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CRIMINAL AND CRIMINAL PROCEEDING PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

Introduction. *The right to the protection of intellectual property arises from its owner at the moment of breach or contestation of his rights and interests protected by law and is realized within the framework of civil, criminal, and administrative legal relations.*

Problem Statement. *While exercising the right to protect intellectual property in the field of criminal law and criminal proceedings, there arises the problem of guaranteeing individual rights.*

Purpose. *The purpose is study the guarantees of individual rights, which are realized in the course of protecting intellectual property rights in criminal proceedings.*

Materials and methods. *The research is based on the legislation of Ukraine and international legal acts; it involves methodological, dialectical, systemic, logical methods, as well as the method of comparative law.*

Results. *Identified guarantees to ensure the rights of the offended party of a criminal offense related to breach of intellectual property rights.*

Conclusions. *Specific guarantees for securing the rights of offended party whose intellectual property rights are infringed include as follows: 1) the offended party is entitle to file a statement of offense, to file a civil lawsuit for damage caused by a criminal offense, to make a conciliation agreement; 2) the exercise by the offended party of his right to file a statement of offense committed against him gives rise to a legal consequence that is the opening of criminal proceedings; 3) investigator/prosecutor shall record the relevant information to the Unified Register of Pre-Trial Investigations, to initiate an investigation; the court shall handle a civil lawsuit, award judgment on it, and perform other responsibilities to secure the offended party's rights; 4) the criminal procedure law establishes responsibility for failure to fulfill obligations related to guaranteeing the rights and legitimate interests of parties of criminal proceedings.*

Keywords: protection, intellectual property, criminal law, criminal proceedings, methods of protection, protection of rights, and offended party.

The intellectual property owner gets the right for protection of his intellectual property when somebody breaches or contests his rights and interests secured by law. This right is realized within the framework of civil, criminal, and administrative legal relations that arise in connections thereof [1, 51].

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The information vector of Ukrainian society development testifies to the relevance of this research. Nowadays, Ukraine has been building an information society, implementing innovative projects, creating preconditions for joining the European Union as organization that deals with trade policy, among others. The development of the information society cannot be imagined without the development of intellectual property sphere.

It should be noted that the legislation of Ukraine secures the protection of intellectual property within the framework of criminal law and criminal procedural relations. In addition, Ukraine has recognized the European Convention on Human Rights and Fundamental Freedoms [2] with related protocols and the practice of the European Court of Human Rights as source of rights. In particular, the First Protocol to the European Convention on the Protection of Human Rights and Fundamental Freedoms dated 03/20/1952 states that every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided by law and by the general principles of international law (Art. 1) [3]. In its decisions the European Court of Human Rights has established that provisions of Article 1 of Protocol No. 1 are applicable to intellectual property as such (Anheuser-Busch Inc. v. Portugal, § 72) [4]. For example, it is applicable to applications for the registration of trademark before such a trademark is registered (ibid., § 78), patents (Smith Kline and French Laboratories Ltd v. The Netherlands; Lenzing AG v. The United Kingdom (Commission decision), copyright (Melnychuk v. Ukraine (dec). Copyright holders are protected by Article 1 of Protocol No. 1 (Neijand SundeKolmisoppi v. Sweden; SIA AKKA / LAA v. Latvia, § 41). This provision is also applicable to copyright for translation of novels (SC Editura Orizonturi SRL v. Romania, § 70), as well as to the copyright for create music works and economic interests arising from them under licensing agreement SIA AK / LAA v. Latvia. 55) [5]. Proceeding from the above mentioned one can state that intellectual property is protected both at national and international levels. In order to harmonize the national and international regulations in the sphere of intellectual property it is necessary to improve ways and methods used in national law in the aspect of their compliance with decisions of the European Court of Human Rights.

With regard to national methods of protection of intellectual property rights, we consider it appropriate to study the criminal law and criminal procedural ways. It should be noted that the effectiveness of criminal law and criminal procedural methods of protection of intellectual property rights depends on the perfection of the regulatory framework, the infrastructure of the national system of legal protection of intellectual property, including criminal law and procedural means.

Intellectual property may be protected both through jurisdictional means, i.e. by recourse to competent government bodies and officials, and through non-jurisdictional means, in particular, self-help, i.e. by the intellectual property owner who takes certain actions aiming at defending their rights and legitimate interests. Undoubtedly, criminal law and criminal procedural methods of intellectual property protection belong to the jurisdictional means, as they provide for recourse to law enforcement agencies with further court proceedings.

