

# ENGAGEMENT - „COMMITMENT TO MARRY” OR „MARRIAGE COVENANT”?

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## Abstract

According to the provisions of the Civil Code in force, engagement is the mutual promise to conclude the marriage. As it will emerge at the end of our study, in order to be in the presence of an engagement, the promise to conclude the marriage must be mutual, i.e. bilateral, concordant of both parties, man and woman.

In the course of our study we will also make a brief history of the main legal regulations of this institution and also, given that over the ages various opinions have been expressed, we will analyze and find out what is the legal nature of engagement and its legal characters. At the same time, we will find out how to prove that two people, a man and a woman, are engaged and what are the substantive and formal conditions for the conclusion of the engagement, as well as the impediments to the conclusion of the engagement.

Finally, we will analyze the effects of breaking off the engagement, the obligation to return the gifts and who is liable for the wrongful breaking of the engagement.

**Keywords:** engagement, family law, promise, marriage, breaking of engagement, restitution of gifts, wrongful breaking of engagement.

## 1. A short history of engagement

Engagement, this transition from celibacy to marriage, is thousands of years old and is also mentioned in the Old Testament where it was referred to by the Hebrew term „aras” meaning „marriage commitment” or „marriage covenant”<sup>1</sup>.

In our land, in Moldavia, the ruler Scarlat Callimachi (1773-1821), promulgated, in 1817, a „Civil Code of the Principality of Moldavia”, also called the „Calimah Code” or the „Civil Code of Moldavia”, in which engagement was considered "a compulsory legal state, prior to marriage", and for engagement to be legal, the man had to be at least 14 years old and the woman 12 years old, a condition that was also valid for marriage at that time<sup>2</sup>.

In Walachia, Caragea's Code (Legiuirea Caragea), which came into force on 01.09.1818, regulated the engagement, in Chapter XIV, as a legal state prior to marriage (first marriage agreement) and established the cases in which the engagement could be broken<sup>3</sup>.

In our first Civil Code, adopted in 1864, all provisions relating to the institution of engagement were repealed and the Family Code of 1864 did not have any regulations on this matter.

Currently, the Romanian Civil Code in force regulates engagement in Chapter I, art. 266-270 of Book II (About family), Title II (Marriage) and is defined as „the mutual promise to enter into marriage” [art. 266 para. (1) CC]<sup>4</sup>.

## 2. Concept of engagement in the Civil Code in force

In the specialized literature prior to the Civil Code in force, but also after its adoption, engagement was defined as „a mutual promise of marriage, usually made in a festive setting”<sup>5</sup>, „a mutual agreement between two

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<sup>1</sup> D. Lupașcu, R. Gălea, *Unele considerații privind reglementarea logodnei în noul Cod civil român și în unele legislații străine*, in *Lex et Scientia International Journal* no. XVII, vol. 1/2010, pp. 177.

<sup>2</sup> A. Rădulescu (coord.), *Codul lui Calimach*, critical ed., Academia Republicii Populare Române Publishing House, 1958, Bucharest, p. 5, 91.

<sup>3</sup> A.R. Motica, *Considerații privind instituția logodnei în Codul civil român*, în *Analele Universității de Vest, Seria Drept* no. 2/2013, pp. 120.

<sup>4</sup> The Civil Code was adopted by Law no. 287/2009 on the Civil Code, published in the Official Gazette of Romania no. 511/24.07.2009 and entered into force on 01.10.2011, according to Law no. 71/2011 for the implementation of Law no. 287/2009 on the Civil Code, published in the Official Gazette of Romania no. 409/10.06.2011, which also introduced a number of amendments. The Civil Code was republished in the Official Gazette of Romania no. 505/15.07.2011.

<sup>5</sup> M. Avram, *Drept civil. Familia*, 3<sup>rd</sup> ed., revised and supplemented, Hamangiu Publishing House, Bucharest, 2022, p. 73.

persons to marry”<sup>6</sup>, „a mutual promise given by the future spouses, man and woman, to enter into marriage”<sup>7</sup>, „an optional legal state, prior to marriage, arising from a mutual promise made by a man and a woman, according to the law, to enter into marriage”<sup>8</sup> or „an optional pre-nuptial mutual commitment of the future spouses, agreed upon precisely with a view to entering into marriage”<sup>9</sup>. In another opinion<sup>10</sup>, it was pointed out that „engagement is nothing more than an empty shell, a legal act without its own content of specific rights and obligations, but which brings together particular rules of civil liability or unjust enrichment, for the hypothesis of unfinished promises of marriage”.

