

AG Campos Sánchez-Bordona on ex officio examination of jurisdiction under the Succession Regulation in the case V A and Z A C-645/20

Where the habitual residence of the deceased at the time of death is not located in any of the Member States, the court of a Member State which finds that the deceased had the nationality of that State and held assets within its territory must, of its own motion, examine whether it has jurisdiction under Article 10 of the Succession Regulation?

This question lies at the heart of the request for a preliminary ruling lodged by French Cour de Cassation before the Court of Justice in the case V A and Z A, C-645/20. This is also the question that AG Campos Sánchez-Bordona thoroughly analyses in his Opinion presented this Thursday.

On the Opinion

As a reminder, under the general rule of jurisdiction set out in Article 4 of the Succession Regulation, the courts of the Member State in which the deceased had his habitual residence at the time of death have jurisdiction to rule on the succession as a whole.

In a subsidiary manner, under Article 10(1)(a) of the Regulation, where the habitual residence of the deceased at the time of death is not located in a Member State, the courts of a Member State in which assets of the estate are located shall nevertheless have jurisdiction to rule on the succession as a whole in so far as the deceased had the nationality of that Member State at the time of death.

These provisions are followed by Article 15. It states that where a court of a

Member State is seised of a succession matter over which it has no jurisdiction under this Regulation, it shall declare of its own motion that it has no jurisdiction.

According to AG Campos Sánchez-Bordona, the outcome of the clash between these provisions leads to an affirmative answer to the preliminary question:

Where the habitual residence of the deceased at the time of death is not located in any of the Member States, a court of a Member State seised of a succession matter must, of its own motion, declare that it has jurisdiction to rule on the succession as a whole when, in the light of the uncontested facts alleged by the parties (“au vu des faits allégués par les parties et non contestés”), the deceased had the nationality of that State and held assets in it (point 94, please keep in mind that this is not an official translation though).

... and on the sidenote

It seems noteworthy that the preliminary question refers to a situation where a court “finds” that the deceased had the nationality of its Member State and held assets in it. According to the Opinion, such findings must be made “in the light of the uncontested facts alleged by the parties” (see, however, the remark made above concerning the translation).

Why the nuance ?

It seems that Advocate General fine-tunes the scope of his analysis of the preliminary question to perfectly reflect the circumstances of the case pending before the French courts (points 37, 38 and 73). It might be a question of debate whether, simultaneously, his supplementary precision relating to “uncontested” and “alleged” facts may be used in order to delineate, in the abstract (what points 82-87 and 91 could maybe allow for), the (highly unclear and varied under national laws - see point 36) modalities of ex officio examination of jurisdiction under the Succession Regulation and as such be of relevance beyond the scope of the present case.

The Opinion can be consulted here (no English version yet).