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[Home](#) → [Country of Origin Information](#) → Responses to Information Requests

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8 December 2021

CHN200786.E

China: Exit controls for individuals who have been issued a summons or previously completed a term of administrative detention and/or were fined under the Public Security Administration Punishment Law (PSAPL) (中华人民共和国治安管理处罚法) [also known as Public Security Penalties Law], including individuals who are suspected members of or involved with unregistered churches or Falun Gong practitioners (2019–November 2021)

Research Directorate, Immigration and Refugee Board of Canada

This Response has been modified to amend the Chinese characters for the legislation.

For information on exit controls and security measures at airports for Chinese citizens travelling overseas, see Response to Information Request CHN106355 of October 2019.

1. Legislation

In correspondence with the Research Directorate, the Director of Safeguard Defenders [1], who consulted with five Chinese lawyers across three different regions of China before issuing their response, stated that "there are no known cases" of the PSAPL "being used as [a] basis for exit bans" (Safeguard Defenders 8 Nov. 2021).

The same source reported that exit bans "can" be applied to individuals who "*may* endanger national security," though what endangering national security entails "remains undefined in Chinese law" (Safeguard Defenders 8 Nov. 2021, emphasis in original). The same source added that there is no requirement to investigate or sentence someone for such a crime; "rather, it is up to the implementing body to decide if such a person leaving *could* or *may* endanger national security" (Safeguard Defenders 8 Nov. 2021, emphasis in original).

The Director of Safeguard Defenders noted that "there are numerous way[s] to, legally, apply travel bans, but administrative penalty regulations are not developed for that purpose" (Safeguard Defenders 8 Nov. 2021). The same source noted, however, that administrative penalty regulations can, "at least in theory," serve as the "basis" for exit controls (Safeguard Defenders 8 Nov. 2021).

The Director of Safeguard Defenders stated that exit bans are "often" applied to individuals "without formal notification" or "any documentation" (Safeguard Defenders 8 Nov. 2021). According to sources, there are cases in which individuals learned of their exit restrictions at the airport while attempting to travel (AP 4 May 2020; US

30 Mar. 2021, 48; Dui Hua 16 June 2021). The Director of Safeguard Defenders noted "there are times when authorities apply such bans" on those they "claim" are related to an investigation such as relatives or children of the person in question (Safeguard Defenders 8 Nov. 2021). Sources report cases from 2020 in which the family members of a person of interest are prevented from exiting the country (AP 4 May 2020; US 30 Mar. 2021, 48).

1.1 The PSAPL

The Director of Safeguard Defenders stated that the PSAPL, adopted in 2005 and revised in October 2012 (China 2005), does not stipulate any "right to use exit bans, either as punishment or during [the] process [of] investigating administrative liability, nor [does it contain] any catch-all paragraph that could be used for that purpose" (Safeguard Defenders 8 Nov. 2021). In correspondence with the Research Directorate, a China researcher at Human Rights Watch (HRW) indicated that restrictions on leaving China are not one of the four penalties provided by the PSAPL for violations of the law (HRW 4 Nov. 2021). In correspondence with the Research Directorate, an associate professor at the Peter A. Allard School of Law of the University of British Columbia (UBC) who specializes in Chinese administrative law, stated that they did not find "any specific regulations or clauses in the law prohibiting individuals [from leaving] China" (Associate Professor 1 Nov. 2021). In an interview with the Research Directorate, the Executive Director of the Center for Asian Law at Georgetown Law, who has published widely on the legal bases and application of Chinese exit bans, indicated that there is "no automatic exit ban mechanism tied to" the PSAPL (Executive Director 10 Nov. 2021). The same source added that "[t]he tool" for authorities to use is the exit ban in the Exit and Entry Administration Law [中华人民共和国出境入境管理法] or other mechanisms that permit exit controls provided in "vague" laws with "catch-all language that allow for broad discretion by authorities" (Executive Director 10 Nov. 2021).

1.2 The Exit and Entry Administration Law of the People's Republic of China (PRC)

The Exit and Entry Administration Law, which was adopted in 2012 and came into force on 1 July 2013, provides the following:

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

1. Hold no valid exit/entry documents, or refuse or evade border inspection;
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;
5. May endanger national security or interests, and are not allowed to exit China upon decision by competent departments under the State Council; or
6. Other circumstances in which exit from China is not allowed in accordance with laws or administrative regulations.

...

