

# Protecting the constitutional rights of the accused minors in the system of measures to ensure social security in cross-border regions

S Davidov<sup>1</sup>, N Dudko<sup>1\*</sup>, and M Neymark<sup>1</sup>

<sup>1</sup> Law Institute, Altai State University, 68 Socialist Avenue, Barnaul, 656049, Russian Federation

E-mail: dudkona@yandex.ru

**Abstract.** The article deals with the concept and meaning of social security and reviews several measures that would help to ensure social security. Based on the analysis of regulatory acts, theoretical provisions, statistical data, conclusions were drawn up, and proposals were made for improving measures to protect the constitutional rights of juvenile defendants, taking into account the conditions of cross-border regions.

**Keywords:** constitutional rights, minors, social security, legislation of the Russian Federation

## 1. Introduction

As one of the elements of the national security of the Russian Federation, social security determines the level of stability and development of the whole society and the state, affects the normal functioning of civil society and its stable existence. This is important for all regions of the Russian Federation, but it is especially important for transboundary territories, including the Altai region. The Altai region is located on the border of continental Asia and is bordered in the south-west and west with the Republic of Kazakhstan. The length of the section of the State border with the Republic of Kazakhstan is 843.6 km [1].

In the Altai region as a border region, the risks and threats to social security are manifested to a greater extent than in other regions. In particular, this is a consequence of migration through the Altai region of foreign citizens and stateless persons, as well as the flow of drugs across the border. Thus, 667,071 foreign citizens and stateless persons entered the territory of the Altai region in 2018. More than that, 9,0937 of them were put on migration registration, and 552 people were expelled and deported [2]. Among the crimes related to drug trafficking registered in the Altai region, 41.3% were the facts of illegal production, sale, or transfer of narcotic drugs, psychotropic substances, or their analogs. 57.5 kilograms of drugs were seized [3].

Migrant offenses, as well as the movement of narcotic drugs and psychotropic substances across the border, significantly aggravate the criminal situation in the Altai region, affect the crime rate, and mainly the juvenile crime rates. This necessitates the use of prosecutorial responses and other legal measures to ensure social security in the region.

The objective of this study is to analyze the legal norms and theoretical provisions on social security in order to justify legal measures to ensure social security in the Altai region and other cross-border regions.

## 2. Materials and Methods

Research materials include (a) the regulatory legal acts of the Russian Federation, which constitute the legal basis for ensuring the national security of the Russian Federation; (b) the Russian legislation on the protection of the rights of the accused; (c) the legislation of the Russian Federation and the Republic of Kazakhstan regulating the organization and functioning of the jury; (d) the legislation of the Russian Federation and the Republic of Kazakhstan on the judicial system; (e) the statistical data on the activities of prosecutors and internal affairs agencies of the Altai region; (f) the scientific literature on the topic of our research.

The methodological basis of the study is a set of methods of scientific knowledge: a method of comparative law in the study of the legal norms of the Russian Federation and the Republic of Kazakhstan, a statistical method in the study of statistical data, a formal legal method for the analysis of regulatory legal acts.

## 3. Results

The Federal Law of the Russian Federation on Security [4], the Concept of Public Security in the Russian Federation [5], the Strategy of National Security of the Russian Federation [6] regulate the concept and types, basic principles and objectives, content of activities and measures to ensure security in the Russian Federation. In accordance with these regulatory legal acts, the concept of “national security” is fundamental. This concept includes various types of security, including personal security.

The authors of scientific studies characterize the security of an individual through social security. The need for social security is justified by the fact that it permeates all types of security and acts as a stabilizing factor in all social relations [7]. “From the position of international law, social security is viewed through the prism of personal security (as reflected, for example, in numerous UN documents)” [8]. “Social security is a socially-philosophical category, denoting the state of protection of an individual, his vital values, rights and freedoms from threats of any kind” [9].

Constitutional rights and freedoms of a person and citizen should be protected first of all. They are the main means of ensuring not only the security of the individual but also the security of society and the state.

