

ENGAGEMENT AS A LEGAL INSTITUTION IN THE PRE-COMUNIST ALBANIAN CULTURE AND ITS TRANSFORMATION AS A SOCIAL INSTITUTION DURING THE POST-COMMUNIST PERIOD

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ABSTRACT

This research paper focuses on the analysis of the social institution of engagement prior to marriage. First, the research will look at the engagement as a legal institution in the pre-communist Albanian society. This will be followed by an exploration of engagement to the present days as a socially regulated institution. The questions will be asked as to how this particular phenomenon has changed, what are the new social dimensions? The study uses a qualitative approach. The data were collected using the in-depth interview. Interviews were conducted with 30 women who were married at an early age (before their 19th birthday). The empirical findings indicate that engagement is no longer an institution regulated by the law, and that the woman's engagement as a step towards marriage has undergone changes in its function. The existence of engagement as a social institution comes out of a need to mesh the novelties of the couple relationship in contemporary times with the cultural inheritance of the past.

Keywords: Engagemet, marriage, matchmaker, cohabitation, union, legal institution, social institution.

INTRODUCTION

This article is based on data collected during the author's dissertation research. This article focuses on the engagement of women in Albania. Engagment in Albania has been and is still an intermediate step towards marriage. This paper draws upon sociological, anthropological and ethnographic studies on this particular phenomenon. In addition, the paper examines the Albanian legislation on marriage and family. The focus of this paper, therefore, will be the transformation of the institution of engagement from pre-communist Albanian society to the present day. There is a lack of studies on this phenomenon in the Albanian society. Therefore this research is important to address this gap in knowledge. This paper will, first, examinethe customary norms, as well as legal norms underlying engagement in Albanian society in pre-communist Albania. This will be followed by an exploration of engagement as a social, not legal institution that exist in post communist Albania.

One of the purposes of this paper is to highlight the transformation of the institution of engagement from an institution regulated by customary and legal norms in pre-communist Albania, to a social institution that is merely part of a cultural tradition. The other purpose of this paper is to present the main forms of engagement in contemporary times. Furthermore, this research aims at describing the new functions that engagement has taken over in present day Albania, compared to pre-communist time.

LITERATURE REVIEW**The Engagement, As A Regulated Institution in Pre-Communist Albania.**

In order to understand the trajectory of the development of family during this period, one need to look at the simultaneous existence of several factors:

1- Customary norms were functional in those areas where the Ottoman regime was not able to stretch its authority. In the mountain areas, there were the Canon of LekeDukagjini, which was in the north of Albania, the Canon of Scanderbeg, in the center of Albania, and the Canon of Labërisë in Southern Albania.

2-The Civil Code of the Ottoman Empire, according to which family relations were regulated based on their widely shared beliefs.

3-Civil code of year 1929, in all articles on the regulation of family activity had a new Western perspective, different from the ones prior to it.

According to customary right, the legitimacy of marriage was viewed as closely linked with respect for the religious norms and the implementation of the ways approved in the canon on the marriage. In traditional Albanian society, where the customary norms were above all laws, marriage could not be carried out without the mediation of a third person, which, in the customary right was called the matchmaker. According to article 40 of the Canon of Lek Dukagjini, a woman was forbidden to marry without matchmaking: "There is no bride without matchmaking." (2001:13)

The studies that focus on typology of marriages of the period of independence until year 1929, highlight the religious character of marriage and the idea that marriage is everlasting. The importance of religious crown is mentioned in the customary right, especially in the Kanon of Scanderbeg according to which: "*The canon as a law of the people is always under the influence of religion, recognizes and honors religious crown as a legal and reinforcing link of the family, therefore the cohabitation without crown is considered improper even in the canon(Ilia, F., 1993: 41)*"

This paragraph highlights the power of the traditional norms that stated that marriage was the only legitimate place of the sexual act. Therefore, the engagement in the religious norms and customary norms meant that the girl was a virgin during the engagement, it was only promised for marriage during the engagement. The laws of the Civil Code of 1929, were a serious attempt between two worlds that were trying to differentiate between each other, regardless of the fact that it did not bring about real changes in the life of the women. Engagement continued to be an intermediate phase towards marriage, which, regardless of the lack of the legal formalities, was regulated and was foreseen in this code. According to Civil Code of 1929, article 114 read: "*Engagement is established with the promise of marriage and is carried out based on the customs of the place.*" (2010:61). In addition, article 116 of this legislation foresaw other possibilities of dissolution of engagement which were presented to the two sides from a reliable intermediary. If he failed, then, close friends or relatives of the couple set up an arbitrary committee (Civil Code 1929, 2010:62).

