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In case no. 6460-23, the **Swedish Tax Agency** (Appellant) v. **AA** (Respondent), the Supreme Administrative Court delivered the following judgment on 2 October 2024.

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## **RULING OF THE SUPREME ADMINISTRATIVE COURT**

The Supreme Administrative Court overturns the ruling of the administrative court of appeal and affirms the ruling of the administrative court.

## **BACKGROUND**

1. A person who is missing and may be feared dead may be declared deceased following an application by a relative. The procedure for a declaration of death and how close in time to a disappearance death may be declared depends, *inter alia*, on the circumstances surrounding the disappearance. The declaration of death may take place immediately when it is established that the person who is missing is dead. If this is not the case, the declaration of death may take place only after the Swedish Tax Agency has issued a public notice in the matter which, in certain situations specifically described in law, may take place either immediately in conjunction with the disappearance or not earlier than one year following the disappearance. In other situations, a declaration of death may be considered not earlier than five years following the disappearance. This case deals with a declaration of death following the five-year period.
2. In 2022, AA applied for a declaration of death regarding his father, BB. He stated that the father travelled to Iraq on a business trip some time in 2005 or 2006 and had not been heard from since July or August 2006. According to the application, a relative in Iraq told the family that BB, shortly thereafter, was captured by a militia group and killed. He left behind his wife and two minor children in Sweden, including AA. The disappearance was reported to the Ministry of

Foreign Affairs which, through the Swedish Embassy and Iraqi authorities, made attempts to locate BB but without success.

3. The Swedish Tax Agency rejected the application with the following explanation. The mere fact that relatives cannot make contact with a relative does not mean that the person is missing within the meaning referred to in the provisions regarding declaration of death. It is unclear what has happened to BB. In the absence of further documentation and information, it may not be assumed with reasonable certainty that BB is missing and may be feared dead.
4. AA appealed to the Administrative Court in Stockholm which rejected the appeal. The administrative court stated that a long period of time had elapsed since BB was reported missing and that there was no reason to question that he had not been heard from since then. The requirements for it to be considered clarified that a person is missing and died are, however, quite stringent. Notwithstanding intensive attempts to obtain information via Swedish and Iraqi authorities, there is no further information which can bring clarity to the fate of BB. According to the administrative court, it could not be deemed to have been established with sufficient weight that he is missing and may be feared dead.
5. AA appealed further to the Administrative Court of Appeal in Stockholm which initially stated that, as regards a declaration of death, it may be deemed sufficient that it is made probable that someone who is missing is dead. The administrative court of appeal thereafter observed that, at the time of the examination, 17 years had elapsed since BB was last heard from and was reported missing. Notwithstanding that the Ministry of Foreign Affairs, together with the Swedish Embassy in Baghdad and Iraqi authorities, had attempted for some years to obtain clarity in the disappearance, no information regarding the whereabouts of BB have been found and there are no indications that he is alive. According to the court, furthermore, there were no circumstances which gave reason to believe that BB has voluntarily disappeared. Against this background, the administrative court of appeal determined that BB may be deemed missing and may be feared dead in the

sense referred to in the provisions regarding a declaration of death. The issue of a death declaration could therefore be tried and the case was referred back to the Swedish Tax Agency for further processing.

### **CLAIMS, ETC.**

6. *The Swedish Tax Agency* claims that the judgment of the administrative court of appeal is to be overturned and the judgment of the administrative court is to be affirmed.
7. AA is of the opinion that the appeal is to be rejected.

### **REASONS FOR THE RULING**

#### **The question in the Supreme Administrative Court**

8. The question is under which circumstances a person may be declared dead pursuant to sections 1 and 4 of the Declaration of Death Act (2005:130).

#### **Legislation, etc.**

9. Section 1 of the Declaration of Death Act states that, in the event anyone who is missing may be feared dead, he or she may be declared dead according to the act.
10. According to section 2, the missing person may be declared dead immediately if it is established that he or she is dead.
11. Section 3, first paragraph states that where it is not established that the missing person is dead but, taking into account the circumstances surrounding the disappearance and what is otherwise known, there is a high degree of probability that he or she is dead, the question regarding a declaration of death may be considered not earlier than one year following the disappearance. The second paragraph states that where the disappearance has taken place in conjunction with

a natural disaster or similar circumstances and there is a high degree of probability that the missing person is dead, the question regarding a declaration of death in accordance with the first paragraph may be considered immediately.

12. According to section 4, in cases other than those referred to in sections 2 and 3, the question of a declaration of death may be considered not earlier than five years following the disappearance.
13. According to section 6, the Swedish Tax Agency is to obtain statements from, *inter alia*, the spouse and closest relatives of the missing person in the absence of special reasons not to do so. It follows from section 7 that the Swedish Tax Agency, in the cases referred to in sections 3 and 4, is to issue a public notice with specific content prior to making a decision regarding a declaration of death.