### 3. Legal nature of the engagement

In order to establish the legal nature of the engagement, we must start from the provisions of art. 266 para. (1) CC, which states that „Engagement is the mutual promise to enter into marriage”. Therefore, the lawmaker provided for that, in order to be in the presence of an engagement, the promise to conclude the marriage must be mutual, *i.e.*, bilateral, concordant of both parties.

Different opinions have been expressed in the literature on the legal nature of engagement. Thus, while some authors<sup>11</sup> qualify engagement as a „legal act, a bilateral convention”, other authors<sup>12</sup> consider engagement as „a mere legal fact”.

There are also authors<sup>13</sup> who argue that engagement is „a *sui generis* bilateral civil legal act”, a view we endorse. The legal act of engagement is characterized as *sui generis* by the authors mentioned, because it does not make the conclusion of the marriage mandatory, the freedom of marriage is not limited at all and can lead to the dissolution of the couple's relationship by breaking it.

It should be stressed that the conclusion of marriage is *not conditional* on the prior conclusion of an engagement, and if an engagement has been concluded beforehand it does not automatically become a marriage. In other words, the *conclusion of the engagement does not create an obligation to conclude the marriage*, which is also clear from the provisions of art. 266 para. (4) CC, according to which „The conclusion of the marriage is not conditional on the conclusion of the engagement”. In a case<sup>14</sup>, the court held that „the conclusion of an engagement does not create a family, but only a possible prerequisite for its birth, but on the basis of a mutual promise made by the parties to conclude the marriage”.

As has been pointed out in the literature<sup>15</sup>, engagement does not imply that the two fiancés, man and woman, are obliged to live together in fact, but neither does it exclude it.

Proof of the engagement may be furnished by written documents, witnesses, presumptions, the confession of one of the parties made on his or her own initiative or obtained on cross-examination, or by any other means provided for by law. Specifically, according to the art. 266 para. (3) final sentence CC, *the engagement can be proved by any means of evidence*, including by mentions made by both fiancés on social networks (Facebook,

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<sup>6</sup> C-tin Hamangiu, I. Rosetti-Bălănescu, Al. Băicoianu, *Tratat de drept civil*, vol. I (Restitutio), All Beck Publishing House, Bucharest, 1996, p. 188.

<sup>7</sup> T. Bodoașcă, A. Csakany, *Opinii privind reglementarea logodnei în Codul civil român*, in *Dreptul* no. 5/2015, p. 9.

<sup>8</sup> D. Lupașcu, C.M. Crăciunescu, *Dreptul familiei*, 4<sup>th</sup> ed., amended and updated, Universul Juridic Publishing House, Bucharest, 2021, p. 50.

<sup>9</sup> M.A. Opreșcu, *Logodna în noul Cod civil*, in *Revista Română de Jurisprudență* no. 4/2012, p. 251.

<sup>10</sup> M. Floare, *Privire istorică, în spațiul dreptului privat european, asupra rolului logodnei și al formalităților prenuptiale în economia reglementărilor privind căsătoria*, in *Revista Română de Drept Privat* no. 3/2018, p. 116.

<sup>11</sup> E. Florian, *Considerații asupra logodnei reglementată de noul Cod civil*, in *Curierul Judiciar* no. 11/2009, p. 632; C. Hageanu, *Logodna în noul Cod civil*, in *Curierul Judiciar* no. 10/2011, p. 529; C.a Roșu, A.F. Moca, *Reglementarea logodnei în noul Cod civil*, in *Dreptul* no. 1/2012, p. 81.

<sup>12</sup> A. Gherghe, *Noul Cod civil. Studii și comentarii*, vol. I, collective coordinated by Marilena Uliescu, Universul Juridic Publishing House, Bucharest, 2012, p. 609; I. Albu, *Căsătoria în dreptul român*, Dacia Publishing House, Cluj-Napoca, 1988, pp. 28-32.

<sup>13</sup> T. Bodoașcă, *Dreptul familiei*, 5<sup>th</sup> ed., revised and added, Universul Juridic Publishing House, Bucharest, 2021, pp. 54-56; D. Lupașcu, C.M. Crăciunescu, *op. cit.*, p. 50; B.D. Moloman, C. Ureche Lazăr, *Codul civil. Cartea a doua. Despre familie. Art. 258-534, Comentarii, explicații și jurisprudență*, 2<sup>nd</sup> ed., revised and supplemented by B.D. Moloman, Universul Juridic Publishing House, Bucharest, 2022, p. 92.

