

On the Influence of Divorce Agreement and Divorce Registration Application on the Effectiveness of Divorce Behavior

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Abstract: Article 1077 of the Civil Code: “within 30 days from the date of receiving the divorce registration application by the marriage registration authority, if either party is not willing to divorce, it may withdraw the divorce registration application from the marriage registration authority. Within 30 days after the expiration of the time limit prescribed in the preceding paragraph, both parties shall apply in person to the marriage registration authority for issuing a divorce certificate; if they fail to apply, the divorce registration application shall be deemed to have been withdrawn. “.The first paragraph of article 1077 endows both parties with the right to withdraw the divorce registration application. The second paragraph seems to be a legal presumption for both parties to withdraw the divorce registration. In addition to the “cooling off period” (or called the “reversal period”) added in article 1077, the civil code also details the procedures for divorce by agreement.

1. Introduction

The divorce behavior involves the identity relationship and property division of both parties to the divorce internally, and also has a great impact on the creditor and debtor. In Taiwan, there has been a “general contract theory” to deal with this problem. The argument of “general contract theory” may be used for reference. There is no doubt that the divorce agreement and divorce registration mentioned in article 1076 are subordinate or parallel. Divorce behavior is one of the legal acts.

2. The Dispute of Legal Methodology Caused by “General Contract Theory”

Divorce behavior is a kind of legal behavior^[1]. The agreement divorce first needs the agreement of both parties, and the divorce agreement is the embodiment of the agreement of both parties. Because the divorce agreement is not open to the public, it is difficult to be detected. For the need of administrative management and protection of the trusted interests of the third party, divorce registration should also be considered as a factor to consider the effectiveness of the agreement divorce. Before the amendment of article 1050 of the civil code of Taiwan, it is stipulated that “if two parties are willing to divorce (i.e. voluntary divorce or agreement divorce), the divorce shall be

deemed to be effective if the parties concerned have signed it and signed by two or more witnesses.”. In the revised 1050, divorce registration is included in the constituent elements of voluntary divorce. The “Taiwan Civil Code” does not specify whether divorce registration is a necessary condition for the establishment or effectiveness of divorce. Due to the lack of connection between legislation and judicial practice shortly after the new amendment of article 1050, there were great differences in the judicial judgment in Taiwan. At that time, both the theoretical and practical circles in Taiwan were deeply influenced by the theory of “effectiveness of general contract” created by the Supreme People court, Generally speaking, the general contract theory is that according to the law, a contract should have the conditions of establishment and special effective conditions. Once the conditions of establishment are met, one party should perform the obligation of “special effective elements”. According to the theory of general contract effectiveness established by the Supreme Court of Taiwan, whether divorce is the effective or important condition of a legal act determines whether the party can initiate a divorce registered residence registration lawsuit^[2].

The author thinks that after the divorce agreement is made by both parties in article 1067 of the civil code, the divorce behavior is still in the “established” state, and the specific behavior of the divorce behavior needs to be confirmed by the public power. Even if it is presumed that both parties intend their divorce behavior to have legal effect after the divorce agreement is made, in terms of the normative purpose, the civil code has a special divorce cooling off period for both parties. There is sufficient space for Estoppel and respect for individuals choice of intention, rather than the binding force referred to in “general contract theory^[3]”.

3. Justification of Divorce Procedure by Agreement in Civil Code

The procedure of divorce by agreement in civil code can be divided into three stages: signing a divorce agreement by both parties - applying for registration in person to the registration authority - the expiration of the “cooling off period” (or “reversal period”). The registration authority approves the registration in accordance with the provisions of article 1078 and issues divorce certificates to both parties. As a hot issue in the civil code, the “calm period of divorce” is the most attractive issue in the civil code. The problems raised by the new divorce agreement have something in common, that is, whether it restricts the exercise of individual rights. The phenomenon of impulsive divorce and hasty divorce has a place in the agreement divorce, but the author thinks that from the normative purpose, the space of estoppel set up by article 1067 and 1068 of civil code should be understood as the full respect for individuals right to choose divorce, and its guiding role should be to fully respect the individuals wishes, give the parties space to repent, and assist in divorce The decision made by the two parties after careful consideration should not be an excuse for the administrative organ to maliciously delay the divorce matters through the divorce procedures set up in articles 1067 and 1068, and complicate the procedures for divorce by agreement^[4].

No matter whether the agreement divorce system is guided by persuasion or reconciliation, it may not be once and for all. Domestic violence, gambling, drug abuse and other social problems are the situations that should be considered in the matters of negotiated divorce. However, it is difficult for the registration authority to conduct a comprehensive review on these issues. Even if it is impulsive divorce, it is difficult to say that it is not a temporary intention to terminate the marriage relationship after both parties have passed the cooling off period. Therefore, the author thinks that the degree of leniency and strictness of the agreement divorce procedure can not be generalized. It is enough for both parties to consider the actual impact of divorce and whether the feelings of both parties are broken in several stages of signing divorce agreement application for divorce registration - Divorce cooling period - cooling off period. If the handling procedure of agreement divorce

procedure is too strict, it is not convenient for the parties to exercise the right of divorce. At the same time, when the couple has applied for registration, there is still room for them to choose to go back. If one party refuses to apply for registration after signing the divorce agreement, it should be explained that there is room for repentance.

4. Discussion

At present, the amendment to the system of divorce by agreement in the civil code has been settled. In the theory of interpretation^[5], we should respect the choice of both parties, explore the true intention of both parties and appropriate mediation as the starting point. When both parties have applied for registration, there is still room to choose to go back on one word. After a couple signs a divorce agreement, one of them should also be interpreted as having room for repentance. On the other hand, it also needs to be pointed out. The time limit set by the newly added “new cooling off period” system in the civil code is enough to explore the true meaning of both parties, and excessive extension of the cooling off period will increase the inconvenience of divorce.

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