State Compensation Law of the People’s Republic of China

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Contents

Table of Contents 1

Chapter I — General Provisions 2

Chapter II — Administrative Compensation 2

Section 1 — Scope of Compensation 2

Section 2 — Claimants for Compensation and Organs Liable for Compensation 2

Section 3 — Compensation Procedures 3

Chapter III — Criminal Compensation 4

Section 1 — Scope of Compensation 4

Section 2 — Claimants for Compensation and Organs Liable for Compensation 4

Section 3 — Compensation Procedures 5

Chapter IV — Methods and Calculation Standards of Compensation 6

Chapter V — Other Provisions 7

Chapter VI — Supplementary Provisions 7

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Table of Contents

- Chapter I — General Provisions
- Chapter II — Administrative Compensation
- Chapter III — Criminal Compensation
- Chapter IV — Methods and Calculation Standards of Compensation
- Chapter V — Other Provisions

- Chapter VI — Supplementary Provisions

Chapter I — General Provisions

Article 1 — This Law is enacted in accordance with the Constitution for the purposes of safeguarding the right of citizens, legal persons, and other organizations to obtain State compensation in accordance with law, and promoting State organs to exercise their powers in accordance with law.

Article 2 — Where a State organ or its functionary, in exercising its functions and powers, infringes upon the personal rights or property rights of a citizen, legal person, or other organization in violation of the law and causes damage, the victim shall have the right to obtain State compensation in accordance with this Law. The obligations of State compensation prescribed by this Law shall be performed by the organs obligated to pay compensation as provided in this Law.

Chapter II — Administrative Compensation

Section 1 — Scope of Compensation

Article 3 — A victim shall have the right to obtain compensation where an administrative organ or its functionary, in exercising its administrative functions and powers, infringes upon the personal rights of a victim under any of the following circumstances: illegally detaining a citizen or illegally taking compulsory administrative measures restricting a citizen's personal freedom; illegally taking a citizen into custody or depriving a citizen of personal freedom by other illegal means; causing bodily injury or death to a citizen by means of battery, maltreatment, or other violent acts, or by instigating others to commit battery, maltreatment, or other violent acts; causing bodily injury or death to a citizen by illegally using weapons or police equipment; or causing bodily injury or death to a citizen by other illegal acts.

Article 4 — A victim shall have the right to obtain compensation where an administrative organ or its functionary, in exercising its administrative functions and powers, infringes upon property rights under any of the following circumstances: illegally imposing administrative penalties such as fines, revocation of permits and licenses, orders to suspend production or business operations, and confiscation of property; illegally taking compulsory administrative measures such as sealing up, seizing, or freezing of property; illegally expropriating or requisitioning property; or causing other damage to property by other illegal acts.

Article 5 — The State shall not be liable for compensation under any of the following circumstances: the personal act of a functionary of an administrative organ that has nothing to do with the exercise of administrative functions and powers; damage caused by the victim's own act; or other circumstances prescribed by law.

Section 2 — Claimants for Compensation and Organs Liable for Compensation

Article 6 — A victim citizen, legal person, or other organization shall have the right to claim compensation. Where the victim citizen has died, his successor or other relatives with a maintenance relationship shall have the right to claim compensation. Where the victim legal person or other organization has been terminated, the successor in rights shall have the right to claim compensation.

Article 7 — Where an administrative organ or its functionary, in exercising its administrative functions and powers, infringes upon the lawful rights and interests of a citizen, legal person, or other organization and causes damage, the administrative organ shall be the organ liable for compensation. Where two or more administrative organs, in jointly exercising their administrative functions and powers, cause damage by infringing upon the lawful rights and interests of a citizen, legal person, or other organization, they shall be the organs jointly liable for compensation. Where an organization authorized by laws or regulations, in exercising the administrative powers granted to it, causes damage by infringing upon the lawful rights and interests of a citizen, legal person, or other organization, the authorized organization shall be the organ liable for compensation. Where an organization or individual entrusted by an administrative organ, in exercising the

entrusted administrative power, causes damage by infringing upon the lawful rights and interests of a citizen, legal person, or other organization, the entrusting administrative organ shall be the organ liable for compensation. Where the organ liable for compensation has been abolished, the administrative organ succeeding to its functions and powers shall be the organ liable for compensation. Where there is no administrative organ succeeding to such functions and powers, the administrative organ that abolished the liability organ shall be the organ liable for compensation.

