

Analysis of China's Rules of Divorce Financial Compensation

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Abstract: As socio-economic landscapes continue to shift, the social division of labor evolves, and the role of domestic work in maintaining family stability and social harmony becomes increasingly apparent. In recognition of the significance of domestic work, the clarity of financial compensation rules in divorce cases has become an urgent imperative. However, challenges arise in the application of these rules in real-life scenarios, particularly in China, where the Civil Code and judicial interpretations often lack specificity. This paper delves into the divorce financial compensation rules, offering a comprehensive analysis of the current legal framework and its application in practice. It identifies gaps and inconsistencies in the legal provisions, explores the reasons behind these challenges, and proposes targeted improvements to ensure smoother and effective implementation. Addressing these issues aims to contribute to harmonious relationships within families and society, promoting a more equitable distribution of responsibilities and resources within marriages.

Keywords: Application Scope; Compensation Standard; Intangible Value; Burden of Proof; Compensation Method

1. Overview of Economic Compensation for Divorce in China

Article 40 of the Marriage Law of 2001 stipulates that "If a couple agrees in writing that the property acquired during the existence of the marital relationship shall be owned by each party separately, and one party has fulfilled more obligations in raising children, caring for the elderly, assisting the other party in work, etc., he/she shall have the right to claim compensation from the other party when divorced, and the other party shall make compensation." [1] According to this provision,

if one party hopes to obtain economic compensation from the other party when divorced, four conditions must be met at the same time: 1. The couple makes a written agreement on the property acquired after marriage, which means that the couple must adopt the separate property system by agreement, rather than the legal joint property system; 2. The claimant is the party who fulfills more obligations in raising children, caring for the elderly, assisting the other party in work, etc., and undertakes more household chores; 3. The economic compensation for divorce needs to be proposed by the party who fulfills more obligations; 4. The time for proposing the economic compensation claim must be during the divorce. The Marriage Law determines the premise of divorce economic compensation as "the couple agrees in writing that the property acquired during the existence of the marital relationship shall be owned by each party separately", which means that only the party who fulfills more obligations during divorce among couples adopting the separate property system by agreement has the right to request compensation from the other party. In judicial practice, the system of divorce economic compensation has not been widely used. The reason is that the majority of families in China adopt the legal joint property system, and only a very small number of families adopt the separate property system by agreement. This premise greatly limits the scope of application of the divorce economic compensation system and makes it lack of operability [2].

The Civil Code of China, issued in 2020, stipulates in Article 1088 that, "When one party in a couple bears more obligations such as caring for children, caring for elderly relatives, assisting the other party in work, etc., he/she shall have the right to request compensation from the other party at the time of divorce, and the other party shall provide compensation. The specific method shall be

agreed upon by both parties; if no agreement can be reached, it shall be decided by the people's court." [3] This provision has removed the prerequisite of "the couple agreeing in writing that the property acquired during the existence of the marital relationship shall belong to each party separately." That is to say, during the existence of the marital relationship, regardless of whether both parties adopt the legal joint property system or the agreed separate property system, if one party bears more obligations to the family than the other party during the marriage, whether the male or female party, can propose divorce economic compensation. This revision has made the divorce economic compensation system effective.

At the same time, Article 68 of the Law on the Protection of Women's Rights and Interests, which was implemented on January 1, 2023, stipulates that "both husband and wife should share family responsibilities and care for family life. If a woman undertakes more responsibilities for child rearing, caring for the elderly, assisting the husband in work, etc. She has the right to demand compensation from the husband when they divorce. The method of compensation shall be determined by mutual agreement; if the agreement cannot be reached, a lawsuit can be filed with the people's court." This provision further affirms the significance of the divorce economic compensation system for the protection of women's rights and interests from the perspective of women's rights and interests' protection, reflecting the important value of the divorce economic compensation system [4].

