JUDGMENT OF THE COURT (Third Chamber)

10 December 2009 *

In Case C-345/08,

REFERENCE for a preliminary ruling under Article 234 EC from the Verwaltungsgericht Schwerin (Germany), made by decision of 8 July 2008, received at the Court on 28 July 2008, in the proceedings

Krzysztof Peśla

v

Justizministerium Mecklenburg-Vorpommern,

THE COURT (Third Chamber),

composed of J.N. Cunha Rodrigues, President of the Second Chamber, acting as President of the Third Chamber, P. Lindh, A. Rosas, U. Lõhmus and A. Ó Caoimh (Rapporteur), Judges,

* Language of the case: German.

Advocate General: E. Sharpston,
Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 2 July 2009,

after considering the observations submitted on behalf of:

— Mr Peśla, by B. Kemper, Rechtsanwalt,

— the German Government, by M. Lumma and J. Kemper, acting as Agents,

— the Czech Government, by M. Smolek, acting as Agent,

— the Greek Government, by E. Skandalou and S. Vodina, acting as Agents,

— Ireland, by D. O'Hagan, acting as Agent, and by M. Collins SC, D. Dodd BL, and K. Keane BL,

— the Hungarian Government, by J. Fazekas, K. Veres and M. Fehér, acting as Agents,

— the Austrian Government, by E. Riedl, acting as Agent,

— the Finnish Government, by A. Guimaraes-Purokoski, acting as Agent,

— the Commission of the European Communities, by H. Støvlbæk, M. Adam and M. Vollkommer, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 39 EC.

2 The reference was made in the course of proceedings between Mr Peśla, a Polish national, and the Justizministerium Mecklenburg-Vorpommern (Ministry of Justice of Mecklenburg-Western Pomerania) concerning the latter's refusal to admit the applicant to serve as a legal trainee (Rechtsreferendar) without first taking an aptitude test in the compulsory legal subjects under the 'erstes juristiches Staatsexamen' (first State examination in law; 'the first State examination').

National law

3 It is apparent from the order for reference that, in order to carry out any of the regulated legal professions in Germany, it is necessary in principle to be qualified to hold judicial office ('Befähigung zum Richteramt'). In accordance with Paragraph 5(1) of the German Law on Judges (Deutsches Richtergesetz; 'the DRiG'), that qualification is granted to persons who pass the first State examination in law at the end of their university legal studies, as well as the second State examination in law on completion of a legal traineeship ('Rechtsreferendariat').

4 Under Paragraph 5a(2) of the DRiG, university studies — which have to be pursued in Germany for at least two years — are to consist of compulsory subjects and specialised subjects, which may be studied along with certain optional courses. The compulsory subjects concern the fundamental aspects of civil law, criminal law, public law and procedural law, including subjects which involve European law, legal methodology and fundamental aspects of philosophy, history and sociology. The specialised subjects aim to complement and deepen knowledge of the compulsory subjects and to provide an inter-disciplinary and international approach to law.

5 Pursuant to the first sentence of Paragraph 5d(2) of the DRiG, the subjects covered by the first State examination have to be of such a level that they can be completed within four and a half years. Under Paragraph 5(1) of that law, the first examination is to consist of a university examination on various specialised subjects and a State examination in the compulsory subjects. According to the third sentence of Paragraph 5d(2), the latter is to take the form of written and oral examinations.

6 Pursuant to Paragraph 5(2) of the DRiG, the content of university studies and that of the legal traineeship must be complementary. Under Paragraph 5b of that law, the legal traineeship is to last for a period of two years and to consist of compulsory periods of training and one or more optional training periods. Under that paragraph, the

compulsory parts of the legal traineeship are to take place: (i) at a general civil law court, (ii) at the Public Prosecutor's Office or at a criminal court, (iii) with the public authorities, and (iv) with a lawyer. Pursuant to the first sentence of Paragraph 5(3) of the DRiG, the written part of the second State examination in law must take place between the 18th and the 21st months of the legal traineeship.

