UNIVERSITATEA „ALEXANDRU IOAN CUZA” DIN IAȘI
FACULTATEA DE DREPT
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REZUMATUL TEZEI DE DOCTORAT

INVESTIȚIILE DE TIP VULTURE FUNDS ÎN DREPTUL COMERȚULUI INTERNAȚIONAL

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IAȘI
2026

PLANUL TEZEI DE DOCTORAT

În această lucrare, cercetarea a avut ca obiect investițiile de tip vulture funds, privite din perspectiva dreptului comerțului internațional, cu accent pe modul în care creanțele, datoriile suverane și titlurile financiare depreciate pot fi transformate în instrumente de presiune juridică și economică. Punctul de plecare a fost ideea că datoria nu mai poate fi înțeleasă exclusiv ca o obligație de plată între creditor și debitor, ci trebuie privită și ca un activ financiar care circulă pe piețele internaționale, poate fi cumpărat la un preț redus, poate fi valorificat prin negociere sau litigiu și, în anumite condiții, poate genera profituri disproporționate.

Am urmărit să arătăm că fondurile de tip vultur nu obțin profit doar prin identificarea unor creanțe ieftine sau a unor titluri financiare depreciate. Elementul determinant este capacitatea de a transforma acea creanță într-o poziție juridică avantajoasă. Aceste fonduri achiziționează datorii ale unor debitori aflați în dificultate, de regulă la un preț mult inferior valorii nominale, iar ulterior refuză soluțiile colective de restructurare sau le acceptă numai dacă obțin condiții mai favorabile decât ceilalți creditori. În lipsa unei soluții convenabile, ele declanșează litigii în jurisdicții favorabile creditorilor, urmărind obținerea unor hotărâri care să le permită recuperarea unei valori mult mai mari decât investiția inițială.

Ipoteza principală a cercetării a fost că ascensiunea fondurilor speculative de tip vultur a fost favorizată de erodarea imunității suverane. Atât timp cât statele beneficiau de o imunitate aproape absolută în fața instanțelor străine, creditorii privați aveau posibilități limitate de a le acționa în judecată. Situația s-a modificat odată cu trecerea de la imunitatea suverană absolută la imunitatea suverană relativă. Prin distincția dintre actele de autoritate și actele de gestiune, contractarea de împrumuturi, emiterea de obligațiuni și participarea statului la piețele financiare au început să fie privite ca acte de natură comercială. Această transformare a permis creditorilor să susțină că statul, atunci când se finanțează de pe piețele internaționale, nu acționează exclusiv ca titular al puterii publice, ci și ca participant la circuitul juridic privat.

Fenomenul a fost abordat nu doar dintr-o perspectivă economică, ci mai ales dintr-o perspectivă juridică. Din acest punct de vedere, cercetarea a urmărit să evidențieze faptul că activitatea fondurilor de tip vultur se sprijină pe o combinație de elemente: piața secundară de capital, clauzele contractuale, regulile privind imunitatea statelor, jurisprudența instanțelor străine, procedurile de executare și dificultățile specifice restructurării datoriei suverane. Fondurile speculative nu sunt relevante doar pentru că speculează financiar, ci pentru că folosesc dreptul ca instrument de maximizare a profitului.

În capitolul dedicat mecanismului economic al investițiilor de tip vulture funds, am explicat de ce se împrumută statele, care sunt principalele instrumente de finanțare, cum funcționează obligațiunile guvernamentale și ce rol are piața secundară de capital. Am arătat că statele contractează împrumuturi pentru finanțarea deficitelor bugetare, a proiectelor publice, a crizelor economice sau a unor nevoi urgente de lichiditate. În mod obișnuit, obligațiunile guvernamentale sunt percepute ca instrumente sigure, însă, atunci când statul ajunge în dificultate financiară, valoarea acestor titluri scade semnificativ. Creditorii inițiali pot prefera să le vândă la *discount*, fie pentru a evita pierderi mai mari, fie pentru a nu aștepta ani de zile finalizarea unei restructurări.