2. The Judicial Application Status of Divorce Economic Compensation

After searching for divorce disputes in 2023 using the keyword 'divorce economic compensation' on the Chinese Judicial Documents Website, people can only find 16 documents. From the analysis of the trial results, among the 15 cases of the first instance court, 3 cases were not allowed to divorce, 1 case was not accepted, 4 cases were not supported for divorce economic compensation due to no evidence or insufficient evidence, 3 cases supported divorce economic compensation with amounts of 15,000 yuan, 20,000 yuan, and 50,000 yuan, respectively. All 3 cases settled by mediation gave up the

claim of divorce economic compensation.

Through analysis, it is found that in a large number of divorce disputes, the number of those who actively propose divorce economic compensation at the time of divorce is particularly small. None of the 16 cases had separate property agreements between the husband and wife, and all adopted the legal joint property system. The subject who proposed divorce economic compensation was usually women, who are more likely to bear more family obligations and household chores in marriage, and thus become the right subject of divorce economic compensation. When determining whether compensation should be made and the specific amount of divorce economic compensation, the court has no unified compensation considerations and standards, and there is a current situation of unclear individual determination standards and compensation amount calculation standards. The main reasons why the court did not support divorce economic compensation are: divorce is not allowed and there is no factual evidence.

3. Problems Existing in Economic Compensation for Divorce

Due to the simplicity of legal provisions and their poor operability, the current application rate of divorce economic compensation system is still low, and there are the following prominent problems in its application.

3.1 Difficulty of Proof for the Parties

"Bearing more responsibilities such as raising children, caring for the elderly, and assisting the other party in work", which is more often reflected in housework in real life. Due to the specificity of housework only existing in family life, no one other than the family members living together can prove that the party has undertaken more household chores. Only both husband and wife know how much housework the party has undertaken, even if friends and neighbors know, they cannot provide comprehensive information. [5] And housework exists in all aspects of life, and it is impossible to create evidence and save it every time. Therefore, it is often difficult to provide physical and effective evidence when presenting evidence. In the case of the other party's disapproval, the party who performs housework has to bear the adverse

consequences of failing to prove.

3.2 The Identification Standard is Not Clear

The first key point of divorce economic compensation system is housework. Because of its personal nature, privacy and family attributes, housework plays an important role in marriage and family, and has unique value. In judicial practice, it is often difficult for the parties to prove the value of housework, and it is also difficult for judges to unify the applicable standards in individual cases. Secondly, the secondary key point of divorce economic system is the recognition of more obligations. This statement is too general and abstract, and judges often ignore the value of the party who has contributed more to housework when hearing cases.

3.3 The Compensation Standard is Not Clear

When compensating, what standards should be followed? Can people refer to the salary of local babysitters? How to determine the compensation standards in various regions, and whether they need to be unified? What factors need to be considered in setting compensation standards? As there are no regulations on these issues at the present stage in China, judges have no reference standards in specific cases, which invisibly increases the discretion of judges, increases the flexibility of the judicial space, reduces the authority of the law, and easily leads to the loss of confidence in the system of compensation by the party seeking compensation. These standards are lacking in legislation and are also the main reason for the low application frequency of the divorce economic compensation system.

3.4 The Compensation Method is Not Clear

Any compensation system involves two aspects in its payment method, namely, the form of compensation and the term of compensation. As for the divorce economic compensation system, the form of compensation refers to the material form when the spouse who is obligated to compensate fulfills the obligation, such as cash payment, payment in kind or other forms of payment. The term of compensation refers to whether the spouse who is obligated to compensate assumes the economic compensation responsibility through a one-time payment or

installment payment. Currently, the legal system has not made further provisions on the payment method of divorce economic compensation. Due to different actual situations, whether economic compensation is paid in cash or in kind has different meanings for the party receiving economic compensation; whether economic compensation is paid in one lump sum or in installments also has different impacts on the party obligated to pay.

4. Improvement of Divorce Economic Compensation

As the Civil Code is widely used, there will be more and more cases applying the system of financial compensation for divorce, and the loopholes of the system will become more prominent. The following thoughts are put forward on the existing problems.

