OPINION OF MR ADVOCATE GENERAL LENZ
delivered on 14 January 1987 *

Mr President,
Members of the Court,

A — Facts

1. The proceedings in which I am today giving my Opinion are concerned with a request for a preliminary ruling by the cour du travail, Mons, a labour court of second instance, on the definition of the terms 'worker' and 'dependent descendants' which are of importance in relation to freedom of movement for workers.

2. It is well known that under Article 7 (2) of Regulation No 1612/68 [1] on freedom of movement for workers within the Community a worker who is a national of a Member State and employed in the territory of another Member State enjoys 'the same social . . . advantages as national workers'. According to the judgment in Case 249/83 [2] that includes the benefit under the Belgian Law of 7 August 1974 ensuring necessary maintenance ('minimex').

3. According to the judgment in Case 94/84 [3] the scope of the said provision also covers benefits for the young unemployed in so far as they are dependent descendants of a migrant worker, that is persons who under Article 10 of Regulation No 1612/68 are entitled to reside with a worker who is a national of a Member State and is employed in the territory of another Member State.

4. Regulation No 1251/70 [4] 'on the right of workers to remain in the territory of a Member State after having been employed in that State' applies according to Article 1 thereof to nationals of a Member State who have worked as employed persons in the territory of another Member State and to members of their families, as defined in Article 10 of Regulation No 1612/68. Article 3 provides that the members of a worker's family referred to in Article 1 who are residing with him in the territory of a Member State are entitled to remain there permanently if the worker has acquired the right to remain in the territory of that State in accordance with Article 2. In addition Article 7 provides that persons coming under the provisions of the regulation are also to have the right to equality of treatment established by Council Regulation No 1612/68.

5. After those preliminary observations it is necessary to set out the following facts in the main proceedings.

6. The respondent in the main proceedings, a French citizen born in Belgium on 1 July 1958, is the daughter of a French migrant worker who had worked in Belgium, had been in receipt of a retirement pension since October 1977 and was living in Courcelles (Belgium), no doubt on the basis of Regu-

* Translated from the German.

1 — Official Journal, English Special Edition 1968 (II), p. 475.

2 — Judgment of 27 March 1985 in Case 249/83 *Hoeckx* v *Openbaar Centrum voor Maatschappelijk Welzijn Kalmthout* [1985] ECR 973 at p. 982. .

3 — Judgment of 20 June 1985 in Case 94/84 *Office national de l'emploi* v *Deak* [1985] ECR 1873 at p. 1881.

4 — Official Journal, English Special Edition 1970 (II), p. 402.

lation No 1251/70. After apparently always having previously lived with her parents, she worked in France from 1979 to 1981 and then in February 1982 returned to Belgium. It seems that at first she lived for a few weeks with her parents; as from May she was in Namur (where she was registered as seeking employment); in December 1982 she was admitted to hospital and from January to October 1983 she received treatment in a day centre in Liège (staying during the week at a hostel for the homeless in Liège and returning at the weekend to her parents' home in Courcelles).

7. From May 1982 the respondent received the minimex from the appellant under the Belgian Law of 7 August 1974. They were stopped in November 1982 because the respondent did not produce evidence that she was registered as seeking employment and did not produce any of the documents evidencing that she was doing so (as apparently required by the Belgian law). In March 1983 the respondent again applied for the minimex. The application was rejected by the Centre public d'aide sociale (Public Social Welfare Centre), Courcelles (hereinafter referred to as 'the Courcelles Centre') because it lacked competence since the respondent was living in a hostel in Liège. The tribunal du travail (Labour Tribunal), Charleroi, did not agree but found in a judgment of March 1984 that the Courcelles Centre was indeed territorially competent for the respondent had stayed in Liège only for the purposes of medical treatment and was habitually resident in Courcelles.

8. The matter came on appeal before the cour du travail (Labour Court), Mons. In a judgment of 18 October 1985 the cour du travail found that it was not the Courcelles Centre but the corresponding authority in Liège where the respondent was habitually resident when she made the claim that was competent. Since the Courcelles Centre did not immediately forward the application to Liège (in accordance with a Royal Decree of October 1974 a social welfare office which considers it is not territorially competent is required to forward the application made to it within three days), the question also arose before the cour du travail whether there was a right to compensation. That depended on the question whether the authority in Liège ought to have granted the minimex.

