

OPINION

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On materials submitted for participation in the competition for the academic position of Associate Professor at University of Plovdiv; Field of higher education 3. Social, economic and law sciences; professional direction 3.6 Law; Civil and Family Law

1. Information on the competition

By order No. R33-4705 dated 25.09.2020 of the Rector of University of Plovdiv I have been appointed an internal member of the scientific jury in the competition for the academic position of Associate Professor at the University of Plovdiv, in the field of higher education 3. Social, economic and law sciences; for the needs of the Civil Law Chair at the Law Faculty. At the first meeting of the scientific jury, held on October 8, 2020, I was assigned to draw up an opinion in connection with the evaluation of the participants in the competition.

One candidate has submitted documents for participation in the competition - this is Chief Asst. Prof. Angel Yordanov Shopov, PhD, from the University of Plovdiv.

2. Brief data on the candidate

Angel Shopov graduated in LLM in Law at the Law Faculty of University of Plovdiv in 1999. He obtained his PhD in 2013, code of scientific field 05 05 08 Civil and Family Law with the dissertation "Mistake as a Reason for Nullification of Contracts". Angel Shopov is a teacher in Civil Law Chair of Law Faculty at the University of Plovdiv and has consecutively held the academic positions of "Assistant Professor", "Senior Assistant Professor" and of "Chief Assistant Professor" since 2001 till present. He made specializations in Italy, Netherlands and Switzerland. Angel Shopov has been a participant in the international project "Common core of European Private Law" since 2008, in the group on Immoral contracts since 2013 - as a national reporter. He is a scientific editor of 4 books and author of two papers of a manual, intended for judges, prosecutors and investigators.

Angel Shopov has presented a total of 10 publications for participation in the competition for associate professor, of which 2 monographs and 8 articles and studies. He also presented 20 articles and studies outside the competition, as well as a Reference on compliance with the minimum national requirements for holding the academic position of "Associate Professor" and a List of scientific papers.

The habilitation thesis "Deceit as a Ground for Nullification of Contracts" is accepted for review. S.: Sibi, 2019, 224 pp., as well as 8 pcs. of articles and studies submitted for participation in this competition. In essence, the subject of evaluation is the habilitation work, as for the most part the other presented publications are incorporated therein. Therefore, only those of them that are not included in the habilitation work will be subject of evaluation.

From the presented Reference of the minimum requirements for holding the academic position "associate professor" it is established that A. Shopov meets the minimum national requirements under Art. 2b, para. 2 and 3 ZRASRB. According to indicator A the candidate has 50 points (out of required 50), according to indicator B - 100 (out of required 100), according to indicator C - 100 points (out of required 100), according to indicator D - 165 points (out of required 100), according to indicator E - 65 points (out of required 50).

From the analysis of the above mentioned documents it is necessary to conclude that the conditions of Art. 24, Para 1 ZRASRB, Art. 53, Para 1 PPZRASRB, as well as of Art. 65, Para 1 and 2 of the Regulations for development of the academic staff (PRAS) of the University of Plovdiv for participation of Ch. Assistant Professor Shopov in the competition for associate professor are covered, which allows me, based on Art. 26, Para 2 ZRASRB and Art. 54, Para 2 PPZRASRB, to proceed to the evaluation.

3. Evaluation of the scientific works of the candidate

3.1. Habilitation work

3.1.1. The work " Deceit as a Ground for Nullification of Contracts" has a volume of 224 pages. He examines the deceit under Art. 29 of the OCA as a ground for annulment of the contracts. The book contains a list of abbreviations, an introduction, three chapters and a conclusion. A bibliography with literature is attached thereto. There are separate points in the separate chapters, and sub-points within the separate points. Writing the work, the author used the historical and comparative law method of scientific research. He analyses both the laws of developed countries (mainly France, Germany and Italy) on deceit and the regulation of this vice of will in the sources of soft law - Principles of European Contract Law, Principles of International Commercial Contracts (of UNIDROIT) and the Draft Common Frame of Reference.

