

**Evgeniy Petrovich Kim** – Doctor of Law, Professor, Head of the chair of criminal law of the fifth training faculty (located in the Khabarovsk city) of the Institute for advanced studies of the Federal state institution of higher education «The Academy of the Investigative Committee of the Russian Federation» (Khabarovsk). *E-mail: kup5fpk@mail.ru*

**Evgeniy Aleksandrovich Kiselev** – Candidate of Jurisprudence, docent, Head of the criminal laboratory of the fifth training faculty (located in the Khabarovsk city) of the Institute for advanced studies of the Federal state institution of higher education «The Academy of the Investigative Committee of the Russian Federation» (Khabarovsk). *E-mail: keajin@gmail.com*

### **To the question of establishment of the constitutional mechanism of protection of the minor victim (on materials of the Khabarovsk territory)**

*In this article the questions of creation and functioning of the constitutional mechanism of protection of the minor victims in the Khabarovsk territory are considered. Activity of the Ombudsman for Children in the Khabarovsk territory is in detail analyzed. Separate aspects of interdepartmental interaction of different public authorities and the local governments with the law enforcement agencies are covered. The structure of the bodies providing the rights and legitimate interests of the minors who were injured from crimes in details is considered by the authors.*

### **К вопросу о создании конституционно-правового механизма защиты несовершеннолетнего потерпевшего (по материалам Хабаровского края)**

*В статье рассмотрены вопросы создания и функционирования конституционно-правового механизма защиты несовершеннолетних потерпевших в Хабаровском крае. Подробно проанализирована деятельность Уполномоченного по правам ребёнка в Хабаровском крае. Освещены отдельные аспекты межведомственного взаимодействия различных государственных органов и органов местного самоуправления с правоохранительными органами. Авторами детально рассматривается структура органов, обеспечивающих права и законные интересы пострадавших от преступлений несовершеннолетних.*

**Keywords:** *constitutional mechanism of protection; Commissioner for the rights of a child; victim; minor; Investigation Committee of the Russian Federation; regional monitoring center for helping missing and injured minors; protection of rights.*

**Ключевые слова:** *конституционно-правовой механизм защиты,*

*уполномоченный по правам ребёнка, потерпевший, несовершеннолетний, Следственный комитет Российской Федерации, региональный мониторинговый центр по оказанию помощи пропавшим и пострадавшим несовершеннолетним, защита прав.*

The constitution of the Russian Federation, proclaiming the rights and freedoms of the person as the supreme value, vests with the state a duty to recognize, observe and protect human rights (Art. 2 of the Basic law). Realization of these duties is executed by the specially created system of legislative, executive and judicial authority of the state. At the same time priority task of the society is protection of the weakest and defenseless.

The investigative committee of the Russian Federation in recent years makes many efforts for the embodiment in life of the constitutional instructions directed to protection of the rights of minors.

Considering an importance of the problem of protection of the rights of minors, including from the violent encroachments, the chairman of Investigative committee of the Russian Federation A.I. Bastrykin has initiated introduction of amendments to the Code of Criminal Procedure of Russia according to which since January 01, 2012 preliminary investigation on the heavy and especially serious crimes committed by the minors and concerning the minors is conducted by investigators of the investigating authorities of the Investigative committee of the Russian Federation [1].

The criminological picture of the crimes committed concerning minors continues to cause big concern in the society. In particular, there is a rejuvenation of the contingent of victims from the crimes including sexual character. And it despite entering into the Criminal Code of the Russian Federation in the summer of 2012 of the changes which have recognized such victims as the persons which are down and out, and, therefore, - the victims under the articles about violent sexual crimes (Art. 131 – 132 of the Criminal Code of the Russian Federation). Indicators of the crimes committed concerning minors in the Khabarovsk territory in 2013 - 2016 despite their reduction on average for 5 – 6% continue to cause concern in the society. The statistics on group aged from 5 up to 10 years concerning which crimes against sexual integrity are in the most cases committed looks disturbing [2].

Ensuring compliance and restoration of the violated rights of the minor victims of crimes is one of the most important activities of the Ombudsmen for Children at the federal and regional levels.

In the system of legal influence in the relations of minors the important place is given to the Federal law of June 24, 1999 No. 120-FL "About bases of the system of prophylaxis of neglect and offenses of the minors" [3].

However the law-enforcement practice taps a series of legislative problems in the questions of prevention of minors' offenses. This circumstance causes a need as scientific and practical judgment of contents and place of the law providing protection of the rights of minors against criminal encroachments.

