



Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

6 October 2015*

(Reference for a preliminary ruling — Freedom of movement of persons — Articles 45 TFEU and 49 TFEU — Workers — Employment in the public service — Directive 2005/36/EC — Recognition of professional qualifications — Definition of ‘regulated profession’ — Admission to a competition to recruit legal secretaries at the Cour de cassation (Belgium))

In Case C-298/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Conseil d’État (Belgium), made by decision of 15 May 2014, received at the Court on 16 June 2014, in the proceedings

Alain Brouillard

v

Jury du concours de recrutement de référendaires près la Cour de cassation,

Belgian State,

THE COURT (Second Chamber),

composed of R. Silva de Lapuerta (Rapporteur), President of the Chamber, J.C. Bonichot, A. Arabadjiev, J.L. da Cruz Vilaça and C. Lycourgos, Judges,

Advocate General: E. Sharpston,

Registrar: V. Tourrès, Administrator,

having regard to the written procedure and further to the hearing on 25 March 2015,

after considering the observations submitted on behalf of:

- Mr Brouillard, by himself,
- the Belgian Government, by M. Jacobs, L. Van den Broeck and C. Pochet, acting as Agents, and P. Levert and P.-E. Paris, avocats,
- the Italian Government, by G. Palmieri, acting as Agent, and S. Fiorentino, avvocato dello Stato,
- the European Commission, by J. Hottiaux and H. Støvlbæk, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 18 June 2015,

* Language of the case: French.

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Articles 45 TFEU and 49 TFEU and of Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ 2005 L 255, p. 22).
- 2 The request has been made in proceedings between Mr Brouillard and the Jury du concours de recrutement de référendaires près la Cour de cassation ('the selection board') and the Belgian State concerning the selection board's decision to reject Mr Brouillard's application to register for that competition.

Legal context

EU law

- 3 Recital 41 of Directive 2005/36 states:

'This Directive is without prejudice to the application of Articles [45(4) TFEU] and [51 TFEU] concerning notably notaries.'

- 4 Article 1 of that directive, entitled 'Subject', provides:

'This Directive establishes rules according to which a Member State which makes access to or pursuit of a regulated profession in its territory contingent upon possession of specific professional qualifications (referred to hereinafter as the host Member State) shall recognise professional qualifications obtained in one or more other Member States (referred to hereinafter as the home Member State) and which allow the holder of the said qualifications to pursue the same profession there, for access to and pursuit of that profession.'

- 5 Article 2 of that directive, entitled 'Scope', provides:

'1. This Directive shall apply to all nationals of a Member State wishing to pursue a regulated profession in a Member State, including those belonging to the liberal professions, other than that in which they obtained their professional qualifications, on either a self-employed or employed basis.

...'

- 6 Article 3 of Directive 2005/36, entitled 'Definitions', provides as follows:

'1. For the purposes of this Directive, the following definitions apply:

- (a) "regulated profession": a professional activity or group of professional activities, access to which, the pursuit of which, or one of the modes of pursuit of which is subject, directly or indirectly, by virtue of legislative, regulatory or administrative provisions to the possession of specific professional qualifications; in particular, the use of a professional title limited by legislative, regulatory or administrative provisions to holders of a given professional qualification shall constitute a mode of pursuit. Where the first sentence of this definition does not apply, a profession referred to in paragraph 2 shall be treated as a regulated profession;

- (b) “professional qualifications”: qualifications attested by evidence of formal qualifications, an attestation of competence referred to in Article 11, point (a) (i) and/or professional experience;
- (c) “evidence of formal qualifications”: diplomas, certificates and other evidence issued by an authority in a Member State designated pursuant to legislative, regulatory or administrative provisions of that Member State and certifying successful completion of professional training obtained mainly in the Community. Where the first sentence of this definition does not apply, evidence of formal qualifications referred to in paragraph 3 shall be treated as evidence of formal qualifications;

...

- (e) ‘regulated education and training’: any training which is specifically geared to the pursuit of a given profession and which comprises a course or courses complemented, where appropriate, by professional training, or probationary or professional practice.

...’

7 Article 4 of that directive, entitled ‘Effects of recognition’, provides:

‘1. The recognition of professional qualifications by the host Member State allows the beneficiary to gain access in that Member State to the same profession as that for which he is qualified in the home Member State and to pursue it in the host Member State under the same conditions as its nationals.

