Reports of Cases

OPINION OF ADVOCATE GENERAL
MEDINA
delivered on 12 December 2024[1]

Case C-662/23 [Zimir][i]

Staatssecretaris van Justitie en Veiligheid
v
X

(Request for a preliminary ruling from the Raad van State (Council of State, Netherlands))

(Reference for a preliminary ruling – Border controls, asylum and immigration – Asylum policy – Directive 2013/32/EU – Point (b) of the third subparagraph of Article 31(3) – Procedures for granting international protection – Use by the national authority of its power to extend the examination period of six months by a period not exceeding a further nine months – A large number of third-country nationals simultaneously applying for international protection – Making it very difficult in practice to conclude the procedure within the six-month time limit – Taking into account other circumstances)

1. The present request for a preliminary ruling concerns the difficulties encountered by Member States when they are faced with a large number of third-country nationals or stateless persons simultaneously applying for international protection. In particular, the Court is asked to rule on the interpretation of point (b) of the third subparagraph of Article 31(3) of the Procedures Directive,[2] under which Member States may extend the time limit of six months set out in the first subparagraph of Article 31(3) of that directive for the examination of applications for international protection. That extension is permitted when a large number of third-country nationals simultaneously apply for international protection, making it very difficult in practice to conclude the procedure within that six-month time limit.

2. The reference was made in proceedings between the Staatssecretaris van Justitie en Veiligheid (State Secretary for Justice and Security, Netherlands; 'the State Secretary') and X, a third-country national, concerning the failure by that authority to take a decision on the application for a temporary asylum residence permit within the six-month period.

3. The referring court wishes to know how the wording 'a large number of third-country nationals or stateless persons simultaneously apply for international protection' within the meaning of point (b) of the third subparagraph of Article 31(3) of the Procedures Directive is to be

[1] Original language: English.

[i] The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

[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 2013 L 180, p. 60; 'the Procedures Directive').

interpreted, how it relates to the wording 'making it very difficult in practice to conclude the procedure within the six-month time limit' also contained therein, and whether any other circumstances may be taken into account in its assessment.

I. Legal framework

A. European Union law

4. Recital 18 of the Procedures Directive states:

'It is in the interests of both Member States and applicants for international protection that a decision is made as soon as possible on applications for international protection, without prejudice to an adequate and complete examination being carried out.'

5. Article 4 of the Procedures Directive, headed 'Responsible authorities', provides in paragraph 1:

'Member States shall designate for all procedures a determining authority which will be responsible for an appropriate examination of applications in accordance with this Directive. Member States shall ensure that such authority is provided with appropriate means, including sufficient competent personnel, to carry out its tasks in accordance with this Directive.'

6. Article 31 of that directive, headed 'Examination procedure', provides as follows in paragraphs 1 to 5:

'1. Member States shall process applications for international protection in an examination procedure in accordance with the basic principles and guarantees of Chapter II.

2. Member States shall ensure that the examination procedure is concluded as soon as possible, without prejudice to an adequate and complete examination.

3. Member States shall ensure that the examination procedure is concluded within six months of the lodging of the application.

Where an application is subject to the procedure laid down in Regulation (EU) No 604/2013 [of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (OJ 2013 L 180, p. 31)], the time limit of six months shall start to run from the moment the Member State responsible for its examination is determined in accordance with that Regulation, the applicant is on the territory of that Member State and has been taken in charge by the competent authority.

Member States may extend the time limit of six months set out in this paragraph for a period not exceeding a further nine months, where:

(a) complex issues of fact and/or law are involved;

(b) a large number of third-country nationals or stateless persons simultaneously apply for international protection, making it very difficult in practice to conclude the procedure within the six-month time limit;

(c) where the delay can clearly be attributed to the failure of the applicant to comply with his or her obligations under Article 13.

By way of exception, Member States may, in duly justified circumstances, exceed the time limits laid down in this paragraph by a maximum of three months where necessary in order to ensure an adequate and complete examination of the application for international protection.

4. Without prejudice to Articles 13 and 18 of Directive 2011/95/EU [of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ 2011 L 337, p. 9)], Member States may postpone concluding the examination procedure where the determining authority cannot reasonably be expected to decide within the time limits laid down in paragraph 3 due to an uncertain situation in the country of origin which is expected to be temporary. …

…

5. In any event, Member States shall conclude the examination procedure within a maximum time limit of 21 months from the lodging of the application.'

B. Netherlands law

7. Article 42 of the Vreemdelingenwet 2000 (Law on foreign nationals of 2000) of 23 November 2000 [3] provides:

'1. A decision on the application for the grant of a temporary residence permit as referred to in Article 28 or a residence permit of unlimited duration as referred to in Article 33 shall be adopted within six months of receipt of the application.

…

4. The time limit referred to in paragraph 1 may be extended a maximum of nine months, where:

a. …

b. a large number of foreign nationals lodge an application at the same time, making it very difficult in practice to conclude the procedure within the six-month time limit; or

c. …'

8. On 21 September 2022, the State Secretary adopted the Besluit houdende wijziging van de Vreemdelingencirculaire 2000 (Decree amending the Circular on Foreign Nationals of 2000; 'the WBV 2022/22'). On the basis of the WBV 2022/22, in force as from 27 September 2022, the State

[3] Stb. 2000, No 495.

Secretary extended the statutory six-month decision period for granting temporary asylum residence permits by nine months. The WBV 2022/22 applies to all requests for which the statutory decision period had not yet expired on 27 September 2022, and was adopted on the basis of the first limb and point (b) of Article 42(4) of the Law on foreign nationals of 2000, transposing point (b) of the third subparagraph of Article 31(3) of the Procedures Directive into Netherlands law.

II. The dispute in the main proceedings and the questions referred for a preliminary ruling

9. On 10 April 2022, X, a Turkish national, lodged an application for asylum in the Netherlands.

10. In September 2022, the State Secretary extended the statutory six-month decision period for granting temporary asylum residence permits by nine months.

11. Since the State Secretary failed to take a decision on the asylum application within six months of the lodging of the application on the basis of the WBV 2022/22, on 13 October 2022 X served a notice of default on that authority for failure to adopt a decision within the prescribed period. The State Secretary then failed to make a decision within 2 weeks. Consequently, X introduced an action before the rechtbank Den Haag (District Court, The Hague, Netherlands) against the failure to make a timely decision.

