

Case Reports

Protection for animals under EU law does not stop at the outer border of the EU

The decision

A landmark decision by the Court of Justice of the European Union (“EUCJ”) in the case of *Zuchtvieh-Export GmbH v Stadt Kempten* (c-424/13) on 23 April 2015 held that EU law providing for minimum standards of welfare in the transportation of livestock extends to livestock that are transported to non-EU countries.

The law

Council Regulation (EC) No 1/2005 (“the Regulation”) provides detailed provisions governing the protection of animals (namely pigs, sheep, cattle, goats and horses) during transport. The Regulation includes rules requiring a journey log to evidence the obligations contained in the Regulation, including, the number and length of rest periods, the provision of food and water, and when animals should be unloaded. The Regulation is based on the principle that animals must not be transported in a way likely to cause injury or undue suffering.

The facts

The case arose when German authorities refused to allow an export company to export live cattle to

Uzbekistan. The cattle were due to be travelling for ten days through four countries with only two opportunities for them to be unloaded from the vehicle and given a 24 hour rest. The journey between the two rests was planned to take 146 hours. The German authorities were not satisfied that the Regulation was being complied with. The CJEU held that the requirements pertaining to the journey log and the powers conferred on a member state of the place of departure to require changes to the journey apply to those stages of the journey that take place outside the EU. The CJEU considered “*that it is not sufficient for the organiser of the journey to claim that the provisions of the applicable legislation in the third countries through which the journey passes and the applicable international conventions in those countries pays will be complied with for the stages of the journey outside the European Union.*” In short, it is not enough to pay lip service to the Regulation.

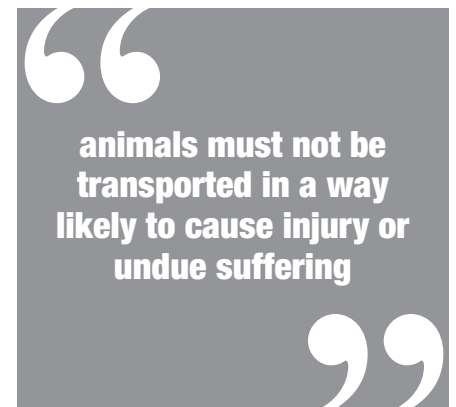
The CJEU also held that a journey log must be submitted by the organiser of the journey which must include the necessary information on watering and feeding intervals, journey times and resting periods for those stages of the journey within the EU and outside the EU. Checks must also be carried out to ensure the

journey log is “realistic” and complies with the Regulation. However, the court also conceded that “*the authority has a certain margin of discretion allowing it to take due account of uncertainties involved in a long journey, part of which is to take place in the territory of third countries.*”, for example where “*the law or administrative practice of a third country... precludes full compliance with the technical rules of that regulation.*”

Ultimately this decision means that member states are now legally obligated to refuse to permit export journeys where the export is not able to evidence that they will comply with the Regulation.

Live export across the EU

The export of livestock from the EU to Turkey, the Middle East and North Africa is an ever growing trade. Every



“
**pigs to Russia, Ukraine
 and Moldova, cattle to
 Lebanon, Israel, Libya,
 Algeria and Tunisia and
 sheep to Libya and
 Jordan**
 ”

year it is estimated that roughly 3 million sheep, cattle and pigs are transported out of the EU for slaughter or fattening in other countries. These journeys are frequently long, for example the export of bulls from Latvia to Iraq is a journey of over 4,600 km and of the 60,000 heifers transported to Russia every year, some are transported to as far as Siberia, a distance of over 6,000km.

The most common exports from the EU are pigs to Russia, Ukraine and Moldova, cattle to Lebanon, Israel, Libya, Algeria and Tunisia and sheep to Libya and Jordan.

The EU parliament has voted¹ in favour of limiting journey times for animals being transported for fattening or slaughter but the Commission has failed to support this change².

The decision of the EUCJ is to be welcomed, it means that, at least while this trade continues, livestock are not without some protection when they leave EU borders. However, it remains to be seen how well enforced the Regulation will be outside of the EU, particularly where levels of

enforcement of the Regulation within the EU are sporadic. Other issues involved in the trade of live animals outside the EU also need addressing, particularly slaughter of the livestock once they reach their destinations. Often such slaughter is in abattoirs whose standards fall well below those of the EU.

Daniel Brandon

RSPB v Secretary of State for the Environment, Food and Rural Affairs [2015] EWCA Civ 227

The appeal related to the dismissal of the RSPB's claim for judicial review of the decision of the Secretary of State to direct Natural England to consent to the culling of two species of gull in a special protection area. An aeronautical company operating a military aircraft manufacturing and research facility on a nearby site had sought consent for the culling of 1700 pairs of lesser black-backed gulls and 500 pairs of herring gulls, as a means of reducing the risk of bird strikes by the aircraft. Natural England initially refused to consent to the balance of the cull, however, following a public inquiry, the Secretary of State directed to consent to a total culling of 752 pairs of lesser black-backed gulls and 500 pairs of herring gulls. In making the decision, the Secretary of State was obliged to comply with Directive 92/43 Art 6, of which subsection (3) states *'Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to*

appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public'. He therefore concluded that the cull would not adversely impact upon the integrity of the area.