2. For the purposes of this Directive, the profession which the applicant wishes to pursue in the host Member State is the same as that for which he is qualified in his home Member State if the activities covered are comparable.’

8 Article 13 of Directive 2005/36, entitled ‘Conditions for recognition’, states:

‘1. If access to or pursuit of a regulated profession in a host Member State is contingent upon possession of specific professional qualifications, the competent authority of that Member State shall permit access to and pursuit of that profession, under the same conditions as apply to its nationals, to applicants possessing the attestation of competence or evidence of formal qualifications required by another Member State in order to gain access to and pursue that profession on its territory.

...’

Belgian law

9 Article 135a of the Belgian Judicial Code states:

‘The Cour de cassation shall be assisted by legal secretaries, whose number shall not be less than five or more than 30, which shall be determined by the Minister for Justice.

The First President and the Principal Crown Counsel shall, by common accord, determine the number of legal secretaries under their respective authority.

The legal secretaries shall prepare the work of the judges and public prosecutors; they shall participate in documentation activities and in the translation and publication of judgments and the alignment of French and Dutch texts.’

10 Article 259 of that code provides:

‘To be appointed a legal secretary at the Cour de cassation, a candidate must be aged 25 or over and hold a doctorate or licentiate degree in law.

The candidates shall be classified during the competition with a view to their recruitment.

The Court shall determine the subject-matter of the competitions according to the requirements of the service. It shall lay down the conditions for the competitions and shall constitute the selection boards.

Each selection board, while respecting the linguistic balance, shall consist of two members of the Court designated by the First President of the Court of cassation, two members of the Public Prosecutor’s Office designated by the Principal Crown Counsel to that court, and four persons external to the institution designated by the King on two lists composed of four candidates each, both respecting the linguistic balance and proposed by the First President and the Principal Crown Counsel respectively.

The validity of a competition shall be (six) years.’

11 Under Article 259l of that code:

‘Legal secretaries shall be appointed by the King for an internship of three years in accordance with the ranking referred to in Article 259k. At the end of the three years, the appointment shall become permanent except where a decision to the contrary by the King is made, exclusively on the proposal of the First President or the Principal Crown Counsel, at the latest during the third quarter of the third year of the internship.

The First President of the Court of cassation and the Principal Crown Counsel at that court shall, by common agreement, designate the trainee legal secretaries and the legal secretaries appointed to permanent posts who shall be placed under the authority of one and those who are to be placed under the authority of the other.’

The dispute in the main proceedings and the questions referred for a preliminary ruling

12 Mr Brouillard, a Belgian national, is employed in the documentation and text alignment service of the Cour de cassation. He holds a licentiate degree in translation, a degree in law and a diploma in specialised studies in human rights awarded by a Belgian university, and a master’s degree in law, economics and management, private law, lawyer-linguist specialism awarded by the University of Poitiers (France), (‘the vocational master’s degree’), following completion of a correspondence course.

13 On 24 May 2011, Mr Brouillard registered for a competition to recruit legal secretaries at the Cour de cassation.

14 On 23 June 2011, he applied to the French Community of Belgium for recognition that his vocational master’s degree was fully equivalent to the qualification of Master’s Degree 2 in Belgian law.

15 On 6 September 2011, the President of the Cour de cassation notified Mr Brouillard of the decision of the selection board declaring his application to enter the competition to be inadmissible, on the ground that, in order to be appointed as a legal secretary at the Court of cassation, the candidate must hold a doctorate or licentiate degree in law from a Belgian university in order to ensure the candidate’s ability to pursue that profession in Belgium. In its decision, the selection board pointed out that Mr Brouillard did not satisfy that condition, since the French Community of Belgium had not recognised the

equivalence of his vocational master's degree with one of the grades of doctor, licentiate or master in law awarded in Belgium, and as he had not completed an equivalence programme at a Belgian university.