7 Paragraph 5b(4) of the DRiG provides that the compulsory parts of the legal traineeship are each to last three months, except for the part which is to be spent with a lawyer, which is to last nine months.

8 As part of their training and pursuant to Paragraph 10 of the Judicature Act (Gerichtsverfassungsgesetz; 'the GVG'), legal trainees may, under the supervision of a judge, deal with requests for mutual assistance in the context of international judicial cooperation, hear the parties to a case, with the exception of criminal cases, make findings on evidence and hold hearings. Paragraph 142(3) of the GVG provides that legal trainees may carry out tasks on behalf of an agent of the Pubic Prosecutor's Office, under the supervision of that agent.

9 It is for the individual *Länder* to determine the specific form of the training to be provided. Under Paragraph 21(3) of the Law of the *Land* Mecklenburg-Western Pomerania on the training of lawyers (Gesetz Über die Juristenausbildung im Land Mecklenburg-Vorpommern; 'the JAG-M-V'), the legal traineeship to be undertaken by legal trainees is part of a training programme governed by public law. Legal trainees receive a monthly subsistence allowance under Paragraph 21a(2) of the JAG-M-V. During the legal traineeship, legal trainees are subject to supervision by their training principal and must obey the instructions of their principal in accordance with Paragraph 36(1) and (2) of the Regulation on the application of the law on the training of lawyers (Verordnung zur Ausführung des Juristenausbildungsgesetes; 'the JAPO M-V'). Under Paragraph 24 of the JAG-M-V, the legal traineeship finishes on the day on which the applicant is declared to have passed the examination or on the day on which he fails to pass the first resit examination.

10 Under Paragraph 6(1) of the DRiG, it is a condition of admission to serve as a legal trainee that the candidate should have passed the first State examination. Pursuant to Paragraph 112a of that law, if a national of a Member State of the European Union has obtained, in that Member State, a university diploma in law giving access to pursue post-university legal training in that Member State, he may request, in Germany, a declaration that his university diploma is the equivalent of the first State examination. If such a declaration of equivalence is granted, the person concerned may serve a legal traineeship.

11 It is apparent from the documents before the Court that Paragraph 112(a) of the DRiG, entitled 'Assessment of equivalence for the purposes of admission to serve as a legal trainee', was adopted following the judgment of the Court in Case C-313/01 *Morgenbesser* [2003] ECR I-13467. That paragraph states:

'(1) Nationals of a Member State of the European Union, of another contracting State to the Agreement on the European Economic Area or of Switzerland, who hold a university diploma in law, which was obtained in one of those States and gives access there to post-university education leading to the profession of a European lawyer under Paragraph 1 of the Law on the activity of European lawyers in Germany, shall on application be admitted to a legal traineeship if their knowledge and skills correspond to the knowledge and skills attested by the passing of the State examination in the compulsory subjects provided for in Paragraph 5(1).

(2) The assessment of the knowledge and skills required under subparagraph 1 extends to the university diploma and the documentary evidence submitted, in particular diplomas, examination results, other documentary evidence and proof of relevant professional experience. Should the assessment establish no or only partial equivalence, an aptitude test shall be carried out on request.

(3) The aptitude test is a State examination which shall be taken in the German language, covering the required knowledge of German law and assessing the ability successfully to complete a legal traineeship. The examination subjects are civil law, criminal law and public law, including the related procedural law on those topics.

The written tests of the State examination in the compulsory subjects shall be taken in those areas of law referred to in the second sentence, the adequate command of which was not already proved in the assessment under the first sentence of subparagraph 2.

(4) A pass shall be achieved in the aptitude test when the candidate:

1. passes the number of written tests required by the law of the *Land* in which the test was taken in order to achieve a pass in the State examination in the compulsory subjects, or at least half of the written tests in the State examination in the compulsory subjects, and

2. passes written tests in at least two of the fields of law referred to in the second sentence of subparagraph 3, at least one in the field of civil law.

