

Divorce by Mutual Consent in Comparative Law

Abstract

Since one of the principles of family is its social protection, the reduction in the number of divorces in every country is of an essential importance. The republic of Macedonia belongs to the group of countries where the number of divorces is in a continuous increase, and the number of concluded marriages is in a gradual decrease. The grounds for divorce are different, and there are also differences in the regulation of the grounds for divorce. Divorce by mutual consent is accepted by most legislatures, but there are differences in the treatment of the consequences caused by it. The author of this text takes an insight in the legislation for divorce by mutual consent of the spouses within comparative law. If we take into consideration the comparative reforms, it is easy to notice that some legislatures have taken one step further in the regulation of divorce by mutual consent. We can also notice that in The Republic of Macedonia some matters, considering the divorce by mutual consent, are not included in the regulation, but now there are proper conditions created for them to be regulated. Changes are essential in the regulation of divorce by mutual consent which should refer especially to the conditions of the submission of the joint application for divorce and the consequences of the divorce. For this cause, comparative law's solutions are presented so that a conclusion can be made on whether our country is ready to act in accordance with comparative solutions, and for which solutions there are conditions and needs to be implemented in the Republic of Macedonia.

Key words: spouses, divorce by mutual consent, joint application, division of mutual property, matrimonial home.

Introduction

Matrimony is a dynamic category which continuously follows changes in the society. It is continuously up to date with the changes in moral and ethical values. If at some point in the past, divorce was an inexplicable term, now it is continuously present in society. It is almost as if there is no spouse who has never thought of divorce, and the number of those who decide to take that step is quite large.

One of the principles of matrimony is its social protection, as a result of the need for protection of the matrimony by the social institutions, for the main reason that family and family relations are the most significant link of society.² This is why it is of great importance to reduce the number of divorces in every country. For exactly this cause many measures and campaigns are lead in order to reduce the divorces and to strengthen the relations in the family. However, there is a noticeable

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² See more for the principles of the marriage at Љиљана Спировиќ Трпеновска, Дејан Мицковиќ, Ангел Ристов, *Семејно право* Скопје: Блесок, 2013, 18.

increase in divorces in most countries whereas the number of new marriages is reducing. The statistics of State Statistical office of Republic of Macedonia show that the number of divorces in the period between 1995 and 2012 is increased for about 2.7 times. The number of divorces in 2012 shows an increase of 9.9% in comparison to 2011, and it equals to 1926 divorced marriages.³

Today divorce is liberalized in most countries so spouses are free to take the initiative for a divorce based on many grounds. The grounds for divorce can be different: divorce based on fault by one or by both spouses, divorce based on separation, divorce by mutual consent, mental insanity of one spouse and disruption of the matrimonial relations to the point when they become unbearable and there can be no expectation to be repaired or as described in some legislatures “irretrievable breakdown of marriage.”⁴

The procedure during divorce based on mutual consent is the shortest because it allows the both parties to agree on the consequences from the divorce in advance. There is no dispute between the two parties, there is no claimant and no defendant - there are only applicants. It offers the spouses a way to terminate the unsuccessful marriage, and to willingly agree on the consequences from the divorce. The decision on the custody of children and the division of the common property are the kind of consequences that cause delay in the procedure for divorce. The advantage of this particular type of divorce is not just that the actual consequences from the divorce can be agreed on, but also in the fact that the parties are not obliged to point out the reasons for initiating the joint application for divorce.

Having in mind comparative-law solutions, it is easy to notice that some legislatures have taken one step further in regulating divorce by consent, but also that our legislator has missed to regulate some matters concerning the divorce by mutual consent for which there are now proper conditions to be regulated. Reforms are necessary in the regulation of the divorce by mutual consent which should particularly refer to the conditions of initiating the joint application and the consequences of it.

The origin of divorce by mutual consent

Divorce by mutual consent originates from divorce by fault, which is the oldest ground for divorce. Divorce by fault is represented in the system of a divorce as a sanction⁵ where divorce is allowed as a result of fault by one spouse. It comes from the inextricability of the marriage, but allows divorce when one of the spouses will hardly harm the obligations of the marriage. It is noticeable that the divorce by fault was acknowledged by the Bible too. For example, in the Gospel of Matthew

³ Државен завод за статистика на Република Македонија, Соопштение, Склучени и разведени бракови во Република Македонија во 2012 година – дефинитивни податоци.

⁴ Germany, Russia, Bulgaria, Czech and others.

⁵ There are also system for forbidding the divorce, system of free divorce, system for divorce as a legal remedy and combined system.

divorce was allowed only in the case of woman's infidelity.⁶ The fault by one of the spouses as the oldest reason for divorce, was present for a long time in the family law and existed as the only ground for divorce in most European countries.

Justification of the accepting of only one ground for divorce is the fact that the prohibition for divorce was present for a long time, the divorce was considered as a holy secret, and the matrimonial bond as inextricable. So the only excuse for divorce was found in fault. Divorce was allowed only in particular circumstances, and only by petition of one spouse who was betrayed by the other spouse.

This ground comes from the subjective criteria, which means that divorce is allowed as a result of the fault by one spouse, and it leaves aside objective circumstances. The most common factors which lead to fault are: adultery, domestic violence, alcoholism, workaholism.

Accepting fault as the one and only ground for divorce has led to a real comedy in the courtroom caused not only by the spouses but the judges too. Apparently, if the spouses were seeking divorce, they were forced to make up a fault in order to satisfy the law, which the judges were familiar with, but still conducted such divorce based on the will of the spouses who had willingly decided to terminate the marriage. They were obliged to play a kind of 'comedy' role with a false confession of fault or false evidence dictated to a lawyer. This legal comedy (*comédie judiciaire*) has raised the awareness that the divorce by mutual consent is present but camouflaged as divorce by fault. The camouflage of the divorce by mutual consent in divorce by fault was present in many European countries for a long time.

One of the flaws of the ground for divorce by fault is the fact that the judge, while acting in accordance with the facts listed in the claim of fault by one spouse, is forced to investigate the private life of the spouses. This causes violation of their intimacy. On top of this, the claim of the presence or absence of fault is in judge's authority, who would decide from his own personal experiences. This turned out to be very unproductive in a way that the same circumstances can be valued differently by different judges.

An argument against this ground also is the fact that if there is no fault by one spouse and still one of them is unhappy in the marriage, it becomes a prison without the opportunity of release just because of lack of grounds for divorce. That is why one of the spouses is forced to make up reasons where the other spouse would be referred as the faulty one.

