

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	599
Land:	Kina
Kilde:	Immigration and Refugee Board of Canada
Titel:	China: Documents issued by the Public Security Bureau (PSB), including Administrative Penalty Decision and Confirmation of Release documents, particularly in Fujian and Guangdong provinces; appearance and security features of such documents; payment of bail or fines, including authority responsible for issuing the receipt of payment (2017–October 2020)
Udgivet:	15. oktober 2020
Optaget på baggrundsmaterialet:	6. januar 2021

Document #2039961

IRB – Immigration and Refugee Board of Canada

China: Documents issued by the Public Security Bureau (PSB), including Administrative Penalty Decision and Confirmation of Release documents, particularly in Fujian and Guangdong provinces; appearance and security features of such documents; payment of bail or fines, including authority responsible for issuing the receipt of payment (2017–October 2020) [CHN200326.E]

Research Directorate, Immigration and Refugee Board of Canada

1. Documents

1.1 Administrative Penalty Decision

In correspondence with the Research Directorate, a foreign law specialist with the US Law Library of Congress, speaking on their own behalf, explained that

[p]ublic security organs (police) in China can punish minor offenses that have disrupted public order but are not serious enough to be punished by the Criminal Law, without going through court trials. The power of the police to impose administrative penalties on such unlawful acts is primarily governed by the Law on Penalties for Administration of Public Security. (Foreign Law Specialist 16 Sept. 2020)

The Law of the People's Republic of China on Penalties for Administration of Public Security provides the following:

Article 100 Where the facts about the act committed against the administration of public security are clear and the evidence is irrefutable, for which a warning is to be given or a fine of not more than 200 yuan [CNY] [C\$39] is to be imposed, the decision on such a penalty for administration of public security may be made on the spot.

Article 101 Where a decision on a penalty for administration of public security is made on the spot, the people's policeman shall show his work certificate to the person who commits an act against the administration of public security, and fill out a written decision on the penalty. The written decision on the penalty shall, on the spot, be handed over to the person penalized; and where there is a victim in the case, the duplicate of the written decision shall be sent to him.

...

Where the decision on a penalty for administration of public security is made on the spot, the people's policeman who handles the case shall, within 24 hours, report the matter for the record to the public security organ which he belongs to. (China 2005)

1.1.1 Appearance and Security Features

Article 96 of the law on penalties provides the following:

When the public security organ makes a decision on penalty for administration of public security, it shall make a written decision on such penalty. In the written decision the following shall clearly be stated:

1. the name, sex, age, title and number of identity card, and address of the person penalized;
2. facts and evidence of the illegal act committed;
3. type and basis of the penalty;
4. means for executing the penalty and the period of time of the penalty;
5. channels and time limit for making an application for administrative reconsideration or for bringing an administrative suit if a person is dissatisfied with the decision on penalty; and
6. name of the public security organ that makes the decision on penalty and the date on which such a decision is made.

The seal of the public security organ that makes the decision on penalty shall be affixed to the written decision. (China 2005)

Similarly, the Editor-in-Chief of *Bitter Winter*, "an online magazine on religious liberty and human rights in China published daily in eight languages by CESNUR, the Center for Studies on New Religions, headquartered in Torino, Italy" (*Bitter Winter* n.d.), stated that Administrative Penalty Decisions (APD) are "legally binding documents aimed at sanctioning illegal acts, and are created on the basis of the relevant evidence that the administrative organs have obtained through their investigations" and that APDs "include the facts of the defendant's violations of law, the grounds and basis according to which the penalties are to be decided, and the specific decision. The document shall be sealed with the administrative organ's official seal by the law-enforcing officer in charge" (Editor-in-Chief 24 Aug. 2020). A copy of a completed APD from Hefei City Public Security Bureau and a copy of a blank APD form from the Ministry of Public Security that were provided to the Research Directorate by the Editor-in-Chief and Foreign Law Specialist, respectively, are attached to this Response (Attachments 1 and 2).

1.2 Confirmation of Release

Article 30 of the Order of the State Council of the People's Republic of China No. 614 or "Regulations on Detention Centers" provides the following: [translation] "Upon expiration of the detention period of a detainee, the detention center shall release the detainee on time, issue a certificate of release from detention, and return the property kept in custody" (China 2012).

The Foreign Law Specialist stated that "after serving administrative detention, a detainee may receive a confirmation of release (*jie chu ju liu zheng ming shu*) issued by the detention house, but not the public security organ that imposed the administrative penalty"; consequently, "the confirmation of release from administrative detention is therefore likely to bear the official seal of a detention house rather than that of a Public Security Bureau" (Foreign Law Specialist 16 Sept. 2020).