In so far as the adequate command of one of the areas of law referred to in the second sentence of subparagraph 3 has already been established in the assessment carried out under the first sentence of subparagraph 2, the written tests in that field shall be deemed passed.

(5) An aptitude test which has not been passed can be retaken once.

(6) A finding of equivalence under subparagraph 1 shall have the same effect as passing the first State examination under Paragraph 5(1).

…'

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

12 In December 2003, Mr Peśla completed his university studies at the Faculty of Law of the University of Poznán (Poland) obtaining a Master's degree ('Magister'). In January 2005, the Law Faculty of the University of Frankfurt-an-der-Oder, where he had studied since 1998 in parallel to his studies in Poland, awarded him, following completion of a course of German-Polish legal studies, the title of 'Master of German and Polish Law', and in February 2005 the title of 'Bachelor of German and Polish Law'.

13 In November 2005, Mr Peśla made an application to be admitted as a legal trainee in Mecklenburg-Western Pomerania. In support of his application, as well as submitting supporting material, such as credits in relation to various academic courses and documents attesting to his professional experience and the courses and training he had followed, he made reference to *Morgenbesser*.

14 By decision of 27 March 2007, the Justizministerium Mecklenburg-Vorpommern dismissed the application for a finding of equivalence under Paragraph 112a of the DRiG. In its view, the criterion for examination of equivalence was the knowledge attested by the State examination in the compulsory subjects in accordance with Paragraph 5(1) of the DRiG. Knowledge of foreign law could not be recognised as equivalent given the differences between it and German law. Furthermore, according to that rejection decision, the knowledge of German law required for the credits obtained

by Mr Peśla in the Master of German and Polish Law course was significantly lower than that required for the written tests of the first State examination in the compulsory subjects.

15 It was none the less stated in the rejection decision that Mr Peśla could, if he applied to do so, undertake an aptitude test pursuant to Paragraph 112a(3) of the DRiG.

16 On 27 April 2007, Mr Peśla brought an action against the decision of 27 March 2007 before the referring court. In support of that action, he claimed as his primary argument that the assessment of equivalence made by the Justizministerium Mecklenburg-Vorpommern was inconsistent with the criteria developed in the Court's case-law. If one were to take the knowledge of, and practical skills in, German law as required under the first State examination as the assessment criterion, a foreign diploma could never satisfy such a criterion because German law is not generally taught in the other Member States.

17 In the alternative, Mr Peśla complained that the knowledge he acquired in Germany in his studies, work experience, work assisting two professors and in tutorials, was not sufficiently taken into account in the rejection decision.

18 The Justizministerium Mecklenburg-Vorpommern claimed that the contested rejection decision is justified. In its view, the knowledge acquired cannot be treated as equivalent.

19 Accordingly, since it took the view that the resolution of the dispute before it depended on the conditions to which Article 39 EC makes subject a declaration of equivalence within the meaning of Paragraph 112a(1), (2) and (6) of the DRiG, the Verwaltungsgericht Schwerin (Schwerin Administrative Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'1. Is it compatible with Article 39 EC that a finding of equivalence under Paragraph 112a(1) and (2) of the [DRiG] is made only if it can be established on the basis of the documentary evidence submitted that the European Union citizen has the knowledge and skills as tested in the (German legal) examination of compulsory subjects provided for in Paragraph 5(1) of the [DRiG]?

2. If question 1 is to be answered in the negative:

Does Article 39 EC require that the only criterion for an assessment of equivalence which is consistent with European law is whether the university diploma obtained by the European Union citizen in the European Union together with the additional evidence submitted by him of educational performance and experience is comparable, from the point of view of the (intellectual) level of education and the effort invested in that education to the [first State examination]?

3. If question 2 is also to be answered in the negative:

Is it compatible with Article 39 EC that the finding of equivalence under Paragraph 112a(1) and (2) of the [DRiG] takes the material examined in the compulsory subjects of the first (German legal) State examination as its reference point, but in the light of the legal education successfully completed elsewhere in the Community only somewhat "lowered" requirements are imposed?'