In this particular sense there is another argument against this ground for divorce as one and only ground for divorce. It is the fact that in the

⁶ Gospel of Matthew, Chapter 19, Some Pharisees came to him to test him. The asked, "Is it lawful for a man to divorce his wife for any and every reason?" "Haven't you read", he replied, "that at the beginning the Creator 'made them male and female and said 'For this reason a man will leave his father and mother and be united to his wife, and the two will become one flesh? So they are no longer two, but one flesh. Therefore what God joined together, let no one separate.'" "Why then", they asked, "Did Moses command that man give his wife a certificate of divorce and send her away?" Jesus replied, "Moses permitted you to divorce your wives because your heart were hard. But it was not this way from the beginning. I tell you that anyone who divorces his wife, *except for sexual immorality*, and marries another woman commits adultery."

process of making up the fault by one of the spouses, a conflict aroused among the spouses, which is logical if we take into consideration that during the legal procedure one of them should be claimed as the faulty one. This raises the question who will be the villain in the 'comédie judiciaire' and which reasons will be ascribed to him/her. This new situation where the spouses are in mutual conflict was not convenient to anyone. It may lead to the question of agreement on the custody over the children and the usage of the common property.

It is important to mention that the presence of fault can lead to the obstruction of applying for divorce. According to the initial definition for the ground for divorce by fault, it seems that divorce is allowed only for the spouse who is not faulty.⁷ This opportunity does not apply for the faulty spouse. This leads to the question of the spouses' fault and whether it is the key point for terminating a marriage. It is often the case the faulty spouse to be the victim of this process as well as for both spouses to be considered as faulty for the dysfunction of the marriage.

All these arguments lead to the fact that the existing of only one ground for divorce (divorce by fault) has proven to be unproductive, and it became of crucial importance to introduce new grounds for divorce. That legal comedies performed because of divorce by fault were the first to initiate the need for divorce by mutual consent. The divorce by fault is gradually replaced by the divorce by mutual consent. It was introduced right after the French revolution by the Law from 1792. It remained in the Civil Code from 1804 as well. Now, divorce by mutual consent is regulated in all European countries just because the fact that it existed in practice a lot earlier since its regulation, but camouflaged by divorce by fault. The introduction of this ground was just an adjustment of the law with the reality in order to avoid further evading the law.

Bulgaria

Bulgaria acknowledges divorce by mutual consent, besides the ground of divorce because of an irretrievable breakdown of the marriage. This ground was introduced in 1945, repealed in 1952 and restored in 1968. It is regulated with the articles 50 and 51 from The Bulgarian Family Code⁸ and article 330 from The Bulgarian Code of Civil Procedure.⁹ What's characteristic about the family law in Bulgaria is that the new Family Code since 2009 does not contain the provision which determined a period of three years duration from the beginning of the

⁷ See article 53, paragraph 2 from Основен закон за бракот, *Службен Лист на СФРЈ*, број 28, XXI, 23 Јуни 1965. and article 52 from Законот за брак на СР Македонија, If for the disorder of the martial relations is fault just one spouse, only the other side have right to seek divorce.

⁸ Семейен Кодекс, *Държавен вестник Бугарија* бр. 47/2009, бр. 74/2009, 82/2009, 98/2010, 100/2010, 82/2012, 68/2013.

⁹ Граждански Процесуален Кодекс, *Държавен вестник Бугарија*, бр. 59/2007, 50/2008, 63/2008, 69/2008, 12/2009, 19/2009, 32/2009, 42/2009, 47/2009, 82/2009, 13/2010, 100/2010, 5/2011, 45/2012, 49/2012, 99/2012, 15/2013, 66/2013.

marriage to the moment of initiating the application for a divorce by consent.¹⁰

Article 50 from the Family Code states that where there is serious and firm agreement between the spouses for the divorce, the court allows it without investigating the motives that cause it. This leads to the fact that in the new Family Code of Bulgaria, the only condition for divorce is the serious and firm agreement by the spouses. As opposed to the previous Family Code which ascribes a term of at least three years since the beginning of marriage.

Along with the joint application, spouses are obligated to apply an agreement regarding domicile of the children, the discharge of parental rights, their personal relations, and the children's maintenance, and also the use of the matrimonial home, the maintenance for one of the spouses, and the use of the family name (article 51 from the Code). They can also agree on other consequences from the divorce.¹¹ It is important to be mentioned that the agreement is ratified by the court only when the court is assured that the interests of the children are well protected. For this purpose the court can ask The Center of Social Work for an opinion. Where the agreement is not complete or the interests of the children are not well protected the court sets a term within which these defects should be remedied. Where the defects are not remedied within the prescribed term, the divorce petition is dismissed.¹² The Code allows a change of residence, parental rights, their personal relations and the children's maintenance if there is a change in the circumstances. The aim is to protect the spouse whose financial conditions were worsen after the divorce.

Divorce in Bulgaria is allowed only through a court procedure. It is initiated by a written application to the district court where the spouses express consent for terminating the marriage. Spouses must appear personally to the court hearing. If one of the spouses does not appear and has no justifiable reasons for it, the divorce procedure is stopped. Taking the application into consideration by the court can be postponed for a specific time only if this is essential for gathering additional evidence.¹³ After the court is assured that the agreement for divorce between the spouses is serious and firm, and after court determine that the agreement does not interfere the law in any way and is in the best interest of the children, the court will allow the divorce. There is no right of appeal against this decree.

In this procedure, the court has no jurisdiction to investigate their motives which caused the initiation of the joint application. However, it is the court's duty to be aware that the agreement is in accordance with the Law as stated in articles 101 and 102 from the Bulgarian Code of Civil Procedure, court investigates whether the rights of the children are well protected and whether it contains all the agreements as mentioned in this ground.

¹⁰ See Article 100, paragraph 2 од Семейен кодекс, *Държавен вестник Бугарија* 41/1985, A petition for a divorce by mutual consent cannot be filed until three years after the contraction of the marriage.

¹¹ Ibid. Article 51, paragraph 1, Семейен Кодекс, *Държавен вестник Бугарија* бр. 47/2009, бр. 74/2009, 82/2009, 98/2010, 100/2010, 82/2012, 68/2013.

¹² Ibid, Article 51, paragraph 3.

