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French Supreme Court rules that compensatory allowance and duty of support between spouses are two legal concepts that must be distinguished

A recent ruling of the *Cour de Cassation* (French Supreme Court) has clarified the criteria for assessing the disparity in the respective living conditions of the spouses for the purpose of determining the compensatory allowance.

The benefit granted to one of the spouses during the divorce proceedings on the basis of the duty of support between spouses (*devoir de secours*) should not be taken into consideration in order to dismiss a request for compensatory allowance.

In a recent ruling handed down on April 13, 2022^[1], the First Civil Chamber of the *Cour de Cassation* (French Supreme Court) recalled a principle regarding the determination of the compensatory allowance and held that “the judge cannot take into consideration, in order to assess a spouse’s right to compensatory allowance, the benefit consisting in the free enjoyment of the marital home which has been granted, on the basis of the duty of support between spouses, to the spouse who is requesting a compensatory allowance.”

The compensatory allowance, provided for by Articles 270 *et seq.* the French Civil Code, is intended to compensate for the disparity in the respective living conditions of the spouses that results from the breakdown of the marriage.

It should be preliminarily recalled that the compensatory allowance concerns only married couples and that a request for compensatory allowance can, therefore, only be made at the time of divorce proceedings.

Any such request made after the divorce proceedings would be declared inadmissible.

The list of criteria set out in Article 271 of the French Civil Code, which allow to determine whether a compensatory allowance should be granted and, if yes, to set its amount, is not exhaustive.

As a result, case law helps to clarify the criteria to be used to assess the disparity in the spouses' living conditions.

To this end, the First Civil Chamber of the *Cour de Cassation* has ruled that benefits granted to a spouse during the divorce proceedings should not be taken into account in determining whether a compensatory allowance is due.

In the case at hand, the Paris Court of Appeals had rejected the wife's request for a compensatory allowance, considering that she had benefited – on the basis of the duty of support between spouses – from the free enjoyment of the marital home during the divorce proceedings, i.e., for 7 years.

It should be specified that the duty of support between spouses and the compensatory allowance do not serve the same purpose.

During the divorce proceedings, the Family Judge can order provisional measures based on the duty of support, taking into consideration the needs of the plaintiff spouse.

This duty of support can result *inter alia* in the payment of alimony to one of the spouses, and/or the free enjoyment of the marital home.

When the divorce becomes final, the measures ordered on the basis of the duty of support come to an end.

When the Family Judge issues the divorce judgment, he/she determines whether a compensatory allowance should be granted and, if yes, sets its amount, it being specified that the compensatory allowance is not only for alimony purposes but also for compensation purposes.

It is in this context that the First Civil Chamber of the *Cour de Cassation* recalled that the benefits granted on the basis of the duty of support between spouses during the divorce proceedings must not be taken into account in order to dismiss a request for a compensatory allowance.

In other words, the trial judges cannot take into consideration the provisional measures ordered during the divorce proceedings in order to assess the disparity in the respective living conditions of the spouses that results from the breakdown of the marriage.

Pursuant to Article 271 of the French Civil Code, the disparity is assessed on the day the divorce is decreed, and according to its evolution in the foreseeable future.

The First Civil Chamber of the *Cour de Cassation* thus seems to make a strict interpretation of the provisions set forth in Article 271 of the French Civil Code by refusing to take into account a benefit that will disappear in

the foreseeable future.

In addition to the criteria set out in the French Civil Code, several calculation methods have been developed by legal professionals to provide guidance on and rationalize the amounts of compensatory allowances that may be awarded in divorce proceedings.

Nevertheless, the role of the Judge remains essential in the assessment *in concreto* of the legal and case law criteria to determine the existence of a disparity in the respective living conditions of the spouses, and to quantify it.

[1] 1st Civil Chamber of the *Cour de cassation*, April 13, 2022 – Appeal No. 20-22.807

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