The questions referred

20 The two first questions, which should be considered together, ask what knowledge ought to be taken as a reference point for assessing whether an applicant for direct admission to serve as a legal trainee, without taking the exams he would otherwise have to sit, has a level of knowledge which is equivalent to that normally required to serve such a legal traineeship in the Member State concerned. The first question concerns the issue whether that knowledge needs to be of the law of the host Member State, whereas the second question seeks to determine whether, by contrast, the knowledge of the law of another Member State may be regarded as equivalent, in terms of the level of training and the time and effort invested in such training, to the knowledge required to be able to serve a legal traineeship in the host Member State.

21 By its third question, the referring court essentially asks whether it is possible that Community law requires that the level of knowledge of the law of the host Member State required for admission to a legal traineeship that must precede the second State examination in law and admission to the legal professions be lowered, to a certain extent, in order to promote the freedom of movement of persons.

The first two questions

22 In order to answer the first two questions, it should be noted at the outset that a person in Mr Peśla's situation cannot, in the case in the main proceedings, rely on secondary Community law in order to have his academic qualifications and work experience recognised for the purposes of gaining access to the practical part of the training required to enter the legal professions in Germany.

23 Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained (OJ 1998 L 77, p. 36) concerns only lawyers who are fully qualified as such in their Member States of origin (see *Morgenbesser*, paragraph 45). In addition, it is apparent from the documents before the Court that the activities undertaken by legal trainees are regarded as forming the practical part of the training required to enter the legal professions in Germany. It follows that such a legal traineeship cannot be classed as a 'regulated profession', within the meaning of Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration (OJ 1989 L 19, p. 16), as amended by Directive 2001/19/EC of the European Parliament and of the Council of 14 May 2001 (OJ 2001 L 206, p. 1), separable from the German legal professions themselves, such as the profession of lawyer (see, by analogy, *Morgenbesser*, paragraphs 46 to 55).

24 As was confirmed at the hearing, at the time of the facts in the main proceedings, Mr Peśla had not obtained the professional qualification required to enter the legal profession as a lawyer in Poland.

25 It is apparent from the Court's case-law that both Article 39 EC, which is referred to explicitly in the questions referred, and Article 43 EC are capable of applying to situations such as the one at issue in the main proceedings.

26 First, it is apparent from the documents before the Court, in particular from the observations of the German Government, that (i) legal trainees are required to apply in practice the legal knowledge acquired during their studies and thus make a contribution, under the guidance of the training principal, to that person's activities and (ii) legal trainees receive payment in the form of a monthly subsistence allowance for the duration of their training. In that regard, the Court has already held that, given that legal trainees carry out genuine and effective activity as an employed person they must be considered to be workers within the meaning of Article 39 EC (see, to that effect, Case C-109/04 *Kranemann* [2005] ECR I-2421, paragraphs 12 to 18).

27 Second, the legal traineeship provided for under the German regulations constitutes a period of training and a necessary prerequisite of access to, inter alia, the profession of lawyer in Germany, a regulated profession to which Article 43 EC applies (see, by analogy, *Morgenbesser*, paragraph 60).

28 It should also be noted that the application of those two articles cannot be ruled out in the main proceedings on the basis of the exceptions laid down in, respectively, Article 39(4) EC in relation to 'employment in the public service' and the first paragraph of Article 45 EC for 'activities which [in a Member] State are connected, even occasionally, with the exercise of official authority'.

29 In the first place, in so far as legal trainees undertake part of their training outside the public sector, suffice it to note that the concept of 'employment in the public service' does not encompass employment by a private natural or legal person, whatever the duties of the employee (see Case C-114/97 *Commission* v *Spain* [1998] ECR I-6717, paragraph 33, and *Kranemann*, paragraph 19).

30 Although in the case giving rise to the judgment in *Kranemann* the issue concerned a part of that training that was to be carried out outside the public sector, it should be noted that, to the extent that a legal trainee must complete part of his training at a general civil court, with the public authorities and at the Public Prosecutor's Office or at a criminal court, that legal trainee will, as the German Government emphasised at the hearing, act in accordance with the instructions and under the supervision of a training principal, as is indeed also apparent from the provisions of the GVG and the JAPO M-V cited in paragraphs 8 and 9 above.

