

# COMPENSATORY ALLOWANCE AFTER DIVORCE IN FRENCH LAW: *LA PRESTATION COMPENSATOIRE*

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In French law, the question of compensatory allowance is governed by articles 270 et seq. of the Civil Code. An English

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Before describing the French law of compensatory allowance, it must be explained that there are four cases of divorce under domestic law:

Divorce by mutual consent (art. 230 and seq. of Civil Code): The spouses agree on the principle of divorce and on all the consequences of divorce (patrimonial and extra-patrimonial).<sup>1</sup> It is a fully consensual divorce that can be decided by a court decision, but which, since 2017<sup>2</sup>, a notary can also register.

Divorce by acceptance of the principle of marriage breakdown (art. 233 and seq. of Civil Code): The spouses agree on the principle of divorce but not on the consequences or not on all the consequences.<sup>3</sup> The judge will rule on the remaining disagreements between the spouses.<sup>4</sup>

Divorce for definitive alteration of the conjugal bond (art. 237 and seq. of Civil Code): This divorce can be obtained by one spouse, regardless of the wishes of the other spouse, from the moment that they have been separated and living apart for a two-year period demonstrating the termination of the community of life between the spouses.<sup>5</sup>

Divorce for fault (art. 242 and seq. of Civil Code): One spouse can obtain this divorce in the event of the other's fault. The fault of a spouse is a serious or renewed violation of the duties and obligations of marriage rendering maintaining the community life unbearable (art. 242 of the Civil Code). If both spouses have committed faults, the divorce may be pronounced for shared wrongs.<sup>6</sup>

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1. CODE CIVIL [C. CIV.] art. 230 (Fr.).

2. Loi n°2016-1547 du 18 novembre 2016 de modernisation de la justice du XXI<sup>e</sup> siècle [Law n°2016-1547 of November 18, 2016 of Modernization of Justice of the XXI<sup>e</sup> Century] JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], November 19, 2016, p. 1547.

3. C. CIV. art. 233 (Fr.).

4. *Id.* at art. 267.

5. C. CIV. art. 237, 238 (Fr.).

6. *Id.* at art. 242.

1. NATURE, EVOLUTION AND FORM OF THE COMPENSATORY ALLOWANCE

Article 270 of the Civil Code provides that:

Divorce puts an end to the duty of support between spouses.

One of the spouses may be compelled to pay the other an allowance intended to compensate, as far as possible, for the disparity that the breakdown of the marriage creates in the respective ways of living. This allowance shall be in the nature of a lump sum. It shall take the form of a capital the amount of which must be fixed by the judge.

However, the judge may refuse to grant such an allowance where equity so demands, either taking into account the criteria set out in Article 271, or when the divorce is declared on account of the blame lying wholly upon the spouse who requests the advantage of this allowance, considering the particular circumstances of the breakdown.<sup>7</sup>

The objective of the compensatory allowance is to compensate for the disparity in living standards between the spouses that will occur because of the divorce; It's an indemnity, not alimony. It is essential to understand that divorce puts an end to the duty of support between the spouses. Therefore, from the day the divorce is granted it is impossible to have alimony between the spouses. It is only possible to have a compensatory allowance. Before the law of 11 July 1975, only divorce for fault existed and the innocent spouse had a right to alimony.<sup>8</sup> In a way, it took over from the duty of support. It was almost always the woman who obtained it<sup>9</sup>, because at that time the majority of women were not working and were housewives. This maintenance was compensatory in its basis (liability for fault) and alimony in its purpose (ensuring the

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7. *Id.* at art. 271.

