

**LAW**

**ON STATE COMPENSATION LIABILITY**

**(No. 35/2009/QH12)**

Pursuant to the 1992 Constitution of the Socialist Republic of Vietnam, which was amended and supplemented under Resolution No. 51/2001/QH10; The National Assembly promulgates the Law on State Compensation Liability Law.

**Chapter I**

**GENERAL PROVISIONS**

**Article 1. Governing scope**

This Law provides for the State's liability to pay compensation to individuals and organizations suffering from damage caused by official-duty performers in administrative management, legal proceedings and judgment enforcement activities; compensation procedures; the rights and obligations of individuals and organizations suffering from damage; compensation funds and the reimbursement liability of official-duty performers who have caused the damage.

**Article 2. Compensation-eligible entitles**

Individuals and organizations suffering from material damage and/or mental sufferings (below collectively referred to as sufferers) in cases provided by this Law are eligible for compensation by the State.

**Article 3. Interpretation of terms**

In this Law, the terms below are construed as follows:

1. An official-duty performer means a person who is elected, approved, recruited or appointed to a position in a state agency 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.
2. An illegal act of an official-duty performer which has caused damage means an act of non-performance or unlawful performance of a task or power, which is affirmed in a document of a competent state agency.

3. Document affirming an illegal act of an official-duty performer means a decision on settlement of a complaint or denunciation of a person competent to settle complaints or denunciations or a judgment or decision of a competent procedure-conducting agency.

4. Compensation-liable agency means the agency directly managing the official-duty performer who commits an illegal act causing damage or another agency as defined by this Law.

#### **Article 4. The right to claim compensation**

1. Sufferers are entitled to request compensation-liable agencies to settle compensation upon the availability of competent state agencies' documents affirming that the official-duty performers' acts are illegal or of documents of competent agencies in criminal proceedings affirming that the sufferers fall into compensation cases defined in Article 26 of this Law.

2. In the course of lodging their complaints or instituting administrative lawsuits, sufferers are entitled to request persons competent to settle complaints or courts to settle compensation.

#### **Article 5. Statute of limitations for lodging compensation claims**

1. The statute of limitation for lodging compensation claims defined in Clause 1. Article 4 of this Law is 2 years counting from the date competent state agencies promulgate the documents affirming that the official-duty performers' acts are illegal or from the date the legally effective judgments or rulings of criminal procedure-conducting agencies affirm that the sufferers fall into compensation-eligible cases defined in Article 26 of this Law.

2. The statute of limitations for lodging compensation claims defined in Clause 2. Article 4 of this Law is determined under the law on complaints and denunciations and the law on procedures for settlement of administrative cases.

3. If in the course of settling complaints or administrative cases, in which the official-duty performers' illegal acts and actual damage have been determined but no compensation has been made yet, the statute of limitations for lodging compensation claims complies with Clause 1 of this Article.

#### **Article 6. Grounds for determination of compensation liability**

1. The state compensation liability in activities of administrative management, civil proceedings, administrative proceedings and judgment enforcement shall be determined on the following grounds:

a/ The availability of competent state agencies' documents affirming that official-duty performers' acts are illegal and fall within the scope of compensation liability prescribed in Articles 13. 28. 38 and 39 of this Law;

b/ The actual damage caused by illegal acts of official-duty performers to sufferers.

2. The state compensation liability in criminal proceedings shall be determined on the following grounds:

a/ The availability of judgments or decisions of competent state agencies in criminal proceedings affirming that the sufferers fall into compensation-eligible cases defined in Article 26 of this Law:

b/ The actual damage caused by criminal procedure-conducting persons to sufferers.

3. The State will not compensate for damage caused in the following circumstances:

a/ The sufferer is at fault:

b/ The sufferer conceals evidence and documents or provides untruthful documents during the settlement of his/her matter or case;

c/ Force majeure or emergency cases.

#### **Article 7. Principles for compensation settlement**

The compensation settlement must comply with the following principles:

1. Being timely, public and lawful;

2. Being conducted on the basis of negotiations between compensation-liable agencies and sufferers or their lawful representatives;

3. Being paid once in cash, unless otherwise agreed upon by the parties.

#### **Article 8. Tasks and powers of compensation-liable agencies**

Compensation-liable agencies have the following tasks and powers:

1. To receive and handle compensation claims of sufferers;

2. To verify the damage, to negotiate with sufferers and issue compensation settlement decisions;

3. To participate in court proceedings in the capacity as plaintiffs in case sufferers institute lawsuits at court for compensation settlement;

4. To make payments to sufferers and settle compensation funds;

5. To request official-duty performers to reimburse to the state budget compensation amounts paid by the State to sufferers;

6. To settle compensation-related complaints and denunciations under the law on complaints and denunciations;
7. To restore or propose competent agencies or organizations to restore the legitimate rights and interests of sufferers;
8. To report on compensation settlement according to law.

#### **Article 9. Rights and obligations of sufferers**

1. Sufferers have the following rights:

- a/ To request the State to pay damages and restore their honor as provided by this Law;
- b/ To be compensated by compensation-liable agencies or to have their compensation claims settled by courts and be notified of the compensation settlement;
- c/ To complain about or denounce illegal decisions or acts of competent persons in compensation settlement under the law on complaints and denunciations;
- d/ To complain about or appeal against court judgments or rulings according to the procedure law;
- e/ To request competent agencies or organizations to restore their legitimate rights and interests.

2. Sufferers have the following obligations:

- a/ To promptly, fully and honestly provide documents and evidence related to their compensation claims;
- b/ To prove the damage actually occurred.

#### **Article 10. Rights and obligations of damage-causing official-duty performers**

1. Official-duty performers who have caused damage have the following rights:

- a/ To receive decisions related to compensation settlement;
- b/ To lodge their complaints, denunciations or institute lawsuits against illegal decisions or acts of competent persons in the settlement of compensation as provided for by law;
- c/ To have other rights as prescribed by law.

2. Official-duty performers who have caused damage have the following obligations:

- a/ To promptly, fully and honestly provide information and documents related to the settlement of compensation at the request of compensation-liable agencies or courts;
- b/ To reimburse to the state budget compensation amounts paid by the State to sufferers under decisions of competent state agencies:
- c/ To have other obligations as prescribed by law.

