

# Legal Obligation of Maintenance Between Spouses and Former Spouses in the Romanian Law

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**ABSTRACT:** The legal maintenance obligation is the duty imposed under the law to a person to ensure to the other person the required subsistence means, both in material and spiritual terms. This paper comprises a theoretical and practical review of the maintenance obligation between the spouses and former spouses, following the dissolution of marriage. As it shall follow from our research, the maintenance obligation may materialize at all times during the marriage, including during the divorce trial, of course, subject to the observance of two conditions: the state of need of the maintenance creditor spouse and the material means of the maintenance debtor spouse. At the same time, at the end of the research, we shall find that the divorced spouse is entitled to maintenance if three conditions are met, i.e.: that they are in need, the need must be the consequence of the incapacity for work and that the incapacity occurred within one year as of the dissolution of marriage.

**KEYWORDS:** legal maintenance obligation, spouses, former spouses, state of need, material means

## Regulation and notion

For starters, please note that, in the Romanian law, the maintenance obligation derives from the law, which is why it should not be mistaken for the maintenance obligation regulated under art. 2.254-2.263 of the Civil Code, which follows from the maintenance contract. Similarly, in a case, the court of law has shown that *“the legal maintenance obligation is a duty imposed under the law, whereas the conventional maintenance obligation is the one freely undertaken by any interested party, including the categories of persons between whom there is a legal obligation of maintenance, pursuant to the contractual freedom”* (Bucharest Court of Appeal, 4<sup>th</sup> Civil Division, Decision no. 3040/2000, *apud* Avram 2016, 511).

The legal maintenance obligation is regulated by Title V (*Maintenance Obligation*) of Book II (*On Family*), art. 513-534 of the Civil Code and it is supplemented, for instance, with other provisions, such as the ones stipulated in art. 389 of the Civil Code, regarding the maintenance obligation between former spouses, in art. 402 of the Civil Code with regards to the parents’ participation, in the case of a divorce, as well as in art.499 of the Civil Code, regarding the maintenance obligation between parents and their minor children (Law no. 287/2009 on the Civil Code, published in the Official Gazette of Romania, Part I, no. 511 of 24 July 2009).

Moreover, there are a number of legal provisions one should take note of, such as: art. 16(2); art.67; art. 104 of the Law no. 272/2004 on the protection and promotion of the child’s right (republished in the Official Gazette of Romania, Part I, no. 159 of 5 March 2014); art. 113(1)(4) – on alternate territorial jurisdiction; art.448(1)(4) – on the provisional rightful enforcement of the first court’s ruling; art. 729 – on the limitations of the prosecution of financial revenue, etc. of the Civil Procedure Code (Law no. 134/2010 on the Civil Procedure Code, republished with the Official Gazette of Romania, Part I, no. 247 of 10 April 2015), and, last but not least, art. 378 of the Criminal Code, which provides for and sanctions the marital abandonment (Law no. 286/2009 on the Criminal Code, published with the Official Gazette of Romania, Part I, no. 510 of 24 July 2009).

In case the legal obligation relation includes an extraneous element, the rule in art. 2.612 of the Civil Code apply, stipulating that *“The law governing the maintenance obligation*

is determined according to the regulations of the European Union law”. Thus, within the European Union, in the matter under scrutiny, Regulation (EC) no. 4/2009 of the Council of 18 December 2008 on jurisdiction, the relevant law, the acknowledgement and the enforcement of court rulings and the cooperation in the field of obligations and maintenance (published with the Official Gazette of the European Union no. L 7 of 10 January 2009) and the Protocol of Hague of 23 November 2007 on the law governing maintenance obligations (published with the Official Journal of the European Union no. L 331/17 of 16 December 2009) apply. The protocol was adopted on 23 November 2007 upon the occasion of the 11th edition of the Hague Conference on Private International Law and it was approved by the Council Decision of 30 November 2009).

The legal maintenance obligation sometimes is the effect of kinship, of the spouse or former spouse capacity or, finally, the effect of relations that are assimilated, under certain aspects, to family relations (Filipescu and Filipescu 2006, 542).

