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# 中华人民共和国国家赔偿法（2012修正）

# STATE COMPENSATION LAW OF THE PEOPLE'S REPUBLIC OF CHINA (2012 Revision)

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主席令第六十八号

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（1994年5月12日第八届全国人民代表大会常务委员会第七次会议通过 1994年5月12日中华人民共和国主席令第23号公布 根据2010年4月29日第十一届全国人民代表大会常务委员会第十四次会议通过 2010年4月29日中华人民共和国主席令第29号公布 自2010年12月1日起施行的《全国人民代表大会常务委员会关于修改〈中华人民共和国国家赔偿法〉的决定》第一次修正 根据2012年10月26日第十一届全国人民代表大会常务委员会第二十九次会议通过 2012年10月26日中华人民共和国主席令第68号公布 自2013年1月1日起施行的《全国人民代表大会常务委员会关于修改〈中华人民共和国国家赔偿法〉的决定》第二次修正）

(Adopted at the 7th session of the Standing Committee of the 8th National People's Congress on May 12, 1994 and issued under the Order of the President of the People's Republic of China No. 23 on May 12, 1994; amended for the first time in accordance with the Decision of the Standing Committee of the National People's Congress on Revising the Law of the People's Republic of China on State Compensation adopted at the 14th session of the Standing Committee of the 11th National People's Congress on April 29, 2010, issued under the Order of the President of the People's Republic of China No. 29 on April 29, 2010, and effective on December 1, 2010; and amended for the second time in accordance with the Decision of the Standing Committee of the National People's Congress on Revising the Law of the People's Republic of China on State Compensation adopted at the 29th session of the Standing Committee of the 11th National People's Congress on October 26, 2012, issued under the Order of the President of the People's Republic of China No. 68 on October 26, 2012, and effective on January 1, 2013)

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第一章 总则

Chapter 1 General Provisions

第一条   为保障公民、法人和其他组织享有依法取得国家赔偿的权利，促进国家机关依法行使职权，根据宪法，制定本法。

Article 1 This Law is formulated in accordance with the Constitution with a view to safeguarding the right of citizens, legal persons and other organizations to State compensation according to law, and promoting the exercise by State organs of their functions and powers according to law.

第二条   国家机关和国家机关工作人员行使职权，有本法规定的侵犯公民、法人和其他组织合法权益的情形，造成损害的，受害人有依照本法取得国家赔偿的权利。

Article 2 Where State organs or State functionaries, in exercising their functions and powers, infringe upon the lawful rights and interests of the citizens, legal persons and other organizations, thereby causing damage to them, the victims shall have the right to State compensation in accordance with this Law.

本法规定的赔偿义务机关，应当依照本法及时履行赔偿义务。

The organs under compensatory obligations as prescribed in this Law shall perform the obligations for compensation in accordance with this Law.

第二章 行政赔偿

Chapter 2 Administrative Compensation

第一节 赔偿范围

Section 1 Scope of Indemnity

第三条   行政机关及其工作人员在行使行政职权时有下列侵犯人身权情形之一的，受害人有取得赔偿的权利：

Article 3 The victim shall have the right to compensation if an administrative organ or its functionaries, in exercising their administrative functions and powers, commit any of the following acts infringing upon the right of the person of a citizen:

（一）违法拘留或者违法采取限制公民人身自由的行政强制措施的；

1. Detaining a citizen in violation of the law or unlawfully taking compulsory administrative measures in restraint of his personal freedom;

（二）非法拘禁或者以其他方法非法剥夺公民人身自由的；

2. unlawfully taking a citizen into custody or depriving him of his right of the person by other unlawful means;

（三）以殴打、虐待等行为或者唆使、放纵他人以殴打、虐待等行为造成公民身体伤害或者死亡的；

3. using or instigating or indulging violence such as beating one up and abuse, thereby causing bodily injury or death to a citizen;

（四）违法使用武器、警械造成公民身体伤害或者死亡的；

(IV) to use illegally arms, police weapons and cause bodily injury or death of a citizen; or

（五）造成公民身体伤害或者死亡的其他违法行为。

(V) other unlawful acts causing bodily injury or death to a citizen.

第四条   行政机关及其工作人员在行使行政职权时有下列侵犯财产权情形之一的，受害人有取得赔偿的权利：

Article 4 The victim shall have the right to compensation if an administrative organ or its functionaries, in exercising their functions and powers, commit any of the following acts infringing upon property right:

（一）违法实施罚款、吊销许可证和执照、责令停产停业、没收财物等行政处罚的；

1. Illegally inflicting administrative sanctions such as imposition of fines, revocation of certificates and licenses, ordering suspension of production and business, or confiscation of property;

（二）违法对财产采取查封、扣押、冻结等行政强制措施的；

2. illegally implementing compulsory administrative measures such as sealing up, distraining or freezing property;

（三）违法征收、征用财产的；

3. to expropriate, requisition properties illegally;

（四）造成财产损害的其他违法行为。

(IV) Other illegal acts causing damage to property.