The Bulgarian case law under Art. 29 of the OCA, as well as more important court decisions from foreign case law in the field of deceit were scrutinized. The author has taken into account and conscientiously quoted the whole Bulgarian literature on the topic - both on deceit and on criminal fraud. Writing the monograph, he also used a huge amount of foreign

literature - French, Italian, German, English and Russian. The monograph is logically structured, analytical, the author's style is concise, the language used is clear and precise.

Chapter one analyses the concept of deceit and the historical development of legal views on deception. The place of deception among the vices of the will is clarified, with the emphasis on its points of contact with the mistake. The author emphasizes the twofold nature of deceit in civil law - it is a ground for the nullification of contracts, like the mistake, but unlike the mistake, the composition of the deceit involves morally reprehensible behaviour. Therefore, its consequences are manifested on the plane of both the institute of invalidity and the institute of liability.

The development of views on deception in ancient Rome, in the Middle Ages and in the modern era is studied in detail. The author concludes that if Roman jurists viewed *dolus* mainly as a non-permitted and unfair act, and the legal framework on it - as a means of repairing the damage, the ideas of deceit as a defect of will gradually developed. Deceit is currently seen primarily as a vice of will.

Chapter two clarifies the legal requirements of deceit. It includes three elements - 1) deliberate misleading, 2) creating a false idea of the reality in the deceived person and 3) concluding the contract under this misconception of reality. The composition of deceit includes objective (material) and subjective (psychological) elements. The conclusion that both elements exist in both the deceiver and the deceived deserves support (pp. 61, 62).

Deceptive intent is a type of bad faith that manifests itself in misleading a potential contractor in order to induce him to make a declaration of will. Intention can manifest itself as both direct and eventual and is derived from the deceptive behaviour of the deceiver. The bad faith itself is derived from the non-fulfillment of the precontractual obligation for good faith during the negotiations under Art. 12 of the OCA, including non-fulfillment of the obligation for information when negotiating.

Through the non-fulfillment of the obligation under Art. 12 of the OCA, the legal requirement of the nullification of a concluded contract and of precontractual liability under Art. 12 of the OCA are fulfilled, but only the admission of the claim for annulment of the contract opens the way for responsibility under Art. 12 of the OCA (pp. 71 and 72). With this conclusion the author confirms his thesis about the two-faced nature of deceit in modern civil law. There is a well-founded notion that the presumption of guilt in civil law does not apply to the establishment of deceptive intent, so this intent must be established by the deceived contractual party (pp. 74 and 75).

Deliberate misrepresentation may consist of the creation and/or maintenance of misconceptions in the other counterparty. The author points out the features of misleading as an objective element of the legal requirements of the deceit (p. 78). On this basis, he outlines the scope of the modern *dolus bonus* (good intent, noble lie), which lacks the goal of misleading potential customers and therefore we cannot talk about misleading behaviour and the presence of deception (pp. 78-86).

The possibility of committing deceit by action derives directly from Art. 29, Para 1 OCA. However, the law is silent on the question whether deception can be committed through inaction. Based on an analysis of the legal framework, the case law, as well as the decisions on the issue in foreign legislation, the author substantiates the conclusion that the factual composition of deceit can be realized through a combination of action and inaction, but not only through inaction of the deceiver. The author connects the possibility of committing deception through inaction with the intentional violation of the pre-contractual obligation for information under Art. 12 OCA. The deceiver does nothing, for example deliberately does not provide the information that is the essential content of the contract. At the same time, he is aware that the other contracting party does not have this information, and that if the latter had known it, he would not have concluded the contract or would have concluded it with a different content (p.119). These conclusions should be supported.

The author distinguishes deceit by failing to provide essential information from similar legal institutes, where the rules of Art. 29 OCA are inapplicable. Such are mainly the rules of Art. 363 IC in connection with the conclusion of the insurance contract, of Art. 193, Para 2 and 3 of the OCA regarding the non-notification of the buyer about the defects of the thing, if the seller knew about them, and the rules of Art. 47–51 CPA in connection with the obligation to provide information in consumer contracts (pp. 97–99).