By the results of monitoring of observing the rights of minors which is regularly carried out by the Ombudsman for Children in the Khabarovsk territory in the territory of the region, a situation in the Khabarovsk territory, nearly two thirds of inhabitants (68,5%) believe that a problem of violence and cruelty concerning the minors in our region critical. At the same time among the main reasons for the low efficiency of protection of minors, according to the experts and citizens, became: free access to a pornography and violence scenes over children in the Internet – 74,5%; lack of due control of children – 58,8%; low level of legal education of the population – 52,9%; intensifying in media of aggressive, cynical and uncontrollable sex promotion – 35,2%; unsatisfactory work of the law enforcement agencies – 33,3%; imperfection of legislation – 23,5% [4].

The fact that on surveys conducted among the youth practically every fifth shows verbal readiness for commission of murder or drawing heavy injuries causes concern. Three quarters of respondents, anyway, can be carried to a group of persons, focused on violation of the law. At the same time more than a half of citizens accuse mass media and the Internet of promotion of a cult of violence and cruelty, sexual dissoluteness, see the direct connection between the rise in crime in the country and suppression of spirituality and morality.

In view of the conducted research, the Investigation department of the Investigative committee of the Russian Federation on the Khabarovsk territory has taken part in creation of the mechanism of protection of the rights of minors affected by violence in the territory of the Khabarovsk territory. A basis was creation of the monitoring centers of lost and affected minors – an important element of the mechanism of the state protection of minors against criminal encroachments.

In the scientific literature the state protection of the rights and freedoms of the person and citizen is understood as a set of measures of economic, organizational, political, social and legal character used by the state for creation of conditions on free realization of the rights and freedoms of their owners and for restoration (recognition) of the violated rights and legitimate interests [5].

Some scientists, proceeding from the rather settled in jurisprudence of the definition of the mechanism of legal regulation [6] offered by S.S. Alekseev, determine constitutional mechanism of ensuring fundamental human rights as the system of the interacting constitutional means taken in the unity by means of which the state carries out legal impact on the legal relations between the legal entities for recognition and observance the fundamental human rights. In other words, it is a set of legal forms and means allowing not allow violations of fundamental human rights, and in a case such is – effectively to restore the violated rights [7].

The authors of this article completely support opinion of the scientists that for formation of conditions for realization of fundamental human rights, including the rights of the minors proclaimed the Constitution of the Russian Federation it is necessary to frame a reliable constitutional mechanism of their providing.

According to the scientists:

"... creation of such mechanism is no other than the universal mechanism of guarantees of human rights as a global system of means of protection of the rights

which consists of the international and interstate and local mechanisms. Thus, all mechanism of constitutional support of human rights is divided on the interstate and the international" [8].

The model of constitutional mechanism offered by A.V. Stremoukhov [9] attracts the interest. In his opinion, now the interstate constitutional mechanism of ensuring fundamental human rights in Russia has difficult system which as a subsystem includes mechanisms: 1) protection of basic rights; 2) qualified legal aid; 3) protection of basic rights.

The main goal of these mechanisms – protection of the basic rights, and also the prevention and prophylaxis of the human rights violations, removal of obstacles (which aren't offenses), interfering their implementation. And the mechanism of legal aid consists in creation of legally favorable conditions for realization of the rights, at the same time the purpose of the mechanism of protection of the rights is in restoring already violated right if it is objectively possible [10]. Therefore, a distinctive sign of mechanisms of protection of the rights, legal aid and protection of the rights is the extent of their connection with disturbance of the rights. Protection of the rights is when there is no offense, protection has to come when there is a disturbance of basic rights, and the legal aid can take place and at protection of basic rights, and at their protection. The similar point of view is supported by many lawyers [11].

Effective structural link of constitutional mechanism of the state protection of minors against criminal encroachments, according to the experts, is the institute of the Ombudsman for Children in the Khabarovsk territory. Human rights activity of the children's ombudsman in the Khabarovsk territory S.L. Zhukova is carried out by the next ways:

- 1) each resonant case of criminal encroachment concerning the child demanding intervention from the ombudsman is taken under special control;
- 2) interaction with the operational search services, bodies of the Investigative Committee of Russia and the Prosecutor's office will be organized;
- 3) when the child has already suffered from this or that form of violence, psychological assistance as the results of researches of psychologists and psychiatrists convincingly demonstrate that the violence postponed at the children's age inevitably leads to emotional and behavioral violations, including suicides and suicide behavior is provided to him.

