

# Compensatory Benefit of the Innocent Spouse under Romanian Law

**Ciprian Raul Romițan**

“Romanian-American” University, Faculty of Law;  
Partner of “Roș & Co” Law Firm, Bucharest, Romania  
ciprian.romitan@rvsa.ro

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**ABSTRACT:** In some cases, after the marriage has been dissolved, a significant economic imbalance can be created as regards the living conditions of one of the former spouses, and should therefore be required that, if he/she is not guilty of divorce, to be assured of living conditions similar to those which he/she had during his/her marriage. The tool which the interested spouse has at his/her disposal is the compensatory benefit. By regulating the institution of compensatory benefit, the Romanian legislator wanted to offer a legal instrument that would compensate for a possible imbalance in the way of life that the divorce would produce to the person requesting such a benefit. The study shall make a theoretical and practical analysis of the conditions for granting the compensatory benefit, the method for determining the amount and the procedures for amending and ceasing it.

**KEY WORDS:** dissolution of marriage, compensatory benefit, innocent spouse, spouse’s exclusive fault, living conditions, significant imbalance

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## Preliminary Remarks

After marriage, the spouses have a series of *rights* and *duties*, of a *personal nature* and of *patrimonial nature*, which will accompany the marriage throughout the life of its existence. However, at the dissolution of marriage, all the rights and mutual duties of the former spouses are lost.

However, with the declaration of divorce, there is no "categorical and immediate rupture between spouses, and they continue to be "linked" without being "united" by what might be called "post-conjugal solidarity" which can be activated, where appropriate, by *the maintenance right* or *the right to compensatory benefit of the former spouse*" (Florian 2013, 401).

If during the marriage the spouses enjoy and have similar living conditions, even if one of them earns incomes from working, in many cases, after the marriage has been dissolved, a significant economic imbalance is created as regards the living conditions of one of the former spouses, and should therefore be required that, if he/she is not guilty of divorce, to be assured of living conditions similar to those which he/she had during his/her marriage. The tool which the interested spouse has at his/her disposal is *the compensatory benefit*, which, as indicated in the specialized literature, although it has no "ambition to perpetuate the material comfort of the past, has the vocation to limit the disadvantages of its loss" (Florian 2013, 402; Hageanu 2017, 197). It should be pointed out that "the purpose of compensatory benefit cannot be to equalize the assets of the spouses after the marriage has been dissolved" (Nicolescu 2020, 153).

It follows from the above that the purpose of the compensatory benefit is to provide the innocent spouse with similar living conditions to those during marriage by obliging the spouse guilty for the dissolution of the marriage to a benefit, which may be in cash or in kind. In other words, *the purpose of the compensatory benefit is not to cover entirely the possible loss incurred by the innocent spouse, but merely to moderate it, to balance the situations of the two, taking into account also the means and interests, present and future, of the debtor spouse.*

Granting of this compensatory benefit has been shown in court practice, "*is not conditional upon proving any damage, and its purpose is to assure the innocent divorced spouse a life as close as possible to that during the marriage*" (Botoșani District Court, Civil Decision No 161A/2013).

## **Concept and regulation**

As mentioned above, the compensatory benefit is an "absolute first" in Romanian civil law and must not be confused with either the right to compensations or the maintenance obligation between the former spouses,

because the condition and rationale of the legal regulation are different. By regulating the institution of compensatory benefit, the Romanian legislator wanted to offer a legal instrument that would compensate for a possible imbalance in the way of life that the divorce would produce to the person requesting such a benefit (Bodoașcă 2020, 353).

Therefore, we can call *the compensatory benefit* as a "right recognized in favor of the claimant spouse when the divorce is ordered out of the exclusive fault of the defendant spouse" (Moloman 2012, 262), or "a legal means to compensate for the imbalance caused by divorce regarding the way one of the spouses lives" (Motica 2018, 168).