In connection with the created misconception about the reality of the deceived, the author concludes that the regulation of Art. 29 of the OCA aim at sanctioning the unfair behaviour of the deceiver. Therefore, unlike the mistake, as a rule, all types of errors created through deception are relevant to the nullification of the contract. Here, exceptionally relevant to the existence of deceit is the error in motive for conclusion of the contract (p.126).

In connection with the third element of the deception - the deceived person concludes a contract under the influence of his misconception), the author discusses the well-known in many countries division of deceit into complete and accidental. The first is when the deceived party would not have entered into a contract at all if the deceit had not taken place. In the case of accidental deception, the deceived would enter into a contract, but under different

conditions. This division is unknown in Bulgarian law, so in both kinds of deceit the deceived has the right to annul the contract. But although it is unknown, this division of deceit has legal significance in our country as well. It is expressed in connection with the possibility of application of Art. 26, Para. 4 of the OCA to accidental fraud.

The author supports the notion that it is possible to annul partially the concluded contract due to deceit, per argumentum a fortiori from Art. 26, Para 4 OCA. I share the clarification made by him that in view of the specifics of the deceit, accidental deception is not a ground for annulment of the entire contract, if only the deceived stated that he would have concluded it without its voidable parts (p. 148); there is no need to examine the willingness of the deceived party to keep the contractual parts which are not vitiated. The author justifies the conclusion that the assessment whether the deceit has a decisive effect on the conclusion of the contract should be made *in concreto*. This assessment should take into account the ability of the particular person (to whom the deceit is directed) to be misled - his age, education, life and professional experience, as well as the specific life situation in which the contract is concluded. However, there is no deception when the person has acquired misconceptions about reality as a result of his negligence (pp. 150, 151).

Chapter three deals with two special cases of deceit - the special legal requirements of deception by third parties and criminal fraud, which is clarified in comparison with deceit.

Based on a rich comparative legal analysis and a review of our practice, the author considers numerous hypotheses when the source of deceit may be third parties. He concludes that deceit by third parties should not be regarded as a major exception to the principle of the possibility of annulment, but rather as a particular subjective complication of the factual composition of deceit. A proposal *de lege ferenda* is made in the regulation of art. 27-35 of the OCA to adopt a text similar to that of the sources of soft law (Art. 3.2.8 PICC; Art. 4: 111 PECL and Art. II.-7: 208 DCFR).

For the first time in our doctrine, a detailed comparison is made between deceit and criminal fraud. With this comparison, the author formally goes beyond the subject of the monographic study. However, the precise legal analysis made by him of the factual compositions, the scope of application and legislative approaches in settling the two types of fraudulent behaviour, and the generalizations made by the author have not only theoretical but also great scientific and applied significance. I share the conclusion (p. 203) that if a transaction is a means of realizing a *corpus delicti*, it cannot automatically be assumed that it is null and void due to a contradiction with the law or good morals. I also support the

conclusion that deceit and criminal fraud can exist both in parallel and independently in legal reality, without being mutually exclusive.

3.2. Evaluation of the submitted articles/studies for participation in the competition

Based on the 8 papers presented, only the following article is not fully incorporated in the habilitation work - "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. Therefore, only this one is a subject to evaluation.

The article makes a comparative analysis of the regulation of deceit in contracting process in the Continental and Anglo-Saxon legal systems. The author points out that the elements of the legal requirements of deceit are the same in the countries of the continental legal system, while the approach of the Common law is different. There, the fraudulent misrepresentation figure developed within the institute of misrepresentation, which has a wider scope, is applied to fraudulent cases.