Firstly, we should refer to the sectoral legislation that contains the component elements of crimes related to infringement of intellectual property rights. The analysis of the Criminal Code of Ukraine (hereinafter referred to as the CCU) allows us to conclude that there is no separate section of the Special Part related to crimes in the field of intellectual property. However, the following group of rules provides legal protection of intellectual property: Art. 176 *Infringement of copyright and related rights*, Art. 177 *Infringement of the rights to an invention, utility model, industrial design, IC chip layout design, plant variety, innovation*, Art. 203-1 *Illegal circulation of disks for laser reading systems, matrices, equipment and raw*

materials for their production, Art. 231 *Illegal collection with intention of use or use of information that constitutes a trade or banking secret*. In most cases, such actions are punishable by a fine, and in some cases, by correctional labor or imprisonment (Art. 176, 177) [6]. In view of the above, it can be stated that in the substantive law, in contrast to the procedural law, the only way to protect intellectual property is the proper legislative enshrinement of relevant regulations that define the composition elements of criminal offenses and responsibility for their commission. Based on this, it is necessary to focus on the rules of criminal procedure law, which determine the procedure for applying criminal law and indicate exactly how to implement the substantive law requirements. According to researchers, committing a crime "brings to life" criminal procedural relations... It can be stated that the criminal procedural relations trigger the underlying substantive (criminal law) relations. The presence or absence of protective criminal law relations can be established only within the limits of criminal procedural relations [7, 39]. We agree with the above thesis and add that in the course of criminal process all other methods of intellectual property rights protection, which can be defined as criminal procedural methods, are implemented.

While studying the methods of protection implemented in the field of criminal procedure, first of all we should note that the objectives of criminal proceedings are to protect individuals, society and the state from criminal offenses, to safeguard the rights, freedoms, and legitimate interests of the parties to criminal proceedings, and to ensure prompt, complete, and impartial investigation and trial so that anyone who commits a criminal offense is prosecuted to the extent of his guilt, no innocent person is accused or convicted, no person is subjected to unreasonable procedural coercion, and each party to criminal proceedings is subject to proper legal procedure (Art. 2 of the Criminal Procedure Code of Ukraine (hereinafter referred to as the CPCU)). Having defined as a task the protection of the individual, society, and the state from criminal offenses, the safeguard of the rights, freedoms, and legitimate interests of parties to criminal proceedings, the legislator, in our opinion, put in the first place the subjects of criminal proceedings involved in criminal trial. The means of securing these tasks are criminal procedural guarantees, in particular, guarantees of securing the rights of parties to criminal proceedings. In this regard, Bazhanov M. I. and Hroshevyi Yu. M. note that the essence of the system of procedural guarantees in criminal proceedings manifests itself: a) through the enshrinement of the rights of parties to the trial in the criminal procedure law; b) the availability of a real opportunity to exercise these rights during the proceedings; c) observance of these rights by parties involved in inquiry and investigation, prosecutor and court; d) the consequences of the breach of the established rights of parties and failure to fulfill obligations to comply with them [8, 9—10]. It should be noted that the above approach remains relevant today. In view of this, criminal procedural guarantees of securing the rights of parties to criminal proceedings shall be understood as follows: the rights of parties to the trial, which are enshrined in the criminal procedure law; the availability of a real opportunity to exercise these rights in the course of criminal proceedings; observance of the rights of parties to criminal proceedings by investigator, prosecutor, and court; enshrinement in the criminal procedure law liability for breach of the rights of parties and failure to comply with their obligations to observe these rights. At the same time, it should be pointed out that to ensure the effectiveness of guarantees, they shall be implemented comprehensively. To study the issue of protection of intellectual property rights is impossible without studying the guarantees of individual rights exercised in the course of such protection in criminal proceedings.

First of all, it should be noted that the investigator/prosecutor shall record information about the criminal offense in the Unified Register of Pre-Trial Investigations, to initiate an investigation and, within 24 hours since such information is

recorded, to provide the applicant with an extract from the Unified Register of Pre-Trial Investigations. In this case, sources of such information may be statement of offense, independent detection from any source of facts that may testify to commission of a criminal offense, by investigator or prosecutor. The investigator who conducts pre-trial investigation is appointed by chief officer of pre-trial investigation body. The trigger for opening the pre-trial investigation is record of information into the Unified Register of Pre-Trial Investigations (parts 1, 2 of Art. 214 of the CPCU). Thus, the right of the offended party to file a statement of offense, in particular, an infringement of intellectual property, triggers to the duty of investigators, prosecutors to accept such a statement and to register it. This interrelation of rights and obligations is a guarantee of the rights of parties to criminal proceedings, including the rights of parties whose rights have been infringed by an intellectual property crime.

