



European Council

Brussels, 11 July 2016

SGS16/06070

TO THE PRESIDENT AND THE MEMBERS
OF THE GENERAL COURT OF THE EUROPEAN UNION

PLEA OF INADMISSIBILITY

lodged by the European Council,
pursuant to Article 130(1) of the Rules of Procedure of the General Court,

in Case T-192/16

NF,

represented by Paul O'Shea, Barrister at Law, and Brian Burns, Solicitor, Burns Kelly Corrigan Solicitors, 252 Harold's Cross Road, Harold's Cross, Dublin 6W, Ireland,

Applicant

against

EUROPEAN COUNCIL,

represented by Mr Krzysztof PLEŚNIAK, Ms Sonja BOELAERT and Mr Alvaro De ELERA, legal advisers in the Legal Service of that institution, as Agents, having agreed that service may be effected on them via e-Curia or, failing that, at fax No +32.2.281.56.56 and, where necessary, at the following address: Council of the European Union, Registry of the Legal Service, for the attention of Mr Krzysztof PLEŚNIAK, Ms Sonja BOELAERT and Mr Alvaro De ELERA, rue de la Loi, 175, 1048 Brussels,

Defendant

in proceedings brought against the European Council seeking annulment of the "EU-Turkey statement" of 18th March 2016¹.

¹ See Press Release 144/16, issued on 18 March 2016, publically available at the following link: http://www.consilium.europa.eu/press-releases-pdf/2016/3/40802210113_en.pdf.

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I. INTRODUCTION

1. On 31 May 2016, the European Council was notified of the application for annulment in Case T-192/16 lodged with the General Court on 22 April 2016 pursuant to the fourth paragraph of Article 263 TFEU.
2. The application is directed against the European Council and requests the Court to annul the "EU-Turkey Statement" (the "contested statement") which was issued following an international summit, held on 18 March 2016, between the Members of the European Council and their Turkish counterpart.
3. The application states that it is brought on behalf of an individual who is a national of Pakistan and who is staying at the "No Borders Refugee Camp", in Lesbos, Greece. The Applicant claims that he seeks international protection because he was in fear of persecution and serious harm as the result of *"a form of a family dispute"*².
4. The Applicant states that he fled Pakistan "[i]n or about the middle of February 2016" and that he ultimately arrived in Greece *"on the 19th of March 2016 by boat from Turkey"*³.
5. The Applicant indicates that he did not wish to claim asylum or another form of international protection in Greece, but wished to proceed *"onwards from Greece"*.⁴ Nonetheless, the Applicant states that he was *"pressurised"* to apply for asylum in Greece, which he eventually did *"[o]n or about the 11th April 2016"*. He claims to have done so *"under duress"*, *"against his wishes"* and *"with grave reservations"*⁵ and that he would not have done so *"but for"* the contested statement⁶. He contends that under current Union law and the ECJ case-law he should not have been required to apply for asylum in Greece⁷.
6. With regard to the nature of the contested statement, the Applicant contends that it constitutes an act designed to be binding in law and intended to produce legal effects of such a nature as to affect adversely his rights and interests⁸. He further contends that the aforementioned statement constitutes an international agreement⁹ concluded with Turkey by the European Council, in breach of the procedure set out in Article 218 TFEU¹⁰ and of his fundamental rights¹¹.

² See application, paragraphs 5 and 6.

³ See application, paragraph 6.

⁴ See application, paragraph 7.

⁵ See application, paragraph 6, 7 and 10.

⁶ See application, paragraph 11.

⁷ See application, paragraphs 9 and 11.

⁸ See application, paragraph 4 and 14.

⁹ See application, paragraph 4.

¹⁰ See application, paragraphs 15, 45 and 55.

¹¹ See application, in particular paragraphs 16, 47, 49 and 52.

the acts referred to in Article 288 TFEU, which the institutions must adopt under the conditions laid down by the Treaty in the exercise of their prerogatives as public authorities¹⁵.

