Translation of a Request for an Advisory Opinion from
Fürstliches Obergericht, Liechtenstein
Registered at the EFTA Court under Case E-13/15-1
Original language: German

Always quote the file reference
SV.2014.41
ON 13

ORDER

The Fürstliches Obergericht (Princely Court of Appeal), Second Chamber, through Presiding Judge Jürgen Nagel, lic. iur., LL.M., with Associate Judge Dr Wilhelm Ungerank, LL.M., and Senior Judge Dr Josef Fehr as other members of the Chamber, in the

social insurance case of

the appellant	Abuelo Insua Juan Bautista, LG Tedin 18, ES-15270 Cee represented by Dr Hugo Vogt, Rechtsanwalt, as the court-appointed legal aid lawyer, c/o Advocatur Sprenger & Partner AG, Landstrasse 11, Postfach 140, 9495 Triesen
v	
the respondent	Liechtensteinische Invalidenversicherung, Gerberweg 2, 9490 Vaduz represented by Marco Christoforetti, MLaw, Dr Irene File, Harry Hasler-Maier, lic. iur., Susanne Jehle, MLaw, Dr Brigitte Müller, Jürgen Seeliger, lic. iur., at the same address
concerning	invalidity pension

after hearing the parties to the dispute (ON 10 and 11), at a closed sitting on **19 May 2015** in the presence of the Rapporteur, Roswitha Grabher,

has made the following

Order:

The appeal proceedings before the Fürstliches Obergericht under file reference SV.2014.41 are hereby interrupted and the following questions are referred to the EFTA Court in Luxembourg pursuant to Article 34 of the Surveillance and Court Agreement with a request for an Advisory Opinion:

1. Is a recipient of benefits (claimant) prohibited, because the debtor institution is bound by the findings of the institution of the place of stay or residence under the second sentence of Article 87(2) of Regulation No 987/2009, from challenging those findings in the procedure before the debtor institution?

2. If the first question is answered in the affirmative: does that binding effect also apply in court proceedings which, under national procedural rules, follow on from the proceedings before a debtor institution?

Grounds

1. The parties are in dispute over the continued award of an invalidity pension.

2. Facts and national legislation

2.1 Facts (where necessary for the purposes of understanding, certain legislation is also examined):

The appellant, Abuelo Insua Juan Bautista ('Mr Bautista'), is a Spanish national, born on 27 May 1969, who was employed as a construction worker in Liechtenstein in 1990 and 1991 and from 1995 to 31 August 2006. In 2010 he transferred his residence from Liechtenstein to Spain.

The respondent, Liechtensteinische Invalidenversicherung (Liechtenstein Invalidity Insurance Fund, 'the Invalidity Insurance Fund'), is an independent public-law institution within the meaning of

Article 534(2) of the Personen- und Gesellschaftsrecht (Law on Persons and Companies, PGR; LR 216.0 [which, like all other Liechtenstein legislation, is available on the internet at www.gesetze.li]), registered in the commercial register of the Principality of Liechtenstein under company number FL-0002.071.941-7. The Invalidity Insurance Fund was established by Article 1(1) of the Gesetz über die Invalidenversicherung (Law on invalidity insurance, IVG; LR 831.20) and has the purpose of implementing invalidity insurance in accordance with the IVG.

Mr Bautista received a one-quarter invalidity pension from the Invalidity Insurance Fund from 1 August 2005 and was granted a full invalidity pension with effect from 1 September 2008.

From time to time the Invalidity Insurance Fund reviews of its own motion entitlement to benefits pursuant to Article 90(1) and (2) of the Verordnung zum Gesetz über die Invalidenversicherung (Regulation on the Law on invalidity insurance, IVV; LR 831.201), and in particular whether there are circumstances indicating a possible significant change in the degree of invalidity.

Such a review took place in 2009. By letter of 9 December 2009, the Invalidity Insurance Fund asked Mr Bautista to answer questions regarding his health and conducted further enquiries. By letter of 3 May 2010, it then informed Mr Bautista that the review of the degree of invalidity had not given rise to any change affecting his pension and that he was therefore still entitled to the invalidity pension.

