

## **REVIEW**

**By Krasimir Nikolov Mitev, PhD, Associate Professor at the Law Faculty of Paisiy Hilendarski University of Plovdiv**

On materials submitted for participation in the competition for the academic position of Associate Professor at University of Plovdiv, published in State Gazette, issue 57 of 26 June 2020 and on the website of University of Plovdiv, for the needs of the Civil Law Chair at Paisiy Hilendarski University of Plovdiv; Field of higher education 3. Social, economic and law sciences; professional direction 3.6 Law; Civil and Family Law.

By order No. R33-4705 dated 25.09.2020 of the Rector of University of Plovdiv I have been appointed a member of the scientific jury in the competition for the academic position of Associate Professor.

Documents for participation in it were submitted by Angel Yordanov Shopov, PhD, currently holding the position of Chief Assistant Professor at the Law Faculty of University of Plovdiv. On September 29, 2020, a meeting of a commission on admissibility was held, appointed by the Dean of the Law Faculty, which decided to admit Mr. Shopov to participate in the competition.

### **I. General presentation of the submitted materials**

1. The package of submitted documents in e- and paper version meets the requirements of the University Rules for Academic Career (PRASPU) and includes the following documents: application for admission to the competition; CV; diploma for LLM in Law; diploma for PhD in Law; list of scientific works; reference for observance of the specific requirements of the Faculty of Law, according to Art. 65 (3) PRASPU; reference for observance of the minimum national requirements under ZRASRB; annotations of the materials under Art. 65 of PRASPU, including self-assessment of contributions; declaration of originality and authenticity of the attached documents; certificate of work experience; testimonials for educational work and research.

In order to participate in the competition, Angel Shopov, PhD has submitted nine scientific papers:

- one monograph “Deceit as a Ground for Nullification of Contracts”, S., Sibi, 2019, 213 p.
- two studies: (1) Contracts' Formation through Deceitful Omission - In: Soft law and contemporary law, S., 2017, c. 84-117. ISBN 978-619-226-005-7
- (2) The Crime “Fraud” and the Deceit in Contracts’ Formation - A Comparison. - In: Iybileen sbornik po slutchay 100-godishninata ot rozhdenieto na akad. Liuben Vasilev i prof.

Zhivko Stalev i 90-godishninata ot rozhdenieto na prof. Vitali Tadzher. S. 2013, p. 360-396.  
ISBN 9786191630172

- six articles:

(1) Judicial and Arbitration Practice On the Contracts' Avoidance, Caused by Deceit. Pravna misal, 2004, No 2, pp. 101-110. ISSN 1310-7348

(2) Notes about Two Questions, Which Are Observed by the Latest Judicial Practice, On the Border of Deceit and of Criminal Fraud. – In: Bourgas Free University. International Academic Conference. Collection of Scientific Works. Vol. 3. 11<sup>th</sup> -13<sup>th</sup> June 2004. Bourgas. 2004, pp. 112 – 116.

(3) Dolus and Deceit in Contracts' Formation. – In: 100 years from the birth of prof. Mihail Andreev. Sbornik statii. Sofiya. 2011, p. 542 – 550.

(4) "On the Legal Requirements of Deceit in Contract Formation", Studia iuris, 2015, № 1, p. 1-10, <http://web.uni-plovdiv.bg/paunov/Stidia%20Iuris/broi%201%20-%202015/Angel%20Shopov.pdf>, ISSN 2367-5314

(5) Deceit by Third Party in Contract Formation. [Договаряне чрез измама от трети лица. - В: Право и права. Сборник в памет на проф. Р. Ташев. С., 2016, УИ, с. 462-477], ISBN 978-954-07-4173-4

(6) *Dolus bonus* in Roman and Contemporary Law [*Dolus bonus* в римското и съвременното право], *Ius romanum*, 2016, № 1, с. 285-295, <http://iusromanum.eu/documents/> or <http://iusromanum.eu/i/2016-commercium>], ISSN 2367-7007

The scientific works presented for participation in the competition are outside the scope of the candidate's dissertation thesis.