Article 8 — Where a case reconsidered by an administrative reconsideration organ causes increased damage while the original infringing act remains, the administrative organ that originally undertook the infringing act shall be the organ liable for compensation. Where the reconsideration decision of the administrative reconsideration organ aggravates the damage, the administrative reconsideration organ shall be liable for the aggravated portion.

Section 3 — Compensation Procedures

Article 9 — The organ liable for compensation shall, after it has been confirmed in accordance with law that any of the circumstances specified in Articles 3 and 4 of this Law has occurred, make compensation. Where a claimant for compensation requests compensation, he shall first submit the request to the organ liable for compensation, and may also raise the same when applying for administrative reconsideration or instituting an administrative litigation.

Article 10 — A claimant for compensation may claim compensation from any one of the organs jointly liable for compensation, and the organ that has received the claim shall first make the compensation.

Article 11 — A claimant for compensation may, in light of the different damage suffered, simultaneously raise several claims for compensation. The organ liable for compensation shall handle the claims in accordance with the provisions of this Law.

Article 12 — A claim for compensation shall be made by submitting an application. The application shall specify the victim's name, sex, age, work unit, and domicile; the legal person or other organization's name and domicile and the name and position of its legal representative or principal responsible person; the specific claims, factual basis, and reasons; and the date of application. Where the claimant for compensation cannot make a written application due to illiteracy or other reasons, he may entrust another person to do so on his behalf; he may also apply orally.

Article 13 — The organ liable for compensation shall, within two months from the date of receipt of the application, make a decision on whether to make compensation. When making a decision on compensation, the organ liable for compensation shall fully hear the opinions of the claimant for compensation, and may, with the consent of the claimant for compensation, conduct consultation with the claimant for compensation on the method, items, and amount of compensation. Where the organ liable for compensation decides to make compensation, it shall prepare a written decision on compensation and serve the same on the claimant for compensation within ten days from the date of the decision. Where the organ liable for compensation decides not to make compensation, it shall notify the claimant for compensation in writing within ten days from the date of the decision and state the reasons.

Article 14 — Where the organ liable for compensation fails to make a decision on whether to make compensation within the prescribed time limit, the claimant for compensation may institute legal proceedings within three months from the date of expiration of the time limit. Where the claimant for compensation is dissatisfied with the method, items, or amount of compensation, or where the organ liable for compensation decides not to make compensation, the claimant for compensation may institute legal proceedings in the people's court within three months from the date of the decision.

Article 15 — The people's court shall, in hearing an administrative compensation case, conduct mediation between the claimant for compensation and the organ liable for compensation in accordance with law.

Where a people's court decides on compensation in an administrative compensation case, it shall clearly specify the method of compensation, the items of compensation, and the amount of compensation.

Article 16 — Where the organ liable for compensation makes compensation, it shall order the functionary who committed intentional or gross negligence, the entrusted organization or individual, to bear part or all of the compensation expenses. The organ liable for compensation shall impose sanctions on the responsible functionaries in accordance with law. Where a crime is constituted, criminal liability shall be pursued in accordance with law.

