https://doi.org/10.31489/2024L4/123-136 Received: 10 August 2024 | Accepted: 23 September 2024

UDC 347.132.6

S.I. Kopzhassarova[1*], A.A. Nukusheva[2]

[1,2]*Karaganda Buketov University, Karaganda, Kazakhstan*
([*])E-mail: sagingul_777@mail.ru)

[1]ORCID ID: 0000-0002-8994-5531,
[2]ORCID ID: 0000-0001-8018-6666,
Scopus Author ID: 57193229324, Researcher ID WOS: AAK-2173-2021

The role of the "Actio pauliana" institution in the formation of the mechanism for invalidating debtor transactions within bankruptcy proceedings

The aim of the research is to conduct an in-depth analysis of the historical aspects of the institution of invalidating transactions within bankruptcy proceedings, with a focus on the influence of Roman law on the formation of domestic legislation. The research also includes a comparative analysis of foreign legal norms related to this subject area. The methodological basis of the study encompasses both general and specific methods, such as formal-logical, scientific analysis and synthesis, comparative legal, and historical-legal approaches. The study of the emergence, establishment, and development of the institution of challenging debtor transactions is crucial for understanding its historical and legal nature within bankruptcy proceedings. In this context, the subject of the research includes the challenge of transactions in bankruptcy, based on the ancient Roman legal institution of "Actio Pauliana", as well as an analysis of the influence of subjective and objective theories on modern legislation. Key elements related to the emergence of the "Actio Pauliana" institution in ancient Roman law, as well as the historical aspects of challenging transactions in the context of bankruptcy, have been examined. Attention is given to the application of the modified "Actio Pauliana" institution in the legislation of various countries. The research concludes that the "Actio Pauliana" was initially based on a strictly subjective theory, but over time, the focus shifted towards objective criteria. In conclusion, it is noted that the modern institution of invalidating transactions in bankruptcy proceedings preserves the foundations of Roman law, integrating both objective and subjective elements into the legislation of different countries.

Keywords: bankruptcy; transaction contestation; invalid transaction; Actio Pauliana; debtor; creditor; objective theory; subjective theory.

Introduction

An individual or legal entity that has anticipated or become aware of its impending bankruptcy takes various actions and enters into transactions with the aim of preserving its assets from creditors and avoiding debt repayment, thereby violating the rights of creditors. Declaring a debtor's transactions invalid in bankruptcy proceedings and returning the assets serve as one of the most effective tools for protecting the rights and legitimate interests of creditors and other interested parties. The origins of this legal institution trace back to ancient Roman times. Historically, the institution of declaring transactions invalid is closely linked to the development and formation of the general insolvency (bankruptcy) institution.

The foundation of the institution for contesting a debtor's transactions in modern bankruptcy proceedings is rooted in concepts established in antiquity. These concepts gradually evolved under the influence of prevailing social conditions and underwent various changes over time. The emergence and development of these concepts demand special attention, both theoretically and practically, as such research can elucidate the state of law during a specific historical period in light of global perspectives and experiences.

In the doctrine of law, two different points of view are distinguished, related to the grounds for recognizing the debtor's transactions as invalid: subjective and objective. In the subjective approach, it is argued that only a transaction made by an unscrupulous debtor and aimed at causing harm to creditors can be recognized as invalid. The objective theory, on the contrary, does not require proof of the dishonest intentions of the participants in the transaction and that their will is aimed at causing harm to the creditors.

* Corresponding author. E-mail: *sagingul_777@mail.ru*

The main task of the objective approach is to prove the existence of strictly defined conditions provided by law, which allow such transactions to be recognized as invalid [1; 49].

Thus, under the subjective approach, it is necessary to prove that the debtor entered into the transaction with the intent to harm creditors, and that the other party knew or should have known about this intent. The objective approach, on the other hand, is based on objective criteria and specific conditions of the transaction, regardless of the parties' intentions. To declare a transaction invalid under the objective approach, it is sufficient to demonstrate that the conditions of the transaction do not align with economic norms and cause harm to creditors. For example, this could occur when a debtor sells their assets at a price below market value.

According to the subjective theory, transactions are deemed invalid when certain subjective factors are present, such as the intent of the parties to enter into a suspicious transaction, the debtor's purpose of causing financial harm to creditors, and the counterparty's awareness of the debtor's intent. In other words, the disputed transaction must have been carried out by a dishonest debtor, and the other party, aware of this, may also be deemed dishonest because they understand the potentially harmful consequences of the transaction [2; 192].

The study of the historical development and establishment of the two aforementioned theories examined their influence on the formation of norms related to the invalidation of a debtor's transaction in bankruptcy proceedings, as well as the "Actio Pauliana" institution in ancient Roman law. A comparative analysis is conducted of the legislation of various countries and domestic legislation concerning the presence and application of these issues in modern legal frameworks.

The aim of this scientific article is to conduct a historical investigation into the emergence and development of the institution of declaring a debtor's transaction invalid in bankruptcy within the legislation of certain foreign countries, to study the specific applications of the "Actio Pauliana" institution in both general and special legislation, and to carry out a comparative analysis with the norms of the current domestic legislation.

Methods and materials

The methodological foundation of the study is based on the laws and categories of materialist dialectics, aid of which is in the understanding of specific legal phenomena, as well as general scientific methods for studying social phenomena and processes, and methods of scientific analysis and synthesis. An analysis of the norms of bankruptcy legislation in several countries was conducted using the formal legal method. Through the comparative legal method, an analysis was carried out on the use of grounds for invalidating a debtor's transactions in bankruptcy in foreign states, and their legal regulation was examined. The historical-legal method was employed to explore the history of the emergence of the Actio Pauliana institution, which traces back to ancient Roman law. The theoretical foundation of the study is based on the works of scholars from the Russian Federation, Germany, and the current legal acts of the United Kingdom, the Netherlands, France, Spain, and Lithuania.

Results

Discussing the history of the emergence of subjective and objective theories mentioned earlier, the legal basis for contesting transactions, according to the subjective theory, is rooted in Roman law. It provided for the possibility of filing a lawsuit as a special means of protecting creditors' rights against the unlawful actions of a debtor.

In other words, the origin of the institution for invalidating debtor transactions in bankruptcy proceedings can be traced back to ancient Roman law, where the doctrine of "Actio Pauliana" existed. This institution was designed to protect creditors from actions aimed at intentionally reducing the debtor's assets, thereby causing harm to creditors. "Actio Pauliana" serves as the historical and theoretical foundation for modern rules on invalidating transactions, and understanding it offers deeper insight into contemporary legal mechanisms. Therefore, within the scope of this research, we have decided to first examine the origins of the "Actio Pauliana" institution and the specifics of its application in modern legislation. This approach, in turn, will allow us to study the evolution of historically established legal norms of this institution and trace their adaptation to current conditions.

According to the term "fraus creditirum" or "deception of creditors", known to Roman lawyers, it meant that the debtor was disposing of the property belonging to him in order to cause harm to the creditors.

In Roman law, special attention was given to the actions of a debtor preceding their insolvency. Insolvent debtors, on the brink of financial collapse, often sought to conceal their assets from creditors in an attempt to avoid complete ruin. Since such actions by the debtor infringed upon the interests of creditors, depriving them of the opportunity to satisfy their claims from the debtor's assets after the initiation of insolvency proceedings, the praetorian edict provided creditors with specific legal remedies (actio Pauliana, interdictum fraudatorium, actio in factum) against the debtor and third parties involved in the fraudulent alienation of assets. The most well-known of these, and the one that has survived in a somewhat modified form, is Actio Pauliana [3; 151].

Roman law, which initially imposed strict personal liability on debtors, gradually eased the position of insolvent debtors by introducing limitations on their personal liability. Along with these changes, a law known as “Actio Pauliana” was introduced, named after the classical jurist Julius Paulus, to compensate for the reduced protection of creditors’ rights [1; 52].