The Court allowed the appeal, holding that the secretary of state had a mistaken interpretation of the conservation objectives for the gulls. The objective was to *'maintain the populations of the qualifying features'* which had to be read in accordance with the overriding objective of *'avoiding deterioration of the habitats or significant disturbance of the qualifying features'*. The essence of these objectives is contrary to the act of deliberately reducing the population of the gulls by a significant amount. Furthermore, the 2011 objectives provided that the habitats be maintained in 'favourable conditions', and this did not allow for a deliberate reduction of the population of a species to the bottom end of the naturally fluctuating range, along with further reductions to prevent the population rising above that point. In the light of these objectives, it was held that the secretary of state's decision to direct Natural England to consent to the cull was fatally flawed.

¹ European Parliament resolution of 12 December 2012 on the protection of animals during transport (2012/2031(INI))

² Commission response to text adopted in plenary SP(2013)175

R (on the application of BUAV) v Secretary of State for the Home Department [2015] EWHC 864

The case concerned an application by an animal welfare organisation for a judicial review claim on the process by which the secretary of state licensed experiments on animals under the Animals (Scientific Procedures) Act 1986. This application followed the licensing of neuroscience experiments conducted upon awake macaque monkeys at Newcastle University, which involved surgical devices being inserted into their brains, eyes and ears which had the effect of immobilising their heads when awake and recording any movement. To force the monkeys to comply they would be deprived of water, and they would be killed after spending several years on the programme, which had no direct application to human or animal welfare. Despite the harmful nature of the research, the application for a licence stated that the monkeys would suffer no distress during the course of the programme. The claimant organisation asserted that, where the application was incorrect regarding the level of suffering which the animals would face, the secretary of state must inform the applicant that a licence could not be granted until they had acknowledged the suffering, and that failure in providing this information is contrary to s.5A(4) of the Act.

“
the application for a licence stated that the monkeys would suffer no distress during the course of the programme
”

The Court refused the application for judicial review, stating that any attempt by the court to supplement the act would encroach on the functions of the legislature. In addition, the court did not possess the expertise to successfully draft a programme in this area of law which would address any difficulties which may arise. Instead, it will remain the case that the secretary of state should consider each application for a licence individually and remain within the lawful margins of appreciation when making a decision, regardless of whether it is agreed with or not.

R (on the application of RSPCA) v Colchester Magistrates Court [2015] EWHC 1418

The local authority obtained a warrant under the Environmental Protection Act 1990 to enter the premises of the owner of 44 dogs and investigate a nuisance, following complaints regarding noise and odour emanating from the premises. The authority was refused the same application under the Animal Welfare Act 2006 and the Breeding of Dogs Act 1991. The execution of the warrant was attended by two local authority officers, along with RSPCA and police officers, which led to charges against the owner of the premises under the Animal Welfare Act, based upon the poor conditions the dogs were kept in. At trial the judge stated that the search had only been granted under the EPA to establish a nuisance, and therefore using the search to justify a conviction under the AWA was a misuse of that warrant under the Police and Criminal Evidence Act 1984 Code B para.6.9. The RSPCA argued that, following *R (on the application of Hicks) v Commissioner of Police of the Metropolis* [2012] EWHC 1947 (*Admin*), [2012] A.C.D. 102, despite the dominant purpose of the search being for nuisance, they still possessed

“
The bill follows declines of bat populations through habitat loss and seeks to safeguard these vulnerable species
”

authority to investigate any other matters once inside the premises.

The court held that once the search had ended, there was no longer any authority to remain on the premises. The fact that the vet was called at a later time and had not completed his assessment by the time the search ended meant that the necessary conditions under the Animal Welfare Act 2006 s.18(9) had not been established. Therefore, the local authority had acted in breach of PACE and any evidence relating to the conditions the dogs were kept in was not admissible at trial.

Bat Habitats Regulation Bill 2015

The Bat Habitats Regulation Bill had its first reading in the House of Commons on the 6th July 2015. The bill aims to enhance the protection afforded to bat habitats in non-built environments, by the use of local bat surveys being undertaken prior to the commencement of any construction work. The occupier of the building will then need to provide a bat box or artificial roost for any bats in the vicinity. The bill follows declines of bat populations through habitat loss and seeks to safeguard these vulnerable species without disrupting the economic needs of the people.

Lauren Stone