

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	721
Land:	Kina
Kilde:	Immigration and Refugee Board of Canada
Titel:	China: Whether authorities seize the passports, identity documents, or travel documents of persons who are the subject of a criminal summons, a police investigation, or criminal charges (2021-october 2023)
Udgivet:	6. oktober 2023
Optaget på baggrundsmaterialet:	31. juli 2024



Document #2101186

IRB – Immigration and Refugee Board of Canada (Author)

China: Whether authorities seize the passports, identity documents, or travel documents of persons who are the subject of a criminal summons, a police investigation, or criminal charges (2021–October 2023) [CHN201661.E]

Research Directorate, Immigration and Refugee Board of Canada

1. Legislation

An article in the *International Migration* journal by Lili Song, a senior lecturer at the University of Otago in New Zealand with a specialization in refugee, immigration and Chinese law (University of Otago n.d.), indicates that "[e]xit in the PRC [People's Republic of China] is regulated through three mechanisms, namely restrictions on access to passports, prohibition of certain passport holders from exiting and criminalization of unauthorized exit" (Song 2022-09-23, 9). A report by Safeguard Defenders [1] on China's use of exit bans identifies "at least" 14 laws that provide for exit bans (2023-04, 5). According to Song, citing a number of "[s]cholars," the laws overseeing exit restrictions for valid passport holders in China are "fragmented and arguably overly broad"; "some" provisions are "inconsistent with each other or with the PRC Legislation Law" (2022-09-23, 6, 9). The same source indicates that a "wide range" of governmental bodies "are empowered or have de facto exercised the power" to implement exit control measures, noting that "some legal provisions" remain "vague or silent" as to which agencies have the right to enforce such exit limitations (Song 2022-08-19, 9). In an interview with the Research Directorate, a human rights lawyer specializing in Chinese criminal justice noted that the Criminal Procedure Law, the Passport Law, and the Exit and Entry Administration Law are relevant to travel document

seizures for those facing criminal charges or under police investigation (Human rights lawyer 2023-08-30). In correspondence with the Research Directorate, a US-based academic whose research focuses on human rights and rule of law in China stated that various governmental and judicial bodies possess the power to confiscate passports under Chinese law (Academic 2023-09-10). The same source mentioned the following legal articles as providing for this: Article 15 of the Passport Law, Article 12 of the Exit and Entry Administration Law, Articles 71 and 77 of the Criminal Procedure Law, and Article 30 of the Supervision Law (Academic 2023-09-10). The source further noted that "as with exit bans, legal authority to confiscate passports is ample and spread across a number of different government bureaucracies" (Academic 2023-09-10).

1.1 Criminal Procedure Law

The Criminal Procedure Law, adopted in 1979 and amended in 2018, provides the following:

Article 71

Criminal suspects and defendants who have been released on bail pending investigation shall abide by the following provisions:

(1) They must not leave their city or county of residence without the approval of the executing authority.

...

On the basis of the circumstances concerning the case, the people's court, people's procuratorate or public security authority may order the criminal suspects and defendants who have been released on bail pending investigation to abide by one or more of the following provisions:

...

(4) They shall provide their passport, including any entry and exit documents, and driver's licence to the executing authority for safekeeping.

...

Article 77

Criminal suspects and defendants who are under residential surveillance shall adhere to the following provisions:

(1) They must not leave the location of their residential surveillance without the approval of the executing authority.

...

(6) They shall provide their passport, including any entry and exit documents, identification card, and driver's licence to the executing authority for safekeeping. (China 1979)

The human rights lawyer made note of the difference in wording between Article 71 and Article 77 (2023-08-30). The same source explained that under Article 71, which refers to suspects or defendants who are released on bail, authorities decide whether to confiscate passports and other identity documents, whereas under Article 77, which refers to suspects and defendants under residential surveillance, handing over passports and other travel documents to authorities is automatically required (Human rights lawyer 2023-08-30).

1.2 Passport Law

According to an English translation that appears on the website of China's National People's Congress, the Passport Law, adopted in 2006, provides the following:

Article 13 The passport issuing authority shall refuse to issue a passport if the applicant:

...

(4) is punished for a crime and is serving a sentence;

(5) is not allowed to leave the country because of an unsettled civil case, as is notified by a people's court;

(6) is a defendant in a criminal case or a criminal suspect; or

(7) is a person who the relevant competent department of the State Council believes will undermine national security or cause major losses to the interests of the State.

...

Article 15 People's courts, people's procuratorate, public security organs, national security organs and administrative supervisory authorities may, where necessary for handling a case, seize the passports of the parties of a case according to law.

Where the parties of the case refuse to hand over the passports, the State organs specified in the preceding paragraph may request the passport issuing authorities to declare the passports of the parties of the case invalid. (China 2006)

1.3 Exit and Entry Administration Law

The Exit and Entry Administration Law, passed in 2012, for which an English translation is available on China's National Immigration Administration website, provides the following:

Article 12 Under any of the following circumstances, Chinese citizens are not allowed to exit China:

...

