Reports of Cases

JUDGMENT OF THE COURT (Tenth Chamber)

7 April 2016*

(Reference for a preliminary ruling — Legal expenses insurance — Directive 87/344/EEC — Article 4(1) — Free choice of lawyer for an insured person — Inquiry or proceedings — Definition — Authorisation granted by a public body to an employer for the purpose of terminating an employment contract)

In Case C-460/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Hoge Raad der Nederlanden (Supreme Court of the Netherlands, Netherlands) made by decision of 3 October 2014, received at the Court on 6 October 2014, in the proceedings

Johannes Evert Antonius Massar

v

DAS Nederlandse Rechtsbijstand Verzekeringsmaatschappij NV,

THE COURT (Tenth Chamber),

composed of F. Biltgen (Rapporteur), President of the Chamber, A. Borg Barthet and E. Levits, Judges,

Advocate General: M. Wathelet,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— Mr Massar, by L.M. Zuydgeest and E. van Engelen, advocaten,

— DAS Nederlandse Rechtsbijstand Verzekeringsmaatschappij NV, by J.W.H. van Wijk and B.J. Drijber, advocaten,

— the Netherlands Government, by M. de Ree and M. Bulterman, acting as Agents,

— the Austrian Government, by C. Pesendorfer, acting as Agent,

— the European Commission, by F. Wilman and K.-P. Wojcik, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

* Language of the case: Dutch.

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 4(1) of Council Directive 87/344/EEC of 22 June 1987 on the coordination of laws, regulations and administrative provisions relating to legal expenses insurance (OJ 1987 L 185, p. 77, 'the Directive' or 'Directive 87/344').

2 The request has been made in proceedings between Mr Massar and DAS Nederlandse Rechtsbijstand Verzekeringsmaatschappij NV ('DAS'), an insurance company, concerning the refusal of the latter to bear the costs of legal assistance provided by the lawyer chosen by the insured person in the context of a procedure that led to the termination of his employment contract.

Legal context

EU law

3 The 11th recital of Directive 87/344 states that:

'… the interest of persons having legal expenses cover means that the insured person must be able to choose a lawyer or other person appropriately qualified according to national law in any inquiry or proceedings and whenever a conflict of interests arises'.

4 Article 2(1) of the Directive is worded as follows:

'This Directive shall apply to legal expenses insurance. Such consists in undertaking, against the payment of a premium, to bear the costs of legal proceedings and to provide other services directly linked to insurance cover, in particular with a view to:

— securing compensation for the loss, damage or injury suffered by the insured person, by settlement out of court or through civil or criminal proceedings,

— defending or representing the insured person in civil, criminal, administrative or other proceedings or in respect of any claim made against him.'

5 Article 4(1) of the Directive provides:

'Any contract of legal expenses insurance shall expressly recognise that:

(a) where recourse is had to a lawyer or other person appropriately qualified according to national law in order to defend, represent or serve the interests of the insured person in any inquiry or proceedings, that insured person shall be free to choose such lawyer or other person;

(b) the insured person shall be free to choose a lawyer or, if he so prefers and to the extent that national law so permits, any other appropriately qualified person, to serve his interests whenever a conflict of interests arises.'

Netherlands law

6 Article 4:67, paragraph 1, of the Law on financial supervision (Wet op het financieel toezicht) is worded as follows:

‘A legal expenses insurer shall ensure that, in the contract for legal assistance cover, it is expressly provided that the insured person is free to choose a lawyer or other practitioner authorised by law where:

a. recourse is had to a lawyer or other practitioner authorised by law in order to defend, represent or serve the interests of the insured person in any inquiry or proceedings of a judicial or administrative nature; or

b. a conflict of interests arises.’

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

7 It is apparent from the order for reference that Mr Massar had taken out legal expenses insurance, the management of which was entrusted to DAS.

8 On 14 January 2014, Mr Massar’s employer requested, pursuant to Article 6 of the Extraordinary Decree on Labour Relations (Buitengewoon besluit arbeidsverhoudingen), authorisation from the Employee Insurance Agency (Uitvoeringsinstituut werknemersverzekeringen), a public body independent of the central administration, to terminate the employment contract with Mr Massar on grounds of redundancy.

