

Judgment of the Court (Fourth Chamber) of 17 March 2011 (reference for a preliminary ruling from the Cour de cassation — France) — proceedings brought by Josep Peñarroja Fa

(Joined Cases C-372/09 and C-373/09) ⁽¹⁾

(Article 43 EC — Freedom of establishment — Article 49 EC — Freedom to provide services — Restrictions — Court experts who are professional translators — Exercise of official authority — National legislation reserving appointment as a court expert for persons enrolled in registers established by the national judicial authorities — Justification — Proportionality — Directive 2005/36/EC — Concept of ‘regulated profession’)

(2011/C 139/07)

Language of the case: French

Referring court

Cour de cassation

Parties in the proceedings brought by

Josep Peñarroja Fa

Re:

Reference for a preliminary ruling — Cour de cassation (France) — Interpretation of Articles 43 EC, 45 EC, 49 EC and 50 EC — National legislation under which appointment as a court expert is reserved for persons enrolled in registers established by the national judicial authorities and that enrolment is subject to conditions relating to age, competence, character and independence, but under which no account need be taken of the fact that the applicant has been recognised as an expert by the judicial authorities of another Member State and no alternative arrangements are introduced for assessing compliance with those conditions — Whether that legislation is compatible with the provisions of primary law relating to freedom of establishment and freedom to provide services

Operative part of the judgment

1. A duty entrusted by a court, in relation to specific matters within the context of a dispute before it, to a professional who has been appointed as a court expert translator constitutes the provision of services for the purposes of Article 50 EC (now Article 57 TFEU).
2. The activities of court experts in the field of translation, such as those at issue in the main proceedings, do not constitute activities which are connected with the exercise of official authority for the purposes of the first paragraph of Article 45 EC (now the first paragraph of Article 51 TFEU).
3. Article 49 EC (now Article 56 TFEU) precludes national legislation, such as that at issue in the main proceedings, under which enrolment in a register of court expert translators is subject to conditions concerning qualifications, but the interested parties cannot obtain knowledge of the reasons for the decision taken in

their regard and that decision is not open to effective judicial scrutiny enabling its legality to be reviewed, *inter alia*, as regards its compliance with the requirement under European Union law that the qualifications obtained and recognised in other Member States must have been properly taken into account.

4. Article 49 EC (now Article 56 TFEU) precludes a requirement, such as that laid down in Article 2 of Law No 71-498 of 29 June 1971 on court experts, as amended by Law No 2004-130 of 11 February 2004, to the effect that no person may be enrolled in a national register of court experts as a translator unless he can prove that he has been enrolled for three consecutive years in a register of court experts maintained by a *cour d'appel*, where it is found that such a requirement prevents, in the consideration of an application by a person established in another Member State who cannot prove that he has been so enrolled, the qualification obtained by that person and recognised in that other Member State from being duly taken into account for the purposes of determining whether — and, if so, to what extent — that qualification may attest to skills equivalent to those normally expected of a person who has been enrolled for three consecutive years in a register of court experts maintained by a *cour d'appel*.
5. The duties of court expert translators, as discharged by experts enrolled in a register such as the national register of court experts maintained by the Cour de cassation, are not covered by the definition of ‘regulated profession’ set out in Article 3(1)(a) of Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications.

⁽¹⁾ OJ C 282, 21.11.2009.

Judgment of the Court (Third Chamber) of 10 March 2011 (reference for a preliminary ruling from the Arbeidshof te Brussel (Belgium)) — Maurits Casteels v British Airways plc

(Case C-379/09) ⁽¹⁾

(Freedom of movement for workers — Articles 45 TFEU and 48 TFEU — Social security for migrant workers — Protection of supplementary pension rights — Inaction on the part of the Council — Worker employed successively by the same employer in several Member States)

(2011/C 139/08)

Language of the case: Dutch

Referring court

Arbeidshof te Brussel

Parties to the main proceedings

Applicant: Maurits Casteels

Defendant: British Airways plc