

# On the Failure to Address Abusive Debt Collection in CEE Region.

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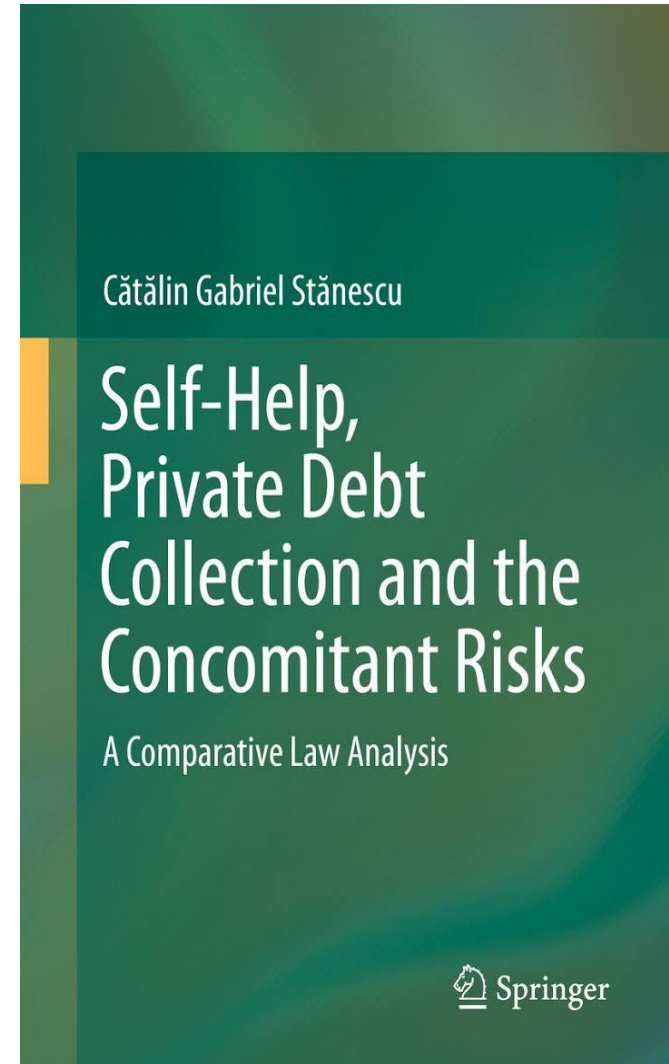


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# Cine sunt

- B.A., UAIC – 2004
- M.A. Pol-Sci, NSPAS – 2006
- LL.M. IBL, CEU – 2011
- SJD. IBL, CEU – 2015
- Postdoc, KU – 2016
- Marie Curie Fellow, Consumer Financial Protection – 2019
- Attorney at Law, Romanian Bar Association – 2006