16 On 27 October 2011, the French Community of Belgium rejected Mr Brouillard's application for recognition of the vocational master's degree as equivalent to an academic master's degree in law and limited the equivalence to the generic academic level of master's degree. That rejection was based on an unfavourable opinion of the Equivalence Committee, Law and Criminology Section, of the French Community of Belgium, which set out its reasons as follows:

- '— Holding a degree attesting to the completion of legal studies demonstrates that the holder has ability and technical expertise relating to the particular features of the legal system in which the degree was awarded; therefore, such studies completed abroad do not meet the requirements of the law faculties in Belgium's French Community, faculties which train their students in the duties of jurists in the Belgian legal system;
- some educational components which are necessary in order to complete, in Belgium's French Community, postgraduate studies in law (including the law of obligations, contract law, administrative law and employment law) are not taught as part of the French vocational master's degree in law, economics and management, private law, lawyer-linguist specialism, in respect of which equivalence is sought.'

17 The Federal Public Service Justice published a notice stating that, by Royal Decrees of 20 September 2012, three legal secretaries had been appointed to the Cour de cassation for a three-year internship (*Moniteur belge* of 28 September 2012, p. 59905).

18 By two actions brought before the referring court, Mr Brouillard sought the annulment of the decisions of the selection board and the royal decrees.

19 It is on that basis that the Conseil d'État decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

- (1) Are Articles 45 TFEU and 49 TFEU and Directive 2005/36 to be interpreted as applying in a situation where a Belgian national, who resides in Belgium and who has not pursued a professional activity in another Member State, relies in support of his application to participate in a competition to recruit legal secretaries at the Belgian Cour de cassation on a degree awarded by a French university, namely a vocational master's degree awarded on 22 November 2010 by the University of Poitiers in France?
- (2) Is the office of legal secretary at the Belgian Cour de cassation, in respect of which Article 259k of the Judicial Code makes appointment conditional on holding a doctorate or licentiate degree in law, a regulated profession within the meaning of Article 3 of Directive 2005/36?
- (3) Is the function of legal secretary at the Cour de cassation, the duties of which are defined in Article 135a of the Judicial Code, employment in the public service within the meaning of Article 45(4) TFEU, and is the application of Articles 45 TFEU and 49 TFEU and Directive 2005/36 therefore precluded by Article 45(4) TFEU?
- (4) If Articles 45 TFEU and 49 TFEU and Directive 2005/36 apply in the present case, must they be interpreted as precluding the selection board charged with the recruitment of legal secretaries at the Cour de cassation from making participation in that competition conditional on the holding of a doctorate or licentiate degree in law awarded by a Belgian university, or on recognition by

the French Community, which has competence in the field of education, that the master's degree awarded to the applicant by the University of Poitiers in France is equivalent to the qualification of doctorate, licentiate degree or master's degree in law awarded by a Belgian university?

- (5) If Articles 45 TFEU and 49 TFEU and Directive 2005/36 apply in the present case, must they be interpreted as requiring the selection board charged with the recruitment of legal secretaries at the Cour de cassation to compare the applicant's qualifications resulting from his degrees as well as from his professional experience with those resulting from a doctorate or licentiate degree in law awarded by a Belgian university and, if necessary, to impose a compensation measure on him under Article 14 of Directive 2005/36?

The application to reopen the oral proceedings

- 20 Following the presentation of the Advocate General's Opinion, the applicant in the main proceedings, by document lodged on 17 August 2015, requested the Court to reopen the oral part of the proceedings. To that end, Mr Brouillard essentially raises issues concerning translation errors in certain language versions of the request for a preliminary ruling and the Advocate General's Opinion, and a risk of conflict between the judgment of the Court in the present case and that of the General Court in *Brouillard v Court of Justice* (T-420/13, EU:T:2015:633), if it is not possible to argue that that opinion fails to examine in depth the question of the 'validation of acquired experience' which he relies upon in both those cases.
- 21 It should be borne in mind that, according to Article 83 of the Rules of Procedure, the Court may, after hearing the Advocate General, order the reopening of the oral part of the procedure, in particular if it considers that it lacks sufficient information or where a party has, after the close of that part of the procedure, submitted a new fact which is of such a nature as to be a decisive factor for the decision of the Court, or where the case must be decided on the basis of an argument which has not been debated between the parties or the interested persons referred to in Article 23 of the Statute of the Court of Justice of the European Union.
- 22 The Court considers that there is nothing to justify an order to reopen the oral phase of the proceedings in the present case, since the arguments put forward by Mr Brouillard do not relate to any specific situations laid down in that provision of the Rules of Procedure.
- 23 The application for the oral procedure to be reopened must therefore be rejected.

