require proceedings to be instituted on the substance of the case even before the courts or tribunals of another jurisdictional system and that during such proceedings any question of Community law provisionally decided in the summary proceedings may be re-examined and be the subject of a reference to the Court under Article 177.

2. The Treaty provisions on freedom of movement for workers and the rules adopted to implement them cannot be applied to cases which have no factor linking them with any of the situations governed by Community law.

It follows that Community law does not prohibit a Member State from refusing to allow a relative, as referred to in Article 10 of Regulation No 1612/68 of the Council, of a worker employed within the territory of that State who has never exercised the right to freedom of movement within the Community to enter or reside within its territory if that worker has the nationality of that State and the relative the nationality of a non-member country.

In Joined Cases 35 and 36/82

REFERENCE to the Court under Article 177 of the EEC Treaty by the Hoge Raad der Nederlanden [Supreme Court of the Netherlands] for a preliminary ruling in the interlocutory proceedings pending before that court between

ELESTINA ESSELINA CHRISTINA MORSON

and

(1) THE STATE OF THE NETHERLANDS,

(2) THE HEAD OF THE PLAATSELIJKE POLITIE [Local Police] WITHIN THE MEANING OF THE VREEMDELINGENWET [Aliens Law]

and between

SEWRADJIE JHANJAN

and

THE STATE OF THE NETHERLANDS

on the interpretation of the third paragraph of Article 177 of the EEC Treaty and Article 10 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (Official Journal, English Special Edition 1968 (II), p. 475),

THE COURT

composed of: J. Mertens de Wilmars, President, A. O'Keeffe and U. Everling (Presidents of Chambers), P. Pescatore, Lord Mackenzie Stuart, G. Bosco and T. Koopmans, Judges,

Advocate General: Sir Gordon Slynn
Registrar: H. A. Rühl, Principal Administrator

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the European Economic Community may be summarized as follows:

I — Facts and written procedure

1. The applicants in the main proceedings, Mrs Morson and Mrs Jhanjan, who are nationals of Suriname, applied for permission to reside in the Netherlands in order to stay in that country with their daughter and son respectively, who are Netherlands nationals of whom they are dependants. Their applications were refused by the Staatssecretaris van Justitie [Secretary of State for Justice] whereupon they requested a review of the decisions refusing their applications.

By virtue of Article 32 of the Vreemdelingenwet [Aliens Law] applications for review as a general rule suspend deportation orders. However, the Secretary of State for Justice may

refuse to give such applications suspensory effect in which case an interlocutory application may be made to the court or judge ordinarily having jurisdiction which, in this case, was the President of the Arrondissementsrechtbank [District Court]. The relevant interlocutory proceedings are governed by Articles 289 to 297 of the Wetboek van Burgerlijke Rechtsvordering [Code of Civil Procedure], Article 292 of which provides that "provisionally enforceable decisions shall be without prejudice to the main proceedings".

The applicants adopted that means of legal redress by applying for an interlocutory injunction restraining the State of the Netherlands from deporting them at least until their applications for review had been decided at the highest instance or the Court of Justice had given a preliminary ruling on certain questions.

In their interlocutory applications they claimed that the refusal to grant them residence permits was contrary to Article 10 of Regulation No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community and the prohibition of discrimination contained in Article 7 of the Treaty. Under Article 10 (1) of that regulation certain members of the family of a worker, including dependent relatives in the ascending line, have the right, irrespective of their nationality, to instal themselves with a worker who is a national of one Member State and who is employed in the territory af another Member State.

The President of the Arrondissementsrechtbank dismissed their interlocutory applications and the Gerechtshof Amsterdam upheld his decisions; the applicants then appealed on a point of law to the Hoge Raad, which, by judgments of 15 January 1982, stayed the proceedings and pursuant to Article 177 of the EEC Treaty referred to the Court the following questions which are the same in both cases:

"1. On an application for an interlocutory injunction, is the Hoge Raad obliged, pursuant to the third paragraph of Article 177 of the Treaty establishing the European Economic Community, when a question of interpretation within the meaning of the first paragraph of that article is raised in an appeal on a point of law, to refer the matter to the Court of Justice for a preliminary ruling, having regard to the fact that a judgment of the Hoge Raad delivered on an application for an interlocutory injunction is not binding on a court which later has to try the case on its merits? If this question cannot be answered generally in the negative or affirmative, what are the circumstances which determine whether such an obligation should be deemed to exist?

