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SAFE COMMUNITIES ALGARVE/GNR-SEPNA

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Seminar

Animal Cruelty Prevention:

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The Judicial practice in the perspective of the Public Prosecution:

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First of all, I would like to present my best wishes to the following individuals:

- Mr. British Vice Consul to Portugal, Clive Jewell;
- Mr. President of the Municipal Council of Loulé, Dr. Vitor Manuel Gonçalves Aleixo;
- Mr. Lieutenant - Colonel José Alberto Palhau, 2nd Commander of the Territorial Command of Faro GNR;
- Mr. President of the Safe Communities Algarve, David Thomas;
- Guest speakers, Lieutenant Pedro Fernandes, Mrs. Ana Silva, veterinarian Doctor, Mrs. Laura McGeoch, President of SOS Algarve Animals, Almancil and Mrs. Karin Holmstrom Forster, Dog Behaviour expert, and Bev Gibbons – Pinetrees Riding Centre.

Dear Ladies and Gentlemen, it was with great honor that I had accepted the kind invitation to report the experience, as a Public Prosecutor, regarding the judicial practice in the prevention and investigation of crimes over pet's abuse.

First of all, I would like to refer the issue of what is the public prosecutor, which its constitutional role in Portugal and its articulation with the criminal police bodies.

The Portuguese Public Prosecutor is an independent judiciary magistrate, which is responsible for instituting criminal proceedings, the same is to say that it is the holder of the criminal prosecution.

Crime news is always transmitted to the Public Prosecutor, who is responsible for the direction of the investigation, assisted by the Criminal Police, being only reserved to judge such acts which are related to the direct compliance with the guarantees and fundamental rights of citizens.

The specific functions of the Public Prosecution: receiving complaints, the direction of the investigation; the deduction of the final decision, which can be the public accusation against the defendant, if the investigation conclude that there was sufficient evidence of the crime and the identity of its author, or if there is no sufficient evidence, should the magistrate order its filing.

The Public Prosecutor may delegate to the criminal police the burden to carry for during a certain period of time, the investigation diligences, in order to discover the existence of a crime, find out the perpetrators, establishing their criminal liability, as well as collect sufficient evidence to support a possible prosecution and later to a possible conviction in Court of Law.

In fact, the Criminal Police, in most cases, are the ones who are in better human, technical and strategic position to conduct relevant research endeavors in order to bring the investigation to a successful conclusion.

Therefore, there is a general delegation to the Criminal Police for carrying out the criminal investigation, to the extent that their technical and tactical autonomy is a real guarantee that their actions are best suited to the eventual success of the investigation.

It follows naturally that Public Prosecutor, as the owner of the criminal proceedings, except in certain situations where this is justified, follows this general delegation, but always having the final word.

Indeed, having the Criminal Police completed the investigation and submitted the proceeding to the superior survey of the Public Prosecutor in terms to render its final decision, if, for some reason, the respective Magistrate understand, in this case, there are more relevant

acts of investigation to be done, he can determine the performance of those, which are essential steps to establish the truth of the event.

In order to fulfill the constitutional objective of instituting criminal proceedings, according to the principle of legality and defending democratic legality, the Public Prosecution, as it turned out, is assisted by the Criminal Police Bodies, which in Portugal, are: The Judiciary Police (PJ) the Public Security Police (PSP), the National Republican Guard (GNR), the Foreigners and Borders Service (SEF), Food Safety and Economic Authority (ASAE) and Maritime Police (PM).

Given the nature and criminal frame of criminal offenses typified in the new law that criminalizes the abuse and neglect of pets in rural areas, the police that is better positioned and with more field experience to assist the Public Prosecution in the investigation on this type of criminality is the GNR / SEPNA (Protection Service of Nature and Environment). Moreover, among city, the most appropriate police will be PSP.

Despite the Criminal Police have not only the crime investigation function already accomplished, but also have a preventive function, awareness campaigns for the citizen, the fact is that the role of the Public Prosecutor, acting on a slope where the criminal event had already occurred and, so it is in this context, that judicial practice experience in the perspective of the Public Prosecution is presented in this case.