第五条   属于下列情形之一的，国家不承担赔偿责任：

Article 5 The State shall not be liable for compensation in any of the following circumstances:

（一）行政机关工作人员与行使职权无关的个人行为；

1. Individual acts of a functionary of an administrative organ, which have nothing to do with the exercise of his functions and powers;

（二）因公民、法人和其他组织自己的行为致使损害发生的；

(II) Damage caused by acts of their own accord; or

（三）法律规定的其他情形。

(III) Other circumstances stipulated by the law arise.

第二节 赔偿请求人和赔偿义务机关

Section 2 Claimants to Compensation and Organs Liable for Compensation

第六条   受害的公民、法人和其他组织有权要求赔偿。

Article 6 Victimized citizens, legal persons or other organizations shall have the right to demand compensation.

受害的公民死亡，其继承人和其他有扶养关系的亲属有权要求赔偿。

Where the aggrieved citizen is deceased, his/her heirs or other relatives with maintenance relationship with him/her shall have the right to claim compensation.

受害的法人或者其他组织终止的，其权利承受人有权要求赔偿。

Where the aggrieved legal person or other organisation has terminated, the person who succeeds its rights shall have the right to claim compensation.

第七条   行政机关及其工作人员行使行政职权侵犯公民、法人和其他组织的合法权益造成损害的，该行政机关为赔偿义务机关。

Article 7 Where an administrative organ and its functionaries, in exercising their administrative powers, infringe upon the lawful rights and interests of a citizen, a legal person or other organizations, thereby causing damage to them, the administrative organ shall be the organ liable for compensation.

两个以上行政机关共同行使行政职权时侵犯公民、法人和其他组织的合法权益造成损害的，共同行使行政职权的行政机关为共同赔偿义务机关。

Where two or more administrative organs in jointly exercising their administrative functions and powers infringe upon the lawful rights and interests of a citizen or a legal person or other organizations, thereby causing damage to them, the administrative organs jointly exercising their administrative functions and powers shall be the organs jointly liable for compensation.

法律、法规授权的组织在行使授予的行政权力时侵犯公民、法人和其他组织的合法权益造成损害的，被授权的组织为赔偿义务机关。

Where an organization authorized by law or regulations invades the legitimate rights and interests of a citizen, legal person or other organization resulting in injury while exercising its authorized administrative power, that authorized organization shall be the indemnity obligatory agency.

受行政机关委托的组织或者个人在行使受委托的行政权力时侵犯公民、法人和其他组织的合法权益造成损害的，委托的行政机关为赔偿义务机关。

Where an organization or individual, in exercising the administrative powers entrusted to it or him by an administrative organ, infringes upon the lawful rights and interests of a citizen or a legal person or other organizations, thereby causing damage to them, the administrative organ that does the entrustment shall be the organ liable for compensation.

赔偿义务机关被撤销的，继续行使其职权的行政机关为赔偿义务机关；没有继续行使其职权的行政机关的，撤销该赔偿义务机关的行政机关为赔偿义务机关。

Where an organ liable for compensation has been abolished, the administrative organ that continues to exercise the former's functions and powers shall be the organ liable for compensation; if there is no administrative organ that continues to exercise the former's functions and powers, the administrative organ that abolished the former organ shall be the organ liable for compensation.

第八条   经复议机关复议的，最初造成侵权行为的行政机关为赔偿义务机关，但复议机关的复议决定加重损害的，复议机关对加重的部分履行赔偿义务。

Article 8 If reconsideration of a case has been made, the administrative organ that first did the tortious act shall be the organ liable for compensation; however, if the outcome of the reconsideration aggravates the damage, the organ undertaking the reconsideration of the case shall carry out its compensatory obligations as regards the increased portion of damages.

第三节 赔偿程序

Section 3 Indemnification Procedures

第九条   赔偿义务机关有本法第三条、第四条规定情形之一的，应当给予赔偿。

Article 9 The organ under compensatory obligations shall pay compensation under any of the circumstances as provided for in Articles 3 and 4 of this Law.

赔偿请求人要求赔偿，应当先向赔偿义务机关提出，也可以在申请行政复议或者提起行政诉讼时一并提出。

A claimant for compensation shall, first, file a claim for compensation with an organ under compensatory obligations and may, in the meantime, file a claim when applying for an administrative reconsideration and instituting an administrative procedure.

第十条   赔偿请求人可以向共同赔偿义务机关中的任何一个赔偿义务机关要求赔偿，该赔偿义务机关应当先予赔偿。

Article 10 A claimant to compensation may demand compensation from any of the organs under joint compensatory obligations, and the said organ under compensatory obligations shall pay compensation first.

第十一条   赔偿请求人根据受到的不同损害，可以同时提出数项赔偿要求。

Article 11 A claimant to compensation may, in light of the difference in nature of the damage suffered, make separate claims simultaneously for compensation of the damages.