2. Does Article 10 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community, whether or not in conjunction with other provisions of Community law, prevent a Member State from refusing to admit a relative mentioned in Article 10 (1) of the regulation, of a worker employed within the territory of that Member State, where the relative wishes to take up residence there with that worker, if the worker has

the nationality of the State in which he works and the relative has another nationality?"

2. The judgments referring the questions to the Court for a preliminary ruling were registered at the Court on 21 January 1982.

By order dated 17 February 1982 the Court decided to join the cases for the purposes of the procedure and judgment.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the European Economic Community written observations were lodged by the Netherlands Government, represented by F. Italianer, acting for the Ministry of Foreign Affairs, by the United Kingdom, represented by J. D. Howes, of the Treasury Solicitor's Department, and by the Commission of the European Communities, represented by its Legal Adviser, J. Amphoux, acting as Agent, assisted by F. Herbert, Advocate, Brussels.

The applicants in the main proceedings, Mrs Morson and Mrs Jhanjan, simply referred to an article by K. J. Mortelmans entitled "Omgekeerde Discriminatie in het Gemeenschapsrecht" [Reverse discrimination in Community law — Sociaal Economische Wetgeving 1979 No 10/11, p. 654 *et seq.*] and adopted its content.

On hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court decided to open the oral procedure without any preparatory inquiry.

II — Written observations

First question

1. The *Governments of the Netherlands and the United Kingdom* take the view that the first question calls for a negative answer. They refer in this regard to the judgment of the Court of 24 May 1977 in Case 107/76 *Hoffmann-La Roche* v *Centrafarm* [1977] ECR 957 in which the Court held that:

"The third paragraph of Article 177 of the EEC Treaty must be interpreted as meaning that a national court or tribunal is not required to refer to the Court a question of interpretation or of validity mentioned in that article when the question is raised in interlocutory proceedings for an interim order *(einstweilige Verfügung)*, even where no judicial remedy is available against the decision to be taken in the context of those proceedings, provided that each of the parties is entitled to institute proceedings or to require proceedings to be instituted on the substance of the case and that during such proceedings the question provisionally decided in the summary proceedings may be re-examined and may be the subject of a reference to the Court under Article 177."

The *Netherlands Government* explains that the court having jurisdiction to decide whether the Secretary of State may dismiss an application for a residence permit is in the last instance the Raad van State [State Council] whereas a refusal to give suspensory effect to an application for review may be challenged in an interlocutory application to the court ordinarily having jurisdiction. In the Netherlands interlocutory proceedings *(kort geding)* are summary, informal proceedings. Their chief feature is that the decision of the court hearing the interlocutory application constitutes a provisional or interim measure, that is to say the proceedings are not designed to provide a definitive settlement of the dispute.

Normally the court hearing the interlocutory application takes account of the chances of the applicant's succeeding on appeal in the main proceedings. Interlocutory proceedings brought against a refusal to given suspensory effect to an application for review or to an appeal to the Raad van State are closely connected with the outcome of the simultaneous and parallel proceedings directed against the decision to refuse to grant the residence permit. Therefore, although a distinction must be drawn as regards matters of form between the interlocutory and main proceedings, they are so closely related in substance that for the purposes of the interpretation of the relevant Community law they may be regarded as constituting the same proceedings.

In particular, questions of Community law provisionally decided in the summary proceedings may be re-examined in the main proceedings and may be the subject of a reference to the Court under Article 177. In that context the Raad van State is bound to make a reference to the Court if there is doubt as to how a provision of Community law should be interpreted.

In conclusion the Netherlands Government considers that in the present cases the court hearing the interlocutory application at last instance is not required to make a reference to the Court of Justice because the questions of interpretation of Community law will still arise during the proceedings on the substance of the cases.

2. The *Commission* feels that the answer to the first question needs to be carefully balanced in view of the judgment in *Hoffmann-La Roche* v *Centrafarm*. In that case the Court considered (in paragraph 5) that the crucial question was whether an ordinary main action, permitting the re-examination of any question of law provisionally decided in the summary proceedings, must be instituted, either in any event, or when the unsuccessful party so requires.