In order to successfully obtain results in the criminal proceeding, there is a need to make a small, synthetic legal framework of the new law that had criminalized the crime of mistreatment of pets, which then I will talk.

Before the entry into force of Law 69/2014 of 29 August, which added Articles 387, 389 and 388 to the Portuguese Penal Code, criminalizing mistreatment of pets and its abandonment, they had under the light of Civil and Criminal Portuguese laws, the status of thing. In fact, the pet was considered a thing that could be owned, such a car, so if the owner himself mistreated or destroyed it, no crime was practicing. If someone other than the pet owner, mistreated or destroyed it, could then incur the commission of a crime of damage, p. and p. by artº 212 of the Penal Code, if the owner of the thing / animal had previously done a criminal complaint, given the semi-public nature of the crime of damage. If there weren't such a complaint, or the pet owner gave up the criminal proceeding, no criminal punishment would the suspect suffer.

Thus, there was an urgent need to criminalize such behavior, even if perpetrated by the very owner of mistreated or abandoned pet, giving the Portuguese law to such animals, a more evolved status than as a simple thing.

The new Portuguese Penal Code is already a step forward to achieve a proper status to animals, which not being persons with rights and duties, they are not inert things incapable of feeling pain or suffering.

On the other hand, the crimes against pets have got public nature, so that the Public Prosecutor can validly initiate a criminal investigation, although there is no formal criminal complaint, as long as he had knowledge of the crime news on its own initiative, or through the reporting by any citizen who has witnessed facts that can be one of the crimes previewed by the above cited articles added to the Penal Code, through the complaint by the victim or knowledge on the part of police officers who are required to report to the Public Prosecutor.

Please note that the new law only criminalized the mistreatment and abandonment of pets, which means that the if the pet owner kills his pet without mistreated it first, no crime of mistreatment is committed, or any other, since as we have seen, in this case, the pet returns to its status of mere thing. The suspect might, possibly, incur in some civil offense without criminal relevancy, but whose classification has nothing to do with the protection of the animal's life, but of public health.

Only if a person other than the pet owner and there is a criminal complaint, it is that this suspect can incur the practice of the crime of damage. But as it turned out, the crime of damage does not protect the life and / or physical integrity of the animal, but only the patrimonial integrity of the owner of the animal seen by the law as a thing.

To understand better what the new law had criminalized, there's important to know what a pet is, since only this category of animals is protected by criminal law.

The new above referred law 69/2014 which conducted the thirty-third amendment to the actual Penal Code, added the Articles 387 (which typifies the crime of mistreatment of pet), 388 (which typifies the crime of abandonment of the pets), provides us with the concept of companion animal for the purposes of the law, through Article 389 which was also added to that code.

Now the Article 389 entitled "pet concept", states:

"Article 389

Pet concept

1 - For the purposes of this title, it is meant

By pet any animal owned or

Intended to be held by human beings, including
in his home, for his entertainment and company.

2 - The preceding paragraph shall not apply to

facts related to the use of animals for

purpose of farming, livestock and agro-industrial,

as well as does not apply to offenses related to

use of animals for commercial purposes, spectacle

or other legally intended purpose. "

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It follows that the crimes described in Articles 387 and 388 of the current Penal Code can only be committed against pets, excluding therefore the animals used for the purpose of farming, livestock and agro-industrial, as well as those that are intended for trade show purposes or other legal purposes provided by law.

Indeed, cows, chickens, turkeys, pigs and other animals that are bred on farms for human consumption, are, under the current Penal Code, incapable of being mistreated or abandoned.

The same is true to horses or donkeys and animals for farming practices, transportation of people and cargo, sporting activities, which are not in fact aimed to be held by the human being in his home for his mere entertainment or company. Even though these animals are "abused", these facts are not subject to criminal protection provided for in the current Penal Code. These facts may, possibly, be investigated in terms of counter-order offenses and that being out of the study under this theme that was undertaken to address, that's why will not be discussed and / or analyzed.

Animals intended for use in performances such as in circuses or in bullfights, are also, under the law, outside the penalty tutelage, so

any mistreatment or abandonment of these animals is also treated in terms of Tort and / or administrative offense.

