

LEGAL OPINION

“Civil procedure law Article 293”

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SUBJECT: - What are the special case conditions “*in cases of cancellation of disposals*”?

- “*What conditions*” can a cancellation decision be made according to the Enforcement and Bankruptcy Law 278/III-2 and 280/I?

Can the buyer's "*purchasing (financial) power*” be investigated in cases of cancellation of disposals?

- What are the consequences of the case of cancellation of disposals “*turning into a price*” (Enforcement and Bankruptcy Law 283/II)?

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I- *The power of disposition* of the debtor, about whom the «*attachment*» procedure is initiated (in case of bankruptcy, «*the decision of bankruptcy*» article 165, 191/I of the Enforcement and Bankruptcy Law), is restricted from this date.

Before the «*attachment*» (and «*bankruptcy decision*»), the debtors who can freely dispose of their properties can transfer all or part of their assets to others (especially their relatives, friends who know this purpose) through some «*fraudulent*» transactions (ie, free of charge or at a very cheap price) with the aim of «*smuggling property*» from the creditors (ie, leaving the pursuit of them unprofitable), without being targeted to pursue the creditors -by way of debt and bankruptcy- or they can reduce their assets by purchasing movable/immovable property on their relatives by paying the price themselves.

In order to protect the creditors who suffer from such transactions «*with the intention of smuggling property*» by such malicious debtors, they have been given the right to file a so-called annulment action.

We can define "*action for the annulment of the disposition*" as "*action for performance in personal (relative) character in which a debtor, to harm his creditors, before the seizure of his property or before the decision of bankruptcy is given, that is, in the period when his power of disposal has not yet been restricted, to ensure that all the savings made by his creditors in order to smuggle his properties are considered as null and void only in terms of the plaintiff-creditor granting the plaintiff-creditor "compulsory enforcement authority" over the subject property and rights "extracted from the debtor's assets," which can be filed within five years, based on the reasons stipulated by the law.*"

The purpose of this case is that in the period when the debtors' powers of disposal are not restricted yet (i.e., before the «*attachment*» and the «*decision of bankruptcy*»), the legal

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actions they have made with the intention of smuggling property from their creditors are invalid in terms of the claimant creditor and It is to ensure that the creditor obtains his receivables by forced execution as if this property still belongs to the debtor, by requesting the sequestration and sale of this property.^{2 3}

As understood from the explanations made, the annulment action is «a personal lawsuit, not a case related to the same of the subject property. » In other words, at the end of this lawsuit, the property subject to savings is removed from the assets of the buyer (or the transferee) and not returned to the debtor's assets. Although the property subject to disposal remains in the buyer's assets (or the taker), the plaintiff-creditor who wins the case will have the opportunity to have the property foreclosed and receive the receivable from the sale price. In case the subject of the case is immovable, with the provision given at the end of the case, no change is made in the title deed record of the immovable If it is decided to "accept the case," only the "plaintiff-creditor" benefits from this provision. Other creditors who are creditors from the defendant-debtor do not benefit from this provision. The court, which already decides "on the acceptance of the case," "the plaintiff-creditor shall be given a mandatory execution authority" as stated in the "insolvency certificate" - limited to the receivables and accessories in the execution file - if the court has not submitted a final certificate of insolvency.^{4 5}

In Article 277/I of the Enforcement and Bankruptcy Law; It is stated that the lawsuit for annulment «can be filed due to the dispositions written in Articles 278, 279, and 280 of the Enforcement and Bankruptcy Law» (Enforcement and Bankruptcy Law article 277).

High Court of Justice⁶ stated that debtor's dispositions subject to cancellation are regulated under three groups and in Articles 278, 279 and 280 of the Enforcement and Bankruptcy Law, however, all the savings that can be canceled in these articles are not counted as limited, cancellation decision can be made and by making a general definition for some of the acts subject to cancellation, the law left the determination of which savings are subject to cancellation to the discretion of the judge (Article 281 of the Enforcement and Bankruptcy Law), for this legal reason, even if the plaintiff relies on one of the 278, 279 and 280th articles of the Enforcement and Bankruptcy Law, the court is not bound by this and that the annulment decision may be made according to one of the other articles.

II- Who can open the annulment case, that is, who can be the «plaintiff» in this case - by counting (as a limitation) in **Article 277 of the Enforcement and Bankruptcy Law** - is specified. Except for the persons mentioned here, there is no right to sue.⁷

In follow-up through attachment;

² UYAR,T./UYAR,A./UYAR,C. Actions for Cancellation of Disposals, 6th Edition, 2019, p: 3 vd.

³ See: 17. HD. 26.11.2018 T. 6958/11330; 19.11.2018 T. 946/10870; 05.11.2018 T. 6517/10079; 15.10.2018 T. 4016/9049; 10.10.2018 T. 4073/8933; 09.10.2018 T. 8503/8819 vb. (www.e-uyar.com)

⁴ UYAR,T./UYAR,A./UYAR,C. a.g.e., p:11 vd.

⁵ See: 17. HD. 05.11.2019 T. 2397/10196; 26.11.2018 T. 6958/11230; 15.10.2018 T. 13062/9065; 04.10.2018 T. 5240/8614; 09.04.2018 T. 8983/3951 vb. (www.e-uyar.com)

⁶ See: 17. HD. 16.04.2018 T. 7082/4143; 06.02.2018 T. 19595/652; 31.05.2017 T. 5927/6179; 16.05.2017 T. 6609/5516; 16.05.2017 T. 6193/5513; 14.03.2017 T. 18940/2720 vb. (www.e-uyar.com)

⁷ UYAR, T. Parties to the Action for Cancellation of the Disposals (Prof. Dr. Firat Öztan'a Armağan, C:2, 2010, p:2243-2274) – UYAR,T./UYAR,A./UYAR,C. a.g.e., s:742 vd.

I-a) The owner of the definitive proof of insolvency (Enforcement and Bankruptcy Law Art. 143; 105/I) can open a creditor.⁸

b) The owner of the definitive proof of insolvency (Enforcement and Bankruptcy Law Art. 143; 105 / I) can open a creditor.⁹

(In the above two cases, if there are more than one enforcement proceedings made by the creditor about the debtor, the creditor can file a lawsuit for annulment by obtaining a separate insolvency certificate for each enforcement proceeding. Likewise, the creditor cannot file an action to annulment his / her receivable without obtaining a separate insolvency certificate, based on the insolvency certificate received by another creditor.)

c) Separately, the creditor can also file an action for annulment as a «counteraction» without submitting proof of insolvency in the «remuneration case» filed according to the Enforcement and Bankruptcy Law art. 97/XVII.¹⁰

It should be noted immediately that the **Court of Appeals for the 17th Circuit**¹¹, such as the **Court of Appeals for the 13th Circuit**, **Court of Appeals for the 15th Circuit**¹² and **Assembly of Civil Chambers**¹³ which previously examined the decisions taken on this matter on appeal, acknowledged that if the insolvency certificate is not presented «while filing a lawsuit or later at the trial/appeal stage,» the «case cannot be heard.»

Court of Appeals for the 4th Circuit, which is still examining the decisions made by the local courts on this matter, accepts that the «*annulment cases based on the cause of the collusion*» «*can be heard without the need to submit insolvency documents.*»¹⁴

Today, Court of Appeals for the 17th Circuit, which is examining the decisions made by the local courts regarding the cancellation of the savings, is seeking the submission

⁸ See: 17. HD. 05.11.2019 T. 2794/10194; 08.10.2019 T. 12648/9053; 01.10.2019 T. 19683/8716; 17.09.2019 T. 16250/8171; 22.05.2019 T. 18062/6611; 15.05.2019 T. 18878/6192; 08.05.2019 T. 6144/5718; 12.02.2019 T. 56/1292; 05.12.2018 T. 7206/11758; 04.10.2018 T. 5240/8614; 08.07.2010 T. 4306/6635; 31.05.2010 T. 4308/4925; 01.07.2010 T. 3699/6225; 01.10.2009 T. 4961/5863; 01.07.2010 T. 5096/6229; 10.12.2009 T. 6893/8204 vb. (www.e-uvar.com)

⁹ See: 17. HD. 05.11.2019 T. 2794/10194; 08.10.2019 T. 12648/9053; 01.10.2019 T. 19683/8716; 17.09.2019 T. 16250/8171; 20.06.2019 T. 6162/7019; 22.05.2019 T. 18062/6611; 15.05.2019 T. 18878/6192; 08.05.2019 T. 6144/5718; HGK. 30.04.2019 T. 17-1791/498; 10.12.2009 T. 6893/8204; 23.11.2009 T. 8206/7773; 19.11.2009 T. 5582/7734; 20.11.2008 T. 3181/5422; 11.04.2007 T. 555/2363; 15. HD. 10.05.2004 T. 1892/2621; 01.10.2001 T. 3971/4209; 16.04.2001 T. 1400/1954; 17. HD. 19.07.2007 T. 3037/2545; 12.07.2007 T. 3032/2476; 15. HD. 04.11.2004 T. 1832/5619; 03.11.2004 T. 1725/5593 vb. (www.e-uvar.com)

¹⁰ See: 17. HD. 14.05.2018 T. 17250/4976; 16.01.2018 T. 12662/531; 28.06.2011 T. 1718/6117; 15. HD. 26.10.1988 T. 2869/3403; 27.10.1987 T. 2251/3709 (www.e-uvar.com)

¹¹ See: 17. HD. 21.03.2013 T. 12347/3975; 14.03.2013 T. 5988/3307; 14.03.2013 T. 5569/3301; 26.06.2012 T. 1921/8024; 19.01.2012 T. 1829/269; 18.04.2012 T. 12788/4874; 25.03.2013 T. 5561/4060; 04.04.2011 T. 7124/3028; 27.01.2011 T. 5310/430; 20.01.2011 T. 7202/215; 01.07.2010 T. 5069/6229 vb. (www.e-uvar.com)

¹² See: 15. HD. 15.01.2003 T. 6346/153; 20.02.2002 T. 642/862; 22.09.2004 T. 3920/4487; 03.11.2004 T. 1725/5593; 04.11.2004 T. 1832/5619; 19.02.2003 T. 6107/5900 (www.e-uvar.com)

¹³ See: HGK. 04.07.2007 T. 4-450/449; 14.04.2004 T. 15-182/220 (www.e-uvar.com)

¹⁴ See: 4. HD. 28.03.2011 T. 2023/3257; 14.03.2011 T. 717/2586; 28.02.2011 T. 3088/2012; 08.03.2011 T. 407/2480; 17.03.2008 T. 6100/3475; 17.03.2008 T. 1813/3444; 21.02.2008 T. 5775/2100 vb. (www.e-uvar.com)

of the proof of insolvency «in the cancellation cases that are not filed based on the 19th article of Turkish Code of Obligations.»¹⁵

As it is known, the «definitive insolvency certificate» is a document given to the creditor who could not receive his receivables partially or completely at the end of the liquidation of the confiscated goods (Execution and Bankruptcy Law art.143/I)¹⁶. In addition, «the attachment report (Execution and Bankruptcy Law Art.105/I), which determines that the debtor does not have any attachment property», is in the «**provision of a definite insolvency certificate**»¹⁷, as well as the attachment report stating that the debtor's assets found and confiscated will not meet the debt according to the values determined by the enforcement office (Execution and Bankruptcy Law article. 105/II) also replaces the **temporary proof of insolvency**.¹⁸

In cases where it is clearly understood that the debtor's assets will not meet the file debt from the contents of the file (from the responses given to the foreclosure letters written to the Land Registry Directorate, Traffic Directorate and Banks), the content of the file is considered as a “*temporary proof of insolvency*”.