In the 2nd century, a praetor named Paulus issued an edict that allowed creditors to challenge “fraudulent transactions” made by the debtor to the detriment of the creditor, provided that the debtor's counterparty was aware of the fraud. This type of lawsuit became known as actio Pauliana, named after that very praetor [4].

Thus, under the Actio Pauliana claim, transactions between parties aimed at causing harm to the debtor could be declared invalid. It was also necessary to prove that both parties had the same intent (consilium fraudandi) [5; 23].

The primary elements of an Actio Pauliana claim are considered to be:

Objective element (eventus damni): The debtor must have taken actions that cause harm to the creditors, diminishing their assets. This is an objective criterion, demonstrating that the debtor's actions directly impacted the creditors’ ability to satisfy their claims.

Subjective element (consilium fraudis): The debtor must have acted with the intent to harm the creditors. This is the subjective element, requiring proof of the debtor's intent when carrying out the transaction [6].

The purpose of “Actio Pauliana” was to restore the creditors to the position they were in before the debtor infringed upon their rights.

D.V. Savin notes that the application of the “Actio Pauliana” claim in Ancient Rome required the fulfillment of the following conditions, which included both subjective and objective aspects:

1. *Execution of an act that diminishes the debtor's assets.* The debtor engages in actions that lead to the reduction of their assets. This referred to any dishonest actions that could worsen the debtor's financial situation.

2. *Harm to the creditor.* The creditor's inability to fully satisfy their claims as a result of the debtor's diminished assets. If the creditor was unable to recover the debt from the debtor's assets, this was considered harm to the creditor.

3. *Debtor's intent to harm the creditor.* It was assumed that the debtor acted with the intent to harm the creditor if they reduced their assets while being in debt and knowing they could not repay those debts.

4. *Knowledge of the third party about the debtor's dishonest intent.* To file a claim against a third party involved in the transaction or a subsequent purchaser of the assets, it was necessary to prove that this party was aware of the debtor's dishonest intent or acquired the assets without compensation [7; 47].

Thus, in Roman law, the subjective criterion played a significant role in contesting transactions and the actions of the debtor.

Later, in medieval Italian law, known for its strictness, a radically different system for contesting the transactions of an insolvent debtor was applied. This system was based on objective criteria. During the Middle Ages, the notion began to emerge that transactions should be evaluated based on objective criteria, such as the deterioration of the creditor's position, regardless of the debtor's intentions. This approach allowed for more effective identification and prevention of fraudulent activities. The objective theory strengthened the legal protection of creditors, as it enabled them to challenge transactions that objectively worsened their position and reduced the need to prove the debtor's intent.

All actions taken by the debtor on the eve of insolvency were deemed invalid. The Italian medieval statutes varied only in the period allowed for contesting transactions, ranging from 10 days to six months. A similar system was used in medieval German and French insolvency law [7; 49].

The study of the “Actio Pauliana” institution within bankruptcy proceedings has sparked considerable interest among various lawyers and scholars, with differing opinions expressed regarding its effectiveness.

For example, E. Godmé, referring to the history of "Actio Pauliana", noted that it is an interesting case of the preservation of a twenty-century-old institution [8].

M.V. Telyukina explained "Actio Pauliana" as "a mechanism that allows a debtor to challenge transactions made immediately before or after the initiation of bankruptcy proceedings" [9; 334].

In assessing the effectiveness of "Actio Pauliana", G.F. Shershenevich pointed out that proving the debtor's intent is practically impossible, and therefore, he regarded this institution as an ineffective means of protecting creditors' rights [10; 305].

On the other hand, T.P. Shishmareva notes that "Actio Pauliana" is the most effective legal tool for increasing the bankruptcy estate, used to annul unlawul actions (transactions) of the debtor or third parties involving the debtor's assets, thereby eliminating fraudulent activities related to the debtor's property [10; 306].

Francis William Sutton Cumbrae-Stewart, in his dissertation "Actio Pauliana: Its Origin, Development, and Nature", conducted an in-depth study of the origin and development of the "Actio Pauliana" institution, noting that this mechanism, which originated in Roman law, was designed to protect creditors from fraudulent actions by debtors aimed at concealing assets. Cumbrae-Stewart emphasizes the importance of this legal mechanism within the context of civil law and analyzes its evolution across various European legal systems [11].

The renowned German jurist Helmut Koziol considers "Actio Pauliana" an important legal tool aimed at protecting creditors from fraudulent actions by debtors. He emphasizes that, despite the challenges in proving the debtor's intent, this institution remains a necessary component of the legal system. Helmut Koziol also highlighted the importance of harmonizing legal norms in this area at the European Union level, noting that it requires further improvement and coordination at the international level [12; 132].

Thus, the views of various authors on the application of the "Actio Pauliana" institution in modern law not only highlight its positive aspects, such as the protection of creditors' rights and the prevention of fraudulent actions by debtors, but also reveal significant challenges, including the difficulty of proving the debtor's intent and the need for harmonization of legal norms at the international level. Despite criticism and difficulties in its application, this institution remains an important and effective tool for protecting the interests of creditors. Its resilience and adaptability underscore the importance and necessity of further improvement and harmonization of legal norms aimed at protecting creditors from fraudulent actions by debtors.

"Actio Pauliana" which originated in Ancient Rome, though in a modified form, continues to exist and is widely applied in the civil or special legislation of most modern countries. It proves its role as an effective means of protecting creditors' interests and remains a fundamental tool for safeguarding against unlawful actions by debtors [13, 147].

Discussion

Let us consider the features of applying the institution of declaring transactions invalid, as well as the subjective and objective theories in the legislation of certain countries. For instance, in ***Germany***, "Actio Pauliana" has long been used as a tool for annulling legal actions carried out with the intent to cause financial harm to creditors, both in insolvency proceedings and outside of them.

T.P. Shishmareva, in her dissertation, notes that "Actio Pauliana" is traditionally applied in Russia and Germany as a legal means of contesting fraudulent transactions in debtor insolvency procedures.

The application of "Actio Pauliana" is regulated by the "*German Insolvency Code"* (Insolvenzordnung, InsO) [14], and outside of insolvency procedures, by the *"Act on the Avoidance of Legal Acts of a Debtor Outside Insolvency Proceedings"* (Anfchtungsgesetz-AnfG) [15]. In doctrine, contesting legal actions through "Actio Pauliana" is referred to as Paulian contestation (Paulianische Anfechtung). The application of "Actio Pauliana" has been thoroughly studied in legal doctrine.

The grounds for contestation outlined in Section 3 of the "German Insolvency Code" (Insolvenzordnung, InsO) are legally similar in nature to those under the "Act on the Avoidance of Legal Acts of a Debtor Outside Insolvency Proceedings" (Anfechtungsgesetz-AnfG). Both share a common goal– to implement provisions on the liability imposed on a debtor who engages in unlawful actions regarding the disposal of assets. However, contestation under the insolvency proceedings (Insolvenzordnung, InsO) serves the collective interest of all creditors and aims to satisfy their claims proportionally, while contestation under the Anfechtungsgesetz-Anf is applied in favor of an individual creditor.

Currently, the legislative foundation in the field of bankruptcy law in Germany is the “Insolvency Code” (Insolvenzordnung, InsO), which came into force on January 1, 1999. Prior to the adoption of this Code, extensive work was carried out on legislative proposals aimed at fundamentally reforming the previous regulation of insolvency proceedings, which had been in effect since February 10, 1877 (Konkursordnung, KO). Since its enactment, the current regulation has been amended and reformed multiple times. One of the most actively and extensively criticized aspects has been the legal institution of contesting the debtor's legal actions [16; 198].

