

SUMMARY

ECJ 7 April 2016, case C-5/15 (Büyüktipi), legal expenses insurance

<p>A legal expenses insurance policy must cover the cost of a lawyer of choice, even in administrative proceedings (judgment largely identical to that in Massar, also summarised in this edition of EELC).</p>

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Facts

Mr Büyüktipi had taken out legal expenses insurance with Achmea. He applied to a public authority (CIZ) for an authorisation that would entitle him to free medical care. His application was rejected, whereupon he approached Achmea, requesting that they bear the costs arising from the involvement of a lawyer of his choice, specialised in such cases. Achmea refused, essentially stating that there was no need for Mr Büyüktipi to be represented by expensive outside counsel, as Achmea's own in-house lawyers could represent him just as well, given that the proceedings he wished to initiate against CIZ were not court proceedings, but merely administrative proceedings. Mr Büyüktipi sued Achmea.

National proceedings

The case was brought before the Court of Appeal in Amsterdam for determination of the question of whether the claim against the CIZ's decision refusing authorisation for care must be classified as an 'inquiry or proceedings of a judicial or administrative nature' within the meaning of Article 4:67(1) of the Law on financial supervision, which transposes Article 4(1) of Directive 87/344, and whether, therefore, Mr Büyüktipi is free to choose a lawyer whose fees

are to be borne by Achmea.

ECJ's findings

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Under Article 4(1)(a) of Directive 87/344 any contract of legal expenses insurance must expressly 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 free to choose that representative. Thus, it follows from the wording of that provision that the term 'inquiry' must be read in opposition to the term 'proceedings' (§16-17).

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An interpretation of the term 'inquiry', within the meaning of Article 4(1)(a) of Directive 87/344, in the manner suggested by Achmea, 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, to seek review of the lawfulness of the contested decision and determine definitively the legal position of the person concerned, would deprive the term 'inquiry' of its meaning (§18).

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The text of the directive does not distinguish between the preparatory stage and the decision-making stage in an inquiry or proceedings. 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 (§19-20).

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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 of the insured party's right to choose his lawyer or representative militates against a restrictive interpretation of Article 4(1)(a). In the present case, it is apparent that the rights of the insured person are affected both by the initial decision of the CIZ and by the decision taken in response to an objection, inasmuch as the factual assessment is made during that administrative stage and that assessment constitutes the basis

of the decision made in the context of subsequent judicial administrative proceedings. In those circumstances, it is indisputable that the insured person has need of legal protection during a procedure that constitutes the indispensable preliminary stage for bringing an action before the administrative court (§21-23).

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Such an interpretation cannot be called into question by Achmea's argument that a broad interpretation of the right to a free choice of lawyer or representative would transform all legal expenses insurance into insurance based on the principle of 'covering costs' (§24).

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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). 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. 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 (§25).

Judgment

Article 4(1)(a) of Council Directive 87/344 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 covers the stage of an objection before a public body, during which that body gives a decision against which an action may be brought before the courts.

Creator: European Court of Justice (ECJ)

Verdict at: 2016-04-07

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