

**LAW**

**ON STATE COMPENSATION LIABILITY**

*Pursuant to the 1992 Constitution of the Socialist Republic of Vietnam;*

*The National Assembly promulgates the Law on State Compensation Liability Law.*

**Chapter I**

**GENERAL PROVISIONS**

**Article 1. Scope**

This Law provides for the state's liability to pay compensation to individuals and organizations suffering from damage caused by law enforcers in administrative management, legal proceedings and judgment enforcement activities; damage to be compensated; the rights and obligations of individuals and organizations suffering from damage; compensation bodies; compensation procedures; restoration of honor; compensation funds; the reimbursement liability; responsibilities of regulatory bodies in state compensation.

**Article 2. Entities eligible for compensation**

Individuals and organizations suffering from material damage and/or mental sufferings (hereinafter referred to as sufferers) caused by law enforcers in cases provided by this Law are eligible for compensation by the state.

**Article 3. Interpretation of terms**

For the purposes of this Law, these terms below shall be construed as follows:

1. *Sufferer* refers to individuals and organizations suffering from material damage and/or mental sufferings caused by law enforcers in cases provided by this Law.
2. *Law enforcer* refers to a person who is elected, approved, recruited or appointed to a position as prescribed in law on officials and public employees and relevant law provisions in a regulatory body to perform the tasks of administrative management, legal proceedings or judgment enforcement, or a person who is assigned by a competent state

agency to perform tasks related to administrative management. legal proceedings or judgment enforcement.

3. *Claimant* refers to any of the following entities who have filed a claim for compensation: sufferers, legal representatives, authorized representatives of sufferers, the heirs of sufferers if the sufferer being natural person died or the heir of sufferer being organization ceased to exist.

4. *Illegal act of law enforcer* refers to an act of non-performance or unlawful performance of a task or power.

5. *Document serving as ground for claim* refers to a legally effective document issued by the regulatory agency or competent person in accordance with regulations of law, which clarify illegal act of a law enforcer or a judgment/decision which certifies that the sufferer is eligible for compensation paid by the state.

6. *Compensation person* refers to a person appointed by the compensation body to settle the compensation claim.

7. *Compensation body* refers to the superior body directly managing the law enforcer who committed an illegal act causing damage (hereinafter referred to as law enforcer causing damage) or the court in charge of lawsuit settlement

8. *Reimbursement* refers to liabilities of law enforcer who committed illegal act causing damage for reimbursing an amount to state budget as prescribed in this Law.

#### **Article 4. Rules for state compensation**

1. The state compensation shall be paid as prescribed in this Law.

2. The compensation claim shall be settled promptly, transparently, equally, in good faith, truthfully, and legally; and be initiated on the basis of negotiation between the compensation body and the claimant as per this Law.

The compensation claim in criminal procedures shall be settled at the superior body of law enforcer causing damage as prescribed in Section 1 Chapter V of this Law.

3. If a claimant filed a compensation claim to any of compensation bodies prescribed in Clause 7 Article 3 of this Law and such compensation body accepted the claim, such claimant is not allowed to file any compensation claim to other competent authorities, except for the cases prescribed in Point b Clause 1 and Clause 2 Article 52 of this Law.

4. The state shall settle a compensation claim upon receipt of the document serving as ground for claim or combine the compensation settlement in the course of criminal procedures or administrative procedures at the court in case of compensation claims in

administrative management, civil procedures, administrative procedures, criminal judgment enforcement, and civil judgment enforcement as prescribed in this Law.

5. In cases where the damage is partly the sufferer's fault, the state shall pay an amount which was deducted from the damages corresponding to the sufferer's fault.

#### **Article 5. The right to claim compensation**

The following entities are entitled to claim compensation from the state:

1. Sufferers;
2. Heirs of sufferers if the sufferer being natural person died or the heir of sufferer being organization ceased to exist;
3. Legal representatives of sufferers if required as prescribed in the Civil Code;
4. Natural persons, juridical persons that are authorized by entities prescribed in Clauses 1, 2, and 3 of this Article to claim compensation from the state.

#### **Article 6. Period of prescription for lodging compensation claims**

1. The period of prescription for lodging compensation claims defined is 3 years from the date on which the entity entitled to claim compensation prescribed in Clauses 1, 2, and 3 Article 5 of this Law receives the document serving as ground for claim, except for the case specified in Clause 2 Article 52 of this Law and restoration of honor.
2. The period of prescription for lodging compensation claims in administrative case settlement is determined according to period of prescription for taking administrative proceedings.
3. Periods not included in period of prescription for compensation claims:
  - a) Periods covering force majeure events or objective hindrance prescribed in the Civil Code that prevent entities eligible for compensation claim prescribed in Clauses 1, 2, and 3 Article 5 of this Law from exercising such right to claim compensation;
  - b) Periods over which the sufferer being minor, legally incapacitated person, or person with limited legal capacity or person with limited cognition or behavior control has not had any representatives as per the law or his/her representative died or could not keep acting as the representative until a new representative is appointed.
4. Claimants shall bear burden of proof in terms of the periods not included in the periods of prescription prescribed in Clause 3 hereof.

#### **Article 7. Grounds for determination of state compensation liability**

1. The state shall have compensation liability when all of the following grounds are given:

- a) The availability of any of the proof to define the law enforcer's illegal act and a compensation claim prescribed in Clause 2 hereof;
- b) The sufferer's actual damage within the state compensation liability as prescribed in this Law;
- c) The existence of the causal link between actual damage and the damaging act.

2. Proof to define the law enforcer's illegal act and equivalent compensation claim:

- a) Document serving as ground for claim prescribed herein and the claim for compensation filed to the enforcer's superior body or the competent court in charge of civil lawsuit settlement;
- b) The court in charge of administrative case settlement confirmed the existence of illegal act of the defendant being law enforcer causing damage within the state compensation liability and a compensation claim was lodged before or at the meeting to check, access, and publicize evidence and settlement dialogue;
- c) The court in charge of criminal case settlement confirmed the existence of illegal act of the defendant being law enforcer causing damage within the state compensation liability in administrative management, civil procedures, administrative procedures, criminal judgment enforcement, civil judgment enforcement and a compensation claim was lodged during the settlement of criminal case.

### **Article 8. Documents forming the basis for compensation claim in administrative management**

Documents forming the basis for compensation claim in administrative management prescribed in Article 17 hereof include:

- 1. Judgments/decisions made by the competent courts on confirmation of illegal acts of law enforcers;
- 2. Decisions partly or wholly accepting complaints filed by the claimants as prescribed by law on complaints;
- 3. Decisions on cancellation, revocation, amendments to administrative decisions which were promulgated unlawfully;
- 4. Decisions on actions against violations committed by law enforcers which were denounced on the basis of denunciation as prescribed by law on complaints;

5. Decisions on actions against violations committed by law enforcers which were denounced on the basis of inspection findings as prescribed by law on inspection;
6. Decisions on disciplinary actions against law enforcers that committed illegal acts;
7. Other documents as per the law that meet the conditions prescribed in Clause 5 Article 3 of this Law.

#### **Article 9. Document serving as ground for claim in criminal procedures**

Documents forming the basis for compensation claim in criminal procedures prescribed in Article 18 hereof include:

1. Judgments made by competent courts to confirm that sufferers are eligible for compensation;
2. Decisions made by courts, procuracies, investigation bodies, agencies assigned to carry out certain investigation activities that confirm that sufferers are eligible for compensation;
3. Other documents as per the law on criminal procedures that meet the conditions prescribed in Clause 5 Article 3 of this Law.

#### **Article 10. Document serving as ground for claim in civil procedures, administrative procedures**

Documents forming the basis for compensation claim in civil procedures, administrative procedures prescribed in Article 19 hereof include:

1. Criminal judgments/decisions made by the competent courts confirming that presiding officers in civil procedures, administrative procedures since they issued illegal judgments/decisions or falsified case files/matter files;
2. Final and conclusive decisions on handling of complaints made by competent chief justice or trial panel as prescribed by law on civil procedures, administrative procedures confirming the illegal acts of law enforcers in enforcement of temporary emergency measures;
3. Decisions on suspension of investigation made by investigation bodies, decisions on suspension of cases made by procuracies, courts as prescribed by law on criminal procedures applying to presiding officers in civil procedures, administrative procedures since they issued illegal judgments/decisions or falsified case files/matter files but they were exempt from criminal liability as prescribed in Criminal Code;
4. Decisions on handling of complaints made by competent chief justice confirming that presiding officers in civil procedures, administrative procedures issued illegal

judgments/decisions or falsified case files/matter files; and decisions on handling of complaints concluding that there are substantial grounds to take disciplinary actions or criminal liability against these presiding officers but they died earlier;

5. Decisions on disciplinary actions against presiding officers in civil procedures, administrative procedures that issued illegal judgments/decisions or falsified case files/matter files;

6. Other documents as per the law that meet the conditions prescribed in Clause 5 Article 3 of this Law.

#### **Article 11. Document serving as ground for claim in criminal judgment enforcement**

Documents forming the basis for compensation claim in criminal judgment enforcement prescribed in Article 20 hereof include:

1. Judgments/decisions made by the competent court on confirmation of illegal acts of law enforcers;
2. Decisions partly or wholly accepting complaints filed by the claimants as prescribed by law on criminal judgment enforcement;
3. Decisions on actions against violations committed by law enforcers which were denounced on the basis of denunciation as prescribed by law on complaints;
4. Decisions on disciplinary actions against law enforcers that committed illegal acts;
5. Other documents as per the law that meet the conditions prescribed in Clause 5 Article 3 of this Law.

#### **Article 12. Document serving as ground for claim in civil judgment enforcement**

Documents forming the basis for compensation claim in civil judgment enforcement prescribed in Article 21 hereof include:

1. Judgments/decisions made by the competent court on confirmation of illegal acts of law enforcers;
2. Decisions partly or wholly accepting complaints filed by the claimants as prescribed by law on civil judgment enforcement;
3. Decisions on cancellation, revocation, amendments to decisions on judgment enforcement which were promulgated unlawfully;
4. Decisions on actions against violations committed by law enforcers which were denounced on the basis of denunciation as prescribed by law on complaints;

5. Documents issued by heads of civil enforcement agencies accepting appeal by the procuracy as prescribed in law on civil judgment enforcement;
6. Decisions on disciplinary actions against law enforcers that committed illegal acts;
7. Other documents as per the law that meet the conditions prescribed in Clause 5 Article 3 of this Law.

### **Article 13. Rights and obligations of claimants**

1. A claimant being sufferer has the rights to:

- a) request any of bodies prescribed in Clause 7 Article 3 hereof to settle his/her compensation claim and is notified of processing results;
- b) file a complaint/denunciation/lawsuit against illegal decision/act of persons competent in settlement of compensation claim as prescribed in law on complaints, denunciation and law on administrative procedures; complaints, appeal against court's judgments and decisions as prescribed in law on procedures;
- c) request competent agencies or organizations to restore his/her legitimate rights and interests as per the law;
- d) ask other persons to protect his/her legitimate rights and interests;
- dd) receive guidelines for compensation claims from compensation-managing authority and enforcer's superior body;
- e) authorize another natural or juridical person to exercise right to compensation claim as prescribed in the Civil Code;
- g) and other rights as prescribed by law.

2. A claimant being sufferer has the obligations to:

- a) provide materials and evidence relating to compensation claim promptly, accurately, and truthfully and take legal responsibility for such provision;
- b) fully participate in the course of compensation claim settlement at the request of compensation body.
- c) prove the damage actually occurred that is eligible for compensation as prescribed in this Law and the existence of the causal link between actual damage and damaging act;
- d) and other obligations as prescribed by law.