In 2013 another review was conducted. By letter of 17 May 2013, the Invalidity Insurance Fund requested Mr Bautista to answer questions regarding his health. By letter of 21 May 2013, the Invalidity Insurance Fund also asked the Instituto Nacional de la Seguridad Social, ES-15009 La Coruna, to produce a 'detailed medical report' on Mr Bautista, making reference, at the same time, to the 'E 213' form. On 24 September 2013 the Invalidity Insurance Fund received a letter from the Ministerio de Empleo y Seguridad Social, Instituto Nacional de la Seguridad Social, dated 13 September 2013, with which was enclosed the E 213 form ('*Informe Medico Detallado*'), undersigned by a Spanish doctor ('*Doctor who drew up the report*' in accordance with point 1.3 of the E 213 form). That form includes the following statements, in so far as they are relevant to the present case (statements made by the Spanish doctor in bold):

'…
9. The insured person is still capable of regularly performing the following types of work: ***light***

10. The following restrictions should be taken into account:
10.1 Work can only be performed without: ***Shifts***
10.2 Work can only be performed under the following conditions: ***(note: no box checked)***
10.3 The work performance is reduced because the insured person is restricted in using his/her sensory organs, hands, etc., is allergic to: ***(note: no statement made)***

…
11.4 Can the insured person work full time in his/her last occupation as a bricklayer: ***No***
11.5 Can adapted work be performed: ***Yes***
11.6 Can adapted work be performed full time: ***Yes***
…'

The report contains various medical diagnoses which are not reproduced here as they are not of relevance.

The Internal Medical Service of the Invalidity Insurance Fund gave the following opinion on that report of 13 September 2013 (E 213 form): '*On the basis of the current, plausible findings, [the Spanish doctor] confirms that the insured person can be reasonably expected to perform light work full time without physical strain … This is plausible from the point of view of insurance medicine. Because no specific date is reported from which the [symptoms] stabilised, I will take the date of the examination as the beginning of the improvement in health.*'

By preliminary decision of the Invalidity Insurance Fund of 4 November 2013, Mr Bautista was informed that the Invalidity Insurance Fund intended to suspend the invalidity pension and that Mr Bautista had the opportunity to lodge any objections to the proposed course of action.

Thereupon, Mr Bautista stated that he disagreed with the Invalidity Insurance Fund's proposed course of action and submitted further medical documents. In addition, he stated that he had not even been properly examined by the Spanish doctor and that the appointment had lasted only ten minutes.

After the Invalidity Insurance Fund had then obtained an opinion from the Internal Medical Service, it ruled, by order of 10 March 2014, that Mr Bautista would forfeit the invalidity pension with effect from 30 April 2014.

Mr Bautista lodged objections against that decision with the Invalidity Insurance Fund and submitted further medical documents. After obtaining an opinion from the Internal Medical Service of the Invalidity Insurance Fund, it ruled, by decision of 2 October 2014, that the objections would not be upheld.

Mr Bautista brought the appeal against that decision of the Invalidity Insurance Fund of 2 October 2014 at the Fürstliches Obergericht, essentially arguing that the Invalidity Insurance Fund had based the withdrawal of the invalidity pension solely on the report by the Spanish doctor of 13 September 2013 (E 213) and the interpretation of that report by the Internal Medical Service of the Invalidity Insurance Fund, but had failed to take into consideration various medical opinions which indicated the contrary (namely, that his health had not improved and he was still subject to full incapacity for work). In addition, the Spanish doctor had merely had a brief, ten-minute-long conversation with Mr Bautista and had not conducted any physical examination. The Spanish doctor had not therefore carried out a professional examination of Mr Bautista, with the result that her opinion (E 213 form) was not based on a comprehensive examination. Lastly, the Invalidity Insurance Fund should have obtained a decisive expert opinion from a medical expert, which could have cleared up the differences between the opinion of the Spanish doctor and of the Internal Medical Service of the Invalidity Insurance Fund, on the one hand, and the medical reports to the contrary, on the other. In summary, Mr Bautista claims that the court should alter the contested decision of the Invalidity Insurance Fund such that he continues to be granted a full invalidity pension.

The Invalidity Insurance Fund claims that the appeal should be dismissed. It is incorrect to claim that there are contradictory specialist medical assessments. There is the detailed medical report in the E 213 form. The other medical reports are by doctors responsible for treating Mr Bautista. According to case-law, a differentiated appraisal of medical findings is possible and even necessary, depending on whether they originate from doctors treating the insured person or from officially appointed or court-appointed experts. Accordingly, the

Invalidity Insurance Fund was right to rely on the detailed medical report (meaning the detailed medical report in the E 213 form).

At the appeal hearing on 7 April 2015 before the Fürstliches Obergericht as the appellate court both parties maintained their positions.

