

Summary of the Status of the Application of the Divorce-by-agreement System and Its Improvement Methods

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Summary of the Status of the Application of the Divorce-by-agreement System and Its Improvement Methods

Chapter 1 Introduction

Although the Civil Act of Korea has introduced a divorce deliberation system for reflective consideration as well as a system aimed at strengthening the role of the court as a sponsor to allow its intervention in matters related to overall child-rearing such as child support, there is no system that can guarantee the effectiveness of the deliberation period. As a result, in many cases, designation of foster parents and persons with parental rights as well as matters related to child-rearing including child support payment are decided without the support of professional counselors in the process of a divorce by agreement. Also, in some cases, no appropriate intervention is made although the agreement on child-rearing is against the welfare of under-age children (Seoul Northern District Court 2010). Accordingly, it is necessary to examine the status of the application of the system following the amendment of the act and to assess its effects. The objectives of this study are to evaluate the divorce by agreement system and to assess the status of its application, as well as to devise improvement methods, three years after the divorce by agreement system was revised and went into effect.

Chapter 2 Historical Changes in the Divorce-by-agreement System and the Procedures for Divorce by Agreement under the Current Civil Act

At first, the divorce-by-agreement system of the Japanese Civil Code was introduced in Korea during the Japanese Colonial Rule and the same kind of rule was incorporated into the civil code enacted after the independence (Kim Joo-soo 1969;159). However, the original objective of the introduction of the system was not to guarantee free divorce based on the agreement between a married couple; rather, the system was mostly used as an illicit method to allow unilateral divorce by husbands in the name of agreement (Kim Sang-yong, 2006:7). In order to fix this problem, a divorce-by-agreement reporting assessment system and a divorce-by-agreement intention confirmation system were introduced in 1963 and 1977, respectively, to partially modify and complement the system. However, as the changes were focused on prevention of unilateral divorce disguised as agreement-based divorce, there was no consideration on the effects of divorce on under-age children.

The procedures for divorce by agreement were drastically changed by the current Civil Act, which was revised by the Act 8720 on December 21, 2007 and took effect on June 22, 2008. The 2007 revision greatly improved and strengthened the previous divorce-by-agreement system: a divorce deliberation period system was introduced to prevent divorce without careful consideration and it was made compulsory to reach an agreement on child-rearing-related matters when getting a divorce by agreement in order to provide better conditions for the children of

divorced couples. That is, in order to get a divorce, those who have filed for divorce must obtain a confirmation of intention of divorce from the family court after a certain period of time (Article 836-2 (2) and (3) were newly added), and it was made compulsory that couples filing for divorce by agreement submit - when obtaining a confirmation of divorce - the original copy of the judgment of the family court or an agreement document that specifies who will take custody of the children, who will bear child-rearing expenses, and whether and how visitation rights will be exercised (Article 836-2 (4), which was newly added, and Article 837 and Article 909-4). Also, in order to prevent damages caused by divorce without legal knowledge or preparation, a counseling recommendation system that mandates professional counseling was introduced. However, since no executory power was given to the agreement document as to who will bear child-rearing expenses for under-age children, there was a problem with regard to child-rearing expenses when the person obligated to provide child support refuses to do so. In order to fix this problem, the Civil Act was revised by the Act 9650 on May 8, 2009 and a protocol about child support payment system” was introduced: if the family court, in the process of divorce by agreement, has the details of the agreement between a married couple regarding payment of child support, it must write a protocol about the details of child support payment. An executory power equivalent to that of a confirmed judgment is given to the protocol and if the obligation to pay child support specified on the protocol is not fulfilled, an order of execution may be given in accordance with the Family Litigation Act.

As the new system has gone into effect, the procedures for divorce

by agreement have changed dramatically. The procedures for divorce by agreement under the current Civil Act are specified in detail in the Act on the Registration, etc. of Family Relationship and its rules as well as in the Regulation on Family Relationship Registration No. 313: Confirmation Process of the Intention of divorce by Agreement and the Guidelines on Family Relationship Registration.

Chapter 3 Examples of Legislation in Foreign Countries with regard to Divorce Deliberation Period, Counseling, and Adjustment

Chapter 3 looks into examples of legislation in foreign countries with regard to divorce deliberation period, counseling and adjustment, which were key elements of recent improvements of the divorce-by-agreement system, in order to compare their differences with those of Korea and draw implications in terms of the system and application.

The global trend in the divorce act has shifted from fault divorce principle to no-fault divorce principle, and most countries have adopted the breakdown divorce system, which allows divorce when a marriage breaks down. Legislative examples based on the breakdown divorce act put their primary focus on the welfare of the people getting a divorce and their children such as child-rearing issues caused by divorce and property distribution. Also, in many cases, the court actively intervenes in the agreement on divorce, and the procedures for divorce are very complicated so that couples filing for divorce can carefully negotiate on divorce-related matters: even if there is an agreement on divorce,

divorce can be granted only through a trial; those filing for divorce must go through a deliberation period; or an agreement document must be submitted to the court. Counseling and adjustment are actively utilized in this process in foreign countries, which carries considerable implications for Korea where the deliberation system does nothing more than recommend counseling.

Chapter 4 Status of the Application of the Divorce-by-agreement System

1. Methods for the analysis of the status of the application of the divorce-by-agreement system

Chapter 4 examines the status of the application of the divorce-by-agreement system through various methodologies. First, the official divorce statistics of the Statistics Korea and the statistical data of the court have been analyzed to indirectly look into the effects before and after the introduction of the divorce deliberation system. Also, a “survey of the status of the application of the divorce by agreement system and its satisfaction level” has been carried out for five groups of respondents: court employees, judges, counselors within the court, people filing for divorce by agreement with under-age children and people filing for divorce by agreement with no under-age children. And through the survey, facilities and personnel required for the application of the divorce-by-agreement system, utilization of divorce deliberation period, status of the implementation of parents guidance education, application of the counseling recommendation system and status of counseling support,

status of the use of counseling, details of the agreement on child-rearing-related matters, and status of the utilization of correction orders have been examined. Also, child-rearing-related details of the agreement documents of cases with confirmed intention of divorce in 2010 have been analyzed to complement the survey.

Below is the outline of the survey and qualitative data analysis.

A. Survey

1) Objective

The divorce deliberation system was introduced based on the view that the system was required for the welfare of children who were almost left unattended in the process of divorce by agreement, although some opposed the system because it puts excessive restrictions on the freedom of divorce. The objective of this survey is to examine whether the purpose of the system is being fully fulfilled three years after it took effect.

2) Selection and composition of survey respondents

a) Court officials

The survey of court employees, judges, and counselors was carried out in 56 courts around the country and their branches dealing with divorce by agreement, excluding municipal and county courts. The survey questionnaire was separately distributed to the Seoul Family Court to carry out a preliminary survey, and the survey questionnaire was distributed to the remaining 55 courts¹⁾ through the official letter

of the Office of Court Administration (Civil case deliberative official-2259). The survey was carried out from July 6 to July 13, 2011. The survey of counselors was carried out among counselors of local courts around the country and those who participated in the “2011 Seoul Metropolitan Area Local Court Counselor Joint Seminar held on June 30, 2011.

Survey respondents included one court employee and one judge responsible for divorce by agreement, as well as three counselors, of each court. While one employee and one judge responded to the survey at most courts, two to three employees and judges responded to the survey if the division of responsibilities was not clear or the court was relatively bigger than others. In total, 66 judges and 60 employees responsible for divorce by agreement responded to the survey. And one to 12 counselors from each court responded to the survey, totaling 145; some courts and branches didn’t have designated counselors for divorce by agreement and additional surveys were carried out. All collected data have been analyzed. When the courts are divided into 10 categories according to region, the regions show a pretty even distribution. <Table IV-1> shows the composition of survey respondents.