3. A claimant being the legal representative or the heir of sufferer which is natural person or organization shall have rights and obligations prescribed in Clauses 1 and 2 of this Article.

4. A claimant being the authorized representative shall have rights and obligations prescribed in Points a, b, c, d, and dd Clause 1 and Clause 2 hereof within the scope of authorization.

#### **Article 14. Rights and obligations of damage-causing law enforcers**

1. A law enforcer causing damage shall have the rights to:

- a) Receive the document on settlement of compensation claim directly related to his/her rights and obligations as prescribed in this Law;
- b) File a denunciation against illegal decision/act of persons competent in settlement of compensation claim, and determination of reimbursement liability as prescribed in law on complaints; file a complaint, lawsuit against the decision on reimbursement, appeal against court's judgments and decisions as prescribed in law on complaints, law on administrative procedures;
- c) and other rights as prescribed by law.

2. A law enforcer causing damage shall have the obligations to:

- a) provide materials and evidence relating to settlement of compensation claim at the request of compensation body promptly, accurately, and truthfully and take legal responsibility for such provision;
- b) fully participate in settlement of compensation claim at the request of compensation body and the court of determining reimbursement liability at the request of enforcer's superior body;
- c) and reimburse to the state budget money amounts already paid as compensation to sufferers under decisions of enforcer's superior body;
- d) and other obligations as prescribed by law.

#### **Article 15. Responsibilities of compensation bodies**

1. Receive and accept compensation claims.

2. Restore honor or request enforcers' superior bodies to restore honor of the sufferers as prescribed in this Law.

3. Provide claimants with explanation for their rights and obligations in the course of settlement of compensation claims.
4. Verify damage; carry out negotiation, settlement dialogue, amicable settlement in the course of settlement of compensation claims as prescribed in this Law and other relevant law provisions.
5. Take responsibility for the adequacy and validity of compensation claims, accuracy of documents and decisions on settlement of compensation claims.
6. Issue judgments and decisions on settlement of compensation claims, enforce judgment/decision itself or request enforcer's superior body to enforce the judgment/decision.
7. Send judgments and decisions on settlement of compensation claims to compensation-managing authority and other entities as prescribed in this Law and other relevant law provisions.
8. Restore or propose competent agencies or organizations to restore other legitimate rights and interests of sufferers.
9. Provide claimants with guidelines for compensation claim procedures.
10. Settle compensation-related complaints and denunciations under the law on complaints and denunciations.
11. Participate in legal proceedings at courts if a claimant filed a lawsuit in terms of settlement of compensation claim, except for the case prescribed in Clause 1 Article 52 or Article 55 of this Law.
12. Determine enforcer's reimbursement liability or request enforcer's superior body to determine enforcer's reimbursement liability and collect given reimbursement as prescribed in this Law.
13. Consider whether to take disciplinary actions within their competence or request competent authorities to consider whether to take disciplinary actions against the law enforcer causing damage.
14. Send reports on settlement of compensation claims, determination of reimbursement liability and disciplinary actions against the law enforcer causing damage to competent authorities, compensation-managing authority.
15. If the court in charge of a criminal or administrative case settles a compensation claim, it shall determine if the law enforcer causing damage committed any of acts prescribed in Point b and Point c Clause 2 Article 7 of this law in advance before it

fulfills other responsibilities prescribed in Clauses 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13 and 14 of this Article.

#### **Article 16. Prohibited acts in settlement of compensation claims**

1. Forging documents and papers or providing truthful papers and evidence in compensation claims and in the course of settlement of compensation claims.
2. Acting in connivance among claimants, persons responsible for compensation settlement and concerned people for self-seeking purposes in compensation.
3. Abusing positions and powers to illegally intervene in the course of compensation settlement, determination of reimbursement liability and consideration of disciplinary actions taken against law enforcers causing damage.
4. Failing to settle compensation, failing to make decision on settlement of compensation claims or settling compensation in contravention of law.
5. Failing to determine reimbursement liability or failing to consider taking actions against law enforcers causing damage.
6. Harass, obstruct settlement of compensation claims.

### **Chapter II**

#### **SCOPE OF ON STATE COMPENSATION LIABILITY**

#### **Article 17. Scope of compensation liability in administrative management**

The State shall be liable for damages in the following cases:

1. Unlawfully issuing decisions on penalties for administrative violations;
2. Unlawfully applying measures to ward off administrative violations and secure the handling of administrative violations;
3. Unlawfully applying one of the following remedial measures for administrative violations:
  - a) Enforce dismantling of facilities or parts of facilities which are constructed without licenses or inconsistently with the license;
  - b) Enforce elimination of infringement on products, packages, business facilities, or articles;
  - c) Enforce recall of unqualified products and goods;

4. Unlawfully enforce the implementation of decision on penalties for administrative violations;
5. Unlawfully applying one of the following handling measures for administrative violations:
  - a) Education at communes, wards, district-level towns;
  - b) Sending to reformatory schools;
  - c) Sending to correctional facilities;
  - d) Sending to compulsory detoxification centers;
6. Failure to apply or apply following measures to protect denouncers upon their requests not in accordance with the Law on denunciation:
  - a) Suspending, temporarily suspending, cancelling partly or wholly decisions on disciplinary actions or other decisions infringing legitimate rights and interests of denouncers; resume positions, income, and other legitimate interests for denouncers at their workplace;
  - b) Suspending, temporarily suspending, cancelling partly or wholly administrative decisions/acts infringing legitimate rights and interests of denouncers; resume positions, income, and other legitimate interests for denouncers at their places of residence;
  - c) Applying prevention, actions against infringement or threats of infringement on life, health, assets, honor, prestige, and reputation of denouncers as per the law;
7. Committing prohibited acts prescribed in the Law on information access in terms of intentional provision of falsifying information without issuing a denial or provide information again;
8. Unlawfully issuing, revoking, non-issuing certificates of enterprise registration, certificates of household business registration, certificates of registration for investment, licenses and license-equivalent documents;
9. Unlawfully imposing taxes, fees, and charges; unlawfully collecting taxes, fees, and charges; unlawfully collecting tax arrears, paying tax refund; unlawfully collecting land levies;
10. Unlawfully applying customs procedures;
11. Unlawfully allocating land, leasing land or recovering land, permitting land use purpose change, compensating for and supporting ground clearance and resettlement;

granting or revoking certificates of rights to use land and own houses and other assets attached to land;

12. Unlawfully issuing decisions on handling of competitions cases;

13. Issuing patents according to the legal basis that the applicant has no right to submit the application or the applicant fails to meet the conditions for protection; refuse to issue a patent with the reason that the applicant fails to meet the conditions for protection without legal basis; and have the patent annulled without legal basis;

14. Unlawfully issuing decisions on dismissal as disciplinary action to public employees at the position of less than or equal to Director General.

### **Article 18. Scope of compensation liability in criminal procedures**

The State shall be liable for damages in the following cases:

1. A person was detained for emergencies without justifiable basis as prescribed in the Criminal Procedure Code and he/she did not commit any violation of law;
2. An agency/person competent in criminal procedures issues a decision to release, revoke the decision on custody, refuse to approve the arrest warrant, temporarily detained decision because he/she did not commit a breach of the law;
3. An agency competent in criminal procedures issues judgment/decision affirming that the detainee has not committed an offence or his/her act have not constituted the offence or the time limit for investigating the case has expired without proof that the accused has committed the offense;
4. An agency competent in criminal procedure issues a judgment/decision affirming that the detainee who has completely served or has been serving their termed imprisonment, life sentence, person who has been sentenced to death or person who has been executed under death sentence has not committed any criminal acts or his/her act has not constituted crime;
5. An agency competent in criminal procedures issues judgment/decision affirming that the person against whom criminal case was instituted, who was prosecuted and brought to trial, or judgment enforcement without being held in custody or detention, or serving sentences has not committed an offence or his/her act have not constituted the offence or the time limit for investigating the case has expired without proof that the accused has committed the offense;
6. An agency competent in criminal procedures issues a judgment/decision affirming that the person against whom criminal cases was instituted, who was prosecuted and brought to trial for several offenses in the same case or who has completely served his/her prison terms did not commit any or some of these offenses and the penalty term of combined

sentence after combination imposed for remaining offenses is shorter than the duration they were temporarily detained or served their imprisonment sentences, and the person is entitled to compensation for the temporary detention or imprisonment duration in excess of the aggregate term imposed for the offense which he/she has committed;

7. An agency competent in criminal procedures issues a judgment/decision affirming that the person against whom criminal case was instituted or who was prosecuted and brought to trial for various offenses in the same case and sentenced to death but the death penalty has not yet been executed, did not commit the offense subject to the death penalty while the aggregate term for remaining offences is shorter than the duration of his/her temporary detention: and the person is entitled to compensation for his/her temporary detention duration in excess of the aggregate term imposed for the offense he/she has committed;

8. An agency competent in criminal procedures issues a judgment or decision affirming that a person who was tried for various offenses under different judgments and subject to different penalties already aggregated by the court did not commit any offense or committed one or certain offenses while the term for remaining offenses is shorter than his/her temporary detention or imprisonment duration; and he/she is entitled to compensation for his/her temporary detention or imprisonment duration in excess of the aggregate term imposed for the offenses they have committed;

9. An agency competent in criminal procedures issues a judgment or decision affirming that a corporation against whom criminal case was instituted, who was prosecuted and brought to trial, or judgment enforcement has not committed an offence or his/her act have not constituted the offence or the time limit for investigating the case has expired without proof that the accused has committed the offense and such corporation did not commit any violation of law;

10. Entities who have property damaged as a result of seizures, impound, distraint, confiscation, frozen accounts or other entities in conjunction with the cases prescribed in Clauses 1, 2, 3, 4, 5, 6, 7, 8 and 9 of this Article that are damaged.

### **Article 19. Scope of state compensation liability in civil and administrative proceedings**

The State shall be liable for damages in the following cases:

1. Unlawfully apply temporary emergency measures by itself;
2. Apply temporary emergency measures other than those requested by individuals, agencies or organizations;
3. Apply temporary emergency measures beyond individuals', agencies' or organizations' requests;

4. Apply temporary emergency measures for periods not in accordance with regulations of law or apply temporary emergency measures without justifiable reasons;
5. A competent authority confirms that a judgment/decision which has been legally effective is illegal and the issuing person has faced disciplinary action or criminal liability;
6. Insert, remove, modify, swap, destroy or damage documents and evidence or falsify the case or matter leading the issuance of illegal judgment/decision.

#### **Article 20. Scope of state compensation liability in criminal judgment enforcement**

The State shall be liable for damages in the following cases:

1. Executing death sentences imposed on persons not subject to death sentences as prescribed in Criminal Code;
2. Jailing people beyond the prison terms under court judgments or rulings;
3. Declining to execute one of the following decisions:
  - a) Judgment enforcement postponement for convicts;
  - b) Judgment enforcement suspension for persons who have been serving imprisonment sentences;
  - c) Mitigation of the prison sentence's term for persons who have been serving imprisonment sentences;
  - d) Releasing the convicts on parole;
  - dd) The State President's grant of reprieve to the convicts;
  - e) The National Assembly's grant of general amnesty to the convicts.

#### **Article 21. Scope of state compensation liability in civil judgment enforcement**

The State shall be liable for damages in the following cases:

1. Unlawfully issuing or failing to issue decisions on:
  - a) Judgment enforcement;
  - b) Cancellation, revocation, amendment to or cancellation of judgment enforcement decisions;

- c) Application of measures to secure judgment enforcement;
  - d) Coercion of judgment execution;
  - dd) Postponement of judgment enforcement;
  - e) Suspension or termination of judgment enforcement;
  - g) Resumption of judgment enforcement;
2. Unlawfully executing or failing to execute one of the decisions defined in Clause 1 of this Article.

