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A review and improvement of the divorce cooling-off period system in the Civil Code

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Abstract. Article 1077 of the Civil Code introduces the divorce cooling-off period system, aimed at curbing impulsive divorces and strengthening the foundation of family stability. However, the implementation of this system has revealed several critical issues. These include ambiguity in the scope and duration of its application, deficiencies in supporting mechanisms such as rights protection, and poor coordination with the litigation-based divorce system. To better balance personal freedom of divorce and the stability of family and society, it is necessary to narrow the applicable scope, allow flexible adjustment of the cooling-off period, and enhance the protection of individual rights.

Keywords: divorce cooling-off period, institutional review, scope of application, protection mechanism

1. Introduction

The divorce cooling-off period[1], also referred to as the deliberation period for divorce, refers to a period of rational reflection that begins when a couple applies for consensual divorce under the principle of freedom of divorce [1]. During this period, either party may unilaterally withdraw the application, thereby terminating the divorce registration process. As early as 1994, the promulgated Marriage Registration Administration Regulations stipulated that after an application for divorce registration was submitted, the marriage registration authority or relevant institutions had the power to review the application within a one-month period—marking the embryonic stage of the divorce cooling-off period system in China[2]. On October 1, 2003, the revised Marriage Registration Regulations came into effect, abolishing the marriage registration authority's right to conduct the one-month review and emphasizing that couples meeting the criteria for consensual divorce should be granted divorce registration and issued a divorce certificate on the spot.

With the rapid development of the economy and society, the divorce rate has remained high. According to data released by the National Bureau of Statistics, in 2020, a total of 4.339 million couples dissolved their marriages in China—3.736 million through registration at civil affairs bureaus and 603,000 through litigation. In response, the Civil Code adopted the principles of safeguarding the freedom to divorce and discouraging hasty divorces as foundational elements of divorce legislation and added the divorce cooling-off period system. On May 28, 2020, the third session of the 13th National People's Congress passed the Civil Code of the People's Republic of China, officially establishing this system. Since its implementation on January 1, 2021, couples applying for consensual divorce through the civil affairs bureau must go through five stages: application, acceptance, cooling-off period, review, and registration (certificate issuance).

Since the formal implementation of the system in 2021, the number of divorce registrations nationwide has shown a marked decline. According to the 2021 quarterly statistical bulletin issued by the Ministry of Civil Affairs, 2.139 million couples completed divorce registration that year—a drop of approximately 43% from 3.733 million in 2020. Studies have shown that the "divorce cooling-off period" has led to a 33%-42% reduction in divorce registrations [2]. This trend is not isolated; many regions have reported similar declines in divorce rates. For example, in Shaoxing City, Zhejiang Province, 9,998 divorce applications were received in 2021, but only 5,554 couples ultimately completed the divorce registration after the cooling-off period, meaning that 3,537 couples chose not to proceed—representing a 35% withdrawal rate. These data clearly show that the divorce cooling-off

[1] This refers specifically to the divorce cooling-off period applicable to divorce by registration and does not include the cooling-off periods in contested divorces under foreign legal systems.

[2] Marriage Registration Administration Regulation (Repealed in 2003).

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period has, to some extent, effectively curbed impulsive and hasty divorces, providing many couples with an opportunity to re-evaluate and reflect on their marital relationships.

However, the system is far from perfect. On the one hand, some question whether it restricts the freedom to divorce. Although the Civil Code adopts a liberal stance toward divorce and imposes only a procedural barrier to deter rash decisions, some believe it increases the cost and difficulty of divorce. On the other hand, in special cases such as domestic violence, the cooling-off period may exacerbate the suffering and risks faced by victims. Therefore, further refinement and optimization of the divorce cooling-off period system are necessary to better balance family stability with marital freedom.