12. By judgment of 6 January 2023, that court declared X's action well founded and held that the State Secretary had not lawfully extended the decision period for asylum applications on the basis of the WBV 2022/22. By that judgment, that court also ordered the State Secretary to conduct an initial hearing within eight weeks of the date of the judgment and to take a decision on X's application within eight weeks of that initial hearing. It therefore ordered the State Secretary to adopt a decision within 16 weeks, failing which a penalty consisting in a fine for each day of delay would be imposed. [4]

13. The State Secretary brought an appeal against that judgment before the Raad van State (Council of State, Netherlands), which is the referring court. In support of that appeal, it argues that, for the purposes of applying the first limb and point (b) of Article 42(4) of the Law on foreign nationals of 2000 and point (b) of the third subparagraph of Article 31(3) of the Procedures Directive, there is no requirement of a rapid increase ('spike') in the number of asylum applications being lodged simultaneously. The national authority may also extend the decision period in the event of a more gradual increase in the number of asylum applications, and in combination with other circumstances, in order to ensure an adequate and complete examination of asylum applications as required by Article 31(2) of the Procedures Directive. The State Secretary further contends that it may take into account existing backlogs in the examination of asylum applications when considering whether to extend the decision period, as those backlogs take up decision-making capacity and contribute to making it very difficult in practice diligently to conclude the procedure within six months of the lodging of the application.

14. At the same time, following the judgment of the rechtbank Den Haag (District Court, The Hague), on 14 April 2023 the State Secretary took a decision on the application for asylum, by which it issued the foreign national with a temporary asylum residence permit.

[4] The State Secretary was ordered to pay a penalty of EUR 100 for each day that time limit was exceeded, up to a maximum of EUR 7 500.

15. According to the referring court, the State Secretary nevertheless retains an interest in its appeal, since it seeks to challenge the judgment of 6 January 2023, by which it had been held that it had not lawfully extended the period for taking a decision on an asylum application on the basis of the WBV 2022/22.

16. The State Secretary argues before the referring court that the third subparagraph of Article 31(3) of the Procedures Directive, and point (b) thereof, must be interpreted as not requiring the national authority to take a decision within the decision period where a rapid increase or 'spike' in the number of asylum applications submitted simultaneously is such that it prevents the national authority from doing so diligently. Therefore, the referring court notes that the expression 'simultaneously' within the meaning of that provision, if interpreted broadly, would mean 'within a short period', as asylum applications are rarely lodged literally simultaneously. However, according to that court, determining a temporal limitation during which such increase or 'spike' arises remains necessary. Moreover, given the delays in detecting such increases or 'spikes', the referring court observes that the practical effect of that provision only arises if some time has elapsed.

17. The referring court harbours doubts as to whether the Procedures Directive allows for the decision-making period to be extended where the number of asylum applications increases only gradually. This is because in such a case the State Secretary has ample time and opportunity to increase the decision-making capacity. This interpretation is in line with the purpose of the Procedures Directive, which aims to have the determining authority take decisions on asylum applications as soon as possible, albeit in a diligent manner.

18. In those circumstances, the Raad van State (Council of State) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) (a) Can the determining authority make use of its power to extend the [six]-month decision period, in the event of a large number of applications for international protection being lodged [simultaneously], within the meaning of point (b) of the third subparagraph of Article 31(3) of the Procedures Directive, if the increase in the large number of applications for international protection occurs gradually over a certain period of time and, as a result, it is very difficult in practice to conclude the procedure within the [six]-month time limit? How should "simultaneously" be interpreted in this context?

(b) What criteria should be used to assess whether there is a "large number" of applications for international protection, as referred to in point (b) of the third subparagraph of Article 31(3) of the Procedures Directive?

(2) Is there a time limit on the period during which there must be an increase in the number of applications for international protection in order still to fall within the scope of point (b) of the third subparagraph of Article 31(3) of the Procedures Directive? And, if so, how long might this period last?

(3) When assessing whether it is very difficult in practice to conclude the procedure within the [six]-month time limit referred to in point (b) of the third subparagraph of Article 31(3) of the Procedures Directive – partly in the light of Article 4(1) of the Procedures Directive – may account be taken of circumstances that cannot be traced back to the increase in the

number of applications for international protection, such as the circumstance that the determining authority has to deal with backlogs that already existed before the increase in the number of applications for international protection or with a lack of staff capacity?'

19. Written observations have been submitted by X, the Czech, French, Hungarian and Netherlands Governments, as well as the European Commission. Those parties, except the Czech and Hungarian Governments, presented oral argument at the hearing on 23 October 2024.

III. Assessment

20. Under point (b) of the third subparagraph of Article 31(3) of the Procedures Directive, three cumulative conditions must be satisfied in order for the decision period to be extended by an extra nine months: (a) 'a large number' of applications must be (b) lodged 'simultaneously', (c) 'making it' very difficult in practice to conclude the procedure within the six-month time limit. Whilst the first two conditions are autonomous, the third is a consequence of the first two. [5]

21. Taking into account that structure, the referring court's questions can be grouped together into two blocks:

– the first and second questions seek to ascertain how the first two conditions of point (b) of the third subparagraph of Article 31(3) of the Procedures Directive are to be interpreted and whether there are time limits applicable to them;

– the third question concerns the third condition and the exclusivity or not of the causal link to the first two conditions, that is to say, whether, in order to rely on that provision, account may be taken of circumstances other than an increase in the number of asylum applications.

22. Before considering those questions, I shall examine briefly the admissibility issue raised before the Court.

A. Admissibility

23. In its written observations, the French Government raised the issue of the admissibility of the questions, arguing, in essence, that the dispute in the main proceedings had become moot, since X had already been granted a temporary asylum residence permit. At the hearing, however, that government withdrew its objection.

24. It should be borne in mind that, in accordance with the Court's settled case-law, questions on the interpretation of EU law referred by a national court enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU law that is sought is unrelated to the actual facts of the main action or its object, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it. [6]

[5] That provision reads '*waardoor*' in Dutch, '*du fait qu[e]*' in French and '*so dass*' in German.

[6] Judgment of 6 September 2016, *Petruhhin* (C-182/15, EU:C:2016:630, paragraph 20).

25. The justification for a reference for a preliminary ruling is not that it enables advisory opinions on general or hypothetical questions to be delivered but rather that it is necessary for the effective resolution of a dispute. As is apparent from the actual wording of Article 267 TFEU, the question referred for a preliminary ruling must be 'necessary' to enable the referring court to 'give judgment' in the case before it. [7]

26. In particular, the case-law requires a genuine dispute about the law and its application between parties to the case. [8] What matters is that the referring court is exercising a judicial function and that it considers that an interpretation of EU law is necessary in order for it to be able to give judgment.

