VULNERABILITY AND INSOLVENCY. PROBLEMS IN THE PROMPT REPAYMENT OF LOANS BY VULNERABLE PERSONS.

Nicolás J. Di Lella[1]

Abstract
This paper analyzes the legal viability or inviability of applying the prompt payment mechanism (article 16, Argentina Bankruptcy Law nº 24,522) in a pre-bankruptcy proceeding to creditors in vulnerable situations. The study approaches the issue from the argumentative framework outlined in two precedents from the Supreme Court of Justice of Argentina, which are clearly contradictory given the different composition of the courts in each case. Reasons are provided for the position adopted, and the need for reform of Argentine bankruptcy law is highlighted, along with potential solutions.

Keywords
Law and Economics. Human Rights and insolvency. Vulnerability and bankruptcy.

Summary

[1] Professor, Tucuman University, Argentina. PhD Catholic University of Argentina. LL.M. Bologna University, Italy. LL.M Austral University, Argentina

1. GENERAL CONCEPTS OF VULNERABILITY.

Despite being seemingly so understandable and well-known, the term "vulnerability" encompasses considerable complexity.

It has been argued that "Vulnerability is, firstly, a concept with multiple meanings, applicable to very diverse areas: from the possibility of a human being injured to the potential intrusion into a computer system. Secondly, vulnerability is a characteristic of humanity that seems evident from an anthropological perspective, but which the cultural tradition closest to the defense of individualism, autonomy, and independence has relegated to the background or even dismissed as inferior. Third, vulnerability, understood as the possibility of harm, is considered the very root of moral behavior, at least for those behaviors that emphasize protection and care rather than the assertion of rights. Furthermore, fourth, vulnerability has become increasingly associated not only with the individual's circumstances but also with the environmental, social, or other conditions in which their life unfolds, leading to the need to incorporate sociocultural aspects into the understanding of this concept. Hence, the frequent use of the term "vulnerable populations" refers to those groups of people who, due to the conditions of their environment, are more susceptible to harm"[2].

Vulnerability comes from the Latin word vulnerabilis, meaning "wound". Therefore, a vulnerable person is understood to be someone who can be wounded, attacked, or affected, physically or morally. This word evokes the idea of fragility[3] and of weakness, appealing to the need for protection, care and attention for everyone in that context[4].

---

[2] FEITO 2007, 7-22.
[3] BARRANCO AVILÉS 2023, 19.
[4] FULCHIRON 2017, 3.

This is a condition inherent to human nature, closely linked to the subject's exposure to risk[5]. It has been argued that vulnerability denotes weakness, fragility in surviving and living with dignity, as well as in claiming one's own rights that are also recognized for others due to difficulties that the jurisdictional system sometimes presents[6].

Vulnerability manifests itself, then, as difficulty or impossibility in coping with changes that endanger some one's own asset (understood as a legal asset) in a given situation, and also as difficulty or impossibility in generating the necessary changes to get out of a situation of lack of a certain asset[7].

In its legal aspect, it can be defined as a measure of the characteristics and circumstances of a person in relation to a threat, including the degree of recovery from the impact produced by the damaging event[8].

It has also been suggested that the expression "groups in vulnerable situations" is used to designate those groups of people or sectors of the population who, due to reasons inherent to their identity or condition and due to action or omission of State bodies, are deprived of the full enjoyment and exercise of their fundamental rights and of the attention and satisfaction of their specific needs[9].

Following the same line of reasoning, it has been explained that this expression is used to identify individuals or groups of individuals who, due to reasons related to their identity or condition and through actions or omissions of the State, are deprived of the full enjoyment and exercise of their fundamental rights and the attention to their needs.

---

[5] See SOSA 2020 and SOSA 2019.
[6] See GELLI, 2020.
[7] GOZAÍNI 2024, 62.
[8] ESTUPIÑAN SILVA 2018.
[9] SACRISTÁN 2022, 19.

In this context, it was considered that the term vulnerability designates those who find themselves in an unfavorable state or circumstance, or who suffer disadvantages, deprivations, or are under circumstances that affect the full enjoyment and exercise of their fundamental rights. In short, it refers to circumstances that hinder the satisfaction of their specific needs[10].

It has been explained that this is not a permanent category applied to a geometrically definable group of people, but rather a "situation" whose cause can be social, biological, and/or external factors. Therefore, this "situation of vulnerability" is dynamic, relational, and contextual[11].

Vulnerability, on the other hand, has been defined as the susceptibility of individuals, their livelihoods, and their assets to suffer adverse effects when impacted by potentially harmful events. Vulnerability is related to predisposition, susceptibility, fragility, weakness, deficiencies, and a lack of capacity that contribute to adverse effects on the exposed elements. This term refers to the insecurity and level of risk one faces in the event of a particular catastrophe. This situation is exacerbated by factors such as poverty and a lack of social networks and support mechanisms[12].

Therefore, it can be argued that vulnerability is related to a situation of exclusion, discrimination, and marginalization that nullifies the exercise and enjoyment of fundamental rights.

Notwithstanding the foregoing, and as noted by authoritative legal scholars[13] "vulnerability" or the qualification of "vulnerable" with respect to a subject is a quality that does not characterize the subject by itself -nor does it give it entity or identity in an abstract way- but arises -and is embodied when a concrete fact or circumstance occurs that involves the subject in its attempt to exercise a right, and in comparison with the exercise

[10] VALENTE 2015,1.
[11] LUNA 2008, 60.
[12] CHURRUCA MUGURUZA 2014, 52.
[13] VÍTOLO 2023,125.

of that same right- or of an analogous or similar right by the rest of the third parties.

Within the jurisdictional sphere, it has been defined as a perspective for analyzing the legal phenomenon (normative and factual), which allows for making visible inequalities that are imperceptible without resorting to the empathy that arises from this perspective, and thus maximizing the norm so that it is the one that best protects the human person[14].

It is presented as a descriptive concept about the situation or circumstance that a person is going through, and it is relevant to the law in relation to the right to equality, since people in vulnerable situations need an equalizing action or positive action for the right to equality to become effective[15].

Vulnerability is a situation beyond a person's control, affecting their ability to prevent or confront a situation that threatens their ability to exercise their rights or to fully exercise them. This situation can manifest itself in relation to an individual in a specific circumstance, or affect them as part of a group, thus creating a structural vulnerability. It can be permanent or circumstantial, but what we see as a common feature is that vulnerability is a relational concept.

Therefore, when we speak of a vulnerability perspective, we are referring to the perception of a vulnerability in a specific case, which obliges the legal operator to intervene in a way that favors that relative vulnerability. This is nothing other than the principle of favor debilis, which can operate in a hermeneutical or corrective manner. Hermeneutically, as with any perspective, it obliges the operator, when there are two or more possible interpretations of a precept, to apply the one most favorable to the vulnerable individual. In its corrective function, which is exceptional and should only be applied when the law, as drafted, has a disproportionate impact (indirect discrimination) on the vulnerable individual, and based on

[14] MOSMANN 2022.
[15] CAPELO 2021.

factual evidence of that impact, it entails applying the law equitably for the benefit of the vulnerable person.

Within this framework, vulnerability has been viewed as a constructive and restorative perspective, empowering and leveling the playing field of law, with the aim of placing individuals on an equal footing in the sphere of family and social interactions. Ultimately, it becomes an instrument for correcting inequalities, both in the realm of distributive and commutative justice.

This concept will be very useful as a complement to the discourse on the values and rights on which our democratic system is based, although not a substitute for it[16].

