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ENGAGEMENT BETWEEN TRADITION AND MODERNITY

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Abstract

For the life of a couple, engagement represents a stage preceding marriage, being the solemn promise to found a family.

For the life of a couple, engagement represents a stage preceding marriage, being the solemn promise to found a family. In the traditional collective mentality, its value is supported by the social function, being in fact an understanding between families, as basic elements of the local community. In modern society, the social character of engagement has faded greatly, its role being mainly to externalize the marriage commitment, to express the feelings of the future spouses.

The institution of engagement is regulated normatively, after years of lack of interest on the part of the legislator, but it has proven lenient with the sanctions applied, so that engagement is an institution known and loved by all, but too little protected, so that it does not have a more symbolic character.

Key words: engagement, tradition, modernity.

JEL Classification:(K33).

INTRODUCTION

In a couple's life, engagement is a symbolic moment that represents the promise of marriage. In the earlier society we commonly refer to as traditional, engagement carried significant legal weight and was accompanied by social and moral implications. It also constituted an agreement between the families of the two fiancés. Today, the institution of engagement focuses primarily on the couple's personal feelings, symbolized through the exchange of rings, while its other dimensions have become considerably diminished.

From the earliest marriage regulations, engagement was both recognized and governed. Early local laws contained provisions concerning engagement. During the reign of Prince Matei Basarab, the required age for entering into an engagement was set at 12 for girls and 14 for boys. Engagement held substantial importance, and becoming engaged to someone who was already promised to another was considered an act of adultery (Aniței, 2022, p. 36).

The Calimach Code established that engagement was mandatory and could last for up to two years. It defined two forms of engagement: the “perfected” form, which involved a religious ceremony and closely resembled marriage, and the “imperfect” form, which involved the offering of a pledge but did not create a legal obligation to marry. However, if the engagement was broken, the party responsible was required to provide compensation (Firoiu, *Istoria statutului și dreptului românesc*, 1993, p. 152).

The Caragea Law Code (1818) regulated engagement as well as the grounds for its dissolution, including the conditions under which sums of money advanced as wedding arrangements were to be returned (Firoiu, *Istoria statutului și dreptului românesc*, 1993, p. 152). Later, the possibility of extending the engagement by an additional two years (for a total of four) was introduced in exceptional situations, such as the illness of one partner or the completion of university studies abroad. The legal effects of engagement were closely linked to the gifts exchanged at the moment of its conclusion. The parents of the engaged couple could themselves decide the conclusion of an engagement; sometimes discussions took place even after the birth of children, while in other cases, the young couple—motivated by their feelings—would send their parents to formally arrange the match (Mihăilă C. O., *Călătorie prin trecut și prezent. Căsătoria și regimurile matrimoniale*, 2020, p. 572 ff.)¹. The dissolution of an engagement was regarded as an exceptional event and represented the ultimate form of social stigmatization for the engaged young woman (Hanga, *Istoria dreptului românesc*, 1980, p. 505).

The former Civil Code contained no provisions regarding engagement, as the intention was to shift the matter toward the religious sphere, considering it to have primarily moral connotations. Before the adoption of the 1864 Civil Code, the conclusion of an engagement involved various formalities—prior, concurrent, and subsequent—whose ritualistic nature complicated the marital arrangements of future spouses.

The Civil Code defines engagement as “the mutual promise to conclude marriage”² and expressly states that its provisions apply only to engagements entered into after the Code came into force. Based on this definition, the conditions required for a valid engagement bear similarities to those necessary for

¹ [https://doi.org/10.24193/SUBBiur.65\(2020\).4.17](https://doi.org/10.24193/SUBBiur.65(2020).4.17)

² Art 266 Cod civil, Legea 71/2011

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marriage: free and unvitiated consent, the condition of sex differentiation, the application of the principle of consensualism, and the existence of a cause—namely, the promise to marry in the future. It should be noted that the legislator does not regulate any obligation to conclude the marriage, nor does it sanction the failure to do so. No time limit is prescribed, nor is marriage in any way conditioned on engagement. In the case of minors, parental or legal guardian approval is required. However, no medical certificate or authorization from the guardianship court is necessary (Romoșan, *Dreptul familiei*, 2014, p. 29).

A legally significant aspect governed by the Civil Code pertains to the termination of the engagement (Art. 267 ff. Civil Code). In such cases, gifts received on the occasion or during the course of the engagement, but given in contemplation of marriage, must be returned. If the engagement ends due to the death of one of the parties, this obligation ceases to exist (Florian, *Dreptul familiei*, 2022, p. 57).