27. In the present instance, it is established that there is a genuine dispute in the main proceedings, since they involve the lawfulness of an extension of the time limit for taking a decision on an asylum application, which was the subject of the judgment of the rechtbank Den Haag (District Court, The Hague). Furthermore, the State Secretary was ordered to pay a penalty for each day that time limit was exceeded, meaning that the Netherlands Government has an interest in receiving a judgment on that specific matter. At the hearing, X stated that he had a financial interest in the judgment of the referring court, since he might have to return the amount of EUR 1 800 that he received following the judgment of the rechtbank Den Haag (District Court, The Hague) that ordered the State Secretary to take a decision within a certain deadline and to pay a penalty in case of delay. X explained at the hearing that he will have to reimburse that amount if the referring court finds that the deadline extension on the basis of the WBV 2022/22 was lawful. It follows that the referring court is required to rule on the lawfulness of that extension, which is a question of law involving a genuine issue of considerable practical importance and which has given rise to a real dispute. [9]

28. I therefore consider that, under the presumption of relevance, an interpretation of EU law is necessary in order to enable the referring court to give judgment.

B. The first and second questions

29. By its first and second questions, which I propose to examine together, the referring court asks, in essence, whether the terms 'simultaneously' and 'a large number' of applications for international protection within the meaning of point (b) of the third subparagraph of Article 31(3) of the Procedures Directive, must be interpreted as precluding an extension of the duration of the procedure for examining applications for international protection by national authorities for a further nine months in the event of a gradual increase in the number of those applications and whether, for the purposes of the application of that provision, the period during which an increase in the number of applications must occur is limited.

[7] Judgment of 26 March 2020, *Miasto Łowicz and Prokurator Generalny* (C-558/18 and C-563/18, EU:C:2020:234, paragraphs 44 and 45 and the case-law cited). See also judgment of 22 March 2022, *Prokurator Generalny (Disciplinary Chamber of the Supreme Court – Appointment)* (C-508/19, EU:C:2022:201, paragraphs 60 and 61 and the case-law cited).

[8] See, for example, judgment of 13 April 2000, *Lehtonen and Castors Braine* (C-176/96, EU:C:2000:201, paragraph 19). See, also, judgment of 25 June 2009, *Roda Golf & Beach Resort* (C-14/08, EU:C:2009:395, paragraph 33 and the case-law cited).

[9] See, by analogy, judgment of 10 December 2018, *Wightman and Others* (C-621/18, EU:C:2018:999, paragraph 29).

1. The concepts of 'simultaneously' and of 'a large number' of applications for international protection within the meaning of point (b) of the third subparagraph of Article 31(3) of the Procedures Directive

30. According to settled case-law, in interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part. [10]

(a) Textual interpretation

31. As the referring court points out, the term 'simultaneously' is synonymous with the expressions 'at the same time', 'concomitantly' or 'at the same moment'. In particular, in its order for reference, that court refers to the meaning of the term '*tegelijk*' in Dutch, which literally means 'at the same time'. As such, that term contains, according to the referring court, a strict temporal limit, which is supported by other language versions. [11] However, in my view, such an interpretation does not in itself provide an indication of a specific period during which the increase in the number of applications should occur.

32. With respect to the wording 'a large number', I should observe that that term is not defined in Article 31(3) of the Procedures Directive. Different linguistic versions use equivalent or similar terms. [12] Therefore, it does not follow from the literal wording of point (b) of the third subparagraph of Article 31(3) of the Procedures Directive whether it refers to an absolute or a relative number, as ascertained by the referring court. However, it should be noted that, in the recently adopted regulation that repeals the Procedures Directive, [13] the legislature refers to '*a disproportionate number* of third-country nationals or stateless persons [making] an application for international protection within the same period of time'. [14]

33. If the term 'a large number' is understood as 'a disproportionate number', it means that the number of asylum requests is out of balance or not in reasonable proportion to what is usual or expected. However, whilst that line of reasoning may be relevant to the interpretation of the new regulation, the Procedures Directive does not refer to the concept of 'disproportionate' or to the overall idea of proportionality.

[10] Judgment of 10 September 2014, *Ben Alaya* (C-491/13, EU:C:2014:2187, paragraph 22 and the case-law cited).

[11] Other language versions use equivalent terms. See, inter alia, the French ('*simultanément*'), Spanish ('*simultáneamente*'), German ('*gleichzeitig*'), Italian ('*contemporaneamente*'), Latvian ('*vienlaikus*'), Lithuanian ('*vienu metu*'), Bulgarian ('*едновременно*'), Portuguese ('*simultaneamente*'), Romanian ('*simultan*'), Finnish ('*samanaikaisesti*'), Slovenian ('*hkrati*'), Danish ('*samtidigt*'), Swedish ('*samtidigt*') and Estonian ('*korraga*') language versions.

[12] See, inter alia, the Dutch ('*een groot aantal*'), French ('*un grand nombre*'), Spanish ('*un gran número*'), German ('*eine große Anzahl*'), Italian ('*un gran numero*'), Latvian ('*liels skaits*'), Lithuanian ('*daug*'), Bulgarian ('*голям брой*'), Portuguese ('*um grande número*'), Romanian ('*un număr mare*'), Finnish ('*suuria määriä*'), Slovenian ('*veliko državljanov*'), Danish ('*et stort antal*'), Swedish ('*ett stort antal*') and Estonian ('*suur hulk*') language versions.

[13] Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union and repealing Directive 2013/32 (OJ L 2024/1348). Since that regulation entered into force on 11 June 2024 (its provisions will apply as from 12 June 2026), it is not relevant to the present proceedings. See also Proposal for a Regulation of the European Parliament and of the Council of 13 July 2016 establishing a common procedure for international protection in the Union and repealing Directive 2013/32 (COM(2016) 467 final).

[14] Emphasis added. Article 35(5) of that regulation contains three different grounds for extending the time limit by a further six months (as opposed to the nine months under the Procedures Directive): (a) a disproportionate number of third-country nationals or stateless persons make an application for international protection within the same period of time, making it unfeasible to conclude the admissibility procedure within the set time limits; (b) complex issues of fact or law are involved; and (c) the delay can be attributed clearly and solely to the failure of the applicant to comply with his or her obligations under Article 9 of that regulation.

34. Therefore, since a textual interpretation of the provision does not offer a conclusive answer as to how the terms 'simultaneous' and 'a large number' within the meaning of point (b) of the third subparagraph of Article 31(3) of the Procedures Directive are to be interpreted, I shall now turn to the context of that provision.

(b) Contextual interpretation

(1) A derogation from the general six-month rule

35. The referring court asks whether point (b) of the third subparagraph of Article 31(3) of the Procedures Directive constitutes an exception which allows the Member States to set aside the six-month rule laid down in the first subparagraph – which could be regarded as the general rule – and whether it should be interpreted strictly as such,[15] or whether that third subparagraph rather describes situations in which a new rule applies, making it a *lex specialis*. At the hearing before the Court, the French and Netherlands Governments argued that the nine-month deadline constituted an autonomous rule, distinct from the six-month rule, whereas X contended that it was a derogation to be interpreted in a strict manner. The Commission argued that there are two parallel deadlines, that is to say, the 6-month deadline set out by the first subparagraph of Article 31(3) of that directive and the 15-month deadline that derives from the third subparagraph of Article 31(3) thereof.