31 Consequently, the activity of a legal trainee cannot fall within the exception laid down in Article 39(4) EC since that exception does not cover posts which, whilst coming under

the State or other bodies governed by public law, still do not involve any association with tasks belonging to the public service properly so called (see, inter alia, Case 149/79 *Commission* v *Belgium* [1980] ECR 3881, paragraph 11, and Case C-47/02 *Anker* [2003] ECR I-10447, paragraph 59).

32 Secondly, the derogation provided for in the first paragraph of Article 45 EC must be restricted to activities which in themselves are directly and specifically connected with the exercise of official authority (see, inter alia, Case 2/74 *Reyners* [1974] ECR 631, paragraph 45; Case C-42/92 *Thijssen* [1993] ECR I-4047, paragraph 8; and Case C-283/99 *Commission* v *Italy* [2001] ECR I-4363, paragraph 20).

33 Therefore, for reasons analogous to those set out in paragraph 30 above, the activities of a legal trainee, even when carried out in the public sector, do not fall within the scope of the exception provided for in the first paragraph of Article 45 EC (see also, by analogy, *Thijssen*, paragraphs 22 and 23).

34 It should furthermore be noted 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 Case 222/86 *Heylens and Others* [1987] ECR 4097, paragraph 10; Case C-340/89 *Vlassopoulou* [1991] ECR I-2357, paragraph 9; and Case C-104/91 *Aguirre Borrell and Others* [1992] ECR I-3003, paragraph 7).

35 However, Community law sets limits on the exercise of those powers by the Member States in so far as provisions of national law adopted in that connection must not constitute an unjustified obstacle to the effective exercise of the fundamental freedoms guaranteed by Articles 39 EC and 43 EC (see *Heylens and Others*, paragraph 11, and Case C-19/92 *Kraus* [1993] ECR I-1663, paragraphs 28 and 32).

36 In that regard, it is apparent from the Court's case-law that 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, to that effect, *Vlassopolou*, paragraph 15; *Kraus*, paragraph 32; Case C-375/92 *Commission* v *Spain* [1994] ECR I-923, paragraph 18; and *Morgenbesser*, paragraphs 61 and 62).

37 Accordingly, the authorities of a Member State, when considering a request by a national of another Member State for access to a practical training period with a view to exercising a regulated profession at a later date, must take into consideration the professional qualification of the person concerned by comparing the qualifications attested by his diplomas, certificates and other formal qualifications as well as by his relevant professional experience with the professional requirements laid down by the national rules (see to that effect, inter alia, *Vlassopoulou*, paragraph 16, and *Morgenbesser*, paragraphs 57 and 58).

38 That case-law is the expression of a principle which is inherent in the fundamental freedoms of the EC Treaty (see, to that effect, Case C-238/98 *Hocsman* [2000] ECR I-6623, paragraph 24, and Case C-31/00 *Dreessen* [2002] ECR I-663, paragraph 25). Thus, as is apparent from paragraph 61 of the judgment in *Morgenbesser*, the analysis does not differ according to whether it is the freedom of movement for workers or the freedom of establishment which is relied upon in opposing the refusal, as in the case in the main proceedings, to admit a candidate of a Member State other than the Federal Republic of Germany to serve as a legal trainee without first taking an aptitude test in the legal subjects that are compulsory under the first State examination.

39 As the Court has repeatedly held, the comparative examination procedure referred to in paragraph 37 above 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 *Heylens and Others*, paragraph 13; *Vlassopoulou*, paragraph 17; *Aguirre Borrell and Others*, paragraph 12; Case C-375/92 *Commission* v *Spain*, paragraph 13; and *Morgenbesser*, paragraph 68).

