material situations of both spouses, including the number of members of the family to which they belong at the present time; (2) the age of the spouses; and (3) the ability of the spouse seeking alimony to support himself or herself. Changes in the material position of each of the two spouses either for the better or worse are sufficient grounds for increase or decrease in the amount of alimony.

The Family Code of the R.S.F.S.R. does not mention the time from which alimony has to be paid. Only the Family Codes of Kirgizia and Ukraine[132] established that alimony has to be paid from the date when the suit was submitted to the court by the plaintiff. The courts of other Soviet Union republics have followed the same practice.

5. Agreements between Spouses as to Alimony

Agreements between the spouses which relinquish the right to alimony in return for some other compensation are not legally binding on the courts. For example, Mr. "X", when facing a claim for alimony from his wife, produced in court a document signed by her in which she relinquished all rights to alimony in return for all the property acquired during the marriage. The court refused to accept this evidence, and awarded alimony.[133]

Finally, it is necessary to distinguish the obligation to pay alimony from the obligation to compensate for damages. These include cases where one spouse caused damages to the other such as physical injury, coerced abortion, infection or other illegal acts. Under such conditions, the obligation to pay damages results from the Civil Code, not from the Family Code, and does not terminate with a new marriage. In some cases one spouse is obliged to pay alimony as well as compensation for damages.[134]

V. DIVORCE

Chapter V of the Family Code is devoted to the termination of marriage. It begins with the enumeration of the conditions under which marriages cease. Marriage is terminated by the death of one of the spouses, including that declared by a court. Under Article 30, marriage can be terminated during the life of the spouses by divorce on petition to the court by one or both spouses. The divorce is declared absolute at the moment of the registration in the ZAGS office. A registration of death in ZAGS, or declaration of death by the courts, does not require supplementary registration in order to terminate the marriage. In the new Family Code, the petition for divorce can be brought only by one or both of the spouses. Prior to its enactment, in the case of a marriage of a mentally incompetent person, the person legally responsible for the mentally incompetent person could petition for a divorce on his or her behalf. The imperative character of the statute in the words "by petition of one or both of the spouses" precludes such a possibility under the new Family Code, according to the author. However, the mentally competent spouse is not precluded from petitioning for divorce from the mentally incompetent one.

132. Family Code of the Kirghizian S.S.R. Art 34; Family Code of the Ukranian S.S.R., Art. 34.

133. Quoted from A. Eroshenko, *Okhrana Pravosposobnosti Grazhdan* (Protection of The Legal Ability of Citizens), 14 *Sovetskaia Iustitsia* (Soviet Justice) (1974) 6.

134. 3 *Sudebnaia Praktika Verkhovnogo Suda S.S.S.R.* (Judicial Practice of the U.S.S.R. Supreme Court) (1953) 36-37; 10 *Sotsialisticheskaia Zakonnost'* (Socialist Legality) (1964) 83.

A. Freedom of Divorce.

Freedom of divorce was declared in the first decrees of the Soviet government as the counterpart of freedom of marriage, both inalienable aspects of the freedom of individuals.[135] Theoreticians of Soviet family law who are supposed, as it was already mentioned, to support and substantiate rather than criticize the statutes, turn in their discussion of divorce as usual to the works of the classics of Marxism and Leninism. "If the feeling disappears or has been replaced by a new and bigger love, the divorce is a blessing to both parties, as well as for society," wrote Engels.[136] Using this quotation, authors of the book *Problems of Family Law* state: "Reactionaries spoke against Lenin's treatment of the freedom to divorce, since it leads to the 'dissolution of a family.' But he confronted them with the following argument: 'Freedom of divorce does not mean the weakening of the family, but it actually means the strengthening of the family by building it on a democratic and egalitarian basis, which is possible only in a civilized society.'"[137] In another place Lenin said, "one cannot be a democrat and a socialist without immediately demanding feedom of divorce. . . ."[138] Full freedom of divorce existed throughout the first 27 years of the Soviet regime. The only condition for divorce was its registration. From 1918 to 1926, one could turn to either the courts or the ZAGS offices for the termination of marriage. Neither the courts nor ZAGS looked into the grounds or the motives for divorce.