The proof of insolvency is a “*special case condition*” for the cancellation of the disposals.^{19 20}

III- In our law, -contrary to the Swiss and German Law-²¹, it is accepted in both the **doctrine**²² and the **Supreme Court case**²³ law that the claim of the plaintiff-creditor must

¹⁵ See: 17. HD. 24.05.2016 T. 11539/6283; 24.05.2016 T. 2682/6341; 14.03.2016 T. 3265/3119; 23.02.2016 T. 11349/2104; 22.10.2015 T. 11421/11025; 11.06.2015 T. 5605/8012; 17.03.2015 T. 2203/4344; 04.11.2014 T. 11472/15070; 04.11.2014 T. 8340/15066; 27.10.2014 T. 10682/14362; 10.06.2014 T. 3653/9318; 09.04.2013 T. 7539/5112; 28.03.2013 T. 6151/4361; 04.03.2013 T. 5918/2619; 02.04.2013 T. 7306/4613; 27.11.2008 T. 11563/13096 vb. (www.e-uyar.com)

¹⁶ For detailed information, see: **UYAR, T.** İcra ve İflas Kanunu Şerhi, C:8, 3. Baskı,2007, s:11853 vd. - **ÖZTEK, S.** İcra ve İflâs Hukukunda Borç Ödemeden Aciz Vesikası (İİK. m. 143; m. 251),1994, s:48 vd. - **DELİDUMAN, S.** İcra ve İflas Hukukunda Borç Ödemeden Aciz Belgesi, 1995, s:28 vd.

¹⁷ For detailed information, see: **UYAR, T.** İcra ve İflas Kanunu Şerhi, C:6, 2. Baskı, 2006, s:9138 vd. - **UYAR, T./UYAR, A./UYAR, C.** age. C: 2, s: 2082 vd.

¹⁸ For detailed information, see: **UYAR, T.** ag. şerh, C:6, s: 9139 vd. - **ÖZTEK, S.** age. s:22 vd. - **DELİDUMAN, S.** age. s:8 vd. - **UYAR, T./UYAR, A./UYAR, C.** İİK. Şerhi, C: 2, 2014, s: 2084 vd.

¹⁹ **KURU, B.** İcra ve İflas Hukuku El Kitabı, 2. Baskı, 2013, s:1418 - **ARSLAN, R./YILMAZ, E./AYVAZ, F.S./HANAGASIE, E.** İcra ve İflas Hukuku, 5. Baskı, 2019, s:537 - **MUŞUL, T.** Tasarrufun İptali Davaları, 2. Baskı, 2017, s:180 - **EROĞLU, O.** Açıklamalı-İçtihatlı Tasarrufun İptali Davaları ile Muvazaa Davası ve Karşılaştırılması, 2019, s:86

²⁰ See: 17. HD. 08.04.2019 T. 16227/4264; 03.04.2019 T. 13056/4022; 01.04.2019 T. 15030/3914; 25.02.2019 T. 5604/1933 vb. (www.e-uyar.com)

²¹ **ERDÖNMEZ, G.** Alacaklılara Zarar Verme Kasdıyla Yapılan Tasarrufların İptali, 2009, 2. Baskı, s:89 - **YILDIRIM, K.M.** Tasarrufun İptali Davası, 1995, s:288 - **EROĞLU, O.** a.g.e., s:70

²² **KURU, B.** El Kitabı, s:1402 - **KURU, B.** İstinaf Sistemine Göre Yazılmış İcra ve İflas Hukuku (Ders Kitabı), 2. Baskı, 2018, s:485 - **MUŞUL, T.** Tasarrufun İptali Davaları, 2. Baskı, 2017, s:122 vd. -

ATALI, M./ERMENEK, İ./ERDOĞAN, E. İcra ve İflas Hukuku, 2. Baskı, 2019, s:740 - **ERCAN, İ.** Uygulamacılar İçin İcra ve İflas Hukuku El Kitabı, 4. Baskı, 2019, s:990 - **COŞKUN, M.** İtirazın İptali, Menfi Tespit, Tasarrufun İptali Davaları, 5. Baskı, 2019, s:1099 - **SERTKAYA, Ş.A./KUL, S.** Tasarrufun İptali Davaları, 2016, s:156 vd.

²³ See: 17. HD. 16.10.2019 T. 2385/9454; 02.10.2019 T. 5952/8805; 19.09.2019 T. 19668/8266; 16.09.2019 T. 17716/8039; 18.06.2019 T. 11306/7721; 11.06.2019 T. 11566/7261; 21.05.2019 T. 13837/6449; 14.05.2019 T. 2378/6032; 08.05.2019 T. 7147/5714; HGK. 30.03.2016 T. 17-843/433; 16.09.2015 T. 2350/1759; 23.10.2013 T. 17-224/1478 vb. (www.e-uyar.com)

have arisen before the dispute subject to the action (cancellation) in order to hear the case of annulment of the disposition.

If the debt has arisen from the *sale of a movable/immovable* between the parties (plaintiff-creditor and defendant-debtor), *loan agreement, invoice, bill, etc., the date of birth of the debt* is deemed to be the date on which the sale is made; the invoice is issued²⁴, the loan agreement is issued²⁵, and the bill is issued²⁶, respectively. However, in the last case; In the event that the creditor has made a follow-up based on a year (ordinary or bills of exchange), as a rule, *«the receivable is considered to be born on the date the bill was issued»*. However, the creditor may claim that *«the note was issued later, the actual underlying relationship from which the receivable was born was earlier»*. In this case, if the creditor proves this claim, *«not the date when the bill was issued», «but the date on which the main relationship between the parties was established» is the date of birth of the debt.*²⁷

In cases of cancellation of the disposals filed due to debts arising from the loan agreement, the debt is deemed to have arisen on the “date the loan agreement is signed”. If this loan agreement is a continuation of a loan relationship that started years ago, it is accepted that *«the loan debt was born on the date of the first loan agreement in practice.»*²⁸

In cases where the employee’s receivable is calculated according to the date of employment, such as “notice pay”, “severance pay”, it is accepted that *«the employee’s receivable (employer’s debt) is born on the date of employment”* in terms of the cancellation of the disposals. ^{29 30 31}

In *«the actions for compensation»* “based on tort”, the date of the debt “is not the date when the lawsuit was filed and the case was concluded”, but the date *“when the tort was committed.”*^{32 33}

If a third party is a “guarantor” for the debt of the debt, the date of birth of the debt is not *«the date of surety»* but *«the date of the contract previously signed between the creditor and the principal debtor.»*³⁴

²⁴ See: 17. HD. 04.04.2011 T. 7105/3027; 15. HD. 14.10.2003 T. 4002/4750 (www.e-uyar.com)

²⁵ See: 17. HD. 05.03.2013 T. 4980/2718; 20.01.2011 T. 7945/229; 17.02.2010 T. 1210/1237; 09.02.2010 T. 8716/957; 19.01.2010 T. 6359/94; 10.12.2009 T. 66108/8208; 19.01.2009 T. 3224/10 (www.e-uyar.com)

²⁶ See: 17. HD. 01.04.2013 T. 8979/4519; 09.04.2013 T. 8333/5123; 08.05.2008 T. 371/2420; 10.03.2008 T. 4366/1138; 21.02.2008 T. 5184/770; HGK. 18.02.2004 T. 15-18/84; 15. HD. 29.01.2003 T. 6349/449; 16.05.2002 T. 2052/2586; 17. HD. 06.05.2008 T. 371/2420; 10.03.2008 T. 4366/1138 (www.e-uyar.com)

²⁷ See also on this topic: **AKŞENER, H.S.** Borcun Doğum Anı ve Tasarrufun İptali Davaları Yönünden Önemi (Legal Huk. D. Aralık/2018, s:4007 vd.) - **KURU, B.** El Kitabı, s:1402 vd. – **GÜNEREN, A.** Tasarrufun İptali Davaları, 2012, s:420 – **UYAR, T./UYAR, A./UYAR, C.** Tasarrufun İptali Davaları, 4. Baskı, C:2, s:1567

²⁸ **SERTKAYA, A.Ş./KUL, S.** age. s: 156 vd.

²⁹ **SERTKAYA, A.Ş./KUL, S.** age. s: 157

³⁰ In the same direction: 17. HD. 25.05.2015 T. 21071/7629; 10.07.2008 T. 2790/3912 (www.e-uyar.com)

³¹ Karş: 15. HD. 21.10.1993 T. 2949/4135 (www.e-uyar.com)

³² **SERTKAYA, A.Ş./KUL, S.** age. s: 157

³³ See: 17. HD. 29.06.2015 T. 7716/9218; 23.03.2015 T. 3460/4631; 12.03.2015 T. 18146/4159; 13.01.2015 T. 14349/224; 21.10.2014 T. 11132/13891 vb. (www.e-uyar.com)

³⁴ **SERTKAYA, A.Ş./KUL, S.** age. s: 157

In practice, especially in the enforcement proceedings based on bills of exchange (bond or check), in cases of cancellation of disposals filed by creditors who could not collect their receivables from the debtor, if the enforcement proceedings are based on bond, as a rule, if your debt is based on *a check on the issuance date of the bond*, It is deemed to have been *born on the date the check is submitted to the bank or clearinghouse*, not «on the date of issue. » The case law of the **high court**³⁵ is in line with this. In addition, in the cases of cancellation of the disposals filed by the **high court**³⁶, the parties are invited to «*ask the parties what the main relationship (legal and commercial relationship) and the date of birth (legal and commercial relationship) causing the drawdown of the follow-up basis and the date of its birth, and giving the parties time to submit their evidence, if any, demands that the parties have an expert review on the commercial books, documents and records*».

Judgment creditors are generally accepted to arise on the date “*when the case is filed at the court*”, not on “*the date the court has accepted (the receivable is decided)*.”