Both the specialty literature (Avram 2016, 510), and the legal practice (Sălaj District Court, Civil Division, Civil Decision no.499 of 20 October 2020), *the legal maintenance obligation* is defined as being “*the duty imposed under the law to a party to provide to another party the required subsistence means, both in material, and in spiritual terms*” (for other definitions, with some nuances, see Florian 2018, 575; Lupașcu and Crăciunescu 2021, 645; Bodoașcă 2020, 467; Dogaru 1978, 12).

The legal maintenance obligation relies on feelings of solidarity and mutual support, on the affection that should characterize family relations in general, as well as on the social cohabitation rules, according to which, the parties between whom such relations exist should not remain indifferent and should act in order to ensure to the other person the required means of subsistence, in case of need, because of the incapacity for work (Moloman 2012, 237; Drăgășani Law Court, Civil Decision no. 612 of 5 August 2020).

### **Parties between whom an obligation of maintenance exists**

According to art. 513 of the Civil Code, the maintenance obligation only exists between the parties stipulated under the law. Thus, according to the provisions in art. 516(1) and (3) of the Civil Code, the maintenance obligation exists between the following subjects:

- Husband and wife, which means the two must be married;
- Former spouses, following the dissolved, null or cancelled marriage;
- Direct relatives, irrespective of whether the kinship is biological or by adoption, i.e.: between parents and children, grandparents and grandchildren, great grandparents and great grandchildren.
  - Siblings, whether biological or by adoption;
  - The other parties expressly stipulated under the law, who are not included under other provisions of the Civil Law and in special laws in the matter. For instance:
    - The spouse who participated in the maintenance of the other spouse’s (biological or adopted) child is bound to continue to provide support to the child for as long as the latter is a minor, if the biological parents died, or are missing or find themselves in a state of need [art. 517(1) of the Civil Code];
    - The child who benefited for at least 10 years from the maintenance of the biological parent’s spouse, may be bound to ensure the maintenance of the biological parent’s spouse [art. 517(2) of the Civil Code];
    - Former spouses in the case of putative marriage, where, according to art. 304(2) of the Civil Code, the provisions in the matter of divorce apply by assimilation to the spouse acting in good-faith;

- The party who obtains a child's custody for temporary care or protection, until a measure of protection is established according to the law, and the respective child [art. 16(2) of the Law no. 272/2004, as republished];

- The heirs of a party who was bound to provide for the maintenance of a child or who provided such maintenance without being bound to do so, and the respective child, up to the coming of age of such child, and only in so far as the biological parents of the child are dead, divorced, missing or find themselves in a state of need [art. 518(1) of the Civil Code]; heirs are bound by a maintenance obligation only within the limits of the inherited assets [art. 518(2) of the Civil Code];

- The adoptee and his/her successors, on the one hand, and the adoptive parent and the adoptive parent's direct relatives, on the other hand, or between siblings, considering the adoption triggers, by assimilation, the full effects of biological kinship [art. 516(2) of the Civil Code];

- The adoptee and their biological relatives or, as the case may be, the spouse, after the termination of the adoption (art. 520 of the Civil Code).

In this research paper, we shall only present and review the legal obligation of maintenance that exists between spouses and former spouses.

### **Obligation of maintenance between spouses**

The legal obligation of maintenance of the spouses represents *their mutual duty to provide to each other the required subsistence means* (Bodoaşcă 2020, 501). Hence, the legal obligation of maintenance between the spouses may be defined as “the mutual obligation, deriving from the law and grounded on the institution of marriage, to provide the required subsistence means to each other” (Florian 2018, 600).