From July 8, 1944, freedom of divorce was sharply restricted by a complicated procedure requiring consideration of a divorce in three separate courts. First, a reconciliation hearing was conducted in the District People's Court, then the action for divorce was considered by the Provincial Court and finally, the highest Court of the Republic, the Supreme Court, declared the outcome of the action if the decision was appealed. In bringing an action for divorce it was necessary to pay a fee, pay for an announcement in the newspapers about the pending divorce, as well as a further fee at the time of the registration of the divorce. This entailed considerable amounts of money, exceeding the average monthly wage. Many could not afford to pay this amount and thus they were unable to register their divorces although their marriages had actually disintegrated.

In 1965, divorce procedures were somewhat simplified. The requirements for publication of the announcement and three separate court actions were abolished. Actions for divorce fell under the jurisdiction of the District People's Courts, and the Provincial Court became a court of appeal as in other areas of law. This system with some amendments is preserved up to now. The limitation of the freedom to divorce unavoidably had to be carried out also with reference to classics of Marxism and Leninism. In the book *New Code on Marriage and Family in the R.S.F.S.R.*, the authors cite the following wisdom from Marx: "Even from the purely legal point of

135. *S.U. R.S.F.S.R.* (Collection of the Laws of the R.S.F.S.R.) (1917) No. 10, Art. 152 and No. 11, Art. 160.

136. K. Marx and F. Engels, 2 *Izbrannye Proizvedenia* (Selected Works) (Moscow, 1955) 227.

137. *Supra* n.43, at 45.

138. V.I. Lenin, *30 Complete Collection of Works* (4th ed.) 125.

view, conditions of the children and their property cannot be made dependent upon arbitrary decision of the parents or their fantasies."[139] These words of Marx, however, are more applicable to the abuse of parental authority than to the problem of freedom of divorce. His real approach to freedom of divorce and its procedure is quite opposite: "It is necessary to release people from the burden of wading through the unnecessary mud of a divorce procedure."[140] Nevertheless, one has to agree that divorce always has an impact on the children. As the authors of the above-mentioned book stated, the dissolution of a marriage means the dissolution of the family. State control, which helps prevent frivolous mistakes without unduly restricting the right to divorce, protects the interests of the children to a greater extent than those of the parents.

It appears that the new divorce system worked out in the recent Soviet Family Codes can more or less adequately perform this function. First, one has to note the provisions of the new divorce law which protect the interests of the mother and the child. According to Article 31, the husband cannot bring an action for divorce without the consent of the wife during her pregnancy or during the first year of the life of the child. This rule applies also to a pregnancy or childbirth occurring from extra-marital relationships. The protection of the health of the mother and child prevails over the "fault" of a wife. Furthermore, the adultery is frequently a product of the imagination of the husband, or is fictitious in order to provide reliable grounds for divorce. Some authors are of the opinion that Article 31 applies as well to cases of still-births and to cases of the death of the child during the first year.[141] The application of this rule does not extend to pregnancy terminated by abortion. It is understood implicitly that a pregnant woman or the mother of an infant is not prohibited from petitioning the court for a divorce. However, if the husband, during the pregnancy of his wife or during the first year of the life of the child, brings an action, the court must refuse to consider it. If such an action is accepted by the court as the result of a judicial mistake, the action has to be dismissed on appeal.

The new Code provides a flexible schedule for court costs: from 50 kopecks (about 80¢) to 200 rubles (about $300.00). Application of court costs will be examined later.

The termination of the marriage by way of divorce, according to the new Code, is under the jurisdiction of the Court or ZAGS. The usual route is through court action. Marriage can be terminated by ZAGS in uncontested cases, if the spouses are childless and also in other specific cases which will be discussed in the following Chapter.

