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## The relationship between general and special grounds for invalidating debtor transactions in rehabilitation and bankruptcy

The purpose of the study is to conduct a comprehensive analysis considering the relationship between general and special grounds for invalidating transactions within the framework of rehabilitation and bankruptcy procedures, as well as a comparative review of the legislation of other countries. The methodological basis of the research is made up of general and specific methods, such as formal logical, scientific analysis and synthesis, comparative legal, historical and legal. As a result of the study, the emergence and development of competitive and non-competitive challenging of the debtor's transaction as the Institute of Actio Pauliana-Paulian claim, which developed in Ancient Rome, was examined. The features of recognizing a debtor's transaction as invalid on general and special grounds in accordance with the legislation of the Russian Federation, Germany, France were considered, and an analysis of the norms of regulatory acts of the Republic of Kazakhstan was carried out. In addition, the advantages of challenging on special grounds were analyzed, emphasizing the differences in the subject of challenging a transaction in declaring a transaction invalid on general and special grounds. In conclusion, the importance of maintaining a balance between general and special grounds was substantiated, and conclusions were drawn that in order to form a unified judicial practice in domestic legislation, it is necessary to clarify the mechanisms for applying in practice the general and special grounds for recognizing a debtor's transaction as invalid.

*Keywords:* bankruptcy, contesting the transaction, invalid transaction, Claim Paula, general grounds, special grounds, weight of property.

### Introduction

A.D. Rykov in his work notes that in different countries there are two main models of legal regulation of insolvency (bankruptcy) — creditor and debtor. Within the framework of the first model, the legislation emphasizes the protection of the rights of the debtor's "creditors", encourages maximum and quick satisfaction of the creditors' claims, sometimes to the detriment of the debtor's interests, in which case it is important to proportionately satisfy the claims of all creditors at the expense of the funds obtained from the sale of the debtor's property. And according to the second model, the legislation tries to help the "debtor" to get out of the crisis as quickly as possible, including getting rid of his debts and getting a chance to start anew [1; 42]. The rules on challenging transactions are influenced by the existing model of legal regulation of bankruptcy and change in accordance with the general trend of development of bankruptcy legislation. In this regard, there are different classifications of the invalidity of the debtor's transactions at different stages of development of bankruptcy legislation.

We can say that in the Republic of Kazakhstan there is a creditor model of legal regulation of bankruptcy. That is, the country's bankruptcy legislation is aimed at ensuring proportional satisfaction of the claims of all creditors when returning the debtor's property to the estate. Therefore, the main priority is to protect the rights of creditors and ensure maximum satisfaction of their claims.

In the context of this model, the mechanism of invalidity of the debtor's transactions serves as a mechanism for protecting creditors from unscrupulous or abusive practices on the part of the debtor aimed at evading the fulfillment of their obligations or infringing on the rights of creditors.

Considering the institution of invalidity of creditor-type debtor transactions, it should be noted that it has a double meaning.

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On the one hand, recognizing the debtor's transactions as invalid can prevent the debtor's actions aimed at concealing or transferring his property to third parties in order to circumvent the interests of creditors, thereby ensuring the safety of property to satisfy the claims of creditors within the framework of bankruptcy proceedings. On the other hand, the mechanism of invalidity of the debtor's transactions ensures fairness in the distribution of the debtor's property between creditors, preventing violation of the equality of creditors in satisfying their claims. This helps ensure proportional satisfaction of the claims of all creditors and compliance with the legitimate interests of all interested parties in the bankruptcy process.

Thus, the institution of invalidity of the debtor's transactions in the creditor model plays an important role in ensuring the protection, fairness, and order of interests of creditors in the bankruptcy process, contributing to the effective implementation of the basic principles of this model and ensuring the stability of the financial system.

The purpose of the scientific article is to consider the relationship between general and special grounds for invalidating transactions in the rehabilitation and bankruptcy procedure, to conduct a comprehensive analysis, dwell on the differences and advantages, and conduct a comparative analysis of foreign legislation.

#### *Methods and materials*

The methodological basis of the study is the principles of materialist dialectics, general scientific methods of analysis of social phenomena, scientific approaches to analysis and synthesis, contributing to a deeper understanding of various aspects of the legal sphere.

