

**Accountability Report:  
The Karim Allah and Elbeik's crises -  
Animal welfare during sea transport.**

June 2021

## Executive Summary

On 18 December 2020, the livestock vessels the Karim Allah and the Elbeik departed from the ports of Cartagena and Tarragona, respectively, bound for Iskenderun, Turkey.

Originally foreseen as a 10-day journey from a European to a non-European country, the animals underwent a three-month odyssey with a fatal outcome.

On arrival of the vessels in Turkey, the animals on board both were rejected by the Turkish Competent Authorities due to disagreement with the Spanish Competent Authorities regarding certain details contained in the veterinary export certificates the latter had issued.

Administrative errors, technicalities in the reporting of the origin of the bovines exported, and lack of agreement in the interpretation of the concepts of *zone*, *region* or *country*, generated this animal welfare crisis. Repeated breaches by the operators involved in the cases of the Karim Allah and Elbeik livestock consignments have been recorded. Ultimately, these two cases also highlight the systemic problems linked to the international maritime transport of terrestrial farmed animals. Serious breaches, and the lack of coordination between the countries involved in the two crises, prevented the animals from being unloaded on the mainland and provided with the necessary rest and care.

From these breaches derive the consequent liabilities analysed in this report; and, from these liabilities, we draw a series of conclusions in which the seriousness of the situation is clear.

Finally, based on the experience gained from the analysis of the Karim Allah and Elbeik crises, we put forward proposals that should be duly addressed by the European Commission and Member States – especially Spain as a departing country.

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**Abbreviations**

CPA - Cartagena Port Authority

LCA - Libyan Competent Authorities

MAPA - Ministry of Agriculture, Fishing and Food

NGO - Non-Governmental Organisation

OIE - World Organisation for Animal Health

SCA - Spanish Competent Authorities

TCA - Turkish Competent Authorities

TPA - Tarragona Port Authority

## 1. Introduction

The transport of animals by sea from southern Europe to non-European (EU) countries, especially those in the Mediterranean watershed, has increased exponentially in recent years. However, this increase in transport volume has not been accompanied by substantial improvements in the conditions under which animals are transported.

According to the Cartagena Port Authority (CPA), the export of animals by sea from Spain to countries outside the EU, such as Turkey, Libya, Lebanon, Algeria, Jordan, and Saudi Arabia, began in 2010 after having obtained the relevant authorisations from the Spanish Competent Authorities (SCA) and the European Union. Since then, this trade has multiplied more than thirty times, especially towards the Middle East and North Africa at the time of religious holidays.

Specifically, the ports of Cartagena and Tarragona (both located in Spain) started their activities as EU exit points for terrestrial farmed animals in 2010 and 2012, respectively. According to the Tarragona Port Authority (TPA), more than 1,300,000 animals have been exported on more than 450 livestock vessels since the beginning of its activities.

Throughout the years, NGOs have reported systematic infringements to Council Regulation (EC) 1/2005 on the protection of animals during transport and related operations. Recently, DG SANTE's (European Commission) audits confirmed the NGO findings. The NGOs also report deficits in Member State transposition into national legislation of EU animal welfare principles established by EU law, and the European Commission's lack of interest in monitoring Member State compliance with the relevant regulations.

In this sense, reports such as "Sea transport - Cartagena Port (Spain) 06-09.06.2018", and "Animal welfare overboard - Cartagena Port (Spain) 07-09.07.2020/18-20.08.2020" both by the Animal Welfare Foundation (AWF), as well as the White Paper by Eurogroup for Animals "Live animal transport: time to change the rules", reported the serious infringements to and shortcomings of EU animal welfare transport law.

Now, as an inevitable consequence of so many infringements by those involved in international maritime animal transport operations from the Union to non-EU countries, we are facing the Karim Allah and Elbeik crises.

The harshness and brutality of the events that occurred between December 2020 and March 2021 have deeply shaken international public opinion and have once again brought to the fore demands to end the systematic violation of the most basic rights of animals, judged as intolerable in a fair society.

## 2. Objective and scope

This report covers the legislation applicable at both the Spanish and EU levels, focusing specifically on the circumstances of the Karim Allah and the Elbeik in relation to their most recent transport of livestock.

This report provides:

- A description of the events that occurred between December 2020 and March 2021 with regards to the two livestock vessels, the Karim Allah and the Elbeik; and
- An assessment of the potential liability of all subjects involved in the crisis caused by these international livestock maritime transport operations.

Additionally, this report sheds light on the shortcomings of currently applicable law as well as its lack of implementation by the public and private entities involved in the international maritime transport of livestock.

In sum, the report highlights the consequences of the export of animals to non-EU countries and its terrible impact on animal welfare.

## 3. Methodology

This report is based on the study of the information obtained during the Karim Allah and Elbeik crises, which took place between December 2020 and March 2021, as well as on an analysis of relevant applicable law.

The information has been obtained from the following sources:

- Investigations undertaken by the firm preparing this report;
- Data provided by NGOs through reports and via email; and
- Data obtained from administrative and judicial procedures.

To determine the extent of the liability of the parties involved in the Karim Allah and Elbeik crises, the following regulations and guidelines, among others of general application, have been analysed:

### **European Union regulations:**

(i) Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code.

(ii) Council Regulation (EC) 1/2005 of 22 December 2004 on the protection of animals during transport and related operations.

(iii) Commission Regulation (EU) No 206/2010 of 12 March 2010 laying down lists of third countries, territories or parts of third countries or territories authorised to introduce certain animals or fresh meat and veterinary certification requirements into the European Union.

(iv) Regulation (EU) 625/2017 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products.

(v) Council Regulation (EC) No. 1255/97 of 25 June 1997 on Community criteria to be met by checkpoints and adapting the travel plan referred to in the Annex to Directive 91/628/EEC.

(vi) Commission Regulation (EU) 1266/2007 of 26 October 2007 on implementing rules for Council Directive 2000/75/EC as regards the control, monitoring, surveillance and restrictions on movements of certain animals of susceptible species in relation to bluetongue.

(vii) Commission Delegated Regulation (EU) 2074/2019 on the specific official checks on the headings of certain animals and goods originating in the Union which return to the Union after being refused entry into a third country.

**International guidelines:**

(viii) OIE Terrestrial Animal Health Code.

**Spanish regulations:**

(ix) Law 8/2003 of 24 April on animal health.

(x) Law 32/2007 of 7 November on the care of animals, on their exploitation, transport, experimentation and slaughter.

(xi) Royal Decree 542/2016 of 25 November on health and animal protection standards during transport.

(xii) Royal Decree 1085/2005 of 16 September laying down animal health rules for the import and transit through Spain of certain living ungulates from third countries.

(xiii) Royal Decree 430/2020 of 3 March developing the basic organic structure of the Ministry of Agriculture, Fisheries and Food, the Directorate-General for Agricultural Production Health.

(xiv) Royal Decree 993/2014 of 28 November laying down the procedure and requirements of official veterinary certification for export.

(xv) Law 39/2015 of 1 October on the Common Administrative Procedure of Public Administrations.

(xvi) Law 29/1998, of July 13, regulator of the Administrative Jurisdiction.

(xvii) Organic Law 10/1995, of 23 November, of the Criminal Code.

(xviii) Law 14/2014, of July 24, on Maritime Navigation.

(xix) Informative note on the export conditions of live bovines from Spain to Turkey dated 2 June 2020.



#### 4. Karim Allah (IMO nº 6519144)



Fig. 1 - The Karim Allah vessel, EFE/Marcial Guillén extract from export certificates and CABI

##### 4.1 Background information

The Karim Allah is a cargo vessel built in 1965, currently sailing under the flag of Lebanon. The vessel left the port of Cartagena on 18 December 2020, heading to Turkey with a cargo of 895 bovines. On that date, the following veterinary export certificates to the Republic of Turkey were issued by the Official Veterinary Services of the Region of Murcia:

- At the request of the exporter BEEF WORLD, S.A., certificates No. ES3020006526 and ES3020006527, comprising, respectively, 192 and 153 bovine animals.
- At the request of the exporter WORLD-TRADE, S.A., certificate No ES3020006528, comprising 550 animals of the bovine species.