B. Divorce by Registration

An analysis of the judicial practice prior to the enactment of the new Family Code indicates that in many instances the court, in considering divorce cases, turned into a simple register of the will expressed by the parties, avoiding problems which had to be adjudicated. The court procedure

139. V. Shakhmatov and B. Haskel'berg, *Supra* n.75, at 81.

140. *Ausgewa"hlte Schriften* in 2 *Bannden*, Berlin, *Kietz Ferlag*, (1958) *Band* 2 *Seite* 223.

141. Riasentsev, *Supra* n.114, at 123.

designed for the protection of family life in many instances had no function to perform.[142] In other words, the judicial machinery's engine was idling. This led to the conclusion that in instances where the spouses were childless the declaration of uncontested divorce could be transferred to the jurisdiction of ZAGS. Moreover, it was determined that there were some instances, even where there were children in the marriage, that could be terminated by ZAGS. Such divorces can be obtained in ZAGS offices, if the children are not from that marriage and are not legally adopted by the non-parent spouse.[143]

In cases where one spouse does not appear for a divorce proceeding in the ZAGS office, despite the absence of objections to the petition for divorce, the other party can bring a court action.[144] The number of grounds on which the spouses can obtain a divorce through ZAGS is limited. There are other matters which have to be determined at the same time as the declaration of the divorce, and which require a court decision. These matters include the upbringing of minor children, division of property and alimony. Other issues, such as alimony for disabled adult children, can be considered by the court separately from the divorce action and thus do not bar the granting of a divorce by ZAGS. If the spouses without court action enter into an agreement resolving all disputable issues, they can then obtain their divorce in the ZAGS office. In bringing a divorce action before ZAGS, the spouses can either bring a joint action or each can appear with a separate petition. The form used in a petition for a divorce before ZAGS is determined by the Republican Ministry of Justice. This form contains a section dealing with reasons for divorce. However, ZAGS is not entitled to enquire about and to cross-examine the spouses on that issue. Nor can it attempt to reconcile the spouses. Nevertheless, it does attempt conciliation on the grounds that strengthening of the family is its social duty. Intervention and violation of the right to privacy in these cases is not considered reprehensible.[145]

The law prescribes a three-month waiting period between the petition for divorce and the absolute declaration of the divorce. This time interval is to allow the spouses to consider the seriousness of their action. Each can, after consideration, withdraw the petition from ZAGS. If one spouse withdraws the petition for divorce or if matters requiring judicial determination emerge, ZAGS is prohibited from declaring the divorce absolute. It should also be noted that many people do not wait the three-month period and turn to the court in order to have this period waived. People sometimes present a fictitious conflict, or a lack of willingness by one of the parties to petition ZAGS, in order to shorten the three-month waiting period. Registration of the divorce in the ZAGS office is subject to a fee of 50 rubles.

142. D.M. Chechot, *"Sudebnaia Zashchita Subjektivnykh Prav i Interesov"* (Judicial Protection of Subjective Rights and Interests), 8 *Sovetskoe Gosndarstvo i Pravo* (Soviet State and Law) (1967) 48.

143. Statute of the Plenary Session of the Supreme Court of the R.S.F.S.R. (Feb. 21, 1973) Art. 7. *See also* 5 *Biulleten' Verkhovnogo Suda R.S.F.S.R.* (Bulletin of the R.S.F.S.R. Supreme Court) (1973) 5-6.

144. Statute of the Plenary Session of the Supreme Court of the U.S.S.R. (Dec. 4, 1969) Art. 12.

145. *See e.g.*, the article of the Chief of the Tambov Province Branch of ZAGS Office, E. Kirillova, *"Rol' Organov ZAGS V Ukreplenii Sem'i"* (The Role of the Registry Offices in Strengthening the Family), 1 *Sovetskaia Iustitsia*, (Soviet Justice) (1974) 22.