Consideration of the questions referred for a preliminary ruling

The first and third questions

- 24 By its first and third questions, which it is appropriate to examine together, the referring court asks essentially, first, whether Articles 45 TFEU and 49 TFEU apply to a situation, such as that at issue in the main proceedings, in which a national of a Member State, residing and working in that Member State, holds a diploma obtained in another Member State, which he relies on in order to apply for registration for a competition to recruit legal secretaries at the Cour de cassation in the first Member State, and, second, whether such a situation is covered by Article 45(4) TFEU.
- 25 In that connection, it must be observed at the outset, that Article 49 TFEU, which concerns access to and the pursuit of activities by self-employed persons, is not applicable to the dispute in the main proceedings.

- 26 First, as regards Article 45 TFEU, it is time that the Court has consistently held that the provisions of the FEU Treaty on the freedom of movement of persons cannot be applied to cases which have no factor linking them with any of the situations governed by EU law and where all elements of which are purely internal to a single Member State (see judgments in *López Brea and Hidalgo Palacios*, C-330/90 and C-331/90, EU:C:1992:39, paragraph 7, and *Uecker and Jacquet*, C-64/96 and C-65/96, EU:C:1997:285, paragraph 16).
- 27 However, the Court has held that the freedom of movement of persons would not be fully realised if the Member States were able to refuse to grant the benefit of the provisions of EU law to those of their nationals who had taken advantage of its provisions to acquire vocational qualifications in a Member State other than that of which they were nationals. The same consideration applies where a national of a Member State has obtained in another Member State a university qualification which supplements his basic education and training and of which he intends to make use after he returns to his country of origin (see judgment in *Kraus*, C-19/92, EU:C:1993:125, paragraphs 16 and 17).
- 28 In the present case, Mr Brouillard intends to make use of a university diploma that he obtained in another Member State, in the Member State of which he is a national.
- 29 Therefore, the benefit of the provisions of the FEU Treaty relating to free movement of persons cannot be denied to him. The fact that that diploma was obtained following completion of a correspondence course is irrelevant in that respect.
- 30 Second, Article 45(4) TFEU provides that the provisions of that article are not to apply to employment in the public service.
- 31 However, that exception concerns only the access of nationals of other Member States to certain posts in the civil service (see judgments in *Vougioukas*, C-443/93, EU:C:1995:394, paragraph 19; *Grahame and Hollanders*, C-248/96, EU:C:1997:543, paragraph 32; *Schöning-Kougebetopoulou*, C-15/96, EU:C:1998:3, paragraph 13; and *Österreichischer Gewerkschaftsbund*, C-195/98, EU:C:2000:655, paragraph 36).
- 32 That provision takes account of the legitimate interest which Member States have in reserving to their own nationals a range of posts connected with the exercise of powers conferred by public law and with the protection of general interests (see judgments in *Commission v Belgium*, 149/79, EU:C:1980:297, paragraph 19, and *Vougioukas*, C-443/93, EU:C:1995:394, paragraph 20).
- 33 It follows that, regardless of whether the post to which Mr Brouillard wishes to gain access falls within the scope of Article 45(4) TFEU, that provision is not applicable to a situation such as that at issue in the main proceedings, since Mr Brouillard wishes to gain access to a post in the civil service of the Member State of which he is a national.
- 34 In those circumstances, the answer to the first and third questions is that Article 45 TFEU must be interpreted as meaning, first, that it applies to a situation, such as that at issue in the main proceedings, in which a national of a Member State, residing and working in that State, holds a diploma obtained in another Member State, which he intends to use in order to register for a competition to recruit legal secretaries at the Cour de cassation of the first Member State, and, second, that such a situation does not fall within Article 45(4) TFEU.

The second question

- 35 By its second question, the referring court asks whether the office of legal secretary at the Cour de cassation is a 'regulated profession' within the meaning of Directive 2005/36.