In this context, prior to the arrival of the Karim Allah in the port of Iskenderun, Turkey, on 21 December 2020, the Turkish Competent Authorities (TCA) communicated to the SCA their intention to refuse the animal consignment, as animals on board originated from an area affected by bluetongue disease. After receiving this communication, to the best of our knowledge, the SCA did not take any specific action, beyond invoking the correct issuance of the veterinary certificates.

On 27 December 2020, when the Karim Allah arrived in the port of Iskenderun, Turkey, the TCA refused to unload the animals onto its territory. The reason invoked by the TCA to justify its refusal to unload the animals was the lack of accreditation and validity of the veterinary certificates issued by the SCA in indicating that the animals originated from a bluetongue-free territory. The TCA proceeded without conducting medical examinations that could confirm or deny the possible infection of the animals.

Specifically, errors were alleged in sections II.2.1(c) and II.2 of the official veterinary export certificates. Section II.2 refers to the Animal Health Certificate, while Section II.2.1(c) refers to the certification of origin in a zone free from bluetongue.

**II.2. Certificado de Sanidad Animal / Animal Health Attestation / Hayvan Sağlığı Beyanı**

Yo, el veterinario oficial abajo firmante, certifico que los animales descritos en el presente certificado. / I, the undersigned official veterinarian hereby certify that the animals described above meet the following requirements. / Ben aşağıda imzası bulunan resmi veteriner hekim yukarıda tanımlanan hayvanların aşağıdaki koşulları karşıladığını onaylarım.

**II.2.1 Los animales a exportar proceden de un país / región dentro de un país con código ES <sup>(1)</sup> que, a la fecha de emisión de este certificado: / The cattle to be exported come from country/ a region within a country with code ES <sup>(1)</sup> which, at the date of issuing this certificate: / İhraç edilecek hayvanlar ES <sup>(1)</sup> kodlu ülkeden/ ülke'nin bir bölgesinden gelmiştir, bu sertifikanın düzenlendiği tarihte söz konusu topraklar:**

- a) Ha sido reconocido como oficialmente libre de Fiebre aftosa durante los últimos 12 meses / has been recognized as officially free from foot-and mouth disease for 12 months / Şap hastalığından 12 aydır resmi arılığa sahiptir
- b) Ha sido libre durante los últimos 12 meses de peste bovina, fiebre del valle del Rift, perineumonía contagiosa bovina, enfermedad hemorrágica epizootica; y 6 meses libre de estomatitis vesicular; y 36 meses libre de dermatosis nodular contagiosa. / has been free for 12 months from rinderpest, rift valley fever, contagious bovine pleuropneumonia, epizootic haemorrhagic disease, for 6 months from vesicular stomatitis and for 36 months from lumpy skin disease, / Sığır vebası, Rift Valley Fever, contagious bovine pleuropneumonia, epizootik hemorajiden 12 aydır; vesicular stomatitisten 6 aydır ve lumpy skin hastalığından 36 aydır aridir,
- c) ES-AR/ES-CM/ES-MC (país) / región <sup>(2)</sup> reconocido como oficialmente libre de Lengua Azul desde hace 24 meses, / ES-AR/ES-CM/ES-MC (country)/ region <sup>(2)</sup> which has been recognized as officially free from Bluetongue disease for 24 months of OIE / ES-AR/ES-CM/ES-MC (ülke / bölge) <sup>(2)</sup> mavdilil hastalığından 24 aydır resmi olarak aridir

Fig. 2 - Extract from export certificates and CABI

Indeed, such certificates did not specify that animals came from the two provinces of Teruel and Zaragoza (bluetongue-free areas in the region of Aragon); instead, they reported that animals on board the Karim Allah originated from some municipalities of Aragon and from the Aragon region, where an outbreak of bluetongue was detected in the province of Huesca on 4 November 2020.

Following the TCA rejection of the animals, the SCA issued certificates nos. ES3021000001 and ES3021000002 to allow the Karim Allah to convey the animals on board to Libya. On 6 January 2021, upon arrival in Tripoli, the Libyan Competent Authorities (LCA) carried out appropriate veterinary examinations and rejected the animals. Whether this rejection was due to the results of the analyses rather than the origin of the livestock – as indicated in the official veterinary export certificates – has not been confirmed.

From 9 January 2021, when the Karim Allah left the port of Tripoli, the vessel sailed aimlessly through the Mediterranean Sea looking for a country willing to allow the animals to enter its

territory. Finally, on 22 February 2021, the Karim Allah returned to the port of Cartagena, Spain.

From that point on, events unfolded as follows:

On 20 February 2021, notified to the parties concerned on 22 February, a resolution rejecting the entry into Spain of the animals onboard the Karim Allah was issued by the Spanish Ministry of Agriculture, Fishing and Food (MAPA).

The previous resolution was corrected by a new resolution dated 22 February, notified on 23 February, following which an official inspection took place on 25-26 February.

On 24 February 2021, inspections were carried out by a private team of health emergency specialists to determine the current state of the animals.

On 26 February 2021, inspectors attached to the Animal Health Inspection Service of the Region of Murcia submitted a record of the inspection, concluding that, as the animals still on board of the vessel were unfit to be transported further, they should have been humanely killed.



Fig. 3 - Animals on board the Karim Allah, private.



On 26 February 2021, a resolution ordering the humane killing of the animals and destruction of the bodies was issued by the MAPA. It was sent on 27 February to all parties concerned and notified on 1 March.

This resolution was amended to include a time limit for the humane killing, and the new resolution, dated 1 March was notified the same day.

The animals' owner submitted an appeal (Recurso de Alzada) against the precautionary measure of killing the animals as well as an appeal (Recurso de Reposición) against the commandeering of the blood samples taken by the private veterinarians hired by the animals' owner.

On 3 March, a resolution was issued by the MAPA rejecting the appeal brought against the order to proceed with the killing of the animals.

Against the previous resolution, which closed the administrative procedure, a 'contentious-administrative appeal' (Recurso Contencioso Administrativo) was filed on behalf of Talia Shipping, with a request for precautionary measures, which were dismissed by a resolution of the Superior Court of Justice of Madrid (Tribunal Superior de Justicia de Madrid), Order No. 44/2021 of 5 March 2021.

Finally, between 6 and 9 March, the MAPA official veterinarian team proceeded with the killing of the 873 animals still alive on board the Karim Allah. Information about the killing methods used are not publicly available.

### **Intervening parties**

Exporters: Beef World, S.A. and World-Trade, S.A.

Animal owners: Beef World, S.A., World-Trade, S.A., Ganados Ferru, S.L. and PINSOS URSA, S.L.

Responsible for cargo: Ganados Montalban de Almacellas, S.L.

Carrier: Talia Shipping Line Co. S.A.R.L.

Ship owner: Agencia Martítima Blázquez, S.A.

## **4.2. Analysis of the liability of the parties involved**

**4.2.1 Analysis of compliance by the SCA with the protocols and requirements established for the issuance of export certificates to Turkey and the departure of bovines and ensuring that the data provided in the export application correctly corresponded to the animals concerned.**

**Applicable regulations and guidelines:**

- OIE Terrestrial Animal Health Code.
- Regulation (EU) 625/2017 of the European Parliament and of the Council of 15 March 2017.
- Royal Decree 993/2014 of 28 November.
- Briefing note on the export conditions for live animals from Spain to Turkey dated 2 June 2020 on the agreement reached between the SCA and the TCA.

**Liability analysis:**

Chapter 8.3 of the OIE Terrestrial Animal Health Code sets out all matters relevant to the transport of terrestrial animals in relation to bluetongue disease. In addition, point 8.3.3 establishes rules for the definition of a zone as “free from bluetongue”.