Having described some of the peculiarities of divorce by registration, it is necessary to take a closer look at the conditions laid down in Article 39 of the Family Code, under which a divorce can be declared by ZAGS upon the petition of only one spouse. In such a case the divorce can be declared absolute by ZAGS, if the other spouse has been: (a) declared missing by the court; (b) declared mentally incompetent by the court; or (c) convicted of a crime carrying a sentence of not less than three years' deprivation of freedom. The presence of children does not prohibit the petitioning spouse in such cases from obtaining a divorce through ZAGS. The fee for such a divorce is 50 kopecks.

Upon receiving the petition for divorce, ZAGS is obliged to inform the convicted spouse or the guardian of the mentally incompetent spouse. ZAGS must also ask the spouse or his guardian whether there is any dispute as to maintenance for the disabled spouse, maintenance for the upbringing of the children or division of the property. The time for providing an answer to these questions cannot exceed three months. In cases where no answer is received or the petition is uncontested, ZAGS declares the divorce absolute. If there are disputes as to any of the above, ZAGS informs the spouses that they can obtain a divorce only through court action. Other considerations, as well as objections to the divorce in general, do not prohibit ZAGS from declaring the divorce absolute. The above-described procedure does not apply to the prisoners themselves, who are prohibited from petitioning ZAGS for divorce. However, they may petition for divorce through the court in accordance with the general rules described below.

Judicial declaration of a person as "missing" occurs according to Article 10 of the Principles of Civil Legislation of the U.S.S.R. Examination of this category of cases shows that the basic reason for seeking such a declaration is to obtain a divorce. In an analysis of 1,700 cases before the Supreme Court of the U.S.S.R., it has been determined that in 1,405 cases (83%), the declaration of a person as being "missing" was used for this purpose. The declaration of absolute divorce occurs, in such cases, on the day of delivery of the court ruling to the ZAGS office.

C. Divorce through Court Action

In cases where the petitioning spouse is required to bring an action to court rather than to a ZAGS office, either due to statutory requirements or at the request of the guardian of a mentally incompetent person or a convict, the divorce procedure is uncomplicated. The action is brought in the court of the residence of the petitioner and the court fee is 30 kopecks (about 48¢). As a rule, the court does not discuss the validity of reasons for the divorce, and considers only other disputable issues that may be involved in the divorce. Apparently, Article 39 of the Family Code presents the only example of a provision containing grounds for divorce comparable to those in Canadian family law. In such cases the court is not obliged to make an attempt to reconcile the spouses.

In the ordinary process of divorce, the court first attempts to reconcile the spouses. Due to this obligation of the court, both spouses must attend the court session. In the absence of one spouse, consideration of the divorce petition can be conducted only as an exception, if there are important valid

reasons for the absence of the spouse. The court is obliged to state the reasons for the decision to consider the divorce action in the absence of one or both of the spouses. However, as a rule, in the absence of one spouse, the court postpones the case. On the repeated absence of both spouses or the petitioner, the court gives an order refusing to proceed with the case. In such cases, the spouses can bring a new action at a later time, when the conditions which caused the court to refuse to proceed with the original action no longer exist.[146] The following are valid exceptions to the general rule that both spouses must attend the court hearing: (1) long residence in distant locations; (2) a convicted spouse in a penitentiary.

