OPINION OF ADVOCATE GENERAL ALBER

delivered on 16 May 2002 [1]

I — Introduction

1. In the present preliminary ruling proceedings introduced by the Immigration Appeal Tribunal (hereinafter: the referring Tribunal), the Court is asked to interpret Article 3 of Regulation (EEC) No 1251/70 of the Commission of 29 June 1970 on the right of workers to remain in the territory of a Member State after having been employed in that State. [2] This reference is submitted in the context of the refusal to grant indefinite leave to remain in the United Kingdom to the family members (spouse and children) of a deceased EC worker.

II — Legal Background

2. The scope of Regulation No 1251/70 is defined in Article 1 as follows:

'The provisions of this Regulation shall apply 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 Council Regulation (EEC) No 1612/68 on freedom of movement for workers within the Community.'

3. Article 2 of Regulation No 1251/70 lays down the following conditions for the accrual of a right to remain for workers:

'1. The following shall have the right to remain permanently in the territory of a Member State:

(a) a worker who, at the time of termination of his activity, has reached the age laid down by the law of that Member State for entitlement to an old-age pension and who has been employed in that State for at least the last twelve months and has resided there continuously for more than three years;

1 — Original language: German.

2 — Regulation (EEC) No 1251/70 of the Commission of 29 June 1970 (OJ, English Special Edition 1970 (II), p. 402; hereinafter: 'Regulation No 1251/70' or 'the Regulation').

(b) a worker who, having resided continuously in the territory of that State for more than two years, ceases to work there as an employed person as a result of permanent incapacity to work....

(c) ...

(2) ...'

4. Article 3 of Regulation No 1251/70 lays down the following conditions for the right to remain of the family members of the worker:

'1. The members of a worker's family referred to in Article 1 of this Regulation who are residing with him in the territory of a Member State shall be 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, and to do so even after his death.

2. If, however, the worker dies during his working life and before having acquired the right to remain in the territory of the State concerned, members of his family shall be entitled to remain there permanently on condition that:

— the worker, on the date of his decease, had resided continuously in the territory of that Member State for at least 2 years; or

— his death resulted from an accident at work or an occupational disease;

— ....'

5. With respect to these conditions and proof of 'continuous residence', Article 4 provides:

'1. Continuity of residence as provided for in Articles 2(1) and 3(2) may be attested by any means of proof in use in the country of residence. It shall not be affected by temporary absences not exceeding a total of three months per year, nor by longer absences due to compliance with the obligations of military service.

2....'

6. Without prejudice to any more far-reaching obligation of the Member States to assist workers who have left their territory after having been continuously resident and having been employed there for some time to re-establish their residence in that State, Article 5 of the Regulation lays down a time limit for the exercise of the right to remain:

'The person entitled to the right to remain shall be allowed to exercise it within two years from the time of becoming entitled to such right pursuant to Article 2(1)(a) and (b) and Article 3. During such period he may leave the territory of the Member State without adversely affecting such right.'

7. Section 7(1) of the Immigration Act 1988 creates an express exception from the general regime requiring the grant of leave, in favour of persons exercising enforceable Community rights:

'A person shall not under the principal Act [the Immigration Act 1971] require leave to enter or remain in the UK in any case in which he is entitled to do so by virtue of an enforceable community right or of any other provision made under section 2(2) of the European Communities Act 1972.'

III — Facts and procedure

8. Mr Rama Givane, husband and father respectively of the appellants in the case leading to this reference, was a Portuguese national. Exercising his rights under the EC Treaty, he entered the United Kingdom on 15 April 1992 in order to work as a cook. He was granted a five-year residence permit and was continuously resident in the United Kingdom for three years [3] until 10 April 1995. He then travelled to India and remained there for 10 months.

