

The Exit Ban and its Reasons in the Laws of Afghanistan

Parwiz Stanekzai, Professor (faculty of law and Political Sciences), Salam University, Kabul, Afghanistan)

Email: parwizstanekzai@gmail.com

<https://orcid.org/0009-0002-0002-5454>

Abdul Hamid Rafat, Professor (faculty of law and political Sciences), Salam University, Kabul, Afghanistan)

Email: Abdulhamidrafat@gmail.com

Abstract

Freedom of entry and exit across borders is a clear and fundamental human right and a part of social life. Every individual has the right to leave their locality, district, province, and country by their own choice and action, and no one should face any obstacles in their travels. The Afghan Constitution explicitly states in Article 39: "Every Afghan has the right to travel within the country, choose a place of residence, except in areas where prohibited by law, and every Afghan has the right, in accordance with the provisions of the law, to travel abroad and return to the country." However, according to the principle of legality in crime, no one should be punished unless the law has decreed so. Thus, the right to travel abroad is not absolute but subject to limitations based on security or financial considerations, as specified by the law.

Exit bans are usually related to criminal cases rather than civil and commercial matters, meaning that a person who has committed a specific crime may be under judicial pursuit and investigation. If the crime is proven, the individual may be temporarily or permanently banned from leaving the relevant area, district, province, or country.

Keywords: Concept of Exit Ban, Passport, Visa, Ticket.

Introduction

Sometimes, it happens that an individual is fully prepared for a journey, having obtained all necessary travel arrangements such as flight tickets, train tickets, or other means of transportation. However, upon arrival at the terminal (be it an airport, bus station, or seaport), they are denied permission to exit the designated area or leave the country. This situation may arise unexpectedly, catching the person off guard and unaware of the exit ban.

Preventing the travel of individuals who have committed crimes, failed to pay government taxes, or lack the required travel documents is indeed a reasonable and lawful measure. However, it is crucial to emphasize that individuals subjected to an exit ban should be informed and made aware of their restricted status from the beginning. This way, they can avoid shock and loss of travel belongings while preparing for their journey at the country's airport terminal.

In general, we can say that the topic of exit restrictions in Afghanistan is a relatively new and fresh subject, as no one has yet conducted research, articles, or books under the title of "exit restrictions" or related topics in Afghanistan. Furthermore, the topic of exit restrictions in neighboring countries to Afghanistan has also seen limited publication in terms of articles and research. We can mention a few examples such as Levitt, P.H., (1980), Legality of the Ban on Travel to Iran, Dimitriadi, Angeliki. (2013) Migration from Afghanistan to third countries and Greece, Hamed Amiri (1400) on the conditions for exit restrictions for individuals leaving the country Ruqiyah Zeynali (1401) on how to determine if one is subject to exit restrictions and the conditions for exit restrictions on individuals, and Halal Kia (2019) on a comparative study of exit restrictions.

However, what we know is that the issue of exit restrictions is mentioned in Afghanistan's laws, but the criteria for being subject to exit restrictions and the circumstances in which individuals can be prohibited from leaving are topics that we will discuss in this article. We will delve into the concepts of exit restrictions, the conditions for being subject to exit restrictions, the authorities empowered to impose exit restrictions, and the types of exit restrictions as outlined in the laws.

Study Questions

1. What is a travel ban (mamnoo al-khurooj) and how is it defined in the laws of Afghanistan?
2. What circumstances can lead to travel bans on individuals in Afghanistan?
3. How can Article 39 of the Afghan Constitution be utilized as the primary source of the right to travel abroad and what role does it play?
4. What legal and regulatory measures exist to protect the rights of individuals who have been subjected to travel bans?

Study Objectives

1. Analyzing the factors that may lead to travel bans on individuals in Afghanistan, including criminal offenses, taxation issues, and required travel documents.
2. Introducing and examining existing research and articles on travel bans, challenges and shortcomings in previous research, and new research opportunities.
3. Clarifying the jurisdiction of travel bans in Afghan laws and conducting a comparative study with other similar regulations.
4. Identifying and understanding the competent authorities for imposing travel bans on individuals (natural and legal persons) in Afghanistan's laws.