8. Brigitte Ecolivet-Herzog, *The New French Divorce Law*, 11 INT'L L. 483, 485 (1977).

9. Ecolivet-Herzog, *supra* note 8, at 491.

creditor's standard of living).<sup>10</sup> It was calculated according to the resources of the debtor and the needs of the creditor.<sup>11</sup>

The compensatory allowance was created to replace alimony by the law of 11 July 1975.<sup>12</sup> In this reform, the legislator had focused on concentrating the payment of financial compensation at the time of the divorce.<sup>13</sup> The idea was that the divorce should put a definitive end to the mutual obligations of the former spouses.<sup>14</sup> No duty should continue to exist between the ex-spouses, and this was the case when there was alimony between the ex-spouses. The compensatory allowance was then a fixed allowance and was non-reviewable.<sup>15</sup>

However, alimony continued to exist in a particular divorce case called a divorce for marital breakdown.<sup>16</sup> In this case, one spouse could impose divorce on the other when the spouses had been separated for at least seven years.<sup>17</sup> The cause of this separation did not matter (choice of spouses, illness of one of them. . .).<sup>18</sup> Given the particularity of this situation, the legislator had allowed that an alimony obligation between the spouses would survive the divorce.<sup>19</sup>

In other divorce cases, the legislator's idea in 1975 was to reduce the disparity in living standards that divorce could cause between the spouses while ending the alimony obligation between them.<sup>20</sup> The objective was to maintain the ex-spouses in the material conditions they had before the divorce or at least to limit

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10. *Id.*

11. European Commission, European Judicial Network, Maintenance Claims – France (June 8, 2006), [http://ec.europa.eu/civiljustice/maintenance\\_claim/maintenance\\_claim\\_fra\\_en.htm](http://ec.europa.eu/civiljustice/maintenance_claim/maintenance_claim_fra_en.htm).

12. Loi n°75-617 du 11 juillet 1975 portant réforme du divorce [Law n°75-617 of July 11, 1975 Supporting Divorce Reform], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], July 12, 1975, p. 7171.

13. Ecolivet-Herzog, *supra* note 8, at 492.

14. C. CIV. art. 270 (Fr.).

15. *Id.*

16. *Id.*

17. *Id.* at art. 237-238. .

18. *Id.*

19. *Id.* at art. 303.

20. *Id.* at art 270.

the dramatic drop in living standards that the divorce could cause, particularly for the woman at that time.<sup>21</sup>

Regarding the form of the compensatory allowance, the 1975 legislature introduced a principle of lump-sum capital payment.<sup>22</sup> Payment in the form of an annuity was the exception.<sup>23</sup> This revision was met with some judicial resistance; The weight of past practices and judgment habits meant that judges frequently granted lifetime pensions. This in turn created very delicate situations, because the compensatory allowances were not subject to review, even if they were paid in the form of an annuity.<sup>24</sup>

The development of women's work, as well as changes in social behavior and mentality, modified the nature of the problem. There was therefore a great need for reform, and the law of 30 June 2000<sup>25</sup> was passed with 4 objectives in mind: Reaffirm the lump-sum capital nature of the compensatory allowance (by limiting the use of the annuity to very exceptional cases); Confirm and make more flexible the terms of payment in the form of capital; Make the conditions for annuity revisions more flexible Reform the tax system of the compensatory allowance.

At the time of the reform of divorce law by the law of 26 May 2004,<sup>26</sup> the legislator also made some changes in the system of compensatory allowance; In particular, the possibility of obtaining a compensatory allowance was extended to all divorce cases (to reduce the "drama" of the procedure) and the link between the cause and the consequences of the divorce disappeared. There is no longer any divorce case in which it is possible to have alimony between the ex-spouses.<sup>27</sup> The only

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21. C. Civ. art. 272 (Fr.).

22. *Id.* at art 270.

23. *Id.* at art. 270.

24. *Id.* at art. 270

25. Loi n°2000-596 du 30 juin 2000 relative à la prestation compensatoire en matière de divorce [Law n°2000-596 of June 30, 2000 Relating to the Compensatory Allowance in Divorce] JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], July 1, 2000, p. 9946.

26. Loi n°2004-439 du 26 mai 2004 relative au divorce [Law n°2004-439 of May 26, 2004 on Divorce] Journal Officiel De La République Française [J.O.] [Official Gazette of France], May 27, 2004, p. 9319.