¹³ Article 330, paragraph 4, Граждански Процесуален Кодекс, op. cit.

Practically, in most cases, the procedure of applying for divorce by mutual consent between spouses, in Bulgaria takes place in just one litigation, where the court makes a decree only when it is fully assured that the agreement is serious and firm and is in accordance with the legal conditions.

Serbia

Serbia also acknowledges divorce by mutual consent between the spouses,¹⁴ besides the grounds: serious and permanent termination of marital relations between spouses and the inability of mutual marital community between spouses from objective circumstances. It is regulated with Article 40 and 225 from the Serbian Family Law Act.¹⁵

The procedure of divorce by mutual consent is initiated with joint application for divorce by consent applied to the court in the area where the spouses' residence is. If the procedure for divorce involves minor children, the procedure of divorce by consent is urgent.¹⁶ The law obliges the court to complete the procedure in two hearings at the most, the first within 15 days since the day when the joint application for divorce by consent is received by the court, whereas the court of second instance is obliged to bring the decision within 30 days since the day when the appeal was applied.

It is mandatory that the agreement for the divorce also must contain written agreement regarding the discharge of the parental rights and written agreement for division of the mutual property. The Law allows that the agreement regarding the discharge of parental rights may take the form of an agreement for mutual or agreement for independent discharge of the parental rights.

It is of great importance to mention that in Serbia, in the procedure of divorce by mutual consent between the spouses, the court includes the agreement regarding the discharge of parental rights in the decree if it decides that it is in the greatest interest of the child.¹⁷ Also, the agreement for division on common property is included in the same decree.

In the divorce decree the court is obliged to decide the discharge of the parental rights. The court is not obliged to include the spouses' agreement if it finds that the agreement is not in the best interest for the child. The court can also decide with its decree to completely or partially deprive the spouses from their parental rights.¹⁸

The legislator in Serbia does not pay much attention to the reconciliation of the spouses if they have mutual consent for divorce. According to

¹⁴Spouses have right to claim divorce if they concluded written agreement for divorce, Article 40, paragraph 1 *Породични закон, Службеном гласнику РС* бр. 18/2005, УС РС бр. 269/2005-101/109-39, УС РС бр. 347/2005-18/2011-55 and Article. 507 paragraph 2 од *Закон о парнично поступку* 72/2011-73.

¹⁵ *Породични закон, Службеном гласнику РС* бр. 18/2005, УС РС бр. 269/2005-101/109-39, УС РС бр. 347/2005-18/2011-55 и чл. 507 ст. 2 од *Закон о парнично поступку* 72/2011-73.

¹⁶ *Ibid*, Article 204, Paragraph 1.

¹⁷ The Agreement of the spouses concerning discharge of the parental rights is a part of the decree for divorce if court finds that agreement in best interests of the children. Article 225 Paragraph 2 од *Породични закон*, *op.cit*

¹⁸ *Ibid*, Article 226, Paragraph 2.

Article 233 from the Family Law Act the reconciliation is only regulated in the litigation which is initiated by petition for divorce by one spouse.

The divorce decree on the grounds of divorce by consent can be appeal only for substantial injures of civil litigation or if the agreement was made by force, fraud or in delusion.

Croatia

The grounds for divorce in Croatia are: serious and permanent disruption of marital relations, the actual termination of the marriage for more than one year and divorce by consent. Divorce in Croatia is initiated by a lawsuit by one of the spouses or with a joint application by both spouses. It is interesting for Croatia that the husband has no right to claim divorce while his wife is pregnant and not until the child turns a year.

The divorce by mutual consent in Croatia is regulated with the articles 42-52 from the Croatian Family Law Act.¹⁹ The procedure is initiated by mutual application applied by the both spouses to the district court.

The Croatian Family Law Act emphasizes the procedure of mediation. In the case of divorce by consent, the procedure of mediation is mandatory only if the spouses have a mutual minor child or children, or an adopted children or children over which they need to discharge parental obligation after their full age. The Act allows not to conduct a procedure of mediation only in certain cases: if one of the spouses been placed under limited incapacity, unless the court finds that they are capable of understanding the meaning of matrimony and the obligations which come along with it, if one or the both spouses are with unfamiliar residence for at least a period of six months, if one or the two spouses live abroad, but besides the last one, the procedure of mediation will be conducted if the spouses have mutual minor children or adopted children over which they need to discharge parental care until they reach full of age, if the court decides that there will be no difficulties in the participation of the spouses in the procedure of mediation.²⁰

It is important that the Act allows the spouses to choose the way of mediation. In Article 46 from the Family Law Act is stipulated "When the court receives a lawsuit or an application for a divorce by consent, the court will make a demand to the spouses on the first hearing asking them to decide to which Center for social care, marriage and family counseling or authorized person for giving professional help (mediator) they want to address to remove the disagreements and to agree on certain legal consequences of the marriage." The court will determine whether there is an agreement about which parent will take custody of the child, the further meetings with the child as well as the accommodation of the child during the legal procedure for divorce. If the spouses didn't agree to whom the procedure of mediation will be conducted, the court has the duty to choose a mediator. The decision is made without any further ado and with no right to appeal. The spouses are obliged to initiate a procedure of mediation 15 days after the decision of mediating is made.

¹⁹ Obiteljski zakon, Pročišćemo tekst zakona, *Narodne novine*, broj 116/03, 17/04, 136/04, 107/07, 57/11 – Zakon o izmjenama I dopunama zakona o parničnom postaku, 61/11, 25/13 – Zakon o izmjenama I dopunama zakona o parničnom postupku.

²⁰ Ibid, Article 45.

Spouses must attend at the procedure for mediation in person and without an attorney. If any of the spouses doesn't appear to the reconciliation or cancels, the mediator will inform the court immediately. In this case the application for divorce by consent will be considered as withdrawn. This attitude of the legislator confirms the mandatory of the mediation during the process of divorce by mutual consent, if the spouses like to proceed with the divorce. The person or institution which conducted the mediation is obliged to give expert opinion to the center for social care, if the spouses have mutual minor children or adopted children or children over which they discharge parental obligations after their full age. The center for social care is obliged to review the expert opinion and to take the measures necessary to protect the child.

The legislator's intention for the mandatory presence of the procedure of mediation is also stated in Article 51 from the Family Law Act "If spouses do not submit an expert advice within a year from the submission of the court's decision to conduct a procedure for mediation, the application for divorce will be considered as withdrawn.