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- 1) The 55 courts include 14 local courts including the Seoul Eastern District Court, Seoul Southern District Court, Seoul Northern District Court, Seoul Western District Court, Uijeongbu District Court, Incheon District Court, Suwon District Court, Chuncheon District Court, Cheongju District Court, Busan District Court, Ulsan District Court, Changwon District Court, Jeonju District Court and Jeju district Court; and 41 branches including Goyang Court, Bucheon Court, Seongnam Court, Yeosu Court, Pyeongtaek Court, Ansan Court, Anyang Court, Gangneung Court, Wonju Court, Sokcho Court, Youngwol Court, Daejeon Family court, Hongsung Court, Gongju Court, Nonsan Court, Seosan Court, Cheonan Court, Chungju Court, Jecheon Court, Youngdong Court, Daegu Family Court, Andong Court, Gyeongju Court, Pohang Court, Gimcheon Court, Sangju Court, Uiseong Court, Youngdeok Court, Masan Court, Jinju Court, Tongyeong Court Milyang Court, Geocheon Court, Gwangju Family Court, Mokpo Court, Jangheung Court, Suncheon Court Haenam Court, Gunsan Court, Jeongeup Court, and Namwon Court.

〈Table IV-1〉 Composition of the Samples of Court Employees, Judges and Counselors

(Unit: persons, %)

Court	Judge	Court employee	Counselor	Total cases
Seoul	6 (9.1)	5 (8.3)	46 (31.7)	57 (21.0)
Gyeonggi and Incheon	11 (16.7)	10 (16.7)	30 (20.7)	51 (18.8)
Chungcheongbuk-do	5 (7.6)	4 (6.7)	5 (3.4)	14 (5.2)
Chungcheongnam-do	6 (9.1)	6 (10.0)	18 (12.4)	30 (11.1)
Gyeongsangbuk-do	9 (13.6)	9 (15.0)	11 (7.6)	29 (10.7)
Gyeongsangnam-do	9 (13.6)	10 (16.7)	11 (7.6)	30 (11.1)
Jeollabuk-do	5 (7.6)	4 (6.7)	9 (6.2)	18 (6.6)
Jeollanam-do	9 (13.6)	6 (10.0)	9 (6.2)	24 (8.9)
Gangwon-do	5 (7.6)	5 (8.3)	3 (2.1)	13 (4.8)
Jeju-do	1 (1.5)	1 (1.7)	3 (2.1)	5 (1.8)
Total	66 (100.0)	60 (100.0)	145 (100.0)	271 (100.0)

b) Applicants

Since it was almost impossible to survey all the local courts responsible for divorce by agreement due to budget restrictions, the courts that received more than 4,000 applications for divorce by agreement in 2010 were selected as subjects. As a result, the Seoul Family Court, Busan Family Court, Gwangju District Court Family Branch, Deajon District Court Family Branch, Daegu District Court Family Branch, Incheon District Court, Suwon District Court, Uijeongbu District Court, Seoul Northern District Court, Seoul Southern District Court, Seoul Eastern District Court, Ansan Court, and Changwon District Court (13 courts) were selected.

The preliminary survey was carried out at the Seoul Family Court on May 31, 2011. 30 questionnaires were collected from people who visited the court to obtain a confirmation of divorce by agreement and then

modifications were made to the survey because a few problems were found in the preliminary survey.

Because the respondents were in a sensitive state in the process of divorce by agreement, researchers themselves distributed questionnaires to the respondents and collected them at the court without the help of a research firm, and the questionnaires were distributed to and collected from the respondents all together - rather than 1:1 interview - due to their sensitive mental state and limitations in available places. Due to these problems, some of the responses lacked consistency and some of the questions were not answered. The research team decided to check the questionnaires, when they collected them from respondents, and fix problems within the available time.

The survey at the Seoul Family Court was carried out from June 7 to June 15, 2011, and the survey period for the remaining courts was scheduled from June 27 to July 29, 2011, and the research team visited the courts once or twice on their divorce by agreement confirmation dates, and distributed and collected questionnaires.

Questionnaires were collected from 520 respondents (cases), who were in the phase of obtaining a confirmation of intention of divorce by agreement, based on their consent and through the support of the Office of Court Administration and each court, and 509 cases, excluding 11 cases with insufficient answers, were selected as analysis data. Of them, 360 samples had under-age children and 149 samples had no under-age children. The former was composed of 190 women (52.8%) and 170 men (47.2%), while the latter consisted of 76 women (51.0%) and 73 men (49.0%).

<Table IV-2> shows the survey period at each court and the number

of each type of sample.

〈Table IV-2〉 Composition of the Samples of the Applicants for Divorce by Agreement

Court	Survey period (2011)	Number of samples with children	Number of samples with no children	Total number of cases
Seoul Family Court	June 7 - June 15	83 (23.1)	42 (28.2)	125 (24.6)
Seoul Northern District Court	July 7	45 (12.5)	17 (11.4)	62 (12.2)
Seoul Eastern District Court	July 22	28 (7.8)	9 (6.0)	37 (7.3)
Seoul Southern District Court	July 1	15 (4.2)	10 (6.7)	25 (4.9)
Incheon District Court	July 5 (firs session) and July 21 (second session)	45 (12.5)	19 (12.8)	64 (12.6)
Daejon District Court Family Branch	July.19	9 (2.5)	4 (2.7)	13 (2.6)
Daegu District Court Family Branch	June 27	46 (12.8)	12 (8.1)	58 (11.4)
Busan District Court	July 4 (first session) and July 13 (second session)	21 (5.8)	13 (8.7)	34 (6.7)
Gwangju District Court Family Branch	July 25	2 (0.6)	8 (5.4)	10 (2.0)
Suwon District Court	July 12	6 (1.7)	2 (1.3)	8 (1.6)
Suwon District Court Ansan Branch Court	June 29	31 (8.6)	0 (0.0)	31 (6.1)
Uijeongbu District Court	July 8	27 (7.5)	13 (8.7)	40 (7.9)
Changwon District Court	July 14	2 (0.6)	0 (0.0)	2 (0.4)
Total number of cases		360 (100.0)	149 (100.0)	509 (100.0)

3) Key details of the survey of each survey subject

a) Court employees, judges, and counselors

The survey of judges, court employees, and counselors involved in the application of the divorce-by-agreement system was focused on the status of the application of the divorce-by-agreement system, assessment of the application of the system and its effects, and collection of information on the improvement of the system.

In addition, in order to look into the actual status of how the divorce-by-agreement system was being applied at each court, detailed items with regard to the application of the system, including material and human resources, counseling recommendation and counseling support systems, and parents guidance education, were surveyed at each court through questionnaires for “court employees.” Also, of the detailed items, questions that court employees couldn’t answer were added as additional questions to the questionnaires for “judges” and “counselors.” The actual status of the utilization of correction orders was surveyed through the questionnaires for “judges.” Also, through the questionnaires for “counselors,” how counseling support was provided at each court was surveyed; information on why the applicants turned to counseling and what the counseling focused on was indirectly collected through the experience of counselors who have face-to-face talks with applicants; and the satisfaction level of and demand for regard to counseling activities were surveyed to use the survey results as information in improving the counseling recommendation system.

[illegible]

Family Court, of the whole people who filed for divorce by agreement and obtained a confirmation of intention of divorce in 2010, agreement documents on the care of under-age children were produced in 2,022 cases. Of these, 2,016 cases, excluding six cases presumed to have entry errors, were selected for analysis.