36. In that respect, I should observe that Chapter II of the Procedures Directive, entitled 'Basic principles and guarantees', and Chapter III of that directive, entitled 'Procedures at first instance', define the rights and obligations of the applicant in the context of the procedure for the adoption of a decision at first instance. Article 31(1) and (2) establishes a framework that lays down procedural standards with respect to the quality and timeline for the assessment of applications.

37. In particular, Article 31(2) of the Procedures Directive provides that Member States are to ensure that the examination procedure is concluded as soon as possible, without prejudice to an adequate and complete examination. That provision thus establishes an obligation to carry out the examination in a timely manner. The first subparagraph of Article 31(3) of that directive gives specific expression to that obligation by setting a deadline of six months from the lodging of the application for the national authority to carry out such an examination (which I shall refer to as 'the general rule of the six-month period').

38. The third subparagraph of Article 31(3) of the Procedures Directive describes three situations in which Member States may extend that period of six months for a period not exceeding a further nine months. When read together, it is clear that points (a), (b) and (c) of that subparagraph constitute derogations from the application of that general rule aiming at individual situations (points (a) and (c)) and general situations (point (b)), which are exceptional in nature. Point (b) of that third subparagraph contains an explicit reference to the circumstances where a large number of third-country nationals or stateless persons simultaneously apply for international protection, making it very difficult in practice to conclude the procedure within the six-month time limit.

[15] See, more generally on the rule that derogations must be interpreted strictly, judgments of 10 March 2005, *easyCar* (C-336/03, EU:C:2005:150, paragraph 21 and the case-law cited), and of 22 June 2021, Ordre des barreaux francophones et germanophone and Others (Preventive measures for removal) (C-718/19, EU:C:2021:505, paragraph 56 and the case-law cited). By way of analogy, the Court has held that Article 33(2) of the Procedures Directive, taken as a whole, constitutes a derogation from the obligation on Member States to examine the substance of all applications for international protection (judgment of 1 August 2022, *Bundesrepublik Deutschland (Child of refugees, born outside the host State)*, C-720/20, EU:C:2022:603, paragraph 49).

39. It follows, in my view, that point (b) of the third subparagraph of Article 31(3) of the Procedures Directive should be construed as allowing Member States to derogate from the the general rule of the six-month period concerning the maximum duration of the decision period only when the conditions laid down in that provision are fulfilled. Under specific circumstances – when a large number of third-country nationals simultaneously apply for international protection, making it very difficult in practice to conclude the procedure within the six-month time limit – Member States may extend that six-month period. Any other interpretation would undermine the effectiveness of the obligation set out in Article 31(2) of that directive, which requires a timely examination of applications, and of the first subparagraph of Article 31(3) of that directive, which lays down the general rule of the six-month period.

40. That interpretation is borne out by other provisions of the Procedures Directive, which allow for various extensions to the time limits under the abovementioned circumstances, that is, where the applications for international protection by a large number of third-country nationals or stateless persons make it very difficult in practice to respect the time limit set by that directive. [16] It is also supported by the Commission's initial proposal of 2009 [17] and its amended proposal of 2011, [18] according to which it intended to introduce a 'general … time limit' or a 'standard asylum procedure' of six months. In particular, the explanatory memorandum to the amended proposal provides that a 'standard asylum procedure of no more than six months remains a major objective of the proposal'. [19] Furthermore, the explanation on the articles of the amended proposal states that, while 'paragraph 3 retains the general six-month deadline for the conclusion of the procedure at first instance', 'two additional exceptions have been introduced, namely in case where large number of applicants lodge applications simultaneously and where the determining authority cannot keep the deadline due to the failure of the applicant to comply with his/her obligations'. [20]

41. The other arguments put forward by the Commission in the present case are not, in my view, capable of invalidating the conclusion that point (b) of the third subparagraph of Article 31(3) of the Procedures Directive constitutes a derogation from the application of the general six-month rule. In that respect, the Commission argues that, whilst the Detailed Explanation of the Amended

[16] Article 6(5) of the Procedures Directive provides that the time limit for registering an asylum application may be extended where simultaneous applications for international protection by a large number of third-country nationals or stateless persons make it very difficult in practice to respect the time limit of three working days after the application is made. Also, Article 43(3) of the Procedures Directive does not contain the term 'simultaneously', but refers to 'a large number of third-country nationals or stateless persons lodging applications for international protection at the border or in a transit zone'. Furthermore, Article 14(1) of that directive allows Member States to provide that the personnel of another authority be temporarily involved in conducting personal interviews where simultaneous applications for international protection by a large number of third-country nationals or stateless persons make it impossible in practice for the determining authority to conduct timely interviews on the substance of each application.

[17] Proposal for a directive of the European Parliament and of the Council on minimum standards on procedures in Member States for granting and withdrawing international protection (COM(2009) 554 final).

[18] Amended proposal for a directive of the European Parliament and of the Council on common procedures for granting and withdrawing international protection status (COM(2011) 319 final), point 3.1.3 of the Explanatory Memorandum.

[19] See Explanatory Memorandum to the amended proposal cited in footnote 18.

[20] See Annex, Detailed Explanation of the Amended Proposal accompanying the document Amended proposal for a directive of the European Parliament and of the Council on common procedures for granting and withdrawing international protection status, p. 11, which states:

'It is also proposed to streamline the asylum process by introducing time limits for procedures at first instance. The envisaged general six-month time limit of the lodging of the application accommodates legislative amendments and/or practices of the majority of Member States … It is instrumental in improving the efficiency of examinations, reducing reception costs, facilitating removal of failed asylum seekers and ensuring quicker access to protection for genuine refugees and persons in need of subsidiary protection. The amendments also provide for the possibility of extending the time limit for [six] more months in individual cases. In order to give [Member States] sufficient time to adapt and re-organise their national procedures in line with the proposed time limits, the proposal provides for the postponement of the transposition deadline with regard to these amendments for 3 years.'

Proposal [21] refers to 'two additional exceptions', the term 'exception' is not used in the text of the proposal itself. The Commission emphasises that the co-legislator does not use the term 'exception' in the third subparagraph of Article 31(3) of the Procedures Directive, while the fourth subparagraph explicitly uses that term.