The high court stated the following on this matter:

√ “*Since the defendant debtor went to Kazakhstan after his marriage, lived with another woman and had a child, and these acts, which are unfair acts, are the grounds for the divorce decision, the birth of the debt is before the date of divorce proceedings.*”³⁷

√ “*Since the debt is based on the claim, the opening date of the case and the warning date to be subject to the lawsuit is before the sale date of the real estate, it must be accepted that the birth of the debt is before the disposal.*”³⁸

√ “*In the judgment subject to follow-up, the basis of the receivable is the work contract and the date of birth of the debt is the final date of this work contract and it is not possible to prove it by witness statements*”³⁹

√ “*In the case regarding the alimony and compensation claims arising from the divorce, the birth of the debt will be accepted as the date of the filing of the divorce case at the latest, since the divorce case was opened before the disposition with the request for alimony and compensation, it will be necessary to accept that the savings were made after the birth of the debt.*”⁴⁰

√ “*The rejection of the case is erroneous because the verdict's finalization date, which is the basis of the claim by the court, is after the disposals in the title deed. According to the purchase date, the contract, which is based on the announcement, is before the disposal and*

³⁵ See: 17. HD. 13.04.2010 T. 710/3424; 19.10.2008 T. 5251/6528; 03.06.2008 T. 858/3001; 15. HD. 22.09.2008 T. 4491/5508; 17. HD. 10.04.2008 T. 5292/1831; 06.05.2008 T. 371/2420; 10.03.2008 T. 4366/1138; 13. HD. 27.03.2002 T. 528/1437; 15. HD. 14.02.2002 T. 5714/30; 263.10.2004 T. 3310/5282 (www.e-uvar.com)

³⁶ See: 17. HD. 28.03.2013 T. 14204/4372; 11.03.2013 T. 7006/3209; 04.03.2013 T. 1586/2620; 22.02.2012 T. 1172/1979, 06.11.2012 T. 2959/12122; 28.11.2012 T. 5128/11359; 09.05.2011 T. 9851/4454; 02.05.2011 T. 9032/4190; 15.03.2011 T. 12199/2285; 07.03.2011 T. 6758/1993; 30.05.2011 T. 10146/5438; 03.02.2011 T. 5065/674; 16.02.2010 T. 10122/1205; 02.02.2010 T. 8720/701 vd. (www.e-uvar.com)

³⁷ See: 17. HD. 27.02.2019 T. E: 2016/11311, K: 2206 (www.e-uvar.com)

³⁸ See: 17. HD. 19.09.2019 T. E: 2016/19668, K: 8266 (www.e-uvar.com)

³⁹ See: 17. HD. 14.05.2019 T. E: 2017/2378, K: 6032 (www.e-uvar.com)

⁴⁰ See: 17. HD. 31.01.2017 T. E: 2016/16188, K: 828 (www.e-uvar.com)

was made at the time of the follow-up of these immovables. It is stated that the confiscation report was prepared and the Enforcement and Bankruptcy Law art. 105, since it is seen that the insolvency of the debtor has occurred, it should be evaluated by the court whether the defendant third party has sufficient economic power to purchase these immovables according to their real values at the time of registration on behalf of the real estate.”⁴¹

√ “Although the plaintiff cannot have a finalized receivable on the date of filing of the case, there is a divorce lawsuit to be ruled on the receivables he has put under follow-up, and it is accepted that a claim was born on the date of the divorce lawsuit, and that alimony and compensation were awarded in favor of the plaintiff at the end of the trial and that the sale transaction between the defendants was considered to be a collusion. The decision will need to be made according to the result to be formed by evaluating the proximity.”⁴²

√ “It will be necessary to compare this date with the date of disposals, assuming that the claim arising from the compensation case was born on the date the case was filed.”⁴³

IV- Contracts in which there is a clear disproportion between the actions against the debtor at the time of their execution subject to cancellation (Enforcement and Bankruptcy Law Art. 278/III-2). The term «contract» here is misleading. This should be understood as «disposals»⁴⁴ The transaction that will be the subject of the lawsuit is a profitable transaction made according to the contract. For this reason, the value on the date of the profitable transaction should be taken as basis in terms of comparing both the duration and the costs.⁴⁵

The *disproportionality* between considerations must be significant and must be found to the extent that the parties can understand with sufficient attention⁴⁶. However, it is not necessary for the defendant to know this disproportion between the considerations.⁴⁷

According to the High Court,⁴⁸ if there is a difference of one or more between the sale price of the immovable subject to disposals and the real value of the property determined according to the free market value at the date of disposal, it must be accepted that there is an exorbitant difference between the actions.

⁴¹ See: 17. HD. 15.03.2017 T. E: 2014/22269, K: 2789 (www.e-uyar.com)

⁴² See: 17. HD. 01.11.2016 T. E: 2014/19030, K: 9654 (www.e-uyar.com)

⁴³ See: 17. HD. 05.02.2009 T. E:3857, K:415 (www.e-uyar.com)

⁴⁴» KURU, B. a.g.e. C: 4, 1997, s: 3430, dipn. 7 - GÜRDOĞAN, B. a.g.e. s: 227

⁴⁵ UMAR, B. a.g.e. s: 64 - GÜRDOĞAN, B. a.g.e. s: 227

⁴⁶ ANSAY, S.Ş. Hukuk, İcra ve İflas Usulleri, 1960, s: 328 - ARAR, K. İcra ve İflas Hükümleri, C:2, 1945, s: 224 - GÜRDOĞAN, B. İflas Hukuku Dersleri, 1966, s: 227 - OLGAC, S. Yargıtay İçtihatlarının Işığında İcra ve İflas Hukuku'nda İptal Davaları (Dr. Recai Seçkin'e Armağan, 1974, s: 464, dipn. 28)

⁴⁷ UMAR, B. Türk İcra-İflas Hukuku'nda İptal Davası, 1963, s: 67 - GÜRDOĞAN, B. a.g.e. s: 227 - KURU, B. a.g.e. C:4, s: 3437 - KURU, B. El Kitabı, s:1405 - KARATAŞ, İ/ERTEKİN, E. Tasarrufun İptali Davaları, 1998, s: 142 - YILDIRIM, M.K. Tasarrufun İptali Davaları, 1995, s:184 - AKKAYA, T. İcra ve İflas Hukuku'nda İptale Tabi Tasarruflar “İİK.m. 277-284” (Eskişehir Bar. Der. Ekim/2006, S:11, s:28)

⁴⁸ See: 17. HD. 13.03.2017 T. 1658/2646; 24.02.2015 T. 16719/3317; 10.04.2014 T. 19253/5395; 17.05.2011 T. 9509/4909; 21.03.2011 T. 7080/2515; 28.11.2008 T. 2522/5601; 25.11.2008 T. 2522/5601; 25.11.2008 T. 3755/5541; 18.11.2008 T. 2633/5370 vb. (www.e-uyar.com)

Again, the High Court⁴⁹ emphasized that «Enforcement and Bankruptcy Law 278/III-2 may be the reason for the cancellation of the disposals between the debtor and the person who buys the property subject to savings from the debtor, and this provision regarding other persons (fourth persons) who purchased the same property from a third would not be applied, and disposals made to these people could not be canceled unless it was proved that they were also malicious. »

On the other hand, the dispositions between the debtor and the third person listed in Article 278 of the Enforcement and Bankruptcy Law are subject to absolute cancellation. It does not matter whether the third party, who has purchased/transferred the property subject to disposals from the debtor, is in good faith or malicious intentions or intends to harm the creditor if there is a difference between the actions.^{50 51 52}

The High Court stated the following in its jurisprudence on this provision:

√ The disposals in the case were made after the birth of the debt. The attachment report is a temporary insolvency document within the scope of Article 105 of the Enforcement and Bankruptcy Law. There is a much difference between the subject property's sale price in the title deed and the current value determined by the expert. The defendant is one of the persons who can know the status and purpose of the debtor of the 3rd person, and the savings subject to the lawsuit is subject to cancellation in accordance with Articles 278/3-2 and 280/1 of the Enforcement and Bankruptcy Law, depending on the conversion of the case to cost by the plaintiff.⁵³

√ Since the real value of the immovable subject to a lawsuit, which is documented as insolvency and sold to the defendant with a price of 14,000.00 TL after the birth of the debt,

⁴⁹ See: 17. HD. 29.11.2016 T. 21972/11011; 16.02.2015 T. 21355/2768; 25.03.2014 T. 13512/4290; 13.01.2014 T. 15053/27; 14.03.2013 T. 6433/3311; 14.03.2013 T. 6439/3312; 18.04.2012 T. 1901/4843; 09.07.2007 T. 649/2408; 15. HD. 13.02.2007 T. 7805/846; 03.02.2005 T. 7361/485; 16.12.2004 T. 4579/6562; 26.02.2004 T. 382/1061 vb. (www.e-uyar.com)

⁵⁰ KURU, B. El Kitabı, s: 1403, 1405 – GÜNEREN, A. age. s: 723 – KURU, B. age. C: 4, s: 3423 – UYAR, T./UYAR, A./UYAR, C. İİK. Şerhi, C:3, 2014, s: 4403 – UYAR, T./UYAR, A./UYAR, C. Tasarrufun İptali Davaları, C:1, 2011, s: 313 – SERTKAYA, A. Ş./KUL, S. a.g.e., s:310 – COŞKUN, M. Açıklamalı-İçtihatlı İcra ve İflas Hukuku, C:4, 5. Baskı, 2016, s: 4708 – YILMAZ, E. İcra ve İflas Kanunu Şerhi, 2016, s:1217 – ÇETİN, E. H. Tasarrufun İptali, Muvazaa, İnançlı İşlem ve Nam-ı Müstear, 2016, s:24 – MUŞUL, T. Tasarrufun İptali Davaları, 2015, s: 298, 300 vd. - MUŞUL, T. İcra ve İflas Hukuku, 6. Baskı, C: 2, 2013, s: 1817 – KARSLI, A. İcra ve İflas Hukuku, 3. Baskı, 2014, s:543 – ULUKAPI, Ö. İcra ve İflas Hukuku, 2015, s: 502 – KAPLAN, H. A. 4949 sayılı Kanun'la Yapılan Değişiklikler Işığında İcra ve İflas Hukuku'nda Tasarrufun İptali Davaları, (Yayımlanmamış Yüksek Lisans Tezi), 2006, s: 137 – TAZE, M. Tasarrufun İptali Davası (Yayımlanmamış Yüksek Lisans Tezi),2007 s: 117 – ALTAY, S. Türk İflas Hukuku, C:1,2, 2004, s: 677 – AKŞENER, H. S. İcra ve İflas Hukuku'nda Tasarrufun İptali Davaları, 2007, s:101 – AKKAYA, T. agm. s:26; 28) – SÜPHANDAĞ, Y. İcra ve İflas Hukukunda Uygulamalar, 2008, s: 694 – KARATAŞ, İ./ ERTEKİN, E. age. s:135, 138 – KOSTAKOĞLU, C. Takip Hukukunda İptal Davaları (Ad. Der. 1989/6, s:25 – Yasa Der. 1989/8, s: 1051) - ANSAY, S. Ş. age. s: 327 – OLGAÇ, S. agm., s: 464 – AKYAZAN, S. İcra ve İflas Kanunu'ndaki Yeni ve Değişen Hükümler Üzerine İnceleme ve Açıklamalar, 1965, s: 183 – GÜRDOĞAN, B. age. s: 224 – UMAR, B. age. s: 64