Hearing a divorce case in the absence of one spouse, without important reasons, constitutes judicial error. The decision usually is overturned by a higher court upon appeal. In one such example the Court stated:

> One of the basic tasks of courts in fulfilling their obligation in declaring a divorce absolute is: the presence of both spouses at the hearing, in order to attempt to reconcile the couple. Granting of divorce in the absence of one of the spouses, without an important reason, is not permissible and leads to a reversal on appeal.[147]

Unlike other civil actions, where refusal to proceed with the action by means of postponement or adjournment is considered to be a case of "red tape" *(volokita),* in divorce cases the courts can postpone the decision, thus giving the parties time for a reconciliation. Courts can refuse to proceed more than once, but with the proviso that the total time of delay should not be longer than six months. According to statistics of the Supreme Court of the U.S.S.R., 25% of such postponed actions end in a reconciliation of the spouses. This data comes from the study of two selected years, 1966 and 1969.[148] The court is obliged to attempt to reconcile the spouses, not only at the hearing, but also when the petition is brought and during the preparation of the case. In furtherance of this, the Judge can hold informal talks with the spouses.

According to Article 164 of the Code of Civil Procedure of the R.S.F.S.R., the case starts with the court questioning both the petitioner and the respondent. First, the court informs itself as to whether the petitioner still wishes to proceed with the action, whether he or she has any changes to make in the original petition, and whether the respondent challenges the petition. In the literature, one can find criticism of the mechanical application of such a rule to divorce cases. The "Yes" of the petitioner, and the "No" of the respondent psychologically bind them and make it more difficult for the court to attempt a reconciliation. The petitioner and respondent are already committed to their answers. It would be more proper to start the case with an attempt to reconcile the parties.[149]

146. Fundamentals of Civil Procedure of the U.S.S.R. and the Union Republics, Arts. 41, 42.

147. 1 *Biulleten' Verkhovnogo Suda R.S.F.S.R.* (Bulletin of the R.S.F.S.R. Supreme Court) (1965) 10.

148. 3 *Biulleten' Verkhovnogo Suda S.S.S.R.* (Bulletin of the U.S.S.R. Supreme Court) (1967) 45; 1 *Biulleten' Verkhovnogo Suda S.S.S.R.* (1970) 41.

149. A. Nechaeva, *"Rastorzhenie braka v Sude"* (Dissolution of Marriage by the Court) 5 *Sovetskaia Iustitsia,* Soviet Justice (1970) 17.

In divorce actions, the court frequently turns for help to social organizations. This is considered to be a positive quality of court activity. Thus, for example, in the official Instructions for the Practice of Soviet Courts in Divorce Actions issued by the Supreme Court of the R.S.F.S.R., the case between the Abramovs, heard by the court in the City of Gor'kii, is used as an illustration of the correct approach. Mrs. Abramov petitioned the court for divorce on the grounds that Mr. Abramov did not want to have children, and after the birth of the child, indulged in alcoholic beverages and rowdy behavior. The court adjourned the case for six months and informed the trade union at Mr. Abramov's place of work. After the intervention of the trade union the case ended in reconciliation.[150] According to the official statistics of the Supreme Court of the R.S.F.S.R. for the period of 1968-69, over a thousand cases in Kalihin province ended in reconciliation of the spouses, due to proper preparation of the cases and broad involvement of social organizations in reconciliation activities.[151]

It is understood that the period for reconciliation is decided by the court and should be based on a realistic assessment. It is not to be used in cases where, due to evidence before the court, it is obvious that reconciliation is impossible as, for example, in cases of adultery.

As already mentioned, Soviet family law does not state formal grounds for divorce. Article 33 of the Family Code states that marriage shall be dissolved when it is established in a court of law that further co-habitation of the spouses and the preservation of their family have become impossible. This approach appears to be preferable to the legislative enumeration of grounds for divorce. The many and varied reasons for which people may want a divorce cannot be catalogued into formal grounds. Thus, a standard reason in a divorce petition is that the spouses "could not get along." In recent years, scholars from various nations have paid increasingly greater attention to psychological incompatability. Tests for psychological incompatability are conducted on astronauts, mountaineers and others. It cannot be ruled out that this situation of not "getting along" is a sort of incompatibility of characters and is just a sub-group of psychological incompatibility. Under such conditions, continuation of a marriage can create psychological damage and mutual frustration.