The right to compensatory benefit, as a possible effect of the dissolution of the marriage (divorce), was first enshrined in Romanian civil law, with the adoption of the Civil Code in force, and is governed by Article 390-395 of the Civil Code (Law No 287/2009 on the Civil Code, published in the Official Gazette of Romania, Part I, No 511 of 24 July 2009, as amended by Law No 71/2011 for the implementation of Law No 287/2009 on the Civil Code, published in the Official Gazette of Romania, Part I, No 409 of 10 June 2011, republished in the Official Gazette of Romania, Part I, no 505 of 15 July 2011). In regulating the compensatory benefit in the Romanian Civil Code, its editors were inspired by the French Civil Code (art. 270-282) and the Québec Civil Code (art. 427-430).

## **Legal characters of the compensatory benefit**

From analyzing the provisions of Article 390-395 Civ. Code, governing the compensatory benefit, we consider that it has the following legal characters:

- *Patrimonial character*, because the Civil Code regulates it among the patrimonial effects of the dissolution of marriage (Article 385-395 Civ. C.);
- *Optional character*, deriving from the provisions of Article 390 (1) Civ. C., according to which "a claimant spouse *may receive* an offsetting benefit" (s.n);
- *Subsidiary character*, as attested by Article 390 (3) Civ. C., which expressly states that "the spouse claiming the compensatory benefit may not claim from his former spouse also maintenance pension under the conditions of Article 389 Civ. C.";

– *Variable character*, deriving from the provisions of Article 394(1) Civ. C. which states that “the court may increase or decrease the compensatory benefit, if the debtor’s means and the creditor’s resources are changed significantly”;

– *Character intuitu personae*, deducted from the provisions of Article 395 Civ. C. according to which “the compensatory benefit ceases by the death of one of the spouses, by the remarriage of the creditor spouse, and where the latter obtains resources likely to ensure him/her living conditions similar to those during the marriage”.

### **Conditions for granting the compensatory benefit**

According to the provisions of art. 390(1) of the Civil Code, “In case the divorce is ordered out of the exclusive fault of the defendant spouse, the claimant spouse is entitled to a benefit, meant to make up, as much as possible, for the imbalance the divorce would cause in the living standard of the claimant”. (2) “The compensatory benefit may be granted only if the marriage has lasted for at least 20 years”. Moreover, according to Article 390(3) Civ. C. the compensatory benefit cannot be combined with the maintenance pension covered by Article 389 Civ. C.

The analysis of these provisions sets out a number of conditions (three positive and one negative) which must be met cumulatively for the granting of the compensatory benefit, namely: the divorce must have been pronounced due to the exclusive fault of the defendant spouse; the marriage must have lasted at least 20 years; there is a significant imbalance which the divorce determines in the living conditions of the person requesting the benefit and the negative condition resulting from the provisions of Article 390 (3) Civ. C., that of the impossibility of combining the compensatory benefit with the maintenance pension (Avram 2016, 148-149). For the same purpose, in a case, the court stated that “*the compensatory benefit can be granted if four conditions, three positive and one negative, are met. Thus, the Civil Code establishes three positive conditions: the divorce must be pronounced of the exclusive fault of the defendant spouse, there must be a significant imbalance which the divorce would cause in the living conditions of the innocent spouse, and the duration of the marriage should be at least 20 years. Regarding the negative*

*condition, this derives from the interpretation of the provisions of Article 389 Civ. C. in the sense that the former spouse must choose between compensatory benefit and maintenance pension because they cannot be cumulated. The four conditions are cumulative. Regarding the first condition, the court states that the spouse claiming the compensatory benefit must not be guilty of the divorce and that the spouse who is liable for the compensatory benefit is exclusively liable for the marriage being dissolved. Therefore, the compensatory benefit cannot be granted if both spouses are responsible for the dissolution of the marriage, nor in the case of divorce by the agreement of the parties. In this case, the dissolution of the marriage is to be pronounced by common fault of the parties, so that the first condition for the compensatory benefit is not fulfilled” (Motru Law Court, Civil judgment No 1244 of 5 October 2020).*

**1. *The divorce to be pronounced from the exclusive fault of the defendant spouse*** [Article 390(1), sentence I Civ. C.]

