

On the Advantages and Disadvantages of the Divorce Cooling-off Period System and Its Improvement

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Abstract

This article takes the advantages, disadvantages, and improvements of the divorce cooling-off period as the starting point, and systematically elaborates the advantages and disadvantages of the divorce cooling-off period in the Civil Code and improving the divorce cooling-off period as one of the highlights of the Civil Code, which reduces impulsive divorce and protects the weak. The interests of the group and the reduction of the time cost of administrative agencies have indeed played a role that cannot be ignored, but at the same time, as a new system, the divorce cooling-off period still has many shortcomings, such as the lack of corresponding supporting measures and the lack of protection for the parties. The rules and the length of the cooling-off period are one size fits all. Therefore, the divorce cooling-off period system needs to be further improved to better play its role in society and the parties, better protect the interests of both parties to the marriage, and further reduce the divorce rate. Negative impact on society.

Keywords

Divorce cooling-off period; Highlights of the Civil Code; Divorce system; Marriage relationship.

1. The Legitimacy of the Divorce Cooling-off Period System

1.1. Reduce the Divorce Rate

Because of impulsive divorce and reckless divorce in my country, most of the spouses are impulsive, not a decision made after careful consideration. The setting of a divorce cooling-off period gives both spouses 30 days to think rationally. During this period, both spouses can calmly think about the necessity and consequences of divorce. After 30 days of calming down, the husband and wife have weighed many aspects. In our country, we encourage both spouses to repair their marriage relationship. The goal of reducing the divorce rate can be achieved.

1.2. Maintaining Social Stability

Society is made up of countless families. The marriage relationship is an important part of social relationships. Marriage relationship plays a vital role in the development of society. The family is composed of individuals, and the impact of the family on people is subtle and profound, and lasting. If the existence of society and most families cannot maintain harmony and stability, then the individual's body and mind will not be well developed, and many individuals will not be able to use good. The state contributes its strength to the development of the society, and thus cannot maintain the stable development of the society.

And with the continuous development of my country's economy, some couples use "false divorce" to circumvent my country's policies to seek certain benefits. This behavior will hurt

social development and set a divorce cooling-off period. It can effectively reduce the use of divorce by individual couples to conduct illegal and criminal activities, and achieve the purpose of maintaining the stable development of society.

1.3. It Can Protect the Interests of Disadvantaged Groups, That Is, the Interests of Minor Children and the Elderly

After the husband and wife gave birth to children during the marriage relationship, the divorce has not only related to the pros and cons of the two parties but also related to the pros and cons of the minor children. The divorce of both spouses will have a subtle impact on the values, emotional cognition, and behavior of minor children. A large number of psychological research data and practical conditions can show that family relationships play a vital role in the growth of minor children. The relationship between husband and wife will directly affect children's views on their marriage. The growth of adult children plays a positive role in promoting, not only can promote children to form the correct three views (world outlook, life outlook, values) in the growth process, be kind to others, care about others more, and can also make minor children reflect everywhere in their behavior. Good education. An inharmonious family relationship negatively hinders the growth of underage children and will hit the minds of underage children. It not only shows the lack of family education in concepts and behaviors but even causes underage children to commit crimes. Moreover, if the husband and wife cannot agree on the alimony after the divorce, the quality of life of the minor children will decline, and the minor children will face the double blow of the breakdown of the family relationship and the poor living environment.

After the divorce, the financial pressure on the elderly care provided by one party will increase, which will inevitably lead to a decline in the quality of the elderly care, and improper handling of the elderly after the divorce may cause psychological pressure on the elderly, which is not conducive to the elderly. Live a stable old age.

Therefore, setting up a divorce cooling-off period is to save the physical and mental health of minor children and the elderly, and to safeguard the rights and interests of family members who are disadvantaged in the family relationship.