As to that question, the Commission explains that the Netherlands Law on Aliens provides two methods of redress against a refusal to grant a residence permit, first, a request for review and, secondly, an appeal to the administrative court. In the present cases the first means of redress was adopted.

As regards that course the Commission explains that if a request for review is refused the Netherlands Law on Aliens allows an appeal to be made to the Raad van State provided however that, if the refusal was in accordance with the opinion of the Aliens Commission, the alien concerned, not being a favoured national of a Member State, has had his main residence in the Netherlands for one year before the date of the decision. If he has not no appeal lies. In the present cases the conditions are fulfilled so appeal may be made to the Raad van State.

However, a reference to the Court would be required if the person concerned, not being a favoured national of a Member State, was not entitled to bring such an appeal. A reference would also be required if the subject-matter of the interlocutory proceedings were a right conferred on the applicant by Community law and that right would be irreparably damaged if the interlocutory

application were refused. That would be the case, for example, if immediate effect were given to a deportation order thereby preventing an applicant from exercising the right of appeal provided by Articles 8 and 9 of Council Directive 64/221 of 25 February 1964 on the coordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health (Official Journal, English Special Edition 1963-1964, p. 117).

In conclusion the Commission suggests that the first question should be answered as follows:

"The third paragraph of Article 177 of the EEC Treaty must be considered as meaning that a national court or tribunal against whose decisions there is no appeal under national law is nevertheless not required to submit to the Court of Justice a question as to the interpretation or validity of Community law within the meaning of that article where that question is raised in interlocutory proceedings provided that it is established that both parties may appeal or require proceedings to be instituted on the substance of the case in which the question provisionally decided in the summary proceedings may be re-examined and referred to the Court under Article 177."

Second question

1. *The Governments of the Netherlands and the United Kingdom* submit that in situations of this kind Community law does not confer any right to enter or stay in the Netherlands.

In the view of the *Netherlands Government* Article 48 of the Treaty does not preclude the existence of differences between the laws of the various Member States on the admission and residence of aliens. Such differences must be eliminated by means of directives or regulations adopted on the legal basis of Article 100 and possibly Article 235 of the EEC Treaty. As long as such harmonization measures are not adopted the Member States are in principle free to frame their own legislation on aliens subject to the following reservations:

Nationals of Member States who move as workers within the Community to exercise their right to pursue an occupation elsewhere in the Community are subject to special Community provisions which prevail over general provisions of national legislation on aliens. However, the scope of those Community provisions is restricted to nationals of Member States pursuing activities as employed or self-employed persons and moving from one Member State to another for that purpose. As long as no frontiers are crossed within the Community national legislation on the admission and residence of aliens continues to apply in full. To that extent any differences in the legal situation of nationals of the various Member States cannot be considered to be discrimination or "reverse" discrimination.

The Netherlands Government adds that Article 10 of Regulation No 1612/68 covers the establishment of a worker only in a Member State other than that of which he is a national. The more favourable legal situation enjoyed by the nationals of other Member States is a

result of their having moved from one Member State of the Community to another. The absence from the present cases of movement of that kind destinguishes them from the *Knoors* case (judgment of 7 February 1979, Case 115/78 [1979] ECR 399) and the *Broekmeulen* case (judgment of 6 October 1981, Case 246/80 [1981] ECR 2311) which concerned Community citizens who fulfilled the conditions governing the applicability of Community law.

The *United Kingdom* emphasizes that the purpose of the provisions of Article 48 *et seq.* of the EEC Treaty and of the directives and regulations issued to implement them is simply to encourage and facilitate movement of workers between Member States of the Community. More specifically, Regulation No 1612/68 is intended to ensure that persons who have exercised the right to take up an activity as an employed person in the territory of another Member State are placed in the same situation as the nationals of the Member State to which they have gone. That emerges in particular from Article 10 of that regulation which confers on certain members of the worker's family "the right to instal themselves with a worker who is a national of one Member State and who is employed in the territory of another Member State".

Underlying those provisions is the assumption that a worker cannot exercise his right to freedom of movement if his family cannot join him. Where the worker remains in his own State, however, that is a matter quite outside the scope of Community law.

