JUDGMENT OF THE COURT (Fourth Chamber)

17 March 2011 *

In Joined Cases C-372/09 and C-373/09,

REFERENCES for a preliminary ruling under Article 234 EC from the Cour de cassation (France), made by decision of 10 September 2009, received at the Court on 17 September 2009, in the proceedings brought by

Josep Peñarroja Fa,

THE COURT (Fourth Chamber),

composed of J.-C. Bonichot, President of the Chamber, K. Schiemann, L. Bay Larsen (Rapporteur), C. Toader and A. Prechal, Judges,

Advocate General: P. Mengozzi,
Registrar: M.-A. Gaudissart, Head of Unit,

* Language of the case: French.

having regard to the written procedure and further to the hearing on 15 September 2010,

after considering the observations submitted on behalf of:

— Mr Peñarroja Fa, by himself,

— the French Government, by G. de Bergues, B. Messmer and A. Czubinski, acting as Agents,

— the Netherlands Government, by C. Wissels and J. Langer, acting as Agents,

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

— the European Commission, by H. Støvlbæk, I. Rogalski and C. Vrignon, acting as Agents,

— the EFTA Surveillance Authority, by X. Lewis, F. Simonetti and I. Hauger, acting as Agents,

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

gives the following

Judgment

1 These references for a preliminary ruling concern the interpretation of Articles 43 EC, 45 EC, 49 EC and 50 EC (now, respectively, Articles 49 TFEU, 51 TFEU, 56 TFEU and 57 TFEU) and 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 (OJ 2005 L 255, p. 22).

2 The references have been made in two sets of proceedings brought by Mr Peñarroja Fa, a Spanish national, concerning his enrolment as a Spanish-language translator in, respectively, the register of court experts of the Cour d'appel de Paris (Court of Appeal, Paris) and the national register of court experts.

Legal context

European Union ('EU') law

3 Article 1 of Directive 2005/36 states:

'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.'

4 Article 3 of Directive 2005/36, which is entitled 'Definitions', provides:

'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;

…'

5 Article 4 of Directive 2005/36, which concerns the 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'.

6 In Title II of Directive 2005/36, which is entitled 'Free provision of services', Article 5 provides:

'1. Without prejudice to specific provisions of Community law, as well as to Articles 6 and 7 of this Directive, Member States shall not restrict, for any reason relating to professional qualifications, the free provision of services in another Member State:

(a) if the service provider is legally established in a Member State for the purpose of pursuing the same profession there (hereinafter referred to as the Member State of establishment); and

(b) where the service provider moves, if he has pursued that profession in the Member State of establishment for at least two years during the 10 years preceding the provision of services when the profession is not regulated in that Member State. The condition requiring two years' pursuit shall not apply when either the profession or the education and training leading to the profession is regulated.

…'

National law

7 Enrolment on the national register of court experts maintained by the *Bureau* of the Cour de cassation (French Court of Cassation) and on the register of court experts maintained by each of the cours d'appel, as well as the appointment of those experts, is governed, inter alia, by the following legislation:

— Law No 71-498 of 29 June 1971 on court experts, as amended by Law No 2004-130 of 11 February 2004 ('Law No 71-498');

— Decree No 2004-1463 of 23 December 2004 on court experts, as amended by Decree No 2007-119, of 19 July 2007 ('Decree No 2004-1463');

— Article 157 of the Code of Criminal Procedure.

Law No 71-498

8 Article 1 of Law No 71-498 states:

'Subject only to restrictions provided by law or regulation, judges may, for the purposes of making findings or of securing the benefit of consultation or expert opinion, appoint a person whose name is entered in one of the registers established pursuant to Article 2. Judges may, where appropriate, appoint any other person of their choice.'

9 Under Article 2 of Law No 71-498:

'I. The following have been established for the guidance of the judges:

1. A national register of court experts, maintained by the *Bureau* of the Cour de cassation;

2. A register of court experts maintained by each cour d'appel.

II. Initial enrolment as a court expert in the register maintained by the cour d'appel is made, under a particular heading, on a probationary basis for a period of two years.