Research Methodology

Regarding the research method and the process of collecting ready and organized resources, the current research is of a descriptive research type that utilizes library and research approaches to gather the necessary resources. In this research, reference has been made to articles, published research papers, and relevant laws related to travel bans in Afghanistan, such as the Constitution, the Law on the Organization and Jurisdiction of the Judiciary, and so on.

1-General Definitions

Before delving into the legal aspects of exit bans on individuals, let's first address the general definitions of exit bans, their conditions, and types. This will help clarify the role of exit bans in laws more effectively.

A) Definition of Exit Ban

An exit ban is a situation in which an individual, for various legal reasons, is deprived of the right to exit from the borders and boundaries of a specific country. It means the person is prohibited from crossing the country's borders, whether by land, air, or sea, due to the absence of all required exit documents and permits. In such circumstances, the person is not allowed to leave the country and enter another territory, making them subject to being labeled as an "exit-banned individual." Alternatively, exit ban refers to a condition imposed on certain individuals who, based on specific conditions, are prevented from leaving a particular region, which is usually a geographical area within a country.

B) Reasons for Exit Ban

Perhaps the concept of an exit ban is not an unfamiliar or entirely new term, but it might be vague and puzzling to many individuals. People who intend to travel or make decisions regarding work and travel abroad prepare all the necessary travel documents and items such as airplane tickets, visas, passports, and other

relevant travel necessities. However, in some cases, despite having all the required documents, a person might be subject to an exit ban and is unable to travel to a foreign country. The following are some cases and conditions under which a person may be subject to an exit ban:

1- Lack of Travel Documents

According to the laws of the country, a person can be subject to an exit ban if they do not possess the necessary travel documents when attempting to leave the country and travel to another country. These required travel documents may include a passport, visa, and tickets (airline, land, or sea).

1-1 Passport

A passport is an official document issued by competent authorities according to the provisions of this law, (Afghanistan passport law) which allows a country's nationals to travel abroad and return to their homeland. Another provision of this law states: "A travel document is an official document issued in special circumstances for a country's nationals to return to their homeland by Afghan political or consular missions abroad, or for foreign nationals whose country of nationality has no political or consular representation or whose interests are not protected, in accordance with the provisions of this law and international regulations, after the confirmation of the Ministry of Foreign Affairs, issued by the Ministry of Interior."

Similarly, the laws of other countries also address the issue of passports and their exit bans. The Iranian Passport Law states: "A passport is a document issued by authorized officials for Iranian nationals to travel abroad, reside abroad, or travel from abroad to Iran." Or passport is an official travel document issued by a government that contains a person's identity. A person with a passport can travel to and from foreign countries more easily and access consular assistance.

In addition to passports and visas, other necessary items that a person must have when traveling to avoid hindrance to their travel include airline, bus, or boat tickets.

Types of Passports

The Afghanistan Passport Law defines four types of passports, which are as follows: Diplomatic Passport, Special Passport, Service Passport, and Ordinary Passport.

1- Diplomatic Passport: A Diplomatic Passport is issued by the Ministry of Foreign Affairs for political officials to carry out political missions, or it is given to individuals by the Ministry of Foreign Affairs who hold political positions in their own country and are traveling to other countries for political missions on behalf of their respective government. Examples of individuals who may hold diplomatic passports are ambassadors, Deputy Ambassador, chargé d'affaires, etc. This type of passport differs from other passports in terms of its color, and the bearer of a diplomatic passport enjoys political immunity.

2- Special Passport: This type of passport is issued for unofficial travels to certain individuals, including employees of the civil service in grades second and above, officers with the rank of Brigadier General and above, children under the age of eighteen, and family members of high-ranking government officials. It is also issued to retired civil service employees in grades second and above, and retired officers with the rank of Brigadier General and above.

3- Service Passport: The Service Passport is issued by the Ministry of Foreign Affairs for individuals, usually administrative staff, experts, and economic representatives, who are on official missions for their respective governments. The validity period for this type of passport, as well as Diplomatic and Special Passports, is five years, while the Service Passport is valid for ten years. The renewal of Diplomatic, Special, and Service Passports is the responsibility of the Ministry of Foreign Affairs of Afghanistan.