The Civil Code of 1929 was the last Code in which engagement was included as an institution regulated by law. During the governing of the communist regime in Albania (1945-1990) some of the first changes were undertaken in the legal sphere. With regard to our topic, engagement ceased to be an institution in the Family Code of the People's Socialist Republic of Albania(1982). None of the articles of the Family Code foresaw any legal

initiative to regulate or administer the consequences brought about during the engagement of two persons, because this was considered an informal relations from a legal standpoint.

Marriage, Living Together and Living in Union: A Legal and Social View

It is important to provide a view of marriage as a juridical act according to the Family Code of the Republic of Albania (2012:6,7) "Marriage is a legal coexistence that is based on moral and legal equality, on the feeling of love and reciprocal understanding. Marriage can be formed between a man and a woman that have reached age 18. The court of the country where marriage occurs may allow the marriage even prior to this age. The marriage is done in front of a civil servant, with the free consent of both future spouses"

However, according to the Family Code (2012:58): "The Cohabitation is a factual union between a man and a woman, who live as a couple. This type of living as a couple is characterized by living together, which is characterized by stability and continuity. The persons who live together could foresee the regulation of the consequences that may emerge as a result of cohabitation with regards to the possible birth of children, and the wealth during the cohabitation, establishing an agreeming in front of a notary."

As the scholar of marriage and family relation Carlfred Broderic (1984:2-4) points out the marriage is;a) a demographic event, b) the joining of two family and social networks,c) a legal contract between the couple and the state, d) an economic union, e) the most common form of adult cohabitation, f) the context of most sexual activity, g) a reproductive unit, i) a unit that socializes children, k) a opportunity to develop an intimate and sharing relationship.

In a research of marriage counsellors, Ridley, Peterman and Avery (1978) identified four common patterns of cohabitation; 1)Linus blanket when he/she prefers a relationship with anyone better than to being alone, 2) Emancipation, as a way to break free from their parents' values and influence, 3) Convenience, in which one person is the giver and the other is the taker. The woman in this type of cohabitation, supplies loving care and domestic labor, and hopes, but dares not ask, for marriage. 4) Testing, before marriage.

Since year 2005, the United Nations Children's Fund (UNICEF,2005) also proposed a recognition of informal marriages (unions) as part of the problem of marriage at a young age. Unions that are recognized as marriages in either statutory or customary law are cohabitation. In this type of cohabitation, when a couple lives together as if married, raises the same human rights concerns as marriage. Additional concerns due to the informality of the relationship, for example, inheritance, citizenship and social recognition, might make girls in informal unions vulnerable in different ways other than those who are in formally recognized marriages.

METHODOLOGY

This research uses a qualitative methodology. Data were collected through the instrument of in-depth qualitative interview with 30 young women who were engaged while they were still adolescent. Participants were reached through social networks, given the sensitive nature of the topic under investigation (Larzelere & Klein, 1987). In addition, the research uses the technique of text analysis and the content analysis of the documents, legislation and various studies of the communist and pre-communist time. In order to preserve the anonymity of the participants, pseudonyms, instead of real names are used throughout this paper.

FINDINGS OF EMPIRICAL DATA

This part explores empirical data based on qualitative interviews with thirty women who were married at an early age. The questions are: Do people get engaged today? What are its main functions? What are the changes compared to pre communist traditional society?

The data indicate that out of thirty participants, nine of them were engaged through a matchmaker, seventeen of them were engaged based on love, and four were engaged through a third person. Twenty six of the interviewed were first betrothed then married. Their engagement had lasted from a minimum of one month to a maximum of 2 years. Only four of them were married without being engaged first. The reason in one case, for example, was that her parents had opposed her choice of her partner, therefore she had decided to run away from her family and go over to her future husband's house, without getting engaged first. The data also show that engagement remains a stage towards marriage. However, the way it is carried out do no longer follow traditional ways. The interviews indicate that:

1- *The matchmaker coming to the family*, or the head of the family is an important factor in the realization of girl's engagement. These girls accept to engage after their family members have agreed upon the relationship among the couple's families. The role of the couple who are engaged is only to meet, see each other, and like each other without getting to know each other beforehand. They spend from several minutes, to some hours at best, to talk and decide upon the engagement.

Besa, for example told her story: *"the worker of the civil office in our village used to come often to my parents telling my mom that she liked me and she wanted to have me as a wife for her brother. In the meantime, there was another person who had come to my family and asked for me to be the wife."*

While Ilda remembered: *"I was engaged to a man that I did not like since I was in second year in high school. My dad arranged my engagement. When he came home from work one day, he told my mom that the next day, people will come to our home to ask for my hand and he had agreed to betroth me to that person."*

Rena also recalled: *"One of the acquaintances of my dad knew somebody in the town, that was looking for a girl and he was serious about it. My dad liked the idea, even though I was only 16 years old. They convinced me that this was best for me. I got engaged even though I did not feel anything about that person."*

2- *Engagement after e period of dating and falling in love*, based on free will of the couple. After a period of dating, they informed their parents about their relationship, as well as other members of their families and relatives. In these circumstances, the engagement serves as a way to receive social confirmation to increase the possibilities for further freedom in the couple's love relationship.