9. On 16 February 1996, Mr Givane returned to the UK with his spouse, Nani Givane, and three children, Vashuben Givane, Vinodbhai Givane and Subashkumar Givane — all four of whom are Indian nationals. He obtained an EU residence permit valid until 21 July 2002. The family members accompanying him were in possession of an EEA Family Permit. [4]

10. On 11 November 1997, 21 months [5] after his return to the United Kingdom, Mr Givane died of *kidney failure* and *chronic liver disease*, which cannot be regarded as

3 — To be precise, five days less than three years.

4 — Footnote relevant only to original German text.

5 — To be precise, five days less than 21 months.

occupational diseases in this particular case.

11. The members of the deceased's family (hereinafter 'the Appellants') applied for leave to remain in the UK pursuant to Article 2(1) of Regulation No 1251/70. The Secretary of State refused their application for indefinite leave to remain by decision of 21 August 1998 as he was not satisfied that Mr Givane had resided continuously in the United Kingdom within the meaning of that article for the two years prior to his death.

12. The Appellants appealed against this decision. The Immigration Appeal Tribunal stayed proceedings and referred the following questions to the Court for a preliminary ruling:

'1. Whether Article 3(2) of Regulation 1251/70 requires that two-year period of continuous residence to be established in the period immediately prior to a worker's death, or whether it may be established by a period of continuous residence which occurs at an earlier point in the worker's life;

2. If the said two-year period is not required to be established immediately prior to the worker's death, then, once such a two-year period of residence has been established by the worker, can the benefit of the accrued rights deriving from that period be retained after periods of absence from the host EU State in excess of the three months specified in Article 4(1) (which have the effect of breaking the period of continuous residence in the host State in question);

3. If the answer to Question 2 is in the affirmative, whether the consequential right to retain the benefit of past periods of continuous residence, despite subsequent breaks in residence, is subject to any limitations;

4. If the answer to Question 3 is in the affirmative, what those limitations are; and what factors must be considered by the national court in seeking to establish whether breaks in the continuity of residence have broken the entitlement to rely on past periods of residence;

5. Whether the benefit of Article 3(2) may be claimed by the deceased worker's family members, in circumstances in which the worker's 10-month period of absence represents less than a third of

the period of continuous residence prior to the absence, and less than a fifth of the total time spent by the worker in the host State prior to his death?'

13. The United Kingdom Government, the German Government and the Commission are participating in the proceedings before the Court.

IV — Submissions of the parties to the main proceedings

14. The arguments of the Appellants and the Secretary of State, who have not expressly submitted observations in the proceedings before the Court, are taken from the order for reference:

(1) *Appellants*

The Appellants submit that Article 3(2) of Regulation No 1251/70, as it applied to Mr Givane, only requires that he resided continuously in the United Kingdom, as an EC worker, for two years at some point in time prior to his death. There is no further requirement in the Regulation that those two years must have occurred immediately prior to his death. Since Mr Givane fulfilled that requirement between April 1992 and April 1995, the application of his family members for indefinite leave to remain in the United Kingdom must be granted.

15. Rama Givane resided continuously in the United Kingdom for a period in excess of two years between April 1992 and April 1995 and thus fulfilled the first part of the requirements of Article 3 of Regulation No 1251/70. The words 'on the date of his decease, had resided continuously' cannot and do not import a further requirement as to when the continual residence took place. Rather, they set the final deadline by which the two years must be completed.

16. A purposive approach to Article 3(2) confirms the correctness of this literal interpretation. Such an approach can be based on the following reasons:

(a) The preamble to Regulation No 1251/70 recognises the need for EU workers to have their family members with them and for those family members to be able, subject to special conditions, to obtain rights of residence.

(b) Article 39 of the Treaty of Rome declares that 'freedom of movement for workers shall be secured within the Community'.

(c) Freedom of movement of workers is an important economic foundation of the Treaty of Rome. Therefore, workers should not be discouraged from exercising their rights of free movement by concerns about being separated from their families or about the welfare of their family members when they move with them.

17. Applying this to the instant case, it is quite clear that, had Rama Givane considered when he finally left India that he might die of natural causes within the next two years and that an interpretation of the type adopted by the respondent authority would be applied, he would have been discouraged from exercising his right of free movement out of concern for the welfare of his family members.

