UDC 347
DOI: 10.31733/2078-3566-2020-5-166-172

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PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

Анастасія Лапко, Марина Поліщук. ЗАХИСТ ПРАВ ІНТЕЛЕКТУАЛЬНОЇ ВЛАСНОСТІ. Стаття присвячена аналізу законодавства та наукових праць щодо способів захисту прав інтелектуальної власності. Матеріальна власність існувала задовго до розбудови першої держави, тому, її захист вже давно закріплений у багатьох нормативно-правових актах, достатньо вивчений та випробуваний на практиці. Інтелектуальна власність набула свою важливість набагато пізніше – з появою демократичного суспільства.

Цивільно-правові відносини зустрічаються нам на кожному шляху і ми самі не помічаємо, як кожного дня стикаємося з інтелектуальною власністю: читаємо книжки, слухаємо музику, дивимось фільми. Нажаль в Україні навіть самі науковці та розробники не володіють достатніми знаннями щодо захисту власних прав, а споживачі прагнучи не витрачати багато грошей уникають легального способу отримання об'єкта інтелектуальної власності. Споживачі повинні розуміти, що будь-яка робота оплачувана і коли ми користуємось інтелектуальною власністю нелегально, автор, винахідник, творець не отримує дохід за свою діяльність.

З розвитком комп'ютерних технологій стало простіше вкрасти чиїсь думки. Безліч різноманітних ресурсів пропонують як оплатно так і безкоштовно отримати тексти будь-яких художніх книг, наукових статей, монографій та підручників, але коли праць стало надто багато, а думки у них були одні й ті самі світове товариство виробило низку засобів виявлення плагіату та відвертого переписування.

Визначальною є наявність не лише цивільної відповідальност за порушення прав інтелектуальної власності, а й адміністративної, господарської та кримінальної у яких найлегшим видом відповідальності є попередження, а найтяжчим – позбавлення волі.

У матеріалі статті досліджується юридичний зміст інтелектуальної власності. Визначено хто є суб'єктами даного права та що відноситься до об'єктів права інтелектуальної власності Розкривається визначення даного поняття у цивільному праві України у суб'єктивному та об'єктивному значенні надане різними науковцями. Розглядається законодавча база, що регулює право інтелектуальної власності. Аналізуються форми і способи захисту результатів інтелектуальної діяльності у тому числі самозахист (неюрисдикційна форма захисту). Висвітлюється проблема відсутності структурованого переліку дій, що визнаються порушеннями прав інтелектуальної власності.

З використанням методів пізнання, таких як узагальнення та синтез, у роботі здійснено аналіз наукових праць та нормативно-правової бази України та міжнародний досвід, визначено перелік протиправних дій, що направлені на порушення прав інтелектуальної власності та мають місце у даний час. У ході аналізу та отриманих даних виявлено розбіжності нормативно-правової бази та методології України з міжнародним законодавством та проблему практичного застосування певних норм.

Ключові слова: *право інтелектуальної власності, захист прав інтелектуальної власності, суб'єкти права інтелектуальної власності, об'єкти права інтелектуальної власності, правопорушення.*

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Relevance of the study. According to Article 54 of the Constitution of Ukraine, everyone has the right to freedom of literary, artistic, scientific and technical creativity, protection of intellectual property, their copyright, moral and material interests arising in connection with various types of intellectual activity. But more and more often, with the development of information technology, the creative possessions of people who become objects of intellectual property suffer from the encroachment of persons aimed at illegal enrichment and appropriation of the achievements of others.

This issue is relevant because one of the most important aspects of human life is creative activity. In European countries, this issue plays a key role in economic development and accounts for the lion's share of national wealth. It is creative activity that creates intangible, spiritual goods that can acquire a certain material, economic value. Such products of intellectual activity are, for example, a literary work or a painting by an artist.

Therefore, ensuring proper protection of objects and subjects of intellectual property rights, namely modern legislation and effective mechanisms for the implementation of legal norms, will help Ukraine to reach a new level of development in the field of intellectual property and secure a place among European leaders.

