

Foreign Divorce Damage Compensation System and Its Inspiration to Our Country

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Abstract: The divorce damage compensation system refers to the breakdown of the marriage caused by the bigamy, cohabitation, domestic violence, abuse and abandonment of the spouse. An innocent party is a system of claiming damages from the guilty party. Divorce damage compensation is an important legal system in China's marriage law. This paper first expounds the definition of "damage" in the divorce damage compensation system in China, analyzes the nature and significance of divorce damage compensation, expounds the constituent elements of divorce damages compensation, examines the legislation of divorce damage compensation system abroad, and puts forward the inspiration of divorce damage compensation in China. The law should recognize damages for divorce. Evidence obtained privately by the innocent parties. Only in this way, can we effectively make up for the lack of social moral function and the gap of the current criminal law system, safeguard the normal marriage and family relations and the legitimate rights and interests of the parties, and better deal with the complex situation in the field of divorce in China.

Keywords: Marriage law, Marital relationship, Divorce damage, Compensation system.

1. The Definition of "Damage" in Our Country's Divorce Compensation System Is Defined

In civil law theory, there are two kinds of understanding of divorce damage, that is, separation damage and divorce damage in a narrow sense. The former means that when one party's act is the tortious act that constitutes the cause of divorce, the other party can claim the damages caused by the tortious act. The latter refers to the damage of divorce itself to the other party. These two understandings differ in many aspects. First, the dissociation damage is equivalent to the damage caused by torts, while the narrow sense of divorce damage is the damage caused by divorce itself to the other party. Secondly, both the tortfeasor and the victim may include a third party except the husband and wife, while the narrow sense of divorce damage only refers to the damage caused by one party to the other party. The difference between these two is that the understanding of cause damage will apply the provisions of tort liability law to the protection of the victim's rights, and the narrow sense of divorce damage should apply the special provisions of marriage law to the protection of the victim's rights. The latter understanding will open a theoretical window for the future of our country in perfecting the special provisions of divorce damage compensation system set up in good condition. In addition, this distinction is also positive degree. The paper defines the understanding and definition of the nature of divorce damages.

There are many differences on how to understand the divorce damage in Chinese law, but this paper thinks that the narrow sense of divorce damage is more appropriate to define, apply and perfect the divorce damage compensation system. First of all, if it is not understood as the damage of divorce in a narrow sense, then there is no need to implement the words "leading to divorce" in the law; Secondly, divorce damages are preconditioned by divorce, so divorce damages are generated by divorce itself, not by the torts that lead to divorce.

Finally, only by understanding divorce damages in this way can we effectively distinguish between marital damages and divorce damages. The claims of both should be independent rather than conjunctive. After adopting the narrow understanding of divorce damage, we distinguish the marital tort and divorce damage. On this basis, since the parties of divorce action can only be the two parties with marital relationship, there will be no question whether the third party should participate in the divorce damage lawsuit, because this issue is the result of mixing divorce damage and divorce damage. Therefore, we should adopt the narrow understanding of divorce damage.

2. Analysis on the Nature and Meaning of Divorce Damage Compensation

2.1. The nature of divorce damages

Just as there are two kinds of understanding of divorce damage, the corresponding understanding of the nature of divorce damage compensation is mainly two different theoretical differences, one is the tort liability said, this theory is also admitted by current judicial practice, in 《Interpretation of marriage law[1]》 Article 28 stipulates that since the mental damage compensation is tort liability, it can be seen that the mainstream view in the legal field is tort liability, corresponding to the understanding of the damage; the other is special liability, the most representative of its nature should be the special civil liability newly created by the marriage law, the divorce itself is the cause of damages, so the divorce damages should have 《law of marriage》 The constitutive elements stipulated in Article 46, but if the relevant content is explained according to the tort law, it is obviously lacking, that is, the tort elements are not met, and it can also have the right to claim damages. Thus it can be seen that the constituent elements of the damages should be the special provisions of the marriage law on the divorce damages, which corresponds to the narrow understanding of the divorce

damage.

In conclusion, this paper believes that this special responsibility is more appropriate to understand the nature of divorce damages. First of all, the tort liability is the result of the confusion of divorce damages and the compensation for the divorce damages is the damage for the other party, while the divorce itself is not a tort, so the liability for the divorce damages can be the tort liability. Second, since the special liability, the legal theory, and is conducive to the special provisions for the improvement of the system.

2.2. The significance of the divorce damage compensation system

The divorce damage compensation system is a civil relief measure, which is an important system to protect the rights of the no-fault party in the divorce. It has great significance in many aspects. First, give economic compensation to the no-fault party in the divorce, which not only improves the authority of the law, but also makes the divorce dispute better solved. Second, for the great significance of the legal system, even if the relevant legal norms in China are better intact. By stipulating the system. It fills the loopholes in this aspect of our law, so that the fault party will no longer avoid the sanctions due to the law because of the lack of legislation. Third, this system better guarantees the freedom of marriage, especially the freedom of divorce. In the social reality of economic status in a weak party often suffer from divorce, because once the divorce their source of living and living standard will be affected by a great degree, but the system is able to make this part of the people in certain degree from worry, by obtaining damages to ensure the economic living level after divorce.

