Chapter Three
RLR in International Migration Law

INTRODUCTION

Few rights are more generally proclaimed or more widely abridged than RLR.¹ This chapter will define the current legal status of RLR in international migration law, to identify important issues that determine criteria by which RLR may be reasonably restricted.

The analysis begins with the recognition and standards of RLR, and sources of evolving jurisprudence of RLR. Given that an individual’s RLR is bound with the possession of a passport and enough foreign exchange, this chapter will then analyse rights related to those possessions. Permissible limits on RLR have always emerged as the most contentious issue in this area and are therefore a focus of attention here. A necessary extended analysis of the right to leave and the right to return then follows in two sections. The analysis in Chapter three may provide an objective criterion and reference by which China could compare its laws.

Chapter Three

3.1 GENERAL CONSIDERATIONS ON RLR

This section examines the recognition of RLR in international migration law, to clarify the standards of RLR internationally and domestically, to then consider disputes with respect to standards and review the sources of evolving jurisprudence of RLR.

3.1.1 The recognition of RLR

By whichever criterion it is classified, RLR has considerable international recognition as a human right. Its wide recognition is one of the most important reasons for its significance. Where RLR is concerned, countries can generally be placed in two groups. The first comprises 152 countries that have ratified the ICCPR before June 2004, and recognised RLR as a fundamental human right, with an international obligation to effectively protect it. Most of these countries fulfill their international obligations by incorporating the terms of the international instruments into the detail of their domestic laws, including their Constitutions. The second group of about 40 countries including Indonesia, Malaysia, Pakistan, Turkey, Saudi Arabia, China and Cuba that have not yet ratified the ICCPR. While they ratified the Charter of the United Nations and the UDHR, and accordingly might recognize RLR as a human right, they usually do not regard RLR as a real right in practice – it remains an aspirational right, on paper.

The recognition of RLR and the recognition of the freedom of movement within a territory do not necessarily follow one another. In China, for example, the fact that people do not enjoy freedom of movement within the territory is not the key cause for preventing them from leaving China. This is contrary to the idea that “when he is confined to a particular locality or reservation, he is in effect prevented from leaving the State itself.” Freedom of movement and RLR are not always indivisible.

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2 Though millions of Chinese people might move around mainland China, their households, personal dossiers, medical treatments, employment, education, housing could not be moved together. There are much differences in these fields between the original resident areas and migration areas. From this angle, Chinese people have not truly enjoyed the freedom of movement. Most Chinese scholars, for example Liu Wujun, Zeng Wenhong, Peng Xiuzhi, Zhang fan etc. accepted this point.

3 Ingles, Jose D., Study of Discrimination in Respect of the Right of Everyone to Leave any Country, Including his Own, and to Return to His Country, the UN Publication Sales No.: 64. XIV. 2 New York: 1963, 9.