4- Ordinary Passport: An Ordinary Passport is issued for ordinary individuals who intend to travel to foreign countries. Inside Afghanistan, it is issued by the Ministry of Interior's General Passport Directorate at the provincial level. After going through the necessary procedures, it is distributed within the provinces. Outside the country, it is issued by Afghanistan's missions abroad (consulates and embassies) through the Ministry of Foreign Affairs following specific procedures. An Ordinary Passport is valid for either five or ten years,

depending on the applicant's request. This type of passport is issued based on the citizenship certificate of the applicant, which is processed by the Ministry of Foreign Affairs and the Ministry of Interior.

1-2 Visa

In addition to a passport or travel document, a visa is also required for entry into another country. A visa is an authorization that grants a person permission to enter the territory of a specific country and stay there for a specified period of time. It is a small sticker or stamp affixed to the passport pages or, in some cases, it can be issued as an electronic visa (e-visa) in the form of a letter. The visa indicates the type of permission, the reason for entry, and the duration of stay. Therefore, no one can enter another country without obtaining a visa, except in cases where bilateral agreements (visa waivers) exist between two or more countries. In such cases, individuals can enter the contracting country for a specified period without obtaining a visa, only with a passport or other travel document. Some countries may not require a visa based on treaties they have concluded with other countries. The requirements for visa issuance vary in different countries.

2-1 Types of Visas

A- Student Visa

The issuance of a student visa is exclusively for students who are planning to study abroad. Consular officials issue this visa after receiving an acceptance letter from educational institutions approved by relevant authorities such as the Ministry of Higher Education, Ministry of Religious Affairs, Ministry of Health, etc. The application for a student visa is processed by the Ministry of Foreign Affairs of Afghanistan.

B- Tourist Visa

Foreign nationals who wish to enter Afghanistan to visit their friends, relatives, or close relatives are required to obtain a tourist visa from the consular section of Afghanistan's missions abroad.

C- Diplomatic Visa

This type of visa is issued to holders of diplomatic passports who are sent by their respective country or affiliated organizations to other countries for diplomatic purposes.

D- Business Visa

A business visa is issued to foreign nationals who intend to travel to Afghanistan for commercial, trade, cultural, or industrial purposes for a duration of 30 days. However, in some countries, the duration of this visa may be longer than the mentioned period. The issuance of such a visa may also require an invitation letter from the inviting company.

E- Pilgrimage Visa

A pilgrimage visa is issued to foreigners who intend to visit tourist areas or historical sites or individuals who are traveling to religious cities in Afghanistan for pilgrimage purposes.

2- Debtors and Government Borrowers

When individuals' tax debts reach the maximum limit or exceed it, they are placed on an exit ban list by the Ministry of Finance. It is important to note that the threshold for tax debt may differ between individuals and entities. According to the prevailing laws of the country, a person who has not paid their government taxes may be prohibited from leaving the country. The tax law of the country states: "A person who has unpaid taxes and liabilities exceeding 20,000 Afghanis cannot leave the country. The competent authorities of the Ministry of Finance can send written notifications to relevant security authorities regarding their non-departure."

Similarly, in other countries, a person with tax debts may also be subjected to an exit ban and may even be unable to obtain a passport, which is a natural right for any individual. For instance, the passport law of Iran states: "The government can prevent the issuance of passports and departure of definite tax debtors, execution debtors, and financial violators according to the regulations specified in the relevant guidelines."

In the context of Afghanistan, the passport law also indicates that a person with financial liabilities exceeding 50,000 Afghanis to the government may be subject to an exit ban.

Furthermore, according to the Central Bank's regulations, a person who is a debtor to a bank can be placed on the exit ban list through the Office of the Prosecutor, and individuals who owe money to banks or financial institutions and have delayed repayment, raising suspicions of potential escape from the country, may also be subjected to an exit ban.

From the above, it can be concluded that an individual who owes debts to the government or has unpaid taxes may not be granted a passport. In such cases, the person without a passport cannot travel to other countries through the borders and checkpoints of Afghanistan. Such individuals are considered as being under an exit ban.

3- Defendants in a Legal Case

Another reason for imposing an exit ban on individuals is when they are accused or charged in a legal case. According to the laws of the country, all judicial authorities are required to inform the Office of the Prosecutor about the decision regarding the prohibition and non-departure of an individual or individuals from the country. The relevant authorities can then take the necessary actions to enforce the mentioned decision.