Furthermore, in defining the term, it has been considered that various perspectives, in addition to the legal one, must be admitted in their constitution as such, such as: the social, the historical, the cultural, the economic, in such a way that the identity of these people varies in each society and at a given historical moment.

That is why the cited author states that "vulnerable people" are those who, due to their disadvantaged characteristics such as age, sex, marital status, educational level, ethnic origin, situation or physical and/or mental condition, require an additional effort to enjoy their fundamental rights on an equal footing.

In short, vulnerability relates to an individual's ability to enjoy their rights on equal terms with others.

Therefore, as postulated by authorized doctrine: "vulnerability is the concrete or abstract quality of legal weakness of an individual, a specific or determinable group of people or an indeterminate sector of society who, due to a constant condition or a contingent situation, are deprived of the full enjoyment and exercise of their fundamental rights or find themselves

[16] MARCOS DEL CANO 2020, 18.

in a situation of inferiority with respect to others in analogous circumstances or in imbalance with respect to others with whom they have to relate" [17].

It has been emphasized that the concept of vulnerability represents the new paradigm for the effective and comprehensive protection of fundamental human rights"[18].

And, with increasing frequency, the term "hypervulnerability" is used, associated with the idea of multiple fragility factors converging in the same person[19].

In this scenario, the recent reform to the Constitution of Santa Fe, Argentina, in Article 32, states that: "The Province protects the rights of consumers and users. In their consumer relations, they enjoy the following rights: to dignity; to education; to access to sustainable, safe, and quality consumption; to health; to the protection of their privacy; to personal and property security, in accordance with the principles of prevention, precaution, and full redress; to information; to free access to justice and effective judicial protection; and to associate for the defense of these rights. The Province protects these rights through an administrative consumer protection system, its implementing regulations, and individual and collective legal actions. In coordination with the municipalities, it adopts measures for consumer education, the promotion of consumer and user associations, sustainable consumption, conflict and risk prevention in the physical and digital environment; and, especially for highly vulnerable consumers and users, protection against the risks of advertising, over-indebtedness, and abusive contractual clauses and practices".

As explained by authoritative legal scholars, "embracing vulnerability as a concept common to the human condition inherently entails substantial changes. These substantial changes are essentially the following: a) if vulnerability is a shared condition, the fictitious categories

[17] SAHIÁN 2025, 8.
[18] DI MARÍA 2020, 267 et seq.
[19] SOSA 2024, 26.

that separate human beings from one another are dismantled, thus eliminating the very root of discrimination, which is classification; b) if vulnerability is a shared condition, the suffering other is not 'other,' but another self: empathy becomes possible as a method of law in the perceptive instance of the legal phenomenon; c) if vulnerability is shared, it is no longer possible to perpetuate the myth of individual autonomy, but rather it is necessary to accept the growing tendency to think in terms of relational autonomy, to exhibit reciprocal dependencies, and thus to reinscribe law within a framework of shared responsibilities surrounding the individual and common good. These three statements alone are revolutionary. This is a shift that is already quietly underway in various areas of civil law and has inspired valuable approaches in contemporary law. This concept is implicit in others such as the notion of the dynamic burden of proof, differentiated legal protections, restorative justice, and also in the expansion of support networks in interventions involving individuals with limited capacity or children, as well as in the conception of the new contractual and obligatory public order. It is present in diverse institutions that cut across private and public law (consider access to justice, consumer law, the digitalization of law, the right to privacy, and we could go on). If 19th-century law conceived of equality in terms of powerful individuals with assets and the ability to choose, the vulnerability perspective, on the other hand, reverses this view and considers law from the perspective of shared fragility. And this impacts both the approach taken by legal professionals and the understanding of the parties' positions"[20].

Finally, it should be noted that people in vulnerable and hyper-vulnerable situations need more in-depth state protection in order to comply with the guidelines of the Inter-American Court of Human Rights[21].

[20] BASSET, 2022.

[21] Corte IDH, 20/10/2016, "Trabajadores de la Hacienda Brasil Verde c/ Brasil", La Ley, cita online: IC/JUR/4/2016; íd., 31/08/2012, "Furlan y Familiares vs. Argentina", La Ley,

The protective criteria for vulnerable people have been strengthened, as also established by the Supreme Court of Argentina[22]. Likewise, the Superior Court of the Province of Tucumán, Argentina, on repeated occasions, emphasized that "individuals who go through situations of vulnerability deserve specific protection, which must be more robust when there are causes that increase the degree of fragility"[23].

2. TREATMENT OF CLAIMS OF VULNERABLE PEOPLE IN BANKRUPTCY PROCEEDINGS.

The typical insolvency proceedings in Argentina, regulated since 1995, are bankruptcy proceedings and insolvency.

Bankruptcy proceedings are essentially aimed at overcoming the debtor's financial distress by obtaining a payment agreement negotiated with

RCyS, 2013-II-276; íd., 14/07/2006, "Ximenes Lópes c/ Brasil", La Ley, cita online: AR/JUR/11786/2006; entre muchos otros

[22] CSJN, "Asociación Civil Macame", fallos: 345:549.

[23] CS, Tucumán, 28/02/2024, "G., O. G. s/ Abuso Sexual", -Sentencia nº 139-; íd., 28/06/2023, "Ahuala Herrera, Karen c/ IPST", Sentencia n° 788; íd., 28/06/2023, "Medina, María c/ IPST", Sentencia n° 791; 27/06/2023, "Fote, Carlos c/ IPST", Sentencia n° 774; íd., 27/06/2023, "Aparicio, Marcela c/ IPST", Sentencia n° 775; íd., 22/06/2023, "Soria, Marta c/ IPST", Sentencia n° 740; íd., 08/05/2023, "Eciri SRL s/ Conc. Prev. s/ Inc. de verificación p.p. Coronel, Omar O.", -Sentencia nº 452-; íd., 04/03/2021, "Maza Ángel Serafín vs. IPSST s/Amparo", Sentencia n° 155; íd., 23/03/2021, "Teri Roque Daniel vs. IPSST s/Amparo", Sentencia n° 219; íd., 06/05/2021, "Sánchez Alvaro Ezequiel vs. Provincia de Tucumán y otro s/Amparo", Sentencia n° 399; íd., 07/09/2021, "Carabajal Karina del Carmen vs. IPSST s/Amparo", Sentencia n° 895; íd., 07/09/2021, "Guaraz Liliana Elizabeth vs. Provincia de Tucumán y otros s/Amparo", Sentencia n° 896; íd., 18/11/2021, "Acosta Adrián Nicolás vs. IPSST y otro s/Amparo", Sentencia n° 1174.

creditors and approved by the court[24], the one who will try to turn a deficit unit into a surplus unit[25].

The Supreme Court of Argentina has held that "Bankruptcy proceedings are a process that aims to grant the benefit of the continuation of the debtor's business activity, for which it must obtain the endorsement of a substantial majority of its creditors with claims or titles prior to the filing, and such procedure, in order to ensure the equality of rights of all creditors, subjects them to a timely and equal participation in the courts, through a common verification process, for which it is necessary to ensure both the regular and natural competence of the judge who will intervene and the real opportunity for the creditors to participate and to make a decision regarding the proposed agreement, which will validate the granting of such benefit"[26].

In contrast, bankruptcy aims to convert the debtor's assets into a single pool for the purpose of a collective, rigid, and egalitarian liquidation, taking into account the privileges of the creditors[27].

