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Civil Law Issues Related to Psychiatric Treatment Psychiatric Treatment and Divorces not Included in the Statistics: Filing for an Uncontested Divorce without the Spouse's Consent

Mitsuko Yokochi

Nagato Ichinomiya Hospital, 17-35 Katachiyama Midori, Shimonoseki, Yamaguchi
751-0885, Japan

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Abstract In this study, we discuss the issue of applications for divorce submitted without the spouse's consent - a problem concerning both family laws and psychiatric care. This issue is often overlooked, although we sometimes encounter such cases during clinical practice. This paper reports five cases, of which I was in charge as an attending physician, and their characteristics.

About 90% of all divorce cases in Japan proceed with mutual consent. Although "uncontested divorce", one of the six types of divorce, places emphasis on the independence of both the husband and wife, the process of discussion involves many problems. Therefore, we compared the system of uncontested divorce in Japan and that in other countries with a similar background in terms of marriage. Most of these countries have prepared a variety of provisions to oblige both husbands and wives to present themselves, prevent illegal acts, and persuade couples to consider the situation carefully, and it usually takes time to make a judgment with reconciliation and revocation in mind. On the other hand, the system in Japan is distinctive in many ways: a husband and wife are allowed to set up a schedule for discussion on their own; they have no means to confirm each other's decisions. Although one can at least apply for the "system to invalidate notification of divorce submitted without the spouse's consent", a path provided by the government, this is far from sufficient. To help them convey and confirm each other's intentions, it is necessary to develop effective methods based on the current status of marriage in Japan. Intervention by health care professionals or facilities should also be allowed, particularly when one (or both) person in a couple is a mental disorder patient.

Key words: uncontested divorce, notification submitted without the spouse's consent, system in other countries, application for the system to invalidate notification, confirmation of invalidity

Introduction

Forensic psychiatry has long been associated with criminal law, categorized under public law. However, for most ordinary citizens who have not committed any crimes, civil law, a field also covered by forensic psychiatry, is far more important. The present study focuses on the issue of files for divorce submitted without the spouse's consent, or

divorces that do not appear in the statistics - a problem related to our daily lives and family law. Although we encounter these cases infrequently during clinical practice, they often tend to go undetected.

Case examples and discussion (Table 1)

This paper reports five cases, of which I was in charge as an attending physician, to

Table 1 Case examples

Case	Gender	Age	Disease	Who notify without consent	Motivation or Reason for notification	Intentions of both parties	Progress
1	female	70	Schizophrenia	Spouse (husband)	Problem of assets inheritance	Totally one-sided	Divorce was approved Remained hospitalized Died of an illness
2	female	45	Depression	Patient (wife)	Separation was the opportunity To get a child custody	Formerly both parties consented They wrote a notification Husband changed his mind	Husband consented later Medical care discontinued
3	male	50	Schizoaffective-disorder	Patient (husband)	Manic excitement	Totally one-sided	Divorce was approved They remarried each other Medical care continued
4	female	52	Schizophrenia	Patient (wife)	Marriage to a man from erotomania	Husband was told about He did not agree to it	Husband consented later Medical care discontinued
5	female	48	Schizophrenia	Spouse (husband)	Exhaustion and feeling of rejection due to delusion of jealousy	Totally one-sided	Prevented divorce by the application to invalidate notification Husband rejected her discharge Removed to a dormitory Medical care continued

discuss their characteristics, the reasons for divorce, and subsequent problems. Three husbands and two wives filed for divorce, with three files being submitted by patients and two by spouses. In general, more files for divorce are submitted by husbands to terminate their marriages without obtaining the spouse's consent.¹⁾ However, characteristic underlying causes were identified in the cases involving mental disorder patients: a lack of judgment by patients due to their disorders, and damaged marital relationships attributable to long-term illness, treatment, and nursing care. Divorce was not granted to one couple, but the other four couples were legally granted their divorce; one couple remarried each other later. The majority of the wives were schizophrenic patients aged about fifty years.

