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Judgments of the Court in Joined Cases C-778/21 P and C-798/21 P | Commission and Council v Front Polisario and in Joined Cases C-779/21 P and C-799/21 P | Commission and Council v Front Polisario

Western Sahara: the 2019 EU-Morocco trade agreements regarding fisheries and agricultural products, to which the people of Western Sahara did not consent, were concluded in breach of the principles of self-determination and the relative effect of treaties

However, the expression of the consent of that people to an agreement which is to apply to the territory of Western Sahara need not necessarily be explicit but may, under certain conditions, be presumed

The consent of the people of Western Sahara to the implementation, in that non-self-governing territory, of the 2019 EU-Morocco trade agreements regarding fisheries and agricultural products is a condition for the validity of the decisions by which the Council approved those agreements on behalf of the European Union. It is true that a consultation process was carried out by the Commission and by the European External Action Service (EEAS) prior to the adoption of those decisions. However, that consultation process did not concern the people of Western Sahara but the inhabitants who are currently present in that territory, irrespective of whether or not they belong to the people of Western Sahara. As a significant proportion of that people now lives outside that territory, that consultation process was not such as to establish such consent on the part of that people.

However, that consent need not always be explicit. It may be presumed where the agreement does not create obligations for the people who is a third party to that agreement, and where the agreement confers on that people a specific, tangible, substantial and verifiable benefit which derives from the exploitation of that territory's natural resources and is proportional to the degree of that exploitation.

As the agreements at issue manifestly do not provide for such a benefit, the Court of Justice confirms the General Court's annulment of the Council's decisions. The decision concerning the fisheries agreement expired in July 2023 and has thus ceased to produce effects. As regards the agreement concerning liberalisation measures on agricultural products, the Court maintains, for a period of 12 months from today, the effects of the Council's decision, in view of the serious negative consequences which its immediate annulment would entail for the external action of the European Union and for reasons of legal certainty.

Western Sahara is a territory situated in north-west Africa: bordering the Atlantic Ocean, it has land borders with Morocco (to the north), Algeria (to the north-east), and Mauritania (to the east and to the south). Since the 1970s, there has been a conflict between Morocco and Front Polisario, a movement campaigning for the exercise by the people of Western Sahara of its right to self-determination and for the creation of a sovereign Sahrawi State, as regards the status of that territory. In addition to that territorial dispute, the conflict has, over the years, concerned the legality of economic agreements concluded by, in particular, Morocco and relating to the exploitation of the natural resources of, and the waters adjacent to, Western Sahara.

It is in this context that Front Polisario, which claims to represent the people of Western Sahara, has challenged two trade agreements concluded between the European Union and Morocco regarding fisheries ¹ and agriculture. ² In 2019, it submitted applications to the General Court of the European Union for annulment of the decisions of the Council approving those agreements. ^{3 4} The General Court, considering that the European Union and Morocco had concluded agreements applicable to Western Sahara without having obtained the consent of the people of Western Sahara, as a third party to the agreements at issue, annulled ⁵ the decisions at issue, while temporarily maintaining the effects of those decisions.

Appeals have been brought before the Court of Justice by the Commission and the Council against those annulling judgments.

The Court, sitting as the Grand Chamber, and giving a **final** ruling on those cases, **dismisses the appeals in their entirety**.

As regards the admissibility of the actions brought by **Front Polisario** before the General Court, the Court of Justice considers that that question must be assessed in the light of the effects of the decisions at issue and, accordingly, of the agreements at issue, on the people of Western Sahara. Front Polisario is **a privileged interlocutor in the process conducted under the auspices of the United Nations with a view to determining the future status of Western Sahara**. Having regard to the purpose of the decisions at issue and their effect on the right of that people to self-determination, Front Polisario **satisfies the conditions to be able to challenge the decisions at issue before the EU judicature**, in the interests of that people.

The Court finds, in the light of its case-law ⁶ and on the basis of the principles of the right to self-determination and the relative effect of treaties, that the implementation of an international agreement between the European Union and Morocco in the territory of Western Sahara, as provided for by the agreements at issue, **must receive the consent of the people of Western Sahara**. However, **such consent has not been given in this instance**.