Bankruptcy is a legally established tool for cases of debtor insolvency where a preventative solution is unavailable or has failed. Its primary purpose is to liquidate the debtor's assets and distribute the proceeds to creditors. Indeed, bankruptcy fundamentally aims to satisfy creditors' claims, and to this end, the debtor's assets are liquidated and the proceeds distributed. The ultimate goal of bankruptcy is to liquidate the debtor's assets and settle their liabilities.[28].

---

[24] CNCom., Sala E, 09/08/2006, "Sueño Estelar S.A. s/ Concurso Preventivo s/ Incidente de pronto pago por Martín Eladio", RSC, 40-171.

[25] CCiv. y Com., Sala III, Córdoba, 28/10/2004, "Corrugadora Centro S.A. s/ Concurso Preventivo", DSE XVIII-492-46; CCiv. y Com., Sala II, Tucumán, 23/06/1971, "Gandur, Emilio s/ Quiebra", LL, 145-410.

[26] CSJN, 15/11/2017, "Oil Combustibles S.A. s/ Concurso Preventivo", LL, 2017-F, 354.

[27] CSJN, 29/03/1988, "Soldimar S.A. s/ concurso preventivo", fallos, 311:424.

[28] CNCom., Sala C, 13/08/2024, "Compañía General de Producciones S.A. s/ Quiebra", La Ley, cita online: AR/JUR/111680/2024.

Argentine insolvency law adopts the general principle of "equal treatment of all creditors." Among many exceptions, the "system of privileges" established by the legislature in Law 24,522 stands out.

Under this system, in insolvency proceedings, privileged creditors are not bound by the agreement (generally a debt reduction and payment deferral) and can claim 100% of their debt after the agreement for unsecured creditors is approved (Art. 57, Insolvency Law). Furthermore, some creditors, such as those with labor claims (Art. 16, Insolvency Law) and those with secured loans (Art. 23, Insolvency Law), can collect even before that point, provided certain conditions are met.

In bankruptcy proceedings, after the debtor's assets are liquidated, debts are paid according to the order established by law, based on the ranking of the debt (Articles 244, 241, 240, 246, and 248 of the Bankruptcy Law). Some creditors, such as those with labor claims (Article 183 of the Bankruptcy Law) and those with secured claims (Article 209 of the Bankruptcy Law), may be paid even before this point.

Under this legal framework, debts owed to the elderly, children, or individuals with disabilities resulting from traffic accidents are not considered priority. Therefore, they are treated the same as any other unsecured debt. And, in many cases, these debts go unpaid in bankruptcy proceedings.

2.1.- Prompt Payment of Labor Claims under Law nº 24.522.

The Bankruptcy Law No. 24,522 ("LCQ") does not include the claims of vulnerable individuals among the list of privileged creditors. Their status is that of unsecured creditors (Art. 248, LCQ). Nor does it grant these claims any prompt payment that would distinguish them from ordinary or non-privileged claims.

The prompt payment system is a mechanism that aims to authorize the rapid settlement of labor claims with special and/or general privilege due to their essential nature.

Specifically, preferred labor claims do not have to wait for the court to ratify the agreement with unsecured creditors to be paid; they can be paid much sooner.

An automatic or ex officio mechanism is foreseen, without the worker's intervention; and another, incidental mechanism, initiated by the worker in cases where the ex officio procedure would not be appropriate. Article 16[29] of the insolvency law explicitly establishes the labor-related claims that have this time priority.

Within the list of creditors whose claims can be paid promptly, the law stipulates that, exceptionally, the judge may authorize the payment of those claims that must be used to cover health, food, or other contingencies that cannot be delayed by their holders.

2.2.- The Role of the Judge in the Verification and Payment of Claims for Vulnerable Individuals.

The aforementioned regulation, incorporated into the insolvency law in 2011, has allowed holders of non-labor-related claims who are experiencing vulnerable situations to request verification of their claims as privileged and promptly paid.

Invoking the repeated rulings of the Inter-American Court of Human Rights: "every person in a vulnerable situation is entitled to special protection, by virtue of those duties whose fulfillment by the State is necessary to satisfy the general obligations of respect for and guarantee of

[29] Art. 16, párr. 2º, LCQ: "The bankruptcy judge will authorize the payment of wages owed to the worker, compensation for work-related accidents or occupational diseases, and those provided for in Articles 132 bis, 212, 232, 233 and 245 to 254, 178, 180 and 182 of the Employment Contract Regime approved by Law 20,744; the compensation provided for in Law 25,877, in Articles 1 and 2 of Law 25,323; in Articles 8, 9, 10, 11 and 15 of Law 24,013; in Articles 44 and 45 of Law 25,345; in Article 52 of Law 23,551; and those provided for in special statutes, collective agreements or individual contracts".

human rights"[30], there is a growing trend of court rulings prioritizing the claims of vulnerable individuals to prevent their abandonment in insolvency proceedings.

This demonstrates the preferential protection afforded to vulnerable individuals by the justice system, in contrast to the rigid system established by the 1995 insolvency legislation, namely:

- *older adults* ([31]; [32]; [33]; [34])
- *sick people* ([35]).

[30] Corte IDH, 20/10/2016, "Trabajadores de la Hacienda Brasil Verde c/ Brasil", La Ley, cita online: IC/JUR/4/2016; íd., 31/08/2012, "Furlan y Familiares vs. Argentina", La Ley, RCyS, 2013-II-276; íd., 14/07/2006, "Ximenes Lópes c/ Brasil", La Ley, cita online: AR/JUR/11786/2006; entre muchos otros

[31] CS, Buenos Aires, 05/04/2006, "González, Feliciana c/ Microómnibus General San Martín S.A.C.", LLBA, 2006-904.

[32] CS, Buenos Aires, 17/06/2009, "Racing Club s/ Concurso Preventivo s/ Incidente de verificación p.p. Persini, Ada S." (causa: 98.731).

[33] CNCom., Sala C, 10/05/2018, "La Economía Comercial S.A. de Seguros Generales s/ Quiebra s/ Incidente de verificación por Tules, Yolanda E.", LL, cita online: AR/JUR/22249/2918.

[34] CCiv. y Com., Sala VIII, Rosario, 18/08/2016, "Sociedad de Beneficencia Hospital Italiano Garibaldi s/ Concurso s/ Incidente de verificación tardía p.p. González Marcelo Eduardo", LLLitoral, 2017 (diciembre), p. 6.

[35] CNCom., Sala B, 02/05/2003, "Correo Argentino SA s/ Conc. Prev. s/ Inc. de verificación y pronto pago por Segura Carlos".

- *minors with disabilities* ([36]; [37]; [38]; [39]; [40]).
- *protection of women* ([41]; [42]).
- *over-indebted consumers* ([43]; [44]; [45]).

On this issue, legal doctrine and local jurisprudence are divided between a denial and an affirmation. These opposing positions have been further reinforced by two rulings issued by the Supreme Court of Argentina.

2.3.- Precedents of the Supreme Court of Justice of Argentina.

To argue for one position or the other, legal scholars and jurisprudence rely on the reasoning of the Supreme Court in two precedents on this matter. These were two identical cases, but with completely opposite outcomes.

---

[36] CNCom., Sala F, 15/12/2021, "Fundación Educar s/ Concurso Preventivo s/ Incidente de verificación", Microjuris, cita digital: MJJ-135707.

[37] CNCom., Sala D, 01/10/2013, "Obra Social Bancaria Argentina s/ Concurso preventivo s/ Incidente de verificación y pronto pago promovido por R.C. y otro", Sup. DJP (diciembre), 2014, y LL, cita online: AR/JUR/84364/2013.