27. Ecolivet-Herzog, *supra* note 8, at 491-492.

possibility is to have a compensatory allowance.<sup>28</sup>

Since the 2004 reform, the compensatory allowance can be granted in all divorce cases.<sup>29</sup> The duty of support, which is the basis for the alimony obligation between the spouses, ends with divorce in all cases.<sup>30</sup> It should also be specified that the claim for compensatory benefits could only be made during the divorce proceedings. It cannot be applied for after the divorce has been granted, i.e. it cannot be the subject of a subsequent legal claim.<sup>31</sup>

Before 2004, the spouse, whose exclusive wrongs were the reason the divorce was pronounced, was not entitled to a compensatory allowance, unless equity required the judge to award a compensatory allowance.<sup>32</sup> Since 2004, the opposite solution has been adopted: the spouse who is exclusively responsible for the divorce may receive a compensatory allowance, unless equity requires that it be refused, in view of the particular circumstances of the divorce.<sup>33</sup>

In the particular case of divorce by mutual consent, the spouses themselves settle the consequences of the divorce by an agreement, which will either be approved by a judge or registered by a notary.<sup>34</sup> In this case, the spouses decide whether a compensatory allowance should be paid and if so, they decide on the amount and write it in the agreement.<sup>35</sup> Spouses have a great deal of freedom to determine the amount and terms of the compensatory allowance; they just have to respect equity.

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28. *Id.* (“it puts an end to the duty of support as provided in article 212 of the Civil Code . . . [but] spouses can be obliged to pay to the other a certain sum of money which will compensate”).

29. C. CIV. art. 270 (Fr.).

30. Ecolivet-Herzog, *supra* note 8, at 491-492.

31. *Id.*

32. *Id.* at 493.

33. *Id.*

34. Charlotte Butruille-Cardew, *Family Law in France: Overview*, THOMSON REUTERS PRACTICAL LAW COUNTRY Q&A (2017) [https://uk.practicallaw.thomsonreuters.com/6-615-3545?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&comp=pluk&bhcp=1](https://uk.practicallaw.thomsonreuters.com/6-615-3545?transitionType=Default&contextData=(sc.Default)&firstPage=true&comp=pluk&bhcp=1) (explaining that French divorces by mutual consent only require the parties represented by their lawyers and the notary to register, except in cases where a judge is required such as when children are involved).

35. *Id.* at 11.

Nowadays, the compensatory allowance has a compensatory nature, as its name suggests: it is independent of the notion of fault and need. However, it continues to have indemnity and alimony characteristics (in particular, it can not be subject of withholding by a creditor and is not subject to compensation).

The compensatory benefit is a public policy institution: the spouses may not renounce it in advance.<sup>36</sup> Under French law, it is also totally prohibited to provide the amount of the compensatory allowance in advance in a prenuptial agreement or in any other arrangement.<sup>37</sup> However, the spouses may agree on the amount of the compensatory allowance or waive the right to claim one during the divorce proceedings.<sup>38</sup>

## 2. DETERMINATION OF THE AMOUNT OF THE COMPENSATORY ALLOWANCE

Article 271 of the Civil Code sets out the criteria for determining the amount of the compensatory allowance:

A compensatory allowance must be fixed according to the needs of the spouse to whom it is paid and to the means of the other, account being taken of the situation at the time of divorce and of its evolution in a foreseeable future.

For this purpose, the judge shall have regard in particular to:

- the duration of the marriage;
- the ages and states of health of the spouses;

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36. Margaret Ryznar & Angélique Devaux, *Voilà! Taking the Judge Out of Divorce*, 42 SEATTLE U. L. REV. 161, 166 (2018).

37. Diane Sussman, *Family Law 2019 | France*, International Comparative Legal Guides (August 28, 2018), <https://iclg.com/practice-areas/family-laws-and-regulations/france>.

38. Konstantinos Rokas, *French International Case-law From 1st April 2016 to 31 March 2017*, 1 RDIA 564, 624 (2018), [https://www.u-paris2.fr/sites/default/files/document/cv\\_publications/29\\_rdia-french\\_international\\_caselaw.pdf](https://www.u-paris2.fr/sites/default/files/document/cv_publications/29_rdia-french_international_caselaw.pdf) (stating that “in French private international law, the compensatory allowance is an available right to its’ beneficiary. The beneficiary may therefore renounce or transfer the right in question” which illustrates both parties’ right to negotiate and waive the compensatory benefit).