Presently, Actio Pauliana serves as a legal instrument for contesting transactions (legal actions) in insolvency proceedings in Germany, as noted in the commentary on the Insolvency Code (Insolvenzordnung). The renowned German legal scholar J. Kohler acknowledges that the adoption of Roman law has had a significant impact on the evolution of this institution in German law. He also highlights that Actio Pauliana functions as a legitimate means to annul transactions (legal actions) undertaken by the debtor that have led to a reduction in the insolvency estate [17; 412].

Moreover, scholars note that in Germany, under the “Insolvenzordnung, InsO”, it is also possible to contest the debtor's inaction, indicating that an updated version of the “Actio Pauliana” institution is applied in this country. While the original Roman version allowed for the contestation of actions that resulted in the debtor's assets being removed from their estate without adequate compensation, the updated version permits the contestation of any action that leads to the debtor losing a portion of their assets [3; 151].

According to §129, paragraph 1, and §§130–146 of the “German Insolvency Code”, legal actions (Rechtshandlungen) taken before the commencement of insolvency proceedings that harm creditors are subject to contestation. §129, paragraph 2, of the Code clarifies that inaction (Unterlassung) is also considered equivalent to a legal action. Examples of inaction include missing the statute of limitations or failing to report defects in goods, among others.

Thus, in German law, elements of both theories are utilized to ensure comprehensive protection of creditors’ interests. The “German Insolvency Code” (Insolvenzordnung, InsO) includes provisions that allow for the contestation of transactions based on objective criteria as well as by considering subjective factors.

In the ***United Kingdom***, the annulment of transactions made within a certain period before the onset of bankruptcy has been a part of English law for many years. This practice originated in the Middle Ages and was based on statutes dating back to the 13th century. One of the earliest legislative acts was the Statute of Edward III in 1376, according to which transactions aimed at alienating the debtor's property were declared void. However, this applied only to gratuitous transactions (gifts). Nevertheless, with the adoption of Queen Elizabeth I's Statute in 1571, compensated transactions also began to be declared void [7; 49].

The first significant step in the formation of this institution was the enactment of the “Fraudulent Conveyances Act 1571”. This law, also known as Queen Elizabeth I's Statute, was aimed at preventing fraudulent transfers of property that were considered to infringe upon the rights of creditors. The law provided for the contestation of transactions made with the intent to conceal assets from creditors [18].

This statute remained in force for over 400 years but gradually became outdated. Later, Queen Elizabeth I's Statute was replaced by Section 172 of the Law of Property Act 1925, and subsequently by the provisions of the Insolvency Act 1986.

Thus, the annulment of transactions remained an important part of bankruptcy legislation and, later, in the 19th century, as legislation regulating company liquidations. Today, such provisions hold a significant place in the Insolvency Act 1986 [19; 6].

According to ***Dutch*** legislation, there are numerous provisions aimed at protecting creditors. An action taken by a debtor may be declared void if it was not obligatory for the debtor and even if the debtor knew (or should have known) that this action would harm the creditors [20] (Article 3:45 of the Dutch Civil Code). Any creditor who was negatively affected by this action can demand its annulment. Under Dutch law, for a creditor to annul such an action, it is presumed that the debtor and third parties who contracted with the debtor knew (or should have known) that the action would harm the creditor.

A creditor seeking to annul the harmful action must, in particular, prove the debtor's awareness of the action and, if the action was not based on a gratuitous transaction, the awareness of the parties who performed the action. In practice, this burden of proof is difficult for the creditor to meet. To ease the burden of proof, Dutch law includes presumptions, for example, regarding the parties’ awareness of the harm caused. In such cases, the burden of proof shifts, and the parties must disprove the presumption.

If such a detrimental legal action was taken within one year prior to the filing of the annulment claim, Dutch law presumes that the debtor and the third party knew (or should have known) that this legal action would harm one or more creditors. The debtor or the third party must, therefore, disprove this presumption [21].

The aforementioned criteria are based on subjective factors, and Dutch legislation also provides for objective criteria to annul transactions made by a debtor on the verge of bankruptcy. The objective theory in Dutch law is grounded in a number of specific criteria that allow for the annulment of transactions that harm creditors. These criteria include *gratuitous transactions, mandatory transactions, transactions made on the eve of bankruptcy*, and *general criteria for the deterioration of creditors' positions*.

Scholarly works discuss the lack of balance between these subjective and objective approaches in Dutch legislation, and it is proposed to expand the application of objective criteria to ease the burden of proof for bankruptcy administrators. For instance, it has been suggested to extend the "suspect period", which would allow for the application of objective criteria over a longer period and thereby facilitate the annulment of suspect transactions [22].

In ***Spanish*** civil law, "Actio Pauliana" can be found in Articles 1111 and 1291.3 of the Civil Code (Civil Code, Book Four: Obligations and Contracts) [23]. The part concerning "Actio Pauliana" is outlined in the final section of Article 1111 of the Civil Code (Código Civil), which states that a creditor may file a claim against actions taken by the debtor that cause harm to the creditor. However, this article does not specify the necessary requirements for its application or the consequences thereof. Although the concept of this article has evolved over time, case law identifies two elements of Actio Pauliana: "events damni" and "consilium fraudis". The first refers to the damage caused to the creditor who is unable to recover the debt and serves as the objective element of the claim. The second element refers to the presence of fraud in the creditor's claim and represents the subjective element.

This article is complemented by Article 1291 of the Civil Code, which sets out the grounds for annulling contracts, specifically: "contracts made with the intent to defraud creditors if they (the creditors) have no other means of obtaining what is owed to them". Thus, if any action is taken with the intent to defraud creditors, and the creditor has no other means of recovery, the action may be contested. Here, the subsidiary nature of "Actio Pauliana" is recognized, meaning it applies in the absence of other means of recovery. These two articles are found in Book IV of the Civil Code, which concerns obligations and contracts; however, the first is in Chapter II, which addresses the nature and consequences of obligations, while the second is in Chapter V, which deals with the annulment of contracts. Thus, we can see how this action is connected with the subject of contracts in Spanish legislation.

Therefore, in Spanish civil law, "Actio Pauliana" is an important tool for protecting creditors from fraudulent actions by debtors. It is based on two elements: the objective element–harm to the creditor, and the subjective element — fraud by the debtor.

In ***France***, "Actio Pauliana", originally borrowed from Roman law, was later incorporated into the Napoleonic Code [10; 10], where Article 1167 stated that "creditors may challenge transactions carried out by the debtor that intentionally violate their rights, in their own name".

The contestation of the debtor's transactions was primarily based on an objective approach, within which not only the debtor's subjective bad faith but also other objective circumstances had to be proven [9; 335]. Specifically, if the transaction was carried out by the debtor shortly before the declaration of insolvency (periode suspecte), it was sufficient to prove, first, that it was conducted after the suspension of payments, and second, that the other party was aware of this.

This provision was later carried forward into the French Civil Code (Article 1167), according to which a creditor could challenge the debtor's actions in their own name if these actions were 1) carried out with fraudulent intent; 2) violated the creditor's rights. Thus, in France, it was sufficient to prove that the transaction was conducted with fraudulent intent (bad faith) and violated the creditor's rights. In 2015, a comprehensive reform of contract law was carried out in France, resulting in the repeal of the aforementioned provisions of the French Civil Code (FCC), which were replaced by more detailed provisions in the section concerning creditors' claims. Certain aspects of "Actio Pauliana" were clarified in terms of their content (Articles 1341-1341-3 of the FCC) [24]. Notably, it was explicitly stated that, for "Actio Pauliana" to be successful, it is now necessary to prove the violation of the creditor's rights. Additionally, it was clarified that bad faith on the part of the third party who entered into the contested transaction is also required.