[38] CNCom., Sala B, 28/12/2015, "Obra Social del Personal Gráfico s/ Concurso Preventivo s/ Incidente promovido por Instituto Armonía de Educación Especial de Adriana M. Urrerepon y otros".

[39] Juzg. Civ. y Com., nº 3, Rosario, 28/09/2021, "IPAM s/ Conc. Prev. s/ Inc. de verificación p. p. F., F. B", LL, cita online: AR/JUR/168031/2021.

[40] Juzgado de Concursos y Sociedades, nº 8, Córdoba, 29/04/2022, "M. B. R. s/ Planteo de inconstitucionalidad", -Sentencia nº 69-.

[41] CNCom., Sala F, 14/03/2023, "G. B. M. L. s/ Concurso preventivo", LL, cita online: AR/JUR/20096/2023.

[42] Juzgado Civ., Com. y Fam., nº 3, Río Cuarto, Córdoba, 24/02/2022, "Larrarte, Ariel L. s/ Pequeño Concurso Preventivo", LL, cita online: AR/JUR/117662/2022.

[43] CNCom., Sala F, 07/07/2023, "Zurpan, Matías G. s/ Concurso Preventivo", elDial.com – AADB2E.

[44] CCiv. y Com., Sala I, Concepción, Tucumán, 27/09/2023, "Tolra, Mónica P. s/ Concurso Preventivo", LL, cita online: AR/JUR/145319/2023.

[45] CCiv. y Com., Sala III, Paraná, Entre Ríos, 16/09/2021, "Goro, Rosendo V. s/ Pedido de quiebra", Rubinzal Culzoni, cita online: RCJ 8448/21.

Each case concerned a request from the representatives of a minor, 100% disabled due to medical malpractice at birth, to be verified "with special first-order privilege" in the bankruptcy proceedings of his debtor, where the funds were insufficient to cover the debt. In this context, the money in the court-ordered account was only enough to pay a mortgage creditor. And, under bankruptcy law, the minor's claim was unsecured. Consequently, it remained unpaid.

In both cases, the lower court declared the bankruptcy privilege regime unconstitutional and granted the verification claim. In both cases, Division A of the National Commercial Court of Appeals reversed the decision, applying the current bankruptcy legislation. Through extraordinary federal appeals, the cases reached the Supreme Court of Argentina, which issued differing rulings.

2.3.1.- Court ruling: "Asociación Francesa" (2018)[46].

In this precedent, the Court, with the votes of Justices LORENZETTI, HIGHTON DE NOLASCO, and ROSENKRATZ, rejected the request to verify the minor's claim as privileged and, therefore, declared it admissible as unsecured.

The main arguments were the following:

- privileges in Argentine bankruptcy law can only arise from the law itself. They cannot be created by private agreement or through judicial proceedings.
- the legislature grants privilege to a claim objectively, without taking into account the particular circumstances of any individual.
- the Human Rights Treaties involved in the case do not contain an express rule granting privilege to the claims of

[46] CSJN, 06/11/2018, "Asociación Francesa Filantrópica y de Beneficencia (AFFyB) s/ Quiebra s/ Incidente de verificación de crédito por L.A.R. y otro", La Ley, cita online: AR/JUR/56326/2018.

vulnerable individuals, but rather broad and generic principles.

- the legislature must consider these principles and reform domestic law.
- judges cannot legislate and modify the existing legislation applicable to the case.
- legal certainty and the separation of powers, the foundation of the Argentine Democratic Rule of Law, must be preserved. If the creation of a judicial privilege for the credit of the vulnerable were admitted, the detrimental consequences for commercial traffic and the security of transactions would be enormous.

2.3.2.- Court ruling: "Instituto Médico Antártida" (2019)[47].

In this precedent, the Court, with the votes of Justices MAQUEDA and ROSATTI, along with Justice MEDINA, admitted the minor's claim as privileged and, therefore, allowed him to collect first in the debtor's bankruptcy proceedings before any other creditor.

The main arguments were the following:

- the case concerns the need to protect a person in a vulnerable situation. Judicial protection must be more comprehensive and specialized.
- human Rights Treaties have constitutional status in Argentina since the 1994 reform.
- bankruptcy legislation contradicts the protective provisions of these Conventions by postponing payment of the vulnerable minor's claim.

[47] CSJN, 26/03/2019, "Institutos Médicos Antártida S.A. s/ Quiebra s/ Incidente de verificación de crédito promovido por Ricardo A. Fava y Liliana R. Harreguy de Fava", La Ley, cita online: AR/JUR/1632/2019.

- domestic law must yield to constitutionalized international law, which has a higher legal standing.
- the right to a dignified life and to health are essential human rights violated in this case. It is the duty of judges to ensure that these rights are effective and not illusory.

2.4.- Conflicting Doctrine and Jurisprudence.

In Argentina, these Supreme Court rulings have divided legal scholars specializing in this area.

2.4.1.- Affirmative stance.

Thus, the affirmative stance that allows for the dismantling of bankruptcy legislation regarding privileges and the creation of a top-priority preference -and prompt payment where applicable- for the personal situations of vulnerability of the holder of the competing claim is important (VÍTOLO[48]; MOSSET DE ITURRASPE[49]; GIL DOMÍNGUEZ[50]; JUNYENT BAS[51]; MARCOS[52]; RIBERA[53]; VAISER[54]; YUBA[55]; BARACAT[56]; MARTÍNEZ[57];

[48] VÍTOLO 2022.
[49] MOSSET DE ITURRASPE 2004.
[50] GIL DOMÍNGUEZ 2019, 7.
[51] JUNYENT BAS 2022.
[52] JUNYENT BAS et al 2019.
[53] RIBERA 2022.
[54] VAISER 2021.
[55] YUBA 2019, 32.
[56] BARACT 2014.
[57] MARTÍNEZ 2019.

GERBAUDO[58]; USANDIZAGA[59]; FAVIER DUBOIS[60]; FERRO[61]; RAMÍREZ BOSCO[62]).

In the jurisprudence, an emblematic case stands out: "Fundación Educar"[63].

This was a claim arising from compensation for damages resulting from the sexual abuse of a minor at a private school. The parents requested priority verification and immediate payment of the claim within the school's bankruptcy proceedings.

The Court of First Instance rejected the request of the parents of a minor (based on: a) the unconstitutionality of the privileged claims system; b) the verification of their daughter's claim of $9,784,352.50 as a priority claim; and c) the unenforceability of the bankruptcy agreement reached for priority creditors).

On December 15, 2021, the Court of Appeals reversed the ruling and ordered: payment of the full amount of the verified claim without reduction (which the approved agreement itself does not contemplate); immediate payment (which the agreement stipulates within a 5-year period); and payment of interest accrued after the filing of the bankruptcy proceedings at the rate ordered in the civil court (disregarding the tax rate set in the agreement). and the option of payment is given which can be made in legal tender or in foreign currency.