第十二条   要求赔偿应当递交申请书，申请书应当载明下列事项：

Article 12 For the purpose of claiming damages, an application in writing shall be made, giving the following particulars:

（一）受害人的姓名、性别、年龄、工作单位和住所，法人或者其他组织的名称、住所和法定代表人或者主要负责人的姓名、职务；

1. Name, sex, age, working unit and address of the victim; if the victim is a legal person or other organization, its name and address as well as the name and post of its legal representative or of the person chiefly responsible for the entity;

（二）具体的要求、事实根据和理由；

(II) specific claim, factual basis and reasons; and

（三）申请的年、月、日。

(III) Date, month and year of the application.

赔偿请求人书写申请书确有困难的，可以委托他人代书；也可以口头申请，由赔偿义务机关记入笔录。

Where it is difficult for the indemnity claimant to write the application, he may entrust others to write on his behalf; he may also make oral application, which shall be recorded in writing by the indemnity obligatory agency.

赔偿请求人不是受害人本人的，应当说明与受害人的关系，并提供相应证明。

If the claimant is not the victim, he shall state his relationship with the victim and provide relevant evidence.

赔偿请求人当面递交申请书的，赔偿义务机关应当当场出具加盖本行政机关专用印章并注明收讫日期的书面凭证。申请材料不齐全的，赔偿义务机关应当当场或者在五日内一次性告知赔偿请求人需要补正的全部内容。

If the claimant submits its/his application in person, the organ liable for compensation shall issue a written voucher with its special seal and the date of receipt on the spot. If the application materials are not complete, the organ under compensatory obligations shall, on the spot or within five days, inform the claimant for compensation of all contents that need to be supplemented.

第十三条   赔偿义务机关应当自收到申请之日起两个月内，作出是否赔偿的决定。赔偿义务机关作出赔偿决定，应当充分听取赔偿请求人的意见，并可以与赔偿请求人就赔偿方式、赔偿项目和赔偿数额依照本法第四章的规定进行协商。

Article 13 The organ liable for compensation shall, within two months from the date of receiving the application, make a decision on whether to make compensation. Where the organ under compensatory obligations decides to pay compensation, it shall listen to the opinions of the claimant for compensation, and may negotiate with the claimant over compensation method, compensation item and compensation amount in accordance with the provisions of Chapter 4 of this Law.

赔偿义务机关决定赔偿的，应当制作赔偿决定书，并自作出决定之日起十日内送达赔偿请求人。

Where the organ under compensatory obligations decides to pay compensation, it shall prepare the written decision on compensation and serve the same on the claimant for compensation within 10 days after such decision is made.

赔偿义务机关决定不予赔偿的，应当自作出决定之日起十日内书面通知赔偿请求人，并说明不予赔偿的理由。

Where the organ under compensatory obligations decides not to pay compensation, it shall, within 10 days after making such decision, notify in writing the claimant for compensation thereof and explain the reason therefor.

第十四条   赔偿义务机关在规定期限内未作出是否赔偿的决定，赔偿请求人可以自期限届满之日起三个月内，向人民法院提起诉讼。

Article 14 Where the organ liable for compensation fails to make a decision on whether to make compensation within the time limit, a claimant may bring a suit in a people's court within three months from the date of expiration of the period.

赔偿请求人对赔偿的方式、项目、数额有异议的，或者赔偿义务机关作出不予赔偿决定的，赔偿请求人可以自赔偿义务机关作出赔偿或者不予赔偿决定之日起三个月内，向人民法院提起诉讼。

If the claimant is not satisfied with the forms, items and amounts of compensation, or the organ liable for compensation has made a decision on non-compensation, the claimant may bring a suit in a people's court within three months from the date when the organ liable for compensation makes the compensation or the decision on non-compensation.

第十五条   人民法院审理行政赔偿案件，赔偿请求人和赔偿义务机关对自己提出的主张，应当提供证据。

Article 15 In the trial of a case of administrative compensation by a people's court, the claimant and the organ liable for compensation shall provide evidences for their claims.

赔偿义务机关采取行政拘留或者限制人身自由的强制措施期间，被限制人身自由的人死亡或者丧失行为能力的，赔偿义务机关的行为与被限制人身自由的人的死亡或者丧失行为能力是否存在因果关系，赔偿义务机关应当提供证据。

During the period when the organ liable for compensation administratively detains a citizen or takes compulsory administrative measures in restraint of his personal freedom, if the citizen dies or loses his capacity, the organ liable for compensation shall produce evidences proving whether there is any causal relationship between its act and the death or loss of capacity of the citizen.

第十六条   赔偿义务机关赔偿损失后，应当责令有故意或者重大过失的工作人员或者受委托的组织或者个人承担部分或者全部赔偿费用。

Article 16 After paying compensation, the organ under compensatory obligations shall order its personnel or the entrusted organisation or person who has committed intentional misconduct or gross negligence to bear part or all of the compensation expenses.

对有故意或者重大过失的责任人员，有关机关应当依法给予处分；构成犯罪的，应当依法追究刑事责任。

The competent authorities shall, in accordance with law, impose administrative sanctions on those responsible persons who have committed intentional mistake or grave negligence; where a crime is constituted, the criminal liability shall be pursued according to law.

