

**MINISTRY OF EDUCATION
AND TRAINING**

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**THE STATE COMPENSATION LIABILITY IN
VIETNAMESE LAWS**

Speciality: Civil law and Civil procedure law
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SUMMARY OF DISSERTATION

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INTRODUCTION

1. Rationale

The laws of State compensation liability have a long progress of development and improvement since the establishment of Vietnam Government.

Based on the duty of “improving the legal institution of compensation liability” to achieve the goals of judicial reform strategy as well as the duty of “promptly approving Act on State compensation liability” to achieve the goals of legal system improvement strategy with direction to 2020, on 18 of June 2009, the Law on State compensation liability (SCL) 2009 was approved by by the XIIth National Assembly of the Socialist Republic of Vietnam at its 5th Session.

In the practical implementation, the Law on SCL 2009 has truly become an important legal instrument to be used by victims to protect their rights, legal interests. However, overtime many provisions of Law on SCL 2009 have become barriers that put a negative impact on the effectiveness of the implementation of this Law. On 20 of June 2017, the Law on SCL 2017 was approved by by the XIVth National Assembly of the Socialist Republic of Vietnam at its 3th Session and officially takes effect on July 1, 2018.

In comparison with Law on SCL 2009, the Law on SCL 2017 has many new provisions and will play a very important part in the protection of rights and legal interests of victims. Inspite of being a new Law, the Law on SCL 2017 immediately shows that there are still a lot of its provisions need to be promptly amended and supplemented as well.

Based on the previous-mentioned facts, there is a big need of continuing to research and make clear some theoretical and practical issues relevant to Law on SCL 2017 to keep proposing the improvement of laws of State compensation liability.

Until now, there are many research works on State compensation liability. Some of them have been successfully in researching deeply in some aspect of State compensation liability, however all of those were not comprehensive. For the rest, most of the researchs only mentioned State compensation liability unilaterally or just mentioned State compensation liability in one-sided aspect. There is no research works proposed the direction to improve SCL legal institution comprehensively.

To participate in solving that fact, especially in the context of conducting the way and policy of the Vietnamese Communist Party and the Vietnamese Government of improving legal mechanism to ensure the rights and freedom of individuals, organization, to decide the title as “*The State compensation liability in Vietnamese laws*” is truly a right choice.

2. Research purposes and tasks

The purpose of the thesis is to make clear some theoretical and practical issues of legal institution of State compensation liability in Vietnamese laws. Based on the research results, propose the improvement of Law on SCL.

The thesis’s tasks are defined as follow: (i) nature and characteristic of SCL; (ii) researched and summarized the experiences in provisions and in the practical implementation of foreign countries in terms of the State compensation liability to propose lessons that Vietnam may learn from; (iii) analysed the characteristic of Vietnamese laws on the State compensation liability in different stages and focused mostly on the time from the day the State compensation liability Law 2009 has been approved until now. Based on the results of previous activities, pointed out the shortcomings of current laws of the State compensation liability and (iv) put forward point of views and directions to improve laws of the State compensation liability and suggested some detail proposal on amending the Law on the State compensation liability.

3. The scope of the research

- *Content limitation*, the doctoral thesis research the nature,

characteristics, the role of the legal institution of SCL and laws of some nations, territories of the world on SCL.

- *Practical issues limitation*, the doctoral thesis research the basic issues and provisions of Vietnamese laws on SCL in different time and focus mostly on the period since the approve of Law on SCL 2009 until now.

- *Time limitation*, the doctoral thesis research the provisions of Vietnamese laws on SCL and focus mostly on the period of Law on SCL 2009 and the period of Law on SCL 2017.

4. Activities of the research

Firstly, research some basic theoretical issues of the State compensation liability.

Secondly, research laws on SCL of some nations as well as territories on the world to gain lessons for Vietnam.

Thirdly, evaluate, analyse basic issues of legal institution of SCL, eg: grounds for claiming compensation, scope of compensation liability, compensation-settlement procedures, compensable damage, supervisory of conducting compensation... Besides, assess practical implementation of Vietnamese laws on to define the shortcomings of current laws.

Fourthly, propose points of view on improving laws on SCL as well as the detailed proposal of provisions that need to be amended.

5. Research Methodology

The thesis is carried out based on methodology of dialectical materialism and historical materialism of Marxism.

