

Case C-199/08

Erhard Eschig

v

UNIQA Sachversicherung AG

(Reference for a preliminary ruling
from the Oberster Gerichtshof)

(Legal expenses insurance — Directive 87/344/EEC — Article 4(1) — Right of insured persons to choose their own lawyer — Contractual limitation — Multiple insured persons suffering loss as a result of the same event — Selection of the legal representative by the insurer)

Opinion of Advocate General Trstenjak delivered on 14 May 2009 I - 8297
Judgment of the Court (Second Chamber), 10 September 2009 I - 8319

Summary of the Judgment

1. *Freedom of movement for persons — Freedom of establishment — Legal expenses insurance — Directive 87/344*
(Council Directive 87/344, Arts 3(2), 4(1)(a), and 5)
2. *Freedom of movement for persons — Freedom of establishment — Legal expenses insurance — Directive 87/344*
(Council Directive 87/344, Art. 4(1)(a))

1. It follows from the wording of Articles 3, 4 and 5 of Directive 87/344 on the coordination of laws, regulations and administrative provisions relating to legal expenses insurance and from the context of that directive that the right to freely choose a representative is granted to every insured person in a general and independent way, within the limits set by each of those articles.

Therefore, Article 4(1) of Directive 87/344 recognises the right of the insured person to choose his representative but, other than in cases where a conflict of interests arises, restricts that right to inquiries and proceedings. The use of the adjective 'any' as well as the tense of the verb 'to recognise' demonstrate the general application and obligatory nature of that rule. Furthermore, that provision lays down the minimum level of freedom which must be granted to the insured person whatever the

option provided for in Article 3(2) of that directive with which the insurance undertaking complies.

(see paras 46-48)

2. 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 not permitting the legal expenses insurer to reserve the right, where a large number of insured persons suffer loss as a result of the same event, itself to select the legal representative of all the insured persons concerned.

(see para. 68, operative part)