9 On 17 January 2014, Mr Massar requested DAS to cover the costs of legal assistance relating to his representation by an external lawyer in that procedure.

10 DAS informed him that the procedure before the Employee Insurance Agency was not an ‘inquiry’ or proceedings within the meaning of the Law on financial supervision, that the insured person accordingly had no right to choose a lawyer and that the insurer would not bear the costs associated with representation by a lawyer.

11 Mr Massar applied to the judge of the Rechtbank Amsterdam (District Court, Amsterdam) dealing with applications for interim measures for an order that DAS should transfer the case on the procedure concerning him before the Employee Insurance Agency to an external lawyer appointed by him, and pay the lawyer’s fees and the costs associated with that procedure.

12 By interlocutory judgment, the judge dealing with interim applications referred to the Hoge Raad der Nederlanden (Supreme Court of the Netherlands) the question whether the proceedings before the Employee Insurance Agency fell within the definition of ‘inquiry’, within the meaning of Article 4(1) of Directive 87/344, upon which Article 4:67 of the Law on financial supervision was based.

13 The Hoge Raad der Nederlanden (Supreme Court of the Netherlands) observes that, under the applicable provisions of Netherlands law on the protection of employees against dismissal, the employer may end the employment relationship with an employee principally in two ways, namely, either by applying to the court for dissolution of the contract between the two parties, or by terminating the contract after obtaining authorisation to dismiss granted by the Employee Insurance Agency. In the latter case, the authorisation procedure is subject to the Extraordinary Decree on Labour Relations which is intended to fulfil the important functions of providing protection against unjustified dismissals and a public measure affording not only the protection of weaker groups on the labour market, but also the prevention of improper recourse to social security.

14 The Hoge Raad der Nederlanden (Supreme Court of the Netherlands) makes it clear that no objection may be made to, or appeal brought against, the Employee Insurance Agency's decision to grant or refuse a request for dismissal to be authorised, whether before a public administrative body or an administrative or civil court. If the Agency does grant authorisation to dismiss, the employer may, observing a notice period, lawfully terminate the employment contract. The employee can, at most, bring an action for damages for manifestly unjustified dismissal before the civil courts.

15 The Hoge Raad der Nederlanden (Supreme Court of the Netherlands) considers that, prima facie, the proceedings before the Employee Insurance Agency can be categorised as an 'inquiry', within the meaning of Article 4(1) of Directive 87/344. However, the arguments against that meaning include, inter alia, the legislative history of that directive and the consequences that such a wide interpretation of 'inquiry' could have for legal expenses insurance schemes.

16 In those circumstances, the Hoge Raad der Nederlanden (Supreme Court of the Netherlands) decided to stay proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must the term "inquiry" in Article 4(1)(a) of Directive 87/344 be interpreted as covering the procedure before the Employee Insurance Agency, in which the employer requests authorisation to dismiss in order to bring to an end the employment contract with the employee (who is covered by legal expenses insurance)?

(2) If the answer to Question 1 depends on the characteristics of the specific procedure, in combination, if necessary, with the facts and circumstances of the case, on the basis of what characteristics, facts and circumstances must the national court then determine whether that procedure is to be regarded as constituting an inquiry within the meaning of Article 4(1)(a) of the Directive?'

The questions referred

17 By its two questions, which can be dealt with together, the referring court asks, in essence, whether Article 4(1)(a) of Directive 87/844 must be interpreted as meaning that the term 'inquiry' referred to in that provision includes a procedure at the end of which a public body authorises the employer to dismiss an employee, who is covered by legal expenses insurance.

18 In that regard, it must be borne in mind, in the first place, that under Article 4(1)(a) of Directive 87/344, any contract of legal expenses insurance is expressly to recognise that, in any inquiry or proceedings, where recourse is had to a representative to defend, represent or serve the interests of the insured person, the latter is to be free to choose that representative.

19 Thus, it follows from the very wording of that provision that the term 'inquiry' must be read in opposition to the term 'proceedings'.