<sup>14</sup> Bucharest County Court, 5<sup>th</sup> civ. s., civ. dec. no. 455/A/07.02.2018, available at [www.rolii.ro](http://www.rolii.ro) (accessed on 03.05.2020).

<sup>15</sup> E. Florian, *Dreptul familiei. Căsătoria. Regimuri matrimoniale. Filiația*, 8<sup>th</sup> ed., C.H. Beck Publishing House, Bucharest, 2022, p. 26.

Twitter etc.)<sup>16</sup>. It should also be pointed out that according to the provisions of art. 249 CPC, *the burden of proof lies with the complainant*<sup>17</sup>.

For example, in a dispute<sup>18</sup>, the court pointed out that „*the giving of a ring engraved with her name does not prove the fact of engagement, since, on the one hand, it was the defendant's birthday when the ring was given and, on the other hand, the law does not make the conclusion of the engagement conditional on this fact*”. In another dispute<sup>19</sup>, the court stated that „*as regards the conditions required by law for the valid conclusion of an engagement, it is not necessary and not required that the parties sign a legal document containing a mutual promise, since the mere acceptance of the engagement can be proved by any means of evidence*”. In this regard, the court emphasized that „*the conclusion of the engagement may also be proved by photographs or documents taken on the occasion of the marriage feast or by the engagement certificate issued by the priest*”.

#### 4. Legal characteristics of engagement

From the interpretation of the legal definition of engagement, governed by art. 266 para. (1) CC, this institution has the following legal characteristics<sup>20</sup>:

- an *engagement is concluded between a man and a woman*, their declared and common purpose being to enter into a marriage in the future, by their mutual promise to each other. Art. 266 para. (5) CC expressly and imperatively states that „*an engagement may only be concluded between a man and a woman*”. In other words, *people of the same sex cannot get engaged*;
- the *engagement is freely consented*, that is, in order to be validly entered into, the consent expressed by the promise made must be *freely given and non-vitiated*. This expression of will, it was pointed out in a case<sup>21</sup>, which concerned the restitution of gifts received during the engagement, „*cannot be vitiated by the existence of divorce proceedings, since both parties knew that it was made under a suspensive condition, pursuant to art. 1400 CC.*”<sup>22</sup>;
- the *engagement is consensual*. Thus, according to art. 266 para. (3) CC (1<sup>st</sup> sentence), „*the conclusion of the engagement is not subject to any formality*”, the fiancés being free to choose the manner of expressing their consent, and not being obliged to comply with any formality;
- the *engagement does not have a time limit*, the law in force does not set a deadline for the marriage<sup>23</sup>. As a rule, the engagement lasts until the conclusion of the marriage. We say as a rule because at any time prior to marriage, the engagement can be broken by either of the fiancés;
- *engagement is based on the principle of equality between man and woman, i.e. between fiancés*. The principle of equality between men and women is enshrined in art. 16 para. (1) of the Romanian Constitution, which states that „*citizens are equal before the law and public authorities, without privileges or discriminations*”;
- the *engagement is concluded for the purpose of concluding the marriage*, in other words, the conclusion of the engagement does not establish a family, but only a possible family can be "born". As a reminder, an engagement is the mutual promise to enter into marriage;
- *engagement is optional*, meaning that engagement is *not compulsory* for the conclusion of a marriage. Art. 266 para. (4) CC provides that „*the conclusion of marriage is not conditional on the conclusion of the engagement*”;
- *engagement is monogamous*, which means that none of the fiancés can be engaged to more than one person at the same time, since in such cases the engagement would be null and void for violation of the

<sup>16</sup> With the ancient Greeks and Romans the consent for engagement could be given verbally or in writing on tablets on which the dowry was inscribed (Carmen Oana Mihăilă, *Călătorie prin trecut și prezent: căsătoria și regimurile matrimoniale*, in *Studia Universitatis Babeș Bolyai* no. 4/2020, p. 578, footnote 35).

<sup>17</sup> According to art. 249 CPC, „he who makes a plea in the course of the proceedings must prove it, except in cases specifically provided for by law”.

<sup>18</sup> Mehedinți county court, 1<sup>st</sup> civ. s., civ. dec. no. 25/F/12.03.2013, available at [www.rolii.ro](http://www.rolii.ro) (accessed on 22.09.2019).

