

LAW DATED FEBRUARY 8, 1992
ON FORCED PHYSICAL IMPRISONMENT

The Council of State of the State of Cambodia,

- Having seen the Constitution of the State of Cambodia;
- Having seen the law on the organization of the National Assembly and the Council of State of the People's Republic of Cambodia which was promulgated by Decree No. 04 Decr., dated February 10, 1982;

hereby decides :

To promulgate the Law on the Force Physical Imprisonment in Criminal Cases which was adopted by the National Assembly of the State of Cambodia on January 30, 1992 during its 22nd Session of its 1st Legislature.

Made in Phnom Penh, on January 8, 1992

For the Council of Stat, the Chairman,

Heng Samrin.

Article 1:

Forfeit Penalty is a fine, damage/repairation or compensation. The methods of claiming for Forfeit Penalty may be proceeded either by claiming for each of the items separately or by claiming for all the 3 items together at the same time according to what permitted by the law and/or either by ways of forced physical imprisonment.

This forfeit penalty shall be claimed for according to the power of the excerpt of the court's judgement when after it became final. The damage and compensation shall be claimed through a complaint of the complaining party on which the court is to decide. The fine, damage/repairation or compensation which shall be for the State's benefit shall be claimed through a complaint of the Ministry of Justice.

Article 2:

When claiming for a fine, damage and compensation at the same time from a convicted person who does not possess sufficient resources, one shall claim at first for a damage/ repairation or compensation before claiming for fine.

The method of claiming for a fine, damage or compensation shall be proceeded in the same manner as what of the claim for damages in the civil cases, except for the method of forced physical imprisonment.

Article 3:

The forced physical imprisonment is only a measure to force the convicted person to re-pay a forfeit penalty but not a deduction to redeem the entire forfeit penalty.

When the convicted person is liberated upon the period of force physical imprisonment is lapsed, all the remaining money that such convicted person has not yet re-paid so far, he/she shall still owe such money the same as what he/she was before. But shall not bring the convicted person to prison again for forced physical imprisonment to claim for such same money that he/she still owed.

Article 4:

A person who the Civil Law has exempted him/her from forced physical imprisonment, shall not be exempted from forced imprisonment in the Penal case even though if such money that he/she owed is either a fine or damage or compensation.

A minor person of below 18 years of age and an insane person shall not be put in jail for forced physical imprisonment to claim for forfeit penalty.

Only those adult persons from 18 years old and above who have sound minded and with proper reasoning who could know of what is wrong what is right should be subjected to forced imprisonment to claim for forfeit penalty.

Article 5:

In Penal cases, the request for forced physical imprisonment shall be done with free of charge, i.e. when upon there is a complaint filed by the complaining party or the Minister of Justice, the chief judge of the provincial or Municipal court at the resident of the convicted person shall issue a warrant to order to bring the convicted person to jail for a forced physical imprisonment and that such complaining party or the Minister of Justice shall not pay any cost or any deposit of money for the cost of food at all even though if it may occur the use of rights to confiscate legally the mobilization and immobilization to put for sale.

The Chief Judge issued this above warrant by referring to an excerpt of the court judgement which has already been decided finally.

But during the course of implementation of this forced physical imprisonment, if the convicted person has paid off all due amount of such forfeit penalty, the Chief Judge of the Court shall issue a warrant to order for releasing the convicted immediately from the prison.

Article 6:

The Minister of Justice may authorize to postpone the implementation of such forced physical imprisonment, if the convicted person's health is not in good condition which should be postponed and if such concerned person is not to be imprisoned for commission of any other offenses during such period of postponement.

The Minister of Justice may authorize such postponement only after there is specific proof which is a medical certificate from the doctor who examined such convicted person. The concerned person who requested the medical doctor to examine his/her health condition shall pay this cost of medical examination at the court clerk's office of the adjudicate court located at his/her resident.

The Minister of Justice may authorize such postponement for a period of only one month, but if the convicted person could obtained another new medical certificate, he/she can always request anew for postponement again for one month each time. Every time when requesting for a postponement the convicted person are strictly required to present an update medical certification from the doctor.

