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Advocate General's Opinion in Joined Cases C-29/22 P and C-44/22 P | KS and KD v Council and Others

Advocate General Ćapeta: Individuals may bring an action for damages against the EU before the EU Courts based on alleged breaches of fundamental rights by EU Common Foreign and Security Policy measures

Two individuals lost family members in 1999 in the aftermath of the Kosovo conflict. The murders and disappearances remained unsolved. In 2008, the European Union established a civilian mission, the EU Rule of Law Mission in Kosovo (Eulex Kosovo), which had, among its tasks, the investigation of such crimes.

The two individuals considered that Eulex Kosovo did not properly investigate the crimes involving their family members. As a result, they claimed a breach of their fundamental rights. They brought an action for damages requesting compensation before the General Court of the EU. The General Court dismissed their action, holding that it lacked jurisdiction to hear the case. The individuals and the EU Commission appealed the General Court's decision.

Together with Case C-351/22 *Neves 77 Solutions*, in which Advocate General Ćapeta also delivered her Opinion today (see Press Release No 180/23), these joined cases raise important questions regarding the limits of the EU Courts' jurisdiction in the area of the Common Foreign and Security Policy (CFSP) set by the Treaties.

In her Opinion, Advocate General Tamara Ćapeta concludes that EU law does not limit the jurisdiction of the EU Courts to hear an action for damages brought by individuals based on an alleged breach of fundamental rights by any type of CFSP measure.

Such an interpretation follows from the constitutional principles of the EU legal order, principally the rule of law that includes the right to effective judicial protection and the principle requiring respect for fundamental rights in all EU policies. The constitutional role of the EU Courts that follows from those principles can be limited only exceptionally. The violation of fundamental rights cannot be a political choice in the European Union, and the EU Courts must have jurisdiction to ensure that CFSP decisions do not cross 'red lines' imposed by fundamental rights.

Advocate General Ćapeta therefore proposes that the Court should find that the General Court erred in law when it found that it lacked jurisdiction to hear the action for damages.

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.

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

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