

STATE COMPENSATION ACT

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Act No. 1899, Mar. 3, 1967
Amended by Act No. 2459, Feb. 5, 1973
Act No. 3235, Jan. 4, 1980
Act No. 3464, Dec. 17, 1981
Act No. 5433, Dec. 13, 1997
Act No. 6310, Dec. 29, 2000
Act No. 7584, Jul. 13, 2005

Article 1 (Purpose)

The purpose of this Act is to provide for the liability of the State or local governments to compensate for damages and the procedure for such compensation.

Article 2 (Liability for Damages)

(1) When public officials inflict damages on other persons intentionally or negligently in the course of performing their official duties, in violation of the provisions of Acts and subordinate statutes or when they are liable for the compensation for damages under the Guarantee of Automobile Accident Compensation Act, the State or local governments shall remedy damages under this Act: *Provided*, That when military personnel, employees in the armed forces, police officials or homeland reserve forces are killed or injured in the course of performing their duties such as combat, training, etc., they or their bereaved family shall not claim damages under this Act and the Civil Act, if they can claim an accident compensation, surviving family annuity, wound annuity, etc., pursuant to other Acts and subordinate statutes. <Amended by Act No. 3464, Dec. 17, 1981; Act No. 7584, Jul. 13, 2005>

«Pursuant to the decision of unconstitutionality within limited scope which was made by the Constitutional Court on December 29, 1994, “when military personnel … are … injured in the course of performing their duties …, they or their bereaved family shall not claim damages under this Act and the Civil Act, if they can claim an accident compensation, surviving family annuity, wound annuity, etc., pursuant to other Acts and subordinate statutes” provided in the proviso of this paragraph is in contravention of the Constitution as far as it is taken as not allowing a civilian who has remedied damages to a soldier injured in the performance of his duty by an illegal act committed by the civilian jointly with

STATE COMPENSATION ACT

another soldier in the discharge of his duty, to exercise his right to demand from the State reimbursement with respect to the share of the damages to be borne by such other soldier»

(2) In the case of the main text of paragraph (1), if such damage has been caused by intention or gross negligence of the public official concerned, the State or local governments may demand from the public official reimbursement.

[This Article Wholly Amended by Act No. 3235, Jan. 4, 1980]

Article 3 (Basis for Compensation)

(1) In the case of the deprivation of another person's life falling under Article 2 (1), compensation shall be made to the inheritor of the victim (hereinafter referred to as the "bereaved family") in accordance with the following:

1. Bereaved family compensation in the amount of the monthly salary or the monthly income or income of average wages at the time of deprivation of the victim's life multiplied by the future working period; and
2. Funeral expenses as determined by the Presidential Decree.

(2) In the case of bodily injury of another person falling under Article 2 (1), compensation shall be made to the injured person in accordance with the following:

1. Necessary medical treatment or medical treatment expenses in lieu of medical treatment;
2. If any loss of monthly salary, monthly income or income of average wage has been incurred on account of medical treatment mentioned in subparagraph 1, non-duty compensation of the loss caused during the period of medical treatment; and
3. If the injured person remains physically handicapped after the completion of treatment and therapy, physical handicap compensation shall be awarded in an amount calculated by multiplying the future workable period by the amount of monthly salary, monthly income or income of average wage at the time injury was incurred, subject to the classification of the degrees of the physical handicap.

(3) In the case of the destruction of or damages to the property of another person falling under Article 2 (1), compensation shall be made to the victim in accordance with the following:

1. The market price of the property at the time damages were incurred, the necessary repair of the property or the cost of repair in lieu of repair itself; and
2. If any loss has been caused to income on account of the repair as referred to in subparagraph 1, compensation shall be made to cover the loss caused during the period of repair.

(4) In the case of loss other than the deprivation of another person's life, bodily injury or the damages to or the destruction of property, com-

STATE COMPENSATION ACT

pensation shall be made within the scope of its proximate causal relation with the tort.

(5) The consolation money for mental distress damages shall be paid to the lineal ascendant, lineal descendant or the spouse of the victim or the victim himself suffering the bodily or other injury in consideration of the social status of the victim or the degree of negligence involved and the living conditions of the bereaved family or the victim, such amount of damages to be within the standards set by the Presidential Decree.

(6) The future workable period and the classification of the degrees of the physical handicap as referred to in paragraphs (1) 1, and (2) 3 shall be determined by the Presidential Decree.

(7) The monthly salary or the monthly income or income of average wages as referred to in paragraphs (1) through (3) shall be ascertained by the head of the internal revenue service or the head of *Shi/Kun/Ku*, whichever has jurisdiction over the victim or the chief of the office of the victim, other officials with authority and in case there is no testimony possible such as the aforementioned, it shall be under the conditions as determined by the Presidential Decree.