Recent publications review. Legal aspects of intellectual property protection in Ukraine have been studied in scientific publications of V. O. Zharova, Long Doris, Ray Patricia, T. M. Sheveleva, R. B. Shishka, O. B. Pihurets, I. E. Vasilenko, B.C. Drobiazko, A. I. Kubah, O. D. Svyatotsky, I. I. Dakhno, O. M. Melnik, O. A. Pidoprigory, Y. M. Kapitsa and others.

The article's objectives is to study the issues of intellectual property rights, disclosure of the main provisions of the legislation governing and protecting the results of intellectual activity.

Discussion. In the general definition, *intellectual property* is considered as the right to the results of human intellectual activity in scientific, artistic, industrial and other areas, which are the object of civil relations in terms of the right of everyone to own, use and dispose of their intellectual, creative activities.

Civil law allocates intellectual property rights to a separate institution, its rules are specified in the fourth book of the Civil Code of Ukraine. The definition of the concept of intellectual property rights is given in Part 1. Art. 418 of the Civil Code of Ukraine (hereinafter – CCU), which states that intellectual property rights - is the right of a person to the result of intellectual, creative activity or other object of intellectual property rights, defined by the Civil Code and other law [1]. Also, the concept of intellectual property and its objects, defined in national law on the basis of the Convention establishing the World Intellectual Property Organization, signed in Stockholm on July 14, 1967 [2, p. 258].

The intellectual property right in the subjective sense is identical to the real property right and consists in belonging to the owner of intellectual property rights to own, use and dispose of the corresponding object. However, due to the difference between the objects of property law and intellectual property rights, the relevant rights are transformed into slightly different categories of law. Thus, a characteristic feature of the right of ownership of intellectual property is the creative origin of these objects and the exclusivity of rights to them, which is the exclusive right of the subject (owner) to allow the use of intellectual property to others; prevent the misuse of the object of intellectual property rights, including the prohibition of such use. [3, p. 26]

Objects of intellectual property rights include: literary and artistic works, computer programs, data compilations (databases), performances, phonograms, videograms, transmissions (programs) of broadcasting organizations, scientific discoveries, inventions, utility models, industrial designs, layout (topography) of integrated circuits, innovation proposals, plant varieties, animal breeds, commercial (brand) names, trademarks (signs for goods and services), geographical indications, trade secrets, etc.

Subjects, according to the legislation, are the creator (creators) of the object of intellectual property rights (author, performer, inventor, etc.) and other persons who own personal non-property and (or) property intellectual property rights in accordance with the Civil Code, other law or contract [1].

The results of intellectual activity were first recognized as property in Ukraine in 1991 as a result of the adoption of the Law of Ukraine «On Property». However, the main sources of intellectual property rights, which formed the basis of special legislation on intellectual property, were the Laws of Ukraine: «On protection of rights to inventions and utility models», «On

protection of industrial design rights», «On protection of trademark rights for goods and services», which were adopted by the Verkhovna Rada of Ukraine on 15.12.1993 [2, p. 258]

In domestic law, the results of intellectual activity are protected by various branches of law. Thus, the rules of criminal, administrative, labor law also protect the intellectual property rights of these entities. Also, the norms of international law need considerable attention.

The need to protect and defend the rights of intellectual property is due to the following needs:

ensuring the interests of creators by granting them time-limited rights to control the use of their own works; stimulating creative intellectual work, encouraging creative activity and implementing its results in the interests of socio-economic progress of society; intensification of investment and innovation activities, introduction of scientific and technological progress and innovations in all spheres of public life; creation of a civilized market environment, reliable protection of business entities from unfair competition associated with the misuse of intellectual property; protection of economic security of states in the context of globalization of world economic development, creation of favorable conditions for the transfer of new technologies; dissemination of information, avoidance of losses due to duplication of efforts aimed at finding ways to solve urgent scientific, technological and socio-economic problems; protection of society's interests in free access to the world's intellectual treasury.

The special legislation of Ukraine on intellectual property provides a definition of the state system of legal protection of intellectual property – an «Institution (the central executive body for legal protection of intellectual property) and a set of expert, scientific, educational, informational and other relevant specialization of state institutions within the scope of management of the Institution».

Today this system consists of the Ministry of Education and Science of Ukraine, the Ukrainian Agency for Copyright and Related Rights, the State Enterprise «Ukrainian Institute of Industrial Property», the Branch «Ukrpatent», the Ukrainian Center for Innovation and Patent Information Services, the State Enterprise «Intelzahist» and Research Institute of Intellectual Property, State Intellectual Property Service.