⁵¹ See: 17. HD. 10.12.2013 T. 15076/17403; 02.07.2013 T. 7650/10497; 01.04.2013 T. 323/4590; 23.05.2011 T. 9958/5137; 21.03.2011 T. 7158/2516; 17.01.2011 T. 10482/54; 20.09.2010 T. 7886/7054; 20.04.2009 T. 6115/2462; 25.12.2008 T. 3195/5747; 20.11.2008 T. 3158/5420; 06.11.2008 T. 1891/5137 (www.e-uyar.com)

⁵² See also on this topic: ÖZTEK, S. Tasarrufun iptali Davalarında Ortaya Çıkan Bazı Sorunlar ve Yargıtay'ın Bu Sorunlara İlişkin Uygulaması (Prof. Dr. Ergun Önen'e Armağan, 2003, s:319 vd.)

⁵³ See: 17. HD. 06.12.2016 T. 22808/11209 (www.e-uyar.com)

was determined as 51,000.00 TL, the disposals made following Article 278 / 3-2 of the Enforcement and Bankruptcy Law are in the form of donation and is subject to cancellation.⁵⁴

√ “There is a multiple difference between the sale price in the title deed and the current value determined by the expert. Since the defendant is one of those who know the debtor defendant's status and purpose, the dispute subject to the lawsuit is subject to cancellation. As the defendant disposed of the immovable subject to the case and the lawsuit was converted into value, the attachment record of the confiscation report issued by the local court is a temporary insolvency document within the scope of Article 105 of the Enforcement and Bankruptcy Law, and the dispute subject to the lawsuit is 278 / 3-2, 279/2 of the Enforcement and Bankruptcy Law. and 280/1. The case must be accepted in case it is subject to cancellation according to the articles.”⁵⁵

√ “According to Article 278/2 of the Enforcement and Bankruptcy Law, the excessive difference between the acts is considered as forgiveness and the disposals made are subject to cancellation, and in this case, the third party's goodwill claim will not be heard.”⁵⁶

√ “Due to the fact that there is a multiple difference between the sale price of the subject immovable in the title deed and the current value determined by the expert and the defendants are siblings the dispositions subject to the lawsuit are subject to cancellation according to articles 28 / 1,2 and 30 of the law numbered 6183.”⁵⁷

√ “Although the sale price of the immovable properties subject to disposal was shown as 9.000 TL in the title deed, it was determined by the expert report that the real value at the date of disposal was 69.244,00 TL. 278 / III-2 of the Enforcement and Bankruptcy Law. At the time of the contract's conclusion, the contracts in which the debtor accepts a very low price according to the value of the thing given by himself will be deemed to be forgiveness and are subject to cancellation.”⁵⁸

√ “The plaintiff requested that the creditor Administration to cancel the sale, claiming that the sale was made with the intention of smuggling goods and with a low price for a collusion. In the article 278 / III-2 of the Enforcement and Bankruptcy Law at the time of conclusion of the contract, according to the value of the thing given by the debtor, it is stipulated that the contracts that the debtor accepts a very low price as a pledge will be subject to forgiveness.”⁵⁹

√ “If there is a multiple difference between the current value determined by the expert and the sales value, the disposals made are subject to cancellation following Article 278 / 3-2 of the Enforcement and Bankruptcy Law.”⁶⁰

V- In Article 280 of the Enforcement and Bankruptcy Law, it is stated that “all (fraudulent) savings made by the debtor whose assets are insufficient to pay his debts with the intention of damaging his creditors are subject to cancellation”.⁶¹

⁵⁴ See: 17. HD. 29.11.2016 T. 21972/11011 (www.e-uyar.com)

⁵⁵ See: 17. HD. 27.09.2016 T. 14882/8282 (www.e-uyar.com)

⁵⁶ See: 17. HD. 24.05.2016 T. 9098/6277 (www.e-uyar.com)

⁵⁷ See: 17. HD. 17.05.2016 T. 14476/6007 (www.e-uyar.com)

⁵⁸ See: 17. HD. 14.05.2015 T. 1180/7403 (www.e-uyar.com)

⁵⁹ See: 17. HD. 19.03.2015 T. 19275/4420 (www.e-uyar.com)

⁶⁰ See: 17. HD. 24.02.2015 T. 16719/3317 (www.e-uyar.com)

• Although the title of the article is called «*annulment due to the intention of damaging*» and the statement of «*fraudulent disposal*» is not included in the text of the article, it is understood from the content of the article that *it is aimed to cancel the fraudulent disposal of the debtor in a broad sense*.⁶² On the basis of the adoption of this provision, there is the purpose of removing the reasons for annulment that the creditors can apply from being limited to those listed in the law.⁶³

The article took its current form as a result of the amendment made by Law No. 4949 of 1.7.2003.⁶⁴

• «*All transactions made by a debtor whose assets are insufficient for his debts with the intention of harming his creditors may be canceled in cases where the other party knows the financial situation of the debtor and the intention to cause harm, or there are clear signs that require it to be known.*» (Enforcement and Bankruptcy Law article 280 / I, c: 1).

According to this article, in order to cancel the fraudulent transactions (disposals) made by the debtor with the intention of damaging its receivables;⁶⁵

a) The debtor's assets should not be enough to pay his debts.

b) The debtor must have made a disposition (transaction) with third parties with the intention of damaging his creditors (property smuggling).

If a debtor transfers a receivable to a third party to whom he is not owed in order to harm his creditors (smuggling property from receivables), this assignment is subject to cancellation under this article as «a fraudulent disposition. » However, if the debtor assigns the debt to a third party to whom he owes his debt as a substitute for payment, this assignment cannot be regarded as «disposal subject to cancellation» within the meaning of this article (Enforcement and Bankruptcy Law article 280). Because the debtor can pay his debt “in cash.” This payment is not covered by Article 280 of the Execution and Bankruptcy Law. Or the borrower can pay his debt “by giving a check.” This payment is also not covered by this article.

c) Third parties with whom the debtor is in the disposal (transaction) should not be in good faith (Civil Code Art. 3). There should be clear indications (presumptions) that the debtor's financial situation (that is, the debtor's assets cannot meet his debts) and *the intention to harm his creditors are known or required to be known by third parties* who deal with the debtor. That is, the third party dealing with the debtor must know the intent of the debtor.⁶⁶ In order

⁶¹ UYAR, T. Alacaklılara Zarar Vermek Kastı İle Yapılan (Hileli) Tasarruflardan Dolayı İptal (İBD. Kasım-Aralık/ 2008 , s:2901-2923)

⁶² KURU. B. El Kitabı, s:1409 vd.

⁶³ ERDÖNMEZ, G. a.g.e. s: 9

⁶⁴ See: 4949 sayılı Kanuna ait Hükümet Gerekçesi (UYAR,T. İcra ve İflas Kanunu Şerhi, C:12, 2. Baskı, 2009, s:19373)

⁶⁵ MUŞUL, T. İcra ve İflâs Hukuku, 6. Baskı, 2013, C: 2, s: 1828 vd. - MUŞUL, T. Tasarrufun İptali Davaları, 2015, s: 315 vd. - AKKAYA, T. agm.,s:40 vd. - GÜNEREN, A. a.g.e., 2012, s:816 vd.

⁶⁶ See: 17. HD. 14.02.2017 T. 4107/1451; 14.02.2017 T. 23889/1460; 01.02.2017 T. 24893/871; 24.01.2017 T. 19676/484; 17.01.2017 T. 11030/166; 28.12.2016 T. 7253/12054; 13.12.2016 T. 18886/11527; 06.12.2016 T. 2847/11210; 25.10.2016 T. 7077/9343; 25.10.2016 T. 18523/9342; 18.10.2016 T. 16588/904206 (www.e-uyar.com)

for this condition to be fulfilled, it is sufficient «for the third party benefiting from the disposals to be able to understand the condition of the debtor and the nature of the transaction if he pays the necessary attention.» In other words, «if the third party is able to know the status of the debtor with a small investigation,» attention or observation, this condition should be considered fulfilled. ⁶⁷

In other words, based on Articles 278 and 279 of the Enforcement and Bankruptcy Law, it is sufficient to «fulfill the condition of damaging the creditors,» which is called the «objective condition» in the **doctrine**, to be able to file a “lawsuit for the cancellation of the disposals”. While the «subjective condition» for filing an action for an annulment due to the “intention of damaging” «the debtor is known to the third party also must be proven. »⁶⁸

The reason for cancellation regulated in Article 280 of the Execution and Bankruptcy Law is a “general reason for annulment”.⁶⁹ According to these articles, the creditor who cannot file a lawsuit for the annulment of the disposals because the conditions stipulated in Articles 278 and 279 of the Enforcement and Bankruptcy Law are not fulfilled, may file a lawsuit according to this article.

In order to cancel the (fraudulent) disposals made by the debtor with the intention of harming its creditors, the existence of the indications (presumption) you have just mentioned can be proved by the plaintiff-creditor⁷⁰ with all kinds of evidence⁷¹ especially with the rules of life experiment, with the normal flow of life.^{72 73} Here, «full proof» is not sought, but «approximate proof» rules are sufficient.⁷⁴

Also, due to its importance, we should state that the defendant (the third person who made a transaction with the debtor (or the fourth person who has made a transaction with the third party) **will not be able to claim the goodwill of the person who is not able to claim goodwill in the event**, as there is no need to prove the bad intentions of the other party⁷⁵. The plaintiff does not need to prove that these persons are in bad faith.⁷⁶

Regarding the fact that third parties who have dealt with «the debtor know the financial situation of the debtor and the intention to harm its creditors» (i.e., regarding

⁶⁷ BERKİN, N. İflâs Hukuku, 1972, s:511 - AKKAYA, T. agm. s:42

⁶⁸ ERDÖNMEZ, G. age. s: 9

⁶⁹ ERDÖNMEZ, G. age. s: 14 vd.