Using the formal legal method, the system and classification of general and special grounds for invalidity of the debtor's transactions were assessed, as well as their impact on the legal status of participants in legal relations. Using the comparative legal method, an analysis of the application in foreign countries of general and special grounds for recognizing the debtor's transactions as invalid was carried out and a study of their legal regulation was carried out. The history of the emergence of competitive and non-competitive challenging of a debtor's transaction using the historical and legal method was considered.

The theoretical basis of the study is based on the works of scientists of the Russian Federation, Germany and the current regulatory legal acts of the countries of the Russian Federation, Germany, and France. The norms of the relevant regulations of the Republic of Kazakhstan in the field of rehabilitation and bankruptcy were also analyzed.

#### *Results*

The legislation of a number of countries around the world applies general and special grounds for invalidating a debtor's transactions in bankruptcy. In particular, in the works of Russian and German scientists, special grounds for challenging a transaction in bankruptcy legislation were comprehensively analyzed and in-depth studies of various types were carried out. While some scholars believe that the study of special fundamentals is sufficient, some are of the opinion that it is appropriate to classify general and special fundamentals and that it is necessary to study the legal nature of both in parallel. A parallel study of general and special fundamentals allows us to gain a complete understanding of the legal nature of the process of challenging the debtor's transactions in bankruptcy and is an important aspect of understanding and effective application of bankruptcy law.

In legal literature and practice, the opinion is widely supported that when contradictions are identified between general and special legislation, with priority as an exception, a special law is subject to application, so that without special grounds there cannot be a general rule [2]. In conditions of competition of norms, the principle of priority of special norms in relation to general norms is applied (extraordinary general rights derogat). The principle of priority of special rules over general ones (the special rule excludes the general one), the so-called "Lex specialis derogat generali", is the basic principle of legal interpretation, applied in cases where there is a contradiction between the rules of general and special law.

The debtor's transactions can be conditionally divided into two parts: transactions in which the grounds for invalidating the debtor occur only when a case for rehabilitation and (or) bankruptcy is initiated, and transactions in which the grounds for invalidating the debtor occur in cases not related to the bankruptcy of the debtor. That is, declaring a debtor bankrupt is the main condition for recognizing transactions as invalid on special grounds and acquires the legal significance of challenging on grounds in bankruptcy legislation.

Considering the competition between general and special rules when challenging a debtor's transaction, A. Shestov argues that differentiating the invalidity of a transaction simultaneously on special and general civil grounds leads to a violation of the principle of priority of generally recognized special rules. According

to some views, in order to challenge a transaction on general grounds, it must exceed the limits of special grounds. To distinguish between general civil and special grounds for a dispute, judicial practice recommended using criteria such as *the limit of defectiveness of a transaction* of an insolvent debtor and *the limit of the disposition* of special grounds for a dispute provided for by bankruptcy legislation. But in practice, the content of these criteria is not specified, therefore they do not allow identifying general civil and special grounds for challenging the debtor's transactions [3].

Thus, it is necessary to conduct further research and discussion in order to clarify the criteria for distinguishing between general civil and special grounds for challenging the debtor's transactions. This allows judicial practice to more effectively apply bankruptcy legislation and ensures fair resolution of disputes in this area.

In accordance with the legislation of some countries, general and special grounds for challenging the debtor's transactions are also classified as competitive and non-competitive. Now, if we look at the history of the emergence of these bankruptcy and non-competitive grounds, then the possibility of protecting the rights of creditors from dishonest actions of the debtor originates in Roman law.

The history of the emergence of bankruptcy and non-competitive challenging of debtor's transactions over the centuries indicates serious changes in legal systems related to the development of trade, financial relations and the protection of creditors' rights. *Actio Pauliana*, which originated in ancient Rome, allowed creditors to challenge transactions entered into by a debtor in an attempt to defraud creditors or avoid fulfilling their obligations under Paul's claim. However, the doctrine has not formed a consensus on the question of who and when can present this claim and whether it can be presented outside of competition [4; 47].

#### *Discussion*

D.D. Grimm noted that the Roman claims system, known as *Actio Pauliana*, was historically originally created to protect the interests of bankruptcy creditors. Over time, this system was expanded and applied to acts of fraud not only within the framework of the competition, but also when individual creditors filed complaints about the dishonest actions of the debtor. This is explained by the application of the same rules to competitive and non-competitive disputes, based on the same assumptions about the subjective and objective aspects of offenses in the Roman system [5]. Similar principles and contestation tools later disappeared in much of medieval Europe, where bankruptcy law was not widespread and legal protection for creditors was less effective. With the further development of commercial relations and the growth of bankruptcy at a new stage, effective means of protecting the rights of creditors were required. Therefore, in a number of European countries of the 19th and 20th centuries, bankruptcy laws were developed, including mechanisms for challenging the debtor's transactions within the framework of the bankruptcy procedure and outside it.

