On 1st January 2016, the amended provision of the Act of 28th February 2003 Bankruptcy Law came into force. The ten-year period of Bankruptcy and Reorganization Law usage enabled critical assess the fulfillment of the particular goals of the regulation in evolving economic conditions. Part of solutions implemented in 2003 and taken over from the pre-existing regulation from 1934 have proved themselves in practice. The remaining provisions analyzed based on current experience indicated certain dysfunctions and justified necessity of carry out the reform[1].

Bankruptcy Law had been treated in modern literature as one of the branches of Law, which regulates legal effects regarding insolvency and its risk covered by this law[2]. The separation of the Bankruptcy Law as a separate branch of law was argued by the objective reason concerning the specific type of social relations to which this branch of law refers to. Apart from objective reason, significant meaning was also functional aspects in a set of standards point out the peculiar functions in terms of bankruptcy law. Essential reason the subject matter of this work was also subjective. The Bankruptcy Law regulates the relationship between insolvent debtors and their creditors[3]. The feature of the Bankruptcy Law is creation of unique kind of relationship between bankrupt and its creditors. Creditors enter in special relation with other creditors under Committee of creditors, creditors' meeting. Proceedings regulated by the provision should be conducted so that claims of the creditors can be settled as much as possible, and if reasonable consideration allows the current debtor's company to be preserved. In the doctrine this term is taught as granting the primacy of the principle of creditors' protection over the need to protect the debtor. Majority of authors adopt superiority of creditors' protection over debtor's needs. The amended provisions are implemented by institutions increasing the influence of creditors on proceedings while limiting the role of court and judge – commissioner. The project assumptions of provision of the Bankruptcy Law was to reinforced creditors' position in the course of proceedings and provided them real influence on its course. The authority representing creditors' business during the proceedings is Committee of creditors and creditors' meeting. This administrative bodies are realizing the main goals justified by the amended provisions.

Term of authority of bankruptcy proceedings, both against the background of the former Bankruptcy Law and the new one is a doctrinal term. In the old and new Bankruptcy Law, the

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1 Uzasadnienie projektu ustawy Prawo restrukturyzacyjne, Druk Sejmu VII kadencji Nr 2824, <URL http://www.sejm.gov.pl s. 2-3> [dostęp: 01.02.2016 r.].

2 K. Flaga- Gieruszyńska, *Prawo upadłościowe i naprawcze*, Warszawa 2005, s. 1.

3 R. Adamus, *Miejsce prawa upadłościowego i naprawczego w systemie prawa*, „Przegląd ustawodawstwa gospodarczego", nr 1/2011, s 16-22.

bankruptcy proceedings are civil court proceedings. Therefore, it will be necessary to make further consideration to attempt determination for the concept scope of term for bankruptcy proceedings body and reflection of this terminology in relation to definition of the civil proceedings authority.

The literature has not developed a commonly accepted definition of the bankruptcy proceedings authority. Most authors agreed to present a catalog of such bodies. According to O. Buber[4], due to the purpose of the bankruptcy proceedings, there is necessity to appoint special authority of bankruptcy proceedings, which are: judge – commissioner, trustee, Committee of creditors and creditors' meeting. They are bodies with statutory certain obligations, tasks and powers. The term of authorities of bankruptcy proceedings was also used by J. Korzonek, who described as the bodies of judge – commissioner, trustee, Committee of creditors and creditors' meeting. M. Allerhand defined the general term authority to refer to trustee, Committee of creditors and creditors' meeting. Commenting on art. 14 of the Act of 1934r., M Allerhand used the wording "establishment of authority" to determine judge – commissioner and insolvency administrator[5]. However, he did not specify the scope of this term. W. Broniewicz also tried to classify the bodies by introducing concept of division into process authorities, enforcement bodies and participants of the proceedings[6]. He included to the proceedings: court, the chairman, the judge – commissioner, trustee and his deputy, the manager of the separate property, his deputy, the court executive officer and the notary. He classified the Committee of Creditors and creditors'meeting as the Creditors'Authorities. S. Gurgul grouped the judge – commissioner, insolvency administrator, the Committee of Creditors and creditors'meeting as bankruptcy proceedings authority[7]. A. Witosz defined the judge – commissioner as a mandatory body of bankruptcy proceedings, trustee as autonomous authority, creditors' meeting as statutory body, which is also a creditors authority who in their own well-understood business should be interested in its operation. Committee of Creditors has been defined as one of two creditors authorities, which are supposed to be operate during the bankruptcy proceedings[8]. M. Koenner indicated that the main classification of bankruptcy and reorganization proceedings entities is division into authorities and participants[9]. Among the organs, he distinguished judicial authorities,