### **Chapter III**

#### **DAMAGE TO BE COMPENSATED**

##### **Article 22. Damage verification**

1. Damage to be compensated refers to damage that actually incurs, interests prescribed in Articles 23, 24, 25, 26 and 27 of this Law and other expenses prescribed in Article 28 of this Law.
2. Amount of damages to be compensated shall be determined at the time of acceptance of compensation claim prescribed in Article 43 of this Law or at the time when the first-instance court determines amount of damages in the cases prescribed in Clause 1 Article 52 and Article 55 of this Law. If a claimant institutes a lawsuit requesting the court to settle the compensation claim as prescribed in Clause 2 Article 52 of this Law, the amount of damages shall be still be determined at the prior time of acceptance of compensation claim.
3. The period of time as the basis for determining damage to be compensated prescribed in Clauses 3, 4 and 5 Article 23, Article 24, Clauses 1, 2 and 3 Article 25, Clauses 1, 2, 3 and Point a Clause 4 Article 26, Clause 3 Article 27 of this Law shall begin from the date on which the damage has actually incurred until its termination.

The Government shall provide on guidelines for this Clause.

##### **Article 23. Damage caused by asset infringement**

1. If the assets have been already disposed of or lost, the damage will be determined on the basis of the market prices of like-kind assets or assets with the same properties and technical standards and the depreciation of the assets at the time prescribed in Clause 2 Article of this Law. Time for determining current conditions of asset as the basis for damages is the time when the damage actually occurs.

2. If the assets have been out of order, the damage will be determined as related expenses for repair and restoration, calculated according to the market prices at the time of compensation prescribed in Clause 2 Article 22 of this Law; if the assets have been out of repair or restoration, the damage will be determined under Clause 1 of this Article.

3. If the assets have been left unused or unexploited, the damage will be determined as lost actual incomes. For assets on lease on the market, lost actual incomes will be determined commensurate with the average monthly rentals of like-kind assets or assets with the same technical standards, properties, utility and quality at the time prescribed in Clause 2 Article 22 of this Law; for assets not on lease on the market, lost actual incomes will be determined as average 3-month incomes brought about by the damaged assets under normal conditions before the time the damage is caused;

4. Amounts of money that have been already remitted into the state budget under decisions of competent authorities or confiscated or kept for judgment enforcement, or deposited as security shall be refunded to sufferers and interests thereof.

If such amounts are interest-bearing loans, interests thereof shall be considered legitimate interests as prescribed in the Civil Code.

If such amounts are not interest-bearing loans, interests thereof shall be considered interests accruing due to late payment in case of absence of an agreement as prescribed in the Civil Code at the time prescribed in Clause 2 Article 22 of this Law.

5. If a sufferer cannot perform civil or commercial transactions which have been effective and paid fines for his/her breach of obligations in these transactions, the damages to be compensated is the amount of fines as agreed and interests thereof.

If such fine is an interest-bearing loan, interests thereof shall be considered legitimate as prescribed in the Civil Code.

If such fine is a not interest-bearing loan, interests thereof shall be considered interests accruing due to late payment in case of absence of an agreement as prescribed in the Civil Code at the time prescribed in Clause 2 Article 22 of this Law.

6. If damage is caused due to beyond an emergency circumstance, the damage to be compensated is the part of damage occurs.

7. The Government shall provide on guidelines for this Article.

#### **Article 24. Damage due to loss of or decrease in actual incomes**

1. Lost or decreased actual income of a sufferer being individual shall be determined as follows:

a) Stable income earned from salary or wage shall be determined according to amount of sufferer's salary/wage during the period in which his/her salary/wage has been lost or decreased;

b) Unstable income earned from salary or wage shall be determined according to his/her average income of three consecutive months prior to the time when the damage occurs during the period in which his/her salary/wage has been lost or decreased;

c) Unstable seasonal income is the average income of local worker/employee at the same level during the period in which his/her salary/wage has been lost or decreased; If the average income of local worker/employee at the same level is unidentifiable, the lost or decreased actual income to be compensated shall be one day's minimum wage applying to the region where the sufferer has been residing for one day of damage.

One day's regional minimum wage equals one month's regional minimum wage prescribed by the state divided by 26 days.

2. Lost or decreased actual income of a sufferer being organization shall include incomes as prescribed in law on corporate income tax.

The income to be compensated shall be determined according to its average income of 2 consecutive years prior to the time when the damage occurs. The average income shall be determined according to financial statement of the organization as per the law. If the organization has been found for less than 2 years until the time when the damage occurs, the income to be compensated shall be determined according to the average income during its actual operation as mentioned in its financial statement as per the law.

## **Article 25. Material loss due to the death of sufferers**

1. Expenditures on medical examination and treatment for the sufferer as prescribed in law on medical examination and treatment before his/her death.

2. Expenditures on health fostering for the sufferer before his/her death shall be determined as equal to one-day minimum wage applying to the region where the health facility is located for one day of medical examination and treatment based on the number of days stated in the medical record.

3. Expenditures on caring for the sufferer's carer during medical examination and treatment period before his/her death shall be determined as equal to one-day minimum wage applying to the region where the health facility is located for one day of caring.

4. Expenditures on funeral for the dead sufferer shall be determined according to the funeral allowance prescribed in law on social insurance.

5. Alimonies for persons for whom the sufferer is currently obliged to provide shall be determined as equal to one-day minimum wage applying to the region where recipient

has been residing for one month of alimony, unless otherwise prescribed by law or another amount prescribed in a legally effective judgment/decision issued by competent authority.

#### **Article 26. Material loss due to health damage**

1. Expenditures on medical examination and treatment for the sufferer as prescribed in law on medical examination and treatment.
2. Expenditures on health fostering for the sufferer shall be determined as equal to one day's minimum wage applying to the region where the health facility is located for one day of medical examination and treatment based on the number of days stated in the medical record.
3. Expenditures on caring for the sufferer's carer during medical examination and treatment period shall be determined as equal to one day's minimum wage applying to the region where the health facility is located for one day of caring.
4. In case a sufferer loses his/her working capacity and needs a regular caregiver, the damage to be compensated will cover:
  - a) Expenditures given to the sufferer's caregiver shall be determined as equal to one-day minimum wage applying to the region where the sufferer has been residing for one day of caring;
  - b) Alimonies for persons for whom the sufferer is currently obliged to provide shall be determined as equal to one-day minimum wage applying to the region where recipient has been residing for one month of alimony, unless otherwise prescribed by law or another amount prescribed in a legally effective judgment/decision issued by competent authority.

#### **Article 27. Damage due to mental suffering**

1. Damage due to mental suffering during the educational administrative measures at communes, wards and towns shall be determined as equal to a half of day's salary according to base salary prescribed by the state (hereinafter referred to as daily base salary) for one day of educational administrative measures at communes, wards and towns.
2. Damage due to mental suffering during the administrative custody or confinement in a reformatory, correctional facility, detoxification center shall be determined as equal to two days' base salary for one day in administrative custody or in a reformatory, correctional facility or detoxification center.

3. Damage due to mental suffering in case of institution of a criminal case, prosecution, trial or judgment enforcement, prevention in criminal proceedings shall be determined as follows:

a) Damage due to mental suffering in a case where the sufferer is held in custody in an emergency shall be determined as equal to two days' base salary;

b) Damage due to mental suffering in a case where the sufferer is arrested, held in custody, detained or serving an imprisonment penalty shall be determined as equal to three days' base salary for one day of being held in custody, detained or serving an imprisonment penalty;

c) Damage due to mental suffering in a case where the sufferer is not arrested, held in custody, detained or serving a penalty other than imprisonment penalty shall be determined as equal to two days' base salary for one day of not being held in custody, detained or serving the penalty, except for the case prescribed in Point d of this Clause;

d) Damage due to mental suffering in a case where the sufferer served a non-custodial sanction or a suspended sentence shall be determined as equal to three days' base salary for one day of serving the sanction or sentence;

dd) Damage due to mental suffering in a case where the sufferer who has already served a penalty as stated in a court's judgment/decision and then considered eligible for compensation by another judgment/decision by the competent criminal procedure authority shall be determined as equal to 2 days' base salary for one day of the period in which the latter judgment/decision has not been issued.

4. Damage due to mental suffering in case of death of sufferers shall be determined as equal to three hundred sixty months' base salary. If the sufferer dies, Clauses 1, 2, 3 and 5 of this Article shall not apply.

5. Damage due to mental suffering in case of infringement upon health shall be determined based on the extent of health damage provided not exceeding thirty months' base salary.

6. Damage due to mental suffering in a case where a public employee is faced with dismissal unlawfully shall be determined as equal to one day's base salary for one day of illegal dismissal.

7. One day's base salary equals one month's base salary divided by 22 days.

## **Article 28. Extraordinary expenditures to be compensated**

1. Extraordinary expenditures to be compensated include:

- a) Expenditures on rental of rooms, travel, printing, sending of complaints or denunciation; hire of defenders or protectors of rights and legitimate interests of sufferer;
- b) Expenditures on relatives' travel to visit detainees, prisoners.

Relatives of detainees or prisoners shall be defined as prescribed in law on temporary detention or imprisonment duration and law on criminal judgment enforcement.

2. The expenditures prescribed in Point a Clause 1 of this Article shall be determined as follows:

- a) The expenditure on rental of rooms, travel, printing with legitimate invoices or supporting documents shall be paid as determined as prescribed in Clause 2 Article 22 of this Law up to the amount prescribed by the Ministry of Finance in terms of business trip allowances provided for officials and public employees; and expenses associated with holding regulatory bodies' meetings.

If the claimant fails to present legitimate invoices or supporting documents for the said expenditures, the expenditure to be compensated shall be up to 6 month's base salary at the time prescribed in Clause 2 Article 22 of this Law for 1 year from the date on which the complaint or denunciation is filed or the claimant involves himself/herself in legal proceeding until the date on which a document on compensation settlement is issued by the competent authority comes into force;

- b) The expenditure on sending claims or denunciation to regulatory bodies or competent persons shall be determined according to the postal charge receipt at the time prescribed in Clause 2 Article 22 of this Law.

If the claimant fails to present the postal charge receipt for the said expenditures, the expenditure to be compensated shall be up to 6 month's base salary at the time prescribed in Clause 2 Article 22 of this Law for 1 year from the date on which the complaint or denunciation is filed or the claimant involves himself/herself in legal proceeding until the date on which a document on compensation settlement is issued by the competent authority comes into force;

- c) The expenditure on hire of defenders or protectors of rights and legitimate interests of the sufferer shall be paid according to under their contractual agreement provided not exceeding the remuneration prescribed by the Government applying to defense counsels at the request of presiding agencies. These expenditures are only paid to one defender or one protector of rights and legitimate interests of the sufferer at a time.

3. The expenditure prescribed in Point b Clause 1 of this Article shall be determined according to number of actual relatives, visits provided not exceeding the maximum number of relatives and visits as prescribed in law on temporary detention, imprisonment, and law on criminal judgment enforcement. If the number of actual relatives, visits is unproven, the expenditure shall be determined according to the maximum number of

relatives and visits as prescribed in law on temporary detention, imprisonment, and law on criminal judgment enforcement.

4. The period of time as the basis for determination of expenditures to be compensated prescribed in this Article shall begin from the date on which the damage occurs until the date on which a document on compensation settlement is issued by the competent authority comes into force.

5. The Government shall provide on guidelines for this Article.

### **Article 29. Restoration of lawful rights and interests of sufferers**

1. Apart from damage to be compensated prescribed in Articles 23, 24, 25, 26, 27 and 28 of this Law, a sufferer being individual is also entitled to restore the following lawful rights and interests:

a) Resume position (if any), job and benefits as prescribed in law;

b) Restore right to learn;

c) Resume membership in political organizations, socio-political organizations, political-social-professional organization, social organizations, and social-professional organizations.