In contrast to the broad and abstract concept of country, OIE defines a zone as “a part of a country defined by the Veterinary Authority containing an animal population or subpopulation with a specific animal health status with respect to an infection or infestation for the purposes of international trade or disease prevention or control” (OIE Terrestrial Animal Health Code, Glossary). In turn, Regulation (EU) 625/2017 of the EU Parliament and of the Council of 15 March 2017 requires the issuance of certificates for the transport of animals by the competent authorities, in this case the SCA.

Also, at the level of internal Spanish regulations, the Royal Decree 993/2014 of 28 November establishes, *inter alia*, the types of certificates and export requirements, and general obligations and responsibility. At this point, it should be noted that the SCA reiterated that the certificates issued for the export of animals to Turkey were issued by the relevant animal health authority, that is the Official Veterinarians of the Veterinary Border Inspection Services, in compliance with Regulation (EU) 625/2017, the OIE Terrestrial Animal Health Code and the Royal Decree 993/2014 of 28 November.

In addition, the SCA questioned the competence of the TCA to develop the concept of *area*. In this sense it is invoked by the SCA that the reason why the TCA denied the entry of the animals into its territory was the “rejection of the EU concept of Community zonification”, by which the competent authority of the exporting countries can certify the origin of animals as from areas free from active bluetongue foci, within larger territories that may include active foci of this disease.

However, the TCA identified deficiencies in the certificates issued by the SCA, since two requirements for the validation of the animals were not met simultaneously. The TCA referred to sections II.2.2(a) and II.2.1(c) of the veterinary certificates: on the one hand, it was not

specified that the animals came from an area with a radius of 150km free from bluetongue; and, on the other hand, that they came from an area declared free from bluetongue for the last 24 months.

In this sense, we must emphasise that the political distribution of Spain divides the country into 17 autonomous communities, one of them Aragon, plus two autonomous cities; Aragon is in turn divided into three administrative territories, “provinces”, precisely defined and recognised: Teruel, Zaragoza, (the origins of the animals exported on board the Karim Allah and the Elbeik), and Huesca, where the active bluetongue outbreak was identified.

The SCA argued that, as the animal health authorities had indicated, in compliance with the established protocol, that the animals came from an area of Aragon free from bluetongue, as an area defined by the veterinary authority, the protocols were respected and the certificates fully valid.

However, the TCA maintained that the certificates issued for export to Turkey do not detail the origin of the animals as being from an area free from bluetongue, (Zaragoza and Teruel); instead, they merely reported the area/region of Aragon which, as an area with an active bluetongue outbreak (Huesca), is prohibited from exporting animals to Turkey.

In this regard/sense, in the Informative Note on the Conditions of Export of Live Animals from Spain to Turkey, under “*Clarifications on some aspects of export conditions*”, it is established that:

*“Livestock farm located in an area where bluetongue foci are active: Export is not possible.”*

In conclusion, it was the responsibility of the SCA (Official Veterinarians of the Border Veterinary Inspection Services) to issue the certificates for export to Turkey in compliance with Regulation (EU) 2017/625, the OIE Terrestrial Animal Health Code and the Royal Decree 993/2014 of 28 November; all this, while complying with the agreement reached between the SCA and the TCA for the transport of bovine animals.

Therefore, at first sight, the SCA is the party responsible for complying with these obligations and issuing the certificates for the export of the animals to Turkey with details correctly identifying the origin of the animals as from areas without active foci of bluetongue (Teruel and Zaragoza), and differentiating these territories from Huesca, with its active bluetongue foci.

The SCA identified the origin of the animals by municipalities and veterinary zones that met the requirements established for the issuance of veterinary certificates, so their non-compliance would be limited to a lack of clear identification of the provinces of origin of

the animals exported, more similar in nature to an issue of quality standards than a regulatory infringement.

Furthermore, the SCA are right in arguing that the TCA not only invoked the irregularity of the certificates, but also denied the possibility of importing animals from Aragon, as a region with active foci of bluetongue.

#### **4.2.2 Analysis of compliance by the TCA and LCA with the protocols established for the refusal of entry of the animals**

##### **Applicable guidelines:**

OIE Terrestrial Animal Health Code.

##### **Liability analysis:**

The analysis of the previous point determines that the SCA that failed to fulfil their obligations when issuing export certificates to Turkey. However, we must now examine TCA and LCA compliance with the protocols established for the rejection of the animals.

Article 7.2.11 of the OIE Terrestrial Animal Health Code establishes the protocol to be followed in the event of a refusal of a livestock vessel, to allow the importation of a shipment. The OIE acknowledges that the welfare of animals should be the first consideration and it sets forth the responsibilities of the importing countries to provide adequate isolation facilities for the unloading of the animals and their safe containment until the resolution of the crisis.

TCA: Although prior to the arrival of the Karim Allah in Turkey, the TCA informed the SCA about the rejection of the animals, the vessel docked in the Turkish port for three days, during which the TCA did not provide facilities for the unloading of the animals to alleviate their suffering and thus ensure their welfare. The corresponding veterinary inspections were not carried out and, to the best of our knowledge, mediation from the OIE was not requested in the face of the impossibility of resolution between the SCA and the TCA.

LCA: Upon arrival at the port, the LCA carried out veterinary inspections on the animals but did not provide facilities for unloading the animals to alleviate their suffering. Nor was OIE mediation requested in the face of the impossibility of resolution between the SCA and the LCA. Additionally, the vessel was not allowed to remain in the port to be supplied with water and feed.

In conclusion, by not adhering to the OIE Terrestrial Animal Health Code, both the TCA and LCA failed to comply with their obligations as members of the OIE.

### 4.2.3 Analysis of compliance by the carrier and the ship's master, with the protocols and requirements established for the transport of animals

#### Applicable regulations and guidelines:

- Council Regulation (EC) No. 1/2005
- Law 8/2003 of 24 April, on Animal Health.
- Royal Decree 542/2016 of 25 November, on animal health and protection regulations during transport.
- Law 32/2007
- Royal Decree 993/2014
- OIE Terrestrial Animal Health Code

#### Liability analysis:

##### Carrier:

During the Karim Allah's journey, the actions undertaken by the carrier show clear non-compliance with Spanish, EU, and international regulations and codes. It was after the second rejection that these breaches by the above-mentioned party were revealed.

Article 14 of Royal Decree 542/2016, Article 11.1(b)(iv) of Council Regulation (EC) 1/2005 and Article 7.2.3 of the OIE Terrestrial Animal Health Code establish the need for a Contingency Plan, with sufficient details and guidelines to ensure the welfare of animals when unforeseen events occur.

Thus, the Karim Allah did not have a corresponding Contingency Plan on which to rely once unloading was rejected, and they had to improvise for a second time with catastrophic results.

Article 3 of Council Regulation (EC) No 1/2005 establishes that animals may only be transported when they are fit for transport and all necessary arrangements have been made in advance to minimise the length of the journey and meet their needs during the journey. The Inspection Record, compiled by the Spanish official veterinarians at the time of the vessel's inspection, reveals a breach with the above-mentioned requirements. Quoting verbatim:

*"85% of them (the animals) present evident skin infections, characterized by a combination of alopecia, flaking, hyperkeratosis, scabs, and seborrhoea. Animals also have injuries to fungal infections."*



It continues:

*“Some animals show profuse hyperkeratosis, peeling and crusting, at the height of the last cervical vertebra. This, together with similar lesions that some animals also have in the periocular area, blepharitis and conjunctivitis, can indicate the presence of a parasitic infection such as scabies.”*

Article 3 (c) (d) and Annex I Chapters II, III and VI of Council Regulation (EC) 1/2005 and Article 7.2.5.4. of the OIE Terrestrial Animal Health Code establish the conditions for the maintenance of the means of transport and the loading and unloading facilities. The Inspection Record, compiled by the official veterinarians at the time of the vessel's inspection, reveals a breach of such legal requirements. Quoting verbatim:

*“As for the geolocation absences reflected in the AIS system, he (the vessel's master) reports that the system frequently fails and loses signal.”*

It continues:

*“The metallic structures for the separation of the pens and the ventilation tubes are deteriorated, with oxide, lack of paint and loss of material.”*

Annex I, Chapters II and VI of Council Regulation (EC) 1/2005 sets forth the requirements applicable to all means of transport (with regards for instance to the floor surface, compartments (space, air quality, etc.) and detailed requirements for livestock vessels. In accordance with the Inspection Record, a breach with the above-mentioned requirements is revealed. Quoting verbatim: *“It is observed that none of the pens have litter or other absorbent material.”*



Fig. 4 - Animals on board the Karim Allah, private.