The main purpose of protection of intellectual property rights is to create legal mechanisms to legally prevent the possibility of free use of these intellectual property rights by third parties for commercial purposes.

The concept of "protection of intellectual property rights" includes the activities of the relevant state bodies provided by law for the recognition, restoration of rights, as well as the removal of obstacles to the realization of the rights and legitimate interests of intellectual property rights. Protection of intellectual property rights and legally protected interests is carried out in the manner prescribed by law, ie, with the use of appropriate forms, means and methods of protection [2, p. 259-260].

Special laws of Ukraine on intellectual property, with some exceptions, do not determine which specific actions are recognized as infringement of intellectual property rights in relation to a particular object of these rights. An offense is any encroachment on intellectual property rights in relation to the relevant object of these rights, provided by law. These laws define actions that are recognized as the use of an object of intellectual property rights. And an offense is any act without the consent of the owner of actions that are recognized as the use of the object of intellectual property rights [4, p. 52]

I. M. Korostashova in his work draws attention to such types of offenses as counterfeiting and piracy, falsification, plagiarism [5].

In the Customs Code of Ukraine, the legislator defined the concept of «counterfeit goods» as goods containing objects of intellectual property rights, the import of which into the customs territory of Ukraine or export from this territory is a violation of intellectual property rights protected by law [6].

The concept of «falsification» is defined as: 1) Forgery of something; deterioration with the selfish purpose of quality of something at preservation of appearance. 2) Intentional distortion or misinterpretation of certain phenomena, events, facts. 3) A counterfeit thing that is pretended to be real; fake; a substitute for something [5, p. 32]

Piracy is an act aimed at the illegal use of intellectual property rights belonging to other persons, intentionally committed by a person who understands the illegal nature of these acts, in order to obtain material benefits. A characteristic feature of this concept is that it is usually used in relation to infringements of intellectual property rights committed in the field of copyright and related rights.

In the New Dictionary of the Ukrainian language, *plagiarism* is defined as the attribution of authorship to someone else's work of science, literature, art or someone else's discovery, invention or innovation proposal, as well as the use of someone else's work without reference to the author [5, p. 34-35]

Copyright infringement by plagiarism in Ukraine has become so widespread and almost uncontrollable that plagiarism in some areas of intellectual activity is seen not as an offense but as an "integral part of science." Thus, some researchers of intellectual property law note that: "elementary copying in the preparation of dissertations, monographs, textbooks, articles is becoming almost the norm, and, consequently - low quality PhD and doctoral dissertations, lack of real responsibility for plagiarism, devaluation of scientific degrees and academic titles, the decline of the prestige of science, etc. " [7]

Relatively new concepts for Ukrainian legislation are “academic integrity” and “academic plagiarism” introduced by the Law of Ukraine “On Education” № 2145-VIII of September 5, 2017. Academic integrity in accordance with Part 1 of Art. 42 of this Law is a set of ethical principles and rules defined by law, which should guide the participants of the educational process during training, teaching and conducting scientific (creative) activities in order to ensure confidence in learning outcomes and / or scientific (creative) achievements. Part 4 of this article establishes that one of the types of violation of academic integrity is academic plagiarism, which is the publication of (partially or completely) scientific (creative) results obtained by others as the results of their own research (creativity) and / or reproduction of published texts (published works of art) by other authors without indication of authorship.

For violation of academic integrity, the law provides for bringing to academic responsibility:

a) refusal to award a scientific degree or confer a scientific title;

b) deprivation of the awarded scientific (educational and creative) degree or the awarded scientific title;

c) refusal to assign or deprivation of the assigned pedagogical title, qualification category;

d) deprivation of the right to participate in the work of statutory bodies or to hold statutory positions. [10]

The legislation provides for two forms of protection of intellectual property rights: *jurisdictional and non-jurisdictional.* The non-jurisdictional form is simpler and provides for the protection of property rights without the intervention of the court and other defense bodies, ie self-defense. The chosen means of self-defense of rights should not contradict the law and the moral principles of society. At the same time, the methods of self-protection of rights must correspond to the content of these violated rights, the nature of the actions by which they are violated, as well as the consequences caused by this violation. Methods of self-defense can be chosen by a person or established by a contract or acts of civil law [4, p. 54].