Lastly, the parties were notified by the Fürstliches Obergericht that it intended to refer the questions contained in the operative part to the EFTA Court for an Advisory Opinion pursuant to Article 34 of the Surveillance and Court Agreement and would give the parties an opportunity to make observations. The parties availed themselves of their opportunity to make observations by pleadings of 30 April 2015 and 5 May 2015 (ON 10 and 11).

2.2 National legislation

Under Article 53(1) and (5) IVG, a person is entitled to an invalidity pension if he has at least 40% invalidity. For a degree of invalidity of at least 40% there is an entitlement to a one-quarter invalidity pension, for a degree of invalidity of at least 50% an entitlement to a 50% invalidity pension and for a degree of invalidity of at least 67% an entitlement to a full invalidity pension. Under Article 29(1) and (2) IVG, invalidity means a potentially permanent or long-term incapacity to work caused by damage to physical or mental health as a result of congenital defect, illness or accident, and invalidity is deemed to have commenced as soon as it has attained the necessary nature and severity to give grounds for entitlement to the benefit in question. Under Article 53(6) IVG, the 'invalidity income' is used to assess invalidity. This is the earned income which the insured person could receive in work he could reasonably be expected to perform after the commencement of invalidity and after the completion of medical treatment and any rehabilitation measures, in a balanced labour market situation. Based on the findings relating to Mr Bautista's health, the Invalidity Insurance Fund takes the view that he could still, for example, perform supervisory activities while seated without any physical strain and therefore has sufficient reasonable work available to him, such that he should not be regarded as subject to invalidity for the purposes of the IVG and he is no longer entitled to an invalidity pension.

Under Article 77c IVG, orders of the Invalidity Insurance Fund (note: by which a decision is taken, for example, to refuse a benefit claim or to

withdraw or reduce an existing benefit) must be made in writing and contain information on rights of appeal. Under Article 78 IVG, objections against orders of the Invalidity Insurance Fund may be lodged with the Invalidity Insurance Fund within four weeks. Under Article 78(2) IVG, Article 84(2) of the Gesetz über die Alters- und Hinterlassenenversicherung (Law on old-age and survivors' insurance, AHVG; LR 831.10) applies to this procedure *mutatis mutandis*. Under that provision, the procedure on the basis of objections is governed by the provisions of the Gesetz über die allgemeine Landesverwaltungspflege (Law on general state administration, LVG; LR 172.020). The LVG provides, in so far as is relevant here, that each party must be given the opportunity to comment on all facts and circumstances relevant to the determination of the matter at hand raised by other parties, witnesses and experts or challenged of its own motion and to safeguard its rights and interests as appropriate (Article 64(4) LVG), to request the summons of parties, witnesses and experts who have not been summoned to appear and to request measures of inquiry as appropriate (Article 60(3) LVG) and to address question to parties, witnesses and experts (Article 66(2) LVG). Under Article 79(1) LVG, the Invalidity Insurance Fund thereupon decides in accordance with its own firm conviction in the light of the entire contents of the hearing and the subject-matter of the measures of inquiry ('unfettered evaluation of evidence'). An appeal may be lodged with the Obergericht against that decision of the Invalidity Insurance Fund pursuant to Article 78(1) IVG and an appeal on a point of law may be lodged with the Oberster Gerichtshof (Supreme Court) against a judgment of the Obergericht. Under Article 78(2) IVG, the procedure for the appeal or the appeal on a point of law is governed by the provisions of Articles 87(1) and 93(2) AHVG, which in turn refer to the provisions of the Zivilprozessordnung (Code of Civil Procedure, ZPO; LR 271.0). The ZPO also has regard to the principle of the unfettered evaluation of evidence (Paragraph 272(1) ZPO). Unless otherwise provided in that Code, the court must assess, in accordance with its own firm conviction and after careful consideration of the results of the entire hearing and the evidence produced, whether or not a factual statement is to be considered to be true. Thus, the court hearing the appeal may – where appeal submissions are made to that effect – review the evaluation of evidence at first instance (in this case by the Invalidity Insurance Fund) and modify the evaluation of evidence, thereby making different factual findings departing from those made at first instance. Nevertheless, the Zivilprozessordnung does also have a few rules of evidence. For example, under Paragraph 292(1) ZPO, authentic instruments establish full proof of that which is officially

ordered or declared therein by the authority or is attested by the authority or the authenticating officer. However, under Paragraph 292(2) ZPO, evidence of the inaccuracy of the attested record or fact or improper authentication may be provided. Furthermore, the ZPO also recognises that earlier final decisions by courts and administrative authorities are binding (Paragraph 190(1) ZPO). Under that provision, in taking its decision, the court must, in certain cases, presume the legal effectiveness of the other decision without re-examining the matters of fact and of law and must base its decision on the outcome of the other procedure as a legal fact and a legal position which is binding on it.