The basic basis for the realization of all constitutional rights of a person and a citizen is the right of everyone to life (personal, fundamental, inalienable, and belonging to everyone from birth, part 1 of article 20 of the Constitution of the Russian Federation) [10]. The criminal procedural guarantee of judicial protection of the right of everyone to life is the constitutional right of the accused to a jury trial of his case (personal, derived from the right of everyone to life, part 2 of article 20 of the Constitution of the Russian Federation): until its abolition, the death penalty may be established by federal law as an exceptional measure of punishment for especially grave crimes against life, in giving the defendant the right to be tried by a jury court. In addition, the accused’s right to a jury trial contains the right of everyone to a fair trial, as provided for by international human rights standards. (Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms) [11].

The 2017 report of the Commissioner for Human Rights in the Russian Federation noted that the indicator of the significance of the right to a fair trial increased significantly (from 27% to 36%) in 2017 (if compared to 2016). The rise of social demand by almost 10% provided this right with the seventh position in the overall rating of human and civil rights and freedoms [12].

Thus, the right of everyone to a fair trial, including a fair trial by a jury, as a guarantee of the right to life, cannot be questioned and limited. However, this right was significantly limited, and, in respect of the least protected persons – the minors.

In accordance with Federal Law No. 217 of July 23, 2013 [13], the minors were deprived of the right to a jury trial, in fact. The problem of limiting the rights of juvenile defendants to a jury trial was discussed at the level of the President of the Russian Federation and the Council of Federation of the Federal Assembly of the Russian Federation [14] and was subject to review by the Constitutional Court

of the Russian Federation. In connection with the restriction of the possibility of juvenile defendants to file a petition for considering the case by a court with the participation of jurors, citizen V. A. Filimonov filed a complaint with the Constitutional Court of the Russian Federation. The Constitutional Court of the Russian Federation recognized the contested legal provisions in accordance with the Constitution of the Russian Federation in the Decision of May 20, 2014 [15].

The Constitutional Court of the Russian Federation concluded that the excluding criminal cases of crimes committed by minors from the jurisdiction of the jury does not violate the criminal procedural rights and interests of minors, as it is accompanied by (a) granting them the right to apply for the consideration of the case in the court of first instance by a panel of three professional judges; (b) the extension to them of the ordinary appeal procedure; (c) the extension of the powers of the court of appeal in part of the review of court decisions due to the inconsistency of the findings of the court, set out in the sentence, the actual circumstances of the criminal case, established by the court of first instance; 4) ensuring requirements aimed at limiting publicity, ensuring the confidentiality of juvenile litigation.

Based on the legal position of the Constitutional Court of the Russian Federation, the Federal Law No. 190 of June 23, 2016 [16] reproduced the key provisions of the Federal Law No. 217 of July 23, 2013: the juvenile criminal cases cannot be tried by a jury, and for especially serious crimes they must be transferred for consideration from the regional court to the district court.

Of course, the problem of proper protection of the rights of juvenile defendants exists and requires resolution. For example, according to the General Directorate of the Ministry of Internal Affairs of the Russian Federation for the Altai region, the number of crimes committed by the minors in the Altai region is about 4% of all recorded crimes. The relevant Law of the Altai region was adopted in the Altai region. According to this Law, the main task is to ensure the protection and realization of the rights and legal interests of minors. And taking into account the specifics of the region, the law regulates the competence of the bodies and institutions of the system for the prevention of neglect and juvenile delinquency [17].

The experience of the Republic of Kazakhstan in improving the judicial system can be an example of protecting the rights of minors. Since 2010, the specialized inter-district juvenile courts have been established and successfully operated in the Republic (Article 307 of the Criminal Procedure Code of the Republic of Kazakhstan) [18].

In the Russian Federation, similar courts may also be created as the specialized juvenile courts. Moreover, the creation of inter-district courts would remove the problem of transferring criminal cases involving minors for serious crimes for consideration from the regional court to the district court. Prerequisites for the creation of inter-district courts and specialized courts are provided by law. The Federal Constitutional Law on the Courts of General Jurisdiction in the Russian Federation (Article 1) includes the inter-district and specialized courts in the system of courts of general jurisdiction [19].