⁷⁰ See: 17. HD. 31.03.2011 T. 2459/2907; 16.02.2011 T. 5347/998; 22.05.2008 T. 2023/2766; 15. HD. 05.07.2006 T. 2786/4194; HGK. 21.12.2005 T. 15-625/736; 15. HD. 25.06.2003 T. 2619/3490; 09.06.2003 T. 441/3358; 18.09.2002 T. 3826/3946; 13.04.2004 T. 1152/2104; 11.05.2000 T. 532/2327; 06.04.1994 T. 260/2072; 21.11.1989 T. 2793/4876 (www.e-uyar.com)

⁷¹ See: 17. HD. 17.05.2011 T. 9509/4909; 21.05.2009 T. 1786/3457; 04.03.2010 T. 10307/1887; 14.05.2009 T. 1293/3131; 09.04.2009 T. 2083/2224; 16.09.2008 T. 1215/4098; 22.05.2008 T. 2023/2766 (www.e-uyar.com)

⁷² KURU, B. İstinâf Sistemine Göre Yazılmış İcra ve İflâs Hukuku, 2016, s: 669 – KURU, B. El Kitabı, s:1410 - UYAR, T./UYAR, A./UYAR, C. İcra ve İflâs Kanunu Şerhi, C: 3, 2014, s: 4436

⁷³ See: 17. HD. 17.01.2017 T. 11030/166; 06.12.2016 T. 2847/11210; 15.11.2016 T. 17928/10506; 25.10.2016 T. 18523/9342; 14.10.2016 T. 14167/8533; 27.09.2016 T. 12977/8287 vb. (www.e-uyar.com)

⁷⁴ PEKCANITEZ, H./ATALAY, O./ÖZKAN, M.S./ÖZEKES, M. İcra ve İflas Hukuku, 11. Bası, 2013, s:866 - AKKAYA, T. agm. s:44

⁷⁵ See: İçt. Bir. K. 14.02.1951 T. 17/1 (www.e-uyar.com)

⁷⁶ UYAR, T./UYAR, A./UYAR, C. Tasarrufun İptali Davaları, s:210 vd.

matters covered by Art.280/I of the Enforcement and Bankruptcy Act), High Court stated the following:

√ «*Suppose the defendant debtor transfers the receivables in the execution file to which the defendant is the creditor to the third-party defendant spouse. In that case, it is understood that the defendants are husband and wife, and the defendant debtor, who is the spouse of the defendant third person, is in a position to know that the defendant debtor owes the plaintiffs, and it is understood that the assignment has been made to leave the claim of the plaintiffs inconclusive. It is appropriate to decide on the cancellation of the assignment disposition.*»⁷⁷

√ «*The defendants who are informed about the status of the debtor and who know or need to know the intention of the creditors must be decided to accept the case on the grounds that all the transfer transactions subject to the annulment action filed against them are fictitious.*»⁷⁸

√ «*The defendant third party stated that “the vehicle in question was purchased on behalf of the debtor company due to the credit limit on the first purchase date, but he used it from the beginning. However, he stated that he had information about the borrower's financial situation, stating that the company that took the loan said ‘come and take it on the vehicle’ due to economic difficulties and that the remaining loan debt was closed”. For this reason, it is necessary to decide on the acceptance of the case regarding the cancellation of the disposals.* »⁷⁹

√ «*He is one of the persons who can know the financial situation of the debtor, as the defendant bought 8 independent sections on the same day with his other brother and operated on the same street with the debtors.*»⁸⁰

√ «*In the event that the sale was made between relatives and the defendants were among the people who could know the plaintiff's situation and purpose, it should be decided to cancel the disposals. Although the defendant 4th person has been accepted to be in good faith by the court, the defendant 4th person is a person who lives in the same village with the other defendants, knows each other closely and knows the situation of the defendant debtor, and in addition, the sale price of the immovables subject to the case is equal to the price determined by the expert. Therefore, the disposals made are subject to cancellation in accordance with Article 280/I of the Enforcement and Bankruptcy Law.* »⁸¹

√ «*Since it is understood that the father, grandfather and uncle of the defendant 3rd person whom he sold the immovable and defendant debtor and are neighbors of the site for six years, it will be necessary to evaluate this situation within the scope of article 280/I of the Enforcement Bankruptcy Law and to decide according to the result.*»⁸²

√ «*The defendants' enmity with the debtor and the receivable in the criminal files are the close relatives of the person who has taken the title of the defendant and turned to crimes because he cannot find the opportunity to collect this receivable. With this state of affairs, it*

⁷⁷ See: 17. HD. 10.04.2017 T. 20990/3853 (www.e-uvar.com)

⁷⁸ See: 17. HD. 14.02.2017 T. 4107/1451 (www.e-uvar.com)

⁷⁹ See: 17. HD. 14.02.2017 T. 23889/1460 (www.e-uvar.com)

⁸⁰ See: 17. HD. 14.02.2017 T. 23919/1454 (www.e-uvar.com)

⁸¹ See: 17. HD. 01.02.2017 T. 24893/871 (www.e-uvar.com)

⁸² See: 17. HD. 24.01.2017 T. 19676/484 (www.e-uvar.com)

has been understood that the debtor's financial situation and his creditors are people who know that he acted with intent. Again, it was understood that the defendant was among the persons who could know that the defendant had acted with the financial condition of the debtor and his creditors with the intent of pain, within this internal relationship where the defendant bought more than one immovable property from the debtor, the same person sold to his uncle shortly after the defendant bought from his brother.»⁸³

√ «The defendant has sold 19 immovables to the debtor on the same day, and three of these immovables were sold to the defendant and five to the persons with the same surname as the defendant. Again, in the tender in the follow-up file, two immovables belonging to the prosecution debtors were bought by the defendant as a result of the execution tender and the debtor and the defendant are registered in the same district, village and volume. Even though the places of activity are different, considering the material and legal facts such as the same fields of activity, the defendant should be accepted as a person who can know the status and purpose of the debtor within the scope of Article 280/1 of the Enforcement and Bankruptcy Law. Again, in the defense of the debtor's attorney, it must be accepted that the other defendant is in a position to know the status and purpose of the debtor, since it is stated that the other defendant has paid 25,000 TL of the sales price through the bank and the remaining TL 12,715.30 is offset by the debt of the company with follow-up debtor. In accordance with Article 280/1 of the Law on Enforcement and Bankruptcy, the dispositions subject to the case should be canceled, limited to the plaintiff's receivables and accessories. »⁸⁴

VI- In the event that the claims and defenses of the **creditor, the defendant-debtor and the third parties** who have made a transaction with the defendant-debtor are «*contrary to the usual flow of life*», these inconsistent claims and defenses are meticulously evaluated in the cancellation of the disposals filed.

What does it mean «*to go against the usual flow of life*»? The criterion of the «*ordinary course of life*» is one of the measures and principles that lawyers use to comment on events. Accordingly, the behaviors of the general public in the social structure constitute «*the ordinary flow of life*» criteria and this criterion is used in the interpretation of legal problems.⁸⁵

In other words, the rules of experience (the usual flow of life) «*are the rules that frequently repeat in life, which are likely to be repeated, or scientific and technical information, and become independent from the concrete events that form them.* » It plays an important role in the determination of the case, the application of the law to the event, the judge to give a value judgment, the evaluation of the evidence and the determination of the proof value of an evidence, the application of uncertain content (such as bad intention).⁸⁶

⁸³ See: 17. HD. 24.01.2017 T. 22158/493 (www.e-uyar.com)

⁸⁴ See: 17. HD. 17.01.2017 T. 11030/166 (www.e-uyar.com)

⁸⁵ DEMİR, A. Yargıtay İçtihatlarındaki Hayatın Olağan Akışı Kriteri (Terazi Der. Aralık/2008, S:28, s:129)

⁸⁶ ALANGOYA, Y. «Senede Karşı Senetle İspat» Kuralı ve «Hayatın Olağan Akışı» Kavramı (N. KOCAYU-SUFPAŞAOĞLU İçin Armağan, 2004, s:528, dipn. 32)

«*The ordinary flow of life criterion*» is used as an interpretive rule in the Court of Cassation and other high-level courts in solving legal problems in many areas. The Court of Cassation understands the «*criterion of the ordinary course of life*» as «*examining whether the events occur following the cause-effect relationship and determining whether they are the usual type within the social structure.* » For example, it is stated that « in order to demonstrate the evidentiary value of a confession, it is necessary to investigate, among other conditions, whether it fits with the ordinary course of life. »⁸⁷

The application area of the «*ordinary course of life*» criterion is quite wide. Simultaneously, it is a very practical criterion for jurists to make a fair decision, as it is a «*presumption that is considered correct until proven otherwise*».

As a result, the criterion of «*the ordinary flow of life*» is an important principle that can be applied by lawyers in almost every field in our current law and facilitates their work. Which events are “*contrary to the ordinary course of life*” will be assessed by the court that deals with the disposals' annulment.⁸⁸

In practice, the following are accepted as “**not in line with the ordinary course of life**”.⁸⁹

- *The debtor disposes of the immovable very soon after purchasing it.*
- *The third person who buys the debtor's movable/immovable is the relative of the debtor.*
- *The debtor has been sitting in the real estate for a long time, even though he has disposed of his property.*
- *The immovable property is still used by the debtor (divorced spouse, mother, daughter, etc.).*
- *The debtor continues to use his vehicle after selling it.*
- *The purchase of the real estate (s) by a third party for twice the current value.*
- *Third-party is the debtor's neighbor, attorney, lawyer, financial advisor.*
- *The debt subject to follow-up is accepted by the debtor by receiving the payment order at the enforcement office and confirming the follow-up.*
- ***Third parties who buy the movables/immovables belonging to the debtor do not have the purchasing (financial) power***⁹⁰
- *Third-party purchases many immovables/vehicles (for example, three/four) belonging to the debtor from the debtor.*
- *The debtor sells more than one property immovable on the same day.*

VII- Another indication that the third parties who have made a transaction with the debtor “know the financial status and the intention to harm” of the debtor «*in the cases of*

⁸⁷ DEMİR, A. agm. s:130

⁸⁸ ERDÖNMEZ, G. a.g.e., s:195

⁸⁹ SERTKAYA, A.Ş./KUL, S. age. s: 352 – UYAR, T./UYAR, A./UYAR, C. a.g.e., s:289 vd.