It follows from the interpretation of the provisions of Article 390 (1), sentence I Civ. Code that only the spouse not guilty for the dissolution of the marriage may claim compensatory benefit. This means that compensatory benefit cannot be granted in the case of divorce by the spouses’ agreement, whether pronounced by the court or by the civil status officer in the case of administrative divorce or by the notary public in the case of divorce by a notary, and where the court has ruled on the “common fault” of the spouses in the dissolution of the marriage, according to the provisions of Article 379 (1), second sentence Civil Code.

For example, in a case in which the claimant requested that his/her former spouse, on whose fault the divorce was declared, pay a benefit which compensated for the imbalance that occurred to his/her living conditions, the court stated that “*the granting of this compensatory benefit is not conditioned upon proof of damage, and its purpose shall be to assure the innocent divorced spouse a life as close as possible to that during the marriage. Therefore, as the conditions laid down in the said legal text are fulfilled and as the claimant’s incomes were always significantly higher than the defendant’s incomes, which enabled them to have a comfortable, worries-free life, and by the dissolution of the marriage the life of the defendant - claimant at least from the material point of view, undergoes*

*a major change and having to apply other standards in accordance with his/her incomes, the District Court will force the defendant to pay a compensatory benefit in the form of a life annuity of 10 %, of the net permanent income obtained by the claimant over a period of 5 (five) years from the date of delivery of this decision” (Botoșani District Court, Civil Decision No 161A/2013).*

**2. The existence of a significant imbalance that the divorce would determine in the living conditions of the one requesting the compensatory benefit award [Article 390 (1), second sentence, Civ. C.]**

As the legal text also shows, the imbalance must be significant, i.e. “liable to destabilize the patrimony of the claimant spouse” (Irinescu 2015, 128).

This *significant imbalance* will be assessed, on a case-by-case basis, by the court on the basis of the elements stipulated in Article 391 (2) Civ. C., taking into account both the resources of the spouse requesting it and the overall income of the other spouse at the time of the divorce, as well as the living prospects of the innocent husband. The court must also consider, in establishing the compensatory benefit, the age, state of health and professional training of the spouses, the possibility of income-producing activities and the effects of liquidation of the matrimonial property regime, by verifying both the assets, and the liabilities that will be left to every spouse. For example, in a case, the court stated that “*the evidence produced fully proves that the defendant never pursued gainful activities during the marriage, and the daily family life was secured from the money received by the spouse and material from the cultivation of the land of the common dwelling. The defendant did not engage in gainful activities during the long marriage period, which could have been set up in contribution periods necessary to establish an own pension right, and now at the age of around 60, she is still without own material means of support necessary for her maintenance. Considering the old age and lack of a professional qualification, the defendant still has minimal chances of accessing a job in the labor market in the area in which she lives. Therefore, in the absence of any secure material means of subsistence, a significant imbalance in her living conditions continues to persist*” (Medgidia Law Court, Civil sentence No 1793 of 23 November 2018). In another case, in which the claimant was requested to pay a compensatory benefit in the form of a life annuity amounting to 1,000 lei per month, the court ruled that “*the innocent spouse who claims that the other is required to pay compensatory benefit, must suffer from divorce a significant imbalance in his/her*

*living conditions. This is a matter of fact to be proved by the person lodging this request. The claimant did not give reasons for this imbalance, namely to mention that during the marriage she was provided with living conditions that offered expenses of an amount of X lei, and that she had an income of a much lower amount. No evidence has been produced from the claimant that would prove the incomes and expenses of the parties during the marriage, the amount thereof and the incomes she will have after the marriage has been dissolved. The claimant made a simple claim in the sense that it is no longer able to carry out gainful activities at this time. From this point of view, the request to order the defendant to pay a compensatory benefit appears to be groundless, since the court cannot check the condition of the existence of the significant imbalance” (Constanța Law court, Civil sentence no. 4145 of April 8, 2015, commented by lawyer Tudor Ion).*