9. That can be the case only if the requirement under national law that nationals of other Member States should have been resident in Belgium at least during the last five years (a condition which does not apply to Belgian citizens and which obviously the respondent does not fulfil) is to be regarded as inapplicable in view of a possible principle of equal treatment to be derived from Community law. That requires a decision on the question whether the respondent comes within the scope of Regulation No 1612/68 and Regulation No 1251/70 as a worker or dependent descendant of a worker.

10. For that reason the judgment ultimately stayed the proceedings and referred the following questions to the Court for a preliminary ruling under Article 177 of the EEC Treaty:

'(1) Where a national of a Member State of the European Economic Community has settled with his family within the territory of another Member State and remains there after having obtained a

retirement pension, do his descendants who were living with him retain the right to equality of treatment granted by Regulation No 1612/68 when they have reached the age of majority, are no longer dependent upon him and do not have the status of workers?

(2) If so, do such descendants continue to retain that right where they no longer live with the migrant worker and have returned to the Member State of which they are nationals and have lived there independently for a certain period, either for more than one year or for more than two years (see Article 5 of Regulation No 1251/70)?

(3) If not, does the status "dependent member of a worker's family" result from a factual situation, to be assessed in each specific case, or from objective circumstances independent of the will of the person concerned which make it necessary for him to have recourse to the support of the worker?

(4) If not, in order that a national of a Member State may rely on his status as a worker in order to enter and establish himself within the territory of another Member State, is it sufficient for him to claim that he wishes or intends to work? Must there be actual evidence of that wish in the form of serious and genuine efforts to find work or must he hold an offer of employment?'

11. The Belgian and Netherlands Governments and the Commission have submitted written observations and the Commission and the German Government presented oral argument at the hearing. For the precise content of those observations I refer to the Report for the Hearing.

B — Analysis

12. *1.* The Belgian and Netherlands Governments suggested taking the questions in a different order and in particular dealing with the fourth question first. There are good reasons for doing so as essentially it might seem appropriate first to consider the problem whether the respondent has a claim to equal treatment in her *own* right as a worker.

13. Since however I shall in any case discuss all the questions, in particular as I do not consider that the answers to be obtained as regards the fourth question will make it unnecessary to consider the other problems (the respondent's claim to equal treatment as a descendant of a former migrant worker), I shall discuss the questions referred to us by the national court in the order adopted by that court.

14. *2.* On the basis of the observations of the Netherlands Government and the Commission in which the representative of the German Government concurred at the hearing and on the basis of the existing case-law on the subject, the first question may be answered without difficulty, and in the negative. It is irrelevant that the question refers to the age of majority whereas Article 10 (1) of Regulation No 1612/68, which is obviously the criterion, speaks of 'the age of 21 years'. Under Belgian law 21 is the age of majority and when the respondent made her claim for the

minimex she was in any event over 21 years of age.

15. The Netherlands Government rightly observed that according to the system of Regulation No 1612/68 descendants of workers who are not themselves workers and who reside with the worker only on the basis of Article 10 of the regulation, have no claim to absolute equality of treatment with the nationals of the State of residence. It is simply provided in Article 12 that children of a migrant worker are to be admitted to the general educational, apprenticeship and vocational training courses of the State of employment on the same conditions as the nationals of that State while Article 11 provides that dependent children of a migrant worker who are under the age of 21 years have the right to take up any activity as an employed person in the State of employment.

16. As regards the equality of treatment in respect of social advantages which is prescribed in Article 7 and which is a central issue in the main proceedings, this is primarily reserved for *workers* from other Member States (as was held in Case 249/83 in respect of a woman who was a Netherlands citizen, resident in Belgium, in receipt of unemployment benefit and claiming maintenance under the Law of 7 August 1974). As regards claims to such advantages by *relatives* of workers, only ascendants and descendants who had a right of residence under Article 10 (1) of Regulation No 1612/68 were recognized as being entitled. So far as relatives in the ascending line are concerned, reference may be made to the judgment in Case 261/83 [5] (at issue in that case was the grant of a guaranteed income for old persons under Belgian law); Case 94/84, which I have already mentioned, is of relevance for relatives in the descending line (it was concerned with bridging maintenance for young workers who find no work on the conclusion of their school education or their apprenticeship). In that case decisive influence was clearly exercised by the consideration that discrimination against such dependents of migrant workers would adversely affect the right of freedom of movement but that does not apply in the case of more distant relatives who do not satisfy the conditions of Article 10 (1).

17. If the facts are such as described in the first question, that is to say the case of a person who is not herself a worker, is more than 21 years of age but is not maintained by a worker, then it is clear that in the absence of a right of residence on the basis of Regulation No 1612/68 there is no claim to equal treatment under that regulation.