In ***Lithuania***, it is also insufficient to prove the bad faith of the debtor; it is necessary to prove the bad faith of the third party as well. The right of creditors to challenge transactions made by the debtor is enshrined in the 1931 Act on the Right of Creditors to Challenge Actions That Cause Them Harm (Act No. 367 on Challenging Actions). The law provides creditors with the right to challenge transactions concluded between the debtor and third parties in order to protect the rights of creditors. It is important that the third party was aware of the debtor's intent to harm the creditors. Even in that law, a claim under “Actio Pauliana” required proving the bad faith of both the debtor and the third party with respect to the creditor [21]. In Chapter Four of Book Six of the Lithuanian Civil Code, which came into force on July 1, 2001 (Valstybes zinios 2000, No. 74-2262) [25], the institution of “Actio Pauliana” was established alongside other methods of protecting the special rights of creditors. Article 571 of the Civil Code defines the grounds for declaring a contract void. In the current Civil Code, the “Actio Pauliana” institution is given a separate chapter dedicated to the protection of creditors’ interests.

According to D. Vanhara, creditors face certain difficulties when challenging transactions. In cases where the bad faith of the debtor at the time of the transaction has been proven, but the bad faith of the third party has not been established, the rights of creditors remain insufficiently protected. This significantly limits the ability of creditors to defend their interests. Therefore, the author suggests considering the possibility of partially shifting the burden of proof onto the debtor and the third party. It is also proposed to impose sanctions on bad faith debtors and third parties, which would help reduce the number of fraudulent transactions and improve the protection of creditors’ rights [26].

In accordance with the legislation of the ***Russian Federation***, “Actio Pauliana” is also known as a legal instrument for contesting transactions (actions) in insolvency (bankruptcy) proceedings. However, in Russian law, “Actio Pauliana” is not applied as a means of contesting transactions outside of insolvency proceedings. Paragraph 2 of Article 1529, Part 1, Volume X of the Code of Laws of the Russian Empire was recognized in Russian doctrine as an analog of “Actio Pauliana” in Russian legislation [15; 446].

The development of the institution of contesting transactions in Russian law has generally been interconnected with the development of the insolvency (bankruptcy) institution, the history of which is divided into four stages: pre-revolutionary, Soviet, post-Soviet, and contemporary.

E.A. Krutiy, considering “Actio Pauliana” as a type of fraudulent claim, identifies three main stages in the legal regulation of fraudulent acts: the imperial, Soviet, and contemporary stages [26, 27].

The historical features of the development of the institution of invalidity of debtor transactions in Russia and the analysis of various stages of the legal evolution of this institution can be found in the works of A.Kh. Golmsten. In his work, he describes how the institution of invalidity of transactions passed through several significant stages, starting from pre-revolutionary legislation and continuing to the present day [28; 63].

In the *pre-revolutionary period*, the institution of invalidity of transactions had certain features characteristic of old Russian law. Based on traditions and customs, as well as under the influence of Western European legal systems, Russian law gradually developed its own norms on the invalidity of transactions aimed at protecting the interests of creditors.

During the *Soviet period*, with the advent of Soviet power and subsequent changes in the legal system, the approach to the invalidity of transactions also underwent significant changes. During this period, the primary focus was on protecting state interests, which influenced the legal regulation of transactions. Soviet law developed specific mechanisms for controlling and nullifying transactions that could harm state interests.

In the *post-Soviet period*, after the collapse of the USSR and the transition to a market economy, Russia’s legislation on the invalidity of transactions was revised. The new civil legislation of Russia incorporated modern principles and approaches to regulating transactions, borrowed from international law and the experience of Western countries. Particular attention was paid to protecting the rights and interests of individuals and organizations, reflecting trends of globalization and integration into the international legal community.

T.P. Shishmareva notes that in Paragraph 1 of Article 61.2 of the Federal Law of the Russian Federation dated October 26, 2002 “On Insolvency (Bankruptcy)” [29], creditors are given the opportunity, with the help of arbitration managers, to eliminate the adverse consequences of actions taken by an insolvent or bankrupt debtor, and that the basis for this provision was the institution of “Actio Pauliana”.

These stages in the development of the institution of invalidity of debtor transactions illustrate how Russian law has adapted to changing socio-economic conditions and international trends. A.Kh. Golmsten

emphasizes the importance of studying these historical features to understand the current state of legal regulation in Russia.

In the ***Republic of Kazakhstan***, bankruptcy legislation has been repeatedly improved since the country gained independence. The first Law "On Bankruptcy", dated January 14, 1992, did not include the institution of invalidating debtor transactions. This initial bankruptcy law was in effect for three years and was repealed following the adoption of the Presidential Decree of the Republic of Kazakhstan with the force of law "On Bankruptcy", dated April 7, 1995. Subsequently, on January 21, 1997, a new Law "On Bankruptcy" was adopted. The 1997 law, for the first time, provided for cases in which debtor transacions could be declared invalid. Article 6 of this law addressed situations involving the return of property and the invalidation of debtor transactions: "if a transaction made by the debtor with individual creditors or other persons after the initiation of bankruptcy proceedings results in the satisfaction of the claims of some creditors before others, it must be declared invalid upon the application of the authorized body, creditors, rehabilitation, or insolvency managers".

Currently, the Law "On Rehabilitation and Bankruptcy", adopted on March 7, 2014, is in force in Kazakhstan [30].

In the Republic of Kazakhstan, the invalidation of transactions within the framework of rehabilitation and bankruptcy procedures is carried out on general grounds in accordance with civil legislation and on specific grounds in accordance with the legislation on rehabilitation and bankruptcy. The invalidity of transactions on general grounds is regulated by the Civil Code of the Republic of Kazakhstan dated December 27, 1994 [31] (hereinafter referred to as the Civil Code of the RK). The Civil Code, as a sectoral codified normative legal act, is designed to ensure the legal regulation of property and personal non-property relations throughout the territory of the Republic of Kazakhstan. Accordingly, the Civil Code enshrines the most important legal norms of civil legislation, aimed at regulating almost all social relations falling within the scope of civil law [32; 53].

In accordance with paragraph 4 of Article 158 of the Civil Code of the Republic of Kazakhstan, if one of the parties to a transaction entered into it with the intent to evade the fulfillment of an obligation or liability to a third party or the state, and if the other party knew or should have known about this intent, the interested party (the state) has the right to demand the invalidation of the transaction. A claim for invalidation of a transaction based on such intent is often referred to as "Actio Pauliana" (named after the Roman jurist) [33; 528].

Thus, it is evident from this provision that the "Actio Pauliana" institution has been incorporated into domestic legislation and includes a subjective element. The subjective approach is based on the analysis of the intentions of the parties to the transaction and their awareness of these intentions. It requires proof of the debtor's intent and the third party's awareness of that intent.

A necessary condition for the application of this provision of the Civil Code of the Republic of Kazakhstan is the bad faith behavior of the other party to the transaction (the purchaser of the property). Therefore, if this party did not know and could not have known about the intent of the person alienating the property (the debtor), based on the circumstances of the case, the transaction should not be declared invalid, as this would violate the legitimate interests of the purchaser of the alienated property [33; 528]. Thus, the subjective theory complicates the process of proving, but it ensures a more equitable consideration of cases and allows for the protection of creditors' rights.

The specific grounds are outlined in the Law of the Republic of Kazakhstan "On Rehabilitation and Bankruptcy" dated March 7, 2014. According to paragraph 1 of Article 7 of this Law, transactions are deemed invalid if they were made by the debtor or an authorized person within three years prior to the initiation of rehabilitation and (or) bankruptcy proceedings, provided that there are grounds stipulated by the civil legislation of the Republic of Kazakhstan and this Law. Paragraph 2 of Article 7 sets out the grounds for declaring a transaction invalid:

1) the price of the transaction made and (or) other conditions differ significantly for the worse for the debtor from the price and (or) other conditions under which similar transactions are made in comparable circumstances;

2) the transaction is out of scope of the debtor's activities, which are limited by the laws of the Republic of Kazakhstan, constituent documents, or was made in violation of the competence determined by the charter;

3) the property was transferred (also into temporary use) free of charge or at a price that significantly differs for the worse for the debtor from the price of an identical or similar product under comparable economic conditions or without grounds for transfer to the detriment of creditors’ interests;

4) if the transaction, completed within six months prior to the initiation of the rehabilitation and (or) bankruptcy proceedings, resulted in preferential satisfaction of claims of some creditors over others;

5) gift contracts for the debtor’s property, if such a transaction differs significantly from those concluded a year before the initiation of a rehabilitation or bankruptcy proceeding;

6) the transaction made without the intention to create appropriate legal consequences for such a transaction, to the detriment of creditors’ interests.