[This Article Wholly Amended by Act No. 3235, Jan. 4, 1980]

Article 3-2 (Amount of Deduction)

(1) Where the victim makes profits and at the same time suffers losses as referred to in Article 2 (1), the amount of profits shall be deducted from the amount of losses.

(2) Where the bereaved family compensation as referred to in Article 3 (1) and injury compensation as referred to in Article 3 (2), and future medical treatment expenses are asserted at one instance, the intermediary interest shall be deducted.

(3) Method of deducting the intermediary interest as referred to in paragraph (2) shall be prescribed by the Presidential Decree. *<Newly Inserted by Act No. 5433, Dec. 13, 1997>*

[This Article Newly Inserted by Act No. 3235, Jan. 4, 1980]

Article 4 (Prohibition of Assignment, etc.)

The right to seek the State compensation for the deprivation of life and bodily injury shall not be assigned or attached. *<Amended by Act No. 3235, Jan. 4, 1980>*

Article 5 (Liability for Damages Caused by Defects in Public Structures,

STATE COMPENSATION ACT

etc.)

(1) In case any damage has been inflicted on another person due to defective construction or management of road, river or any other public structures, the State or local governments shall redress such damage. The provisions of the proviso of Article 2 (1) and Articles 3 and 3-2 shall apply *mutatis mutandis* to this case. <Amended by Act No. 3235, Jan. 4, 1980>

(2) In the case as referred to in paragraph (1), if there exists any other person who is to assume the liability for the cause of the damage, the State or local governments may claim indemnity from him.

Article 6 (Liability of Person who Bears Expenses, etc.)

(1) In case the State or local governments are liable for the redress of damages under Articles 2, 3, and 5, if a person who is in charge of the assignment and supervision of public officials or construction and management of public structures is not the same person as the person who is responsible for the disbursement of the salary, allowance or any other expense of the public officials or the expense of construction and management of public structures, the person responsible for such expenses shall also be liable for the redress of the damages.

(2) In the case as referred to in paragraph (1), the person who has redressed the damage, may claim indemnity against the person liable for the redress of the damage on account of the special relation between them.

Article 7 (Liability for Alien)

This Act shall apply only in case where a mutual guarantee exists, if an alien is a victim or a damage sufferer.

Article 8 (Relation with Other Acts)

Liability of the State or a local government to redress damages shall be governed by the provisions of the Civil Act, except as otherwise prescribed in this Act: *Provided*, That if there are different provisions in Acts other than the Civil Act, it shall be governed by such provisions.

Article 9 (Relationship between Lawsuit and Compensation Application)

Lawsuits for compensation of damages under this Act may be instituted without filing an application for compensation with the Compensation Council (hereinafter referred to as the "Council").

[This Article Wholly Amended by Act No. 6310, Dec. 29, 2000]

Article 10 (Compensation Council)

(1) In order to deliberate a case of compensation application filed against

STATE COMPENSATION ACT

the State or local governments, a Central Council shall be established in the Ministry of Justice: *Provided*, That a Special Council shall be established in the Ministry of National Defense in order to deliberate a case of compensation application for damage inflicted on a person by military personnel or military service officials. <Amended by Act No. 6310, Dec. 29, 2000>

(2) The Central Council and the Special Council shall establish a District Council under the conditions as prescribed by the Presidential Decree. <Amended by Act No. 3235, Jan. 4, 1980>

(3) The Central Council, Special Council and District Council shall be placed under the direction of the Minister of Justice.

(4) Each Council shall have its Chairman, who exercises general control over the business affairs of the Council and represents it. <Newly Inserted by Act No. 6310, Dec. 29, 2000>

(5) Matters concerning jurisdiction, composition, operation and any other necessary matters of each Council shall be determined by the Presidential Decree.

Article 11 (Authority of Each Level Council)

(1) The Central or Special Council shall deliberate and determine the following matters: <Amended by Act No. 3464, Dec. 17, 1981; Act No. 6310, Dec. 29, 2000>

1. Matters forwarded from a District Council under Article 13 (6);
2. Matters concerning application for redeliberation; and
3. Matters over which the Council has jurisdiction under other Acts and subordinate statutes.