The legislator also addresses the matter of compensation, which the party at fault may be required to pay. This includes expenses incurred in anticipation of the marriage, as well as those that may be considered as having been made in contemplation of marriage, without excluding moral damages that may be awarded when the non-faulting party suffers moral prejudice.

The doctrinal debates concerning the legal nature of liability have crystallized into two main theories: that of contractual civil liability and that of tortious civil liability. One may ask: For what exactly are the parties liable—for failing to conclude the marriage, or for abandoning the promise of marriage by breaking the engagement?

Moreover, the legislator specifies that the promise does not entail an obligation to conclude the marriage. No time frame is indicated within which the promise of marriage must be fulfilled. What criteria should be used to assess whether the termination of the engagement is abusive? Can a person's moral values serve as criteria of evaluation for a legally regulated institution—one that does not, however, offer even exemplary parameters for such an assessment?

Consequently, the prevailing view is that the civil liability arising from the abusive termination of an engagement is tortious liability, requiring the presence of its essential elements: an unlawful act, damage, a causal link between the unlawful act and the damage, and fault (Florian, Floare, *Dreptul Familiei*, 2024, p. 62).

Romanian courts have been called upon to rule on various aspects related to engagement.

In a decision issued by the Zărnești District Court, Civil Judgment No. 1520/2019, the claimant requested that the court compel the defendant to return the sum of 68,000 euros, offered as gifts in consideration of the engagement, as well as a diamond engagement ring. However, based on the claimant's statements, the court found that the engagement had allegedly been concluded in 2006 on

New Year's Eve, although he later modified this claim, asserting that the engagement was actually concluded in 2012, so as to fall under the current Civil Code. The court dismissed the claim based on the established date of the engagement.³

In another decision issued by the Bucharest District Court, Sector 3 (Judgment No. 3641/2015 of March 13, 2015), the claimant requested the restitution of gifts made during the engagement period, amounting to 280,000 euros, following the defendant's abusive termination of the engagement. The gifts consisted of money used by the defendant to purchase real estate, after which she severed ties with the claimant and no longer allowed him access to the properties, which were registered solely in her name. The court took note of the settlement reached between the parties, under which the claimant took possession of two of the three properties, while one remained in the defendant's ownership.⁴

From a comparative perspective, examining traditional and modern engagement reveals that the traditional purpose of engagement was the formation of alliances between families, whereas in modern society its purpose is merely a romantic promise, a delicate symbolic moment. In terms of form, traditionally it involved a religious and social ceremony, while today it tends to be a largely private event. The importance...

The importance of engagement in traditional society was considerable, carrying significant legal and moral consequences. Today, it entails legal effects only when it is abusively broken, yet it is not subject to any formal requirements, and proof of its existence may be established through any means of evidence (Mihăilescu I., *Sociologia familiei*, 2010, p. 68).

Traditionally, engagement was closely linked to canon law (Cîrmaciu, 2015, pp. 53-58), as it preceded and was mandatory before the conclusion of marriage, through which the Church blessed and consecrated the future spouses' decision to marry (Gavrilă V., *Cununia – viață întru Împărăție*, 2004, pp. 51–53). Today, the civil marriage ceremony may or may not be followed by a religious wedding, but when a church service is performed, it includes specific preliminary blessings associated with engagement.

CONCLUSION

In traditional society, engagement functioned as a mechanism of social unification and the formalization of alliances. Its functions involved confirming marital intentions, achieving social agreement, and integrating the newly formed couple into the structure of the community.

In modern society, its meaning has shifted. The emphasis falls on its private character, even though certain traditions—such as the giving of a ring, the marriage proposal, or the celebration of the engagement through a party—are

³ www.rolii.ro, accesat in data de 20.11.2025, ora 15.20

⁴ www.rolii.ro, accesat in data de 20.11.2025, ora 15.35

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preserved. Engagement does not disappear, but it transforms into a symbol that maintains a connection with the past.

Engagement represents a living and even dynamic link between tradition and modernity, an eloquent example of contemporary socio-cultural transformations. It reflects the tension between continuity and change, between normative expectations and subjective choices, as well as the way individuals negotiate the meaning of emotional relationships in societies marked by diversity, mobility, and increased access to multiple cultural models.

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