It was initially argued that it is essential to emphasize that addressing any legal conflict cannot disregard the analysis and potential impact that the National Constitution and International Treaties have on the domestic law of the case. In other words, the interpretation of common law norms must

---

58 GERBAUDO 2024, 223-224.
59 USANDIZAGA 2014.
60 FAVIER DUBOIS 202.
61 FERRO 2019.
62 RAMÍREZ BOSCO2019.
63 CNCom., Sala F, 15/12/2021, "Fundación Educar s/ Concurso Preventivo s/ Incidente de verificación", Microjuris, cita digital: MJJ-135707.

be adapted to the constitutional understanding of the interests at stake. The conflict under study does not warrant being addressed solely through the specific regulations of the Bankruptcy Law; rather, it is imperative to consider the guidelines provided by international human rights instruments that protect girls who are victims of abuse from a dual perspective: as girls and as women. The court based its arguments on the 2019 Supreme Court ruling in the "Institutos Médicos Antártida" case, which declared the bankruptcy privilege regime unconstitutional for the purpose of satisfying the claim of a vulnerable minor. The court argued that to claim that, even in the case of a person with preferential protection, the bankruptcy proceedings can impose the same treatment as other creditors is a reprehensible and erroneous conclusion in the overall understanding required by the case. Subjecting the minor's claim to the regulatory guidelines of the bankruptcy proceedings effectively dilutes the compensation agreed upon in the civil court. Furthermore, the court emphasized that the bankruptcy remedy sought by the bankrupt foundation was primarily aimed at addressing the liabilities arising from that lawsuit, thus avoiding the full payment of the larger claim established for the minor.

2.4.2.- Negative stance.

Contrary to this position, a restrictive current of opinion has emerged, which is in line with the grounds provided by the CSJN in 2018, in "Asociación Francesa", denying the possibility of dismantling the bankruptcy legislation on privileges and generating a preference of the highest order - and prompt payment where applicable - for the personal situations of vulnerability of the holder of the competing credit (GRAZIABILE[64]; LAFFERREIRE[65]; RICHARD[66] y FUSHIMI[67]; DE LAS

[64] GRAZIABILE 2022, 44-51.
[65] LAFFERRIERE 2020, 250.
[66] RICHARD **et al** 2021, 257.
[67] FUSHIMI 2021, 185.

MORENAS[68]; TON[69]; CAPDEVILLA y PALAZZO[70]; ESPIÑO COLLAZO[71]; VANNEY[72]; FISSORE[73]; PANIAGUA[74]; FURUNDARENA[75]; SAFI[76]).

In support of this, the ruling in "Clínica del Niño"[77] was cited, in which a request for prompt payment of a debt stemming from medical malpractice that caused the plaintiff irreversible blindness from birth was denied. It was argued that the recognition of the privileged nature of a debt, implying the right to be paid in preference to another, can only arise from the law, and judges are not permitted to make a broad or extensive interpretation of the scenarios recognized by law, to prevent exceptional situations from becoming the general rule. Specifically, it was noted that the proposed solution "corresponds, mutatis mutandis, to the criterion maintained by the Supreme Court in "Asociación Francesa". In that precedent, the Supreme Court of the Nation, with a majority vote, held that the recognition of the privileged nature of a credit that implies the right to be paid in preference to another can only arise from the law without judges being given to make a broad or extensive interpretation of the assumptions recognized by the law, to prevent exceptional situations from becoming the general rule. Furthermore, it understood that: "the assignment of a privilege corresponds to the cause or nature of the credit regardless of the subject's condition" and that the classification of the credit derived from compensation for malpractice at the time of birth as unsecured and not

68 DE LAS MORENAS 2018, 375.
69 TON 2006.
70 CAPDEVILLA **et al,** 2019.
71 ESPIÑO COLLAZO 2022.
72 VANNEY 2021, 189.
73 FISSORE 2018.
74 PANIAGUA 2023, 175-176.
75 FURUNDARENA 2015, 151 **et seq.**
76 SAFI 2020.
77 CS, San Luís, 19/03/2024, "Clínica del Niño S.R.L. s/ Concurso preventivo s/ Incidente de pronto pago p.p. Ansaloni, Martín", LL, cita online: AR/JUR/29966/2024.

privileged, does not infringe upon rights of constitutional origin, since neither the Conventions on the Rights of the Child and on the Rights of Persons with Disabilities invoked nor Law 26,061 contain specific references to the situation of children or persons with disabilities as holders of a credit within the framework of a bankruptcy process; nor is a preference for collection expressly foreseen -nor can it be derived from its terms- based solely on the condition invoked, "a possible declaration of unconstitutionality of the privilege regime based on the broad mandates contained in international conventions could lead to the invalidity of any rule or act that does not grant minors and/or disabled persons preferential treatment". He also stated that: "the preference given to one creditor over the others, within the framework of a bankruptcy proceeding, is a decision that falls to the legislature and not to the judges, according to the subjective circumstances that may arise in each particular case." Although subsequently the Supreme Court of Justice of the Nation, in re "Institutos Médicos Antártida s/ bankruptcy s/ incident of verification by R.A.F and L.R.H. de F", dated March 26, 2019, also by majority vote, ruled in a different sense than the one indicated above, I understand that the difference in criteria could have been due to the particular composition of the Court when issuing the aforementioned ruling, which included the alternate judge Dr. Medina".

For its part, Chamber III of the Civil and Commercial Court of Tucumán[78], Argentina, overturned the decision to declare the bankruptcy privilege regime unconstitutional in order to grant priority to an unsecured debt whose holder was in a vulnerable situation. It emphasized that "however enormous the impact that the so-called 'constitutionalization of private law' has had on the interpretation and application of the law, such impact is insufficient to overcome the restriction that judges face from the principle that declaring a law unconstitutional is the last resort of the legal

[78] CCiv. y Com., Sala III, Tucumán, 31/07/2024, Sala III, "Sanatorio Central SRL s/ Concurso Preventivo", -Sentencia nº 362-.

system, a hurdle that the lower court's ruling has not cleared. Considered the Supreme Court precedent in the "French Association" case (2018) to be of paramount importance, stating that a declaration of unconstitutionality is absolutely exceptional. He said: "…The Supreme Court recognized the separation of powers as a fundamental principle of our political system, and has repeatedly expressed that the most delicate mission of the nation's judiciary is to remain within the bounds of its jurisdiction, without undermining the functions of the other branches of government or jurisdictions, since it is the judiciary that is called upon by law to uphold the observance of the National Constitution. Therefore, any encroachment by this branch of government that undermines the powers of the other branches would be extremely serious for constitutional harmony and public order". Added that this is why "…the reasonableness control must always be carried out bearing in mind that the declaration of unconstitutionality is an act of utmost gravity that must be considered the last resort of the legal order, especially in cases such as the present one, where the decisions being judged correspond to the scope of exclusive functions of the other branches of government, with ample room to define the measures they deem most appropriate, convenient or effective for achieving the proposed objectives…". Finally they established that the value of this latter precedent is not diminished by the decision the Court subsequently made in the aforementioned "Antarctica Medical Institutes" case, which the appealed judgment cited to support its decision. In this regard, it cannot be overlooked that in the case at hand, the composition of the Federal Court was "atypical," in that Justice Rosenkrantz (who had ruled contrary in the judgment cited in the preceding paragraph) did not participate in the ruling, and therefore the court was completed with a substitute judge.

3.- POSITION ADOPTED.

I subscribe to the negative thesis, which does not admit the possibility of dismantling insolvency legislation regarding privileges and creating a top-priority preference—and prompt payment where

applicable—for the personal situations of vulnerability of the holder of the competing claim.