42. In my opinion, a provision can be classified as a derogation without containing the term 'derogation'. It should be noted that, by referring to 'the time limit of six months set out in this paragraph' and to the term 'further', [22] the rule in the third subparagraph of Article 31(3) of the Procedures Directive explicitly refers to the general rule of the six-month period set out in the first subparagraph. Therefore, it is clear that the extension of nine months is not an autonomous rule, but rather constitutes an extension of, and thus a derogation from, the general rule of the six-month period. [23] In that respect, I would argue that derogations come in various forms, such as provisions restricting fundamental freedoms [24] or provisions addressing force majeure or hardship situations. [25] That interpretation is supported by the Proposal for a regulation of the European Parliament and of the Council addressing situations of crisis and force majeure in the field of migration and asylum, which provides inter alia for *specific rules derogating from* those set out in regulations, such as the new Asylum Procedures Regulation. [26] Finally, the wording of Article 31(3), (4) and (5) of the Procedures Directive shows that the examination deadlines are cumulative in nature and cannot exceed 21 months.

43. I therefore take the view that the possibility of extending the examination of the application for international protection under point (b) of the third subparagraph of Article 31(3) of the Procedures Directive constitutes a derogation from the application of the six-month rule and should be interpreted restrictively. In addition, derogations must be interpreted in such a way that their scope is limited to what is strictly necessary in order to safeguard the interests which those derogations protect. [27] In that respect, it is important to note that Article 31(3) of the Procedures Directive, which sets out the general rule of the six-month period for deciding on applications for international protection under the Procedures Directive, confers the right for an individual to have his or her application assessed within a six-month period. Therefore, the principle of good administration as a general principle of EU law includes the right of any person to have his or her affairs handled within a reasonable period of time. [28] That right may be subject to limitations only when the circumstances laid down in Article 31(3) of the Procedures Directive are present.

21 Ibid.

22 While the Dutch language version does not refer to the term 'further', it should be observed that this term can be found in many other language versions. See, inter alia, the Bulgarian ('*допълнителен*'), Spanish ('*otros*'), English ('further'), French ('*supplémentaires*'), Czech ('*dalších*'), German ('*weitere*'), Italian ('*ulteriori*'), Latvian ('*vēl*'), Portuguese ('*outros*'), Finnish ('*enintään*'), Danish ('*yderligere*'), Swedish ('*ytterligare*'), Slovak ('*ďalších*') and Greek ('*επιπλέον*') language versions.

23 It should be pointed out that, contrary to the arguments of X, in its judgment of 17 December 2020, *Commission* v *Hungary (Reception of applicants for international protection)* (C-808/18, EU:C:2020:1029), the Court did not rule on the nature of the third subparagraph of Article 31(3) of the Procedures Directive. The reference to that provision in paragraph 134 of that judgment constitutes merely a description of the Commission's argument presented to the Court in that case.

24 See, to that effect, judgment of 22 June 2021, *Ordre des barreaux francophones et germanophone and Others (Preventive measures for removal)* (C-718/19, EU:C:2021:505, paragraph 56), where the Court reiterated that exceptions to and derogations from freedom of movement for individuals must be interpreted strictly.

25 See, for example, judgment of 23 November 2023, *Instituto de Financiamento da Agricultura e Pescas (Reforestation measures)* (C-213/22, EU:C:2023:904, paragraph 39). See also my Opinion in *UFC – Que choisir and CLCV* (C-407/21, EU:C:2022:690, point 39).

26 COM(2020) 613 final.

27 Judgment of 14 October 2010, *Union syndicale Solidaires Isère* (C-428/09, EU:C:2010:612, paragraph 40). See also judgment of 9 September 2003, *Jaeger* (C-151/02, EU:C:2003:437, paragraph 89).

28 See judgment of 8 May 2014, *N.* (C-604/12, EU:C:2014:302, paragraph 45), where the Court held that the need to ensure genuine access to the status conferred by international protection requires that the application be examined within a *reasonable time*.

44. However, the terms of the derogation set out in point (b) of the third subparagraph of Article 31(3) of the Procedures Directive are not to be interpreted so restrictively that they deprive the exception of its effects.[29] Consequently, the effectiveness of the derogation at issue must be preserved precisely in order to let the Member State seek relief from the large number of applications and diligently to assess the applications for international protection.

(2) The effectiveness of the derogation under point (b) of the third subparagraph of Article 31(3) of the Procedures Directive

45. Since asylum applications are in practice rarely actually filed at exactly the same time, the term 'simultaneously' should be understood as meaning 'within a short period of time'. This could mean that point (b) of the third subparagraph of Article 31(3) of the Procedures Directive could also be applied in the case of an aggregation of asylum applications lodged over a certain, albeit short, period of time. It follows that, although it is not necessary to require that all applications be made at exactly the same time, the term 'simultaneously' clearly implies that such applications must be made within a certain – short – period.

46. With respect to the wording 'a large number', I would argue that there ought to be a pattern of data showing a sharp increase over a short period of time or cumulative quantities of new applications increasing at a considerable rate. Therefore, for the purposes of determining whether point (b) of the third subparagraph of Article 31(3) of the Procedures Directive applies, the administration must carry out an examination of the number of applications relying on a growth model.

47. In that respect, as stated in a European Council on Refugees and Exiles report, 'asylum caseloads in individual countries can fluctuate significantly within a relatively short period of time and backlogs of pending cases can increase or drop exponentially from one year to another.'[30] As observed by X, owing to the fact that budgetary measures are by definition dependent on estimates and forecasts, national authorities are bound to monitor and make forecasts of the fluctuation of asylum requests in order to comply with its obligations under Article 4(1) of the Procedures Directive. As argued by the Commission at the hearing before the Court, the application of point (b) of the third subparagraph of Article 31(3) of the Procedures Directive entails a comparison with a usual and expected flow of refugees. In my view, the national authorities should compare that flow to the one that constitutes 'a large number' according to those authorities. Such a comparison entails the analysis of current and historical statistical data and patterns.

48. It follows, in my view, that the wording 'a large number' of 'simultaneous' applications implies a significant increase thereof compared to regular trends in a given Member State. For example, in the case of exponential growth, there is a rapid and accelerating increase in the quantity of applications. In such a case, it is clear that it falls under 'a large number' within the meaning of point (b) of the third subparagraph of Article 31(3) of the Procedures Directive. Such an interpretation is consistent with the objective of the provision in that, if the number of

[29] Judgment of 5 September 2019, *Regards Photographiques* (C-145/18, EU:C:2019:668, paragraph 32). See also judgment of 21 March 2013, *PFC Clinic* (C-91/12, EU:C:2013:198, paragraph 23).

[30] Ott, J., Asylum authorities: An overview of internal structures and available resources, *European Council on Refugees and Exiles*, Brussels, Belgium, 2019, p. 34. In plain terms, exponential growth occurs when the growth rate of a value is proportional to the value itself, leading to the value increasing by a constant factor in each equal time period. For instance, when the value doubles or triples in each time period, it is an example of exponential growth.

applications keeps growing at a high rate, the national authority may face a decision-capacity problem during the six months of the assessment period, resulting in deadlines needing to be extended.