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4 O. Buber, *Polskie prawo upadłościowe*, Warszawa 1936, s. 85.
5 M. Allerhand, *Prawo upadłościowe, Prawo o postępowaniu układowym, Komentarz,* Warszawa 1937, s. 95.
6 W. Broniewicz, *Postępowanie cywilne w zarysie*, Warszawa 1999, s. 476-478.
7 S. Gurgul, *Prawo upadłościowe i układowe. Komentarz*, Warszawa 2000, s. 361, 366, 470, 496.
8 A. Witosz, A.J. Witosz, *Prawo upadłościowe i naprawcze, Komentarz,* Warszawa 2014, s. 418.
9 M. Koenner, *Likwidacja upadłościowa*, Warszawa 2006 s. 31.

which include the court and judge – commissioner, extrajudicial bodies proceedings, to which the trustee, the court supervisor, the administrator and their deputies are classified. He also included creditors' authorities like Committee of Creditors, creditors' meeting, preliminary meeting of creditors as the proceedings bodies. M. Strus- Wołos, who pointed out, that creditors meeting is an organ appearing in the bankruptcy proceedings, should act in the general interest of creditors. It is a subject of bankruptcy proceedings. Regulations of meeting of creditors is in division 2 chapter 2 of section III (participants of the proceedings) of title IV. Moreover, the author referred to doctrine statement, which shows that this body is called creditors meeting[10]. In support of the above thesis, she presented the opinion of Z. Świeboda, F. Zedler, A. Jakubecki, F. Zedler, S. Gurgul, P. Pogonowski and distinct statement of K. Piaseckiego. The author also drew attention to the non-uniform of the concept of the meeting of creditors. Apart from the fact that it functions in law as creditors' authority, it also can be discriminated to the second organizational and technical meaning of this concept. The Committee of Creditors was defined by author as collegial body of bankruptcy proceedings which should act in the name of collective interest of creditors as the entity of bankruptcy proceedings. According to Mr Zimmerman [11], the court, the judge-commissioner, the Committee of Creditors and the meeting of creditors are the bodies of the bankruptcy proceedings. The author pointed out that the law clearly delineates the actions of the judge-commissioner and court actions - in order to emphasize the different nature of these bodies in the proceedings. The creditors' meeting is the body of bankruptcy proceedings with the far-reaching competence. The committee of creditors is the one of the authorities of bankruptcy proceedings. P. Nazarewicz[12] distinguished judicial authorities whose purpose is to take specific activities, as well as the participants of the proceedings, to which the trustee, creditors and debtor were included. W. Opalski classified the judge-commissioner, insolvency administrator, and his deputy, manager of the separate property, creditors' meeting and Committee of creditors in authorities of bankruptcy proceedings[13]. A similar classification was introduced by K. Piasecki[14], who included trustee, committee of creditors and creditors' meeting.

P. Pogonowski considered the bankruptcy court, the judge–commissioner, trustee, the

10 M. Strus- Wołos, *Uprawnienia procesowe wierzycieli w postępowaniu upadłościowym,* Warszawa 2011 s. 91.

11 P. Zimmerman, *Prawo upadłościowe. Prawo restrukturyzacyjne,* Warszawa 2017 Legalis NB 4.

12 P. Nazarewicz, *Charakter postępowania upadłościowego oraz wpływ upadłości na procesowe postępowanie cywilne*, „Przegląd Prawa Handlowego" 1992/1, s. 13.