## II. General characteristics of the candidate's activity

1. Angel Shopov graduated in LLM in Law at the Law Faculty of University of Plovdiv in 1999. The candidate has been holding the academic position of “Assistant Professor” and of “Chief Assistant Professor” since 2001. After being a trainee in Plovdiv District Court in 2000-01, in 2001 he started to work in University of Plovdiv as Assistant Professor in Civil Law. Thereafter, he consecutively holds the academic positions of “Senior Assistant Professor” and of “Chief Assistant Professor”, at present.

After training as a part-time PhD student at the Institute of State and Law at the Bulgarian Academy of Sciences (formerly the Institute of Legal Studies), in 2013 he defended a dissertation thesis on "Mistake as a ground for nullification of contracts" and obtained the educational and scientific degree "PhD in Law".

Angel Shopov is an established and respected lecturer in the subject "Civil Law - General Part". Since 2001 he has been conducting seminars on it, and for several years he has been taking a lecture course on the subject at the Law Faculty of Paisiy Hilendarski University of Plovdiv. He has also taught seminars on Obligations. He lectures on the elective course "Legal Protection of Consumers".

He participated in the preparation of a manual on contract law and private international law, intended for judges, prosecutors and investigators (Belazelkov, B., Yordanski, S., Pandov, V., Shopov, A. Contract Law and International Law. magistrates, VSS, S., 2015).

Dr. Shopov has numerous publications in authoritative legal journals in the country and abroad: "Pravna misal", "Iuridicheski svyat", "Savremenno pravo", Travaux de l'Association Henri Capitant des amis de la culture juridique française- (ISBN224700413X), Journal of European Consumer and Market Law (ISSN 2364-4710). He has publications in English and French. He has participated in various scientific conferences in the country and abroad. He has specialized in the Netherlands and in Switzerland.

Angel Shopov is a regular participant in the international project "Common Core of European Private Law" ([www.common-core.org](http://www.common-core.org)), as well as in research projects funded by the SR Fund of Paisiy Hilendarski University of Plovdiv. He is the one of co-leaders of the Civilian Club (discussion platform for students, PhD students and lecturers) at the Faculty of Law.

### III. Characteristics of the presented scientific works

1. For participation in the competition Angel Shopov, PhD applied in the first place with the book "Deceit as a Ground for Nullification of Contracts". It is a monograph dedicated to one of the vices of will, ground for annulment of contracts. The scientific editor of the monograph is Assoc. Prof. Krassen Stoychev, Dr Sc.

1.1. The monograph is devoted to the legal requirements for relevance of deceit as a ground for the annulment of contracts. The legal consequences of the annulment are outside the scope of the study.

The book is structured in three chapters. The first deals with the concept of fraud and the historical development of the institution. The center of the study is in the second chapter: the elements of the legal requirements for relevance of deceit and of the right to set aside a contract concluded through delusion are examined and clarified in detail. The characteristics of the deceiver's behaviour are considered - the deliberate misleading. Special attention is paid to fraud through inaction. The author substantiates that in this case there is a deliberate

violation of the pre-contractual obligation for information, following from Art. 12 OCA. It is argued that fraud by inaction is actually the result of a combination of actions and inactions.

When considering the next element of the legal requirements of deceit (false idea of reality), the thesis is substantiated that any type of error (unlike the hypothesis of mistake as a vice of will under Article 28 of OCA) in mind of deceived person are legally relevant. The significance of the cases in which the deception affects the motives of the party to the contract is thoroughly considered. The author accepts that, exceptionally, for the purposes of Article 29 of the OCA, the legal requirements of the concluded contract also include the motive of the deceived party. Further, Dr. Shopov considers in which cases the impact of the motive would be relevant. He accepted that the deceiving act in order to fulfill the hypothesis of Art. 29, Para 1 of the OCA, it is necessary to create a specific (incorrect /wrong) motive, and not just a general and abstract need.

In the analysis of the third element of the legal requirements of Art. 29 of the OCA (causal link between the deceiving actions, the incorrect idea and the concluded contract) substantiates the need for the behaviour of the deceiver to be of such a nature that it is objectively suitable to delude someone. At the same time, however, the author maintains that it must be established whether the specific addressee of this conduct could have been misled.