The basis of my position consists of the following arguments[79]:

- argentine lawmakers created the system of privileges in Law 24,522 as an exceptional measure, since it broke with the principle of equal treatment for all other creditors. Thus, the legislature, based on principles such as the common good, protection of commercial transactions, distributive justice, and the need for sustenance—among others—objectively granted privileges to certain credits so that they would be satisfied in preference to others. Clearly, the legislature's intent was that only it, and no one else, would create these privileges, emphatically and forcefully highlighting their characteristics of legality, objectivity, and specificity, with a highly restrictive judicial interpretation (Art. 239, Bankruptcy Law). This was done to provide predictability and security to the legal system and commercial transactions. This system was established in 1995, after the Constitution had already been amended and several international human rights treaties had been granted constitutional status, a fact well known to members of Congress. It should also be noted that, based on this system of privileges for universal foreclosures, it was extended to individual foreclosures in 2015 with the enactment of the Civil and Commercial Code (Articles 2573 to 2586), emphasizing the "legal, exclusive, and objective" origin of these preferences (Article 2574), at a time when the issue of multiple claims from vulnerable creditors was being debated by legal scholars and analyzed by both bankruptcy and non-bankruptcy jurisprudence. Thus, the lack of express

[79] DI LELLA 2021, 233-238; DI LELLA 2020, 165 et seq.

treatment by the civil and commercial legislator of this issue when establishing the regime of privileges within the framework of individual executions and, at the same time, the ratification in the CCyCN of the characteristics of legality, exactness and objectivity of credit preferences, must be interpreted as an endorsement and support for the restrictive thesis that is advocated.

- however laudable the balancing of the debtor's property rights—and those of the other creditors—with the vulnerable creditor's right to health and a dignified life may be, the bankruptcy law and the judges responsible for applying it cannot be expected to provide solutions that must necessarily come from policy. If the rule is perfectly clear and the legislature has no intention of modifying it, despite having had repeated opportunities to do so and this power being reserved exclusively to its authority, it is inappropriate to resort to principles that are merely mandates for optimization. Therefore, contrary to the assertion of the affirmative thesis, when the system of bankruptcy privileges is simply disregarded by resorting to the general principles and values enshrined in human rights treaties, the mandate requiring judges to decide based on a "reasonably founded decision" (Article 3, CCyCN) is violated. This is because they are not applying objective law but rather proceeding to legislate subjectively on the matter, generating diverse solutions for identical cases and creating legal uncertainty. Clearly, judges cannot legislate in a particular case, lest they arrive at as many different solutions as there are judges—that is, at a state of judicial rule—thus undermining the essential principle of separation of powers that prevails in any state governed by the rule of law.

- legal certainty is one of the fundamental and basic principles of a democratic constitutional order, ensuring that every citizen knows what to expect in their dealings with the State and other individuals. It translates into the confidence of every individual in the observance and respect for situations arising from the application of valid and current laws. Judges and courts have the duty to apply the law, and this adherence to it is what provides predictability to the legal consequences of all citizens' actions.
- the breakdown of the principle of legal certainty automatically leads to a collapse of the predictability required by the financial system. Credit is the primary driver of expansion and is irreplaceable for facilitating financing and development in the market; it is considered the lifeblood of the economy. All of this has a direct and negative impact on the system of collateral, which is considered when carrying out legal transactions and granting credit. This is especially true when the economic uncertainty that has prevailed in Argentina for years is added to the existing legal uncertainty.
- it would be difficult, given the proliferation of rulings in this regard (such as the 2019 Supreme Court ruling), to imagine the financing of transportation (mainly bus, railway, and airline companies) or the construction, modernization, or financing of medical or educational establishments, where unfortunately accidents constantly occur, and sadly, a significant percentage of them involve children and adolescents.
- the declaration of unconstitutionality of a precept of legal hierarchy constitutes the most delicate of the functions to be entrusted to a court of justice, configuring an act of utmost gravity that must be considered the last resort of the

legal order, so it can only be formulated when a thorough examination of the precept leads to the certain conviction that its application violates the right or constitutional guarantee invoked. Within this framework, we find insolvency law, which expressly, objectively, and definitively establishes which claims have priority and the order of their payment in a crisis proceeding. As mentioned, this system may not be perfect and may require reform, but it generates predictability in business relationships and, therefore, legal certainty in commercial transactions. This is so necessary in times of economic crisis, such as the one Argentina has been experiencing for years.

- from this formal and certainly not inconsequential perspective, neither the Convention on the Rights of the Child (Law 26.061) nor the Convention on the Rights of Persons with Disabilities (Law 26.378) do the same. While these treaties specifically protect the individuals to whom they are addressed, they do not address the legal mechanisms for protecting the assets of potential debts that might be at stake. In short, these treaties do not contain a provision that mandates giving "privilege" to the claims of children or persons with disabilities, nor do they establish a right to collect in preference to other creditors.
- currently, the Supreme Court of Argentina is made up of LORENZETTI, ROSENKRANTZ and ROSATTI, that is, there is a majority of the criteria of the 2018 precedent, French Association. And respect for the institutions established by law is the line that has been noted in recent rulings ("Acevedo", del 4/3/2025 y "Oviedo", del 7/10/2025).

4. CONCLUSIONS.

In insolvency proceedings and bankruptcy, the concept of "prompt payment" is reserved for employee creditors (Articles 16 and 183 of the Bankruptcy Law), given that their claims are of a subsistence nature and aim to provide for the early satisfaction of those claims. Creditors in vulnerable situations are not entitled to a privilege or prompt payment of their debt.

This follows the prevailing view, consistent with the precedent set by the Supreme Court of Justice of Argentina in the "French Association" case (2018), which held that insolvency law applies—as domestic law that cannot be modified by broad principles enshrined in Human Rights Treaties—and therefore, prompt payment cannot be granted to "non-employee creditors" experiencing a vulnerable situation.

Judges cannot legislate. It is the legislative branch that must imbue domestic law with these principles (the right to a dignified life, to health, to full reparation for damages, among others) through an amendment to the bankruptcy law. A just and equitable solution must be analyzed in each specific case, assessing the clarity of the applicable rules, the interests involved, the fundamental rights of all parties, and the intra- and extra-procedural impact of the decision.

Generally speaking, I believe that appealing to principles, values, and human rights should be done in the face of legal gaps or in situations where the decision does not affect the property rights of third parties, legal certainty, the commercial activity of a community, or disrupt the essence and structure of the entire legal system.

Along those lines, I certainly agree with improving a rule to find the fairest and most equitable solution to the specific case when procedural formalities interfere with the search for objective truth[80]; or when a procedural institution is not adequate for the protection of vulnerable persons (v. gr. unconventionality of the expiration of proceedings in

[80] CSJN, fallos: 328:550; 317:1845; CS, Tucumán, 16/02/2012, "Terán, Juan C. s/ Sucesión".

parentage trials[81]; inapplicability of the expiration of proceedings in labor insolvency incidents[82]); or an advance payment or the unenforceability of the approved agreement—under situations of extreme urgency and necessity—(but without destabilizing the debtor's assets and without jeopardizing the successful fulfillment of the agreement, the preservation of the company, and the source of employment). Therefore, clearly, this regulatory upgrade can in no case displace the property rights (also protected constitutionally and by convention) of the other parties in a proceeding whose rules (established beforehand) are of public order (such as insolvency proceedings); generating legal uncertainty for future cases and altering the general conditions of the market and credit.

If these limits are not clearly defined, any reform emanating from the Legislative Branch will be insufficient, because it will always be possible to go further in each specific case, based on an attempt to fully satisfy the diffuse principles contained in the conventions.

Only through a comprehensive and efficient legislative reform on the litigious issue analyzed in this work would it be possible to adequately safeguard the dignity of the human person, comply with the conventional guidelines on the matter, and mitigate the situation of vulnerable individuals participating in corporate crisis processes, without infringing on the rights of third parties or violating the principles of separation of powers, legal certainty, and predictability in economic transactions.

