主管機關「怠於執行職務」之國家保護義務

—兼評最高法院 111 年度台上字第 1733 號民事判決

謝　榮　堂*

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關鍵詞：國家賠償、怠於執行職務、行政委託、行政助手、即時強制

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摘　　要

國家賠償法第 2 條第 2 項後段所稱之公務員「怠於執行職務」，其涉及公務員消極地怠於執行職務，致人民權益受損時，應負擔國家賠償責任。惟國家或行政機關何時構成「怠於執行職務」，不僅國家賠償法未定有明文，同時學說與實務見解亦頗不一致。因此，本文旨在說明臺灣宜蘭地方法院 109 年度國

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字第 4 號民事判決、臺灣高等法院 110 年度上國字第 11 號民事判決與最高法院 111 年度台上字第 1733 號民事判決，分析同一事實在各審法院認定行政機關「怠於執行職務」之判斷標準，而最高法院所採取之見解與前兩審級判決大相逕庭，深具研究價值，亦屬於國家保護義務範圍之擴大，故除分析上述三者判決相異者外，亦提出作者對應學說與實務見解之看法。

A Study of the Elements of "Breach of Duty" in the Latter Part of Article 2, Paragraph 2 of the State Compensation Law-Review of the Yilan District Court, Taiwan, Judgment Kuotzu No. 4, 2020, the Taiwan High Court, Judgment Shangkuotzu No. 11, 2021, and the Supreme Court, Judgment Taishangtzu No. 1733, 2022

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Abstract

The civil servants' "Breach of Duty" referred to in the latter part of Article 2, Paragraph 2 of the State Compensation Law is related to the liability for national compensation when the civil servants' negative negligence in performing their duties causes damage to the people's rights and interests. However, when the state or administrative agency constitutes "Breach of Duty", not only is there no express provision in the State Compensation Law, but also the doctrine and practical opinions are quite inconsistent. Therefore, the purpose of this article is to analyze the same fact in the judgment standard of each trial court to determine the executive authority's "Breach of Duty" by the Yilan District Court, Taiwan, Judgment Kuotzu No. 4, 2020, the Taiwan High Court, Judgment Shangkuotzu No. 11, 2021, and the Supreme Court, Judgment Taishangtzu No. 1733, 2022. In this regard, in addition to analyzing the differences between the above three decisions, we also present this article's viewpoints for the consideration of doctrinal and practical opinions.