The Law on Structure and authority of Attorney (Prosecutor) explicitly states its authority concerning the imposition of exit bans on accused individuals in a legal case: "Suspending and imposing exit bans and other precautionary and financial measures against the accused, and the removal of such measures, are within the jurisdiction of the Office of the Prosecutor." Likewise, another provision in this law addresses the authority of the Deputy Prosecutors: "The proposal for suspension, imposition of exit bans, and other precautionary and financial measures against the accused, as well as the removal of such measures, falls within the jurisdiction of the Deputy Prosecutors, according to the provisions of the law."

When a crime has been committed, and the individual is recognized as a suspect or offender, the prosecutor of the case has the authority to order judicial supervision and detention to determine the duration of the investigation. In this order, one of the possible measures could be the imposition of an exit ban. Therefore, all judicial authorities are required to inform the Office of the Prosecutor about the decision regarding the prohibition of an individual's departure, along with the relevant orders and steps, so that it can be forwarded to other relevant authorities as well.

4- Minors and Dependents

Individuals who cannot travel independently and are subject to an exit ban include those who are under the age of 18 and individuals who are under the guardianship and care of someone else. If authorized by their legal guardian or custodian in writing, they may be allowed to travel. If a person is under 18 years of age and is considered a child according to the laws of Afghanistan, they cannot obtain a travel document (passport) without the permission of their legal guardian. The Passport Law explicitly states: "A child who does not have parents, guardians, or legal custodians cannot obtain a passport." This includes the presence of the child's legal guardian during the passport application process, which serves as one of the obstacles to passport issuance.

The Law on the Protection of the Rights of the Child also addresses this matter: "A child whose parents or family members are unknown, or who does not have a legal custodian, is protected according to the provisions of the relevant law. Matters related to the guardianship of children are regulated according to the provisions of the relevant law."

Similarly, the Law on the Protection of the Rights of the Child also mentions the prohibition of transferring a child abroad by a custodian: "The legal custodian of the child cannot transfer the child abroad unless authorized by a competent court to protect the child's interests in that country, in accordance with the provisions of this law. If a child becomes parentless, they are placed under the custody of a guardian based on the order of a competent court, in accordance with the provisions of the law."

5- Government Interest:

Among other reasons that can lead to the imposition of an exit ban on individuals is when their departure is not in the interest of the government. Therefore, the government has the authority to impose an exit ban on such individuals. Persons whose foreign travel contradicts the interests of the country and is deemed against the provisions of the law, based on the judgment of the judicial authorities of the country, will be prevented from leaving. The prohibition of departure for these individuals must be announced in writing by the high-ranking judicial authorities of the country.

B) Authorities with Exit Ban Competence

The authorities with the power to impose an exit ban are as follows:

1- General Attorney

The first authority responsible for dealing with criminal offenses and issuing exit bans is the Directorate of Judiciary of Afghanistan. According to Article 11, Clause 4 of the Law on the Formation and Competence of the Judiciary, the imposition and removal of exit bans on suspects fall under the jurisdiction of the attorney general.

2-Competent Courts

The Directorate of Judiciary is only responsible for imposing exit bans on individuals who are accused or under judicial pursuit. However, after the individual is recognized as a criminal by the court, the imposition or removal of exit bans falls under the jurisdiction of the competent court.

3-Legal Affairs Authorities (Quasi-Judicial Authorities)

Quasi-judicial authorities are responsible for handling legal cases. The Legal Affairs Office is the unique authority entitled to summon and summon debtors or creditors. If the creditor is satisfied with the debtor's property, they can obtain a guarantee from the Legal Affairs Office. If there is a fear of the debtor fleeing or hiding, the Legal Affairs Office can impose an exit ban on the person.

4-Ministry of Finance

The Law on State Revenues Tax in Afghanistan addresses the exit ban of individuals as follows: "A person whose tax and dues accounts exceed twenty thousand Afghanis and have not settled them with the relevant authorities cannot leave the country. The competent authorities of the Ministry of Finance can send a written notice to the relevant security authorities about the non-departure of the individual."