Article 59 Persons suspected of violating the regulations on exit/entry administration may be interrogated on the spot; upon on-the-spot interrogation, the aforesaid persons may be interrogated in continuation in accordance with the law under any of the following circumstances:

1. Are suspected of illegally exiting or entering China;
2. Are suspected of assisting others in illegally exiting or entering China;
3. Are foreigners suspected of illegally residing or working in China; or

4. Are suspected of endangering national security or interests, disrupting social or public order, or engaging in other illegal or criminal activities.

On-the-spot interrogation and continued interrogation shall be conducted in accordance with the procedures prescribed in the People's Police Law of the People's Republic of China.

Where public security organs under local people's governments at or above the county level or exit/entry border inspection authorities need to summon the persons suspected of violating the regulations on exit/entry administration, they shall handle the matter in accordance with the relevant regulations of the Law of the People's Republic of China on Penalties for Administration of Public Security.

...

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)

Referring to article 12 of the Exit and Entry Administration Law, Chen Qing'an, an associate researcher at the Shanghai Academy of Social Science Institute of Law, in a 2018 article in the Chinese journal *Politics and Law* (政治与法律) writes that the [translation] "abstract" language of the law "provide[s] state authorities with a relatively large amount of discretionary power" and "has laid a foundation for the relevant departments to expand their power and abuse their authority to restrict persons from exiting the country" (Chen 2018). Chen adds that the [translation] "obscurity and arbitrary nature" of this provision of the law has led to "many individuals being blacklisted so that they cannot exit

the country, including rights-protection lawyers, online opinion leaders and even persons who have been pronounced not guilty in a judicial process" (Chen 2018). The Director of Safeguard Defenders indicated that "[s]everal" of the human rights lawyers consulted in responding to the Research Directorate's request for information "are under active exit ban[s], based on the vague Exit and Entry Law article 12, paragraph 5, because they *may* endanger national security" (Safeguard Defenders 8 Nov. 2021, emphasis in original). The same source stated that these lawyers were informed "verbally" of the ban but "[n]one" were provided with "documentation," adding that "[m]any" of the lawyers' family members "are also forbidden to leave the country, but without any legal procedure or formal notification" of a ban (Safeguard Defenders 8 Nov. 2021). In reference to Article 12, the Associate Professor stated that "in terms of border control, both [the] courts and the executive agencies, especially national security agencies, have discretionary power to decide whether one can be [prevented] from leaving the country" (Associate Professor 1 Nov. 2021). The Director of Safeguard Defenders stated that "it is common for exit bans to be used on targets without any criminal or civil procedure or punishment, using either vague national security threat claims, which require no legal procedure, or applied ad hoc without legal basis" (Safeguard Defenders 8 Nov. 2021). According to the HRW China researcher, article 12, paragraph 6, of the Exit and Entry Administration Law provides that although the PSAPL does not cover exit control, individuals accused of violating the PSAPL "still could be prohibited from leaving the country, if any of the authority entities decide so" (HRW 4 Nov. 2021).

1.3 The Regulations on the Implementation of the Supervision Law of the PRC (中华人民共和国监察法实施条例)

The Regulations on the Implementation of the Supervision Law, implemented on 20 September 2021, provide the following:

[translation]

Article 55

During the initial verifications, a supervisory authority may use the following methods in accordance with the law: discussions, interviews, questioning, collection of information, on-the-spot inspections and authentication. After a case has been filed for investigation, the supervisory authority may use the following methods: interrogations, retention of objects, freezing [of assets], searches, seizures, detention and issue of warrants for arrest. If it is necessary to use measures for conducting technical investigations and for restricting persons from exiting the country, [the supervisory authority] shall, in accordance with the regulations, entrust the relevant authority [with the responsibility] to execute [these measures] in accordance with the law. During the initial verifications, supervisory authorities at the municipal level (municipalities that are divided into districts) or below must not use measures for conducting technical investigations.

...

Article 162: In order to prevent persons under investigation and other relevant persons from fleeing the country and hiding abroad, a supervisory authority may, upon requesting approval in accordance with the regulations, decide to impose measures for restricting persons from exiting the country in accordance with the law and entrust the immigration administration authority [with the responsibility] to execute [these measures] in accordance with the law.