The question if in Bulgarian law there is a place for distinction between principal (*dolus causam dans*) and incidental (*dolus incidens*) deceit, known in some national legal systems, is also considered. After a comparative and legal dogmatic analysis, the author concludes that this division has no legal significance in our civil law.

The third chapter is devoted to deception committed by a third party who is not a contractual party and to the comparison between deceit and criminal fraud. The emphasis in this part of the work is the clarification of the question: who the third parties are in the hypothesis of Art. 29, Para 2 OCA. The author reasonably concludes that persons acting in the name or on behalf of a contract party should be excluded from this category.

1.2. The starting point of the author when considering the institute is the twofold nature (Janus face) of deceit - on the one hand is a ground for annulment of a contract, on the other hand - illegal and morally reprehensible behaviour, which is a ground for [tort] liability of the deceiving contract party. This characteristic of deceptive behaviour enables the author to repeatedly refer to the maxim *fraus omnia corrumpit* (see pp. 97, 130, 132, 133, 137) in substantiating his theses on the scope of the examined ground for annulment.

The position on the two-faced nature of deception runs throughout the whole study, which ends with a detailed comparison between in civil law deceit and the crime of fraud.

This position is based on the detailed historical analysis made in the first chapter of the monograph. The author leads the reader among the views on the deception of Roman jurists, glossators, jurists of the school of natural law and pandectists. The development of deceit on the grounds of liability for deceiver to a vice of will of a deceived party who is entitled to annul the agreement is presented and analyzed in great detail.

Following the understanding of the diverse nature of deceit, the author consistently seeks to draw arguments from the general theory of law, considering legal actions performed under the influence of fraud as a general problem of law.

Next, characteristic of the author's approach to the analysis of deceit is the comparison with another ground for nullification – mistake - as a cognitive method. Revealing the similarities and differences between these two vices of will helps to highlight the specifics of the studied object.

Characteristic of the monograph is the desire of Dr. Shopov to consider the deceptive behaviour in the context of the general requirement of good faith in negotiations and concluding contracts under Art. 12 OCA.

Another feature of the monograph is the strong overlap of the comparative law method of research. The statement shows that Mr. Shopov has an in-depth knowledge of French, Italian and German law in the subject matter (see, for example, pp. 109-119). The author does not limit himself only to present the foreign legal framework and doctrine, but skilfully uses the comparative law data in substantiating his conclusions (see, for example, p. 125 and p. 145).

1.3. The language in which the book is written is precise. The author's theses are clearly stated and substantiated. The legislation, the case law and the doctrine (Bulgarian and foreign) have been carefully studied. Dr. Shopov is not limited only to the provision of Art. 29 of the OCA, but also examines the regulations in other normative acts (the Insurance Code, the Consumer Protection Act, the Competition Protection Act), relevant to the object of his study.

The work has a logical structure: after clarifying the concept of deceit in contracting process and the historical development of views thereon, a detailed analysis of the legal requirements of Art. 29 of the OCA, as in conclusion the special hypotheses of deception and the differences with the crime fraud in the Criminal Code are considered. The author is consistent with the opinions he defends, following the main previously sketched by him features of the studied legal phenomenon.

The traditional research methods of legal science are used. In addition to the comparative legal method - already mentioned, the author's affinity for the historical method of research is evident (see pp. 25-57).

1.4. The following contributions to the monograph can be highlighted:

- the clear delineation and the analysis of the elements of the legal requirements of deceit under Art. 29 of the OCA;
- the study of the content of intention as an element of deceit;
- study of the significance of the so-called *dolus bonus*;
- the study of the impact of deceptive behaviour on the motive of the contractors;
- the study and substantiation of the conditions for deceitful omission;
- study of the problem of the so-called major and incidental deception;
- clarifying the hypotheses of deceit committed by third parties;
- the analysis of the historical development of deceit as a ground for the nullification of contracts;
- the detailed comparison and distinction between deceit and criminal fraud;
- the critical analysis of the case law under Art. 29 OCA;

These scientific contributions lead to a better and in-depth knowledge of a basic institute of civil law. Poorly researched issues in the Bulgarian doctrine have been studied (the meaning of *dolus bonus* / noble lie / and the so-called accidental fraud (*dolus incidens*), the concept of a third party in the hypothesis of Article 29, paragraph 2 of the OCA).