### **3. *The marriage has lasted at least 20 years* [Article 390(2) Civ. C.]**

We believe that this relatively long period of time was considered by the Romanian legislator in order to discourage the marriages concluded, not for the purpose of establishing a family, but for the purpose of obtaining material benefits. In other words, the legislator considered that *only a long-term marriage justified the granting of a compensatory benefit to the innocent spouse*. As also stated in the specialized literature (Florian 2018, 345), “rigorously, the minimum duration of 20 years should be related to the date of the divorce decision remaining final, this being the time of the judicial dissolution of the marriage” [Article 382(1) Civ. C]. It follows from the analysis of the legal text of Article 390(2) Civ. C. that the legislator has considered exclusively the duration of the marriage, without including in the minimum duration of 20 years, their pre-marital coexistence in the form of cohabitation or engagement. Also, given that the legal text does not distinguish, we consider that the condition is fulfilled also if, during the 20 years of marriage, the spouses had some interruptions in the life community in the form of separations *de facto* (Florian 2018, 345; Nicolescu 2020, 155). In a case where the court found that all the conditions required by law for the granting of benefits were fulfilled, it was decided that “*the compensatory benefit may also be granted where the marriage is actually dissolved for the separation de facto, for more than two years, since in this case, the claimant assumes the failure of the marriage*” (Bârlad Court, Civil sentence No 2870/2015).

Regarding the minimum duration of 20 years of marriage, imposed by law in order to benefit from a compensatory benefit, we acquiesce the views expressed in the doctrine and consider that the legal provision of Article 390(2) Civ. C. “may create an unfair situation, as there may be innocent spouses who suffer a significant imbalance through the disposal of a 10, 15 or 19-year marriage and who could receive such compensation” (Moloman and Ureche 2013, 171; Hageanu 2017, 199). Considering that the suffering caused to one of the former spouses as a result of divorce cannot in any way be quantified, particularly by the minimum duration of the 20-year marriage, we propose *de lege ferenda*, together with the above-mentioned authors, that the minimum period of 20 years of marriage necessary for the granting of the compensatory benefit to be waived, and the judge in charge of the divorce settlement, after producing the evidence, determine in each case whether it is necessary to grant it, irrespective of the length of the marriage between the two spouses.

In another case, the court ruled that “... *the applicability of Article 390 Civ. C, concerning the compensatory benefit to which the spouse guilty for the marriage dissolution may be liable, cannot be retained, since the condition concerning the duration of the marriage of at least 20 years is not fulfilled*’ (Focsani Law Court, Civil Matters, Civil sentence No 1570 of 2 April 2013). In addition, in a case where the claimant has requested that his/her former spouse, on whose fault the divorce was declared, be obliged to pay a benefit which would compensate for the imbalance which occurred to him/her in his/her living conditions, the court considered that “*the conditions laid down in the law are fulfilled [Article 390(1) and (2) Civ. C. (n.a.)] and as the conditions laid down in the said legal text are fulfilled and as the claimant’s incomes were always significantly higher than the defendant’s incomes, which enabled them to have a comfortable, worries-free life, and by the dissolution of the marriage the life of the defendant - claimant at least from the material point of view, undergoes a major change and having to apply other standards in accordance with his/her incomes, the District Court will force the defendant to pay a compensatory benefit in the form of a life annuity of 10 %, of the net permanent income obtained by the claimant over a period of 5 (five) years from the date of delivery of this decision*” (Botoșani District Court, Civil Decision No 161A/2013).