Chapter III — Criminal Compensation

Section 1 — Scope of Compensation

Article 17 — A victim shall have the right to obtain compensation where an organ exercising the functions of criminal investigation, prosecution, trial, or prison administration, or its functionary, in exercising its functions and powers, infringes upon personal rights under any of the following circumstances: a citizen is detained in violation of the Criminal Procedure Law, or a citizen is detained in accordance with the conditions and procedures prescribed by the Criminal Procedure Law, but the detention period exceeds the time limit prescribed by the Criminal Procedure Law, and the decision is subsequently made to withdraw the case, not to prosecute, or to render an acquittal, and the criminal liability is not pursued; a citizen is arrested, and the decision is subsequently made to withdraw the case, not to prosecute, or to render an acquittal, and the criminal liability is not pursued; a citizen who has been finally adjudged not guilty in a retrial in accordance with the trial supervision procedure has served the original sentence; extorting a confession by torture, or causing bodily injury or death to a citizen by means of battery, maltreatment, or other violent acts, or by instigating others to commit battery, maltreatment, or other violent acts; or causing bodily injury or death to a citizen by illegally using weapons or police equipment.

Article 18 — A victim shall have the right to obtain compensation where an organ exercising the functions of criminal investigation, prosecution, trial, or prison administration, or its functionary, in exercising its functions and powers, infringes upon property rights under any of the following circumstances: illegally sealing up, seizing, freezing, or recovering property; or a citizen who has been adjudged not guilty in a retrial in accordance with the trial supervision procedure has had the original sentence of a fine or confiscation of property enforced.

Article 19 — The State shall not be liable for compensation under any of the following circumstances: a citizen is taken into custody or sentenced to criminal punishment due to his own intentional false statements, or fabricated evidence of guilt that is sufficient to cause the citizen to be held criminally liable; a person who shall not be held criminally liable in accordance with the provisions of Articles 17 and 18 of the Criminal Law is taken into custody; the personal act of a functionary of an organ exercising the functions of criminal investigation, prosecution, trial, or prison administration that has nothing to do with the exercise of such functions and powers; damage caused by the victim's own intentional act such as self-mutilation or self-harm; or other circumstances prescribed by law.

Section 2 — Claimants for Compensation and Organs Liable for Compensation

Article 20 — The provisions of Article 6 of this Law shall apply to the determination of claimants for compensation.

Article 21 — Where an organ exercising the functions of criminal investigation, prosecution, trial, or prison administration, or its functionary, in exercising its functions and powers, infringes upon the lawful rights and interests of a citizen, legal person, or other organization and causes damage, the organ shall be the organ liable for compensation. Where a citizen is detained and the decision is subsequently made to withdraw the case, not to prosecute, or to render an acquittal, and the criminal liability is not pursued, the organ that made the decision to detain the citizen shall be the organ liable for compensation. Where a citizen is arrested and

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the decision is subsequently made to withdraw the case, not to prosecute, or to render an acquittal, and the criminal liability is not pursued, the organ that made the decision to arrest the citizen shall be the organ liable for compensation. Where a citizen is adjudged not guilty in a retrial and has served the original sentence, the organ that rendered the original judgment shall be the organ liable for compensation. Where a citizen is adjudged not guilty in a second instance, or is adjudged not guilty in a retrial by a people's court, the organ that made the arrest decision shall be the organ liable for compensation.

Section 3 — Compensation Procedures

Article 22 — The organ liable for compensation shall, in accordance with the provisions of this Law, make compensation after it has been confirmed that any of the circumstances specified in Articles 17 and 18 of this Law has occurred. Where a claimant for compensation requests compensation, he shall first submit the request to the organ liable for compensation.

Article 23 — The organ liable for compensation shall, within two months from the date of receipt of the application, make a decision on whether to make compensation. When making a decision on compensation, the organ liable for compensation shall fully hear the opinions of the claimant for compensation, and may, with the consent of the claimant for compensation, conduct consultation with the claimant for compensation on the method, items, and amount of compensation. Where the organ liable for compensation decides to make compensation, it shall prepare a written decision on compensation and serve the same on the claimant for compensation within ten days from the date of the decision. Where the organ liable for compensation decides not to make compensation, it shall notify the claimant for compensation in writing within ten days from the date of the decision and state the reasons.