<sup>19</sup> Bucharest Court of district 1, civ. s., civ. sent. no. 17.717/23.11.2016, available at [www.rolii.ro](http://www.rolii.ro) (accessed on 13.01.2020).

<sup>20</sup> For details, see Al. Bacaci, V.C. Dumitrache, C.C. Hageanu, *Dreptul familiei*, 7<sup>th</sup> ed., C.H. Beck Publishing House, Bucharest, 2012, pp. 17-18; C.C. Hageanu, *Dreptul familiei și actele de stare civilă*, Hamangiu Publishing House, Bucharest, 2012, p. 16; D. Lupașcu, C.M. Crăciunescu, *op. cit.*, (2021), pp. 51-52; L. Irinescu, *Instituția logodnei – între tradiție și inovație*, in "Revista de științe juridice" no.2/2014, pp.47-53.

<sup>21</sup> Reșița county court, 1<sup>st</sup> civ. s., civ. dec. no. 145/A/21.03.2019, available at [www.rolii.ro](http://www.rolii.ro) (accessed on 22.09.2019).

<sup>22</sup> According to art. 1400 CC, „the condition is suspensive when its fulfillment depends on the effectiveness of the obligation”.

<sup>23</sup> Art. 83 and 85 of the Code of Calimach stipulated that „engagement must be followed by wedding within 2 or 4 years at the most” (See C-tin Hamangiu, I. Rosetti-Bălănescu, Al. Băicoianu, *op. cit.*, p. 188).

substantive conditions required by law for its valid conclusion, according to art. 266 para. (2) CC<sup>24</sup>.

## 5. Substantive and formal conditions for the conclusion of the engagement

### 5.1. Substantive conditions for the conclusion of the engagement

The substantive conditions for the conclusion of the engagement are, according to art. 266 para. (2) CC, identical to those for the conclusion of marriage, with the exception of the medical opinion and the authorization of the guardianship court. Therefore, the basic conditions for the conclusion of the engagement are:

- *consent* to the conclusion of the engagement must be: *personal, freely expressed, mutual and full*. In other words, consent *cannot be expressed by an attorney*, even if the mandate is in authentic form, cannot be affected by any defect, cannot be affected by any term or condition;

- *age of the future fiancés*. Given the reference that the legislator makes to the provisions of art. 272 CC, the age at which an engagement can be concluded is, as a rule, 18 years for both women and men. However, art. 272 para. (2)-(5) CC also provides for an *exception* to this rule, an exception which is applied according to the art. 266 para. (2) CC, *i.e., for good cause*, a minor who has reached the age of 16 may become engaged with the consent of his/her parents or, where applicable, his/her guardian. If there is no unanimity between the parents on whether to agree to the engagement, the disagreement between them will be submitted to the court, which will resolve it in the best interests of the child. If one parent is deceased or unable to express his or her will, the consent of the other parent is sufficient. If there are no parents or guardian who can consent to the engagement, the consent of the person or authority who has been empowered to exercise parental rights is required.

The legislator has not defined the phrase „*for good cause*” so that the analysis of the existence of good cause will be carried out on a case-by-case basis by the parents, the guardian or those entitled to exercise parental rights, and in case of disagreement between parents the existence of good cause will be examined by the guardianship court. Minors who have been granted full capacity by the guardianship court according to the art. 40 CC<sup>25</sup> may also validly enter into an engagement. In a case<sup>26</sup>, the court held „*that according to art. 266 CC in conjunction with art. 272 CC, the substantive conditions for the conclusion of an engagement by a minor over 16 years of age refer only to the freely expressed consent of the minor and the consent of his/her parents, given that art. 266 para. (2) CC expressly states that the provisions on the conclusion of marriage, with reference to medical opinion and the authorization of the guardianship court, are not applicable. In those circumstances, the court of first instance wrongly held that the defendant was not old enough to enter into an engagement, since the evidence produced in the case shows that her parents agreed to the engagement and even received money for their daughter from the plaintiff by way of a transfer*”;

- *sex difference*. Art. 266 para. (5) CC states that „*an engagement may only be concluded between a man and a woman*”. So, like marriage, engagement is forbidden between people of the same sex. We consider the express regulation in art. 266 para. (5) CC that an engagement can only be concluded between a man and a woman since, in para. (2) of the same article states that the provisions on the substantive conditions for the conclusion of marriage also apply to engagement. However, one of the basic conditions of marriage is the prohibition of same-sex marriage;

