



Careful Review of Criminal Compensation

In accordance with the International Covenant on Civil and Political Rights and the intentions of the Judicial Yuan Grand Judges' Interpretation Shih-Zi No. 670, the Judicial Yuan had undertaken a comprehensive review of the legal system relating to the Wrongful Imprisonment Compensation Act, and had proposed "Draft Amendments to the Law of Compensation for Wrongful Detentions and Executions" comprising of 41 articles. The Draft Amendments were submitted for consideration by the Executive Yuan before being submitted for consideration by the Legislative Yuan, and passed their third reading on June 13, 2011. The Amendments were promulgated by order of the President on July 6, 2011 and entered into enforcement on September 1, 2011. The amended Law changes the term "compensation" to "remedy", and replaces "wrongful detentions and executions" to "criminal cases", to establish the contemporary concepts and frameworks that should exist in a legal remedies system.

The original "Wrongful Imprisonment Compensation Act" had been promulgated and enforced since 1959, and had adopted the concept of "compensation for damages" with regards to criteria for remedies. However, the Judicial Yuan Grand Judges' Interpretation Shih-Zi No. 670 had interpreted the state liability under the "Wrongful Imprisonment Compensation Act" as a "criminal remedy" in pecuniary form that is given according to law, where the State imposes criminal detentions, immigration detentions, police custodianships, criminal sanction or preservative measures in order to enforce its criminal sanction powers or to implement public interests of education and correction, resulting in limitations to constitutionally protected freedoms and powers of a particular individual to an extent that exceeds the generally tolerable level, so that there is a special sacrifice on the part of such individual. Accordingly, the state liability under the "Wrongful Imprisonment Compensation Act" was not restricted to the essential criterion of a deliberate or negligent, illegally infringing act on the part of a public official exercising public powers in carrying out his/her official duties. Further, the Grand Judges held that the exclusion from application for compensation under Article 2, Paragraph 3 of the "Wrongful Imprisonment Compensation Act" was contrary to the constitutional protection of the physical freedom and right of equality of the people, and was inconsistent with the proportionality principle under Article 23 of the Constitution; restrictions on the right to claim for compensation under the "Wrongful Imprisonment Compensation Act" should therefore also be comprehensively reviewed in line with the reform of relevant legal systems. The said Act was therefore amended to become the "Law of

Compensation for Wrongful Detentions and Executions”, in order to fully enforce the aforementioned International Covenants and implement the intentions of the Judicial Yuan Grand Judges’ Interpretation Shih-Zi No. 670.

The scope of remedies provided under the “Law of Compensation for Wrongful Detentions and Executions” is now broader, with additional provisions allowing for compensatory claims for preservative measures other than determined detentions and compulsory work that restrict physical liberty. Claims for compensation may now also be made in various other circumstances, including where the prosecutor withdraws an indictment, the court makes a ruling dismissing an indictment, or where the court issues a judgment exempting the indictment. The “Law of Compensation for Wrongful Detentions and Executions” also deletes the bar on a compensatory claim for wrongful imprisonment due to the deliberate or seriously negligent act of the doer; however, under Article 4 of the new law regarding grounds for compensatory claims, there will be no remedial measure where the wrongful imprisonment is caused by the injured party misleading the investigation or court adjudication with the deliberate intention of being incriminated.

An authority handling claims for criminal remedies shall issue its decision as to whether the claim is or is not grounded, within three months of receiving the claim for remedy, and deliver the decision to the Supreme Prosecutors Office and the claimant. The responsible prosecutor of the Supreme Prosecutors Office will carefully review such cases by reviewing all the case files. If the prosecutor finds that a decision is contrary to Articles 1 to 3 of the “Law of Compensation for Wrongful Detentions and Executions”, or if compensation has been made when there are legal grounds for not making compensation, the prosecutor will apply to the Criminal Compensation Court of the Judicial Yuan for a review of the decision within the unchanging period of 20 days after service of the decision, so as to be consistent with the law. Careful assessment of criminal compensation cases by this Office has been beneficial to saving of public funds. (Please see the attached table for relevant statistics)

**Criminal Compensation (Wrongful Imprisonment) Cases Handled by the SPO
in Past Ten Years**

Unit: cases; \$ 1,000

Year	No. Cases Handled	Result of Application for Review					
		Cases	Original Decision Upheld		Original Decision Overturned		
			No. Cases Compensated	Compensation Amount	Amounts Not Compensated	No. Cases Not Compensated	Other
2007	478	8	2	3,752	2,751	6	0
2008	1537	18	2	605	19,206	16	0
2009	2022	21	3	1,918	6,072	17	1
2010	700	11	2	147	5,051	9	0
2011	447	9	4	1581	1,197	5	0
2012	481	22	8	2473	7,648	14	0
2013	397	16	6	1688	3,952	10	0
2014	271	5	1	90	1,531	3	1
2015	254	2	2	1402	0	0	0
2016	218	0	0	0	0	0	0

Remarks: As of September 1, 2011, “wrongful imprisonment” cases have been re-named “criminal compensation” cases