Croatia differentiates from the most countries for the fact that the Act explicitly stipulates that the lawsuit for divorce initiated by one of the spouses, while the other spouse considers the petition as justified, to be considered that the spouses initiated a joint application. On the other hand, if one of the spouses withdraws the concessive application for divorce and the other stay with the demand for divorce, such quest will be considered as a lawsuit for divorce, and the court will direct the spouses to conduct a procedure for mediation.²¹

Montenegro

The grounds for divorce in Montenegro are: serious and permanent disruption of the marital relations between spouses, the inability of accomplishing the purpose of the marriage and divorce by consent. Montenegro's Family Law as well as Croatian, contains the provision for prohibition of applying for divorce by the husband during wife's pregnancy or at least their child is one year old except if the wife willingly agrees on it.

Divorce by consent in Montenegro is regulated by the article 57, paragraph 2 from Montenegro's Family Law Act.²² Spouses are obliged to apply a written agreement along with the joint application about the discharge of parental rights and the division of common property.²³

The procedure for divorce by consent is initiated with a joint application by both spouses. Similar to Croatia, Montenegro's law allows if the lawsuit for divorce applied by one of the spouses while the other does not dispute the grounds for the petition at least not until the first hearing, to be considered as an application for divorce by mutual consent. As opposed to Croatia, in Montenegro mediation is not obligatory in the divorce by consent. The procedure of mediation is conducted in litigations where there is a petition by one of the spouses.

²¹ Ibid, Article 280, Paragraph 4.

²² Porodični zakon, *Službeni list Republike Crne Gore*, 1/2007.

²³ Ibid, Article 57, paragraph 3.

This procedure is regulated in the Act of mediation²⁴ and the Family Law Act.

The obligation of the spouses in the process of divorce by consent to reach an agreement for division of common property and the discharge of parental rights after the divorce is obligatory and regulated by the law. Article 333, paragraph 1 stipulated that the agreement between the spouses about the division of the common property is included in the decree which terminates the marriage. It is interesting that the agreement of discharging the parental rights does not have the same treatment. More specifically, agreement will be included in the verdict which terminates the marriage, only if the court is assured that the agreement is in the best interest for the child. With this decision, the legislator increases the participation of the judge in the process of making the decision so that the court can refuse to include the agreement in the decree as long as it is not in the best interest for the child.

When the procedure is initiated with a joint application by the spouses for divorce by mutual consent, the facts for the initiation of the application are not investigated, however the court can decide whether to conduct an evidentiary proceedings, like when the procedure is initiated with petition for divorce if it finds that is of great interest for the children for the marriage to be maintained.²⁵ If the applicants have mutual children, the court can investigate the facts and conduct an evidentiary proceedings in the part of the spouses' proposal which deals with the discharge of parental rights, if it is convinced that the parents' agreement does not guarantee that total protection of the interests of their minor or disabled children. However, the court is obliged to make the decision about the discharge of parental rights in the decree. With the decree, the court can decide about the limitation or deprivation of parental rights.²⁶

The spouses can withdraw the joint application for divorce by mutual consent until the divorce decree is final. Also, the application will be considered as withdrawn if and when one of the spouses decides to cancel it. If the withdrawal occurs after the divorce decree, the court from first instance will decide that the decree does not produce legal action, and that the procedure is stopped.

The divorce by consent decree can be dissolved only if there are substantial injuries of civil litigation or because the application was given by force, fraud or by mistake.

Slovenia

Slovenia differentiates from the other countries in the regulations of divorce by mutual consent. It is regulated with article 99 and 100 by the Slovenian Family Code.²⁷ In Slovenia, as in the other countries, divorce by mutual consent is previously conditioned by the submission of agreement by both spouses concerning the custody over the children and maintenance and their contacts and the division of the common property. According to Article 99 "the court will dissolve the marriage on the ground of mutual consent, if they had previously reached an agreement

²⁴ Zakon o posredovanju, *Sluzben list Republika Crna Gora*, 30/2005, 29/2012.

²⁵ Article 340, Paragraph 1, *Porodični zakon*, op.cit.

²⁶ Ibid, Article 342.

²⁷ *Družinski Zakonik*, *Uradni List Republike Slovenije*, 16.06.2011.

on the custody and child maintenance of their children as well as their contact with the parents and if the spouses submit an agreement in the form of a notarial act concerning the division of the mutual property, who will take over the matrimonial home as well as the maintenance of the spouse who does not have enough finances but it is not his/hers fault for the unemployment.

It is interesting for Slovenia that the court can dismisses the divorce application if he decided that the children's interests are not protected. It is pointed out in Article 99, paragraph 2 that before the court dissolves the marriage it must be fully assured about the spouses' agreement on the custody over the children and maintenance as well as their contact with the parents is in the best interest for the children. If the court decided that the spouses' agreement is not in the best interest for the children, it rejects the application.

Another characteristic which differentiates Slovenia from the other European countries is the fact that in Slovenia, an administrative procedure for divorce by consent is allowed. The procedure is conducted by a notary and it is allowed only if the spouses have no mutual children and if they agree on the division of the common property and the one spouse maintenance who lacks finances but it is not his/hers fault for being unemployed. In this case, a notarial divorce act is prepared. This procedure is regulated with Article 100 from the Slovenian Family Code.²⁸ This notarial act is the legal ground for the termination of the marriage to be inscribed into the registry. The notary is obliged to send the certified contract to the administrative authority in order to be inscribed in the registry.

Slovenia also pays attention to the procedure of conciliation. With articles 204-215 from the Family Code is regulated procedures for previously counseling (counseling before the beginning of the marital litigation, experts advice to the spouses, counseling concerning the children's custody in order to protect their interests) and the mediation in the family.

Slovenian Family Code anticipates obligatory counseling before the submission of the lawsuit or the joint application for divorce. This is excluded only if: the spouses do not have a mutual child to take care of, if one of the spouses is physically or mentally disabled and is incapable of any kind of judgment, if the defendant spouse has unfamiliar residence or is missing and if one or both spouses live abroad. The purpose of this counseling is to help the spouses determine whether their relation is disrupted to the point of becoming unbearable or there is still chance of restoring the marriage. Personal presence of the spouses is mandatory during the counseling.

If we look at Slovenian legislature, we can notice that they have taken one step further in regulating the divorce by consent as opposed to the other countries. The fact that administrative procedure is allowed tells us that the legislator followed the example of some European countries, which also have administrative procedure for divorce by consent, no matter whether it is conducted by a notary, public official of the Department for Registration of Civil Acts (Russia) or other administrative authority.

