The Cooling-off Period in Divorces and Its Impacts

Description

Since January 1, 2021, with the promulgation of the *Civil Code*, the cooling-off period of divorce has been officially implemented in the divorce registration process, which has aroused widespread concern in the society. Some people suggest that this is conducive to preventing impulsive divorce and providing the spouse with the opportunity to repair their relationship. Others believe that this period limits the freedom of marriage and makes it harder to divorce. Further, quite a few agree with that the period will shelters domestic violence and leave room for either spouse to transfer the property privately.

> Is it necessary to have a cooling-off period for divorce?-- Beijing Review

However, any discussion about the reasonability of the cooling-off period will not solve the possible impact that the implementation of a new system may bring to our life. It is better to calm down and figure out how to deal with the problems that may arise from the period. Here are some of the hot issues that the public is concerned about, and we may find some answers.

1. **What is the significance of setting up a cooling-off period for divorce?**

The cooling-off period is a compromise solution to the contradiction between the freedom of divorce and the rapid growth rate of divorce. Mostly, some people, especially young couple, divorce often without careful consideration, while out of anger or impulsive choice.

In fact, the relationship of the couple has not broken, and there is still a good possibility of reconciliation. In this case, the setting of a certain period allows cushion time for both spouses to cure their marriage or make rational choices during this period, thereby effectively avoiding impulsive divorces. In addition, the cooling-off period is conducive to improving divorce system and harmonizing the interests of the spouse and their minor children.

The rationale behind this new legislation is to reserve the traditional China family values, a response to rein in the increasing rate of divorces, thus breakdown of functional families.

2. **Does the divorce cooling-off period limit the freedom of divorce?**

The purpose of setting a cooling-off period is mainly to prevent impulsive divorces, but the initiative of divorce is still in the hands of both spouses. Whether to withdraw the divorce application during the cooling-off period and whether to apply for divorce after the cooling-off period expires, still depends on the spouses.

Additionally, the civil affair department only deals with the marriage relationship between the spouses in which there is no dispute over divorce, child custody, property division, and debt obligations. If the spouses do not reach an agreement on the aforementioned issues, they cannot go through the divorce registration in the civil affairs bureau. The party requesting divorce can also apply to the court for divorce through litigation. Therefore, the introduction of a divorce cooling-off period in the divorce

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registration process does not affect the freedom of divorce.

3. **If either party of spouses insists on divorce, can the divorce cooling-off period not be implemented?**

Article 1077 of the *Civil Code* stipulates if, within 30days after the marriage registration bureaus receive the divorce applications, either of the parties does not want to get divorced, he/she may withdraw the divorce registration applications from the marriage registration bureaus. Within 30 days after the expiration of the above prescribed period, both parties shall in person apply to the marriage registration bureaus for the issuance of divorce certificate; those who fail to make the application for divorce certificate shall be deemed to have withdrawn the application.

This provision is the legal basis for introducing a cooling-off period system in the divorce registration procedure. In other words, it is to make restrictive provisions on the registration of divorce procedures from the view of law. Therefore, even if only one party of the spouses insists on divorce, he cannot refuse to implement the cooling-off period. However, if both parties fail to reach an agreement on divorce after the cooling off period, the party who firmly divorces can terminate the marriage through litigation.

It is apparent such mechanism will drive more divorces through court proceedings instead of the peaceful agreement.

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4. **Is the divorce cooling-off period detrimental to protecting the victim of domestic violence?**

Zero tolerance for domestic violence is the bottom line of civilization that society cannot tramp on, and the cooling-off period is definitely not a “protective umbrella” for domestic violence. For cases of domestic violence, in practice, the parties often apply to court for divorce. Domestic violence is a conflict between the spouse that endangers life and safety. If it is determined that there is a serious domestic violence, the court will no longer apply the divorce cooling-off system to avoid harm to the victim. In addition, victims can also apply for a habeas corpus order to the court.

