ paragraph 3: “engaging in illegal veterinary activities, if this has led to the emergence and spread of epizootics or other serious consequences”;
- ✓ paragraph 4: “unlawful conduct of experiments on a vertebrate animal if it caused unjustified danger to life or health”.

When justifying the amendments to the criminal legislation of Ukraine, it should be noted that in the proposed paragraph 2 of Article 251 CC, for the semantic analysis of certain terms contained in this paragraph, it is worth referring to the Dictionary of the Ukrainian Language (1974) (hereinafter – the Dictionary). All terms in paragraph 2 are inextricably linked to the term “professional duty”. The Dictionary defines duty as follows: “something that must be unconditionally observed, that should be performed without fail following the requirements of society or based on one’s conscience; a certain amount of work, set of cases, limits of responsibility, etc., determined by the relevant rank, position, family status, etc.”.

Furthermore, the said dictionary explains that the term “non-fulfilment” should be understood as the failure to do something, and the term “improper” means “not as it should be”. Following the antinomy of paragraph 91 of Article 1 of the Draft Law of Ukraine “On Veterinary Medicine and Animal Welfare” (2020), an inadequate “level of animal health protection and related human health protection is a level of protection that is

considered insufficient when establishing veterinary and sanitary measures to protect the health and life of people and animals from adverse effects associated with animal diseases”. The term “negligent” is quite multidimensional. The Dictionary (1974) explains it as follows: “treating one’s duties indifferently, without due diligence, not caring, not concerned about someone or something; done, performed without effort, in a sloppy manner; treating someone with inattention, indifference; inattentive”. And “unscrupulous” is interpreted as “having no conscience, honour, not treating duties conscientiously, honestly, in good faith, expressing a lack of conscientiousness, honesty, good faith”.

As stated in paragraph 2 of the amendment to Article 251 of the CC of Ukraine, a breach of professional duties by a veterinary officer may result in an epizootic or other serious consequences. Thus, an “epizootic” should be understood as “a widespread explosive spread of a contagious animal disease that significantly exceeds the normal incidence of that disease in a particular area” (State Committee on Technical Regulation and Consumer Policy, 2010). Other grave consequences include human illness or death due to violations of veterinary regulations. Given the aforementioned, it is possible to conclude that veterinary care (activities) should be considered inadequate (poor quality) when at least one of the specified requirements for proper medical, diagnostic and other veterinary activities is not confirmed, and veterinary care (activities) was carried out promptly, in an insufficient amount, technically and technologically incorrectly; in violation of applicable regulatory and technical documents (instructions, guidelines, rules, etc.).

Therefore, the following definition of the term “non-performance or improper performance of professional duties by a veterinary professional” can be proposed: “an activity performed

by a veterinary professional within the scope of professional competence, provided that it is objectively possible to exercise professional competence in a proper manner, but performed incorrectly, insufficiently, untimely and superficially, in violation of the rules, regulations, guidelines or instructions available in veterinary medicine, provided for by law for the mandatory performance of actions in accordance with the position held by the employee, including organisational, diagnostic, therapeutic and tactical, preventive, rehabilitation, resuscitation”.

In justifying the proposed amendments (paragraph 3 “engaging in illegal veterinary activities”) to Article 251 of the CC of Ukraine, it should be noted that veterinary specialists may be doctors and veterinary assistants who have the appropriate veterinary education in the field of knowledge 21 “Veterinary Medicine”, speciality 211 “Veterinary Medicine”; meet the uniform qualification requirements set out in the educational standard of Ukraine. Veterinary activity should be understood as both a one-time and systematic provision of veterinary services. The professional rights and obligations of veterinary medicine specialists are stipulated by the job description developed following the legislation of Ukraine, in particular the Law of Ukraine “On Veterinary Medicine” (1992), as well as other by-laws and regulations. Private veterinary activity is possible with a licence for such activity, as well as appropriate material and technical support, by the Licensing Terms (Resolution of the Cabinet of Ministers of Ukraine No. 896..., 2015). Entities that do not meet these requirements are not allowed to carry out veterinary activities.

The severe consequences of engaging in illegal veterinary activities should be considered the occurrence of severe or moderate bodily injuries, mutilation, or death of an animal. to establish the

causal link between engaging in illegal veterinary activities and the negative consequences of such activities, a forensic veterinary examination is appointed. Scientists at the Kharkiv Scientific Forensic Veterinary School have developed guidelines and methods for conducting forensic veterinary examinations of animal corpses and live animals to determine the severity of injuries and mutilations.