Article 163: A supervisory authority shall produce the relevant documents of correspondence when imposing measures for restricting persons from exiting the country and shall submit them, along with a Written Decision Concerning the Imposition of Measures for Restricting Persons from Exiting the Country, to the immigration administration authority so that it may execute [these measures]. The documents may include the following: If imposing measures for border control, a Notice of Persons Placed on a Border Control List shall be included; if imposing

measures against persons who are not legally permitted to exit the country, a Form for Reporting Persons Who Are Not Legally Permitted to Leave the Country shall be included.

Article 164: The measures for restricting persons from exiting the country shall be valid for a maximum of three months. The measures shall automatically be terminated upon their date of expiry.

If it is still required to impose measures upon their date of expiry, the original procedure shall be followed for requesting approval. The department responsible shall produce the relevant documents of correspondence and submit them prior to the date of expiry, along with a Written Decision Concerning the Extension of Time Limits of Measures for Restricting Persons from Exiting the Country, to the immigration administration authority so that it may execute [these measures]. Each extension of time limits must not be for periods that exceed three months.

...

Article 166: If it is no longer required to impose measures for restricting persons from exiting the country, a report shall be submitted in accordance with the regulations, and the measures shall be terminated for these persons in a timely manner. The department responsible shall produce the relevant documents of correspondence and shall submit them, along with a Written Decision Concerning the Termination of Measures for Restricting Persons from Leaving the Country, to the immigration administration authority so that it may execute [these measures].

Article 167: In emergency scenarios, supervisory authorities at the county level or above may, upon receiving approval and in accordance with the law, directly submit a request to the immigration administration authority of the port at a given location to process temporary measures for restricting persons from exiting the country. (China 2021)

According to the Director of Safeguard Defenders, the enactment of the National Supervision Law and the creation of the National Supervision Commission (NSC) has led to "this non-judicial body ... hold[ing] sweeping rights to place people under exit bans, despite their investigations not constituting a judicial process" (Safeguard Defenders 8 Nov. 2021).

1.4 The PRC's Regulations on Border Inspections for Persons Entering and Exiting the Country (中华人民共和国出境入境边防检查条例)

The Regulations on Border Inspections, adopted in July 1995 and implemented on 1 September 1995, provide the following:

[translation]

Article 8: If persons entering or exiting the country fall under any one of the following categories, a border inspection station shall have the authority to prevent such persons from entering or exiting the country:

...

7. Persons who are the subject of a notification of the Department of Public Security or Department of State Security of the State Council that they are not permitted to enter or exit the country;

8. Persons who are not permitted to enter or exit the country under the provisions of laws or administrative regulations.

...

Article 15: If persons entering or exiting the country fall under any one of the following categories, a border inspection station shall have the authority to restrict the movements of such persons, conduct investigations or transfer them for processing by the relevant authorities:

...

3. Persons who are the subject of a notification of the Department of Public Security or Department of State Security of the State Council, or of the public security authorities or state security authorities at the provincial level, within an autonomous region or within a directly controlled municipality, that they are suspected of criminal behaviour;
4. Persons who are suspected of endangering state security or interests and public order. (China 1995)

1.5 The PRC's Administrative Punishments Law (中华人民共和国行政处罚法)

According to the Director of Safeguard Defenders, the Administrative Punishments Law, adopted in 1996 and revised in 2021 (China 1996), does not "specif[y]" the "right to use exit bans," either as "punishment" or while "investigating administrative liability" (Safeguard Defenders 8 Nov. 2021). The same source noted, however, that the law, which is "[p]rimarily aimed at businesses and entities, not individuals," does "contain a 'catch-all' 'other' category" (Safeguard Defenders 8 Nov. 2021).

2. Exit Controls Associated with the PSAPL

According to the Associate Professor, "discretionary power is the decisive factor" in determining if someone accused or found guilty of violating the PSAPL can exit China or not (Associate Professor 1 Nov. 2021). The Executive Director indicated that an individual pursued by authorities under the PSAPL "could" be subject to an exit ban since administrative discretion is "so broad" (Executive Director 10 Nov. 2021). The HRW China researcher stated that although "no one can be stripped of the freedom to leave China for violating" the PSAPL, according to the provisions of the Exit and Entry Administration Law [2], if someone is

accused of violating the PSAPL and the case is not yet settled (and there are "multiple ways to delay the process"), the person "can be asked not to leave the country" (HRW 4 Nov. 2021).