În acest context apar fondurile de tip vultur. Ele identifică state sau companii aflate în dificultate, cumpără creanțe depreciate și mizează pe recuperarea unei sume superioare. Am subliniat că profitul nu rezultă automat din simpla achiziție la preț redus, ci apare atunci când fondul poate bloca restructurarea, poate negocia dintr-o poziție de forță sau poate sesiza instanțe care îi recunosc dreptul la plata integrală. De aceea, a fost necesar să explicăm nu doar ce cumpără aceste fonduri, ci și modul în care reușesc să transforme creanța cumpărată într-un avantaj juridic.

În cadrul cercetării a fost făcută distincția între fondurile care acționează împotriva companiilor private și cele care se îndreaptă împotriva statelor suverane. În cazul companiilor, fondul poate cumpăra creanțe, poate dobândi control asupra procedurii de reorganizare, poate influența conducerea societății și poate decide valorificarea activelor. În cazul statelor, fondul nu poate prelua controlul asupra debitorului în aceeași manieră, însă poate exercita o altă formă de presiune: refuzul restructurării, blocarea soluțiilor colective și inițierea unor acțiuni judiciare pentru recuperarea integrală a creanței.

Pentru a explica logica fondurilor orientate împotriva companiilor private, am utilizat cazul *Kmart/Sears*. Acest exemplu a fost relevant pentru a evidenția ambivalența fenomenului. Pe de o parte, intervenția unui fond speculativ poate salva temporar o companie aflată în dificultate, prin finanțare și reorganizare. Pe de altă parte, aceeași intervenție poate conduce ulterior la extragerea valorii din companie, prin vânzarea activelor importante, reducerea investițiilor, contractarea de împrumuturi și adoptarea unor decizii favorabile fondului, dar distructive pentru viitorul societății. Prin acest studiu de caz am urmărit să arătăm că nu calitatea debitorului este decisivă, ci metoda folosită: identificarea vulnerabilității, cumpărarea creanței depreciate și valorificarea poziției dobândite.

În materia datoriei suverane, această metodă produce efecte mult mai sensibile. Atunci când fondurile de tip vultur cumpără titluri emise de state aflate în dificultate, consecințele nu se limitează la raportul dintre creditor și debitor. Ele pot afecta ceilalți creditori, procesul de restructurare, capacitatea statului de a se finanța și, indirect, populația statului debitor. Această problemă a fost examinată prin raportare la absența unui mecanism universal de insolvență aplicabil statelor. Spre deosebire de companiile private, statele nu pot fi supuse unei proceduri clasice de insolvență. Restructurarea datoriei lor depinde de negocieri cu mai multe categorii de creditori: instituționali, bilaterali și comerciali. În lipsa unui mecanism obligatoriu, creditorii de tip *holdout* pot refuza soluția colectivă și pot urmări plata integrală.

Am avut în vedere și cazul Puerto Rico, pentru a arăta cum fondurile speculative pot acumula o poziție suficient de importantă în structura datoriei pentru a influența sau bloca restructurarea. Acest exemplu a fost util deoarece demonstrează că strategia fondurilor de tip vultur nu constă doar în cumpărarea unor titluri ieftine, ci și în dobândirea unei poziții care să le permită să negocieze agresiv. În astfel de situații, fondul nu urmărește neapărat o soluție echitabilă pentru toți creditorii, ci maximizarea diferenței dintre prețul plătit pentru achiziția creanței și valoarea recuperată ulterior.

În capitolul dedicat apărărilor juridice ale statelor debitoare, cercetarea a urmărit modul în care aceste apărări au fost restrânse sau relativizate în practica litigiilor privind datoria suverană. Am pornit de la imunitatea de jurisdicție, deoarece aceasta reprezintă una dintre cele mai importante apărări tradiționale ale statului în fața instanțelor străine. Distincția dintre actele de *iure imperii* și actele de *iure gestionis* a fost decisivă. Dacă statul acționează ca titular al autorității publice, protecția sa rămâne justificată. Dacă însă statul emite obligațiuni, acceptă clauze comerciale, contractează împrumuturi și se supune unei legi străine, el poate fi tratat ca actor economic.