Upon expiry of that probationary period and submission of a new application, the expert may be re-enrolled for a period of five years, following a reasoned opinion issued by a committee composed of representatives of the courts and of experts. To that end, an assessment shall be made of the professional experience of the interested party and of his knowledge of the guiding principles governing proceedings and the procedural rules applicable to the measures of inquiry entrusted to specialists.

Subsequent re-enrolments, for a period of five years, shall be subject to examination of a new application in the terms set out in the preceding paragraph.

III. No person may be entered in the national register of experts unless he has been enrolled in a register maintained by a cour d'appel for three consecutive years. Enrolment in the national register shall be for a period of seven years and re-enrolment, also for a period of seven years, shall be subject to examination of a new application.

…'

Decree No 2004-1463

10 As regards the general conditions for enrolment in a register of court experts, Article 2 of Decree No 2004-1463 provides:

'A natural person may not be enrolled or re-enrolled in a register of experts unless he fulfils the following conditions:

(1) he has not committed acts contrary to honour, probity or morality;

(2) he has not committed acts giving rise to the disciplinary or administrative penalties of removal, suspension, termination, withdrawal of approval or withdrawal of authorisation;

(3) he has never been declared culpably bankrupt or received another penalty pursuant to Title II of Book VI of the Code of Commerce;

(4) he pursues or has pursued for a sufficient period a profession or activity related to his field of specialism;

(5) he pursues or has pursued that profession or activity in conditions such that he may be regarded as sufficiently qualified;

…'

11 As regards the procedure for enrolment in a register of court experts maintained by a cour d'appel, Article 6 of Decree No 2004-1463 provides:

'…

The application must be accompanied by all appropriate information, in particular the following:

…

(2) details of the applicant's academic qualifications, of his scientific, technical and professional work, the various duties which he has discharged and the nature of all the professional activities that he pursues, together, where appropriate, with the name and address of his employers;

(3) proof of the applicant's qualification in his field of specialism;

…'

12 As regards the procedure for re-enrolment in a register of court experts maintained by a cour d'appel, Article 10 of Decree No 2004-1463 provides:

'…

The application must be accompanied by all documents which enable the following to be assessed:

(1) the experience of the candidate, both in his field of specialism and in the performance of the duties of expert since his last enrolment;

(2) the knowledge that he has acquired of the guiding principles governing proceedings and the procedural rules applicable to the measures of inquiry entrusted to experts, as well as training that he has undertaken in those areas.'

13 As regards the procedure for enrolment and re-enrolment in the national register of court experts maintained by the Cour de cassation, Article 17 of Decree 2004-1463 provides:

'…

The application shall be examined by the Procureur général [(principal public prosecutor)]. He shall determine whether the condition relating to the period of enrolment in a register of the cour d'appel, set out in paragraph III of Article 2 of Law [No 71-498], is fulfilled as at 1 January of the year following that in which the application was submitted. He shall obtain the opinion of the First President and of the Procureur général of the cour d'appel where the interested party is enrolled and shall forward the applications, together with his opinion, to the *Bureau* of the Cour de cassation.'

14 Article 20 of Decree No 2004-1463 provides:

'Decisions enrolling or re-enrolling, or refusing enrolment or re-enrolment, taken by the authority responsible for maintaining the registers may give rise to proceedings before the Cour de cassation.'

Code of Criminal Procedure (Code de procédure pénale)

15 As regards the appointment of court experts in criminal matters, Article 157 of the Code of Criminal Procedure states:

'Experts shall be chosen from among the natural or legal persons entered in the national register maintained by the Cour de cassation, or in one of the registers maintained by the cours d'appel, in accordance with the conditions laid down in Law No 71-498 …

In exceptional cases, the courts may, by reasoned decision, choose experts who are not entered in any of those registers.'

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

16 Mr Peñarroja Fa lives in Barcelona and, for over twenty years, he has pursued the profession of accredited expert translator in Catalonia. After passing a competitive public examination, he was officially appointed to that position by the Spanish Ministry of Foreign Affairs and the Catalonian Government. He translates French into Spanish and Spanish into French.