⁹⁰ See: Yuk. dipn. 107-117

cancellation of all (fraudulent) disposals made to harm its creditors» is that «the debtor and the third-party operate in the same sector. »⁹¹

If the third person to whom the debtor has disposed (transferred his movable and immovable properties, transferred his rights and receivables to third parties) is in the same sector (line of business) with the “debtor”, for example construction industry, textile industry, private hospital business sector, pharmaceutical industry, press industry, oil business industry, tourism and hotel industry, transportation industry, food industry, agriculture industry, real estate industry, etc. or if there is a subcontracting relationship between the «debtor» and the «third party», the claim of the «third party» that he «does not know the financial situation of the debtor and the intention to harm its creditors» is considered contrary to the ordinary course of life. For this reason, the high court has consistently stated in all its decisions that “it will be required to cancel the disposals between the debtor and the third party. ”

Indeed, the high court stated:

√ *«The acceptance of the lawsuit for the annulment of the disposal is also correct for the 4th person, who is active in the same sector and who is understood to be one of the people who know or should know the financial status of the debtor company and the creditors intent.»⁹²*

√ *«In cases where one of the debtors is a shareholder in the company where the defendant is the director of the third party, and the other debtor attends the general assembly by proxy to some other shareholders and is operating in the same line of business, the debtor's financial situation and creditors are among the persons who know and need to know the intention of persecution, a decision must be made to cancel the disposals according to Enforcement and Bankruptcy Law article 280.»⁹³*

√ *«The vehicle subject to the case was sold to a third party by the defendant debtor company and to a fourth person by him. It was alleged that the third party was operating in the same workplace as the debtor, and the other fourth defendant was the neighbors of the debtors, both in terms of workplace and residence. For this reason, it will be investigated whether the specified company records are brought and whether they do business in the same field of activity with the debtor, whether they operate in the same work place with the debtors, and whether the fourth person is a neighbor of the debtors. Within the scope of Article 280 of the Enforcement and Bankruptcy Law, it is necessary to evaluate the debtors' financial situation and whether they are among the people who know or need to know their creditors. »⁹⁴*

√ *«Considering the mortgages, there is no exorbitant price difference between the sale price of the real estate in the title deed and its current value. It was understood that the defendant third party had information about the debtor's financial situation with the statement that they were operating in the same area with the debtor and had known the debtor for a long time. For this reason, the sale of the immovable subject to a lawsuit to the Chamber of Merchants*

⁹¹ ERDÖNMEZ,G. a.g.e., s:225 vd.

⁹² See: 17. HD. 11.04.2017 T. 541/3933 (www.e-uvar.com)

⁹³ See: 17. HD. 14.02.2017 T. 23898/1459 (www.e-uvar.com)

⁹⁴ See: 17. HD. 14.02.2017 T. 23903/1462 (www.e-uvar.com)

and Craftsmen out of court 6 days after the defendant's purchase by the third party is for the purpose of smuggling property, so it must be canceled.»⁹⁵

√ *«Since it is understood that the defendant debtor and the third party are operating in the same sector and factories side by side, the savings in question were sold together with the factory building and its details on the subject property following Article 30 of the law on the procedure for the collection of public receivables numbered 6183. Therefore, it is comparatively subject to cancellation following Article 280/3 of the Enforcement and Bankruptcy Law. »⁹⁶*

√ *«As it is understood from the defenders' defenses that the subject immovable transfers were made on account of debt, the disposals between the defendants regarding the transfer of four immovable shares subject to the lawsuit, dated 04.04.2011, are stated in Article 279 / 1-2 of the Execution and Bankruptcy Law, due to the fact that the defendant is the guarantor of the debtor and the defendant is one of the persons who can know the debtor's status and purpose due to the fact that the defendant is the guarantor of the debtor and the defendant is one of the persons who can know the debtor's position and purpose (due to the fact that the immovable transfer made on account of the debt is not the regular payment), cancellation should be decided limited to the amount of receivable.»⁹⁷*

√ *«It was determined that the defendants were active in the food sector, they were also their neighbors of the villa, the witness statements predominantly stated that 'the immovable subject to the case was used by the debtors', and the court observation during the discovery made that the immovable subject to the lawsuit was not used by the defendant and was not leased. It has been observed that the failure to rent out the luxury villa purchased for investment purposes for eight years cannot be considered following the normal course of life in terms of the defendant third person engaged in trade. Therefore, with the acceptance that the defendant 3rd person is one of the persons who can know the status and purpose of the debtors, it must be decided to annul the dispositions subject to the litigation, following Article 280/1 of the Enforcement and Bankruptcy Law, limited to the claims and officers of the plaintiffs.»⁹⁸*

√ *«According to Article 280 of the Enforcement and Bankruptcy Law, all transactions made by a debtor whose assets are insufficient to damage his debts to harm his creditors, the financial situation of the debtor and if there are clear indications that the other party of the transaction is known or known to the other party, the disposals will be canceled. Due to their activities, it will be necessary to examine whether the defendant third party is among the persons who know or should know the financial status of the other defendant debtor and his creditors. Then a decision must be made according to the result by evaluating all the evidence collected after that.»⁹⁹*

√ *«The transfer of the hospital operating license subject to disposal is subject to the transfer agreement and purchase and sale by taking a provision. It was understood that the defendant*

⁹⁵ See: 17. HD. 12.04.2016 T. 9909/4624 (www.e-uyar.com)

⁹⁶ See: 17. HD. 10.11.2015 T. 5118/11878 (www.e-uyar.com)

⁹⁷ See: 17. HD. 29.09.2015 T. 978/9814 (www.e-uyar.com)

⁹⁸ See: 17. HD. 25.06.2015 T. 18016/7756 (www.e-uyar.com)

⁹⁹ See: 8. HD. 01.07.2014 T. 7981/10397 (www.e-uyar.com)

company, which is the 4th person operating in the same sector with the debtor, is a person who knows or needs to know the financial status of the debtor defendant and the intention of persecution.»¹⁰⁰

√ *«According to the determination that the hospital operating license subject to disposal is subject to purchase and sales and that it has a financial value as a lien can be placed on the licenses, they operate in the same sector and the defendant company in the position of the 4th person from all the file content knows or should know the financial status of the debtor defendant and the creditors' willingness. According to the understanding that it is from the incoming people, the disposals regarding the hospital operating license transfer will need to be canceled.»¹⁰¹*

√ *«The defendant company, which is the 4th person operating in the same sector with the debtor, and the defendant company, which is the 4th person operating in the same sector with the debtor, knows or knows the intent of suffering. It has been understood that it is among the necessary people»¹⁰²*

√ *«The defendant third party company purchases the immovables on account of its receivables from the defendant debtor company, and both defendants are the seller and authorized service of a brand in the same sector (i.e. the third party is one of those who can know that the debtor is stealing property from his creditors or that his creditors are acting with the intention of Enforcement and the Bankruptcy Law article 280/I-, a decision will be made to cancel the disposals made in case of an exorbitant difference between the sale price and the real value of the property subject to disposals.»¹⁰³*

√ *«Since the company in which the defendants are partners, and the defendant debtor company operate in the same line of business and their factories are located in the same industrial zone, there is only a one-week period between the sale of the immovables from the debtor company to the defendant third party and from the third person to the fourth person. It was understood that the immovables were based on collusion in the title deed record, and the fourth persons stated that there were mortgages much higher than the real value of the immovables, and according to the witness testimony, the immovables were not directly purchased from the debtor company, and there was a person in between. Accepting that the defendant fourth persons are among those who can know that the debtor acted intending to smuggle property from his creditors or despise his creditors, it will be necessary to decide on the acceptance of the case in terms of these defendants.»¹⁰⁴*

√ *«Since the company of which the debtor is a partner and the company of the third party do not operate in the same line of business, they are not adjacent to each other in terms of their addresses and the immovable property was purchased from the company by using a proxy, it*

¹⁰⁰ See: 17. HD. 05.06.2014 T. 6358/8986 (www.e-uyar.com)

¹⁰¹ See: 17. HD. 05.06.2014 T. 13391/8983 (www.e-uyar.com)

¹⁰² See: 17. HD. 05.06.2014 T. 6682/8988 - **Aynı doğrultuda**; 17. HD. 05.06.2014 T. 6683/8989; 05.06.2014 T. 6684/8990; 05.06.2014 T. 6685/8991; 05.06.2014 T. 6686/8992; 05.06.2014 T. 6358/8986; 05.06.2014 T. 6681/8987 (www.e-uyar.com)

¹⁰³ See: 17. HD. 16.04.2013 T. 5986/5535 (www.e-uyar.com)

¹⁰⁴ See: 17. HD. 02.05.2012 T. 3773/5423 (www.e-uyar.com)

will make it difficult for the defendant to know that the debtor is acting with the intention of smuggling property from the creditors of the debtor or the creditors.»¹⁰⁵

√ «The transfer of the “naming right” in a local newspaper to another company in the same city by the debtor is the “transfer of commercial enterprise” regulated in the Enforcement and Bankruptcy Law 280/III. Due to the fact that the debtor and the defendant third party operating in the same sector of the transfer of the gas station, the defendant third party is one of the persons who can know that the debtor has a tax debt and the intent to smuggle property, in cases of cancellation of the disposals arising from Law No. 6183, will need to be implemented.»¹⁰⁶

VIII- In the cases of cancellation of the disposals, *the defendant third party who has made a transaction with the debtor “has the monetary (financial) power to buy the immovable/movable property” or “the defendant third party who has made an execution proceeding claiming that he has lent money to the debtor, the debtor is indeed this amount. Whether he has the monetary (financial) power to lend the money or not be investigated”* by the court? **The High Court** answered this question «positively» as follows, **in our opinion**, as well.