The subject of illegal veterinary activity is both veterinary specialists and persons without veterinary education. Signs of illegal veterinary activity include the following: a person does not have a veterinary education and a diploma confirming it; a legal entity or individual entrepreneur does not have a licence to conduct business in veterinary practice. In justifying the proposed amendments to Article 251 of the CC of Ukraine (paragraph 4 “illegal conduct of experiments on vertebrate animals”), it should be noted that the law establishes the procedure for the use and outlines the requirements for keeping animals used in scientific experiments, testing, education, production of biological products, etc. based on the principle of humanity and protection from cruel treatment, which is consistent with European requirements, as this problem concerns many moral aspects of society that need to be addressed. Such norms are aimed at preventing unnecessary suffering and torment, as well as preventing harm to animals ensuring their safe and natural existence, as well as protecting human morality (Zapara *et al.*, 2019).

Illegal experimentation on a vertebrate animal, if it created an unjustified danger to its life or health, resulting in injury, or if it caused injury or death, is grounds for criminal liability under Article 299 of the Criminal Code of Ukraine (cruelty to animals). Such an act is observed in case of violation of the legislation of Ukraine on the treatment of animals, in particular, Law of Ukraine “On the Protection of Animals from Cruelty” (2006); Guidelines

of the Ministry of Health of Ukraine “Medicines. Preclinical Safety Studies as The Basis for Clinical Trials with Human Participation and Registration of Medicines” (2014); Procedure for Carrying Out Trials and Experiments on Animals by Scientific Institutions (Ministry of Education and Science, Youth and Sports of Ukraine..., 2012) others.

To conduct experiments using vertebrate animals, as well as to be able to care for experimental animals, persons must have appropriate medical, veterinary, zootechnical, biological or pharmaceutical education and training, according to paragraph 4 of Article 26 of the Law of Ukraine “On the Protection of Animals from Cruelty” (2006). Thus, applying the antinomy to Art. 26 of the Law, it is possible to outline the signs of unlawful experiments on vertebrates, including the following:

- ✓ conducting scientific research and testing on animals, if there is an alternative;
- ✓ participation of persons without higher medical, veterinary, zootechnical, biological or pharmaceutical education in work with experimental animals;
- ✓ carrying out research procedures on experimental animals, causing them pain without sufficient anaesthesia;
- ✓ use of the experimental animal in subsequent experiments until their health is normalised;
- ✓ devocalisation of animals;
- ✓ dementia on animals for certain veterinary and biological procedures during the educational process, if alternative methods of teaching involving inanimate objects can be used;
- ✓ conducting experimental research on live animals involving surgery or any other kind of injury, with the participation or in the presence of children;
- ✓ failure to provide expert animals with qualified care;
- ✓ not killing a non-viable experimental animal before it suffers, etc.

Specialised veterinary knowledge in the form of forensic veterinary examination is used as a means of proof during the pre-trial investigation of illegal experiments on vertebrates. In this context, I. Yatsenko (2022) theoretically substantiated and outlined the pragmatic significance of the stages of expert examination of a live animal and an animal corpse; formulated the questions posed in a court decision or an investigator’s decision to appoint a forensic veterinary examination; developed a theoretical and epistemological construction of the phenomenon of the severity of harm caused to the health of an animal. Thus, it is possible to note that violation of veterinary rules poses a public danger (creates a threat of anthrozo-zoonotic diseases – diseases common to humans and animals), causes the emergence and rapid spread of contagious diseases, which are accompanied by mass deaths of animals, and causes economic losses to livestock facilities, and sometimes threatens the country’s food security; may hurt international trade in animals and food and non-food products of animal origin.

Official crimes of veterinary professionals in the course of their professional activities constitute a separate large group in the structure of defects in veterinary activities, which, when extrapolated to the field of veterinary activities and animal health, form a group of official veterinary crimes and misdemeanours. They relate exclusively to officials in the field of veterinary medicine and have authority in the field of veterinary medicine and institutions of the competent authority, which is currently the State Service of Ukraine on Food Safety and Consumer Protection and its territorial bodies. The official crimes of veterinary medicine employees include criminal offences under the Special Part of the CC of Ukraine (2001), in particular, abuse of power or official position (Art. 364); abuse of authority by

an official of a legal entity of private law regardless of its legal form (Art. 364¹); abuse of power or official position (Art. 364); forgery (Art. 366); declaration of false information (Art. 366²); official negligence (Art. 367); abuse of influence (Art. 369²).