The agreement document on child-rearing-matters is a qualitative data type document, so this study has converted qualitative data into quantitative data through content analysis to analyze the actual conditions of divorce by agreement and child-rearing-related matters. It was necessary to convert case records into quantitative data in order to analyze how people filing for divorce by agreement negotiate on child-rearing-related matters, and a “Divorce-by-agreement Case Analysis Table” was created as an analysis tool. The table consists of registration date, confirmation date, age of father, age of mother, number of children, gender of children, age of children, person with parental rights, fosterer, monthly payment, lump sum payment, visitation date, and others (income of the person who pays child support). This table was reorganized and the actual conditions related to child-rearing were categorized into matters related to the person with parental rights and fosterer, matters related to child support payment, visitation-related matters, and correction order-related matters to analyze the details related to child-rearing.³⁾

3) Meanwhile, since data on the monthly income and property of father and mother as well as a child support payment breakdown are needed to decide whether the agreement document is consistent with the welfare of children, applicants are requested to submit supporting documents to the court; it was expected that analysis of agreement documents and attached supporting documents would enable analysis of the details of the agreement on child-rearing-related matters. However, the Seoul Family Court didn't require divorce applicants to submit a breakdown of their property in the phase of providing guidance to the applicants; applicants were requested to provide information on their property only in special cases - e.g. when there is an agreement on non-payment of child support.

2) Analysis of counseling reports

Although the initial plan was to look into the status of the implementation of counseling through the survey of satisfaction levels for the divorce deliberation system, it was deemed that it would be difficult to produce significant statistics due to the low proportion of the people who used the counseling service. Accordingly, the research team decided to analyze counseling reports, to collect more data, consisting of questionnaires completed by applicants before and after counseling as well as questionnaires completed by counselors. Since each court had its own counseling system, it was difficult to generalize the counseling system; so only the counseling services on divorce by agreement provided at the Seoul Family Court in 2010 were selected as analysis subjects. While 156 counseling reports were provided from the Seoul Family Court for counseling services provided in 2010, 152 were selected as analysis subject excluding those with insufficient or redundant data.

2. Official statistics analysis

The Statistics Korea's official statistics of divorce and the court's analysis of statistics provide a few implications. First, the number of judicial divorce increased by 9.6% in 2010 compared with 2007; it is presumed that more people preferred judicial divorce procedures to avoid the divorce deliberation period introduced following the improvement of the divorce-by-agreement procedures.

Second, while the divorce deliberation system was carried out on a

Accordingly, there was not enough information on property and it was difficult to measure the monetary value of property in many cases, so the information on property was excluded from the analysis due to its lack of accuracy.

trial basis before the revision of the act, counseling was not a mandatory obligation but a recommendation after the revision, and while reduction of the length of the deliberation period after receiving counseling was possible depending on the decision of judges, the withdrawal ratio increased from 10% level during the trial period to 30% level after the system took effect in earnest; so regardless of counseling, the deliberation period itself led some people to reconsider their divorce application.

Third, although the role of the court as a sponsor was strengthened and there was more room for the intervention of the court, the ratio of no confirmation of intention to get a divorce by agreement didn't change greatly after the system was put into practice in 2008; the court failed to effectively serve as a sponsor, which was one of its expected roles.

3. Actual status of the application of the divorce by agreement system

A. Facilities and personnel required for the application of the divorce by agreement system

The proportion of courts with facilities required for the application of the divorce by agreement system, including reception room, waiting room, counseling room and parents education room, was surveyed. While most courts had a reception room, only few of them had other facilities: the proportions of courts that had a counseling room, a waiting room and a parents education room were 53.6%, 50% and 32.1%, respectively. Also the proportion varied wildly depending on the type of the court: while high proportions of family courts and family branch courts had the

facilities, branch courts of local district courts showed lower proportions. In particular, the proportion of local courts that had a waiting room and a parents education room was very low.

<Table IV-3> Facilities Required for the Application of the Divorce by Agreement System

(Unit: number of courts, %)

Classification		Total (n)	Number of courts with a reception room	Number of courts with a waiting room	Number of courts with a counseling room	Number of courts with a parents education room (AV room)
Type of court	Family court	5	5 (100.0)	4 (80.0)	5 (100.0)	5 (100.0)
	Family branch court					
	Local court	13	12 (92.3)	7 (53.8)	12 (92.3)	5 (38.5)
	Branch court	38	35 (92.1)	17 (44.7)	13 (34.2)	8 (21.1)
Total		56	56 (92.9)	28 (50.0)	30 (53.6)	18 (32.1)

The personnel required for the application of the divorce by agreement system includes employees in charge of providing guidance on divorce by agreement and support for confirmation process, judges responsible for the confirmation process of divorce by agreement, counselors who provide counseling within the court if people filing for divorce want counseling after receiving recommendation for counseling, and family fact-finding officers who provide support in the process of divorce by agreement. The number of judges in charge of divorce by agreement ranged widely from one to 25 depending on how duties were allocated. Judges on duty take charge of divorce by agreement cases alternately at the courts with a relatively higher number of judges in charge of such cases; in order to make a more active intervention to improve the

welfare of under-age children, such a system should be changed.

〈Table IV-4〉 Allocation of Divorce-by-agreement Cases to Judges at Each Type of Court

(Unit: number of persons, %)

Classification		Total (n)	Allocation of divorce-by-agreement cases to judges		
			To judges on duty	To judges fully in charge	Both
Court type	Family court Family branch court	5 (100.0)	3 (60.0)	2 (40.0)	0 (0.0)
	Local court	13 (100.0)	2 (15.4)	11 (84.6)	0 (0.0)
	Local branch court	38 (100.0)	16 (42.1)	18 (42.1)	6 (15.8)
Total		56 (100.0)	21 (37.5)	29 (51.8)	6 (10.7)

Also, 28 courts (50.0%) answered that they had at least one family fact-finding officer, but more than 50% of them had only one officer, lacking the ability to provide support for divorce-by-agreement procedures. In fact, family fact-finding officers were involved in divorce-by-agreement procedures only at nine courts (16.1%).

〈Table IV-5〉 Whether There is a Family Fact-finding Officer at Each Type of Court and Whether the Officer is Involved in Divorce-by-agreement Procedures

(Unit: number of persons, %)

Classification		Total (n)	Whether there is a family fact-finding officer		Whether the officer is involved in divorce-by-agreement procedures	
			Yes	No	Involved	Not involved
Court type	Family court	5 (100.0)	5 (100.0)	0 (0.0)	2 (40.0)	3 (60.0)
	Family branch court					
	Local district court	13 (100.0)	9 (69.2)	4 (30.8)	10 (76.9)	3 (23.1)
	Branch court	38 (100.0)	15 (37.5)	24 (63.2)	35 (92.1)	3 (7.9)
Total		56 (100.0)	28 (50.0)	28 (50.0)	47 (83.9)	9 (16.1)

B. Actual status of the divorce deliberation period

According to the respondents who filed for divorce by agreement, the proportion of them who actively used the deliberation period was very low; more than 30% said that they have spent the period for other purposes. Thus, it is necessary to improve the system to increase the usage of the period. In particular, it is necessary to strengthen the current counseling system or make it compulsory to receive counseling for those with under-age children so that they can devise plans to improve the welfare of their children.

〈Table IV-6〉 Usage of the Deliberation Periods

(Unit: number of persons, %)

Classification		Survey (With children)	Survey (With no children)
Usage of the deliberation periods (multiple responses)a	Deliberation on whether to get a divorce	95 (26.4)	49 (32.9)
	Collection of information on divorce	6 (1.7)	6 (4.0)
	Deliberation on plans for child-rearing	78 (21.7)	-
	Counseling from professional counselors	9 (2.5)	4 (2.7)
	Consult with friends about divorce	49 (13.6)	11 (7.4)
	Spent the period for other purposes	115 (31.9)	54 (36.2)
Others		27 (7.5)	17 (11.4)

a : The percentage for each item of the usage of the deliberation period is the percentage of the respondents who chose the item among all the respondents.

