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Judgment in Case E-13/15 *Abuelo Insua Juan Bautista v Liechtensteinische Invalidenversicherung*

A RECIPIENT OF SOCIAL SECURITY BENEFITS MAY CHALLENGE FINDINGS OF THE INSTITUTION OF THAT PERSON'S PLACE OF STAY OR RESIDENCE

In a judgment delivered today, the Court answered the questions referred to it by the Princely Court of Appeal (*Fürstliches Obergericht*), on the interpretation of Article 87(2) of Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (“the Regulation”).

Mr Abuelo Insua Juan Bautista, a resident of Spain, is in receipt of an invalidity pension from the Liechtenstein Invalidity Insurance Fund (*Liechtensteinische Invalidenversicherung*) (“the Fund”). In 2013, at the request of the Fund, the Spanish Social Security Institute performed a medical examination of Mr Bautista. The examining doctor concluded that he was able to perform adapted work full time. On that basis, the Fund decided to terminate the invalidity pension. Mr Bautista appealed that decision to the Princely Court of Appeal, which made a reference to the Court on whether the binding effect on the debtor institution of medical findings of the institution of the place of stay or residence mentioned in Article 87(2) of the Regulation prohibits the recipient or claimant of benefits from challenging those findings in proceedings before the debtor institution.

It follows from Article 87(2) that the debtor institution requesting a medical examination by the institution of the place of stay or residence shall be bound by the latter's findings. That binding effect applies to medical findings, not to the legal assessment of whether the claimant is entitled to benefits, which is for the debtor institution to determine under national law.

The Court pointed out that the purpose of the binding nature of the medical report is to enable the right of free movement of a recipient of social security benefits and that there is nothing in the wording of Article 87 to prevent a recipient or claimant of benefits from challenging the findings of the institution of the place of stay or residence.

Moreover, if a recipient or claimant of benefits staying or residing in Liechtenstein is allowed to challenge the decision of the Fund, including its medical findings, under national law, as was argued before the Court, then it follows from the principle of equal treatment that recipients or claimants staying or residing in another EEA State must also be entitled to challenge the findings of the institution of the place of stay or residence in the proceedings before the Fund.

The Court therefore concluded that Article 87(2) of the Regulation does not prevent a recipient or claimant of benefits from challenging the findings of the institution of the place of stay or residence made under the said provision in an administrative procedure before the debtor institution.

The full text of the judgment may be found on the Internet at: www.eftacourt.int.

This press release is an unofficial document and is not binding upon the Court.