In her work, M.V. Telyukina, conducting a comparative analysis of the grounds for challenging transactions in bankruptcy in Kazakhstan and Russia, classified the grounds set forth in subparagraphs 1, 2, and 5 of paragraph 2 of Article 7 of the Law of the Republic of Kazakhstan “On Bankruptcy” as objectively suspicious transactions [34].

The aforementioned article includes both objective and subjective grounds. However, the legislation lacks clear definitions related to the practical application of the six aforementioned grounds. The absence of specific legislative explanations regarding subjective and objective grounds for invalidating transactions may cause difficulties in their application. Some grounds in the law may be both subjective and objective, depending on their content and interpretation. For example, when considering subparagraph 1: “the price of the transaction made and (or) other conditions differ significantly for the worse for the debtor from the price and (or) other conditions under which similar transactions are made in comparable circumstances”. Here, the objective ground could be a significant deviation of the transaction price from market value, while the subjective ground could be the intention to conceal assets and harm the creditor.

Therefore, we believe it is necessary to establish specific criteria for distinguishing between subjective and objective grounds. This would allow for more effective application of legislative norms in practice, i.e., to standardize them, help creditors better understand their rights and opportunities when challenging a transaction, and increase their chances of satisfying claims. Since this issue requires separate research and falls outside the scope of the current topic, we will not discuss it in detail.

Let's consider an example from practice: the bankruptcy manager of “Kunduz” LLP filed a lawsuit seeking to invalidate a sales contract with “Sting” LLP. The claim argued that the transaction violated legal requirements because the property was sold at a reduced price, which harmed the interests of creditors, including the tax authority. According to the decision of the court of first instance, the bankruptcy manager's claim was denied, with the court stating that the plaintiff had not provided evidence proving that the transaction did not comply with legal requirements. The civil division of the court of appeal upheld the decision of the first instance court without changes. The Prosecutor General of the Republic of Kazakhstan filed a protest, pointing out significant violations of substantive and procedural law in the consideration of the case, arguing that such violations undermine the uniform interpretation and application of legal norms. The civil division of the Supreme Court of the Republic of Kazakhstan, guided by paragraphs 1 and 4 of Article 158 of the Civil Code of the Republic of Kazakhstan and subparagraph 1 of paragraph 2 of Article 7 of the Law of the Republic of Kazakhstan “On Rehabilitation and Bankruptcy”, annulled the previous court decisions and sent the case for a new hearing in the appellate court, highlighting the following violations: 1) the court of first instance did not investigate the market value of the property at the time of its alienation; 2) the court did not take into account that the property was sold at a reduced price, which was confirmed by an appraisal report; 3) the transaction violated the interests of creditors, including the tax authority [35].

Thus, from this example, we can conclude that if the norm of the Law “On Bankruptcy” were based solely on objective criteria, it would be sufficient to establish the fact that the property was sold at a price below its market value. However, if subjective criteria were considered, it would be necessary to prove that the debtor understood that the sale at a reduced price would harm creditors, including the tax authority, and that the third party (“Sting” LLP) was aware of this.

Thus, the Actio Pauliana institution, with its long history and deep roots in Roman law, has also been adapted to Kazakhstani legislation and allows for the effective protection of the rights and interests of all interested parties. In the subjective approach, since it is necessary to prove the debtor's intent and the counterparty's awareness of that intent, the process of proving the invalidity of a transaction may be challenging in practice. However, this approach contributes to a more precise and fair consideration of bankruptcy cases, as it takes into account the specific intentions and behavior of the parties. The subjective

and objective theories of transaction invalidity in bankruptcy proceedings offer different methods for challenging the debtor's transactions. The historical development of these theories demonstrates their importance and adaptability to changing legal and economic conditions.

Despite the presence of a normative legal act in the Republic of Kazakhstan that regulates the issues of recognizing transactions as invalid within the framework of rehabilitation and bankruptcy, we assert that this institution is still in the process of formation, and its legal regime is not fully defined by the legislator. Although specific grounds for recognizing a transaction as invalid have been established, the mechanism of theoretical and practical application requires comprehensive research.

Conclusion

In conclusion, it can be stated that the modern institution of challenging debtor transactions in bankruptcy is based on concepts and institutions that were established in Roman law. The bankruptcy legislation of several countries provides for the possibility of challenging debtor actions that were carried out with the intent to harm other creditors. The adoption of Roman law served as a foundation for creating the institution of challenging transactions in bankruptcy for many countries within the Anglo-Saxon and Romano-Germanic legal families.

The legal claim for the protection of rights (Actio Pauliana) serves as a remedy aimed at safeguarding the interests of a creditor whose rights have been violated. Through this claim, actions taken by the debtor and third parties that caused harm to the creditor can be contested.

Initially, in Roman law, the subjective criterion played a significant role in challenging debtor transactions and actions. Later, medieval Italian law relied on the objective criterion for challenging transactions made by an insolvent debtor. Today, Actio Pauliana is used in the legislation of several countries as the primary legal tool for invalidating transactions in bankruptcy, taking into account both objective and subjective criteria.

The history of the institution of invalidating debtor transactions in bankruptcy is deeply rooted and is regulated in the legislation of many countries both on general grounds through civil law and on specific grounds through bankruptcy law. Actio Pauliana, considered as a subjective ground, is found in the Civil Codes of some countries (the Netherlands, France, Spain), while in others, it is also mentioned in the provisions of special bankruptcy legislation (Germany, the United Kingdom, the Russian Federation). However, it can be concluded that the concept of "Actio Pauliana" is consistent across all these countries.

References

1 Рыков Д.А. Недействительность сделок должника в деле о банкротстве: гражданско-правовые аспекты: дис. ... канд. юрид. наук: 12.00.03 — «Гражданское право; предпринимательское право; семейное право; международное частное право» / Д.А. Рыков. — Иркутск, 2018. — 185 с.

2 Сушкова О.В. Правовые проблемы оспаривания подозрительных сделок в процедурах банкротства: теоретический и практический аспекты / О.В. Сушкова // Современные проблемы гражданского права: материалы Междунар. науч.-практ. конф., посвящ. 70-летнему юбилею канд. юрид. наук, в.н.с. НИИ частного права Каспийского университета К.В. Мукашевой. — Алматы, 2019. — С. 189–207.

3 Свириденко О.М. Зарождение институтов конкурсного процесса в римском праве / О.М. Свириденко // Журн. российского права. — 2005. — № 6. — С. 146–152.

4 Будылин С. Внеконкурсное кредиторское оспаривание: как вернуть выведенные активы? / С. Будылин // Юридическая работа в кредитной организации. — 2021. — № 4 (70). — С. 4–19. — [Электронный ресурс]. — Режим доступа: https://zakon.ru/blog/2021/12/18/vnekonkursnoe_kreditorskoe_osparivanie_kak_vernut_vyvedennye_aktivy

5 Прохорский С.В. Паулианов иск как основной способ защиты прав требования конкурсных кредиторов / С.В. Прохорский // Юрист. — 1999. — № 1. — С. 23–33.

6 Rebull Corral P.M. «Actio Pauliana in EU Private International Law: a matter relating to a contract?» / P.M. Rebull Corral // Journal of Private International Law. — 2021. — Vol. 17, No. 1, — P. 123–145.