²⁸ Ibid, Article 100.

Germany

Germany does not formally acknowledge the divorce by mutual consent, but there is no doubt that it is present in practice. Germany formally acknowledges just the ground for divorce caused by the breakdown of a marriage. Article 1565 from the German Civil Code ²⁹ states that „A marriage fails if the marital community of the spouses no longer exists and there can be no expectation that the spouses will restore it.” The judge should be aware if there is a possibility of restoring the marriage. For this cause the court will use the provision from article 1566. Namely, there is a conclusive presumption that the marriage failed if the spouses have lived apart for a year and both spouse petition for divorce or the other spouse consents to the divorce. Also, with the provision is determined another conclusive presumption that the marriage failed if spouses have lived apart for three years. It is important to be mentioned that by living apart, does not only mean living in deferent houses, it also mean living in the matrimonial home but having separate lives. In the first presumption, it's obvious that besides the failure of the marriage there has to be mutual consent to divorce. It is allowed to be expressed in the joint application or in petition by one spouse and other consents to the divorce. It leads us to the conclusion that divorce by consent really exists. More preciously, if the mutual consent exists at the time of the termination of marriage for a year, the judge will not investigate the causes for divorce or the possibility of restoring the marriage. It is important to say that the mutual consent facilitates the judge's work in the process of determination whether the marital community is terminated or there still exists the possibility of restoration. In this sense, the presence of a year of separate living is not an undisputable presumption. Life apart is a presumption of the failure of the marriage, but it is not a complete evidence for this. ³⁰ The judge will be fully assured of the failure of the marriage only when the separate life of spouses is accompanied with mutual consent or as in the second presumption: if there is no mutual consent but spouses led separate lives for three years.

This two conclusive presumptions for the failure of a marriage are limited by two exceptions (hardship clauses). The first one is stipulated in Article 1565, paragraph 2, if the spouses have been separated for less than a year, the marriage may only be dissolved if the continuation of the marriage would result in unreasonable hardship for the petitioner for reasons that lie in the person of other spouse. Second exception is stipulated in Article 1568, the marriage should not be dissolved by divorce, although it has broken down, if and as long as the maintenance of the marriage, is in the best interest of minor children of the family, is exceptionally, necessary for particular reasons or if and as long as divorce, by reason of extraordinary circumstances, would be such a severe hardship for the respondent, who rejects it, that the maintenance of the marriage, exceptionally, appears to be advisable, even taking into account the concerns of the petitioner.

²⁹ German Civil Code, *Federal Law Gazette*, p.42, 2909, 2003, p. 738.

³⁰ Report by Dieter Martiny in “Grounds for divorce and maintenance between former spouses”, Commission on European Family Law, 2002.

A provision where the ground for divorce by mutual consent also is visible, is the article where the Code implies compulsory representation by a lawyer in the procedure of divorce and if the spouses apply mutual application, only one representation is allowed for the both parties. This circumstance is present in the legislatives of those countries which acknowledge the divorce by consent. Moreover, in Article 6300 is stipulated that if the petition for divorce is applied by both spouses, they are also obliged to submit an agreement on the parental responsibilities, child maintenance, mutual maintenance and use of the matrimonial home.

It is of crucial importance for the German Family Code is that administrative divorce procedure is not allowed. More precisely, article 1564 from the German Civil Code states that “A marriage may be dissolved by divorce only by judicial decision on the petition of one or both spouses. The marriage is dissolved when the decision becomes final and absolute. “

France

France acknowledge the ground for divorce by mutual consent which is the subject of this paper and it is regulated with Article 230 and 231 in the Civil Code.³¹ It is interesting for France that besides the existence of this ground for divorce by mutual consent (Du divorce par consentement mutuel), the French legislature acknowledges another ground for divorce by mutual consent, that is a divorce based upon the mutual confession (Du divorce accepté) or mutual acceptance of the consequences from the divorce. In fact this is a procedure which can be initiated only by one of both spouses while the other consents to it. This ground is regulated in Article 233 in the Civil Code. The difference between the two grounds is that in the divorce based upon mutual confession, spouses admit the causes for the marriage failure and the fact that the law allows it to be initiated by one of both spouses, as opposed to the divorce by mutual consent, where the law determines that it is applied by both spouses. In both cases, there is consent by the two spouses and they are not obliged to reveal the facts that caused the divorce.

The first ground, or divorce by mutual consent, is defined in Article 230 from the Civil Code in which is stipulated that spouses can apply for divorce if they reach an agreement on the termination of the marriage and the consequences of it, by submitting the agreement for approval by the judge where the consequences are regulated - (a proposed arrangement). It seems that the petition for divorce by mutual consent is only conditioned by the presence of an agreement where the consequences of the divorce are regulated. With the reforms in 2004, it is no longer necessary to have a period of at least 6 months since the beginning of the marriage to apply for divorce by consent. More precisely, these reforms caused the abolishment of the provision from Article 230, paragraph 3 in which was stipulated that Divorce by mutual consent cannot be asked during the first six months of the marriage. Also, the reforms abolished the provision from Article 231 in which was stipulated that “The judge first examines the divorce claim with each spouse separately. If the spouses maintain their intention to divorce, the

³¹ Code Civil of France, n. 2004-164, 20.02.2004.

judge informs them that they have to relodge their claim after a period of three months. If the spouses do not again bring the divorce application within six months after the expiry of this time-limit of three months, their joint application then becomes null and void.”

The procedure is initiated by the spouses’ lawyer or one lawyer for both parties. The judge first examines the divorce claim with each spouse separately, then together with both spouses and in the end with the lawyer/s. In France representation by a lawyer is obligatory, except at the conciliation attempt, where they must appear in person before Court.

The Civil Code also contains provisions for the consent. Article 1109 stipulates that there has no valid consent if the consent was given by mistake or was extorted by violence or fraud.