49. Conversely, that provision precludes a steady or gradual increase of applications. Even though the term 'simultaneously' can be interpreted slightly more broadly than its literal meaning, the fact remains that that period could not exceed a short period of time, since in that case the situation which that provision is intended to govern would be exceeded. The term 'simultaneously' means that there is a peak of asylum applications made within a short period of time. Therefore, it does not appear that the objective of the derogation is to apply to a gradual increase of applications over a certain period.

50. Any other interpretation of point (b) of the third subparagraph of Article 31(3) of the Procedures Directive would deprive the wording 'a large number' of 'simultaneous' applications within the meaning of that provision of any meaning or effect, since a normal increase would entail some predictability and would not correspond to the objective of the provision, which is to create a derogation in the case of specific circumstances.

51. In that respect, it is important to note that the derogation contained in point (b) of the third subparagraph of Article 31(3) of the Procedures Directive is also a derogation from the obligation laid down in Article 4(1) of that directive to ensure that the number of staff is sufficient. Therefore, one could argue that, in order for that derogation to apply, the specific circumstances must be defined in such a manner that the number of applications must be *unforeseeable* for the national authority. However, in my view, since point (b) of the third subparagraph of Article 31(3) of the Procedures Directive does not explicitly impose the condition that the increase in the number of simultaneous applications is to be unforeseeable, the predictability of the increase should not be part of what is understood as 'a large number' of 'simultaneous' applications.

52. Consequently, when the number of applications increases at a steady rate over time, such as where there is linear growth, that provision should not apply. Conversely, when the curve representing the number of those applications experiences a rapid increase or a spike, the situation may fall under point (b) of the third subparagraph of Article 31(3) of the Procedures Directive.[31]

53. Finally, when talking about an increase in or a growth of applications, the question that arises concerns the time period that should be taken into account in order to determine whether there is a large number of simultaneous applications within the meaning of point (b) of the third subparagraph of Article 31(3) of the Procedures Directive. In that respect, the Court cannot provide a specific timeframe, since it is for the national court to determine whether a significant growth has occurred. That being said, while Member States do have a certain margin of discretion in applying point (b) of the third subparagraph of Article 31(3) of the Procedures Directive, the objective of that directive is to ensure a certain degree of *uniformity* across the European Union in how asylum applications are processed. By imposing binding procedural

[31] Since not all curves that bend upwards are exponential, point (b) of the third subparagraph of Article 31(3) of the Procedures Directive may accommodate more growth models than just exponential growth.

standards on how quickly asylum applications should be handled, that directive creates a common procedural standard for Member States to ensure that asylum seekers across the European Union are not subject to widely varying waiting times. [32]

54. In the context of a directive that provides for specific deadlines for assessing applications for international protection, in particular Article 31(3) of the Procedures Directive that stipulates a six-month time limit as a rule for deciding on such applications, an interpretation in terms of quarters and half-years seems to make more sense than that in years. However, as stated above, the Procedures Directive, and, in particular, the term 'simultaneous', does not indicate the length of period that should serve as a timeframe or reference for the purposes of determining whether there has been a large number of simultaneous applications, and nor can there be any maximal period of time during which the increasing rate in the number of applications occurs in order to make such a finding. It follows that the national authorities or courts should favour an application in line with the objective of the Procedures Directive, which envisages the prompt conclusion of the examination procedure. [33]

(c) Teleological interpretation

55. The abovementioned contextual interpretation of point (b) of the third subparagraph of Article 31(3) of the Procedures Directive, which allows account to be taken of a certain period of time and excludes situations of gradual or steady growth in application numbers, is consistent with the teleological interpretation of the Procedures Directive.

56. In particular, the objective of that directive is to ensure a comprehensive and efficient assessment of applications for international protection. [34] In that respect, it is apparent from the Court's case-law that the Procedures Directive seeks to ensure effective, easy and rapid access to the procedure for granting international protection, including as early as the lodging of the application for international protection. [35] To that end, Article 31(2) of the Procedures Directive provides that the examination procedure must be concluded 'as soon as possible, without prejudice to an adequate and complete examination', which means that the procedure must be prompt, complete and appropriate. [36] As stated above, the purpose of point (b) of the third subparagraph of Article 31(3) of the Procedures Directive is to provide a derogation from the six-month deadline set out in the first subparagraph of Article 31(3) of that directive in the case of specific circumstances, that is, when a large number of third-country nationals simultaneously apply for international protection, making it very difficult in practice to conclude the procedure

[32] The Procedures Directive is part of the Common European Asylum System, which seeks to ensure that asylum procedures across the European Union are conducted in a similar and consistent manner. This includes setting principles and specific deadlines for processing applications. See, to that effect, in particular, recitals 12, 18, 19 and 37 of the Procedures Directive. With respect to specific time limits in relation to access to the procedure and the examination of applications, see, in particular, Article 6(1) and Article 31 of the Procedures Directive.

[33] See, in particular, Article 31(2) of the Procedures Directive, which aims to foster a certain uniformity in asylum law across EU Member States, specifically with respect to the timeframes for processing asylum applications.

[34] See recital 11 of the Procedures Directive.

[35] See judgment of 16 November 2021, *Commission* v *Hungary (Criminalisation of assistance to asylum seekers)* (C-821/19, EU:C:2021:930, paragraph 80 and the case-law cited). The Court has ruled that a Member State cannot, without undermining the effectiveness of Article 6 of the Procedures Directive, unjustifiably delay the time at which the person concerned is given the opportunity to make his or her application for international protection (judgment of 17 December 2020, *Commission* v *Hungary (Reception of applicants for international protection)*, C-808/18, EU:C:2020:1029, paragraphs 103 and 106).

[36] See also recital 18 of the Procedures Directive.

within the six-month time limit.[37] In particular, as explained above, the standard asylum procedure of a maximum duration of six months was the rationale underlying the legislation introduced in 2009.[38]

57. Consequently, the concepts of 'a large number' and 'simultaneously' must be interpreted with due regard to the objective of Article 31 of the Procedures Directive, which is to increase the efficiency of the examination of applications and provide faster access to protection for refugees and persons in need of subsidiary protection. The objective of taking the decision as swiftly as possible is clearly incompatible with a broad interpretation of those concepts. The attainment of the abovementioned objectives and the effectiveness of that provision would be seriously compromised if a Member State was able to apply the derogation at issue in the event of a gradual increase in the number of asylum applications over a relatively long period.