In case analysis, the length of the period from registration to confirmation was measured to figure out the actual length of the deliberation period, and whether the deliberation period was shortened or not was indirectly examined through the calculation. The length of the period from registration to confirmation - although the table doesn't show it - ranged from zero day (when getting a confirmation upon registration) to 25 days a year. According to <Table IV-7>, 85.8% of the respondents said that they went through a deliberation period of more than three months, and 14.2% said that their periods were shortened or they were exempted from it. On the other hand, according to the survey (with children) of the deliberation period, 93.6% of the respondents said that they went through a deliberation period of three months, when they were given three choices: shortened, exempted or three months, while only 6.4% said their period were shortened or they were exempted from the period.

〈Table IV-7〉 Whether the Deliberation Period was Shortened

(Unit: number of persons, %)

Classification	Case analysis	Survey (with children)
Shortened/exempted	286 (14.2)	23 (6.4)
More than three months	1,730 (85.8)	337 (93.6)
Total	2,016 (100.0)	360 (100.0)

Also, the percentage of divorce by agreement cases whose deliberation periods were shortened was surveyed (through survey of court employees) at each court, and 45 courts - out of 56 courts - responded to the survey. The result was that 19 courts (42.2%) said that they shortened the deliberation period for 5 to less than 10% of their cases, which was in between the results of case analysis and the above survey(with children).

〈Table IV-8〉 The Ratio of Shortened Deliberation Periods

Ratio of shortened periods	Total	Less than 5%	5- less than 10%	10%	More than 10%
Number of cases (%)	45 (100.0)	15 (33.3)	19 (42.2)	7 (15.6)	4 (8.9)

C. Actual status of counseling support and parents education

Only low percentage of the people filing for divorce by agreement were aware of the counseling system and received counseling. Only around 40% of them were aware of the counseling system - whether they have under-age children or not - and counseling was recommended to only 20% of them. Moreover, less than 10% of them actually participated in counseling during their deliberation periods, while only

8.5% of those with under-age children and 3.5% of those with no under-age children used the counseling system.

〈Table IV-9〉 Actual Status of the Counseling Recommendation System
for People Filing For Divorce by Agreement

(Unit: number of persons %)

Classification		Survey (with children)	Survey (With no children)
Are you aware of the counseling system	Aware	147 (43.0)	52 (36.1)
	Not aware	195 (57.0)	92 (63.9)
	Total	342 (100.0)	144 (100.0)
How did you find out the existence of the counseling system (multiple responses) ^a	Through guidance of court employees	59 (16.4)	23 (15.3)
	Recommendation of judges	1 (0.3)	1 (0.7)
	Introduction of friends	29 (8.1)	11 (7.4)
	Court guide book	19 (5.3)	5 (3.3)
	Video materials of the court	21 (5.8)	4 (2.7)
	Promotional materials on the Internet	27 (7.5)	8 (5.4)
Whether counseling was recommended by the court	Recommended	83 (24.9)	28 (20.3)
	Not recommended	250 (75.1)	110 (79.7)
	Total	333 (100.0)	138 (100.0)
Focus of the recommendation	Simple introduction of the counseling system	34 (45.9)	16 (59.3)
	Detailed guidance on external counseling agencies	6 (8.1)	4 (14.8)
	Introduction of certain counselors	2 (2.7)	0 (0.0)
	Guidance on the counseling center of the court	26 (35.1)	6 (22.2)
	Others	6 (8.1)	1 (3.7)

a : The percentage for each item of “how did you find out the existence of the counseling system” is the percentage of the respondents who chose the item among all the respondents.

While 83.9% of the court employees said that they were recommending counseling, only 24.9% of those filing for divorce by agreement said that counseling was recommended to them; it is presumed that the

recommendation and promotion-related activities of court employees were not active enough to have those filing for divorce by agreement recognize the counseling system and encourage their participation.

〈Table IV-10〉 Whether Counseling was Recommended
(Unit: number of persons, %)

		total (n)	Experience of counseling recommendation	
			Yes	No
Type of court	Family court	5 (100.0)	4 (80.0)	1 (20.0)
	Family branch court			
	Local court	13 (100.0)	12 (92.3)	1 (7.7)
	Local branch court	38 (100.0)	31 (81.6)	7 (18.4)
Total		56 (100.0)	47 (83.9)	9 (16.1)

Meanwhile, when it came to parents education, many courts were not carrying out parents education or didn't have any places for parents education. 28.6 of the courts were not carrying out parents education, while only 32.1% of them had a parents education room.

〈Table IV-11〉 Ratio of Courts Carrying Out Parents Education
(Unit: number of persons, %)

Classification		Total	Whether parents education is carried out	
			Yes	No
Type of court	Family court	5 (100.0)	5 (100.0)	0 (0.0)
	Family branch court			
	Local court	13 (100.0)	12 (92.3)	1 (7.7)
	Local branch court	38 (100.0)	23 (60.5)	15 (39.5)
Total		56 (100.0)	40 (71.4)	16 (28.6)

Parents education was mostly provided through video materials, as well as through verbal explanation of court employees and printed materials.

D. Actual conditions regarding agreement documents on child-rearing-related matters

Although child-rearing support for under-age children was provided mostly on a monthly basis, many couples agreed on non-payment and non-receipt of such support despite the recommendation of the court: according to the survey of people filing for divorce by agreement, 35.6% of the respondents said that they agreed with non-payment, while 35.4% of the respondents in the case analysis of the Seoul Family Court in 2010 said so, indicating that the monthly payment for child-rearing expenses was set at a very low level. The amount of monthly child support was set at excessively low level, considering the actual child-rearing expenses, so the payment was not enough to guarantee the welfare of children: according to the case analysis of the Seoul Family Court, less than KRW 500,000 was 62.0%, while 66.5% was less than KRW 500,000 according to the survey of applicants. Those filing for divorce by agreement said that the amount of the child support was the most unsatisfactory element in their agreement documents.

〈Table IV-12〉 Methods and Amounts of Child Support Payment
Depending on Who has Custody of the First Child

(Unit: number of persons, %)

Classification		Total	Fosterer of the first child			x 2
			Father	Mother	Both	
Payment method	Periodic payment	1,170 (59.2)	177 (26.6)	980 (75.9)	13 (61.9)	534.118***
	Lump sum payment	85 (4.3)	17 (2.6)	65 (5.0)	3 (14.3)	
	Periodic payment+lump sum payment	23 (1.2)	6 (0.9)	16 (1.2)	1 (4.8)	
	Agreed with no payment	700 (35.4)	466 (70.0)	230 (17.8)	4 (19.0)	
Total		1,978 (100.0)	666 (100.0)	1,291 (100.0)	21 (100.0)	
Monthly payment range	KRW 300,000 or less	365 (30.6)	125 (70.2)	234 (23.4)	6 (40.0)	165.440***
	KRW 310,000-500,000	372 (31.2)	35 (19.7)	334 (33.4)	3 (20.0)	
	KRW 510,000-1,000,000	301 (25.3)	11 (6.2)	287 (28.7)	3 (20.0)	
	KRW 1,010,000-2,000,000	109 (9.1)	7 (3.9)	99 (9.9)	3 (20.0)	
	More than KRW 2,000,000	45 (3.8)	0 (0.0)	45 (4.5)	0 (0.0)	
Total		1,192(100.0)	178 (100.0)	999 (100.0)	15 (100.0)	

*** p< .001

75.2% of those filing for divorce by agreement were aware of the system of forcible execution for non-payment of child support. As to the question of whether they would apply for the forcible execution order for non-payment of child support, 44.0% of the respondents answered yes. Meanwhile, because more than 30% said that they were skeptical about the execution of the details of agreement documents on child-rearing-related matters and determination of the person with parental rights, a considerable number of people who divorced by agreement would apply for the forcible execution. Thus, it would be necessary to secure executory power of the system and build an administrative and enforcement system for forcible execution.