18. The Appellants accept that, when applying a purposive construction of the Regulation in a situation where the two years of continuous residence prior to the death of the worker predated an absence of more than three months from the host State, such an absence should be subject to some form of reasonable limitation. However, in determining such reasonable limitation, the principle of proportionality should be applied.

(2) *The Respondent*

19. The Respondent submits that the natural meaning of Article 3(2) of Regulation No 1251/70 requires that the two-year period of residence must be established immediately prior to the worker's death. This is the effect, in particular, of the words 'on the date of his decease' and resided 'continuously'. In contrast, the interpretation adopted by the Appellants renders the words 'on the date of his decease' in Article 3(2) of the Regulation unnecessary and superfluous.

20. Furthermore, the Respondent's interpretation of Article 3(2) is consistent with, and fulfils, the purpose of Regulation No 1251/70. The purpose of the Regulation, as set out in the preamble, is to secure the free movement of workers by ensuring stability and security of settled residence after the cessation of employment; by enabling workers to be joined by their families; and by ensuring that families derive, from the worker, similar rights of security of residence. Rights to remain arise from a combination of periods of residence and employment in the Member State.

Article 2(1), like Article 3(2), focuses on what periods of residence and/or employment have been established immediately prior to the cessation of employment.

21. The interests of a worker and his or her family require that, if the process of establishing rights of permanent residence under Article 2(1) has been cut short by the premature death of the worker, the family should be entitled to remain provided the connection with the host State is sufficiently well-established. However, such a conclusion is only required if the connection with the host State has been established for a reasonable period of time prior to the cessation of employment.

22. Further, the Appellants' interpretation introduces uncertainty and additional tests that are not provided for in the Regulation.

V — Submissions of the parties participating in the proceedings before the Court

(1) *The United Kingdom Government*

23. The United Kingdom Government founds its submissions primarily on a literal interpretation based on a comparison of the English, French and German versions of Regulation No 1251/70. It concludes that the possible ambiguity in the English text of the Regulation with respect to the temporal connection of the required two years' continuous residence and the death of the worker is cleared up by an examination of the French and German texts. The period of residence must immediately precede the worker's death.

24. This construction is supported by the purpose of the Regulation. Just as the acquisition of the primary right to remain of the worker pursuant to Article 2(1) of the Regulation is subject to certain conditions, so is the acquisition of the derived rights of family members. If the process of acquiring a permanent right to remain in accordance with Article 2(1) is not completed due to the premature death of the worker, the interests of the worker and his family require that they should be entitled to remain if the connection with the host State is sufficiently well-established. This applies only if a considerable period of time allowing the establishment of such a connection precedes the cessation of employment. If the worker was not entitled to remain, then his family cannot have a right after his death. The purpose of the Regulation is to ensure that a settled or stable way of life can be maintained which means that such a way of life must already have been established and the two-year qualifying period laid down in Article 3(2) of the Regulation applies for this reason.

25. Further, the Appellants' interpretation would lead to considerable uncertainty and require additional tests which are not provided for in the Regulation. There is no basis in the Regulation for the test of proportionality advocated by the Appellants. Temporary absence from the host State is regulated in Article 4 of the Regulation. Periods of absence exceeding those mentioned in that article not only interrupt the 'continuous' character of residence but also extinguish already existing rights.

(2) *The German Government*

26. In the opinion of the German Government, the two-year period of continuous residence required by Article 3(2) must immediately precede the death of the worker. It bases this argument on the German version of the Regulation. [6] Pursuant to Article 4 of the Regulation, continuous residence comes to an end as a result of absences of more than three months. A new period of continuous residence begins with re-entry into the host State. The previous residence 'lapses'. This conclusion is supported by the scheme of the Regulation. The term 'continuous' in Article 2(1)(a) and (b) also relates to minimum periods of residence.