Thus, in modern legal systems dating back to Ancient Rome, competitive and non-competitive challenging of the debtor's transactions are the most important means of protecting the rights of creditors. They allow creditors to combat unscrupulous actions by debtors, such as hiding or repossessing property.

Consideration of foreign legislation from the point of view of the relationship between this bankruptcy and non-competitive dispute when challenging a debtor's transaction will expand our understanding of the mechanisms for protecting the interests of creditors and conduct a comparative analysis by analyzing various models and mechanisms. Therefore, let's look at the legislation of some countries in order to determine the best solutions for improving our legal system.

The legislation of the **Russian Federation** also stipulates that challenging a transaction is competitive (special) and non-competitive (general), as we have already noted. Competition grounds are grounds for challenging transactions and actions of the debtor arising in the event of bankruptcy. They are regulated by the Federal Law of the Russian Federation of October 26, 2002 "On Insolvency (Bankruptcy)" (hereinafter referred to as the Law of the Russian Federation on Insolvency) [6] and are applied at the stage of the bankruptcy process. Non-competitive grounds for challenging transactions allow creditors to appeal the actions of the debtor outside the context of bankruptcy and are regulated by the provisions of Articles 10, 168 of the Civil Code of the Russian Federation [7]. They represent grounds not directly related to bankruptcy and may be based on a violation of the law or the rights of creditors.

Thus, according to M.A. Erlikh, the grounds for invalidating the debtor's transactions, enshrined in the bankruptcy legislation of the Russian Federation, are specified cases of abuse of right in the Civil Code of the Russian Federation [8].

The system of grounds for competitively challenging a debtor's transaction is determined as follows: 1) *preferred transaction without taking into account the bad faith of the counterparty* (Clause 2 of Article 61.3 of the Bankruptcy Law); 2) *privileged transaction* (Clause 3 of Article 61.3); 3) *suspicious deal with unequal counter offer* (Clause 1 of Article 61.2); 4) *suspicious transaction committed with the aim of causing harm to the property rights of creditors* (Clause 2 of Article 61.2). A system of grounds for out-of-competition challenges has not developed, since the current legislation uses only the combination of Articles 10, 168 and 170 of the Civil Code of the Russian Federation [9; 299]. At the same time, judicial practice establishes the following criteria for the application of a non-competitive dispute: 1) lack of debtor's property to satisfy the creditor's claims [10]; 2) reduction of the debtor's property mass as a result of a transaction; 3) the presence of an intention to cause harm to the creditor by depriving him of satisfaction as a result of the transaction.

Another feature is that non-competitive contestation of transactions gives rise to a number of unsolvable issues related to the nullity of the transaction, and competitive contestation — with the fact that it is a contested transaction: The difference between the legal regimes of these transactions 1) statute of limitations for filing a claim regarding transactions (irrelevant — 3 years, contestable — 1 year), 2) the legal status of the transaction (if it is considered that a void transaction was never concluded, whereas a voidable transaction is considered non-existent from the moment it is recognized as invalid), and also 3) application of the consequences of invalidity of transactions on these grounds (non-competitive grounds provide for the separation of the requirement for invalidity and the requirement for the application of the consequences of invalidity, and competitive grounds are not considered without applying the consequences of the invalidity of the transaction, since otherwise the subject of the competitive dispute is lost) will differ.

In a bankruptcy case, a competitive dispute has a clear priority, and a non-competitive dispute is applied subsidiarily [9; 299]. In bankruptcy proceedings, preference is most often given to special grounds for challenging the debtor's transactions. It aims to protect the interests of all creditors and ensure fair distribution of the debtor's property.

On the other hand, challenging on general grounds is used in cases where the use of subsidiary or special grounds in a bankruptcy case is impossible or ineffective. It can be initiated by a private creditor or other interested parties outside the bankruptcy procedure and is aimed at protecting the interests of a specific creditor.

This division of disputes on special and general grounds makes it possible to effectively resolve disputes and ensure fair satisfaction of the claims of all participants in the bankruptcy process. However, it is important to strike a balance between these two grounds to prevent the rights of creditors from being violated or the rights of individual stakeholders being abused.