(2) Each District Council shall deliberate and determine matters concerning compensation applications made to the State or local governments over which the Council has jurisdiction. <Amended by Act No. 5433, Dec. 13, 1997>

[This Article Wholly Amended by Act No. 3235, Jan. 4, 1980]

Article 12 (Application for Compensation)

(1) A person who desires to receive compensation, shall file an application for the compensation with the District Council which has jurisdiction over the place where the person's domicile or seat is located, or where the cause for compensation has occurred. <Amended by Act No. 3235, Jan. 4, 1980; Act No. 5433, Dec. 13, 1997>

STATE COMPENSATION ACT

(2) The head of the agency at which the public official who has inflicted damage to a victim is employed, shall advise and encourage the victim or the bereaved family to file an application under paragraph (1).

(3) Where the Chairman of the Council deems that an application for compensation is inappropriate but correctable, he shall demand the correction thereof with fixing a reasonable period. <Newly Inserted by Act No. 6310, Dec. 29, 2000>

(4) Where a correction is made pursuant to paragraph (3), it shall be deemed to be effective retroactively to the time of the application for compensation. <Newly Inserted by Act No. 6310, Dec. 29, 2000>

(5) The period of correction under paragraph (3) shall not be included in the period for decision on compensation under Article 13 (1). <Newly Inserted by Act No. 6310, Dec. 29, 2000>

Article 13 (Deliberation and Decision)

(1) A District Council shall, without delay, upon receipt of an application for compensation, conduct an inspection of evidence such as an examination of witnesses, inspection on the scene of the accident, and, through deliberation of the Council, render a decision of the payment of compensation or of rejection or dismissal thereof (hereinafter referred to as the "decision on compensation") within four weeks. <Amended by Act No. 3235, Jan. 4, 1980; Act No. 5433, Dec. 13, 1997; Act No. 6310, Dec. 29, 2000>

(2) The District Council may, if it considers the payment of expenses urgent, decide to pay in advance a part of the funeral expenses, medical treatment expenses, and repair expenses as provided in Article 3 (1) 2, Article 3 (2) 1, and Article 3 (3) 1. In this case, the expenses paid in advance shall be deducted from the amount of compensation when the compensation is paid after a decision on compensation. <Amended by Act No. 6310, Dec. 29, 2000>

(3) Necessary matters concerning the standards, methods, and procedures, etc. for advance payment under the former part of paragraph (2) shall be prescribed by the Presidential Decree. <Newly Inserted by Act No. 6310, Dec. 29, 2000>

(4) Notwithstanding paragraph (2), when there is no time to call a meeting of the District Council or there is any unavoidable reason therefor, the Chairman of the District Council may, at his own discretion, decide to pay in advance the compensation. In this case, the Chairman shall re-

STATE COMPENSATION ACT

port thereon to the District Council and obtain ratification therefrom, and if he fails to get such ratification, the decision of such advance payment shall lose its effect. *<Newly Inserted by Act No. 6310, Dec. 29, 2000>*

(5) The Council shall deliberate and determine the payment for compensation under Articles 3 and 3-2. *<Amended by Act No. 3235, Jan. 4, 1980>*

(6) After the District Council deliberates the application for compensation, it shall forward without delay the records together with any deliberative opinion to the Central or Special Council, if the application falls under any of the following subparagraphs: *<Amended by Act No. 3464, Dec. 17, 1981; Act No. 5433, Dec. 13, 1997>*

1. Where the roughly estimated amount of compensation is in excess of the amount as determined by the Presidential Decree; and
2. Where the Presidential Decree provides that the Central or Special Council shall deliberate and determine the matters.

(7) When the Central or Special Council receives the preceding record under paragraph (4), it shall make a decision on compensation within four weeks. *<Amended by Act No. 3464, Dec. 17, 1981>*

(8) The Council shall dismiss an application for compensation in the case falling under one of the following subparagraphs: *<Newly Inserted by Act No. 6310, Dec. 29, 2000>*

1. Where the applicant has previously received the decision of the payment of compensation or the rejection thereof due to the same cause: *Provided*, That this shall not apply where the applicant who received the decision of rejection presents such evidence as is newly discovered and important;
2. Where the applicant has previously received, due to the same cause, the final and conclusive judgment of the payment of compensation or the rejection thereof through institution of a lawsuit for damage compensation under this Act; and
3. Where an application for compensation is so inappropriate that its default is not correctable or the applicant fails to comply with the demand for correction under Article 12 (3).

Article 14 (Service of Written Decision)

(1) The Council shall, in the event of rendering a decision of compensation, serve an original authenticated copy of the decision on the applicant within one week from the day on which the decision is made.

STATE COMPENSATION ACT

(2) The provisions of the Civil Procedure Act concerning service shall apply *mutatis mutandis* to the service as referred to in paragraph (1).

Article 15 (Applicant's Consent and Payment of Compensation)

(1) An applicant who has obtained a decision of compensation, shall request without delay the payment of compensation, attaching consent to the decision, to the State or local government.