7 Савин Д.В. Становление и развитие внеконкурсного оспаривания в европейских правовых системах и в дореволюционной России / Д.В. Савин // Пролог: журнал о праве. — 2023. — № 1. — С. 44–53.

8 Годэмэ Е. Общая теория обязательств / Е. Годэмэ. — М.: Юрид. изд-во Мин-ва юстиции СССР, 1948. — 415 с.

9 Телюкина М.В. Механизм *Actio Pauliana* как конкурсно-правовой способ защиты интересов кредиторов / М.В. Телюкина // Материалы Междунар. науч. -практ. конф., посвящ. 90-летию проф. В.Ф. Чигира (4–5 ноября 2014 г.). — Минск: Право и экономика, 2014. — 336 с.

10 Шишмарева Т.П. Институт несостоятельности в России и Германии / Т.П. Шишмарева. — М.: Статут, 2015. — 332 с.

11 Cumbrae-Stewart F.W.S. The ActioPauliana: It’s Origin, Development and Nature: Being a Dissertation on Frauds Upon Creditors in the Civil Law / F.W.S. Cumbrae-Stewart, — 1920. — [Electronic resource]. — Access mode: https://www.google.kz/books/edition/The_Actio_Pauliana/mPagQAAACAAJ? hl=ru

12 Кациоль Х. Основы и спорные вопросы оспаривания действий должника, совершенных во вред его кредиторам (начало) / Х. Кациоль; пер. К.А. Усачевой // Вестн. гражданского права. — 2017. — № 3. — Т. 17. — [Электронный ресурс]. — Режим доступа: https://bankruptcyclub.ru/2020/10/29/helmut-coziol/

13 Копжасарова С.И. Оңалту және банкроттық рәсіміндегі борышкердің мәмілелерін жарамсыз деп тану негіздері / С.И. Копжасарова // Қарағанды университетінің хабаршысы. Құқық сериясы. — 2023. — № 3 (111). — Б. 145–156.

14 “Insolvency regulations” (Insolvenzordnung InsO) 05.10.1994. — [Electronic resource]. — Access mode: https://www.gesetze-im-internet.de/inso

15 “Act on the Avoidance of Legal Acts of a Debtor Outside Insolvency Proceedings” (Anfechtunggesetz-AnfG) 05.10.1994. — [Electronic resource]. — Access mode: AnfG — unofficial table of contents(gesetze-im-internet.de)

16 Маренков Д. Сборник статей о праве Германии / Д. Маренков. — 2015. — Вып. 1. — [Электронный ресурс]. — Режим доступа: https://www.advant-beiten.com

17 Шишмарева Т.П. Правовые средства обеспечения эффективности процедур несостоятельности в России и Германии: дис. ... д-ра юрид. наук. Спец. 12.00.03 — «Гражданское право; предпринимательское право; семейное право; международное частное право» / Т.П. Шишмарева. — М., 2021. — 485 с.

18 Harris B. The Ultimate Guide to Understanding Fraudulent Conveyances: Unveiling the Mysteries of Asset Transfers / B. Harris — [Electronic resource]. — Access mode: https://blakeharrislaw.com/blog/guide-to-understanding-fraudulent-conveyances

19 Keay A. Transactional Avoidance: Critical Aspects of English and Australian Law / A. Keay // International Insolvency Review. — 2000. — Vol. 9. — P. 5–36. — [Electronic resource]. — Access mode: https://onlinelibrary.wiley.com/doi/epdf/10.1002/%28SICI%291099-1107 %28200021 %299 %3A1 %3C5 %3A%3AAID-IIR60 %3E3.0.CO%3B2-P

20 Civil Code of the Netherlands. 01.01.1992. — [Electronic resource]. — Access mode: http://www.dutchcivillaw.com/legislation/dcctitle33022.htm

21 Roosjen R. Creditor protection under Dutch law / R. Roosjen. — [Electronic resource]. — Access mode: https://www.maak-law.com/creditor-protection-under-dutch-law/

22 Reinout D.V. Transactional Avoidance in the Netherlands / D.V. Reinout, van F.P. Koppen // International Insolvency Review. — 2000. — Vol. 9. — P. 47–64.

23 Civil Code of Spain, Book Four: Obligations and Contracts. Royal Decree of July 24, 1889. — [Electronic resource]. — Access mode: https://www.icj.org/wp-content/uploads/2013/05/Spain-Spanish-Civil-Code-2012-eng.pdf

24 Усачева К.А. Внеконкурсное оспаривание во французском праве: до и после реформы / К.А. Усачева // Закон. — 2017. — № 12. — С. 187–192.

25 Гражданский кодекс Республики Литва. 18.07.2000 г. — [Электронный ресурс]. — Режим доступа: https://e-mas.lrs.lt/portal/legalAct/lt/TAD/TAIS.245495

26 Dirgėlienė I. Application of actiopauliana in law various countries: the aspects of the debtor and the third party acting in bad faith / I. Dirgėlienė // Экономика и социум. — 2015. — № 2(15). — [Electronic resource]. — Access mode: www.iupr.ru

27 Крутий Е. А. Институт внеконкурсного оспаривания сделок, совершенных должником в ущерб интересам кредиторов: история становления в России / Е. А. Крутий // Вестн. Иванов. гос. ун-та. — 2020. — Вып. 2. — С. 26–34.

28 Гольмстен А.Х. Учение о праве кредитора опровергать юридические акты, совершенные должником в его ущерб, в современной юридической литературе / А.Х. Гольмстен; под ред. А.Г. Смирных. — М.: «Издание книг.ком», 2019. — 264 с.

29 Федеральный закон Российской Федереции от 26 октября 2002 года № 127–ФЗ «О несостоятельности (банкротстве)». — [Электронный ресурс]. — Режим доступа: https://base.spinform.ru/show_doc.fwx? rgn=3568

30 «Оңалту және банкроттық туралы» Қазақстан Республикасының 2014 жылғы 7 наурыздағы No 176-V Заңы — [Электрондық ресурс]. — Қолжетімділік тәртібі: // https://adilet.zan.kz/kaz/docs/Z1400000176

31 Гражданский кодекс Республики Казахстан от 27 декабря 1994 года № 268–XIII. — [Электронный ресурс]. — Режим доступа: // https://adilet.zan.kz/kaz/docs/K940001000_

32 Ильясова Г.А. Азаматтық құқықтың қазақ тіліндегі қайнар көздеріне түсінік беру мәселелері / Г.А. Ильясова, Р.А. Тоқатов // Қарағанды университетінің хабаршысы. Құқық сериясы. — 2020. — № 3 (99). — Б. 50–58.

33 Сулейменов М.К. Гражданский кодекс Республики Казахстан (Общая часть). Комментарий (постатейный) / М.К. Сулейменов. — Алматы, 2007. — 548 с.