E. Actual status regarding execution of correction orders

According to the survey of judges, 36.1% of the respondents were using correction orders, while 63.9% said that they were not using it. Correction orders are aimed at making improvement for agreement documents - written by applicants - on child-rearing-related matters and determination of the person with parental rights if a judge decides that details of the document is against the welfare of children, and the percentages show that corrections orders are not actively used in practice.

〈Table IV-13〉 Actual Status Regarding Correction Orders and Intervention

(Unit: number of persons, %)

Classification		Frequency (n)	Percentage (%)
Usage of correction orders and intervention	Very actively use them	2	3.3
	Use them quite often	20	32.8
	Sometimes use them	21	34.4
	Do not use them	18	29.5
	Total	61	100.0

Specific cases where correction orders were used included cases for parental rights and fosterer, visitation, and child support. First of all, when it comes to parental rights and fosterer, if the person with parental rights and the fosterer are different, and if parents decide to separate their children, the court recommends joint custody or foster care of all children by one parent. Secondly, when it comes to visitation, if parents have decided that the parent not having custody of the children will forgo visitation rights or if the visitation of the parent not having custody of the children is excessively restricted, the court explains the necessity

of visitation from the viewpoint of children and recommends correction of agreement documents. Also, when it comes to child support, if there is an agreement with non-payment of child support or division of the burden of child support payment is unreasonable, correction orders are used. On the other hand, reasons for non-use of correction orders included excessive burden on judges, respect for the intention of people filing for divorce by agreement, lack of data based on which judges can make decisions and lack of institutional support for correction orders.

Chapter 5 Assessment of the Application of the Divorce-by-agreement System and its Effects

Chapter 5 looks at the assessment of the application and effects of the divorce-by-agreement system. For this, based on the results of the “survey of the status of the application of the divorce by agreement system and its satisfaction level,” this chapter first looks at how court employees, judges, and counselors, as well as people filing for divorce by agreement, evaluate the application and effects of the system, and then looks at the comparison among judges, court employees, and counselors, as well as the comparison between people filing for divorce by agreement with under-age children and those with no under-age children. Also, their opinions on system improvement will be analyzed. Also, in order to assess the effects of counseling, which didn’t have significant statistics due to the small number of responses to the survey, the details of the 2010 counseling report have been analyzed.

1. Assessment of the application of the divorce-by-agreement system

Judges, court employees, and counselors were surveyed for the assessment of the application of the divorce-by-agreement system, which focused on the assessment of the overall application of the system, reasonableness of divorce deliberation periods, preparation of agreement documents on child-rearing and determination of the person with parental rights, and the counseling recommendation system. However, for the assessment of the reasonableness of divorce deliberation periods, people filing for divorce were also surveyed.

The results of the survey suggested that judges, court employees, and counselors agreed with the need to improve the application of the system. Many respondents in the survey of the overall application of the divorce-by-agreement system, reasonableness of the length of divorce deliberation periods, preparation of agreement documents on child-rearing, and the counseling recommendation system said that the system required improvement, in particular when it came to the reasonableness of the length of divorce deliberation periods as well as the current counseling recommendation system. Thus, it is deemed that the system needs to be improved in terms of the divorce deliberation period system and the counseling recommendation system.

When it came to the assessment of the application of the child-rearing agreement document preparation system, about 20% of each respondent group said the system required improvement, and when it came to the overall application of the divorce-by-agreement system and the counseling recommendation system, 30 to 60% of the respondents groups said that improvement would be necessary. Also, when it came to the reasonableness

of the length of deliberation periods, around 30% of judges, court employees, and counselors, as well as 45% to 65% of people filing for divorce by agreement, said that improvement would be needed.

2. Assessment of the effects of the divorce-by-agreement system

In order to assess the effects of the divorce-by-agreement system, details of the system were divided into divorce deliberation period, parents guidance education, preparation of agreement documents of child-rearing, counseling recommendation and counseling, and the extent to which each detailed item affects prudent decision on divorce, deliberation of the life after divorce, improvement of the welfare and interests of children, and reaching an agreement between a married couple was assessed.

The result suggested that suppliers and consumers of the divorce-by-agreement system had divergent views toward the effects of the system, and within the group of suppliers, judges, court employees, and counselors have different views. Judges, court employees and counselors have relatively more positive views than people filing for divorce by agreement, and among the group with positive views, counselors have relatively more negative views. Given the respondents have different views and desires, it would be necessary to collect opinions of various groups to seek system improvements that everyone will accept.

Meanwhile, the survey suggested that everyone agrees with the importance of guaranteeing welfare of children in the divorce-by-agreement system, so it should be prioritized in the improvement of the system. While

Judges, court employees and counselors - particularly judges- have some expectations that the divorce-by-agreement system would encourage people to prudently decide on divorce, all groups of respondents have high expectations for the system in terms of protection of under-age children.

3. Opinions on the improvement of the divorce-by-agreement system

This section focuses on the respondents who actively presented opinions, particularly the comparison between court officials who apply the system and people filing for divorce by agreement who use the system; so the opinions of these groups can be very different from the opinions of all the respondents.

In the survey of necessary improvements for the divorce-by-agreement system, court officials (judges, court employees and counselors) and people filing for divorce by agreement presented common responses that provision of protection for under-age children to guarantee their welfare, improvement of the agreement document preparation system, improvement of the divorce deliberation period system, improvement of the counseling recommendation system, and support for people filing for divorce by agreement in the process of divorce should be prioritized.

First of all, when it came to the protection of under-age children to guarantee their welfare, respondents with under-age children said that making counseling mandatory, strengthening of parents guidance education and making it mandatory, creation of methods to strengthen the executory power for the payment for child support, establishment of standards for

child support payment, and strengthening of forcible execution of child support payment are required. In addition, when it came to preparation of agreement documents on child-rearing and determination of the person with parental rights, respondents suggested that active intervention of the court when agreement documents are against the welfare of children, provision of support for the preparation of agreement documents, provision of education on relevant information, and development of methods to support actual preparation of agreement documents are required.

Secondly, when it came to the divorce deliberation period system, respondents said that flexible application of deliberation periods and diversification of the conditions for shortening deliberation periods are required.

Meanwhile, when it came to the improvement of the counseling recommendation system, respondents said that making counseling mandatory for people with under-age children, active promotion of counseling by the court, organic connection between the court and counselors, making counseling mandatory before designation of a confirmation date or filing for divorce by agreement, expansion of counseling agencies and utilization of external counseling agencies, shortening of deliberation periods as incentives for counseling, improvement of the quality of counseling and continuous counseling, and periodic training of counselors, are required.

When it came to the process of divorce by agreement, respondents said that improvement of the complicated divorce procedures and the complexity of documents or provision of support for such complicated procedures, shortening of waiting time, and expansion of the range of choices for confirmation dates and time, are required.

Chapter 6 Policy Suggestions

Below are suggestions for the methods to improve the application of the divorce-by-agreement system as well as the system itself.