Base on the rationale above, the author apply methods as: (i) the analyzing method was applied to make clear the basic issues of SCL in current laws as well as to assess the practical implementation of current laws on SCL; (ii) the synthetizing method was applied to assess comprehensively assess the practical implementation of current laws on SCL, particularly in the making claim for compensation or the conducting of compensation settlement,

summarize necessary information of foreign laws on SCL; (iii) comparing method was used to define the similarities and differences between each period of time in Vietnam relevant to SCL provisions.

6. Contributions of the thesis

Firstly, proposed a new concept of the State compensation liability and pointed out some of its specific characteristics in comparison with the tort liability in common.

Secondly, researched and summarized the experiences in provisions and in the practical implementation of foreign countries in terms of the State compensation liability to propose lessons that Vietnam may learn from.

Thirdly, analysed the characteristics of Vietnamese laws on the State compensation liability in different stages and focused mostly on the time from the day the State compensation liability Law 2009 has been approved until now. Based on the results of previous activities, pointed out the shortcomings of current laws of the State compensation liability.

Fourthly, put forward point of views and directions to improve laws of the State compensation liability and suggested some detail proposal on amending the Law on the State compensation liability.

7. Scientific sense and practical applications

The thesis has enriched the number of research works on theory and practice on SCL in Vietnam, contributes some point of views on theoretical issues on SCL, summarizes some international viewpoints on SCL. Especially, the thesis has put forward many proposals that could be applied to improve current laws and strengthen the state compensation mechanism to have better achievement of protection the rights and legal interests of the victims.

In addition to the practical meaning, the thesis will be a high value of reference source to the state agencies responsible for compensation works, state agencies which are compensation-eligible agencies and state agencies responsible for law-making works. To the scientific meaning, the thesis will also

an useful material for researching and teaching works in law-training center in Vietnam.

PART I: OVERVIEW OF THE RESEARCH

The topic “The State compensation liability in Vietnamese Laws” is a novel research topic. Until now, there has been no in-depth research ever to study this topic. In some research works, authors also researched some aspects of SCL and the current laws of SCL but deficient in comprehensiveness.

There are many monographs, theses and research papers that have research SCL in different levels. Many of those have defined SCL as a type of tort liability. However, there is no study point out clearly particular characteristics between SCL and general tort liability. In terms of the concept of SCL, some researchs have shown their own concepts but just focus on some aspects of this liability. All the researchs focus mostly on the civil aspects of SCL but the relation between SCL and the legal mechanism of defining the legality of illegality of public duty that caused damages.

To the experience of foreign laws, there has no studies research systematically and comprehensively laws and practical implementation of foreign nations and territories on SCL. Most of them collected information on laws and practical implementation of foreign nations and territories on SCL through expert but from the original normative legal documents.

For the proposals of improving laws on SCL, since the coming into effect of Law on State compensation liability 2017, there is no research that mentions systematically on provisions of the Law mentioned above, thus there is no research that put forward in details proposals for improving laws on SCL.

Therefore, to continue to study the area of SCL with topic “The State compensation liability in Vietnamese Laws” has a significant meaning and will contribute effectively to the improvement current laws on State compensation liability in Vietnam.

PART II: CONTENT OF THE THESIS

CHAPTER 1:

SOME THEORETICAL ISSUES OF THE STATE COMPENSATION LIABILITY

1.1. Concept, nature of State compensation liability

1.1.1. Concept of State compensation liability

The State compensation liability (SCL) was research in different angles and aspects.

In Vietnam, currently there are many concepts of the SCL and in each angle or aspect, the author has his/her own argument.

Viewpoint of PhD Student: there are some aspects need to be considered: (i) the SCL in the relation with the State liability in general; (ii) source of violation and (iii) the subject of the state liability.

Base on the analysist metioned above, the concept of the SCL may be defined: “The State compensation liability is a specific type of the State liability in which, the State shall be subject to the compensation for an individual or organization’s material damages and mental sufferings that caused by official duty performer in the process of conducting official duty”.

1.1.2. Nature of the State compensation liability

The most popular legal point of view in Vietnam stated that the SCL is a type of tort liability in civil law in statutory aspect as well as in theory aspect. Besides, there is another opinion states that the SCL is a type of administrative relation or the opinion argue for the nature of civil but conducted by administrative procedure.