- 36 It should be borne in mind that the definition of ‘regulated profession’ within the meaning of Directive 2005/36 is a matter of EU law (see judgments in *Rubino*, C-586/08, EU:C:2009:801, paragraph 23 and *Peñarroja Fa*, C-372/09 and C-373/09, EU:C:2011:156, paragraph 27).
- 37 Under Article 3(1)(a) of Directive 2005/36, ‘regulated profession’ means ‘a professional activity or group of professional activities, access to which, the pursuit of which, or one of the modes of pursuit of which is subject, directly or indirectly, by virtue of legislative, regulatory or administrative provisions to the possession of specific professional qualifications’.
- 38 As the Advocate General noted, in points 53 to 55 of her Opinion, it follows from Article 3(1)(b), (c) and (e) of Directive 2005/36 that the concept of ‘specific professional qualifications’ in Article 3(1)(a) thereof does not cover all qualifications attested by evidence of formal qualifications, but only those relating to training which is specifically designed to prepare candidates to exercise a given profession.
- 39 In the present case, the evidence of formal qualifications required by Article 259k of the Judicial Code in order to gain access to the office of legal secretary at the Cour de cassation do not specifically aim to prepare holders for that post, but give access to a wide range of legal careers.
- 40 Therefore, that evidence of formal qualifications does not confer ‘specific professional qualifications’ within the meaning of Article 3(1)(a) of Directive 2005/36, on the possession of which access to or the pursuit of the office of legal secretary at the Cour de cassation is contingent.
- 41 Furthermore, the provisions relating to that post are less like those regulating a profession but are more similar to those relating to a post at a court.
- 42 Therefore, that post does not constitute a ‘regulated profession’ for the purposes of Directive 2005/36, so that the latter is not applicable to the situation at issue in the main proceedings.
- 43 The fact that the legal secretaries at the Cour de cassation are appointed as a result of a competition, the subject-matter of which is determined in accordance with the requirements of the service, and which is valid for six years, is irrelevant to that assessment. The Court has already held that fact of having been successful in a procedure to select a predefined number of persons on the basis of a comparative assessment of the candidates rather than by application of absolute criteria, which confers a qualification the validity of which is strictly limited in time, cannot be regarded as a ‘professional qualification’ within the meaning of Article 3(1)(b) of Directive 2005/36 (see judgment in *Rubino*, C-586/08, EU:C:2009:801, paragraph 32).
- 44 That is also the case where, according to the provisions of the Judicial Code, the appointment of legal secretaries to the Cour de cassation becomes permanent only after an internship of three years. It is clear from those provisions and the explanations given by the Belgian Government at the hearing that that the internship is similar to a probationary period, at the end of which a decision may be taken not to make a permanent appointment. Therefore, such an internship does not correspond to a training period which is necessary to pursue the office of legal secretary at the Cour de cassation.
- 45 In those circumstances, the answer to the second question is that Directive 2005/36 must be interpreted as meaning that the office of legal secretary at the Cour de cassation is not a ‘regulated profession’ for the purposes of that directive.

The fourth and fifth questions

- 46 Having regard to the answers to the first to third Questions, the fourth and fifth questions need be examined with regard only to Article 45 TFEU.