The jurisdictional form of protection provides for two ways: general protection and special. In general, the protection of intellectual property rights and legally protected interests is carried out by the court. The bulk of such disputes are heard by local courts. If both parties to the disputed legal relationship are legal entities, the dispute that arose between them is subject to the commercial court. With the consent of the parties to the legal relationship in the field of intellectual property, the dispute between them may be referred to arbitration. Disputes between individuals are considered by local courts. A special form of protection of intellectual property rights is the administrative procedure for their protection. It is used as an exception to the general rule, ie only in cases expressly provided by law. According to the law, the victim may apply for protection of his violated rights to the authorized state body, in particular, to the Antimonopoly Committee of Ukraine, the Ministry of Internal Affairs of Ukraine, the State Customs Service of Ukraine, the State Intellectual Property Department of the Ministry of Education and Science of Ukraine. , which can provide such protection if necessary.

The jurisdictional form of protection of intellectual property rights provides for civil, criminal and administrative protection of infringed rights.

Under the civil protection of intellectual property rights means the statutory substantive measures of a coercive nature, through which the recognition or restoration of infringed intellectual property rights, termination of the offense, as well as property influence on the offender. Along with the civil law protection of intellectual property rights in the modern legal literature distinguish economic and legal protection of infringed intellectual property rights of enterprises, institutions, organizations, other legal entities (including foreign), and citizens -

business entities.

The main purpose of civil and economic liability is not punishment for non-compliance with the established law and order, and compensation for damage. The case is initiated in court on the basis of a statement of claim, which is filed in writing by the person whose rights have been violated.

General civil law methods of protection of rights, which also apply to the protection of intellectual property rights are: recognition of rights; invalidation of the transaction; termination of an action that violates rights; restoration of the situation that existed before the violation; forced performance of duty in kind, etc. [4, p. 55].

Also, it should be emphasized that the current civil legislation of Ukraine on intellectual property regulates contractual relations in the field of intellectual property at an insufficient level. Active intellectual activity and the scale of use of its results - intellectual property - require a more perfect and effective system of contracts in the field of intellectual activity and intellectual property.

Criminal liability for infringement of intellectual property rights occurs if the right holder has suffered material damage in a significant, large or particularly large amount. Yes, according to Art. 176 of the Criminal Code illegal reproduction, distribution of works of science, literature and art, computer programs and databases, as well as illegal reproduction, distribution of performances, phonograms, videograms and broadcasting programs, their illegal reproduction and distribution on audio and video cassettes, diskettes, other media, camcording, cardsharing or other intentional infringement of copyright and related rights, as well as the financing of such actions, if it caused material damage in a significant amount - are punishable by a fine of two hundred to one thousand tax-free minimum incomes or correctional labor for up to two years, or imprisonment for the same term. Also in Art. 177 provides for penalties for infringement of the rights to an invention, utility model, industrial design, topography of an integrated circuit, plant variety, innovation proposal [7].

A special form of protection of intellectual property rights in Ukraine is the administrative procedure for their protection. It is used as an exception to the general rule, ie only in cases expressly provided by law. According to the law, the victim may apply for protection of his violated rights to a certain public administration body, the highest body of the defendant or the Antimonopoly Committee of Ukraine. The means of protection in this case is not a claim, but a complaint or application, the procedure for submission and consideration of which are regulated by administrative law.

As for administrative methods of protection of intellectual property rights, they are in accordance with Articles 23 and 24 of the Code of Administrative Offenses of Ukraine are applied in the form of administrative penalties, which are a measure of responsibility to educate the person who committed an administrative offense, in compliance with Ukrainian laws. rules of cohabitation, as well as prevention of new offenses by the offender and other persons. These types of administrative penalties can be: warnings; fine; paid confiscation or confiscation of an object that has become an instrument of commission or a direct object of an administrative offense; confiscation of money received as a result of committing an administrative offense; correctional work or administrative arrest [4, p. 148].

Also, no less important issue related to the protection of intellectual property rights is the payment of remuneration for the use of relevant objects. According to the Accounting Chamber of Ukraine, the state annually collects only about 30 million hryvnias in remuneration, which experts estimate is 3% of the potential amount of revenue. This is due to the fact that in Ukraine only 7% of users pay fees for the use of copyright.