It is interesting for France that the court can not only approve the claim for divorce but it can refuse it too. Article 232 stipulates that the judge will approve the agreement and pronounce divorce only when he/she is assured that it is the real intention of both spouses and their consent is nothing but free will. If these conditions met, the judge will approve the agreement where the consequences from the divorce are regulated and with the same decree will pronounce the divorce.³² The agreement can also be refused and divorce disapproved if the court finds that the agreement does not protect the other spouse’s or children’s interests.³³ If the judge refuse the agreement he/she can allow interim measures, which the parties decide to undertake until the moment when the decision which pronounce the divorce becomes *res judicata*, under the condition that they are in the best interest for the children.³⁴ The new agreement can be submitted by the spouses within 6 months of the expiry of the time-limit. If a new agreement is not submitted in the specific deadline or the judge does not give an approval, the petition for divorce is null and void.

The second ground for divorce, or divorce by mutual confession, is regulated in Article 233 in the Civil Code. The Code stipulated that divorce can be requested by one or both spouses where they accept the principle of marriage failure regardless of the facts behind it. This acceptance cannot be withdrawn. When the judge is assured that both spouses’ consent is given by free will, he/she will pronounce the divorce and determine the consequences of it. Spouses can accept the principle of marriage break down and its termination only when both spouses are represented by lawyers.³⁵

In the French legislature, great attention is paid to the procedure of spouses’ reconciliation. This is stated in Article 252 from the Civil Code. Attempt for reconciliation is mandatory before the court procedure begin and can be renewed during the procedure. The judge will insist on reconciliation between spouses. The procedure is conducted with each spouse separately and then together with both spouses. Then the judge asks the lawyers to be present and take part in the meeting too.

³² Ibid, Article 250-1 B.B. co Paragraph 232.

³³ Ibid, Article 234.

³⁴ Ibid, Article 250-2.

³⁵ Ibid, Article 253.

Russia

Russia does not formally acknowledge divorce by mutual consent, but if we look the Family Code of the Russian Federation,³⁶ we can see that it *de facto* exists. What is specific about Russia is that the Code acknowledges two types of divorce: administrative and judicial. Divorce by mutual consent is enabled in administrative and judicial procedure. The difference is in the manner of conducting the procedure. The administrative procedure for divorce is conducted by a public official at the Department for Registration of Civil Acts.

Administrative procedure is allowed only if these two conditions met: both spouses have mutually agreed to a divorce and the spouses do not jointly have minor children. Except these cases, administrative procedure is also allowed when a defendant spouse is declared by court to have disappeared, a defendant spouse is declared by court to a lack legal competence or if a defendant spouse has been sentenced to more than three years imprisonment. In these three cases it is not important whether the spouses have mutual minor children.³⁷ The certificate on the dissolution will be issued by the Registry Offices upon the expiry of one month from the date of filing an application on the dissolution of the marriage.³⁸

The Code also stipulates which disputes between spouses shall be considered in court, apart from dissolution of the marriage at registry offices. These are the disputes for division of the spouses' common property, about the payment of the means for the maintenance of a disabled needy spouse, and also disputes about children arising between the spouses, one of whom is recognized by the court as legally incapable or is sentenced for committing a crime to imprisonment for a term over three years.³⁹ For these disputes, the court conducts the procedure besides the existence of mutual consent and the procedure is conduct apart from the administrative procedure.

A marriage shall also be dissolved in court if one of the spouses, while raising no objections to it, avoids the dissolution of the marriage at the registry office (for example he/she refuses to file an application, does not wish to attend the registering of the dissolution of the marriage etc.). A marriage shall be dissolved in court also if one of the spouses does not consent to the dissolution of the marriage or if they have mutual minor children, except in the above mentioned situations when an administrative procedure is conducted no matter if they have mutual minor children. In this case, the court will terminate the marriage if it states that the further live of the spouses together and the preservation of

³⁶ See article 19 of Family Code of the Russian Federation, No. 223-FZ, 29.12.1995, Amendments and Additions of 15.11.1997, 27.06.1998, 02.01.2000, 22.08.2004, 03.06, 18.29.12.2006, 21.06.2008, 30.07.2008.

³⁷ Article 19, paragraph 2, Family Code of the Russian Federation, Dissolution of the marriage upon an application of one of the spouses, regardless of whether the spouses have or have not common underaged children, shall be effected at registry offices, if the other spouse: is recognized by a court as missing; is recognized by a court as legally incapable; is sentenced to imprisonment for committing a crime for a term of over three years.

³⁸ Ibid, Article 19, paragraph 3.

³⁹ Ibid, Article 20.

the marital community is impossible.⁴⁰ When considering a case on dissolution of the marriage in the absence of one of the spouses' consent to the dissolution of the marriage, the court shall have the right to take measures for reconciling the spouses and shall also have the right to put off the proceedings for a three-month term for reconciliation of the spouses.⁴¹ The marriage shall be dissolved if the measures taken to reconcile the spouses have failed and the spouses or one of the spouses insist on dissolution of the marriage.

If there is a mutual consent to the dissolution of the marriage on the part of both spouses having common minor children, or if both spouses oppose to the procedure before the Registry Office, then the court will dissolve the marriage without investigating the causes for it. Spouses have the right to present to the court an agreement on the children.⁴² In the absence of an agreement, or if the given agreement is not in the best interest of the children, the court will take measures to protect children's interests. In the judicial procedure as well as in the administrative one, dissolution of the marriage shall not be effected by the court before the expiry of one month from the date of the spouse' filing the application on the dissolution of the marriage.

When dissolving the marriage in court, the spouses may present for the consideration of the court an agreement on the issue of with whom of them the minor children shall live, on the procedure for paying the means for the maintenance of the children and (or) of a disabled needy spouse, on the amount of these means or on dividing the common property of the spouses. In the absence of an agreement on these issues between the spouses, or if it is determined that the same is not in the best interest for the children, the court is obligated: to decide with whom of the spouses shall the minor children live after the divorce, to determine from which of the parents and in what amounts shall the alimony be exacted for their children, upon the demand of the parents (or one of them), to divide the property in their joint ownership, upon the demand of the spouse having the right to claim for maintenance from the other spouse, to define the size of this maintenance.⁴³ It is important to mention that if the division of the property infringes the interests of a third person, the court has the right to consider the claim for dividing the property by separate proceedings.

The termination of marriage by divorce differentiates in the way whether the marriage is dissolved in a judicial or administrative procedure. The marriage dissolved at the registry offices shall be terminated as from the date of the state registration of the dissolution of the marriage in the Register of Civil Status Acts, and if the marriage is dissolved in court – as from the date of the court decision coming into legal force.

It is obvious that in the Russian family legislature that the divorce by consent exists. It is enabled by an administrative procedure (if the spouses do not have mutual minor children and in other three exceptional situations) and by a legal procedure too (if one of both spouses consents

⁴⁰ Ibid, Article 22, paragraph 1.