- *people who get engaged not to be married or engaged*. A person who is married or already engaged cannot validly enter into an engagement or a new engagement. This condition derives from bigamy, which is a negative substantive condition for marriage. It is true that, in the case of engagement, one cannot speak of bigamy, which is the marriage of a person who is already married. Therefore, if a married person becomes engaged to another person, we are not in the presence of bigamy, but we are in the presence of a failure to fulfill a substantive condition necessary for the valid conclusion of the engagement, the condition represented by the prohibition to become engaged to persons who are married or already engaged;

- *non-existence of natural kinship*. Future fiancés (man and woman) must not be related in the direct or collateral line up to and including the fourth degree. For „*good cause*”, collateral relatives of the fourth degree

<sup>24</sup> Caransebeș district Court, civ. sent. no. 1435/01.11.2012, available at [www.rolii.ro](http://www.rolii.ro) (accessed on 22.09.2019).

<sup>25</sup> Art. 40 CC, with the margin „Anticipated capacity of exercise”, provides that „For justified reasons, the guardianship court may recognize the full capacity of exercise to a minor who has reached the age of 16. To this end, the minor's parents or guardian will also be heard, and, where appropriate, the opinion of the family council will also be sought.”

<sup>26</sup> Botoșani county court, civ. dec. no. 700/02.12.2020, available at [www.rolii.ro](http://www.rolii.ro) (accessed on 10.02.2021).

(first cousins) may be engaged to be married to each other [art. 274 CC in relation to art. 266 para. (2) CC];

- *the non-existence of civil kinship (adoption)*. Since adoption creates a filiation link between the adopter and the adopted person, as well as a kinship link between the adopted person and the adopter's relatives, the engagement cannot take place between the adopted person and those who have become relatives through adoption. The prohibitions and exceptions laid down with regard to natural family kinship also apply in the case of adoption;
- *non-existence of guardianship*. This prohibition results from the proper application under art. 266 para. (2) CC, of the provisions of art. 275 CC, according to which the guardian and the person who benefits from his/her protection may not marry.<sup>27</sup>

## 5.2. Formal conditions for the conclusion of the engagement

In accordance with the provisions of art. 266 para. (3) CC, engagement is not subject to any formality and may be proved by any means of evidence. In a case<sup>28</sup>, our supreme court held, with regard to the conclusion of an engagement, „*that in accordance with the principle of consensualism, it may be concluded by simple agreement of the parties and may be proved by any means of evidence. Therefore, there is no need for the parties to present a document certified by a state authority to justify the conclusion of the engagement*”. In the same dispute, with regard to the proof of engagement, it was held that «*the appellant-plaintiff has proved that there were mutual promises to marry between him and the respondent, in this regard he has submitted messages sent to each other by e-mail, in which both parties addressed each other as „future husband”. It also appears from the content of the e-mails sent by the two to each other that they had planned to get married and live together, with the appellant-plaintiff informing the respondent on 28.10.2011 that on 22.12., when he was going to meet her, he was going to put the engagement ring he had bought on her finger*».

But, as has been pointed out in the specialized literature<sup>29</sup>, in order to help them in the future in proving their engagement, the fiancés can opt to conclude the engagement in written form or by a notarized deed.

We also consider that, although the law does not require any formalities to be carried out for the conclusion of the engagement, there is nothing to prevent the fiancés from formalizing the conclusion of the engagement by concluding a deed.

## 6. Effects of engagement

As already mentioned, engagement is *optional* and therefore not a necessary precondition for marriage. In other words, the marriage can be concluded without the prior existence of the engagement, and the existence of the engagement does not oblige to the conclusion of the marriage.

With the conclusion of the engagement, the two parties, the man and the woman, obtain the status of *fiancés*, which in itself constitutes an<sup>30</sup> *effect* of the conclusion of the engagement. The status of fiancés results from the provisions of Article 267 para. (1) and (2) of the Civil Code.<sup>31</sup> and Art. 268 para. (1) and (3) Civil Code<sup>32</sup>.

An analysis of the legal provisions governing the institution of engagement shows that fiancés have a number of *rights* and *obligations*, namely:

- the right of the fiancés to break off the engagement [art.267 para. (1) Civil Code];
- the right or, as the case may be, the obligation of the fiancés to return, in the event of the break-up of the engagement, the gifts they have received in consideration of the engagement, with the exception of ordinary gifts (art. 268 Civil Code);
- the right of fiancés to be compensated (art.269 Civil Code);
- the obligation to compensate for wrongful breaking off the engagement (art.269 Civil Code)<sup>33</sup>.

