

Court Decision: Applicable Law for Transactions Harmful to Creditors (Actio Pauliana)

On 8 October 2024, at an action meeting in case No SKC-606/2024, the Senate of the Supreme Court of the Republic of Latvia examined an issue of determining the applicable law in claims where a creditor challenges transactions concluded by a debtor with third parties that are harmful to the creditor's ability of recovering their claims.

Referring to the European Union case law, the Supreme Court concluded that claims where a creditor challenges a debtor's transaction with a third party that is detrimental to the creditor's interests (actio pauliana) fall under the scope of **Regulation (EC) No. 593/2008 (Rome I) on the law applicable to contractual obligations**, even though the creditor is not a party to the contested transaction.



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This decision is significant for several reasons. The Senate has clarified that:

- Even if there are no direct contractual obligations between the creditor and the debtor's transaction partner (e.g., the acquirer of the debtor's assets), such claims by the creditor are considered contractual obligations within the meaning of the Rome I Regulation.
- Such creditor claims will be governed by the law of the country agreed upon by the debtor and the acquirer of the debtor's assets as contracting parties.
- The applicable law cannot be determined under Regulation (EC) No 864/2007 of the European Parliament and of the Council on the law applicable to non-contractual obligations (Rome II), for example, based on the law of the jurisdiction where the damage occurred.

This decision provides a more in-depth explanation of the role and importance of the applicable law in cross-border transactions. It is particularly significant for both creditors and debtors, as it highlights that the choice of applicable law can be decisive not only for the validity and enforcement of a transaction but also in potential disputes. For businesses operating in an international environment, this decision serves as a reminder to carefully evaluate the choice of applicable law, considering possible risks and the need to protect their interests.