13 W Opalski, *Prawo handlowe* pod red. J. Okolskiego Warszawa 1999, s. 192-193.

14 K. Piasecki, *Prawo upadłościowe, prawo o postępowaniu układowym, bankowe postępowanie ugodowe wraz z komentarzami, Bydgoszcz 1994, s. 91.*

manager of the separate estate of debtor, creditors' meeting, the creditors' board, the court executive officer and the notary as authorities of bankruptcy proceedings. Other entities are participants in the bankruptcy proceedings[15]. F. Zedler[16] did not use the concept of authorities of bankruptcy proceedings but replaced as the authorities conducting the bankruptcy proceedings. He included the court, the judge-commissioner, trustee and his deputy, the court executive officer and the notary. The Committee of creditors and creditors' assembly was named as creditors' bodies nonetheless he classified them to the participants of the proceedings together with the bankrupt and the debtor. Thus, as the entity of the proceedings, we can include: the court announcing bankruptcy, the court considering appeals, the judge-commissioner, insolvency administrator and his deputy, manager of the separate estate of debtor and his deputy, the court executive officer, debtor (bankrupt), creditors represented themselves personally, and also as creditors' meeting and the Committee of creditors, heirs, curator, head of the voivodship labour office (etc.). However, only some of the entities listed above have the right to the individual actions of the proceedings - influencing its progress, shaping the legal situation of other entities. These are the bodies of bankruptcy proceedings[17]. To define the concept of authorities in bankruptcy proceedings, reference is made to the definition of civil procedure bodies. The term authority of civil procedure isn't statutory. It is doctrinal notion developed mainly based on the criteria named "interest of a given entity in the results of a case"[18]. Majority of the doctrine takes the view that civil law entities are classified into two groups: the first group of entities is usually referred to procedural and enforcement bodies, the second group as parties and participants of proceedings.[19]The first group includes, court, judge, court clerk, head of adjudicating panel, president of a court as well as the district court and court executive officer as enforcement authorities. The second group includes an entity which, in order to defend its own or other people's rights, initiates litigation. This applies to the both phases as contentious or non-contentious proceedings as well as to the enforcement proceedings. The above classification was made by comparing the particular entities involved in the proceedings. This standpoint was presented by M.

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15 P. Pogonowski, *Organy postępowania upadłościowego,* Warszawa 2003, s. 27.
16 F. Zedler, *Prawo upadłościowe i układowe...* s.4-6.
17 P. Pogonowski, *Organy postępowania upadłościowego,* Warszawa 2003, s. 29
18 A. G. Harla, *OOrgany postępowania upadłościowego a organy postępowania cywilnego w ujęciu systemowym, „Przegląd Prawa Handlowego 4/2006", s. 21.*
19 W. Berutowicz, *Postępowanie cywilne w zarysie*, Warszawa 1984, s. 121, W. Broniewicz; *Postępowanie cywilne w zarysie*, Warszawa 1999 s. 109; H. Dolecki, *Postępowanie cywilne, zarys wykładu*, Warszawa 2005, s. 2, 69; W. Miszewski, *Proces cywilny w zarysie*. Część I, Warszawa 1946, s. 6-7, 62; W. Siedlecki, Z. Świeboda, *Postępowanie cywilne. Zarys wykładu*, Warszawa 2004, s. 6-7.

Waligórski, who wrote „we divide the proceedings entities into two basic groups differing in their interest in result of the proceeding"[20]. The process is the one of the functions of public law performed by the state. All state functions performed by state are being done through its authorities. The state agencies, which are entrusted function to conduct related to the process, are called procedural bodies. Another criterion of differentiation has been presented by A.G. Harla, who took case as follows: "It can be concluded to present different criteria of distinguishing two groups of entity mentioned above. Thus, other criteria may be the government authorities regarding the settlement of civil cases and compulsory execution of consideration on the basis of enforcement tittles. So the bodies of the proceedings and execution have such power, and the parties and participants of proceeding do not have such power"[21]. Referring to the analysis of the word organ itself, it should be assumed, that it is ambiguous word with different meaning depending on which other word and in what context it will be used. From the above, it should be assumed, that the procedural and enforcement bodies would be called civil procedural authorities, which would characterize attitude to the outcome of the case, while the other entities including in civil proceedings would be participants in such action. The nomenclature adopted in this way should be also incorporated in the scope of bankruptcy proceeding. Analyzing the provisions of the bankruptcy law related to the creditors' bodies, first and foremost, it is necessary to systematize the matter related to the definition of the creditors under civil law, the bankruptcy law, and then explain the concept of the claims.