The attitude of the intervening parties implies a breach of the provisions of the previously mentioned articles.

Upon their departure from Libya, the necessary measures should have been taken so that the animals were returned to port and not to wait for a new buyer or new export documents. Arrival at the port of Cartagena was postponed until 22 February 2021, prolonging the suffering of the animals unnecessarily.

In addition, a total of nine animals were unaccounted for according to the declaration by the ship's master, who also stated that he could provide neither the Roadmap nor the Registration Sheet to the Inspectors attached to the Animal Health Inspection Service of the Region of Murcia, in violation of Annex II, point 8 of Council Regulation (EC) 1/2005 and Article 9(3) of Royal Decree 542/2016.

Therefore, there is no doubt that the carrier was in breach of its legal obligations under the applicable regulations, for not having a Contingency Plan to be implemented at time of the rejection of the animals at destination, and for having maintained a stubborn insistence on

denying an end to the trip for the animals, instead of returning to the port of departure (Cartagena) immediately after refusal by the LCA.

**Exporter:**

In addition to the previous point regarding the Contingency Plan, responsibility for which also lies with the exporter, Article 3 of Council Regulation (EC) 1/2005 establishes that animals may only be transported when they are fit for the intended journey (Art 3 (b)) and that all necessary arrangements should have been made in advance to minimise the length of the journey and meet animals' needs during the journey (Art.3 (a)).

In accordance with the documentation we have, the Exporter was in breach through unnecessarily prolonging the suffering of the animals and not ordering the ship's master to return to the port of origin, thereby giving greater priority to the economics of such a journey than the welfare and health conditions of the animals transported.

#### **4.2.4 Analysis of compliance by SCA with the protocols established for the management of the situation after the animals have been rejected in the country of destination**

**Applicable regulations:**

- Regulation (EU) 625/2017 of the European Parliament and of the Council, of March 15, 2017.
- Commission Delegated Regulation (EU) 2074/2019.
- Council Regulation (EC) No. 1/2005, of December 22, 2004.
- Law 8/2003, of April 24.

**Liability analysis:**

Once the Karim Allah returned to the port of Cartagena, Spain, all options for determining the fate of animals result from the application of Article 2 of Commission Delegated Regulation (EU) 2074/2019 of September 23<sup>rd</sup> 2019, by carrying out beforehand documentary, identity and physical checks on the animals; that is, by carrying out an expert counter-report determining: (i) the health status of animals, (ii) their aptitude for re-export, or (iii) the possibility of their stay in Spain for recovery and later consumption.

As for the health status of animals, this was deplorable; as reflected in the Inspection Record carried out on 25 and 26 February 2021 by the Inspectors Attached to the Animal Health Inspection Service of the Region of Murcia dated 26 February in accordance with Chapter I of Title V of Law 8/2003 of 24 April, "Inspections, Infringements and Sanctions".

Specifically, the problems presented by animals were skin affectations, such as alopecia, flaking, hyperkeratosis, scabs, seborrhoea, fungal and parasitic infections, scabies, physiological alterations of a digestive nature, inflammations in the joints, aseptic keratoconjunctivitis infectious, abscesses, and septicaemia.

Therefore, in compliance with Article 5 of Law 32/2007 and Article 3(b) of Council Regulation (EC) 1/2005 establishing that animals may only be transported when they are fit for transport, it was determined that animals were not in a condition to be transported further.

Regarding the options reported above under points (ii) (iii), namely the possibility of importing or reimporting animals under Commission Delegated Regulation (EU) 2074/2019 and of recovering them for intra-EU trade, we must highlight the inadmissibility of this approach, as determined by the SCA and in disagreement with the view of the animals' owner.

Commission Delegated Regulation 2074/2019 on the specific official controls on consignments of certain animals and goods originating in the Union which return to the Union after being refused entry into a third country, is not applicable to this case, since these animals do not just come from third countries – they come from third countries that are prohibited from exporting animals to the Union.

In this regard, we must cite the resolution issued by MAPA dated 26 February 2021, "Resolution ordering the slaughter of animals initially exported to the Republic of Turkey in accordance with veterinary certificates nos. ES3020006526, ES3020006527, and ES3020006528, and later to Libya under certificates ES3021000001 and ES3021000002, where it was determined:

*"[...] that Article 3 of Commission Regulation (EU) No 206/2010 of March 12<sup>th</sup> 2010, which establishes lists of third countries, territories or parts of third countries or territories authorised to introduce into the European Union certain animals or fresh meat and the veterinary certification requirements, it also provides that only ungulates from third countries, territories or parts of the third countries or territories listed in columns 1, 2 and 3 of the table in Part 1 of Annex I shall be permitted to enter the Union, for which column 4 of the same table provides for a model veterinary certificate corresponding to the consignment concerned; for the purpose of which Libya is not found in that table, so it is not possible to authorise the return (importation) of ungulate animals of that origin.*

*This is due to the fact that Libya is a State that is prohibited from exporting animals to the European Union given the existence, among other high-impact epizootics for livestock, foot-and-mouth disease in that State, depending on, for example, the information available in the OIE."*

Therefore, under Commission Delegated Regulation 2074/2019, mandatory health checks were carried out on the animals, resulting in them being declared not fit for transport; and, in application of Commission Regulation (EU) No 206/2010 of 12 March 2010, the possibility of importing or reimporting animals and, logically, the possibility of destination for human consumption was rejected.

From this point on, to decide the fate of the animals, the following precepts had to be considered:

- Article 13 of Law 8/2003 of 24 April establishing the authority of the SCA to take the precautionary measures contained in Article 8 of that legal text, in relation to the importation of animals whose entry is prohibited;
- Article 23.2, last paragraph, of Council Regulation (EC) 1/2005, which provides that, in the absence of any means for the protection of animals, they shall be slaughtered without cruelty; rule endorsed by Article 8 of Law 8/2003 in relation to Article 4 of Law 8/2003, which in turn determines the necessary proportionality of decisions taken in relation to public health and animal welfare.

In conclusion, the SCA complied with the applicable regulations by adopting the decisions not to authorise the transport of animals for re-export under a state of health incompatible with animal welfare and to refuse the importation or re-importation of animals and their destination for human consumption, agreeing on the humane killing as the lack of fitness of the animals for entering the food chain.

#### **4.2.5 Analysis of the correct qualification by the SCA of the arrival, import or reimport of the animals into Spain after the animals have been rejected in the country of destination and the competence of the Directorate-General for Health of Agricultural Production to take decisions in this case**

##### **Applicable regulations:**

- Regulation (EU) No. 952/2013 of the European Parliament and of the Council, of October 9, 2013.
- Law 8/2003, of April 24.

##### **Liability analysis:**

Article 154(a) of Regulation (EU) 952/2013, which lays down the Union Customs Code, is crystal clear in defining the reasons for the loss of Union customs status (*Loss of customs status of Union goods*):

*“Union goods shall become non-Union goods in the following cases: (a) where they are taken out of the customs territory of the Union, insofar as the rules on internal transit do not apply;”*

There is no doubt that the animals on board the Karim Allah, as they had left the customs territory of the Union, without the application of internal transit rules, had lost the status of Union goods. Article 3.15 of Law 8/2003 of 24 April clearly defines the concept of import as:

*“The entry of animals, products of animal origin, zoo sanitary products and products for animal feed in the Spanish territory included in the customs territory of the European Union, coming from third countries or third territories.”*

Therefore, once the animals had lost the Union customs status and subsequently returned to the Union, the qualification of that movement must be of import or reimport.