However, the above-mentioned official crimes of veterinary professionals will be defects in veterinary activities if they result in the emergence and spread of epizootics or other serious consequences from abuse of office by a person in the performance of professional duties related to organisational, administrative, or economic functions or the performance of such functions by special authority. All of the above crimes have a special subject, which is a veterinary professional, but they all have a common generic object – a negative impact on the life and health of animals (in the case of zoonoses) or the life and health of animals and humans (in the case of anthro-po-zoonoses).

Thus, during the performance of professional veterinary activities, an intentional or negligent act is committed that is prohibited by criminal law under penalty of law. However, the relevant law, the Law of Ukraine “On Veterinary Medicine” (1992), does not contain a provision on the liability of veterinary professionals. Given this, it would be advisable to amend Article 94 of the said law as follows: “2. Veterinary practitioners guilty of violating legislation in the areas of animal health and welfare, veterinary practice, production, circulation, and use of veterinary drugs, as well as circulation of animal by-products, shall bear civil, administrative, or criminal liability following the law”.

Misconduct and civil law torts of veterinary practitioners in the course of their professional activities

Violation of veterinary rules that did not cause the spread of epizootic or other serious consequences

may be qualified as an administrative offence. Veterinary offences include violations of animal quarantine rules and other veterinary and sanitary requirements (Article 107 of the CAO). In addition, it is worth noting that violation of veterinary rules may be manifested by non-performance or improper performance of professional duties by veterinary officers or as a result of engaging in illegal veterinary activities or illegal issuance of prescriptions. However, there are no provisions in the CAO that would provide for administrative liability for such acts. In this regard, it makes sense to supplement Article 107 CAO “violation of rules on animal quarantine and other veterinary and sanitary requirements” with new parts as follows: paragraph 2 “non-performance or improper performance of professional duties by a veterinary officer as a result of negligent or dishonest attitude to them, if this caused negative consequences for the animal/animals”; and paragraph 3 “illegal issuance of a veterinary prescription”.

It is worth focusing on the proposed amendments to Article 107 of the CAO regarding the illegal issuance of a veterinary prescription. A veterinary prescription is “a document of the prescribed form issued by a licensed veterinarian, a veterinarian of a licensed veterinary institution or, in cases determined by law, another veterinary specialist, based on which a veterinary medicine or a medicine intended for the treatment of animals is manufactured and/or sold” (Order of the Ministry of Agrarian Policy and Food of Ukraine “On Approval of the Form and Rules for Issuing Veterinary Prescriptions”, 2022).

Veterinary prescriptions are issued in paper and/or electronic form. Signs of illegal and improper issuance of a prescription for the purchase of veterinary medicinal products include the following: violation of the content and form of a

veterinary prescription; issuing a prescription for veterinary drugs that are not approved for use in the treatment and prevention of animal diseases; issuing a veterinary prescription by a person who was not entitled to do so; issuing a veterinary prescription without a clinical diagnosis of animals; issuing a veterinary prescription more than three times for a particular animal or group of animals, unless they have been re-examined clinically; issuance of a veterinary prescription for more than one name of poisonous, potent, hypnotic veterinary medicinal products, in other cases – more than three names.

The official misconduct of veterinary medicine employees includes administrative offences that infringe on the established management procedure provided for in the Special Part of the CUO (1984), in particular, evasion of the lawful requirements of officials of the central executive body implementing state policy in the field of state control over compliance with consumer protection legislation (Article 188⁻²); failure to comply with the lawful requirements of the central executive body implementing state policy in the field of labour protection (Article 188⁻⁴); failure to comply with resolutions, orders, instructions, conclusions, as well as other legal requirements of officials of the state sanitary and epidemiological service (188⁻¹¹); failure to comply with legal requirements of officials of the state sanitary and epidemiological service and the state veterinary medicine service (Art. 188⁻²²); violation of requirements for the prevention and settlement of conflicts of interest (Art. 172⁷).

It should be emphasised that the above-mentioned misconduct of veterinary professionals will be defects in veterinary activities in the event of negative consequences resulting from abuse of office by a person in the performance of professional duties related to organisational,

administrative, or economic functions, or the performance of such functions by special authority.