1.4. It Has A Warning Effect, Confirms and Guarantees the True Expression of Marriage Intention

The setting of a divorce cooling-off period is a signal against impulsive divorce and reckless divorce. The divorce cooling-off period is a reasonable interference by the state's public power in the dissolution of marriage relations. It reflects my country's efforts and determination to maintain the stable development of marriage relations. Citizens decide to dissolve themselves. The marriage relationship should be carefully considered, and the two parties should be fair and just when deciding on the distribution of benefits, and must not harm the interests and expression of the intention of one party.

The setting of the divorce cooling-off period not only has a warning effect on the decision of both parties to dissolve the marriage relationship, but also has a warning effect on the decision of both parties to establish a marriage relationship. With the open development of social concepts at this stage, there are more and more cases of reckless marriages such as "flash marriages". Both parties enter into marriages without fully understanding each other and having sufficient preparations. This is also a major cause of the continued increase in the divorce rate. The reason is that setting up a divorce cooling-off period increases the cost of divorce for both spouses, and further demonstrates that the marriage relationship is a formal and solemn relationship, which can effectively reduce the situation of the reckless marriage.

The divorce cooling-off period allows both spouses to reconsider whether to dissolve the marriage or re-evaluate the interests of both parties during the cooling-off period, try their best

to make both parties impartial, distribute the benefits reasonably, and confirm and guarantee the true expression of the marriage intentions of both parties.

1.5. The Divorce Cooling-off Period Will Not Restrict the Autonomy of the Two Parties for Divorce

The cooling-off period is an opportunity, rather than a barrier for both spouses. It gives both spouses time to calmly think, and the period is appropriate. It will not cause both spouses to become numb or cause more serious consequences due to prolonged thinking. It allows both spouses to calm down and re-understand themselves, re-understand each other's character, and consider the consequences of divorce so that both spouses can return to a calm understanding of marriage.

The divorce cooling-off period is a buffer period for both spouses. Marriage requires both spouses to continue their business with patience and stability, rather than parting ways because of a conflict or disagreement. During the cooling-off period, both spouses can peacefully negotiate with each other. Analyze specific problems in detail, find solutions through the nature of the problem, consider the other side from the perspective of the other side, find a suitable way for both sides to run in, and jointly restore the marriage relationship.

1.6. Comply with the Legislative Concept of Family Harmony in the "Civil Code" Marriage and Family Edition

my country's marriage law respects the freedom of both spouses to dissolve their marriage, but respect for the freedom of divorce does not include reckless divorce and impulsive divorce. Reckless divorce and impulsive divorce violate the legal concept of marriage and family in our country. The parties must treat the freedom of divorce with a solemn attitude. Rather than abuse the right to divorce. The setting of the divorce cooling-off period is aimed at my country's rising divorce rate and the fact that both spouses have not treated divorce with sufficient caution. The setting is undoubtedly in line with my country's current social conditions and legislative concepts. Once the husband and wife have entered into a marriage relationship, they have already assumed the responsibilities and social responsibilities of the family. Therefore, both husbands and wives should not only consider their interests when divorcing. They must clarify their responsibilities and must use a long-term perspective to weigh each other. And make full preparations in many aspects, to achieve the purpose of saving the marriage relationship and promoting the stable development of family relationships.

2. The Shortcomings of the Divorce Cooling-off Period

2.1. Lack of Corresponding Supporting Measures

According to Article 1077 of the Civil Code, if one party withdraws the divorce application during the divorce cooling-off period, the marriage cooling-off period will of course end. However, in practice, while the methods and signs of the start and end of the divorce cooling-off period are not clearly defined, there are also many other procedural problems. For example, if the spouse negotiates, they can apply to the marriage registration authority. After the divorce enters the divorce cooling-off period, one of the parties develops a malicious or unbalanced negative mentality and uses malicious withdrawal or repeated withdrawal to interfere with the divorce process, so that the divorce cooling-off period cannot expire and cannot apply for the issuance of a divorce certificate at the marriage registration authority. This is undoubtedly psychological torture for the other party. There may also be situations in which one party maliciously uses the divorce cooling-off period to damage the other party's interests. When the divorce cooling-off period is applied, to prevent the above-mentioned "one-party maliciously committing disorder" If the situation occurs, reasonable provisions should also be made. In addition, there is also the issue of the application frequency of the divorce cooling-off period, what is the upper

limit of the frequency of the divorce cooling-off period, whether the marriage mediator is qualified and the employment issues, these issues may cause the implementation of the divorce cooling-off period to be confused and unorganized. Therefore, the supporting measures for the divorce cooling-off period should be further stipulated.