5-Asset Management Offices and Central Bank

Asset management offices and banking institutions are entities that can request exit bans from the Directorate of Judiciary for banking and tax debtors. However, banking institutions and the Central Bank do not have the authority to impose exit bans on individuals on their own.

C) Stages and Ways to Remove Exit Bans

In fact, according to principles, any individual who has been subjected to an exit ban from any authority must obtain permission to lift the exit ban from that same authority. The process of removing an exit ban can vary depending on the reason and type of the ban. In cases where an individual is under surveillance and custody due to a crime, they can obtain a temporary exit permit based on a valid official document or guarantee. In cases of property payments, the person can provide their property as collateral to temporarily lift the exit ban. The following are the cases and ways to remove exit bans:

1. If a person has been accused of committing a crime and is banned from leaving the country due to the unavailability of the person, as soon as they inform and present themselves to the judiciary, the exit ban is immediately lifted, and the relevant authorities are notified.
2. If an individual, after receiving a criminal order, has been issued an exit ban by the judiciary at the request of the Directorate of Judiciary, they can file an objection to the issued order, and if approved, the Directorate of Judiciary can lift the exit ban.

3. If a person is banned from leaving the country under the order of an execution judge due to unavailability, they can appear before the execution judge, and as soon as they are present, the exit ban can be lifted.
4. If an individual has been banned from leaving the country due to tax indebtedness, they can remove the exit ban after paying their debts.
5. Acquittal of charges recognized by the competent court.
6. Permission from the legal guardians, custodians, and guardians for minors.
7. Travel for performing Hajj pilgrimage once for a temporary removal of the exit ban.
8. Travel for receiving medical treatment for severe medical conditions.
9. Travel for pilgrimage or financial purposes to resolve debts.

D) Duration of Exit Ban

Regarding the duration of an exit ban, there is no explicit provision in the laws of Afghanistan. However, based on laws in other countries, it can be seen that the duration of an exit ban is limited. This means that the duration of an exit ban for an individual is six months, and to continue it, the person must apply for an extension to the Directorate of Judiciary. If the relevant tax or legal authorities, or the Directorate of Judiciary, do not submit a request for extending the exit ban after the six-month period has passed, the Directorate of Judiciary will lift the exit ban for the individual.

Conclusion

In conclusion, the exit ban in Afghanistan is a legal measure that restricts individuals from leaving the country for various reasons, such as outstanding debts, tax liabilities, criminal accusations, or for the protection of the state's interests. The exit ban can be imposed by different authorized institutions, including the Directorate of Judiciary, the Ministry of Finance, and the Central Bank. Individuals under the age of 18, as well as those under the custody of others, are also subject to exit restrictions.

To lift an exit ban, individuals must seek approval from the same institution that imposed the ban. The process of lifting the ban varies depending on the reason for the restriction. It may involve settling financial obligations, obtaining court orders, or acquiring valid travel permits. The duration of the exit ban is not explicitly defined in Afghan laws, but in some cases, it may last for six months with the possibility of extension upon request.

It is essential for individuals facing an exit ban to comply with the legal requirements, settle their financial obligations, and seek appropriate approvals to resolve the situation. The exit ban is a critical aspect of safeguarding the interests of the state, maintaining financial integrity, and ensuring compliance with the country's laws and regulations.

References

1. Dimitriadi, Angeliki.(2013) "IRMA Background Report, Migration from Afghanistan to third countries and Greece,p 1-34.
2. AmiriHamed (1400)hamedamiri.com (website is a good lawyer in Isfahan), on the conditions for exit restrictions for individuals leaving the country.
3. Zeynali,Ruqiya(1401) exitban.ssaa.ir,on how to determine if one is subject to exit restrictions and the conditions for exit restrictions on individuals, p6
4. Saheid (1400), www.dadgaran.com/Legal-content,Prohibited Entry and Necessary Measures to eliminate it from the Perspective of the Law.

5. Hami dadkaran(2020)Prohibited from Leaving Countries, Conditions, Removal Cases and New Laws,Ways to contact a lawyer and legal counsel.
6. Afghanistan, Law on the Organization and Jurisdiction of Judiciary (2013), (Journal Official Gazette), Ministry of Justice, Article 11clause 4
7. Afghanistan Law on Protection of Children's Rights, (2019) (Journal Official Gazette) Ministry of Justice Article 72