18. Article 7 of Regulation No 1251/70, which I mentioned at the beginning, leads to no other conclusion. That provision states that the right to equality of treatment applies to the persons coming under the provisions of that regulation. That class of persons would appear, according to Article 1, to include all the members of the family as defined in Article 10 of Regulation No 1612/68, that is not only those who come under Article 10 (1). Indeed, it cannot be reasonably accepted that the right to bring the family together has been granted on a broader basis in the case of retired migrant workers than in that of active workers. It is therefore more reasonable to assume, as the Netherlands Government argues, that Article 7 refers to the equal treatment granted by Regulation No 1612/68 and that accordingly its scope as far as members of

5 — Judgment of 12 July 1984 in Case 261/83 *Carmela Castelli v Office national des pensions pour travailleurs salariés* [1984] ECR 3199.

the family are concerned is determined by Regulation No 1612/68.

19. *3.* Since the *second question* arises only in the event that the first question is answered in the affirmative, there is no need to discuss it in view of the conclusion which I have just reached. If, however, one does not adhere too closely to the actual wording of the question, one may gain the impression that, at least tacitly, the following further, and broader issue is broached, one which is certainly of relevance to the case in the main proceedings. That is the question whether a descendant who was maintained by a migrant worker (and thus had a right of residence pursuant to Article 10 (1) of Regulation No 1612/68 and a claim to equal treatment) may, after temporary interruption of the cohabitation (while he resided abroad and was independent), reacquire the status required for the application of Article 10 (1). That must in any event be discussed.

20. If I understand the position correctly, the Netherlands Government seems to hesitate to answer that question in the affirmative. That may be inferred from its view that only persons who are living with a migrant worker at the time when Regulation No 1251/70 applies to him have a right of residence under Article 3 of Regulation No 1251/70 and correspondingly a claim to equal treatment. In support of its view it refers to the fact that the object of Regulation No 1251/70 is to make it possible for persons who have already acquired a right of residence to *continue* their residence and relies on the fact that Regulation No 1251/70 speaks of a right 'to remain' and not, as does Regulation No 1612/68, of the right 'to install themselves'. It also finds it significant in this connection that Article 5 of Regulation No 1251/70 provides that the person entitled to the right to remain may exercise it within two years from the time of becoming entitled to do so.

21. The Commission on the other hand considers that the question should be answered in the affirmative. In other words, it should be accepted that a descendant of a migrant worker may, if after reaching the age of 21 he is supported, following a period of independence, reacquire the position under Article 10 (1) of Regulation No 1612/68 (right of residence and claim to equal treatment) even where he resides with a former migrant worker who has exercised his right to remain under Regulation No 1251/70. Let me say straightaway that it seems to me the Commission has put forward solid reasons for its view which should be adopted by the Court in its preliminary ruling.

22. The Commission has rightly argued that in the case of *active workers* Article 10 (1) of Regulation No 1612/68 cannot be interpreted narrowly as meaning that they may not, even though they support them, reaccommodate descendants who have been temporarily independent. Such an interpretation would mean a restriction of freedom of movement. What is more, however, there is nothing in the wording of Article 10 to support such an interpretation. In addition, one may refer on this point to the judgment in Case 139/85 [6] according to which the provisions on the freedom of movement must be given a wide interpretation and exceptions to and derogations from the principle should be strictly interpreted.

6 — Judgment of 3 June 1986 in Case 139/85 *Kempf* v *Staatssecretaris van Justitie* [1986] ECR 1741 at p. 1746.

23. The Commission also convincingly argued that since the former migrant worker's right to remain is expressly mentioned in Article 48 (3) (d) of the EEC Treaty it can have no lesser rank than the *worker's right to freedom of movement.* It must therefore be considered that in this connection, too, namely as regards the possibility of the family living together again, there is no justification for a restrictive interpretation. It would be incomprehensible if it depended on whether a member of a family entitled to remain had over a certain period exercised *his* right to freedom of movement. Moreover, it cannot be ruled out that a restrictive interpretation of the right to remain would have adverse effects on the right to freedom of movement for it may be assumed that workers frequently remain where they have worked for the longest period and that they prefer not to exercise their right of freedom of movement if in the case of any activity pursued abroad they can do so only subject to considerable restrictions.