第三章 刑事赔偿

Chapter 3 Criminal Compensation

第一节 赔偿范围

Section 1 Scope of Indemnity

第十七条   行使侦查、检察、审判职权的机关以及看守所、监狱管理机关及其工作人员在行使职权时有下列侵犯人身权情形之一的，受害人有取得赔偿的权利：

Article 17 The victim shall have the right to compensation if an organ in charge of investigatory, procuratorial, judicial work or a watch house or prison administration, or its functionaries, infringe upon his right of the person in the exercise of its functions and powers in any of the following circumstances:

（一）违反刑事诉讼法的规定对公民采取拘留措施的，或者依照刑事诉讼法规定的条件和程序对公民采取拘留措施，但是拘留时间超过刑事诉讼法规定的时限，其后决定撤销案件、不起诉或者判决宣告无罪终止追究刑事责任的；

1. Detaining a citizen in violation of the Criminal Procedure Law, or detaining a citizen in light of the conditions and procedures of the Criminal Procedure Law, but the time of detention exceeds the time limit as stipulated in the Criminal Procedure Law and later a decision on cancellation of the case or non-suit is made or the citizen is adjudged innocent and the prosecution of his criminal responsibility shall be terminated;

（二）对公民采取逮捕措施后，决定撤销案件、不起诉或者判决宣告无罪终止追究刑事责任的；

(II) After taking detention measures against a citizen, deciding to cancel the case or not bringing a suit or the citizen is adjudged innocent and the prosecution of his criminal responsibility shall be terminated;

（三）依照审判监督程序再审改判无罪，原判刑罚已经执行的；

(III) Innocence is found in a retrial held in accordance with the procedure of trial supervision, but the original sentence has already been executed;

（四）刑讯逼供或者以殴打、虐待等行为或者唆使、放纵他人以殴打、虐待等行为造成公民身体伤害或者死亡的；

(IV) Extorting a confession by torture or causing bodily injury or death to a citizen by using or instigating or divulging the use of violence such as beating one up or abuse; or

（五）违法使用武器、警械造成公民身体伤害或者死亡的。

(V) to use illegally arms, police weapons and cause bodily injury or death of a citizen.

第十八条   行使侦查、检察、审判职权的机关以及看守所、监狱管理机关及其工作人员在行使职权时有下列侵犯财产权情形之一的，受害人有取得赔偿的权利：

Article 18 The victim shall have the right to compensation if an organ in charge of investigatory, procuratorial, judicial work or a watch house or prison administration, or its functionaries, infringe upon property rights in any of the following circumstances:

（一）违法对财产采取查封、扣押、冻结、追缴等措施的；

1. Unlawfully taking measures such as sealing up, distraining, freezing or recovering a property;

（二）依照审判监督程序再审改判无罪，原判罚金、没收财产已经执行的。

(II) Innocence is found in a retrial held in accordance with the procedure of trial supervision, but the fine or confiscation of property in the original sentence has already been executed.

第十九条   属于下列情形之一的，国家不承担赔偿责任：

Article 19 The State shall not be liable for compensation in any of the following circumstances:

（一）因公民自己故意作虚伪供述，或者伪造其他有罪证据被羁押或者被判处刑罚的；

1. The taking into custody or sentencing being due to a citizen's own intentionally made false statements or fabricated evidence of guilt;

（二）依照刑法第十七条、第十八条规定不负刑事责任的人被羁押的；

2. The person taken into custody being one not liable for criminal responsibility in accordance with Articles 17 and 18 of the Criminal Law;

（三）依照刑事诉讼法第十五条、第一百七十三条第二款、第二百七十三条第二款、第二百七十九条规定不追究刑事责任的人被羁押的；

(III) The person taken into custody being one who shall not be investigated for criminal responsibility in accordance with Article 15, Paragraph 2 of Article 173, Paragraph 2 of Article 273 and Article 279 of the Criminal Procedure Law;

（四）行使侦查、检察、审判职权的机关以及看守所、监狱管理机关的工作人员与行使职权无关的个人行为；

(IV) Individual acts of functionaries of organs in charge of investigatory, procuratorial, judicial work or watch houses or prison administrations, which have nothing to do with the exercise of their functions and powers;

（五）因公民自伤、自残等故意行为致使损害发生的；

(V) Damage being caused by intentional acts of a citizen such as self-wounding and self-mutilation; or

（六）法律规定的其他情形。

(VI) Other circumstances stipulated by the law arise.

第二节 赔偿请求人和赔偿义务机关

Section 2 Claimants to Compensation and Organs Liable for Compensation

第二十条   赔偿请求人的确定依照本法第六条的规定。

Article 20 The claimant for compensation shall be determined in accordance with Article 6 of this Law.

第二十一条   行使侦查、检察、审判职权的机关以及看守所、监狱管理机关及其工作人员在行使职权时侵犯公民、法人和其他组织的合法权益造成损害的，该机关为赔偿义务机关。

Article 21 Where an organ in charge of investigatory, procuratorial, judicial work or a watch house or prison administration, or its functionaries, infringe upon the rights and interests of a citizen, a legal person, or other organizations, in the exercise of its functions and powers, thereby causing damage to the victims, that organ shall be the organ liable for compensation.

