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

Re:

Reference for a preliminary ruling — Arbeidshof te Brussel — Interpretation of Articles 39 EC and 42 EC and of Council Directive 98/49/EC of 29 June 1998 on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community (OJ 1998 L 209, p. 46) — Absence of action on the part of the Council — Employee working successively in the operating units of the same employer in several Member States (otherwise than in the context of postings) and subject on each occasion to the locally applicable supplementary pension scheme

Operative part of the judgment

1. *Article 48 TFEU does not have any direct effect capable of being relied on by an individual against his private-sector employer in a dispute before national courts.*

2. *Article 45 TFEU must be interpreted as precluding, in the context of the mandatory application of a collective labour agreement:*

   — *for the determination of the period for the acquisition of definitive entitlements to supplementary pension benefits in a Member State, the non-inclusion of the years of service completed by a worker for the same employer in establishments of that employer situated in different Member States and pursuant to the same coordinating contract of employment;*

   — *a worker who has been transferred from an establishment of his employer in one Member State to an establishment of the same employer in another Member State from being regarded as having left the employer of his own free will.*

(1) OJ C 312, 19.12.2009.

Judgment of the Court (Third Chamber) of 10 March 2011 (reference for a preliminary ruling from the Cour de cassation (France)) — Charles Defossez v Christian Wiart, in his capacity as liquidator of Sotimon SARL, Office national de l'emploi — fonds de fermeture d'entreprises, Centre de gestion et d'études de l'Association pour la gestion du régime de garantie des créances des salariés de Lille (CGEA)

(Case C-477/09) (1)

(Preliminary ruling — Directives 80/987/EEC and 2002/74/EC — Insolvency of the employer — Protection of employees — Payment of outstanding workers' claims — Determination of the competent guarantee institution — More favourable guarantee under national law — Possibility of relying on that law)

(2011/C 139/09)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Applicant: Charles Defossez

Defendants: Christian Wiart, in his capacity as liquidator of Sotimon SARL, Office national de l'emploi — fonds de fermeture d'entreprises, Centre de gestion et d'études de l'Association pour la gestion du régime de garantie des créances des salariés de Lille (CGEA)

Re:

Reference for a preliminary ruling — Cour de cassation (France) — Interpretation of Article 8a of Council Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer, as amended by Directive 2002/74/EC (OJ 2002 L 270, p. 10), in conjunction with Article 9 of that directive — Determination of the competent guarantee institution in respect of payment of workers' outstanding claims — Guarantee institution of the Member State on the territory of which the workers are habitually employed — Possibility for the employees to take advantage of the more favourable guarantee provided by the institution with which their employer is insured and to which it makes contributions under national law

Operative part of the judgment

Article 3 of Council Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer, in the version thereof as it existed before it was amended by Directive 2002/74, is to be interpreted as meaning that, for the payment of the outstanding claims of workers having been habitually employed in a Member State other than that where their employer is established, where the employer was declared insolvent before 8 October 2005 and that employer is not established in that other Member State and fulfils its obligation to contribute to the financing of the guarantee institution in the Member State where it is established, it is that institution which is liable for the obligations defined by that article.

Directive 80/987 does not preclude a Member State's legislation from providing that employees may avail themselves of the salary guarantee from that Member State's institution in accordance with its law, either in addition to or instead of the guarantee offered by the institution designated as competent under that directive, provided however that that guarantee results in a greater level of worker protection.

(1) OJ C 37, 13.2.2010.