2.1 Exit Controls Following Issuance of a Summons Under the PSAPL

The Director of Safeguard Defenders stated that the PSAPL "does not provide for any situation" in which exit controls could be issued "neither for those under a summons, nor as an administrative penalty" (Safeguard Defenders 8 Nov. 2021). According to the Associate Professor, "only" people the authorities decide "need to be arrested" due to a summons under the PSAPL "would be stopped by border control authority" when trying to exit the country (Associate Professor 1 Nov. 2021). The Executive Director stated that investigating an individual under the PSAPL and "activating" an exit ban for a person are two courses of action that authorities would pursue separately (Executive Director 10 Nov. 2021). The same source added that individuals subject to an exit ban due to an active investigation or case, particularly under the PSAPL, "could well" be prohibited from exiting China, but if the authorities pursuing the case "do not activate the exit ban" or if "the locality does not engage the exit ban mechanism," then the individual "could well" exit the country "without trouble" (Executive Director 10 Nov. 2021).

For information on summons issued under the PSAPL, see Response to Information Request CHN200752 of September 2021.

2.2 Exit Controls Following Administrative Detention and/or Fines Under the PSAPL

According to the Associate Professor, individuals who have previously completed a term of administrative detention and/or been fined under the PSAPL can exit China using their own Chinese passport

(Associate Professor 1 Nov. 2021). The same source added that because administrative punishment is "typically not considered severe," such punishments "will not be recorded in the personal files" of the individuals in question (Associate Professor 1 Nov. 2021). According to the same source, "[e]ven for criminal offences" "there is no legal ground to prohibit the accused [from] travelling abroad" if they have "completed the term of imprisonment" (Associate Professor 1 Nov. 2021).

The Executive Director stated that they "see nothing in the law" indicating that if someone were subjected to an exit ban it would be indefinite, and there is not an "automatic long-term exit ban that can be imposed" (Executive Director 10 Nov. 2021). The same source indicated that "some" Chinese lawyers they have spoken with knew of individuals who had been subject to administrative or criminal proceedings under laws other than the PSAPL and were still able to exit China after the matters were resolved (Executive Director 10 Nov. 2021). The Executive Director also noted cases they have researched in which activists and dissidents have had their passport and travel rights restored once their case is "resolved" (Executive Director 10 Nov. 2021). In such cases, the same source added, the exit ban is a "'means to an end'" for authorities to resolve the case in question, though "prominent" activists or dissidents that the government is concerned will "sa[y] bad things overseas" are an exception and an exit ban could be imposed on them "indefinitely" (Executive Director 10 Nov. 2021).

For information on punishments associated with the PSAPL, see Response to Information Request CHN200754 of October 2021.

2.3 Exit Controls for Individuals Suspected of an Affiliation with an Unregistered Church or Falun Gong

Section 2 of *China's Policies and Practices on Protecting Freedom of Religion Belief*, a white paper issued by Chinese authorities in April 2018, provides the following:

The State ... bans illegal religious activities, prohibits the dissemination of extremist thought and engagement in extremist activities in the name of religion, resists the infiltration of hostile foreign forces taking advantage of religion, and fights against illegal and criminal activities under the guise of religion. (China 4 Apr. 2018)

The HRW China researcher stated that "if a religious group was not registered/recognized by the authorities, it could be considered 'illegal'," and the various laws providing for exit controls would apply (HRW 4 Nov. 2021). According to the Director of Safeguard Defenders, both Falun Gong members and Christian house church pastors have been subject to travel bans (Safeguard Defenders 8 Nov. 2021). In correspondence with the Research Directorate, a representative of the Asia Team of CSW, a UK-based Christian organization that advocates for the right to freedom of religion and documents violations of religious rights (CSW n.d.), stated that "human rights defenders such as human rights lawyers, who often defend religious communities," including Falun Gong practitioners and members of unregistered Christian churches, are "often subject to travels bans, including being denied passports or being prevented from leaving the country" (CSW Asia Team 30 Nov. 2021). The same source added that it is "common for prisoners of conscience, including human rights defenders and religious leaders, to be denied permission to leave the country for a period of time after their release" (CSW Asia Team 30 Nov. 2021).