To point out that even dogs or cats, which traditionally in Portuguese society, are pets, which are intended solely for practices of hunting, are also outside the scope of protection of the new law.

Only the pets are worth of the criminal protection of the current penal code. So knowing that category of animals are outside the penalty tutelage, there is necessary to examine what is meant by pet.

As it turned out, the Article 389 of the current penal code defines "pet", is one that is held or intended to be held by the human being, particularly in his home, for his entertainment and company.

That said, the animal held or intended to be held by humans for their entertainment or company, is a companion animal, which includes, inter alia, cats, dogs, hamsters, fish, turtles / tortoises, and other commonly sold in pet stores.

Anyone wishing to purchase an animal to entertain him and keep his company, has the inherent obligation to treat it with dignity, since it is not a toy, but a living being that has the right to life and to be treated well. That is to say that the owner / keeper or pet detainer has an obligation to the feed it, to supervise their health, to protect it, to make it happy, interacting with it, through appropriate and proportionate jokes.

The interaction of man with the pet can have positive effects on growth / physical and moral development of that. Therefore, and given that the pet is not an object or a mere thing likely to be damaged, such as civil law had classified it prior to criminalization under examination, it was necessary to protect criminal facts which would injure the physical integrity of the animal.

The issue of property or animal destined to be detained for entertainment or company purposes, intends to cover not only cases in which people have at their home, pets, such as those that are displayed for sale in specialized stores, in kennels / catteries and / associations of protection of animal rights that promote actions for future adoption.

This means that either the animals already held at the residence of its holder / owner or possessor, whether they are in stores, associations or kennels / cattery, although it does not have owner, are considered by law as pets, capable of being mistreated or abandoned and their agents be properly and adequately punished.

The crime of simple mistreatment, provided for and punished by Article 387 paragraph 1 of the current Criminal Code provides:

"Article 387

Mistreatment of pets

1 - Any person who, without reasonable cause, inflict pain, suffering or any other physical abuse to a companion animal is punishable with imprisonment up to a year or a fine of up to 120 days. "

So that the agent can practice this crime it is necessary to be present the following elements:

- a) Pain, suffering or any other physical abuse to a pet.
- b) There is no legitimate reason to cause the mistreatment of the pet.

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Firstly it matters to question "who" can commit the crime of mistreatment? The crime of the agent must necessarily be the owner, holder or possessor of the animal?

The law states that "who" cause pain or suffering to a pet, means that anyone who knows that animal is owned for entertainment or company or is destined for this purpose, the mistreating suspect incurs the crime, regardless if he is the owner, possessor or detainer, because the law don't distinguish the difference.

What the law requires is that the suspect knows it's a pet.

If, for example, the owner of a cat, and treated with a leash, let him leave the house every day to go sightseeing and that after the end of the day it returns, and someone observes this daily habit, he is just to know that the cat is a pet. If one of the times, as usual the cat goes to the street and that person, who is not the owner, possessor or detainer of the animal, approaches the cat and gives it kicks, he is to be incurred for the crime of mistreatment of the pet.

The fact that the animal is wandering in the street alone does not detract from the pet status, to the extent that in our society there is a

habit of the owners leaving their pets to wade freely down the street and if any person mistreat it he can incur the commission of the crime.

On the other hand, it points out that the way the law is worded makes the interpreter understand that only physical abuse is worth of criminal protection, getting away with any psychological maltreatment to the pet.

So if someone screaming for a cat, causing him fear or unease, the suspect is not inflicting any physical pain, it is not a legally-relevant action. This, in our opinion, is a dubious choice of the legislator, since he could go further by providing for criminal liability of facts which were causing psychological harm to the pet. We think that in the future, the criminal law should evolve to this extension of the protection of “moral” integrity of the pet.

However, the law speaks of pain and suffering, so it is possible to integrate an action that although is not a physical mistreatment, it can physically reveal a physical harm; thus taking the same example of the action to shout to the animal, imagine that the agent screams into the eardrums of a cat or a dog in such a way that causes a disturbance / damage this organ, objectively there was no physical aggression, but this offensive act has caused physical damage to the animal. We all know that animals such as dogs and cats have a hearing finer than the human ear, so the fact that screaming directly into the animal's eardrums, results in the worsening of the damage that much larger body than would occur if He had been directed to a human ear.