- their professional qualifications and occupations;
- the consequences of the professional choices made by one spouse during their living together for educating the children and the time which must still be devoted to this education, or for favoring his or her spouse's career to the detriment of his or her own;
- the estimated or foreseeable assets of the spouses, both in capital and income, after liquidation of the matrimonial regime;
- their existing and foreseeable rights;
- their respective situations as to retirement pensions, having estimated, as much as possible, the reduction of the retirement rights that circumstances mentioned in the sixth paragraph above might cause for the spouse creditor of the compensatory allowance.<sup>39</sup>

To facilitate the evaluation, article 272 adds that:

In the context of setting the amount of the compensatory allowance, by the judge or by the parties, or on the occasion of an application for revision, the parties shall provide the judge with declarations stating on their honor the accuracy of their resources, incomes, patrimony and living conditions and When determining the needs and resources, the judge shall not take into account to the sums paid as compensation for accidents in the workplace and the sums paid as an indemnity for a disability.<sup>40</sup>

Furthermore, in order to determine the right to compensatory allowance and the amount of compensatory allowance, it is necessary to consider the situation at the time of the divorce and to try to look to the future to see what the creditor's situation will be after the divorce.

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39. C. CIV. art. 271 (Fr.).

40. *Id.* at art. 272.

The needs of the creditor and the resources of the debtor are taken into account in order to determine the amount of the compensatory allowance<sup>41</sup>: this reveals its alimony-like nature. However, we must be careful because this is not really a question of a state of need. What is important is that there is a disparity between the situations of the ex-spouses. For example, if one spouse earns a good salary and is the owner of a large apartment in a big city, he or she can still obtain a compensatory allowance if the other ex-spouse earns three times as much and has a very large patrimony.

What gives rise to a right to a compensatory allowance (disparity in living conditions) should not be confused with the way in which the compensatory allowance is determined. For the method of determining the amount, all the charges incumbent on each spouse will be taken into account: rents, loan repayments, taxation, medical expenses, compensatory allowance paid as an annuity to a previous wife.<sup>42</sup> Since the law of 2000, the spouses are required to provide a declaration on their honor to certify the accuracy of their incomes, property and living conditions.<sup>43</sup> For example, a person who earns a small salary but lives on his mother's huge property, without rent, without invoices, without anything to pay, is in a totally different situation from the person who has to live on the same salary, provide for three children and so on. All the elements for determining post-divorce living conditions must be considered.

The judge will decide, at her own discretion, whether the marriage breakdown will create a disparity in the respective living conditions of the former spouses.<sup>44</sup> If a disparity exists, it will be compensated by the attribution of a compensatory allowance determined at the discretion of the judge.<sup>45</sup> To do this,

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41. L. M. Mitchell, *Alimony in French Law*, 6 LAW AND CONTEMPORARY PROBLEMS 293, 296-97 (1939).

42. Michell, *supra* note 43, at 296-97; *see also* C. CIV. art. 271 (Fr.) (stating that the parties shall provide the judge with declarations on their honour the accuracy of their means, incomes, assets and ways of livings).

43. Frédérique Ferrand, *Grounds for Divorce and Maintenance Between Former Spouses*, thèse, 37 (University of Lyon 2002).

44. *Id.* at 32.

45. *Id.*

the judge takes a position at the time of the divorce but must consider the foreseeable evolution of the spouses' situation; for example, a spouse has important rights in the liquidation of the community of matrimonial property.<sup>46</sup>

Article 270 also provides a series of criteria that are not related to an alimony obligation. It should be noted that this list is not exhaustive:

- *The duration of the marriage:*<sup>47</sup> Of course, the longer the marriage has lasted, the higher the compensatory benefit can be. However, we must be careful because the period of cohabitation before the marriage is not taken into account.

- *The ages and states of health of the spouses:*<sup>48</sup> the older or sicker the ex-spouse is, the higher the chance of obtaining a high compensatory benefit is.

- *Their professional qualifications and occupations:*<sup>49</sup> The fewer qualifications the person has, the less work experience the person has, and the more difficult it will be to upgrade his or her level of living after the divorce. As a consequence, there is a greater chance that this ex-spouse will receive a compensatory allowance.