6 — 'Seit mindestens zwei Jahren'.

27. The Appellants' method of 'reasonable limitation of absence' seems arbitrary. The meaning and purpose of the right to remain in accordance with Article 39(3)(d) EC presupposes a certain degree of establishment in the host State. This finds expression in the requirement of a period of continuous residence of at least two years.

(3) *The Commission*

28. In its observations, the Commission first of all compares the different language versions of Article 3(2) of Regulation No 1251/70 and concludes that, in principle, the wording permits both interpretations. In accordance with the English, Spanish, Portuguese and Swedish versions, the fact that the worker had at some point been continuously resident for two years in the territory of a Member State could be considered sufficient to justify a right to remain, whereas the German, French and Italian versions require that the two-year period of residence continues up to the date of death.

29. In accordance with the settled case-law of the Court, Community Regulations must be interpreted uniformly in the light of the versions existing in the other official lan-

guages. [7] However, only the interpretation reflected by the second group examined is consistent with all language versions, so that interpretation must be preferred to ensure uniformity. Moreover, the period of two years is expressly linked to the date of decease. This link would be superfluous if the date of death were not to be considered the end of the continuous residence.

30. However, even if the continuous residence of the worker did not have to occur immediately before death, the Appellants could not in any case be granted a right to remain. Article 3(1) of Regulation No 1251/70 makes it a condition of the family members' right to remain that they reside with the worker in the territory of the Member State. This must also apply to Article 3(2) of the Regulation since the rights to remain pursuant to Article 3(1) and (2) differ only to the extent that Article 3(2) covers the situation that the worker has died before obtaining a right to remain in the Member State concerned. However, in the situation covered by Article 3(1), the family members derive their rights from the already existing rights of the worker whereas, pursuant to Article 3(2) of the Regulation, the family members obtain a right of their own which they acquire by establishing a sufficient connection with the host State. Since the Appellants did not reside with Mr Rama Givane in the territory of the United Kingdom between April 1992 and April 1995, a right to remain must in any event be denied in their case.

7 — See Case 9/79 *Koschnyske* [1979] ECR 2717, paragraph 6.

VI — Analysis

Preliminary observations

31. It is striking that the opposing viewpoints of the parties to the proceedings are both based on a literal, systematic and teleological interpretation of Regulation No 1251/70. The relevant texts must therefore be interpreted with great care.

32. By its first question, the referring Tribunal wishes to know whether the two-year period of continuous residence required by Article 3(2) must *immediately* precede the death of the worker or whether it can be linked to previous periods of residence, the nature and duration of which fulfil the requirements. There are two aspects to this question. Firstly, there is the question of the temporal proximity of the two years' continuous residence giving rise to entitlement and the date of death, and, secondly, the question whether periods which, in view of their duration and intensity, fulfil, in themselves, the

requirement of residence of at least two years can be taken into consideration.

33. While detailed submissions have been made with respect to the first part of the question, the second part has been virtually ignored in the submissions to the Court. In each case, reference has been made to Article 4 of the Regulation and it has been argued that periods of absence exceeding three months cause the previous residence to lapse. However, the submissions have not addressed the fact that this provision relates only to the period entitling the person concerned to acquire a right, with respect to both the worker's right to remain pursuant Article 2(1) and that of the family members pursuant to Article 3(2). Article 4 of the Regulation does not deal with what happens to a right to remain once it has been established.

34. These two aspects to the first question submitted by the referring Tribunal should therefore be borne in mind in the following arguments.

Answer to the questions for a preliminary ruling

35. According to Article 39(3)(d) EC, the worker's right to freedom of movement entails the right 'to remain in the territory of a Member State after having been employed in that State, subject to conditions which shall be embodied in implementing regulations to be drawn up by the Commission.' The Commission has embodied these conditions in Regulation No 1251/70.