Finally, since the return of the animals was correctly classified as import or reimport, and that the Directorate-General for Health in Agricultural Production (Dirección General de Sanidad de la Producción Agraria) has, in accordance with Article 4.1(c) of Royal Decree 430/20 of 3 March (which establishes the structure of MAPA, phytosanitary and veterinary control functions in imports from third countries), the Directorate-General was effectively competent to decide on the resolutions issued.



## 5. Elbeik (IMO nº 6718427)



Fig. 5 - The Elbeik vessel, Vesselfinder.

### 5.1 Background information

The Elbeik is a cargo vessel built in 1967 and it currently sails under the flag of Togo. The vessel left the port of Tarragona, Spain, on 18 December 2020, bound for the port of Iskenderun, Turkey, with a cargo of 1,789 animals.

On that date, the following official veterinary export certificates to the Republic of Turkey were issued by the Official Veterinary Services of Tarragona: ES4320001888, ES4320001891, ES4320001893, ES4320001895, ES4320001896 and ES432000187 comprising 336, 650, 120, 300, 103 and 280 animals, respectively, all belonging to the bovine species.

There are a few discrepancies between the number of animals authorised by the above-mentioned certificates and the number of animals loaded under the CABI (Roadmap). Indeed, despite the fact 1,789 animals were authorised for export, 1,871 were loaded onto the Elbeik in December 2020.

N° 0044T

**ANEXO I. MODELO DE CUADERNO DE A BORDO / HOJA DE RUTA**  
**SECCION 1 – PLANIFICACION (SECTION 1 – PLANNING)**

CAB N° (JL N°) 0044T	FECHA (DATE) 18/12/2020	N° SOLICITUD CEXGAN (N° APPLICATION TO EXPORT) OVINOS 410638 BOVINOS	
ORGANIZADOR (ORGANISER): Nombre (Name) [REDACTED]	ANIMALES (ANIMAL DATA)	N°/especie (number/specie)	Peso medio/especie (average weight/specie)
¿Existen otros organizadores? No X Si <input type="checkbox"/> Nombre: (Are there other organisers? No Yes Name)	Especies (species)	OVINOS/ 1923 BOVINOS	OVINO / 1923 BOVINO 320kg
NOMBRE DE LA PERSONA RESPONSABLE DE ESTE VIAJE (NAME OF THE PERSON IN CHARGE OF THE JOURNEY)			
El abajo firmante, en calidad de organizador, declara por la presente que es responsable de la organización del transporte y que ha tomado las medidas pertinentes para preservar el bienestar de los animales durante el transporte, de conformidad con lo dispuesto en el Reglamento (CE) n° 1/2005 del Consejo (I, the organiser, hereby declare that I am responsible for the organisation of the journey and I have made suitable arrangements to safeguard the welfare of the animals throughout the journey in accordance with the provisions of Council Regulation (EC) N° 1/2005)			
Firma del organizador (Signature of the organiser):			

  

TRANSPORTE POR BARCO (TRANSPORT BY VESSEL)	
Nombre (name) ELBEIK	N° IMO (IMO n°) 6718427
Superficie útil total (Total useable area) 2404 m²	
EEMM que ha concedido la autorización y número de autorización (Member state who granted the authorization and number of the authorization) or: N° 34	
Nombre del transportista (Transporter's name) IBRAHIM MARITIME LTD	EEMM que ha concedido la autorización y número de autorización (Member state who granted the authorization and number of the authorization) RO-CT-N-063-6718427
Fecha y lugar de la última descarga de animales/pienso (Place and date of the last unloading of animal/feed): ALGER (DZ) 09/12/2020	
Ultimo puerto visitado (last port of docking) ALGER (DZ)	

Fig. 6 - Extract from the export certificates and CABI.

On 29 December 2020, the Elbeik arrived at the port of Derince, Turkey, a different port than the one indicated in the Roadmap as destination (Iskenderun), where no tests were conducted on the animals.

Subsequently, following the rejection of the animals by the TCA, the SCA issued certificate no. ES4320001943, thus allowing the vessel to head to Libya. The aim was to unload and sell the livestock there. On 9 January 2021, the Elbeik arrived at the port of Tripoli, Libya, where it remained until 25 January 2021. While the LCA decided not to accept the animals, they nevertheless carried out the test to detect bluetongue disease.

Following Libya's rejection, the Elbeik headed to Alexandria, Egypt, where it remained from 1 to 4 February. Subsequently, the vessel headed to Greece, where between 4 February and 11 March it anchored in Famagusta, Cyprus, Kalamata, Greece, and Crete (Greece).

On 11 March, having not found a new buyer for the animals on board and experienced shortages of food, feed, and water, the Elbeik began its journey back to Spain, making a short stop in Menorca, probably due to unfavourable sea conditions.

On 16 March, the General Director of the Merchant Navy (Director General de la Marina Mercante) ordered the Elbeik to enter the port of Cartagena, where it finally arrived on 18 March.



From that point on, events unfolded as follows:

- On 19 March 2021, the Inspectors attached to the Animal Health Inspection Service of the Region of Murcia compiled a record of the inspection carried out on 19 March.
- On 22 March 2021, a resolution was issued, notified on the same day, rejecting the entry into Spain of the animals, and ordering their killing in accordance with the law.
- On 25 March 2021, the killing of the animals began.

**Intervening parties:**

Exporters: GANADOS FERRU S.L.

Shipping Agency: Agencia Marítima Blázquez, S.A.

Animal owners: Ganados Ferru, S.L. and PINSOS URSA, S.L.

Carrier: IBRAHIM MARITIME LTD

Ship owner: MEDITERRANEAN SHIPPING AGENCY

## **5.2 Analysis of the liability of the parties involved**

### **5.2.1 Analysis of compliance by the SCA with the protocols and requirements established for the issuance of export certificates to Turkey and the departure of bovine animals and ensuring that the data provided in the export application corresponded to the animals concerned.**

To avoid unnecessary repetition, the conclusions contained in point 4.2.1 relative to the analysis of compliance by the SCA Official Veterinary Services for the issuance of export certificates to Turkey are considered as also applying in the case of the Elbeik except for specific differences.

Article 12 of Law 8/2003, Article 9 of Royal Decree 542/2016 and Article 6 of Royal Decree 993/2014 establish the obligation to establish the necessary veterinary documents prior to the authorisation of the export of animals. In the present case and in accordance with the information provided by the CABI, we can see a breach by SCA by allowing the departure of 82 animals without the relevant health documentation.

### **5.2.2 Analysis of compliance by the TCA and LCA with the protocols established for the refusal of entry of the animals**

The contents of paragraph 4.2.2 relative to the analysis of compliance by the TCA and LCA of the protocols established for the rejection of the animals, also apply in their entirety in this case.

### **5.2.3 Analysis of compliance by the carrier and the ship's master with the protocols and requirements established for the transport of animals**

#### **Applicable regulations and guidelines:**

- Council Regulation (EC) N° 1/2005.
- Law 8/2003 of 24 April, on Animal Health.
- Royal Decree 542/2016 of 25 November, on animal health and protection regulations during transport.
- Law 32/2007.
- Royal Decree 993/2014.
- OIE Terrestrial Animal Health Code.

#### **Liability analysis:**

##### **Exporter:**

The first apparent non-compliance comes, as mentioned above, in the discrepancies between the number of animals authorised by the Veterinary Export Certificates and the number of animals loaded according to the CABI (Roadmap): While only the export of 1,789 animals was authorised in the Veterinary Export Certificates, 1,871 were apparently loaded onto the Elbeik.