Including the definition of a creditor in civil law is of fundamental importance to the constructive concept of a creditor in bankruptcy proceedings. The Civil Code regulates legal relationship between natural and legal persons. The relations of legal and natural persons should be qualified as civil law relations, which the important feature is the equivalence of entities establishing such relationship. The conclusive criterion of equivalence is that entities that have established a legal relationship do not remain to each other in the relation of subordination. Thus, the authorized entity, the creditor in the contractual relations according to the Civil Code, will be the entity that has the subjective right to demand a particular behavior by a specific person, and thus demand that the debtor satisfy certain benefits. This position was also adopted in the doctrine of the civil law - the creditor is the entity referred to as the party entitled to demand fulfillment of the benefit. [22]

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20 M. Waligórski, *Polskie prawo procesowe cywilne. Funkcja i struktura procesu,* Warszawa 1947, część II, struktura procesy cywilnego s. 124.

21 A. G. Harla, *Organy postępowania upadłościowego...* s. 23.

The definition of both the creditor and the claims is determined in the Bankruptcy Law. According to S. Cieślak, the bankruptcy claim is that subject which satisfies the bankruptcy estate.[23] Therefore, character of the claim is not important, but subject, from which they are being satisfied. S. Gurgul speaks out against combining the categories of bankruptcy claim and claims of bankruptcy estate due to the grammatical interpretation. He takes a view that the creditors of bankruptcy estate can be considered as creditors, who have claims which are not coming on account of bankrupt[24]. It seems that the statement presented by S. Cieślaka is most accurate. A creditor is any entity that has a bankruptcy claim. From Art. 189 of the Bankruptcy Law is based that a creditor is both a creditor in a strictly civil-law sense, but also a creditor, who is authorized to pursue a public and law claim. Therefore, the bankruptcy law uses the wider concept of the creditors, rather than the civil code.

In order to exercise the powers by creditors and influence on conduct of the bankruptcy proceedings, the legislature has predicted institutions representing their interests. Institutions representing the creditors' interest during the bankruptcy proceedings are meeting of creditors and Committee of Creditors. They are collegial bodies whose primary form of the action is passing enactments which influence on procedure of bankruptcy proceedings. The legislature also reserved liability of each member of creditors' bodies, who violated with their behavior the applicable regulations.

Meeting of creditors is creditors' body in bankruptcy proceedings, appointed to fulfill the functions provided by Bankruptcy Law. This authority acts in the interest of all creditors. P. Zimmerman claims that the meeting of creditors is the body of bankruptcy proceedings with the most far-reaching competence.[25] It cannot be agreed with such conclusion. Meeting of creditors due to their complement, competences cannot be assigned to bankruptcy proceedings authority, and finally scope of the tasks reserved for the creditors does not support the view that most far-reaching competences are reserved for the meeting of creditors. In addition P. Zimmerman indicates that practical implication of meeting of creditors concerns the decision of agreement acquisition in taken in the proceedings with the possibility

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22 M. Safjan [w] : Z. Banaszczyk, A. Brzozowski, J. Mojak, L. Ogiegło, M. Pazdan, J. Pietrzykowski, W. Popiołek, M. Safjan, E. Skowrońska, J. Szachułowicz, K. Zawada, *Kodeks cywilny, Komentarz,* t. I red. K. Pietrzykowski, Warszawa 2002, s. 655; T. Wiśniewski [w]: G. Bieniek, H. Ciepła, S. Dmowski, J. Gudowski, K. Kołakowska, M. Sychowicz, T. Wiśniewski, Cz. Żuławska, *Komentarz do kodeksu cywilnego. Księga trzecia Zobowiązania,* t. I red. G. Bieniek, Warszawa 2002, s. 12.

23 S. Cieślak, *Charakterystyka pojęć wierzytelności upadłościowej, wierzyciela upadłościowego oraz sposobu zaspokojenia wierzytelności upadłościowej* „Przegląd Prawa Handlowego" 1997, nr. 12, s.22.

24 S. Gurgul, *Prawo upadłościowe...,* s. 553-554.

25 P. Zimmerman, *Prawo upadłościowe...,* s. 451.

of concluding the arrangement[26]. Such opinion points at contradiction in the view presented by P. Zimmerman regarding the legal nature of the meeting of creditors.

