

ORDER OF THE COURT (First Chamber)

12 September 2018 (*)

(Appeal — Article 181 of the Rules of Procedure of the Court of Justice — EU-Turkey statement of the European Council of 18 March 2016 — Application for annulment)

In Joined Cases C-208/17 P to C-210/17 P,

THREE APPEALS under Article 56 of the Statute of the Court of Justice of the European, brought on 21 April 2017,

NF, residing on the Island of Lesbos (Greece), (C-208/17 P),

NG, residing in Athens (Greece), (C-209/17 P),

NM, residing on the Island of Lesbos, (C-210/17 P),

represented by P. O'Shea, Barrister-at-Law, I. Whelan, Barrister-at-Law, and B. Burns, Solicitor,

applicants,

the other parties to the proceedings being:

European Council, represented by S. Boelaert, M. Chavrier and J.-P. Hix, acting as Agents,

defendant at first instance,

supported by:

Hellenic Republic, represented by M. Michelogiannaki and G. Karipsiadis, acting as Agents,

THE COURT (First Chamber),

composed of R. Silva de Lapuerta (Rapporteur), President of the Chamber, C.G. Fernlund, J.-C. Bonichot, S. Rodin and E. Regan, Judges,

Advocate General: M. Wathelet,

Registrar: A. Calot Escobar,

having regard to the written procedure,

having decided, after hearing the Advocate General, to give a decision by reasoned order, in accordance with Article 181 of the Rules of Procedure of the Court of Justice,

makes the following

Order

1 By their appeals, NF, NG and NM seek the annulment of the orders of the General Court of the European Union of 28 February 2017, *NF v European Council* (T-192/16, EU:T:2017:128), of 28 February 2017, *NG v European Council* (T-193/16, EU:T:2017:129), and of 28 February 2017, *NM v European Council* (T-257/16, EU:T:2017:130), respectively (together ‘the orders under appeal’), by which the General Court dismissed their actions for annulment of an agreement allegedly concluded between the European Council and the Republic of Turkey dated 18 March 2016, entitled ‘EU-Turkey statement’.

Background to the disputes

2 The background to the disputes is set out by the General Court in the same way for all three cases, in paragraphs 1 to 9 of the orders under appeal, as follows:

‘The meetings between the European leaders and the Turkish leader prior to 18 March 2016

1. On 15 October 2015, the Republic of Turkey and the European Union agreed on a joint action plan entitled “EU-Turkey joint action plan” (“the joint action plan”) designed to strengthen their cooperation in terms of supporting Syrian nationals enjoying temporary international protection and in terms of managing migration, in order to respond to the crisis created by the situation in Syria.

2. The joint action plan aimed to respond to the crisis situation in Syria in three ways, namely by (i) addressing the root causes leading to a mass exodus of Syrians, (ii) providing support to Syrians enjoying temporary international protection and to their host communities in Turkey, and (iii) strengthening cooperation in terms of preventing illegal migration flows towards the European Union.

3. On 29 November 2015, the Heads of State or Government of the Member States of the European Union met with their Turkish counterpart. ... Following that meeting, they decided to activate the joint action plan and, in particular, to step up their active cooperation concerning migrants who were not in need of international protection, by preventing them from travelling to Turkey and the European Union, by ensuring the application of the established bilateral readmission provisions and by swiftly returning migrants who were not in need of international protection to their countries of origin.

4. On 8 March 2016, a statement by the Heads of State or Government of the European Union, published by the joint services of the European Council and the Council of the European Union, indicated that the Heads of State or Government of the European Union had met with the Turkish Prime Minister in regard to relations between the European

Union and the Republic of Turkey and that progress had been made in the implementation of the joint action plan. That meeting had taken place on 7 March 2016. ... That statement specified:

“The Heads of State or Government agreed that bold moves were needed to close down people smuggling routes, to break the business model of the smugglers, to protect [the] external borders [of the European Union] and to end the migration crisis in Europe [They] warmly welcomed the additional proposals made today by [the Republic of] Turkey to address the migration issue. They agreed to work on the basis of the [following] principles:

- to return all new irregular migrants crossing from Turkey into the Greek islands with the costs covered by the [European Union];
- to resettle, for every Syrian readmitted by Turkey from Greek islands, another Syrian from Turkey to the Member States [of the European Union], within the framework of the existing commitments;

...