(2) Are sentenced to criminal punishments, the execution of which have not been completed, or are suspects or defendants in criminal cases;

(3) Are involved in unsettled civil cases and not allowed to exit China upon decision of the people's courts;

(4) Are subject to criminal punishment for impairing border administration, or are repatriated by other countries or regions due to illegal exit from China, illegal residence or illegal employment, and the No-Exit-from-China period has not expired;

...

Article 65 Where persons are not allowed to exit or enter China upon decisions made in accordance with the law, the decision-making authorities shall duly inform the exit/entry border inspection authorities of such decisions in accordance with relevant regulations; where the circumstances in which the persons are not allowed to exit or enter China disappear, the decision-making authorities shall duly cancel the aforesaid decisions and inform exit/entry border inspection authorities of the cancellation. (China 2012)

1.4 Supervision Law

The Supervision Law, adopted in 2018. provides the following:

Article 30

In order to prevent persons under investigation and other relevant persons from fleeing the country and going into hiding, supervisory authorities may, with the approval of a supervisory authority at or above the provincial level, impose restrictions to prevent the persons under investigation or other relevant persons from exiting the country, and such restrictions shall be enforced by the public security authorities in accordance with the law. Where it is not necessary to continue to impose restrictions preventing such persons from exiting the country, these restrictions shall be lifted immediately. (China 2018)

2. Passport Confiscation and the Enforcement of Exit Bans

The US-based academic stated that,

given what we know about Chinese law, any decision on seizure of passport will almost certainly be based not on a legal delineation of the relevant circumstances in which passports should be seized, but rather the arbitrary and usually non-reviewable decision of the official in charge of handling the case in question. (Academic 2023-09-10)

According to the academic, police "often" confiscate passports of rights activists and others who are either under investigation or long-term surveillance; however, the authorities' approach is not consistent (2023-09-10). In some cases studied by the academic, the police have chosen not to take the passport of someone under investigation, "likely" because they believe alternative measures such as exit bans or continuous monitoring are enough to prevent that person from leaving the country (Academic 2023-09-10).

The information in the following paragraph was provided by the human rights lawyer:

Although authorities have the right to confiscate passports and other travel documents, it is "more common in practice" to put individuals on a travel ban list. "Technically," passports and other travel documents do not need to be confiscated to prevent travel, since a person on a travel ban list cannot "legally" exit the country in any case. How authorities interpret regulations is "arbitrary and not transparent." Under Article 15 of the Passport Law, authorities have the right to seize passports of parties involved in a case "where necessary." However, "[i]n practice, most" people whose passports were taken away were not parties in any pending cases (Human rights lawyer 2023-08-30).

In correspondence with the Research Directorate, a campaign director at Safeguard Defenders stated that it "appear[s]" that Chinese authorities are "increasingly" issuing travel bans against persons under police investigation or facing criminal charges (Safeguard Defenders 2023-09-05). The same source noted that due to the "severe lack of transparency" and inconsistency in exit ban reporting, it is "difficul[t]" to "quantif[y]" the extent of the practice (Safeguard Defenders 2023-09-05). The source added that a travel ban "may result" in the confiscation of an individual's passport, the refusal to issue them a travel document, or the "invalidat[ion]" of existing travel documents (Safeguard Defenders 2023-09-05).

The information in the following two paragraphs was provided in a country information report on China by Australia's Department of Foreign Affairs and Trade (DFAT):

Relatives of someone under investigation might also face an exit ban. This does not just apply to "sensitive" allegations but also to financial ones like fraud.

Due to China's "strictly regulated" entry and exit management procedures, the State is able to monitor individuals' movements into and out of the country via air and seaports, using artificial intelligence, facial recognition tools, and biometric data to detect fraudulent documents and verify identities. Several government departments, including those related to tax, customs, and law enforcement, contribute data to the biometric databases. Such technology assists in establishing an exit control list, though it is "not clear" how the list works, and the bans "may appear arbitrary." When someone is the subject of an exit ban, "it is very unlikely, probably impossible, that they would be able to leave China" (Australia 2021-12-22, para. 5.31, 5.33).

3. Incidents of Passport Confiscation

According to a May 2023 article by Associated Press (AP), a number of Chinese sports officials, including the Vice President of the Chinese Football Association (CFA), were under investigation for corruption charges (2023-05-02). The Chinese-language news site Sohu.com reported in June 2023 that the passports of a [translation] "dozen" CFA officials had been confiscated as part of an ongoing "anti-corruption crackdown on the CFA" and "to prevent certain CFA members from running away" (2023-06-29).

According to an article by Radio Free Asia (RFA), a non-profit broadcasting corporation funded by the US Congress (RFA n.d.), a [translation] "dissident" under surveillance by authorities in Zhejiang Province had his passport confiscated (2023-04-06). The same source reports that the individual had been released in 2018 after serving seven years in prison for [translation] "subversion of state power" for writing a poem that "called on people to support freedom" and that the individual has been under house arrest since his release (RFA 2023-04-06). RFA notes that the "dissident" successfully applied for and was issued a passport and a Japanese visa in February 2023 to visit an ailing relative; however, in March 2023, authorities from Hangzhou Shangcheng District Domestic Security Brigade visited the individual's home and confiscated his passport (RFA 2023-04-06).