40 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 *Vlassopoulou*, paragraph 19; *Aguirre Borrell and Others*, paragraph 14; Case C-234/97 *Fernández de Bobadilla* [1999] ECR I-4773, paragraph 32; *Morgenbesser*, paragraph 70; and Case C-255/01 *Markopoulos and Others* [2004] ECR I-9077, paragraphs 64 and 65).

41 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 (*Vlassopoulou*, paragraph 20; *Fernández de Bobadilla*, paragraph 33; and *Morgenbesser*, paragraph 71).

42 On the basis of the case-law set out in the three preceding paragraphs and, in particular, paragraph 68 and the first sentence of paragraph 70 of the judgment in *Morgenbesser*, Mr Peśla claims that, in order to apply a national provision such as Paragraph 112a(1) and (2) of the DRiG in a manner consistent with Community law, account must be taken primarily of the knowledge and qualifications which have been acquired in the Member State of origin, in this case the Republic of Poland and, where appropriate, of the legal knowledge and qualifications acquired in the host Member State, in this case the Federal Republic of Germany, only in the alternative. He considers that, if one takes the knowledge of, and practical skills in, German law as the criterion for the comparison to be made, a foreign diploma could never satisfy such criteria because German law is not generally taught in the other Member States. Thus, in his view, the freedom of

movement would in practice be ruled out for young lawyers who have obtained qualifications in a Member State other than the Federal Republic of Germany.

43 That line of argument is based on an incorrect interpretation of the case-law on which it relies.

44 According to that case-law, in the course of the comparative examination set out in paragraphs 37 and 39 to 41 above, a Member State may 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. In the case of the profession of lawyer, a Member State may therefore carry out a comparative examination of diplomas, taking account of the differences identified between the national legal systems concerned (see *Vlassopoulou*, paragraph 18, and *Morgenbesser*, paragraph 69).

45 As is apparent from the case-law cited in paragraph 37 of this judgment, and contrary to what Mr Peśla claims, it is in relation to the professional qualification required by the rules of the host Member State that the knowledge attested by the diploma granted in another Member State and the qualifications and/or work experience obtained in other Member States, together with the experience obtained in the Member State in which the candidate seeks enrolment, must be examined (see also, to that effect, *Aguirre Borrell and Others*, paragraph 11; Case C-164/94 *Aranitis* [1996] ECR I-135, paragraph 31; *Dreessen*, paragraph 24; and *Morgenbesser*, paragraph 67).

46 Thus, the mere fact that legal studies relating to the law of one Member State may be regarded as comparable, from the point of view of both the level of training received and the time and effort invested to that end, to studies seeking to provide the knowledge attested by the qualification required in another Member State, cannot of itself lead, in the context of the comparative examination referred to in paragraphs 37 and 39 to 41 above, to an obligation to give priority, not to the knowledge required by the national provisions of the Member State in which the candidate seeks to benefit from the

professional training required in order to enter the legal professions, but to knowledge which relates essentially to the law of another Member State, attested by the qualifications obtained in that latter State. As noted by the referring court, a line of argument such as that raised by Mr Peśla as his primary argument, would, if taken to its ultimate conclusion, be tantamount to accepting that a candidate could be admitted to serve as a legal trainee without having any knowledge of German law or the German language.

47 In addition, to the extent that Mr Peśla claims, in the alternative, that the knowledge of German law which he acquired during his university studies in Germany was not sufficiently taken into account by the Justizministerium Mecklenburg-Vorpommern, it is sufficient to note that, in the present case, it is not for the Court to determine whether the German authorities are justified in regarding documentary evidence such as that submitted by Mr Peśla as insufficient.

48 In the light of the above, the answer to the first two questions is that Article 39 EC is to be interpreted as meaning that the knowledge to be taken as a reference point for the purposes of assessing the equivalence of training following an application for direct admission to a legal traineeship for the legal professions, without taking the exams he would otherwise have to sit, is that attested by the qualification required in the Member State in which the candidate seeks to be admitted to serve such a legal traineeship.