## **Article 11. State management responsibilities for compensation work**

1. The Government has the following responsibilities:

- a/ To perform the unified state management of compensation work in administrative management and judgment enforcement;
- b/ To coordinate with the Supreme People's Court and the Supreme People's Procuracy in the management of compensation work in procedural activities;
- c/ To promulgate according to its competence or propose competent agencies to promulgate legal documents on state compensation liability:
- d/ To annually make statistics on and review compensation work; to report on compensation work to the National Assembly or its Standing Committee upon request.

The Ministry of Justice shall assist the Government in performing the tasks specified in this Clause.

2. Ministries, ministerial-level agencies and provincial-level People's Committees shall, within the ambit of their tasks and powers, perform the state management of compensation work and annually report to the Ministry of Justice on their respective compensation work.

3. The Ministry of Finance shall formulate and submit to competent state agencies for promulgation or promulgate according to its competence legal documents on the use and settlement of the state budget for compensation.

4. The Supreme People's Court and the Supreme People's Procuracy shall, within the scope of their respective tasks and powers, manage compensation work and coordinate with the Government in performing the state management of compensation work; annually notify the Ministry of Justice of their respective compensation work.

5. The Government, the Supreme People's Court and the Supreme People's Procuracy shall, within the ambit of their tasks and powers, detail and guide the implementation of this Article.

## **Article 12. Prohibited acts**

1. Forging dossiers, documents and papers for compensation.
2. Acting in connivance among sufferers, 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.
4. Failing to settle compensation or settling compensation in contravention of law.

## **Chapter II**

### **STATE COMPENSATION LIABILITY IN ADMINISTRATIVE MANAGEMENT ACTIVITIES**

#### **Section I. SCOPE OF LIABILITY AND COMPENSATION-LIABLE AGENCIES**

#### **Article 13. Scope of compensation liability in administrative management activities**

The State is liable to compensate for damage caused by illegal acts of official-duty performers in the following cases:

1. Issuing decisions on sanctioning administrative violations;
2. Applying measures to ward off administrative violations and secure the handling of administrative violations;
3. Applying measures to force the dismantlement of houses, constructions, architectural objects and measures for coercive enforcement of other decisions on sanctioning administrative violations;
4. Applying administrative measures of confining people to a reformatory, rehabilitation establishment or medical establishment;
5. Granting, revoking business registration certificates, investment certificates, permits and papers of permit validity;
6. Imposing taxes, charges and fees; collecting taxes, charges and fees; collecting tax arrears; collecting land use levies;
7. Applying customs procedures;
8. 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;

9. Issuing decisions on handling of competition-related matters and cases:

10. Issuing protection titles to ineligible persons; issuing protection titles to ineligible industrial property objects; issuing decisions on termination of the validity of protection titles;

11. Refusing to grant business registration certificates, investment certificates, permits and papers of permit validity, protection titles to eligible subjects;

12. Other compensation-eligible cases prescribed by law.

#### **Article 14. Compensation-liable agencies**

1. Administrative agencies directly managing official-duty performers who commit damage-causing illegal acts are liable to pay compensation.

2. Apart from cases defined in Clause 1 of this Article, compensation-liable agencies shall be determined as follows:

a/ If agencies managing official-duty performers in question have been separated, merged, consolidated or dissolved, the agencies inheriting their functions and tasks shall pay compensation. If no agencies inherit the functions and tasks of the dissolved agencies, the agencies which have issued the dissolution decisions shall pay compensation;

b/ If at the time of handling compensation claims, damage-causing official-duty performers no longer work in their managing agencies, the agencies managing those official-duty performers at the time of causing the damage shall pay compensation;

c/ In case of authorized or mandated performance of official duties, authorizing or mandating agencies shall pay compensation. If authorized or mandated agencies perform official duties at variance with authorized or mandated contents, thus causing damage, they shall pay compensation;

d/ If many official-duty performers from different agencies jointly cause damage, the line management agencies taking principal responsibility for the matters or cases shall pay compensation;

e/ If many official-duty performers from central agencies and local agencies jointly cause damage, central agencies shall pay compensation.

### **Section 2. COMPENSATION SETTLEMENT PROCEDURES**

#### **Article 15. Requests for determination of illegal acts of official-duty performers**

1. Individuals and organizations, when holding that they suffer from damage caused by official-

duty performers, are entitled to request persons competent to settle complaints to examine and conclude on illegal acts of official-duty performers.

2. Within the time limit prescribed by the law on complaints and denunciations, the persons competent to settle complaints shall examine and conclude in writing whether the official-duty performers' acts are illegal.

3. The procedures for determination of illegal acts of official-duty performers comply with the law on complaints and denunciations. In complaint settlement decisions, damage-causing illegal acts of official-duty performers must be determined.

#### **Article 16. Compensation claim dossiers**

1. Upon receiving documents affirming that the official-duty performers' illegal acts fall into cases defined in Article 13 of this Law, sufferers shall file their compensation claims with compensation-liable agencies defined in Article 14 of this Law.

2. A compensation claim contains the following principal details:

a/ Full name and address of the compensation claimant;

b/ Reasons for compensation claim;

c/ The extent of damage and the claimed compensation amount.

3. A compensation claim must be enclosed with a competent state agency's document affirming the illegal act of the official-duty performer and documents and evidence related to the compensation claim.

#### **Article 17. Handling of compensation claims**

1. Upon receiving compensation claim dossiers, compensation-liable agencies shall check and determine the validity of the claims and enclosed papers; if the dossiers are incomplete, they shall instruct the sufferers to supplement them.

2. Within 5 working days after the receipt of valid compensation claims and papers. If determining that the claims fall under their handling responsibility, dossier-receiving agencies shall handle them and notify sufferers thereof in writing; if the compensation claims do not fall under their handling responsibility, they shall return them and guide sufferers to file their claims with competent agencies for compensation settlement.

#### **Article 18. Damage verification**

1. Within 20 days after accepting compensation claims, compensation-liable agencies shall completely verify the damage for use as a ground for determination of compensation amounts. For matters involving many complicated circumstances or to be verified at different places, the



verification time limit may prolong but must not exceed 40 days.