The President of the European Council will take forward these proposals and work out the details with [the Republic of Turkey] before the March European Council.

This document does not establish any new commitments on Member States as far as relocation and resettlement is concerned.

...”

5. In its Communication COM(2016) 166 final of 16 March 2016 to the European Parliament, the European Council and the Council, entitled “Next operational steps in EU-Turkey cooperation in the field of migration” (“the communication of 16 March 2016”), the European Commission stated that, on 7 March 2016, the “[European Union] leaders [had] warmly welcomed the additional proposals made by [the Republic of] Turkey and [had] agreed to work with Turkey on the basis of a set of six principles”, that “the President of the European Council [had been] requested to take forward these proposals and work out the details with Turkey before the March European Council” and that “this Communication [set] out how the six principles should be taken forward, delivering on the full potential for [European Union]-[Republic of] Turkey cooperation while respecting European and international law”.

6. In the communication of 16 March 2016, the Commission stated in particular that “the return of all new irregular migrants and asylum seekers from Greece to Turkey [was] an essential component in breaking the pattern of refugees and migrants paying smugglers and risking their lives” and that, “given the extent of flows currently between Turkey and Greece, such arrangements should be considered as a temporary and extraordinary measure which is necessary to end the human suffering and restore public order and which needs to be supported with the relevant operational framework”. According to that communication, recent progress had been made in the readmission of

irregular migrants and asylum seekers not in need of international protection to the Republic of Turkey under the bilateral Readmission Agreement between the Hellenic Republic and the Republic of Turkey, which was to be succeeded, from 1 June 2016, by the Agreement between the European Union and the Republic of Turkey on the readmission of persons residing without authorisation (OJ 2014 L 134, p. 3).

7. The Commission concluded, in the communication of 16 March 2016, that the “arrangements for the return of all new irregular migrants and asylum seekers crossing the Aegean Sea from Turkey [would] be a temporary and extraordinary measure [that] should begin as soon as possible” and that, in that respect, the communication “[set] out a framework that will ensure that the process is carried out in accordance with international and European law, which excludes the application of a ‘blanket’ return policy[, and it] also [indicated] the steps, legislative and logistical, that [needed] to be taken as a matter of urgency for the process to be launched.”

The meeting of 18 March 2016 and the EU-Turkey statement

8. On 18 March 2016, a statement was published on the Council’s website in the form of Press Release No 144/16, designed to give an account of the results of “the third meeting since November 2015 dedicated to deepening Turkey-EU relations as well as addressing the migration crisis” between “the Members of the European Council” and “their Turkish counterpart” (“the EU-Turkey statement”).

9. The EU-Turkey statement provided that, while “reconfirm[ing] their commitment to the implementation of their joint action plan activated on 29 November 2015, [the Republic of] Turkey and the [European Union] recognise[d] that further, swift and determined efforts [were] needed”. That statement continued in the following terms:

“In order to break the business model of the smugglers and to offer migrants an alternative to putting their lives at risk, the EU and [the Republic of] Turkey today decided to end the irregular migration from Turkey to the [European Union]. In order to achieve this goal, they agreed on the following additional action points:

(1) All new irregular migrants crossing from Turkey into Greek islands as from 20 March 2016 will be returned to Turkey. This will take place in full accordance with [European Union] and international law, thus excluding any kind of collective expulsion. All migrants will be protected in accordance with the relevant international standards and in respect of the principle of non-refoulement. It will be a temporary and extraordinary measure which is necessary to end the human suffering and restore public order. 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, in cooperation with UNHCR [the Office of the United Nations High Commissioner for Refugees]. Migrants not applying for asylum or whose application has been found unfounded or inadmissible in accordance with the said directive will be returned to Turkey. [The Republic of] Turkey and [the Hellenic Republic], assisted by [European Union] institutions and agencies, will take the necessary steps and agree any necessary bilateral arrangements, including the presence of Turkish

officials on Greek islands and Greek officials in Turkey as from 20 March 2016, to ensure liaison and thereby facilitate the smooth functioning of these arrangements. The costs of the return operations of irregular migrants will be covered by the [European Union].