The High Court stated the following on this matter:

√ “Although it was accepted that the immovable subject to the case had nothing to do with the defendant-debtor company’s assets, it was claimed that the real estate was registered in the name of the spouse of the debtor company official. Therefore, it will be observed that the 95% shareholder of the principal debtor company is the spouse of the defendant’s third-party, and the father of the third defendant is the 5% shareholder. It will be investigated whether the third party has the economic power to purchase the immovables subject to the lawsuit and whether his wife or father actually bought the immovables on behalf of the defendant's third party. Since the defendant third-person dismissed it, it should be decided according to the result by asking whether the plaintiff will include the buyer in the lawsuit or convert the case into a cost, according to Article 282 of the Enforcement Bankruptcy Law.”¹⁰⁷

√ “Although the court states that the defendant third party should know that the debtor is incapable, the conditions of Article 280/1 of the Enforcement and Bankruptcy Law are fulfilled, it is not explained how the conditions in article 280/1 are realized and why the defendant third party should know that the company is incapable. Since the costs paid by the defendant third party for the purchase of the immovable are not taken into account, the commercial books of the defendant debtor company are also examined; How much is the total amount paid by the company for the purchase of the immovables, what is the fate of the amounts paid by the company since the immovable is ultimately registered in the name of the defendant third party, and the economic power of the defendant the third party to purchase according to the real values of these immovables is sufficient. Whether there are issues such as familiarity, friendship, commercial relationship, the business partnership between the

¹⁰⁵ See: 17. HD. 03.12.2012 T. 12662/13378 (www.e-uvar.com)

¹⁰⁶ See: 17. HD. 17.09.2009 T. 6102/5519 (www.e-uvar.com)

¹⁰⁷ See: 17. HD. 25.11.2019 T. 3551/11086 (www.e-uvar.com)

defendant third party and the defendant debtor company should be investigated and evaluated by the court.”¹⁰⁸

√ *“In the concrete case, since the plaintiff claims that the debtor has registered the immovable he bought by paying the price to smuggle property from the creditors in the title deed in the name of his brother, who does not have economic power, the court will decide whether the defendant sibling has sufficient economic power to purchase these immovables according to their real values, in other words, It is necessary to evaluate the pseudonym matter and decide according to the result.”*¹⁰⁹

√ *“The fictitious transaction between the defendants was accepted with the response petition of the defendant attorney. The defendant's wife became the surety of the debtor. It was confirmed that when the debt was not paid, the immovables on it were transferred to the defendant first and then to the defendant third party with the proposals of the other defendant. In addition, since the defendant does not have the power to purchase this immovable and has information about the financial situation of the debtor, the disposals must be canceled according to article 280 of the Enforcement and Bankruptcy Law.”*¹¹⁰

√ *«Since it is understood that a lawsuit has been filed and the proceedings are continuing due to the liquidation of the property, and the contribution fee will be received. As a result of this lawsuit, an action for annulment of the disposals based on the cause of collusion may be filed in case of an award in favor of the plaintiff; a decision must be made according to the situation result after it is awaited.»*¹¹¹

√ *«In the expert report taken by the court, it was understood that there was no increase in the property of the people who sold the real estate and the people who bought the real estate did not have the purchasing power, and it was understood that the registration of all the immovables of the debtor, who was already a contractor, on behalf of his daughter, wife and close relatives was not suitable for his life experiences. In terms of these immovables, it will be necessary to decide on the acceptance of the case, the transaction claimed to be collusive is before the birth of the debt, shortly, since there is no precondition for the case, it will be necessary to rule the fixed attorney fee according to the 7/2 article of the Minimum Attorneyship Fee Tariff.»*¹¹²

√ *« Since the proceedings related to the case's immovable subject were made before the birth of the debt, it is appropriate to deny the case in terms of these immovables. In the court's expert report, it was stated that there was no increase in the property of the people who sold the immovable, and the purchasers did not have the purchasing power. Since it is understood that the registration of all immovables of the debtor, who is already a contractor, on behalf of his daughter, wife, and close relatives is not suitable for his life experiences, it will be necessary to decide on the acceptance of the case in terms of this immovable property. Since the allegedly fraudulent transaction is before the debt's birth, briefly as there is no*

¹⁰⁸ See: 17. HD. 13.05.2019 T. 9206/5982 (www.e-uyar.com)

¹⁰⁹ See: 17. HD. 15.03.2017 T. 22269/2789 (www.e-uyar.com)

¹¹⁰ See: 17. HD. 23.12.2016 T. 18886/11527 (www.e-uyar.com)

¹¹¹ See: 17. HD. 21.06.2016 T. 24077/7603 (www.e-uyar.com)

¹¹² See: 17. HD. 05.04.2016 T. 12040/4257 (www.e-uyar.com)

precondition for the case, it will have to be ruled on the fixed counsel's fee according to Article 7/2 of the Minimum Attorneyship Fee Tariff.»¹¹³

√ *«The decision that the disposals made to the defendant's sibling is subject to forgiveness and is subject to cancellation since it was made due to the abduction of property from the creditors. However, the fact that the person who bought the immovable property related to the other defendants from a third party is not considered whether there is a familiarity with the debtor or his brother due to the kirve, the fact that the debtor continues to live in the real estate for a long time even after the sale is made to the last owner, and the last owner has the economic power to buy the property. It cannot be decided by incomplete examination without considering whether the dispositions are subject to cancellation or not by making an evaluation together with the witness statements that there is no.»¹¹⁴*

√ *«The defendant debtor's dispositions regarding the purchase of the vehicles subject to the case by paying his own money on behalf of his other son may be canceled because they were falsified. It is against the ordinary course of life that the borrower's son has the economic power to pay for the disposals subject to cancellation, taking into account both the start of insurance and the starting date of employment at the time of the disposals. Money from the debtor's assets and increases in the third party's assets may also be subject to the disposals' cancellation. Witness statements alone are not sufficient to prove goodwill and economic status. »¹¹⁵*

√ *«Although the defendant third party submitted a document titled inheritance transfer deed between the heirs, arguing that he bought the immovable with the money he obtained from the inheritance of his father, the court brought the title deed records of the immovables written in the inheritance transfer deed presented by the defendant, who owned the immovable, from whom to whom, whether they are sold or not, whether the defendant has any money remaining due to these immovables, and if inherited, to determine the date of their inheritance, investigate in detail the economic situation of the defendant at the date of disposal, and then evaluate all the evidence collected and collected together and make a decision according to the result. It would be wrong to decide the dismissal of the case because "the collusion could not be proven" without investigations. »¹¹⁶*

√ *« In the annulment cases, the court will have to investigate whether the defendant third parties who have made a transaction with the debtor have the financial power to purchase the subject movables/immovables. »¹¹⁷*

IX- In the case of annulment of the disposals, if the defendant third-party disposes of the movable/immovable purchased from the debtor, that is, transfers it to a fourth person, the court asks the plaintiff (his attorney) whether he will include the lawsuit he filed (in bad faith) to the fourth party by reminding his right of choice pursuant to Articles 282 and 283/II of the

¹¹³ See: 17. HD. 05.04.2016 T. 11974/4256 (www.e-uyar.com)

¹¹⁴ See: 17. HD. 09.06.2014 T. 4544/9210 (www.e-uyar.com)

¹¹⁵ See: 17. HD. 09.09.2013 T. 7129/11624 (www.e-uyar.com)

¹¹⁶ See: 17. HD. 29.11.2012 T. 12777/13299 (www.e-uyar.com)

¹¹⁷ See: 15. HD. 23.01.2007 T. 6400/235; 17. HD. 28.01.2008 T. 5538/339; 15. HD. 08.04.1993 T. 1572/1646; 17. HD. 14.04.2008 T. 1112/1914; 17.04.2008 T. 362/2022; 04.11.2008 T. 2340/5093; 23.10.2008 T. 1876/4835; 07.04.2011 T. 9155/3212; 22.11.2010 T. 10925/9928; 26.10.2010 T. 5342/8805; 01.07.2010 T. 2225/6230 (www.e-uyar.com)

Enforcement and Bankruptcy Law. If the plaintiff (his attorney) includes the fourth person in his case (bad faith), if he notifies this person of the petition of the lawsuit, that is, if this person is not included in the lawsuit or if his bad faith cannot be proven, the **lawsuit is deemed to have turned into a price**, and the subject matter of the lawsuit is considered to be the defendant is sentenced to compensation for the **third party** (Execution and Bankruptcy Law, Article 283 / II), limited to the claimant's receivables and accessories (interest and follow-up costs).

In this case, the creditor can execute the verdict received as a result of the annulment action directly against the defendant-third party before it becomes final.¹¹⁸¹¹⁹

If the third party has disposed of the property in question during the lawsuit, the plaintiff-creditor may request the application of the provisions of Article 283/II of the Enforcement and Bankruptcy Law.

For the annulment case to “*turn into a price*” the person (the fourth person) to whom the third party transfers the subject property / immovable must be “**in good faith**,” and it is a matter that both the **doctrine**¹²⁰ and the **Supreme Court practice**¹²¹ agree.¹²²

In addition, following the settled practices of the high court, “*if the property subject to annulment has been lost by the third party and the court decides the value of this property as compensation at the time of the third person's disposal,*” the court will not judge the interest in the decision. Because the plaintiff-creditor will be paid “*in a way to cover his/her receivables and his/her accessories*” limited to this amount, and in the compensation decision to be given separately by the court, it would not be appropriate to apply interest on this compensation.

As a matter of fact, **the High Court** stated the following in its decisions on this issue:

√ “*In the event that the property subject to the action for annulment of the disposal is out of the possession of the third party and the person who owns the property cannot be proven to be malicious, the cancellation request is not made, or this request is rejected, the value of the*

¹¹⁸ See: 8. HD. 26.06.2012 T. 6080/6236; 26.06.2012 T. 6078/6234; 08.05.2012 T. 3729/3956; 12. HD. 25.12.2008 T. 8746/23250; 24.04.2007 T. 5791/5973 (www.e-uyar.com)

¹¹⁹ KURU, B. age., s: 3576 - KURU, B. El Kitabı, s: 1436 - GÜRDOĞAN, B. age. s: 245 - MUŞUL, T. İcra ve İflas Hukuku, C: 2, 2013, s: 1840 - MUŞUL, T. İcra ve İflas Hukukunda Tasarrufun İptali Davaları, 2017, 2. Baskı, s: 530 - KARATAŞ, İ/ERTEKİN, E. a.g.e., s: 243 - UYAR, T./UYAR, A./UYAR, C. İİK. Şerhi, C: 3, s: 4582 - YILMAZ, E. age., s: 1252

¹²⁰ KURU, B. El Kitabı, s: 1424 vd. - SERTKAYA, A.Ş./KUL, S. age., s: 445 vd. - MUŞUL, T. Tasarrufun İptali Davaları, s: 514 - YILMAZ, E. age. s: 1251 - COŞKUN, M. Açıklamalı-İçtihatlı İcra ve İflas Kanunu, 2016, s: 4819

¹²¹ See: 17. HD. 13.03.2017 T. 1658/2646; 28.02.2017 T. 19825/2123; 06.12.2016 T. 20381/11217; 15.11.2016 T. 17928/10506; 25.10.2016 T. 7077/9343; 05.11.2007 T. 3606/3386; 24.01.2017 T. 22158/493; 29.03.2016 T. 4074/3949; 13.10.2015 T. 12192/10580; 15.06.2015 T. 4112/8628; 09.06.2015 T. 4523/8439; 30.03.2015 T. 16194/5058; 01.04.2013 T. 15317/4587; 14.03.2013 T. 5932/3305; 18.09.2012 9199/9510; 17.05.2012 T. 5229/6274; 16.05.2012 T. 5131/6235; 18.04.2012 T. 1901/4843; 28.03.2012 T. 1926/3773; 25.04.2011 T. 8141/3884; 15.03.2011 T. 12143/2284; 09.12.2010 T. 3033/10818; 17.06.2010 T. 4844/5635; 27.05.2010 T. 3700/4799; 18.03.2010 T. 429/2408; 15.09.2009 T. 4441/5400; 17.11.2009 T. 7699/7593; 17.11.2009 T. 7699/7593; 15.09.2009 T. 4441/5400; 02.06.2009 T. 829/3821; 19.11.2008 T. 4326/5325; 27.10.2008 T. 2351/4913; 08.07.2008 T. 806/3815; 10.06.2008 T. 736/3139; 14.05.2007 T. 7688/3231; 16.12.2004 T. 4579/6562; 30.11.1995 T. 6640/7084 (www.e-uyar.com)

¹²² UYAR, T./UYAR, A./UYAR, C. İİK. Şerhi, C: 3, 2014, s: 4582 vd.