Article 24 — Where the organ liable for compensation fails to make a decision on whether to make compensation within the prescribed time limit, the claimant for compensation may apply for reconsideration to the organ at the next higher level within thirty days from the date of expiration of the time limit. Where the claimant for compensation is dissatisfied with the method, items, or amount of compensation, or where the organ liable for compensation decides not to make compensation, the claimant for compensation may apply for reconsideration to the organ at the next higher level within thirty days from the date of the decision. Where the organ liable for compensation is a people's court, the claimant for compensation may apply to the compensation committee of the people's court at the next higher level for a compensation decision in accordance with the provisions of the preceding paragraph.

Article 25 — The organ conducting the reconsideration shall make a decision within two months from the date of receipt of the application. Where the claimant for compensation is dissatisfied with the reconsideration decision, he may, within thirty days from the date of receipt of the reconsideration decision, apply to the compensation committee of the people's court at the same level as the organ conducting the reconsideration for a compensation decision. Where the organ conducting the reconsideration fails to make a decision within the time limit, the claimant for compensation may, within thirty days from the date of expiration of the time limit, apply to the compensation committee of the people's court at the same level as the organ conducting the reconsideration for a compensation decision.

Article 26 — The compensation committee of a people's court shall handle a claim for compensation in accordance with the procedures prescribed by this Law. The compensation committee of a people's court, when handling a claim for compensation, shall hear the opinions of the claimant for compensation, the organ liable for compensation, and other parties. The compensation committee may, with the consent of the claimant for compensation and the organ liable for compensation, conduct mediation between the claimant for compensation and the organ liable for compensation on the method, items, and amount of compensation.

Article 27 — The compensation committee of a people's court shall make a decision within three months from the date of receipt of the application for compensation. For a complex or major case, the time limit may be extended for three months with the approval of the president of the people's court. Where the

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compensation committee of a people's court makes a decision on compensation, it shall clearly specify the method of compensation, the items of compensation, and the amount of compensation.

Article 28 — After a compensation committee of a people's court makes a compensation decision, the organ liable for compensation shall perform the decision. Where the claimant for compensation or the organ liable for compensation considers that the compensation decision made by the compensation committee is erroneous, it may file a complaint with the compensation committee of the people's court at the next higher level.

Article 29 — The compensation committees of the intermediate people's courts and above shall be established. The compensation committees shall be composed of three or more judges of the people's court, and the number of members shall be an odd number. The compensation committee shall make a compensation decision by the principle of the minority being subordinate to the majority. The compensation decision made by the compensation committee shall be legally binding and must be performed.

Chapter IV — Methods and Calculation Standards of Compensation

Article 30 — State compensation shall be mainly in the form of payment of compensation. Where the property can be returned or restored to its original state, the property shall be returned or restored to its original state.

Article 31 — Where a citizen's personal freedom is infringed upon, the compensation for each day shall be calculated according to the national average daily wage of staff and workers in the previous year.

Article 32 — Where a citizen's right to life and health is infringed upon, the compensation shall be calculated according to the following provisions: where bodily injury is caused, compensation shall be paid for medical expenses, nursing expenses, and the loss of income due to missed work. The compensation for the loss of income due to missed work per day shall be calculated according to the national average daily wage of staff and workers in the previous year, and the maximum amount shall be five times the national average annual wage of staff and workers in the previous year; where partial or total loss of the capacity to work is caused, compensation shall be paid for medical expenses, nursing expenses, the cost of assistive devices for disability, rehabilitation expenses and other expenses required for ongoing treatment and rehabilitation, and the disability compensation. The disability compensation shall be determined according to the degree of loss of the capacity to work and in accordance with the disability level as prescribed by the State, and the maximum amount shall not exceed twenty times the national average annual wage of staff and workers in the previous year. Where total loss of the capacity to work is caused, the persons who have no capacity to work and are dependent on the victim for maintenance shall also be paid living expenses. Where death is caused, compensation shall be paid for death compensation and funeral expenses, the total amount of which shall be twenty times the national average annual wage of staff and workers in the previous year. Living expenses shall also be paid to the persons who have no capacity to work and were dependent on the deceased for maintenance before his death. The amount of living expenses payable to the persons supported as specified in the second and third subparagraphs of the preceding paragraph shall be determined by reference to the local minimum subsistence security standards. Where the persons supported are minors, the living expenses shall be paid until they reach the age of eighteen; where they have no capacity to work, the living expenses shall be paid for twenty years. However, where they have reached the age of sixty or older, the period shall be reduced by one year for each year of age increase; where they have reached the age of seventy-five or older, the living expenses shall be paid for five years.