*The consequences of the professional choices made by one spouse during their living together for educating the children and the time which must still be devoted to this education, or for favoring his or her spouse's career to the detriment of his or her own:*<sup>50</sup> If one of the spouses has been able to have a brilliant career, because the other has solely taken care of the children's education, housekeeping, etc. This spouse has a better chance of obtaining a compensatory allowance.

*The estimated or foreseeable assets of the spouses, both in capital and income, after liquidation of the matrimonial regime:*<sup>51</sup> The liquidation of the matrimonial property regime must be

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46. EVA STEINER, *FRENCH LAW: A COMPARATIVE APPROACH* 17 (2d ed. Oxford University Press 2018).

47. C. CIV. art. 271 (Fr.).

48. *Id.*

49. *Id.*

50. C. CIV. art. 271 (Fr.).

51. *Id.*

anticipated in order to know what assets each spouse will have after this liquidation.

*Their existing and foreseeable rights*<sup>52</sup>: If in principle we should not anticipate the inheritance we may receive, case law sometimes takes this into account. For example, in order to grant a significant compensatory allowance to the wife, the judge explained in one case that the husband would recover full ownership of a very large property of which his very elderly mother was a usufructuary.

*Their respective situations as to retirement pensions, having estimated, as much as possible, the reduction of the retirement rights that circumstances mentioned in the sixth paragraph above might cause for the spouse creditor of the compensatory allowance*:<sup>53</sup> This is often the reason for the existence of part of the compensatory allowance. It is used to compensate for the lack of a retirement pension plan for a woman who did not work during her marriage to care for the children and the home.

Therefore, it is not enough to have a significant disparity in wealth between the ex-spouses. The duration of the marriage, professional aptitude and skills, etc. are also taken into account to determine the right to compensatory allowance and the amount of the compensatory allowance.

### 3. EXECUTION OF THE COMPENSATORY ALLOWANCE

The compensatory allowance is due from the date on which the divorce decision becomes final. It should be noted that if you do not pay a compensatory allowance ordered in a final judgment, it is a criminal offense: abandonment of the family, which may result in two years imprisonment and a fine.<sup>54</sup>

The payment of the compensatory allowance can take two forms: either a lump sum or an annuity that is obligatory for life.

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52. *Id.*

53. STEINER, *supra* note 48, at 17.

54. European Commission, *Maintenance Claims – France*, EUROPEAN E-JUSTICE, [https://e-justice.europa.eu/content\\_maintenance\\_claims-47-fr-en.do?member=1](https://e-justice.europa.eu/content_maintenance_claims-47-fr-en.do?member=1) (last updated Nov. 30, 2017).

### 3.1. *Compensatory allowance in the form of capital*

The payment of the compensatory allowance in the form of a lump sum capital is the principle.<sup>55</sup> Beginning in 1975, the legislator sought to impose the payment of a lump sum capital in order to concentrate all litigation at the time of the divorce.<sup>56</sup> There was some resistance in practice, however, as judges were too accustomed to annuities. The 2000 and 2004 laws then solemnly reiterated this principle, which now appears in Article 270 of the Civil Code: the compensatory benefit takes the form of a capital payment, the amount of which is fixed by the judge.<sup>57</sup>

According to Article 274 of the Civil Code, several forms of capital are possible:

The payment of a sum of money: this may be the giving of money, but if the compensatory allowance is paid at the time of the liquidation and division of the matrimonial property regime, the compensatory allowance may take the form of a waiver by the debtor of all or part of his share in the spouses' property community.<sup>58</sup>

The abandonment of a property: the debtor may decide to abandon a property, either in ownership or in the form of a temporary or lifetime right of usufruct, use or habitation. If it is not a question of full ownership but of usufruct, use or habitation, it is necessary to quantify this right of usufruct. The judge is not obliged to obtain the consent of the spouse who abandons the property, unless this spouse has received the property by succession or donation.<sup>59</sup>

This capital can be paid in a single payment: the property is transferred or the sum of money is paid.<sup>60</sup>

If the debtor does not have sufficient cash and does not want

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55. Ferrand, *supra* note 45, at 30.

56. Mary Ann Glendon, *The French Divorce Reform Law of 1976*, 24 AM. J. COMP. L. 199, 216-17 (1976) (explaining that the law was reformed with the goal of eliminating or reducing litigation by allowing lump-sum, non-modifiable compensatory payment when possible).