1. Expansion of facilities and the personnel in charge of divorce by agreement

A. Improvement of how judges take charge of duties

Currently, there are three ways in which judges take charge of divorce-by-agreement cases: First, judges specializing in family affairs take charge of divorce-by-agreement cases. Second, judges on duty take charge of such cases alternately. And lastly, both ways are used. These days, it is mandatory to submit agreement documents, unlike in the past when only obtaining a confirmation of intention of divorce was required in the process of confirming intention of divorce by agreement. Accordingly, if details of agreement documents of a couple with under-age children are against the welfare of such children, intervention of judges is made. In this case, if judges on duty take charge of divorce-by-agreement cases alternately, they will become passive in the utilization of correction orders. Thus, this system requires improvement. It is desirable to assign judges exclusively responsible for divorce-by-agreement cases. However, if it is impossible to do so immediately, utilization of both judges on duty and judges exclusively responsible for divorce-by-agreement cases would be a possible option; judges exclusively responsible for such cases can take charge of cases requiring their continuous intervention so that the welfare of under-age children can be guaranteed.

in the process of divorce.

B. Hiring more family fact-finding officers and intervention in the process of divorce by agreement

Only 50% of the courts surveyed had at least one family fact-finding officer and more than 50% of such courts had only one officer, lacking the ability to provide support for divorce-by-agreement procedures. And only 32.1% of the family fact-finding officers intervene in the procedures for divorce by agreement.

The role of family fact-finding officers is important because it is necessary, in many cases, to decide whether there is a reason for shortening a deliberation period before the intervention of judges and whether the details of agreement documents are against the welfare of under-age children, and court employees lack the expertise required to make such decisions and cannot but address such matters mechanically. In fact, in the survey of necessary improvements for the divorce-by-agreement system, some respondents said that it is necessary to have a pre-inspection tool to decide whether the intervention of judges is required, and hiring more family fact-finding officers and their intervention in the procedures for divorce by agreement could be a solution.

C. Facilities for efficient application of the system

While most courts had a reception room, only few of them had other facilities. Only 53.6% of them had a counseling room and 50% of them had a waiting room. Also, a pitiful 32.1% of them had a parents education room. Also, facilities possession ratios varied wildly depending on the type of the court: while a high proportion of family courts and family branch courts had aforementioned facilities, branch courts of local courts showed a much lower facilities possession ratio - in particular, the possession ratio for waiting rooms and parents education rooms were very low. Given the reality where a number of people filing for divorce by agreement must gather at the same place at the same time for confirmation of intention of divorce, the proportion of local courts and local branch court with waiting rooms - less than 50% - need to be increased urgently. The survey of people filing for divorce by agreement and getting a confirmation of intention of divorce suggested that they felt uncomfortable due to the lack of waiting rooms. Courts with no waiting room chose one of the following methods: first, after providing guidance at the court, all people other than those getting a confirmation wait in the hallway - on the ground that getting a confirmation of intention of divorce by agreement is also a part of the trial. Second is that all people filing for divorce by agreement enter the court and they are called up to judge one after another with everyone else in the court and a confirmation of intention of divorce is given. Given privacy protection is the most important element in divorce by agreement, it is urgent to set up essential facilities required for divorce by agreement in order to more effectively apply the system.

2. Revitalization of the divorce deliberation system

A. Improvement of the system for more efficient utilization of the deliberation system

In order to improve the system through revision of the Civil Act, the deliberation period and counseling recommendation systems were introduced; submission of agreement documents on child-rearing and determination of the person with parental rights were made mandatory; and the child support burden protocol system was introduced. However, findings of surveys suggest that more than 30% of the people filing for divorce by agreement spent their deliberation periods for other purposes, and only 2%⁴⁾ of them received counseling from a professional counselor - almost no people spontaneously used the counseling system during their deliberation period.

While the deliberation period itself is important, equally important is to provide system-related support so that people filing for divorce by agreement can deliberate on - during a deliberation period - whether divorce is the best option, whether there is an alternative, and whether there are solutions to the upcoming problems after divorce, and receive support. Currently, most courts have internal counselors to provide counseling support during deliberation periods. Despite the existence of such systems for counseling support, not many people are using counseling. Accordingly, there were many negative views on the assessment of the

4) The percentage is the response ratio for the multiple response question on the utilization of deliberation periods. As to the question of whether the respondent received counseling during their deliberation periods, 8.5% of those with under-age children said that they received counseling, while 3.5% of those with no under-age children said so.

application of the counseling system; many court officials were aware of the necessity of the improvement for the counseling recommendation and counseling systems; and in particular, they agreed that it is necessary to establish a system to make it mandatory for people filing for divorce by agreement with under-age children to receive counseling. However, in order to make it mandatory to receive counseling, it is necessary to resolve the poor conditions in terms of human, material and financial resources - although the situation is much better than when the system was introduced. Thus, in the long term, it is necessary to make it mandatory for those with under-age children to receive counseling, while in the short term establishing system-related infrastructure and encouraging spontaneous counseling by providing incentives - a temporary approach aimed at accumulating experience to reduce trials and errors when counseling is made mandatory. The court implemented this method before the divorce deliberation system and counseling recommendation were institutionalized; but in the process of legislation, shortening deliberation periods as incentives for counseling was not accepted.

B. Flexible application of the deliberation period-shortening system

Although the survey of people filing for divorce by agreement didn't produce significant statistics due to a low counseling usage rate, analysis of the 2010 counseling report of the Seoul Family Court showed to what extent counseling was helpful. Whether the respondent received counseling spontaneously or for purpose of having their deliberation periods shortened, most of them showed positive responses to counseling.

Also, they acknowledged that it is necessary to receive professional counseling before deciding on divorce. Since the necessity of counseling has been recognized and its effects have been proven, now the question is how to encourage people filing for divorce to use counseling. In the survey of people filing for divorce by agreement, a high proportion of the respondents said that they didn't receive counseling because they were not sure about its effects, they didn't have time or they didn't want to reveal their private life, indicating that the perception toward counseling is not very positive in Korea yet, and thus there are limitations in encouraging spontaneous counseling. Thus, it is necessary to continue to promote the effects of counseling and the counseling system to encourage utilization of counseling. Also, shortening of deliberation periods, based on flexible interpretation of relevant rules, for people who received counseling could be a solution (Shin Yoo-gyeong, 2008:65).

3. Improvement of counseling support and parents guidance education

A. Diversification of counseling support methods

According to rules on counseling, counseling support can be provided by appointing internal counselors, designating external counseling agencies or using both methods; currently, most courts appoint internal counselors for divorce by agreement and provide counseling support during deliberation periods. The advantage of this method is that people filing for divorce by agreement can use the counseling service of the court when they file for divorce and they don't have to find other counseling

agencies. Currently, the court does nothing more than just recommending counseling and provides no incentives for the use of counseling, so the proportion of people using counseling is very low and the court can provide counseling with no excessive burden. However, if incentives for counseling are provided and many people apply for counseling, they might not be able to receive counseling when filing for divorce and need to revisit the court later. In this case, this could impose another burden on those who couldn't receive counseling due to lack of time. In order to prevent this from happening, it is necessary to provide people filing for divorce by agreement with opportunities to receive counseling in places close to where they live. Thus, it is necessary to diversify counseling support methods by designating the Healthy Family Support Centers, free-of-charge counseling agencies located around the country, as well as the headquarters and branches of the Korea Legal Aid Center for Family Relations registered as a legal aid corporation and the headquarters and branches of the Korea Family Legal Service Center, as external counseling agencies so that the counseling provided at such agencies can count as counseling provided during a deliberation period. This change will help overcome the limitations of the internal counseling support, which mostly provides only one-time counseling, and those filing for divorce by agreement will be able to use various counseling programs of external counseling agencies so that more demand of consumers will be satisfied.