#### **4. Impossibility of cumulating the compensatory benefit with the maintenance pension [art. 390 (3) Civ. C.]**

Although the normative wording is slightly defective, we consider, along with other authors (Nicolescu 2020, 155), that, in essence, the double claim is not forbidden, but the cumulative granting of the compensatory benefit and the maintenance pension. Where the court has rejected the claim for compensatory benefit to the innocent spouse, the latter may subsequently apply separately for maintenance pension if the legal conditions laid down in Article 389 Civ. C. are fulfilled. For example, the spouse who claims the compensatory benefit cannot claim from his/her former spouse also maintenance pension for incapacity to work. During the divorce process, the requesting spouse has to decide whether to receive a compensatory benefit or a maintenance pension. For this purpose, in a case in which, by way of a statement of claim and counterclaim, the spouse responsible for the dissolution of the marriage has been required to pay the former spouse a maintenance pension until he/she ceases to be disabled and, in the alternative, to pay him/her compensatory benefits and moral damages, the court stated that *"according to Article 390 (3) Civ. C. the spouse claiming the compensatory benefit cannot claim from his/her former spouse a maintenance pension also, under the conditions of Article 389 Civ. C. As has also been pointed out in the doctrine, the prohibition of the cumulation of the two forms of repair is natural, since, although different in terms of regulation and legal nature, both are intended to compensate, as far as possible, for the imbalance caused by the divorce in the living conditions of the one requesting the payment. The two legal institutions – the maintenance pension between the former spouses and the compensatory benefit – are different. If in the case of maintenance obligation the essential condition to be fulfilled is that of the state of need of the person requesting it, due to incapacity to work due either to sickness or to old age, in the case of a compensatory benefit, it is about a significant imbalance which the divorce produces in the living conditions of the person requesting it"* (Suceava Court of Appeal, Civil Decision No 993 of 18 September 2013).

### **Determination of the compensatory benefit**

Pursuant to Article 391 (1) Civ. C. compensatory benefit may be claimed only when the marriage is dissolved. In other words, compensatory benefit

cannot be claimed during the marriage, before the application for divorce was lodged, even if the spouses were separated *de facto* or after the court ruled on the dissolution of the marriage. However, although the judicial way for determining the compensatory benefit cannot be avoided, if the spouses agree, they can decide, both in terms of the form and amount of the benefits, throughout the divorce process.

It should be pointed out that, where the claimant does not claim compensatory benefits in the course of the divorce proceedings, by a claim ancillary to the main divorce claim or, where appropriate, by the defendant, by a counterclaim, the disclaiming of the right to compensatory benefits is applicable.

The application for a compensatory benefit shall be lodged, either as an application ancillary to the application for a divorce or separately, before the divorce is pronounced. In determining the compensatory benefit, account shall be taken, according to Article 391 (2) Civ. C. of several criteria, as follows:

- The resources of the spouse requesting it;
- The means of the other spouse who will have to pay it from the time of the divorce;
- The effects which the liquidation of the matrimonial property regime has or will have;
- Any other foreseeable circumstances likely to modify them, such as the age and state of health of the spouses, the contribution to the raising of the minor children which each spouse has had and is about to have, vocational training, the possibility of carrying out an income-producing activity and the like.

The criteria set out in Article 391(2) Civ. C. are flexible in the sense that the judge will not be able to know exactly what the material situation of the innocent spouse will be, but will only consider mere assumptions as to the situation of his/her living conditions (Moloman and Ureche 2013, 172).

In other words, the judge will have to examine not only the material situations of the possible creditor and possible debtor, but also any other circumstances to modify them. In this respect, as professor Emese Florian also points out, “the judge is invited to exercise futurology” (Florian 2013, 408).

In a case in which the payment of a compensatory benefit was claimed pursuant to Article 390 Civ. C., the Court “*rejected the counterclaim lodged by the appellant claimant C.D. for forcing the husband C.G. to pay a compensatory*

*benefit from which to compensate for the significant imbalance which the divorce creates in the living conditions of the claimant, and the district court considers this solution to be correct. Thus, according to the evidence produced in the case the appellant defendant is a pensioner, achieving a monthly income of about 1000 lei, which is substantially equal to the pension income realized by the husband of C.G., and considering that during the whole period of the de facto separation and at present the appellant defendant has remained in the household with all the assets acquired by the spouses during the marriage, it cannot be claimed that the level of living in terms of the material state of the appellant defendant has suffered a considerable imbalance, her material situation remaining approximately the same” (Gorj District Court, Civil Decision No 834 of 5 September 2014).*