17 Mr Peñarroja Fa applied for initial enrolment, for a period of two years, in the register of court experts of the Cour d'appel de Paris, as a Spanish-language translator. His application was rejected by a decision of the General Assembly (Assemblée Générale des magistrats du siège) of the Cour d'appel de Paris of 12 November 2008.

18 At the same time, Mr Peñarroja Fa applied for enrolment as an expert Spanish-language translator in the national register of court experts maintained by the *Bureau* of the Cour de cassation. His application was rejected by decision of the *Bureau* of 8 December 2008.

19 In accordance with Decree No 2004-1463, Mr Peñarroja Fa challenged both of those decisions before the Cour de Cassation.

20 It is in that context that the Cour de cassation decided to stay the proceedings in Case C-372/09 and to refer the following questions to the Court for a preliminary ruling:

'(1) Must Article 50 [EC] be interpreted as applying to the duties entrusted to a professional, acting as an expert, in a dispute brought before the national courts, and appointed by the court seised of the dispute …?

(2) Must the connection with the exercise of official authority, referred to in the [first] paragraph … of Article 45 [EC], be interpreted as applying to the duties of an expert appointed by a French court, as governed by the French Codes of Civil and Criminal Procedure, and by Law No 71-198 … and Decree No 2004-1463 …?

(3) Must Articles 43 [EC] and 49 [EC] be interpreted as precluding legislation, such as that resulting from Law No 71-198 … and Decree No 2004-1463 …, which makes enrolment in a register maintained by a cour d'appel subject to conditions relating to age, competence, character and independence, and which does not take into account the fact that the applicant has already been recognised as an expert by the courts of his [Member] State of origin or introduce other arrangements for assessing his competence?'

21 In Case C-373/09, the Cour de cassation referred, in addition to two questions framed in terms identical to those of the first two questions referred in Case C-372/09, the following questions:

'(3) Must Articles 43 [EC] and 49 [EC] be interpreted as precluding legislation, such as that resulting from Law No 71-498 … and Decree No 2004-1463 …, which restricts enrolment in the national register and the title of expert approved by the Cour de cassation to professionals who have been enrolled for at least three years in a register maintained by a French cour d'appel?

(4) Must Article 3(1)(a) of Directive 2005/36 … be interpreted as covering the performance of the duties of court expert under the title of "court expert approved by the Cour de cassation" in accordance with the detailed rules laid down by Law No 71-498 … and Decree No 2004-1463 …?'

22 By order of the President of the Court of 16 October 2009, the two cases were joined for the purposes of the written and oral procedure and the judgment.

Consideration of the questions referred

Preliminary observations

23 According to the terms in which the national court has framed its questions, they relate to all types of court expert and in consequence they do not, strictly speaking, relate only to court appointed translators.

24 According to the orders for reference, however, the disputes in the main proceedings concern the enrolment of Mr Peñarroja Fa as a translator in two registers of court experts. It should also be noted that, while the documents before the Court disclose the content of the duties entrusted to experts appointed as translators by the courts in the context of proceedings before those courts and the conditions in accordance with which those duties must be discharged, the information provided in relation to the other types of court expert is not sufficient to enable the Court to make an informed examination of the questions in relation to them.

25 Accordingly, the questions must be treated as relating exclusively to the duties of a translator who has been appointed as a court expert ('court expert translator').

The fourth question in Case C-373/09

26 By the fourth question in Case C-373/09, which it is appropriate to examine first, the national court asks, in essence, whether 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 covered by the definition of 'regulated profession' set out in Article 3(1)(a) of Directive 2005/36.

27 It should first of all be pointed out that the definition of 'regulated profession' is a matter of EU law (see Case C-586/08 *Rubino* [2009] ECR I-12013, paragraph 23 and the case-law cited).

28 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'.

29 In that regard, it should be noted that Law No 71-498 and Decree No 2004-163 are designed, with a view to protecting litigants and to ensuring the sound administration of justice, to enable the establishment of a register of professionals in various fields of expertise, to which the courts can turn for expert opinions or the performance of other duties in the context of the various procedures relating to cases before them.