2. Based on the nature and contents of matters, compensation-liable agencies may organize the valuation of property, examination of property damage, examination of health damage or acquire opinions of relevant agencies on the settlement of compensation. Expenses for such valuation and examination shall be covered by the state budget.

3. If sufferers disagree with valuation or examination results and request re-valuation or re-examination, which is agreed upon by compensation-liable agencies, re-valuation or re-examination costs shall be paid by sufferers, unless valuation or examination results prove that re-evaluation or re-examination requests are grounded.

### **Article 19. Negotiations on compensation**

1. Within 30 days after the end of damage verification, compensation-liable agencies shall organize negotiations with sufferers on the settlement of compensation. If matters or cases involve many complicated circumstances, the negotiation time limit may prolong but must not exceed 45 days.

2. Participants in negotiations will be representatives of compensation-liable agencies and sufferers or their lawful representatives. When necessary, damage-causing official-duty performers will be invited to participate in negotiations.

Representatives of compensation-liable agencies must be persons competent to reach compensation agreement with sufferers and take responsibility before their agencies.

3. Negotiation venues will be offices of compensation-liable agencies or offices of People's Committees of communes, wards or townships where sufferers reside, unless otherwise agreed upon by the concerned parties.

4. Negotiations shall be recorded in writing. A negotiation record must contain the following principal details:

a/ Date of negotiation;

b/ Negotiation venue and participants:

c/ Opinions of negotiation parties:

d/ Successfully or unsuccessfully negotiated contents.

5. A negotiation record must be signed by the parties and sent to the sufferer immediately after the conclusion of negotiations.

5. Negotiation results will serve as a basis for making decisions on compensation.

## **Article 20. Decision on compensation settlement**

1. Within 10 days after the conclusion of negotiations, compensation-liable agencies shall issue compensation settlement decisions. A compensation settlement decision must contain the following principal details:

a/ Full name and address of the compensation claimant:

b/ Brief reasons for compensation claim;

c/ Grounds for determination of the compensation liability;

d/ Compensation amount;

e/ The right to institute a lawsuit at court in case of disagreement with the compensation settlement decision;

f/ Effect of the compensation settlement decision.

2. Compensation settlement decisions shall be sent to sufferers, immediate superior agencies of compensation-liable agencies and damage-causing official-duty performers.

## **Article 21. Effect of compensation settlement decisions**

Compensation settlement decisions take effect 15 days after sufferers receive the decisions, except where sufferers disagree therewith and institute lawsuits at court.

## **Section 3. SETTLEMENT OF COMPENSATION CLAIMS AT COURT**

### **Article 22. Institution of lawsuits to request courts to settle compensation**

1. Past 15 days after the time limit for issuing compensation settlement decisions prescribed in Article 20 of this Law expires, if compensation-liable agencies fail to issue such decisions or after sufferers receive but disagree with the decisions, sufferers are entitled to initiate lawsuits at competent courts defined in Article 23 of this Law to request the settlement of compensation.

If sufferers can prove that objective obstacles or force majeure circumstances have rendered them unable to institute lawsuits on time, the duration when the objective obstacles or force majeure circumstances exist will not be counted into the lawsuit time limit prescribed in this Clause.

2. Sufferers may not institute lawsuits requesting courts to settle compensation after the compensation settlement decisions have taken effect.

### **Article 23. Competence and procedures for settlement of compensation claims at court**

1. Courts competent to settle compensation claims are district-level People's Courts of localities where sufferers reside or work or where the damaged organizations are headquartered or where the damage occurs, depending on the sufferers' choice, or other cases prescribed by the civil procedure law.

2. The procedures for settlement of compensation claims at court comply with the law on civil procedures.

### **Section 4. SETTLEMENT OF COMPENSATION CLAIMS IN THE COURSE OF SETTLEMENT OF ADMINISTRATIVE CASES**

#### **Article 24. Compensation claims in the course of instituting administrative lawsuits**

1. If in the course of instituting administrative lawsuits, lawsuit-instituting parties hold that the illegal acts of official-duty performers have caused damage, they may request courts competent to settle administrative cases to settle the compensation. In this case, a lawsuit petition must also contain the following details:

a/ Request for affirmation of the illegal act of the official-duty performer concerned;

b/ Details of the compensation claim;

c/ The damage and claimed compensation amount;

d/ Documents and evidence related to the compensation claim.

2. The procedures for settlement of compensation claims in the course of settlement of administrative cases comply with the law on procedures for settlement of administrative cases.

#### **Article 25. Contents of settlement of compensation claims in court judgments or rulings**

1. If there arises a compensation claim in the course of settlement of an administrative case, the court judgment or ruling must also contain the following details:

a/ Brief reason for the compensation claim;

b/ Grounds for determination of the compensation liability;

c/ Compensation amount;

d/ Form of compensation.

2 The compensation liability and compensation amounts shall be determined under this Law.

## **Chapter III**

### **STATE COMPENSATION LIABILITY IN LEGAL PROCEEDINGS**

#### **Section I. SCOPE OF COMPENSATION LIABILITY**

##### **Article 26. Scope of compensation liability in criminal proceedings**

The State shall compensate for damage in the following cases:

1. Agencies competent in criminal proceedings issue decisions annulling the decisions on custody as the persons held in custody do not commit any illegal act;
2. Agencies competent in criminal proceedings issue judgments or decisions affirming that detainees or persons who have completely served or are serving their termed imprisonment, life sentence, persons who are sentenced to death or persons who have been executed under death sentences did not commit any criminal acts;
3. Agencies competent in criminal proceedings issue judgments or decisions affirming that persons against whom criminal cases were instituted, who were prosecuted and brought to trial or against whom judgments were enforced without being held in custody or detained, or who served their prison terms did not commit any criminal acts;
4. Agencies competent in criminal proceedings issue judgments or decisions affirming that persons against whom criminal cases were instituted, who were prosecuted and brought to trial for several offenses in the same case or who have completely served their prison terms did not commit any or some of these offenses and the penalty term imposed for remaining offenses is shorter than the duration they were temporarily detained or served their imprisonment sentences, and these persons are entitled to compensation for the temporary detention or imprisonment duration in excess of the aggregate term imposed for the offenses which they have committed;
5. Agencies competent in criminal proceedings issue judgments or decisions affirming that persons against whom criminal cases were instituted or who were 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 their temporary detention: and these persons are entitled to compensation for their temporary detention duration in excess of the aggregate term imposed for the offenses they have committed;
6. Agencies competent in criminal proceedings issue judgments or decisions affirming that persons who were tried for various offenses under different judgments and subject to different penalties already aggregated by the court did commit one or some of these offenses while the term for remaining offenses is shorter than their temporary detention or imprisonment duration; and these persons are entitled to compensation for their temporary detention or imprisonment duration in excess of the aggregate term imposed for the offenses they have committed:

7. Organizations or individuals suffering from property damage due to property seizure, custody, distraint, confiscation or handling related to cases defined in Clauses 1. 2 and 3 of this Article are entitled to compensation.

#### **Article 27. Cases ineligible for compensation in criminal proceedings**

1. Persons who are exempt from penal liability under law.
2. Deliberately making false declarations or providing other untruthful documents or exhibits in order to admit guilt for other persons or to cover up crimes.
3. Persons against whom criminal cases were instituted, who were prosecuted and brought to trial for various offenses in the same case or for whom the court decided to aggregate the penalties under various judgments, who were held in custody, detained, completely served their imprisonment sentences, or who were sentenced to death but the death penalty has not yet been executed, but later agencies competent in criminal proceedings issue judgments or decisions affirming that those persons did not commit one or some of these offenses but they do not fall into cases defined in Clauses 4, 5 and 6, Article 26 of this Law.
4. Persons against whom criminal cases were instituted or who were 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, unless their illegal acts do not constitute a criminal offense.
5. Persons against whom criminal cases were instituted or who were prosecuted and tried strictly in accordance with legal documents effective at the time of prosecution and trial but at the time when the judgments or decisions take effect new legal documents are promulgated and took effect after the date of prosecution or trial they no longer bear penal liability.

#### **Article 28. Scope of compensation liability in civil and administrative proceedings**

The State shall compensate for damage caused by illegal acts of civil procedure- or administrative procedure-conducting persons in the following cases:

1. They applied provisional urgent measures by themselves.
2. They applied provisional urgent measures other than those requested by individuals, agencies or organizations:
3. They applied provisional urgent measures beyond individuals', agencies' or organizations' requests.
4. They issued judgments or decisions which were, to their clear knowledge, were illegal or deliberately distorted the case files.

## **Section 2. COMPENSATION-LIABLE AGENCIES**

### **Article 29. Compensation-liable agencies in criminal proceedings**

1. Agencies liable for compensation in criminal proceedings are those defined in Articles 30, 31 and 32 of this Law. If these agencies have been separated, merged, consolidated, dissolved or mandated to perform the official duty, compensation-liable agencies shall be determined under Points a and c, Clause 2, Article 14 of this Law.

2. Agencies liable for compensation in criminal proceedings shall compensate for damage caused in previous procedural stages.

### **Article 30. Compensation liabilities of investigative agencies and agencies tasked to conduct a number of investigative activities in criminal proceedings**

Investigative agencies and agencies tasked to conduct a number of investigative activities shall pay compensation in the following cases:

1. They issued custody decisions but such decisions were then annulled by decisions of competent procuracies as the persons held in custody did not commit any illegal act;
2. They issued decisions to institute criminal cases against the accused but such decisions were not ratified by competent procuracies as the accused did not commit any criminal act.

### **Article 31. Compensation liability of People's Procuracies in criminal proceedings**

Procuracies shall compensate for damage in the following cases:

1. They ratified the decisions to extend the custody duration made by competent investigative agencies but the persons held in custody did not commit any illegal act;
2. They ratified detention orders of competent investigative agencies or issued detention or detention extension orders and later competent agencies in criminal proceedings issued decisions affirming that such persons did not commit any criminal act;
3. First-instance courts returned files for additional investigation and later competent agencies issued decisions terminating the investigation as the persons in question did not commit any criminal act;
4. They issued prosecution decisions but first-instance courts declared the defendants not guilty as they did not commit any criminal act and the first-instance judgments have taken legal effect;
5. Appellate courts uphold first-instance courts\* judgments or rulings declaring the defendants not guilty as they did not commit any criminal act;

6. Appellate courts uphold first-instance courts' judgments or rulings declaring the defendants not guilty as they did not commit any criminal act and later courts conducting trial according to cassation or reopening procedures still uphold the appellate courts' judgments or rulings declaring the defendants not guilty as they did not commit any criminal act.

### **Article 32. Compensation liability of People's Courts in criminal proceedings**

1. The first-instance court shall compensate for damage in the following cases:

a/ It declares the defendant guilty but the appellate court quashes the first-instance judgment, declared the defendant not guilty and terminated the case as that person did not commit any criminal act or quash the first-instance judgment for re-investigation and later the defendant's investigation and case are terminated as he/she did not commit any criminal act, or quashes the first-instance for re-trial and later the defendant is declared not guilty as he/she did not commit any criminal act;

b/ It declares the defendant 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 that person did not commit any criminal act;

c/ It declares the defendant guilty and the judgment has taken effect but later the court conducting trial according to cassation or reopening procedures quashes that judgment for re-investigation and the defendant's investigation and case are terminated as he/she did not commit any criminal act;

d/ It declares the defendant guilty and the judgment has taken effect but later the court conducting trial according to cassation or reopening procedures quashes that judgment for re-trial and the defendant is declared not guilty as he/she did not commit any criminal act.

2. The appellate court shall compensate for damage in the following cases:

a/ It declares the defendant guilty but the court conducting trial according to cassation or reopening procedures quashes the appellate judgment and terminates the case as that person did not commit any criminal act;

b/ It declares the defendant guilty but the court conducting trial according to cassation or reopening procedures quashes the appellate judgment for re-investigation and later the defendant's investigation and case is terminated as he/she did not commit any criminal act;

c/ It declares the defendant guilty but the court conducting trial according to cassation or reopening procedures quashes the appellate judgment for re-trial and later the defendant is declared not guilty as he/she did not commit any criminal act.