34 Телюкина М.В. Проблемы оснований недействительности сделок организации, признанной банкротом, в России и Казахстане / М.В. Телюкина. — [Электронный ресурс]. — Режим доступа: https://online.zakon.kz/Document/?doc_id=31610310

35 Постановление Судебной коллегии по гражданским делам Верховного Суда Республики Казахстан от 8 июня 2023 года. — [Электронный ресурс]. — Режим доступа: https://office.sud.kz/

С.И. Копжасарова, А.А. Нукушева

Банкроттық рәсіміндегі борышкердің мәмілелерін жарамсыз деп тану механизмін қалыптастырудағы «Actio Pauliana» институтының рөлі

Зерттеудің мақсаты — Рим құқығы нормаларының отандық заңнаманы қалыптастырудағы әсеріне баса назар аудара отырып, банкроттық рәсімі шеңберінде мәмілелерді жарамсыз деп тану институтының тарихи аспектілерін терең талдау. Зерттеу аясында аталған тақырыпқа қатысты шетелдік заңнамалардың нормаларына салыстырмалы талдау жүргізілді. Зерттеудің әдіснамалық негізі формальды-логикалық, ғылыми талдау және синтез, салыстырмалы-құқықтық және тарихи-құқықтық тәрізді жалпы және жеке әдістерді қамтиды. Борышкердің мәмілелерін даулау институтының пайда болу, қалыптасу және даму процесін зерттеу оның банкроттық рәсіміндегі тарихи-құқықтық табиғатын түсіну үшін өте маңызды. Осыған орай зерттеу пәні «Actio Pauliana» Ежелгі Рим құқықтық институтына негізделген банкроттықтағы мәмілелерді даулауды, сондай-ақ субъективті және объективті теориялардың қазіргі заңнамаға әсерін талдауды қамтиды. Ежелгі Рим құқығындағы «Actio Pauliana» институтының пайда болуымен байланысты негізгі элементтер, сондай-ақ банкроттық контексіндегі мәмілелерді даулаудың тарихи аспектілері зерттелді. Өзгерген күйіндегі «Actio Pauliana» институтын әр түрлі елдердің заңнамасында қолдану ерекшеліктеріне назар аударылды. Жүргізілген зерттеу барысында авторлар бастапқыда «Actio Pauliana»-ның негізінде қатаң субъективті теория жатқанын, алайда уақыт өте келе объективті критерийлерге назар ауысқандығы туралы тұжырым жасайды. Қорытындысында банкроттық рәсімдерінде мәмілелерді жарамсыз деп танудың қазіргі институты әртүрлі елдердің заңнамасында объективті және субъективті элементтерді біріктіре отырып, Рим құқығының негіздерін сақтайтыны атап өтілді.

Кілт сөздер: банкроттық, мәмілені даулау, жарамсыз мәміле, Actio Pauliana, борышкер, кредитор, объективті теория, субъективті теория.

С.И. Копжасарова, А.А. Нукушева

Роль института «Actio Pauliana» в формировании механизма признания сделок должника недействительными в рамках процедуры банкротства

Цель исследования — углубленный анализ исторических аспектов института признания сделок недействительными в рамках процедуры банкротства, с акцентом на влияние норм римского права на формирование отечественного законодательства. В рамках исследования также проведен сравнительный анализ норм зарубежных законодательств, затрагивающих указанную предметную область. Методологическая основа исследования включает в себя общие и частные методы, такие как формально-логический, научный анализ и синтез, сравнительно-правовой и историко-правовой подходы. Изучение процесса возникновения, становления и развития института оспаривания сделок должника имеет важное значение для понимания его историко-правовой природы в процедуре банкротства. В связи с этим предмет исследования включает оспаривание сделок при банкротстве, основанное на древнеримском правовом институте «Actio Pauliana», а также анализ влияния субъективной и объективной теорий на современное законодательство. Исследованы ключевые элементы, связанные с возникновением института «Actio Pauliana» в древнеримском праве, а также исторические аспекты оспаривания сделок в контексте банкротства. Особое внимание уделено особенностям применения модифицированного института «Actio Pauliana» в законодательстве различных стран. В процессе проведенного исследования авторы приходят к выводу, что изначально в основе «Actio Pauliana» лежала строго субъективная теория, однако со временем акцент сместился в сторону объективных критериев. В заключение отмечено, что современный институт признания сделок недействительными в процедурах банкротства сохраняет основы римского права, интегрируя как объективные, так и субъективные элементы в законодательстве разных стран.

Ключевые слова: банкротство, оспаривание сделки, недействительная сделка, Actio Pauliana, должник, кредитор, объективная теория, субъективная теория.

References

1 Rykov, D.A. (2018). Nedeistvitelnost sdelok dolzhnika v dele o bankrotstve: grazhdansko-pravovye aspekty [Invalidity of Debtor's Transactions in a Bankruptcy Case: Civil Law Aspects]. *Candidate's thesis.* Irkutsk [in Russian].

2 Sushkova, O.V. (2019). Pravovye problemy osparivaniia podozritelnykh sdelok v protsedurakh bankrotstva: teoreticheskii i prakticheskii aspekty [Legal problems of contesting suspicious transactions in bankruptcy proceedings: theoretical and practical aspects]. *Sovremennye problemy grazhdanskogo prava: materialy Mezhdunarodnoi nauchno-prakticheskoi konferentsii,*

posviashchennoi 70-letnemu yubileiu kandidata yuridicheskikh nauk, vedushchego nauchnogo sotrudnika NII chastnogo prava Kaspiiskogo universiteta K.V. Mukashevoi — Modern problems of civil law: Materials of the International Scientific and Practical Conference, dedicated to the 70th anniversary of the candidate of juridical sciences, leading researcher of Research Institute of Private Law of the Caspian University named after K.V. Mukasheva (pp. 189–207). Almaty [in Russian].

3 Sviridenko, O.M. (2005). Zarozhdenie institutov konkursnogo protsessa v rimskom prave [The Emergence of Bankruptcy Process Institutions in Roman Law]. *Zhurnal rossiiskogo prava — Journal of Russian Law,* 6, 146–152 [in Russian].

4 Budylin, S. (2021). Vnekonkursnoe kreditorskoe osparivanie: kak vernut vyvedennye aktivy? [Extra-Judicial Creditor Challenges: How to Recover Diverted Assets?]. *Yuridicheskaia rabota v kreditnoi organizatsii — Legal Work in a Credit Organization,* 4(70), 4–19. Retrieved from https://zakon.ru/blog/2021/12/18/vnekonkursnoe_kreditorskoe_osparivanie_kak_vernut_vyvedennye_aktivy [in Russian].

5 Prohorskij, S.V. (1999). Paulianov isk kak osnovnoi sposob zashchity prav trebovaniia konkursnykh kreditorov [Paulian Action as the Primary Method of Protecting the Claims of Bankruptcy Creditors]. *Yurist — Lawyer,* 1, 23–33 [in Russian].

6 Rebull Corral, P. M. (2021). "Actio Pauliana in EU Private International Law: a atter relating to a contract?". *Journal of Private International Law, 17*(1), 123–145.

7 Savin, D.V. (2023). Stanovlenie i razvitie vnekonkursnogo osparivaniia v evropeiskikh pravovykh sistemakh i v dorevoliutsionnoi Rossii [Formation and Development of Extra-judicial Dispute Resolution in European Legal Systems and Pre-revolutionary Russia]. *Prolog: zhurnal o prave — Prologue: A Journal of Law,* 1, 44–53 [in Russian].

8 Godeme, E. (1948). Obshchaia teoriia obiazatelstv [General Theory of Commitments]. Moscow: Yuridicheskoe izdatelstvo Ministerstva yustitsii SSSR [in Russian].

9 Telyukina, M.V. (2014). Mekhanizm *Action Pauliana* kak konkursno-pravovoi sposob zashchity interesov kreditorov [The mechanism of *Action Pauliana* as a competition-legal way to protect the interests of creditors]. *Materialy Mezhdunarodnoi nauchno-prakticheskoi konferentsii, posviashchennoi 90-letiiu professora V.F. Chigira (4–5 noiabria 2014 goda) — Materials of the International scientific and Practical conference dedicated to the 90th anniversary of Professor V.F. Chigir.* Minsk: Pravo i ekonomika [in Russian].

10 Shishmareva, T.P. (2015). *Institut nesostoiatelnosti v Rossii i Germanii [The Insolvency Institution in Russia and Germany].* Moscow: Statut [in Russian].

11 Cumbrae-Stewart, F.W.S. (1920). The Actio Pauliana: It's Origin, Development and Nature: Being a Dissertation on Frauds Upon Creditors in the Civil Law. Retrieved from https://www.google.kz/books/edition/The_Actio_Pauliana/mPagQAAACAAJ?hl=ru

12 Koziol, H. (2017). Osnovy i spornye voprosy osparivaniia deistvii dolzhnika, sovershennykh vo vred ego kreditoram (nachalo) [Basic principles and disputable points in relation to the challenging a debtor's activities undertaken to its creditors' detriment (first part)]. *Vestnik grazhdanskogo prava — Herald of Civil Law, 17*(3). Retrieved from https://bankruptcyclub.ru/2020/10/29/helmut-coziol/ [in Russian].