⁴¹ Ibid, Article 22, paragraph 2.

⁴² This agreement should refer on the issue of with whom of them the minor children shall live, on the procedure for paying the means for the maintenance of the children.

⁴³ Ibid, Article 24, paragraph 2.

to the divorce but refuses the procedure to be conducted before public official of the Department for Registration of Civil Acts and if they have mutual minor children). In all of these cases there is mutual consent between the spouses for the termination of the marriage.

Republic of Macedonia de lege lata, de lege ferenda

The Republic of Macedonia also acknowledges the ground for divorce by mutual consent, besides the grounds initiated with lawsuit by one spouse because of the following: actual termination of the marital community for a period of a year and disruption of the marital relations to the point of becoming unbearable.⁴⁴ This leads to the point that in Macedonia there are three grounds for divorce: divorce by consent, divorce by the request on one of both spouses on the ground that the marital relations are disrupted to the point of becoming unbearable and divorce by factual termination of marriage. In Macedonia's legislature, fault is not accepted as ground for divorce as opposed to other countries (France).

In Macedonia's legislature, divorce by consent is conditioned by the presence of mutual consent by both spouses for termination of marriage expressed in the mutual proposal of divorce. The duration of the marriage is not relevant when the mutual proposal is submitted. If the spouses have mutual minor children, or children over whom the parental rights have been extended, it is obligatory to submit an agreement on the manner of discharging their parental rights and obligations and for their maintenance and upbringing.⁴⁵ This agreement can be written or oral but submitted in to the minutes by the court from first instance. During this type of initiated procedure for divorce, the court has no authority for investigation of the reasons for divorce. The court will make a decree for divorce by mutual consent if it is assured that the agreement was given willfully, seriously and firmly.⁴⁶ If the agreement on the manner and discharge of parental rights and obligations and children's maintenance and their upbringing is not submitted, the court will act in accordance with the provision from the Civil procedure Act⁴⁷ for improper submissions.⁴⁸

As opposed to some legislatures where the divorce procedure is regulated in the Process Law, in Macedonia both, the material and

⁴⁴ Article 39 and 40 from Закон за семејството, *Службен весник на Република Македонија* бр. 80/92, Изм. 9/96, У. бр. 149/99, У. Бр.15/01, 38/2004, 33/06, 84/08, 156/10, 44/12.

⁴⁵ Ibid, Article 39, paragraph 2.

⁴⁶ Ibid, Article 39, paragraph 3.

⁴⁷ Закон за парничната постапка, Пречистен текст, *Службен весник на Република Македонија*, 7/2011.

⁴⁸ Submissions that are submitted by a lawyer which are incomprehensible or the doesn't contains the information from article 98, paragraph 3,4,5,8 from this Act, or if they are not submitted in sufficient number of copies submitted in writing, the court will dismiss. If the submission is incomprehensible or doesn't contains what it takes, the court will inform the applicant who doesn't have lawyer to correct the submission. The court will set a date for submitting the submission which cannot be longer than eight days. If the submission is not apply in that specified time, it will considered as withdrawn, but if the submission is re-applied but not corrected, the court will rejected it. Article 101, Законот за парничната постапка.

procedural aspects of divorce are regulated with the Family Law Act.⁴⁹ For other issues, not regulated with the Family Law Act, the provisions from the Civil procedure Act and Enforcement Act are appropriately applied.⁵⁰

The regulation of the procedure for divorce by mutual consent and the procedures in the marital disputes in the Family Law Act starts with the provisions for the authorization of the court. The procedure is initiated by a joint proposal for divorce by consent to the court with the general jurisdiction. The proposal can be withdrawn until the procedure is not final. The proposal will be considered as withdrawn if one of the spouses cancels.⁵¹

In Republic of Macedonia special attention is paid to the procedure of reconciliation of spouses so that it is mandatory. It is excluded only in the cases when: one the spouses is incapable of judgment, one or both spouses live abroad, one spouse has unknown residence for longer than 6 months and when there is a counterclaim for divorce, no matter the time of submission and the attempt of reconciliation of the spouses has failed.⁵² The procedure for reconciliation is conducted by the court or by the Center of Social Work. If the spouses have mutual minor children or children over whom the parental right have been extended, the procedure of reconciliation is conducted by the Center of Social Work.⁵³ The procedure for reconciliation conducted by the Center of Social Work is regulated in both, The Family Law Act as well as the Act for Social Protection.⁵⁴ In the procedure of reconciliation no matter if it's conducted by the court or by the Center, the public is excluded. For its undertaken actions, the center is obliged without further ado to submit a written report to the court about the outcome of the reconciliation procedure.

If the spouses do not have mutual minor children or children over whom the parental right have been extended, the reconciliation procedure is conducted by the court, except if the court determines that it would be better to leave this to the Center of Social Work. In this case, the president of the Council determines hearing. If during such initiated procedure, one or both spouses do not appear to the attempt for reconciliation and have no proper excuse for this, the mutual proposal of divorce will be considered as withdrawn.⁵⁵ If one or both spouses do not

⁴⁹ See: Articles 228-261, Законот за семејството, *op.cit.*

⁵⁰ In proceedings in which the court decides in marriage, family and other disputes regulated with this Law, and also for the domestic violence, provisions from Civil procedure Act and Enforcement Act are properly applied, except if with this Act those disputes are regulated different. Article 222 from Законот за семејството.

⁵¹ *Ibid*, Article 236, Paragraph 1.

⁵² *Ibid*, Article 237.

⁵³ In this case, the court has eight days to file written report to the Center of Social Work, with information when the process began, the main reasons for requesting the divorce and information concerning the children. Center is obligated in the period of three months from this report, to finish the procedure for reconciliation of the spouses. Article 237, paragraph 4, Законот за семејството.

⁵⁴ Act for Social protection, Службен весник на Република Македонија, Пречистен текст бр. 148/2013.

⁵⁵ Article 240, paragraph 3, Законот за семејството, *op. cit.*

appear to the main hearing and have no excuse for their absence the petition will be also considered as withdrawn.

