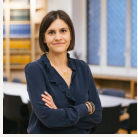


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Spouses' contribution to household expenses

In a recent decision issued on June 9, 2022, the First Civil Chamber of the *Cour de Cassation* (French Supreme Court) clarified the concept of spouses' contribution to household expenses:

“The equity contribution, made by a spouse married under the separation of property regime, to finance the improvement, by way of construction, of an undivided property intended for family use, is not to be taken into account in the performance of his/her obligation to contribute to household expenses.”

When it comes to the liquidation of a matrimonial regime, the question of claims between spouses married under the separation of property regime (i.e., a regime under which the assets and revenues of the two spouses are held separately) regularly arises.

Are spouses really protected through the adoption of this separation of property regime?

In other words, is it possible to consider that the community of property regime (i.e., a regime under which the spouses pool all of their present and future assets) is tantamount to “everything in common” and that the separation of property regime is tantamount to “everyone for himself/herself”?

In a decision issued on June 9, 2022^[1], the First Civil Chamber of the *Cour de Cassation* further clarified the concept of spouses' contribution to household expenses.

This legal concept is a tool used by judges to make the separation of property regime more “communal” than

the community of property regime.

The obligation for each spouse to contribute to household expenses is provided under Article 214 of the French Civil Code, the first paragraph of which reads as follows:

“Where a premarital agreement does not regulate the contribution of the spouses to the household expenses, they shall contribute to such expenses in proportion to their respective abilities”.

Under the legal default matrimonial regime, i.e., in the absence of a premarital agreement, there is a presumption of community of property.

As for the separation of property regime, the clause very regularly inserted in premarital agreements under which the spouses adopt such regime is at issue.

This clause reads as follows:

“Each of the spouses will be considered to have made his/her proper contribution to the household expenses day by day, so that there will be no accounting between them and none of them will be able to claim compensation from the other in this regard”.

The First Civil Chamber of the *Cour de Cassation* has held, in several decisions and in particular on 18 November 2020^[2], that *“when trial judges have considered, in their sole discretion, irrebuttable the presumption resulting from the fact that the spouses had agreed, by adopting the separation of property regime, that they would contribute to the household expenses in proportion to their respective abilities and that each of them would be deemed to have contributed his/her share day by day, so that they would not be subject to any accounting between them and not be entitled to claim compensation from each other on this subject, a spouse may not, in support of a claim, be allowed to prove the insufficiency of his/her spouse’s contribution to the household expenses or the excess of his/her own contribution”.*

In other words, if the trial judges recognize the irrebuttable nature of this clause contained in the premarital agreement, no spouse may be allowed to claim his or her “excess contribution” or to assert the insufficiency of his/her spouse’s contribution to household expenses.

As indicated, the case law of the *Cour de cassation* delineates the contours of this obligation to contribute to household expenses, but sometimes in a surprising manner.

Judges can thus use this concept of spouses’ contribution to household expenses to negate a claim by one of the spouses.

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Trial judges now often consider that the financing of an undivided property through the repayment of a loan by one of the spouses results from the overriding French legal provisions governing marriage and consequently from the obligation to contribute to household expenses.

Fortunately, the First Civil Chamber of the *Cour de Cassation* ruled in a decision dated March 17, 2021^[3] that the equity contribution by a spouse for the acquisition of the undivided property intended for family is not to be taken into account in the performance of the obligation to contribute to household expenses.

In a judgment dated September 1, 2020, the Court of Appeals of Chambéry had dismissed the claim of a spouse as it considered that this financing ought to be analyzed as the performance of his obligation to contribute to household expenses.

However, in its decision issued on June 9, 2022^[4], the First Civil Chamber of the *Cour de Cassation* overturned this decision.

It reaffirmed its case law regarding the acquisition of undivided property and extended this exclusion to the equity contribution by a spouse to finance the improvement, by way of construction, of an undivided property intended for family use.

The *Cour de Cassation* specified that these case law solutions apply unless the spouses agree otherwise.

It is, therefore, necessary to be particularly vigilant when drafting the marital agreement.

^[1] First Civil Chamber of the *Cour de Cassation*, June 9, 2022, appeal No. 20-21.277

^[2] First Civil Chamber of the *Cour de Cassation*, November 18, 2020, appeal No. 19-15.353

^[3] First Civil Chamber of the *Cour de Cassation*, March 17, 2021, Appeal No. 19-21.463

^[4] See *supra*

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