Therefore, such facts can cause physical pain and suffering to the animal, which could be integrated into the crime typified in Article 387 paragraph 1 of the current Criminal Code.

The investigation of a case like this should collect sufficient evidence not only that the agent will have screamed directly into the eardrums of the pet, such as the physical consequences caused to the animal. The latter are usually proof of medical-veterinary examination to the animal directly requested by the prosecution or by the Criminal Police in which it was delegated authority to investigate the facts that integrate the crime of mistreatment of the pet.

Other physical abuse referred to in the law allow encompass any type of physical aggression to pets, so that is no impunity for not being sufficiently typified and identified in criminal law.

With regard to legislative requirement there is no legitimate reason in the mistreatment of animals, it is necessary to analyze what is meant by legitimate reason.

Indeed, one wonders when there is "reasonable cause" to cause pain, suffering or other physical abuse to a pet?

But if the "legitimate reason" preclude the wrongfulness of the conduct of the agent and this is not legally-punishable, it is necessary to densify the same concept, in particular where it is found.

Let us densify the concept in a negative way; the same is to say when there is "reasonable cause". Thus, any conduct intended to cause pain, suffering or other mistreatment of the pet, for the pleasure of doing so, necessarily exclude the "reasonable cause." That is to say that such conduct is unlawful, typical, culpable and legally-punishable.

By a process of elimination, a behavior that matters pain or suffering to an animal and it is not for the pleasure of doing so, you can integrate the concept of "legitimate reason". We are thinking in clinical euthanasia of a pet "condemned to death" due to a serious and incurable disease that makes him suffer. Indeed, an animal that is suffering terribly because of a severe and incurable disease, the fact of taking the animal to a veterinary clinic to give it a merciful death to end his suffering as well as the act of administer him the substances that give him such a death, it implies that cause the animal some degree of pain and suffering.

However, there is a legitimate reason, since it is intended that the animal does not suffer from a degrading course of the disease.

Also we should be talking about intrusive clinical operations that may be done on the animal to cure certain diseases. These intrusive operations cause a greater or lesser degree of pain and suffering in the animal, even though attenuated by the given anesthesia but are legitimate, because they're not intended to cause abuse to the animal; intended rather to eradicate an evil that plagues the animal's body, so that they can return to their health and well-being.

All other cases where the intention of the agent is not to terminate an atrocious animal suffering caused by serious and incurable illness or restore health through medical and veterinary intrusive operations, are illegitimate and, therefore, criminally punishable.

However, the criminal investigation should gather evidence to find out if some fact practiced by the suspect, whether is a "legitimate reason" or not.

It should be noted that the law does not provide for the practice of this crime of mistreatment in the form of negligence, that is to say the agent to be punished must have wanted the obtained result, or at least have predicted that necessarily such a result would be produced with abusive conduct that was to be adopted.

If there was negligence, that is simply not punished because they do not legally provided.

It turns out, however, if the abusive attitude, the agent achieving the result that he had not wanted, death or withdrawal of an important organ of the animal, which seriously threaten their health / mobility, the penalty to be applied to the agent is more serious, since incurs the crime of mistreatment in aggravated form (cfr. Article 387 paragraph 2 of the Penal Code). Here, the agent did not wanted the worst result, which actually came to pass, but settled for this possibility and did not refrain from continuing to mistreat the animal and, therefore, acted in the same intentionally.

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After analyzing the legal framework of the crime of mistreatment of pets, we will then address the practical issues linked to the precautionary police measures in order to safeguard evidence, recovery and seizure of mistreated pets, the destiny to be given to them after being captured by the Police, dealing with issues of *flagrant offense* in which can be done by any citizen, personal and house searches, and finally, some difficulties faced by the police in investigating this type of crime.

The Police, who have heard the news of a crime by itself or upon termination knowledge, should transmit it to the prosecutor in the shortest possible period of time not exceeding 10 days.

However, during this period, the Police can practice the precautionary acts necessary and urgent for the investigation, in order to secure and preserve the evidence – which are called precautionary police measures.