1.5. Some critical remarks can be made to the reviewed work:

1.5.1. The subject of research is the legal requirements of deceit as a ground for nullification of contracts. Therefore, in general, the legal consequences of the implementation of legal requirements remained outside its scope. The author has only incidentally dealt with some of them as the issue of partial annulment. This approach is probably justified by the fact that the consequences of vices of will are generally settled for all grounds for annulment (Articles 32, 34, 35 of the OCA). However, I think that the study of deceit would benefit from one, albeit brief, consideration of the legal consequences of the deception. Thus, the reader would get a fuller view of the nullification of contracts due to deceit.

For example, it would be interesting to consider the nature of possible liability for damages to the deceiver. The doctrine in our country seems to lean towards a solution based on Art. 45 of the OCA (and not of Article 12 of the OCA). In the work, the author seems to look at the deceptive behaviour [by a contractor] as a ground for precontractual liability under Article 12 of the OCA (see p. 71). It seems to me that paying a little more attention on this

problem would be a logical continuation of the thesis about the two-faced nature of fraud and its "tort colouring", developed and clarified in the work.

1.5.2. In considering the scope of the misbelief caused by deceit, the author argues that, exceptionally, the legal requirements of the contract also include the motive of the deceived party (p. 127). I will allow arguing with this thesis of Dr. Shopov. Its purpose is to (up to) justify the relevance of a motive for concluding the contract caused by the deceiving behaviour. It seems to me that for this result it is enough to conclude that without the created false idea the deceived person would not have concluded the contract, i.e. the problem should be considered through the prism of the requirement for a connection between the deceiving behaviour and the conclusion of the contract.

The law does not require the misbelief to necessarily refer to the elements of the legal requirements and therefore the addition of the motive to the legal fact of the transaction seems unnecessary to me. Furthermore, the case does not concern the legal requirements of the contract, but the legal requirements of the right of nullification.

1.5.3. In the third chapter a thorough comparison is made between the deceit under Art. 29 of the OCA and the crime of fraud under the Criminal Code. I think that it would be better to include this part of the study as a separate one, instead of including it in the chapter "Special cases of fraud". The author himself concludes that deceit and criminal fraud do not have the same scope, from which it follows that it is not appropriate to consider one as a special case of the other.

1.5.4. The presented critical remarks and recommendations do not impair the positive assessment of Dr. Shopov's monograph. His work testifies to the author's in-depth knowledge and ability to conduct research in the field of civil law.

Dr. Shopov's book is the first in our country particular monographic study on deceit as a basis for annulment. Although it is dedicated to a classic problem of private law, the work is in tune with nowadays - a new doctrine and case law is analyzed, including new sources of soft law (Principles of European Contract Law, Principles of International Commercial Contracts (of UNIDROIT) and the Draft Common Frame of Reference) showing developments and trends in deception views. The book has an original character and author's style.

2. For participation in the competition Dr. Shopov also presented (apart from the monographic work) two studies and six articles published in the Bulgarian legal periodicals. They are all dedicated to deceit as a ground for nullification. For the most part, the theses set forth in them are enshrined in the monograph.

2.1. The article “Judicial and Arbitration Practice On the Contracts’ Avoidance, Caused by Deceit” provides a critical analysis of judicial practice. Problems of the interpretation and application of Art. 29 of the OCA, which were encountered by the Supreme Court of Cassation and the Arbitration Court at the BCCI. The factual situation and the reasons on which the judicial authorities justified their decisions were discussed.

2.2. Judicial practice is also the main subject of research in the article "Notes about Two Questions, Which Are Observed by the Latest Judicial Practice, On the Border of Deceit and of Criminal Fraud". The factual situation in two criminal cases is refracted through the prism of civil law and Article 29 of the OCA.

2.3. The study "The Crime “Fraud” and the Deceit in Contracts’ Formation - A Comparison" is dedicated to the comparison between these two institutions. The study of the phenomena and the conclusions made are embedded in the monographic study.

2.4. The article "*Dolus* and Deceit in Contracts’ Formation" explores the importance of deceit in the conclusion of contracts and the means of protection of deceit in Roman law. It is concluded that the emphasis is on the behaviour of the deceiver and his characterization as an illegal action, without the deceit being identified as a defect of the will of the deceived counterparty.

