JUDGMENT OF THE COURT (Third Chamber)
5 April 1990 *

In Case C-109/89

REFERENCE to the Court under Article 177 of the EEC Treaty by the cour du travail (Labour Court), Liège, Belgium, for a preliminary ruling in the proceedings pending before that court between

Office national des pensions

and

Ernesto Bianchin

on the interpretation of Articles 48 and 51 of the EEC Treaty on freedom of movement for workers,

THE COURT (Third Chamber)

composed of: M Zuleeg, President of Chamber, J C Moitinho de Almeida and F Grévisse, Judges,

(the grounds of the judgment are not reproduced)

in answer to the questions submitted to it by the cour du travail, Liège, by judgment of 24 March 1989, hereby rules:

(1) **Where an employed or self-employed person receives a pension by virtue of national legislation alone, the provisions of Regulation (EEC) No 1408/71 do not preclude that legislation alone from being applied to him in its entirety, including any national rules against the overlapping of benefits, unless the**

* Language of the case: French

application of that national legislation proves to be less favourable to him than that of the rules laid down in Article 46 of Regulation (EEC) No 1408/71 In the latter case, Article 46 must be applied, account being taken of the fact that provisions for reduction, suspension or withdrawal of benefit laid down by national legislation are inapplicable by virtue of the final sentence of Article 12(2) of the regulation, when the person concerned receives benefits of the same kind in respect of invalidity, old age, death (pensions) or occupational disease awarded by the institutions of the different Member States An early retirement pension and an invalidity pension are to be regarded as benefits of the same kind within the meaning of Article 12(2) of the regulation

(2) When the legislation of only one Member State is applied, the classification, in the light of the anti-overlapping rules contained in that legislation, of an early retirement pension awarded under the legislation of that State alone and of an invalidity pension awarded by another Member State is not governed by Community law