The Commission and the EEAS did not consult the people of Western Sahara, which is the sole holder of the right to self-determination with regard to the territory of Western Sahara, but, in essence, the 'population' of that territory, meaning its current inhabitants, the majority of which do not belong to that people. Indeed, a large part of that people has been in exile since the 1970s and has found refuge in Algeria.

However, the Court of Justice considers that, contrary to what was held by the General Court, the expression of the consent of the people of Western Sahara to the agreements at issue **did not necessarily have to be explicit**. ⁷ Indeed, international law does not exclude the possibility that the consent of a third party to an agreement which is intended to be applied to the territory to which that third party's right to self-determination relates **may be granted implicitly, provided that certain conditions are satisfied**. That consent may be **held to have been obtained** where the agreement in question **does not give rise to an obligation** for that people and where it provides that that people receives **a specific, tangible, substantial and verifiable benefit from the exploitation of that territory's natural resources; a benefit which must, in addition, be proportional to the degree of that exploitation**. Where those conditions are satisfied, the fact that a movement which presents itself as the legitimate representative of that people objects to that agreement cannot, as such, be sufficient to call in question the existence of such presumed consent.

The Court specifies however that **that presumption** of consent **may be reversed**. Thus, it may be **examined by the EU judicature** where legitimate representatives of the people in question establish that an agreement does not satisfy the stated conditions, or at the request of the institutions or the Member States before the conclusion of an agreement in the context of an advisory procedure concerning the compatibility of that agreement with the Treaties. In this instance, although it finds that the agreements in question do not give rise to legal obligations for the people of Western Sahara, the Court notes by contrast that **the second condition is not satisfied, because those agreements do not confer any rights or benefits on the people of Western Sahara**, in particular inasmuch as no financial contribution is received by that people for the exploitation of the natural resources of, or

the waters adjacent to, that territory under those agreements.

Accordingly, **the consent of the people of Western Sahara to the application of the agreements at issue to that territory may not be presumed.**

Applying, inter alia, the same principles of international law, the Court also gives a ruling on the issue of the identification and labelling of melons and tomatoes from Western Sahara ⁸ in a judgment delivered today. In that judgment, it finds, in essence, that that labelling must indicate Western Sahara alone as the country of origin of those goods, to the exclusion of any reference to Morocco, so as to avoid misleading consumers as to the true origin of those goods.

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.

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The full text and, as the case may be, the abstract of the judgments ([C-778/21 P and C-798/21 P](#) and [C-779/21 P and C-799/21 P](#)) is published on the CURIA website on the day of delivery.

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Pictures of the delivery of the judgment are available from "[Europe by Satellite](#)" ☎ (+32) 2 2964106.

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

² [Agreement in the form of an Exchange of Letters](#) between the European Union and the Kingdom of Morocco on the amendment of Protocols 1 and 4 to the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part.

³ 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.

⁴ Council [Decision \(EU\) 2019/217](#) of 28 January 2019 on the conclusion of the agreement in the form of an Exchange of Letters between the European Union and the Kingdom of Morocco on the amendment of Protocols 1 and 4 to the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part.

⁵ See judgments of the General Court of 29 September 2021, *Front Polisario v Council*, [T-279/19](#) and [T-344/19](#) and [T-356/19](#) (see also Press Release [No 166/21](#)).

⁶ Judgments of the Court of Justice of 21 December 2016, *Council v Front Polisario*, [C-104/16 P](#) (Press Release [No 146/16](#)) and of 27 February 2018, *Western Sahara Campaign UK*, [C-266/16](#) (Press Release [No 21/18](#)).

⁷ The Court of Justice considers that, contrary to the interpretation given by the General Court, the agreements at issue do not give rise to legal obligations for the people of Western Sahara as a subject of international law.

⁸ See judgment of the Court of 4 October 2024, *Confédération paysanne*, [C-399/22](#) (Press Release No 169/24).