Many lawsuits filed by animal owners or animal rights activists are related to compensation for material and moral damages suffered as a result of the death of an animal that has received veterinary care, as pointed out by J. Wallis *et al.* (2019); and M.L. Daly (2023). Based on personal forensic practice, the civil liability of veterinary practitioners for professional offences caused by violation of property rights in the field of veterinary medicine and animal welfare involves compensation for damages, as per the provisions of Article 22 of the Civil Code of Ukraine (2003), is 22%.

If the harmful consequences for the animal were not caused by the unlawful professional actions of a veterinary specialist, but for other reasons (e.g., individual characteristics of the organism, neglected treatment, atypical or rapid development of diseases, etc. This problem can only be resolved by employing forensic veterinary examination. Thus, the doctrine of the causal relationship between the unlawful professional acts of a veterinary professional and the harm caused to a sick animal during its treatment or veterinary and sanitary measures is central to the determination of guilt and is a prerequisite for legal liability for causing such harm and cannot be accidental. The civil liability of a veterinary professional is incurred for damage caused to the health of an animal and arises only when such damage was caused by the fault (usually through negligence) of the veterinary professional. In this regard, the burden of proof lies with the parties in each case. If the veterinary professional against whom the claim is filed proves that the negative consequences of the provision of veterinary care were not service fault, no obligation to compensate for both material and moral damage will be required.

Analysing and summarising the results

The group of defects in veterinary activities, which are offences by their legal nature (crimes, misdemeanours, civil torts), is provided for by criminal, administrative and civil legislation. However, this legislation is not perfect. There are also no publications on this topic in Ukrainian scientific sources. However, the problems of the occurrence and prevention of defects in veterinary activities are actively discussed in foreign publications (Gartrell & White, 2021; Mosedale & Blackie, 2021).

The problem of veterinary care defects and defects in veterinary activities is not sufficiently covered by Ukrainian scientists. At the same time, many international scholars – theorists and practitioners – have devoted their research to this issue. In particular, K. Blackie (2022), M. Turner (2022), E.H. Hofmeister and L. Love (2023) focus on improving the culture of patient safety and preventing human errors in veterinary hospitals through systematic analysis of clinical cases; B. Gartrell and B. White (2021) emphasise the need to improve the quality of veterinary medicine and prevent errors in veterinary care; C.O. Cummings *et al.* (2022) argue the deontological problems of veterinary care defects and identify risk factors associated with working in specialised veterinary hospitals, including the burnout syndrome of veterinary medicine specialists, and emphasise the need to improve communication within the team to reduce the risk of medical errors; G.M. Hayes *et al.* (2020) presented a multidisciplinary study of animal care errors, staffing levels and workload in small animal intensive care units.

In addition, the problem of defects in the provision of medical care in various areas of this industry is actively discussed in foreign scientific publications. T. Miyagami *et al.* (2023) and V. Grenon *et al.* (2023) analyse diagnostic medical errors; F. Steffens *et al.* (2023) found out the advantages

of the commission examination in identifying professional errors of doctors; D. Ostrovsky *et al.* (2022) summarise the views of emergency clinicians on medical errors that cause patient harm through negligence or lead to litigation; A. Ünal and Ş.S. Intepeler (2022) conducted a bibliometric analysis and systematised global sources on medical errors; K.R. Amlaev *et al.* (2022) studied the deontological aspects of defects in the provision of medical care. Many foreign scientists devoted their studies to the issues of medical errors in various areas of medical activity, in particular in anaesthetic practice (Oliveira Junior *et al.*, 2023), orthopaedic surgery (Yamamoto *et al.*, 2023), dermatology (Lehmann *et al.*, 2022), gastroenterology (Azizian *et al.*, 2021), obstetrics and gynaecology (Klemann *et al.*, 2023) etc.

The foregoing indicates that the research results obtained in this paper in many areas of defects in veterinary practice are consistent with similar studies in the field of humane and veterinary medicine conducted by foreign scientists. However, despite the active publication activity on defects in veterinary activities, the issue of using these scientific achievements to solve the problems of forensic veterinary examination and expert support of legal proceedings has not been addressed by either domestic or foreign researchers. This, in turn, further substantiates the relevance of our results and the outlined problems for future research and improvement of domestic legislation on veterinary and sanitary support of animal health and life.

