**Pechersky V.V.**

Candidate of juricial sciences, associate professor,

Associate professor of the department of Criminal Law

Process and the branch of the State Russian

Socium University in the city of Minsk

**BASIC CONDITIONS OF THE PROFESSION IN THE CRIMINAL PROCEDURE OF THE REPUBLIC OF BELARUS**

**Summary.** the article is devoted to the basic conditions of the legal activity in the criminal process, which directly affect its content, suggests ways of their further improvement.

**Keywords:** legal activity, adversarial principle, criminal process, the conditions of the legal activity.

**Formulation of the problem**. The implementation of the declared principles of competition and equality of the parties, as well as the powers of attorney for legal aid is not possible without the development of an appropriate mechanism, of which necessarily includes the conditions under which these activities will be carried out. In general terms, they are the specific circumstances affecting the formation and development of a particular object, the subject, a specific activity. Marx wrote that "in addition to those things, through which labor acts on the subject of work and are therefore somehow serve as agents of its activities, in a broader sense means the process of labor includes all the material conditions necessary at all to the process could committed. Right they are not in it, but without them it is impossible or completely, or may occur only in an incomplete form "[1, 191]. Conditions are not included in the content of legal aid, but have a significant impact on the completeness and efficiency of its delivery to all needy subjects of criminal proceedings. Conditions can act as circumstances 1) preventing or limiting the scope and content of the legal advice, but there may be circumstances that significantly 2) to strengthen the defense attorney in the provision of legal aid. Which of the existing conditions act as the first variety, and what conditions of the second type should be introduced or further way to improve (to develop)? Presentation of the basic material. Conditions necessary for the provision of legal aid, derived from the nature of the legal profession and that entity is defined. In such a case to say that the state and the law, recognizing and accepting the legal profession to provide legal assistance in the administration of justice must therefore create the appropriate conditions to it. At the stage of preliminary investigation Code of Criminal Procedure (next UPK) provides a suspect or an accused person who is in bondage, get free legal advice to the first interrogation. A long time there was debate about the conditions of its holding (in the presence of the investigator or the investigator or the absence thereof) necessitated legislative recognition of the confidential nature of the consultation and all subsequent meetings defense attorney with his principal in situations of captivity. However, in the practice of the operative-search activity, continue to apply a special technique, which allows for covert listening and video recording content of such consultations and visits. These circumstances have had a negative influence on the content of legal aid, which defense attorney to principal. As a condition to a lawyer in their various investigative deystviyot criminal investigation body or the court; prevent preliminary criminal investigation or review by a court.In accordance with Part 3. 103 CCP defense attorney may present evidence and collect information necessary for the protection of rights of the suspect, the accused and provide them with legal assistance, through a survey of individuals, as well as to seek references and other documents or copies of them, to seek the consent of the suspect, accused the opinions of experts to explanations arise in connection with the protection issues that require specialized knowledge. The implementation of each of these tools requires the creation of appropriate conditions. For example, in order to present evidence, the lawyer should first collect them, but this requires a special procedure under which can be and should be done such advocacy. Despite the clear need for such procedures in the Code of Criminal Procedure does not exist. Moreover, if the law provides for the possibility of collecting the data necessary for the implementation of protection, and thus indicated an inalienable right, this corresponded to the appropriate law enforcement and responsibility of persons having such information on their giving. To create the appropriate conditions under which the lawyer could collect the necessary information on the case, it is necessary to develop the rule of law, which would have secured the responsibility for the failure of such information, similar to the liability associated with the refusal to provide data for employees of power, control and law enforcement agencies. Without this right to counsel willOnly wish the legislator is not regulated as the mechanism for its implementation and enforcement is provided for non-performance.One of the profession is a statement of petitions bodies criminal prosecution at any stage of pre-trial proceedings. Application shall be reviewed and, if the representative of the body subjectively determines it to be satisfied, there is a realization of its contents. The subjective opinion of the representative body of criminal prosecution may be the opposite, in which case a decision is made to refuse to meet. There may be a third option, when the content of the proposals met the application in part. In discussing the options for making the body of criminal prosecution, we highlight their subjective, judgmental nature from the perspective of the prosecution. The investigator and the prosecutor in accordance with the Criminal Procedure Code de jure not a Partycharges, they will of the legislator to the organs of criminal prosecution, but de facto the conduct of its activities, these officials push suspicion, to charge, that is, exercise the powers obvineniya1 hand. It actually turns out that a representative of the defense refers to the representative of the prosecution with a proposal to make any legal proceedings (or take certain procedural decision) that the defense itself is not able to implement (in the absence of authority and / or availability). When deciding on the full or partial denial of the petition alleged, the prosecution established the foundation for the dispute. The dispute should be resolved by contacting one of the parties or both parties to the third party, which can take a final decision that is binding on both parties to the dispute. The