11. Moreover, it is also a settled line of case-law that an action for annulment is inadmissible when it is directed against "an act" that is not adopted by the Council but by representatives of the Member States acting, not in their capacity as members of the Council, but as representatives of their governments, and thus collectively exercising the powers of the Member States which are not subject to judicial review by the Court.¹⁶
12. The same applies when the action for annulment is formally directed against the European Council whereas the act in question was approved, as in the present case, not by the European Council, but by Members of the European Council meeting with their Turkish counterpart outside the legal, institutional and procedural framework of the European Council.
13. As will be demonstrated below, the contested statement was issued on 18 March 2016 by the participants of an international summit held on that day between the Members of the European Council on the one hand, and their Turkish counterpart on the other, and not by the European Council.
14. Whilst it is true that the European Council met on 17 and 18 March 2016, its agenda did not include any reference to a meeting with third parties, let alone any meeting with Turkey. In fact, the provisional agenda included seven items, amongst which item 3 "Migration"¹⁷. The deliberations of the European Council started on 17 March 2016 and continued on 18 March 2016. At the end of its meeting, the European Council approved the conclusions on migration, jobs, growth and competitiveness¹⁸.
15. After the end of the European Council meeting, a new, separate meeting was held, on 18 March 2016, by members of the European Council, with a third party, the Turkish Prime Minister. As it can be seen from the first phrase of the contested statement, it was issued following the summit between "*the Members of the European Council and their Turkish counterpart*"¹⁹. This summit was a particularly important meeting and was referred to as an "international summit" (as demonstrated by the header of the press release containing the contested statement), but it was not a meeting of the European Council.

¹⁵ See order in case Lito Maieftiko Gynaikologiko kai Cheirourgiko Kentro/Commission T-353/10, ECLI:EU:T:2010:449, point 23.

¹⁶ See judgement in case Parliament/Council and Commission, C-181/91 and C-248/91, ECLI:EU:C:1993:271, points 12-25.

¹⁷ See document EUCO 13/16 of 15 March 2016, publically available at the following link: <http://www.consilium.europa.eu/en/meetings/european-council/2016/03/17-euco-provisional-agenda/>.

¹⁸ See document EUCO 12/16 of 18 March 2016, publically available at the following link: <http://www.consilium.europa.eu/en/press/press-releases/2016/03/18-european-council-conclusions/>.

¹⁹ See first sentence of the first paragraph of the contested statement, which reads as follows: "*Today the Members of the European Council met with their Turkish counterpart*".

16. As stated in the first sentence of the abovementioned press release, the summit of 18 March 2016 was the third in the series of international events, during which the representatives of Member States of the Union met with their Turkish counterpart to discuss Turkey-EU relations as well as the migration crisis. Before the 18th of March, the Heads of State or Government of the Member States had met with their Turkish counterpart on 29 November 2015 and on 7 March 2016, each time to discuss the same subject matters. Following each of these two previous meetings, a common statement, either referred to as an EU-Turkey statement or an EU-Turkey action plan, had been issued by the participants of these meetings²⁰. In sum, the meetings of 29 November 2015 and of 7 and 18 March 2016 are all international events which are of an identical legal, diplomatic and organisational nature, and were not meetings of the European Council.

²⁰ See Press release concerning that action plan, issued on 29 November 2016, publically available at the following link: <http://www.consilium.europa.eu/en/press/press-releases/2015/11/29-eu-turkey-meeting-statement/>; see also Press release, issued on 8 March 2016, publically available at the following link: <http://www.consilium.europa.eu/en/press/press-releases/2016/03/07-eu-turkey-meeting-statement/>. For the broader context, see the European Council internet site containing the "Timeline - response to migratory pressures", publically available at the following link: <http://www.consilium.europa.eu/en/policies/migratory-pressure/history-migratory-pressure/>.

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25. In the light of the foregoing, the application is manifestly directed against a contested act of which the European Council is not the author and which is not attributable to it. In addition, the contested act does not emanate from any of the other EU institutions, nor from any of the other entities mentioned in the first paragraph of Article 263 TFEU. Consequently, the Court does not have jurisdiction to examine the application and the European Council cannot legally be a defendant in the present case. The European Council respectfully submits that for these reasons alone the application must be dismissed as manifestly inadmissible.

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III. CONCLUSION

55. For all the reasons set out above, the European Council respectfully submits that the Applicant's action should be rejected as manifestly inadmissible and that the Applicant should bear the costs of these proceedings.

Respectfully submitted,

[REDACTED]

Krzysztof PLESNIAK

Sonja BOELAERT

Alvaro DE ELERA

Agents of the European Council

[REDACTED]