3. People's Courts of provinces and centrally run cities and military courts of military zones or equivalent level shall compensate for damage when the Judges' Committees of the People's Courts of provinces or centrally run cities or the military courts of military zones or equivalent

level conducting trial according to cassation or reopening procedures uphold subordinate courts' judgments declaring defendants guilty, in the following cases:

a/ The Criminal Tribunal of the Supreme People's Court conducting trial according to cassation or reopening procedures quashes the cassation or reopening rulings of the Judges' Committees of the People's Courts of provinces or centrally run cities or the military courts of military zones or equivalent level and suspends the cases as the defendants did not commit any criminal act;

b/ The Criminal Tribunal of the Supreme People's Court conducting trial according to cassation or reopening procedures quashes the cassation or reopening rulings of the Judges' Committees of the People's Courts of provinces or centrally run cities or the military courts of military zones or equivalent level for reinvestigation and later the defendants' investigation and cases are terminated as they did not commit any criminal act;

c/ The Criminal Tribunal of the Supreme People's Court conducting trial according to cassation or reopening procedures quashes the cassation or reopening rulings of the Judges' Committees of the People's Courts of provinces or centrally run cities or the military courts of military zones or equivalent level for re-trial and later the defendants are declared not guilty as they did not commit any criminal act.

4. The Supreme People's Court shall compensate for damage when the appellate court of the Supreme People's Court, the Criminal Tribunal of the Supreme People's Court or the Central Military Court (below collectively referred to as competent court) conducting trial according to cassation or reopening procedures upholds the subordinate courts' judgments declaring the defendants guilty in the following cases:

a/ The Judges' Council of the Supreme People's Court quashes cassation or reopening rulings of competent courts under the Supreme People's Court and terminates the cases as the defendants did not commit any criminal act;

b/ The Judges' Council of the Supreme People's Court quashes cassation or reopening rulings of competent courts under the Supreme People's Court for re-investigation and later the defendants' investigations and cases are terminated as they did not commit any criminal act;

c/ The Judges' Council of the Supreme People's Court quashes cassation or reopening rulings of competent courts under the Supreme People's Court for re-trial and later the defendants are declared not guilty as they did not commit any criminal act.

### **Article 33. Compensation liability of People's Courts in civil and administrative proceedings**

1. Courts competent to issue rulings on application of provisional urgent measures defined in Clauses 1, 2 and 3, Article 28 of this Law shall compensate.

2. First-instance courts shall compensate if their legally effective first-instance judgments or rulings defined in Clause 4, Article 28 of this Law are quashed according to cassation or



reopening procedures.

3. Appellate courts shall compensate for damage if their legally effective appellate judgments or rulings defined in Clause 4, Article 28 of this Law are quashed according to cassation or reopening procedures.

4. Courts conducting trial according to cassation or reopening procedures shall compensate if their legally effective cassation or reopening rulings defined in Clause 4, Article 28 of this Law are quashed according to cassation or reopening procedures.

5. If courts defined in Clauses 1, 2, 3 and 4 of this Article are separated, merged, consolidated or dissolved, compensation-liable agencies shall be identified under Point a, Clause 2, Article 14 of this Law.

### **Section 3. COMPENSATION SETTLEMENT PROCEDURES**

#### **Article 34. Dossiers of claims for compensation at criminal procedure- conducting agencies**

1. Upon receipt of judgments or decisions of criminal procedure-conducting agencies affirming that they fall into compensation-eligible cases defined in Article 26 of this Law sufferers shall file compensation claims with compensation-liable agencies according to the following provisions:

a/ Persons suffering from damage due to custody decisions or decisions to institute criminal cases against the accused issued by investigative agencies or agencies tasked to conduct a number of investigative activities defined in Article 30 of this Law shall file compensation claims with the investigative agencies or the agencies tasked to conduct a number of investigative activities which have issued such decisions:

b/ Persons suffering from damage due to procuracies' decisions defined in Article 31 of this Law shall file compensation claims with the procuracies which have issued such decisions:

c/ Persons suffering from damage due to judgments or rulings of competent courts defined in Article 32 of this Law shall file compensation claims with the courts which have made such judgments or rulings.

2. A claim for compensation in criminal proceedings defined in Clause 1 of this Article contains the following principal details:

a/ Full name and address of the compensation claimant:

b/ Reasons for the compensation claim;

c/ The damage and claimed compensation amount.

3. Enclosed with a compensation claim shall be the judgment or decision affirming that the

claimant falls into one of compensation-eligible cases defined in Article 26 of this Law and documents and evidence related to the compensation claim.

**Article 35. Dossiers of compensation claims at civil or administrative procedure-conducting agencies**

1. Upon receipt of documents affirming illegal acts of official-duty performers who have committed acts defined in Article 28 of this Law, sufferers shall file compensation claims with compensation-liaible agencies according to the following provisions:

a/ Persons suffering from damage due to courts' application of provisional urgent measures defined in Clauses 1, 2 and 3. Article 28 of this Law shall file compensation claims with the courts which have issued rulings to apply such provisional urgent measures;

b/ Persons suffering from damage due to court judgments or rulings defined in Clause 4. Article 28 of this Law shall file compensation claims with the courts which have made such judgments or rulings.

2. A claim for compensation in civil or administrative proceedings defined in Clause 1 of this Article contains the following principal details:

a/ Full name and address of the compensation claimant;

b/ Reasons for the compensation claim;

c/ The damage and claimed compensation amount.

3. Enclosed with a compensation claim shall be documents affirming the illegal act of the official-duty performer and documents and evidence related to the compensation claim.

**Article 36. Handling, verification, negotiation, issuance and effect of decisions on settlement of compensation in legal proceedings**

The handling, verification, negotiation and issuance and effect of decisions on settlement of compensation in criminal, civil or administrative proceedings comply with Articles 17, 18, 19, 20 and 21 of this Law.

**Article 37. Settlement of claims for compensation in legal proceedings at courts**

The initiation of lawsuits requesting courts to settle compensation and the competence and procedures for settlement of compensation at courts in legal proceedings comply with Articles 22 and 23 of this Law.