2. Rational limitation of the scope of application of the divorce cooling-off period under the Civil Code

The establishment of the divorce cooling-off period aims to reduce impulsive divorces and lower the divorce rate while adhering to the principle of freedom of marriage [3]. However, in real-life scenarios, each family and marriage faces unique circumstances. Is the cooling-off period suitable for all cases of registered divorce? Article 1079 of the Civil Code of the People's Republic of China stipulates that a divorce should be granted if mediation in a contested divorce fails[3]. However, no corresponding provisions exist for consensual divorces. In special cases—such as those involving domestic violence, abuse or abandonment of family members, or habitual gambling or drug abuse—strictly applying the divorce cooling-off period may inflict further harm on the vulnerable party. For example, in cases of domestic violence, victims may continue to suffer abuse during the cooling-off period, unable to promptly escape the constraints of marriage. Furthermore, in cases of bigamy or other invalid marriages, applying the cooling-off period may be ineffective in salvaging the relationship [4]. Regarding the scope of the divorce cooling-off period, a one-size-fits-all legislative mandate is neither practical nor reasonable. The flexibility of judicial divorce should be preserved, while the application boundaries of the cooling-off period in registered divorces should be purposefully narrowed [5], ensuring the system operates rationally and in an orderly manner.

2.1. Exclusion of invalid marriages from the application of the cooling-off period

According to Article 1051 of the Civil Code, invalid marriages include those involving bigamy, prohibited degrees of kinship, or failure to meet the legal age for marriage. From the perspective of protecting individual rights and the public interest, invalid marriages—such as bigamy—should be categorically excluded from the application of the cooling-off period. Whether the divorce application exceeds the statutory time limit for annulment is irrelevant in such cases, as only legally recognized marital relationships and their parties fall under the protection of the law [6]. If a party to a legally valid first marriage applies for divorce in such circumstances, the divorce procedure should be processed immediately without being subject to the cooling-off period.

2.2. Restricting the application of the cooling-off period to "dead marriages"

The legislative intent behind the divorce cooling-off period is to salvage "crisis marriages," not "dead marriages" [7]. In simple terms, a "crisis marriage" refers to a relationship where both parties file for divorce due to issues such as arguments or impulsiveness, but the emotional bond is not entirely broken, and the marriage may be repairable through calm reflection during the cooling-off period[4]. In contrast, a "dead marriage" is one in which the couple has entirely lost emotional connection—for instance, in situations involving domestic violence, abuse, abandonment, or repeated harmful behaviors like gambling and drug abuse—causing serious harm to the weaker party [8].

If "dead marriages" are indiscriminately subjected to the cooling-off period in practice, the implementation of the system may deviate significantly from its original legislative intent, undermining the legitimate rights and interests of the parties involved. From a jurisprudential perspective, such an approach contradicts the core legal values of freedom and justice. Therefore, when there is clear evidence of domestic violence or abuse and the emotional bond between the couple has completely dissolved, the desire to exit the marriage is not impulsive, and the application of the cooling-off period should be restricted. Legislatively, divorce registration authorities should be granted the substantive power and responsibility to review such cases. Upon identifying these circumstances, they should promptly process the divorce for the victimized party to prevent further harm during the cooling-off period[5].

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[3] Article 1079 of the Civil Code of the People's Republic of China stipulates: Divorce shall be granted if mediation fails under any of the following circumstances: (1) bigamy or cohabitation with another person; (2) domestic violence, abuse, or abandonment of family members; (3) persistent gambling, drug addiction, or other vices with no correction despite repeated admonition; (4) separation due to emotional discord for two years; (5) other circumstances that have led to the breakdown of the marital relationship.

[4] See Civil Judgment No. (2016) Zhe 0381 Min Chu 3489 by the People's Court of Ruian City, Zhejiang Province. Coincidentally, it was held that "as the marital relationship has not yet completely broken down and the evidence submitted by the plaintiff is insufficient to prove an actual breakdown of the relationship, and given that the defendant does not consent to the divorce, it is appropriate to provide both parties with a cooling-off period."

[5] See Civil Judgment No. (2016) Gui 0107 Min Chu 908 by the Xixiangtang District People's Court of Nanning City, Guangxi Province.

3. Flexible adjustment of the divorce cooling-off period in the Civil Code

Article 1077 of the Civil Code rigidly sets the divorce cooling-off period at 30 days, without offering any additional provisions. This fixed timeframe has sparked extensive debate among scholars, with no consensus reached.