3. The Constituent Elements of The Right to Claim for Divorce Damages

Most of the theory of the divorce damages claim is discussed from the perspective of damages, so the elements of the theoretical analysis has a common problem is that the fault party tort and no-fault party damage causality, but in fact based on the narrow sense of divorce damages understanding, should be divorce itself with no fault party damage causal relationship, divorce to damage, have the generation of the claim for divorce damages. From the perspective of this paper, the composition of the claim for divorce damage should be understood as follows: first, one of the husband and wife has a legal fault, and one party has no legal fault; second, the fault behavior of the party with a legal fault leads the husband and wife to dissolve the marriage relationship; third, the no-fault party suffers damage due to the divorce.

For the first point in the constitutive elements, legal fault is the core concept. According to the current legal system in China, only four situations conform to the concept of legal fault. It is not difficult to see that these four situations alone lack the legislative purpose of the divorce damage compensation system. The establishment of the system is to punish the behavior of the major fault that leads to divorce, on the other hand, it is to protect the rights of the no-fault party and make up for the damage suffered by the divorce. At the same time, with the progress of society, many behaviors that lead to divorce are even worse than these four kinds, such as adultery, drug use, gambling, fraudulent support, and so on are common fault behaviors that lead to divorce, so the expansion of legal fault situation is certain and in line with the

law of progress. For the second point of the constitutive elements, we can make it clear that divorce is a necessary condition for the claim for divorce damages, that is to say, even if one of the husband and wife has a fault behavior, the other party is not a fault behavior, but the fault behavior does not lead to divorce, the claim will not arise. In addition, it is necessary to require that the fault behavior is the direct cause of divorce. In other words, there is a causal relationship between the fault behavior and the divorce to produce the right to claim for divorce damages. The third point of the constitutive elements is to make it clear that the divorce produces the damage, and there is no compensation without the damage. As mentioned above, the damage here refers to the damage of the divorce itself to the no-fault party. That is, there is a causal relationship between divorce and injury. In addition, the damage here should include both property damage and non-property damage is more conducive to the improvement of the system.

4. Legislative Analysis and Reference of Foreign Divorce Damage Compensation System

Analysis of foreign legislation examples

4.1. France

《 French civil code 》 Article 266 stipulates the compensation system for divorce damages, which means that the divorce is due to the cause of the spouse of one party at fault, and the party at fault shall compensate for the damage suffered by the no-fault party. The no-fault party may claim damages when the divorce proceedings is filed. From this we can see that the French legislation for divorce damage compensation system stipulates that no fault in marriage can claim compensation for divorce damages. In the actual justice of France, the performance of damage compensation is mainly through the way of material compensation, but the amount of divorce damage compensation in China is determined mainly based on the extent of the damage caused by the fault party as the standard, and the economic level and economic sources of both parties in the standard are not considered.

4.2. Switzerland

《 Swiss Civil Code 》 Article 92,93 and 95 stipulate the contents of the compensation system for divorce damages. In this respect, the subject of compensation stipulated by Switzerland is also the no-fault party, and the composition of the right of compensation claim is the fault of the one fault that brings damage to the no-fault party, and there should be a causal relationship between the fault and the damage result. It can be said that the Swiss divorce damage compensation also applies to the system from the perspective of divorce injury. In addition, the specific amount of the Swiss system is based on the damage results of the no-fault party and the economic ability of the fault party. One of the most important is the regular pattern of Swiss compensation for divorce damages, which includes a payment period from the no-fault party's divorce to their remarriage.

4.3. America

Since the United States is a federal country, the relevant provisions of divorce damage compensation vary from state to state. The United States takes the division of property, the

divorce damage compensation system and the former spouse support as the divorce relief system. In addition, although the situation of each state is not exactly the same as the other, the concept of spousal right is recognized in the United States, that is, in the United States where the spousal right is infringed by the fault of the third party, the injured party has the right to claim compensation. Can be seen from this regulation, the United States from the perspective of tort liability to confirm divorce damages, because according to the provisions of the tort law to remedy and solve the problem of divorce damages, so in the rules of the divorce this precondition, this provision although relatively simple, but confused the marital damages and divorce damages, is not conducive to the improvement of the divorce damage compensation system and progress.

Evaluation of foreign legislative examples

Considering the provisions of many countries on the compensation system for divorce damages, except for a few countries such as Germany, which clearly pointed out in 1909, 《German Civil Code 》 Article 1,5,78, the legal provisions, Article 10. In principle, only the time, the reason, the rights and obligations of the parties, but the specific amount of compensation is not the standard, the payment method, the payment period and the so on; the second model is for. In the above aspects, in the marriage and family law part to give good provisions, forming a relatively sound divorce damage compensation system. Can say the first mode although the regulation is relatively concise, agility, applicable can be based on various condition of flexibility, but in the judicial practice tend to produce injustice, after all, this flexibility is done by the judge's discretion, at the same time this paper for this from the perspective of tort liability. Understanding the unclear concept of marital damage and divorce damage.

Although the second model is less complicated and agile than the first one, it can form a compensation system, on the contrary, the judgment is a special civil liability and requires complete special provisions in the marriage law. Therefore, I think it is more appropriate for our divorce damage compensation system to accept the second model. At the same time, we can see the request time of divorce damages, most countries also choose the legislative mode of divorce damages in divorce, that is, divorce is the precondition for divorce damages, and more confirm the understanding that divorce damage should be made in a narrow sense of divorce damage.

In addition, for the Swiss regular compensation way I think is not take, the main reason is the time span change too much, this leads to the may have remarried but this period of time actual compensation amount did not reach the real loss amount, may also be from divorce to remarry time is too long lead to the actual compensation amount and so on many problems, so I think this system is not applicable in our country.

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