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**THE GREEK-TURKISH BORDER SITUATION,
THE WESTERN BALKANS ROUTE
AND *N.D.&N.T.***



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DEVELOPMENTS AT THE GREEK-TURKISH BORDER

- On 28/02/2020 Turkey announced that it would no longer stop refugees and migrants trying to cross the Greek-Turkish border
- The border was opened only on the Turkish side
- Following weeks: tens of thousands of people gathered on the Turkish side of the border, after having been reportedly taken there by Turkish buses
- Greece decided to suspend all asylum applications for one month
- Von der Leyen thanked Greece as Europe's "shield" in blocking the entry to the EU and promised financial and material support, and the deployment of Frontex
- Numbers decreased, partly since they realised that they would not be able to enter the EU and partly due to the coronavirus crisis

STARTING POINTS

- The developments at the Greek-Turkish border can only be understood as the result of the interaction of 4 factors:
 - MSs' experience of the WB route and their fear of its reoccurrence
 - fear of turning into hotspots (especially of frontline MSs)
 - judicial reactions:
 - CJEU decisions on EU-Turkey deal and in *A.S. and Jafari*
 - ECtHR's judgment in *N.D. and N.T.*

NF, NG & NM V. EUROPEAN COUNCIL

GENERAL COURT

- 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.

ORDER OF THE CJEU (12/9/2018)

- In the present case, the appeals are incoherent
- The appeals are therefore inadmissible in their entirety
- The appeal must be dismissed as manifestly inadmissible

CASES C-490/16 A.S. & C-646/16 JAFARI

- In 2016 a Syrian national and the members of two Afghan families crossed the border between Croatia and Serbia, even though they were not in possession of an appropriate visa. The Croatian authorities organised transport for those persons to the Croatia - Slovenia border with the aim of assisting them in moving on to other Member States in order to make an application for international protection there.
- The Syrian national made such an application in Slovenia, whereas the members of the Afghan families did so in Austria.
- Slovenia and Austria took the view that, as the applicants had entered Croatia unlawfully, according to Dublin it was for the authorities of that MS to examine their applications for international protection.

A.S. & JAFARI - CJEU

- Croatia is responsible for examining applications for international protection by persons who crossed its border en masse during the 2015-2016 migration crisis
- Those persons must be regarded as having crossed the external border of Croatia irregularly within the meaning of the Dublin III Regulation
- A MS which has decided on humanitarian grounds to authorise the entry on its territory of a non-EU national who does not have a visa and is not entitled to visa waiver cannot be absolved of the responsibility to examine the asylum application

N.D & N.T. V. SPAIN

- Immediate return to Morocco of two nationals of Mali and Côte d'Ivoire who attempted to enter the Spanish territory from Morocco by climbing the fences surrounding Melilla, together with two groups of more than 600 individuals
- As they reached the Spanish ground, they were apprehended by the Spanish police, who handcuffed them and handed them over to the Moroccan authorities, without undertaking any identification procedure and without enabling N.D. and N.T. to explain their personal circumstances

ECtHR: *N.D & N.T.*

- The applicants chose not to make use of the official entry procedures to enter the Spanish territory lawfully
- Instead, they took advantage of the fact that they were part of a large group of individuals which used force in its attempt to cross the border
 - The lack of individual removal decisions could be attributed to the applicants' unlawful behaviour
 - No violation of Art. 4 of Protocol No. 4 (prohibition of collective expulsion) and Art. 13 ECHR (right to an effective remedy)

ECtHR: *N.D* & *N.T.*

- 2 conditions for determining whether the situation can be attributed as “the applicant’s own behaviour”:
 - whether the state provides “genuine and effective access to means of legal entry, in particular border procedures for those who have arrived at the border”
 - whether there is an “absence of cogent reasons why the applicant did not make use of official entry procedures, which were based on objective facts for which the respondent state was responsible”

***N.D & N.T.* – OPEN ISSUES**

- EU –Turkey Statement ↔ State responsibility in a situation where the applicant does not make use of the official entry procedures
- Does the ECtHR's evaluation of the legality of expulsion apply:
 - only to cases where migrants arrive *en masse* or also where they arrive individually?
 - in case migrants did not use force, but just stood at the border?
 - Would the ECtHR's rule differently in case of an individual attempt to cross the border which was devoid of any security threat?
 - What criteria would ECtHR use to measure the existence of such a threat?

CONCLUDING REMARKS

- Would blocking migrants from entering Greece get judicial approval, in case of a reference to ECtHR?
- Signal to the CJEU, should it be confronted with a similar case?



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