Thus, under the provisions of article 249 paragraph 2 of the Penal Procedure Code, the Police upon arrival at the crime scene can examine the crime traces that have been left there, being able to preserve the

purpose of completeness of such traces, restrict the entry or transit of persons outside the site; can also, if necessary with the use of public force, compel people who might be involved to, do not depart from the site in order to proceed also the inquiries and / or examinations traces. They may or may not be involved in crime that occurred there.

Indeed, this measure of preventing the flee of people from the crime scene, also allows the police obtain information from them, to facilitate the discovery of the crime agents and reconstitution, in factual terms; the same is to say determining what eventually have occurred in circumstances of time, place and mode.

As part of the precautionary measures of police, this can in case of emergency or danger of delay, even before notifying the Public Prosecutor, seize the pet at the scene, as long as that this site is a place with free access to the public, in order to ensure the proof thereof; after the apprehension of the pet, it should be sent to the municipal veterinarian, in order to make a veterinary expertise, to ascertain whether the presence of evidence of mistreatment and shall give notice of the facts to the Public Prosecutor.

Seized the mistreated animal, this will never be returned to the person who mistreated it, although it is his owner, holder or possessor.

The seized animal must be, after made the forensic medical expertise to establish the evidence of mistreatment, delivered to an official collection center (the only one that exists in the Algarve, is in Lagos), the Municipal Kennels / Catteries, if any or the animal associations or those destined to promotion and protection of animal rights. These associations or entities are responsible for promoting the well-being, physical and psychological animal, in order to later submit for a future adoption by persons that provide guarantees of responsibility and trustworthiness.

Under the Article 251 of the Criminal Procedure Code, the police, even without prior authorization from the Public Prosecutor in cases of urgency and danger in delay, to ensure the preservation of evidence that might otherwise be lost, can if there are grounds to suspect that the agent hides objects related to the crime, in case of imminent flight or detention, to search that person and do object searches, in the place where they are, except in the case of house search which can only be authorized by the very suspect or by the investigating judge if there is no such authorization.

One of the greatest practical and legal constraints felt by Police in the search and rescue of mistreated animals, is the access to the target site of the complaint, since the same it is a privately owned, whose protection is safeguarded by the Portuguese Constitution.

In fact paragraph 8 of Article 19 of Decree-Law No. 276/2001 of 17 October, as amended by Decree-Law No. 260/2012 of 12 December states that *"In case of strong suspicion or evidence of signs of use of animals in fights or in cases involving the health and well-being of animals, SAGD, with the participation of municipalities, if necessary, and the authorities referred to in the preceding paragraph shall collect or capture thereof and may for that purpose request the court order issued that gives them access to the places where these are, in particular establishments, homes and private land."*(emphasis added).

The question that arises is:

In the time between the finding of the facts by the Police, and the issuance of the court order does not run the risk of disappearance of evidence regarding the alleged mistreatment perpetrated by the suspect against the pet?

The need for clearance by the investigating judge, guarantees the freedoms and guarantees of citizens, aims to protect the sacred right to privacy of the home, which is constitutionally inviolable.

The domiciliary protection can only be called into question if of the investigation arising founded suspicions that this place booked the suspect hides the practical evidence of any crime and that these are in place reserved or not freely accessible to the public - in this case is ordered house searches by court order (cf.. artº 174 paragraph 2 of the CPP). Of course, no matter how diligent it is the Police, the time between the finding of the facts in terms of carrying out investigative and referral of the case to Prosecutor to promote with the judge issuing the relevant house search warrant for the purpose of rescuing the mistreated animal, grasp it and send it to the Municipal Veterinarian, there is a lapse of time that may be incompatible with the effective preservation of evidence, since that time gap, in particular if the suspect knows he is being investigated and that search may be a possibility, can indeed make the evidence disappear.

So it is always advisable, in these matters, either the complainant or the Police entrusted with the investigation, both maintain secrecy and description of the steps that are undertaken.