36. In principle, rights of the members of the worker's family can also be derived from the rights granted to the worker under Article 39 EC. The conditions for the family members' right to remain are likewise contained in Regulation No 1251/70. Pursuant to Article 3(1), family members have a right to remain if the worker himself has acquired a right to remain under the conditions of Article 2. If the worker dies during his working life before acquiring a right to remain in the Member State concerned, his family nevertheless has a right to remain in the Member State, subject to the conditions of Article 3(2) of Regulation No 1251/70.

37. Regulation No 1251/70 is applicable in the present case since Mr Rama Givane resided in the United Kingdom as a worker within the meaning of Article 39 EC and Regulation No 1251/70. The Appellants are family members for the purposes of Article 1 of Regulation No 1251/70 in conjunction with Article 10 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community. [8] Article 10(1)(a) of Regulation No 1612/68

8 — Regulation (EEC) of the Council of 15 October 1968, OJ, English Special Edition 1968 (II), p. 475.

provides: 'The following 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:

(a) his spouse and their descendants who are under the age of 21 years or are dependants;...'.

38. In order to answer the referring Tribunal's question whether the right to remain of the worker's family members requires that the worker had been continuously resident in the territory of the Member State for at least two years immediately before his death or whether an earlier period of continuous residence of equal duration is sufficient, the rule in Article 3(2) of Regulation No 1251/70 must be interpreted literally, systematically and teleologically.

39. The English version of the Regulation, which will have been considered in the main proceedings, is neutral with respect to the temporal connection between the two years' continuous residence and the date of death. It merely states: 'The worker, on the date of his decease, had resided continuously in the territory of that Member State *for at least two years*'. [9] In accordance with this wording, it would suffice that the worker had resided continuously in the territory of the Member State concerned for two years at some point before his death.

40. The versions of the Regulation in Dutch ('gedurende'), Portuguese ('pelo menos dois anos'), Spanish ('un mínimo de dos años') and Swedish ('onder minst två år') are similarly neutral.

41. The German, French and Italian versions on the other hand suggest that the two-year period of continuous residence must immediately precede the date of death. In the German text, the worker is required to have been resident in the Member State 'seit mindestens zwei Jahren'. The word 'seit' links the date of death to a period of time which is still continuing. Had an earlier period been meant, it would have been more appropriate to use the word 'während' ('during'). The same can be said of the French and Italian versions of the provision. There, the words 'depuis' and 'da' are used instead of 'pendant' and 'durante'.

9 — Emphasis added.

42. However, as already stated, this interpretation is not supported by the other language versions. Moreover, different verb tenses have been chosen in the various versions. In the German text, 'aufgehalten hat' is used, expressing temporal proximity to the present. In the Dutch text, the past tense 'woonachtig was' is chosen and, in the English version, the pluperfect tense 'had resided'.

43. Thus, a literal interpretation does not lead to a definite conclusion. However, according to the settled case-law of the Court 'all the language versions must, in principle, be recognised as having the same weight and this cannot vary according to the size of the population of the Member States using the language in question.' [10]

44. The Commission's argument that the interpretation which can be reconciled with all versions must be chosen, which in this case would mean that the continuous residence must immediately precede death, is not conclusive.

45. In the *Akman* case, [11] the Court, in a similar situation, merely concluded that, in such cases, a literal interpretation does not permit a definite answer to the question referred for a preliminary ruling. In the *Akman* case, the question was whether Article 7(2) of Decision No 1/80 of the Association Council of 19 September 1980 on the development of the Association required that a Turkish worker still be employed in a Member State in order that his children could seek employment in that Member State. The German wording of this provision requires that the parent concerned should have been employed 'seit', in French 'depuis', at least three years whereas the Dutch version again uses the neutral expression 'gedurende'. The Court finally adopted the latter approach and thereby decided against the continuity suggested by 'seit'.

46. Since a literal interpretation of Article 3(2) of the Regulation does not permit a definite answer to the question, the provision must be considered in its context and interpreted in accordance with its meaning and purpose.