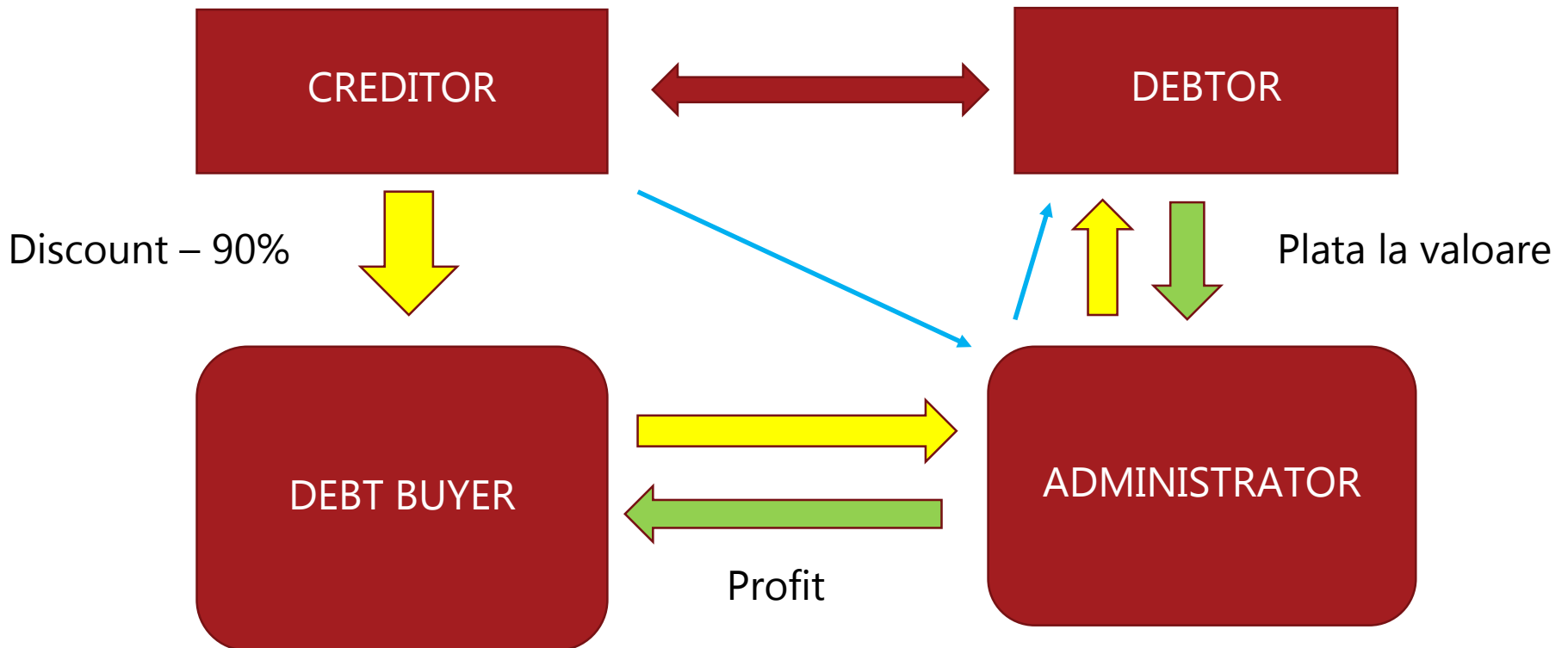


# OVERVIEW

- A Creditor confronted with debtor's default has several options available :
  1. To collect the debt himself,
  2. To hire a specialized third party debt collector or a law firm
  3. To sell or assign the debt to a company specialized in defaulted debts portfolios or to a factor
- ALL the above will have the possibility to resort to either judicial or non-judicial remedies, as they see fit



# OVERVIEW (II)



# HUNGARY - INKASSZO

- Non-judicial debt collection – known phenomenon
- International debt collectors present – eos KSI Kft - hungary
- “EOS Hungary focuses its activities on debt purchase, receivables management, personal visit, and legal services”
- Members of MAKISZ may only be businesses, which comply with the requirements set out in the Code of Ethics, and have demonstrated their ability to carry out their activities legally, effectively and in accordance with the client’s needs, over a substantial period of time in business.
- ONLY SOFT LAW – dispute settlement within the EU/CONSUMER PROTECTION FRAMEWORK

# Hungary – nice words



HU EN DE

NO CREDIT WITHOUT CONSEQUENCE

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## For debtors

[I received a letter of formal notice](#)
[I would like to settle the debt](#)
[I already settled the debt](#)
[About the receivable management](#)
[What makes up the claim](#)
[What can happen if I don't pay](#)
[Debt settlement supporting opportunities](#)
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Each of our steps are made in compliance with regulations in effect and by strictly observing ethical norms. We never exceed the legal limits of credit management and we also avoid the effect of this! We forebear violent, harassing and misleading conduct. Our agents do not apply psychological pressure during their work.

We can approach debtors by mail (by post or electronic mail), phone (calling or texting) or in person, too. We always use a polite tone in such cases, we do not communicate in an aggressive or threatening way, respectively we only make calls at times fixed in advance!

Regarding scheduling, we do not make contact late in the evening and during rest periods (weekends, holidays). By this we observe the values we represent during our work as well. Basically we aim to come to an agreement with debtors and our purpose is to help them in fighting their financial difficulties.

## Romania – one case

- Bank sold non-performing debt portfolio to investor
- Tri-partite contract: Romanian bank (subsidiary of foreign bank)
  - a) buyer from Cyprus, shareholders in caiman islands
  - b) Romanian debt administrator (collector), subsidiary of Cypriot company,
  - c) shareholders from caiman islands
- No piercing of corporate veil, no actual redress against the real owner of the debt.
- Difficult judicial process – cross-border procedure, issues with enforcement
- Political ties

# First Project – “Law Concerning the Procedure for Debt recovery”

- Adopted by the Senate 2010
- Rejected by Deputies Chamber 2012
- Reasoning: legally inconsistent
- E.g.: natural person debtor vs legal person debtor; reference to personal insolvency law (non-existent); debts under collection have priority in insolvency (secured transactions status for unsecured debts); disciplinary and contraventional liability had no active subject
- Lobby: World Bank and the financial industry



## 2<sup>nd</sup> Project – Law Concerning Regulation of Assigned Debts

- Proposed: 05.10.2015
- Adopted by Senate – 13.10.2015

“Debitorii devin captivi firmelor de recuperare, executarea silită încetând la momentul achitării integrale a creanței sau a decesului debitorului, în condițiile în care moștenitorii acestora renunță la moștenire.”

“Instituțiile financiare nebankare nu se subordonează în niciun fel BNR-ului, având o legislație permisivă identică cu cea a SRLurilor, ceea ce permite să se abuzeze când se face executarea și în special valoarea la care se finalizează.  
(Expunere de motive)

- No rule against abusive debt collection – just limitation of recovery to double of the paid price

## 3<sup>rd</sup> Project – Datio in Solutum Law (77/2016)

“Prezentul proiect de lege își propune să protejeze debitorii contractelor de credit de abuzurile cesionarilor de creanțe...” (Expunere de motive)

- Proposed 28.10.2015
- Adopted by Senate: 29.02.2016
- Adopted by Deputies Chamber 13.04.2016
  
- No measure concerning abusive debt collection practices
- Controversial debt relief mechanism

## 4<sup>th</sup> Project: GEO 52/2016 concerning consumer credits for immovable property...

"Având în vedere dezvoltarea continuă pe care activitatea de recuperare creanțe o cunoaște și faptul că tot mai mulți creditori cesionează creanțe către entitățile care desfășoară activitatea de recuperare creanțe, precum și lipsa unui cadru legislativ care să stabilească un echilibru în relația contractuală dintre consumatori și entitățile care desfășoară activitatea de recuperare creanțe, sunt necesare prevederi speciale urgente în acest sens."