The thesis stated that it is crucial to define the nature of SCL, especially for the determination legal mechanism of settling compensation claims. There is no necessity if a research can not explain the relation between the nature of SCL and the legal mechanism to conduct compensation. Therefore, to define nature the SCL, it its needed to be considered not only in the aspect of ensuring civil

rights but also in the aspect of legal ensuring measure.

The thesis asserts that, if the SCL is considered not only in the aspect of ensuring civil rights but also in the aspect of legal ensuring measure, we can define its nature like a legal type of non-contractual liability which is established to ensure the right of claiming for compensation to damages caused by the public-duty performer in the process of conducting public duty. The way of settling compensating claims is the legal mechanism that provided by law to solve the complaints of victims to decisions or actions of public-duty performer.

1.2. Characteristics of of State compensation liability

The research has stated that, a part from similar characteristic in comparison with non-contractual liability, the SCL has its own characteristic as:

Firstly, the SCL arises from the damage caused by the official-duty action. phát sinh từ thiệt hại gây ra bởi hành vi thi hành công vụ.

Secondly, the subject of the SCL is always the State.

Thirdly, the object of the State compensation liability is “double” object, according to that, the object is not only the interest of victims but also is the trust that the public have in the State.

Fourthly, the SCL could be limited.

Fifthly, the legal mechanism to conduct compensation always inherents in the legal mechanism of determinating the legality of illegality of official-duty action.

1.3. Meaning of the institution of State compensation liability

Firstly, the institution of State compensation liability is an instrument to restore rights and interests of victims.

Secondly, the institution of State compensation liability plays an important part in preventing the violations in the process of conducting official-duty actions.

1.4. Laws on the State compensation liability of some countries in the world

In this part, the author research the issues as: (i) source of laws on SCL; (ii) aspects and angles of considering the SCL; (iii) legal nature of the SCL; (iv) the complainant; (v) right of claim for compensation; (vi) compensation-settling agency; (vii) the scope of SCL; (viii) compensation settlement procedure; (ix) the reimbursement liability of public-duty performer; (x) the execution of decisions on compensation.

Base on the issues mentioned above, the thesis drawn some lessons and experience for Vietnam: (i) the existence of the diversity of compensation mechanism; (ii) the tight relation between the SCL and the Civil Code; (iii) the supervisory of conducting the SCL needed to be in order of power.

CHAPTER 2: LEGAL PROVISIONS ON THE STATE COMPENSATION LIABILITY IN VIETNAM

2.1. Cursory information on the development of laws on the State compensation in Vietnam

In this part, the author has affirmed that in Vietnam, the SCL was provided very early.

Since the establishment of the Vietnamese State, there were some characteristics recognized regularly as: (i) right of being compensated is always a constitutional right; (ii) laws on the SCL in Vietnam is always “one-way”, according to that, laws on the SCL in Vietnam focuses mostly in providing the liability of the State to the victims of official-duty performer’s violation and does not regulates the liability of individual or organization when they cause damages to the State; (iii) the state compensation relation is considered popularly a non-contractual liability relation; (iv) laws on the SCL has a wide-range scope of regulation that prescribe the relations arise from the three subjects: the State, the victims and the public-duty performer.

On that basis, the thesis has divided the development of legal institution of SCL into periods as follows:

Firstly, the time before the approve of Law on SCL 2009;

Secondly, the time when Law on SCL 2009 was issued;

Thirdly, the time when Law on SCL 2017 was issued.

2.1.1. Laws on State compensation liability in the time before the approve of Law on SCL 2009

In this time, the research has shown some main characteristic of laws on SCL, including:

Firstly, in general angle:

(1) Laws on SCL was not a systematic legal institution. In this time,

provisions on the SCL were provided by many normative legal documents in different levels (from Act level to regulation level). All of Act level documents just prescribed the fundamental rules for the SCL. In terms of the implementary issues, most of them were provided in regulation level documents.

(2) The subjects of compensation liability are state agencies but the State.

(3) There were many legal mechanism for the victims to claim for compensation as well as for state agencies to settle complaints.

Secondly, in aspect of detailed provisions:

(1) The scope of SCL was curtailed in regulation level documents in comparison with Act level documents. The previous mention situation was not the limitation of right of victims. It was because of the fundamental rules in Act level documents were unenforceable, therefore only some feasible areas were provided in the regulation level documents to particularize the rights of victims, especially in criminal area.

(2) There were many compensated-settling procedures but there was no regulations of the right to select procedure. Provisions on compensable damages, reimbursement liability of official-duty performers were provided differently in different documents.