47. The conditions for the accrual of the worker's right to remain are laid down in Article 2 of Regulation No 1251/70, while the family members' right to remain is provided for in Article 3 of the Regulation. In principle, their right is derived from that of the worker. This is made clear in Article 3(1) which contains the expression '... are entitled to remain there permanently if the worker has acquired the right to remain in the territory of the State in accordance with Article 2'. Upon the

10 — See Case C-296/95 [1998] ECR I-1605, at paragraph 36.

11 — See Case C-210/97 [1998] ECR I-7519, paragraph 31 et seq.

worker's death, the right of the family members to remain becomes their own right. Article 3(1) of the Regulation therefore contains the phrase: 'even after his death'. However, should the worker die during his working life before having acquired the right to remain — in other words, should the employment required for the acquisition of the right to remain end prematurely and unexpectedly — a two-year period of continuous residence of the worker in the Member State in which he was employed confers a right to remain on the family members under Article 3(2). Thus, this is also a case of a right of the family members which is derived from the right of the worker but which becomes their own right upon the worker's death. The scheme of Article 3(2) corresponds therefore to that of Article 3(1).

48. Contrary to the opinion of the German Government, a comparison of Articles 2 and 3 does not provide any further arguments. Certainly, the phrase 'resided continuously for more than three [two] years' also appears in Article 2(1)(a) and Article 2(1)(b) respectively. In these articles, the phrase also appears in the context of the crucial date — reaching the age of retirement and incapacity to work respectively — just as it is linked to the date of death in Article 3(2). However, there are no grounds for the conclusion that the minimum period of residence in Article 2(1) of Regulation No 1251/70 must immediately precede the decisive date since in this respect also the wording of the various language versions is ambiguous. Rather, with respect to the normal case of termination of employment, reaching the age of retirement, Article 2(1)(a) of the Regulation expressly requires, in addition to continuous residence 'for more than three years', employment for 'the last' 12 months. However, the latter phrase does not appear in Article 3 which suggests that this article does *not* require that the two-year period of residence must immediately precede the date of death.

49. Lastly, Article 5 even expressly contradicts the view that the circumstances entitling the person concerned to a right to remain must immediately precede the crucial date. In accordance with the express wording of this provision, the person entitled to the right to remain may leave the territory of the Member State for a period of two years without adversely affecting such right. A systematic interpretation of the Regulation thus in no way leads to the conclusion that the two-year period of residence conferring entitlement to a right to remain pursuant to Article 3(2) of the Regulation must immediately precede the date of death.

50. In order to achieve complete clarity, it is therefore also necessary to analyse the meaning and purpose of the provisions regarding the right to remain. According to

the second recital in the preamble to the Regulation, the right to remain signifies 'the right of the worker to maintain his residence in the territory of a Member State when he ceases to be employed there'. It must therefore be possible for the worker, even after the end of employment, to maintain a centre of interests established by way of residence and employment. According to the third recital of the Regulation, the mobility of labour in the Community requires that 'workers may be employed successively in several Member States without thereby being placed at a disadvantage'. With respect to family members, the seventh recital states that 'the exercise by the worker of the right to remain entails that such right shall be extended to members of his family;... in the case of the death of the worker during his working life, maintenance of the right of residence of the members of his family must also be recognised...'.

51. The family members who have moved to a Member State with a worker or subsequently joined him there are to be able to remain with him even after he has ceased to work in the Member State in which he was employed. The family is not to be compelled to leave their chosen place of residence upon the death of the worker irrespective of whether his death occurs during or after his working life.

52. In the normal situation governed by Article 2(1)(a), the basic condition for the acquisition of a right to remain is a degree of established connection with the host State which is evidenced by a three-year period of continuous residence and a 12-month period of employment preceding the end of employment due to reaching retirement age. Once these conditions have been fulfilled, the person entitled to the right to remain has, in accordance with Article 5 of the Regulation, a period of two years in which to exercise his right, without a period of absence from the territory of the Member State concerned adversely affecting such right.