24. It is also clear that Regulation No 1251/70 (namely Article 5 which is expressly mentioned in the question) contains nothing to support the contrary view. Thus it certainly cannot be inferred from Article 3, which provides that members of a worker's family who are residing with him are entitled to remain there permanently, that the right to reside must be exercised pursuant to Article 10 of Regulation No 1612/68 (that is during the worker's active period), for this would amongst other things have the result, which seems wholly inconceivable, that a retired worker's wife who acquired that status only after he had retired would have no right to reside with him. On the other hand Article 5 can certainly be interpreted as meaning that for members of the family who begin to reside with the former worker for the first time during his retirement the period of two years begins to run when they are taken into the household, and, as the case may be, are supported by him. It thus does not necessarily follow that a member of the family must have lived with the worker when his right to remain arose.

25. With regard to the second question it may thus be said that the fact that the respondent (who moreover was obviously already living with her father at the beginning of his retirement) was for some time not entitled to reside in Belgium pursuant to Article 10 (1) of Regulation No 1612/68 does not mean that she may not reacquire a right to reside as a member of the family of a migrant worker even if she once again fulfils the conditions of Article 10 (1) after the period of her independence.

26. *4.* The *third question,* to which I now turn, relates precisely to those conditions, that is, it is to be determined, in relation to the term 'dependent', whether this implies solely the actual provision of assistance or whether significance is also to be attributed to objective circumstances independent of the will of the person concerned which make it necessary for him to have recourse to the support of the worker.

27. The Netherlands Government has observed that the essential test is whether the requirements of the person in receipt of support are fully or largely satisfied. It thinks however that in the present case the fact that the respondent has claimed the minimex is evidence that she is not supported by her parents.

28. The premise adopted by the Commission is similar. With regard to Article 10 (1) of Regulation No 1612/68, it speaks of the existence of economic dependence in relation to maintenance and says that there is provision of support if the recipient through lack of means of his own is unable to meet his needs. Should the use in the question of the term 'objective circumstances which make it necessary' be taken to refer to circumstances in which the pursuit of an occupation is prevented by reasons to do with health and no social security benefits are available or, in spite of efforts made, no occupation can be found and there is no other income, the Commission goes on to say, however, that such criteria cannot be decisive in view of the difficulties of appraisal involved. The 'factual situation' is the decisive factor so that Article 10 (1) also covers indolent members of the family if they are supported.

29. The German Government, which made observations only at the hearing, firmly challenged the latter view. In its opinion voluntary payments are not sufficient nor is a *de facto* dependency. Since there would otherwise be difficulties in defining reliable criteria (in relation, for example, to the duration and amount of maintenance) and since there would also be a risk of abuse (establishing a right of residence by temporary payments to members of the family and thus making it possible to obtain social assistance by artifice), the criterion is to be found in rights and duties in the matter of maintenance and there can be no question of the provision of support if the recipient is in a position to obtain income by working.

30. *(a)* So far as these questions are concerned I consider, if I may begin with this point, that the view put forward by the German Government, in so far as it is based on an obligation to maintain, cannot be accepted.

31. Had such an obligation been intended it could easily have been expressed in the wording of Article 10 and there would not simply have been a reference to dependents (just as in Council Directive 68/360/EEC of 15 October 1968 provision is made, in relation to Article 10, simply for the production of a document issued by the competent authority of the State of origin testifying to dependency). It must moreover not be overlooked that the German Government's view would make national law the criterion since that determines the personal relations of the worker to the members of the family referred to in Article 10 (1). That could, first of all, involve considerable difficulties in the application of the law in certain cases. Furthermore, since maintenance obligations are not uniform (as we heard at the hearing, there is no obligation for example to maintain parents in Denmark and the parents' obligation *vis-à-vis* issue ends when the latter reached the age of 24), the result would be that the scope of Article 10 (1) would vary from one Member State to another. It is hard to imagine, however, that, in relation to a factor which is of considerable importance for freedom of movement, such a situation should be accepted. It follows that 'the provisions on persons who have a right of residence in Article 10 of Regulation No 1612/68 apply uniformly and equally in all Member States'.[7]

7 — See my Opinion in Case 59/85 *State of the Netherlands* v *Ann Florence Reed* [1986] ECR 1283, particularly at p. 1290 *et seq*, paragraphe B.II.1.(d).

32. *(b)* Likewise I cannot agree with the conclusion of the Netherlands Government that simply because the respondent claimed the minimex it is clear that in fact she was not supported by her parents so that further efforts to interpret the concept are not necessary.

33. In that respect the Commission has shown that under Belgian law the minimex consists, normally, of small sums of money which accordingly are often no more than supplementary payments which do not remove the necessity for substantial contributions from relatives who provide support. Thus it cannot be said that those who claim such benefits are not at the same time supported from other sources.

