



Press and Information

General Court of the European Union
PRESS RELEASE No 19/17
Luxembourg, 28 February 2017

Orders of the General Court in Cases T-192/16, T-193/16 and T-257/16
NF, NG and NM v European Council

The General Court declares that it lacks jurisdiction to hear and determine the actions brought by three asylum seekers against the EU-Turkey statement which seeks to resolve the migration crisis

That measure was not adopted by one of the institutions of the EU

On 18 March 2016, a statement setting out how the Member States of the EU and Turkey intend, first, to address the current migration crisis and, secondly, to combat human trafficking between Turkey and Greece ('the EU-Turkey statement') was published, in the form of a press release, on the website shared by the European Council and the Council of the European Union.¹ The main points of that statement are the following:

- all new irregular migrants crossing from Turkey to the Greek islands as from 20 March 2016 will be returned to Turkey;
- migrants arriving in the Greek islands will be duly registered and any application for asylum will be processed individually by the Greek authorities in accordance with the Asylum Procedures Directive;²
- migrants not applying for asylum or whose application for asylum has been found to be unfounded or inadmissible will be returned to Turkey;
- for every Syrian being returned to Turkey from the Greek islands, another Syrian will be resettled from Turkey to the European Union.

Two Pakistani nationals and an Afghan national travelled from Turkey to Greece, where they submitted applications for asylum. In those applications, they stated that, for a variety of reasons, they risked persecution if they returned to their respective countries of origin. In view of the possibility, pursuant to the 'EU-Turkey statement', that they might be returned to Turkey if their applications for asylum are rejected, those persons decided to bring actions before the General Court of the European Union with a view to challenging the legality of the 'EU-Turkey statement'. According to those asylum seekers, that statement is an international agreement which the European Council, as an institution acting in the name of the EU, concluded with the Republic of Turkey. However, they claim, in particular, that this agreement infringes the rules of the FEU Treaty relating to the conclusion of international agreements by the EU. For its part, the European Council raised a plea pursuant to Article 130 of the Rules of Procedure of the General Court, in which it contended that the Court lacked jurisdiction to hear and determine the actions.

In the orders made today, **the General Court declares that it lacks jurisdiction to hear and determine the actions pursuant to Article 263 TFEU, and, accordingly, dismisses them.**

In those orders, the Court states, first of all, that there were inaccuracies in the press release of 18 March 2016 regarding the identification of the authors of the 'EU-Turkey statement' as the press

¹ Press Release No 144/16.

² Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ L 180, 29.6.2013, pp. 60 to 95).

release indicates, first, that it was the EU, and not its Member States, which had agreed on the additional action points referred to in that statement and, secondly, that it was the 'Members of the European Council' who had met with their Turkish counterpart during the meeting of 18 March 2016 which gave rise to that press release.

The Court takes the view that the evidence, provided by the European Council and relating to the meetings on the migration crisis held successively in 2015 and 2016 between the Heads of State or Government of the Member States and their Turkish counterpart, shows that it was not the EU but its Member States, as actors under international law, that conducted negotiations with Turkey in that area, including on 18 March 2016.

In that regard, the Court finds, in particular, that several official documents produced by the European Council attest that, on 17 and 18 March 2016, two separate events were organised in parallel at that institution's headquarters in Brussels in the presence of the representatives of the Member States of the EU meeting at the level of the Heads of State or Government. Those two events followed distinct courses from a legal, formal and organisational perspective. Thus, first, a session of the European Council, as an institution of the EU, took place on 17 March with the participation of those representatives of the Member States acting in their capacity as members of that institution. Secondly, an international summit took place the following day in the presence of the Prime Minister of the Republic of Turkey and those representatives of the Member States, acting this time in their capacity as Heads of State or Government.

The Court holds that it was in this latter capacity that, on 18 March 2016, the Heads of State or Government of the Member States met with their Turkish counterpart to discuss the migration crisis and proceeded to adopt the 'EU-Turkey statement', the main points of which were set out in the press release of the same day.

The Court therefore considers that **neither the European Council nor any other institution of the EU decided to conclude an agreement with the Turkish Government on the subject of the migration crisis**. In the absence of any act of an institution of the EU, the legality of which it could review under Article 263 TFEU, **the Court declares that it lacks jurisdiction to hear and determine the actions brought by the three asylum seekers**.

For the sake of completeness, with regard to the reference in the 'EU-Turkey statement' to the fact that 'the EU and [the Republic of] Turkey agreed on ... additional action points', the Court considers that, **even supposing that an international agreement could have been informally concluded during the meeting of 18 March 2016**, something which has been denied by the European Council, the Council of the European Union and the European Commission in the present cases, **that agreement would have been an agreement concluded by the Heads of State or Government of the Member States of the EU and the Turkish Prime Minister**. In an action brought under Article 263 TFEU, however, the Court does not have jurisdiction to rule on the lawfulness of an international agreement concluded by the Member States.

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months of notification of the decision.

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

The full text of the orders ([T-192/16](#), [T-193/16](#) and [T-257/16](#)) is published on the CURIA website.

Press contact: Holly Gallagher ☎ (+352) 4303 3355