**Chapter IV**

**STATE COMPENSATION LIABILITY IN JUDGMENT ENFORCEMENT ACTIVITIES**

## **Section I. SCOPE OF LIABILITY AND LIABLE-COMPENSATION AGENCIES**

### **Article 38. Scope of liability for compensation in civil judgment enforcement**

The State shall compensate for damage caused by illegal acts of official-duty performers in the following cases:

1. Issuing or deliberately failing to issue decisions on:
  - a/ Judgment enforcement;
  - b/ Revocation, amendment, supplementation or cancellation of judgment enforcement decisions;
  - c/ Application of measures to secure judgment enforcement;
  - d/ Coercion of judgment execution;
  - e/ Execution of court rulings on application of provisional urgent measures;
  - f/ Postponement of judgment enforcement;
  - g/ Suspension or termination of judgment enforcement;
  - h/ Resumption of judgment enforcement.
2. Organizing or deliberately failing to organize the execution of decisions defined in Clause 1 of this Article.

### **Article 39. Scope of compensation liability in criminal judgment enforcement**

The State shall compensate for damage caused by illegal acts of official-duty performers in the following cases:

1. Issuing decisions on execution of the death penalty against persons fully meeting the conditions defined in Article 35 of the Penal Code;
2. Jailing people beyond the prison terms under court judgments or rulings;
3. Declining to execute decisions on judgment enforcement postponement for convicts or decisions on suspension of execution of imprisonment judgment;
4. Declining to execute decisions on commutation of imprisonment sentences, decisions on special reprieve or amnesty.

## **Article 40. Agencies liable to compensate in judgment enforcement**

1. Agencies liable to compensate in criminal judgment enforcement are prisons, detention centers, remand home-managing agencies, competent public security offices and courts issuing judgment enforcement decisions.
2. Agencies liable to compensate in civil judgment enforcement are civil judgment enforcement agencies directly managing official-duty performers who have committed illegal acts causing damage.
3. If agencies defined in Clauses 1 and 2 of this Article are separated, merged, consolidated or dissolved or damage-causing official duty performers no longer work in such agencies at the time of handling the compensation claims, or they performed the official duty under authorization or mandate, compensation-liable agencies shall be determined under Points a, b and c. Clause 2. Article 14 of this Law.

## **Section 2. COMPENSATION SETTLEMENT PROCEDURES**

### **Article 41. Dossiers of compensation claims at civil judgment enforcement agencies**

1. Upon receipt of documents affirming the official-duty performers' illegal acts defined in Article 38 of this Law, sufferers shall file compensation claims with competent agencies specified in Clauses 2 and 3, Article 40 of this Law.
2. A claim for compensation in civil judgment enforcement contains the following principal details:
  - a/ Full name and address of the compensation claimant;
  - b/ Reasons for the compensation claim;
  - c/ The damage and claimed compensation amount.
3. Enclosed with a compensation claim shall be the document affirming the illegal act of the official-duty performer and documents and evidence related to the compensation claim.

### **Article 42. Dossiers of compensation claims at criminal judgment enforcement agencies**

1. Upon receipt of documents affirming the illegal acts of official-duty performers and their compensation-eligible cases as defined in Article 39 of this Law, sufferers or their relatives shall file compensation claims with compensation-liable agencies according to the following provisions:
  - a/ Persons who are jailed beyond the sentence-serving duration under court judgments or rulings, as provided for in Clause 2, Article 39 of this Law, shall file compensation claims with the

prisons, detention centers or remand home-managing agencies which have made such excessive jail;

b/ Persons suffering from damage due to non-execution of decisions on postponement of imprisonment penalty, suspension of execution of imprisonment penalty, commutation of imprisonment terms, special reprieve or amnesty, defined in Clauses 3 and 4. Article 39 of this Law, shall file compensation claims with competent public security offices;

c/ Relatives of persons suffering from damage due to decisions on execution of the death penalty, defined in Clause 1, Article 39 of this Law, shall file compensation claims with competent courts having issued such decisions.

2. A claim for compensation in criminal judgment enforcement, defined in Clause 1 of this Article, contains the following principal details:

a/ Full name and address of the compensation claimant;

b/ Reason for the compensation claim;

c/ The damage and claimed compensation amount.

3. Enclosed with a compensation claim shall be the document affirming the illegal act of the official-duty performer and documents and evidence related to the compensation claim.

#### **Article 43. Handling, verification, negotiation and issuance of decisions on settlement of compensation in judgment enforcement**

The handling, verification, negotiation and issuance and effect of decisions on compensation in judgment enforcement comply with Articles 17, 18, 19, 20 and 21 of this Law.

#### **Article 44. Handling of claims for compensation in judgment enforcement at courts**

The initiation of lawsuits requesting courts to settle compensation and the competence and procedures for settlement of compensation at courts in judgment enforcement comply with Articles 22 and 23 of this Law.

### **Chapter V**

#### **COMPENSATED DAMAGE**

#### **Article 45. Damage caused by asset infringement**

1. If the assets have been already auctioned or lost, the damage will be determined on the basis of the market prices of assets of the same kind or assets with the same properties and technical standards and the wear-out of the auctioned or lost assets at the time of compensation.

2. If the assets have been out of order, the damage will be determined as related expenses for the asset repair and restoration, calculated according to the market prices at the time of compensation; 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 to the rentals of assets of the same kind or assets with the same technical standards, properties, utility and quality at the time of compensation; for assets not on lease on the market, lost actual incomes will be determined as incomes brought about by the damaged assets under normal conditions before the time the damage is caused; if distrained assets are assigned to sufferers or other persons for management, reasonable expenses for the prevention, restriction and redress of damage to the assets will be determined as the compensated damage.

4. Money amounts already remitted into the state budget under decisions of competent state agencies, confiscated or kept for judgment enforcement, and money amounts deposited as security at competent agencies will be returned to sufferers or their relatives; if such money amounts are interest-bearing loans, lawful interest amounts shall also be returned; if such money amounts are interest-free loans, they shall be returned to sufferers or their relatives together with interest amounts calculated at the prime interest rate announced by the State Bank of Vietnam at the time of compensation.