3. European legal framework

The relevant provisions are contained in Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, which was adopted into the body of EEA law by Decision of the EEA Joint Committee No 76/2011 of 1 July 2011, Liechtensteinisches Landesgesetzblatt (Liechtenstein Law Gazette, LGBl) 2012 No 202, and 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, which was adopted into the body of EEA law by the same Decision of the EEA Joint Committee No 76/2011 of 1 July 2011, LGBl 2012 No 202, which both entered into force for the Principality of Liechtenstein on 1 June 2012. At the same time, Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 were repealed. Under Article 3(1)(c) of Regulation No 883/2004, the matters covered by the regulation include all legislation concerning invalidity benefits. In accordance with Article 11 of Regulation No 883/2004 ('country of employment principle') Mr Bautista is subject to the legislation of the Principality of Liechtenstein in respect of the invalidity pension at issue. Under Article 82 of Regulation No 883/2004, medical examinations provided for by the legislation of one Member State may be carried out at the request of the competent institution (here: at the request of the Invalidity Insurance Fund), in another Member State (here: in Spain), by the institution of the place of residence or stay of the claimant or the person entitled to benefits, under the conditions laid down in the Implementing Regulation or agreed between the competent authorities of the Member States concerned. The Implementing Regulation (Regulation No 987/2009) makes the following provision in Article 87 (Medical examination and administrative checks) (emphasis added):

'Article 87
(1) Without prejudice to other provisions, where a recipient or a claimant of benefits, or a member of his family, is staying or residing within the territory of a Member State other than that in which the debtor institution is located, the medical examination shall be carried out, at the request of that institution, by the institution of the beneficiary's place of stay or residence in accordance with the procedures laid down by the legislation applied by that institution.

The debtor institution shall inform the institution of the place of stay or residence of any special requirements, if necessary, to be followed and points to be covered by the medical examination.

(2) The institution of the place of stay or residence shall forward a report to the debtor institution that requested the medical examination. This institution shall be <u>bound</u> by the findings of the institution of the place of stay or residence.

The debtor institution shall reserve the right to have the beneficiary examined by a doctor of its choice. However, the beneficiary may be asked to return to the Member State of the debtor institution only if he or she is able to make the journey without prejudice to his health and the cost of travel and accommodation is paid for by the debtor institution.'

Legal commentators (Spiegel in: Fuchs [ed.], Europäisches Sozialrecht, Article 82, paragraphs 5 and 6) state in this regard that the requesting institution has the option to proceed on the basis of either the first subparagraph of Article 87(2) or the second subparagraph of Article 87(2) of Regulation No 987/2009. If (as in the present case) it proceeds on the basis of the first subparagraph, and requests from the institution of the place of stay or residence, for example, an examination of the disability of children in respect of whom an increased family benefit has been claimed, and if the examination concludes that the disability exists, that examination cannot be ignored and the disability cannot be dismissed. If it wishes to avoid being bound by the examination, however, it may have the person concerned examined by a doctor of its choice pursuant to the second subparagraph, which can also be done locally, that is to say in the respective State of residence or stay.

The E 213 form is a model form drawn up by the Administrative Commission on Social Security for Migrant Workers which is necessary

for the application of Regulations No 1408/71 and No 574/72 (OJ 2002 L 304, p. 1).

4. Request for an Advisory Opinion

4.1 Basic situation

As has been explained, under the second sentence of Article 87(2) of Regulation No 987/2009 the Invalidity Insurance Fund is bound by the findings made in the E 213 form of 13 September 2013, which was sent by the institution of Mr Bautista's place of stay or residence. Accordingly, Mr Bautista could not challenge the findings made in that medical examination.

4.2 The positions of the parties

The parties in the main proceedings were given an opportunity, in order to safeguard the right to be heard, to submit observations on the proposed reference.

4.2.1 Observations by Mr Bautista

Mr Bautista claims that the first subparagraph of Article 87(2) of Regulation No 987/2009 should not be interpreted too strictly, that is to say on the basis of its wording. An absolute binding effect on the debtor institution would result in manifest discrimination against the claimant or beneficiary as, if the debtor institution proceeded on the basis of the second subparagraph of Article 87(2), such a binding effect would not apply in any case. This is clear from Petition 0825/2005 to the European Parliament. In addition, Mr Bautista raises constitutional questions, arguing in particular that an absolute binding effect would infringe the right to be heard and the right to a fair trial. Nevertheless, he does not oppose the proposed reference.