(2) For every Syrian being returned to Turkey from Greek islands, another Syrian will be resettled from Turkey to the [European Union] taking into account the UN Vulnerability Criteria. A mechanism will be established, with the assistance of the Commission, [European Union] agencies and other Member States, as well as the UNHCR, to ensure that this principle will be implemented as from the same day the returns start. Priority will be given to migrants who have not previously entered or tried to enter the [European Union] irregularly. On the EU side, resettlement under this mechanism will take place, in the first instance, by honouring the commitments taken by Member States in the conclusions of Representatives of the Governments of Member States meeting within the Council on 20 July 2015, of which 18 000 places for resettlement remain. Any further need for resettlement will be carried out through a similar voluntary arrangement up to a limit of an additional 54,000 persons. ...”

The procedure before the General Court and the orders under appeal

3 By applications lodged at the Registry of the General Court on 22 April 2016, NF, NG and NM each brought an action seeking annulment of the EU-Turkey statement, arguing that it is an act attributable to the European Council establishing an international agreement contrary to EU law.

4 By document lodged at the Registry of the General Court on 11 July 2016, the European Council raised a plea of inadmissibility pursuant to Article 130 of the Rules of Procedure of the General Court and requested the General Court to dismiss the applicants’ actions.

5 By the orders under appeal, the General Court upheld that plea by declaring that:

‘1. The action is dismissed on the ground of the Court’s lack of jurisdiction to hear and determine it.

...’

Procedure before the Court of Justice and forms of order sought

6 NF, NG and NM claim that the Court should:

- set aside the orders under appeal;
- refer the cases back to the General Court for adjudication with a direction that it should accept jurisdiction, and
- order the European Council to pay the costs.

7 The European Council contends that the Court should:

- dismiss the appeals;
- in the alternative, refer the cases back to the General Court for a ruling on the other pleas of inadmissibility raised, and
- order the appellants to pay the costs.

8 By decision of the President of the Court of 17 May 2017, Cases C-208/17 P, C-209/17 P and C-210/17 P were joined for the purposes of the written and oral procedure and of the judgment.

9 By order of the President of the Court of 21 September 2017, the Hellenic Republic was granted leave to intervene in support of the form of order sought by the European Council.

The appeals

10 Pursuant to Article 181 of the Rules of Procedure of the Court, where the appeal is, in whole or in part, manifestly inadmissible or manifestly unfounded, the Court may at any time, acting on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decide by reasoned order to dismiss that appeal in whole or in part.

11 That provision must be applied in the present appeals.

12 It should be borne in mind that, according to settled case-law, it is apparent from Article 256 TFEU, the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union and Articles 168(1)(d) and 169 of the Rules of Procedure that an appeal must indicate precisely the contested elements of the decision of the General Court and also the legal arguments specifically advanced in support of the appeal, failing which the appeal or the ground of appeal in question will be dismissed as inadmissible (judgment of 14 December 2016, *SV Capital v EBA*, C-577/15 P, EU:C:2016:947, paragraph 69 and the case-law cited).

13 Accordingly, an appeal supported by an argument that is not sufficiently clear and precise to enable the Court to exercise its powers of judicial review without running the risk of ruling *ultra petita*, in particular because essential elements on which the argument is based are not indicated sufficiently coherently and intelligibly in the text of the appeal, which is worded in a vague and ambiguous manner in that regard, does not satisfy those requirements and must be dismissed as inadmissible (see, to that effect, judgment of 29 September 2011, *Arkema v Commission*, C-520/09 P, EU:C:2011:619, paragraph 61 and the case-law cited).

14 The Court has also held that an appeal lacking any coherent structure which simply makes general statements and contains no specific indications as to the points of the decision of the General Court which may be vitiated by an error of law must be dismissed as manifestly inadmissible (judgment of 10 July 2014, *Telefónica and Telefónica de España v Commission*, C-295/12 P, EU:C:2014:2062, paragraph 30 and the case-law cited).

15 Moreover, it is also settled case-law that a mere abstract statement of the pleas in law in the text of the appeal does not satisfy the requirements of Article 21 of the Statute of the Court of Justice of the European Union and Article 169 of the Rules of Procedure (see, to that effect, order of 12 December 2006, *Autosalone Ispra v Commission*, C-129/06 P, not published, EU:C:2006:775, paragraph 30).

16 In the present case, the appeals are incoherent. The appellants summarise, at the end of their appeals, eight pleas in law but their reasoning is not clearly and precisely apparent from the elements which they set out in a vague and confused manner in the section entitled ‘Pleas in law and main arguments’. The appeals thus simply make general assertions that the General Court disregarded a certain number of principles of EU law, without indicating with the requisite degree of precision the contested elements in the orders under appeal or the legal arguments specifically advanced in support of the application for annulment.