Some scholars argue that the current 30-day period is overly long and restricts the parties' freedom to divorce, proposing a reduction to 15 days. Firstly, for those who have clearly decided to divorce and already have future plans, the cooling-off period may disrupt their life rhythm and personal development. Secondly, it requires both parties to spend additional time and energy handling divorce-related matters, which can be a considerable burden—especially for those with demanding jobs—potentially affecting their work efficiency and career progression. Moreover, in cases where the marriage has irreparably broken down, such as prolonged domestic violence, abuse, or severe and irreconcilable personality conflicts, the existence of the cooling-off period may simply prolong the suffering of individuals trapped in such painful marriages [9].

Conversely, other scholars hold the opposite view, contending that 30 days may be insufficient for couples to truly reflect on their marriage. They suggest extending the period to 3 or even 10 months. In today's fast-paced and high-pressure society, many couples may decide to divorce impulsively during emotional upheaval, and 30 days may not allow enough time for calm reflection on marital issues, the pros and cons of divorce, or considerations concerning the future of their children [4]. This could result in impulsive divorce decisions even after the cooling-off period ends, failing to salvage potentially repairable marriages; or, even if the couple temporarily refrains from divorce, unresolved issues may resurface, leading to future crises.

Currently, China's divorce cooling-off period begins from the date the marriage registration authority receives the divorce application, lasting 30 days. If both parties apply for a divorce certificate within this period, the divorce is granted; otherwise, the application is deemed withdrawn. However, this fixed period may not adequately address the complexities of diverse divorce scenarios. Transitioning from a fixed period to a flexible interval represents a reasonable path for reform.

3.1. Consideration of the actual circumstances and needs of the couple

The duration of the divorce cooling-off period should not be uniformly applied; rather, it should be tailored to the specific circumstances and motivations of the divorcing parties. Divorce reasons could be categorized—such as minor domestic disputes, financial difficulties, or personality incompatibility. For couples divorcing over relatively minor issues like domestic or financial problems, the cooling-off period could range from 15 to 30 days. For those citing more complex issues like personality clashes, the period could be extended to 30 to 60 days. Moreover, a professional marriage assessment mechanism could be established at marriage registration offices. These offices, or qualified psychological counseling institutions and marriage and family consultants, could provide comprehensive evaluations of the applicants. Assessment factors would include the couple's emotional state, the severity of marital conflicts, personality traits, communication skills, and whether domestic violence is involved. Based on these evaluations, a suitable cooling-off period could be determined for each couple.

3.2. Drawing on international experience for reasonable adjustments

Take South Korea as an example: in 2005, it introduced a "deliberation period" and mandatory mediation system. Couples with children must observe a 3-month deliberation period, while those without children are subject to a 1-month period [10]. During this period, marriage registration authorities may offer psychological counseling to understand the couple's marital situation and actively mediate disputes. This system has had positive effects in reducing rash divorces and stabilizing family relationships.

The United Kingdom has a similar reflection period. Section 3 of the Matrimonial Causes Act (1973) stipulates that divorce cannot be filed within the first year of marriage. However, this restriction does not prevent a party from filing for divorce on grounds such as adultery or other statutory reasons after one year. In cases of special circumstances requiring separation, judicial separation can be sought.

Article 231 of the French Civil Code provides that if both spouses persist in their desire to divorce, the judge must inform them that the application must be resubmitted after a 3-month reflection period. If the application is not resubmitted within 6 months after the end of this period, the joint petition becomes void.

These international approaches to divorce cooling-off periods provide valuable reference points for China. Based on domestic realities, China could differentiate the length of the cooling-off period for registered divorces. For cases involving minor children, the period could be appropriately extended. When reviewing divorce agreements, marriage registration authorities should pay particular attention to child custody arrangements, thoroughly evaluating whether the proposed arrangements align with the best interests of the child. This ensures that the impact of divorce on minors is minimized.