The Japanese system of uncontested divorce

Article 763 of the Civil Law states that the "Husband and wife may effect divorce by agreement". Japanese Civil Law stipulates six types of divorce, and about 90% of all divorce cases in the country proceed by mutual consent. A husband and wife should meet the substantial and formal requirements for their uncontested divorce to be approved.

The substantial requirements include the fact that both the husband and wife have intentions for divorce; intentions mentioned here refer to a certain level of will sufficient to legally terminate the marital relationship, instead of a strong one to continue a marriage. Mutual consent on divorce is required at the time of submitting as well as preparing an application.

The formal requirements include the submission of an application for divorce in accordance with the family law – an essential condition for uncontested divorce. In Japan, however, family registration officials conduct only a routine examination of submitted applications, and thorough screening is not performed to determine the validity of such applications.

Discussion only between a husband and wife is often accompanied by ambiguity in its processes, and no agreement is reached regarding many issues, such as the distribution of assets and child-raising. The issue involving mental disorder patients is more serious,²⁾ as indicated by the number of lawsuits and requests for reconciliation filed by those who claim the invalidity of their uncontested divorce, citing the lack of sufficient mental capacity of their spouse as a reason.³⁾

Table 2 The system of uncontested divorce in other countries

Country	Who must appear	Agency and places for appearance	System for confirmation of intention Other screening items	When divorce is approved
Russia	Both parties must appear if no minority child	Administrative agency Identification-registration-agency (family registration division)	Confirmation of intention for divorce No minority child	Certificate of divorce is issued after three months
China	Both parties must appear	Administrative agency matrimony agency (municipalities)	Review is strict investigation and mediation complete capacity to act confirmation of intention for divorce appropriate child support appropriate property settlement	Within one-month-review, divorce is approved and registered
Korea	Both parties must appear	Family court	Requires intent capacity. If not, guardian or family council consent Confirmation of intention for divorce Certificate of confirmation is issued	Within three months, they notify divorce paper to the municipal head with certificate
Japan	One or Both parties or Mandate or Post	Administrative agency (municipalities)	No confirmation of intention for divorce Custody is decided for a minority child	On the acceptance of notification

The system of uncontested divorce in other countries (Table 2)

In Western Christian countries, where divorce had long been prohibited, all divorce cases must be settled in court, and divorce by mutual consent between a husband and wife is not allowed. On the other hand, some non-Christian countries, including Russia, China, Taiwan, and Korean, allow uncontested divorce.

Russia

Russian Family Law states that divorce cases shall be settled in court. However, divorce by mutual consent between a husband and wife is allowed as long as they do not have underaged children.

Both the husband and wife are required to visit an administrative agency (family registration division of a local government office) for registration. On acceptance of the application, the registration agency confirms their will to divorce and that they do not have minor children. Three months after the submission of an application, the registration of divorce is completed and a certificate is issued. This period of three months is designed for husbands and wives to carefully consider their divorce or reconciliation; it is said that about 20% of the couples do not return to the office for registration.⁴⁾

China

Both the husband and wife must apply for divorce registration at an administrative marriage and divorce registration agency (local government office).

Both the husband and wife are not allowed to designate any third person as an agent. Although the registration agency is an administrative organization, it is authorized to make judgments to some extent, and may become involved in investigation, reconciliation, and persuasion. Thorough screening, instead of a routine or superficial one, is performed during a one-month period from application to registration. The husband or wife is allowed to withdraw the application within this period, which also serves as a provision for those who have been deceived or forced into filing for divorce.⁵⁾

Korea

Korea adopted the Japanese divorce system in the colonial period. Article 834 of the Korean Civil Law states that "Husband and wife may divorce by mutual consent". However, a husband or wife wishing to file for divorce is required to have a certain level of mental capacity, and those who do not shall obtain consent from their parent or guardian, or an agreement reached in a family meeting when consent is not obtained from them (Articles 835 and 808 of the Korean Civil Law). In the past, family registration officials were

authorized to conduct screening to prevent divorces not based on the intentions of a husband or wife. Since the revision of the family registration law in 1978, family courts have been in charge of the screening. As in Japan, both the husband and wife must submit an application signed by two adult witnesses. In Korea, however, a family court summons both the husband and wife to confirm their identity and intentions for divorce prior to issuing a confirmatory note; the confirmation becomes invalid if an application for divorce is not submitted to the local government office within three months. The regulations also stipulate that a husband and wife shall discuss with each other the matter of raising underaged children and the distribution of assets, although they are not necessarily requirements for an uncontested divorce.⁶⁾