30 Thus, the sole purpose of those provisions is to facilitate recourse to the services of professionals, whether members of regulated professions or not, and not to lay down rules governing recognition of a particular qualification, a matter which does not fall within the competence of the cours d'appel or of the *Bureau* of the Cour de cassation (see, by analogy, Case C-285/01 *Burbaud* [2003] ECR I-8219, paragraph 91). Moreover, those courts may lawfully have recourse to experts who are not entered in those registers. Accordingly, those provisions do not, by themselves, establish a 'regulated profession'.

31 Moreover, the fact that persons are moved to provide translation services for French national courts under the title of 'expert approved by the cour d'appel of …' or 'expert authorised by the Cour de cassation' does not, in the light of the second part of the first sentence of Article 3(1)(a) of Directive 2005/36, weaken that finding.

32 Consequently, the answer to the fourth question in Case C-373/09 is that 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.

The first question in each of the two cases

33 By its first question in each of the two cases, the national court asks in essence whether, in cases where the legal position is as defined by the French Codes of Civil

and Criminal Procedure, Law No 71-498 and Decree No 2004-1463, the duty which is entrusted to a professional who has been appointed by a national court as a court expert translator for the purposes of the dispute before it is covered by the concept of 'services' as used in Article 50 EC.

34 It should first be noted that, according to the documents before the Court, the role of court expert translators at issue in the main proceedings consists, upon appointment by judges in specific cases, in providing to a high standard an impartial translation from one language to another.

35 In that regard, it should be noted that, under the first paragraph of Article 50 EC, activities are to be regarded as 'services' where they are normally provided for remuneration, in so far as they are not governed by the provisions relating to the free movement of goods or capital, or freedom of movement for persons. The second paragraph of Article 50 sets out, by way of example, various activities which are covered by the concept of services, including the activities of the liberal professions.

36 The Cour de cassation states that services provided by court experts are governed by specific rules, according to which, inter alia, a court expert may act only upon appointment by judges, to perform duties as defined by those judges, from the terms of which he may not depart, and for which the remuneration is set by the court.

37 In that regard, it should be borne in mind that, according to established case-law, the essential characteristic of remuneration lies in the fact that it constitutes consideration for the service in question and is normally agreed upon between the provider and the recipient of the service (see, inter alia, Case C-355/00 *Freskot* [2003] ECR I-5263,

paragraphs 54 and 55, and Case C-169/08 *Presidente del Consiglio dei Ministri* [2009] ECR I-10821, paragraph 23 and the case-law cited).

38 Accordingly, the sole fact that the remuneration is fixed in accordance with a rate decided by the public authority, as is the case for court experts in France, is of no consequence as regards the categorisation of the work which those experts are called upon to perform as the provision of services (see, by analogy, Case C-157/99 *Smits and Peerbooms* [2001] ECR I-5473, paragraph 56).

39 Furthermore, the fact that a court expert acts only upon appointment by judges, to perform duties as defined by those judges, does not fundamentally distinguish that role from traditional contractual relationships in relation to the provision of services. It is not unusual for the provider and the recipient of a given service to decide, in the contract upon which their relationship is based, to entrust one of the parties to the contract with certain decision-making powers, while circumscribing those powers through the detailed requirements concerning the services to be provided. In that context, the expert applying for enrolment in a register of court experts must be regarded as having accepted the specific rules governing the services of court experts, such as the procedural rules relating to the powers of the judges, who define by reference to the specific case the material to be translated and the specific conditions in accordance with which the translation to be provided by the court expert translator must be undertaken.

40 In the light of the foregoing, the answer to the first question in each of the two cases is that 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).