Nu am susținut că restrângerea imunității este, în sine, nelegitimă. Dimpotrivă, într-o economie globală, nu ar fi rezonabil ca statele să poată accesa piețele financiare internaționale, să atragă capital privat, iar ulterior să invoce imunitatea absolută pentru a evita orice răspundere. Problema apare atunci când această deschidere juridică este folosită de fonduri speculative care nu au participat la finanțarea inițială a statului, ci au cumpărat creanța ulterior, la un preț redus, tocmai pentru a obține un avantaj litigios.

În continuare, am examinat doctrina act of state, pentru a vedea în ce măsură instanțele străine pot refuza să controleze actele adoptate de un stat în materia datoriei publice. Am arătat că această doctrină și-a pierdut o parte din eficiență în litigiile comerciale. Atunci când disputa este formulată ca o problemă de executare a unor obligații contractuale, instanțele sunt mai dispuse să analizeze conduita statului. Astfel, ceea ce ar putea fi prezentat ca o decizie de politică economică internă ajunge să fie tratat ca un litigiu patrimonial între creditor și debitor.

Am examinat și doctrina *champerty*, întrucât activitatea fondurilor de tip vultur presupune, în esență, cumpărarea unor creanțe cu scopul de a obține profit prin litigii. O aplicare strictă a acestei doctrine ar fi putut limita strategiile speculative. Totuși, evoluția jurisprudenței a redus considerabil eficiența sa practică. Instanțele au devenit mai reticente în a sancționa simpla achiziție a unei creanțe în scop investițional, chiar dacă fondul urmărește valorificarea ei prin proces. Această evoluție a permis creditorilor speculativi să prezinte litigiul ca pe o consecință legitimă a deținerii unui titlu valabil, nu ca pe un abuz.

O atenție distinctă a fost acordată clauzei *pari passu*, în special în litigiile împotriva Argentinei. Am arătat cum o clauză contractuală destinată, în principiu, să asigure egalitatea juridică între creditori a fost transformată într-un instrument de presiune împotriva statului debitor. Interpretarea dată acestei clauze a permis creditorilor de tip holdout să blocheze plățile către creditorii care acceptaseră restructurarea, dacă statul nu efectua plăți proporționale și către ei. În acest mod, un mecanism contractual aparent tehnic a devenit decisiv pentru strategia fondurilor speculative.

Totodată, cercetarea a urmărit diferența dintre obținerea unei hotărâri favorabile și executarea efectivă a acesteia. Chiar dacă imunitatea de jurisdicție a fost restrânsă, imunitatea de executare continuă să protejeze bunurile afectate exercitării funcțiilor suverane. De aceea, fondurile de tip vultur trebuie să identifice active comerciale ale statului debitor, aflate în afara protecției acordate bunurilor suverane. Litigiul nu se termină la momentul obținerii hotărârii, ci continuă în etapa localizării activelor, recunoașterii hotărârii și încercării de executare.

În același registru, au fost avute în vedere și măsurile legislative adoptate pentru limitarea litigiilor abuzive declanșate de fondurile de tip vultur. Aceste măsuri urmăresc, de regulă, să împiedice recuperarea unor sume disproporționate față de prețul plătit pentru achiziționarea creanței, mai ales atunci când debitorul este un stat sărac sau un stat care beneficiază de programe internaționale de reducere a datoriei. Totuși, eficiența acestor soluții rămâne limitată dacă ele sunt adoptate izolat. Fondurile speculative pot alege jurisdicții favorabile, pot utiliza structuri juridice complexe și pot evita statele în care legislația le limitează recuperarea.

