SUMMARY

ECJ 7 April 2016, case C-460/14 (Massar), legal insurance

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Facts

Mr Massar had taken out legal expenses insurance with the insurance company DAS. In January 2014, his employer applied to the UWV, an independent public body, for permission to terminate his employment contract on grounds of redundancy. Mr Massar requested DAS to cover the costs of legal assistance relating to his representation by an external lawyer. DAS informed him that the UWV procedure was not an "inquiry or procedure" within the meaning of the Dutch law transposing Directive 87/344. Article 4(1) of that directive provides:

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

- 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;

- 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."

Accordingly, DAS informed Mr Massar that it would not bear the costs associated with representation by a lawyer, but that, if he wished, one of DAS' own lawyers could provide him with the necessary legal assistance.

Mr Massar applied to the District Court in Amsterdam for interim relief in the form of an order that DAS should transfer the case to an external lawyer appointed by him, and pay the lawyer's fees and the costs associated with that procedure. The District Court asked the Supreme Court for guidance.The Supreme Court observed that, under the applicable provisions of Dutch 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 UWV. In the latter case, the authorisation procedure is subject to legislation 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. The Supreme Court considered that, prima facie, UWV proceedings 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. For this reason, the Supreme Court referred questions to the ECJ, in essence asking 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.

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'. 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. 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. (§18-21).

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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. 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 (§22-23).

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In the present case, it is apparent from the documents that there was no action available to the dismissed worker against the decision of UWV 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. In those circumstances, it is indisputable that the rights of the employee are affected by the decision of UWV and that his interests as an insured person require protection in the context of the procedure before that body (§24-25).

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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), 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 (§26).

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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). 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 (§27).

Judgment

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.

Creator: European Court of Justice (ECJ)
Verdict at: 2016-04-07
Case number: C-460/14 (Massar)