Its primary function, which should be fulfilled is the protection of creditors and ensuring that bankruptcy proceedings were conducted according to binding regulations, the principles of the social co-existence, economic and social purpose[27] to fully realize elementary functions of bankruptcy proceedings and strive to satisfy as much as possible all creditors. General provisions, which are supposed t protect creditors' interest indicated above should be treated as social standards, emphasizing the role of the social interest, in this case creditors, in the ongoing bankruptcy proceedings[28].

The bankruptcy proceedings can take place and finish, even if there was not single creditor's meeting[29]. Such situation will occurs first of all in cases, in which bankruptcy proceedings will run smoothly and there will not be necessary to convene a meeting of creditors, because no actions will be taken during the bankruptcy proceedings, and by law, were passed to the exclusive competences of meeting of creditors. However, if during the bankruptcy proceedings problems arise, which can be only solved by the meeting of creditors, regulation orders to appoint meeting of creditors[30]. The bankruptcy Law had not adopted the principle of creditors' autonomy, which essence consist of the fact that the creditors of the bankrupted debtor were appointing the authorities by elections, which holding the management of the bankruptcy estate and decided about manner of liquidation of assets of the bankruptcy estate[31].

According to system adopted by the German law, the court has control only over the ongoing bankruptcy proceedings, while the entire scope of making decision is in the hands of the creditors[32]. The Polish bankruptcy law as axis of the whole construction establishes by the court, which directs the course of bankruptcy and reorganization proceedings, while creditors' authorities ensure that bankruptcy proceedings are carried out in accordance with the primary purposes and functions of this law, and through resolutions affect to a certain extent the individual stages of bankruptcy proceedings. The separation of competences belonging to

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26 *Ibidem,* s. 451.
27 Szerzej: Z Łyda, *Funkcjonowanie klauzuli społeczno- gospodarcze przeznaczenie prawa,* „Prace Naukowe Uniwersytetu Śląskiego" nr 619, Katowice 1984, s. 68.
28 S. Dmowski, S. Rudnicki, *Komentarz do kodeksu cywilnego. Księga pierwsza. Cześć ogólna,* Warszawa 2001, s. 27.
29 S. Gurgul, *Prawo upadłościowe...,* s. 496.
30 W. Głodowski, *op.cit.,* s. 83.
31 S. Gurgul, *Prawo upadłościowe...,*s. 496.
32 J. Brol, *Niemieckie prawo insolwencyjne,* Instytut wymiaru sprawiedliwości Warszawa 1996 r., s. 35.

individual creditor institutions has been normalized in the rules of bankruptcy proceedings in a comprehensive manner, and the provisions regulating these matters are of the nature of mandatory provisions, which means that their application may not be dependent or excluded by judicial authorities[33]. Matters belonging competences of others judicial authorities cannot be effectively passed to recognition by the meeting of creditors[34].

Doctrine standpoint indicates that the decisions made by meeting of creditors are in the form of resolutions, which are conventional activities. They include declaration of intent of more than one entity and in opposed to contracts, all statements do not have to be compliant[35]. The legislator by protecting the creditors' interest allows passing the important resolutions, only by these creditors, who have been properly notified about the meeting. The resolution is validly adopted, when the required number of votes has been cast for it. It must be reordered. The resolution is a kind of declaration of creditors' institution intent, which their requirements are comprehensively regulated by law relating to the particular types of such persons. The resolutions taken by the meeting of creditors have dual nature. As procedural activities are assessed in terms of correctness of summons, notifications and announcement, quorum needed to vote on a resolution and the organization of the agenda of meeting. The court checks the fulfillments of primary formal requirements and the compliance of all activities, both actual and legal, made during the course of the meeting of creditors with the generally prevail provisions[36]. On the other hand, looking at the effects of the resolution, this activity may have material and legal character. In the majority of the cases, resolutions of meeting have constitutive nature, despite the resolutions which is only the opinion of the meeting in a given case.

Resolutions may have also declaratory character. It will only state the existence of a certain legal status. An example of such resolution is the opinion issued by meeting of creditors, which is being given the nature of the resolution[37]. A resolution that has been validly adopted, becomes bind from the moment it was passed. It does not have to be approved of confirm by anyone. Such resolution is not a subject to appeal, the exception of being unchallengeable is the possibility of its repeal. This right is granted by art. 200 of the Bankruptcy Law to the judge-commissioner[38].

