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Advocate General's Opinion in Joined Cases C-778/21 P | Commission v Front Polisario and C-798/21 P | Council v Front Polisario

Advocate General Ćapeta: the Court of Justice should annul the Council decision concluding the Sustainable Fisheries Partnership Agreement with the Kingdom of Morocco

In not treating the territory of Western Sahara and the waters adjacent thereto as separate and distinct from that of the Kingdom of Morocco, the Council failed to respect the right of self-determination of the people of Western Sahara

Western Sahara is a territory in North-West Africa, bordered by Morocco to the north, the People's Democratic Republic of Algeria to the north-east, the Islamic Republic of Mauritania to the east and south and the Atlantic to the west.

In January 2019, the European Union and the Kingdom of Morocco signed the Sustainable Fisheries Partnership Agreement (the "Fisheries Agreement"), along with the Implementation Protocol ¹. That agreement was approved ² by the Council on behalf of the European Union (the "Council decision").

In June 2019, the Front Polisario ³, a movement supporting the right of the Sahrawi people to self-determination sought the annulment of the Council decision before the General Court. In its action, Front Polisario claims to represent the people of Western Sahara. It argues that the Council failed to respect the right to self-determination of that people. In its judgment ⁴, the General Court annulled the Council decision. In 2021, both the Commission and the Council brought an appeal before the Court of Justice ⁵.

In her Opinion, Advocate General Tamara Ćapeta proposes that the Court reject these appeals and uphold the General Court's judgment to annul the Council's decision. However, Advocate General proposes to base that annulment on different reasoning.

First, the Advocate General explains that **the people of Western Sahara have no official or recognised representative** to bring an action on their behalf. **However, Front Polisario fights for one of the three possible outcomes of the right to self-determination of the people of Western Sahara:** the creation of an independent State. Accordingly, Front Polisario should be viewed as **reflecting the interests and wishes of (at least) part of the people of Western Sahara.**

Turning to the substance of the case, the Advocate General explains that the **Fisheries Agreement and the Implementation Protocol do not fulfil the requirement to treat the territory of Western Sahara as 'separate and distinct' from that of the Kingdom of Morocco.**

This is in violation of **the principle of self-determination**, as interpreted by the Court of Justice in its 2016 judgment in C-104/16 P *Council v Front Polisario* ⁶.

Furthermore, according to the Advocate General **the failure to treat the two territories separately may also have repercussions on the right of the people of Western Sahara to enjoy and benefit from their natural resources**, including the fishing resources in the waters adjacent to that territory. However, since some of those elements, while raised before the General Court, were not dealt with, it is not for the Court of Justice to discuss the scope of the rights and duties related to the enjoyment of natural resources of the people of Western Sahara.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

Unofficial document for media use, not binding on the Court of Justice.

The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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¹ [Sustainable Fisheries Partnership Agreement](#) between the European Union and the Kingdom of Morocco.

² [Council Decision \(EU\) 2019/441](#) of 4 March 2019 on the conclusion of the Sustainable Fisheries Partnership Agreement between the European Union and the Kingdom of Morocco, the Implementation Protocol thereto and the Exchange of Letters accompanying the Agreement.

³ Frente Popular para la Liberación de Saguia El-Hamra y Rio de Oro (Popular Front for the Liberation of Saguia El-Hamra and Rio de Oro).

⁴ Judgment of 29 September 2021, *Front Polisario v Council*, [T-344/19](#) and [T-356/19](#) ([Press Release n° 166/21](#)).

⁵ These appeals are linked to the appeals in joined cases [C-779/21 P](#) and [C-799/21 P](#), *Commission and Council v Front Polisario* ([Press Release n°54/24](#)).

⁶ Judgment of 21 December 2016, *Council v Front Polisario*, [C-104/16 P](#) ([Press Release n°146/16](#)).