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Двенадцатый сборник из серии «Анализ современного права» объединяет статьи, посвященные проблематике свободы договора. В представленных работах анализируются различные, порой весьма неожиданные аспекты свободы договора, определяются дальнейшие перспективы развития данного принципа, разбираются вопросы, тесно связанные с обозначенной темой, и т.п.

Для судей, адвокатов, практикующих юристов, научных работников, преподавателей, аспирантов и студентов юридических факультетов, а также всех тех, кого интересуют проблемы развития российского права и вопросы применения действующего законодательства.

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The freedom of contracts is limited by extremely numerous regulations and prohibitions. Many legal systems set forth that contracts that infringe these regulations are null (void) and generate thus no contractual effects. The judicial practice has often been confronted with the need of more nuanced solutions, with, as a consequence, a serious lack of predictability. The article points out that approaching the issue under the principle of proportionality allows delineating predictable and appropriate consequences to the civil sanction of illegal contracts. Nullifying contractual effects shall, in general, not serve the purpose of punishing the parties, since other legal instruments set forth by the infringed law (administrative or criminal sanctions, incl. confiscation of illicit profit) fulfill this function. From another point of view, it shall not be abstained from nullifying effects for the sole purpose of protecting a good faith party's reliance (trust) on the validity of the contract, since such protection is granted by a particular liability (often referred to as «culpa in contrahendo»). As a result, the appropriate sanction consists in nullifying contractual effects to the extent useful to preserve or (if it is in concreto possible when the illegal contract has been fulfilled) reestablish a situation that complies with the infringed regulation. Such proportionate and efficient sanction can be called the «useful nullity».

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The research allowed the author to demonstrate and argue both from a theoretical and practical point of view the importance of the idea of freedom of contract for private law. It should be neither tribute to the traditions nor just dead rule. On the contrary, from the point of view of the history of private law, the prospects for its development and improvement, and according to the developers of the Civil Code of Ukraine the idea of freedom of contract should be elevated to the rank of the principle of private law.

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The scope of the principle of freedom of contract as described in art. 421 the RCC, it seems to cover all possible manifestations. But practitioners lawyers are well knows that it impression is deceptively - it can be confusing only those, who knows nothing about Russian judicial practice, the settlement of disputes relating to the conclusion or performance of a contract. Rights from contract, which have any deviation from the standard and type, are risking does not meet neither legal protection, nor even the understanding of the Russian court. On the causes of this situation and whether it is trying to change, and if so — that how exactly, it looks at the author of this article.

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The key distinction between traditional bilateral contracts and multilateral ones is not about number of parties involved in particular agreement, but rather how the interests of the parties to agreement to be defined. Normally in a typical civil law contract, bilateral agreement, there is a strong conflict of interests between two parties; whereas in multilateral agreement opposition of interests of parties participating in such a contract might be more complex. As the author argues, parties to multilateral contract have heterogeneous interests varying from one group to another and these interests may change in the course of time, furthermore they are typically contract and case-specific and may change dramatically over the lifetime for a given contract. Because it is quite difficult (if possible at all given Arrow's impossibility theorem) to aggregate preferences of all parties to multilateral contracts, majority rule is the only way how multilateral contracts to be governed by contract law. Hence, the author concludes, interaction between majority rule and the principle of freedom of contract is a key element for regulating of all multilateral contracts. The paper provides also an outline as how some specifies problems essential for all multilateral contracts (voting for subsequent amendments to contract terms, dissolution and expulsion, enforcement by minority of the contract terms, agency relationship) might be addressed, should the law has provided adequate enforcement for this type of contractual agreements.

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