2.2. Lack of Protection Rules for the Parties

The divorce cooling-off period currently implemented in our country does not stipulate habeas corpus for the disadvantaged party or the injured party in the marriage, which may give the aggrieved party the last opportunity to take advantage of the other party's physical and mental harm. If the divorce cooling-off period is Failure to formulate specific implementation rules to protect the disadvantaged or injured party in the marriage will lead to serious consequences.

2.3. Lack of Relevant Assessment System for Employees of Marriage Registration Agencies

There is a common view that the divorce cooling-off period is just the spouse's thinking about the cooling-off period in private to make a sensible decision. If the divorce cooling-off period is to play the most effective role, it is necessary not only to rely on the subjective initiative of both spouses but also to rely on the active reconciliation of family conflicts by the staff of the marriage registration agency to help restore the coordination role of the marriage. However, not every staff member can keep the enthusiasm for work all the time. If we do not conduct a reasonable inspection of the staff, likely this month's divorce cooling-off period will only be a more formal basis on the original basis. Procedures, will not have the effect of restoring the marriage of the couple. If the divorce cooling-off period is to achieve the best effect under the dual efforts of both spouses and the marriage registration agency, regular and reasonable inspections of employees should be set up.

2.4. Whether the Cooling-off Period System Is Formally Stipulated in the Divorce Proceedings

At present, individual provisions in litigation for divorce have played a role in the divorce cooling-off period. For example, in the first litigation, the court made a judgment not to dissolve the marital relationship between the spouses, and there is no reasonable reason within six months. Filed a lawsuit to dissolve the marriage relationship on the same petition. In a certain sense, this gives both spouses a six-month cooling-off period for divorce. But if the court in the first litigation ruled that both spouses dissolve the marriage relationship, of course, there is no such six-month cooling-off period for divorce. Impulsive divorce also exists in litigation divorce, which can also be resolved by setting a divorce cooling-off period; secondly, both parties may be extreme in litigation divorce. It can be said that under such circumstances if the court simply makes a judgment to dissolve the marriage or not to dissolve the marriage, it is undoubtedly not an ideal result for both parties. At this time, a divorce cooling-off period can be set up to reconcile this. Finally, if both parties in the litigation agree to a divorce, but do not reach an agreement on the support of the child, the division of property, or other circumstances, setting a divorce cooling-off period in the litigation divorce can give both parties a buffer time for negotiation. But at the same time, if the divorce cooling-off period is truly implemented in litigation divorce, whether it conflicts with the divorce cooling-off period during the six-month litigation period, or confuses the divorce registration and litigation procedures. Questions for discussion. Therefore, whether the divorce cooling-off period is strictly applied in litigation divorce is still a question that needs serious consideration.

2.5. The Question of the Scale of State Public Power Intervention During The Divorce Cooling-off Period

The divorce cooling-off period is the state public power intervening in divorce, but it does not strictly regulate the scale of state public power intervention. If the state public power intervenes reasonably in divorce, then as mentioned above, divorce The cooling-off period is not a restriction on the freedom of divorce by the public power, but a chance for both spouses to save the marriage. If the public power of the state intervenes excessively in the cooling-off period of divorce, it will result in an infringement of the freedom of divorce of both spouses. Therefore, strict regulations should be made on the scale of public power intervention to prevent improper use of public power.