The questions concerning protection of the rights of minors affected by violence, bodies of the Investigative Committee of Russia in the Khabarovsk territory and the problems of their social rehabilitation were discussed within the Interregional scientific and practical conference held by the Fifth faculty of professional development of the Academy of Investigative committee of the Russian Federation in the city of Khabarovsk on November 19, 2014 "Crimes against family and minors. Criminal and legal problems and the ways of their solution". Following the results of this conference recommendations about creation of the mechanism of protection of the minor victim have been adopted [12].

Coordinated work of the Ombudsman for Children in the Khabarovsk territory, has allowed open in June, 2013 the Regional monitoring center for

assistance to the lost and affected minors (further – RMC) on the basis of the Regional center for psycho - medico-social maintenance in the city of Khabarovsk that is a huge step in creation of a legal mechanism of protection of the minor victim effective constitutionally.

RMC is one of structural elements of the mechanism of protection of the rights of minors which effectively functions now in the Khabarovsk territory. The main goal of opening of RMC – protection of the rights and legitimate interests of the minor participating citizens of criminal legal proceedings needing the psychology and pedagogical help; contribution to creation of conditions for normal personal development of children and teenagers; collection of data on the minors who have left educational institutions of residential type, orphanages, educational schools and psychology and pedagogical escort of these minors. The tasks of RMC: information exchange on the facts of violations of the rights, freedoms and legitimate interests of minors; timely rendering the emergency psychology and pedagogical help to the minors who have appeared in a difficult life situation including to the minor participants of criminal trial; identification of situations of social trouble, cases of ill treatment and violence over the children; psychological examination of educational institutions on identification of cases of ill treatment of students, pupils; cooperation and interaction with the Investigation department of the Investigative Committee of the Russian Federation across the Khabarovsk territory; participation in the investigative actions with participation of the minors which are carried out by the investigators of ID of IC of Russia across the Khabarovsk territory.

As the analysis testifies, functioning of constitutional mechanism of protection of the minor victim in the Khabarovsk territory is shown in the form of the following interaction and activity of links of the system of law enforcement and public authorities:

- 1) coming of the psychologist to the place of commission of crime, or in the territorial departments of Investigation department of the Investigative committee of the Russian Federation of the Khabarovsk territory for implementation of the psychology and pedagogical escort of the minor that is caused by requirements of the Code of Criminal Procedure of Russia;

- 2) consultation of parents, lawful representatives, minors, and also investigators, concerning the separate aspects connected with the taken place event;

- 3) participation in the court sessions on criminal cases with participation of the minors that is caused by requirements of the Code of Criminal Procedure of the Russian Federation;

- 4) search of the lost children, i.e. in a case of loss of the child – search of his possible location.

All above activity of RMC promotes increase in the efficiency of activity of the investigating authorities by investigation of criminal encroachments concerning the minors. In particular it was succeeded to reach the agreement on obligatory participation of the educational psychologists by proceeding of investigative and procedural actions with minors. Following the results of the done collaboration, it

was succeeded to reduce the number of interrogations of minors, on average, from 7 – 10 times to a possible minimum – 1 – 2 time.

The interaction algorithm with the psychologist on the venue of investigative actions looks as follows:

- 1) the investigator reports to the head of the Sector of the emergency psychology and pedagogical help about the need of carrying out investigative action with participation of the expert;
- 2) the head determines which of experts will be directed to this or that child;
- 3) having arrived to the place, the psychologist carries out psychology and pedagogical escort of the child during investigative actions;
- 4) if when carrying out investigative actions there are parents, then the expert advises them on further actions and concerning a visit of the psychologist. In the subsequent the psychologist can be interrogated as the witness or the specialist in an occasion of testimonies of the minor and his emotional state, and also to an actively help the investigator with establishment of an objective truth on the case.

The positive moment of functioning of the constitutional-right mechanism of protection of the minor victim was that in RMC the work of duty psychologists for assistance in psychological maintenance of preliminary investigation of cases of crimes, perfect concerning the minors is organized. In particular, before the proceeding of investigative actions at the request of the investigator the psychologist adjusts, prepares and in the form of a game receives answers to the questions interesting the investigator at the juvenile victim. At the same time the subsequent interrogations of psychologists who were injured the investigator with participation take place in an easy situation that allows the victims give evidences in a free form.

Since 2013, from the moment of opening of RMC, about 150 – 200 visits of educational psychologists including at night will annually be organized. There is a psychological maintenance over 50 minor victims, and also to the parents (lawful representatives) of the minor victims. The special place in the Center is allocated to the after-treatment of injured children.

Exchange of information about the lost and injured children, acceptance of joint efforts on establishment of location of the gone children is carried out; the analysis of reasons of going of the minors from the houses, educational and social institutions is carried out, measures for prophylaxis of leaving of the minors are implemented.