It should be noted in this regard that Petition 0825/2005 to the European Parliament proves to be irrelevant, as (for the first time) Regulation No 987/2009 expressly envisages (in contrast to Regulations No 1408/71 and No 574/72) binding effect, however it had not yet entered into force in 2005. Furthermore, it is clear from the statements made by Mr Bautista, who argues that the meaning of the first subparagraph of Article 87(2) of Regulation No 883/2004 is to be determined by way of interpretation, that there is a need for a reference to the EFTA Court.

4.2.2 Observations of the Invalidity Insurance Fund

The Invalidity Insurance Fund claims that no request for an Advisory Opinion should be made to the EFTA Court. It argues that it is required to verify the probative value of any examination, namely whether the subjective self-assessment was recorded, whether the objective diagnoses were noted etc., such that the conclusions are conclusive. The abovementioned criteria should – in accordance with previous practice – also be applicable to medical information in a E 213 form. Otherwise, if the information in a E 213 form was accorded greater probative value than information from another examination, persons resident in Liechtenstein and persons resident in other countries would be treated differently and thus discriminated against. Furthermore, regard should not be had solely to the wording of the first subparagraph of Article 87(2) of Regulation No 987/2009. In addition, according to Article 49 of Regulation No 987/2009, the decision concerning the degree of invalidity is to be taken where the eligibility criteria under the legislation applied by the competent institution are met.

It is also evident from the substance of the observations submitted by the Invalidity Insurance Fund that there is a need for a reference to the EFTA Court, as the Invalidity Insurance Fund also wishes to depart from the wording of the second sentence of Article 87(2) of Regulation No 987/2009. The further question proposed by the Invalidity Insurance Fund in the event of a reference ('*Is the competent social insurance institution permitted, in the absence of a legal basis for the harmonisation of social security schemes or on the basis of Article 49 of Regulation No 987/2009, in particular paragraph 2 thereof, to challenge the information in a detailed medical report in the EU E 213 form in the invalidity insurance procedure*') could not be asked because in the contested decision the Invalidity Insurance Fund ultimately reached the same conclusion as was set out in the detailed medical report from the institution of the place of residence or stay, and did not otherwise challenge the information in the detailed medical report at all, with the result that the question would be hypothetical and thus inadmissible.

4.3 Justification for the reference

A binding effect resulting from a regulation which has been adopted into the body of EEA law would take precedence over national

procedural rules ('principle of the unfettered evaluation of evidence'). However, there would be nothing unusual in principle about a binding effect under national procedural law, since, as was explained above, it can in fact be found, to some extent, in national procedural law.

As regards the question of the interpretation of the provision at issue, it should be pointed out that Regulation No 987/2009 also includes other provisions relating to a (kind of) binding effect:

Thus, Article 5(1) of that regulation provides that documents issued by the institution of a Member State and showing the position of a person for the purposes of the application of the Basic Regulation and of the Implementing Regulation, and supporting evidence on the basis of which the documents have been issued, must be accepted by the institutions of the other Member States for as long as they have not been withdrawn or declared to be invalid by the Member State in which they were issued. Where no agreement is reached between the institutions concerned, for example where there is doubt about the validity of a document or the accuracy of the facts on which the particulars contained therein are based, the authorities may bring the matter before the Administrative Commission (Article 5(4)). Under Article 24 of the regulation, a right to benefits in kind in the Member State of residence must be certified by a document issued by the competent institution upon request of the insured person or upon request of the institution of the place of residence, and that document remains valid until the competent institution informs the institution of the place of residence of its cancellation. Under Article 27(8) of that regulation, the particulars of the certificate of incapacity for work of an insured person drawn up in another Member State on the basis of the medical findings of the examining doctor or institution must have the same legal value as a certificate drawn up in the competent Member State. Lastly, under Article 49(2) of the regulation, in the cases described in that provision the competent institution must, in accordance with its legislation, have the possibility of having the claimant examined by a medical doctor or other expert of its choice, but must take into consideration documents, medical reports and administrative information collected by the institution of any other Member State as if they had been drawn up in its own Member State.

To some degree, there is thus no absolute binding effect under the abovementioned provisions, but it is presumed that documents are equivalent with documents drawn up pursuant to national rules or may be questioned or a dispute settlement procedure is envisaged.