### **Form of the compensatory benefit and guarantees**

The form of the compensatory benefit may differ depending on the actual situation of the two divorcing spouses. Thus, pursuant to Article 392(1) Civ. C. the compensatory benefit may be set in *money*, under the form of a global amount or *life-long annuity*, or in *kind*, under the form of *usufruct* on *movable* or *immovable* assets belonging to the debtor. According to the provisions in art. 706 of the Civil Code, “the right of usufruct can be granted for any movable or immovable, tangible or intangible assets, including a patrimonial estate, a factual universality or a share thereof”. In other words, the usufruct right may relate to any property in the general civil circuit, a patrimonial estate, a factual universality or even a share of such universalities *de facto* or *de jure* (for developments, Bîrsan 2017, 269-270).

According to Article 393 Civ. C., “the court may, at the request of the creditor spouse, oblige the debtor spouse to provide security in rem or to give a bail to insure the annuity execution”. Where a “guarantee in rem” has been provided, the provisions of Articles 2.343 to 2.479 Civ. C. relating to the mortgage and Articles 2.480 to 2.499 Civ. C. relating to the pledge shall apply. If the court has ordered the debtor to pay a bail, the provisions of Article 1.057 et seq. Civ. C. relating to legal bail shall apply (Bodoașcă 2020, 361).

The lodging of such security shall be *optional* and, depending on the circumstances of each case, the judge may determine whether or not the security should be established. The purpose of establishing the security by the judge is to *ensure the payment of the annuity* (Frențiu 2012, 344).

As shown in the literature, the court can also establish a *mixed compensation*, partly in money, partly in kind (Lupascu and Crăciunescu 2021, 360). As regards annuity, Article 392(2) Civ. C. provides that this may be set in terms of a percentage share of the debtor's income or a specified amount of money.

The court may, by a divorce judgment, determine the length of time for which the annuity and the usufruct are constituted. Thus, under Article 392 (3) Civ. C., both the annuity and the usufruct may be established throughout the life of the person applying for the compensatory benefit or for a shorter period. For example, in a case, the court ordered the husband guilty for the dissolution of the marriage to pay, to his former wife, a "*compensatory benefit in the form of a life annuity, amounting to 10 %, of the net permanent income obtained by the claimant over a period of 5 (five) years, from the date of delivery of this decision*" (Botoșani District Court, Civil Decision No 161A/2013).

On the grounds of Article 393 Civ. C. at the request of the creditor spouse, the court may require the debtor spouse to provide a security in rem or to give a bail in order to ensure the annuity execution. In other words, the debtor may be required to provide a security only at the request of the creditor spouse and only where the court has established that the compensatory benefit is in the form of a life annuity.

## **Modification and cessation of the compensatory benefit**

Pursuant to Article 394 (1) Civ. C., the court may increase or decrease the compensatory benefit if the debtor's means and resources are significantly modified. In other words, the court decision establishing the compensatory benefit enjoys a relative authority of *res judicata* (Avram 2016, 151). For example, in a case concerning the cessation of the payment of the compensatory benefit provided to the defendant, the claimant pointed out that "*although his incomes did not change since the initial settlement, medical expenses have increased as a result of the serious deterioration in his health condition through the discovery of new diseases by doctors, which is also reinforced by the Medical letter submitted to the court. Consequently, taking into account all the evidence produced, the court will decide to reduce the amount of the compensatory benefit to which the appellant was obliged by a previous decision and forces the claimant to pay the defendant a compensatory benefit in the form of a monthly annuity, of 15 % of the net income*

*obtained by the claimant, throughout the entire life of the defendant”* (Constanta District Court, Section 1 Civil Matters, No 919 of 14 May 2029).