(2) The procedure for payment of compensation, the agency which shall pay the compensation, the time for payment and the necessary details shall be determined by the Presidential Decree. <Amended by Act No. 3464, Dec. 17, 1981>

(3) If the applicant has obtained a decision of compensation and fails to request the payment of compensation, or if the local government concerned fails to pay the compensation within the period as referred to in the Presidential Decree, the applicant shall be considered as not having consented to the decision rendered. <Amended by Act No. 3464, Dec. 17, 1981>

Article 15-2 (Application for Redeliberation)

(1) An applicant whose application for the compensation was rejected (including being partially rejected) or dismissed in a District Council may apply for redeliberation to the Central or the Special Council through the District Council within two weeks from the day when the original authenticated copy of the decision was served on him. <Amended by Act No. 5433, Dec. 13, 1997; Act No. 6310, Dec. 29, 2000>

(2) The District Council which receives an application for redeliberation, shall forward all of the documents regarding the application for compensation to the Central or the Special Council within one week. <Amended by Act No. 5433, Dec. 13, 1997>

(3) The Central or the Special Council shall make within four weeks its decision on the application as referred to in paragraph (1) through deliberation of the case.

(4) Where there is a violation of Acts and subordinate statutes in the decision of the District Council which dismissed the application for compensation, the Central or the Special Council may return the case in question to the District Council concerned. <Newly Inserted by Act No. 6310, Dec. 29, 2000>

(5) Where an applicant whose application for compensation was dismissed makes an application for redeliberation after correction of the

STATE COMPENSATION ACT

error in question, the Central or the Special Council may return the case in question to the District Council concerned. <Newly Inserted by Act No. 6310, Dec. 29, 2000>

(6) The provisions of Articles 14 and 15 shall apply *mutatis mutandis* to the decision of compensation made by the Central or the Special Council on the application for redeliberation. <Newly Inserted by Act No. 3464, Dec. 17, 1981>

[This Article Newly Inserted by Act No. 3235, Jan. 4, 1980]

Article 16 Deleted. <by Act No. 5433, Dec. 13, 1997>

Article 17 (Enforcement Decree)

Matters concerning the enforcement of this Act shall be prescribed by the Presidential Decree.

ADDENDA

(1) (Enforcement Date) This Act shall enter into force thirty days after the date of its promulgation.

(2) (Acts to be Repealed) The State Compensation Act and the Procedural Act for Demanding State Redress are hereby repealed.

(3) (Transitional Measures) Cases pending before the court at the time of the enforcement of this Act shall not be subject to the provisions of Article 9.

(4) (Transitional Measures) For the cases pending with regard to demands for the payment of compensation at the council formed under the previous Acts and subordinate statutes, the period as prescribed in this Act shall proceed from the date of the enforcement of this Act.

ADDENDUM <Act No. 2459, Feb. 5, 1973>

This Act shall enter into force on the date of its promulgation.

ADDENDA <Act No. 3235, Jan. 4, 1980>

(1) (Enforcement Date) This Act shall enter into force on February 1, 1980.

(2) (Transitional Measures on Jurisdiction of Council) The claims pending before the Central and the Special Council when this Act becomes effective, shall be considered to be pending before the council which has jurisdiction under this Act beginning with the date when the application for redress

STATE COMPENSATION ACT

of damages was filed, and the claims shall be forwarded immediately to the council which has jurisdiction.

(3) (Transitional Measures on Determination of Damages) The decision of compensation which is rendered to damages by the Central and the Special Council when this Act enters into force, shall be considered to have been rendered by the Council which has jurisdiction.

ADDENDA <Act No. 3464, Dec. 17, 1981>

(1) (Enforcement Date) This Act shall enter into force on February 1, 1982.

(2) (Transitional Measures) The application for permission pending before the Central or Special Council when this Act enters into force shall be deliberated on and decided by the Council under this Act.

ADDENDA <Act No. 5433, Dec. 13, 1997>

(1) (Enforcement Date) This Act shall enter into force on March 1, 1998.

(2) (Transitional Measures) The application for permission pending before the Central, District or Special Council when this Act enters into force shall be deliberated on and decided by the Council under the amended provisions.

ADDENDA <Act No. 6310, Dec. 29, 2000>

(1) (Enforcement Date) This Act shall enter into force on the date of its promulgation.

(2) (Transitional Measures) With respect to a case pending before the Council and a case of lawsuit for damages pending before a court at the time when this Act enters into force, the amendments to this Act shall apply.

ADDENDUM <Act No. 7584, Jul. 13, 2005>

This Act shall enter into force on the date of its promulgation.