However, in case of danger in delay, the Police may choose to seek the owner of the house, or who has their availability, to provide the written and express consent in self, which will include the investigation that the police proceed to house search and seizure of mistreated animal. The risk here is that the person is not consenting and, therefore, does not carry out the search and at this very moment, the suspect learns that a crime investigation leans against him and while it request the issuance of a judicial search warrant, he will take time to make the evidence disappear.

Another possibility arises when the Police themselves witnesses a *flagrant offense* for a crime that corresponds prison sentence, which covers the case of mistreatment of pets, such transfer police authority to search domicile without court order (cf. . art° 174 # 5 al. c) of the Criminal Procedure Code), should stop the suspect, it is accused, rescue and seize the animal and send it to the veterinarian expert.

Then, should the police do report on the steps taken, referring the *flagrant offense* and present the accused, in the shortest amount of time to the Prosecutor who shall present the judge to first defendant interrogation held for application of a coercive measure or to submit him from now on the summary judgment, if it is considered that there is no more investigation endeavors to do.

Another question that plagues Police officers in investigating this type of crime has to do with the following:

Can the Police notify the suspect to go himself to the local authority (Municipal Veterinary) or other entity credited for purpose of making a direct examination on the mistreated pet, following a drafting of the relevant report?

As we have seen, one of the elements that must be occur for someone to commit the crime of mistreatment of pets is precisely the existence of pain / injury in the animal, which had been, directly or indirectly, caused by human action. The clearance of these injuries involves the medical and veterinary expertise that must report if the animal has suffered injury, if the animal is suffering and if that was the result of abuse, establishing a causal link between suffering and the action taken by subject who mistreated it. This is an essential act of criminal inquiry that is generally delegated on the police, it must, under the provisions of article 273 paragraph 1 and 4 of the Criminal Procedure Code, notify the suspect to present the animal allegedly mistreated to the veterinarian for examination, under of conviction in fines and / or imprisonment for bringing him and for the time strictly

necessary for carrying out such a procedural act, in the event of unjustified absence.

Otherwise, in a situation where the absence of the Police is a fact, citizens witness themselves, in *flagrant offense*, the agent mistreating his pet. Can a citizen enter the property and save / rescue the animal, since there was no time to call the police, otherwise the continuation of the abusive act, would likely to cause the death of the animal?

The *flagrant offense* is defined as any crime that is at that moment being committed or has just been committed, which is punishable with imprisonment and is of a public nature, as with the crime of mistreatment, any citizen who witnesses such act, may proceed to a civil arrest, if the judicial authority (Public Prosecutor or Judge) or the law enforcement agency is not in place, or cannot be called in a timely manner (cfr. Article 255 paragraph 1 al. b) of the Criminal Procedure Code).

In this case, the citizen who made the civil arrest should immediately call the Police, to whom the detainee in their custody must be delivered; then the Police, must draw up an delivery summary and report immediately the arrest to the Prosecutor for purposes of the summary trial form or be presented by the Prosecutor to the Judge for applying any coercive measure, within the legal deadline of 48 hours from the time of arrest, under penalty of illegal detention.

In the event of detention in *flagrant offense*, the mistreated animal can be apprehended by the Police and sent, immediately, to the Municipal Veterinarian, in order to make the forensic examination, in order to collect maltreatment evidence of the seized animal, and later it shall be sent to the above mentioned associations / entities destined to promote their welfare and future adoption.

In the name of good practice in the investigation of crimes of mistreatment of pets, the Prosecutor may delegate to the Police the authority to order the enforcement of the forensics in pending inquiry or in the event of an emergency or danger in delay, even if that inquiry is not registered in the Public Prosecution Service, has a general delegation with regard to this type of crime, the law enforcement agency can order the forensic expertise on the seized animal together with the examination remains that were collected at the crime scene.

To point out that when there was no *flagrant offense*, it is not legally possible to arrest the suspect, since the crime of mistreatment of

pets does not admit the coercive measure of pre-trial imprisonment, in view of the provisions of Article 257 of the Criminal Procedure Code.

In this case, any attempt by the ordinary citizen in rescuing the mistreated animal, will incur in the commission of a criminal offense.

The only thing, in case of non-existence of *flagrant offense*, the citizen has an obligation to do is reporting it to the judicial authorities (Prosecutor) or Police, in order to initiate the criminal investigation.