#### **Article 46. Damage due to loss of or decrease in actual incomes**

1. Individuals and organizations with identifiable incomes are entitled to compensation for their unearned actual incomes.

2. For individuals with regular but unstable incomes, compensation amounts will be determined based on their average incomes of three consecutive months prior to the time the damage is caused.

3. For individuals with unstable incomes which cannot be specifically identified due to the lack of grounds or with seasonal incomes, the average income level of local labor of the same type shall apply. If the average income level cannot be determined, the damages will be determined based on the common minimum wage applicable to state agencies at the time of compensation (below collectively referred to as the minimum wage).

#### **Article 47. Damage due to mental suffering**

1. Damage due to mental suffering during the administrative custody or confinement in a reformatory, rehabilitation establishment or medical establishment will be determined as equal to two days' minimum wage for one day in administrative custody or in a reformatory, rehabilitation establishment or medical establishment.

2. Damage due to mental suffering in cases of being held in custody, detained or serving an imprisonment penalty will be determined as equal to three days' minimum wage for one day of

being held in custody, detained or serving an imprisonment penalty.

3. Damage due to mental suffering in case of death of sufferers will be determined as equal to three hundred sixty months' minimum wage.

4. Damage due to mental suffering in case of infringement upon health will be determined based on the extent of health damage but must not exceed thirty months' minimum wage.

5. Damage due mental suffering in case of institution of a criminal case, prosecution, trial or judgment enforcement without being held in custody or detained will be determined as equal to one day's minimum wage for one day of institution of a criminal case, prosecution, trial, non-custodial reform or serving of a suspended sentence. The duration used for calculating the compensation amount shall be determined from the date of issuance of the decision to institute a criminal case against the accused to the date of issuance of the judgment or decision by a competent agency affirming that such person falls into a compensation-eligible case specified in Clause 3, Article 26 of this Law.

#### **Article 48. Material loss due to the death of sufferers**

1. Reasonable expenses for medical treatment, health fostering and care for the sufferer before his/her death.

2. Funeral costs prescribed by the law on social insurance.

3. Alimonies for persons to whom the sufferer is currently obliged to provide. Monthly alimonies shall be determined as equal to the minimum wage, unless they are otherwise provided by law or determined under effective decisions of competent state agencies.

#### **Article 49. Material loss due to health damage**

1. Reasonable expenses for medical treatment, health fostering and recovery and functional rehabilitation for sufferers.

2. Lost or reduced actual incomes of sufferers, as provided for in Article 46 of this Law.

3. Reasonable expenses for, and lost actual incomes of. persons who look after sufferers during hospitalization.

4. In case a sufferer loses his/her working capacity and needs a regular caretaker, the damages will cover reasonable expenses for caring the sufferer and alimonies for persons to whom the sufferer is currently obliged to provide. Monthly alimonies are determined as equal to the minimum wage, unless they are otherwise provided by law or determined under effective decisions of competent state agencies.

## **Article 50. Return of assets**

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

## **Article 51. Honor restoration for sufferers in criminal proceedings**

1. Sufferers defined in Clauses 1, 2 and 3, Article 26 of this Law or their lawful representatives are entitled to claim for honor restoration within 3 months, counting from the date the compensation settlement decisions take effect.

2. Within 30 days after receiving a written claim for honor restoration filed by a sufferer or his/her lawful representative, the compensation-liable agency which has handled the case shall make public apologies and corrections.

3. Public apologies and corrections shall be made in the following forms:

a/ Direct apologies and public corrections made at residence or working places of the sufferers with the participation of representatives of the administrations of the localities where the sufferers reside or representatives of the agencies in which the sufferers work, and representatives of a socio-political organization of which the sufferers are members;

b/ Apologies and corrections published on a central newspaper and a local newspaper for three consecutive issues at the request of the sufferers or their lawful representatives.

4. If the sufferers have died, their relatives are entitled to claim for honor restoration.

## **Chapter VI**

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

## **Article 52. Compensation funds**

1. If central agencies are liable to compensate, compensation funds will be ensured by the central budget.

2. If local agencies are liable to compensate, compensation funds will be ensured by local budgets.

## **Article 53. Estimation of compensation funds**

Annually, based on the preceding year's actual compensations, finance agencies at all levels shall coordinate with agencies and units of the same level in formulating compensation fund estimates for inclusion in their respective budget estimates and submit them to competent state agencies for decision in accordance with the law on the state budget, which will be allocated to agencies and



units when there are claims for damages.

#### **Article 54. Order and procedures for allocating and paying compensation amounts**

1. Within 5 working days after the effective date of compensation settlement judgments or decisions, compensation-liable agencies shall immediately transfer compensation claim dossiers to finance agencies of the same level; if they are funded with central budget funds, they shall transfer the dossiers to their superior managing agencies.

Within 5 working days after the receipt of dossiers, dossier-receiving agencies shall check the validity of compensation claim dossiers for fund allocation or send written requests to the finance agencies of the same level for allocation of compensation funds; if the dossiers are invalid, they shall guide the compensation-liable agencies to supplement the dossiers or shall amend, supplement the compensation settlement decisions. The dossier supplementation duration must not exceed 15 days.

2. A compensation claim dossier comprises:

a/ The written request for allocation of compensation funds, with full and specific details on the compensation-eligible person compensation amounts for each specific damage and the total sum requested to be allocated for compensation;

b/ A copy of the competent state agency's document affirming the illegal act of the official-duty performer;

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

3. Within 10 days after the receipt of valid compensation claim dossiers, competent finance agencies shall allocate funds to compensation-liable agencies for payment to sufferers.

4. After the receipt of funds allocated by financial agencies, compensation-liable agencies shall, within 5 working days, pay compensation amounts to sufferers or their relatives.

5. If compensation-liable agencies decline to voluntarily implement the legally effective compensation settlement judgments or rulings of courts, compensation-eligible persons may request civil judgment enforcement agencies to enforce them under the law on civil judgment enforcement.