2.1.2. Laws on State compensation liability the time when Law on SCL 2017 was issued

On 18 of June 2009, Law on State compensation liability was approved by the XIIth National Assembly of the Socialist Republic of Vietnam at its 5th Session and officially takes effect on January 1, 2010. This is the first time the SCL was provided comprehensively in an Act level document. In this time, there was also a big change in the law system. This led to the situation that there were many mechanism for claiming compensation and compensation settlement as well.

Firstly, in terms of grounds for claiming compensation, in this time, laws of SCL prescribed many different grounds for claiming compensation. This

situation enabled the victims to complaint compensation because they had many options. However, that also led to some disadvantages because in each way, the settlement would be different when the state agencies determinated the scope of compensation and compensable damage.

Secondly, in this time, laws on the SCL defined many different subject of compensation liability.

Thirdly, in this time, there was a big inconsistence in provisions of right to claim for compensation;

Fourthly, laws on the SCL defined many procedures of conducting compensation liability.

Fifthly, under laws on the SCL, there were two compensation fund and two payment procedures.

2.2. The State compensation liability under Law on State compensation liability 2017

The thesis has pointed out main characteristic of this time as:

Firstly, laws on the SCL determinated only one legal framework for the SCL in the Law of State compensation liability 2017;

Secondly, provisions related to rights of claiming for compensation were extended significantly in comparison with Law on SCL 2009.

Thirdly, provisions relevant to the relation between the State and the official-duty performer as well as the relation between state agencies were determinated more clearly and adequately.

Besides, the thesis analysed the contents of Law on SCL 2017 as: (i) the compensable entities; (ii) the complainants; (iii) principles of conducting state compensation; (iv) right of claiming for compensation; (v) the subject of compensation liability; (vi) grounds for determination of compensation; (vii) the scope of the SCL; (viii) the compensable damage; (ix) compensating settlement procedures; (x) compensation funds and payment procedures; (xi) state magament of compensation works.

In each content mentioned above, the author evaluated, analysed related provisions and compared with Law on SCL 2009. Especially, the thesis also specified the advantages, disadvantages of Law on SCL 2017.

CHAPTER 3:
**DIRECTIONS AND PROPOSALS FOR IMPROVING LAWS ON
STATE COMPENSATION IN VIETNAM**

3.1. Viewpoints of directions for improving laws on State compensation liability

The thesis has proposed some viewpoints of directions for improving laws on State compensation liability as follows:

Firstly, the liability of the State must be considered in the balance with the scope of power prescribed by laws.

Secondly, ensuring the constitutionality, lawfulness and uniformity of laws on SCL in the legal system.

Thirdly, the TNBTCNN phải được kiểm soát chặt chẽ.

3.2. Proposals on improving laws on State compensation liability

The thesis has put forward some main proposals as:

Firstly, proposal on principles of application of laws on SCL, especially the relation between Law on State compensation liability with the Civil Code.

Secondly, proposal on provisions of compensating-settlement mechanism as: (i) principles of conducting compensation; (ii) rights of claiming for compensation; (iii) prescription of claiming for compensation; (iv) compensating-settlement agencies; (v) compensating-settlement procedures.

Thirdly, proposals on compensable damage.

Fourthly, proposals on state management of compensation works.

CONCLUSION

As one of the most important legal institutional, laws the State compensation liability play a significant role in the process of building and improving The State of the Socialist Republic of Vietnam to be a socialist state ruled by law and of the People, by the People and for the People with the goal to protect the human rights in general and to protect the right to compensation in particular.

Laws on State compensation liability in Vietnam has a long and remarkable development especially the time when the Civil code 1995 was passed to the approve of Law on State compensation liability 2017. However, this legal institution still needs to be researched and amended as well. By the thesis, the author has drawn some conclusions as follows:

1. The State compensation liability is a specific type of non-contractual liability. The compensation shall be conducting by many different legal mechanisms which were established by laws to solve the conflicts between individuals, organizations and the State.

2. The conducts of State compensation liability must be supervised tightly to ensure the lawfulness, interests of both side, the State and the victims.

3. Currently, the State compensation liability is conducted under Law on State compensation liability 2017. However, it is said that in spite of being issued lately, Law on State compensation liability 2017 will itself quickly exposes disadvantages, shortcomings that need to be researched to improved reasonably.

Offers and proposal in Chapter 3 will provide lawmakers suggestions to improve this legal institution.