This discrepancy between the number of animals authorised and the ones effectively loaded onto the Elbeik, is also reported in the Inspection Record carried out by the Inspectors Attached to the Animal Health Inspection Service of the Agriculture and Fishing Area of the Region of Murcia. Quoting verbatim:

*“Based on the planning of section 1 of the CABI, transport consisted of the movement of 1,923 animals with an average weight of 320 kg.”*

Article 5.1 of Royal Decree 993/2014, Article 9 of Royal Decree 542/2016 and Article 7.2.3. of the OIE Terrestrial Animal Health Code establish an obligation to apply for veterinary export certificates for all animals, as well as the list of documents to accompany the animals during transport. Such precepts were breached as apparently the loading of a certain number of animals was carried out without the corresponding documentation.

Article 7.2.3 of the OIE Terrestrial Animal Health Code establishes that the exporter shall provide the appropriate medication for the species transported and the intended journey. The Inspection Record reveals a breach of the above-mentioned precepts. Quoting verbatim:

*“Asking about the possession of medication on board he tells us that you do not have and that he believes that they have not been necessary at any stage of the trip.”*



Fig. 7 - Animals on board the Elbeik, private.

Article 3 of Council Regulation (EC) 1/2005 establishes that animals may only be transported when they are fit for transport and all necessary arrangements have been made in advance to minimise the length of the journey and meet their needs during the journey. In accordance with the above, and according to the documentation we have, the Exporter committed several breaches, completely ignoring the welfare and health of the animals transported.

Indeed, the suffering of animals was unnecessarily prolonged by not ordering the ship's master to return to the port of origin (Cartagena), probably due to the economic loss that the interruption of the journey would have implied; the corresponding certificates for at least 134

animals were not requested; and no medication was given to the vessel's crew to provide minimum care to the animals that were in a desolate/bleak state upon arrival at Cartagena. According to the Inspection Record, quoting verbatim:

*“The most striking thing at the time of inspection is the general poor condition of animals on all decks, some of them in advanced cachexia, presumptive of poor and low feeding. [...] Some of these cachectic animals were in a state of stupor, being unable to open their eyes or respond to stimuli. [...]. More specifically, some animals with broken horns, keratoconjunctivitis, corneal ulcers, fractured tails, skin wounds and an animal with a fractured left hind limb were also found.”*

#### **Carrier:**

During the Elbeik's journey, the actions of the carrier indicate an apparent breach of the applicable regulations.

Article 14 of Royal Decree 542/2016, Article 11.1 (b)iv of Council Regulation (EC) 1/2005 and Article 7.2.3 of the OIE Terrestrial Animal Health Code establish the need for a Contingency Plan, with sufficient details, to ensure the welfare of animals if unforeseen events were to occur.

Article 3 of Council Regulation (EC) 1/2005 establishes that animals may only be transported when they are fit for transport and all necessary arrangements have been made in advance to minimise the length of the journey and meet their needs during the journey.

Article 3 (c) (d), Annex I Chapter II of Council Regulation (EC) 1/2005 and Article 7.2.5.4 of the OIE Terrestrial Animal Health Code establish the conditions for the maintenance of the means of transport and related loading and unloading facilities. The Inspection Record reveals a breach of the above-mentioned precepts. Quoting verbatim:

*“The pens are made of iron tubes that show a total lack of maintenance with rusty and broken parts, some of which form sharp elements that protrude into the pens. Several of the separating elements of the pens are completely or partially disassembled from their hinges and thrown into the pens among the animals.”*

Article 7.1.2 of the OIE Terrestrial Animal Health Code acknowledges that:

*“[...] the internationally recognised ‘five freedoms’ (freedom from hunger, thirst and malnutrition; freedom from fear and distress; freedom from physical and thermal discomfort; freedom from pain, injury and disease; and freedom to express normal patterns of behaviour) provide valuable guidance in animal welfare.”*

Article 3 (h) and Annex I Chapters III, IV, V and VI of Council Regulation (EC) 1/2005 and Article 7.2.3 and 7.2.9 of the OIE Terrestrial Animal Health Code establish the requirements for food and water during transport. However, the Official Inspection Record reveals a breach of the above-mentioned precepts. Quoting verbatim:

*“When asked about the amounts of feed and forage destined to the animals during said journey, the First Officer was unable to provide concrete data regarding the amount of feed and forage with which he left Tarragona. As for the food that he currently has for the animals, he reports that there are 5 tons of straw and 2 tons of feed and 120 tons of water on the ship. They have never been without food, but he acknowledges that at certain times they have had to ration it.”*

It continues:

*“The pens have automatic drinking systems [...], the water supply pump is off. After having been put into operation, it is observed that many of the automatic drinkers are not functioning, the conduction systems have numerous leaks and breaks. There are alternative drinkers that, given the dirtiness, it is evident have not been used. When water starts flowing from the drinkers, all the animals go to them showing a great need for water, which causes competitions and fights.”*

Annex I Chapter III of Council Regulation (EC) 1/2005 and Articles 7.2.3, 7.2.5 and 7.2.9 of the OIE Terrestrial Animal Health Code establish rules on the ventilation requirements during transport. In accordance with the Official Inspection Record, a breach with the above-mentioned requirements is revealed. Quoting verbatim:

*“On the lower decks, and mainly in the (pens) 2 and 3, a high concentration of ambient ammonia is perceived, which causes eye and nasal irritations in the personnel performing the checks, and proves problems in the ventilation systems. Mice are present in several decks.”*

Annex I, Chapters II and VI of Council Regulation (EC) 1/2005 set forth the requirements applicable to all means of transport (with regards for instance to the floor surface, compartments (space, air quality, cleaning conditions, etc.) and detailed requirements for livestock vessels. Those conditions were breached according to the Official Inspection Record. Quoting verbatim:

*“The pens showed a poor state of cleanliness with accumulation of faeces and urine, especially against the side walls. There are several pens where the accumulation of liquid manure completely covers the hooves of the animals that do not have the possibility of laying down in a dry area. None of the pens have straw litter or other*

*absorbent material. In those (pens) in which the faeces had been dragged to the bottom, the animals lay directly on the ground.”*

Article 7 of Law 8/2003 establishes the general obligations of operators involved in animal transport operations. As indicated in the Official Inspection Record carried out upon arrival at the port of Cartagena, the Elbeik was in clear breach of paragraphs (f) (g) in relation to the “treatment” of animals or their dead bodies. Quoting verbatim:

*“The pens identified as ‘HOSPITAL’ were used as one more pen, housing apparently healthy animals. In the pen marked ‘HOSPITAL’ on deck number 5, seven corpses of bovines, a dying one, one with an open fracture in a hind limb and 9 incapables of moving on their own and that due to overcrowding stepped on the death bodies of other animals and on the dying ones, with one of them laying down on a carcass.”*

It continues:

*It can be seen dead animals semi-buried in the manure of other animals. In a pen situated on deck 5 there is a cachectic and dying animal being trampled by other animals.”*

The conduct of the carrier constitutes a breach of the provisions of the above-mentioned articles, and it should be classified as very serious.

The Elbeik did not have a corresponding Contingency Plan to activate once the consignment was rejected. As in the case of the Karim Allah, once the Elbeik departed from Libya, the necessary measures should have been implemented to ensure the fast return of the animals to the port of departure. However, the animals were transported without a clear destination for several weeks, waiting for a new buyer or new export documents.

The vessel was not in condition to carry out the transport of the animals, posing a danger to the integrity and life of the animals, since the pens were not safe, sufficient, nor were they adequately ventilated. The crew failed to comply with the basic requirements to ensure the animals were kept fed and hydrated, the principle of minimum animal welfare.

In addition, there was no medication on board to deal with any pathologies that may have occurred during the trip, especially considering the critical transport conditions that were unlikely to guarantee a satisfactory level of welfare to the animals. It should be added that the pens were not cleaned, the dead bodies were not removed, and the decks on which the animals were travelling were not properly ventilated.

In short, if the conduct of the Karim Allah was clearly in infringement, that of the Elbeik was even more so.

Its arrival at the port of Cartagena, Spain, was postponed until 19 March 2021, unnecessarily prolonging the suffering of the animals.



Fig. 8 - The Elbeik vessel docked at Cartagena, private.