58. From this perspective, point (b) of the third subparagraph of Article 31(3) of the Procedures Directive, which provides for the possibility of extending the examination deadlines in certain circumstances, must be balanced against the obligations laid down in Article 4(1) of that directive. However, the deadline set by the first subparagraph of Article 31(3) of the Procedures Directive, which creates a right for an individual to have his or her application examined within six months, cannot be compromised excessively in order to ensure compliance with the obligations under Article 4(1) thereof. In that respect, the Procedure Directive's aim includes ensuring that Member States handle asylum applications efficiently and without undue delay. In other words, the right to a quick and efficient decision-making process is on an equal footing with the qualitative requirements stemming from Article 4(1) of the Procedures Directive.

59. Furthermore, as to the question whether the concept of 'a large number' can depend on the capacity and resources of the Member State, in the Commission's view that concept may be assessed *numerically*, referring to a purely numerical increase in applications that does not vary based on a Member State's administrative or processing capacity. Conversely, the Netherlands and French Governments argued at the hearing that that number can be determined by allowing each Member State to consider its own capacity and resources. In my view, taking into account that derogations should be interpreted restrictively and that the capacity-based approach may give rise to varying approaches in how Member States apply point (b) of the third subparagraph of Article 31(3) of the Procedures Directive, the number of applications should be assessed by taking into account the actual number of applications in a given period and comparing it to historical data. As I have already suggested, using data from previous periods could provide a more consistent and objective standard for what qualifies as 'a large number' of applications. While capacity and resources can play a role in assessing the overall ability of a Member State to handle asylum applications, they may not be a factor in determining whether the number of applications is 'large'.

60. Finally, the objective of the extension of time limits provided for in point (b) of the third subparagraph of Article 31(3) of the Procedures Directive is for the Member States to avoid creating backlog. When that provision is triggered, the authorities of the Member States may seek temporary relief in the extension of time limits, but when the number of applications

[37] See points 39 to 41 above.

[38] See point 40 above. See also the initial proposal for the revised Procedures Directive, where the Commission explained that the introduction of deadlines for the completion of the processing procedure was motivated by the need 'to streamline the asylum process by introducing time limits for procedures at first instance'. It was stated that 'the envisaged general [six-]month time limit accommodates legislative amendments and/or practices of the majority of Member States, consulted in the process of preparing the amendments … It is instrumental in improving the efficiency of examinations, reducing reception costs, facilitating removal of failed asylum seekers and ensuring quicker access to protection for genuine refugees and persons in need of subsidiary protection.'

remains continuously high – as has been the case in the Netherlands since 2021, as the Netherlands Government explained at the hearing – the national authorities must find other ways to deal with this problematic. As argued by the Commission at the hearing, a Member State may invoke that provision only if strictly necessary in order to increase its resources. In sum, the concept of 'a large number' of 'simultaneous' applications within the meaning of point (b) of the third subparagraph of Article 31(3) of the Procedures Directive must be interpreted as meaning that the six-month time limit for examining the application for international protection may be extended by nine months only if the increase in the number of applications in a given Member State occurs at a high rate, giving rise to a 'spike' in those numbers which, in view of the derogative nature of that provision, precludes a progressive increase over a lengthy period of time.

2. Application to the present case

61. It is of course for the referring court to determine the facts in the main proceedings. In its order for reference, the referring court included tables showing the number of asylum applications made in 2021 and 2022. [39] Those figures are taken from the State Secretary's website and reflect fluctuations in the numbers of asylum applications as well as fluctuations in decision-making capacity.

62. It is for the referring court to assess, on the basis of the existing figures relating to the number of asylum applications between 2014 and 2022 and to decision-making capacity, whether the Netherlands faced a sudden or, on the contrary, a progressive increase in the number of applications.

63. In that respect, it should be noted that the WBV 2022/22 was adopted on 21 September 2022 and entered into force on 27 September 2022. [40] Therefore, it is appropriate to look at the trend at that point in time in order to establish whether a rapid growth or increase of the number of applications, as described above, took place during a limited period of time before that act was adopted, and to compare the rate of that growth to the growth that the authorities should have reasonably foreseen when planning their resources for 2022 in order to comply with the requirements of Article 4(1) of the Procedures Directive.

64. In the present case, the referring court states that the number of asylum applications lodged per year was as follows:

Year	Number of asylum applications [41]
2017	31 330
2018	30 380
2019	29 440
2020	19 130
2021	36 620
2022	47 991

[39] See paragraphs 4 to 7, 'The figures and forecasts relating to the number of asylum applications in the Netherlands'.

[40] According to the referring court, the State Secretary refers to the 'total number of asylum applications', which encompasses first asylum applications, subsequent asylum applications and family reunification applications.

[41] Those figures include first asylum applications, subsequent asylum applications and family reunification applications.

65. In my view, those figures show that the growth rate for the 2018 to 2020 period was negative. That rate increased sharply in 2021 (more than 90% compared to the previous year, which was probably due to the COVID-19 pandemic) and continued more steadily into 2022 (more than 30%). Had the growth rate of 2021 continued in 2022, then the expected number of applications for 2022 would have been around 70 000, but instead the rate decreased, due to which the number of applications was 47 991. However, the WBV 2022/22 was adopted on 21 September 2022, that is, a year after a sharp increase in the growth rate, and initially remained in force for six months. It appears, therefore, that the sharp increase took place earlier and not in 2022 when that decree was adopted.

66. That being said, it is for the national court to examine all the relevant statistical data with respect to asylum applications to determine whether that growth represents a sharp increase and whether it took place in a limited period of time.

C. The third question

67. By its third question, the referring court asks, in essence, if, in determining whether it is very difficult in practice to conclude the procedure within the six-month time limit referred to in point (b) of the third subparagraph of Article 31(3) of the Procedures Directive – partly in the light of Article 4(1) thereof – account may be taken of circumstances that cannot be traced back to the increase in the number of applications for international protection, such as the circumstance that the determining authority has to deal with pre-existing backlogs dating from before the increase in the number of applications for international protection or with a lack of staff capacity.

1. The concept of 'very difficult in practice to conclude the procedure within the six-month time limit' within the meaning of point (b) of the third subparagraph of Article 31(3) of the Procedures Directive

68. In view of the obligation to carry out an adequate and complete examination as set out in Article 4(1) of the Procedures Directive, the wording 'very difficult in practice to conclude the procedure within the six-month time limit' within the meaning of point (b) of the third subparagraph of Article 31(3) of the Procedures Directive should entail an objective assessment of the decision-making capacity of the national authorities. In particular, when a national authority relies on that provision, it should be able to demonstrate by way of qualitative analysis that there is an *objective* impossibility of concluding the procedure within the six-month time limit. In other words, a subjective impression is not sufficient and there should be proof of objective difficulties due to insufficient decision-making capacity as compared to what could have been expected according to the forecasts.