57. C. CIV. art. 270 (Fr.).

58. *Id.* at art. 274.

59. C. CIV. art. 274 (Fr.).

60. Ferrand, *supra* note 45, at 35.

to take out a bank loan or sell property to pay the compensatory benefit, Article 275 of the Civil Code allows the capital to be paid in the form of periodic payments.<sup>61</sup> For example, if the debtor has to pay a compensatory benefit of 100,000 euros, the court may decide that he will pay 1400 euros per month for six years to his former spouse or 17,000 euros per year. In this case, the periodic payment is indexed according to the rules applicable to alimony.<sup>62</sup>

It is also possible to mix the ways of paying the capital. For example, for a compensatory allowance of 200,000 euros, it is possible to pay 150,000 euros at one time and then provide for a periodic payment for the remaining 50,000 euros, i.e. 1000 euros per month for four years.<sup>63</sup>

### 3.2. *Compensatory allowance in the form of a life annuity*

Article 276 of the Civil Code provides that:

By way of exception, when the age or state of health of the creditor does not allow him or her to supply to his or her needs, the judge may, by a judgment specifically outlining the grounds on which it is based, fix the compensatory allowance under the form of a life annuity. He shall have regard to the factors laid down in Article 271.<sup>64</sup>

“The amount of the annuity may be reduced, where circumstances so demand, by the allocation of a fraction in capital among the forms provided for in Article 274.”<sup>65</sup> This is a subsidiary form of compensatory allowance that is very rarely used.<sup>66</sup>

The judge determines the amount of the annuity according to

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61. C. CIV. art. 271 (Fr.). See also Ferrand, *supra* note 45, at 35.

62. C. CIV. art. 275 (Fr.) (permitting a judge to split up a payment over a period not to exceed eight years when dealing with a debtor who does not have sufficient cash or does not want to take a loan to pay at once.).

63. Christian Dadomo, *The Current Reform of French Law of Divorce*, 4 INT. FAM. L. 1, 7 (2004).

64. C. CIV. art. 276 (Fr.).

65. C. CIV. art. 276 (Fr.).

66. Ferrand, *supra* note 45, at 30-31 (permitting a reduction in maintenance is viewed strictly and only permitted under exceptional circumstances).

the needs of the creditor and the resources of the debtor.<sup>67</sup> Under Article 276-1 of the Civil Code, this amount may change according to the period:

An annuity must be linked to an index; the index must be determined as is done in the case of an alimony payment.<sup>68</sup>

The amount of the annuity before it is indexed, must be fixed in a uniform fashion for its entire duration or may vary by successive periods following the likely evolution of the resources and needs.<sup>69</sup>

The annuity is a life annuity, it is for the entire life of the creditor spouse.<sup>70</sup> Since the 2004 law, there has been no temporary pension except in the case of divorce by mutual consent or in the case of agreement of the spouses during a divorce by other means.

It is also possible to mix capital and life annuity. For example, the debtor spouse may have to abandon a property in full ownership, and in addition pay a life annuity. During the debates in the French Parliament during the 2004 reform, it was clearly stated that life annuity should be reserved for situations like elderly spouses, whose marriage lasted a long time, or whose state of health does not allow them to exercise a professional activity.<sup>71</sup>

### *3.3. Compensatory allowance in the form of a temporary annuity*

This is only possible in the context of a divorce by mutual consent or agreements between spouses authorized by article 268 of the Civil Code<sup>72</sup>, i.e. an agreement signed as a consequence of

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67. *Id.* at 32.

68. C. CIV. art. 276-1 (Fr.).

69. *Id.*

70. *Id.*

71. Law n°2004-439 of May 26, 2004, p. 9319.

72. "During the proceedings, the spouses may submit to the approval of the judge agreements settling all or part of the consequences of the divorce. After having checked that the interests of each spouse and the welfare of the children are preserved, the judge can approve the agreements when he declares the divorce." C. CIV. art. 268 (Fr.).

the divorce during a divorce procedure other than mutual consent. The spouses may decide together that the compensatory allowance will take the form of an annuity granted for a limited period of time, or an annuity that will end upon the occurrence of a specific event (return to work, remarriage of the creditor, retirement of the debtor or death of the debtor, etc.).<sup>73</sup> Thus, spouses have more freedom under temporary annuity than in the case of a compensatory allowance decided exclusively by the judge.

