

行政機關處理國家賠償事件實務

— 兼比較行政院修正草案（上）

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目 次

壹、前言	一、行政主體
一、國家賠償法制定與修正沿革	二、行政機關
二、國家賠償案件處理及受償情形	三、公務員應該遵守之法規範種類
三、近十年（2004～2014）中央行政機關處理國賠事件情形	四、公務員如何從條文中判斷“義務”和“責任”呢？
四、國家向過咎之公務員求償之情形	五、人民權利之種類-可能侵犯了人民的甚麼權利？
貳、公務員必須重視國家賠償法	六、行政行為
參、進入國家賠償法基本認知	七、權限和管轄（含委任委託與委辦、行政協助）
一、為什麼要有國家賠償制度	八、法令解釋、判斷餘地和行政裁量
二、國家賠償責任之立論基礎	九、故意、過失和意圖
三、我國現行國賠法規定國家賠償之類型	十、合法、違法、非法、不法
四、國家對人民可能有哪些行政上的損害，有哪些救濟方式？	十一、一事不二罰
五、行政法和專業法規知識，是避免國賠案件發生之前提	十二、期間計算
肆、與國賠事件相關之行政法及其他必備法治觀念	十三、送達
	十四、其他與國賠相關之重要法律概念

關鍵詞：國家賠償、行政法、公務員、公權力、公共設施、求償

Keywords：State Compensation, Administration Law, Public Officers, Capacity of Public Rights, Public Facilities, Reimbursement

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摘 要

面臨政府高倡提升服務和效能之時代，無論文職或武職公務員，都將遭遇更多之公共行政事務，從而創造許多行政服務之機會，但伴隨而來者，公務員亦在處理行政事務時增添了許多犯錯之可能性，因而可能侵害人民之權利，引發國家賠償事件。我國國家賠償法及其施行細則，針對公務員過咎和公共設施瑕疵，分別訂有國家賠償之要件和處理原則，現行國賠法之條文並不繁雜，公務員並非對國賠法不瞭解，但為何仍屢見國賠案件發生，原因除專業法令不夠嫻熟外，另則在國賠法必須與行政法、刑法、民法等相關之觀念併同學習，始能奏其全功，而訓練機構似未注意此現象，故亦無實用之教材。作者鑑此，為針砭此缺失，乃完成此文，供公務員實用和訓練研習，並可為一般行政機關處理國賠案件時參考。

國賠法新修草案，業經行政院送請立法院，本文除深入淺出闡述現行國賠法內涵，並將新修草案法條併比研析，文末並作建議。

The Executive Institutions Handling State Compensation Cases - In Comparing with the Executive Yuan's Amendments (1)

Hsiang Jui Kuo

Abstract

With the government enhancing service and efficiency of the era, both civil and military officers will face more public administration, which also create many opportunities for administrative services. Civil servants are forced to deal with these matters, however, adding more possibilities to making mistakes, which may also infringe the rights of the people and lead to state compensation events. According to State Compensation Law and its enforcement rules for civil servants' negligence and flaws of public facilities, the statutes have specified each composition and processing elements of the principles, and these provisions are not difficult to be understood, but then why state compensation cases still happen so often? The author believes this is because some civil servants are not familiar with professional regulations, and the other reason is that there are no arrangements meanwhile in the same course for civil servants to learn multi-legal actions, such as administrative law, criminal law, civil law and other concepts which are related to State Compensation Law. The training institutions are not aware of this phenomenon, so there are no practical teaching materials. Seeing this phenomenon with my own experience in legal profession and practicing State Compensation events, I thus finished this article. It surely can provide civil servants with practical lessons, and administrative institutions can use it for reference while dealing with cases involving state compensation law.

The new draft of amendments to the State Compensation Law has been proposed by the Executive Yuan to the Legislative Yuan. In this article, simple words and terms are used to explain and to compare with the contents of the current statutes of the State Compensation Law as well as the statutes of the new draft of amendments, and moreover, some suggestions are given to the last paragraph of this article.