În capitolul consacrat cadrului european, am urmărit să verificăm dacă fenomenul fondurilor de tip vultur se manifestă în aceeași formă în Uniunea Europeană. Punctul de pornire a fost criza datoriilor suverane din zona euro și, în special, situația Greciei. Am examinat modul în care intervenția instituțiilor europene, programele de asistență financiară, implicarea Băncii Centrale Europene și restructurarea datoriei grecești au limitat spațiul de acțiune al creditorilor speculativi. Cazul Greciei a fost relevant deoarece a arătat că, în interiorul Uniunii Europene, datoria suverană este gestionată într-un cadru instituțional mai dens decât în alte regiuni.

În acest context, cercetarea a avut în vedere rolul Mecanismului European de Stabilitate și al clauzelor de acțiune colectivă. Aceste instrumente reduc riscul ca un creditor minoritar să blocheze restructurarea acceptată de majoritatea creditorilor. Clauzele de acțiune colectivă permit ca decizia unei majorități calificate să devină obligatorie și pentru creditorii care se opun. Prin urmare, ele limitează strategiile de tip holdout, care au stat la baza multor litigii promovate de fondurile speculative. Cu toate acestea, aceste mecanisme nu elimină fenomenul, ci doar restrâng forma sa clasică în materia datoriei suverane.

În continuare, am urmărit să demonstrăm că limitarea oportunităților speculative în materia datoriei suverane nu conduce la dispariția logicii de tip vulture funds. Dimpotrivă, capitalul speculativ se poate reorienta către alte active vulnerabile. Din acest motiv, cercetarea a avut în vedere situațiile apărute în Irlanda și Spania, unde fondurile speculative au cumpărat credite neperformante, active imobiliare și portofolii bancare depreciate după criza financiară. În aceste cazuri, logica este asemănătoare: criza produce active depreciate, instituțiile financiare sau structurile publice încearcă să curețe bilanțurile, iar fondurile cumpără masiv aceste active la preț redus pentru a le valorifica ulterior.

Situația Irlandei a fost prezentată prin raportare la rolul *NAMA* și *IBRC*, iar situația Spaniei prin raportare la *SAREB*, la transferul activelor toxice și la intrarea capitalului speculativ pe piața imobiliară. Aceste exemple au fost importante pentru că arată că fenomenul nu se limitează la datoria suverană. Atunci când arhitectura europeană reduce posibilitatea de a obține profituri speculative din obligațiuni suverane, aceeași logică investițională se poate deplasa către locuințe, credite ipotecare, portofolii bancare și creanțe private.

În capitolul final, cercetarea a privit România nu ca exemplu clasic de stat atacat de fonduri de tip vultur în materia datoriei suverane, ci ca spațiu în care se poate observa o logică apropiată în domeniul creanțelor private neperformante. Relevanța fenomenului în România se manifestă mai ales prin activitatea unor entități specializate în achiziționarea și recuperarea creanțelor neperformante. Am avut în vedere, în special, mecanismele prin care creanțele sunt cumpărate la preț redus și valorificate ulterior prin acțiuni judiciare, cereri cu valoare redusă sau executare silită.

Scopul nu a fost acela de a susține o identitate perfectă între fondurile speculative care au acționat împotriva statelor și recuperatorii de creanțe din România, ci de a evidenția o asemănare de metodă. În ambele situații există o creanță depreciată, un debitor vulnerabil și un creditor profesionist care folosește mecanisme juridice pentru a recupera o valoare superioară prețului plătit. Diferența este că, în cazul României, miza nu este datoria suverană, ci masa creanțelor private neperformante, în special creanțe bancare, creanțe de consum sau creanțe cesionate către entități specializate.

În acest context, a fost examinată și problema prescripției în litigiile promovate de recuperatorii de creanțe. Debitorii nu invocă întotdeauna apărările disponibile, fie din lipsă de cunoștințe juridice, fie din lipsă de resurse, fie pentru că procedurile sunt standardizate și se desfășoară rapid. De aceea, cercetarea a propus o reflecție asupra posibilității ca, în anumite situații, prescripția să poată fi invocată din oficiu atunci când a trecut un termen semnificativ, mai ales dacă reclamantul este un profesionist al recuperării creanțelor. O asemenea soluție nu urmărește protejarea debitorului de rea-credință împotriva unei creanțe valabile, ci echilibrarea raportului dintre debitorul vulnerabil și creditorul profesionist.