3.3. Scientific contributions

Among the presented scientific works of A. Shopov, the main contributing character for legal science and practice is the monographic work "Deceit as a Ground for Nullification of Contracts". It has a contributing character not only because it is the first independent study of deceit in our country as a ground for the annulment of contracts, but also because it contains analyses, conclusions and summaries, many of which represent an original contribution to the development of legal science. Some of them were mentioned above, but along with them the following conclusions and summaries have an important scientific and scientific-applied value:

On the basis of a rich comparative legal analysis, the paper clearly outlines the legal requirements of deceit as a basis for the nullification of contracts (pp. 60, 67-86). The author pays special attention to the deceitful omission and its peculiarities (p. 86 et seq.), Concluding that unlike the error under Art. 28 of the OCA, for deceit, as a separate vice of will, the nature of the error in the deceived person is legally irrelevant for the annulment of the contract. In particular, the divisions of errors as essential and of errors of motives, value or calculation have no legal significance for the application of deceit.

The clarification of the concept of *dolus bonus* (noble lie) for the first time in our doctrine has a contributing character, as well as its precise distinction from intent as an element of the composition of deception. In the case of a noble lie, there is no intent to

mislead potential contractors, so the contracts concluded by them are not subject to nullification due to deceit (p. 79 et seq.).

The delineation of the features of deceptive inaction and its demarcation from similar legal institutions is of scientific-theoretical and practical importance (p. 92 et seq.). In connection with the deceit by third parties, the author made a proposal for the adoption of an additional text in Art. 27–35 of the OCA, similar to the regulation of the sources of soft law.

The detailed analysis and the derived summary of the relationship between deceit and criminal fraud are also contributing.

4. Critical remarks and recommendations

My main critical remark is related to the small number of proposals for improving the provisions on deceit in the OCA. In writing the monograph, the author uses extremely rich normative and practical comparative material, as well as rich case law - Bulgarian and foreign, therefore I think that he could draw and make more similar proposals. Generally, his proposal is only one and is related to the composition of the deceit caused by a third party (on p. 172). However, it is too general and could hardly help the legislator in view of the future amendment of Art. 27–35 OCA.

In connection with the analyzed rich comparative and empirical material, I believe that the monograph would have an incomparably higher value if the author had outlined the circle of persons who are third in relation to the deceived person and those who are not considered third parties, in view of the application of the general legal requirements of deceit under Art. 29, Para 1 of the OCA or of the special legal requirements under Para 2.

In connection with the common elements of the legal requirements of the deceit and the mistake as grounds for annulment of the contracts, I do not consider the author's approach to outline the legal requirements of the deceit by referring to the details of what was said in his monograph on mistake. In this case, repetitions are undoubtedly avoided, but I think that the referral technique will be difficult for the reader. It seems to me that the author should, albeit more schematically, reproduce in the monograph on deceit the common elements in these two legal requirements.

Conclusion

The critical remarks made do not diminish the merits of the habilitation work (and other scientific works) of Ch. Assistant Professor A. Shopov, to whom I give a high positive evaluation. The candidate has made great efforts in writing his work and has achieved significant scientific results. His work contains original scientific and scientific-applied results, which have a contributing character and contribute to the development of civil law

science and to support the jurisprudence in applying the rules of the OCA on deceit. Along with the habilitation work, A. Shopov has presented other - sufficient in number and quality - publications. The habilitation thesis does not repeat the dissertation work of A. Shopov for obtaining the scientific and educational degree "Doctor". I have no data on plagiarism in writing the work.

The scientific papers presented by A. Shopov during his participation in the competition for associate professor cover and even exceed the minimum requirements of the Law for development of the academic staff in the Republic of Bulgaria of Art. 53, Para 1 of the Regulations for application of ZRASRB, as well as the requirements of Art. 65, Para 1 and 2 of the PRAS of the University of Plovdiv, for holding the academic position of "Associate Professor" in the field of higher education 3. Social, economic and legal sciences; professional direction 3.6. Law; Civil and Family Law.

Therefore, confirming my high positive evaluation of the assessed scientific papers, I recommend the Scientific Jury to draw up a report-proposal to the Faculty Council of the Law Faculty of University of Plovdiv "P. Hilendarski " for the election of Chief Assistant Professor Angel Yordanov Shopov, PhD to the academic position "Associate Professor" at the University of Plovdiv in the field of higher education 3. Social, economic and legal sciences; professional direction 3.6. Law; Civil and family law.

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Prepared by prof. Grigor Grigorov, PhD