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ACADEMIC FORUM INSOL Europe
Academic Conference
AMSTERDAM
11-12 October 2023
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# Is Par Conditio Omnium Creditorum just a legend?

*Elina (Eleni) Moustaira*

*Professor of Comparative Law*

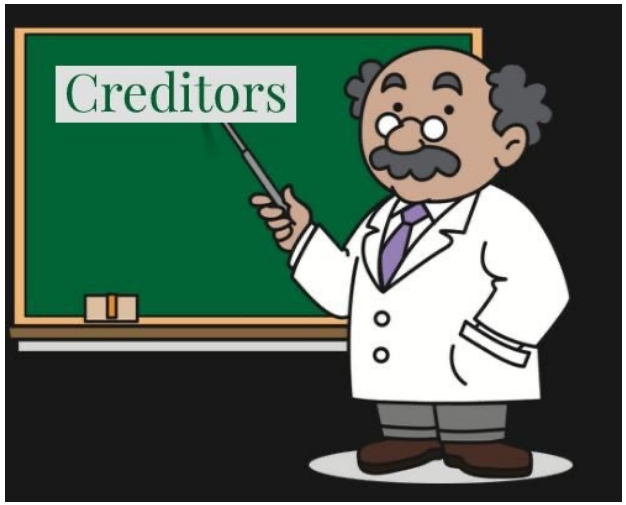
*School of Law, National & Kapodistrian University of Athens*

- It is strongly argued that there is nothing much left for equality of creditors; that “the equality norm is either perverse or unnecessary in every context where it is thought to hold sway”. Still, it is accepted that equality of creditors remains important within classes of creditors, where the pari passu treatment is guaranteed. But is it? And if it is, is that enough?

So:

Is it a principle that always reigns in insolvency cases?

Is it a principle that must reign in international insolvencies too?



- The answer to the first question is not really clear. The existence of preferences, privileges of creditors undermines its hypothetical sovereignty.
- As it is very accurately stated, if all creditors have to suffer a loss – since the debtor's property does not suffice to satisfy them in full – par conditio creditorum appears as the best principle, while that of priorities/privileges as the worst one.

- In most – if not all – national legal systems, the equality of all people is being guaranteed by the Constitution and by the International Treaties on Human Rights. There are those who argue that the privileges in insolvency are not an exception to the par conditio creditorum or, generally, to the [constitutional] guarantee of equality.

- Furthermore, is it a principle that must find application only in already opened insolvency proceedings or should the application of the principle be extended and include the time period prior to the commencement of insolvency proceedings?

- Is this principle reigning in international insolvencies too? Should it reign, should it be a par conditio omnium creditorum?
- Yes,  is the obvious answer of those who believe that this is the most important target that international insolvencies should aim to.
- However, the problems arise when one questions oneself which system can guarantee that. Creditor protection in general is steadily diminishing. Rescue procedures have often side effects for the creditors. Some pre-pack procedures  do not involve creditors at all. Some others often have as result significantly lower returns for unsecured creditors.

- Forum shopping – not the good one, if we accept that there is a good forum shopping – could always be a temptation for the debtor or/and the [secured] creditors who would want to take advantage of a national law that would seemingly favor them.

- National legal systems that permit and often favor private pre-pack agreements may attract the forum shoppers, by "promising" – often unreasonably – bigger gains. In these cases, one can hardly speak about equal treatment of creditors, since very often, if not always, secured creditors and cooperative debtors reach agreements in their favor privileging the first and reducing the cost for the second, so that unsecured creditors remain without any protection.

- It is argued that according to the Directive 2019/1023, things are not necessarily so. As it is mentioned – speaking about the benefits of pre-insolvency proceedings – “the return for unsecured creditors is significantly higher in pre-insolvency proceedings compared with formal insolvency proceedings”. According to that opinion, only a few key major creditors suffer a haircut at the pre-insolvency restructurings, while all other claims are fully satisfied. Is that absolutely true? And if yes, is equality principle being respected?

- And what about those legal systems (mostly or mainly common law ones) which permit liquidators to act without mandatory supervision from creditors or the court? When, in such cases, there is no requirement for minimum qualification and experience of the liquidators, the whole proceeding is obviously open to abuse.
- Obviously, if such conditions reign, the equality principle seems rather a joke…

- So, is the equality principle just a legend? Is there no leeway towards its salvation? If not, what would be the difference in practice, between collective [insolvency] proceedings and individual actions by the creditors?

- If restructuring/reorganization is considered part of contract law and not of insolvency law, equality of creditors stops being a means and a target. If, on the contrary, restructuring is considered part of insolvency law, the same principles should be followed – the principle of equal treatment of creditors included.
- Is it a clear equality of creditors, when there are various classes of creditors and the rule of absolute priority ("the organizing principle of the modern law of corporate reorganizations" ) reigns between the classes and the equality of creditors remains dominant just inside the frame of each priority class?

- Would unification of insolvency rules guarantee the equality of creditors?
- Even inside a regional organization of states, as European Union is, things are far from easy – especially in insolvency cases. Paper exercise is always easier than the reality. Insolvency topics, as it is very well pointed out, are “particularly marked by national cultures and customs” and this should not be underestimated. Because if it would be (underestimated), the reality would bring all the problems on the surface. Even the rules with the same wording may (or shall) be interpreted differently, in the states that have legislated them.

- In any case, the fact that the principle of equality is being steadily disputed, undermined, avoided, questioned by the commentators of recent national, regional and international insolvency rules or/and of recent insolvency cases, does not mean that it must not still and always be one of the central targets of the [international] insolvency proceedings.