13 Kopzhassarova, S.I. (2023). Onaltu zhane bankrottyq rasimindegi boryshkerdin mamilelerin zharamsyz dep tanu negizderi [Grounds for invalidating the debtor's transactions during the rehabilitation and bankruptcy procedure]. *Qaragandy universitetinin khabarshysy. Qyqyq seriasy — Bulletin of the Karaganda University "Law Series"*, 3(111), 145–156 [in Kazakh].

14 "Insolvency regulations" (Insolvenzordnung InsO) 05.10.1994 (effective version). *base.gesetze-im-internet.de*. Retrieved from https://www.gesetze-im-internet.de/inso/

15 "Act on the Avoidance of Legal Acts of a Debtor Outside Insolvency Proceedings" (Anfechtunggesetz-AnfG) 05.10.1994. (effective version). *base.gesetze-im-internet.de.* Retrieved from AnfG — unofficial table of contents(gesetze-im-internet.de)

16 Marenkov, D. (2015). Sbornik statei o prave Germanii [Collection of Articles on German Law]. Retrieved from https://www.advant-beiten.com [in Russian].

17 Shishmareva, T.P. (2021). Pravovye sredstva obespecheniia effektivnosti protsedur nesostoiatelnosti v Rossii i Germanii [Legal means to ensure the effectiveness of insolvency proceedings in Russia and Germany]. *Doctor's thesis.* Moscow [in Russian].

18 Harris, B. The Ultimate Guide to Understanding Fraudulent Conveyances: Unveiling the Mysteries of Asset Transfers. Retrieved from https://blakeharrislaw.com/blog/guide-to-understanding-fraudulent-conveyances

19 Keay, A. (2000). Transactional Avoidance: Critical Aspects of English and Australian Law. *International Insolvency Review*, *9,* 5–36. Retrieved from https://onlinelibrary.wiley.com/doi/epdf/10.1002/%28SICI%291099-1107%28200021%299%3A1%3C5%3A%3AAID-IIR60%3E3.0.CO%3B2-P

20 Civil Code of the Netherlands. 01.01.1992. *www.dutchcivillaw.com* Retrieved from http://www.dutchcivillaw.com/legislation/dcctitle33022.htm

21 Roosjen, R. Creditor protection under Dutch law. Retrieved from https://www.maak-law.com/creditor-protection-under-dutch-law/

22 Reinout, D. V., & van Koppen, F.P. (2000). Transactional Avoidance in the Netherlands. *International Insolvency Review*, *9*, 47–64.

23 Civil Code of Spain, Book Four: Obligations and Contracts. Royal Decree of July 24, 1889. *www.icj.org.* Retrieved from https://www.icj.org/wp-content/uploads/2013/05/Spain-Spanish-Civil-Code-2012-eng.pdf

24 Usacheva, K.A. (2017). Vnekonkursnoe osparivanie vo frantsuzskom prave: do i posle reformy [Extra-Judicial Challenge in French Law: Before and After the Reform]. *Zakon — Law*, 12, 187–192 [in Russian].

25 Grazhdanskii kodeks Respubliki Litva. 18.07.2000 god (v deistvuiushchei redaktsii) [Civil Code of the Republic of Lithuania. 18.07.2000.]. *www.e-mas.lrs.lt.* Retrieved from https://e-mas.lrs.lt/portal/legalAct/lt/TAD/TAIS.245495 [in Russian].

26 Dirgėlienė, I. (2015). Application of actiopauliana in law various countries: the aspects of the debtor and the third party acting in bad faith. *Ekonomika i sotsium — Economy and Society*, 2 (15). Retrieved from www.iupr.ru

27 Krutiy, E.A. (2020). Institut vnekonkursnogo osparivaniia sdelok, sovershennykh dolzhnikom v ushcherb interesam kreditorov: istoriia stanovleniia v Rossii [The Institution of Extra-Judicial Contestation of Transactions Made by the Debtor to the Detriment of Creditors' Interests: The History of Development in Russia]. *Vestnik Ivanovskogo gosudarstvennogo universiteta — Bulletin of Ivanovo State University, 2,* 26–34 [in Russian].

28 Golmsten, A.H. (2019). *Uchenie o prave kreditora oprovergat yuridicheskie akty, sovershennye dolzhnikom v ego ushcherb, v sovremennoi yuridicheskoi literature [The Doctrine of the Creditor's Right to Contest Legal Acts Committed by the Debtor to Their Detriment in Contemporary Legal Literature].* Moscow [in Russian].

29 Federalnyi zakon Rossiiskoi Federatsii ot 26 oktiabria 2002 goda № 127–FZ «O nesostoiatelnosti (bankrotstve)» (v deistvuiushchei redaktsii) [Federal Law of the Russian Federation No. 127–FZ "On Insolvency (Bankruptcy)" dated October 26, 2002]. *base.spinform.ru.* Retrieved from https://base.spinform.ru/show_doc.fwx? rgn=3568 / [in Russian].

30 «Onaltu zhane bankrottyq turaly» Qazaqstan Respublikasynyn 2014 zhylgy 7 nauryzdagy № 176-V Zany [The Law of the Republic of Kazakhstan "On Rehabilitation and Bankruptcy". March 7, 2014, No. 176-V]. *base.adilet.zan.kz.* Retrieved from // https://adilet.zan.kz/kaz/docs/Z14000001 [in Kazakh].

31 Grazhdanskii kodeks Respubliki Kazakhstan ot 27 dekabria 1994 goda № 268–XIII [The Civil Code of the Republic of Kazakhstan dated December 27, 1994, No. 268-XIII]. *base.adilet.zan.kz.* Retrieved from https://adilet.zan.kz/kaz/docs/K940001000_ [in Russian].

32 Ilyassova, G.A., & Toqatov, R.A. (2020). Azamattyq qyqyqtyn qazaq tilindegi qainar kozderine tusinik beru maseleleri [Problems of interpretation of civil law sources in the Kazakh language]. *Qaragandy universitetinin khabarshysy. Qyqyq seriasy — Bulletin of the Karaganda University, Law Series*, 3 (99), 50–58 [in Kazakh].

33 Sulejmenov, M.K. (2007). *Grazhdanskii kodeks Respubliki Kazakhstan (Obshchaia chast). Kommentarii (postateinyi) [Civil Code of the Republic of Kazakhstan (General Part). Commentary (Article-by-Article)].* Almaty [in Russian].

34 Telyukina, M.V. Problemy osnovanii nedeistvitelnosti sdelok organizatsii, priznannoi bankrotom, v Rossii i Kazakhstane [Issues of the Grounds for Invalidity of Transactions of an Organization Recognized as Bankrupt in Russia and Kazakhstan]. *base.online.zakon.kz.* Retrieved from https://online.zakon.kz/Document/? doc_id=31610310 [in Russian].

35 Postanovlenie Sudebnoi kollegii po grazhdanskim delam Verkhovnogo Suda Respubliki Kazakhstan ot 8 iiunia 2023 goda [Decision of the Civil Affairs Judicial Board of the Supreme Court of the Republic of Kazakhstan dated June 8, 2023]. *based.office.sud.kz.* Retrieved from https://office.sud.kz/ [in Russian].

Information about the authors

Kopzhassarova, Sagyngul Izbassarovna — Master of jurisprudence, Doctoral student at the Department of civil and labor law, Karaganda Buketov University, Karaganda, Kazakhstan;

Nukusheva, Aigul Ashimovna — Candidate of juridical sciences, Professor, Professor at the Department of civil and labor law, Karaganda Buketov University, Karaganda, Kazakhstan; e-mail: *akuka007@mail.ru.*