

J. Y. Interpretation No.469 (November 20, 1998) *

ISSUE: The Precedent of the Supreme Court states, in reference to a public servant's negligence in discharging his/her duty as provided in Article 2, Paragraph 2, of the State Compensation Act, that the situation upon which a claim for damages may arise is limited to the case where the public servant is obligated to discharge certain duties to the victim but fails to do so. Is the limitation imposed by the said Precedent excessive and beyond the meaning and intent of the State Compensation Act, and does it thus contravene Article 15 of the Constitution governing protection of the people's property right?

RELEVANT LAWS:

Article 24 of the Constitution (憲法第二十四條); Article 2, Paragraphs 2 and 3 of the State Compensation Act (國家賠償法第二條第二項、第三項).

KEYWORDS:

state compensation (國家賠償).**

HOLDING: The stipulation of law is not confined to the powers granted to the national authorities in the execution of public affairs, but the purpose of which

解釋文：法律規定之內容非僅屬授予國家機關推行公共事務之權限，而其目的係為保護人民生命、身體及財產等法益，且法律對主管機關應執行職

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is to protect the life, body health, property and other interests of the citizen as well. In addition, specific provisions are stipulated with respect to matters which are executed by the responsible authorities in the exercise of their public authorities. Where, pursuant to the said provision, the public servant of a responsible authority cannot exercise any discretionary power for inaction with respect to any obligations to identifiable persons, and the failure to discharge his/her duties by reason of deliberateness or negligence has resulted in harm to the liberty or rights of the identifiable persons, the victim thereunder may claim compensatory damages in accordance with Article 2, the latter part of Paragraph 2, of the State Compensation Act. Precedent T.S.T.No. 704 (Sup Ct., 1983) states that, “pursuant to Article 2, the second sentence of Paragraph 2, of the State Compensation Act, the so-called ‘negligence in the discharge of duties by a public servant’ refers to the situation where the public servant is obligated to discharge certain duties to the victim but fails to do so. In other words, the victim has the right of claim under the public law

務行使公權力之事項規定明確，該管機關公務員依此規定對可得特定之人所負作為義務已無不作為之裁量餘地，猶因故意或過失怠於執行職務，致特定人之自由或權利遭受損害，被害人得依國家賠償法第二條第二項後段，向國家請求損害賠償。最高法院七十二年台上字第七〇四號判例謂：「國家賠償法第二條第二項後段所謂公務員怠於執行職務，係指公務員對於被害人有應執行之職務而怠於執行者而言。換言之，被害人對於公務員為特定職務行為，有公法上請求權存在，經請求其執行而怠於執行，致自由或權利遭受損害者，始得依上開規定，請求國家負損害賠償責任。若公務員對於職務之執行，雖可使一般人民享有反射利益，人民對於公務員仍不得請求為該職務之行為者，縱公務員怠於執行該職務，人民尚無公法上請求權可資行使，以資保護其利益，自不得依上開規定請求國家賠償損害。」對於符合一定要件，而有公法上請求權，經由法定程序請求公務員作為而怠於執行職務者，自有其適用，惟與首開意旨不符部分，則係對人民請求國家賠償增列法律所無之限制，有違憲法保障人民權利之意旨，應不予援用。

with respect to certain duties of the public servant. After the request for execution, if, as a result of the failure to discharge the duties, harm is caused to the liberty or rights of the victim, the victim can thus claim that the state should be responsible for compensatory damages based on the aforesaid provision. Where the people can enjoy the interest of reflection as a result of the discharge of duties by the public servant, but where the people cannot request the discharge thereof, in this instance, even if the public servant fails to discharge his/her duties, the people cannot exercise any right of request under public law to seek to safeguard their interests, and as such they cannot claim state compensation based on the above provision.” Such Precedent shall be applicable in the situation where the prerequisites are satisfied, and if the identifiable persons have the right of claim under public law and have made a request for action by the public servant in accordance with legal procedures where the latter fails to discharge his/her duties. However, the portion of said Precedent which contravenes the aforesaid intent of the interpretation

would be imposing limits on the rights of the public to request state compensation where the law does not so impose, and it would be contradictory to the constitutional purpose of protecting the rights of the public and therefore such portion should no longer be applicable.