#### **Article 55. Settlement of compensation funds**

At the end of a budget year, compensation-liable agencies and units shall settle compensation funds already paid and synthesize them in their respective annual budget settlements for submission to competent agencies under the law on the state budget.

## Chapter VII

### REIMBURSEMENT LIABILITY

#### **Article 56. Reimbursement obligation and handling of responsible official-duty performers**

1. Official-duty performers who are at fault in causing damage are obliged to reimburse to the state budget money amounts already paid as compensation to sufferers under decisions of competent agencies.
2. Official-duty performers who unintentionally cause damage prescribed in Article 26 of this Law are not liable to reimbursement.
3. Apart from reimbursing money amounts stated in Clause 1 of this Article, official-duty performers shall, depending on the nature and severity of their violations, be disciplined or examined for penal liability according to law.

#### **Article 57. Grounds for determination of reimbursed amounts**

1. Grounds for determination of reimbursed amounts comprise:
  - a/ The degree of fault of official-duty performers;
  - b/ The extent of damage caused; c/ Financial conditions of official-duty performers.

The Government, the Supreme People's Court and the Supreme People's Procuracy shall determine amounts to be reimbursed by official-duty performers.

2. If many official-duty performers cause the damage, they shall bear joint liability for the reimbursement; compensation-labile agencies shall assume the prime responsibility for, and coordinate with agencies managing official-duty performers who have caused the damage in, unanimously determining the amount to be reimbursed by each of these performers.

#### **Article 58. Order of and procedures for deciding on reimbursement**

1. Within 20 days after completing the payment of compensation amounts, compensation-labile agencies shall set up a council for considering reimbursement liabilities in order to determine reimbursement liabilities of and amounts to be reimbursed by official-duty performers who have caused the damage.

In case the damage is caused by many official-duty performers from different agencies, such council shall be participated by representatives of concerned agencies to determine the reimbursement liability of and amount to be reimbursed by each of these official-duty performers.

The Government, the Supreme People's Court and the Supreme People's Procuracy shall provide for the establishment, composition, tasks and powers of a council for considering reimbursement liabilities of official-duty performers.

2. Within 30 days after the compensation payment is completed, competent persons defined in Article 59 of this Law shall issue reimbursement decisions. A reimbursement decision shall be sent to the person with the reimbursement obligation and the immediate superior agency of the compensation-liable agency.

#### **Article 59. Competence to issue reimbursement decisions**

1. Heads of compensation-liable agencies are competent to issue reimbursement decisions.
2. If heads of compensation-liable agencies are persons with the reimbursement obligation, heads of immediate superior agencies of those persons are competent to issue reimbursement decisions.

#### **Article 60. Complaints and lawsuits against reimbursement decisions**

If official-duty performers with the reimbursement liability disagree with reimbursement decisions, they are entitled to lodge complaints about, or initiate lawsuits against, such reimbursement decisions under the law on complaints and denunciations and the law on procedures for settlement of administrative cases.

#### **Article 61. Effect of reimbursement decisions**

1. Reimbursement decisions will take effect 15 days after their signing if the damage-causing official-duty performers do not lodge any complaints or initiate any lawsuits against such decisions.
2. Based on legally effective reimbursement decisions, compensation-liable agencies shall collect reimbursed amounts and remit them into the state budget.

#### **Article 62. Reimbursement**

1. Reimbursement may be made in a lump sum or in installments.
2. If reimbursement is made by gradual deduction from monthly salaries of official-duty performers, the minimum deduction level must not be lower than 10% and the maximum deduction level must not exceed 30% of monthly salaries.

#### **Article 63. Management and use of reimbursed money**

Compensation-liable agencies shall fully and promptly remit reimbursed amounts into the state budget. The management and use of reimbursed amounts comply with the law on state budget.

## Chapter VIII

### IMPLEMENTATION PROVISIONS

#### **Article 64. Non-collection of court costs, fees, other charges and taxes in the course of compensation settlement**

1. When exercising their right to claim for damage compensation to which the State is liable under this Law, sufferers are not required to pay court costs, fees and other charges.
2. The damages received by sufferers are not liable to personal income tax and enterprise income tax.

#### **Article 65. Effect**

1. This Law takes effect on January 1, 2010.
2. The following legal documents cease to be effective on the date this Law takes effect:
  - a/ The National Assembly Standing Committee's Resolution No. 388/2003/NQ-UBTVQH11 of March 17, 2003, on compensation for damage caused to unjustly condemned people by competent persons in criminal proceedings, and guiding documents;
  - b/ The Government's Decree No. 47/CP of May 3, 1997, on compensation for damage caused by civil servants or competent persons of procedure-conducting agencies, and guiding documents.

#### **Article 66. Transitional provisions**

1. Damage compensation claims which have been accepted by competent state agencies but not yet settled or are being settled under Resolution No.388/2003/NQ-UBTVQH11 of March 17, 2003, of the National Assembly Standing Committee on compensation for damage caused to unjustly condemned people by competent persons in criminal proceedings or the Government's Decree No.47/CP of May 3, 1997, on compensation for damage caused by civil servants or competent persons of procedure-conducting agencies, before the effective date of this Law, will be further settled under these legal documents.
2. Cases eligible for compensation under Resolution No.388/2003/NQ-UBTVQH11 of March 17, 2003, of the National Assembly Standing Committee, on compensation for damage caused to unjustly condemned people by competent persons in criminal proceedings and the Government's Decree No.47/CP of May 3, 1997, on compensation for damage caused by civil servants or competent persons of procedure-conducting agencies, for which the statute of limitations has not yet expired under these documents by the effective date of this Law and for which claims for state compensation have not yet been made or have been already made but not yet handled, will be settled under this Law.

**Article 67. Implementation detailing and guidance**

The Government, the Supreme People's Court and the Supreme People's Procuracy shall detail and guide the implementation of this Law's articles and clauses assigned to them and guide oilier necessary contents of this Law to meet state management requirements.

This Law was passed on June 18, 2009, by the 12<sup>th</sup> National Assembly of the Socialist Republic of Vietnam at its 5<sup>th</sup> session.

**THE NATIONAL  
ASSEMBLY  
CHAIRMAN**

*(signed)*

**Nguyen Phu Trong**