4. Strengthening the protection of rights during the cooling-off period for divorce in the Civil Code

Within the current framework of China's marriage law system, the divorce cooling-off period has become a highly prominent and significant component. However, in actual practice, this system reveals clear shortcomings in safeguarding the rights of both spouses during the cooling-off period. At this particular stage, many of their rights and interests are in a relatively vulnerable state,

lacking effective supervision and protection. For example, in terms of personal safety, the cooling-off period may become a "shelter period" for abusers to continue violent behavior in families where there are risks of domestic violence or actual instances of abuse. Additionally, regarding access to information and legal support, many couples remain unclear about their rights and obligations within the legal framework of marriage during this period. They do not know how to gather evidence beneficial to themselves or how to handle complex legal issues that may arise. The current public legal service resources, both in terms of coverage and the specificity of consultation and assistance provided, fall short of meeting the pressing needs for legal education and professional legal aid during the cooling-off period. This results in significant obstacles for spouses seeking to exercise their legal rights and protect their legitimate interests during this time.

The divorce cooling-off period is intended as a mechanism to reduce impulsive divorces and promote marital stability. In practice, however, the related rights protection mechanisms urgently require improvement. Providing remedies for the disadvantaged party during divorce proceedings, ensuring legal fairness and justice, is also a key element of divorce legislation [11].

4.1. Provision of psychological counseling and support services

In the context of modern society, divorce is rarely a one-dimensional event but rather one that intertwines multiple complex factors. It often comes with emotional struggles, psychological trauma, and uncertainty about the future. During the cooling-off period, parties urgently require professional psychological support and marriage counseling. To meet this need, a dedicated psychological counseling hotline could be established, staffed by professional counselors offering one-on-one emotional support and assistance in emotional regulation, helping individuals manage the psychological stress caused by divorce and approach marital issues with greater rationality [12]. At the same time, marriage experts and legal professionals could be invited periodically to deliver talks on marriage management and relevant legal knowledge, enhancing the ability of individuals to resolve marital conflicts and navigate divorce proceedings. Through psychological counseling and support services, individuals can gain deeper self-awareness and reevaluate their marriages during the cooling-off period, thus reducing the likelihood of emotionally driven divorce decisions and creating favorable conditions for either reconciliation or an amicable separation.

4.2. Safeguarding the living and housing conditions of the parties

For individuals who are economically dependent or facing housing difficulties, securing their basic living and housing conditions during the cooling-off period is crucial. For example, where divorce disputes may result in homelessness or substandard living environments, relevant authorities should actively intervene to provide temporary housing assistance or coordinate housing resources to ensure safe and stable accommodations. In cases where asset division has not yet been finalized, a temporary property preservation and reasonable use mechanism should be established to prevent malicious transfer or concealment of assets by one party, or the cutting off of the other party's financial support. This would help secure the basic living expenses and economic rights of the parties during the cooling-off period. Such measures would prevent individuals from falling into hardship due to lack of basic living support, uphold their dignity and legal rights during the cooling-off period, and lay a solid foundation for the subsequent divorce process or potential reconciliation.

4.3. Establishment of emergency divorce relief mechanisms

Although the divorce cooling-off period is intended to encourage parties to reconsider their decision carefully, it is especially important to establish a swift and effective divorce relief system in urgent situations, such as domestic violence, abuse, abandonment of family members, or serious threats to personal safety. A dedicated emergency divorce application channel should be set up, simplifying the application and review procedures so that individuals facing such emergencies can quickly submit a divorce application to the court or marriage registration authority and receive timely processing and feedback. In addition, coordination and cooperation should be strengthened among public security authorities, women's federations, community organizations, and other relevant entities to build a comprehensive safety protection network. Upon receiving emergency distress signals from individuals, relevant departments should immediately take responsive actions, including but not limited to providing emergency shelter and imposing legal penalties and educational interventions on the abuser, thereby ensuring the personal safety of the individuals involved during the divorce cooling-off period.