#### **5.2.4 Analysis of compliance by SCA with the protocols established for the management of the situation after the animals had been rejected in the country of destination**

The conclusions contained in point 4.2.4 regarding the analysis of compliance by the SCA with the protocols established for the management of the situation once rejected in the destination country, also apply, though with specific differences concerning animal pathologies and dates.

### **5.2.5 Analysis of the correct qualification by the SCA of the arrival, import or reimport of the animals into Spain after the animals have been rejected in the country of destination and the competence of the Directorate-General for Health of Agricultural Production to take decisions in this case**

The contents of point 4.2.5 relating to the qualification by the SCA as import or reimport of the animals returning to Spain after the animals have been rejected in the country of destination apply in full.

## **6. Conclusions**

The evidence we present throughout this report reveals, without any doubt, the responsibilities of the parties involved with regards to breaches of international, EU and national regulations, in the animal transport operations carried out between December 2020 and March 2021 by livestock vessels the Karim Allah and the Elbeik.

In terms of public institutions, we underline a large number of apparent breaches by the competent authorities.

On the part of the SCA, as represented by their Official Veterinary Services, there might have been infringements in terms of proper completion of the export certificates to Turkey, taken that it is an obligation on the part of the authorities to comply with minimum quality standards when issuing these certificates.

The SCA are allowed by current regulations to determine the origin of the animals as coming from a zone free of bluetongue, within a larger territory with active foci of bluetongue. Thus, it is up to the SCA to determine such territories as free from bluetongue. Instead, in this case, the SCA failed to mention Zaragoza and Teruel as being territories free from bluetongue within a larger region (Aragon), with active foci, instead limiting its declaration to simply naming the municipalities where the farms were located.

In the case of the Elbeik, there was also a breach by the SCA of the rules on the authorisation for departure of bovine animals without the corresponding documents. In addition, there were apparent breaches by the TCA and LCA regarding merchandise rejection protocols, following which they should have guaranteed animal welfare at the time, providing facilities for the unloading of the animals and thus alleviating their suffering.

Furthermore, all these authorities, the SCA, TCA and LCA, as well as the EU Commission itself, acted passively, allowing for the slowness of an excessively bureaucratic process to



affect the animals, by prolonging the suffering of more than 2,600 animals for over three months.

In terms of private enterprise, there were also many breaches of established legal obligations.

Starting with the Karim Allah, we must highlight the breaches by the carrier of regulations in relation to animal welfare conditions, regarding the provisions relating to bedding and ventilation. As for animal health, there is no doubt about the deplorable state of the animals, most of which had skin conditions, fungal conditions, parasitic infestations, and much more. With regards to documentary control, the ship's master did not make either the Roadmap or Record Sheet available to the authorities.

Regarding public health, animals from third countries that are expressly prohibited from being exported to EU Member States, due to the fact of these countries having active foci of diseases with a high health risk, were introduced into Spain.

Also, the bodies of dead animals were torn to pieces, and thrown overboard into the sea, without no confirmation as to whether at a minimum distance from the mainland so that such actions did not pose a health risk.

About the Elbeik, we highlight the breaches by the Carrier, of regulations in relation to animal welfare conditions, regarding the provisions relating to bedding, ventilation, the adequacy of the pens, the hydration and feeding of animals and the loading density of the animals. From the point of view of animal health, animals aboard the Elbeik were subjected to a situation of suffering and degradation that is unjustified, with animals in a state of cachexia, dehydrated, malnourished, with some being forced to eat, when they were provided with food, on the corpses of their own companions.

The Karim Allah and the Elbeik showed obvious deficits in their maintenance.

In both cases, the Carrier, together with the exporter, delayed the return of the animals to the country where the ports of departure are located. Consequently, the animals stayed at sea for more than three months for purely commercial considerations, in disregard and in breach of the minimum legal requirements for animal welfare and animal health during transport operations, as set forth by Council Regulation (EC) 1/2005 and related regulations, and the corresponding Spanish national regulations.

These breaches are not limited to the cases of the Karim Allah and the Elbeik, which instigated this report; rather than being isolated facts, these cases are presented to us as the 'tip of the iceberg' of what happens every day in the commercial movement of terrestrial farmed animals via sea.

Whether due to (i) insufficient Community regulations, and/or insufficient implementation by Member States of certain EU rules (such as avoiding the overcrowding of the animals, maintaining temperature and ventilation control and guaranteeing an adequate supply of water and food), (ii) the lack of means and/or interest by the Member State competent authority in verifying and complying with the requirements established by EU regulations, or (iii) insufficient action by the EU Commission in enforcing the regulations itself, the truth is that Member States, and especially Spain, are a long way from meeting the minimum standards of animal welfare that are required by law.

The process of transposition of certain parts of the EU Regulations by Spain is insufficient, since, in some ways, it appears the authorities are not interested in establishing and imposing sufficiently harsh sanctions that could jeopardise the continuity of commercial activity via their commercial ports of Cartagena and Tarragona.

There is, without doubt, insufficient transposition of EU Regulations. Spanish regulations are excessively ambiguous when qualifying the breaches of parties involved in animal transport. It is thus extremely difficult to frame the breaches within the regulated sanctions, which are already scarce.

The SCA are also not required to field sufficient qualified independent personnel; again, the only reason is the lack of interest in additional verification of compliance with the regulations.

In any case, another essential element that determines the violation of the minimum principles of animal welfare and health during maritime transport lies in the practically non-existent protocols for crisis management, from the rejection of animals, such as the cases analysed in this report, to crises of different kinds, such as ship breakdowns in transport.

Finally, at the level of Spanish internal regulations, we must undertake a series of considerations regarding the criminal liability of companies.

In accordance with Article 31 Bis 1 of the Spanish Criminal Code, after its reform by Organic Law 1/2015, companies shall be criminally responsible:

- 1. Of the offences committed on behalf of or on their behalf, and for their direct or indirect benefit, by their legal representatives or by those acting individually or as members of a body of the company, they are authorised to make decisions on behalf of the company or have powers of organisation and control within it.*
- 2. Of the offences committed, in the exercise of activities and on account and for the direct or indirect benefit thereof, by those who, being subject to the authority of the natural persons referred to in the preceding paragraph, have been able to carry out*

*the acts because they have seriously breached the duties of supervision, monitoring and control of their activity in the specific circumstances of the case.”*

However, the Spanish Criminal Code establishes a closed list of offences that companies may commit against animals, which do not include the criminal type of unjustified animal abuse (Art. 337) and unjustified animal abuse resulting in death (Art. 337.3), in a new exercise of ignorance regarding minimum standards of welfare and animal protection.

Such types of criminal offences could entail both economic penalties, as well as deprivation of liberty and disqualification for the development of professions directly linked to animals, so their imposition on companies and not just natural persons would give the clearest concept of justice a greater deterrent effect.

## **7. Recommendations**

With regards to the Elbeik and Karim Allah cases, the legal actions to be taken could be as follows:

- The EU Commission should take action against the Spanish authorities, aimed at clarifying whether a correct transposition and implementation of pieces of EU law related to animal welfare during transport is taking place.
- In the case of serious infringements, to be classified as such, they must be linked to an objective of torture or the conditionality of the action with a specific aim of harming the animal as established in Art. 14 of Law 32/2007. The abstract nature of these concepts determines a difficult qualification of the action and allows breaches of a very serious nature, such as those in this report, to remain virtually unpunished.
- The imposition of real and effective sanctions, such as the requisitioning of ships or the disqualification for the development of activities related to animals, for a double purpose: the punishment for an action contrary to the principles of animal welfare that result from Art. 13 of the Founding Treaty of the European Union and, on the other hand, a deterrent effect to avoid future infringements motivated by purely economic interests.
- The EU Commission should take actions aimed at clarifying whether the Romanian and Croatian Governments comply with current regulations when granting transport authorisations to livestock vessels.
- The Spanish authorities (MAPA, Council of Ministers and other Competent Authorities) should launch administrative actions against the owners of the animals, the exporter, the vessels' owner, and the carrier in accordance with the procedure

established in Law 39/2015 of 1 October, of the Common Administrative Procedure of the Public Administrations (LPACAP), for infractions of Law 8/2003 and Law 32/2007 for the following reasons:

- Animals that could have spread diseases with a high health risk were transported, which according to Law 8/2003 is a very serious offence, since an attempt has been made to reimport animals from countries with active foci of dangerous diseases, such as Libya. This being the main reason why these countries are prohibited from exporting animals to EU countries. In this sense, we cannot ignore the MAPA resolutions that denied the animals entry into Spanish territory and, subsequently, after they had already entered the territory, ordered their immediate killing, which implies recognition by the SCA of such circumstances.
- The dead bodies of the animals that were abandoned, torn to pieces, and thrown overboard, posed a serious risk to public health, which is a serious offence. Even though the captains of both vessels claimed that said actions were carried out at a sufficient distance, no proof of this was provided, and it should be duly investigated by the Spanish authorities.
- The captains of the Karim Allah and the Elbeik did not have the sanitary documentation required for the movement and transport of the animals, as expressly recognised by the Official Inspection services, which is also a serious offence. There has been a clear breach of the obligations required by the regulations in relation to animal health on the part of those in charge of the vessels, which is also a serious infringement.
- In the case of very serious infractions, a fine of €60,001 to €1,200,000 can be applied. In the case of serious infractions, a fine of €3,001 to €60,000 can be applied. In the case of minor infractions, a fine of €600 to €3,000 euros or a warning can be applied.
- Regarding Law 32/2007, there has been a serious violation of the obligations required by animal protection regulations, through causing permanent injuries, and leading to death. In the case of serious infringements, a fine of at least €601 euros can be applied, up to a maximum limit of €6,000.
- The owners of the animals can take actions against the Spanish authorities (Responsabilidad Patrimonial de la Administración), in accordance with the procedure established in Law 39/2015 of 1 October 1, of the Common Administrative Procedure of Public Administrations (LPACAP). In this sense, the possible qualification of the actions taken by the SCA in the issuing of the veterinary export certificates to Turkey

and to Libya will need to be clarified in court, according to Art. 32.1 of the above-mentioned Law:

*“Individuals will have the right to be compensated by the corresponding Public Administrations, for any injury they suffer to any of their property and rights, provided that the injury is a consequence of the normal or abnormal operating of public services except in cases of force majeure or damages that the individual has the legal duty to bear in accordance with the Law.”*

Therefore, in the event of claiming compensation from the SCA, they must take actions aimed at qualifying the actions taken by the SCA as an irregular performance of its administration.

- Actions must also be initiated by the Spanish authorities to assign criminal responsibilities, in accordance with Art. 337 of the Criminal Code. This article, included in the Chapter on environmental crimes, establishes the penalties, both deprivation of liberty and fines, as well as an accessory penalty of disqualification from the exercise of any profession related to animals for those who cause unjustified suffering to animals.

In addition, Art. 337.3 of the Spanish Criminal Code establishes a type of aggravated criminal offence for unjustified animal abuse resulting in death. These criminal actions can be initiated both by the Courts, State Security Forces and Bodies, the Public Prosecutor's Office, and may also be exercised by complaint of any citizen or entity, as a “popular accusation” or a private accusation, according to the process established for each.

Overall, by considering and analysing the systematic breaches by all parties involved, both from a public and private perspective, in the activity of transporting animals by sea to countries outside the Union, the prohibition of this activity is essential. To this end, the EU Commission should ban such trade within the revision of Council Regulation 1/2005 and prepare a strategy to shift to an extra-EU trade in meat products, carcasses and genetic material.

## ANNEXES

### ANNEX I

1. 20-2-2021 MAPA RESOLUTION
2. 22-2-2021 MAPA RESOLUTION
3. 26-2-2021 ANIMAL HEALTH INSPECTION RECORD
4. 26-2-2021 MAPA RESOLUTION
5. 1-3-2021 MAPA RESOLUTION
6. 3-3-2021 RESOLUTION REJECTING APPEAL
7. 5-3-2021 RESOLUTION FROM HIGH COURT (TSJ SECCION CUARTA)
8. 12-18-2020 CABI SECTIONS 1 AND 2 TURKEY ELBEIK 18122020 TARRAGONA
9. 12-18-2020 CABI SECTION 3 TURKEY ELBEIK 18122020 TARRAGONA
10. 18.12.2020 ELBEIK CABI 0044T CARGO TARRAGONA TURQUIA
11. 3-16-2021 RESOLUTION FROM THE GENERAL DIRECTORATE OF MECHANT NAVY (DIRECCIÓN GENERAL MARINA MERCANTE)
12. 3-18-2021 COMUNICATION TO GANADOS FERRU ELBEIK
13. 3-19-2021 INSPECTION RECORD
14. 22-3-2021 RESOLUTION OF THE GENERAL DIRECTOR OF HEALTH MINISTER
15. INFORMATIVE NOTE ON THE CONDITIONS OF EXPORT OF LIVE ANIMALS FROM SPAIN TO TURKEY

## ANNEX II

### Sanctions in Laws 8/2003 and 32/2007

Law 32/2007 - from Article 13 to Article 22 - establishes the classification of the different infringements, between minor, serious and very serious, as well as the possible sanctions to be applied.

- In the case of very serious infringements, a fine of at least EUR 6,001 and up to a maximum limit of EUR 100 000 shall apply.
- In the case of serious infringements, a fine of at least EUR 601 and up to a maximum limit of EUR 6,000 shall apply.
- In the case of minor infringements, a fine penalty shall apply up to a maximum limit of EUR 600 or a warning in its absence.

Likewise, a series of accessory sanctions and provisional measures are established, consisting of measures aimed at the interruption of the infringing situation, such as confiscation of animals, suspension of activity, cessation of activity or closure of establishments.

Law 8/2003 – from Article 82 to Article 91 - establishes the classification of the different infringements, between minor, serious and very serious, as well as the possible sanctions to be applied.

- In the case of very serious infringements, a fine of EUR 60,001 to EUR 1,200,000 shall apply.
- In the case of serious infringements, a fine of EUR 3,001 to EUR 60,000 shall apply.
- In the case of minor infringements, a fine of EUR 600 to EUR 3,000 or a warning in its absence shall apply.

Likewise, a series of accessory sanctions and provisional measures are established, consisting of measures aimed at the interruption of the infringing situation such as confiscation of animals, suspension of activity, cessation of activity, closure of establishments or disqualification from obtaining subsidies or public aid.

In accordance with the facts described in this report, in the specific cases of the Karim Allah and the Elbeik the following offences found in the above-mentioned articles of Laws 8/2003 and 32/2007 are observed:

#### Law 8/2003

Very serious:

*“14. The transport of animals, sick or suspicious, that may spread diseases of high sanitary risk.”*

Serious:

*“20. The abandonment of animals, their corpses or products or raw materials which pose a health risk to animal health, public health or pollute the environment, or their shipment to destinations that are not authorised, provided that it is not criminalized as a very serious infringement.”*

*“23. The absence of the sanitary documentation required for the movement and transport of animals, or its non-correspondence with the origin, destination, type of animals or territorial scope, where it is not typified as a minor infringement.”*

*“25. Breach by animal health care technicians or, in the case of animal health products other than veterinary medicinal products, by persons responsible for their control and even their preparation, of the health obligations imposed on them by the applicable regulations, where it poses a risk to animal health.”*

Law 32/2007:

Serious:

*“2(d) Non-compliance with the obligations required by animal protection regulations, when it results in permanent injury, deformation or serious defects in the animals.”*

Although together Law 8/2003 and Law 32/2007 contain an extensive list of infringements, we can see how, in the face of cases of such depth as these, due to the plurality of precepts infringed, these regulations are practically useless. We are faced with yet more evidence of the need for better transposition of EU regulations and the consequences of non-compliance.

In short, we need a more effective sanctioning regime designed to ensure animal welfare during transport.



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