A fost avută în vedere și faza executării silite, deoarece valorificarea creanței nu se oprește la obținerea unei hotărâri. În multe situații, adevărata presiune asupra debitorului apare în executare. Atunci când creanțele sunt cesionate succesiv și ajung la entități specializate în recuperare, devine esențială verificarea titlului executoriu, a prescripției dreptului de a obține executarea silită, a calității creditorului și a întinderii creanței. Contestația la executare devine, în aceste situații, principalul instrument de apărare al debitorului.

Concluzia generală a cercetării este că fondurile de tip vultur trebuie înțelese ca rezultat al interacțiunii dintre piață, creanță și drept. Ele nu sunt doar investitori agresivi și nici doar cumpărători de active depreciate. Ele folosesc vulnerabilitatea economică a debitorului și cadrul juridic disponibil pentru a transforma o creanță cumpărată la preț redus într-o sursă de recuperare disproporționată. În materia datoriei suverane, această posibilitate a fost favorizată de absența unui mecanism universal de restructurare și de restrângerea apărărilor tradiționale ale statelor. În materia creanțelor private, aceeași logică poate fi observată atunci când debitorii nu dispun de mijloace reale de apărare, iar creditorii profesioniști utilizează proceduri standardizate și repetitive.

Cercetarea nu a urmărit să nege dreptul creditorului de a-și recupera creanța. Problema nu este recuperarea în sine, ci disproporția dintre prețul plătit pentru achiziționarea creanței și suma urmărită ulterior, mai ales atunci când această diferență este maximizată prin folosirea agresivă a procedurilor judiciare și execuționale. Într-o asemenea ipoteză, mecanismele juridice create pentru protejarea creditorului diligent pot ajunge să transforme dificultatea economică a debitorului într-o sursă de profit speculativ.

Prin această cercetare am încercat să arătăm că fenomenul vulture funds nu poate fi redus la o discuție despre moralitatea investitorilor sau despre oportunitatea economică a cumpărării unor creanțe depreciate. Problema este mai profundă și privește modul în care dreptul permite sau limitează transformarea vulnerabilității într-un avantaj patrimonial. De aceea, tema rămâne relevantă nu doar pentru dreptul comerțului internațional și dreptul internațional public, ci și pentru dreptul intern, procedura civilă, executarea silită și protecția debitorilor vulnerabili.

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UNIVERSITY “ALEXANDRU IOAN CUZA” OF IAȘI
FACULTY OF LAW
DOCTORAL SCHOOL

SUMMARY OF THE DOCTORAL THESIS
VULTURE FUND INVESTMENTS IN INTERNATIONAL COMERCIAL LAW

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IAȘI
2026

PLAN OF THE DOCTORAL THESIS

In this thesis, the research focused on vulture fund investments from the perspective of international trade law, with particular emphasis on the manner in which claims, sovereign debts and distressed financial instruments may be transformed into instruments of legal and economic pressure. The starting point of the research was the idea that debt can no longer be understood exclusively as a payment obligation between creditor and debtor, but must also be regarded as a financial asset that circulates on international markets, may be purchased at a discounted price, may be enforced through negotiation or litigation and, under certain conditions, may generate disproportionate profits.

The thesis sought to show that vulture funds do not obtain profit merely by identifying cheap claims or distressed financial instruments. The decisive element is their ability to transform that claim into an advantageous legal position. These funds acquire debts owed by distressed debtors, usually at a price far below their nominal value, and subsequently refuse collective restructuring solutions or accept them only if they obtain more favourable conditions than the other creditors. In the absence of an acceptable settlement, they initiate litigation in creditor-friendly jurisdictions, seeking judgments that allow them to recover an amount significantly higher than their initial investment.

