

ENGAGEMENT. PAST AND PRESENT

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Abstract

An institution of family law that is not currently found in the Family Code, engagement existed in the Romanian law prior to the current regulations, representing the mutual promise between two people that they will marry one another.

Regulated under the Article 266 of the new Civil Code, engagement has the same regulatory framework, this time legal, representing the mutual promise to conclude a marriage.

Keywords

Engagement, Romanian law, pre-marriage, trial marriage, promissory agreement, promise of marriage.

Engagement was and is defined as “mutual promise to end the marriage”.

Unregulated in the Family Code, engagement existed in the Romanian law prior to the current regulations, representing the mutual promise made by two people that they will marry one another, usually made in a festive atmosphere. Engagement cannot be regarded as a promissory agreement, because it does not entail the existence of an obligation to enter into marriage. In other words, the freedom to marry, through its component - the right not to marry, makes such a legal obligation impossible. From a sociological point of view, engagement is an event that is as important as the religious marriage ceremony. It expresses the same covenant, feelings, emotions and may also be celebrated in a holy place of worship. It is a beautiful, natural thing preceding the definitive union through marriage. In the modern sense of the term, “marriage promises are reinforced by the prospective spouses’ living together,” a kind of “pre-marriage” or “trial marriage”. Although, legally, the mere promise of marriage is sufficient to raise issues pertaining to legal qualification and responsibility, in practice there is no relevant litigation cause in this matter, which means that any potential disputes will be placed in the plenum of the patrimonial relations between the common-law spouses and of establishing paternity outside marriage, if there are any resulting children.

Under the old legal regulations, namely the Calimach, Caragea and Donici Codes, engagement was a promissory agreement obliging the betrothed to conclude the marriage. At that time, engagement was compulsory, and it had to be followed by marriage within 2 to 4 years.

In certain cases the dissolution of the engagement was allowed; engagement was thus a legal status prior to marriage. Subsequently, the Civil Code and the Family Code no longer regulated engagement in an effort to give full consistency to matrimonial freedom.

In the current Romanian legislation, engagement does not produce legal effect, and is not a legal requirement for marriage. Moreover, any promise of marriage is considered void if it tends to restrict the individuals’ freedom to marry. Since it is not a contract, the conditions required thereof under the law do not apply to it.

The conclusion of the engagement is not subject to any formalities and may be proved by any evidentiary means.

The conclusion of marriage is not subject to the conclusion of the engagement.

While it is not compulsory for engagement to lead to the conclusion of the marriage (the penal clause stipulated for breaking an engagement is deemed to be unwritten), it may produce legal effects in certain situations.

Traditionally, engagement did not produce any legal effect, but in theory it was considered that only in the case of an unjustified withdrawal from a planned marriage, did the fiancé or the fiancée who was abandoned have the right to address the court, under Article 998 of the Civil Code, in order to demand that the person liable for breaking the engagement should be sentenced to damages, provided that the former could prove that the termination of the engagement had caused him or her injury. Under the new regulation, this may generate certain legal effects, in the cases provided by Article 268 - *The returning of the gifts* and Article 269 - *Liability for breaking the engagement*, of the New Civil Code.

Thus, in the case of a broken engagement, the gifts the fiancé or the fiancée received in consideration of the engagement or, throughout its duration, in consideration of the marriage, are subject to being returned, with the exception of ordinary gifts. It is not specified whether these are the gifts received by either of the betrothed from other people, or the gifts they gave to each other; in the silence of the law, we think that any of these gifts are subject to restitution. In future, jurisprudence bears the burden of establishing criteria based on which a unitary ascertainment may be made concerning which of these gifts can be considered ordinary, so that they may be excluded from the duty of restitution under the legal obligations.

The party that breaks the engagement in abusive manner may be forced to compensation for the expenses incurred or contracted for the marriage. Also, the party which culpably led the other party to break the engagement may be liable for damages.

The jurisdiction to hear such cases belongs, according Article 265 of the Civil Code, to the guardianship court and the right to file a claim is subject to a special term, one year after the breaking of the engagement.

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