The third question

49 By its third question, the referring court essentially asks whether, for the purposes of the examination of equivalence to be carried out in accordance with paragraphs 37 and 39 to 41 of this judgment, it is necessary to lower, even if only slightly, the level of knowledge required under the law of the host Member State in order to give practical effect to Article 39 EC.

50 In that regard, Article 39 EC does not, in order to be given practical effect, require that access to a professional activity in a Member State be subject to lower requirements than those normally required of nationals of that State.

51 In the case-law referred to in paragraphs 34 to 41, 44 and 45 of this judgment, the Court recognised the need to reconcile the requirement relating to the qualifications necessary in order to pursue a particular occupation with the requirement that the fundamental freedoms guaranteed by Articles 39 and 43 EC be capable of being exercised effectively (see to that effect, in particular, *Heylens and Others*, paragraph 13).

52 Thus, it is apparent from that case-law that the examination of equivalence referred to in paragraph 39 of this judgment must be carried out in the light of the academic and professional training as a whole which the person concerned is able to demonstrate, in order to assess whether that overall assessment may be regarded as satisfying, even in part, the conditions required for access to the activity concerned (see to that effect, inter alia, *Morgenbesser*, paragraphs 66 and 67). If that comparative examination reveals that that demonstrable training satisfies those conditions only in part, the host Member State is entitled, as is apparent from paragraph 40 of this judgment, to require the person concerned to demonstrate that he has acquired the knowledge and qualifications which are lacking.

53 The fact that a host Member State must thus take account of knowledge which corresponds only in part to that attested by the professional qualification required by the national rules of that Member State, without requiring that examinations be passed before such a qualification is granted, already contributes to facilitating the freedom of movement of persons as laid down in particular in Article 39 EC. If such an obligation did not exist, the fact of not having the diploma normally required by nationals of the host Member State could of itself constitute a decisive obstacle to access to the legal professions in that Member State (see, to that effect, *Morgenbesser*, paragraphs 64 to 67).

54 Therefore, Mr Peśla's argument that Article 39 EC would be rendered meaningless if the host Member State could require of candidates the same level of knowledge of its

national law as that attested by the professional qualification required in that Member State to enter the legal professions, cannot be upheld.

55 In addition, it is apparent from the documents before the Court that legal trainees are expected, from the beginning of the legal traineeship, to work closely with their training principal and to carry out practical activities under the latter's supervision. To that end, it could be regarded as essential that legal trainees should have acquired, prior to putting their legal knowledge to practical use in the context of such practical activities, the same level of knowledge of the German legal system as that attested by the first State examination in the compulsory subjects. In any event, it appears very difficult, given, in particular, the progressive nature of the training process, to acquire within the time allocated the knowledge required to be able to sit, with a reasonable prospect of success, the second State examination in law.

56 However, although Article 39 EC does not, of itself, require a lowering of the level of knowledge required of the law of the host Member State in situations such as that which arises in the main proceedings, it should be noted that that article cannot be interpreted as depriving the Member States of the possibility of relaxing the relevant qualification requirements.

57 It follows that, where the authorities of a Member State consider a request by a national of another Member State to be admitted to serve a practical training period, such as a legal traineeship, with a view to exercising a regulated legal profession at a later date, Article 39 EC does not of itself oblige those authorities to require from the candidate, in the examination of equivalence required by Community law, merely a level of legal knowledge which is lower than that attested by the qualification required in that Member State for access to such a period of practical training. That article does not, however, prevent a flexible interpretation of such a qualification from being adopted.

58 None the less, it is important, in practice, that the possibility of partial recognition, as referred to inter alia in paragraph 52 of this judgment, should be more than merely notional.

59 In that regard, where a comparison between the qualifications of the candidates concerned and the knowledge required reveals only partial equivalence, the host Member State is not necessarily entitled to require that the same type of aptitude test be taken in every case, irrespective of the extent to which the partial knowledge established may vary among the candidates. The absence of a sufficiently detailed breakdown of the subjects covered by the comparative examination referred to in paragraph 37 above could have the effect that, in reality, a partial recognition of the qualification acquired would in practice be ruled out since the parties concerned would subsequently have to demonstrate that they had not only acquired the knowledge which is lacking, but also that which is apt to be recognised, at the required standard, in the comparative examination.