*property at the time of its disposal will be ruled against the third person, in this case, “annulment action” will be transformed to “action for performance”. At this stage, since the interest is charged on the actual receivable in the execution proceeding on the amount decided by the court separately, the interest cannot be ruled from the date of the case. »*¹²³
¹²⁴;

√ *«The dispositions requested to be annulled are made after the debt, the definitive insolvency certificate has been presented, the defendant is one of the persons who can know his status and purpose because he is the brother-in-law of the debtor. Therefore, the dispositions subject to the case are subject to cancellation following Article 280/1 of the Enforcement and Bankruptcy Law. Since the execution proceedings against the debtor continue, there has been no inaccuracy in not applying interest to the compensation awarded in terms of the immovable subject to the lawsuit, which turned into cash compensation. Since the dispositions among the defendants regarding the sale of the immovables subject to the lawsuit are subject to cancellation following Article 280/1 of the Enforcement and Bankruptcy Law, it will be necessary to accept the case in terms of the immovables as mentioned earlier, and to cancel the dispositions related to the immovables as mentioned earlier limited to the amount of receivable in the claimer’s final insolvency certificate.»*¹²⁵

√ *« If the case turns into a price, the provision of interest on the amount and holding the debtor responsible for this amount is not in line with the purpose of the cancellation of the disposals. »*¹²⁶

√ *« In cases of cancellation of the disposals, it is not possible to charge interest on the amount if the case turns into a price and the amount is ruled as a result. »*¹²⁷

√ *«Since the enforcement proceedings about the defendant debtor are continuing, it is also wrong to be held liable for cash compensation following Article 283/2 of the Enforcement and Bankruptcy Law and applying interest to the compensation, except for the debt subject to follow-up. In terms of the defendant debtor, the settlement between the defendant debtor and the third person and the dispensation regarding the sale of the immovable share of the defendant, the cancellation of the disposals between the defendant 3rd person and the domestic defendant 4th person, the compensation of the defendants from the 3rd person and the 4th person, depending on the request, a collection should be decided.»*¹²⁸

√ *«In the event that the case turns into a price, the plaintiff will have to take into account the real value of the property subject to disposal at the time of disposal by a third party, depending on the amount of the plaintiffs and the number of his personalities. It is inaccurate to decide on the amount consisting of the original receivables and their members, on the real*

¹²³ See: 12. HD. 29.09.2011 T. 1875/16987; 17. HD. 19.11.2008 T. 3378/4160; 03.03.2008 T. 5058/995; 26.02.2008 T. 5199/845; 14.01.2008 T. 4742/39; 08.10.2007 T. 4394/3010; 17.07.2007 T. 3040/2535; 17.07.2007 T. 3422/2522; 17.07.2007 T. 3022/2528; 14.03.2007 T. 7735/1590 vb. (www.e-uvar.com)

¹²⁴ See: 12. HD. 13.01.2016 T. 23482/639; 27.06.2014 T. 16270/18855; 15. HD. 08.03.2000 T. 210/1123 (www.e-uvar.com)

¹²⁵ See: 17. HD. 29.11.2016 T. 19066/11014 (www.e-uvar.com)

¹²⁶ See: 17. HD. 07.06.2016 T. 15910/6936 (www.e-uvar.com)

¹²⁷ See: 17. HD. 02.02.2016 T. 12128/1169 (www.e-uvar.com)

¹²⁸ See: 17. HD. 26.10.2015 T. 3468/11290 (www.e-uvar.com)

value of which the immovable property is disposed of by a third party, by charging interest as of the transfer date that interest will be charged for the second time.»¹²⁹

√ « *It is necessary to examine the objections of the debtor regarding the interest and make a decision according to the result that the receivable ruled in the cancellation of the dispositions into money can be followed up before it becomes final. »¹³⁰*

√ «*Following the Enforcement and Bankruptcy Law 283/2, the third party's compensation liability is the property's value on the date when the subject matter is disposed of, and since the proceedings against the debtor continue, no additional interest will be applied to the compensation awarded.»¹³¹*

*

In the dispute regarding the opinion (and the case);

A- As we have stated above, the **high court** stated in many decisions that "the acts subject to cancellation of the debtor are regulated under three groups and in Articles 278, 279 and 280 of the Enforcement and Bankruptcy Law, however, all the disposals that can be canceled in these articles are not counted as limited, the law provides a general definition for some disposals subject to cancellation. By doing so, it is left to the discretion of the judge to determine which disposals are subject to cancellation (Article 281 of the Enforcement and Bankruptcy Law). For this legal reason, even if the plaintiff relies on one of the articles 278, 279, and 280 of the Enforcement and Bankruptcy Law, the court is not bound by it. An annulment decision may be given according to one of the other articles". *For this reason, the lawsuit subject is Istanbul province, Tuzla district, ...street, ... plot, ... parcel (7) no based on the "grounds for an annulment" determined from the file content but not clearly stipulated by the plaintiff's attorney defendant (the debtor) of the independent section (villa) (A) YAPI Construction and limited company. It may be decided to cancel the sale transaction (disposition) made by the other defendant O...K... on 29.09.2015 in terms of the plaintiff's creditor.*

B- Again, as we have emphasized above¹³², in these cases, "the plaintiff's creditor's submitting a final/temporary insolvency document" is a "special case condition", the plaintiff-creditor, the debtor (A) YAPI Construction. And limited company. Upon the finalization of the execution proceedings about the execution, no positive result was obtained from the responses given by the Land Registry Directorate, the Traffic Directorate, and various banks to the foreclosure letters sent by the enforcement office within the framework of the creditor's request. In other words, since the deposit, movable and immovable amount of the debtor company could not be reached, the execution file shows that the debtor is in an incapacitated state. Therefore, the content of the file is a "temporary insolvency document,"¹³³ the court

¹²⁹ See: 17. HD. 26.01.2015 T. 13119/894 (www.e-uyar.com)

¹³⁰ See: 8. HD. 26.06.2012 T. 6080/6236 (www.e-uyar.com)

¹³¹ See: 17. HD. 26.03.2013 T. 7316/4182 (www.e-uyar.com)

¹³², See: Yuk. dipn. 7-19

¹³³ See: Yuk. dipn. 17-19 civarı

accepts that the “precondition of the case” has been fulfilled, the case will need to be entered into the merits.

C- As we mentioned above¹³⁴, where the defendant third party knows or is in a position to know “the debtor’s financial situation is acting with the intention of harming its creditors,” it is decided to cancel the disposals made to the person. (Enforcement and Bankruptcy Law Article 280/I)

In the concrete case, the defendant - third-person O...K...

a) Since the defendant - the debtor is the son of a former partner of (A)YAPI İnşaat and the limited company, due to this closeness, he is able to know that the debtor company “acted in order to smuggle its property from its creditors” (*the debtor does not know his financial situation would be contrary to the ordinary course of life*) and **following Article 280/I of the Enforcement and Bankruptcy Law**, a decision will be made to cancel the sale of the real estate (villa).

b) Since the defendant - the third person O...K.... - as we will state below - works in the “construction sector” like the defendant - the debtor and therefore “is in a position to know the financial situation of the debtor company”, again **following the Enforcement and Bankruptcy Law 280/I**, a decision will have to be made.

D- As we stated above¹³⁵; in the event that the “third party” (to whom the debtor has transferred his property, rights, and receivables) is working in the same sector (line of business) as the “debtor”- following the established Supreme Court case-law - the defendant - the third person is responsible “for the financial situation of the debtor”, he is deemed to be able to know that he acted with will” and the disposals made to him are therefore canceled.

In the concrete case, “debtor” (A) YAPI CONSTRUCTION and the limited company is a **construction company**, as well as the other defendant “third party” O... K... also has a construction company; **a)** and (B) CONSTRUCTION INDUSTRY AND FOREIGN TRADE LİMİTED COMPANY and **b)** (C)CONSTRUCTION INDUSTRY AND FOREIGN TRADE LİMİTED COMPANY are partners. (In fact, he is also the founder of the first company.)

For this reason, since **both** the defendant debtor and the defendant third party are working **in the same sector**, it will be necessary to cancel the sale disposals made to the defendant O... K... for this reason.

E- As we explained above; In the case of annulment of the disposals, the court should investigate whether the defendant third party who purchased the subject immovable/movable from the defendant debtor “has the financial power to buy that property”. The sales price in the land registry has been shown as 1.200.000,00 TL. Submit a lawsuit on 29.09.2015, the date of the purchase of the villa, as a result of the discovery made by the court on that date, whether the defendant O... K... had the financial power to buy with its real value at that date,

¹³⁴, See: Yuk. dipn. 107-117

¹³⁵, See: Yuk. dipn. 91-106

by sending a warrant to the Tax Office and through Law Enforcement Forces will need to be investigated.

F- As we have mentioned above¹³⁶, “the difference between the 1.200.000,00 TL shown as the sale price of the immovable property (villa) in the title deed and the market value on 29.09.2015, which is the date of sale, is one-fold or more”, according to Article 278/III-2 of the Enforcement and Bankruptcy Law is “the reason for cancellation”. The court will need to make a “discovery” on-site and obtain a report from a “real estate expert” to indicate these issues.

G- As we have explained above¹³⁷, in cases of cancellation of the disposals, if the defendant - the third party sells the immovable/movable - to a good fourth person - the action for the annulment of the disposition turns into a price, and the defendant third person “the current value of the subject matter, on the date of transferring the subject matter to the fourth person, plaintiff - to pay the creditor as compensation”.

Therefore, in the concrete case, if the court concludes that “*the plaintiff is justified in the case and that the case must be decided*”, it will be necessary to decide “*to collect the current value of the subject immovable property on the date of transfer from the defendant-third party O... K...*” **without additional interest (no interest is charged) to the compensation to be awarded.**¹³⁸

¹³⁶, See: Yuk. dipn. 43-59

¹³⁷ See: Yuk. dipn. 119-131

¹³⁸ See: 17. HD. 29.11.2016 T. 19066/11014; 07.06.2016 T. 15910/6936; 02.02.2016 T. 12128/1169; 26.01.2015 T. 13119/894; 26.03.2013 T. 7316/4182 (www.e-uyar.com)