The Supreme Court of the U.S.S.R. at its plenary session held December 4, 1969, issued a statute giving *general* instructions as to the circumstances under which a divorce cannot be granted: (1) temporary discord in the family; (2) accidental conflict between spouses; (3) petition for divorce based on frivolous reasons. Such grounds are not considered to be sufficient to grant a divorce. Following are examples of cases where petitions for divorce would not be granted. Mr. and Mrs. Krek, although petitioning for divorce, continued to live together. The family, including three children, did not disintegrate.[152] The petition for divorce was refused. Mr.

150. 10 *Biulleten' Verkhovnogo Suda R.S.F.S.R.* (Bulletin of the R.S.F.S.R. Supreme Court) (1972) 4.

151. 2 *Biulleten'Verkhovnogo Suda R.S.F.S.R.* (Bulletin of the R.S.F.S.R. Supreme Court) (1970) 3, Other data has shown that in some courts the percentage of couples reconciled in those cases which were postponed reached 25%. Iu. A. Korolev, *Brak I Razvod Sovremennye tendentsii* (Marriage and Divorce, Contemporary Trends) (Moscow, 1978) 168.

152. 10 *Biulleten' Verkhovnogo Suda R.S.F.S.R.* (Bulletin of the R.S.F.S.R. Supreme Court) (1972) 3-4.

Gurianov petitioned for divorce on the grounds that his wife did not trust him and therefore there were continuous quarrels in the family. It was established in court that the lack of trust and the family quarrels were due to adultery on the part of the petitioner. The Court refused his petition for divorce, since the wife did not wish a divorce.[153] In other cases, however, jealousy may be sufficient grounds for divorce. In one such case the Supreme Court of the U.S.S.R. stated that:

> [R]efusal to grant a divorce cannot be a penalty for the frivolity of one of the spouses. Thus the refusal of the lower court to grant a divorce on the grounds of frivolity of one of the spouses, can be considered reasonable only if there is no evidence that the family was torn apart, the conflict is not of a serious character, and normal spousal relations can be restored.[154]

A divorce cannot be refused if continuation of the marriage would be contrary to the interests of the children. For example, a divorce would be granted in a case where the petitioner states that his wife is a bad mother to his children of a first marriage, and that all attempts to improve the relationship between the stepmother and the children have failed.

One has to understand that the reasons for divorce are evaluated by the courts from the point of view of "the communist morality." Take the example of a spouse who believes in God and wants to give the children a religious upbringing. The spouse who disagrees with that decision may petition the court for a divorce. On the ground of socialist morality, the court would grant the petition. It appears that the court, at this point, takes into consideration not only the interests of the petitioning spouse, but also the interests of the children who have to be brought up in the principles of communist morality, or in other words, atheistic morality.

The following circumstances are considered in judicial practice to be serious reasons for divorce: existence of a new, stable, Common Law family of one spouse; cruelty towards the other spouse and the children; refusal to give material support to the other spouse; prohibition of the other spouse from participation in an educational program; drunkenness; immoral behaviour outside or within the family; commission of an intentional crime; inability to have children; or deeply ingrained animosity. On the contrary, insufficient income or the intention to study do not provide grounds for divorce. In 500 divorce cases studied by Leningrad sociologists, 210 petitioners stated, as the reasons for the divorce, alcoholism and immoral behaviour of the husband. Five per cent of those divorced of both sexes stated the inability to have children as the reason.[155]

In some cases, a person who is mentally ill, but not declared incompetent, petitions the court for a divorce, even though the other spouse does not want a divorce. In such cases the court seeks a medical opinion as to whether the continuation of the marriage will contribute to the illness of the

153. *Supra* n.75, at 93; *Supra* n.43, at 51.

154. *Supra* n.75, at 94.