2.6. The Application of the Divorce Cooling-off Period to Specific Circumstances

The divorce situation of each couple varies. If a "one size fits all" one-month cooling-off period is adopted, it may not be suitable for each couple's specific circumstances. One is the question of the length of time for both spouses to marry. For couples who have not been in a marriage relationship for a long time, and those who have been in a marriage relationship for a long time, the applicable period of the divorce cooling-off period should be different. For newlyweds, their marriage time is relatively short, and the characters and living habits of both parties have not been properly adapted for a long time. The dissolution of the marriage is likely to be young and energetic, and it is a decision made on impulse. The cooling-off period for the divorce of newlyweds can be longer. For old couples and wives, they have passed a relatively long period. Even if the decision to divorce was made impulsively, it is probably due to the accumulation of long-term dissatisfaction. Therefore, the period of divorce cooling-off period can be shorter for old couples and old wives. The second issue is whether the spouses have minor children. If both spouses do not have minor children, a one-month cooling-off period is appropriate in most cases, but if both spouses have minor children, then for the sake of the growth environment and psychological development of the minor children, the divorce cooling-off period should be longer. For example, in South Korea's Civil Code, if both spouses have minor children, the period of the divorce cooling-off period is three months. [1] In addition to underage children, there are also cases of domestic violence and malicious transfer of property by one party, all of which require flexible provisions for the time limit. In summary, there is still room for flexible regulations for the one month of the "one size fits all" period of the divorce cooling-off period.

3. Improving the Divorce Cooling-off Period System

3.1. Using Remote Processing Methods for Some People Through the Internet

Using the Internet to remotely apply for a divorce to enter the divorce cooling-off period for some groups of people can not only facilitate people with mobility impairments but also conform to the concept of convenience for the people. In addition, the Internet is developing rapidly nowadays. The combination of "Internet+" and various industries with my country's official business processes is becoming more mature. The adoption of "Internet + divorce processing" not only conforms to the trend of continuous integration and development of Internet technology in my country but also allows divorce. The procedures for handling are embodied in serving the masses and being considerate of the masses [2].

3.2. Diversification of Time Limit and Scope of Application

In terms of a time limit, as mentioned above, the "one size fits all" time limit is unreasonable under any circumstances, such as underage children, domestic violence, abuse, transfer of property, etc., if the one-month period is always applicable, Will cause damage to the interests of vulnerable groups other than both spouses in the family or the disadvantaged party of both

spouses. Therefore, to protect the legitimate interests of the vulnerable party, it is necessary to address the situation of underage children, domestic violence, abuse, transfer of property, etc. Flexible regulations.

In terms of the scope of application, the marriage registration agency can set up a general survey form to distinguish between salvageable marriages and marriages that have no chance of salvation. For irretrievable marriages, the divorce cooling-off period will become a decoration. It only increases the troubles between the husband and wife, and even damages the interests of one or both parties. For marriages that can be restored, the marriage registration agency can adopt a divorce cooling-off period to set a reasonable cooling-off period to allow both spouses to think rationally, to promote the stable maintenance of the marriage.

3.3. Regulate the Rights and Obligations of Both Spouses During the Cooling-off period

In order to fully protect the interests of minor children and the elderly, as well as the reasonable progress of the divorce cooling-off period, the rights and obligations of both spouses should be clarified before the divorce cooling-off period is implemented. Although the freedom of both spouses is fully respected during the divorce cooling-off period, the freedom of both spouses should not be fully respected. Both spouses must live together forcibly, but at the same time, it is necessary to determine the guardianship and support of minor children during the divorce cooling-off period, the support of the elderly, and the disposal of property. While fully respecting the freedom of marriage of both spouses, it also reflects The rationality of the divorce cooling-off period system.

3.4. Improve Supporting Measures

First of all, as mentioned in the deficiencies of the divorce cooling-off period above, the start and end of the divorce cooling-off period should be clearly set, and whether the divorce cooling-off period is implemented should be based on the situation survey form filled by both spouses and the intentions of both spouses. Make the divorce cooling-off period more standardized. Secondly, before the implementation of the divorce cooling-off period, the registration and approval of existing property should be done, and the divorce cooling-off period should be carried out on the basis of mutual trust between the two parties. Finally, the third-party mediation agency should give full play to its role, actively coordinate between the parties, help them understand each other, and carefully consider the consequences and necessity of divorce, so as to promote their reconciliation and help the spouses to restore their marriage [3].

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