A final difficulty that the Police have faced has to do with the collection of live animals, given the difficulties in accommodating them.

Pursuant to paragraph 9 of Article 19 of Decree-Law No. 276/2001 of 17 October, as amended by Decree-Law No. 260/2012 of 12 December says "*The animals collected in the preceding paragraph are housed in official collection centers, with the municipal veterinarian report that fact to SAGD, which decides the destiny to be given to the same, namely being slaughtered without any indemnity.*"

The law that made the criminalization of mistreatment of companion animals, only criminalized behavior that was once a tort or as much an administrative offense. With the entry into force of the criminal law, there was a tacit revocation of offenses relating to mistreatment and pet abandonment.

However, the part that refers to the destiny to be given to the pets, which are victims of such abuse, as well as skills deferred to certain entities to make the investigation and autopsies are still in force; this means that the criminal doesn't revoked this important part.

Although the Decree-Law 276/2001 of 17 October, which establishes the legal standards to put into application in Portugal to the European Convention for the Protection of Pet Animals and a special regime for the detention of potentially dangerous animals, elect as the central authority to SAGD (Food Directorate-General and Veterinary) in phytosanitary terms, where it can intervene in urgent cases where the animal health and physical integrity is in danger; although, there wasn't still, the legislative concern in harmonizing these standards with the practice of criminal investigation.

Here is what should guide all parties, Prosecutors, Police, Food General-Directorate and Veterinary, medical-veterinary doctors

regarding the criminal investigation of mistreatment of pets is common sense.

If the Police is faced with the refusal of medical-veterinary skills in making the forensic examination, they shall immediately refer the inquiry to the Prosecutor, who must decide based on the law.

That decision could be to request the good offices of the Medical Veterinarian, although not the same who had refused before the Police in doing so, to undertake the implementation of expertise, since without it, it cannot determine whether the pet was mistreated or not. In case of refusal or renewed rejection, the criminal procedure will be simply filed, because it wasn't possible to establish a conclusion, to a sufficient degree, that the animal had been mistreated.

Then, and finally, we will address the pet abandonment, which is a less serious crime than the mistreatment, attentive to abstractly applicable penalty, but no less deserving of criminal protection.

The crime of abandonment of pets - provided for and punished by Article 388 of the Criminal Code:

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Article 388 of the current Penal Code typifies the pet abandonment as a crime, providing the following:

"Article 388

Pet abandonment.

Who, having the duty to guard, watch or aid

pet, abandon it, thereby putting

endangering their feeding and care

that are due, shall be punished with imprisonment up to

six months or a fine of up to 60 days. "

Doing now appeal to a brief legal framework for the crime of pets abandonment, in order to realize when, in fact, such criminal offense occurs, firstly, it must be noted that even though it is not required that the real danger, defined in law, should occurs, the law requires that it is

necessary that there is a close connection between the concrete infringing behavior of the agent (the leave the animal on its luck) and the possible danger to which it is exposed.

The elements that have to be present are:

a) The owner, possessor or detainer of the pet must have a duty to guaranty its life and physical well-being, embodied in the obligation to care, watch and protect it;

b) The animal abandonment that the holder should protect, thus placing in danger the animal feed and the surveillance care of its well-being, physical integrity and health and assistance in food and health.

Contrary to what happens to the crime of mistreatment, the law requires that the perpetrator must be the owner, possessor or pet detainer, for only this category of people have an obligation to ensure their life, well physical being, embodied in the obligation to care, watch and protect it;

If someone on the street finds the animal and gives him no food, nor rescue it, he is not committing the crime of abandonment.

As noted, the pet abandonment to their own devices, since before that action the holder, owner or pet detainer caused him to benefit care in diet and health and protection from dangers of the outside, is that suddenly the animal is deprived of such care and protection. The animal is, thus, subjected to all kinds of dangers for which the pet once fully protected, may not be prepared to defend themselves and depend on itself to survive on the street.

So the deliberated abandonment of pets in the street puts it at risk for their feeding, to the extent that before leaving the pet owner provided him the food and the animal didn't need to look for. The same applies to hygienic and medical and veterinary care, is now deprived, suddenly thereof, and subjected to a real danger of contracting diseases against which they cannot defend himself.