#### **4. Discussion**

The validity of the legal position of the Constitutional Court of the Russian Federation and the desirability of subsequent changes to the Code of Criminal Procedure of the Russian Federation on the jurisdiction of criminal cases of particularly serious crimes committed by minors raise doubts.

The Constitutional Court of the Russian Federation in the Decision on the Complaint of Citizen V. A. Filimonov argued its position as follows: the specifics of resolving issues related to the determination of the guilt of juveniles in the commission of criminal wrongful acts requires the full consideration of the peculiarities of their personality. In turn, comprehensive accounting assumes that judges, as subjects of the exercise of the function of justice, have not only high qualifications but also special knowledge and skills. Based on this knowledge and skills and using all the mechanisms of the educational impact of the judicial procedure, they should determine the further fate of such defendants.

It is unlikely that the transfer of cases of crimes committed by minors to the district court was expedient, especially without consideration by the court with the participation of jurors. Leaving them in the jurisdiction of the regional court would be appropriate. The professional level of the judges of the regional court, taking into account the work experience and professional skills of dealing with especially

grave crimes, is certainly higher. We believe that in order to properly ensure the rights of minors, the norms of the Code of Criminal Procedure of the Russian Federation should be adjusted: criminal cases of crimes committed by minors should be left to the jurisdiction of the regional court. The consideration of criminal cases in respect of minors by the regional court, but without the participation of jurors, will ensure not only the quality of considering the case on the merits but also the empowerment of the appeal against court decisions in these cases.

In addition, the issue of creating juvenile courts that can be an effective means of protecting the rights of minors remains controversial. At the legislative level in 2002 and 2010, bills on the creation of juvenile justice (specialized juvenile courts) were discussed. In some regions, juvenile technology was used in pilot projects [20]. However, this problem remains unresolved and requires further discussion by scientists and practitioners.

## 5. Conclusion

In the conditions of border areas to ensure social security, more effective (compared to other territories) measures to protect the rights and freedoms of the person and citizen must be used. The primary task is to protect the rights and interests of minors, including those minors being accused. One of the legal measures to ensure the social security of minors is to improve the legislation of the Russian Federation on the implementation of the right of accused minors for a fair trial. When reforming the judicial system of the Russian Federation, a similar experience of the Republic of Kazakhstan can be used.