Article 33 — Where a citizen's property rights are infringed upon, the damage shall be handled in accordance with the following provisions: where a fine, penalty, or recovery or confiscation of property is imposed, the property shall be returned; where the property should be returned but cannot be returned, compensation of the corresponding amount shall be paid; where property is sealed up, seized, or frozen, the sealing up, seizure, or freezing shall be released; where damage is caused to the property, the property shall

be restored to its original state if possible, or compensation of the corresponding amount shall be paid; where the property should be returned but is damaged, the property shall be restored to its original state if possible, or compensation of the corresponding amount shall be paid; where the property has been auctioned or sold off in a disguised form, compensation shall be paid at the auction price or the price from the disguised sale; where the price is obviously lower than the value of the property, compensation of the corresponding amount shall be paid; where the permit or license is revoked or the production or business operation is ordered to be suspended, compensation shall be paid for the necessary regular expenses incurred during the period of suspension of production or business operation; where other damage is caused to the property, compensation shall be paid based on the direct loss.

Article 34 — Where the compensation for expenses paid by a claimant for compensation falls under any of the circumstances specified in Articles 3 and 17 of this Law and causes serious mental damage to the victim, the organ liable for compensation shall, in addition to paying compensation in accordance with the provisions of this Law, pay the corresponding consolation money for mental damage within the scope of the infringement.

Article 35 — The compensation expenses shall be included in the fiscal budgets of the people's governments at various levels, and the specific measures shall be prescribed by the State Council. The people's governments at various levels may order the responsible organs to bear part or all of the compensation expenses. The specific measures shall be prescribed by the State Council.

Chapter V — Other Provisions

Article 36 — Where the people's court in a civil or administrative litigation process takes compulsory measures that infringe upon personal rights, or takes preservation measures, or wrongly enforces an effective legal document such as a judgment or ruling that causes damage to property, the criminal compensation procedures shall apply.

Article 37 — Where the claimant for compensation requests State compensation, the organ liable for compensation, the organ conducting the reconsideration, and the people's court shall not charge any fee from the claimant for compensation. No tax shall be levied on the compensation obtained by the claimant for compensation.

Chapter VI — Supplementary Provisions

Article 38 — Where a foreigner, foreign enterprise, or other foreign organization requests State compensation from the People's Republic of China in accordance with this Law, this Law shall apply. This Law shall not apply where the home country of the foreigner, foreign enterprise, or other foreign organization does not protect the right of a citizen, legal person, or other organization of the People's Republic of China to claim State compensation or imposes restrictions on such right.

Article 39 — The limitation period for a claimant for compensation to request State compensation shall be two years, calculated from the date on which the claimant knows or should have known that the State organ and its functionary, in exercising their functions and powers, infringed upon his personal rights or property rights. However, the period of detention or other restriction of personal freedom shall not be included in the calculation. Where a claimant for compensation is unable to exercise the right to claim compensation due to force majeure or other obstacles within the last six months of the limitation period for requesting compensation, the limitation period shall be suspended. The limitation period for claiming compensation shall be continuously calculated from the date on which the reason for suspension is eliminated.

Article 40 — Where a foreigner, foreign enterprise, or other foreign organization within the territory of the People's Republic of China requests State compensation from the People's Republic of China, the provisions of this Law shall apply. Where the home country of a foreigner, foreign enterprise, or other foreign

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organization does not protect or restricts the right of a citizen, legal person, or other organization of the People's Republic of China to claim State compensation from that country, the People's Republic of China shall apply the principle of reciprocity to such foreigner, foreign enterprise, or other foreign organization.

Article 41 — This Law shall take effect as of January 1, 1995.

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