It is a different situation, however, in respect of the provision at issue here, the second sentence of Article 87(2) of Regulation No 987/2009. Unlike the abovementioned provisions, that provision does not imply that the findings contained in the detailed medical report are equivalent with the findings, for example, from an examination carried out under national law, but it does mention being bound, while the regulation does not provide for a possibility to challenge those findings. If, however, the Invalidity Insurance Fund is bound by the finding, it could not take into consideration conflicting evidence, as consideration of conflicting evidence could not be reconciled with a binding effect.

As far as can be seen, there is no case-law on the second sentence of Article 87(2) of Regulation No 987/2009. However, the European Court of Justice has ruled as follows with regard to Regulations No 1408/71 and No 574/72. In Case C-102/91 *Knoch* the European Court of Justice found that a certified statement issued in accordance with Article 84(2) of Regulation No 574/72 does not constitute irrefutable proof vis-à-vis either the competent institution of another Member State or a court of that State. In Case C-22/86 *Rindone* the European Court of Justice held (with regard to the certificate of incapacity for work under Article 18 of Regulation No 574/72) that that provision must be interpreted as meaning that if the competent institution does not exercise the option provided for in Article 18(5) of having the person concerned examined by a doctor of its choice, it is bound, in fact and in law, by the findings made by the institution of the place of residence as regards the commencement and duration of the incapacity for work (note: Article 18(5) seems to be the same as the second subparagraph of Article 87(2) of Regulation No 987/2009). In Case C-45/90 *Paletta I* the European Court of Justice ruled (once again with regard to Article 18 of Regulation No 574/72) that the competent institution, even where this is the employer and not a social security institution, is bound in fact and in law by the medical findings made by the institution of the place of residence or temporary residence concerning commencement and duration of the incapacity for work, when it does not have the person concerned examined by a doctor of its choice, as it may do under Article 18(5). In *Paletta II* (Case C-206/94) the European Court of Justice qualified its previous statement (albeit only in respect of the employer) to the effect that it does not imply that employers are barred from adducing evidence to support, where appropriate, a finding by the national court of abuse or fraudulent conduct on the part of the worker

concerned, in that, although he may claim to have become incapacitated for work, such incapacity having been certified in accordance with Article 18 of that regulation, he was not sick at all. Lastly, the European Court of Justice ruled in Cases C-372/02 *Adanez-Vega*, C-2/05 *Herbosch Kiere* and C-114/13 *Boumann* (all with regard to Regulation No 1408/71, however) that a certified statement issued by an institution of another Member State is binding, on the basis of the general principle of loyal cooperation (at that time laid down in Article 10 EC), as long as that certified statement issued by an institution of a Member State has not been withdrawn or declared invalid by the authorities of the issuing State.

However, none of this can be applied to the present case as a binding effect is not inferred by the case-law simply from the general principle of loyal cooperation (in the EEA this would be Article 3 of the EEA Agreement), with the result that grounds for departing from binding effect could also be derived from further case-law, but here there is a piece of secondary legislation, in the form of Regulation No 987/2009, and specifically the second sentence of Article 87(2) thereof, which prescribes a binding effect (without any exceptions).

The question referred is evidently a preliminary question, as if the findings made by the Invalidity Insurance Fund in the contested decision on the basis of the report by the Spanish doctor (E 213 form) are binding, the correct findings were made in any case and could no longer be challenged by Mr Bautista.

If the EFTA Court answers Question 1 to the effect that the competent institution (in this case the Invalidity Insurance Fund) is bound by the findings in the detailed medical report, the subsequent question arises whether such a binding effect also applies to the court which, in subsequent appeal or review proceedings under national law (like the referring court in the present case), is required to review the institution's decision.

A request therefore had to be made to the EFTA Court for an Advisory Opinion pursuant to Article 34 of the Surveillance and Court Agreement.

5. Interruption of the main proceedings

Under Article 62(1) of the Gesetz über die Organisation der ordentlichen Gerichte (Law on the organisation of the ordinary courts,

GOG; LR 173.30), the interruption of the appeal proceedings had to be ordered pending the Advisory Opinion from the EFTA Court.

FÜRSTLICHES OBERGERICHT, Second Chamber
Vaduz, 19 May 2015

The Presiding Judge:
Jürgen Nagel, lic. iur.

Certified true copy

Roswitha Grabher

Notice:

No appeal may be lodged against this order.