155. V. Lisovskii and S. Pelevin, *"Razvod, Ego Prichina I Povod"* (Divorce: Its Cause and Reasons), *Nedelia* (The Week) (1966) No. 27; M. Oridoroga, *"Voprosy Sovershenstvovania Semeinogo Zakonodatel'stva"* (The Problems of Perfection of Family Legislation), *IV Problemy Pravoznavstva* (Problems of Jurisprudence) (Kiev, 1966) 63, 64.

petitioner. If the court receives an affirmative answer, it grants the divorce without an attempt at reconciliation. One can conclude that the proper resolution of divorce cases should be left to judicial discretion and experience and should not be bound by rigorous adherence to formal dogmatic grounds for divorce.

The law does not provide a time limit for re-application in a case where the court has refused to grant divorce, or when the court has dismissed a case after successful reconciliation. Article 129, paragraph 3 of the Code of Civil Procedure of the R.S.F.S.R., as a matter of principle, prohibits reconsideration of "the same case, between the same parties, on the same grounds." In the literature it is frequently stated that this principle should not be applicable to divorce cases. This opinion is shared by the author. It is understandable that the court can and will refuse to hear a petition for a divorce immediately after a prior decision of the court on the same matter, but this is not always the case. Supposedly, even if the day after a court decision, new grounds emerge on which the petitioner seeks a divorce, the court should hear the new petition. Also, re-application for divorce after several months, by itself, can be evidence that further deterioration of the family relationship has occurred, and that the court should hear such a petition.

In the consideration of a petition for divorce, the court should resolve some other related matters. The number of such questions, however, is limited. Most matters to be decided by the court are stated in the petition or raised on the court's own initiative. This obligation of the court is found in Article 14 of the Fundamentals: "When dissolving a marriage, the court when necessary shall take measures to protect the interests of minors and a disabled spouse." The court has to determine the following matters: (a) custody over the children; (b) from whom and in what amount the maintenance for children should be assessed; (c) determination of alimony for the spouse who is unable to work or who is in need; and (d) division of common property of the spouses, (excluding shares in a co-operative housing). The court, of course, determines these matters only when it decides to grant the divorce. If the court refuses the petition, it does not have to determine any of these issues. All of these matters may, however, be handled by the court in a separate proceeding if the parties wish, even where the divorce is granted. If, at the granting of the divorce, the common property of the spouses was not divided, it remains their common property, as distinct from the separate property acquired after the divorce by either spouse. On the request of either spouse, the court can change his or her name to the one used prior to the marriage. The wish of the other spouse in this case is to be ignored.

A petition for divorce is to be brought in a district court of the place of residence of one of the spouses. In cases of separate residences, the action is brought in the court of the residence (registered domicile) of the respondent. If the place of residence of the respondent is unknown, the action can be brought in the court of the last known residence of the respondent. However, in cases where the petitioner would have difficulty in travelling to the court of the residence of the respondent, (due, for example, to illness, or

the fact of having minor children in custody), the petitioner can bring an action in the court of his or her own residence. Finally, the spouses can agree to bring the action in either place of residence.

The court costs in divorce actions (10 rubles) are paid when the petition for the divorce is filed and at the registration of the divorce, as determined by the court. The sum to be paid by either or both parties can range from 50 to 200 rubles, depending on the material conditions of the parties, and sometimes depending on the reasons for the disintegration of the family. In specific instances, the court is empowered to waive the costs. In practice this happens very rarely.

According to Article 40 of the Family Code, the divorce is declared absolute from the moment of registration in a ZAGS office. The divorce is registered even if the decision of the court is filed by only one spouse. At the time of the registration of the divorce, ZAGS provides each spouse with a certificate of divorce. Until the moment of obtaining this certificate, the ex-spouses cannot enter into another marriage; nevertheless, in practice such marriages are not always declared invalid. In one instance, the Supreme Court denied the petition of the son of Mr. Konrad to annul his father's second marriage on the grounds that Mr. Konrad did not register a divorce from his first wife, and did not have a certificate of divorce. Mr. Konrad died prior to the petition of his son, who brought the petition because of a dispute over inheritance. The petition was refused on the grounds that the ex-wife of Mr. Konrad had registered the divorce. Thus the ZAGS office had a record of the divorce, although Mr. Konrad did not have the certificate.[156]

