

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	409
Land:	Kina
Kilde:	UK Home Office
Titel:	Country Information Guidance, China: Fear of punishment on return to China for crimes committed in other countries ('Double Jeopardy')
Udgivet:	September 2015
Optaget på baggrundsmaterialet:	5. januar 2016



Home Office

Country Information and Guidance

China: Fear of punishment on return to China for crimes committed in other countries ('Double Jeopardy')

Version 1.0

September 2015

Preface

This document provides guidance to Home Office decision makers on handling claims from – as well as country of origin information (COI) about – double jeopardy in China. This includes whether claims are likely to justify the granting of asylum, humanitarian protection or discretionary leave and whether – in the event of a claim being refused – it is likely to be certifiable as ‘clearly unfounded’ under s94 of the Nationality, Immigration and Asylum Act 2002.

Decision makers must consider claims on an individual basis, taking into account the case specific facts and all relevant evidence, including: the guidance contained with this document; the available COI; any applicable caselaw; and the Home Office casework guidance in relation to relevant policies.

Country Information

The COI within this document has been compiled from a wide range of external information sources (usually) published in English. Consideration has been given to the relevance, reliability, accuracy, objectivity, currency, transparency and traceability of the information and wherever possible attempts have been made to corroborate the information used across independent sources, to ensure accuracy. All sources cited have been referenced in footnotes. It has been researched and presented with reference to the [Common EU \[European Union\] Guidelines for Processing Country of Origin Information \(COI\)](#), dated April 2008, and the [European Asylum Support Office’s research guidelines, Country of Origin Information report methodology](#), dated July 2012.

Feedback

Our goal is to continuously improve the guidance and information we provide. Therefore, if you would like to comment on this document, please [e-mail us](#).

Independent Advisory Group on Country Information

The Independent Advisory Group on Country Information (IAGCI) was set up in March 2009 by the Independent Chief Inspector of Borders and Immigration to make recommendations to him about the content of the Home Office’s COI material. The IAGCI welcomes feedback on the Home Office’s COI material. It is not the function of the IAGCI to endorse any Home Office material, procedures or policy.

IAGCI may be contacted at:

Independent Chief Inspector of Borders and Immigration,
5th Floor, Globe House, 89 Eccleston Square, London, SW1V 1PN.

Email: chiefinspectorukba@icinspector.gsi.gov.uk

Information about the IAGCI’s work and a list of the COI documents which have been reviewed by the IAGCI can be found on the Independent Chief Inspector’s website at <http://icinspector.independent.gov.uk/country-information-reviews/>

Contents

- Guidance..... 4**
 - 1. Introduction 4
 - 2. Consideration of Issues 4
- Country Information..... 6**
 - 3. Double Jeopardy..... 6
- Version Control and Contacts..... 8**

Guidance

Updated: 8 September 2015

1. Introduction

1.1 Basis of Claim

- 1.2.1 Fear of punishment and/or imprisonment on return to China for crimes the person has committed and been punished for in other countries?

2. Consideration of Issues

2.1 Is the person's account credible?

- 2.1 For further guidance on assessing credibility, see sections 4 and 5 of the [Asylum Instruction on Assessing Credibility and Refugee Status](#).
- 2.2 Decision makers must also check if there has been a previous application for a UK visa or another form of leave. Asylum applications matched to visas should be investigated prior to the asylum interview (see the [Asylum Instruction on Visa Matches, Asylum Claims from UK Visa Applicants](#)
- 2.3 Decision makers should also consider the need to conduct language analysis testing (see the [Asylum Instruction on Language Analysis](#)).

2.2 Do those at risk of double jeopardy in China constitute a particular social group (PSG)?

- 2.2.1 Victims or potential victims of double jeopardy in China do not constitute a particular social group (PSG) within the meaning of the 1951 UN Refugee Convention. This is because they do not possess a common immutable/innate characteristic that cannot be changed or a characteristic that is so fundamental to human identity that they should not be required to change it. Neither are they perceived by Chinese society as having a distinct identity.

- 2.2.2 For further information on particular social groups, see section 7.6 of the [Asylum Instruction on Assessing Credibility and Refugee Status](#).

2.3 Are those who have been prosecuted and punished for crimes in another country at risk of re-prosecution and imprisonment amounting to persecution in China?

- 2.3.1 Chinese citizens can be punished/imprisoned on return to China for crimes they have committed and been punished for in other countries (which attract a maximum sentence of more than three years unless the offender is a civil servant or a serviceman, in which case all offences may, in theory, be prosecuted). (See [Double jeopardy](#)). However, in the country guidance case of [JC \(double jeopardy: Art 10 CL\) China CG \[2008\] UKIAT 00036 \(14 May 2008\)](#), the Tribunal found that whilst there is a risk of prosecution or re-prosecution under Articles 7 and 10 of the Chinese Criminal Law for overseas offenders returned to China, use of the legal provisions is discretionary and extremely rare. Without particular aggravating factors, the risk falls well below the level required to engage international protection [Para 273(17) of determination].

