

J. Y. Interpretation No.228 ( June 17, 1988 ) \*

**ISSUE:** Is Article 13 of the State Compensation Act constitutional in providing specifically for the liability of the State where a “public functionary with the duty of trial or prosecution” infringes upon the freedom or right of a person while taking part in the trial or prosecution of a case, in distinction from the situation involving other public functionaries?

**RELEVANT LAWS:**

Articles 7, 16, 23 and 24 of the Constitution, ( 憲法第七條、第十六條、第二十三條、第二十四條 ), Article 2, Paragraph 2, first sentence, and Article 13 of the State Compensation Act ( 國家賠償法第二條第二項前段、第十三條 ).

**KEYWORDS:**

state compensation ( 國家賠償 ), legislative discretion ( 立法裁量 ), duty of trial or prosecution ( 審判或追訴職務 ), tortious acts ( 侵權行為 ), compensation for wrongful imprisonment ( 冤獄賠償 ).\*\*

**HOLDING:** The provision of Article 13 of the State Compensation Act that “this Act is applicable where a public functionary with the duty of trial or prosecution who, in the performance of his

**解釋文：**國家賠償法第十三條規定：「有審判或追訴職務之公務員，因執行職務侵害人民自由或權利，就其參與審判或追訴案件犯職務上之罪，經判決有罪確定者，適用本法規定。」係

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\* Translated by Raymond T. Chu.

\*\* Contents within frame, not part of the original text, are added for reference purpose only.

duty, infringes upon the freedom or right of a person, and is convicted and sentenced by an irrevocable judgment for his crime committed in connection with his duty while taking part in the trial or prosecution of a case” is a special law directed at the characteristics of such duty without having gone beyond the scope of legislative discretion, and is therefore not in contradiction to the Constitution.

**REASONING:** The legislation of the State Compensation Act is based on Article 24 of the Constitution, which provides: “Any public functionary who, in violation of the law, infringes upon the freedom or right of any person shall, in addition to being subject to disciplinary measures in accordance with the law, be held liable under criminal and civil laws. The injured person may, in accordance with the law, claim compensation from the State for damages sustained.” When making this law, the legislature is free to use its discretion to set forth reasonable requirements for people’s applications for state compensation. With respect to the liability for damages arising out of or in

針對審判與追訴職務之特性所為之特別規定，尚未逾越立法裁量範圍，與憲法並無牴觸。

**解釋理由書：**憲法第二十四條規定：「凡公務員違法侵害人民之自由或權利者，除依法律受懲戒外，應負刑事及民事責任。被害人民就其所受損害，並得依法律向國家請求賠償。」據此而有國家賠償之立法，此項立法，自得就人民請求國家賠償之要件為合理之立法裁量。國家賠償法第二條第二項前段：「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，國家應負損害賠償責任。」係國家就公務員之侵權行為應負損害賠償責任之一般規定。而同法第十三條：「有審判或追訴職務之公務員，因執行職務侵害人民自由或權利，就其參與審判或追訴案件犯職務上之罪，經判決有罪確定者，適用本法規定。」則係國家

connection with tortious acts of public functionaries in general, the State Compensation Act provides in Article 2, Paragraph 2, the first sentence: “Where a public functionary who, in performing his duty to enforce the public power, has wrongfully infringed upon the freedom or right of any person as a result of his intentional or negligent act, the State shall be liable for damages sustained by the person.” Specifically, the liability for damages arising out of or in connection with tortious acts committed by public functionaries with the duty of trial or prosecution is set forth in Article 13 of the same Act, which provides: “This Act is applicable where a public functionary with the duty of trial or prosecution who, in the performance of his duty, infringes upon the freedom or right of a person, and is convicted and sentenced by an irrevocable judgment for his crime committed in connection with his duty while taking part in the trial or prosecution of a case.”

Under the current judiciary system, when a public functionary in charge of a trial or prosecution performs his duty, he

就有審判或追訴職務之公務員之侵權行為應負損害賠償責任之特別規定。

依現行訴訟制度，有審判或追訴職務之公務員，其執行職務，基於審理或偵查所得之證據及其他資料，為事實

is vested with the power to render judgment on the questions of facts and law by moral conviction and the opinion in which he firmly believes based on the evidence and other information obtained during a trial or investigation. It is thus inevitable that public functionaries with the duty of trial or prosecution at different levels will disagree with each other's moral conviction or opinions. Such variance, if any, may be put right by the mechanism already existing within the framework of the judiciary system. In criminal cases, damages are compensable under the system of compensation for wrongful imprisonment. To ensure judicial independence and that no external interference will be applied in prosecution so that fairness and justice may be upheld, any such inevitable variance within reasonable degree must be tolerated and should not be taken by any party as a ground to support his argument that his freedom or right has been wrongfully infringed upon, based on which to claim state compensation. Only in this way will all public functionaries with the duty of trial or prosecution be able to take an impartial position in their efforts to

及法律上之判斷，係依其心證及自己確信之見解為之。各級有審判或追訴職務之公務員，就同一案件所形成之心證或見解，難免彼此有所不同，倘有心證或見解上之差誤，訴訟制度本身已有糾正機能。關於刑事案件，復有冤獄賠償制度，予以賠償。為維護審判獨立及追訴不受外界干擾，以實現公平正義，上述難於避免之差誤，在合理範圍內，應予容忍。不宜任由當事人逕行指為不法侵害人民之自由或權利，而請求國家賠償。唯其如此，執行審判或追訴職務之公務員方能無須瞻顧，保持超然立場，使審判及追訴之結果，臻於客觀公正，人民之合法權益，亦賴以確保。至若執行此等職務之公務員，因參與審判或追訴案件犯職務上之罪，經判決有罪確定時，則其不法侵害人民自由或權利之事實，已甚明確，非僅心證或見解上之差誤而已，於此情形，國家自當予以賠償，方符首開憲法規定之本旨。

make objective and equitable decisions in adjudication and prosecution without having to be overly cautious, and will the lawful rights of the people be thus protected. In the case where such a public functionary is convicted and sentenced by an irrevocable judgment because of the crime he has committed in connection with his duty while taking part in a trial or prosecution, then the fact that he has wrongfully encroached upon the freedom or right of a person has become rather obvious and is not just a matter of the difference in moral conviction or opinions. When this happens, the State must certainly be held liable for damages in order to conform to the spirit contemplated in the constitutional provision quoted above.

It must be noted that the principle of equality embodied in the Constitution does not forbid reasonable variation in statutory provisions regulating the State's liability for compensation based on dissimilarity in the functions of different organs of the State. In cognizance of this concept, we hold that Article 13 of the State Compensation Act, as a special law

按憲法所定平等之原則，並不禁止法律因國家機關功能之差別，而對國家賠償責任為合理之不同規定。國家賠償法針對審判及追訴職務之上述特性，而為前開第十三條之特別規定，為維護審判獨立及追訴不受外界干擾所必要，尚未逾越立法裁量範圍，與憲法第七條、第十六條、第二十三條及第二十四條並無牴觸。

directed at the characteristics of the duty of trial and prosecution, is necessary in order to ensure judicial independence, that no external interference will be applied in prosecution, and that said Article has not gone beyond the scope of the legislative discretion and is therefore not in contradiction to Articles 7, 16, 23, and 24 of the Constitution.

Justice Tieh-Cheng Liu filed dissenting opinion.

本號解釋劉大法官鐵錚提出不同意見書。