Said Ana: *"I was engaged before I began university studies. Nobody thought that I would get engaged so early. However, faced with the fact of a secret relation, they gave up. My sister who had left to attend university told my parents that if they did not agree to my engagement, she did not want to be responsible if I met secretly with the one that I loved. In fact, even the son of my uncle who was aware of our relationship told my parents that he did not think we would separate even if I was going to attend university studies. So even if they stopped us*

from seeing each other, we would still be seeing each other. Therefore after two or three rounds of discussions in our family, it was decided.”

Deni told her story: *“After several years of relationship, before I finished high school, he asked me if I wanted to get married to him. I told him yes. Later he and his father came over to my house. His father told my father ‘Our children are in love, therefore we have nothing else to do except for do things according to tradition.’ And we got engaged.”*

Suida recalled: *“ The engagement was done because I insisted on it soon after we got to know each other. I was raised to believe that if somebody loves you and is serious about it, he should come to your house and ask for your hand. I told this to my boyfriend. After a month of seeing each other every day, he came to my house and asked for my hand. My parents got very nervous because he came on his own, without being accompanied by any adult person. However, they accepted my engagement, knowing that his family was not quite unknown for them”.*

3-Engagement after a love relationship that is realized through a third person. This type of relationship is different from the first one, because the person that introduces the couple enables their meeting. Afterwards, it is the couple who undertake decision to continue their relation. The third person is an individual who knows both the girl and the boy and bring them together face to face and not through their family. Afterwards, the engagement could be realized only if the couple would like to inform their families upon their own volition.

Jola told her story: *“His best friend was the boyfriend of my female friend and they both enabled our meeting. We then later decided to go out. At that time I was in the middle of the fourth year of high school. I informed my parents telling my dad: ‘Dad, somebody will come and ask for my hand.’ He told me: ‘Ok, let him come.’ And then I tell him: ‘Get dressed, because he will soon be here.’ My dad said: ‘You are not joking? Are you serious.’ And then they started getting ready to receive people.”*

These excerpts from the interviews show that the women have followed the practice of engagement as a step towards marriage. Some of the women got engaged according to the traditions of pre-communist Albania, with a match-maker. While others got engaged not following customary norms. Yet, in most cases, they followed certain ceremonies, such as meeting with families, or they informed their parents about their intentions.

“Legalization” of Living in a ‘Cohabitation’, or ‘Union’ of Girls Prior to Engagement

Twenty six of the study participants who had gone through the stage of engagement before marriage, mentioned that their engagement had opened the door to going over to the home of their spouse. This allowed them to spend certain days in the home of their spouse’s parents. In fact, as several of the women alluded, they began to cohabit in their spouse’s home.

Deni, for example said that since her engagement at the end of her high school, she moved to her fiancée’s house where she lived:

“First we got engaged, but it did not last for a long time, because I went to live at his house. After two years at my husband’s home, where I took care of his sister and brothers, he thought that we should get married and thinking about establishing our own family, so that I could raise my children. Because, up until then, I literally lived there, but we were not officially married.”

Mirela, who is 21 years old, said how she got engaged when she was 16 years of age to her first fiancée, and began to live in his parents' house, right after engagement

“Quickly after we got engaged, he took me to his home and I began to spend time alone with my mother-in-law, while he used to go out and have fun... I was only 16, and as a child that I was, I accepted, although I did not want to... So we had a little wedding ceremony, but we were not officially married.”

Nela also remembered how, after her engagement at the age of 17, her fiancée used to spend time between Albania and Italy. Any time he would be back from Italy, they used to spend time to his parents' home. Following his departure to Italy, she would then return to her parents' home:

“Up until our engagement, my fiancée would not come very close to me. Any time we would go out, he would bring me back home. After engagement, everything changed. We became real husband and wife. In fact, any time he would come to Albania, we would live at his house, even though we were engaged. When he would leave for Italy, he would bring me back to his parents' home.”

Seven of the participants mentioned that they had to speed up the wedding process, because she got pregnant while they were engaged. Ani, for example, got engaged while she was 14 and got married when she was 15, because of the pregnancy. She recalled how she did not have a wedding ceremony, once the “older people” of her family learnt she was pregnant:

“We did not have a wedding, because we spent one year being engaged, and I got pregnant while I was 15 years. When my grandmother learned about it, she said I could not have a wedding, but I had to leave home as soon as possible. When I was 4 months old into my pregnancy, I went to my parents' home that is close to our home.”