As a matter of fact, *spouses are under an obligation* to provide moral support to each other, according to the provisions in art. 309(1) of the Civil Code and, at the same time, they are bound to materially support each other, according to the provisions in art. 325(1) of the Civil Code. Thus, for example, in a case where it has been found that art. 309(1) of the Civil Code is also incident *inter alia*, the court noticed that “*the parties have been married as of 16.07.1969, and that currently, even though they share the same residence, they are financially separated, an aspect confirmed by both parties (the claimant – pursuant to the writ of summons, and the defendant through the statement of defense filed). According to the claimant's hospital discharge summary of 26.10.2012 and to the medical prescriptions of the claimant issued on 15.03.2012 and on 03.03.2012, respectively, it follows that the claimant suffers from several medical conditions (mainly ophthalmic and orthopedic), and aspect, which, combined with her age (75 years of age), creates the presumption that the claimant currently is in a state of need. This is even the more so since, according to the claimant's pension slip for the months of July and September 2012 and April 2011, it follows that she has an average monthly income of RON 251, appreciated by the court as insufficient for her maintenance, also considering her medical conditions. On the other hand, according to the defendant's pension slip for the month of October 2012 it follows his monthly revenue is of RON 583 lei. According to the evidence filed in the case, as analyzed, it follows that the claimant is in a state of need, being unable to support herself from work or out of her own revenue (the conditions for the creditor of the maintenance being thus met in her case), and the defendant, in the light of the higher amount of his pension as compared to that of the wife, does hold the required funds to pay spousal support to the wife (according to the provisions in art. 527(1) of the Civil Code). In the light of the above, the court finds that the claimant's request is grounded, so that it will admit it and shall order the defendant to pay to the latter the amount of RON 100 per month as spouse support, starting the date when the action was brought and up to the claimant's decease. Upon the setting of the spouse support amount, it*

*shall be taken into account that this amount was unanimously accepted by the parties”* (Focșani Law Court, Civil Decision no. 5737 of 8 November 2012).

In another case, the claimant, A.M. requested the court *“in the case versus the defendant A.G., to order the latter to monthly pay in her favor, on the 15th of each month, spousal support in cash, amounting to ½ of his net revenue to support her petition, the claimant has shown that the defendant has been her husband as of 1975. She mentioned that, during this period, they had constantly coin habited, that she never had a workplace and that she was a housewife. According to the claimant’s allegations, even though they live in the same apartment, the defendant refuses to provide her with any type of material support, all monetary entitlements being collected by the husband. Thus, he deprives her of the most basic needs, such as food, personal care, medicine. The court finds that, according to the provisions in art. 516(1) of the Civil Procedure Code, there is an obligation of maintenance between the husband and the wife but, on the first court date, the parties filed the transaction that occurred between them on the same date. De jure, the court shows that according to art. 438(1) of the Civil Procedure Code, “the parties may appear at all times during the court proceedings, even without having been summoned, to ask for a decision ascertaining their transaction”, whereas para. (2) of the same article states that “if the parties appear on the set court date, the ruling petition may be received even by a single judge”, and para. (3) stipulates that “if the parties appear on a different date, the court will rule in closed session”* (Constanța Law Court, Civil Division, Civil Decision no. 4771 of 30 June 2020).

The obligation of maintenance between spouses may materialize during the marriage, including during the divorce trial [art. 389(1) of the Civil Code], of course, subject to two conditions:

- *The state of need of the spouse who is the creditor of the maintenance.* In this respect, art. 524 of the Civil Code stipulates that *“only the spouse who is in a state of need is entitled to maintenance, being unable to support him/herself from work or own assets”*. The specialty literature defines the *“state of need”* as the *“situation of a person who is unable to satisfy natural material needs of food, clothing, dwelling, medication, and the spiritual ones, such as education, information, cultural development, etc.”* (Avram 2016, 515). In other words, the party unable to obtain revenue from work (salary, seniority pension, social security pension, copyright, etc.) or from the sale of own assets (leases, rents, sale of assets, etc.) is in a state of need. One of the causes leading to the impossibility of the individual to support themselves from the revenue obtained pursuant to an activity carried out is the *incapacity for work*, which should be construed *“both as a physiological or medical or social incapacity, and as a legal one. The incapacity for work may be full or partial, periodical or permanent”* (Ureche and Moloman 2015, 121). The causes for the incapacity for work may vary: health condition, bodily injury, old age, or, in the case of young people who, even though they are able to work, must complete their studies and their professional training. The creditor’s inability to support themselves may also derive out of the fact that the revenue obtained from work is not sufficient to cover the daily needs or out of the absence of assets that could be sold in order to obtain the necessary subsistence means.