4.1 Reasonable Allocation of Burden of Proof

In civil litigation, most cases are "whoever claims, whoever proves". In order to solve the problem of the difficulty of proof in the system of financial compensation for divorce, not most people will also think of applying the "reversal of the burden of proof". However, across-the-board application of the reversal of the burden of proof, the burden of proof will be shifted entirely to the divorce financial compensation obligor practice is unfair, and even more cannot solve the reality of the problem. In marital life, the party who pays does not keep the evidence, and the party who does not do so may be even less likely to keep the evidence. Therefore, in order to solve the problem, should be "who claim, who prove" on the basis of other auxiliary means, such as husband and wife have been living together, both parties have the burden of proof, should be jointly proved, the judge according to the evidence of the evidence provided by the parties to the evidence of the size of the evidence which side of the evidence is more persuasive, in the side of the evidence can be determined that there is a high degree of likelihood, the evidence of which the party evidence can be determined to exist a high degree of likelihood, can be based on this to find that it bears more obligations of the claim.^[6] If the preponderance of the evidence provides that, in the case of a couple living apart or separated, one of the parties puts more

effort into the children and the elderly, the judge may, when the parties provide prima facie evidence, find that he or she puts more effort into the family on that basis.

4.2 Clarify the Recognition of More Obligations

First, the recognition of obligations should be limited to the scope of family obligations. As for household chores obligations, those who undertake more obligations should be those who invest a large amount of personal time and energy in family life, bringing benefits to the family and family members. As for non-household chores obligations, those who undertake more obligations should be those who have invested a lot of personal energy and time in assisting the other party's work, and the other party's work has certain difficulty and intensity.^[7] Not all obligations undertaken can be compensated, and certain conditions need to be met. The most important thing is to invest a lot of personal time and energy to maximize family interests.

4.3 Clarify the Reference Factors for the Amount of Compensation

When determining the amount of compensation, the following factors should be considered comprehensively according to the principle of consistency between rights and obligations: the duration of the couple's marital relationship; the time and energy invested by both parties in marital life; the occupation and income of both parties; the benefits obtained by both parties through family life; the age and health status of both parties; the local economic development level; the payer's burden and actual payment ability, and other factors.^[8]

4.4 Specify the Compensation Method

If the financial conditions of the obligated party permit, the court should try to choose a one-time payment when making a judgment and determine the payment period in combination with the actual situation of the parties. A one-time payment can effectively protect the rights and interests of the obligee and stabilize the rights and obligations of both parties as soon as possible. However, if the court verifies that the obligated party is indeed financially difficult and has weak payment ability, and after consulting the opinions of the

obligee, it can consider adopting a phased payment method. At the same time, when making a judgment on phased payment, it should inform the obligated party of the legal consequences of failure to perform and urge the obligated party to fulfill the payment obligation. It should be noted that the legal provisions for the divorce economic compensation system in the civil code on marriage and family law have been added with the stipulation that "the specific methods shall be agreed upon by both parties; if no agreement is reached, the people's court shall make a judgment". Some people believe that this is the embodiment of the principle of autonomy of will in divorce proceedings.^[9] The combination of modern genders and the division of labor in families are both based on the autonomy of will. Regardless of the purpose and lifestyle of marriage, the way of family life is chosen by the parties according to their own situation, and the core of private law autonomy is to respect the choices of the parties." Regarding the specific amount and payment method of divorce economic compensation, the wishes of the parties should be respected, and first negotiated by both parties. This negotiation can also be conducted during the mediation process of the case. If both parties cannot reach a consensus through negotiation, the judge will comprehensively judge based on the specific circumstances of the case.

5. Conclusions

After the revision, the divorce economic compensation system is more favorable to protect the interests of the party in an economically weaker position, ensuring justice in the distribution of divorce property. Its value should be recognized. In view of the problems existing in the economic compensation for divorce, this paper puts forward the following suggestions for improvement: reasonably allocating the burden of proof, clarifying how to determine that one party has borne more obligations, and refining the reference factors and compensation methods for economic compensation. It is hoped that the system can be better applied to practice.

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