2. Apart from damage to be compensated prescribed in Articles 23, 24, 25, 26, 27 and 28 of this Law, a sufferer being organization is also entitled to restore other lawful rights and interests.

3. Procedures for restoration of lawful rights and interests prescribed in Clause 1 and Clause 2 of this Article shall be carried out as prescribed by law and regulations and charters of relevant organizations.

### **Article 30. Return of assets**

1. Assets seized, held in custody, distrained or confiscated unlawfully will be returned immediately after the decisions on asset seizure, custody, distraint or confiscation are cancelled.

2. The return of assets held in custody, confiscated unlawfully in administrative management shall be carried out as prescribed in law on actions against administrative violations.

3. The return of assets distrained unlawfully in civil judgment enforcement shall be carried out as prescribed in law on civil judgment enforcement.

4. The return of assets seized unlawfully in procedural activities shall be carried out as prescribed in law on procedural activities and other relevant law provisions.

### **Article 31. Honor restoration**

1. Any sufferer in criminal procedures, public employee faced with dismissal unlawfully, person faced with administrative measures, including bringing to reformatory school, correctional facility, compulsory detoxification center unlawfully shall be entitled to have his/her honor restored.

2. Enforcer's superior body shall proactively restore the sufferer's honor in the circumstances prescribed in Clause 1 of this Article. The honor restoration shall be carried out as prescribed in Section 3 Chapter V of this Law.

### **Article 32. Non-compensation damage**

1. The state shall not compensate for damage caused in the following circumstances:

- a) Damage occurs entirely due to the fault of the sufferer;
- b) Damage occurring objectively unpredictable and irreparable even though the law enforcers has applied all necessary measures and to the best of his/her ability;
- c) Damage occurring in circumstances where the law enforcer, in order to avert a threat actually and directly threatening the public interest, the legitimate rights and interests of the sufferer or another person, has no alternative but to take an act which would cause lesser damage than the damage to be prevented, except for the case prescribed in Clause 6 of Article 23 of this Law.

2. Apart from damage prescribed in Clause 1 of this Article, in criminal procedures, the state shall not compensate for damage caused in the following circumstances:

- a) Damage occurs in cases where a person faced with criminal prosecution is eligible for exemption from criminal liability according to the provisions of the Criminal Code;
- b) Damage caused due to the sufferer's making false declarations or providing other untruthful documents or exhibits in order to plead guilty for other persons or to conceal the offenses;
- c) Damaged caused owing to the fact that the person who committed violation of law shows clear signs of offense constitution, against whom criminal cases was instituted or who was prosecuted in criminal cases instituted at the request of victims, but the cases were terminated as the victims have withdrawn their requests for institution of criminal cases;

d) Damage caused owing to the fact that the person against whom criminal case was instituted or who was prosecuted and tried strictly in accordance with legal documents effective at the time of prosecution and trial but at the time when the judgment or decision take effects new legal documents are promulgated and took effect after the date of prosecution or trial he/she no longer bears criminal liability.

3. Apart from the damage prescribed in Clause 1 of this Article, in the course of civil procedures or administrative procedures, the state shall not pay compensation for damage caused when the law enforcer applies the temporary emergency measures in accordance with the request that unluckily causing damage to the person faced with temporary emergency measures or to a third party. The person who requests the court to apply temporary emergency measures improperly, causing damage to the accused or to the third party, shall have to pay compensations to the victims according to the provisions of the civil procedure legislation.

4. In addition to the damage prescribed in Clause 1 of this Article, in civil judgment enforcement, the state shall not pay compensation for damage caused when the law enforcer has applied judgment enforcement measures strictly according to request of the party causing damage. The person who requests the executor to apply temporary emergency measures improperly, causing damage to the accused or to the third party, shall have to pay compensations to the victims according to the provisions of the civil procedure legislation.

## **Chapter IV**

### **COMPENSATION BODIES**

#### **Article 33. Compensation bodies in administrative management**

1. Central compensation bodies include:

a) Ministries, ministerial-level agencies, Governmental agencies shall act as compensation bodies in cases where the law enforcers causing damage work under their direct management, except for the case prescribed in Point b of this Clause;

b) General Departments, Departments and other units that have the legal person status and separate accounts of Ministries, ministerial-level agencies or Governmental agencies shall act as compensation bodies in cases where the law enforcers causing damage work under their direct management.

2. Compensation bodies of provinces and central-affiliated cities (hereinafter referred to as provinces) include:

a) People's Committees of provinces shall act as compensation bodies in cases where the law enforcers causing damage work under their direct management, except for the case prescribed in Point b of this Clause;

b) Specialized agencies or entities affiliated to the People's Committee of provinces that have the legal person status and separate accounts shall act as compensation bodies in cases where the law enforcers causing damage work under their direct management.

3. People's Committees of districts shall act as compensation bodies in cases where the law enforcers causing damage work under their direct management.

4. People's Committees of communes shall act as compensation bodies in cases where the law enforcers causing damage work under their direct management.

5. Authorities competent to provide information as prescribed in the Law on information access.

6. Authorities competent to apply necessary measures to protect denouncers as prescribed in the Law on Denunciation.

7. Agencies issuing dismissal decision as disciplinary actions to public employees.

8. Courts that have jurisdiction in lawsuit settlement as prescribed in law on criminal procedures, civil procedures, administrative procedures; courts that have jurisdiction in applying administrative measures as prescribed in the Law on penalties for administrative violations.

#### **Article 34. Investigative agencies and agencies tasked to conduct certain investigative activities for compensation in criminal proceedings**

An investigative agency or agency tasked to conduct certain investigative activities shall act as a compensation body in the following cases:

1. It issued a custody order for emergencies without justifiable grounds as prescribed in the Criminal Procedure Code and the person held in custody did not commit any illegal act; it issued an arrest or custody order but then the competent authority issued decision on release, cancellation of the custody orders, non-endorsement of the arrest order or decision on extension of custody order as the person held in custody or arrested did not commit any criminal act;

2. It issued a decision to prosecute the accused but then the procuracy does not approve the decision to prosecute the accused as the commission of an offence did not occur or the act did not constitute the offence;

3. The procuracy issued a decision on return of case files for additional investigation and then investigation body made additional investigation findings or new investigation findings for prosecution but the procuracy issued a decision on suspension of case as an offence did not occur or the act did not constitute the offence.

#### **Article 35. Procuracies settling compensation in criminal proceedings**

A procuracy shall act as a compensation body in any of the following cases:

1. It ratified an arrest order or decision to extend the custody duration made by competent investigate agency or agency tasked to conduct certain investigative activities but the arrested person or person held in custody did not commit any illegal act;
2. It ratified a decision to prosecute the accused or a detention order made by the investigation agency or agency tasked to conduct certain investigative activities or issued a decision to prosecute the accused, a detention order, or a decision to extend the detention duration but then the competent authority confirmed that the offence did not occur, the act did not constitute the offence, or the investigation period expired without justifiable grounds to prove that the accused committed any illegal act, except for the case prescribed in Clause 3 Article 34 of this Law; or it returned the case files for additional investigation, but the investigation body, according to investigation findings, issues a decision on suspension of investigation as the commission of an offence did not occur, the act did not constitute the offence, or the investigation period expired without justifiable grounds to prove that the accused committed any illegal act;
3. It issued a decision to prosecute the accused but the first-instance court declared that the defendant was not guilty as he/she did not commit any criminal act or the act did not constitute the offence and the first-instance judgment has taken legal effect;
4. The first-instance court returned case files for additional investigation and later the competent agency issued a decision on suspension of the investigation or case as the commission of an offence did not occur, the act did not constitute the offence or the investigation period expired without justifiable grounds to prove that the accused committed any illegal act;
5. The first-instance court returned case files for additional investigation and later declared that the defendant is not guilty as he/she did not commit any criminal act or the act did not constitute the offence and the first-instance judgment has taken legal effect;
6. The appellate court upheld a first-instance court judgment/ruling declaring that the defendant was not guilty as the commission of an offence did not occur or the act did not constitute the offence
7. The appellate court upheld a first-instance court's judgment/ruling declaring that the defendant is not guilty as the commission of an offence did not occur or the act did not constitute the offence and later the court conducting trial according to cassation or reopening procedures still uphold the appellate court's judgment/ruling declaring that the defendant is not guilty as the commission of an offence did not occur or the act did not constitute the offence.

### **Article 36. Courts settling compensation in criminal proceedings**

1. A first-instance court shall act as a compensation body in any of the following cases:

a) It declared that the defendant was guilty but then the appellate court quashes the first-instance judgment, declaring that the defendant is not guilty and terminate the case as the commission of an offence did not occur or the act did not constitute the offence;

b) It declared that the defendant was guilty but later the appellate court quashes the first-instance judgment for re-investigation, and then the defendant's investigation and case are terminated as the commission of an offence did not occur or the act did not constitute the offence or the investigation period expired without justifiable grounds to prove that the accused committed any illegal act;

c) It declared that the defendant was guilty but then the appellate court quashed the first-instance judgment for retrial, and then declares that the defendant is not guilty as the commission of an offence did not occur or the act did not constitute the offence;

d) It declared that the defendant was guilty and the first-instance judgment has taken legal effect but later the court conducting trial according to cassation or reopening procedures quashes that judgment and terminates the case as the commission of an offence did not occur or the act did not constitute the offence;

dd) It declared that the defendant was guilty and the first-instance judgment has taken legal effect later the court conducting trial according to cassation or reopening procedures quashes that judgment for re-investigation as the commission of an offence did not occur, or the act did not constitute the offence, or the investigation period expired without justifiable grounds to prove that the accused committed any illegal act;

e) It declared that the defendant was guilty the first-instance judgment has taken legal effect but later the court conducting trial according to cassation or reopening procedures quashes that judgment for re-trial and then the defendant is declared not guilty as the commission of an offence did not occur or the act did not constitute the offence.

2. An appellate court shall act as a compensation body in any of the following cases:

a) It declared that the defendant was guilty but later the court conducting trial according to cassation or reopening procedures quashes the appellate judgment and terminates the case as the commission of an offence did not occur or the act did not constitute the offence;

b) It declared that the defendant was guilty, but later the court conducting trial according to cassation or reopening procedures quashes the appellate judgment for re-investigation and then the defendant's investigation and case is terminated as the commission of an offence did not occur, or the act did not constitute the offence, or the investigation period expired without justifiable grounds to prove that the accused committed any illegal act;

c) It declared that the defendant was guilty, but later the court conducting trial according to cassation or reopening procedures quashes the appellate judgment for re-trial and then

the defendant is declared not guilty as the commission of an offence did not occur or the act did not constitute the offence.

3. A superior people's court or a central military court that have jurisdiction to conduct trial according to cassation or reopening procedures shall act as a compensation body in any of the following cases:

a) The Council of Judges of the Supreme People's Court quashes the cassation or reopening ruling of the Superior People's Court or central military court which declared that the defendant was guilty and terminate the case as the commission of an offence did not occur or the act did not constitute the offence;

b) The Council of Judges of the Supreme People's Court quashes the cassation or reopening ruling of the Superior People's Court or central military court which declared that the defendant was guilty for re-investigation and then the defendant's investigation and case is terminated as the commission of an offence did not occur, or the act did not constitute the offence, or the investigation period expired without justifiable grounds to prove that the accused committed any illegal act;

c) The Council of Judges of the Supreme People's Court quashes the cassation or reopening ruling of the Superior People's Court or central military court which declared that the defendant was guilty for re-trial and then the defendant is declared not guilty as the commission of an offence did not occur or the act did not constitute the offence.