B. Expansion of material and human resources for counseling

The survey of the status of free-of-charge counseling agencies located around the country suggested that some regions lack required resources compared with the regions governed by the court. Thus, it is necessary to expand material resources to achieve a regional balance. Also, in order to guarantee the minimum quality of the counseling provided by internal counselors of the court and the counseling provided by free-of-charge counseling agencies, which counts as counseling provided by the court, it is necessary to establish standards for the qualifying conditions of counselors, such as major, degree, certificate, experience and age, and it is necessary to develop and run a separate central training program for the counselors connected with the court. Such a central training program must allow its trainees to learn that the objective of divorce counseling is not to prevent family disruption but to help get a divorce without problems⁵⁾; that legal knowledge required for divorce counseling as well as essential information required in the process of divorce counseling must be provided through counseling - if the person filing for divorce has children, information on foster care, designation of the person with parental rights and improvement of the welfare of children through communication after divorce must be provided; that counselors must help people filing for divorce to effectively negotiate on the welf

5) Counseling during divorce deliberation serves as a mediator and decides on whether the decision was made through a reasonable process, how conflicts caused by differences in demand will be minimized to reach an agreement, how the losses for the couple and their children will be minimized after divorce, and how the post-divorce roles of the husband and the wife will be coordinated (Choi Seon-ryeong, 2007:45).

are of children with regard to child-rearing and designation of the person with parental rights; and that there are rules for the acceptance of reasons for shortening deliberation period. After going through such a program, counselors will be able to build an organic system for cooperation with judges who make the ultimate decision. Also, the central training program will be able to serve as a venue for sharing actual examples of counseling.

C. Strengthening of promotion of the counseling system

Although each court promotes, in the process of provision of guidance on divorce, the necessity of counseling and provision of free-of-charge counseling, the proportion of people who use counseling is very low; it is deemed that more effective promotional tools are required. As low as 40% of people filing for divorce by agreement with or without under-age children were aware of the counseling system. Also, the survey suggests that while 81.7% of court employees said that they recommended counseling, only 24.9% of people filing for divorce by agreement said that counseling was recommended to them; it is presumed that the recommendation and promotion-related activities of court employees were not active enough to let people filing for divorce by agreement find out the existence of the counseling system and encourage their participation. Given that 20% of the people who didn't receive counseling said that they didn't use counseling due to the lack of detailed information, it is necessary to enhance promotional activities for the recommendation system.

In order to make people filing for divorce by agreement actively use counseling, it is necessary to let many people know that counseling is

essential and helpful for people filing for divorce by agreement as well as for child-rearing-related matters (Seoul Northern District Court, 2010). Our suggestions are turning to promotion through mass media to let people filing for divorce and the general public know the existence of such a system, as well as provision of relevant information to government offices including community centers which the general public can easily approach. The TV program “Love and War” aired by KBS a few years ago portrayed the activities of a divorce coordination board. The program first showed problems of married couples in conflict and then reminded the public strongly of the importance and meaning of deliberation period through the closing remark, “Let’s meet in four weeks.” If a TV program that shows details of how deliberation periods can be used is produced and aired, it will be helpful in the promotion of the effects of counseling as well as the improvement of the counseling culture.

D. Active implementation of parents guidance education

According to the survey, 28.6% of the court didn’t implement parents guidance education and only 32.1% had a parents education room. Also, mostly AV materials are used for such education, and verbal education of employees and education with printed materials are provided. However, even most of the courts that are providing parents guidance education are not actively providing such education due to poor facilities and excessive burden; they just show AV materials in the reception or waiting room.

In order to let parents know the effects of divorce on children and effectively respond to it through parents guidance education, it is necessary

to do more than just showing AV materials: court employees can provide verbal explanation or more effective education can be provided through external agencies if there are not enough internal personnel.

Also given the reality where counseling is not being effectively used during deliberation periods, parents guidance education is expected to complement the role of counseling. The Seoul Family Court implements parents guidance education for all people with under-age children through AV materials as well as verbal explanation of family fact-finding offers. Confirmation dates are given only to those who have completed the education and guidance on the preparation of agreement documents of child-rearing and determination of the person with parental rights is provided along the way, which is a best practice that other courts can learn from. However, in order to provide an effective parents guidance education that can provide actual support for parents with under-age children - like the Seoul Family Court - it is expected that quite a long time will be required and the number of education sessions a day will be limited. Since this could impose another burden on people filing for divorce by agreement, it would be desirable to let people filing for divorce receive a counseling service that counts as the counseling of the court, instead of parents guidance education, for more flexible application of the system.

4. Improvement of the agreement document on child-rearing

A. Refinement of the document form and presentation of examples for preparation

People filing for divorce agreement shall enter information on the person who provides child support, recipient, payment method, amount, payment date, account, and others in the document on the burden of child support. For example, when it comes to periodic payment, a certain amount shall be set as the monthly payment for one under-age child and the payment shall be made from the next date of the registration of the divorce until the child reaches the age of majority.

In some cases, the blank for additional information was used to set different amounts of child support for before school age and during school age; but since the form is almost a fixed form, the age of children is mostly not considered and the amount for one child is fixed. If there is no request for change in the interim, it is highly likely that details of such a form will be valid until the child reaches the age of majority. Since child-rearing expenses can go up as the child grows and inflation should be considered, it is necessary to make an exemplary child support agreement document or make the form more detailed.

B. Development of a welfare provision system for cases where there is no agreement on child support

Financial problems make up a large proportion (36.1%) of the reasons for divorce among the people filing for divorce by agreement with under

-age children, and most of them (80.8%) separate before or after the submission of an application for confirmation of intention of divorce by agreement and go through a deliberation period of three months. Only as low as 31.2% of the respondents said that they executed the details of the agreement on child-rearing during the deliberation period. Also, while mostly the child support for under-age children is paid on a monthly basis, there are many people who agree on non-payment of child support despite the intervention of the court. According to the survey of people filing for divorce by agreement, 35.6% of the respondents said that they agreed on non-child support, while analysis of divorce by agreement cases of the Seoul Family Court in 2010 suggested that 35.4% agreed on non-payment. More than 75% of couples agreed that the mother becomes the fosterer and the father pays child support; but in 25% of the cases where the father is the fosterer and the mother should pay child support, as high as 70% of the respondents said that they agreed on non-payment of child support. This suggests that the status of women is very low in their family because they earn no income or very low income at the time of getting a divorce, and thus they cannot pay child support and that the traditional value system, whereby men considered as breadwinners should support their family, is still valid.

Also, although there is an agreement on child support, the amount is too low to bear actual child-rearing expenses and to guarantee the welfare of children. According to the survey of people filing for divorce by agreement, 62.4% of the respondents said that the monthly child support is KRW 500,000 or less, and analysis of divorce by agreement cases of the Seoul Family Court in 2010 indicated that 62.0% agreed on child support of KRW 500,000 or less. Accordingly, respondents said

that the most unsatisfactory detail of their agreement document was the amount of child support.

This result suggests that the financial difficulties of women, who take on the responsibility of child-rearing, and their children exist even before getting a divorce and during the three-month deliberation period, that is, in the process of getting a divorce. In fact, some people filing for divorce by agreement complain that although they wanted a divorce due to financial difficulties, they cannot receive welfare support from the government during their deliberation period due to the existence of a spouse.

Since this situation can expectably occur, it is necessary to build a welfare connection system for them to plan for post-divorce life rather than giving a confirmation just because they agreed on non-payment of child support due to lack of financial means.

It was pointed out earlier that while it is necessary to make counseling mandatory in the process of divorce by agreement for the welfare of under-age children, there are insufficient material and human resources to do so. In order to resolve this, it is necessary to make it mandatory to receive counseling from the Healthy Family Support Centers and the Single Parent Support Center, which will decrease the proportion of the people filing for divorce by agreement without setting the amount of child support and provide welfare for the families with financial difficulties to fill a vacuum of welfare.