According to the Editor-in Chief, Confirmation of Release (COR) [or Certificate of Release] documents are issued in triplicate and include a primary and secondary copy and a stub (Editor-in-Chief 24 Aug. 2020). The same source further described the COR documentation process as follows:

1. After the primary copy is completed, it shall be kept by the released prisoner, in order to show that his/her detention has been removed or terminated in accordance with the law. The primary copy includes the beginning, the main body, and the end.
 1. The beginning shall include the name and number of the document according to the prescribed format.
 2. The main body shall include the released person's name, sex, age, original place of residence, the time of his/her arrest or detention, the reason for his/her release, etc.
 3. The end shall include the date for the production of document and the seal of the detention house.
2. The secondary copy also includes the beginning, the main body, and the end parts. The difference with the primary copy is that its end also includes the following content: The holder shall visit the public security organ of his/her place of residence to go through the formalities of residence registration, and the document will become invalid after the expiration date. This copy shall be kept by the public security organ of the holder's place of residence.
3. The stub includes the document number, the arrestee's or the detainee's name, sex, age, place of residence, the reason for his/her arrest or detention and for his/her release, the name of the unit approving the decision, the release date, the name of the case handler, the date of preparation and issuance, and the name of the preparing and issuing person. Finally, the released person shall sign his/her name and the date of receiving the COR document. (Editor-in-Chief 24 Aug. 2020)

A copy of a blank Certificate of Release document and a sample of a filled-out Certificate of Release document, provided to the Research Directorate by the Editor-in-Chief, are attached to this Response (Attachments 3 and 4).

2. Payment of Fines

The law on penalties provides the following:

Article 91 Penalties for administration of public security shall be decided on by public security organs under the people's government at or above the county level, among which, a warning or a fine of not more than 500 yuan [C\$98] may be decided on by local police stations.

...

Article 104 The person on whom a fine is imposed as a penalty shall pay the fine to a designated bank within 15 days from the date he receives the written decision on the penalty. However, under one of the following circumstances, the people's policeman may collect the fine on the spot:

1. if the amount of the fine imposed is not more than 50 yuan [C\$9.80] and the person penalized has no objection to the fine;
2. if in an outlying area, or on water, or in a place not easily accessible where the public security organ or the people's policeman makes a decision on a fine in accordance with the provisions of this Law, the person penalized makes such a proposal because it is really difficult for him to pay the fine to the designated bank; or

3. if it is difficult to enforce the penalty unless the fine is collected on the spot, because the person penalized has no permanent dwelling place in the locality.

Article 105 The people's policeman who collects a fine on the spot shall, within two days from the date he collects the fine, hand the fine over to the public security organ which he belongs to; if a fine is collected on the spot on water or aboard a train, he shall, within two days from the date he arrives at the port or railway station, hand the fine over to the public security organ which he belongs to; and the public security organ shall, within two days from the date it receives the fine, hand the fine over to the designated bank.

Article 106 When a people's policeman collects a fine on the spot, he shall produce to the person penalized a voucher for the fine which is uniformly printed and issued by the finance department of the people's government of a province, autonomous region, or municipality directly under the Central Government; and if no such voucher is produced, the person penalized shall have the right to refuse to pay the fine. (China 2005)

The Editor-in-Chief indicated that "[i]n case of ... fines, authorities other than the public security organs may also be designated [to exercise the 'powers of administrative penalty']. ... The designated organization selected in accordance with the law also has the right to sign and issue the receipt for the fine" (Editor-in-Chief 24 Aug. 2020).

A copy of a fine receipt, provided to the Research Directorate by the Editor-in-Chief, is attached to this Response (Attachment 5).

3. Payment of Bail

According to the Foreign Law Specialist, "bail under Chinese law usually refers to *qu bao hou shen* in the criminal proceedings, which allows a suspect or defendant to be released by providing an individual guarantor or cash security" (Foreign Law Specialist 16 Sept. 2020). In addition, the same source also noted that *bao zheng jin* is the "closest concept to 'bail'" in the administrative proceedings under the law on penalties (Foreign Law Specialist 16 Sept. 2020). The source stated that according to article 107 of the law on penalties,

a person on whom the administrative detention is imposed may challenge the decision through administrative reconsiderations or lawsuits and in the meantime file a petition with the public security organ to postpone the detention. If the public security organ approves the petition, it will require the petitioner to provide an individual guarantor or cash security. (Foreign Law Specialist 16 Sept. 2020)

According to the Foreign Law Specialist, the cost of a *bao zheng jin* security "is fixed to 200 Chinese yuan (about US\$29) per day of the administrative detention imposed" (Foreign Law Specialist 16 Sept. 2020).

Sources indicated that while bail may be decided by several designated organizations, including courts, it is the public security organs that have the authority to implement it (Editor-in-Chief 24 Aug. 2020; Foreign Law Specialist 16 Sept. 2020).

The Foreign Law Specialist also stated that the Law on Penalties for Administration of Public Security "does not specify the authority that is responsible for issuing a receipt of payment of bail" and that the Ministry of Public Security "in its procedural requirements for public security organs in handling administrative cases, in general requires this bail to be paid to a bank, and allows public security organs to collect the money only during non-business hours of the bank" (Foreign Law Specialist 16 Sept. 2020).