#### **The Court's assessment**

*What is required for a declaration of death in accordance with sections 1 and 4 of the Declaration of Death Act?*

14. Pursuant to section 1 of the Declaration of Death Act, the basic condition for someone to be declared dead is that the person in question is missing and may be feared dead. Sections 2–4 contain provisions regarding the evidentiary requirements and periods of time applicable in order for a declaration of death to be able to be issued. In the event none of the situations set forth in sections 2 and 3 are present, the question of a declaration of death may, according to section 4, be considered not earlier than five years following the disappearance.
15. The periods of time for declarations of death in sections 2 and 3 are significantly shorter than those set forth in section 4. In order for the periods of time in sections 2 and 3 to be applicable, it is necessary that it has been established that the missing person is dead or that this may be established with a very high or high degree of probability. In those cases covered by section 4, no specific evidentiary

requirements are presented but, rather, in such cases, only the basic condition in section 1 applies according to which the person is missing and may be feared dead.

16. The preparatory works state that the provisions of sections 2 and 3 may not be applied where a person has disappeared in the absence of any indication of what has occurred. The same applies where there exists some investigation regarding the disappearance but, taking into account the evidentiary requirements enumerated in those provisions, the evidence is not sufficiently strong. For this reason, according to the preparatory works, there must be a rule regarding a declaration of death which becomes applicable in those cases which are not covered by the other provisions. In addition, there is a discussion of which period of time is to then apply. In such context, it is stated that the previously applicable period of ten years has its origin in an era during which society's conditions were entirely different from those of today. It is also emphasized that it is now considerably easier to search for missing persons and more difficult to emigrate to another country or change identity without the knowledge of the authorities. Against this background, it was opined that the applicable ten-year period should be halved (Government Bill 2004/05:88, p. 19).
17. According to the Supreme Administrative Court, both the wording of the legislation and the preparatory works suggest that it shall be possible to declare someone dead pursuant to sections 1 and 4 of the Declaration of Death Act even when the circumstances surrounding the disappearance and what has subsequently happened to the missing person are unclear. In such cases, the interest in avoiding inaccurate declarations of death – instead of the application of an enhanced evidentiary requirement – is satisfied by the application of a longer period. According to the Supreme Administrative Court, the provisions are to be understood such that the issue of a declaration of death may be tried when a person has been missing for five years where, taking into account the circumstances, it cannot be reasonably assumed that such person is alive.

18. In order to avoid to the extent possible that declarations of death occur inaccurately, this assessment must be based, however, on a robust investigation. The applicant must therefore provide information regarding the disappearance itself in which any investigations on the part of public authorities may be of particular weight in contributing to the picture of what happened to the missing person. In addition, information regarding the missing person's work, finances, family circumstances, life situation and wellbeing otherwise at the time of the disappearance may be of interest since such information may provide guidance in the assessment of whether there may be reasons for the person in question to stay away. In the determination, what is known about the missing person following the time of disappearance is also relevant, e.g. whether there is information which suggests that the missing person was subsequently alive or, the opposite, that he or she may have died. To the extent possible, the applicant is to submit documentation which supports the adduced information.
19. In summary, all reasonable attempts to determine what has happened to the person must have been pursued and been fruitless. However, if such is the case, the fact that it is uncertain what has occurred does not prevent the question of a declaration of death being considered.

*The assessment in this case*

20. It is apparent from the investigation in the case that BB, according to information from relatives, travelled to Iraq sometime in 2005 or 2006 and has not been heard from since the summer of 2006. He was reported missing to the Ministry of Foreign Affairs which requested that the Swedish Embassy make certain inquiries. The correspondence in the matter at the Ministry of Foreign Affairs which has been appended to the application for a declaration of death is in principal respects subject to secrecy and therefore provides only limited information. In addition, according to AA, there is information from a relative in Iraq according to which BB was abducted and killed by a militia. However, the person providing this information has not been named and the information

surrounding the abduction lacks detail. Accordingly, the value of the information as evidence is low.

21. It may be further observed that BB, at the time of the disappearance, had a wife and two children in Sweden and that AA has stated that the father lived here under orderly conditions. However, AA has not provided any specific information regarding the father's social and financial situation in Sweden or regarding the further circumstances surrounding the trip to Iraq. Nor is there any other information from other relatives in the matter. Notwithstanding a request from the Swedish Tax Agency, BB's wife has not given a statement regarding the application for a declaration of death and, as far as is known, the Swedish Tax Agency has not obtained any statement from BB's other son. Nor has AA provided any explanation as to why information from these persons or from other relatives could not be submitted in the matter.
22. Accordingly, while there are other close relatives who could potentially contribute information, the investigation in the matter almost exclusively consists of information provided by AA. Furthermore, the information provided by AA is sparse. According to the Supreme Administrative Court, the investigation is not sufficient in order for the question regarding a declaration of death of BB to be able to be considered.
23. Accordingly, the appeal of the Swedish Tax Agency shall be granted.

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Justices Helena Jäderblom, Kristina Ståhl, Inga-Lill Askersjö, Leif Gäverth and Martin Nilsson have participated in the ruling.

Judge Referee: Josefine Lloyd.