Jola was 18 years old when she got engaged. Soon after it, she began to live together with her fiancée. Because of her pregnancy, they began to formalize their relations in a marriage according to the law:

“Various circumstances and conditions made us to live together during our engagement. The idea of marriage came up right after my pregnancy. We did not have a wedding like everyone else, but we had a civil marriage in the court and we had a small family dinner.”

Fabiana, who got engaged while she was 17 years, also said that they had to speed up the wedding process because of her pregnancy in the first months of her engagement:

“A little after the engagement, I got engaged. We were very happy that this happened and we had to speed up the wedding process...”

Eli remembered how they decided to get married because she got pregnant while she was engaged. She was only 17 at the time. She said that her family did not want her to give birth to her child while she was not yet married, therefore, she and her husband had to get married. She also mentioned that they had the civil marriage after she turned 18.

These interviews show that the women were careful “not to do the wrong things,” “not to go too far,” not to do “bad things, so that they would regret later” while they were still dating. Engagement was a place where the sexual act was legitimated. It also “saved” them from the negative stigmatization, or the moral punishment of their families and the opinion of other people. Such an argument did not exclude the sexual relations prior to engagement. This was mostly implied in the interviews with the participants who were married based on love. In

general, however, all the participants in this study agreed that the couple built their real relationship after their engagement. Naomi Seiler (2002: 5) in her study of the marriage of adolescent girls in United States calls them “shotgun marriages”. Some of the participants in the study agreed that their wedding occurred during the period between their conception of their child and their birth. In this sense, the marriage was not planned, but was a result of unplanned pregnancy. As a result, they organized their wedding so that they did not want to have a child outside the wedlock.

DISCUSSION

Based on the above, one can highlight several important findings:

The legal marriage among participants in the study occurred later than the real marriage. There were several reasons for the lack of legal marriage. The first reason had to do with the fact that even when the women had reached the marriage age, they neglected to carry out the official marriage due to various factors, such as problems in life. In fact, several of the women who were interviewed stated that they ignored the official marriage even after they had given birth to their children. In addition, there were several cases when the participants had given birth to their children while they were not officially married. When asked why they had not performed the civil marriage, their answer was that “they had not reached the marriageable age.”

These women were not aware of the existing laws in Albania that allowed them to have a civil marriage, even though they had not reached the marriage age. The fact that they had given birth to a child was a strong reason to present in front of a judge to have a civil marriage (Family Code, 2012:7). In addition, one could point out that the engagement of the participant while they were still adolescent, was a type of cohabitation according to the definition of Family Code(2012), because the interviewees stated that they had cohabited for certain periods of time with their partners after their engagement. In fact, having a child was a result of their cohabitation. While in the typology of cohabitation offered by Ridley, Peterman and Avery (1978), cohabitation is a test before marriage. In the case of Albania, however, this type of cohabitation is approved after the engagement. This is due to the uniqueness of Albanian culture.

Furthermore, several of the women considered themselves married, even though they had not gone through a legal marriage. According to the definition of the UNICEF (2005) their marriages are unions of the young who are in socially approved relationships and have gone through certain traditions that have been transformed and suited based on various situations, such as the big Albanian weddings, or living in their husband’s home. When a young woman is part of a union after the engagement, a marriage without the wedding and civil marriage, her tasks and responsibilities are still the same with those of a married woman. These types of union lack a legal contract between the couple and the state that Broderic (1984) identified among characteristics of marriages. A married girl has taken over a social approval. In addition, she also has the legal protection (for those countries that offer protection) as a result of the legitimization of her civil relationship based on the Family Code (2012), something which is lacking for the women who are in a union.

CONCLUSIONS

For the participants of this study, engagement, like in pre-communist area continues to preserve its function of proclaiming the relationship between two people with a promise for

marriage. Engagement is no longer an institution that is regulated and necessary for marriage, but it is part of a tradition inherited by the past. Its functions have adapted to create a relationship that is less conflictual between the freedom of individuals and the conservative dimension of tradition. Engagement is to the young people as a “request for permission” to live the intimate relation. In addition, engagement serves the parents of the daughter to free them of their anxiety of moral deviances, legitimating the future of the daughter, the possible failures of the rapport of their children, not as consequences of decisions undertaken at a young age, but as their “bad luck”. It could also be said that marriage is no longer the institution of the consumption of sexual relations. The women who were interviewed admitted that even in those cases when they did not have sexual relations during romantic dating, or their engagement, they did not save their virginity for marriage. This “tradition” has been transformed into one in which women “save their virginity for their engagement,” meaning that they have the security of having a prospect husband. Furthermore, engagement in contemporary Albanian society is a type of cohabitation for the young people, because they can live together, can have children without necessarily getting married. Seven of the participants said that they got pregnant while they were still engaged.

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