

## Article Content

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Title : State Compensation Law <sup>CH</sup>

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Amended Date : 2019-12-18

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Category : Ministry of Justice (法務部)

### Article 1

This Law is enacted in accordance with Article 24 of the Constitution of the Republic of China.

### Article 2

For the purposes of this law, "employee of the Government" means any officer or employee acting in performance of his or her public duties under the law.

The State shall be liable for any damage arising from the intent or negligent act of any employee of the Government acting within the scope of his or her office or employment which infringes upon the freedom or right of any person.

The same shall be applied when the damage results from the omission of any employee of the Government.

Should the damage referred to in the preceding paragraph result from an act committed with intent or gross negligence on the part of the employee of the Government, the compensating authority shall have the right to reimbursement from the said employee of the Government.

### Article 3

The State shall be liable for damage to any person's life, body, physical liberty or property resulting from a defect in the installation or management of any public facility.

Where the management of any facility set out in the preceding paragraph is delegated to a private organization or individual, the State shall be liable for damage to any person's life, body, liberty or property resulting from a defect in the management of the facility.

Where the respective managing authority or delegated private

organization or individual has placed appropriate warnings or signs on the use of any natural public property such as open mountain or water, the State shall not be liable to any person who continues to engage in adventurous or dangerous activities under the preceding two paragraphs.

Where the respective managing authority or delegated private organization or individual has placed appropriate warnings or signs on the use of the facility located in any natural public property such as open mountain or water, the State's liability to any person who continues to engage in adventurous or dangerous activities may be reduced or exempted under the first and second paragraphs.

The compensating authority shall have the right to reimbursement from the said third person who is liable for the damage referred to in the first, second and preceding paragraph.

#### Article 4

An executor from an organization mandated with the function of public office, when exercising the public power, shall be deemed to be an employee of the mandating organization. The same shall be applied when an individual is mandated to exercise the public power.

The compensating authority shall have the right to reimbursement from the mandated organization or individual in cases where the executor referred to in the preceding paragraph has acted with intent or gross negligence.

#### Article 5

In addition to this Law, the provisions of the Civil Code also apply to the liability of the state.

#### Article 6

When other laws have special provisions on the liability of the state, the State Compensation law and the Civil Code are inapplicable.

#### Article 7

The State shall pay in money when legally bound to make compensation for damage; however, restoration of the prior condition may be the alternative remedy in cases where it is more suitable and such an application is received from the claimant. The expenditure for the above-mentioned compensation shall be

paid for the specially-provided item of the budget of the central or local government.

#### Article 8

A right of claim for compensation is extinguished by prescription if not exercised within two years from the discovery of the fact by claimant, or not exercised within five years from the date when the damage was inflicted.

The right to reimbursement for compensation referred to in paragraph 3 of Article 2, paragraph 5 of Article 3, and paragraph 2 of Article 4 is extinguished by prescription if not exercised within two years from the date when payment of compensation is made or the date when restoration of prior condition is completed.

#### Article 9

In cases referred to in paragraph 2 of Article 2, the compensating authority shall be the one that employs the employee of Government.

In cases where the claim is of the type referred to in paragraph 1 of Article 3, the compensating authority shall be the one that installs or manages the public facility; in cases referred to in paragraph 2 of Article 3, the compensating authority shall be the delegating authority.

If the above-mentioned compensating authorities have been removed or reorganized, the compensating authority shall be the one that succeeds the former's business. In case of no successor, the superior authority shall be the authority liable for compensation.

If the liable authority cannot be decided by the above-mentioned methods, or there is a dispute regarding the liable authority, the superior authority can make a decision after receiving the application. In case the decision cannot be made within twenty days from the date of the receipt of the application, the superior authority may be regarded as the authority liable for compensation.

#### Article 10

In order to claim compensation under this Law, a written application shall be made to the relevant compensating authority. The compensating authority shall negotiate with the claimant on

the abovementioned application. Concluded negotiations shall be documented in written form. Such document shall be regarded as the document for execution.

Article 11

Where the compensating authority refuses to pay compensation, or to negotiate within thirty days from the date of the receipt of the application, or if negotiations cannot be concluded within sixty days, the claimant may bring a suit for compensation. However, if the claimant previously has sought compensation, pursuant to the provisions of the Law of Administrative Proceedings, the claimant may not commence a fresh action on the basis of the same legal relation. On the application of the claimant, the court, pending the final decision, may issue an interim order to the liable party to pay medical or funeral expenses.

Article 12

The provisions of the Code of Civil Procedure, as well as the provisions of the State Compensation law, are to be applied in claims for compensation.

Article 13

If an employee of the Government having the duty of a trial judge or a prosecutor infringes upon the freedoms or rights of persons while acting within the scope of his or her office or employment, and is adjudicated to have committed a crime when he or she performed the duty of trial or prosecution, the provisions of this law shall apply.

Article 14

The provisions of this law shall apply mutatis mutandis to the public juristic person.

Article 15

The provisions of this Law shall be applicable to a foreign claimant only to the extent that the people of the Republic of China, according to a treaty, law, or custom of that foreigner's country, enjoy the same rights in that country.

Article 16

The enforcement rules of this Law shall be prescribed by the Executive Yuan.

Article 17

This Law shall become effective from July 1, 1981.

The amendment to this Law shall become effective from the promulgation.