The second question in each of the two cases

41 By its second question in each of the two cases, the Cour de Cassation asks in essence whether, in cases where the legal position is as defined by the French Codes of Civil and Criminal Procedure, Law No 71-498 and Decree No 2004-1463, the duty which is entrusted to a professional who has been appointed as a court expert translator by a national court for the purposes of a dispute before it is covered by the term 'activities connected with the exercise of official authority' as used in the first paragraph of Article 45 EC. The national court specifies, in particular, that the court expert derives his powers from the judges; that his involvement in the proceedings is intended to assist the judges in taking their decision; and that the expert's opinion may influence that decision, even though the judges are not obliged to follow the expert's views. The Cour de Cassation adds that the court expert must comply with the procedural principles prescribed by law.

42 In that regard, it should be borne in mind that the Court has consistently held that the first paragraph of Article 45 EC applies only to activities which in themselves involve a direct and specific connection with the exercise of official authority (see, to that effect, inter alia, Case C-2/74 *Reyners* [1974] ECR 631, paragraphs 45 and 54).

43 In the case before the referring court, it is apparent from the documents placed before the Court that the duty of a court expert translator, at issue in the main proceedings, is to provide to a high standard an impartial translation from one language to another, not to give an opinion on the substance of the case.

44 The translations carried out by such an expert are therefore merely ancillary steps and leave the discretion of judicial authority and the free exercise of judicial power intact, so that – as submitted by Mr Peñarroja Fa, the French Government, the European Commission and the EFTA Surveillance Authority – such translation services cannot be regarded as activities connected with the exercise of official authority (see, by analogy, *Reyners*, paragraphs 52 and 53, and Case C-306/89 *Commission* v *Greece* [1991] ECR I-5863, paragraph 7).

45 Consequently, the answer to the second question in each of the two cases is that 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).

The third question in Case C-372/09

46 By its third question in Case C-372/09, the Cour de Cassation asks in essence whether Articles 43 EC and 49 EC preclude national legislation, under which enrolment in a register of court expert translators maintained by a cour d'appel is subject to conditions relating to age, competence, character and independence, but which does not require the national authorities to take account, when assessing the applicant's professional competence, the qualifications obtained by the applicant in another Member State and which does not introduce arrangements for review of the assessments made by those authorities in that regard.

47 It should first be noted that, according to the information provided, Mr Peñarroja Fa resides in Barcelona, pursues in Catalonia the profession of accredited expert translator and wishes to be enrolled as a translator, in France, in the two registers of court experts at issue in the main proceedings.

48 Since it is not apparent from the documents before the Court whether Mr Peñarroja Fa intends to establish himself on French territory, the question referred to the Court must be examined only in the light of the provisions of the EC Treaty which apply to the freedom to provide services.

49 The French Government argues that national legislation such as that at issue in the main proceedings, concerning both the register of court experts maintained by each cour d'appel and the national register of court experts, does not constitute a restriction on the freedom to provide court expertise services, inter alia because, pursuant to Article 1 of Law No 71-498, judges may as a general rule appoint any person of their choice who is not entered in the registers of court experts.

50 In that context, it should be noted that Article 49 EC requires not only the elimination of all discrimination on grounds of nationality against providers of services who are established in another Member State, but also the abolition of any restriction – even if it applies to national providers of services and to those of other Member States alike – which is liable to prohibit, to impede or to render less advantageous the activities of a provider of services established in another Member State in which he lawfully provides similar services (see, to that effect, inter alia, Case C-58/98 *Corsten* [2000] ECR I-7919, paragraph 33, and Case C-42/07 *Liga Portuguesa de Futebol Profissional and Bwin International* [2009] ECR I-7633, paragraph 51 and the case-law cited).

51 In that regard, it should be noted that – as was pointed out by the Cour de cassation – even though, under national law, registers of court experts are established 'for the guidance of the judges', they are intended to make it possible for the courts to ensure that the professionals who assist them have the skills and other attributes essential to the quality and efficiency of the public administration of justice.

52 In the light of that objective, it must be held that the establishment of registers of court experts such as those at issue in the main proceedings is likely to influence the choice made by the courts, that is to say, they will tend to appoint experts enrolled in such registers, whom they can assume to have the attributes necessary for assisting them.