All these elements have to be abundantly scrutinized in a criminal investigation of the events, since only the dropout once protected pets is punishable behavior.

In case of an animal born on the street and get used to survive alone, depending on its own, although sometimes could be fed by humans, any "abandonment" by people who fail to pay him such power, does not constitute the practice of crime of abandonment. Indeed, there

was, by that action, any placing of the animal in danger, because it has depended on himself to survive.

Also with regard to neglect, similar to what was seen with respect to the crime of mistreatment; this type of guilty is not required by law.

The agent for practicing the crime of pet abandonment, have to represent and want to leave the pet. If, however, the agent violating the duties of care and negligently, the animal is "abandoned" in the sense of it "get away" from home and the owner does not take steps to try to locate it, he does not commit the crime under the Article 388 of the current Penal Code.

Thus, all criminal investigative steps should be guided to the discovery and collection of evidence, for determining if the agent did indeed leave the pet in order to put it at risk in terms of feeding and basic care that once provided him.

In case of have not been *flagrant offense*, if a citizen finds out an abandoned pet on the road, he can freely rescue it without running the risk of being incurred on the commission of a crime, since the abandoned animal is no longer on the availability of its previous owner.

The extreme situation of the pet owner who left food and water at home at the disposal of the same, while away on vacation, it can be configured the practice of the crime of abandonment or mistreatment, if food or water wasn't sufficient to safeguard its survival.

Notwithstanding the wealth of the case, with all its variables, it does not seem that the suspect incurs in the practice of the crime of abandonment, if he plans to return and besides having taken care to leave the animal a provision Food and water. The agent did not, in this case, any intention to expose it to danger, although the provision has been insufficient.

Although, if the pet owner, has provisioned food and water, that are not inexhaustible resources, instead of going on vacation, be absent abroad on emigration, leaving the animals to their own luck, without have endeavored in order to find someone who would give it food and water during his absence. Here's what is discussed is the boundary between negligence not punishable, and the deliberate will, even if possible, to leave the animal on its luck putting their food, health and medical care in danger.

It is in this specific field that criminal investigation should guide their steps in order to determine the "intent" of the suspect, which in terms of evidence, though circumstantial, is not always easy.

Yet with respect to the example of the guy who went on vacation, given that never incur the practice of the crime of abandonment, that he left a supply of food and water, since clearly insufficient for the days he was away on vacation, you can set up, in theory, the practice of a crime of mistreatment with possible will. This is because, in accordance with the rules of the common experience of life, any ordinary citizen knows that depriving an animal from food and water over a certain period of time, causes pain and physical suffering that will lead it, to the limit, to death.

Even if the suspect does not want the result - pain and physical suffering caused by insufficiency of food or water - he knows that leaving a grossly inadequate provision for the time that he will be missing, such a result could occur and accepts it.

Another difficulty discerning the boundary between what is the crime of pet abandonment and what is not, has to do with the extreme situation of a complaint that is an animal in the street "abandoned" without leash or muzzle and without being accompanied by the holder.

Made the respective investigation steps, the Police identified the owner and faced the same with the facts alleged against him, he argues that the animal slipped the yard and fled.

Here the steps of investigation to be undertaken, are destined to determine under what circumstances, time, manner and place, such leak. That is to say that it should determine whether the pet owner has taken all the care that is required to take to prevent the animal run away; for example, closed the yard door and found that it was really closed and there was no possibility of the animal achieve to open it by pushing it, efforts were exerted in order to, in case of escape, put it a identity chip, which can facilitate its recovery. In this case, the suspect does not incur the commission of any crime. Otherwise, if the suspect did not take all precautions and he knows that he did not, it could produce the escape of animals and settled for this flight, the suspect may incur in the practice of crime of pet abandonment, with eventual intent.

Here's what he had to tell you and would be much more to say, if it was not the time available to do so. I am, however, available for the end of all the following presentations, to answer the questions you might find relevant.

Thank you for your attention.

Paulo Sepúlveda,

Public Prosecutor placed at Faro DIAP - Local Instance of Olhão.