It should be noted that the pre-trial investigation of criminal offenses under Art. 176, 177, 203-1, 231 of the CCU shall be carried out by investigators of the National Police (Part 1 of Art. 216 of the CPCU). By the way, the criminal proceedings related to the crimes under the group of norms of the Criminal Code of Ukraine, which provide legal protection of intellectual property, shall be conducted as private prosecution (Art. 477 of the CPCU). The criminal proceedings in the form of private prosecution are proceedings that can be initiated by investigator/prosecutor only based on the offended party's statement of offense under Art. 477 of the CPCU. The institution of private prosecution is an exception to the principle of publicity, which is fundamental in criminal proceedings.

Having defined in Part 1 of Art. 477 of the CPCU private prosecution as proceedings that may be initiated by investigator/prosecutor only based on of the offended party's statement, the legislator determines that the legal position of the offended party is the only condition for such a special procedure that is private prosecution. In private prosecution, the offended party's will and his assessment of the wrongful act against him are of priority importance. The offended party can either be proactive, i.e. file a statement of offense investigator/prosecutor, which is the basis for opening of criminal proceedings, or be retroactive, i.e. waive his right to file such a statement, which makes it impossible to initiate proceedings. In view of the above, the application of criminal procedural method in the case of infringement of intellectual property rights is impossible unless the offended party has the will. Therefore, only the proactive legal position of the offended party in private prosecution proceedings gives rise to a legal consequence that is the opening of criminal proceedings and allows the implementation of criminal procedural methods of protection of intellectual property rights.

The above reasoning has been confirmed by the Supreme Court stating that choosing a way to respond to a crime, the offended party, at his discretion, makes decision how this illegal act affects his interests, how effective is recourse to court proceedings, and in the case of opening such proceedings, whether it is appropriate to continue it. The statement of the offended party testifies to his decision to protect his interests by criminal proceedings. The will of the offended party to bring the offender to justice is a necessary driving force for private prosecution [9].

As mentioned above, the grounds for initiating private prosecution is the submission by a person of a statement of criminal offense. The statement of the offended party is proposed to be interpreted as a procedural act that has several functions in the proceedings: it is a component of grounds for initiating proceedings; a source of information about facts of crime [10, 48].

It should be noted that the law does not establish uniform requirements for the form and content of the offended party's statement of offense. It may be submitted both orally and in writing with information that the offended party deems necessary to provide. In accordance with paragraph 2 of Section II of the Regulations on the Procedure

for Keeping the Unified Register of Pre-Trial Investigations, information on a criminal offense set forth in the statement, notice or other source shall contain a summary of facts that may indicate a criminal offense [11]. In our opinion, this provision facilitates the offended party's access to justice and protects the process from formalism.

As the CPCU was adopted in 2012, a fundamentally new procedure for pre-trial investigation within private prosecution has been established. With the reform of criminal procedure legislation, the main feature of the private prosecution procedure in Ukraine, like in many other countries, is the exclusive right of offended party to initiate a pre-trial investigation and to make a conciliation agreement in such proceedings regardless of the crime severity. In addition, it should also be noted that pre-trial investigation in these criminal proceedings is carried out, as a general rule, in the same way as in public prosecution, in particular, proving evidence of facts of crime is responsibility of pre-trial investigation bodies. This is an additional guarantee of fulfilling the tasks of criminal proceedings, namely, prompt, complete, and impartial investigation and trial (Art. 2 of the CPCU).

For example, in Germany, crimes against intellectual property rights are also mostly handled as private prosecution. According to Art. 77 of *Strafprozessordnung* (Germany's Code of Criminal Procedure), if an offense is prosecuted only based on the statement, only the offended party or his representatives may file a statement, unless otherwise provided by law. In the case of private prosecution, the offended party lodges a complaint with land department of justice. However, the land department, having received the complaint, does not open proceedings until unsuccessful attempt of reconciliation by the offended and the accused parties has been proved. In this case, depending on the land/district where the case is entertained, the reconciliation is handled by different bodies (community, land district of justice, reconciliation board or mediator). In the case of unsuccessful attempt, they issue a special certificate to the claimant. The offended party attaches this certificate to his complaint and submits it to the court. In the case of private prosecution, the accused party is entitled to file a countercharge. In this case, a complaint in private prosecution may be withdrawn at any time by the person who filed it. However, if the trial has already opened, it cannot be done unless upon the consent of the accused party. In private prosecution cases, the offended party may appear before court as a private prosecutor, without the public prosecutor's office involved. A low-income offended party who acts as a private prosecutor private prosecution may apply for assistance from the state to conduct the trial [12, 99].