The main hypothesis of the research was that the rise of speculative vulture funds was favoured by the erosion of sovereign immunity. As long as states benefited from an almost absolute immunity before foreign courts, private creditors had limited possibilities to sue them. This situation changed with the transition from absolute sovereign immunity to restrictive sovereign immunity. Through the distinction between acts of sovereignty and acts of management, the contracting of loans, the issuance of bonds and the participation of states in financial markets began to be regarded as acts of a commercial nature. This transformation allowed creditors to argue that a state, when financing itself on international markets, does not act exclusively as a holder of public authority, but also as a participant in private legal and economic relations.

The phenomenon was approached not only from an economic perspective, but primarily from a legal one. From this point of view, the research aimed to highlight that the activity of vulture funds relies on a combination of elements: the secondary capital market, contractual clauses, rules on state immunity, the case law of foreign courts, enforcement procedures and the specific difficulties of sovereign debt restructuring. Speculative funds are relevant not only because they engage in financial speculation, but because they use law as an instrument for maximising profit.

In the chapter dedicated to the economic mechanism of vulture fund investments, the thesis explained why states borrow, what the main financing instruments are, how government bonds function and what role the secondary capital market plays. It was shown that states borrow in order to finance budget deficits, public projects, economic crises or urgent liquidity needs. Government bonds are usually perceived as safe instruments, but when a state enters financial distress, the value of those instruments may decrease significantly. Initial creditors may prefer to sell them at a discount, either to avoid greater losses or to avoid waiting for years until a restructuring process is completed.

It is in this context that vulture funds appear. They identify distressed states or companies, acquire depreciated claims and rely on the possibility of recovering a higher amount. The research emphasized that profit does not automatically result from the mere acquisition of a claim at a reduced price. Profit arises when the fund is able to block restructuring, negotiate from a position of strength or seize courts that recognise its right to full payment. For this reason, it was necessary to explain not only what these funds acquire, but also how they manage to transform the acquired claim into a legal advantage.

The research also distinguished between funds acting against private companies and funds targeting sovereign states. In the case of companies, a fund may acquire claims, gain control over the reorganisation procedure, influence the management of the company and decide how assets are to be realised. In the case of states, the fund cannot take control of the debtor in the same manner, but it may exert a different form of pressure: refusing restructuring, obstructing collective solutions and initiating judicial proceedings for the full recovery of the claim.

In order to explain the logic of funds acting against private companies, the thesis used the Kmart/Sears case. This example was relevant because it illustrates the ambivalence of the phenomenon. On the one hand, the intervention of a speculative fund may temporarily save a distressed company through financing and reorganisation. On the other hand, the same intervention may later lead to the extraction of value from the company, through the sale of important assets, the reduction of investments, the contracting of loans and the adoption of decisions favourable to the fund, but destructive for the company's future. Through this case study, the thesis sought to show that the decisive element is not the legal nature of the debtor, but the method used: identifying vulnerability, acquiring the distressed claim and exploiting the legal position thereby obtained.

In the field of sovereign debt, this method produces far more sensitive consequences. When vulture funds purchase instruments issued by states in financial difficulty, the effects are not limited to the relationship between creditor and debtor. They may affect other creditors, the restructuring process, the state's ability to finance itself and, indirectly, the population of the debtor state. This problem was examined in relation to the absence of a universal insolvency mechanism applicable to states. Unlike private companies, states cannot be subjected to a classic insolvency procedure. The restructuring of their debt depends on negotiations with several categories of creditors: institutional, bilateral and commercial creditors. In the absence of a binding mechanism, holdout creditors may refuse the collective solution and pursue full payment.

The thesis also considered the case of Puerto Rico, in order to show how speculative funds may accumulate a sufficiently important position within the debt structure to influence or obstruct restructuring. This example was useful because it demonstrates that the strategy of vulture funds does not consist merely in buying cheap instruments, but also in acquiring a position that allows them to negotiate aggressively. In such situations, the fund does not necessarily seek an equitable solution for all creditors, but rather the maximisation of the difference between the price paid for the acquisition of the claim and the amount recovered thereafter.