69. That assessment implies that the national court should examine whether it has been objectively demonstrated that the six-month time limit cannot be achieved, which means that the decision-making capacity of the national authority and its forecasts for the period concerned need to be assessed. It is only when that finding of fact is made that the national judge can establish the reasons underlying the difficulties at issue, which I shall examine in the next section.

70. In that respect, there is nothing in the Court's file indicating whether, on 21 September 2022 when the WBV 2022/22 was adopted, there was any significant backlog. In the order for reference, the referring court mentions the State Secretary's argument that circumstances such as the

pre-existing backlogs encountered by the national authority, which impose constraints on its decision-making capacity and contribute to making it very difficult in practice to conclude the procedure carefully within six months, must be taken into account for the purposes of determining whether that authority may extend that time limit. However, since there is nothing in the file suggesting that such circumstances have been established, the referring court must make a finding as to whether, at the time of the adoption of the WBV 2022/22, an actual backlog existed.

71. Therefore, in view of the cumulative nature of the conditions set out in point (b) of the third subparagraph of Article 31(3) of the Procedures Directive, and the causal link required between the first two conditions and the third condition, the third question arises only if the national court establishes that on 21 September 2022 there appeared to be 'a large number' of 'simultaneous' applications, making it very difficult in practice to conclude the procedure carefully within six months. The issue that arises is whether the referring court may take into account circumstances other than the increase in those applications, which essentially means whether the link between the first two conditions and the third is of an exclusive nature or not.

2. The exclusivity of the causal link

72. In the judgment in *A and S*,[42] concerning the right to family reunification of minor refugees under Article 10(3)(a) of Directive 2003/86/EC,[43] the Court recognised that the processing of applications for international protection does not depend only on the situations at issue, but also on how much work the competent authorities have and the political choices made by Member States as regards the staff made available to those authorities and the cases to be dealt with as a priority. Consequently, the Court has, in essence, already held that the practical difficulties encountered by the national authorities in complying with time limits, such as the six-month time limit at issue, are often multifactorial. More recently, the Court reiterated that Member States may not rely on circumstances which fall under their responsibility, such as legislative amendments, in order to justify any failure to comply with the requirement to deal with a request of international protection within a reasonable time.[44]

73. However, for the purposes of the application of point (b) of the third subparagraph of Article 31(3) of the Procedures Directive, the national authority must demonstrate that the impossibility of complying with the six-month time limit is, in a certain and unequivocal manner, attributable to the simultaneous increase in the number of *new* applications. The wording and the context of that provision precludes an interpretation that would take into account other reasons that led to the absence of a decision within the prescribed period. In that respect, I should note that all three of the derogations provided for in the third subparagraph of Article 31(3) of the Procedures Directive are triggered by events that are not related to the internal management issues of the competent national administration. Those events may be classified as 'external events', making it clear that none of the problems that allow for an extension of the six-month

[42] Judgment of 12 April 2018 (C-550/16, EU:C:2018:248). See, to that effect, paragraph 56 thereof.

[43] Council Directive of 22 September 2003 on the right to family reunification (OJ 2003 L 251, p. 12).

[44] See judgment of 29 June 2023, *International Protection Appeals Tribunal and Others (Attack in Pakistan)* (C-756/21, EU:C:2023:523, paragraph 80).

deadline can be attributable to management difficulties.[45] Such an interpretation is supported by the requirement to interpret the derogation set out in that provision in a strict manner and the fact that the Member States may invoke that derogation only when the conditions set out therein are fulfilled.

74. Furthermore, the impossibility of complying with the six-month time limit which is attributable to the simultaneous increase in the number of new applications must occur during or shortly before the six-month period that will be the subject of the extension. A Member State may not invoke a sharp increase that took place well before that six-month period. In other words, a backlog from a previous increase in the number of applications that took place long before the submission of the application cannot give rise to an extension of the time limit under point (b) of the third subparagraph of Article 31(3) of the Procedures Directive.

75. In addition, if other circumstances were allowed for the purposes of point (b) of the third subparagraph of Article 31(3) of the Procedures Directive, that would undermine the Member State's obligation under Article 4(1) of that directive. The effectiveness of Article 4(1) of that directive presupposes that the national authority ensures that certain fluctuations in the number of asylum applications can be remedied and that the Member State's decision-making capacity is up to the task. Put simply, when the number of asylum applications corresponds to a normal trend, the national authority is expected to organise its resources and decision-making capacity on that basis. However, when extraordinary external circumstances, such as 'a large number' of 'simultaneous' applications, occur, the Member States cannot be expected to meet those obligations, since the normal expected resources may not be sufficient. Hence, a pre-existing backlog cannot constitute a circumstance justifying an extension under the third subparagraph of Article 31(3) of the Procedures Directive.

76. In view of Article 4(1) of that directive, circumstances which do not amount to a simultaneous increase in the number of applications for international protection cannot be taken into account for the purpose of determining whether it is very difficult in practice to conclude the procedure within the six-month time limit. The impossibility of complying with the six-month time limit which is attributable to the simultaneous increase in the number of new applications must occur during or shortly before the six-month period that will be the subject of the extension.

IV. Conclusion

77. In the light of the above considerations, I propose that the Court answer the questions referred for a preliminary ruling by the Raad van State (Council of State, Netherlands) as follows:

Point (b) of the third subparagraph of Article 31(3) of 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, read in combination with Article 4(1) of that directive,

[45] By way of analogy, with respect to the distinction of 'internal' and 'external' events when identifying extraordinary circumstances for which the air carrier is exempted from compensating the traveller, the Court has held that 'external' events result from external circumstances which are more or less frequent in practice but which an air carrier does not control because they arise from a natural event or an act of a third party (see, to that effect, judgment of 7 July 2022, *SATA International – Azores Airlines (Failure of the refuelling system)*, C-308/21, EU:C:2022:533, paragraphs 25 and 26). See also judgment of 11 May 2023, *TAP Portugal (Death of the co-pilot)* (C-156/22 to C-158/22, EU:C:2023:393, paragraph 18 and the case-law cited), and my Opinion in that case (EU:C:2023:91).

must be interpreted as meaning that the six-month time limit for examining an application for international protection as referred to in the first subparagraph of Article 31(3) of Directive 2013/32 may be extended by nine months only if the increase in the number of applications in a given Member State occurs at a high rate, giving rise to a rapid increase ('spike') in that number, which, in view of the exceptional nature of the circumstances outlined in that provision, precludes a progressive increase of the number of applications over a lengthy period of time. Circumstances which do not amount to a simultaneous increase in the number of applications for international protection cannot be taken into account for the purpose of determining whether it is very difficult in practice to conclude the procedure within the six-month time limit. The impossibility of complying with the six-month time limit which is attributable to the simultaneous increase in the number of new applications must occur during or shortly before the six-month period that will be the subject of the extension.