<sup>27</sup> According to art. 275 CC, „marriage is stopped between the guardian and the person benefiting from his/her guardianship”.

<sup>28</sup> HCCJ, 1<sup>st</sup> civ. s., dec. no. 3084/11.11.2014, available at [www.csj.ro](http://www.csj.ro) (accessed on 21.09.2019).

<sup>29</sup> L. Irinescu, *op. cit.*, p. 51.

<sup>30</sup> T. Bodoaşcă, *op. cit.*, (2015), p. 49.

<sup>31</sup> According to art. 267 para. (1), (2) CC: „(1) A fiancé who breaks the engagement cannot be forced to conclude the marriage. (2) The penal clause stipulated for the breaking of the engagement is considered unwritten”.

<sup>32</sup> According to art. 268 para. (1), (3) CC: „(1) In the event of the breakdown of the engagement, the gifts that the fiancés received in consideration of the engagement or, during the engagement, for the purpose of marriage, are subject to restitution, with the exception of ordinary gifts. (...) (3) The obligation of restitution does not exist if the engagement has ceased by the death of one of the fiancés”.

<sup>33</sup> According to art. 269 CC: „(1) A party who wrongfully breaks off an engagement may be required to pay compensation for expenses incurred or contracted for the purpose of the marriage, insofar as they were appropriate to the circumstances, and for any other damage

It should be noted that, according to the provisions of Article 270 of the Civil Code, "The right of action based on the provisions of Articles 268 and 269 shall be subject to statute of limitation one year after the breaking off the engagement".

As pointed out in the literature<sup>34</sup>, the fiancés may also agree, verbally or in writing, on certain rights and obligations that are compatible with the engagement, such as: setting the date and place of the wedding, the place of the wedding, the list of guests, the material contribution of each to support the event, the conditions under which the engagement is broken, the manner in which the gifts will be returned<sup>35</sup> etc.

Children born in a engagement relationship have the status of children out of marriage, following the respective legal regime<sup>36</sup>. In this case, the presumption of filiation with respect to the alleged father, governed by Art. 426 para. (1) of the Civil Code, according to which "Paternity is presumed if it is proved that the alleged father has cohabited with the child's mother during the legal time of conception".

The fiancés can choose the matrimonial property regime, but such an agreement will only take effect from the moment of the marriage<sup>37</sup>.

With regard to property acquired by the fiancés during the period of the engagement, we would point out that this is subject to the rules of co-ownership (joint ownership in shares).

## 7. Conclusions

Now, at the end of our study, we can conclude that engagement, although not a formality prior to marriage, is, along with it and other aspects of people's family life, *a fundamental component of our lives*.

In order to be in the presence of an engagement, as provided by the legislator, *the promise to enter into an engagement must be mutual*, i.e. bilateral, concordant of both parties (man and woman).

The conclusion of a marriage is not conditional on the prior conclusion of an engagement, and if an engagement has been concluded beforehand it does not automatically become a marriage. In other words, *the conclusion of the engagement does not create an obligation to conclude the marriage*. In the same sense, the courts in our country have also ruled that *the conclusion of the engagement does not create a family, but only a possible premise for its birth, but on the basis of the mutual promise that the parties make to each other to conclude the marriage*.

Finally, engagement is *a sui generis bilateral civil legal act* because it does not make the conclusion of marriage mandatory, the freedom of marriage is not limited at all and can lead to the dissolution of the couple's relationship by breaking it off.

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caused. (2) A party who has culpably caused the other party to break off the engagement may be liable to pay damages under paragraph (1)".

<sup>34</sup> D. Lupașcu, C.M. Crăciunescu, *op. cit.*, (2021), pp. 60-61.

<sup>35</sup> Art. 268 CC, with the marginal „Return of gifts”, regulates the manner in which gifts are returned: „(1) In the event of the breakdown of an engagement, gifts which the fiancés have received in consideration of the engagement or, during the engagement, in view of the marriage, with the exception of customary gifts, shall be subject to restitution. (2) Gifts shall be returned in kind or, if this is no longer possible, to the extent of enrichment. (3) The obligation of restitution does not exist if the engagement has ceased by the death of one of the fiancés.”

<sup>36</sup> B.D. Moloman, C. Ureche Lazăr, *op. cit.*, (2022), p. 95.

<sup>37</sup> N.C. Aniței, *Convenția matrimonială potrivit noului Cod civil*, Hamangiu Publishing House, Bucharest, 2012, p. 24.

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