In the chapter dedicated to the legal defences of debtor states, the research examined how these defences have been restricted or relativised in sovereign debt litigation. The analysis began with jurisdictional immunity, because this represents one of the most important traditional defences available to states before foreign courts. The distinction between acts de iure imperii and acts de iure gestionis was decisive. If the state acts as a holder of public authority, its protection remains justified. If, however, the state issues bonds, accepts commercial clauses, contracts loans and submits to a foreign law, it may be treated as an economic actor.

The thesis did not argue that the restriction of immunity is, in itself, illegitimate. On the contrary, in a global economy, it would not be reasonable for states to access international financial markets, attract private capital and then invoke absolute immunity in order to avoid any responsibility. The problem arises when this legal openness is used by speculative funds that did not participate in the initial financing of the state, but acquired the claim later, at a reduced price, precisely in order to obtain a litigation advantage.

The research then examined the act of state doctrine, in order to determine the extent to which foreign courts may refuse to review acts adopted by a state in the field of public debt. It was shown that this doctrine has lost part of its effectiveness in commercial litigation. When the dispute is framed as a matter concerning the performance of contractual obligations, courts are more willing to examine the conduct of the state. Thus, what could be presented as a decision of domestic economic policy comes to be treated as a patrimonial dispute between creditor and debtor.

The thesis also examined the doctrine of champerty, since the activity of vulture funds essentially involves the acquisition of claims with the aim of obtaining profit through litigation. A strict application of this doctrine could have limited speculative strategies. However, the evolution of case law has considerably reduced its practical effectiveness. Courts have become more reluctant to sanction the mere acquisition of a claim for investment purposes, even where the fund intends to enforce it through litigation. This development has allowed speculative creditors to present litigation as a legitimate consequence of holding a valid instrument, rather than as an abuse.

Particular attention was given to the pari passu clause, especially in the litigation against Argentina. The thesis showed how a contractual clause originally intended to ensure legal equality among creditors was transformed into an instrument of pressure against the debtor state. The interpretation given to this clause allowed holdout creditors to block payments to creditors who had accepted restructuring, unless the state also made proportionate payments to them. In this way, an apparently technical contractual mechanism became decisive for the strategy of speculative funds.

At the same time, the research addressed the difference between obtaining a favourable judgment and actually enforcing it. Even though jurisdictional immunity has been restricted, immunity from enforcement continues to protect assets used for the exercise of sovereign functions. For this reason, vulture funds must identify commercial assets of the debtor state that fall outside the protection granted to sovereign assets. The dispute does not end when a judgment is obtained; it continues through the identification of assets, recognition of the judgment and attempts at enforcement.

In the same context, the thesis also considered legislative measures adopted to limit abusive litigation initiated by vulture funds. Such measures generally seek to prevent the recovery of amounts that are disproportionate in relation to the price paid for the acquisition of the claim, especially where the debtor is a poor state or a state benefiting from international debt relief programmes. Nevertheless, the effectiveness of these solutions remains limited if they are adopted in isolation. Speculative funds may choose favourable jurisdictions, use complex legal structures and avoid states whose legislation limits their recovery.

In the chapter devoted to the European framework, the research sought to verify whether the vulture fund phenomenon manifests itself in the same form within the European

Union. The starting point was the sovereign debt crisis in the euro area and, in particular, the situation of Greece. The thesis examined the manner in which the intervention of European institutions, financial assistance programmes, the involvement of the European Central Bank and the restructuring of Greek debt limited the room for action available to speculative creditors. The Greek case was relevant because it showed that, within the European Union, sovereign debt is managed within a denser institutional framework than in other regions.

In this context, the research considered the role of the European Stability Mechanism and of collective action clauses. These instruments reduce the risk that a minority creditor may block a restructuring accepted by the majority of creditors. Collective action clauses allow the decision of a qualified majority to become binding also on creditors who oppose it. Therefore, they limit holdout strategies, which have formed the basis of many claims brought by speculative funds. However, these mechanisms do not eliminate the phenomenon; they merely restrict its classic form in the field of sovereign debt.