Cap. IX Arierate și executare + Cap X Cesiunea

# Other Legal Measures

- Civil Code
- Tax Code
- UCPD – debt collection is a post-sale service
- UCT – non-negotiated terms may be abusive
- CJEU case law
  
- Remedies?
  - Tort
  - Moral damage
  - Administrative complaints to NOCP

# Building blocks of an efficient fair debt collection regime

- Definition of debt collectors
- License/permit/authorization system
- Updated statutory provisions on communication, harassment/abuse, false, deceptive or misleading forms of representation, validation of debt, added fees and charges
- Open-end functional definitions to include new practices based on a functional approach
- Civil liability + incentives for private action
- Availability of swift and effective state action (administrative enforcement)

# Definition of debt collectors

- Original creditors (through inhouse dept)
- Third parties - specialized companies
- Lawyers? (yes, in house for banking institution, credit institution, debt collector)
- Debt buyers? Only if recovering on their own
- Factoring companies
- Original creditors and those acting on their behalf (Art 45, alin 4)
- Romanian legal persons (Art 59 (there must be a Romanian based 'representative' for sanctioning purposes))

# License/Permit/Authorization System

- No license or authorization.
- Exception – collection and processing of personal data
- Art 128, alin 1, lit b) debt collectors must register with NOCP
- Several conditions must be met (Annex 3)

# Communication

- No symbol or expression indicating the purpose of correspondence
- Uncovered:
  - Time and place of communication
  - House visits
  - Phone calls, e-mail, social media
- Confidentiality (Art 46, alin 2, Art 60 i))
- Simple and clear language (Art 47, alin 1)
- Essential info a) unpaid amounts, total amount of debt, cost of delay + penalizing interest
- Art 60, lit g), h) cannot contact debtor at work place or third parties (other than representatives)
- Art 60 j) hours 9-20



# Harassment

- Practices that harass or abuse debtors are forbidden
- Non-exhaustive list:
- Threats with violence or other harms
- Using profane language
- Auctioning the debt
- Persistent phone calls made with the purpose to irritate
- Art 60, lit e) it is forbidden to harass or abuse the consumer
- Art 60, lit f) practices that use threats or aggressive techniques with the purpose to damage, physically or mentally, or to affect the consumer's reputation

# Misleading Representations

- Using false or misleading identity is forbidden
- Categories:
  - a) Information regarding the debt
  - b) Information provided during recovery (state involvement, litigation)
- Special criminal act?
- No provision, BUT
- Art 59, alin 6 – debt collectors must identify themselves
- Art 66 – debt collectors and collection agencies cannot use the terms advice, counsel.

# Validation of Debt

- No obligation to validate debt
- Art 59, alin 5, lit b)  
consumer can challenge debt and must receive answer in 30 days  
(suspension of recovery)
- Art 59, alin5, lit c)  
consumer may address the court for challenging debt

# Fees and Charges

- Collectors cannot use illegal practices in collection
- Ex: collection of amounts (interest, taxes, charges, fees added to the main debt) which do not originate from the contract signed between the creditor and debtor
- Ex: phone calls (with reversed charge), courier.
- Rules concerning penalizing interest (Art 53-55)
- Any other charges regarding collection are strictly forbidden

# Open End Functional Definitions

- Non-exhaustive examples
- No provision regarding the use of new technologies
- ...

# Civil Liability and Incentives for Private Action

- Disciplinary, contraventional or criminal liability
- NOCP – supervision
- NO right to private action
- NO incentives
- Only administrative action
- Contraventional or criminal liability (Art 120)
- Administrative procedure, ADR, litigation
- Fines: Art 121, alin 4, 20.000-100.000 lei for breach of law sau 30.000-100.000 lei for activities without license
- Optional (Art 123, alin 2): suspension, de-registration, injunction of collection plus restitution

# Swift and Effective State Action

- Răspundere disciplinară – procedură internă (dreptul muncii)
- Răspundere penală – doar în cazul infracțiunilor
- Răspundere contravențională (ANPC?)
- ANPC

# Conclusions

Condiții	
Definition of Debt Collectors	X
License and Bond	X*
Updated Provisions	X*
Open-End and Functional Definitions	-
Civil Liability and Incentives	-
Administrative Enforcement	X

- Awareness
- Long and failed legislative process
- Partial solutions
- Focus on effects rather than on cause
- Lack of adequate solution