对公民采取拘留措施，依照本法的规定应当给予国家赔偿的，作出拘留决定的机关为赔偿义务机关。

Where a citizen is detained and shall be given state compensation in accordance with the provisions hereof, the organ which made the decision on such detention shall be the organ liable for compensation.

对公民采取逮捕措施后决定撤销案件、不起诉或者判决宣告无罪的，作出逮捕决定的机关为赔偿义务机关。

If a citizen is arrested and then the decision on cancellation of the case or non-suit is made or the citizen is adjudged innocent, the organ which made the decision on such arrest shall be the organ liable for compensation.

再审改判无罪的，作出原生效判决的人民法院为赔偿义务机关。二审改判无罪，以及二审发回重审后作无罪处理的，作出一审有罪判决的人民法院为赔偿义务机关。

If a citizen is adjudged not guilty in a retrial, the people's court passing the originally effective sentence shall be the organ liable for compensation. Where a citizen is adjudged not guilty by a court of the second instance, or is found not guilty after retrial of the original court, the court passing the original sentence shall be the organ liable for compensation.

第三节 赔偿程序

Section 3 Indemnification Procedures

第二十二条   赔偿义务机关有本法第十七条、第十八条规定情形之一的，应当给予赔偿。

Article 22 The organ under compensatory obligations shall pay compensation under any of the circumstances as provided for in Articles 17 and 18 of this Law.

赔偿请求人要求赔偿，应当先向赔偿义务机关提出。

A claimant to compensation shall first apply to an organ under compensatory obligations.

赔偿请求人提出赔偿请求，适用本法第十一条、第十二条的规定。

The provisions of Articles 11 and 12 of this Law shall apply to the compensation claim made by the claimant for compensation.

第二十三条   赔偿义务机关应当自收到申请之日起两个月内，作出是否赔偿的决定。赔偿义务机关作出赔偿决定，应当充分听取赔偿请求人的意见，并可以与赔偿请求人就赔偿方式、赔偿项目和赔偿数额依照本法第四章的规定进行协商。

Article 23 The organ liable for compensation shall, within two months from the date of receiving the application, make a decision on whether to make compensation. Where the organ under compensatory obligations decides to pay compensation, it shall listen to the opinions of the claimant for compensation, and may negotiate with the claimant over compensation method, compensation item and compensation amount in accordance with the provisions of Chapter 4 of this Law.

赔偿义务机关决定赔偿的，应当制作赔偿决定书，并自作出决定之日起十日内送达赔偿请求人。

Where the organ under compensatory obligations decides to pay compensation, it shall prepare the written decision on compensation and serve the same on the claimant for compensation within 10 days after such decision is made.

赔偿义务机关决定不予赔偿的，应当自作出决定之日起十日内书面通知赔偿请求人，并说明不予赔偿的理由。

Where the organ under compensatory obligations decides not to pay compensation, it shall, within 10 days after making such decision, notify in writing the claimant for compensation thereof and explain the reason therefor.

第二十四条   赔偿义务机关在规定期限内未作出是否赔偿的决定，赔偿请求人可以自期限届满之日起三十日内向赔偿义务机关的上一级机关申请复议。

Article 24 Where the organ liable for compensation fails to make a decision on whether to make compensation within the time limit, a claimant may apply for reconsideration to an organ at the next higher level within thirty days from the date of expiration of the period.

赔偿请求人对赔偿的方式、项目、数额有异议的，或者赔偿义务机关作出不予赔偿决定的，赔偿请求人可以自赔偿义务机关作出赔偿或者不予赔偿决定之日起三十日内，向赔偿义务机关的上一级机关申请复议。

If the claimant is not satisfied with the forms, items and amounts of compensation, or the organ liable for compensation has made a decision on non-compensation, the claimant may apply for reconsideration to an organ at the next higher level within thirty days from the date when the organ liable for compensation makes the compensation or the decision on non-compensation.

赔偿义务机关是人民法院的，赔偿请求人可以依照本条规定向其上一级人民法院赔偿委员会申请作出赔偿决定。

Where the organ liable for compensation is a people's court, the claimant to compensation may, in accordance with the provisions of this article, apply to the compensation commission of a people's court at the next higher level for a decision on compensation.

第二十五条   复议机关应当自收到申请之日起两个月内作出决定。

Article 25 The reconsideration authority shall make a decision within two months of receiving the application.

赔偿请求人不服复议决定的，可以在收到复议决定之日起三十日内向复议机关所在地的同级人民法院赔偿委员会申请作出赔偿决定；复议机关逾期不作决定的，赔偿请求人可以自期限届满之日起三十日内向复议机关所在地的同级人民法院赔偿委员会申请作出赔偿决定。

A claimant to compensation who refuses to accept the outcome of the reconsideration, may, within thirty days from the date of receiving the decision, apply for a decision on compensation to the compensation commission of the people's court at the same level in the locality where the organ that attended to the reconsideration is situated; if the latter organ has made no decision within the period prescribed, the claimant to compensation may, within thirty days from the expiration of the period, apply for a decision to the compensation commission of the people's court at the same level in the locality where the organ undertaking the reconsideration is situated.