Repealing the resolution of the meeting of creditors is an exception to the

33 *Ibidem*, s. 497.
34 J. Korzonek, *Prawo upadłościowe...*,s. 94.
35 Z. Radwański: *Prawo cywilne...*, s. 185-186.
36 W. Głodowski, *op.cit.*, s. 96.
37 D. Charpoński, *op.cit.*, s. 244.
38 W. Głodowski, *op.cit.*, s. 96-97.

principle that the resolutions are unchallengeable. From Art. 200 of the Bankruptcy Law, through interpretation and *maiori ad minus*, it can be assumed that the judge-commissioner may annul it entirely, and may only revoke a part of it. Repeal of a resolution of the meeting of creditors may take place if the resolution: is against law, violates good manners, grossly harms creditor's interest, which was against the resolution in the voting[39]. A resolution is against the law if it infringes binding laws, so those whose usage is not depending on will of the parties. The resolution may harm both substantive law and process[40]. The first case is when resolution infringes substantive law, while in the second case, when it is contrary to the procedures[41]. The second reason for repealing the resolution of the meeting of creditors is violation of good manners. This proviso is a vague term and belongs to the general clauses. The clause of good manners must meant principle of fairness, morality, customs and traditions, honesty, loyalty, so the behavior of members of society according to Christian values[42]. However, infringement of creditors' interest must be considered excessive protection of the interest of some creditors at the expense of protecting others. The violation may also occur if the losses of the creditor are not justified by the economic situation of the bankrupt.

The second authority of creditors in the bankruptcy proceedings is the committee of creditors. It is the representative body of creditors' interest in the course of bankruptcy proceedings. The committee of creditors is referred as bankruptcy authority, but it is not a creditors' body[43]. In the literature concerning legal character of committee of creditors, it was even stated that the committee of creditors "is rather a judge-commissioner's body facilitating control over the trustee"[44]. First of all, the committee of creditors holds a function as institution, which has consulting and auditing character[45]. In the literature, there is a view that this institution has ancillary role for judge-commissioner[46]. The institution has also control role related to the supervision over the activity of the official receiver[47]. The Committee of Creditors should undertake a number of activities related to the examination of the bankruptcy

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39 A. Jakubecki, F. Zedler, *Prawo upadłościowe i naprawcze...*, s. 544.
40 D. Zienkiewicz, *Prawo upadłościowe i naprawcze...*,s. 472.
41 P. Zimmerman, *Prawo upadłościowe...*,. s. 477.
42 S. Dmowski, S. Rudnicki, *Komentarz do kodeksu cywilnego Księga pierwsza część ogólna,* Warszawa 2001 s. 189.
43 *Ibidem,* s.486, 494.
44 O. Buber, *Prawo upadłościowe...*,s. 106.
45 S. Gurgul, *Prawo upadłościowe...*, Warszawa 2004, s. 577-578. W Głodowski, *op.cit.,* s. 102, P. Pogonowski, *op.cit.,*s. 235.
46 W Głodowski, *op.cit.,* s. 101.
47 R. Adamus, *Rada wierzycieli w postępowaniu upadłościowym z możliwością zawarcia układu z zarządem własnym,* „Monitor Prawny" rok 2006, numer 18, s. 2.

estate funds, issuing opinions and providing assistance to the trustee in this area. In this way, it have been given the character of an auxiliary authority in activities related to the supervision and control over the activity of the official receiver. Despite giving it this character of an auxiliary authority, the committee of creditors has also the rights related to granting the trustee the permission to perform actions specified in art. 206 Bankruptcy Law. Thus, the committee of creditors influences the further course of the bankruptcy proceedings. The committee of creditors, despite being classified as the creditors' authority, has largely been deprived of a nature of representing the interest of all creditors[48]. Limited competences, the narrow scope of powers do not give the committee of creditors possibilities of protection of general collective interest of creditors. The legislator by regulating the competency scope of committee of creditors presumed limitation of creditors' autonomy. These restrictions apply to both the scope of cases examined by committee of creditors, its impact on the course of proceedings and operating as well as the appointment of the committee of creditors. The committee of creditors in bankruptcy proceedings is a collegial body equipped with specific powers regulating the scope of its obligations and permissions. The competences can be basically divided into three groups. In the first group – committee of creditors will have the competence to perform a number of checking operations related mostly to the activity of the trustee. These controls should be carried out through the prism of legality, the compliance with the law and purposefulness of tasks performed by the trustee. All activities carried out by the trustee are inspected, in the terms of correctness, efficacy and efficiency of proceedings[49]. The expenses incurred by trustee are also controlled. Within the assistance of the receiver, it should be assumed that this control usually takes form of consultancy.