For instance, in a case having as subject-matter the establishment of the spousal support for the wife, the court has found that *“pursuant to the documents submitted with the case file, it follows that the parties are spouses. Defendant M.D. obtains pension revenue amounting to RON 2,206 per month - pension slip for September 2017. The claimant obtains no revenue. According to his answers during the hearing, the defendant admits that he is the only one in the family obtaining revenue, and, even though he admits he does not support his wife, he agrees to fulfill this obligation towards her. According to art. 325 of the Civil Code, spouses are bound to materially support each other. Art. 341 of the Civil Code stipulates that the revenue obtained from work, the amounts due as pension as part of the social security system and other such are joint assets of the spouses. Moreover, art. 516 of the Civil Code mentions*

*that the maintenance obligation exists between the husband and the wife, and, according to art. 524 of the Civil Code, only the party in need, unable to support him/herself from work or own assets, is entitled to maintenance. Hence, in this case, the defendant owes material support to the wife who obtains no revenue and is in need. The court admits the petition lodged by the claimant and shall order the defendant to pay spousal support to the claimant, amounting to RON 600 per month, quarterly indexable according to the law” (Moinești Law Court, Civil Decision no. 1491 of 12 October 2017).*

Regarding the spouse who is the creditor of the maintenance obligation, please note that it must be demonstrated by the party invoking it and, since this is a legal fact, proof may be produced via all means of evidence. Moreover, it should be highlighted that *the state of need must not be absolute*, so that it may be assessed both in the light of the creditor spouse’s revenue, and in the light of the latter’s assets that could be sold in exchange for revenue (Florian 2018, 601).

- *The material means of the spouse who is the debtor of the maintenance obligation.* Regarding the debtor of the maintenance obligation, according to art. 527(1) of the Civil Code, only the party holding the means to pay it or the possibility to obtain such means can be ordered to provide it”. Pursuant to the interpretation of this text, it follows that it concerns both the debtor’s current means, and the future ones.

The party *holding the capacity for work*, but who does not obtain revenue from work for *reasons imputable to them* may not be exonerated from the maintenance obligation. In the case of those who *hold the capacity for work*, but they do not obtain revenue from work for *reasons not imputable to them* (they serve a detention sentence, they are unemployed and do not receive the state aid, continuation of studies, etc.), cannot be bound to fulfill the maintenance obligation if they do not hold other financial means.

In so far as the category of the revenues is concerned, it includes all the net revenue obtained, regardless of the field of activity, the only condition being that of continuity. The category of the revenue shall not include occasional revenue or the one obtained under special circumstances, related to the capacity for work of the respective person.

When establishing the means of the party liable for the maintenance, the court shall also consider their revenue and assets, as well as the possibilities to obtain the same. At the same time, other obligations they might have shall also be taken into consideration, if any [art. 527(1) of the Civil Code.].

It should be stated that, considering the provisions in art. 519(a) of the Civil Code, the main feature of the obligation of maintenance between spouses consists of its priority, the spouses being liable to each other for this maintenance obligation as a priority regardless of any other obligations they might have towards other parties. In this respect, in a case where the mother requested that the daughter paid her alimony, the court found that the defendant did not hold the required means to provide for such maintenance. *“As the first court correctly found, even though the defendant M.S. does obtain revenue from work, this revenue amounts to approximately RON 1,200 per month. Moreover, she has a duty of maintenance as a priority towards her husband who obtains no revenue, pursuant to art. 519(a) of the Civil Code. The defendant also has a minor daughter aged 14 to whom she must provide food, clothing and school stationery. The defendant’s revenue per family member is lower than that of the claimant. If she were ordered to pay alimony to the claimant, she would be in a situation in which she could no longer cover her family’s daily needs”* (Sălaj District Court, Civil Division, Civil Decision no. 499 of 20 October 2020).