- 47 By its fourth and fifth questions, the referring court asks essentially whether Article 45 TFEU must be interpreted as meaning that the selection board for the competition to recruit legal secretaries for a court of a Member State, when it examines an application to take part in that competition submitted by a national of that Member State, may not make participation contingent on the possession of the diplomas required by the law of that Member State or to the recognition of academic equivalence of a master's degree awarded by the university of another Member State without taking into consideration all the diplomas, certificates and other titles and the relevant professional experience of the person concerned, by making a comparison of the professional qualifications attested by those qualifications and those required by that law.
- 48 In this regard, it must be stated first of all that in the absence of harmonisation of the conditions of access to a particular occupation the Member States are entitled to lay down the knowledge and qualifications needed in order to pursue it and to require the production of a diploma certifying that the holder has the relevant knowledge and qualifications (see judgments in *Vlassopoulou*, C-340/89, EU:C:1991:193, paragraph 9, and *Pešla*, C-345/08, EU:C:2009:771, paragraph 34).
- 49 Since the conditions for access to the office of legal secretary at a court of a Member State have not, up to the present time, been harmonised at EU level, the Member States retain the power to define those conditions.
- 50 It follows that, in the present case, EU law does not preclude Belgian law from making access to the office of legal secretary at the Cour de cassation contingent on the possession of the knowledge and qualifications deemed to be necessary.
- 51 However, the fact remains that the Member States must exercise their powers in this area in a manner which respects the basic freedoms guaranteed by the FEU Treaty (see judgments in *Commission v France*, C-496/01, EU:C:2004:137, paragraph 55; *Colegio de Ingenieros de Caminos, Canales y Puertos*, C-330/03, EU:C:2006:45, paragraph 29; and *Nasiopoulos*, C-575/11, EU:C:2013:430, paragraph 20).
- 52 In particular, the provisions of national law adopted in that connection must not constitute an unjustified obstacle to the effective exercise of the fundamental freedoms guaranteed by Article 45 TFEU (see judgments in *Kraus*, C-19/92, EU:C:1993:125, paragraph 28, and *Pešla*, C-345/08, EU:C:2009:771, paragraph 35).
- 53 Thus, according to settled case-law, the national rules establishing the conditions for national qualifications, even when applied in an indiscriminate manner in relation to nationality, may infringe the exercise of those fundamental freedoms if the national rules at issue fail to take account of learning, skills and qualifications already acquired by the person concerned in another Member State (see judgments in *Vlassopoulou*, C-340/89, EU:C:1991:193, paragraph 15; *Morgenbesser*, C-313/01, EU:C:2003:612, paragraph 62; and *Pešla*, C-345/08, EU:C:2009:771, paragraph 36).
- 54 In that context, it must be recalled that the authorities of a Member State which receive a request for authorisation, submitted by an EU national, to pursue a profession to which access, under national law, depends upon the possession of a diploma or a professional qualification or periods of practical experience must take into consideration all of the diplomas, certificates and other evidence of qualifications and lies relevant experience by comparing the specialised knowledge and abilities so certified and that experience with the knowledge and qualifications required by the national legislation (see judgments in *Vlassopoulou*, C-340/89, EU:C:1991:193, paragraph 16; *Fernández de Bobadilla*, C-234/97, EU:C:1999:367, paragraph 31; *Dreessen*, C-31/00, EU:C:2002:35, paragraph 24; and *Morgenbesser*, C-313/01, EU:C:2003:612, paragraphs 57 and 58).
- 55 That comparative examination procedure must enable the authorities of the host Member State to assure themselves, on an objective basis, that the foreign diploma certifies that its holder has knowledge and qualifications which are, if not identical, at least equivalent to those attested by the

national diploma. That assessment of the equivalence of the foreign diploma must be carried out exclusively in the light of the level of knowledge and qualifications which its holder can be assumed, by virtue of that diploma, to possess, having regard to the nature and duration of the studies and practical training to which the diploma relates (see judgments in *Vlassopoulou*, C-340/89, EU:C:1991:193, paragraph 17; *Morgenbesser*, C-313/01, EU:C:2003:612, paragraph 62; and *Pešla*, C-345/08, EU:C:2009:771, paragraph 39).

- 56 In the course of the comparative examination, a Member State may however take into consideration objective differences relating to both the legal framework of the profession in question in the Member State of origin and to its field of activity (see judgments in *Vlassopoulou*, C-340/89, EU:C:1991:193, paragraph 18; *Morgenbesser*, C-313/01, EU:C:2003:612, paragraph 69; and *Pešla*, C-345/08, EU:C:2009:771, paragraph 44).
- 57 If that comparative examination of diplomas results in the finding that the knowledge and qualifications attested by the foreign diploma correspond to those required by the national provisions, the Member State must recognise that diploma as fulfilling the requirements laid down by its national provisions. If, on the other hand, the comparison reveals that the knowledge and qualifications attested by the foreign diploma and those required by the national provisions correspond only partially, the host Member State is entitled to require the person concerned to show that he has acquired the knowledge and qualifications which are lacking (see judgments in *Vlassopoulou*, C-340/89, EU:C:1991:193, paragraph 19; *Fernández de Bobadilla*, C-234/97, EU:C:1999:367, paragraph 32; *Morgenbesser*, C-313/01, EU:C:2003:612, paragraph 70; and *Pešla*, C-345/08, EU:C:2009:771, paragraph 40).
- 58 In that regard, it is for the competent national authorities to assess whether the knowledge acquired in the host Member State, either during a course of study or by way of practical experience, is sufficient in order to prove possession of the knowledge which is lacking (see judgments in *Vlassopoulou*, C-340/89, EU:C:1991:193, paragraph 20; *Fernández de Bobadilla*, C-234/97, EU:C:1999:367, paragraph 33; *Morgenbesser*, C-313/01, EU:C:2003:612, paragraph 71; and *Pešla*, C-345/08, EU:C:2009:771, paragraph 41).
- 59 In so far as all practical experience in the pursuit of related activities can increase an applicant's knowledge, it is incumbent on the competent national authorities to take into consideration all practical experience of use in the pursuit of the profession to which access is sought. The precise value to attach to such experience will be for the competent national authority to determine in the light of the specific functions carried out, knowledge acquired and applied in pursuit of those functions, responsibilities assumed and the level of independence accorded to the person concerned (see judgment in *Vandorou and Others*, C-422/09, C-425/09 and C-426/09, EU:C:2010:732, paragraph 69).
- 60 The case-law set out in paragraphs 53 to 59 of the present judgment does not prevent a recruitment body, such as the selection board, from relying on a decision taken by a competent authority, such as the Equivalence Committee, Law and Criminology Section, of the French Community of Belgium, in order to determine whether the foreign qualifications in question are equivalent to the national qualifications required.
- 61 However, as regards the dispute in the main proceedings, it is apparent from the documents before the Court that the selection board rejected Mr Brouillard's application to register for the competition to recruit legal secretaries at the Cour de cassation before that committee had given its decision on the application by the person concerned to have his vocational master's degree recognised as equivalent to the academic master's degree in Belgian law.