Thus, in the Russian Federation, in a bankruptcy case, clear preference is given to a competitive dispute, and a non-competitive dispute is applied subsidiarily; a conclusion is drawn about the presence of its own shortcomings in the application of a non-competitive dispute.

In Germany, special grounds or a bankruptcy dispute are regulated by the “Insolvency Regulation” (Insolvenzordnung, InsO) [11], and outside the insolvency procedure — by the “law on challenging the legal actions of the debtor outside the bankruptcy procedure” (Anfechtungsgesetz-AnfG) [12] (hereinafter referred to as the Law About disputing).

In German legislation, the issues of the relationship between bankruptcy and non-bankruptcy disputes are widely discussed in paragraphs 16–18 of the “law on challenging the legal actions of the debtor outside the bankruptcy procedure” (Anfechtungsgesetz-AnfG). In accordance with §16 of the Law, bankruptcy challenge becomes a priority after the opening of bankruptcy proceedings [13].

As follows from the commentary on bankruptcy law, the claim of a private creditor becomes a claim of the bankruptcy estate. The process initiated at the request of a private creditor is terminated by opening bankruptcy proceedings and can be carried out by a bankruptcy trustee. This requirement also occurs when it is simultaneously justified on other grounds, such as the commission of unauthorized acts. If the bankruptcy creditor, even before the opening of the bankruptcy process, received a decision that came into force as a result of his dispute, but has not yet been executed, then further execution of the claim must be carried out by the bankruptcy trustee. If the creditor who obtained the decision does not compensate the defendant for losses, he will receive a claim for compensation from return to the estate. If a creditor does not receive compensation for his losses from the prevailing debtor, he has the right to claim compensation for these losses from the property returned to the bankruptcy estate after bankruptcy [13; 157].

Also, if the creditor satisfies or secures its claims as a result of the out-of-competition challenge process, in accordance with §16, paragraph 2 of the Challenge Law, §130 of the insolvency provision

applies. This means that the bankruptcy trustee can challenge such acts to satisfy the claim, and the creditor must return the result to the masses. This provision is based on the idea of uniform satisfaction of creditors' claims, which, although not applicable to the field of non-bankruptcy disputes, may prevent individual satisfaction of creditors' claims with the opening of bankruptcy proceedings. That is, this rule is intended to ensure equal satisfaction for all creditors in a bankruptcy proceeding and to prevent situations where one creditor may gain an advantage over others through unfair actions or decisions.

Paragraph 17 of the German "Dispute Act" regulates the suspension of out-of-competition disputes after the commencement of bankruptcy. If deemed appropriate, the manager may enter the process in place of the creditor. If it is not included in the process, the creditor can continue it after the bankruptcy process is completed. According to paragraph 18, if the bankruptcy process is terminated and the trustee renounces it, the right to contest is returned to the creditor.

German law therefore differs in that it details the interaction between out-of-competition and in-competition disputes. According to the Law on Disputes, a creditor has the right to dispute only before the commencement of bankruptcy proceedings. In other words, when the bankruptcy process begins, the bankruptcy dispute prevails, and creditors must turn to the bankruptcy trustee to challenge the debtor's transactions. This provides a more structured and efficient process for adjudicating and resolving bankruptcy disputes.

In **France**, non-competitive challenge of a debtor's transaction is regulated by the French Civil Code [14] (Articles 1341–1341–3). It defines the following special ways to protect the rights of creditors:

- *indirect claim* (Article 1341) provides for the possibility of exercising the creditor's property rights at his expense in the event of the debtor's inaction. However, since the debtor may also benefit from other creditors by satisfying such a claim, this makes the claim disadvantageous to the individual creditor.

- *Paul's claim* (Article 1167), a requirement that allows a creditor to act against the actions of a debtor that violates his rights.

- *direct claim*, that allows a creditor to directly demand payment of an obligation from a debtor.

The reform of the law of obligation that took place in France in 2015 led to a clear identification of the consequences of out-of-competition challenges to the debtor's transactions. Now the disputed act was declared invalid only in relation to the plaintiff-creditor and restored his rights, as if the transaction had never taken place. This means that only the plaintiff-creditor benefits and the law is invalidated only in respect of him. However, even after the reform, many aspects were ignored in the new rules and were often based on earlier approaches to jurisprudence and doctrine [15; 190]. Some additional conditions of challenge, such as the property status of the debtor at the time of the transaction and requirements for its financial stability, were also not fully regulated by the new rules.