In so far as the *amount of the spousal support is concerned*, it should be noted that it can be *increased or decreased*. In this respect, art.531(1) of the Civil Code stipulates that in case *“a change occurs with regards to the means of the party providing the maintenance obligation and the need of the party receiving it, the custody court may, according to the circumstances, increase or decrease spousal support or may decide to cancel its payment”*.

Hence the maintenance obligation is not absolute or perpetual once established, but, instead, it changes depending on the actual circumstances of the party providing it and of the party receiving it.

The *increase* of the amount of the spousal support shall be ordered by the court as of the date when it was requested, according to the rationale substantiating its granting (art. 532 of the Civil Code). In other words, the increase of a spousal support is, hence, conditional not only upon the increase of the revenue of the party bound to pay it, but also depending on the changes in the needs of the party in whose favor it was granted. Regarding the *decrease* of the amount of the spousal support, the specialty literature (Avram 2016, 521) shows that “it will be ordered as of the date when the cause leading to such measure occurred. If the spousal support were not decreased, this would lead to the enrichment without just cause of the creditor of the maintenance obligation”.

In a case having as subject-matter the increase of the spousal support, the court has found that “*the parties have been married since 1973, according to the marriage certificate filed. Currently, because of some misunderstandings, the two are separated in fact, they reside separately and individually manage their revenue. The defendant receives a net pension of RON 3,800 per month, while the claimant has a pension of RON 704/month. The court further shows that the maintenance needs of the claimant have increased, because she suffers from a medical condition, and the money she collects is insufficient to cover her medication, food and utility payments, which she is bound to pay, because the defendant refuses to contribute to the same. Moreover, the defendant’s revenue increased in the meantime, so that his pension amounts to more than 3,800, and he also benefits from a pension from Italy, according to the documents herein. The court further holds that art. 531 of Civil Code states that in case a change occurs with regards to the means of the party providing the maintenance obligation and the need of the party receiving it, the custody court may, according to the circumstances, increase or decrease spousal support or may decide to cancel its payment. Considering these aspects, the court will order the increase from the amount of RON 310/month to the amount of RON 500/month, as of 13 March 2020, the date when the action was brought and up to the date when the court orders otherwise*” (Vişeu de Sus Court of Law, Civil Decision no. 758 of 2 July 2020).

With regards to the provisions in art. 531(2) of the Civil Code it should be stated that even though the spousal support is set as a fixed amount, this amount is quarterly indexed depending on the inflation rate. This means that the garnishee (the employer of the maintenance obligation debtor) is bound to proceed to the quarterly indexing of the amounts garnished in the favor of the creditor, without requiring a court order for the increase of the spousal support with the indexed amount (Avram 2016, 522).

The maintenance obligation also exists in the case of the putative marriage, but only in favor of the spouse who acted in good-faith upon the conclusion of marriage, because, according to art. 304(1) of the Civil Code, the latter continues to be a spouse according to a validly concluded marriage up to the date on which the court order becomes final.

### **Legal obligation of maintenance between former spouses**

According to art. 389(1) of the Civil Code, the obligation of maintenance between spouses ceases the dissolution of marriage and the obligation of maintenance between former spouses occurs, of course, subject to the observance of the legal terms. According to the case-law (Bacaci 2007, 187), the fundament of the obligation of maintenance between former spouses separated through the dissolution of marriage is represented by the moral and humanitarian rules by virtue whereof the obligation of maintenance between spouses continues even after they separate. In other words, in the case of the dissolution of marriage, in this case, the

former spouse has the legal, as well as the moral obligation to support the spouse in need up to a possible change in circumstances.

The capacity as “*husband*” and “*wife*” is also lost upon the dissolution of marriage, and alongside it, the obligation of maintenance between the two. The phrase “*former spouse*” shall mean the person who, when the maintenance is requested, holds the capacity as divorcee or of a party whose marriage was declared to be a putative one. It should be highlighted that the phrase “*former spouse*” does not include the widow(er), whose marriage ceased (Bodoaşcă 2020, 503).