While studying the phenomenon of using specialised veterinary knowledge in the form of forensic veterinary examination as a scientifically sound means of proving offences relating to defects in veterinary practice, the author identified problematic issues which should be emphasised by scientists and practitioners, in particular: no

methodology for pre-trial investigation of professional offences in the field of veterinary medicine has been developed; no algorithms have been developed for forensic veterinary examination in case of defects in the provision of veterinary care and veterinary activities; no methodology has been developed for conducting forensic veterinary examination in criminal and administrative proceedings initiated in connection with defects in veterinary activities; the questions that law enforcement agencies would consider in a procedural document on the appointment of a forensic veterinary examination regarding defects in the provision of veterinary care and veterinary activities are not formulated.

Given the above, there is a need to improve Article 251 of the CC of Ukraine (violation of veterinary rules), Article 299 of the Criminal Code of Ukraine (cruelty to animals) and Article 107 of the CUO (violation of animal quarantine rules and other veterinary and sanitary requirements), as well as veterinary legislation by supplementing them with new parts. Timely and qualified detection of veterinary practice defects, as well as their prevention, is not possible without the involvement of specialised veterinary knowledge, in particular, forensic veterinary examination as a means of proof in criminal, administrative and civil proceedings. The forensic issue in this regard is the development of a methodology for conducting forensic veterinary research in connection with defects in veterinary activities.

Leaving further theoretical discussion for future research, it is appropriate and important from the pragmatic point of view to focus on outlining ways to solve this problem. In particular, it is necessary to: introduce the conceptual and categorical apparatus of the construction of the phenomenon of defects in veterinary activity and consolidate the definitions of the concepts in the legislation: “crime in veterinary activity”, “fault

in veterinary activity”, “non-performance or improper performance of professional duties by a veterinary practitioner”, “engaging in illegal veterinary activity”, “illegal conduct of experiments on vertebrates”, “illegal issuance of a veterinary prescription”, and clearly define the criteria for their distinction; supplement Article 251 of the CC of Ukraine (2001) “Violation of Veterinary Rules” with new parts, in particular; “2. Failure to perform or improper performance of professional duties by a veterinary worker due to negligence or dishonesty if this led to the emergence and spread of epizootics or other serious consequences”; “3. Engaging in illegal veterinary activities without a special permit, carried out by a person who does not have a proper veterinary education if this led to the emergence and spread of epizootics or other serious consequences”; 4. “Unlawful conduct of experiments on vertebrates if it caused unjustified danger to the life or health of the vertebrate”; supplement Article 299 of the CC of Ukraine (2001) with paragraph 5. “Unlawful conduct of veterinary biological or other experiments on animals, if it caused unjustified danger to their life or health”; supplement Article 107 CUO’s “violation of rules on animal quarantine and other veterinary and sanitary requirements” with new parts, in particular, 2. “Failure to perform or improper performance of professional duties by a veterinary officer due to negligence or dishonesty, if this caused negative consequences for the animal(s)”; 3. “Illegal issuance of a prescription for the purchase of veterinary medicines”; supplement Article 1 of the Law of Ukraine “On State Control over Compliance with the Legislation on Food Products, Feed, By-Products of Animal Origin, Animal Health and Welfare” (2017) with definitions of the following concepts: “crime in veterinary activity” and “guilt in veterinary activity”, formulating them as per the author’s wording;

include the author's definitions of the conceptual and categorical apparatus of defects in veterinary activity in the methodology of forensic veterinary examination to determine defects in veterinary activity, which will ensure the correctness and validity of the qualification of professional offences of veterinary medicine specialists; develop standards for ensuring veterinary activities and animal treatment protocols that would allow forensic veterinarians to refer to them as reference standards (samples) when conducting forensic examinations to determine defects in veterinary activities and provide expert assessment of the actions of veterinary professionals.

Conclusions

The study of defects in veterinary activity produced the first formulation of the concept of "crime in veterinary activity", the definition of which is a socially dangerous, unlawful, guilty, punishable act committed by a veterinary professional intentionally or negligently, provided for by criminal law and consisting of a breach of professional duties, requirements of veterinary regulations, which result in deterioration of veterinary, sanitary and epizootic welfare, or bodily injury or other health disorder, mutilation, death of an animal or cause significant damage to the state interests in the field of veterinary medicine and animal husbandry.