The United Kingdom adds that Article 7 of the Treaty has no relevance in this case because the subject-matter of the reference is not within the scope of the Treaty. In any event the situation of a Netherlands national working in the Netherlands is not comparable with that of the national of a Member State who has exercised his right to freedom of movement under the Treaty. For that reason the applicants cannot seek assistance from the judgment of the Court in the *Knoors* case. In contrast to the present cases that judgment was made in the context of freedom of movement and establishment.

2. The *Commission* considers first the question of "reverse" discrimination. The Court's case-law on this matter rests on the following principles:

(a) The free movement of persons, which is considered to be a fundamental feature of Community law, cannot be fully attained if a Member State may deprive nationals, who have exercised the existing right to freedom of movement, of the application of the provisions of Community law.

(b) A Member State may however legitimately prevent its nationals from attempting to abuse freedom of movement in order to avoid the application of national laws.

(c) The existence and the degree of any discrimination may be determined within the scope of the specific articles of the Treaty only to the extent to which they give specific expression to the general prohibition contained in Article 7 of the Treaty.

(d) The Community provisions do not however apply to purely internal matters of the Member States. They do not apply either if there is no connection with matters governed by Community law.

On the basis of those principles the Commission considers that Article 10 (1) of Regulation No 1612/68 must apply to workers whether they are nationals of another Member State or nationals of the Member State concerned. Therefore a Member State may not refuse to grant members of the family of a worker employed in the territory of that Member State permission to enter its territory to settle with that worker even if he possesses the nationality of the State in whose territory he works whilst the member of his family in question has another nationality.

However, that argument should be qualified in the sense that the prohibition of discrimination applies only to the situations and persons covered by the principle of the free movement of persons, as defined in Article 48 of the Treaty. That provision covers only workers who move from one Member State to another for occupational reasons. The distinction as to the "migration" of a worker may indeed involve distortion in so far as a Netherlands national employed in another Member State may be joined by his family and may return with them to the Netherlands to seek or take up employment there. However, the resultant problems may be resolved only in the context of a generalized right of residence attaching to the status of citizen of the European Economic Community.

In conclusion the Commission therefore proposes that the second question should be answered as follows:

"Article 10 (1) of Regulation No 1612/68 prohibits a Member State from refusing to allow such members as are mentioned in that provision of the family of a worker who is a national of a Member State, including the Member State in question, to instal themselves with that worker under the conditions laid down by that provision.

However, that provision does not apply to purely internal situations, for example where the worker concerned has spent all his working life in the Member State in question."

III — Oral procedure

At the sitting on 15 September 1982 the following presented oral argument and replied to the Court's questions: B. R. Angad-Gaur of the Bar of The Hague, for the applicants in the main proceedings, Mrs Morson and Mrs Jhanjan; J. W. de Zwaan, acting as Agent assisted by L. A. Geelhoed, appearing as an expert witness, for the Netherlands Government; and J. Amphoux, acting as Agent assisted by F. Herbert of the Brussels Bar, for the Commission of the European Communities.

The Advocate General delivered his opinion at the sitting on 6 October 1982.

Decision

1 By judgments dated 15 January 1982 which were received at the Court on 21 January 1982 the Hoge Raad der Nederlanden [Supreme Court of the Netherlands] referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty two questions, which are the same in both joined cases, as to the interpretation of, first, the third paragraph of Article 177 of the EEC Treaty and, secondly, Article 10 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (Official Journal, English Special Edition 1968 (II), p. 475).

2 The applicants in the main proceedings, Mrs Morson and Mrs Jhanjan, who are nationals of Suriname, applied for permission to reside in the Netherlands in order to take up residence with their daughter and son respectively, who are Netherlands nationals of whom they are dependants. According to the papers before the Court the daughter and son hold employment in the Netherlands but have never been employed in another Member State. Their applications were refused by the Secretary of State for Justice whereupon Mrs Morson and Mrs Jhanjan lodged with him requests for review.

3 As a general rule under Netherlands legislation on aliens such applications for review suspend deportation orders. However, the Secretary of State for Justice may refuse to give such applications suspensory effect in which case an interlocutory application may be made to the court or judge ordinarily having jurisdiction. The relevant interlocutory proceedings are governed by Articles 289 to 297 of the Wetboek van Burgerlijke Rechtsvordering (Netherlands Code of Civil Procedure), Article 292 of which provides that "provisionally enforceable decisions shall be without prejudice to the main proceedings".