In Austria, for the vast majority of cases, the public prosecution applies, according to which the prosecutor's office, having conducted an inquiry, submits materials to the court for reviewing the merits of the case. At the same time, crimes against intellectual property belong mostly to private prosecution cases. Pursuant to the applicable criminal procedure law of Austria, criminal prosecution in the cases of private prosecution is initiated only based on a complaint from the offended party. However, it is allowed to terminate the proceedings upon achieving a reconciliation of the parties. In pre-trial investigation, the rights of the offended party acting as a private prosecutor are somewhat restricted by law as compared with the rights of the prosecutor's office. However, the prosecutor's office is excluded from the court trial in this case, with the private prosecutor granted with all the procedural rights of the prosecution since the trial is brought to the court. If necessary, the private prosecutor is entitled to request prosecutor's support in the court trial [13, 88].

The criminal procedure law of France does not formally enshrine private prosecution, nor provides for the participation of individuals in the prosecution together with the prosecutor's office. Offended party is entitled only to file a statement based on which criminal proceedings are initiated, as well as to take part in the case as a civil plaintiff. Since the offended party lodges a complaint,

the prosecutor is given full freedom of action and individually upholds the charge in court. If the prosecutor for some reason withdraws the charge, the individual is entitled to demand further trial as a private prosecutor, but in practice rarely exercises this right, because it is very costly, and if the accused party is found not guilty. the offended party shall pay the costs associated with unsubstantiated prosecution [14, 49]. Thus, despite the fact that in France there is no official recognition of the institution of private prosecution, it can be stated that it actually exists and in cases of infringement of intellectual property rights in France there is the procedure for criminal proceedings in the form of private prosecution.

If return to the national procedure for the investigation of criminal offenses concerning the infringement of intellectual property rights, it should be emphasized that a person who has suffered from pecuniary and / or non-pecuniary damages resulting from a criminal offense or other socially dangerous act is entitled in the course of criminal proceeding before the opening of the court trial to file a civil lawsuit against a suspect, an accused party or a natural or legal person who is legally liable for damage caused by the actions of the suspect, accused party or person immune from prosecution who committed a socially dangerous act (Part 1 of Art. 128 of the CPCU). That is, if a criminal offense under Art. 176, 177, 203-1, 231 of the CCU results in pecuniary and / or non-pecuniary damages, the offended party is entitled to file a civil lawsuit in the course of criminal proceedings and thus to make a claim for pecuniary and/or non-pecuniary damages. The right of a person to file a civil lawsuit in criminal proceedings corresponds to the duty of investigator, prosecutor or court to accept such a lawsuit, to establish the facts to be proved in criminal proceedings, in particular, the type and amount of damages caused by a criminal offense (Part 1 of Art. 92 of CPCU), which guarantees the rights of parties to criminal proceedings, in particular, those who protect intellectual property rights.

It is well known that the simultaneous handling of criminal proceedings and civil lawsuits by court has several advantages that protect the rights and legitimate interests of persons who have suffered harm from a criminal offense: first, the civil lawsuit in criminal proceedings allows saving costs, insofar as there is no longer need to handle the same case twice. At the same time, the law states that if a civil lawsuit is dismissed without prejudice, the complainant is entitled to file it in civil proceedings (Part 7 of Article 128 of the CPCU); second, the handling of a civil lawsuit within criminal proceedings ensures a quick restitution of the infringed rights of the offended party, as it does not require a separate handling of the lawsuit in civil proceedings. Third, the handling of a civil action in criminal proceedings precludes the adoption of conflicting conclusions on the same issues, since the rejection of a lawsuit in civil, commercial, or administrative proceedings deprives the civil plaintiff of the right to bring the same action in criminal proceedings. A person who has not filed a civil lawsuit in criminal proceedings, as well as a person whose civil lawsuit has been dismissed without prejudice is entitled to file it in civil proceedings (Parts 6, 7 of Art. 128 of the CPCU). Fourth, the offended party, witnesses, experts, translators, and others are exempted from having to appear twice in the trials on the same issue. This is especially true in cases where a person has experienced emotional suffering as a result of a criminal offense against him/her. In this case, it is impractical to force him/her to take part in the proceedings twice and to repeatedly recall about the facts of crime committed against him/her. Fifth, this method of protection of the infringed rights of the offended party, as compared with other non-contentious methods, has a significant advantage because its implementation in criminal proceedings is carried out with the active involvement of civil plaintiff and defendant, which contributes to a comprehensive investigation of all facts, in particular those relating to the nature and extent of damages, as well as the proper settlement of the case [15, 25].