5. **Is it suspected of rape if sexual relationship is forced during the cooling-off period of divorce?**

The cooling-off period still belongs to the duration of the marriage, and the marital relationship between the spouse is not actually terminated at this time. Therefore, both parties still enjoy the rights and should also perform the obligations of the spouse in accordance with law. But this does not mean that either party of the spouse can force the other party to have the sexual relationship. During the cooling-off period of divorce, the sexual relationship is based on the wishes of both parties. If there is sufficient evidence to prove that a forceable sexual relations by means of violence, coercion or other means against one party’s will, it can be deemed to constitute the crime of rape.

6. **What should be done if either of the spouses transfers property or squanders property during the cooling off period of divorce?**

Article 1066 of the *Civil Code* stipulates that during the life of their marriage, either of them may make a request to the court for division of their jointly owned property under the following circumstances: (1) One party commits the acts that seriously harm the interest of community property, such as hiding,

transferring, selling off, destroying, or squandering community property or forging community debt.

This is the intra-marriage division of community properties in certain prescribed circumstances.

In the meantime, Article 1092 of the *Civil Code* also stipulates that if one party of spouse conceals, transfer, sell off, destroys, or squander the community properties of spouses, or forges joint debts of the spouses in an attempt to encroach upon the property of the other party, the former may be awarded with less or no property when the community properties are partitioned upon divorce. After divorce, if the other party discovers the above, it may bring a suit in the court to demand re-partition of such newly discovered community property.

Therefore, no matter when the transfer or squandering occurs during the duration of the marriage, the other party can be dealt with in accordance with the relevant provisions of Article 1066 and Article 1092 of the *Civil Code*.

7. **During the cooling-off period of divorce, if either of the spouse has any new debt or property, is it the joint debts or community property of the spouse?**

Chinese relevant laws and judicial interpretations have clear provisions on the martial property and debt. During the cooling-off period of divorce, the newly incurred debt or acquired property cannot be identified as joint debt or property of the spouse arbitrarily but should be judged in accordance with the pertinent legal rules. There is no necessary connection between the divorce cooling-off period and the determination of the martial property and debt.

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8. **After the divorce cooling-off period expires, what if either party goes back on the divorce agreement the spouse originally reached?**

A registered divorce is also known as divorce by agreement. This system can only be applied if spouses divorce voluntarily and reach a consensus on matters such as child custody, property division and debt obligation. If either party has any objections or disputes over divorce, child custody, property division and other matters at the end of the cooling-off period in the divorce registration procedure, and both parties cannot reach an agreement through any negotiation anymore, the applicable conditions for registration of divorce will no longer be met. The party requesting a divorce may have to take litigation to dissolve the marriage.

9. **Is it reasonable for the court to apply the cooling-off period of divorce in litigation?**

The cooling-off period for divorce stipulated in article 1077 of the *Civil Code* is applicable to registered divorce with civil affair department. Although this article does not intend the cooling-off period to be applied in court divorce proceedings, on July 18, 2018, the Supreme People's Court issued *the opinions on further deepening the reform of family trial mechanism (Trial Implementation)*, in which Article 40 stipulates that the court could set a cooling off period of no more than three months in divorce litigation with the consent of both parties. During the period, the court may, considering the circumstances of the case, conduct mediation, family investigation and psychological counseling. At the end of the cooling off period, the court shall notify both parties.

As soon as the cooling off period of divorce is set up, the number of divorce cases in court will increase rapidly, and the court will face unprecedented pressure. Although the function of the opinions of the

Supreme Court is to reduce the impulsive divorce and the confrontation between the parties, However, for the sake of social harmony and stability, the time-limitation of trial and the rate of closing cases, the court will try every means to set up various obstacles, “divorce cooling off period” is the best way, which will eventually affect the principle of “freedom of divorce” stipulated in the civil code. Therefore, we believe that the implementation of cooling off period in divorce proceedings is not conducive to the resolution of any family disputes.

Whether reasonable or not, the cooling-off period of divorce system already exists, and it will definitely have far-reaching impact on life in the future. While hotly discussing its irrationality, we should also pay attention to how to make up for the defects brought about by the new legal system, and continuously improve the system to play its positive role in legal practice and society.

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