4 In this case the applicants in the main proceedings sought an interlocutory injunction restraining the Netherlands State from deporting them at least until their application for review had been decided at the highest instance. They relied on Article 10 (1) of Rgulation No 1612/68, cited above, which gives certain members of a worker's family, including dependent relatives in the ascending line, the right to install themselves with the worker if he is a national of one Member State and employed within the territory of another

Member State. They also relied on the prohibition of discrimination embodied in Articles 7 and 48 of the EEC Treaty.

5 The Hoge Raad, with which Mrs Morson and Mrs Jhanjan lodged appeals on a point of law in the interlocutory proceedings, considered that the decision to be given depended on the interpretation of provisions of Community law and submitted the following questions for a preliminary ruling:

"1. On an application for an interlocutory injunction, is the Hoge Raad obliged, pursuant to the third paragraph of Article 177 of the Treaty establishing the European Economic Community, when a question of interpretation within the meaning of the first paragraph of that article is raised in an appeal on a point of law, to refer the matter to the Court of Justice for a preliminary ruling, having regard to the fact that a judgment of the Hoge Raad delivered on an application for an interlocutory injunction is not binding on a court which later has to deal with the substance of the case. If this question cannot be answered generally in the negative or affirmative, what are the circumstances which determine whether such an obligation should be deemed to exist?

2. Does Article 10 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community, whether or not in conjunction with other provisions of Community law, prevent a Member State from refusing to admit a relative mentioned in Article 10 (1) of the regulation, of a worker employed within the territory of that Member State, where the relative wishes to take up residence there with that worker, if the worker has the nationality of the State in which he works and the relative has another nationality?"

First question

6 In substance the first question seeks to ascertain whether the third paragraph of Article 177 of the EEC Treaty must be construed as meaning that a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law must refer to the Court a question of interpretation as referred to in the first paragraph of that article if the question is raised in interlocutory proceedings and the decision to be given is not

binding on the court or tribunal which later has to deal with the substance of the case even if that court or tribunal belongs to a different jurisdictional system.

7 The second paragraph of Article 177 provides that a court or tribunal of a Member State before which is raised a question of interpretation or validity as mentioned in the first paragraph of that article may request the Court to give a preliminary ruling on the question if it considers that a decision thereon is necessary to enable it to give judgment. However, the third paragraph of Article 177 provides that where any such question is raised before a national court or tribunal against whose decisions there is no judicial remedy under national law that court or tribunal must bring the matter before the court.

8 As the Court has already held in its judgment of 24 May 1977 in Case 107/76 *Hoffmann-La Roche* [1977] ECR 957, the purpose of Article 177 is to ensure that Community law is interpreted and applied in a uniform manner in all the Member States. Viewed in that light the particular purpose of the third paragraph of Article 177 is to prevent a body of national case-law that is not in accord with the rules of Community law from coming into existence in any Member State. The requirements arising from that purpose are observed as regards summary and urgent proceedings such as those in the present case, where ordinary proceedings as to the substance, permitting the re-examination of any question of Community law provisionally decided in the summary proceedings, must be instituted either in all the circumstances or when the unsuccessful party so requires.

9 Therefore the specific objective underlying the third paragraph of Article 177 is preserved if the obligation to refer preliminary questions to the Court applies within the context of proceedings as to the substance even if that action is tried before the courts or tribunals belonging to a jurisdictional system different from that under which the interlocutory proceedings are conducted, provided that it is still possible to refer to the Court under Article 177 any questions of Community law which are raised.

10 The answer to the first question submitted by the Hoge Raad must therefore be that the third paragraph of Article 177 of the EEC Treaty must be

interpreted as meaning that a national court or tribunal against whose decisions there is no judicial remedy under national law is not required to refer to the Court a question of interpretation as referred to in the first paragraph of that article if the question is raised in interlocutory proceedings and the decision to be taken is not binding on the court or tribunal which later has to deal with the substance of the case, provided that each of the parties is entitled to institute proceedings or to require proceedings to be instituted on the substance of the case even before the courts or tribunals of another jurisdictional system and that during such proceedings any question of Community law provisionally decided in the summary proceedings may be re-examined and be the subject of a reference to the Court under Article 177.