For the victims of violence temporary "shelter" is organized. The agreement with KGBOU DOD "The Khabarovsk regional center of out-of-school work "Sozvezdie"" is for this purpose reached.

The system of consultation consists immediately of diagnostic consultation during which it is necessary to establish what vital values, installations and behavior models of the minor underwent pathological change in a consequence of the psycho-trauma caused by the committed crime.

By the means of different psychological techniques, exercises and the technician, process of restoration of a psycho-emotional condition of the minor is carried out.

After completion of the after-treatment the regular monthly monitoring of emotional state of the minor is made.

Within the investigative actions over 500 consultations from which, as a rule, 80% with the minor victims and 20% with minor witnesses are annually held.

Staff of the center is also involved in the court sessions which assume:

1) presence when electing a measure of restraint in the form of detention, change of a measure of restraint, and also extension of a term of detention concerning the minor;

2) participation as the witness, the educational psychologist within criminal case with participation of the minor;

3) participation as the expert for evidence in the psychological conclusion.

The office of the Ombudsman for Children in the Khabarovsk territory in the period of 2013 – 2016 took the effective measures on creation of the effective constitutional mechanism of protection of minors – the victims of crimes.

Such events were for this purpose held:

- working meetings with the principals of public authorities and the local governments for prophylaxis of crimes concerning the minors;

- joint orders on prophylaxis of crimes concerning the minors were issued;

- offers in the authorities and local government on prophylaxis of crimes concerning the minors were made;

- reasons and conditions of commission of crimes concerning the minors were analyzed;

- methodical recommendations, on the organization of adaptation of persons who served sentence in FKU the Birobidzhan educational colony of OFPS of Russia across the Jewish autonomous region were submitted;

For the more effective ensuring protection of the rights of minors, victims of crimes, it is planned: development of the regulations of interaction of KGBOU of "KTsPMSS" with the educational institutions of the Khabarovsk territory on realization of the effective system of monitoring of the lost minors and implementation of the measures for prophylaxis of goings of the last in the regional and municipal educational institutions of the Khabarovsk territory; holding seminars and "round tables" with the law-enforcement, educational and social services of systems of the Khabarovsk territory; development of production of the information booklets; establishing interaction with the subordinated services.

Holding the meetings with the administration of the Investigation department of the Investigative committee of the Russian Federation on the Khabarovsk territory is planned. At the same time becomes obvious that if not to take the well-timed measures capable cardinaly affect the dynamics of crimes committed concerning the minors, then the situation can leave from under control.

Now the system of interaction with the Investigation department of the Investigative committee of the Russian Federation across the Khabarovsk territory and the other public authorities is adjusted, and its action has a positive take –

continuous prophylaxis on prevention of crimes concerning the minors. What in turn positively influences the prevention of crimes concerning the minors in the Khabarovsk territory.

Proceeding from the above it is possible to draw a conclusion that further cooperation of the Investigation department of the Investigative committee of the Russian Federation on the Khabarovsk territory with the office of the Ombudsman for Children in the Khabarovsk territory promotes rising of the efficiency of functioning of constitutional mechanism of protection of the minor victim against crimes.

### **Список литературы:**

1. Жукова С.Л. Проблемы и перспективы социальной реабилитации детей, пострадавших от насилия // Преступления против семьи и несовершеннолетних. Уголовно-правовые проблемы и пути их решения: сборник материалов Межрегиональной научно-практической конференции 19 ноября 2014 г. Хабаровск: Пятый факультет повышения квалификации (с дислокацией в г. Хабаровск) ИПК ФГКОУ ВО «Академия СК России», 2014. Ч. I. С. 8.
2. Гунич С.В. Деятельность органов внутренних дел по защите прав и свобод человека и гражданина в Российской Федерации: монография. Хабаровск: ДВЮИ МВД РФ, 2011. 131 с.
3. Алексеев С.С. Механизм правового регулирования в социалистическом государстве. М., 1966. С. 30.
4. Алексеев С.С. Теория права. М., 1994. С. 150.
5. Рудинский Ф.М. Механизм гарантий прав человека в современных условиях // Права человека в условиях становления гражданского общества: матер. Междунар. науч.-теорет. конференции (г. Курск, 15 – 16 мая 1997 г.). Курск, 1997. С. 30–31.
6. Стремоухов, А.В. Правовая защита человека: Теоретические проблемы. СПб., 2003. С. 33.
7. Тихонова Б.Ю. Субъективные права советских граждан, их охрана и защита: автореф. дисс. ... канд. юрид. наук. М., 1972. С. 12.
8. Гасанов К.К. Конституционный механизм защиты основных прав человека: монография. М.: ЮНИТИ-ДАНА, Закон и право. 2004. – 431 с.
9. Ким Е.П., Киселёв Е.А. Некоторые аспекты создания механизма социальной реабилитации несовершеннолетних пострадавших от насилия (по материалам Хабаровского края) / Межрегиональная научно-практическая конференция «Преступления против семьи и несовершеннолетних. Уголовно-правовые проблемы и пути их решения» // Вестник Академии Следственного комитета Российской Федерации №2 - 2014
10. Тихонова Б.Ю. Субъективные права советских граждан, их охрана и защита: Автореф. дисс. ... канд. юрид. наук. М., 1972. С. 12.
11. Гасанов К.К. Конституционный механизм защиты основных прав