60 However, it must be pointed out that, to the extent that passing the national legal examinations, such as the first State examination, is proof that both broad and in-depth knowledge of the legal fields covered has been acquired, the requirement of a sufficient detailed breakdown of the kind referred to in the preceding paragraph must not lead to a situation whereby merely limited knowledge of certain aspects of those legal fields would be deemed to be sufficient for the interested party to be able to request partial recognition of his qualifications.

61 In the case in the main proceedings, it is the task of the referring court to determine whether the system put in place under Paragraph 112a of the DRiG, as applied by the competent national authorities, offers persons with sufficiently broad and in-depth knowledge of a significant subset of topics, which — together — are examined comparatively in accordance with Paragraph 112a(1) and (2) of the DRiG, the possibility of being exempted from the obligation to take all of the examinations listed in Paragraph 112(3) of the DRiG.

62 On that point, in response to a question put by the Court at the hearing, the German Government stated that, where a candidate has acquired, for example, knowledge of German civil law corresponding to the level required by the comparative examination referred to in Paragraph 112a(1) and (2) of the DRiG, without however being able to demonstrate the same level of knowledge of the German code of civil procedure, it would be possible for the aptitude tests provided for in Paragraph 112a(3) to relate only to German civil procedure law.

63 It should also be noted that the examination of the knowledge and skills provided for in Paragraph 112a(1) of the DRiG actually appears to be less demanding, in practice, than the first State examination. It is apparent from the documents before the Court that, unlike law graduates who have studied in Germany, candidates from another Member State are not required to take exams in the specialised subjects or to take the oral examinations.

64 Accordingly, at first sight it does not appear that, in the context of the system put in place by Paragraph 112a of the DRiG, the possibility of partial recognition of the knowledge acquired, as referred to in paragraph 52 above, is merely notional. However, it is the task of the referring court, which alone is competent to rule on the interpretation of national law, to determine whether that is the case.

65 In the light of all of the above, the answer to the third question is that Article 39 EC is to be interpreted as meaning that, where the competent authorities of a Member State consider the application of a national of another Member State to be admitted to serve a practical training period, such as a legal traineeship, with a view to exercising a regulated legal profession at a later date, that article does not of itself oblige those authorities to require from the candidate, in the examination of equivalence required by Community law, merely a level of legal knowledge which is lower that that attested by the qualification required in that Member State for access to such a period of practical training. However, Article 39 EC does not preclude a degree of flexibility as regards the qualification required. Moreover, it is important that, in practice, the possibility of

partial recognition of the knowledge attested by qualifications which the person concerned has obtained should be more than merely notional. That is a matter for the national court to determine.

Costs

66 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 (Third Chamber) hereby rules:

1. **Article 39 EC must be interpreted as meaning that the knowledge to be taken as a reference point for the purposes of assessing the equivalence of training following an application for direct admission to a legal traineeship for the legal professions, without taking the exams he would otherwise have to sit, is that attested by the qualification required in the Member State in which the candidate seeks to be admitted to serve such a legal traineeship.**

2. **Article 39 EC must be interpreted as meaning that, where the competent authorities of a Member State consider an application of a national of another Member State to be admitted to serve a practical training period, such as a legal traineeship for the legal professions in Germany, with a view to exercising a regulated legal profession at a later date, that article does not of itself oblige those authorities to require from the candidate, in the examination of equivalence required by Community law, merely a level of legal knowledge which is lower than that attested by the qualification required**

in that Member State for access to such a period of practical training. However, Article 39 EC does not preclude a degree of flexibility as regards the qualification required. Moreover it is important that, in practice, the possibility of partial recognition of the knowledge attested by qualifications which the person concerned has obtained should be more than merely notional. That is a matter for the national court to determine.

[Signatures]