4. The Supreme People's Court shall act as a compensation body in any of the following cases:

a) The Council of Judges of the Supreme People's Court quashes its cassation or reopening rulings which declared that the defendant was guilty, or quashes a legally effective judgment/decision of the inferior court, and declares that the defendant is guilty as the commission of an offence did not occur or the act did not constitute the offence;

b) The Council of Judges of the Supreme People's Court quashes its cassation or reopening ruling which declared that the defendant was guilty, or quashes a legally effective judgment/decision of the inferior court for re-investigation and then the defendant's investigation and case is terminated as the commission of an offence did not occur, or the act did not constitute the offence, or the investigation period expired without justifiable grounds to prove that the accused committed any illegal act;

c) The Council of Judges of the Supreme People's Court quashes its cassation or reopening rulings which declared that the defendant was guilty , or and quashes a legally effective judgment/decision of the inferior court for re-trial, and then the defendant declared not guilty as the commission of an offence did not occur or the act did not constitute the offence.

### **Article 37. Courts settling compensation in civil procedures, administrative procedures**

1. A court competent to issue rulings on application of temporary emergency measures defined in Clauses 1, 2 and 3, Article 28 of this Law shall act as a compensation body.
2. A first-instance court shall act as a compensation body if its legally effective first-instance judgments or rulings defined in Clause 5 and Clause 6 Article 19 of this Law are quashed according to cassation or reopening procedures.
3. An appellate court shall act as a compensation body if its legally effective appellate judgments or rulings defined in Clause 5 and Clause 6 Article 19 of this Law are quashed according to cassation or reopening procedures.
4. A court conducting trial according to cassation or reopening procedures shall act as a compensation body if its legally effective cassation or reopening rulings defined in Clause 5 and Clause 6 Article 19 of this Law are quashed according to cassation or reopening procedures.
5. A court shall act as a compensation body if its legally effective judgments or rulings defined in Clause 5 and Clause 6 Article 19 of this Law are quashed by the Council of Judges of the Supreme People's Court according to special procedures, except for the case prescribed in Clause 6 of this Article.
6. The Supreme People's Court shall act as a compensation body if the Council of Judges of the Supreme People's Court quashes its legally effective judgments or rulings or those of inferior courts as defined in Clause 5 and Clause 6 Article 19 of this Law according to special procedures and determine damages incurred by the Supreme People's Court.
7. Courts that have jurisdiction to settle cases as prescribed in the Criminal Procedure Code, the Civil Procedure Code.

### **Article 38. Compensation bodies in criminal judgment enforcement**

1. Criminal enforcement agencies of the People's Police prescribed in the Law on criminal judgment enforcement.
2. Criminal enforcement agencies of the People's Army prescribed in the Law on criminal judgment enforcement.
3. Agencies assigned certain duties of criminal judgment enforcement prescribed in the Law on criminal judgment enforcement.
4. Courts that have jurisdiction to settle cases as prescribed in the Criminal Procedure Code, the Civil Procedure Code.

### **Article 39. Compensation bodies in civil judgment enforcement**

1. Department of civil judgment enforcement and Sub-department of civil judgment enforcement.
2. Enforcement authorities of military zones and equivalent.
3. Courts that have jurisdiction to settle cases as prescribed in the Criminal Procedure Code, the Civil Procedure Code.

### **Article 40. Determination of compensation bodies in some specific cases**

1. In cases where the compensation body is enforcer's superior body, the compensation body in some specific cases shall be determined as follows:
  - a) If the compensation body has been totally or partially divided, acquired, or consolidated or dissolved, its successor agency shall act as a compensation body; if there is no successor agency, the body that has issued the dissolution decision shall act as a compensation body; if the body that has issued the dissolution decision is the National Assembly, the Standing Committee of National Assembly, the Government, the Prime Minister, the compensation-managing authority shall have power to determine the compensation body;
  - b) In a case where multiple law enforcers of multiple agencies jointly cause damage, the agency assuming the prime responsibility shall act as a compensation body; in a case where it is unable to reach a consensus on the compensation body, the competent compensation-managing authority shall determine the compensation body;
  - c) At the time of handling compensation claim, if the law enforcer causing damage has no longer worked at his/her superior body at the time of causing the damage, such superior body shall act as the compensation body;
  - d) In case of authorized or mandated performance of official duties, the authorizing or mandating agency shall act as a compensation body. If the authorized or mandated agency performs official duties at variance with authorized or mandated contents, thus causing damage, it shall act as a compensation body.
2. In case of settlement of a claim in the course of criminal procedures or administrative procedures at a court, the court handling the case shall act as a compensation body.
3. In cases where the claimant simultaneously request the enforcer's superior body and the court that has jurisdiction to settle the claim, either the enforcer's superior body or the court shall act as the compensation body, whichever accepts the claim first.

### **Chapter V**

## **PROCEDURES FOR SETTLEMENT OF COMPENSATION CLAIMS**

### **Section 1. SETTLEMENT OF COMPENSATION CLAIMS AT ENFORCER'S SUPERIOR BODY**

#### **Article 41. Compensation claims**

1. If the claimant is the sufferer, the compensation claim (hereinafter referred to as claim) shall include:

- a) Compensation claim form;
- b) Document serving as ground for claim, unless the sufferer has not received or cannot have such document;
- c) Identity papers of the sufferer;
- d) Documents and evidence related to the compensation claim (if any).

2. If the claimant is the sufferer's successor (or the successors' representative in case of multiple successors) or the sufferer's representative, apart from the documents prescribed in Points a, b and d Clause 1 of this Article, the claim shall also include the following:

- a) Identity papers of sufferer's successor or representative;
- b) A legitimate written authorization in case of authorized representative;
- c) If the sufferer dies testate, the claimant has to provide the testament, if he/she otherwise dies intestate, a legitimate document on inheritance right is required.

3. A compensation claim shall at least contain:

- a) Claimant's full name, address, phone number (if any);
- b) Date of compensation claim;
- c) Damaging act of law enforcer;
- d) The existence of the causal link between the actual damage and damaging act of the law enforcer;
- dd) The extent of damage, calculation and the claimed compensation amount;
- e) Request for provisional sums of compensation funding (if any);

g) Request of document serving as ground for claim to be sent to compensation body, which clarifies document's name and the address where the document could be collected if the claimant is unable to collect such document;

h) Request for honor restoration (if any);

i) Request for restoration of other legitimate rights and interests (if any).

If the sufferer only requires honor restoration, the compensation claim shall contain contents prescribed in Points a, b, c, d, g and h of this Clause.

4. The claimant shall file a claim in person or send by postal to the compensation body.

If the compensation body has been unidentifiable promptly, the claimant shall file the claim to Services of Justice of province where the sufferer has been residing or headquartered. Within 5 working days, Services of Justice shall determine the compensation body, forward the claim to the compensation body and send a notice to the claimant.

5. If the claimant files a claim in person, all of documents and evidence prescribed in Points b, c, d Clause 1 and Clause 2 of this Article shall be copies with originals for collation; if the claimant file the claim by post, all of documents and evidence prescribed in Points b, c, d Clause 1 and Clause 2 of this Article shall be certified true copies as prescribed in law on authenticity.

#### **Article 42. Procedures for claim acceptance and processing**

1. The compensation body shall accept claim, keep records and issue an acceptance certificate to the claimant if the claimants file the claim in person. If the claim is filed by post, within 2 working days from the date on which the claim is received, the compensation body shall send a notice of acceptance to the claimant.

2. Within 5 working days from the date of receipt, the head of compensation body shall perform the tasks below:

a) Request the claimant to provide additional document in case of inadequate claim as prescribed in Clause 1 and Clause 2 Article 41 of this Law;

b) Request the competent regulatory body or person to provide document serving as ground for claim as required by the claimant or clarify such document if its text is ambiguous.

3. Within 5 working days from the date on which the request of the head of compensation body is received as prescribed in Clause 2 of this Article, the claimant shall provide appropriately additional documents and the competent regulatory body or person has to provide the document serving as ground for claim or clarify text of such document. The

period of force majeure events or objective hindrance prescribed in the Civil Code shall not be included in the time limit prescribed in this Clause.

#### **Article 43. Acceptance of claim and assignment of compensation person**

1. Within 3 working days from the date on which the valid claim prescribed in Article 41 of this Law is received, the compensation body must accept the claim and keep records, except for the case prescribed in Clause 1 hereof.

2. The compensation body may refuse the claim upon occurrence of any of following circumstances:

- a) The compensation claim does not fall within its jurisdiction;
- b) The period of prescription of compensation claim expires;
- c) The compensation claim does not fall within the state compensation liability prescribed in Chapter II of this Law;
- d) The claimant is not entitled to claim compensation as prescribed in Article 5 of this Law;
- dd) The claim was not adequate as prescribed in Article 41 of this Law but the claimant has failed to provide additional documents within the time limit prescribed Clause 3 Article 42 of this Law;
- e) The compensation claim has not been sent to the superior body's enforcer as prescribed in Point a Clause 1 Article 52 of this Law and has been accepted by a court that have jurisdiction in accordance with civil procedures;
- g) The compensation claim has been accepted by a court that have jurisdiction as prescribed in Clause 1 Article 55 of this Law;
- h) The compensation claim has been settled by a legally effective judgment/decision.

3. The compensation person shall be assigned as follows:

a) Within 2 working days from the date of acceptance of claim, the compensation body must assign the compensation person;

b) The compensation person has wide professional experience in the area from which the compensation claim arises; he/she has no rights and interests in respect of the case or no relationship with the law enforcer causing damage or the sufferer as prescribed in the Civil Code.

4. The acceptance or non-acceptance of claim and assignment of compensation person must be written advice as to the claimant and compensation-managing authority. If the claim is rejected, it shall be returned with explanation in writing; in case of Point a Clause 2 of this Article, the claimant shall be instructed to come to competent bodies for settlement.

During the process of acceptance of claim, upon occurrence of any of the circumstances prescribed in Clause 2 of this Article, the compensation body shall suspend the case, delete the case's name in the acceptance record and return the claim to the claimant.

5. If the sufferer only requires honor restoration, no decision on settlement of compensation shall be issued as prescribed in this Section. The honor restoration shall be carried out as prescribed in Section 3 of this Chapter.

#### **Article 44. Provisional sums of compensation funding**

1. At the request of the claimant prescribed in Point e Clause 3 Article 41 of this Law, the compensation body shall provide provisional sums of compensation funding for:

a) Damage due to mental suffering prescribed in Clauses 1, 2, 3, 4, and 6 Article 27 of this Law;

b) Other damage that are promptly calculated without verification.

2. Procedures for receiving provisional sums of compensation funding:

a) As soon as practicable after accepting the claim, the compensation person shall determine amount of damages as prescribed in Clause 1 of this Article and send a request for provisional sums of compensation funding and amount thereof to the head of compensation body;

b) Within 5 working days from the date on which the request is received, if estimated administrative management funding allocated by competent authority still remains, the compensation body must complete the allocation of provisional sum and award it to the claimant.

According to the provisional sum awarded to the claimant, the compensation body shall request the competent finance authority to provide additional fund equivalent to the provisional sum;

c) If estimated administrative management funding allocated by competent authority runs out, within 2 working days from the date on which the request is received, the head of compensation body shall request the competent finance authority to provide additional fund equivalent to the provisional sum to be awarded to the claimant.

3. The finance authority shall provide funding for the compensation body as follows:

a) If the compensation body has provided provisional sum for the claimant, within 7 working days from the date on which the request for additional fund is received as prescribed in Point b Clause 2 of this Article, the competent finance agency shall provide additional fund for the compensation body;

b) If the compensation body has submitted a request for provisional sum, within 7 working days from the date on which the request is received as prescribed in Point c Clause 2 of this Article, the competent finance agency shall provide additional fund for the compensation body.