An article by the Paper, a Chinese digital news website, states that 10 defendants involved in a [translation] "pyramid scheme" case in Henan province were released on bail pending trial on 10 July 2023; one of the individuals was put under residential surveillance [2] for a period of six months (2023-07-12). The same source, citing the [translation] "Decision to Release on Bail Pending Trial" by the People's Court of Yicheng District, Zhumadian City, states that according to the Criminal Procedure Law the

defendant under residential surveillance [translation] "will hand over their passport and other entry-exit documents, ID card, and driver's license to the enforcement agency for safekeeping" (The Paper 2023-07-12).

According to the Safeguard Defenders report, in 2015 a rights activist was put under residential surveillance at a designated location for trying to help the son of a human rights lawyer escape China (2023-04, 25). The report indicates that the activist, released on bail in 2016, was told by Beijing police that his confiscated passport would be returned at the end of the bail period; however, after bail expired and the activist requested his passport back, he was denied by authorities because he was on an exit ban list (Safeguard Defenders 2023-04, 25). The same report states that the activist was later successful in obtaining a new passport, applying on the grounds that his previous passport had been "lost"; he left the country in 2021 and "now lives in exile" (Safeguard Defenders 2023-04, 25).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

Notes

[1] Safeguard Defenders is a Spain-based human rights NGO that "undertakes and supports local field activities" in Asia (Safeguard Defenders n.d.). Safeguard Defenders "inherited the mission of China Action," its Beijing-based precursor NGO which was shut down in 2016 "after Chinese authorities targeted it in a major crackdown"; at that time, "many of its staff and partners were detained, disappeared or imprisoned" (Safeguard Defenders n.d.).

[2] The report by Safeguard Defenders describes Residential Surveillance at a Designated Location (RSDL) as a form of secret incommunicado detention that can last up to six months (Safeguard Defenders 2023-04, 48).

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Oral sources: Associate professor at a Canadian university specializing in Chinese law and government; honorary professor at an Australian university specializing in the globalization of law; postdoctoral fellow at an American university whose research focuses on Chinese legal reform;

professor at a Canadian university specializing in Chinese law and criminal justice; professor at an American university specializing in Chinese and Taiwanese law; professor at an American university specializing in modern Chinese law; professor of Chinese studies at an Australian university; professor of Chinese studies at an Austrian university specializing in Chinese law and politics; professor of law at an American university specializing in Chinese law; professor at a Chinese university whose research focuses on criminology; senior lecturer at a British university specializing in criminal justice; senior lecturer at an Australian university specializing in Chinese criminal justice; senior research scholar at an American university specializing in Chinese law.

Internet sites, including: Amnesty International; Austrian Red Cross – ecoi.net; BBC; Bertelsmann Stiftung; China – Ministry of Public Security, National People's Congress; ChinaAid; China Justice Observer; The China Project; Chinese Human Rights Defenders; Dui Hua; Freedom House; Germany – Federal Office for Migration and Refugees; *Global Times*; *The Guardian*; Human Rights Watch; *Made in China Journal*; *The New York Times*; NPC Observer; *People's Daily*; *South China Morning Post*; SupChina; UK – Home Office; US – Congressional-Executive Commission on China, Department of State; Voice of America; Weiquanwang; WeLanen.

Associated documents

Document ID 2101186 Translation / language version

6 October 2023 | [IRB – Immigration and Refugee Board of Canada](#)
(Author)

China

Query response on China: Seizure of identity and travel documents of persons subject to a police investigation or criminal charges (2021 to October 2023) (legislation; passport confiscation and enforcement of exit ban; incidents of passport confiscation)

[Chine : information indiquant si les autorités saisissent les passeports, les pièces d'identité ou les titres de voyage des personnes qui font l'objet d'une citation à comparaître en matière criminelle, d'une enquête policière ou d'accusations au criminel \(2021-octobre 2023\) \[CHN201661.EF\]](#) (Response, French)

ecoi.net description:

Query response on China: Seizure of identity and travel documents of persons subject to a police investigation or criminal charges (2021 to October 2023) (legislation; passport confiscation and enforcement of exit ban; incidents of passport confiscation)

Country:

China

Source:

[IRB – Immigration and Refugee Board of Canada](#) (Author)

Published:

6 October 2023

Original link:

<https://irb-cisr.gc.ca/en/country-information/rir/Pages/index.aspx?doc=458884&pls=1>

Document type:

Response

Language:

English

Available on ecoi.net since:

4 December 2023

Document ID:

2101186

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Country of Origin and
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ecoi.net is run by the Austrian Red Cross (department ACCORD) in cooperation with Informationsverbund Asyl & Migration. ecoi.net is funded by the Asylum, Migration and Integration Fund, the Austrian Ministry of the Interior and Caritas Austria. ecoi.net is supported by ECRE & UNHCR.