第二十六条   人民法院赔偿委员会处理赔偿请求，赔偿请求人和赔偿义务机关对自己提出的主张，应当提供证据。

Article 26 In handling of a compensation demand by the compensation commission of a people’s court, the claimant and the organ liable for compensation shall provide evidences for their claims.

被羁押人在羁押期间死亡或者丧失行为能力的，赔偿义务机关的行为与被羁押人的死亡或者丧失行为能力是否存在因果关系，赔偿义务机关应当提供证据。

Where a citizen dies or loses his capacity during his detention, the organ liable for compensation shall produce evidences proving whether there is any causal relationship between its act and the death or loss of capacity of the citizen.

第二十七条   人民法院赔偿委员会处理赔偿请求，采取书面审查的办法。必要时，可以向有关单位和人员调查情况、收集证据。赔偿请求人与赔偿义务机关对损害事实及因果关系有争议的，赔偿委员会可以听取赔偿请求人和赔偿义务机关的陈述和申辩，并可以进行质证。

Article 27 The compensation commission of a people's court shall review written materials when handling a compensation request. When necessary, it may conduct investigations on and collect evidences from the relevant entities and persons. Where there is any dispute between the claimant for compensation and the organ under compensatory obligations over the facts of damage and the causal relationship, the compensation commission may listen to the statement and defense of the claimant for compensation and the organ under compensatory obligations and may also carry out the cross-examination on evidences.

第二十八条   人民法院赔偿委员会应当自收到赔偿申请之日起三个月内作出决定；属于疑难、复杂、重大案件的，经本院院长批准，可以延长三个月。

Article 28 The compensation commission of a people's court shall decide the matter within three months from the date of receiving the compensation application. If the case is difficult, complex or material, the period for making a decision may extended three months upon approval of the president of the court.

第二十九条   中级以上的人民法院设立赔偿委员会，由人民法院三名以上审判员组成，组成人员的人数应当为单数。

Article 29 People's courts at or above the intermediate level shall establish a compensation commission composed of three or more judges, and the member number shall be odd.

赔偿委员会作赔偿决定，实行少数服从多数的原则。

In making indemnity decisions, the indemnity committee shall adopt the principle of the minority subordinating to the majority.

赔偿委员会作出的赔偿决定，是发生法律效力的决定，必须执行。

The compensation decision made by a compensation commission shall be a decision with legal force and must be executed.

第三十条   赔偿请求人或者赔偿义务机关对赔偿委员会作出的决定，认为确有错误的，可以向上一级人民法院赔偿委员会提出申诉。

Article 30 A claimant or an organ liable for compensation that holds the decision of a compensation commission is really wrong may apply to the compensation commission of a people's court at a higher level for appeal.

赔偿委员会作出的赔偿决定生效后，如发现赔偿决定违反本法规定的，经本院院长决定或者上级人民法院指令，赔偿委员会应当在两个月内重新审查并依法作出决定，上一级人民法院赔偿委员会也可以直接审查并作出决定。

After the compensation decision of a compensation commission comes into effect, if the decision is found in violation of the provisions herein, the compensation commission shall conduct a reexamination and make a new decision within two months upon decision of the president of the court or the order of the people's court at a higher level, and the people's court at a higher level may directly conduct an examination and make a decision.

最高人民检察院对各级人民法院赔偿委员会作出的决定，上级人民检察院对下级人民法院赔偿委员会作出的决定，发现违反本法规定的，应当向同级人民法院赔偿委员会提出意见，同级人民法院赔偿委员会应当在两个月内重新审查并依法作出决定。

If the Supreme People's Procuratorate and people's procuratorates at a higher level respectively find any decision of the compensation commissions of people's courts at all levels and of the compensation commissions of people's courts at a lower level violates the provisions herein, they may give opinions to the compensation commission of the people's court at the same level and the latter shall conduct a reexamination and make a new decision within two months.

第三十一条   赔偿义务机关赔偿后，应当向有下列情形之一的工作人员追偿部分或者全部赔偿费用：

Article 31 An organ liable for compensation shall, after compensating the damage, recover part, or the whole of the compensation expenses from its functionaries who are involved in any of the following circumstances:

（一）有本法第十七条第四项、第五项规定情形的；

1. Circumstances stated in Paragraph 4 and 5 of Article 17 herein; or

（二）在处理案件中有贪污受贿，徇私舞弊，枉法裁判行为的。

2. while handling the case, committing embezzlement, accepting bribes, doing malpractice for personal benefits, or perverting the law in adjudication of the case.

对有前款规定情形的责任人员，有关机关应当依法给予处分；构成犯罪的，应当依法追究刑事责任。

The competent authorities shall, in accordance with law, impose administrative sanctions on those responsible persons who fall in any of the circumstances as mentioned above; if a crime is constituted, the criminal liability shall be pursued in accordance with law.

第四章 赔偿方式和计算标准

Chapter 4 Indemnification Methods and Calculation Standards

第三十二条   国家赔偿以支付赔偿金为主要方式。

Article 32 State compensation shall take the form of payment of damages in the main.