#### 4. REVIEW OF THE COMPENSATORY ALLOWANCE

The legislator's idea in 1975 and 2004 was to concentrate disputes at the time of divorce.<sup>74</sup> In 1975, it was therefore decided that the compensatory allowance should be fixed at the time of divorce with a definitive character: the compensatory allowances could not be reviewed under the 1975 Law.<sup>75</sup> It was therefore not possible to adapt the compensatory allowance to changes in the former spouses' circumstances of life, for example, if the creditor made a fortune, or if the debtor lost his or her job. The law of 30 June 2000 wanted to find a solution to the painful situations that could arise from the definitive character of the compensatory allowance.<sup>76</sup> It authorized the review of compensatory allowances by exception (although in principle they are still non-reviewable).<sup>77</sup>

Unlike alimony, the compensatory allowance is a lump sum payment.<sup>78</sup> This means that it is in principle definitively fixed at the time of divorce, in order to avoid litigation between divorced spouses.<sup>79</sup> The Court of Cassation declared that the compensatory allowance can only be claimed at the time of divorce, and not

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73. *Id.* at art. 278 (Fr.).

74. Sénat [Senate], compte rendu intégral des débats du 7 janvier 2004 [Integral Report of January 7, 2004], Jan. 7, 2004, pp. 20-21.

75. *Id.*

76. Sénat [Senate], annexe au procès-verbal de la séance du 12 décembre 1996 [Appendix to the Minutes of the Meeting of December 12, 1996], Dec. 12, 1996, pp. 1-2.

77. Law n°2000-596 of June 30, 2000, p. 9946.

78. C. Civ. art. 270 (Fr.).

79. *Id.*

during a subsequent proceeding.<sup>80</sup> However, the 2000 and 2004 laws provided several mechanisms to facilitate requests for revisions.

#### *4.1. Review of payment conditions*

The debtor cannot request the review of the capital; it is fixed once and for all. However, under Article 275(2), it may request a review of the terms of payment of this capital in the event of a change in circumstances. Then, by a special and reasoned decision, the judge may exceptionally authorize the payment of the capital over a period of more than 8 years.<sup>81</sup> For example, instead of paying 2000 euros per month for 8 years, it can be decided that he will pay 1,500 euros for 10 years and 7 months.

#### *4.2. Review of the lifetime annuity*

The life annuity is an exceptional form of the compensatory allowance. The review of this lifetime annuity may be obtained when there is a substantial change in the situation of the debtor or creditor of the compensatory allowance.<sup>82</sup> Article 276-3 provides that:

A compensatory allowance set under the form of an annuity may be revised, suspended or suppressed in case of an important change in the resources or needs of either party.

Revision may not lead to increase the annuity up to an amount superior to the one initially fixed by the Judge.<sup>83</sup>

So, in fact, for the creditor, the only change that will have an impact is the one that goes up, which means if he is more able to provide for himself outside the annuity. On the other hand, if he is even more in need, the annuity cannot be increased.

For the debtor, it is only the reduction in his resources that

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80. See, e.g., Cour de cassation [Cass.] [supreme court for judicial matters] Nov. 15, 2017, n°16-25700.

81. C. CIV. art. 275 (Fr.).

82. *Id.* at art. 276-3.

83. *Id.*

allows the annuity to be reviewed.<sup>84</sup> But this can only reduce the amount of the annuity; it can never be increased.<sup>85</sup> Normally, remarriage has no effect on the pension.<sup>86</sup> However, the debtor may request a review.<sup>87</sup> He can say that the creditor's resources have increased because of the duty of support that the new spouse has to assume.

We must keep in mind that the spouses' foreseeable future is taken into account when determining the amount of the annuity. Consequently, the elements that were taken into account when the amount was fixed cannot justify a modification of the annuity.