4. The head of compensation body shall decide the provisional sum of compensation awarded to claimant provided not exceeding 50% of damages prescribed in Clause 1 of this Article.

#### **Article 45. Damage verification**

1. The compensation person shall verify damage as required in the claim. In exceptional circumstances, the compensation person may require the claimant and other entities to provide supporting documents and items of evidence prevailing the verification of damage, request the valuation of assets, damage examination, or getting opinions from entities relating to the damage and amount of damages.

2. Within 15 days from the date of acceptance of claim, the compensation person must complete the damage verification. For matters involving many complicated circumstances or to be verified at different places, the verification time limit is 30 days from the date of acceptance of claim.

The verification time limit may prolong as agreed by the claimant and the compensation person but not longer than 15 days from expiration date as prescribed in this Clause.

3. Within 3 working days from the closing date of damage verification, the compensation person must complete the report on damage verification as the basis for negotiation of compensation.

4. For matters involving many complicated circumstances, the compensation body may request the representative of compensation-managing authority, competent finance authority to participate in the verification process.

5. Expenses associated with such valuation and examination shall be covered by the state budget.

6. The Government shall provide on guidelines for this Article.

#### **Article 46. Negotiations on compensation**

1. Within 2 working days from the date on which the report on damage verification is completed, the compensation body shall initiate the negotiation of compensation. The negotiation must be completed within 10 days from the beginning date of negotiation. If matters or cases involve many complicated circumstances, the negotiation time limit may prolong is 15 days

The negotiation time limit may prolong as agreed by the claimant and the compensation person but not longer than 10 days from expiration date as prescribed in this Clause.

2. The negotiation must be carried out according to the following rules:

- a) The claimant and the compensation body are considered equal in the course of negotiation,
- b) Democracy and opinions of participants in the negotiation are respected;
- c) Negotiation contents and results in terms of damage to be compensated and amount of damages shall comply with regulations of this Law.

3. Participants in negotiations:

- a) Representative of compensation body who presides over the negotiation;
- b) Compensation person;
- c) Claimant; his/her protector of rights and legitimate interests prescribed in Clauses 1, 2, and 3 Article 5 of this Law;
- d) Representative of compensation-managing authority
- dd) Representative of procuracy that has jurisdiction in case of compensation claim in criminal procedures;
- e) In necessary cases, the compensation body may invite representative of finance authority at the same administrative level, other entities, and call for the law enforcer causing damage.

4. The negotiation shall be convened at any of the following venues:

- a) If the claimant is an individual, the negotiation venue will be the headquarters of the People's Committee of commune where the claimant has been residing, unless otherwise agreed by the parties;
- b) If the claimant is an organization, the negotiation venue will be the headquarters of the People's Committee of commune where the claimant has been headquartered, unless otherwise agreed by the parties.

5. The negotiation contents shall include:

- a) Damage to be compensated;
- b) Amount of damages;
- c) Restoration of other legitimate rights and interests (if any);
- d) Methods of awarding damages;
- dd) Other contents relating to settlement of compensation claims.

6. The negotiation shall be according to the following steps:

- a) The claimant presents his/her compensation claim and provides additional supporting documents and evidence (if any);
- b) The compensation person announces report on damage verification;
- c) The compensation person and the claimant discusses as prescribed in Clause 5 of this Article;
- d) The representative of compensation body states opinions, the law enforcer causing damage present opinions (if any); individuals and representatives of other organizations state opinions at the request of the presiding person;
- dd) The representative of finance agency offers opinions about types of damage, extent of damage, and amount of damages (if any);
- e) Representative of compensation-managing authority offers opinions.

7. Negotiations shall be recorded in writing. If parties conduct multiple negotiations, each of negotiation must be recorded in writing.

As soon as practicable after finishing the negotiation, the compensation person must keep a record of results. The record of results must specify main contents prescribed in Clause 5 of this Article, clarifying whether the negotiation is successful or unsuccessful. The record must bear signature or fingerprint of claimant, signatures of representatives of participants as prescribed in Clause 3 of this Article and handed over to each participant of negotiation.

8. In case of successful negotiation, the head of compensation body shall issue a decision on compensation settlement as prescribed in Clause 1 Article 57 of this Law.

In case of unsuccessful negotiation, the claimant is entitled to institute a lawsuit over settlement of compensation claim as prescribed in Clause 2 Article 52 of this Law.

## **Article 47. Decision on compensation settlement**

1. As soon as practicable after receiving the record of successful negotiation, the head of compensation body shall issue a decision on compensation settlement and award it to the claimant at the end of the negotiation process.

If the claimant does not receive the decision on compensation settlement, the compensation person shall make a record of such refusal. The record must bear the signatures of representatives of participants. The record must also clarify legal consequences of the refusal of decision as prescribed in Point dd Clause 1 Article 51 of this Law. The compensation body must send the record to the claimant within 5 working days from the date on which it is made.

2. The decision on compensation settlement shall take effect after 15 days from the date of awarding. A decision on compensation settlement must at least contain the following

- a) Full name and address of the claimant;
- b) Grounds for determination of the state compensation liability;
- c) Contents prescribed in Clause 5 Article 46 of this Law;
- d) Provisional sum as prescribed Article 44 of this Law (if any).

## **Article 48. Cancellation of or amendments to decisions on compensation settlement**

1. The head of compensation body shall issue a decision on cancellation of the decision on compensation settlement and suspend the settlement of compensation claims within 2 working days from the date on which one of circumstances is discovered:

- a) One of grounds for determining state compensation liability has no longer existed as prescribed in Clause 1 Article 7 of this Law;
- b) The document serving as ground for claim has been forged;
- c) Documents prescribed in Point c, Point d Clause 1 and Clause 2 Article 41 of this Law have been forged for the purpose of compensation claim.

2. The consequences resulting from the cancellation of decision on compensation as provided for in Clause 1 of this Article shall be settled as follows:

- a) If the damages have not yet been paid to the sufferers, the compensation body shall issue a decision on suspension of compensation settlement as prescribed in Article 51 of this Law and recover the provisional sums of compensation (if any);

b) In cases where damages have been paid to the sufferer in full, the compensation body shall have to recover compensation amount according to law provisions;

c) Where the law enforcer causing damage has already paid damages, the enforcer's superior body shall have to return the money amount already collected according to the provisions of Article 69 of this Law;

d) To settle other consequences (if any) according to the provisions of law.

3. The head of compensation body shall issue a decision on cancellation of the decision on compensation settlement for re-settlement within 2 working days from the date on which one of circumstances is discovered:

a) There is a collusive practice between the claimant and the compensation person and related persons for self-seeking purposes;

b) At the request of the claimant, if the claimant fails to meet the conditions specified at Point b, Clause 3, Article 43 of this Law or if the negotiation is improperly held in terms of composition, contents, procedures as prescribed in Clauses 3, 5 and 6, Article 46 of this Law.

4. The head of the compensation body shall issue a decision to amend the decision on settlement of compensation within 2 working days as from the date of detecting the decision on settlement of compensation with obvious errors in the spelling, about data due to mistake or miscalculation.

5. Decisions on cancellation, correction or supplementation of compensation decisions must be immediately sent to the claimants, compensation-managing authority and other entities involved.

#### **Article 49. Postponement of settlement of claims**

1. The head of the compensation body shall issue a decision to postpone the settlement within two working days from the date on which the claimant requests the compensation body to postpone the settlement of claim due to his/her serious sickness with the certification of the health facility from the district level upwards or cannot participate himself/herself in the process of claim settlement for other plausible reasons.

2. The time limit for postponement of claim settlement shall be determined at the request of the claimant but shall not exceed 30 days, unless the claimant is seriously ill and unable to participate on his own in the process of claim settlement.

3. The decision on postponement of a claim settlement must specify reasons, postponement period and be immediately sent to the claimant, compensation-managing authority and other entities involved. Upon the expiration of the time limit for

postponement of the claim settlement, the head of the compensation body shall issue a decision to continue settling the compensation.

### **Article 50. Suspension of claim settlement**

1. The head of compensation body shall issue a decision on suspension of the decision on compensation settlement within 1 working day from the date on which one of circumstances is discovered:

- a) The claimant twice refuses the invitations to negotiate;
- b) The claimant does not come twice to the negotiating venue when the invitations have been accepted without plausible reasons;
- c) The claimant fails to sign or press his finger-print to the minutes of the negotiation result;
- d) Competent agency/person reconsiders the document serving as ground for claim

2. The time limit for suspending the settlement of claims shall be 30 days from the date of issuance of the suspension decision under one of the grounds prescribed at Points a, b and c, Clause 1 of this Article.

Within 5 working days after the expiry of the suspension duration prescribed in this Clause, the claimant may propose the continued settlement of compensation. The head of the compensation body shall issue a decision to continue the settlement of compensation.

3. In case of suspension under the provisions of Point d, Clause 1 of this Article, after receiving the written review, if the document being re-examined remains the document serving as a basis for claim, the head of compensation body issue a decision to continue the settlement of compensation; in cases where the re-examined document is not the document used as grounds for compensation, the head of the compensation body shall issue a decision to termination of the settlement of compensation as prescribed in Article 51 of this Law.

4. The suspension decision must clearly state the reasons and duration of the suspension, the rights and obligations of the claimants and the legal consequences of the suspension.

Decisions on suspension or continued settlement of compensation must be immediately sent to the claimant, compensation-managing authority and other entities involved.

### **Article 51. Termination of claim settlement**

1. The head of compensation body shall issue a decision on termination of the decision on compensation settlement within 5 working days from the date on which one of circumstances is discovered:

- a) The claimant withdraws the claim before the compensation body conducts the verification of the damage;
- b) The sufferer dies without an heir; the damaged organization has ceased to exist without an organization inheriting rights and obligations;
- c) Upon the expiration of the suspension duration, the claimant does not request the continuation of the claim as provided for in Clause 2, Article 50 of this Law or the request for further settlement of the claim, but perform one of the acts specified at Points a, b and c, Clause 1, Article 50 of this Law;
- d) Issue a decision to cancel the compensation decision in the cases specified in Clause 1, Article 48 of this Law;
- dd) Upon the expiry of the time limit of 30 days from the date on which the written decision on non-receipt of the compensation decision is made under Clause 1, Article 47 of this Law, the claimant fails to receive the settlement decision.

2. The claimant has no right to request the compensation body which is the enforcer's superior body to re-settle the claim after the suspension decision is issued, unless the claimant demonstrates that the claim has been withdrawn due to deception or coercion.

In the case specified at Point b, Clause 1 of this Article, the restoration of honor is required in the written request for compensation shall be carried out as provided for in Article 59 of this Law.

3. Decisions on termination of compensation must be immediately sent to the claimant, compensation-managing authority and other entities involved.

4. In cases where the claimant has been provided with provisional sums of compensation, the compensation body shall have to recover the provisional sum upon the issuance of the decision to termination of compensation settlement, unless otherwise provided for at Point b, Clause 1 of this Article.

## **Section 2. RESOLUTION OF CIVIL CASES ON CLAIMS, SETTLEMENT OF CLAIMS REQUIRED IN CRIMINAL PROCEDURES AND ADMINISTRATIVE PROCEDURES AT COURTS**

### **Article 52. Institution of lawsuits and procedures for settlement of claims at courts**

1. Within three years from the date of receipt of the document serving as a basis for claim, the claimant may initiate a lawsuit requesting the court to settle the claim in the following circumstances:

- a) The claimant has not yet requested the enforcer's superior body to settle the claim;

b) The claimant withdraws his/her claim as provided for at Point a, Clause 1, Article 51 of this Law.