- 62 It is also clear from the documents before the Court that Mr Brouillard has not completed a course of legal training, such as that attested by the doctorate, licentiate degree or master's degree in law from a Belgian university.
- 63 Thus, as confirmed at the hearing, it is also apparent that the vocational master's degree relied on by Mr Brouillard does not consist of any instruction in Belgian law and does not attest to any studies of administrative law and social law, whereas the Equivalence Committee, Law and Criminology Section, of the French Community of Belgium considers that teaching in those field to be essential to the completion of postgraduate legal studies in the French Community of Belgium.
- 64 However, he also indicated at the hearing that the master's degree consists of the study of French civil law, including the law of obligations and contract law. Therefore, it was conceivable that the knowledge and qualifications attested by that master's degree had some relevance for the assessment of the possession of the knowledge and qualifications required to pursue the office of legal secretary at the Cour de cassation.
- 65 Furthermore, Mr Brouillard emphasised his professional experience, in particular the experience he acquired in the documentation and text alignment service of the Cour de cassation. That experience could appear to be relevant in that assessment.
- 66 Therefore, the selection board was required to examine whether Mr Brouillard's vocational master's degree and professional experience demonstrated that he had acquired the knowledge and qualifications required. It is for the referring court to verify whether, having regard to all the relevant circumstances of the case in the main proceedings, the selection board complied with that obligation and, if appropriate, whether the person concerned has sufficiently demonstrated that he has the necessary qualifications.
- 67 In those circumstances, the answer to the fourth and fifth questions is that Article 45 TFEU must be interpreted as meaning that it precludes, in circumstances such as those at issue in the main proceedings, the selection board for a competition for recruitment of legal secretaries at a court of a Member State, where it examines an application to participate in that competition submitted by a national of that Member State, from making that participation contingent on the possession of diplomas required by the legislation of that Member State or the recognition of academic equivalence of a master's degree awarded by the university of another Member State, without taking into consideration all of the diplomas, certificates and other qualifications, and the relevant professional experience of the person concerned, by comparing the professional qualifications attested by those qualifications with those required by that legislation.

Costs

- 68 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

1. **Article 45 TFEU must be interpreted as meaning, first, that it applies to a situation, such as that at issue in the main proceedings, in which a national of a Member State, residing and working in that State, holds a diploma obtained in another Member State, which he intends to use in order to register for a competition to recruit legal secretaries at the Cour de cassation of the first Member State, and, second, that such a situation does not fall within Article 45(4) TFEU.**

2. Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications must be interpreted as meaning that the office of legal secretary at the Cour de cassation is not a ‘regulated profession’ within the meaning of that directive.
3. Article 45 TFEU must be interpreted as meaning that it precludes, in circumstances such as those at issue in the main proceedings, the selection board for a competition for recruitment of legal secretaries at a court of a Member State, where it examines an application to participate in that competition submitted by a national of that Member State, from making that participation contingent on the possession of diplomas required by the legislation of that Member State or the recognition of academic equivalence of a master’s degree awarded by the university of another Member State, without taking into consideration all of the diplomas, certificates and other qualifications, and the relevant professional experience of the person concerned, by comparing the professional qualifications attested by those qualifications with those required by that legislation.

[Signatures]