It is important to mention that the court is not obligated with the given agreement from the spouses. More specifically, the provision in Article 80 states that “Along with the decree which dissolves the marriage, the court will decide on the custody, upbringing and maintenance of the mutual children.” If the parents did not reach an agreement on this, or if the agreement is not in the best interest for the children, the court will ask for an opinion from the Center of Social Work and will investigate all circumstances, than he will decide whether one of both spouses will be responsible for the upbringing of the children, or maybe some of them will stay with the mother and the others with the father or they will be given in custody to a third person or institution.⁵⁶ When evaluating the agreement, the court is obliged to seek for an opinion from the Center of Social Work and if it decides that the agreement is not in the best interest for the children it will give its own decree.⁵⁷ The center is obliged to give its opinion within 15 days from the admission of the agreement. Besides this, the court can investigate the facts for the grounds of their petition if they have mutual minor children and if those facts are closely connected with the children. These facts can be investigated by the court even when they are not disputable.

In comparison to the other legislatures, it is noticeable that in our legislature, some issues concerning the divorce by consent are not regulated. What is partly regulated in Macedonian Family Law Act are the consequences from the divorce. Concerning this, Macedonian’s Law conditions the mutual proposal of divorce between spouses who have minor children or children over whom the parental right have been extended just with the existence of an agreement about the manner of discharging the parental rights and responsibilities. If there is no mutual minor children, the court decrees divorce only if the agreement was willfully, seriously and firmly submitted by spouses. It is considered that the agreement on the custody over the children is not sufficient for the court to terminate the marriage. An agreement on the division of the common property is necessary aside from the presence of mutual minor children. This may resulted several unpleasant situations: first, even when the court terminates the marriage and the judicial procedure is over, a new litigation appears, that is the litigation over the marital property so spouses again are obliged to deal with this on court, second, during the procedure for divorce, the usage of the marital home is of essential importance for the court’s decree for the children’s custody, of course, because of the children’s best interests,⁵⁸ and third, after the divorce, it is very common one of both spouses to leave the current country which significantly complicates the procedure for division of the property. In Macedonian Family Law Act, Article 250 states that property litigation between spouses, except the litigation about the maintenance cannot be dealt along with the divorce litigation. The law firmly states that common property cannot be the subject in the same

⁵⁶ Ibid, Article 80.

⁵⁷ Ibid, Article 256.

⁵⁸ It is consider that the children’s best interest is to continue to live in the same home.

divorce litigation. It is considered that the period during the divorce litigation is the best for division of the common property between spouses, especially when they mutually consented to the divorce. This, for example, is the case in Serbia⁵⁹ and Montenegro.⁶⁰

Lately there is a tendency in the comparative divorce law, divorce by consent to be dissolved in administrative procedure (Russia, Slovenia). This is because during the procedure of the divorce by consent there is no litigation among the party, there is no claimant, no defendant which leads to the opportunity the marriage to be divorced outside the court. In some cases this is the notary (Slovenia). The administrative divorce procedure is faster and more efficient as opposed to the long and rigid procedure in court. If spouses mutually consent to divorce, reached an agreement on the all consequences from the divorce, there is no reason why not having a less formal procedure where all that is need is their signatures. It is admitted that it may be a more expensive procedure for spouses but the fact that is short and informal is the reason why they will chose it on the first place. It is considered that Slovenia's legislature is the most suitable for our region.⁶¹ Administrative divorce procedure should be allowed if these two cumulative conditions met: if the marital partners mutually agree on the consequences from the divorce (division of common property and the support of one of both spouses) and if they do not have mutual minor children. If the marital partners do have mutual minor children, it is considered that by conducting the administrative divorce procedure, not enough care will be taken to the protection of the children's interests, at least not to the point as it will if the procedure is conducted by the court.

It is important to mention that the administrative divorce procedure should not be interpreted as violation of the social nature of marriage. It must not disrupt the importance of marriage as a social institution. For this cause, right after obtaining notarial certificate it should be immediately registered, which will confirm the social character of the marriage.

The administrative divorce procedure maybe seems as too ambitious for our legislature, since we just have had new reforms in the judiciary, so many of the courts' authorities were trusted to the notaries, which caused a rationalization of courts. However, having in mind the spouses' interests and the conditions in which we live now, it is more than clear that such thing is necessary in our country too. Marriage between spouses of different nationality is no rareness. In case of divorce, there is a great probability that spouses will chose the notary, which will provide a short, more efficient and less formal procedure for both parties.

⁵⁹ The agreement for divorce must contains written agreement for discharge of parental rights and written agreement for dividing common property, Article 40, Paragraph 2 from Serbian Family Law Act.

⁶⁰ Spouses are obligated along with the joint application for divorce to submit and written agreement for discharge of parental rights and written agreement for dividing common property. Article 57, Paragraph 3 from Family Law Act of Montenegro.

⁶¹ In Slovenia administrative procedure is enabled when spouses doesn't have mutual minor children and if they reach an agreement for all consequences from the divorce.

Because it is just a matter of time for this new way of terminating the marriage become the case in many European countries, the legislators should be prepared for carefully implication of administrative procedure of divorce, in the sense of conditions which must exist. Administrative procedure can not refer for all grounds of divorce, only when above mentioned conditions met and in not in all cases. Also, the administration authority which will have jurisdiction to ratify the agreement between spouses should be chosen carefully.

Summary

Divorce by mutual consent is present in almost every legislature. Where it is not directly present it does exist in practice camouflaged as “divorce by mutual confession” or “divorce by accepting the fault.” Although it exists in all of the above mentioned legislatures, it has different treatment in all of them. The above presented comparative-law solutions have shown us that Macedonia is one step behind in the regulation of this ground for divorce.

Divorce by mutual consent has proven to be a ground for divorce which offers the shortest and least harmful solution for spouses and children as well, as opposed to the other grounds where one of both spouses is obliged to additionally state the reasons. The fact that divorce by mutual consent is the best solution for the spouses is also proven in practice, when judges after acting on the lawsuit by one of both spouses, suggest to the spouses to transform the lawsuit into a joint application, all in the interest of completing the procedure with as less consequences as possible.

In this text, a series of suggestions were given, which are supposed to simplify the Macedonian divorce procedure between spouses and children, who are most affected by it. The suggestion for the division of the common property in the same divorce litigation means a step forward in the regulation of divorce. As opposed to the current decision, in article 150 from the Macedonian Family Law Act which prohibits the division of the common property in the divorce litigation.

Further in time, the administrative divorce procedure would enable divorce between spouses in just one day, of course in full accordance with the lawful condition, and still the importance of marriage as a societal institution would not be violated in any way or manner.

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