In correspondence with the Research Directorate, the President of ChinaAid Association (ChinaAid), a US-based international non-profit Christian human rights organization committed to "promoting religious freedom and the rule of law in China" (ChinaAid n.d.), indicated that "technically" a person who has been issued a summons on suspicion of being affiliated with an unregistered church or Falun Gong can still leave China using their own Chinese passport (President of ChinaAid 23 Nov. 2021a). The same source stated that "[u]sually" those subject to an exit

ban have been "explicitly" placed on an exit ban list "under the 'endangering national security clause'," and that to be "summoned by the police or security agents alone would not necessarily constitute an automatic exit ban ... unless the individual is a high profile figure and [they would] still need to be put into the [Public Security Bureau's] alert system for that ban to actualize" (President of ChinaAid 23 Nov. 2021a). With regard to whether individuals issued a summons on suspicion of being affiliated with an unregistered church or Falun Gong could be subject to exit controls, the Executive Director indicated that there are cases where local officials allow individuals to leave China "permanently" in order to "neutralize" these individuals who are "problematic" in a "political sense" (Executive Director 10 Nov. 2021).

In follow-up correspondence, however, the President of ChinaAid indicated that they were aware of "quite a lot" of cases of individuals suspected of affiliations with unregistered churches or Falun Gong being subjected to exit controls (President of ChinaAid 23 Nov. 2021b). The same source noted an example from 2019, in which "at least one hundred" people were "blocked" from attending a conference on South Korea's Jeju Island (President of ChinaAid 23 Nov. 2021b). In follow-up correspondence, the President of ChinaAid noted that the conference was organized by ChinaAid "for independent house church [3] leaders and civil society [members] / lawyers, primarily from Protestant churches," the theme of which was "Christian leadership and biblical teachings in the context of persecution" (President of ChinaAid 23 Nov. 2021c). Of those subjected to exit controls, "at least one hundred" people were "blocked from leaving" at the airport in mainland China and "a few" who "managed to" travel to Hong Kong were prevented from going at the [Hong Kong] Airport (President of ChinaAid 23 Nov. 2021b). The same source stated that Wang Yi, a "pastor" and the "founder of one of [China's] largest underground churches" who was "known for taking high-profile positions on politically sensitive issues" until his arrest and

imprisonment in 2019 (*The New York Times* 2 Jan. 2020), was placed on an exit ban list in the period before his arrest (President of ChinaAid 23 Nov. 2021b).

The CSW Asia Team representative indicated that they were "aware of cases of unregistered ('house') church leaders, members and their families who have not been able to obtain passports" (CSW Asia Team 30 Nov. 2021). The same source added that it is "[l]eaders of religious communities, including Protestant pastors" who are "generally more likely to be prevented from travelling," but noted that "non-leaders can also face restrictions" (CSW Asia Team 30 Nov. 2021).

For information on the treatment of people suspected of being involved with an unregistered church see Response to Information Request CHN200760 of October 2021. For information on the treatment of Falun Gong practitioners by authorities, see Response to Information Request CHN200328 of October 2020.

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.). China Action's mission included supporting "China's fledgling lawyer community" through "trainings and

capacity building projects" and offering "direct support for legal interventions" to human rights defenders in China (Safeguard Defenders n.d.).

[2] The Exit and Entry Administration Law provides that Chinese and foreign nationals are prohibited from leaving China if they have an unsettled criminal or civil case, or if they were convicted and sentenced and the sentence has not been executed (HRW 4 Nov. 2021).

[3] According to Freedom House, Chinese "house churches" are "underground" Christian churches that are not formally "registered" with the Chinese state (Freedom House Feb. 2017, 11, 16). For further information on house churches, including treatment of members of house churches by authorities, see Response to Information Request CHN200760 of October 2021.

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Oral sources: China Human Rights Lawyers Concern Group; Chinese law specialists at Australian universities (3); Chinese law specialists at universities in Canada (3); Chinese law specialists at US universities (6); Lawyers' Rights Watch Canada; professor of Chinese politics at a university in Canada; professor of Chinese religion at a university in

Canada; specialist in Chinese religion at a university in France; specialists in Chinese religion at US universities (2); visiting professor at a university in Illinois.

Internet sites, including: Amnesty International; Australia – Department of Foreign Affairs and Trade; BBC; Bertelsmann Stiftung; Bitter Winter; China – Ministry of Public Security; *The Diplomat*; ecoi.net; Factiva; *Foreign Policy*; *The Guardian*; Human Rights Watch; International Crisis Group; Lawfare Institute; Radio Free Asia; Reuters; *South China Morning Post*; UN – Refworld; US – Congressional-Executive Commission on China, Office of International Religious Freedom; *USA Today*; *The Wall Street Journal*; *The Washington Post*; Xinhua News Agency.

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