Second question

11 In substance the second question seeks to ascertain whether, and if so in which circumstances, Community law prohibits a Member State from refusing to allow a relative, as referred to in Article 10 of Regulation No 1612/68 cited above, of a worker employed within that Member State's territory to enter or reside within its territory if the worker has the nationality of that State and the relative the nationality of a non-member country.

12 Article 48 of the Treaty provides that freedom of movement of workers within the Community is to entail the abolition of any discrimination based on nationality between workers of the Member States. Article 10 of Regulation No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community, cited above, provides that specified members of a worker's family, including dependent relatives in the ascending line, "shall, irrespective of their nationality, have the right to install themselves with a worker who is a national of one Member State and who is employed in the territory of another Member State".

13 Since that provision does not cover the position of dependent relatives of a worker who is a national of the Member State within whose territory he is employed, the answer to the preliminary question depends on whether it may

be inferred from the context of the provisions and the place which they occupy in the Community legal system as a whole that they have a right of entry and residence.

14 In this regard the applicants in the main proceedings rely on the rule prohibiting discrimination on grounds of nationality which Article 7 of the Treaty enunciates in general terms and to which Article 48 gives more specific expression.

15 It is however clear that Article 7 and Article 48 may be invoked only where the case in question comes within the area to which Community law applies, which in this case is that concerned with freedom of movement of workers within the Community. Not only does that conclusion emerge from the wording of those articles, but it also accords with their purpose, which is to assist in the abolition of all obstacles to the establishment of a common market in which the nationals of the Member States may move freely within the territory of those states in order to pursue their economic activities.

16 It follows that the Treaty provisions on freedom of movement for workers and the rules adopted to implement them cannot be applied to cases which have no factor linking them with any of the situations governed by Community law.

17 Such is undoubtedly the case with workers who have never exercised the right to freedom of movement within the Community.

18 The answer to the second question submitted by the Hoge Raad must therefore be that Community law does not prohibit a Member State from refusing to allow a relative, as referred to in Article 10 of Regulations No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community, of a worker employed within the territory of that State who has never exercised the right to freedom of movement within

the Community to enter or reside within its territory if that worker has the nationality of that State and the relative the nationality of a non-member country.

Costs

19 The costs incurred by the Governments of the Netherlands and the United Kingdom and by the Commission, which have submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the questions submitted to it by the Hoge Raad der Nederlanden by judgments of 15 January 1982, hereby rules:

1. The third paragraph of Article 177 of the EEC Treaty must be interpreted as meaning that a national court or tribunal against whose decisions there is no judicial remedy under national law is not required to refer to the Court a question of interpretation as referred to in the first paragraph of that article if the question is raised in interlocutory proceedings and the decision to be taken is not binding on the court or tribunal which later has to deal with the substance of the case, provided that each of the parties is entitled to institute proceedings or to require proceedings to be instituted on the substance of the case even before the courts or tribunals of another jurisdictional system and that during such proceedings any question of Community law provisionally decided in the summary proceedings may be re-examined and be the subject of a reference to the Court under Article 177.

2. **Community law does not prohibit a Member State from refusing to allow a relative, as referred to in Article 10 of Regulation No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community, of a worker employed within the territory of that State who has never exercised the right to freedom of movement within the Community to enter or reside within its territory if that worker has the nationality of that State and the relative the nationality of a non-member country.**

Mertens de Wilmars O'Keeffe Everling

Pescatore Mackenzie Stuart Bosco Koopmans

Delivered in open court in Luxembourg on 27 October 1982.

For the Registrar

H. A. Rühl
Principal Administrator

J. Mertens de Wilmars
President

OPINION OF ADVOCATE GENERAL SIR GORDON SLYNN DELIVERED ON 6 OCTOBER 1982

My Lords,

The Dutch Supreme Court has, in two cases pending before it, referred to the Court under Article 177 of the EEC Treaty the following questions:

1. "On an application for an interlocutory injunction, is the Supreme Court obliged, pursuant to the third paragraph of Article 177 of the Treaty . . ., when a question of interpretation within the meaning of the first paragraph of that Article is raised in an appeal on a point of law, to refer