- 2.3.2 The Tribunal in JC found that the risk of prosecution or re-prosecution will be a question of fact in individual cases but is more likely where (a) there has been a substantial amount of adverse publicity within China about a case; (b) the proposed defendant has significantly embarrassed the Chinese authorities by their actions overseas; (c) the offence is unusually serious. Generally, snakehead cases do not have the significance they have in the West and are regarded as ordinary (but serious) crimes requiring no special treatment; (d) political factors may increase the likelihood of prosecution or re-prosecution; and (e) the Chinese Government is also particularly concerned about corruption of Chinese officialdom [Para 273(19) of determination].
- 2.3.3 This position has been further confirmed and expanded on by the country guidance case, YF (Double jeopardy – JC confirmed) China CG [2011] UKUT 32 (IAC) (26 January 2011) which added under (d) political factors, “(which may include the importance attached by the Chinese authorities to cracking down on drugs offenders)” [headnote paragraph 1].
- 2.3.4 For further information on assessing risk, see section 6 of the Asylum Instruction on Assessing Credibility and Refugee Status.
- 2.4 **Are those at risk able to seek effective protection?**
- 2.4.1 As the person’s fear is of ill treatment/persecution at the hands of the state, it is unreasonable to consider they would be able to avail themselves of the protection of the authorities.
- 2.4.2 For further guidance on assessing the availability or not of state protection, see section 8.1 of the Asylum Instruction on Assessing Credibility and Refugee Status.
- 2.5 **Are those at risk able to internally relocate?**
- 2.5.1 As the person’s fear is of ill treatment/persecution at the hands of the state, it is neither relevant - nor realistic to expect them to relocate to escape that risk.
- 2.5.2 For further guidance on the factors to consider and considering internal relocation, see section 8.2 of the Asylum Instruction on Assessing Credibility and Refugee Status.
- 2.6 **If refused, is the claim likely to be certifiable as ‘clearly unfounded’?**
- 2.6.1 Where a claim falls to be refused, it is likely to be certifiable as ‘clearly unfounded’ under section 94 of the Nationality, Immigration and Asylum Act 2002.
- 2.6.2 For further information on certification, see the Asylum Instruction on Non-Suspensive Appeals: Certification Under Section 94 of the NIA Act 2002.

[Back to Contents](#)

Country Information

Updated: 8 September 2015

3. Re-prosecution (Double Jeopardy)

- 2.1 Articles 7 to 12 of the Criminal Law cover the circumstances in which an individual who commits crimes outside the People's Republic of China (PRC) can be retried upon return to China.

'Article 7

'This law is applicable to PRC citizens who commit the crimes specified in this law outside the territory of the PRC; but those who commit the crimes, provided that this law stipulates a minimum sentence of less than a three-year fixed-term imprisonment for such crimes, may not be dealt with.

'This law is applicable to PRC state personnel and military personnel who commit the crimes specified in this law outside PRC territory.

'Article 8

'This law may be applicable to foreigners, who outside PRC territory, commit crimes against the PRC state or against its citizens, provided that this law stipulates a minimum sentence of not less than a three-year fixed term of imprisonment for such crimes; but an exception is to be made if a crime is not punishable according [to] the law of the place where it was committed.

'Article 9

'This law is applicable to the crimes specified in international treaties to which the PRC is a signatory state or with which it is a member and the PRC exercises criminal jurisdiction over such crimes within its treaty obligations.

'Article 10

'Any person who commits a crime outside PRC territory and according to this law bear criminal responsibility may still be dealt with according to this law even if he has been tried in a foreign country; however, a person who has already received criminal punishment in a foreign country may be exempted from punishment or given a mitigated punishment.

'Article 11

'The problem of criminal responsibility of foreigners who enjoy diplomatic privileges and immunity is to be resolved through diplomatic channels.

'Article 12

'If an act committed after the founding of the PRC and before the implementation of this law was not deemed a crime under the laws at that time, the laws at that time are to be applicable. If the act was deemed a crime under the laws at that time, and if under the provisions of Chapter IV,

Section 8 of the general provisions of this law it should be prosecuted, criminal responsibility is to be investigated according to the laws at that time. However, if this law does not deem it a crime or imposes a lesser punishment, this law is to be applicable.

‘The effective judgments that were made according to the laws at that time before the implementation of this law will continue to be in force.’¹

- 2.2 According to a 2005 FCO letter, the circumstances under which an individual would be punished in China for a crime committed in a foreign country, for which he had already been punished in that country, are not stipulated. The Chinese authorities are most likely to take this action if the crime had received a lot of publicity in China, if the victims were well-connected in China, if there were a political angle to the original crime or if the crimes were of a particular type that the authorities wanted to make an example of. As of July 2005 the British Embassy in Beijing is unaware of any such instances. The specific inclusion in the Criminal Law of ‘exemptions’ from second punishment in China for crimes committed abroad suggests that the authorities would not take further action against those convicted abroad for ordinary criminal offences.²

See also [Country Information and Guidance, China: Background Information, including actors of protection and internal relocation \(July 2015\)](#) for further information about the judicial system in China.

[Back to Contents](#)

¹ National Legislative Bodies Criminal Law of the People's Republic of China, 1 October 1997, <http://www.refworld.org/docid/3ae6b5cd2.html>, date accessed 5 June 2015

² Foreign and Commonwealth Office (FCO), Letter from FCO of 15 July 2005

Version Control and Contacts

Contacts

If you have any questions about the guidance and your line manager or senior caseworker cannot help you or you think that the guidance has factual errors then email [the Country Policy and Information Team](#).

If you notice any formatting errors in this guidance (broken links, spelling mistakes and so on) or have any comments about the layout or navigability of the guidance then you can email [the Guidance, Rules and Forms Team](#).

Clearance

Below is information on when this version of the guidance was cleared:

- version **1.0**
- valid from **8 September 2015**
- this version approved by **Sally Weston, Deputy Director, Head of Legal Strategy, Immigration and Border Policy Directorate**
- approved on: **28 August 2015**

Changes from last version of this guidance

- First version in new template

[Back to Contents](#)