2. Within 15 days after receiving the compensation decision as provided for in Article 47 of this Law, the claimant disagrees with that decision or from the date of the minutes of the successful negotiation as specified in Clause 7, Article 46 of this Law, if the enforcer's superior body fails to issue a decision to settle the compensation or from the date the minutes of the unsuccessful negotiation as prescribed in Clause 7, Article 46 of this Law, the claimant shall have the right to initiate a lawsuit requesting the court to settle the claim.

3. If any force majeure event or objective hindrance as provided for by the Civil Code prevents the claimant from initiating the lawsuit on time, the duration of force majeure event or objective hindrance shall not be included in the time limit for initiating a lawsuit as provided for in Clauses 1 and 2 of this Article.

4. The claimant has no right to initiate a lawsuit requesting the court to settle the claim in a case where the decision on settlement of compensation specified in Article 47 of this Law takes legal effect.

5. Procedures for settling claims at courts shall comply with the provisions of this Section; in cases where this Section does not prescribe, the provisions of the Civil Procedure Code shall apply.

6. Any case which satisfies the conditions for the application of reduced procedures in accordance with the provisions of the Civil Procedure Code shall be carried out in accordance with such reduced procedures.

7. The enforcer's superior body shall represent the state to participate in the proceedings as the defendant.

### **Article 53. Determination of courts having jurisdiction to settle civil cases on claims**

1. The People's Court of district where the claimant has been residing or has worked or where the defendant is headquartered at the own discretion of the claimant shall be the court competent to hear compensation claim at the first instance if defendants are the following agencies:

a) The agencies defined in Clauses 3 and 4, Article 33 of this Law;

b) The agencies defined in Clauses 5, 6 and 7, Article 33 of this Law at the district and commune levels;

c) Presiding agencies of districts, enforcement authorities of districts.

2. The People's Court of province where the claimant has been residing or has worked or where the enforcer's superior body is headquartered at the own discretion of the claimant shall be the court competent to hear compensation claim at the first instance, except for the case prescribed in Clause 1 of this Article.

#### **Article 54. Execution of court judgments or decisions on settlement of claims**

1. The enforcer's superior body shall have to pay compensation to the claimant according to the legally effective judgment/decisions of the court on settlement of claim.

2. Related entities must restore other legitimate rights and interests for the sufferer according to the legally effective judgment/decision of the court on settlement of claim.

#### **Article 55. Settlement of claims in the course of criminal procedures or administrative procedures at courts**

1. The settlement of criminal cases or administrative cases with contents of claim shall comply with the provisions of law on criminal procedures and administrative procedures.

The time for accepting a claim in the course of criminal procedures or administrative procedures is the time when the competent court accepts the claim.

2. The determination of damage to be compensated in the course of criminal procedures or administrative procedures shall comply with the provisions of this Law after competent courts determine unlawful acts of law enforcer causing damage that fall within the scope of state compensation liability.

3. If a compensation claim is filed in the course of settlement of a criminal or administrative case, the court judgment or ruling must also contain the following:

a) Damaging acts within the scope of state compensation liability;

b) Damage, amount of damages, restoration of honor (if any) and restoration of other legitimate rights and interests (if any);

c) The agency shall have to pay damages, restore honor (if any) and restore other legitimate rights and interests (if any).

4. In cases where the claimants disagree with the settlement of compensation in court judgment/decisions or the court judgment/decision does not contain compensation settlement matter, they may continue exercising the right to make a claim under due process.

5. The Supreme People's Court shall guide the implementation of this Article.

### **Section 3. HONOR RESTORATION**

## **Article 56. Form of honor restoration**

1. The restoration of honor of a sufferer in criminal procedures shall be conducted in the following forms:

a) Directly apologizing and publicly rectifying at the place where the sufferer being individual has been residing or where the sufferer being corporation has been headquartered;

b) Publishing public apology and making public rectification.

2. The restoration of honor of individuals who are sufferers in case of unlawful dismissal or application of administrative measures to sending them to reformatory schools, correctional facilities, detoxification centers are provided in the form of publication of apology and public rectification.

## **Article 57. Proactive restoration of honor**

1. Within 15 days from the date on which the document serving as ground for claim is issued or the judgment/decision referred to in Article 55 of this Law becomes effective, the enforcer's superior body shall have to notify the sufferer of the honor restoration by the state.

2. In a case where the sufferer agrees with the notice, the enforcer's superior body shall effect the restoration of honor as prescribed in Articles 58 and 59 of this Law.

3. In a case where the sufferers disagree with the notice, they shall make a specific proposal for such notice as the basis for the enforcer's superior body to effect the restoration of honor.

4. In a case where the sufferer proposes to remain honor restoration unperformed, the restoration of honor shall be conducted when the sufferer makes a request in writing.

5. In a case where the sufferer denies the right to restore honor as prescribed in this Law, he/she no longer has the right to request the restoration of honor. The refusal must be expressed in writing; if the sufferer denies the right to restore his/her honor orally, the enforcer's superior body shall make records thereon, clearly stating the refusal of the right restore honor by the sufferer. The record must be signed by or borne with finger-print of the sufferer.

6. In a case where the sufferers dies, the enforcer's superior body shall publish apology and make public rectification as prescribed in Article 59 of this Law.

7. The Government shall provide on guidelines for this Article.

## **Article 58. Direct apology and public rectification**

1. The meeting of direct apology and public rectification specified at Point a, Clause 1, Article 56 of this Law shall be held as follows:

a) Within 15 days after receiving the written consent or request of the sufferer of the restoration of honor as provided for in Article 41 or Article 57 of this Law, the head of enforcer's superior body shall have to directly hold a meeting of public apology and rectification;

b) The participants in the meeting of public apology and rectification are representatives of leaders of the presiding agencies, other concerned agencies, organizations and individuals.

2. The Government shall provide on guidelines for this Article.

### **Article 59. Publication of apologies and public rectification**

1. The publication of apologies and public rectification specified at Point a, Clause 1, Article 56 of this Law shall be as follows:

a) Within 15 days after receiving the written consent or request for restoration of honor sent by the sufferer as provided for in Article 41 or Article 57 of this Law, the enforcer's superior body at the central level shall have to publish a paper on apology and public rectification on a central newspaper and a local newspaper of administrative division where the sufferer being individual has been residing or the sufferer being corporation has been headquartered for 3 consecutive issues; post the content of apology and public rectification on the website (if any) of the enforcer's superior body;

b) Within 15 days after receiving the written consent or request for restoration of honor sent by the sufferer as provided for in Article 41 or Article 57 of this Law, the enforcer's superior body at the central level shall have to publish a paper on apology and public rectification on a newspaper of province where the sufferer being individual has been residing or the sufferer being corporation has been headquartered for 3 consecutive issues; post the content of apology and public rectification on the website (if any) of the enforcer's superior body;

c) As soon as practicable after publishing the apology and making public correction, the enforcer's superior body shall have to send such newspaper to the sufferer and the People's Committee of commune where the sufferer being individual has been residing or the sufferer being corporation has been headquartered to put it on bulletin board at the headquarters.

2. The Government shall provide on guidelines for this Article.

## **Chapter VI**

### **COMPENSATION FUNDS AND PAYMENT PROCEDURES**

## **Article 60. Compensation funds**

1. The State shall allocate a state budget fund to fulfill the state's compensation liability. The compensation funding includes:

- a) Damages for the sufferer;
- b) Expenses associated with asset valuation and damage examination.

2. If the compensation body is allocated operational fund from the central budget, the compensation funding shall be covered by the central budget.

3. If the compensation body is allocated operational fund from the local budget, the compensation funding shall be covered by the provincial budget.

4. The Ministry of Finance and the Service of Finance shall have to promptly and adequately allocate compensation funds.

## **Article 61. Estimation of compensation funds**

1. Annually, based on the preceding year's actual compensations, expenses associated with asset valuation, damage examination, the Ministry of Finance shall make budget estimates for compensation for compensation bodies whose operational funds are allocated from central government budget, send reports to the Government which then submit them to the National Assembly for consideration as prescribed in law on state budget.

2. Annually, based on the preceding year's actual compensations, expenses associated with asset valuation, damage examination, Departments of Finance shall make budget estimates for compensation for compensation bodies whose operational funds are allocated from local government budget, send reports to the People's Committees of provinces which then submit them to the People's Councils of provinces for consideration as prescribed in law on state budget.

## **Article 62. Allocation of funding for compensation and payment of damages**

1. Within two working days from the effective date of the compensation decision or the judgment or decision of the court on the settlement of the claim, the enforcer's superior body must send the application for allocation of compensation fund to the competent financial agency.

2. An application for allocation of compensation fund, except for the case prescribed in Clause 3 of this Article, shall include:

- a) The written request for allocation of compensation funds, with full and specific details on the sufferer, grounds for determining damages, amount of damages, damages for each

specific damage, provisional sum (if any) and total amount of money proposed to pay the damages;

b) The copy of document serving as ground for claim;

c) The legally effective compensation settlement judgment or decision of a competent agency.

3. An application for allocation of compensation fund prescribed in Article 55 of this Law shall include:

a) The written request for allocation of compensation funds, with full and specific details on the sufferer, grounds for determining damages, amount of damages, damages for each specific damage, and total amount of money proposed to pay the damages;

b) The legally effective compensation settlement judgment or decision of a competent court.

4. Within 5 working days after receiving complete application specified in Clause 2 or Clause 3 of this Article, the financial agency must complete the allocation of compensation fund to the enforcer's superior body.

Where there are clear grounds that the application fails to meet the requirements specified in Clause 2 or 3 of this Article or the amount of damages are not in accordance with law provisions, the finance body shall coordinate with the compensation body to complete the application, allocate compensation funds within 15 days after receiving the application for allocation for compensation fund.

Where there are clear grounds that the amount of damages in the court judgment/decision on settlement of compensation prescribed in Clauses 1 and 2 of Article 52 or Article 55 of this Law are not in accordance with the provisions of law, the financial agency shall request the competent authority to resolve the dispute according to the procedure.

5. Within two working days from the date of receipt of the funding provided by the financial agency, the enforcer's superior body shall notify the claimant of the payment. Within two working days from the date of receipt of the funding provided by the financial agency, the enforcer's superior body shall pay the damages.

6. Upon the expiration of the period of 03 years from the date of receipt of the notice stipulated in clause 5 of this article, if the claimant has not received damages, the enforcer's superior body shall put them into public treasury in accordance with the law. The period of force majeure events or objective hindrance prescribed in the Civil Code shall not be included in the time limit prescribed in this Clause.

### **Article 63. Settlement of compensation funds**

1. After paying damages to the sufferer, the enforcer's superior body shall send papers and documents related to the payment of damages to the finance agency that has allocated funding for statement purpose in accordance with the law.
2. At the end of the budget year, the Ministry of Finance and the Department of Finance shall make the statement of compensation funding as prescribed in law on the state budget.

## **Chapter VII**

### **REIMBURSEMENT LIABILITY**

#### **Article 64. Reimbursement obligation of responsible law enforcers**

1. Law enforcers who are at fault in causing damage are obliged to reimburse to the state budget partly or wholly the amount of damages already paid to the sufferers under decisions of competent agencies.
2. Where multiple law enforcers jointly have caused damage, such persons shall be obliged to pay correspondingly to the extent of their faults and damages paid by the State.

#### **Article 65. Determination of refund rates and reduction of refund rates**

1. Grounds for determination of reimbursed amounts comprise:
  - a) The degree of fault of law enforcers;
  - b) Amount paid by the State.
2. If a law enforcer causes damage, the refund shall be determined as follows:
  - a) If the law enforcer caused damage with intentional fault and a judgment which states that he/she committed a crime, he/she has to refund all the money already paid by the State to the sufferer;
  - b) If the law enforcer caused damage with intentional fault but not to the extent of being prosecuted for penal liability, his/her 30 to 50 months' pay rate shall be refunded at the time the refund decision is issued but not exceeding 50% of the amount of damages paid by the State;
  - c) If the law enforcer caused damage with unintentional fault, his/her 3 to 5 months' pay rate shall be refunded at the time the refund decision is issued but not exceeding 50% of the amount of damages paid by the State;
  - d) Where the 50% of the amount of damages is less than the 30 months' pay rate prescribed at Point b of this Clause or less than 3 months' pay rate prescribed at Point c

of this Clause, the law enforcer must pay at least 50% of the amount of damages paid by the State.