Other countries

In Taiwan, the system of uncontested divorce was established in as early as the Han Dynasty period.⁷⁾ Under the current civil law system, a husband and wife are required to submit an application signed by at least two witnesses. An uncontested divorce involving minor children requires consent from an attorney – a difference from the Japanese system. Some Islamic countries, including Indonesia and certain areas of India, also allow uncontested divorce. However, it should be noted that some of these countries permit polygamy, and, therefore, comparison with them may not be valid.³⁾

Comparison with Japan

Confirmation of the intentions of the husband and wife

Signatures of witnesses

Japan, Korea, and Taiwan require two witnesses to sign an application for divorce to confirm the intentions of the husband and wife.

Confirmation of the intentions of couples at the agency

In Russia, China, and Korea, the husband and wife must report to the relevant administrative agency (family court in Korea).

In Japan, the husband or wife does not have to visit the relevant agency to convey

their intentions. Notification of divorce submitted by one or both parties, a third person, or by mail will be accepted.

Concerned agencies

In Japan, China, and Russia, only the relevant administrative agency, apart from the husband and wife, is involved in the procedures for divorce registration. However, China has far more strict requirements, compared to Japan and Korea, and thorough screening is performed regarding confirmation of the intentions of couples, child-raising, the distribution of assets, and financial support following a divorce. Only Korea requires the involvement of a family court.

On the other hand, administrative officials at Japanese family registration offices are not authorized to perform official screening, and conduct only routine documentary examinations.

Periods for reconsideration and screening

Period for reconsideration

The Russian and Korean systems specify a period of three months to prevent illegal acts related to uncontested divorce, and for couples to consider withdrawal and reconciliation.

Period for screening

Under the Chinese system, a period of about one month has been set up to identify illegal applications, and persuade couples to reconsider their divorce.

Unlike other countries, Japan has not yet specified such periods for reconsideration and screening.

Approval of divorce

In Russia, divorce is approved on completion of registration at the local government office. Under the Korean system, the husband and wife are allowed to submit an application for divorce only after the receipt of a certificate of confirmation of their identity and intentions. Couples in China have to undergo rigorous screening for their divorce to be registered and approved.

In Japan, on the other hand, divorce approval is straightforward on completion of a routine documentary examination.

As we have just discussed, the Japanese

system of uncontested divorce, which does not provide any measures to confirm the intentions of husbands and wives, or specify a sufficient period of time for screening or reconsideration, is characteristic among those in other countries.

Application for the system to invalidate notification of divorce submitted without the spouse's consent

Until recently, there was no provision in Japanese Civil Law to invalidate a notification of divorce, as it is modeled after civil laws in European countries that do not have a system of uncontested divorce. To compensate for this legal defect, a system was established to invalidate any notification of divorce submitted without the spouse's consent. Since its establishment, there has been an increase in the number of those who apply for the system, particularly from 2000.

However, the system is insufficient and has some limitations: the validity of notification expires in six months; hospital inpatients and those in care facilities cannot utilize the system.

Conclusions

A number of civil law issues related to psychiatric treatment remain unresolved. The Japanese system of uncontested divorce places greater emphasis on couples' decisions than any other country, and it has a serious drawback at the same time: a husband and wife cannot confirm each other's decisions. To help them confirm each other's intentions while respecting their independent decisions, it is necessary to improve the existing system in accordance with the current situation in

Japan and its culture. The above-mentioned principles and provisions in other Asian countries as well as specialists in forensic psychiatry should be consulted.

A number of notifications for divorce have already been accepted against the spouse's will. Utilizing the "system to invalidate notification of divorce submitted without the spouse's consent", although it is insufficient in many ways, provides some support while respecting the parties' intentions.⁸⁾

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