The compensatory benefit shall cease by the death of one of the spouses, by the remarriage of the creditor spouse, and when the latter obtains resources likely to assure him/her living conditions similar to those during the marriage (Article 395 Civ. C.). As one can see the listing of the grounds for cessation of the compensatory benefit is exhaustive, which only ceases in the event of the death of one of the spouses, the re-marriage of the creditor spouse, or where the creditor spouse obtains resources which would ensure similar living conditions to those during the marriage. For example, in a case in which the claimant asked the court, on the basis of the evidence to be produced, to order the cessation of the compensatory benefit to which he/she was liable to the defendant following the civil sentence in which the divorce was pronounced, the court has held that at present, *“the circumstances regarding the defendant’s own income have changed significantly since the civil decision no. 790/30.10.2014 and the civil sentence no. 58/14.02.2017, increasing from lei 438 per month to lei 800 per month. At the same time, the total income of the defendant is lei 1,200/month (combining the pension with the compensatory benefit) and the claimant has an income of lei 1,155/month, according to the unique declaration. Therefore, for the above considerations, the court will admit the claim lodged by the claimant and order the cessation of payment of the compensatory benefit established in the favor of the defendant and incumbent upon the claimant”* (Lehliu Gară Law Court, Civil judgment No 61 of 19 January 2021).

As we have already mentioned, the list of reasons for the cessation of the compensatory benefit is exhaustive, which is why other cases can no longer be added, such as, for example, the loss of employment or even the loss of the debtor’s ability to work. In the latter cases, we consider, along with other authors, that *“the court may be asked to reduce the amount of the compensatory benefit or to suspend it provisionally”* (Hageanu 2019, 180). It is for the supervisory body to establish that the compensatory benefit is ceased, i.e. the law court of the defendant’s domicile [art. 94 (1) let. a) corroborated with art 107 Civ. C.].

Where the compensatory benefit consists of an amount of money, it shall be indexed *de jure* on a quarterly basis according to the rate of

inflation [Article 394(2) Civ. C.]. It should be pointed out that the quarterly indexation of the compensatory benefit “does not exclude the revision of the compensatory benefit” (Florea and Florea 2019, 127).

## Conclusions

As a conclusion, from our analysis of compensatory benefit, the following result:

- For granting the compensatory benefit, several conditions must be fulfilled cumulatively: the divorce must have been pronounced due to the exclusive fault of the defendant spouse; the marriage must have lasted for at least 20 years; there must be a significant imbalance which the divorce causes in the living conditions of the person requesting the benefit; the impossibility of combining the compensatory benefit with the maintenance pension;

- The right to a compensatory benefit may be redeemed only with the divorce;

- In determining the compensatory benefit, account shall be taken of several criteria: the resources of the spouse who requests it; the means of the other spouse who will have to pay it from the time of the divorce; the effects that the liquidation of the matrimonial property regime has or will have; any other foreseeable circumstances of a nature to modify them, such as the age and state of health of the spouses, the contribution to the raising of the minor children each spouse has had and is about to have, professional training, the possibility of carrying out an income-producing activity and the like;

- The compensatory benefit may be set in money, under the form of a global amount or life-long annuity, or in kind, under the form of usufruct on movable or immovable assets belonging to the debtor;

- At the request of the former spouse concerned, if there is a significant change in the means of the debtor and the resources of the creditor, the court may increase or decrease the compensatory benefit;

- The compensatory benefit shall cease at the death of one of the spouses, by the remarriage of the creditor spouse, and when the latter obtains resources likely to assure him/her living conditions similar to those during the marriage.