4. Fujian and Guangdong Provinces

According to sources, a form template document issued by China's Public Security Ministry provides forms to be used by local authorities [1], including a form for administrative penalty decisions [Attachment 2] (Editor-in-Chief 24 Aug. 2020, Foreign Law Specialist 16 Sept. 2020). The Editor-in-Chief reports that there are "no special documents applicable to Fujian or Guangdong Provinces" and that

legal documents are based on nationally unified forms and are printed by the local authorities on their own accord based on the book "Form of Criminal Legal Documents of Public Security Organs," published by the Public Security Ministry. (Editor-in-Chief 24 Aug. 2020)

Print examples of documents issued by the PSB from Fujian or Guangdong Province could not be found among the sources consulted by the Research Directorate within the time constraints of this Response. However, the Foreign Law Specialist stated that "Public Security Bureau of Guangdong Province ... appears to be running an online law enforcement platform, which publishes digital versions of Administrative Penalty Decisions issued by public security organs throughout the province" (Foreign Law Specialist 16 Sept. 2020). A sample administrative penalty decision from Guangdong Province's online platform, provided to the Research Directorate by the Foreign Law Specialist, is attached to this Response (Attachment 6).

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.

Note

[1] This document is referred to as the "Form of Criminal Legal Documents of Public Security Organs" (Editor-in-Chief 24 Aug. 2020) or "Templates of Public Security Administrative Documents" (Foreign Law Specialist 16 Sept. 2020).

References

Bitter Winter. N.d. "About." [Accessed 15 Oct. 2020]

China. 2012. [Order No. 614 of the State Council of the People's Republic of China](#). Excerpt translated by the Translation Bureau, Public Services and Procurement Canada. [Accessed 24 Sept. 2020]

China. 2005. [Law of the PRC on Penalties for Administration of Public Security](#). [Accessed 15 Sept. 2020]

Editor-in-Chief, *Bitter Winter*. 24 August 2020. Correspondence with the Research Directorate.

Foreign Law Specialist, US Law Library of Congress. 16 September 2020. Correspondence with the Research Directorate.

Additional Sources Consulted

Oral sources: Assistant professor at an American university who conducts research on Chinese politics; China – Embassy of the People's Republic of China in Canada, Guangdong Provincial Public Security Department, State Council; ChinaAid; China-based international law firm; Dui Hua Foundation; human rights activist and lawyer in China; Human Rights in China – New York and Hong Kong offices; Jiuwenlaw.com; lecturer on modern China studies at a Dutch university; New York-based immigration law firm; professor who specializes in Chinese law at an American University; professor at the University of Melbourne's Asian Law Centre; professor of Chinese studies at an Australian university; professor of law at the China University of Political Science and Law; professor of law with a focus on China and Taiwan at an American university; professor of politics at a UK university with a focus on Chinese policing and punishment; senior research scholar in law at the Paul Tsai China Center at Yale Law School.

Internet sites, including: Amnesty International; Asian Association of Police Studies; ChinaAid; *China Daily*; China – China Internet Information Center, Guangdong Provincial Public Security Department, State Council; China Law & Policy; China Law Translate; ecoi.net; EU – European Asylum Support Office; Factiva; Human Rights Watch; NPC Observer; *South China Morning Post*; US – Congressional-Executive Commission on China, Department of State.

Attachments

1. China. N.d. Sample of an Administrative Penalty Decision. Sent to the Research Directorate by the Editor-in-Chief of *Bitter Winter*, 24 August 2020. Translated by the Translation Bureau, Public Services and Procurement Canada.
2. China. N.d. Template of an Administrative Penalty Decision form. Sent to the Research Directorate by a Foreign Law Specialist at the US Law Library of Congress, 16 September 2020. Translated by the Translation Bureau, Public Services and Procurement Canada.
3. China. N.d. Template of a Certificate of Release form. Sent to the Research Directorate by the Editor-in-Chief of *Bitter Winter*, 24 August 2020. Translated by the Translation Bureau, Public Services and Procurement Canada.
4. China. N.d. Sample of a Certificate of Release. Sent to the Research Directorate by the Editor-in-Chief of *Bitter Winter*, 24 August 2020. Translated by the Translation Bureau, Public Services and Procurement Canada.
5. China. N.d. Sample of a receipt for a fine. Sent to the Research Directorate by the Editor-in-Chief of *Bitter Winter*, 24 August 2020. Translated by the Translation Bureau, Public Services and Procurement Canada.
6. China. N.d. Sample of a Written Decision Concerning Administrative Penalty. Sent to the Research Directorate by a Foreign Law Specialist at the US Law Library of Congress, 16 September 2020. Translated by the Translation Bureau, Public Services and Procurement Canada.

ecoi.net summary:

Query response on China:
Documents issued by the Public
Security Bureau (PSB) (2017 -
October 2020)

Country:

China

Source:

IRB – Immigration and Refugee
Board of Canada

Original link:

<https://irb-cisr.gc.ca/en/country-information/rir/Pages/index.aspx?doc=458219&pls=1>

Document type:

Response

Language:

English

Published:

15 October 2020

Document ID:

2039961

Austrian Red Cross Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD)	Wiedner Hauptstraße 32, 1041 Wien T (Telefon) +43 1 589 00 583 F (Fax) +43 1 589 00 589 info@ecoi.net	Contact Imprint & Disclaimer F.A.Q. Data Protection Notice
--	---	---

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.