As shown in the legal specialty literature (Filipescu 1970, 67-80), the reason of the maintenance obligation between former spouses derives from the experience of the previous family relations between them, which call for mutual moral and material support.

The former spouse claiming spousal support, pursuant to art.389 of the Civil Code, must observe all the conditions that the law generally imposes to a creditor of the maintenance obligation, i.e.: *the state of need* and the incapacity for work. Pursuant to the interpretation of the provisions in art. 389(2) of the Civil Code, it follows that the former spouse claiming spousal support, on these grounds, must meet a special requirement, i.e.: that the incapacity for work occurred prior to or during the marriage; the former spouse’s entitlement to maintenance occurs even if the incapacity for work arises within one year as of the dissolution of marriage, but only if it is caused by circumstances related to the marriage.

Pursuant to the review of the aforementioned provisions, it follows that the divorced spouse is entitled to maintenance if three conditions are met, i.e.:

- *That the spouse is in a state of need*, i.e., cannot obtain revenue from work. For instance, in a case having as subject-matter the establishment of the spousal support after the dissolution of marriage, the court decided that “*the conditions stipulated in art. 389 of the Civil Code are not met, because the defendant-claimant receives invalidity pension pursuant to a medical condition occurred during the marriage and supplements her revenue by working abroad, so that it cannot be stated that she is in a state of need*” (Suceava Court of Appeal, Civil Decision no. 993 of 18 September 2013). In another case, the court decided that “*the maintenance obligation between former spouses also exists in case the claimant receives an invalidity pension that is insufficient to cover the subsistence needs*” (Bucharest District Court, 4th Civil Division, Decision no. 181/1991, *apud* Mihuşă 1992, 54).

- *The need must derive from the incapacity for work*. For instance, in a case, the court decided that “*the conditions in art. 389 of the Civil Code are met, the divorced spouse being entitled to spousal support in case it suffers from a severe and irreversible disability, which reduces their capacity for work to 25%*” (Drobeta-Turnu Severin Law Court, Civil Decision no. 925/2012).

- *That the incapacity occurred within a year* as of the dissolution of the marriage, but provided, however, that this incapacity is caused by circumstances related to the marriage. For instance, as shown in the specialty literature (Avram 2016, 530), the incapacity could be due to childbirth. For example, in a case, the court holds that “*the claimant was diagnosed as suffering from bipolar disorder, other appetite disorders, metal and conduct disorders due to the use of tobacco, the syndrome of addiction and non-organic insomnia, the disorder persisting throughout the marriage of the parties, and the incapacity for work occurred in the context of these medical conditions during the marriage, i.e., in 2019, in May. They are also corroborated with the disability certificate, issued by the Board for the Evaluation of Adults with Disabilities, according to which the claimant was included under the severe disability category. The claimant has not been an employee on the territory of Romania starting May 2019, and she receives a monthly disability pension of RON 860 according to the information provided by the Pension Fund. The court appreciates that a spousal support of 1/4 of the net monthly revenue of the defendant covers the claimant’s basic needs, a lower amount being insufficient as compared to the revenue obtained by the parties and to the claimant’s current*

*status, which is unable to obtain additional revenue because of the full incapacity for work. Moreover, such a pension is not an obligation that affects the defendant's means of subsistence. In so far as the date as of which the spousal support is due, according to art. 532(1) of the Civil Code, the spousal support is due as of the date of the writ of summons"* (Bucharest 4th District Court, Civil Division, Civil Decision no. 1276 of 6 March 2020).

Hence, pursuant to the above, it follows that the divorced spouse is entitled to maintenance if three conditions are met, i.e.: that they are in need, the need must be the consequence of the incapacity for work and that the incapacity occurred within one year as of the dissolution of marriage. No other reasons invoked by any of the spouses to claim spousal support from the former spouse is regarded as legal grounds in this respect. For instance, in a case, where the appellant *"invoked certain abuses of the defendant appellee against the members of the family and stated that her capacity for work was affected because of the back pains and the depression, the district court holding that the abuses invoked by the appellant against the members of the family do not represent grounds for claiming spousal support from the former spouse, according to the provisions in art. 389 of the Civil Code."* (Bucharest District Court, 5th Civil Division, Civil Decision no. 552 of 20 February 2019).