## References

- Avram, Marieta. 2016. *Drept civil. Familia*, 2<sup>nd</sup> Edition, revised and supplemented. Bucharest: Hamangiu Publishing House.
- Bârlad Law Court, Civil judgment no. 2870/2015, available at portal.just.ro (accessed on 13.03.2021).
- Bîrsan, Corneliu. 2017. *Drept civil. Drepturile reale principale în reglementarea noului Cod civil*, 3<sup>rd</sup> edition, revised and supplemented Bucharest: Hamangiu Publishing House.
- Bodoaşcă, Teodor. 2020. *Dreptul familiei*, 4<sup>th</sup> edition, revised and supplemented Cluj-Napoca: Risoprint Publishing House.
- Botoşani District Court, Civil Decision no. 161A/2013, in <https://www.legal-land.ro/> (accessed on 11.03.2021).
- Constanţa District Court, Section 1 Civil matters no.919 of May 14, 2020, available at [www.rolii.ro](http://www.rolii.ro) (accessed on 21.10.2019).
- Constanţa Law Court, Civil judgment no. 4145 of 8 April 2015, commented by the lawyer Ion Tudor, available online at <https://www.avocat-tudor.ro> (accessed on 11.03.2021).
- Curtea de Apel Suceava, Civil Decision no.993 of 18 September 2013, available at <https://www.jurisprudenta.com/jurisprudenta/> (accessed on 13.03.2021).
- Florea, Bujorel and Florea, Vlad Teodor. 2019. *Dreptul familiei și actele de stare civilă*. Bucharest: Hamangiu Publishing House.
- Florian, Emese. 2013. "Prestația compensatorie – post-scriptum la albumul de familie," in the Magazine *Studii și cercetări juridice* nr. 4: 401-412.
- Florian, Emese. 2018. *Dreptul familiei. Căsătoria. Regimuri matrimoniale. Filiația* 6<sup>th</sup> Edition Bucharest: C.H. Beck Publishing House.
- Focşani Law Court, Civil matters, Civil judgment no.1570 of 2 April 2013, available at [www.rolii.ro](http://www.rolii.ro) (accessed on 13.03.2021).
- Frențiu, Gabriela Cristina. 2012. *Comentariile Codului civil. Familia*. Bucharest: Hamangiu Publishing House.
- Gorj District Court, Civil decision no.834 of 5 September 2014, available at <https://legeaz.net/> (accessed on 13.03.2021).
- Hageanu, Cristina Codruța. 2017. *Dreptul familiei și actele de stare civilă*, 2<sup>nd</sup> Edition, revised and supplemented Bucharest: Hamangiu Publishing House.
- Hageanu, Cristina Codruța. 2019. "Din nou despre prestația compensatorie și dreptul la despăgubiri. Trecut și viitor sau între sancțiune și recompensă", in *Revista de dreptul familiei* nr. 1-2: 168-187.

- Irinescu, Lucia. 2015. *Curs de dreptul familiei*. Bucharest: Hamangiu Publishing House.
- Lehliu Gară Law Court, Civil judgment no. 61 of 19 January 2021, available at [www.rolii.ro](http://www.rolii.ro) (accessed on 13.03.2021).
- Lupașcu, Dan and Crăciunescu, Cristiana Mihaela. 2021. *Dreptul familiei*, 3<sup>rd</sup> Edition, amended and updated. Bucharest: Universul Juridic Publishing House.
- Medgidia Law Court, Civil judgment no 793 of 23 November 2018, available at [www.rolii.ro](http://www.rolii.ro) (accessed on 12.03.2021).
- Moloman, Bogdan Dumitru and Ureche, Lazăr Ciprian. 2013. "Prestația compensatorie-sprijin acordat soțului inocent și vulnerabil urmare divorțului", in *Revista română de jurisprudență* nr. 6: 168-176.
- Moloman, Bogdan Dumitru. 2012. *Dicționar de dreptul familiei*. Bucharest: Universul Juridic Publishing House.
- Motica, Adina R. 2018. *Dreptul civil al familiei*, 2<sup>nd</sup> Edition. Bucharest: Universul Juridic Publishing House.
- Motru law Court, Civil judgment no.1244 of 5 October 2020, available at [www.rolii.ro](http://www.rolii.ro) (accessed on 05.03.2021).
- Nicolescu, Cristina. 2020. *Dreptul familiei*. Bucharest: Solomon Publishing House.