The thesis further sought to demonstrate that the limitation of speculative opportunities in sovereign debt does not lead to the disappearance of the vulture fund logic. On the contrary, speculative capital may redirect itself towards other vulnerable assets. For this reason, the research considered situations that emerged in Ireland and Spain, where speculative funds purchased non-performing loans, real estate assets and distressed banking portfolios after the financial crisis. In these cases, the logic is similar: the crisis produces distressed assets, financial institutions or public structures attempt to clean up their balance sheets, and funds acquire these assets massively at a reduced price in order to realise them later.

The situation in Ireland was presented by reference to the role of NAMA and IBRC, while the situation in Spain was considered by reference to SAREB, the transfer of toxic assets and the entry of speculative capital into the real estate market. These examples were important because they show that the phenomenon is not limited to sovereign debt. When the European architecture reduces the possibility of obtaining speculative profits from sovereign bonds, the same investment logic may move towards housing, mortgage loans, banking portfolios and private claims.

In the final chapter, the research considered Romania not as a classic example of a state targeted by vulture funds in the field of sovereign debt, but as a space in which a similar logic may be observed in the field of private non-performing claims. The relevance of the phenomenon in Romania is manifested especially through the activity of entities specialised in the acquisition and recovery of non-performing claims. The thesis considered, in particular, the mechanisms through which claims are purchased at a reduced price and subsequently enforced through judicial actions, small claims procedures or enforcement proceedings.

The purpose was not to argue for a perfect identity between speculative funds acting against states and debt collection entities operating in Romania, but to highlight a similarity of method. In both situations, there is a distressed claim, a vulnerable debtor and a professional creditor using legal mechanisms in order to recover an amount higher than the price paid. The difference is that, in Romania, the issue is not sovereign debt, but the mass of private non-performing claims, especially banking claims, consumer claims or claims assigned to specialised entities.

In this context, the thesis also examined the issue of limitation periods in litigation initiated by debt collection entities. Debtors do not always raise the available defences, either because they lack legal knowledge, because they lack resources or because the procedures are standardised and move rapidly. For this reason, the research proposed a reflection on the possibility that, in certain situations, limitation could be raised ex officio where a significant period has elapsed, especially if the claimant is a professional debt collector. Such a solution would not aim to protect a bad-faith debtor against a valid claim, but rather to rebalance the relationship between the vulnerable debtor and the professional creditor.

The enforcement stage was also considered, because the realisation of the claim does not stop with the obtaining of a judgment. In many situations, the real pressure on the debtor appears during enforcement proceedings. When claims are assigned successively and end up in the hands of entities specialised in debt recovery, it becomes essential to verify the enforceable title, the limitation of the right to obtain enforcement, the standing of the creditor and the amount of the claim. In such situations, the challenge to enforcement becomes the debtor's main instrument of defence.

The general conclusion of the research is that vulture funds must be understood as the result of the interaction between market, claim and law. They are not merely aggressive investors, nor merely purchasers of distressed assets. They use the debtor's economic vulnerability and the available legal framework in order to transform a claim purchased at a reduced price into a source of disproportionate recovery. In the field of sovereign debt, this possibility was favoured by the absence of a universal restructuring mechanism and by the restriction of traditional state defences. In the field of private claims, the same logic may be observed where debtors do not have real means of defence, while professional creditors use standardised and repetitive procedures.

The research did not seek to deny the creditor's right to recover its claim. The problem is not recovery itself, but the disproportion between the price paid for the acquisition of the claim and the amount later pursued, especially where that difference is maximised through the aggressive use of judicial and enforcement procedures. In such a scenario, legal mechanisms created to protect the diligent creditor may end up transforming the debtor's economic difficulty into a source of speculative profit.

Through this research, the thesis sought to show that the vulture fund phenomenon cannot be reduced to a discussion about the morality of investors or the economic opportunity of purchasing distressed claims. The problem is deeper and concerns the manner in which law allows or limits the transformation of vulnerability into patrimonial advantage. For this reason, the topic remains relevant not only for international trade law and public international law, but also for domestic law, civil procedure, enforcement proceedings and the protection of vulnerable debtors.

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