---

[81] CS, Tucumán, 13/06/2019, "Notari Analía Roxana c/ Rodríguez Luis s/ Filiación", -Sentencia nº 967-. En similar sentido: CS, Tucumán, 18/09/2019, "Pacheco Diego Emilio c/ Mera Emilio Antonio s/ Filiación extramatrimonial", -Sentencia nº 1699-.

[82] CNCom., Sala C, 16/06/2023, "Palacio, María del Rosario s/ Incidente de verificación de crédito", LL, cita online: AR/JUR/77028/2023; íd., 07/12/2017, "Instituto de Psicopatología Nuestra Señora de Luján SRL s/Quiebra s/ Incidente de verificación de crédito por Reguiera, Clara A."; íd., Sala B, 14/03/2013, "RT Construcciones SRL s/ Quiebra s/ Incidente de verificación por Carabajal, Amancio", LL, cita online: AR/JUR/13145/2013.

Along these lines, it is considered that the most appropriate solution to this problem would be the creation of a national fund for the protection of these types of situations, where the State complies with the court order for payment and grants the debtor a plan for its repayment, without weighing the consequences on the remaining creditors involved in the bankruptcy proceedings, who may also be in a vulnerable situation.

REFERENCES

BARACT, Edgar J., "Otra creación de los jueces activistas: el acreedor involuntario", LL, cita online: AR/DOC/552/2014.

BARRANCO AVILÉS, M. Carmen, "El concepto de vulnerabilidad con respecto al acceso a la justicia", en ANSUÁTEGUI, Francisco J. - BARRANCO AVILÉS, M. Carmen (Dirs.), *Acceso a la justicia y vulnerabilidad*, Dykinson, Madrid, España, 2023, p. 19.

BASSET, Úrsula C., "Fallar con perspectiva de vulnerabilidad (o el riesgo de las categorías en el derecho antidiscriminatorio", RCCyC, 2022 (diciembre), 5 y en LL, cita online: AR/DOC/3111/2022.

BASSET, Úrsula C., "La vulnerabilidad como perspectiva: una visión latinoamericana del problema. Aportes del sistema interamericano de derechos humanos", en BASSET - FULCHIRON - BIDAUD-GARON – LAFFERRIERE (Dirs.), *Tratado de la vulnerabilidad,* p. 19.

BOQUÍN, Gabriela F., "Los acreedores involuntarios. Vulnerabilidad, concursos y COVID 19", DECONOMI, año III, n° 3.

CAPDEVILLA, Guillermo H. (h.) - PALAZZO, Carlota, "Una solución de justicia distributiva que no repara en sus posibles consecuencias", LL, cita online: AR/DOC/3499/2019.

CAPELO, María J. – MOSMANN, María V., "El derecho procesal y los sujetos vulnerables. Una mirada comparada entre los ordenamientos de Argentina y Portugal", LL, cita online: AR/DOC/2554/2021.

CHURRUCA MUGURUZA, Cristina, "Vulnerabilidad y protección Humanitaria", en BARRANCO AVILÉS, María C. - CHURRUCA MUGURUZA,

Cristina (Editoras), *Vulnerabilidad y protección de los derechos humanos*, Tirant de blanch, Valencia, 2014, p. 52.
CORRADO, Florencia, "Los jueces ¿interpretan o legislan?", Errepar, cita digital: EOLDC105945A.
DE LA CRUZ-AYUSO, Cristina, "Pobreza y desigualdades complejas", en MORONDO, Dolores - DE LA CRUZ-AYUSO, Cristina – LA SPINA, Encarnación (Coords.), *Desigualdades complejas e interseccionalidad. Una revisión crítica,* Dykinson, Madrid, 2021, ps. 187-211.
DE LAS MORENAS, Gabriel, "Aplicación de tratados internacionales al estado de distribución", ponencia en *X Congreso Argentino de Derecho Concursal y VIII Congreso Iberoamericano de la Insolvencia*, T. III, Santa Fe, 2018, ps. 375.
DEL CARPIO RODRÍGUEZ, Columba, "Derechos humanos, familia y vulnerabilidad", en BASSET - FULCHIRON - BIDAUD-GARON – LAFFERRIERE (Dirs.), *Tratado de la vulnerabilidad,* p. 109.
DEL CARPIO RODRÍGUEZ, Columba, "Derechos humanos, familia y vulnerabilidad", en BASSET - FULCHIRON - BIDAUD-GARON – LAFFERRIERE (Dirs.), *Tratado de la vulnerabilidad,* p. 109.
DI LELLA, Nicolás J., *Personas vulnerables frente al concurso preventivo y la quiebra*, Rubinzal Culzoni, Santa Fe, 2025;
DI LELLA, Nicolás J., "Transmisibilidad de los Privilegios", RDPyCO, 2021-3, ps. 233-238.
DI LELLA, Nicolás J., *Régimen Concursal Preventivo*, T. I, Bibliotex, Tucumán, 2020, ps. 165 y ss.
DI MARÍA, Roberto, "Un fil rouge: la vulnerabilitá quale nouvo (o innovativo) paradigma per una tutela effetiva dei diritti fondamentali", en PÉREZ MIRAS, Antonio – TERUEL LOZANO, Germán M. – RAFFIOTTA, Edoardo C. – IADICICCO, María P. (Dirs.) – MONTESINOS PADILLA, Carmen (Coord.), *Setenta años de Constitución Italiana y cuarenta años de Constitución Española*, Eucons, Madrid, 2020, ps. 267 y ccs.
DÍAZ CORDERO, Agustina, "¿Hacia un test de vulnerabilidad?. La perspectiva de vulnerabilidad en los fallos de la Corte Suprema de Justicia de la Nación y Corte Interamericana de Derechos Humanos", elDial.com – DC340B.

ESPIÑO COLLAZO, Natalia, "El devenir del acreedor involuntario. Entre el régimen de privilegios, la par conditio creditorum y la constitucionalización del Derecho Privado", Revista Argentina de Derecho Concursal, nº 31 (Mayo) 2022, cita online: IJ-II-DCCCXXVIII-937.
ESTUPIÑAN SILVA, Rosmerlín, "La vulnerabilidad en la Jurisprudencia de la Corte Interamericana de Derechos Humanos: Esbozo de una tipología" en BAROCELLI, Sebastián, "La tutela de la vulnerabilidad como principio general del Derecho Privado", Revista Iberoamericana de Derecho Privado, 2018, cita online: IJ-DXLI-220.
FAVIER DUBOIS, Eduardo M., "El derecho concursal "posmoderno". Un nuevo modelo para abordar la insolvencia", Errepar, DSC (junio), 2021, cita digital: EOLDC103804A.
FEITO, Lydia, "Vulnerabilidad", en *Anales del sistema sanitario de Navarra*, Gobierno de Navarra, Departamento de Salud, España, 2007, ps. 07/22.
FERRO, Carlos A., "El pronto pago de privilegio especial prioritario en los concursos y quiebra", Temas de Derecho Comercial Empresarial y del Consumidor, Erreius, agosto, 2019.
FISSORE, Gabriel, "Una Corte, una quebrada y volvemos", Univ. San Andrés, En Disidencia Blog Online, 17/11/2018.
FULCHIRON, Huges, "Acerca de la vulnerabilidad y de las personas vulnerables", en BASSET, Ursula - FULCHIRON, Huges - BIDAUD-GARON, Christine - LAFFERRIERE, Jorge N. (Dir.), *Tratado de la vulnerabilidad,* La Ley, Buenos Aires, 2017, p. 3.
FURUNDARENA, Mariano D., "El acreedor involuntario frente al concurso del deudor", Errepar, DSC, (febrero), 2015, ps. 151 y ss.
FUSHIMI, Jorge F., "Proceso concursal, vulnerabilidad e hipervulnerabilidad", ponencia en *XI Congreso Nacional de Derecho Concursal y IX Congreso Iberoamericano de la Insolvencia*, T. III, Bahía Blanca, 2021, p. 185.
GARCÍA, Silvana, "Acreedores involuntarios y responsabilidad limitada de los socios ¿o debería ser de otro modo?", Errepar, cita digital: EOLDC1100536A.
GELLI, María A., "Vulnerabilidad y pobreza. Relectura en tiempos de pandemia, LL, cita online: AR/DOC/2045/2020.