能够返还财产或者恢复原状的，予以返还财产或者恢复原状。

Where the property can be returned or its original condition can be restored, the property shall be returned or its original condition restored.

第三十三条   侵犯公民人身自由的，每日赔偿金按照国家上年度职工日平均工资计算。

Article 33 If freedom of the person of a citizen is infringed, compensatory payment for each day shall be assessed in accordance with the State average daily pay of staff and workers in the previous year.

第三十四条   侵犯公民生命健康权的，赔偿金按照下列规定计算：

Article 34 If a citizen's right to life and health is infringed upon, compensatory payment shall be assessed in accordance with the following provisions:

（一）造成身体伤害的，应当支付医疗费、护理费，以及赔偿因误工减少的收入。减少的收入每日的赔偿金按照国家上年度职工日平均工资计算，最高额为国家上年度职工年平均工资的五倍；

(I) In the case of bodily injury, medical expenses, nursing costs and compensation for loss in income due to absence from work shall be paid. The daily indemnity payment for the income deduction shall be calculated according to the average daily salary of the employees of the state in the last year, and the maximum shall be 5 times of the average annual salary of the employees of the state in the last year;

（二）造成部分或者全部丧失劳动能力的，应当支付医疗费、护理费、残疾生活辅助具费、康复费等因残疾而增加的必要支出和继续治疗所必需的费用，以及残疾赔偿金。残疾赔偿金根据丧失劳动能力的程度，按照国家规定的伤残等级确定，最高不超过国家上年度职工年平均工资的二十倍。造成全部丧失劳动能力的，对其扶养的无劳动能力的人，还应当支付生活费；

(II) In the case of loss of part or the whole of working capability, medical expenses, nursing costs, costs of aiding devices for the disable and necessary expenses increased due to disability and for continuous curing including rehabilitation expenses as well as disability compensation shall be paid. The maximum amount of compensation money for disablement shall be determined on the basis of the seriousness of loss of ability to work and in accordance with the relevant provisions of the state, provided that the maximum amount may not exceed 20 times as much as the annual average salary of the employees of the state in the preceding year. In case of total loss of ability to work, living expenses shall be paid to the person who is maintained by the aggrieved and without ability to work; and

（三）造成死亡的，应当支付死亡赔偿金、丧葬费，总额为国家上年度职工年平均工资的二十倍。对死者生前扶养的无劳动能力的人，还应当支付生活费。

(III) Where death results, compensation for death and funeral expenses shall be paid, the total amount shall be 20 times the State average annual wage of employees in the preceding year. Living expenses shall be paid to the person without ability to work who is supported by the deceased during his lifetime.

前款第二项、第三项规定的生活费的发放标准，参照当地最低生活保障标准执行。被扶养的人是未成年人的，生活费给付至十八周岁止；其他无劳动能力的人，生活费给付至死亡时止。

The payment of living expenses mentioned in Items 2 and 3 of the preceding paragraph shall be made with reference to the local minimum living standards. If the persons supported by the deceased are minors, their living expenses shall be paid until they reach the age of 18; as to the persons supported by the deceased, living expenses shall be paid until their death.

第三十五条   有本法第三条或者第十七条规定情形之一，致人精神损害的，应当在侵权行为影响的范围内，为受害人消除影响，恢复名誉，赔礼道歉；造成严重后果的，应当支付相应的精神损害抚慰金。

Article 35 In any of the circumstances stipulated in Article 3 and 17 herein, if mental injury of a victim is caused, the organ liable for compensation shall, within the scope of influence of the tortious act, eliminate the evil effects for the victim, rehabilitate his reputation, and extend an apology; if a serious consequence is caused, the corresponding consolation money for mental injury shall be paid.

第三十六条   侵犯公民、法人和其他组织的财产权造成损害的，按照下列规定处理：

Article 36 Where the property right of a citizen, legal person, or other organization is infringed upon and damage is caused, it shall be handled according to the following provisions:

（一）处罚款、罚金、追缴、没收财产或者违法征收、征用财产的，返还财产；

1. If fines, recovery or confiscation of property have been ordered, or property have been illegally requisitioned or expropriated, the properties shall be returned;

（二）查封、扣押、冻结财产的，解除对财产的查封、扣押、冻结，造成财产损坏或者灭失的，依照本条第三项、第四项的规定赔偿；

2. if properties have been sealed up, distrained or frozen, the restraints shall be lifted; for properties thus damaged or missing, compensation shall be paid in accordance with the provisions of Items 3 and 4 of this Article;

（三）应当返还的财产损坏的，能够恢复原状的恢复原状，不能恢复原状的，按照损害程度给付相应的赔偿金；

(III) if the property to be returned is damaged, it shall be restored to its original condition if such restoration can be done; if not, corresponding compensation shall be paid in accordance with the extent of damage;

（四）应当返还的财产灭失的，给付相应的赔偿金；

(IV) If the property to be returned is lost, corresponding compensation shall be paid;

（五）财产已经拍卖或者变卖的，给付拍卖或者变卖所得的价款；变卖的价款明显低于财产价值的，应当支付相应的赔偿金；

(V) If the property has been auctioned or sold, the proceeds of the auction or sale shall be returned; if the selling price is obviously lower than the value of the property, the corresponding compensation shall be paid;