Sixth, the type and amount of damages caused by a criminal offense are the facts to be proved in criminal proceedings (paragraph 3, Part 1 of Article 93 of the CPCU). To establish such facts in criminal proceedings, as a rule, is responsibility of investigator/prosecutor (Part 1 of Art. 92 of the CPCU). In civil proceedings, each party shall prove the facts to which it refers as the ground for its complaints or objections (Part 3 of Article 10 of the CPCU). As one can see, in criminal proceedings, the offended party, in contrast to the civil plaintiff in civil proceedings, is released from the obligation to prove the type and amount of damages as a basis for compensation for the damages caused to it. Seventh, the advantage of filing a civil lawsuit in criminal proceedings is that the plaintiff who files a claim for compensation for pecuniary damages caused by a criminal offense is exempt from court fees (paragraph 6, Part 1 of Article 5 of the Law of Ukraine on Court Fees) [16], except for compensation for non-pecuniary damage to natural persons. In this aspect, the legislator's approach seems incomprehensible, as this provision actually deprives a person who has suffered non-pecuniary damages of the right for compensation in the case if he/she has a lack of funds to pay court fee. It is clear that offended party shall be given equal opportunities to protect property and non-property interests in criminal proceedings. In view of the above, we propose to read paragraph 6 of Part 1 of Art. 5 of the Law of Ukraine on Court Fees as follows, "plaintiffs shall be exempt from the payment of court fee for filing claims for compensation for pecuniary and non-pecuniary damages caused by a criminal offense" [17, 134—135].

Summarizing the above advantages of filing and handling a civil lawsuit in criminal proceedings, it can be states that the simultaneous criminal and civil proceedings in no way contradicts the objectives of criminal proceedings, but is an additional guarantee of restoration of infringed rights and legitimate interests, insofar as it does not involve an offended party or a civil plaintiff (persons whose rights and legitimate interests have been breached) into the evidentiary process, as well as is a separate criminal procedural way to protect intellectual property.

In addition, it should be noted that the United States uses a similar approach to determining the procedure for compensation. Having analyzed the protection of intellectual property rights in the U.S. judicial system, the researchers note that "most cases to ensure the protection of intellectual property rights in the United States are resolved by means of civil lawsuits or criminal proceedings in courts of respective jurisdiction" [1, 102].

With regard to criminal procedural methods of protection of intellectual property in Ukraine and guarantees of their implementation, it should be noted that after pre-trial investigation, prosecutor shall apply to the court with a charging document. At the same time, proceedings in the case of crimes against intellectual property fall under the category of crimes defined by the criminal procedure law, in which a reconciliation agreement may be made between the offended party and the accused party (Art. 469 of the CPCU). However, regardless of the further development of criminal proceedings, the charging document or the charging document together with the agreement signed by the parties is submitted to the court of the first instance (in accordance with paragraph 22 of Part 1 of Art. 3 of the CPCU, local court of general jurisdiction that has the right to award a sentence or a decision to close criminal proceedings; the Supreme Anti-Corruption Court in criminal proceedings for crimes within its jurisdiction pursuant to the CPCU; and the Court of Appeal in the case as established by the CPCU). For proceedings related to criminal offenses against intellectual property, the court of first instance is a local court of general jurisdiction; the principle of specialization does not apply here, i.e. in Ukraine, there are no specialized courts to deal with cases of intellectual property infringement.

Similarly, in the United Kingdom, there is no specialized criminal court to deal with intellectual

property issues, so criminal cases are heard by criminal courts of general jurisdiction. In practice, the cases related to infringement of intellectual property rights may be handled in accordance with the procedure for private prosecution [18]. In Switzerland, the competent authorities for the prosecution and judgment of an offence are those of the place where the act was committed or of the place where the act occurred. The prosecution and judgment of an offence is a matter for the cantonal authorities (Art. 84—85 of the Swiss Federal Act on Patents for Inventions) [19].