## References

- [1] Official Website of the Altai Region (n.d.) *Brief information about the Altai Region* Available at: <http://www.altairegion22.ru> (Accessed 14 03 2019)
- [2] Prosecutor's Office of the Altai Region 2019 *Basic statistics on the state of crime, investigative work and prosecutor's supervision in the Altai Region for the 12 months of 2018* (Barnaul, Russia: Prosecutor's Office of the Altai Region)
- [3] Rosstat 2019 *Offenses in the Altai Region (according to the General Directorate of the Ministry of Internal Affairs of the Russian Federation for the Altai Region)*. Available at: [http://akstat.gks.ru/wps/wcm/connect/rosstat\\_ts/akstat/resources/934a070048f607189826d9c5c743fbc3/4.htm](http://akstat.gks.ru/wps/wcm/connect/rosstat_ts/akstat/resources/934a070048f607189826d9c5c743fbc3/4.htm) (Accessed 14 03 2019)
- [4] State Duma of the Russian Federation 2010 *Federal Law of the Russian Federation "On Security"* (December 28, 2010 No. 390-FZ). Available at: <http://www.consultant.ru/Online> (Accessed 14 03 2019)
- [5] Presidential Executive Office 2013 *Public Security Concept in the Russian Federation* (November 14, 2013 No. Pr-2685) Available at: <http://www.consultant.ru/Online> (Accessed 14 03 2019)
- [6] Presidential Executive Office 2015 *National Security Strategy in the Russian Federation* (December 31, 2015 No. Pr-683) Available at: <http://www.consultant.ru/Online> (Accessed 14 03 2019)
- [7] Rakhlev A V 2008 *Ensuring social security of the Russian society at the present stage of modernization* (Abstract of the dissertation of the candidate of sociological sciences) (Volgograd, Russia) Available at: <http://www.dslib.net> (Accessed 14 03 2019)
- [8] Kashnik O I, and Bryzgalova A A 2013 Social security: theoretical aspects *Education and Science* **3**(102) pp 98-110
- [9] Pugin V B 2003 *Social security of the person: regional aspect* (Dissertation of the candidate of philosophical sciences) (Arkhangelsk, Russia) Available at: <http://www.dslib.net> (Accessed 14 03 2019)
- [10] *The Constitution of the Russian Federation* (adopted by popular vote in December 12, 1993) (revised December 30, 2008 No. 6-FKZ, December 30, 2008 No. 7-FKZ, February 5, 2014 No. 2-FKZ, July 21, 2014 No. 11-FKZ). Available at: <http://www.consultant.ru/Online> (Accessed 14 03 2019)
- [11] Council of Europe 1950 *European Convention for the Protection of Human Rights and Fundamental Freedoms* (November 4, 1950, as amended by the Protocol of May 11, 1994 No. 11, entered into force in the Russian Federation May 5, 1998) Available at: <http://www.espch.ru> (Accessed 14 03 2019)
- [12] Commissioner for Human Rights in the Russian Federation 2017 *Report on the activities of the Commissioner for Human Rights in the Russian Federation in 2017* Available at: <http://www.consultant.ru/Online> (Accessed 14 03 2019)

- [13] State Duma of the Russian Federation 2013 *Federal Law "On Amendments to the Criminal Procedure Code of the Russian Federation and Articles 1 and 3 of the Federal Law "On Amendments to the Criminal Procedure Code of the Russian Federation and recognition of certain legislative acts (provisions of legislative acts) of the Russian Federation" on the improvement of the appeal procedure"* (July 23, 2013 № 217-FZ). Available at: <http://www.consultant.ru/Online> (Accessed 14 03 2019)
- [14] Presidential Executive Office 2015 *The list of instructions on the implementation of the Presidential address to the Federal Assembly* (December 3, 2015, signed by the President of the Russian Federation December 8, 2015) Available at: <http://news.kremlin.ru> (Accessed 14 03 2019)
- [15] Constitutional Court of the Russian Federation 2014 *Resolution "On the case on the verification of the constitutionality of paragraph 1 of part three of Article 31 of the Criminal Procedure Code of the Russian Federation in connection with the complaint of citizen V. A. Filimonov"* (May 20, 2014 No. 16-P) Available at: <http://www.consultant.ru/Online> (Accessed 14 03 2019)
- [16] State Duma of the Russian Federation 2016 *Federal Law "On Amendments to the Criminal Procedure Code of the Russian Federation in connection with the expansion of the use of the institution of jury"* (June 23, 2016 No. 190-FZ) Available at: <http://www.consultant.ru/Online> (Accessed 14 03 2019)
- [17] Altai Region Legislative Assembly 2002 *The law of the Altai Region "On the system of prevention of neglect and juvenile delinquency in the Altai Region"* (December 15, 2002 No. 86-ZS) Available at: <http://docs.cntd.ru/document/940002994> (Accessed 14 03 2019)
- [18] Criminal Procedure Code of the Republic of Kazakhstan (July 4, 2014) Available at: <http://online.zakon.kz> (Accessed 14 03 2019)
- [19] State Duma of the Russian Federation 2011 *Federal Constitutional Law "On Courts of General Jurisdiction in the Russian Federation"* (February 7, 2011 No. 1-FK) Available at: <http://www.consultant.ru/Online> (Accessed 14 03 2019)
- [20] Kramarov A O 2015 Prospects for legislative regulation of juvenile justice in the Russian Federation *Issues of Juvenile Justice* 2 Available at: <http://www.consultant.ru/Online> (Accessed 14 03 2019)