REASONING: Article 24 of the Constitution prescribes that where a public servant is in violation of the liberty or rights of the people, the people can request state compensation based on the law. This elucidates in principle the obligations for state compensation. The legislative authority enacts appropriate laws with respect to state responsibilities based on this principle. In addition, on the premise of legal stipulations, the administrative authority may, because of an expansion in its scope of duties and in response to the hazards created to the environment or sanitation as a result of intense industrialization and overdevelopment as well as hazards triggered by the technical facilities, adopt measures to prevent or minimize dangers so as to enhance the protection of public safety. If the constituent

解釋理由書：憲法第二十四條規定公務員違法侵害人民之自由或權利，人民得依法律向國家請求賠償，係對國家損害賠償義務所作原則性之揭示，立法機關應本此意旨對國家責任制定適當之法律，且在法律規範之前提下，行政機關並得因職能擴大，為因應伴隨高度工業化或過度開發而產生對環境或衛生等之危害，以及科技設施所引發之危險，而採取危險防止或危險管理之措施，以增進國民生活之安全保障。倘國家責任成立之要件，從法律規定中已堪認定，則適用法律時不應限縮解釋，以免人民依法應享有之權利無從實現。國家賠償法第二條第二項規定：「公務員於執行職務行使公權力時，因故意或過失不法侵害人民自由或權利者，國家應負凡公務員職務上之行為符損害賠償責任。公務員怠於執行職務，致人民自由或權利遭受損害者亦同」，

elements for national responsibilities are found to be adequately present as prescribed in the legal stipulations, then a strict interpretation cannot be adopted when applying the applicable law so as not to hinder the exercise of rights to which the people are legally entitled. Article 2, Paragraph 2, of the State Compensation Act provides that “where the exercise of public authorities in the performance of duties by a public servant results in illegal violation of the liberty or rights of the people by reason of deliberateness or negligence, the state shall be responsible for compensation. The same shall apply where harm is caused to the liberty or rights of the people by reason of failure of a public servant to discharge his/her duties.” As long as the official conduct of a public servant satisfies the following: exercise of public authorities (either intentional or negligent), illegal conduct, sufficient causal link between the harm to the liberty or rights of the identifiable persons and the illegal conduct, and the harm is not caused by natural disasters or force majeure events, the victim may base his/her case on either active action or

合：行使公權力、有故意或過失、行為違法、特定人自由或權利所受損害與違法行為間具相當因果關係之要件，而非純屬天然災害或其他不可抗力所致者，被害人即得分就積極作為或消極不作為，依上開法條前段或後段請求國家賠償，該條規定之意旨甚為明顯，並不以被害人對於公務員怠於執行之職務行為有公法上請求權存在，經請求其執行而怠於執行為必要。惟法律之種類繁多，其規範之目的亦各有不同，有僅屬賦予主管機關推行公共事務之權限者，亦有賦予主管機關作為或不作為之裁量權限者，對於上述各類法律之規定，該管機關之公務員縱有怠於執行職務之行為，或尚難認為人民之權利因而遭受直接之損害，或性質上仍屬適當與否之行政裁量問題，既未達違法之程度，亦無在個別事件中因各種情況之考量，例如：斟酌人民權益所受侵害之危險迫切程度、公務員對於損害之發生是否可得預見、侵害之防止是否須仰賴公權力之行使始可達成目的而非個人之努力可能避免等因素，已致無可裁量之情事者，自無成立國家賠償之餘地。倘法律規範之目的係為保障人民生命、身體及財產等法此規定對可得特定之人負有作為義務已無不作為之裁量空間，猶因故意或過失

passive inaction and, in accordance with the former or the latter clause of the aforesaid article, request state compensation. The essence of that stipulation is evident and is not dependent on the victim's having a right of claim under the public law with respect to the public servant's failure to discharge duties and the subsequent actual failure thereof after the claim. However, because of the different laws and the different purposes of prescription, there are those which stipulate the limits on the powers exercisable by the responsible authority in the execution of public affairs, and those which grant discretion to the responsible authority for action or inaction. As regards the above legal provisions, even if a public servant of the said responsible government authority fails to discharge his/her duties, if it is difficult to determine whether the rights of the citizens have been directly affected as a result thereof, or if by nature it is a matter of whether it is an issue appropriate for administrative determination, there is no ground to institute a claim for state compensation if it is to no extent in violation of any laws. The various factors for