человека: Монография. М.: ЮНИТИ-ДАНА, Закон и право. 2004. 431 с.

12. Ким Е.П., Киселёв Е.А. Некоторые аспекты создания механизма социальной реабилитации несовершеннолетних пострадавших от насилия (по материалам Хабаровского края) / Межрегиональная научно-практическая конференция «Преступления против семьи и несовершеннолетних. Уголовно-правовые проблемы и пути их решения» // Вестник Академии Следственного комитета Российской Федерации. 2014. № 2.

### **References:**

1. ZHukova S.L. Problemy i perspektivy social'noj rehabilitacii detej, postradavshih ot nasiliya // Prestupleniya protiv sem'i i nesovershennoletnih. Uголовно-pravovye problemy i puti ih resheniya: sbornik materialov Mezhhregional'noj nauchno-prakticheskoy konferencii 19 noyabrya 2014 g. Habarovsk: Pyatyj fakul'tet povysheniya kvalifikacii (s dislokaciej v g. Habarovsk) IPK FGKOU VO «Akademiya SK Rossii», 2014. CH. I. S. 8.

2. Gunich S.V. Deyatel'nost' organov vnutrennih del po zashchite prav i svobod cheloveka i grazhdanina v Rossijskoj Federacii: monografiya. Habarovsk: DVYUI MVD RF, 2011. 131 s.

3. Alekseev S.S. Mekhanizm pravovogo regulirovaniya v socialisticheskom gosudarstve. M., 1966. S. 30.

4. Alekseev S.S. Teoriya prava. M., 1994. S. 150.

5. Rudinskij F.M. Mekhanizm garantij prav cheloveka v sovremennyh usloviyah // Prava cheloveka v usloviyah stanovleniya grazhdanskogo obshchestva: mater. Mezhdunar. nauch.-teoret. konferencii (g. Kursk, 15 – 16 maya 1997 g.). Kursk, 1997. S. 30–31.

6. Stremouhov, A.V. Pravovaya zashchita cheloveka: Teoreticheskie problemy. SPb., 2003. S. 33.

7. Tihonova B.YU. Sub"ektivnye prava sovetskih grazhdan, ih ohrana i zashchita: avtoref. diss. ... kand. jurid. nauk. M., 1972. S. 12.

8. Gasanov K.K. Konstitucionnyj mekhanizm zashchity osnovnyh prav cheloveka: monografiya. M.: YUNITI-DANA, Zakon i pravo. 2004. – 431 s.

9. Kim E.P., Kiselyov E.A. Nekotorye aspekty sozdaniya mekhanizma social'noj rehabilitacii nesovershennoletnih postradavshih ot nasiliya (po materialam Habarovskogo kraja) / Mezhhregional'naya nauchno-prakticheskaya konferenciya «Prestupleniya protiv sem'i i nesovershennoletnih. Uголовно-pravovye problemy i puti ih resheniya» // Vestnik Akademii Sledstvennogo komiteta Rossijskoj Federacii №2 - 2014

10. Tihonova B.YU. Sub"ektivnye prava sovetskih grazhdan, ih ohrana i zashchita: Avtoref. diss. ... kand. jurid. nauk. M., 1972. S. 12.

11. Gasanov K.K. Konstitucionnyj mekhanizm zashchity osnovnyh prav cheloveka: Monografiya. M.: YUNITI-DANA, Zakon i pravo. 2004. 431 s.

12. Kim E.P., Kiselyov E.A. Nekotorye aspekty sozdaniya mekhanizma social'noj rehabilitacii nesovershennoletnih postradavshih ot nasiliya (po

*materialam Habarovskogo kraya) / Mezhhregional'naya nauchno-prakticheskaya konferenciya «Prestupleniya protiv sem'i i nesovershennoletnih. Uголовно-pravovye problemy i puti ih resheniya» // Vestnik Akademii Sledstvennogo komiteta Rossijskoj Federacii. 2014. № 2.*