According to art. 389(4) of the Civil Code, if the divorces are pronounced due to the exclusive fault of one of the spouses, the spouse shall only benefit from support for one year as of the dissolution of marriage. In other words, art. 389(4) of the Civil Code applies in the situation in which *"the spouse whose fault led to the dissolution of marriage is the beneficiary of the spousal support, and not the spouse who is the creditor of the obligation, if the spouse at fault for the dissolution of the family relations is the debtor"* (Dolj District Court, 1st Civil Division, Civil Decision no. 1392 of 11 July 2019).

In a case ruled upon under the auspices of the former regulations in the matter, the court appreciated that *"the maintenance obligation persists even if the incapacity of the spouse who is the creditor of the obligation occurred because of his/her own fault"*. For instance, attempted suicide (Olt County District Court, Civil Decision no. 447/1982 *apud* Avram 2016, 530, footnote 2 and the mentions of the author).

With regards to the order of precedence, former spouses owe each other spousal support just like spouses, as a priority, their obligations towards each other as spouses taking precedence over their obligations towards their parents (Hageanu 2017, 366).

### **Termination of the maintenance obligation**

The right to maintenance ceases when the former spouse who is the creditor of the maintenance obligation remarries, according to the provisions in art. 389(5) of the Civil Code.

According to the provisions in art. 531(1) of the Civil Code, the custody court may, according to the circumstances, order the cessation of the payment of the spousal support. In this respect, the cessation of the legal maintenance obligation may be determined by various causes, such as:

- The disappearance of one of the conditions the creditor of the maintenance obligation was supposed to fulfill (the state of need or the incapacity for work);
- The debtor of the maintenance obligation no longer holds the required means to pay the spousal support;
- The decease of the creditor of the maintenance obligation, unless the law stipulates otherwise [art. 514(2) of the Civil Code].
- The cancellation, dissolution or termination of marriage;
- The remarriage of the spouse entitled to spousal support.

As it may be noted, some causes only trigger the temporary cessation of the maintenance obligation (the lack of the debtor's material means), whereas others trigger the final termination thereof.



For instance, in a case, claimant D.I. sued defendant D.G.D. requesting the court to order the cessation of the spousal support payment, because the defendant no longer was in a state of need, following the conclusion of a marriage. Pursuant to the review of the submissions made in the case, the court held that “*as long as the evidence submitted in the case showed that the defendant got married, the maintenance obligation established against the claimant and in the favor of the defendant becoming subsidiary to the maintenance obligation that exists between the spouses, the circumstances based on which the spousal support was granted pursuant to civil decision no. 5029/23.06.2017 of Galați Law court have changed. In the light of these considerations, the court orders the cessation of the spousal support payment*” (Galați Law Court, Civil Division, Civil Decision no. 5708 of 30 October 2020).

## Conclusions

To conclude, *the legal maintenance obligation* represents the duty imposed under the law to a person to ensure to the other person the required subsistence means, both in material and spiritual terms.

The legal maintenance obligation relies on feelings of solidarity and mutual support, on the affection that should characterize family relations in general, as well as on the social cohabitation rules, according to which, the parties between whom such relations exist should not remain indifferent and should act in order to ensure to the other person the required means of subsistence, in case of need, because of the incapacity for work.

The maintenance obligation only exists between the parties stipulated under the law, including spouses and former spouses, and it may materialize at all times during the marriage, including during the divorce trial, of course, subject to the observance of two conditions: the *state of need of the maintenance creditor spouse and the material means of the maintenance debtor spouse*.

The termination of the maintenance obligation may be ordered by the custody court, for one of the following causes: the disappearance of the state of need or of the incapacity for work, the debtor of the obligation is no longer able to provide the spousal support, the decease of the debtor or creditor of the spousal support, the remarriage of the spouse entitled to spousal support.

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