53. In contrast to 'the normal and foreseeable end of working life' due to retirement, [12] which is governed by Article 2(1)(a), in the event of a 'premature and unforeseeable termination of activity' due to incapacity to work, [13] even a two-year period of continuous residence is, pursuant to the first sentence of Article 2(1)(b), sufficient to establish a right to remain. In such cases also, the person entitled to a right to remain has, in accordance with Article 5, a period of two years in which to decide where he wishes to establish his final residence. [14] In the event of such an unforeseeable end to a working life, the Community legislature allows a two-year period of continuous residence to found the right to remain. In those circumstances, the Regulation deems the connection with the Member State of employment established by the two-year period of continuous residence to be sufficient.

12 — See fifth recital of the Regulation.

13 — See fifth recital of the Regulation.

14 — See, to this effect, the sixth recital of the Regulation.

54. The first sentence of Article 2(1)(b) has a parallel in the first indent of Article 3(2). The death of the worker during his working life is likewise a premature and unforeseeable end to that working life. Just as the family members can, in the cases covered by the first sentence of Article 2(1)(b), rely upon the right to remain arising from the worker's two years' continuous residence, they can equally rely on a preceding two-year period of continuous residence of the worker pursuant to the first indent of Article 3(2). Under the scheme of the Regulation, the rights of the family members are therefore derived from the rights of the worker.

55. Therefore, if a two-year period of continuous residence is sufficient in such circumstances for the acquisition of a right, the two-year period laid down in Article 5 of the Regulation during which the right can still be exercised must apply in these cases also. Only after expiry of this two-year period must it be assumed that the acquired right to remain has lapsed as a result of non-exercise.

56. Consequently, absences exceeding three months within the meaning of Article 4 adversely affect the acquisition of the right only in so far as they interrupt the 'continuous' residence required. However, once the right has been established, the two-year time-limit provided for in Article 5 of the Regulation applies.

57. If these considerations are applied to the present case, this means that, on returning to the United Kingdom with his family in February 1996, Mr Rama Givane was able to rely on his continuous residence from 1992 to 1995. This is *a fortiori* the case because as a result of his residence and employment in the United Kingdom from 1992 to 1995 (with the exception of five days for which he was, however, permitted to be absent in accordance with Article 4), he had already fulfilled the conditions for the acquisition of a right to remain pursuant to Article 2(1)(a) of the Regulation, which directly leads to Article 5 of the Regulation in accordance with which an absence from the Member State of up to two years has no adverse effect on the exercise of the right to remain.

58. Considered from this point of view, it can be assumed that the requirement of a period of two years' continuous residence had been fulfilled by Rama Givane at the time of his death.

59. However, regardless of the earlier periods of residence, the requirement could possibly be considered fulfilled on the basis of the following consideration, which is

expressly put forward only in the alternative. In view of the interruptions of residence of up to three months annually which, in accordance with Article 4 of the Regulation, have no adverse effect on the continuous residence, the worker is, over a total period of 24 months, merely required to be resident in the Member State of employment for at least 18 months. The connection with the Member State of employment required for the right to remain can, according to the Regulation, be established even in these circumstances. If the permitted period of absence were deemed added to the second period of continuous residence of almost 21 months, Mr Rama Givane would have spent a further period of continuous residence in the United Kingdom entitling him to a right to remain, immediately prior to his death.

60. However, this alternative need not be pursued since, in accordance with the above assessment, Rama Givane was able to rely on his previous period of residence which in itself gave him an established right for the purposes of the Regulation.

61. Since the family members' right to remain is a derived right, it is not necessary that the family members lived with the worker for the entire period which established his right. For the family members' own right to accrue as a result of the death of the worker from which their right is derived, this means — under both the second sentence of Article 3(1) and the first indent of Article 3(2) — that they must in any event have lived with him at the time of his death. It appears to be undisputed in the main proceedings that this condition was fulfilled.

