

## EXTENDED SUMMARY

*This article offers an extensive and critical examination of the legal and constitutional implications of the requirement that a marriage must last at least one year before spouses may file for a consensual divorce under Article 166(3) of the Turkish Civil Code. Consensual divorce is intended as a streamlined, non-contentious mechanism that allows couples to dissolve their marriage based on mutual consent while resolving key issues such as property division, financial arrangements, and child custody. Despite its procedural efficiency, the statutory one-year waiting period has generated significant debate, with critics questioning its compatibility with individual autonomy, the right to private and family life, and constitutional principles such as proportionality and equality. Proponents, on the other hand, argue that the measure serves to safeguard the institution of marriage, provide a reflective period, and prevent hasty decisions that could undermine social stability.*

*The first section of the article provides a doctrinal analysis of the consensual divorce framework under Turkish law. It clarifies the concept, explaining the procedural and substantive requirements that distinguish consensual divorce from contentious divorce proceedings. A key feature is the necessity for a joint application and the spouses' mutual agreement on fundamental matters, emphasizing the consensual nature of the mechanism. The one-year minimum duration is central to this framework, justified by the legislature as a measure to protect marital stability and reduce impulsive dissolutions. However, scholarly critiques argue that this condition may operate as an excessive formal barrier, particularly in situations where the marital bond has already irreversibly deteriorated, imposing unnecessary emotional, social, and financial burdens on the parties. The article analyzes the tension between the protective objectives of the legislature and the practical realities for couples seeking timely judicial relief, highlighting the potential dissonance between formal legal structures and lived experiences of marital breakdown.*

*The second section examines the constitutional dimensions of the rule, focusing on the Turkish Constitutional Court's decision dated 30 May 2024 (E.2023/109, K.2024/113). The Court upheld the one-year requirement, with the majority opinion emphasizing the legislature's legitimate objective to preserve the institution of marriage and uphold public interest. The Court suggested that the waiting period provides a reasonable timeframe for reflection,*

ensuring that consensual divorces are not pursued impulsively. However, dissenting opinions raised substantial concerns, arguing that the requirement disproportionately interferes with personal autonomy, delays access to judicial remedies, and imposes an undue burden on couples who have mutually agreed to end their marriage. Dissenting judges highlighted constitutional protections under Articles 20 and 41, which guarantee individual autonomy and private life, contending that the one-year rule does not satisfy the proportionality principle and fails to achieve a fair balance between collective interest and individual rights. This analysis illustrates the ongoing challenge of reconciling societal objectives with constitutional safeguards for personal freedom.

The third section situates the Turkish experience in a comparative perspective. It notes that the Swiss Civil Code (ZGB Art. 111), a key influence on the Turkish Civil Code, does not impose a comparable time restriction; consensual divorce in Switzerland is primarily governed by the parties' agreement, without an imposed waiting period. Similarly, France permits divorces by mutual consent to be finalized through notarial procedures without judicial oversight or a statutory duration requirement. In Anglo-American and German legal systems, while procedural waiting periods or factual separation requirements may exist, these measures are generally intended to allow reflection or verify the factual breakdown of the marriage rather than serving as formal prerequisites solely based on the marriage's duration. This comparative analysis emphasizes the divergence between Turkish law and modern international practices, highlighting a broader trend toward facilitating consensual dissolution while respecting personal autonomy.

The final section provides a critical assessment and policy recommendations. It argues that the one-year rule is increasingly misaligned with contemporary social realities, the evolving conception of marriage as a personal contract, and prevailing international standards. The article recommends that the Turkish legislature consider reforming or repealing the duration requirement to enhance personal autonomy, streamline judicial procedures, and harmonize domestic law with liberal democratic principles. Such reform would not only support the protection of individual rights but also contribute to reducing the procedural burden on courts, thereby enhancing the efficiency of the judicial system. In conclusion, the study advocates for a rights-based, flexible approach to Turkish family law, in which consensual divorce

*mechanisms operate effectively without arbitrary impediments and the legal system reflects the constitutional and societal significance of personal freedom in family life. By balancing the protection of marriage with respect for individual autonomy, the legal framework can ensure that consensual divorce fulfills its intended purpose while promoting fairness, efficiency, and alignment with both domestic and international legal standards.*