Thus, French bankruptcy legislation is aimed at protecting the interests of creditors. Therefore, if a transaction is declared void at the request of one creditor, it will benefit that same creditor and not all creditors. French law understands a non-competition dispute as a personal claim of the creditor that benefits only that creditor: the act is invalidated only as against him, and the fortune of that creditor is restored as if the disputed act had not existed.

All legal provisions governing bankruptcy and rehabilitation procedures in the Republic of Kazakhstan are conditionally divided into three groups: 1) code level: Civil Code, Criminal Code, etc.; 2) legal level: "On rehabilitation and bankruptcy", etc.; 3) Regulatory resolution of the Supreme Court, individual acts (provisions, orders) of the authorized body and domestic judicial practice [16; 54].

Invalidation of transactions in the rehabilitation and bankruptcy procedure in the Republic of Kazakhstan is carried out on a general basis in accordance with civil law legislation and on special grounds in accordance with the legislation on rehabilitation and bankruptcy. The invalidity of transactions on general grounds is provided for by the Civil Code of the Republic of Kazakhstan dated December 27, 1994 [17], the Law of the Republic of Kazakhstan dated March 7, 2014 "On Rehabilitation and Bankruptcy" [18]. In accordance with paragraph 1 of Article 7 of this law, transactions are recognized as invalid if they were concluded by the debtor or a person authorized by him within three years before the initiation of rehabilitation and (or) bankruptcy proceedings in the presence of grounds provided for by the civil legislation of the Republic of Kazakhstan and this Law. Paragraph 2 of Article 7 provides grounds for declaring a transaction invalid:

- 1) differ significantly from the price of the transaction and (or) other circumstances, the price and (or) other circumstances when making similar transactions in comparable circumstances for the debtor for the worse;

2) inconsistency of the transaction with the activities of the debtor, limited by the laws of the Republic of Kazakhstan, constituent documents, or completion in violation of the competence defined by the charter;

3) transfer of property for free (including temporary use) or at a price that differs from the price of a similar or homogeneous product in a direction that is relatively bad for the debtor under relative economic conditions, or to the detriment of the interests of creditors without grounds for transfer;

4) if a transaction completed within six months before the initiation of rehabilitation and (or) bankruptcy proceedings entails preferential satisfaction of the claims of certain creditors over others;

5) the conditions for donating the debtor's property differ significantly from transactions completed a year before the initiation of rehabilitation or bankruptcy proceedings, if such a transaction;

6) carried out under such a transaction without the intention of causing the corresponding legal consequences, with prejudice to the interests of creditors.

In accordance with the Law “On the restoration of solvency and bankruptcy of citizens of the Republic of Kazakhstan” dated December 30, 2022 [19], if there are grounds provided for by the civil legislation of the Republic of Kazakhstan, transactions are invalid if they were made by the debtor or his authorized person within three years before the initiation cases of restoration of solvency and application of bankruptcy procedures through the courts are recognized. That is, the said law does not provide for special grounds for declaring transactions invalid.

In accordance with the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated November 2, 2023 No. 2 “On some issues of the application by courts of legislation on rehabilitation and bankruptcy of legal entities and individual entrepreneurs”, the grounds for such claims in the claim of bankruptcy and rehabilitation managers to invalidate transactions are also *special grounds* provided for in paragraph 2 of Article 7 of the Law it should be noted that *general grounds* provided for in Articles 158, 159, 160 of the Civil Code can also be given [20].

The three-year period established by paragraph 1 of Article 7 of the Law of the Republic of Kazakhstan “On Rehabilitation and Bankruptcy” also applies to claims to invalidate transactions made on the grounds provided for in Articles 158, 159, 160 of the Civil Code.

That is, we cannot say exactly which of the general and special grounds will have priority in accordance with domestic legislation, which may lead to obstacles in the practical application of the legislation. There may also be differences in the mechanisms for suspending disputes on general grounds after the commencement of the bankruptcy process and in establishing provisions for the return of funds to the estate if the creditor's claims are satisfied outside the bankruptcy procedure.