Article 7:

The method of forced physical imprisonment shall be calculated on the basis of " one day in jail for an amount of debt of five hundred (500) Riels or less ". Even if such amount of debt is a big amount up to a hundred thousand (100,000) Riels, this imprisonment method shall always be calculated on the basis of " one day in jail for five hundred Riels of debt ", until it corresponds the whole amount. If the amount of debt exceeds 100,000 Riels, its surplus shall be calculated on the basis of " one day in jail for 1,000 Riels of debt." But regardless of how big the amount of such debt is, the term of imprisonment which will determined for a convicted person in the same case should in total not exceed two (2) years.

Article 8:

If only one sole convicted person or many of them owed a forfeit penalty because of he/she or they has/have committed one or many offenses which he/she or they all have to be responsible to share jointly in the re-payment of such debt to the complaining party which is only one person, the term of forced physical imprisonment shall be calculated in the same manner as above and such calculated term shall be applied equally to each of them, that means when the imprisonment term calculated is for 20 days, each of these above convicted persons shall respectively be equally imprisoned for 20 days.

If only one or many convicted persons who is/are principal(s) in one or many offenses who are to share the re-payment of a forfeit penalty to the complaining party of many persons, the term of forced physical imprisonment shall be considered by separating the amounts of money which belongs respectively to each of the persons in the complaining party at first, and that the damages or the compensations of all those persons of the complaining parties shall not be combined all in one.

In case when it occurs a cumulative of a fine and a compensation in a forfeit penalty, the term of forced physical imprisonment shall be considered by separating amount of the fine from which the compensation at first and then calculate the number of days for imprisonment corresponding respectively to the amount of the fine and which of the compensation separately. Shall not combine the amount of the fine with which of the compensation.

Article 9:

In case when there are many convicted persons where some of them are principals, some are co-principals and some are accomplices

who are under one same penalty to share the re-payment of a compensation, the term of forced physical imprisonment to be considered for each of the convicted person, will be just as one single convicted person shall bear the total number of days of imprisonment alone, that means the whole amount of money shall not be divided in many parts corresponding to each convicted person at first then the number of days of imprisonment for each convicted will be calculated separately. And that such term of imprisonment to force to re-pay the money should not be deducted or added anything which makes it different from what proceeded following the method of calculation of the number of days of imprisonment as stated above.

And for the fine which was ordered by the court to be repaid by each of the individual convicted person should not be paid in global amount in one, but shall do it separately and individually according to what due by each of them and for the imprisonment to force them to re-pay such fine shall also be proceeded corresponding to the amount of fine to be born by each of those convicted.

Article 10:

In principle, in the criminal cases as well as in civil cases the claim for a forfeit penalty may not be done, unless upon there is an ordered formula specified in a court's judgement.

In criminal cases, it is not necessary to have a complaint from the complaining party, the court shall decide to order for a forced physical imprisonment to claim for a forfeit penalty if the debtor refuses to pay it.

In civil cases, before deciding on a case it is necessary to have a complaint from the complaining party (plaintiff), upon this the court will decide to order for a forced physical imprisonment in order to claim for re-payment of the debt when the debtor refuses to pay it. In this sort of case, the court should not urge or force the client to file a complaint to claim for such re-payment.

Article 11:

In the copy of judgement or excerpt of judgement which shall be brought for application shall mention of an ordered formula for application which will be written at the last part of the judgement or excerpt of judgement as follows:

" The Head of State of the State of Cambodia would like to order to those who are to implement this judgement shall comply with this judgement and to order to the authorities of all functions and all levels to help in enforcing this above judgement if there is a legitimate request".

Article 12:

In principle, in the excerpt of Judgement of criminal cases the court clerk shall inscribe as remark of the effectiveness of the judgement and the record of the number of days to be put in jail for forced physical imprisonment to claim for the forfeit penalty and of the formula which are written at the last part of such judgement. In case if failed to comply with this principle, the concerned court clerk who has issued that excerpt of judgement shall be penalized to pay fine of five thousand (5,000) Riels.

The formula which, is to be excerpted, has been stated in article 11 of this law.

Article 13:

All the armed forces, people's police, organizations of the local authorities of all levels shall assist in the enforcement of the court's judgement successfully, if it is so request.

This law was adopted by the National Assembly of the State of Cambodia on January 30, 1992, during the 22nd Session of its 1st Legislature.

Phnom Penh, on January 31, 1992

For the National Assembly,

Chairman,

Chea Sim