For example, broadcasters and cable operators refuse to recognize the collective rights management mechanism and pay remuneration for the use of copyright and related rights, as different collective management bodies, of which 14 are registered with the State Intellectual Property Department, collect remuneration for the same primary subsidiaries. objects of copyright and related rights.

Such statistics give grounds to assert that today in Ukraine there is no effective system of collection and payment of remuneration to authors, performers, producers of phonograms [9].

Conclusion. The progress of the XXI century leads humanity to the fact that further development will be determined by the intellectual activity of man. Therefore, the state is obliged to provide all the conditions for the proper development of this activity. It is equally important for the rule of law to create modern, effective, systemic legislation that will regulate and protect the rights of subjects to intellectual property.

Thus, the protection of intellectual property rights always requires confirmation and proof of ownership of the full range of rights of the owner to the object of creative activity. Such confirmation, by obtaining a permit (certificate, patent), always precedes the protection of intellectual property rights in any field of use. Based on the role and importance of intellectual activity for the socio-economic progress of Ukraine as one of the forms of socially useful activity, it should be officially declared a priority at the state level and one that determines the successful development of all other forms of socially useful activity.

At the moment, there are such types of violations as piracy and counterfeiting, falsification, plagiarism. If the rights of the person who is the owner of the results of intellectual activity are violated, he can go to court with a claim or resolve the issue independently. The state determines the laws that ensure the protection of various intellectual property.

At this stage of development, Ukrainian legislation on intellectual property rights is sufficient, but there are difficulties with its implementation and differences with international law.

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Submitted 30.11.2020

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Abstract

This article is devoted to the analysis of legislation and scientific works on ways to protect intellectual property rights. Material property existed long before the development of the first state, therefore, its protection has long been enshrined in many regulations, sufficiently studied and tested in practice. Intellectual property gained its importance much later - with the advent of a democratic society.

Using methods of cognition, such as generalization and synthesis, the analysis of scientific works and legal framework of Ukraine and international experience is carried out, the list of illegal actions aimed at infringement of intellectual property rights and currently taking place is determined.

The analysis and the obtained data revealed discrepancies between the regulatory framework and methodology of Ukraine with international law and the problem of practical application of certain rules.

Keywords: *intellectual property law, protection of intellectual property rights, subjects of intellectual property law, objects of intellectual property law, offenses.*

UDC 346.2
DOI: 10.31733/2078-3566-2020-5-172-175

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BANKRUPTCY OF THE ENTERPRISE AND ITS REHABILITATION

Олена Нагорна. БАНКРУТСТВО ПІДПРИЄМСТВА ТА ЙОГО САНАЦІЯ. Висвітлено сутність та зміст процесу банкрутства, а також санації, як основного засобу подолання кризового становища підприємства. В зв'язку зі складною економічною ситуацією, що склалася в Україні за сучасних умов, окремим питанням удосконалення та виходу з економічно нестабільного становища суб'єктів господарювання є вжиття санаційних заходів. Проведений аналіз нормативно-правової бази, якою регламентується даний процес. Окреслено основні прорахунки виконавчої та законодавчої влади під час побудови стратегії дій у разі виникнення складного становища підприємств. Проведено паралель між системою ефективних заходів, котрі проводять на Заході для попередження банкрутства, та слабкими заходами вітчизняного законодавства. Надано визначення поняття санації, та заходів, котрі повинні бути присутні під час її реалізації. Основну увагу приділено відсутності конкретної стратегії та порядку дій для ефективного відновлення платоспроможності та стабільності суб'єктів господарювання, а також надані можливі шляхи його вдосконалення. Практичне значення отриманих результатів полягає в тому, що вони можуть бути використані в діяльності підприємства в процесі вжиття антикризових заходів.

Ключові слова: *банкрутство, підприємство, санація, криза, процедура, суб'єкт господарювання.*

Relevance of the research. Taking into account today's working conditions of enterprises, opportunities for their development and economic opportunities against the background of the global crisis, we can say that this period has become the biggest challenge for entrepreneurship for the entire period of activity. Analyzing the processes of entrepreneurship in Ukraine, we can say significant mistakes in building strategy and tactics by the legislature and the executive. First of all, for the future development of Ukrainian business needs an effective mechanism of state regulation in this area.