GERBAUDO, Germán E., L*os acreedores hipervulnerables en los procesos concursales,* Ad-Hoc, Buenos Aires, 2024, ps. 223-224.
GIL DOMÍNGUEZ, Andrés, "Convencionalidad, discapacidad y normatividad", LL, 11/02/2019, p. 7.
GOZAÍNI, Osvaldo A., *Protección procesal de personas y sectores vulnerables*, Rubinzal Culzoni, Santa Fe, 2024, p. 62.
GRAZIABILE, Darío J., Nuevo sistema concursal, Ediciones DyD, Buenos Aires, 2022, ps. 44-51.
SAHIÁN, José, "La vulnerabilidad en el derecho privado", en HERNÁNDEZ, Carlos A. – SANTARELLI, Fulvio G. (Dirs.), Agenda transversal de derecho privado actual, La Ley, Buenos Aires, 2025.
JUNYENT BAS, Francisco A. – MARCOS, Fernando J., Los privilegios concursales frente a la vulnerabilidad del "acreedor involuntario", LL, cita online: AR/DOC/187/2019.
JUNYENT BAS, Francisco A., "Los llamados acreedores involuntarios", DCyE, XXXIV (enero), 2022 y Errepar, cita digital: EOLDC104941A.
LAFFERRIERE, Jorge N., "Dignidad humana, equidad y prioridad de cobro en una quiebra. Comentario a la sentencia "Institutos Médicos Antártida" de la Corte Suprema argentina", Revista Internacional de Derechos Humanos, vol. 10, nº 2, 2020, p. 250.
LUNA, Florencia, *Vulnerabilidad, la metáfora de las capas*, Lexis Nexis, Buenos Aires, 2008, p. 60.
MARCOS DEL CANO, Ana M., *En tiempos de vulnerabilidad: reflexión desde los derechos humanos*, Dykinson, Madrid, España, 2020, p. 18.
MARTÍNEZ, Marisol, "Régimen de privilegios: bloque federal de convencionalidad y acreedor involuntario. La igualación de los desiguales no es igual ante la ley", LL, cita online: AR/DOC/1744/2019.
MEDINA, Graciela, "Vulnerabilidad, control de constitucionalidad y reglas de prueba. Las "categorías sospechosas": una visión jurisprudencial", en BASSET - FULCHIRON - BIDAUD-GARON - LAFFERRIERE, (Dirs.), *Tratado de la vulnerabilidad,* p. 78.

MICELLI, María I., "Un nuevo pronunciamiento de la Corte sobre las tutelas diferenciadas: Institutos Médicos Antártida. ¿Habemus justicia?", Microjuris, cita online: MJ-DOC-14875-AR.
MOIA, Ángel L., "La liquidación falencial y los terceros vulnerables: nuevos desafíos de la concursalidad", Revista DECOMI, año IV, nº 18.
MOSMANN, María V., "Actualidad del derecho procesal respecto del acceso a la justicia de personas en situación de vulnerabilidad", RCCyC, 2022 (diciembre), 40 y en LL, cita online: AR/DOC/3239/2022.
MOSSET DE ITURRASPE, "Otra muestra del "Derecho Privado Constitucional": La Constitución avanza sobre los privilegios concursales", LL, cita online: AR/DOC/2047/2004.
PANIAGUA, Juan M., "Los privilegios de los acreedores involuntarios dentro del régimen concursal vigente a la luz del fallo "Institutos Médicos Antártida" de la CSJN", *Prudentia Iuris*, nº 95, 2023, ps. 175/176.
RAMÍREZ BOSCO, Lucas, "La quiebra y el porvenir de los acreedores involuntarios más vulnerables", RDCO nº 295, p. 353 y LL, cita online: AR/DOC/1183/2019.
RIBERA, Carlos E., "Perspectiva de género y proceso concursal", LL, cita online: AR/DOC/1486/2022.
RICHARD, Efraín H. y FUSHIMI, Jorge F., "Acreedores hipervulnerables de una sociedad concursada o en quiebra: ¿problema de los acreedores o de los socios?", en Instituciones y Principios Concursales, T. I, Univ. Nacional del Sur, Departamento de Derecho, Bahía Blanca, 2021, p. 257.
SACRISTÁN, Estela B., "Vulnerabilidad: categorización y contextualización como herramienta legislativa", en "Revista de Derecho Administrativo", 2022-140, p. 19.
SAFI, Leandro, "La fuga facilitadora hacia los principios generales", LL, cita online: AR/DOC/3817/2020.
SOSA, Guillermina L., "¿Vulnerabilidad para todos? Personas vulnerables, personas en situación de vulnerabilidad e hipervulnerables. Contornos conceptuales e implicancias", en PEYRANO, Jorge W. (Dir.) – ESPERANZA, Silvia L. (Coord.), *La vulnerabilidad en los procesos judiciales*, Rubinzal Culzoni, Santa Fe, 2024, p. 26.

SOSA, Guillermina L., "La prevención y/o mitigación del daño en materia de vulnerabilidad", LL, cita online: AR/DOC/436/2020.
TON, Walter, "Pars conditio creditorum ¿existe?", LLBA, 2006-1147.
USANDIZAGA, Manuel, "La problemática de los acreedores involuntario en el derecho concursal", DCCyE, 2014 (agosto),25 y LL, cita online: AR/DOC/1342/2014.
VAISER, Lidia, "Las personas vulnerables y el concurso. Facultad de los jueces", Microjuris, 23/02/2021, cita digital: MJ-DOC-15747-AR.
VALENTE, Luís A., "El nuevo derecho civil y ética de los vulnerables", UNLP, 20/11/2015, p. 1 y en La Ley, cita online: AR/DOC/3695/2015.
VANNEY, Carlos E., "La última porción", ponencia en XI Congreso Nacional de Derecho Concursal y IX Congreso Iberoamericano de la Insolvencia, T. III, Bahía Blanca, 2021, p. 189.
VÍTOLO, Daniel R., "El acreedor en situación de vulnerabilidad frente a los procesos de insolvencia", LL, cita online: AR/DOC/726/2024.
VÍTOLO, Daniel R., "La "pars condicio creditorum". Privilegios y vulnerabilidad en los procesos de insolvencia", en BOQUÍN, Gabriela F. - FERNÁNDEZ ANDREANI, Patricia A. (Dir.), *Vulnerabilidad en el proceso comercial. Protección especial de la justicia ante la desigualdad*, Astrea, Buenos Aires, 2023, p. 125.
VÍTOLO, Daniel R., *Privilegios Concursales y Derechos Humanos*, La Ley, 2022.
YUBA, Gabriela, "El Estado y el deber de proteger a los sujetos vulnerables", SJA, 22/05/2019, p. 32; DFyP, 2019 (junio), p. 215 y LL, cita online: AR/DOC/1301/2019.