The compensatory allowance debtor in the form of an annuity may also use the substitution technique. According to article 276-4 of the Civil Code, at any time, he may ask the judge to substitute a lump sum capital for a life annuity.<sup>88</sup> The substitution may be for the entire annuity or only part of it.<sup>89</sup> For example, it is possible to change from an annuity of 2500 euros to a pension of 1500, by paying a capital that can be the granting of a property in full ownership. Such substitution shall not be subject to the agreement of the creditor.<sup>90</sup> The creditor may also request this substitution if he establishes that the debtor's situation has changed to the point of allowing this substitution.<sup>91</sup> The Code specifies that this may be the case, for example, when the matrimonial property regime has been liquidated.<sup>92</sup>

#### *4.3. Review of the conventional compensatory allowance*

Article 279 of the Civil Code sets out the rules for review of compensatory allowances that have been decided by the spouses, i.e. in divorce by mutual consent or in an agreement approved by

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84. *Id.* at art. 275, 276-3.

85. *Id.* at art. 276-3.

86. C. CIV. art. 279 (Fr.).

87. *Id.*

88. *Id.* at art. 276-4.

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

the judge (art. 268, cf. *supra*).<sup>93</sup>

If the spouses agree to modify the compensatory allowance, they can make a new agreement that must be submitted to the judge for approval.<sup>94</sup>

It is also possible that in the initial agreement they draft a clause providing that everyone may request a review by the judge if a significant change in the resources or needs of the parties occurs.<sup>95</sup> A single spouse may ask the judge for a review, even if the other spouse does not agree to review the conventional annuity.<sup>96</sup> While such a clause is rarely included in agreements,<sup>97</sup> it has a major advantage over a purely judicial review: it can lead to an upward or downward revision of the annuity.<sup>98</sup>

#### 4.4. *Death of the debtor*

If the compensatory allowance was a lump sum capital and was not fully paid by the debtor, the balance will be deducted from the inheritance assets of the heirs.<sup>99</sup> For example, we can imagine a father who remarried and divorced his second wife. If he were to pay her a compensatory benefit of 400,000 euros and he still has to pay 150,000 euros in the form of split capital. The 150,000 euros will be deducted from the estate's assets and given in one time in the form of a lump sum capital to the second wife. However, the heirs are only *intra vires successionis* liable, which means that in proportion to what they have received from the inheritance and in proportion to their emoluments.<sup>100</sup>

In the same way, if it were a compensatory allowance in the form of a life annuity, it would immediately be converted into a lump sum capital and paid in one time.<sup>101</sup>

Article 280-1 of the Civil Code provides for an exception to

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93. *Id.* at art. 268, 279.

94. *Id.* at art. 279.

95. C. Civ. art. 279 (Fr.).

96. *Id.*

97. *Id.*

98. *Id.* at art. 276, 276-3.

99. *Id.* at art. 280.

100. *Id.*

101. *Id.*

these rules. The heirs may decide to maintain the forms and terms of payment of the compensatory allowance and therefore decide to be personally liable for this debt.<sup>102</sup> In this case, a notarial deed is required.<sup>103</sup> This is a very unusual hypothesis, as the agreement of all heirs is necessary.<sup>104</sup>

## 5. CONCLUSION

As the reforms progressed, the French legislator changed the nature of divorce. He made it a right, a right to get out of marriage. The compensatory allowance is marked by this idea. There must be no remaining alimentary links between the ex-spouses. Everything must be settled at the time of the divorce.

## 6. BIBLIOGRAPHY

Droit de la famille, Ph. Malaurie et H. Fulchiron, LGDJ, 6<sup>e</sup> éd., 2017.

Droit des personnes et de la famille, B. Beigner et J.-R. Binet, LGDJ, 3<sup>e</sup> éd. 2017.

Droit des personnes et de la famille, Th. Garé et A. Raynaud, Ellipses, 2<sup>e</sup> éd. 2018.

Droit de la famille, V. Bonnet, Larcier, 7<sup>e</sup> éd. 2018.

Droit de la famille, V. Egéa, Lexis Nexis/Litec, 2<sup>e</sup> éd. 2018.

Droit de la famille, P. Courbe et A. Gouttenoire, Sirey, 7<sup>e</sup> éd. 2017.

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102. *Id.* at art. 80-1.

103. *Id.*

104. *Id.*