Thus, we consider it necessary to clarify in domestic legislation the mechanisms for applying in practice general and special grounds for recognizing a debtor's transaction as invalid. Development of more detailed rules and procedures for invalidating a debtor's transaction on general and special grounds, which helps to increase the transparency and efficiency of the entire process. The introduction of mechanisms to ensure uniform satisfaction of the claims of all creditors within the bankruptcy procedure, which will avoid situations where one creditor may have an advantage over others. These proposals could contribute to the creation of a more balanced and fair system for resolving disputes in the field of bankruptcy in Kazakhstan, taking into account international experience in this area, including German.

The *difference* between declaring a transaction invalid on general and special grounds is based on the subject of challenging the transaction. Bankruptcy on special grounds in accordance with the law, with a requirement to recognize a transaction as invalid, the *administrator*, including at the request of the creditor who determined the transaction, applies to the court with an application to recognize such transactions as invalid, and on general grounds, in accordance with civil law, interested parties, the relevant government agency or prosecutor may file a claim to invalidate the transaction.

Thus, in the Russian Federation, an application to challenge a debtor's transaction can be filed by an *external manager* or *bankruptcy trustee* on behalf of the debtor on his own initiative or by decision of a meeting of creditors or a committee of creditors to the Arbitration Court. In this case, the main goal of challenging a transaction in a bankruptcy case is achieved — the interests of all creditors are taken into account equally, and proportionality in the satisfaction of their property claims is achieved. And in the event of a non-competitive dispute, a private creditor or bailiff acts in his own interests individually, as a result of which only the individual creditor's property claims are satisfied [9; 298].

Kristen Van Swieten notes that non-competitive disputes basically violate the property interests of all other creditors, since the challenge by an interested creditor of fraudulent transactions is aimed at satisfying his personal interests — he receives priority satisfaction, bypassing other creditors [21]. It is noted that a

non-competitive challenge of a transaction, although it allows interested creditors to satisfy their claims outside the bankruptcy procedure, may have a negative impact on other creditors. The reason is that a creditor challenging transactions may have an interest in obtaining maximum benefit or compensation from the debtor's property. However, at the same time, he may strive to ensure priority satisfaction of his claims, ignoring or violating the interests of other creditors.

A general or out-of-competition contest allows a creditor to gain access to the debtor's issued assets without having to wait through a lengthy, complex and costly bankruptcy process, and thereby satisfy its (previously unfulfilled) claims against the debtor [15]. That is, on the one hand, in the event of a non-competitive dispute, the creditor has the opportunity to independently and quickly act by going to court to protect its rights and interests. This also improves the financial climate and helps maintain confidence in the justice system, as creditors can expect their rights to be protected without resorting to complex and lengthy bankruptcy proceedings. However, when challenging a transaction on general grounds, the bankruptcy estate does not increase, only the interests of the plaintiff-creditor are taken into account, and when challenging a transaction on special grounds within the bankruptcy framework, the bankruptcy estate increases and, accordingly, the interests of all creditors are taken into account.

The purpose of recognizing the debtor's transactions as invalid on special grounds, that is, as part of the bankruptcy procedure, is to ensure the functioning of the procedure in the interests of all creditors, as well as to achieve proportional satisfaction of the property claims of all of them. This will allow observing the principles of fairness and equality between creditors, as well as preventing possible manipulations by the debtor with his property aimed at infringing the interests of creditors. But in the case of invalidity of the transaction, on general grounds, the private creditor acts independently in accordance with its interests. The main purpose of the process of challenging a transaction is to satisfy the property claims of a particular creditor and protect his rights in relation to the debtor. In this case, the challenge procedure is not necessarily related to the bankruptcy procedure, and its main purpose is the personal satisfaction of the interests of a specific creditor outside the context of the general procedure. It reflects the confidentiality of challenging a transaction on general grounds and is aimed at protecting the interests of individual parties to the transaction.

Thus, a challenge on general grounds may lead to an unequal distribution of property, since one creditor may obtain more favorable conditions for satisfaction of its claims, violating the rights of other creditors. This poses potential risks to ensuring fairness and equity among creditors in the bankruptcy process.

### *Conclusion*

Thus, as a result of the study the following conclusions will be drawn:

1. Due to the history of the emergence of general and special grounds, the Roman claim system, known as *Actio Pauliana*, which originated in ancient Rome, was historically initially created to protect the interests of creditors on a competitive (special) basis, and over time, this system was expanded to include suspicious acts only within the context of competition but was also used when individual creditors filed a claim about the debtor's dishonest actions (general basis).