34. Reference may also be made to the case-law of the Netherlands Hoge Raad according to which social assistance payments of the amount of the minimex do not preclude the recipient from being regarded as in need for the purposes of the law on maintenance (see the judgment of 28 August 1939, *Nederlandse Jurisprudentie*, pp. 818 and 819).

35. How untenable the Netherlands argument is becomes clear, however, if it is borne in mind that it would mean that if indigent members of the families of migrant workers were to claim social assistance benefits they would lose the right of residence (because they would no longer be supported by the worker) or, to express it differently, in such situations they could have a right of residence only if they forwent essential benefits available to nationals, that is if they accepted a serious disadvantage.

36. *(c)* In so far as the German Government, when setting out its point of view in relation to the application of Article 10 (1) of Regulation No 1612/68, pointed to the *risk of abuse* (temporary support of a member of the family in order to enable him to obtain social assistance benefits), the justification for such a fear cannot be dismissed out of hand.

37. That concern does not however, in my opinion, necessarily entail a restrictive application of Community law as advocated by the German Government. The risk in point can largely be met by national rules on social assistance, for example by making it depend on whether the applicant can claim maintenance from members of the family or is in a position to maintain himself by accepting reasonable employment. Belgian law seems in fact to have such provisions for Article 6 of the Law of 7 August 1974 refers to proof of willingness to work and that the person concerned may be required to make claims for maintenance against certain relatives.

38. *(d)* For the rest, after all that we have heard it may be accepted that it is not necessary to deal comprehensively with all the questions which might arise under Article 10 (1), such as what the situation is in the case of a migrant worker who gives shelter to a descendant who has attained the age of majority and voluntarily assumes responsibility for his maintenance although the descendant has sufficient income from his own capital. Such a situation is certainly not in point before the national court in this case. The respondent is obviously a member of the family who has no means of her own and is in need (that is she satisfies a criterion which is basic to the concept of

dependency, as reference to the laws of the Member States shows).

39. The only question which arises in the present case in relation to Article 10 (1) is essentially whether it is of decisive importance that a member of the family could obtain the necessary means through his own work and whether there can be said to be dependency for the purposes of that provision only if it is shown that the member of the family who is being supported can find no work in spite of serious efforts on his part.

40. It seems to me, if I may say so at once, that this question must indeed be answered in the affirmative. For the purposes of Article 10 (1) it is a question not only of actual dependency (such as that of a member who prefers to be idle) but also, to use the words of the question, of objective circumstances independent of the will of the person concerned which make it necessary for him to have recourse to the support of the worker.

41. It must indeed be admitted that this is certainly not expressly stated in Article 10 (1) (although it could have been without major difficulty). It must however be recognized that such considerations are obvious in a regulation which is concerned with the freedom of movement for workers and which is also intended, as is apparent from Article 11, to enable members of the family of the workers to obtain employment in the State of employment.

42. Secondly, it may be said that the factor referred to is also indissociable from the concept of 'dependency'; this follows from an interpretation of the concept of 'dependency' on the basis of national law, or should one prefer this, of a general principle of law. I refer to German, French, Spanish, Netherlands and Greek law under which the dependency of members of the family is variously related to capacity for work and whether the acceptance of employment can be expected. Reference may also be made to Italian and Portuguese law under which a corresponding idea is expressed in the criterion whether the physical and intellectual capacities of the person concerned enable him to maintain himself. In addition there is Danish social law (I have no information on the relevant legal provisions in the other Member States) in which unjustified refusal to work is relevant.

43. *(e)* In my opinion the only answer which can be given to the third question is that dependency for the purposes of Article 10 (1) of Regulation No 1612/68 is not purely a matter of actual payments to meet a substantial part of daily needs; it is more important to consider whether, because of need, such necessity exists and cannot be met by taking up suitable employment in spite of serious efforts to find it.

44. *5.* The *fourth question* is concerned with whether the respondent in the main proceedings has a claim to equal treatment in her own right as have workers under Community law. It asks what factors must be present for that purpose, whether it is sufficient that there should be an intention to acquire the status of a worker or whether serious and genuine efforts must be shown in that direction even to the extent of producing an offer of employment.

45. *(a)* In so far as this question is concerned with *entry and taking up residence* (temporary residence for the purpose of *looking for work*) there are, as the Commission has shown, obviously no special difficulties.