17 In these circumstances, as is apparent from the case-law in paragraphs 12 to 15 of the present order, an appeal with such characteristics cannot be the subject of a legal assessment which would allow the Court of Justice to exercise its function in the area under examination and to carry out its review of legality.

18 The appeals are therefore inadmissible in their entirety.

19 In addition, the appeals contain assertions and allegations that are also inadmissible.

20 The appellants allege, in the first place, that the orders under appeal fail to state reasons. In order to demonstrate that failure to state reasons, the appellants refer to the arguments in the applications lodged before the General Court at first instance, raised for the purpose of obtaining the annulment of the EU-Turkey statement.

21 That line of reasoning does not contain any legal argument to demonstrate how the General Court allegedly erred in law.

22 On the contrary, the appellants merely refer to the arguments which they invoked before the General Court and do not furnish any further clarification and identify clearly the elements of the orders under appeal that they wish to challenge. Such an argument actually seeks to have the Court merely reexamine arguments put forward before the General Court, which, under the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union, falls outside its jurisdiction (see, to that effect, judgment of 13 September 2007, *Il Ponte Finanziaria v OHIM*, C-234/06 P, EU:C:2007:514, paragraphs 45 and 46).

23 In the second place, the appellants claim that the General Court, in the orders under appeal, erred in law by failing to properly examine whether the EU-Turkey statement was in fact a decision of the European Council. The General Court allegedly erred in law by restricting its analysis to form rather than substance and failing to examine the competence of the author of the contested act.

24 However, by their claim, which is, moreover, unsubstantiated, the appellants do not identify any error of law that the General Court may have committed in the orders under appeal, nor do they allege that its conclusion is contrary to EU law, but merely express their disagreement with that conclusion.

25 In the third place, the appellants are of the opinion, first of all, that the orders under appeal disregard relevant questions of fact, next, that certain pieces of evidence were not examined in those orders and, finally, that the orders are vitiated by irregularities as concerns both the full investigation of material issues and the assessment of those issues.

26 In that regard, according to settled case-law, the General Court has exclusive jurisdiction to find and appraise the relevant facts and, in principle, to examine the evidence it accepts in support of those facts. Provided that the evidence has been properly obtained and the general principles of law and the rules of procedure in relation to the burden of proof and the taking of evidence have been observed, it is for the General Court alone to assess the value which should be attached to the evidence produced before it. Save where the evidence has been distorted, that assessment does not therefore constitute a point of law which is subject as such to review by the Court of Justice (judgment of 7 April 2016, *Akhras v Council*, C-193/15 P, EU:C:2016:219, paragraph 67 and the case-law cited).

27 It is only where the evidence has been distorted that the Court can review the General Court's assessment of it. There is such distortion where, without recourse to new evidence, the assessment of the existing evidence is clearly incorrect. However, such distortion must be obvious from the documents on the Court's file, without there being any need to carry out a new assessment of the facts and the evidence (judgment of 7 April 2016, *Akhras v Council*, C-193/15 P, EU:C:2016:219, paragraph 68).

28 In that regard, the appellants, on the one hand, do not indicate specifically the evidence which has been distorted by the General Court or point out the errors of analysis that allegedly led the General Court to that distortion in its assessment and, on the other hand, rely on new evidence, such as the legal opinions drawn up by the Commission and other EU bodies, that does not appear in the Court's file.

29 Consequently, by their arguments, the appellants merely express their disagreement with the General Court's assessment of the facts, while requesting that those facts be assessed again, without claiming or establishing that the General Court's assessment of the facts is manifestly inaccurate, which is inadmissible in an appeal.

30 In those circumstances, the appeal must be dismissed as manifestly inadmissible, pursuant to Article 181 of the Rules of Procedure.

Costs

31 Under Article 138(1) of the Rules of Procedure, applicable to appeal proceedings by virtue of Article 184(1) thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the European Council

has applied for costs and the appellants have been unsuccessful, the appellants must be ordered to pay the costs.

On those grounds, the Court (First Chamber) hereby orders:

1. **The appeals are dismissed as being manifestly inadmissible.**
2. **NF, NG and NM shall pay the costs.**

Luxembourg, 12 September 2018.

A. Calot Escobar R. Silva de Lapuerta

Registrar President of the First Chamber

* Language of the case: English.