53 In consequence, it must be held that, even though there is no formal obligation requiring the courts to appoint only those experts who are enrolled in those registers, the establishment of the registers constitutes a restriction of the freedom to provide the services of a court expert translator (see, by analogy, Case 249/81 *Commission* v *Ireland* [1982] ECR 4005, paragraph 28).

54 It is also settled law that, even in the absence of harmonisation in this area, such a restriction of the freedom to provide services may, where it is applicable to all individuals or undertakings carrying on business in the territory of the host Member State, be justified by an overriding reason in the public interest to the extent that it is appropriate for securing the attainment of the objective which it pursues and does not go beyond what is necessary in order to attain it, and in so far as that interest is not safeguarded by the rules to which such a service provider is subject in the Member State of establishment (see, to that effect, inter alia, Joined Cases C-369/96 and C-376/96 *Arblade and Others* [1999] ECR I-8453, paragraphs 34 and 35 and the case-law cited, and Case C-439/99 *Commission* v *Italy* [2002] ECR I-305, paragraph 23 and the case-law cited).

55 Among those overriding reasons in the public interest are the protection of litigants and the sound administration of justice.

56 While, admittedly, the conditions laid down in a provision such as Article 2 of Decree No 2004-1463 are likely to ensure the attainment of those objectives and, accordingly, to constitute a permissible restriction of the freedom to provide services, that restriction must not go beyond what is necessary in order to attain those objectives.

57 In that regard, although the protection of litigants and the sound administration of justice may justify the establishment of a register of experts who, as was stated in paragraph 52 above, will be those most often called upon in practice, that register must nevertheless be established on the basis of objective and non-discriminatory factors.

58 It is settled law that national authorities must ensure, inter alia, that qualifications obtained in another Member State are accorded their proper value and duly taken into account (see, inter alia, Case C-340/89 *Vlassopoulou* [1991] ECR I-2357, paragraph 16; Case C-31/00 *Dreessen* [2002] ECR I-663, paragraphs 23 and 24; and *Rubino*, paragraph 34).

59 In the case before the referring court, the French Government states that it is current practice, in the assessment of applications for enrolment in the register of court experts at issue, to take into account the experience of candidates who serve, or have served, as court experts for a foreign court.

60 However, it emerges from the orders for reference that the Cour de cassation has consistently held that there is no requirement under any statutory or legislative provision to state the reasons for a decision refusing initial enrolment in those registers; that the procedure for enrolment does not involve any act which might come within the scope of the French procedure for accessing administrative documents; and that, when hearing an action contesting a decision refusing enrolment, the Cour de cassation merely confirms that the proper procedure was followed for consideration of the application and, in consequence, does not address issues such as the professional attributes of the candidate.

61 Consequently, it is clear that decisions refusing enrolment of court expert translators in the registers of experts in circumstances such as those of the case before the referring court are not open to effective review by the courts as regards the taking into account of the experience and qualifications obtained and recognised in other Member States.

62 In that regard, it should be noted that the consideration and taking into account of the qualifications obtained in other Member States must be properly carried out by the national authorities in accordance with a procedure which complies with the requirements of EU law concerning the effective protection of the fundamental rights conferred on EU citizens and, in particular, with Article 47 of the Charter of Fundamental Rights of the European Union.

63 It follows that all decisions must be open to judicial scrutiny enabling their legality under EU law to be reviewed. In order to ensure that such review by the courts is effective, the interested party must be able to obtain the reasons for the decision taken in relation to him, thus enabling that interested party to defend himself under the best possible conditions and to decide, with full knowledge of the relevant facts, whether it is worth applying to the courts. Consequently, the competent national authority is under a duty to inform that interested party of the reasons upon which its refusal is based, either in the decision itself or in a subsequent communication made at the

request of that party (see Case 222/86 *Heylens and Others* [1987] ECR 4097, paragraphs 15 and 17, and *Vlassopoulou*, paragraph 22).

64 Consequently, in so far as national legislation which constitutes a restriction on the freedom to provide services does not establish mechanisms to ensure effective judicial scrutiny of the taking into account at their proper value of the qualifications of a court expert translator recognised by courts in other Member States, that legislation does not comply with the requirements of EU law.