In the United States, for example, infringement of patents for inventions or copyright infringement cases shall be heard in federal courts only, since they fall entirely within the federal jurisdiction. In contrast, trade secret or trademark infringement actions may be brought in local courts, depending on the law under which the lawsuits are filed (either federal or local). The main differences with civil proceedings are the elements of the proceedings and the burden of proof. In criminal case, intent is required, while in civil proceedings, proof of intent is not required. The burden of proof in a criminal case falls on the prosecutor. The subjects of criminal liability are individuals and legal entities [1, 104].

Hence, the analysis of national and foreign criminal procedural law, legislation in the field of intellectual property protection, and law enforcement practice has enabled studying the guarantees of the rights of parties to criminal proceedings, in particular, those who protect intellectual property rights. In this case, the methods of intellectual property protection, which are implemented in the field of criminal law and criminal procedure law may be attributed to statutory remedies.

The research has allowed us to conclude that the enshrinement of the rights of parties and the consequences of breach thereof and non-fulfillment of obligations for their observance in the criminal procedure law, the availability of real opportunity to exercise these rights in criminal proceedings, and observance by investigators, prosecutors, and courts of the rights and legitimate interests of parties to criminal proceedings are criminal procedural guarantees of the rights of the parties to criminal proceedings. Specific guarantees of the rights of the offended party in the case of a criminal offense related to the infringement of intellectual property rights are as follows: 1) the right to file a statement of offense under Art. 176, 177, 203-1, 231 of the CCU, the right to lodge a civil lawsuit for damages caused by a criminal offense, and the right to make a conciliation agreement and other rights enshrined in the CPCU; 2) since crimes against intellectual property rights belong to private prosecution proceedings, the exercise of the offended party's right to file a statement of offense committed against it gives rise to a legal consequence that is the opening of criminal proceedings; 3) investigator/ prosecutor shall record the relevant information in the Unified Register of Pre-Trial Investigations and initiate an investigation; the court shall handle a civil lawsuit, award judgement on it, and perform other responsibilities to secure the offended party's rights; 4) the criminal procedure law establishes responsibility for failure to fulfill obligations related to securing the rights and legitimate interests of the parties to criminal proceedings.

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КРИМІНАЛЬНО-ПРАВОВИЙ ТА КРИМІНАЛЬНИЙ ПРОЦЕСУАЛЬНИЙ ЗАХИСТ ПРАВ ІНТЕЛЕКТУАЛЬНОЇ ВЛАСНОСТІ

Вступ. Право на захист інтелектуальної власності з'являється у його власника в момент порушення або оспорювання його прав та охоронюваних законом інтересів і реалізується в рамках цивільних, кримінальних та адміністративних правовідносин, які виникли при цьому.

Проблематика. Під час реалізації права на захист інтелектуальної власності у сфері кримінального права та кримінального процесу постає питання реалізації гарантій прав особи.

Мета. Вивчення гарантій прав особи, які реалізуються під час захисту прав інтелектуальної власності у кримінальному провадженні.

Матеріали й методи. Інформаційну основу дослідження склали законодавство України та міжнародно-правові акти; методологічну — діалектичний, системний, логічний методи, а також метод порівняльного правознавства.

Результати. Визначено гарантії забезпечення прав потерпілого від кримінального правопорушення, пов'язаного із порушенням прав інтелектуальної власності.

Висновки. Специфічними гарантіями забезпечення прав потерпілого від кримінального правопорушення, пов'язаного із порушенням прав інтелектуальної власності є 1) право подачі заяви, повідомлення про кримінальне правопорушення, подання цивільного позову про відшкодування шкоди, завданої внаслідок кримінального правопорушення, право укладення угоди про примирення; 2) реалізація потерпілим свого права на подачу заяви, повідомлення про вчинене щодо неї кримінальне правопорушення породжує правовий наслідок — початок кримінального провадження; 3) обов'язок слідчого, прокурора внести відповідні відомості до Єдиного реєстру досудових розслідувань, розпочати розслідування; обов'язок суду — розглянути цивільний позов та прийняти рішення по ньому та інші обов'язки, які забезпечують реалізацію потерпілим своїх прав; 4) встановлення у кримінальному процесуальному законі відповідальності за невиконання обов'язків щодо забезпечення прав та законних інтересів учасників кримінального провадження.

Ключові слова: захист, охорона, інтелектуальна власність, кримінальне право, кримінальний процес, способи захисту, захист прав, потерпілий.