The second group of competencies of committee of creditors concerns activities related to issuing opinions by committee of creditors. The opinions issued by the committee of creditors should be made at the request of relevant entities of the bankruptcy proceedings.

The last scope of the task reserved the committee of creditors will be related to approving activities. These activities constitute the basis for issuing permits or refusal for specific actions performed by the trustee. This is the most important competence awarded to the committee of creditors. Until the consent made by committee of creditors, the actions performed by the trustee will be invalid. In this way the committee of creditors may influence on the course of further bankruptcy proceedings. If the committee of creditors does not

48 A. Jakubecki F. Zedler, *Prawo upadłościowe i naprawcze...* s 615, S Gurgul, P*rawo upadłościowe i naprawcze* ...s . 577, P. Pogonowski, *op.cit.,* s. 222, W. Głodowski, *op.cit., s.* 101, D. Zienkiewicz, P*rawo upadłościowe i naprawcze...* s. 474.

49 S. Gurgul, *Prawo upadłościowe. Prawo...*, s.488.

perform properly its approval activities, such activities can be executed by the judge-commissioner. The substitute performance by the judge-commissioner has only legal effects when despite the request to perform the appropriate actions, make the decisions, the committee of creditors did not complete in a timely manner.

As a rule, the committee of creditors performs its collegial obligations. Only in the extreme cases, which are stipulated by act within the competence of committee, may be performed by single member or person who is not a member of committee of creditors and who has specialized knowledge and was selected by the committee of creditors. When performing its activities, the committee of creditors may operate in various forms. The basic form of acting by committee of creditors is adopting of resolutions. The committee of creditors may also take stricte pragmatic initiatives, such as controlling the activities of entities in bankruptcy proceedings, expressing opinions and presenting remarks to the judge-commissioner[50].

The scope of obligations that burdened on members of the committee of creditors and the legal consequences of resolutions adopted by them, which have a significant impact on the course of bankruptcy proceedings means that the members of the committee of creditors fulfill their functions in person or through representatives. If member of the committee of creditors is a legal person, her obligations as a member of the committee of creditors are fulfilled by a person who has been authorized to represent the legal person or plenipotentiary[51] . Resolutions of the committee of creditors are not subject to appeal. The only possibility of repealing the resolution is when it is contrary to the law or infringes creditors' interest. The responsibility of member of the committee of creditors arises if he had not taken all due care, which is required in given case[52]. In order to determine whether a member of the committee has exercised due care, we should refer to the provisions of the Civil Code, which qualified it as a certain pattern of debtor's behavior in the terms of his involvement and care for the performance of an obligation. Behavior differed from the standards is classified as negligence or gross negligence depending on the difference between the behavior of the debtor and proper behavior resulting from the given legal relationship[53]. When analyzing the liability of the members of the committee of creditors, it should be assumed that it is created only for

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50 R. Adamus, *Rada wierzycieli w postępowaniu upadłościowym z możliwością zawarcia układu z zarządem własnym*, „Monitor Prawniczy" rok 2006, numer 18, s. 4.

51 Art. 38 Kodeks Cywilny, osoba prawna działa przez swoje organy w sposób przewidziany w ustawie i w opartym na niej statucie.

52 W. Czachórski, *Zobowiązania. Zarys wykładu*, Warszawa 1995, s. 152.

53 P. Machnikowski E. Gniewek, *Komentarz...*, s. 610.

own actions. A member of the committee of creditors may be liable only for the normal consequences of the omission or act from which the damage resulted.

The range of activities of the institution representing the creditors' interests, the forms of their decision-making and the impact on the course of the bankruptcy proceedings allow to name them as creditors' authorities involved in bankruptcy proceedings.