20 An interpretation of the term 'inquiry', within the meaning of Article 4(1)(a) of Directive 87/344, in the manner suggested by the defendant in the main proceedings, that seeks to limit the scope of that term to legal proceedings in administrative matters only, that is to say, those that take place before a court in the strict sense, would deprive the term 'inquiry', expressly used by the legislature of the European Union, of its meaning.

21 Furthermore, it must be observed that, even if the difference between the preparatory stage and the decision-making stage in an 'inquiry' or proceedings could have been the subject of debate during the legislative history of Directive 87/344, the text of Article 4(1) of that directive does not contain any such distinction, with the result that the interpretation of the term 'inquiry' may not be limited in that way.

22 In the second place, according to settled case-law, in interpreting a provision of EU law, it is necessary to consider not only its wording but also its context and the objectives pursued by the rules of which it forms part (see, to that effect, judgments in *St. Nikolaus Brennerei und Likörfabrik*, 337/82, EU:C:1984:69, paragraph 10; *VEMW and Others*, C-17/03, EU:C:2005:362, paragraph 41; and *Eschig*, C-199/08, EU:C:2009:538, paragraph 38).

23 In that regard, it is to be noted that the objective pursued by Directive 87/344, in particular Article 4 thereof, concerning the free choice of lawyer or representative, is to protect, broadly, the interests of insured persons. The general scope and obligatory nature that the right of the insured party to choose his lawyer or representative is recognised to possess militate against a restrictive interpretation of Article 4(1)(a) of the Directive (see, to that effect, judgments in *Eschig*, C-199/08, EU:C:2009:538, paragraphs 45 and 47, and *Sneller*, C-442/12, EU:C:2013:717, paragraph 24).

24 In the present case, it is apparent from the documents in the case file submitted to the Court that there was no action available to the dismissed worker against the decision of the Employee Insurance Agency granting the employer authorisation to dismiss on grounds of redundancy. If the employee can, at a later stage, bring an action for damages for manifestly unjustified dismissal before the civil courts, the decision in such a case cannot, however, call into question the decision taken by the Agency.

25 In those circumstances, it is indisputable that the rights of the employee are affected by the decision of the Employee Insurance Agency and that his interests as an insured person require protection in the context of the procedure before that body.

26 An interpretation of Article 4(1)(a) of Directive 87/433 that recognises the right of an employee who holds legal expenses insurance freely to choose his lawyer or other representative in the context of the ‘inquiry’ at the end of which a public body authorises the employer to dismiss him, is all the more necessary because, in the judgment in *Sneller* (C-442/12, EU:C:2013:717), the Court recognised the right freely to choose a lawyer or representative of an employee who found himself in the same situation, but whose contract of employment had been terminated by a judicial decision.

27 Furthermore, as regards the possible financial consequences for legal expenses insurance schemes, it must be recalled that, even if such financial consequences could arise, they may not lead to a restrictive interpretation of Article 4(1)(a) of Directive 87/344. Directive 87/344 does not seek the complete harmonisation of the Member States’ legal expenses insurance contracts, and the Member States remain free, as EU law currently stands, to determine the body of rules applicable to those contracts, on condition that the principles laid down by that directive are not rendered meaningless (see, to that effect, judgment in *Stark*, C-293/10, EU:C:2011:355, paragraph 31). Thus, the exercise by the insured person of the right to choose his representative does not mean that, in certain cases, limitations may not be set on the costs to be borne by the insurer (see judgment in *Sneller*, C-442/12, EU:C:2013:717, paragraph 26).

28 Having regard to the foregoing considerations, the answer to the questions referred is that Article 4(1)(a) of Directive 87/344 must be interpreted as meaning that the term ‘inquiry’ referred to in that provision includes a procedure at the end of which a public body authorises an employer to dismiss an employee who is covered by legal expenses insurance.

Costs

29 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Tenth Chamber) hereby rules:

Article 4(1)(a) of Council Directive 87/344/EEC of 22 June 1987 on the coordination of laws, regulations and administrative provisions relating to legal expenses insurance must be interpreted as meaning that the term 'inquiry' referred to in that provision includes a procedure at the end of which a public body authorises an employer to dismiss an employee who is covered by legal expenses insurance.

[Signatures]