Misconduct in veterinary activity differs from a crime in veterinary activity in the degree of public danger. In this regard, misconduct in veterinary activities is a socially harmful, unlawful, culpable, punishable, intentional, or negligent act of a special subject of misconduct – a veterinary professional – provided for by law, which consists of deviating from the requirements outlined in regulatory documents, including veterinary documents. The system of signs of professional offences in the field of veterinary activity is

outlined, in particular, such as an unlawful act as an active form of behaviour of a veterinary worker, active conduct or unlawful inaction as a passive behaviour (passive act); acts of a special subject of crime from the standpoint of criminal or administrative law – a veterinary worker whose official or official duty is to provide veterinary care or carry out veterinary and sanitary measures; a socially dangerous (criminal) or socially harmful (administrative) act prohibited by law; an unlawful, culpable, punishable act committed intentionally (with or without direct intent) or through negligence (through self-confidence or negligence); provided for by law; deterioration of veterinary, sanitary and epizootic welfare, bodily injury or other health disorder, mutilation or death of an animal, violation of animal quarantine rules, other veterinary and sanitary requirements resulting from professional offences in the field of veterinary medicine.

The author's definitions of the concepts are proposed: "crime in veterinary activity", "fault in veterinary activity", "non-performance or improper performance of professional duties by a veterinary practitioner", "engaging in illegal veterinary activity", "illegal issuance of a veterinary prescription", "illegal conduct of veterinary biological or other experiments on animals", and their signs are highlighted. It is proposed to supplement criminal and administrative legislation in terms of defects in veterinary activity. It is proposed to amend Article 94 of the relevant Law of Ukraine "On Veterinary Medicine" on the liability of veterinary professionals. The epistemological and praxeological aspects of the phenomenon of a defect in veterinary activity can predictably influence the appointment and conduct of forensic veterinary research, the provision of a well-founded categorical opinion of a forensic veterinary expert, as well as law enforcement agencies and the court to conduct a qualitative legal consideration

and qualify the negative results of veterinary activity. Prospects for research on the chosen topic are to develop a methodology for conducting forensic veterinary research to determine defects in veterinary activities.

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Conflict of Interest

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Дефекти ветеринарної діяльності як предмет судово-ветеринарного дослідження

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Анотація

Дефекти ветеринарної діяльності часто стають причиною виникнення й розповсюдження епізоотій, які несуть загрозу для життя тварин і людей, заподіюють економічні збитки тваринницьким потужностям. Для доведення винуватості працівника ветеринарної медицини у виникненні дефектів професійної діяльності суттєве значення має судово-ветеринарна експертиза. Мета роботи – сформулювати та схарактеризувати поняттєво-категорійний апарат феномену дефектів ветеринарної діяльності, виокремити ознаки цих дефектів в аспекті проведення судово-ветеринарної експертизи, а також запропонувати доповнення до кримінальної, адміністративної й ветеринарної національної законодавчої бази. Методологічна основа дослідження – системний підхід в якому використані загально- та спеціально наукові методи: аналіз та синтез, індукція й дедукція, аналогія; логіко-семантичний та системно-структурний методи; метод моделювання й порівняльно-правовий метод. Аргументовано, що доречно виокремлювати дві групи правопорушень, пов'язаних із ветеринарною діяльністю, серед яких кримінальні (проступки та злочини), адміністративні провини та цивільно-правові делікти. Запропоновано авторські дефініції: «злочин у ветеринарній діяльності», «провина у ветеринарній діяльності», «невиконання чи неналежне виконання професійних обов'язків працівником ветеринарної медицини», «заняття незаконною ветеринарною діяльністю», «незаконна видача ветеринарного рецепта», «незаконне проведення ветеринарно-біологічних або інших дослідів над тваринами» та окреслено їхні ознаки. Окреслено ознаки об'єктивної сторони кримінальних, адміністративних та цивільно-правових правопорушень у сфері ветеринарної медицини. Виявлено проблемні аспекти дефектів ветеринарної діяльності, на які необхідно акцентувати увагу науковцям і фахівцям-практикам, а також запропоновано шляхи їх вирішення. Проведене дослідження стало базою для розробки методики судово-ветеринарного дослідження дефектів ветеринарної діяльності в кримінальних і адміністративних провадженнях та цивільних справах

Ключові слова: судова ветеринарна медицина; працівники ветеринарної медицини; невиконання і неналежне виконання професійних обов'язків; підекспертні тварини; професійне правопорушення; злочин; провини; цивільно-правовий делікт