2. It is important to strike a balance between general and specific grounds in order to avoid the infringement of creditors' rights or the abuse of the rights of individual stakeholders. On special grounds, that is, within the framework of the bankruptcy procedure, in order to ensure the interests of all creditors, by recognizing the debtor's transactions as invalid, proportional satisfaction of the property claims of all of them is achieved. This will ensure compliance with the principles of fairness and equality between creditors. A dispute on general grounds can lead to an unequal division of property, since one creditor may receive more favorable conditions for satisfying his claims by violating the rights of other creditors.

3. The introduction of mechanisms to ensure uniform satisfaction of the claims of all creditors within the bankruptcy procedure, which will avoid situations where one creditor may have an advantage over others. That is, taking into account the experience of the German state, we consider it necessary to clarify in domestic legislation the mechanisms for applying in practice general and special grounds for recognizing a debtor's transaction as invalid. This could help to create a more balanced and fair system for resolving bankruptcy disputes in Kazakhstan.

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## Оңалту және банкроттықтағы борышкердің мәмілелерін жарамсыз деп танудың жалпы және арнайы негіздерінің арақатынасы

Зерттеудің мақсаты — оңалту және банкроттық рәсімдері аясында мәмілелерді жарамсыз деп танудың жалпы және арнайы негіздері арасындағы байланысты қарастыра отырып, жан-жақты талдау жүргізу, сондай-ақ басқа елдердің заңнамасына салыстырмалы шолу жасау. Зерттеудің әдістемелік негізін формальды-логикалық, ғылыми талдау және синтез, салыстырмалы-құқықтық, тарихи-құқықтық тәрізді жалпы және жеке әдістер құрайды. Зерттеу нәтижесінде Ежелгі Римде қалыптасқан *Actio Pauliana*-Паулдық талап институты ретіндегі борышкердің мәмілесін конкурстық және конкурстан тыс даулаудың пайда болуы, дамуы қарастырылды. Ресей Федерациясының, Германия, Франция елдерінің заңнамаларына сәйкес борышкердің мәмілесін жалпы және арнайы негіздер бойынша жарамсыз деп танудың ерекшеліктері қарастырылып, Қазақстан Республикасының нормативтік актілерінің нормаларына талдау жасалды. Сонымен қатар жалпы және арнайы негіздер бойынша мәмілені жарамсыз деп танудағы мәмілені даулау субъектісі бойынша айырмашылығына тоқталып, арнайы негіздер бойынша даулаудың артықшылықтары талданды. Қорытындысында жалпы және арнайы негіздер арасындағы тепе-теңдікті сақтау маңыздылығы негізделіп, бірінғай сот тәжірибесін қалыптастыру мақсатында отандық заңнамада борышкердің мәмілесін жарамсыз деп танудың жалпы және арнайы негіздерін тәжірибеде қолдану тетіктерін нақтылау қажет деген тұжырымдар жасалды.

*Кілт сөздер:* банкроттық, мәмілені даулау, жарамсыз мәміле, Паулдық талап, жалпы негіздер, арнайы негіздер, мүліктік масса.

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## Соотношение общих и специальных оснований признания недействительными сделок должника в реабилитации и банкротстве

Целью исследования является проведение всестороннего анализа с рассмотрением взаимосвязи между общими и специальными основаниями признания сделок недействительными в рамках процедур реабилитации и банкротства, а также сравнительный обзор законодательства других стран. Методологическую основу исследования составляют общие и частные методы, такие как формально-логический, научный анализ и синтез, сравнительно-правовой, историко-правовой. В результате исследования было рассмотрено возникновение, развитие конкурсного и внеконкурсного оспаривания сделки должника как института *Actio Pauliana* — Паулианова иска, сложившегося в Древнем Риме. Рассмотрены особенности признания сделки должника недействительной по общим и специальным основаниям в соответствии с законодательством Российской Федерации, Германии, Франции, проведен анализ норм нормативных актов Республики Казахстан. Кроме того, были проанализированы преимущества оспаривания по специальным основаниям, с учетом различия по субъекту оспаривания сделки в признании сделки недействительной по общим и специальным основаниям. В заключение обоснована важность соблюдения баланса между общими и специальными основаниями, сделаны выводы о том, что в целях формирования единой судебной практики в отечественном законодательстве необходимо уточнить механизмы применения на практике общих и специальных оснований признания сделки должника недействительной.

*Ключевые слова:* банкротство, оспаривание сделки, недействительная сделка, Паулианов иск, общие основания, специальные основания, имущественная масса.

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