



## RESPONSES TO INFORMATION REQUESTS (RIRs)

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China: Circumstances and authorities responsible for issuing summonses/subpoenas; procedural law; whether summonses are given to individuals or households; format and appearance; whether legality can be challenged; punishment for failure to comply with a summons (1998-2004)

Research Directorate, Immigration and Refugee Board, Ottawa

### Circumstances and Authorities Responsible for Issuing Summonses

In a 17 April 2004 legal opinion on summonses in China, a University of Wisconsin associate professor of Criminal Justice, who specializes in comparative policing, criminal law and criminal justice issues and who has served as the president of the Asian Association of Police Studies, provided the Research Directorate with the following information regarding the two types of summonses:

a) *Zhuanhuan* (summons) is used when no arrest or detention of suspects is necessary or contemplated, i.e. when cooperation is expected or flight is not likely. See Art. 92 of PRC Criminal Procedure Law. This is not a coercive measure (*qiang zhi cuoshi*).

b) *Juzhuan* (arrest summons) is used when voluntary compliance is not appropriate or *zhuanhuan* has failed. See Article 50 of PRC Criminal Procedure Law and Article 60 of Public Security Criminal Procedure Regulations. This is a coercive measure (*qiang zhi cuoshi*).

In 21 December 1998 correspondence to the Research Directorate, a University of Washington law professor provided corroborating information on the two types of summonses. According to the law professor, *chuanhuan* is a formal order, issued in writing (*chuanhuan zheng*) or orally (*kotou chuanhuan*), that requires a person to appear at a local police station. When the person served the summons refuses to cooperate, there may be a requirement to use a coercive summons (*qiangzhi chuanhuan*) (University of Washington 21 Dec. 1998).

The associate professor reported that Article 50 of the People's Republic of China (PRC) Criminal Procedure Law-which was last amended on 17 March 1996-states that the People's Court, the People's Procuratorate and the Public Security Organ are the authorities responsible for arrests and the issue of summonses (17 Apr. 2004). The associate professor also quoted Article 92 of the PRC Criminal Procedure Law regarding the summoning of "criminal suspects who do not need to be arrested or detained" and added that both "Articles 50 and 92 of PRC Criminal Procedure Law should be read in conjunction with Article 60 of Public Security Criminal Procedure Regulations and other pertinent Public Security internal interpretive and instructional guidelines" (17 Apr. 2004).

### Procedural Law

With respect to the official procedure for issuing summonses and "arrest-summon warrants" (*juzhuan zheng*), the associate professor provided the following information:

a) Summons[es] (*zhuanhuan*) should be prepared by the public security when it is determined that arrest or detention is not necessary to procure the *voluntary appearance* of the suspect or defendant for interrogation. The Notice of Summons (*zhuanhuan tongzhi shu*) must be prepared in triplicate stating the person, time, and place of appearance for questioning. The Notice of Summons is then to be stamped with public security official chop. The original copy is kept at the police station. The duplicate copy is signed, dated and returned by the suspect, before the process is deemed completed. One copy is left with the suspect.

b) "Arrest-summons warrant" (*juzhuan zheng*) can only be obtained with the approval of county level and above public security organs upon the presentation of an "Application for Arrest - Summons" (*chengqing juzhuan baogaoshu*). The application will state clearly and support with credible evidence that a crime has been committed, the person to be arrested - summoned for interrogation is connected to the crime, and the suspect is not likely to appear voluntarily or that a summon for interrogation has been executed with no success. The "Arrest-summons warrant" will be executed with a notation of the time of arrest and at the completion of interrogation.

c) Persons held under the Summons (*zhuanhuan*) or "Arrest-summons warrant" (*juzhuan zheng*) for interrogation cannot be interrogated for longer than 12 hours. No repeated issuance of Summons (*zhuanhuan*) or "Arrest-summons warrant" (*juzhuan zheng*) is allowed (17 Apr. 2004).

However, in 21 April 2004 correspondence with the Research Directorate, the associate professor further noted that while procedural laws in China are expected to be uniformly implemented and concerted efforts have been made by the Ministry of Public Security to improve policing standards, in practice the "PSB [Public Security Bureau] has yet to arrive as a rule of law institution." According to the associate professor, there can be substantial regional variances in law enforcement, in which some differences are written into policies, but "in most instances rule of the book gives way to norms in the street" (21 Apr. 2004).