益，且對主管機關應執行職務行使公權力之事項規定明確，該管機關公務員怠於執行職務或拒不為職務上應為之行為，致特定人之自由或權利遭受損害，被害人自得向國家請求損害賠償。至前開法律規範保障目的之探求，應就具體個案而定，如法律明確規定特定人得享有權利，或對符合法定條件而可得特定之人，授予向行政主體或國家機關為一定作為之請求權者，其規範目的在於保障個人權益，固無疑義；如法律雖係為公共利益或一般國民福祉而設之規定，但就法律之整體結構、適用對象、所欲產生之規範效果及社會發展因素等綜合判斷，可得知亦有保障特定人之意旨時，則個人主張其權益因公務員怠於執行職務而受損害者，即應許其依法請求救濟。

consideration (for example, the imminence of harm to the interests of the citizens, the foreseeability of the occurrence of the harm by the public servant, whether the prevention of harm is reliant on the exercise of public authorities in order to achieve the purpose and harm can not be avoided by reason of personal efforts), are not matters which are beyond determination. If the purposes of the laws are to protect the life, health, property and other interests of the citizen, and there are clear provisions in regard to the exercise of public authorities by the relevant authorities, by virtue of this provision, the public servant of the responsible authority does not have the discretion for inaction with regard to the identifiable persons to whom he/she has a responsibility to act. Therefore, where harm is caused to the liberty or rights of an identifiable person as a result of an intentional or negligent failure to discharge official duties or a refusal to discharge duties where so obligated, then the victim can claim compensatory damages from the state. The determination of the purpose of protection under the aforesaid legal provision depends on each indi-

vidual case. If the law clearly stipulates that the identified person shall enjoy certain rights or if it grants the identifiable person who satisfies the legal requirements the right of request of certain action vis-a-vis the administrative body or government authorities, undoubtedly the purpose of the regulation whereof lies in protecting the interests of the individual. However, although the laws are enacted for the public welfare or the benefits to the general public, and judging from the overall structure of the law, the applicable party, the intended regulatory effects and factors of social developments, the laws also intend to protect the identified persons, then the person who claims that his/her interests have been harmed as a result of the public servant's failure to discharge his/her duties shall have a recourse in law.

Precedent T.S.T. No. 704 (Sup. Ct., 1983) states that, "pursuant to Article 2, the second sentence of Paragraph 2, of the State Compensation Act, the so-called 'negligence in the discharge of duties by a public servant' refers to the situation

最高法院七十二年台上字第七〇四號判例：「國家賠償法第二條第二項後段所謂公務員怠於執行職務，係指公務員對於被害人有應執行之職務而怠於執行者而言。換言之，被害人對於公務員為特定職務行為，有公法上請求權存

where the public servant is obligated to discharge certain duties to the victim but fails to do so. In other words, the victim has the right of claim under the public law with respect to certain duties of the public servant. After the request for execution, if, as a result of the failure to discharge the duties, harm is caused to the liberty or rights of the victim, the victim can claim the nation to be responsible for compensatory damages based on the aforesaid provision. Where the people can thus enjoy the interest of reflection [point is unclear] as a result of the discharge of duties by public servant, but where the people cannot make a request for the discharge thereof, in this instance, even if the public servant fails to discharge his/her duties, the people cannot exercise any right of request under public law to seek to safeguard their interests, and as such they cannot claim state compensation based on the above provision.” Such Precedent shall be applicable in the situation where the prerequisites are satisfied, and if the identifiable persons have the right of claim under public law and have made a request for action by the public servant in

在，經請求其執行而怠於執行，致自由或權利遭受損害者，始得依上開規定，請求國家負損害賠償責任。若公務員對於職務之執行，雖可使一般人民享有反射利益，人民對於公務員仍不得請求為該職務之行為者，縱公務員怠於執行該職務，人民尚無公法上請求權可資行使，以資保護其利益，自不得依上開規定請求國家賠償損害。」對於符合一定要件，而有公法上請求權，經由法定程序請求公務員作為而怠於執行職務者，自有其適用，惟與前開意旨不符部分，則係對人民請求國家賠償增列法律所無之限制，有違憲法保障人民權利之意旨，應不予援用。

accordance with legal procedures where the latter fails to discharge his/her duties. However, the portion of such Precedent which contravenes the aforesaid intent of the interpretation would be imposing limits on the rights of the public to request state compensation where the law does not so impose, and it would be contradictory to the constitutional purpose of protecting the rights of the public; and, therefore, such portion should no longer be applicable.

Where the authority is responsible for compensation by virtue of the above purpose, and the public servant was intentionally wrong or grossly negligent, the responsible authority can exercise the right of indemnification against such public servant pursuant to Article 2, Paragraph 3, of the State Compensation Act. Undoubtedly, where there is a person responsible for the compensatory damages, then the authority obligated for compensation is entitled to a right of compensation against the said person.

Justice Sen-Yen Sun filed dissenting opinion.

依上述意旨應負賠償義務之機關，對故意或重大過失之公務員，自得依國家賠償法第二條第三項行使求償權，如就損害賠償有應負責任之人時，賠償義務機關對之亦有求償權，乃屬當然。

本號解釋孫大法官森焱提出不同意見書。