62. The second indent of Article 3(2) also supports the view that, contrary to the observations of the Commission, it is not a question of the family members' own minimum period of residence. If the worker's death resulted from an accident at work or an occupational disease, his family members are entitled to remain in the Member State of his employment irrespective of any minimum periods of residence.

63. Moreover, the requirement of a minimum period of residence of the worker alone appears appropriate since it is then possible for him to acquire a secure position with respect to the subsequent right to remain before he arranges for his family to join him.

64. The subsequent arrival of family members generally entails considerable changes for that family, such as, for example, leaving their homeland and social environment, giving up the home to which they have become accustomed, a possible transfer of school-age children to another school, establishment of a reasonable standard of accommodation and living in the

host State, etc. It therefore seems entirely justified that — where the worker has already acquired an established right — family members who have taken this step should not be faced with a period of legal uncertainty with respect to their right to remain. This applies particularly where the worker dies since this is most often an unforeseeable stroke of fate for the family.

65. The distinction between the first and second indents of Article 3(2) therefore appears arbitrary. However, it can probably be explained by the fact that in the event of a death as a result of an accident at work or occupational disease the reason for residence in another Member State, namely employment, becomes the cause of death. In these circumstances, it would seem unreasonable to deny the family the right to remain. The provision shows that the Regulation does provide for considerations of reasonableness and equity which modify the requirements of certain periods or of an established connection. This is all the more the case where a 'reasonableness rule' appears justified not only for one single reason but also on the basis of several individual considerations. This view is supported by the fact that pursuant to Article 4, it is possible to be absent from the host State for up to three months annually — or, in the event of compliance with military service obligations, for even longer — without this adversely affecting the period of residence.

66. Having regard to the above considerations, I propose that the first question be answered as follows. Article 3(2) of Regulation No 1251/70 does not necessarily require that the two-year period of continuous residence must have occurred immediately prior to the death of the worker if and to the extent that the worker can rely on a previous two-year period of continuous residence within the meaning of the Regulation and this legal position has not, by analogy with Article 5, been extinguished as a result of an absence from the Member State of employment exceeding two years.

67. The answers to Questions 2 to 5 of the reference for a preliminary ruling follow logically from the proposed answer to the first question.

The second question

68. The rights acquired by the worker as a result of a two-year period of residence remain unaffected in the event of absences from the host Member State exceeding the permitted annual period of three months laid down by Article 4(1) provided, by analogy with Article 5, they do not exceed two years.

The third question

69. In the event of subsequent interruptions of residence, the right to retain the benefit of past periods of continuous residence is subject to a time-limit of two years.

The fourth question

70. The rights acquired as a result of past periods of residence lapse in the event of interruptions of residence exceeding two years.

The fifth question

71. The family members of a deceased worker may claim the benefit of Article 3(2) if the worker acquired an established right through at least two years' continuous residence and did not lose this right as a result of an interruption of residence exceeding two years.

VII — Conclusion

72. I propose that the questions for a preliminary ruling be answered as follows:

(1) Article 3(2) of Regulation (EEC) No 1251/70 does not necessarily require that the two-year period of continuous residence must have occurred immediately prior to the death of the worker if and to the extent that the worker can rely

on a previous two-year period of continuous residence within the meaning of the Regulation and this legal position has not been extinguished as a result of an absence from the Member State of employment exceeding two years.

(2) The rights acquired by the worker as a result of a two-year period of residence remain unaffected in the event of absences from the host Member State exceeding the permitted annual period of three months laid down by Article 4(1) (which, in the case of an established position, *only* lead to an interruption of the continuous residence in that host State) provided, by analogy with Article 5, they do not exceed two years.

(3) In the event of subsequent interruptions of residence, the right to retain the benefit of past periods of continuous residence is subject to a time-limit of two years.

(4) The rights acquired as a result of past periods of residence lapse in the event of interruptions of residence exceeding two years.

(5) The family members of a deceased worker may claim the benefit of Article 3(2) if the worker acquired an established right by way of at least two years' continuous residence and did not lose this right as a result of an interruption of residence exceeding two years.