5. Coordination between the cooling-off period for divorce in the Civil Code and the system of litigated divorce

In China, the dissolution of a marital relationship can be achieved either through registered divorce or litigated divorce. The parties are free to choose between these two options, and neither is mandatory. According to the Civil Code, the cooling-off period for divorce primarily applies to consensual (registered) divorces [13]. However, compared with litigated divorce, consensual divorce now entails a 30-day waiting period, which undoubtedly increases the time cost and reduces its convenience. In practice, it is not

uncommon for couples who initially intended to divorce by mutual agreement to abandon this route upon learning that they must wait for the cooling-off period to expire before the divorce can be finalized, and instead opt for litigation. Data from the Ministry of Civil Affairs show that from 2013 to 2020, the proportion of consensual divorces rose from 80.43% to 86.1%, while litigated divorces decreased from 19.57% to 13.9%. However, since the implementation of the cooling-off period in 2021, the share of consensual divorces has declined annually, while that of litigated divorces has increased. In 2021, consensual divorces accounted for 75.41% of all divorces, dropping further to 71.94% in 2023. In contrast, litigated divorces rose to 24.59% in 2021 and further increased to 28.06% in 2023.

In fact, due to the uncertainty surrounding consensual divorce, many parties who have already reached a preliminary agreement choose to file a lawsuit instead, seeking a judicial ruling or mediation to avoid the cooling-off period. This not only renders the cooling-off period effectively meaningless, but also places an additional burden on the judicial system and leads to a waste of social resources [14]. As the scope of application for the cooling-off period has already been analyzed earlier, the discussion will not be repeated here.

Beyond the issue of choice between the two procedures, there is still a lack of seamless integration between the cooling-off period system and the litigated divorce system. For example, when couples fail to finalize a consensual divorce after the cooling-off period and turn to litigation, the current transition mechanism is neither convenient nor efficient. Parties must recompile materials and clarify their claims, and may face cumbersome procedures and long waiting times at the court's filing stage. This undoubtedly adds to their time and energy costs. Therefore, further improving the coordination between the cooling-off period for registered divorce and the litigated divorce process holds practical significance [15].

5.1. Transition from registered divorce to litigated divorce

If, after the cooling-off period ends, the couple remains determined to divorce but cannot resolve matters through mutual agreement, a smooth transition to the litigated divorce system is necessary. Upon expiration of the cooling-off period, the parties should be allowed to file for divorce in court using relevant documentation from the cooling-off process. The court should give priority to such filings and reasonably schedule hearings based on the case circumstances. Any measures undertaken during the cooling-off period, such as property preservation or personal safety protection, along with related evidence, should be acknowledged by the court and used as reference during litigation to avoid duplication of effort and resource waste.

5.2. Transition from litigated divorce to registered divorce

If the applicant chooses to pursue registered divorce during litigation, the marriage registration office, after investigation and verification, should explain the rationale to the applicant and the court should terminate the litigation process to avoid wasting judicial resources and to respect the parties' freedom to divorce. If the parties have already undergone the cooling-off period for litigated divorce and later withdraw the lawsuit to reach a divorce agreement and apply for registered divorce, they should be exempted from undergoing the cooling-off period again. The marriage registration office should issue the divorce certificate directly and document the relevant circumstances for recordkeeping.

6. Conclusion

As the legal system governing marriage and family continues to evolve, the cooling-off period for divorce occupies a unique and critical position. Like a double-edged sword, it plays a positive role in reducing impulsive divorces and maintaining family stability, while also presenting numerous challenges and dilemmas. Through an in-depth analysis of the system, it is clear that there is room for improvement in several aspects, including scope of application, duration, rights protection, and its coordination with the litigated divorce system. Both theoretical exploration and practical observation underscore the urgency and importance of constructing a more scientific, rational, and humane cooling-off period system.

As a legal measure aimed at preventing impulsive divorces and promoting family stability, the cooling-off period system requires continuous attention and improvement. In the future, it is hoped that legislators will adopt a more cautious approach, take into account diverse social factors, and refine the criteria for applying the cooling-off period. The current one-size-fits-all model should be replaced with more flexible and personalized solutions tailored to specific circumstances. Additionally, greater emphasis should be placed on safeguarding the rights of parties during the cooling-off period. The normalization of psychological counseling and support services, implementation of living condition protections, and establishment of emergency assistance mechanisms should all become central to the system's development. Finally, efforts should also be made to improve the interface between the cooling-off period system and the litigated divorce system, ensuring that both mechanisms complement each other and work in tandem to provide robust institutional support for the effective resolution of marital disputes.

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