（六）吊销许可证和执照、责令停产停业的，赔偿停产停业期间必要的经常性费用开支；

(VI) If the certificate and licence have been revoked and suspension of production and business has been ordered, compensation shall be paid for necessary overhead expenses for the period of such suspension;

（七）返还执行的罚款或者罚金、追缴或者没收的金钱，解除冻结的存款或者汇款的，应当支付银行同期存款利息；

(VII) Where the fines or recovered or confiscated money are returned, or the frozen deposits or remittance are released, the bank interests on deposits at the same period shall be paid; and

（八）对财产权造成其他损害的，按照直接损失给予赔偿。

(VIII) If other damage is done to property rights, compensation shall be paid for the direct losses.

第三十七条   赔偿费用列入各级财政预算。

Article 37 Compensation expenses shall be entered in the financial budget at all levels.

赔偿请求人凭生效的判决书、复议决定书、赔偿决定书或者调解书，向赔偿义务机关申请支付赔偿金。

A claimant shall apply for payment of his compensation to the organ liable for compensation on the strength of the effective judgment, the written decision on reconsideration, the written decision on compensation or the mediation paper.

赔偿义务机关应当自收到支付赔偿金申请之日起七日内，依照预算管理权限向有关的财政部门提出支付申请。财政部门应当自收到支付申请之日起十五日内支付赔偿金。

The organ under compensatory obligations shall, within seven days after receiving the application for payment of compensation, apply to the relevant finance department for payment of compensation in accordance with the authorities for budget management. The finance department shall pay the compensation within 15 days after receiving the application for payment.

赔偿费用预算与支付管理的具体办法由国务院规定。

Specific measures for administration of budget and payment of compensation expenses shall be formulated by the State Council.

第五章 其他规定

Chapter 5 Miscellaneous

第三十八条   人民法院在民事诉讼、行政诉讼过程中，违法采取对妨害诉讼的强制措施、保全措施或者对判决、裁定及其他生效法律文书执行错误，造成损害的，赔偿请求人要求赔偿的程序，适用本法刑事赔偿程序的规定。

Article 38 If a people's court, in violation of the law, adopts in civil or administrative proceedings compulsory measures or preservative measures in impairment of the proceedings, or wrongly executes a judgment or a ruling or other effective legal documents, thereby resulting in damage being done, the criminal compensation procedures herein shall be applicable to the procedure for making claims for compensation by the claimant.

第三十九条   赔偿请求人请求国家赔偿的时效为两年，自其知道或者应当知道国家机关及其工作人员行使职权时的行为侵犯其人身权、财产权之日起计算，但被羁押等限制人身自由期间不计算在内。在申请行政复议或者提起行政诉讼时一并提出赔偿请求的，适用行政复议法、行政诉讼法有关时效的规定。

Article 39 The limitation of action for claims for State compensation shall be two years, counted from the day the claimant knows or ought to know the exercise of the functions and powers by a State organ and its functionaries infringes upon his personal right or property right, but the period when he is detained or his freedom is restricted shall not be counted. Where the claim for compensation is lodged together with the application for administrative reconsideration or administrative litigation, the provisions on prescription as specified in the Administrative Reconsideration Law and the Administrative Procedure Law shall apply.

赔偿请求人在赔偿请求时效的最后六个月内，因不可抗力或者其他障碍不能行使请求权的，时效中止。从中止时效的原因消除之日起，赔偿请求时效期间继续计算。

The limitation of action for claims for compensation shall be suspended if during its last six months, the claimant is unable to exercise his rights due to force majeure or other obstacles. The limitation shall resume on the day when the causes for suspension are eliminated.

第四十条   外国人、外国企业和组织在中华人民共和国领域内要求中华人民共和国国家赔偿的，适用本法。

Article 40 This Law shall be applicable to claim by a foreigner, foreign enterprise or organisation in the territory of the People's Republic of China against the People's Republic of China for state compensation.

外国人、外国企业和组织的所属国对中华人民共和国公民、法人和其他组织要求该国国家赔偿的权利不予保护或者限制的，中华人民共和国与该外国人、外国企业和组织的所属国实行对等原则。

If a State to which a foreigner, a foreign enterprise, or a foreign organization belongs gives no protection to or limits the right of a citizen, a legal person, or other organizations of the People's Republic of China to claim compensation by that State, the People's Republic of China shall implement the principle of reciprocity in respect of that State.

第六章 附则

Chapter 6 Supplementary Provisions

第四十一条   赔偿请求人要求国家赔偿的，赔偿义务机关、复议机关和人民法院不得向赔偿请求人收取任何费用。

Article 41 No organs liable for compensation or undertaking the reconsideration of a case, or the people's courts may collect any expenses from a claimant to state compensation.

对赔偿请求人取得的赔偿金不予征税。

No tax shall be levied as regards the compensation a claimant has obtained.

第四十二条   本法自１９９５年１月１日起施行。

Article 42 This Law shall go into effect as of January 1, 1995.