current legislation on criminal procedure appeal the rejection of an application is by filing a complaint the prosecutor, who in a controversial process can not be given the authority to resolve the dispute. He is a member of one of the parties (even if taking the stand that, legally, the prosecution does not exist, then the investigator and the investigator and the prosecutor are members of one body - the prosecution). In case of failure to meet the prosecutor's one of Russia's code on this issue expressed unambiguously refer to the prosecution prosecutor, head of the investigation department, doznavatel.zayavlennogo petition is still being appealed in the chain of command to a higher prosecutor, and not an independent and impartial third party, which can only be the court, performing the function of justice in the dispute. The message is clear: the conditions and procedure for appealing disputes between members of the prosecution and the defense in the trial proceedings, require a change in the first place by identifying the court as the only body with such powers. It should be noted that each of the parties to the criminal proceedings are free to decide on the admissibility, relevance, adequacy and reliability of the evidence that she collects. In case of defects in the properties of such evidence, it has an absolute right to exclude him from the criminal case. If such defects are found the opposite hand, it is in a specific order (for example, through the application of an application or a different procedure) may require exclusion of such evidence from the case. If not satisfied this requirement and the dispute on thismatter between the parties must be the subject of legal proceedings. One of the stages of pre-trial stage is to get acquainted with the materials of the finished lawyer criminal investigation. Analyzing the collected body of prosecution evidence, a lawyer with his client determine the need for additional representation in the proceedings to justify and / or mitigating evidence, as well as their sources, which include the factincluding witnesses. But at this point the representatives of the defense are not aware of the list of persons to be invited to the hearing as a witness for the prosecution. Additionally, the law does not provide such an important condition for the provision of legal assistance to the accused, asformation of his list of witnesses for the defense, which can and should be questioned in court. This list of defense witnesses may be formed by counsel and the accused, the investigator provided and attached to the materials submitted to the prosecutor for a decision on the direction of the case to the court. However, neither the investigator nor the prosecutor can not make changes to the list of witnesses to be invited by the defenseAt the stage of the production conditions created criminal procedure law, do not allow us to provide full legal assistance. Referring to the conditions of the implementation of the principle of adversarial proceedings and equality of arms. The prosecutor of the decision to refer the criminal case to court is still referred to the Court all the materials of the criminal case. Although the Code of Criminal Procedure does not directly secured obligation of the court to get acquainted with their content, however the provision of materials to the court only one aspect of the process reflects a lack of equality. It is in this procedure, the direction of all the materials of the criminal case to the court system is contrary to the whole stage of the criminal process, which can produce bias in the court of the guilt of the accused. And, in addition, when the direction of the court of all the materials of the criminal case certainly raises the question: if these materials contain all the evidence gathered in the course of the preliminary investigation, as it may be the activity of the public prosecutor if they are in court? Because he has the evidence to present to the court, they can prove the charge; so far he has to have them at home, and not to transfer to the court in advance. Way to resolve the contradiction indicated uncomplicated enough - it is necessary that the court directed only the conclusions of the preliminary investigation without evidence is available, and all the materials of the criminal case were at the public prosecutor. In the process of proving it will be the content of the court and through the application of their initiation, they, as well as evidence for the defense, along with the record of the hearing will shape the court a criminal case. Other materials not examined during the inquiry and not the communion of the court (including the materials that were in the materials of the preliminary investigation, but foror other reasons were not represented by the public prosecutor) will not be such a trial materials of the criminal case and thus to influence the content of the final decision of the court. It should be noted that a similar proposal made by us several years ago, was taken by Ukrainian legislator, and the new Criminal Procedure Code in 2012 to the court after the pre-trial investigation only sent the indictment, the register of materials pre-trial investigation, a civil lawsuit and a receipt a copy of the indictment and a copy of the civil action. Other documents submitted to the court before the trial is prohibited. Output. The proposed set of new conditions for the provision of legal aid lawyer in the course of their professional activity will effectively implement the principles of the foundation of the modern criminal process, to give it an updated qualitative nature of the relevant content.

Literature:

Маркс К. Капитал. Критика политической экономии / К. Маркс. – Т. 1, Кн. 1. Процесс производства капитала. – М. : Политиздат, 1983. – 905 с.

**Печерський В.В. Основні умови здійснення адвокатської діяльності в кримінальному процесі Республіки Білорусь**

**Анотація.** В статті досліджуються основні умови здійснення адвокатської діяльності в кримінальному процесі, які безпосереднім чином впливають на її зміст, пропонуються способи їх подальшого вдосконалення.

**Ключові слова:** адвокатська діяльність, принцип змагальності, кримінальний процес, умови адвокатської діяльності.

**Pechersky V.V. Basic conditions of the profession in the criminal procedure of the Republic of Belarus**

**Summary.** the article is devoted to the basic conditions of the legal activity in the criminal process, which directly affect its content, suggests ways of their further improvement.

**Keywords:** legal activity, adversarial principle, criminal process, the conditions of the legal activity