



Court of Justice of the European Union

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Judgment in Case C-266/16

The Queen, on the application of Western Sahara Campaign UK v
Commissioners for Her Majesty's Revenue and Customs and Secretary of
State for Environment, Food and Rural Affairs

Press and Information

The Fisheries Agreement concluded between the EU and Morocco is valid in so far as it is not applicable to Western Sahara and to its adjacent waters

Western Sahara is a territory in North-West Africa, bordered by Morocco to the north, Algeria to the north-east, Mauritania to the east and south and the Atlantic to the west. Currently, the greater part of Western Sahara is occupied by Morocco, which considers it to be an integral part of its territory. A smaller part of that territory, in the east, is controlled by the Front Polisario, a movement which seeks to achieve the independence of Western Sahara.

The EU and Morocco successively concluded an association agreement in 1996, a partnership agreement in the fisheries sector ('the Fisheries Agreement')¹ in 2006 and a liberalisation agreement with respect to agricultural and fisheries products in 2012. The Fisheries Agreement is supplemented by a protocol setting out the fishing opportunities which it lays down, and expires in July 2018.²

By judgment of 21 December 2016,³ the Court of Justice, hearing an appeal in the dispute between the Front Polisario and the Council of the European Union and the European Commission, held that the association agreement and the partnership agreement concluded between the EU and Morocco had to be interpreted, in accordance with international law, as meaning that they were not applicable to the territory of Western Sahara. That case did not, however concern the Fisheries Agreement, and consequently the Court gave no ruling on the validity of that agreement in its judgment.⁴

The Western Sahara Campaign (WSC) is an independent voluntary organisation whose aim is to support the recognition of the right of the people of Western Sahara to self-determination. WSC claims, before the High Court of Justice (England and Wales), Queen's Bench Division (Administrative Court) that the Fisheries Agreement and the acts approving and implementing that agreement⁵ are invalid in so far as that agreement and those acts apply to the waters adjacent to the territory of Western Sahara. WSC consequently considers that the United Kingdom authorities are acting unlawfully in providing for implementation of that agreement and, in particular, issuing licences to fish in the waters at issue.

¹ OJ 2006 L 141, p. 4. The conclusion of that agreement was approved by Council Regulation (EC) No 764/2006 of 22 May 2006 (JO 2006, L 141, p. 1).

² OJ 2013 L 328, p. 2. The conclusion of that protocol was approved by Council Decision 2013/785/EU of 16 December 2013 (JO 2013, L 349, p. 1).

³ Case: [C-104/16 P](#) Council v Front Polisario, see Press Release [No 146/16](#).

⁴ The Front Polisario is however challenging the legality of the Fisheries Agreement Protocol before the General Court (Case [T-180/14](#)). The General Court has stayed proceedings in that case until the Court has given judgment in the WSC case.

⁵ In addition to the acts referred to in footnote 1 and 2, WSC also disputes the validity of Council Regulation (EU) No 1270/2013 of 15 November 2013 on the allocation of fishing opportunities under the 2013 Protocol (OJ 2013 L 328, p. 40).

In those circumstances, the High Court of Justice sought to ascertain from the Court of Justice, *inter alia*, whether the Fisheries Agreement was valid under EU law. This is the first time that a request has been made under the preliminary ruling procedure for a review of validity formally covering international agreements concluded by the EU.

In today's judgment, the Court holds, in the first place, that it has jurisdiction to assess the validity of acts approving the conclusion of international agreements concluded by the EU and, in that context, **to assess whether such agreements are compatible with the treaties and the rules of international law which bind the EU.**

The Court examines, in the second place, the validity of the Fisheries Agreement. It notes that the British court seeks to determine whether the opportunity to exploit the natural resources in the waters adjacent to the territory of Western Sahara is compatible with EU law and international law. Such a question presupposes that those waters are included within the territorial scope of the Fisheries Agreement. Therefore, the Court first establishes the validity of that premise.

In that regard, the Court notes, first of all, that the Fisheries Agreement is applicable to the "territory of Morocco", an expression equivalent to the concept of "territory of the Kingdom of Morocco" in the Association Agreement. As the Court has previously held in its judgment of 21 December 2016, that concept itself refers to the geographical area over which the Kingdom of Morocco exercises its sovereign powers under international law, to the exclusion of any other territory, such as that of Western Sahara. In those circumstances, **if the territory of Western Sahara were to be included within the scope of the Fisheries Agreement, that would be contrary to certain rules of general international law that are applicable in relations between the EU and Kingdom of Morocco, *inter alia* the principle of self-determination.**

The Court notes, next, that the Fisheries Agreement is applicable to "waters falling within the sovereignty or jurisdiction" of the Kingdom of Morocco. In accordance with the UN Convention on the Law of the Sea,⁶ the waters over which a coastal State is entitled to exercise sovereignty or jurisdiction are limited exclusively to the waters adjacent to its territory and forming part of its territorial sea or of its exclusive economic zone. **The Court therefore holds that, taking account of the fact that the territory of Western Sahara does not form part of the territory of the Kingdom of Morocco, the waters adjacent to the territory of Western Sahara are not part of the Moroccan fishing zone referred to in the Fisheries Agreement.**

Lastly, the Court examines the territorial scope of the Protocol to the Fisheries Agreement. Although that Protocol does not contain any specific provisions on that subject, the Court states that several of its provisions use the expression "Moroccan fishing zone". That expression is the same as that to be found in the Fisheries Agreement, which defines it as "waters falling within the sovereignty or jurisdiction of the Kingdom of Morocco". The Court concludes that **the "Moroccan fishing zone" under the Protocol does not include the waters adjacent to the territory of Western Sahara.**

The Court therefore holds that, since neither the Fisheries Agreement nor the Protocol thereto are applicable to the waters adjacent to the territory of Western Sahara, the EU acts relating to their conclusion and implementation are valid.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

⁶ The United Nations Convention on the Law of the Sea, concluded at Montego Bay on 10 December 1982 (United Nations Treaty Series, Vol. 1833, 1834 and 1835, p. 3), entered into force on 16 November 1994. Its conclusion was approved on behalf of the Community by Council Decision 98/392/EC of 23 March 1998 (OJ 1998 L 179, p. 1).

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

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