Furthermore, a Human Rights in China (HRIC) representative, who is based in New York, provided the following information that she received from a colleague who is based in Hong Kong and who works as a lawyer specializing in Chinese law, on a) the service of subpoenas, b) the refusal of service and c) on witness appearance at trials:

a) Article 81 of the Criminal Procedure Law (CPL) governs service of process on witnesses. The service of subpoenas, notices and other procedural documents shall be made upon the addressee himself. If the addressee is not in, delivery may be made on his behalf to an adult member of his family or a responsible person of his unit.

b) If the addressee himself or the person receiving on his behalf refuses to accept a document or refuses to sign his name or place his seal upon a document, the person serving the document may invite the addressee's neighbor or other eyewitness to the scene, explain the situation, leave the document at his residence, record on the service certificate the particulars of refusal and date of service and then put his own signature to it. The service is thus deemed to have been made.

c) Although Article 47 of the CPL requires that witnesses must appear to be subjected, in the courtroom, to questioning and cross-examination by both sides-the public prosecutor and the victim, as well as the defendant and the defender, Article 141 of the SPC Interpretation of the CPL states that with the court's permission, witnesses may be absent if:

- I. the witness is a minor;
- II. the witness is suffering from serious illness or is physically incapable of being present at trial;
- III. the testimony of the witness will not affect the trial in a significant way; and
- IV. for "other reasons."

Note the last catch-all "for other reasons." According to our Empty Promises report, most witnesses are exempted from presence at trial by court decision, even when lawyers have applied for their presence (EP 45). Many if not most trials proceed without a single witness being called (27 Apr. 2004).

The HRIC representative in New York further commented that it is not uncommon for individuals, including, at times, public officials to fail to respond to a summons or a subpoena (23 Apr. 2004). Information to corroborate this viewpoint could not be found among the sources consulted by the Research Directorate.

## Whether Summonses are Given to Individuals or Households

According to information provided to the Research Directorate on 10 December 1998 by a senior fellow of the Open Society Institute, a summons would almost always be issued to the individual, rather than to a household registration or family member (10 Dec. 1998). The University of Washington law professor corroborated this information in correspondence to the Research Directorate, saying that he was not aware of any changes to this practice, as of April 2004 (22 Apr. 2004).

However, according to the representative of HRIC in New York,

...it is very common in China for the police authorities to leave a summons or subpoena with family members (or possibly close friends, though that is probably less common), instructing them to pass it along to the person named on the summons. The person accepting the summons would be expected to sign an acknowledgement of receipt. This is not actually the proper procedure, but it happens all the time, especially in cases when the person on the summons is not easily locatable. ... [S]ome police officers themselves are not well versed in the proper procedures, and probably think that this is a perfectly acceptable practice (while others may simply be too idle to chase the person down, and rely on the public's sense of intimidation to do their work for them) (23 Apr. 2004).

## Format and Appearance of Summonses

Regarding the appearance and format of summonses, the associate professor of Criminal Justice provided the attached translated samples of a PRC Arrest Warrant, an Arrest-Summons for Interrogation and a Notice of Summons to Testify. No additional documents could be found among the sources consulted by the Research Directorate.

## Whether the Legality of a Summons Can Be Challenged

During telephone interviews with the senior fellow of the Open Society Institute (10 Dec. 1998) and the professor of Law at the University of Washington (14 Dec. 1998), both expressed the opinion that because the summons for detention (*juchuan*) is one of the "coercive measures" there is no legislative basis for challenging its validity. While the Research Directorate was unable to follow up with the senior fellow of the Open Society Institute, the professor of Law at the University of Washington commented that he did not have any further information to that provided in 1998 and that he was unaware of any changes that had taken place since 1998 (22 Apr. 2004).

## Punishment for Failure to Comply with a Summons

The Hong Kong-based HRIC representative stated that "there is ... no penalty for not complying with a court subpoena" (27 Apr. 2004). No corroboration of this statement and no further information on possible punishments for individuals who fail to comply with a summons could be found among the sources consulted by the Research Directorate.

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 additional sources consulted in researching this Information Request.

### References

Human Rights in China (HRIC). 27 April 2004. Correspondence from representative.

\_\_\_\_\_. 23 April 2004. Correspondence from representative.

Open Society Institute. 10 December 1998. Telephone interview with senior fellow.

University of Washington, Seattle. 22 April 2004. Correspondence from professor of Law.

\_\_\_\_\_. 21 December 1998. Correspondence from professor of Law.

\_\_\_\_\_. 14 December 1998. Telephone interview with professor Law.

University of Wisconsin (Oshkosh). 21 April 2004. Correspondence from associate professor of Criminal Justice.

\_\_\_\_\_.17 April 2004. Correspondence from associate professor of Criminal Justice.

Additional Sources Consulted

The Director of the Institute of Asian Research at the University of British Columbia did not have any current information on the topic.

Unsuccessful attempts to obtain contact information for the senior fellow with the Open Society Institute who provided information to the Research Directorate in 1998.

**Internet sites, including:** *China Rights Forum* ; *ChinaWe.com*; *Country Reports on Human Rights Practices for 2003* ; *Ecol.net*; *Human Rights in China*; *Immigration and Nationality Directorate*; *National Criminal Justice Reference Service*.

Attachment

University of Wisconsin (Oshkosh). 21 April 2004. Correspondence from associate professor of Criminal Justice.

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