In the first years of the operation of the new Family Code, a regulation required that a divorce had to be registered in the ZAGS office within three years after the decision of the court. This regulation was based on Article 346 of the Code of Civil Procedure of the R.S.F.S.R. However, the Plenum of the Supreme Court of the U.S.S.R., in a decision of February 21, 1973, stated that there is no limitation period in the Family Code regarding the registration of a divorce in the ZAGS office. Furthermore, until the time of registration of the divorce in the ZAGS office, the parties can petition the court for a waiver of the decision. The three-year limitation period exists at present only in the Family Code of the Georgian Republic.

The Family Code provides for re-institution of a marriage in cases where a spouse reappears after termination of a marriage owing to the court's declaration of the death of that spouse. After the judicial cancellation of the declaration of death, the marriage is automatically re-instated if the other spouse did not enter into a subsequent marriage. A second marriage can be declared null and void only if the new spouse actually knew that the person was alive prior to the registration of the second marriage. Also, a marriage terminated due to the declaration of one spouse as missing can be re-instated upon application of both parties, after the court order declaring the spouse missing has been revoked. Such a marriage cannot, however, be re-instated if the other spouse entered into a second marriage.

156. 6 *Sotsialisticheskala Zakonnost'* (Socialist Legality) (1964) 83.

It is necessary to state that the number of divorces in the U.S.S.R., as well as the reduction of the birth rate, are being closely watched by both party and government officials. It is notable that a common cause of divorce is a bad relationship between one spouse and the parents of the other, which leads to domestic quarrels. In Leningrad, these cases constitute 41% and in Kiev, 61% of all divorce cases. According to the official statistics cited by Soviet sociologists, approximately three-quarters of the newlyweds do not have their own apartments. The majority have to live in bad conditions together with the parents of one of the spouses.[157]

VI. PARENTS AND CHILDREN

According to Article 16 of the Fundamentals, the mutual rights and duties of parents and children shall be based on the parentage of the children, certified according to law. Therefore, the discussion of the relationship between parents and children should begin with an examination of how parentage is established.

A. Establishment of Parentage

1. Paternity and Maternity

Articles 47 to 51 of the Family Code of the U.S.S.R. are the basic provisions dealing with this issue. There is a legal presumption that the child of a married couple whose marriage is registered in a ZAGS office belongs to them. The fact of the marriage of the mother creates a presumption of the paternity of the husband. Father and mother are registered in the ZAGS office as parents upon application by either of them. Upon application of the mother, the registration of her husband as the father of the child shall be done, even if the husband objects to such registration. He, however, can later dispute the registration of paternity in a court action.

The presumption of paternity remains despite divorce or annulment of a marriage, if between the time of the divorce or annulment and the birth of the child, not more than ten months has elapsed. This ten-month period runs from the registration of the divorce by either spouse in the ZAGS office, rather than from the date of the court decision granting the divorce. Furthermore, if upon appeal the granting of the divorce is overturned, the husband will be declared the father of the child even if the child was born more than ten months from the original decision of the court granting the divorce. Presumption of paternity can also be contested by the mother, who has the right to show her husband is not the father of her child. In this instance, the husband can attempt to establish himself as the father of the child by bringing a court action.

Registration of parentage of the child officially establishes that parentage. Registration of the birth of a child can be done in the ZAGS office of the place of residence of either parent, or the place of birth of the child. The parents are obliged to make application to register their child no later than one month after birth. In case of stillbirth, this fact has to be reported in three days.

157. Y. Riurikov, "Interview", *Nedelia* (The Week) (1977) No. 15, at 5. *See also* Iu. A. Korolev, *Supra* n.151, at 135-65.