Previously, the world implemented two different models of bankruptcy law. The first, the so-called American, was based on the principles, the essence of which was rehabilitation, as a means of revival and rehabilitation of the enterprise. For another model, the British, bankruptcy became the only option for a business entity to be able to settle with creditors at the expense of the debtor's funds. So far, developed countries have learned to integrate these two

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models.

Recent publications review. With the growth of instability in the economic market, in the political arena and the spread of post-crisis panic among the population, the level of interest among researchers in ways to address negative phenomena in enterprises, methods and ways to overcome the crisis, including rehabilitation. Western research is mainly aimed at the reincarnation of enterprises and providing conditions for further stable work compared with domestic experience. The phenomenon of remediation, and its individual aspects have been the subject of a number of studies, reflected in the works of such scientists: Becker R., Skull A.V. , Makarenko P.M., Langendorf D., Ben T. G., Chupisa A. V., Kristena U., Karpun I. M., Sazonets I.L., Sabluk P.T., Layko P.A., Tereshchenko O.O., Blank I.A. and others. Their work has made a significant practical contribution to the study of bankruptcy and financial recovery of enterprises.

The subject of research was also the institution of bankruptcy in general. Special scientific literature consists of theoretical foundations for economics, the structure of its system, positioning in matters of state regulation - all these issues were dealt with by such scientists as Dehtyar A., Dudin T., Yurchyshyn V., Motrenko T., Amosov O., Guberna G., Dorofienko V., Varnaliy Z., Radysh J. and others.

The article's objective is to scientifically and theoretically substantiate the importance of effective and well-established work of the bankruptcy institution, the problems of reincarnation of the economy of bankrupt enterprises, the mechanism of state regulation of market relations, as well as the development of basic areas for reorganization.

Discussion. According to the provisions of domestic law, bankruptcy is the activity of the debtor, which is recognized by the commercial court, which consists in the impossibility of restoring its solvency and satisfaction of creditors' claims determined by the court through the liquidation procedure [1]. In addition, it can be defined as an economic situation that has occurred in an entity as a result of a crisis caused by internal or external factors that has caused a systemic crisis. It is important to remember that the inability of the enterprise to make payments in accordance with the debt to creditors must be expressed [2, p.110].

- Bankruptcy proceedings in Ukraine are regulated by the Commercial Court, the Code of Ukraine on Bankruptcy Procedures and the Law on Enforcement. Bankruptcy proceedings originate when the undisputed claims of a creditor or the claims of several creditors amount to at least three hundred minimum wages [3]. The status of the debtor as a bankrupt is granted by the Arbitration Court when there are no proposals for reorganization or disagreement of creditors with its terms. It would be appropriate to define the phenomenon of bankruptcy as the way in which businesses are "filtered". For a market economy, this phenomenon is common, but the condition of fair competition is possible only in the case of a transparent procedure, an effective mechanism and equal rights of participants in the procedure.
- As world practice shows, bankruptcy is a problematic and difficult process, like any other disintegration, but from which it is clear that the fact of unproductiveness does not always mean turning the producer into a bankrupt.
- Participants in bankruptcy proceedings are state structures and bodies provided by current legislation:
- The body conducting the case itself (Arbitration Court);
- The structure, which in case the bankrupt enterprise is state-owned, will be authorized to temporarily dispose of its property (State Property Fund);
- Organizations and citizens who have expressed a desire to participate in the restoration of the enterprise (sanatorium);
- Firm that confirms the insolvency of the debtor company (audit firm);
- The commission appointed by the Arbitration Court after the debtor is confirmed bankrupt, in which the administrator of the property (liquidation commission) must participate [1].
- The goal set by the institution of bankruptcy is expressed in ensuring the requirements of the state and creditors, and not the liquidation of the enterprise. That is why bankruptcy is one way to solve problems in economic relations, which is an effective means of state regulation, the substantive part of which is to create a business environment on a civilized basis, the formation of state protection of all market participants, settlement of disputes between market participants [4].
- The problem of financial recovery of enterprises depends on several factors:
- The legislator did not clearly define the aspect of determining creditors during the