# CJEU on ex officio examination of jurisdiction under the Succession Regulation, case VA and ZA, C-645/20

Where the habitual residence of the deceased at the time of death is not located in a Member State – or, more precisely – not located in a Member States bound by the Succession Regulation, 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(1)(a) of the Succession Regulation? This is the question that the Court of Justice addresses in its judgment of 7 April 2022, handed down in the case VA and ZA, C-645/20.

## Context of the preliminary question

Under Article 10(1)(a) of the Regulation, which interpretation was sought by the referring court, where the habitual residence of the deceased at the time of death is not located in a Member State (see Article 4 of the Regulation), 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.

Back in December 2021, we reported about the Opinion presented by AG Campos Sánchez-Bordona in that case. As a reminder, after having thoroughly examined the preliminary question, Advocate General proposed to answer it in the following manner:

> *"Article 10(1)(a) of [the Succession Regulation] must be interpreted as meaning that, in the case where the deceased did not have his last habitual residence in any Member State of the European Union [footnote 2 of the Opinion clarifies that the notion of 'Member State' refers to a Member State bound by the Regulation], the court of a Member State in which a dispute in a matter of succession has arisen must declare of its own motion that it has jurisdiction to*

*settle the succession as a whole if, in the light of facts alleged by the parties which are not in dispute, the deceased was a national of that State at the time of his death and was the owner of assets located there.”*

**Court’s judgment and its findings**

In line with the reasoning developed by AG Campos Sánchez-Bordona, the Court answers the preliminary question in the affirmative. According to the Court:

*‘a court of a Member State must raise of its own motion its jurisdiction under the rule of subsidiary jurisdiction [of Article 10(1)(a) of the Succession Regulation] where, having been seised on the basis of the rule of general jurisdiction of established in Article 4 [of the Regulation], it finds that it has no jurisdiction under that latter provision’.*

Before reaching that conclusion, the Court indicates that the referring court found that the deceased – who passed away on 3 September 2015, in France – had his last habitual residence in the United Kingdom. The Court then goes on to note that, at that date, the United Kingdom, even though it was an EU Member State, was neither bound by the Succession Regulation nor, as a result, subject to its application. Thus, Article 10(1)(a) of the Regulation is of relevance, as it applies ‘where the habitual residence of the deceased at the time of death is not located in a Member State’ (paragraph 25). Interestingly, the Court does not seem to suggest that the interpretation according to which the notion of ‘Member State’ equals to ‘Member State bound by the Succession Regulation’ is an overarching understanding that applies universally across the Regulation (for discussion on that issue see J. Basedow, “Member States” and “Third States” in the Succession Regulation, available here). The cautious wording of those findings may seem to suggest the contrary: each ‘occurrence’ of that notion or reference to it in the Regulation must be individually examined. However, within the context of the case presented here, the Court did not need to reach any general conclusion as to the understanding of that notion. Therefore, it may be premature to give a definitive opinion on this matter solely on the basis of the judgment and its wording.

On the face of it, the answer provided by the Court does not contain the nuance found in the answer proposed by Advocate General, who argued in favour of ex officio application 'if, in the light of facts alleged by the parties which are not in dispute' other two requirements from Article 10(1)(a) were met (nationality of the deceased and location of assets; see my previous post). That being said, the Court makes a clear reference to the point of the Opinion where this nuance has been introduced by Advocate General (paragraph 42), with some addition remarks reiterating his point (paragraph 43): in essence, the court seised is not obliged to look actively for a factual basis on which rule on to rule on is jurisdiction; however, by taking into consideration uncontested facts, court is required to examine the jurisdiction it may have in the light of all the information available.

Interestingly, to reach its ultimate conclusion in favour of ex officio application of Article 10(1)(a) of the Regulation, among other arguments, the Court echoes the judgment in Oberle and observes that the principle of a single estate underpins the rule of jurisdiction of Article 10(1)(a) "inasmuch as that Article states that that rule is to determine the jurisdiction of the courts of the Member States to rule 'on the succession as a whole'" (paragraph 37).

The judgment can be found here.