3. In a case where multiple law enforcers jointly cause damage, the reimbursement rate of each person shall be determined correspondingly according to the provisions of Clause 2 of this Article, but the total reimbursement shall not exceed the amount of damages already paid by the State for the sufferer.

4. Each law enforcer shall be entitled to reduced reimbursement when they fully meet the following conditions:

a) Proactively overcoming the consequences;

b) To fulfill all obligations in the process of claim settlement and have repaid at least 50% of the amount to be reimbursed;

c) He/she is economically disadvantaged.

The head of the enforcer's superior body shall decide to reduce the reimbursement but not exceeding 30% of the total amount to be reimbursed.

5. The Government shall provide on guidelines for this Article.

#### **Article 66. Competence and procedures for determining the reimbursement liability**

1. Within 10 days from the date on which the damages are paid in full, the head of compensation body shall set up the council to consider the reimbursement liability. In case the damage is caused by multiple law enforcers from different agencies, such council shall be participated by representatives of concerned agencies to determine the reimbursement liability.

2. Within 20 days from the date of establishment, the council shall consider the reimbursement liability to complete the identification of law enforcers causing damage, their extents of fault, reimbursement liability, the amount of each person's reimbursement and written request to the head of the agency for payment of damages. In case of complicated cases, the time limit may be extended but not exceeding 30 days.

3. On the basis of the recommendation of the Council for consideration of reimbursement liability, the head of compensation agency shall:

a) Issue a decision on reimbursement to the law enforcer causing damage, except for the case prescribed at Point b of this Clause;

b) Issue a decision on reimbursement to law enforcer causing damage under its management in criminal procedures and propose the head of concerned presiding agency to issue a decision on reimbursement to the law enforcer causing damage.

The head of enforcer's superior body shall issue a decision on reimbursement and take legal responsibility for such decision.

4. The reimbursement decision must be sent to the law enforcer liable for reimbursement, compensation-managing authority and the agencies and organizations involved in the collection of reimbursement.

5. The Government shall provide on guidelines for this Article.

#### **Article 67. Decisions on reimbursement and decisions on reduction in reimbursement rates**

1. Decisions on reimbursement and decisions on reduction in reimbursement rates shall take effect from the date of signing.

2. If a decision on reimbursement or decision on reduction in reimbursement rates is inconsistent with the provisions of Articles 65 and 66 of this Law, the compensation-managing authority shall request the head of enforcer's superior body to reconsider such decision.

3. Based on the decision on reimbursement, the decision on reduction in the reimbursement rates that becomes legally effective, the enforcer's superior body shall have to collect the amount to be reimbursed and paid in full and promptly to the state budget according to the provisions of law, except for the case prescribed in Article 70 of this Law.

#### **Article 68. Reimbursement**

1. Reimbursement can be made once or multiple times and must be specified in the reimbursement decision.

2. If reimbursement is made by gradual deduction from monthly salaries of law enforcers, the minimum deduction rate is 10% and the maximum deduction rate is 30% of monthly salaries.

3. If the law enforcer liable for reimbursement is raising a child younger than 36 months of age or pregnant, the reimbursement shall be postponed under the decision of the head of enforcer's superior body.

#### **Article 69. Handling reimbursed money, reimbursement liability if the document serving as ground for claim no longer serves as a basis for claim**

1. If a document used as ground for claim is determined by the competent regulatory body no longer serve as ground for claim of damages that have been repaid by law enforcer causing damage, his/her superior body shall be responsible for repaying the sum of money that he/she has repaid.

2. Where the head of enforcer's superior body has not yet issued the reimbursement decision, the determination of reimbursement liability shall be suspended.

3. The Government shall provide on guidelines for this Article.

**Article 70. Responsibility to collect reimbursements in cases where law enforcers transfer to other agencies or organizations**

1. The agency or organization which has directly managed, utilized, or paid salaries to the law enforcer causing damage shall have to collect reimbursements according to the reimbursement decision.

2. The enforcer's superior body, at the time that the law enforcer causes the damage, shall request the agency or organization which has directly managed, utilized, or paid salaries to the law enforcer to reimbursements according to the reimbursement decision and pay them to state budget as per the law.

**Article 71. Responsibility for collecting reimbursement in cases where the law enforcer causing damage have retired or resigned**

1. The social security agency that has been paying pensions to the law enforcer causing damage shall collect money according to the reimbursement decision and remit fully and promptly into the state budget.

2. If the law enforcer causing damage has resigned without receiving his/her pension or working at another agency or organization, the enforcer's superior body shall, at the time that the law enforcer causes the damage shall execute the reimbursement decision according to the provisions of law.

**Article 72. Reimbursement liability in case of death of law enforcer causing damage**

Where the law enforcer causing damage dies, the reimbursement decision shall cease to be valid at his/her death time.

**Chapter VIII**

**RESPONSIBILITIES OF STATE AGENCIES IN STATE COMPENSATION**

**Article 73. State management responsibilities for compensation work**

1. The Government shall perform the consistent state management of compensation work in administrative management, procedures and judgment enforcement nationwide.

2. The Ministry of Justice is the central agency assisting the Government in performing state management of state compensation and has the following tasks and powers:

- a) Formulate strategies and policies on state compensation;
- b) Promulgate within its competence or request competent state agencies to promulgate documents on guidelines for the Law on State Compensation Liability Law; issue forms and books on state compensation;
- c) Guide and provide training courses in professional skills and practices of state compensation; response to problems in the application of the law on compensation liability of the state;
- d) Determine compensation bodies as prescribed in Point a and Point b Clause 1 Article 40 of this Law;
- dd) Assist sufferers in going through procedures for compensation claims;
- e) Monitor and urge the state compensation; take charge and cooperate with concerned agencies in inspecting and examining the state compensation work; settle complaints, denunciations and take actions against violations in state compensation according to the provisions of law;
- g) Annually, release statistics on the implementation of the state compensation work and send reports to the Government according to regulations;
- h) Request the compensation agencies to send reports on the settlement of claims, fulfill reimbursement liability and take disciplinary actions against law enforcers in case of necessity;
- i) Carry out state management of international cooperation in state compensation;
- k) Build and manage a database on state compensation;
- l) Propose the competent bodies to take actions against violations in settling the compensation and performance of the reimbursement liability as per the law;
- m) Propose the competent persons to protest the court judgments or decisions with compensation contents as provided for by law; request the head of the enforcer's superior body to cancel the decision on settlement of compensation in the case of one of the grounds specified in Clause 1 and Point a of Clause 3, Article 48 of this Law without cancellation decision;
- n) Assist the Government in cooperating with the Supreme People's Court, the Supreme People's Procuracy in managing state compensation work in procedures;
- o) Other tasks and powers as per the law.

3. People's Committees of provinces shall perform the state management of state compensation in the administrative management, proceeding and judgment execution in their respective administrative divisions and have the following tasks and powers:

- a) Guide and provide training courses in professional skills and practices of state compensation;
- b) Determine compensation bodies as prescribed in Point a and Point b Clause 1 Article 40 of this Law;
- c) Guide the suffers to carry out the procedures for claiming compensation within their respective administrative divisions;
- d) Monitor, urge and inspect the state compensation; inspect, settle complaints, denunciations, take actions against violations in state compensation;
- dd) Annually, take charge and cooperate with concerned local agencies and organizations in releasing statistics on the implementation of the state compensation work and report it to the Ministry of Justice according to regulations;
- e) Request the compensation agencies to send reports on the settlement of claims, fulfill reimbursement liability and take disciplinary actions against law enforcers in case of necessity;
- g) Propose the competent bodies to take actions against violations in settling the compensation and perform the reimbursement liability within its scope of management;
- h) Propose the competent persons to protest the court judgments or decisions with compensation contents as provided for by law; request the head of the enforcer's superior body to cancel the decision on settlement of compensation in the case of one of the grounds specified in Clause 1 and Point a of Clause 3, Article 48 of this Law without cancellation decision;
- i) Other tasks and powers as per the law.

4. Departments of Justice shall assist the People's Committees of provinces in performing the state management over the state compensation work in their respective administrative divisions.

#### **Article 74. Responsibilities of the Supreme People's Court and the Supreme People's Procuracy**

The Supreme People's Court and the Supreme People's Procuracy shall, within the scope of their functions, duties and powers, have the following responsibilities:

1. Cooperate with the Government in performing the state management of state compensation work prescribed in Clause 2, Article 73 of this Law;
2. Examine, inspect and settle complaints and denunciations related to the state compensation work according to the provisions of law;
3. Direct the compensation bodies to settle claims, to determine the reimbursement liability, to implement decisions on the reimbursement, to take disciplinary actions it according to its competence;
4. Handle and direct the actions against violations in the settlement of compensation and performance of reimbursement liability;
5. Annually or at the request of compensation-managing authority, release statistics and reporting the Government the performance of state compensation;
6. Direct People's Courts, the People's Procuracies to cooperate with state management agencies on state compensation in state compensation work;
7. Respond to and implement recommendations of compensation-managing authority;
8. Perform other tasks and powers as per the law.

**Article 75. Responsibilities of Ministries, ministerial-level agencies and Governmental agencies**

Ministries, ministerial-level agencies and Governmental agencies shall, within the scope of their respective functions, tasks and powers, have the following responsibilities:

1. Cooperate with the Ministry of Justice in performing the state management of state compensation work prescribed in Clause 2, Article 73 of this Law;
2. Examine, inspect and settle complaints and denunciations related to the state compensation work according to the provisions of law;
3. Direct the compensation bodies to settle claims, to determine the reimbursement liability, to implement decisions on the reimbursement, to take disciplinary actions it according to its competence;
4. Handle and direct the actions against violations in the settlement of compensation and performance of reimbursement liability;
5. Annually or at the request of compensation-managing authority, release statistics and reporting the performance of state compensation;
6. Respond, to make recommendations of compensation-managing authority;

7. Perform other tasks and powers as per the law.

## **Chapter IX**

### **IMPLEMENTATION PROVISIONS**

#### **Article 76. Court costs, fees, other charges and taxes in the course of compensation settlement**

1. Compensation bodies shall not collect court fees, charges and other charges for the claim for compensation within the scope of the state compensation liability as provided for by this Law.
2. The sufferers are not liable for personal income tax and corporate income tax on their received damages.

#### **Article 77. Entry in force**

1. This Law comes into force as of July 1, 2018.
2. The Law on State Compensation Liability No. 35/2009/QH12 shall cease to be effective from the effective date of this Law.

#### **Article 78. Transitional provisions**

1. In a case where a claim has been accepted by the compensation body before the time this Law takes effect but it has not yet been settled or being settled, the provisions of the Law on State Compensation Liability No. 35/2009 / QH12 shall prevail.
2. Since the effective date of this Law, the cases that are entitled to compensation in accordance with the Law on State Compensation Liability No. 35/2009/QH12 and responsive periods of prescription have not expired in accordance with the Law on State Compensation Liability No. 35/2009/QH12 but have not yet requested the state to compensate or have requested but have not yet been accepted for settlement, the provisions of this Law shall prevail.

*This Law is passed on June 20, 2017, by the 14th National Assembly of the Socialist Republic of Vietnam at its 3rd session.*

**PRESIDENT OF NATIONAL ASSEMBLY**

**Nguyen Thi Kim Ngan**

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