65 The answer to the third question in Case C-372/09 is, therefore, that 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 EU law that the qualifications obtained and recognised in other Member States must have been properly taken into account.

The third question in Case C-373/09

66 By its third question in Case C-373/09, the national court asks, in essence, whether, taken on its own, a requirement such as that laid down in Article 2 of Law No 71-498, under which no person may be enrolled in a national register of court experts unless he has been enrolled in a register maintained by a cour d'appel for three consecutive years, is contrary to the freedom of establishment and the freedom to provide services.

67 As a preliminary point, it should be noted that, for the reasons referred to in paragraph 48 above, that question must be considered in relation only to the provisions of the Treaty which apply with regard to the freedom to provide services.

68 It follows from the considerations set out in paragraphs 49 to 53 above that the requirement laid down in Law No 71-498 and Decree No 2004-1463 of having been enrolled in registers of court experts constitutes a restriction on the freedom to provide the services of a court expert translator.

69 It should also be noted that a precondition such as that of having been enrolled for three consecutive years in a register maintained by a cour d'appel is likely to ensure the attainment of the objectives relating to the protection of litigants involved in proceedings before the Cour de cassation and to the sound administration of justice and may, therefore, constitute a permissible restriction on the freedom to provide services.

70 It is necessary, however, to determine whether that condition, which applies to national service providers and those from other Member States alike, goes beyond what is necessary to ensure the attainment of those objectives.

71 In that regard, the French Government argues, first, that such a condition makes it possible to ensure that an expert has acquired a good knowledge of the court procedures of the Member State concerned, which can differ considerably from court procedures in other Member States and knowledge of which can only be acquired through experience. The French Government adds that, since the duties of court experts are specific to a particular case and since many months or years may pass

between successive assignments, the requirement of having been enrolled for three consecutive years in a register of court experts is not excessive.

72 It should be pointed out that, while requirements relating to the calibre of any professional participating in a court procedure are laid down in order to ensure the protection of litigants and the sound administration of justice, that is true *a fortiori* in the case of professionals who are participating in proceedings before the supreme court of a Member State, such as the French Cour de cassation.

73 In the case of translation services which are provided in the context of such proceedings, it is not disproportionate, in order to attain the objectives of protecting litigants and ensuring the sound administration of justice, to provide that the court expert translator must already possess some practical experience in performing legal translation duties and some knowledge of the judicial system of the Member State of the court concerned.

74 In view of the specific nature of the duties of court expert translators who are enrolled in a register maintained by a cour d'appel, and the fact that many months or years may pass between successive assignments, it is appropriate to allow the Member State concerned a measure of discretion as to the period considered necessary to achieve the above objectives. Accordingly, the requirement that the translator must have been enrolled in a register of court experts for three consecutive years does not, in principle, go beyond what is necessary to attain those objectives.

75 However, the application of such a rule to a court expert translator from another Member State who has already performed duties for the courts of that Member State or for the courts of other Member States – and, in particular, for the higher courts of those Member States – is disproportionate in relation to the principle set out in paragraph 58 above.

76 In a situation such as that of the case before the referring court, EU law requires the authority to which an application has been made for enrolment in a register such as the national register of court experts to take into consideration the qualifications obtained by the applicant in other Member States, in order to determine whether – and, if so, to what extent – those qualifications might attest to skills equivalent to those normally expected of a person who has been enrolled for three consecutive years on a register maintained by a cour d'appel (see, by analogy, *Vlassopoulou*, paragraph 16).

77 In that regard, it should be noted that – as has already been stated in paragraph 63 above – all decisions must be open to judicial scrutiny through which their legality under EU law can be reviewed and the interested party must be able to obtain knowledge of the reasons for the decisions taken in his regard.

78 In the light of the foregoing considerations, the answer to the third question in Case C-373/09 is that Article 49 EC (now Article 56 TFEU) precludes a requirement, such as that laid down in Article 2 of Law No 71-498, 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.

Costs

79 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 (Fourth Chamber) hereby rules:

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.**

[Signatures]