According to the “Single Parent Family Support Act,” “those who have lost one’s spouse, or who have been divorced or abandoned” with the responsibility for fostering under-age children can receive support. While the death of a spouse and divorce can be clearly proven by

documents, it is difficult to prove abandonment by a spouse, and thus it is difficult to receive actual support. Although it is possible to receive support after divorce in accordance with the “Single Parent Family Support Act” by meeting its requirements, there is no support during the deliberation period. It is necessary to allow those who submit an agreement document on child-rearing and the person with parental rights with an agreement on non-payment of child support - if they have decided to do so due to lack of financial source - to receive a certificate for deliberation period and receive temporary support under the “Single Parent Family Support Act” based on the income of the fosterer, in order to let the family in crisis receive urgent support.

5. Strengthening of the role of the court as a sponsor

The survey of judges suggested that judges are reluctant to actively use correction orders because active intervention of the court should be avoided to respect the intention of people filing for divorce by agreement, and there is not sufficient data on which decisions can be made.

Non-use of correction orders caused by insufficient data for decision-making can be resolved by changing the way in which the system is applied. It is necessary to collect data on the income of parents in order to decide if the details of an agreement on child-rearing is against the welfare of children. It is inappropriate to decide on the matter arbitrarily even through there are relevant document forms. It is necessary to make it mandatory to submit income data along with support documents so that decisions on the welfare of children can be made based on reliable data.

While those who administer justice view divorce as a matter that should be dealt with by individuals, it is necessary to exert additional efforts to make improvement in such a mindset. Educational materials on the effects of divorce on under-age children and the society need to be provided to not only to those applying for confirmation of intention of divorce by agreement but also to judges and court officials responsible for divorce by agreement. This is because most judges and court officials in charge of divorce by agreement are men in their 30s or 40s who take charge of such cases for a short period of time due to frequent reshuffling; by the time they realize the distinct characteristics of family cases through experience, they are transferred to other departments, so it is hard for them to cultivate expertise, and thus it is necessary to use such materials to fill the gap. Currently, the Judicial Research and Training Institute, a training institution for judges, and the Training Institute for Court Officials are running training programs for officials of family case trial and family relationship registration-related government offices, so the aforementioned educational materials can be incorporated into such training or separate AV materials can be provided.

6. Treatment of divorce-by-agreement intention confirmation as a non-litigation case

Legislative examples of foreign countries suggest that the global trend in the divorce act focuses on the situation rather than the reason for the breakdown of a marriage to give opportunities to freely end a marriage that has broken down.⁶⁾ Also, another important characteristic is that

6) While Korea applies a fault divorce principle whereby all the reasons for divorce are

there is sufficient consideration for those who sustain losses in the process of ending a marriage relationship.

Amid this new trend, Korea changed its position through the 2007 revision of the Civil Act: while the intention of people filing for divorce was fully respected in the past, the welfare of children is prioritized over the intention of parents. And in order to strengthen the role of the family court as a sponsor, intervention of the court can be made when the agreement on child-rearing-related matters such as determination of the person with parental authority and the fosterer is against the welfare of children - the person concerned with such matters can also request adjustment. However, because there is no regulation and rule on the extent to which the court can intervene in such an agreement, the best option that the judges in charge of divorce by agreement can take for the welfare of under-age children is giving no confirmation of divorce. That is, the court intervention rule aimed at improving the welfare of under-age children is nothing more than a declarative rule.

In order for the court to make an intervention, the case should be in the process of family litigation or non-litigation process; the current divorce-by-agreement intention confirmation process is a subordinate procedure required for filing for divorce and is governed by the “Act on the Registration, etc. of Family Relationship” and its rules (hereinafter referred to as the Family Relationship Registration Act). Since the act is aimed at prescribing rules on the registration and confirmation of the establishment and changes of family relationship, it is impossible to deal with the improvement of the welfare of children with the act.

presented in a trial, a breakdown divorce principle is also applied: regardless of the reasons for divorce, a married couple can get a divorce by agreement.

The historical changes around the divorce-by-agreement system have made the divorce-by-agreement confirmation process become a part of the family relationship registration process. When the divorce-by-agreement system was first introduced, there was no restriction and only registration was required to get a divorce; so it was governed by the Family Registration Act. And in order to prevent unilateral divorce, two revisions were made to introduce a divorce-by-agreement registration assessment system and a divorce-by-agreement intention confirmation system. However, there was no dramatic change that could change the nature of relevant processes, and after the abolition of the Family Registration Act, the Family Relationship Registration Act became the governing law as an alternative.

However, after the revision of the relevant law aimed at improving the welfare of under-age children in the process of divorce by agreement, the nature of the divorce-by-agreement intention confirmation process changed: the process involves not only confirmation of intention of divorce but also assessment of details of agreement documents on child-rearing and determination of the person with parental rights in terms of the welfare of children, if the married couple has under-age children.

Nevertheless, the fact that the divorce-by-agreement intention confirmation process still falls under the rules of the Family Relationship Registration Act, which only governs registration of family relationship and relevant certification, is a legislative defect. Thus, the status of the divorce-by-agreement intention confirmation process needs to be elevated to have a quasi-jurisdiction power. The Current Family Litigation Act is based on the principle that family litigations should be specified by the law. And according to the act, non-litigation cases are divided into Category D

and Category E, and non-dispute cases regarding permission and certification of important acts with positional effects as well as grant and deprivation of rights and obligations are treated as Category D non-litigation cases - in order to allow the intervention of the government. Thus, given divorce by agreement is related to acts with positional effects and there is no dispute between the people concerned with the confrontation, divorce by agreement can be classified as a Category D non-litigation case (Kim Mae-gyeong, 2006:22).

The details in the box below show what rules need to be revised to convert divorce-by-agreement intention confirmation process into a non-litigation family case. Article 836 of the current Civil Act prescribes that divorce by agreement shall take effect upon reporting in accordance with the Act on the Registration, etc. of Family Relationship after obtaining the confirmation of the Family Court. If the divorce-by-agreement intention confirmation process is converted into a non-litigation case, divorce by agreement should take effect upon obtainment of confirmation, and reporting should be used only for provision of information. However, given the meaning of disclosure of acts with positional effects, reporting could be required in order to enforce its validity on a third party.

〈Table VI-1〉 Rules related to the Conversion of the
Divorce-by-agreement Intention Confirmation Process into a
Non-litigation Family Case (proposal)

<p>※ Civil Act</p> <p>Article 836 Divorce by agreement shall take effect upon reporting in accordance with the Act on the Registration, etc. of Family Relationship after obtaining the confirmation of the Family Court.</p> <p>※ Family Litigation Act</p> <p>Article 2 (Matters under Jurisdiction of Family Court) ① (2) (Family non-litigation cases) (a) (Cases of Category D) 8) Confirmation of divorce by agreement under the proviso to Article 836 of the Civil Act (addition)</p> <p>Article 44 (Jurisdiction) 3. For cases concerning an alteration to the property agreement between the married couple, cases concerning a confirmation of divorce by agreement and cases concerning a determination of the method of jointly exercising the parental authority to a common child, the family court as prescribed in subparagraphs 1 through 3 of Article 22</p> <p>※ 「Act on the Registration, etc. of Family Relationship」</p> <p>Article 75 (Confirmation of Divorce by Agreement) and Article 76 (Provisions to be deemed) are deleted</p> <p>Chapter 7 (Article 73 to 80) of the “Rules on Registration, etc. of Family Relationship” is deleted.</p>