2.5. Roman law is also the starting point of the study in the article "*Dolus bonus* in Roman and Contemporary Law". It continues in the study of the characteristics of deceptive behaviour and the meaning of the so-called noble lie in modern times.

2.6. In the article "Deceit by Third Party in Contract Formation" a comparative analysis of the regulation of the intentional misleading of a counterparty by a person who is not a party to the contract is made. In addition to leading jurisdictions from the continental legal family, the approach of private codifications such as the PECL, the PICC and the DCFR has been examined.

2.7. In the study "Contracts' Formation through Deceitful Omission" are considered requirements for classifying an omission as deceiving and fulfilling the requirements of this ground for the nullification of contracts.

2.8. In the article “On the Legal Requirements of Deceit in Contract Formation" a study of deceit in contracts has been investigated in several jurisdictions of the continental legal system. A comparison is made with the approach of Bulgarian law, as well as with the approach of Anglo-Saxon Common Law.

The studies and articles presented by Dr. Shopov for participation in the competition are characterized by the features highlighted in the review of the monographic work. These

scientific works testify to the fact that deceit as a ground for the annulment of the contracts is the subject of lasting scientific interest on the part of the author and the monograph is the culmination of his several years of research.

3. The nature and number of publications with which Dr. Shopov participates in the competition meet the national requirements for holding the position of "Associate Professor" under the Law on the Development of Academic Staff in the Republic of Bulgaria. In addition to the monograph with which Mr. Shopov participated in the competition, he is the author of another monographic work ("Nullification of contracts due to mistake". S. 2013), written on the basis of his dissertation. The articles and studies presented in the competition are published in [non-referred] editions with scientific review or editing, providing the required number of points according to the regulations.

#### IV. Personal impressions

I have known Angel Shopov for more than 20 years. I met him while he was still a student in the Civil Law Seminar I was leading at the time. Soon after graduating, Mr. Shopov started working at the Law Faculty and since then we have had many opportunities to work together. We have published two co-authored articles, we have led lecture courses together, we have worked on collective research projects (of which Mr. Shopov is usually the driving force). His collegial attitude can only be spoken of in superlatives. The support and assistance that Dr. Shopov willingly provides to many younger colleagues (students, PhD students, Assistant Professors) should also be noted.

#### V. Conclusion

The candidacy of Dr. Angel Shopov meets the conditions of the Law for the development of the academic staff in the Republic of Bulgaria (art. 24) and the Regulations for its implementation (art. 53) for holding the academic position of "associate professor". The minimum national requirements (Appendix to Art. 1a Regulations) for the type, number of publications and citations of his works are satisfied, and in some cases exceeded.<sup>1</sup>

The requirements of the Regulations for the development of the academic staff at the University of Plovdiv have also been met (Article 65).

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<sup>1</sup> With 100 points required for publications (outside the habilitation thesis), 165 points are achieved with the ones submitted by the candidate. With the mentioned citations of scientific works of Dr. Shopov, 65 points are achieved, with 50 required.

The presented monographic work "*Deceit as a Ground for Nullification of Contracts*" is an original and in-depth study of a classical problem of civil law science, containing sufficient scientific contributions. It is also useful for the practice with the detailed analysis of the ground for nullification under Art. 29 of the OCA and the critical analysis of the case law on the application of this rule. The work was published by an authoritative and specialized in legal literature publishing house.

Angel Shopov is a long-term lecturer in the discipline 'Civil Law - General Part'. It has significant scientific output and an excellent reputation in academia. His scientific and teaching qualifications are unquestionable. These considerations lead me to believe that he is an excellent candidate for the position of "Associate Professor" at the Law Faculty.

In view of the above mentioned, I propose to the scientific jury to draw up a report-proposal to the Faculty Council of the Faculty of Law of University of Plovdiv for election of Dr. Angel Yordanov Shopov to the academic position of "Associate Professor" at the Law Faculty at the University of Plovdiv "P. Hilendarski" in the professional area of "Law" ("Civil and Family Law").

**Signature: Krasimir Mitev**