46. First it is clear that the production of an *offer* of employment cannot be required. In that respect reference may be made to Article 5 of Regulation No 1612/68 which provides that a national of a Member State who seeks employment in the territory of another Member State is to receive the same assistance there as that afforded by the employment offices in that State to their own nationals seeking employment. That means that personal contacts with such offices must be possible without there already being an offer. It is also significant that under Article 3 of Directive No 68/360/EEC the production of a valid identity card or passport is sufficient for entry. It is significant in addition that the Member States adopted an interpretative declaration at the meeting of the Council at which Regulation No 1612/68 and Directive 68/360/EEC were adopted to the effect that nationals of a Member State who move to another Member State in order to find employment have a minimum period of three months in which to do so (judgment in Case 53/81 [8]).

47. On the other hand a simple statement of *intention* to seek work is equally insufficient. That is apparent from paragraph 21 of the judgment I have just cited where it is stated that the advantages which Community law confers in the name of freedom of movement may be relied upon only by persons who actually pursue or seriously wish to pursue activities as employed persons. It is thus undoubtedly necessary that the relevant intention should be expressed in specific conduct, that is to say the act of seeking work is evidenced by registration at the employment registry, calling on firms or the placing of advertisements in newspapers.

48. *(b)* However, it is also clear, as the Netherlands and German Governments stress and the Commission agreed at the hearing, the foregoing observations which arose from the wording of the fourth question basically do nothing towards resolving the problem with which the main proceedings are concerned. It is concerned with equality of treatment in connection with the grant of social advantages and the fourth question is in particular concerned to ascertain whether the respondent may claim them directly on the basis of Article 7 of Regulation No 1612/68 and not only through her father's claim to equality of treatment as a former migrant worker.

49. In that respect it is important to note that the wording of Article 7 of Regulation No 1612/68 refers to the actual pursuit of an activity. It is significant in any event that wherever in Title I to that regulation a *person seeking work* is referred to it is made clear and the expression 'worker' is not used. It is also appropriate to mention, as the Netherlands Government has done, the fact that in the description of the nature of the right to freedom of movement in Article 48 of the Treaty there is at most (as in paragraph (3) (a)) reference to offers of employment but it is nowhere stated that persons seeking work are to be treated as workers for the purposes of that provision.

8 — Judgment of 23 March 1982 in Case 53/81 *Levin* v *Staatssecretaris van Justitie* [1982] ECR 1035 at p. 1043.

50. Let me cite once again the judgment in Case 53/81 (at paragraph 17) where it is stressed that the provision on freedom of movement for workers covers only the pursuit of effective and genuine activities, to the exclusion of activities on such a small scale as to be regarded as purely marginal and ancillary.

51. Finally it should not be overlooked that in the aforementioned Council declaration it was stated, precisely in relation to public assistance, that if persons who for three months had found no employment and during that period had claimed social assistance in the State in which they were seeking employment they might be requested to leave its territory. That shows clearly that a person seeking work who has no right of residence for the purposes of Article 4 of Directive 68/360/EEC has no claim to equality of treatment with regard to social advantages, and that, to the contrary, that right is reserved to persons who are in fact pursuing an activity.

C — Opinion

52. To summarize I propose that the questions put to this Court by the cour du travail, Mons, should be answered as follows:

(1) Where a national of a Member State of the European Economic Community has settled with his family in the territory of another Member State and remains there after obtaining a retirement pension, his descendants who were living with him retain the right to equality of treatment granted by Regulation (EEC)No 1612/68 only if

(i) they are themselves workers, or

(ii) they are dependent after reaching the age of 21 years.

(2) Descendants who have resided with a former migrant worker may reacquire the right to equality of treatment pursuant to Regulations (EEC) Nos 1612/68 and 1251/70, which they have lost as a result of ceasing to reside together with the migrant worker (as a result of returning to their home country and living independently) if they fulfil the conditions laid down in Article 10 (1) of Regulation (EEC) No 1612/68 (dependency) and Article 3 of Regulation (EEC) No 1251/70 (residing with the former migrant worker).

(3) For the status of 'descendants who are dependents' it is not sufficient that the migrant worker should actually satisfy their needs but it is also of importance

that such needs cannot be obviated by serious efforts to find suitable employment.

(4) In order to enter the territory of another Member State a national of a Member State who intends to acquire the status of worker does not need to produce an offer of employment; he must, however, prove the seriousness of his intention. To establish a right to residence, with which a claim to equality of treatment as a worker is associated, serious and genuine efforts to find employment are not sufficient; the pursuit of an activity as a worker is necessary.