

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.<sup>157</sup>

## 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.

Establishment of maternity occurs as a result of medical evidence or court order. In exceptional circumstances it can be determined by the testimony of two witnesses. ZAGS requires the following documents in order to register a child: 1) birth records from the medical institution; 2) certificates of identity of the parents (internal passports); 3) marriage licence.

## 2. *Unmarried Parents*

In the absence of a registered marriage, establishment of the parentage of a child can be made upon the application of the mother and father, or after filing a court decision establishing paternity. If the mother is unmarried and there is neither a joint application nor a court decision as to the paternity, the registration of the child in almost all Union Republics occurs in the following manner. In the Section "Father's Surname," the surname of the mother is entered. In the Sections "Name and Patronymic Name of the Father" and "Nationality of the Father" the entry is posted in accordance with the mother's instructions. This replaces the old and degrading system under the regulation of 1944, which left all these Sections blank, making the illegitimacy of the child self-evident and reviving for 20 years the old concept of "illegitimate child."

The parentage of a child whose parents are not married, is now established by the statements of both parents in the ZAGS office. This has changed another ridiculous situation caused by the decree of July 8, 1944, which prohibited the father of a child born out of wedlock to be registered as such. Voluntary admission of paternity is quite common in the U.S.S.R. According to the statistics of the ZAGS office for Moscow, in a two-year period, there were approximately 10,000 registrations of paternity by a voluntary statement of the father, and only approximately 300 resulting from court actions.<sup>158</sup>

The above new statutory provisions establishing paternity, were given a retroactive effect. They were extended to children born prior to October 1, 1968, the day of the enactment of the new Fundamentals. However, establishment of the paternity of children after reaching the age of majority can be done only with the consent of the child. They can, for example, object to the establishment of paternity in cases where the actual father, having neglected his parental duties, did not support them during their childhood. Article 3 of the law of July 27, 1968, on the Approval of the Fundamentals of Family Law Legislation considered situations where the father of a child born prior to the enactment of this statute died without having been able to realize his full rights as to the establishment of his paternity. This applies only to cases of a previous, voluntary declaration of paternity. In such cases the court establishes an admission of paternity on the part of the deceased, rather than actual paternity. The additional requirement in such cases is proof that the child was supported by the actual father, in full or in part. The courts have found that the father's support of a child, when he maintained a separate residence from the mother and child, sufficed even if that support was only partial. It is not a necessary requirement that the financial assistance took place throughout the period from the

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158. A. Efremova, "Praktika Raboty Organov ZAGS Moskvy" (The Work of the ZAGS Offices of the City of Moscow), *J Sovetskaja Iustitsia* (Soviet Justice) (1972) 13.

birth of the child to the death of the father. The establishment of paternity of the deceased can be determined by various kinds of evidence, including the testimony of witnesses.

The following is a typical example of such a case. In 1946, eleven-year-old Nadia Erikova arrived in Moscow and became a domestic in the family of Golovin. After one year she moved to the suburban house of the family near Moscow and took care of the property, including the cottage, the orchard, vegetable garden and livestock. At that time Mr. Golovin began to co-habit with her, and in 1953 Nadia gave birth to a daughter. Regularly, once a month, Mr. Golovin paid her 80 rubles. He hid from his family and other people in Moscow the fact of his co-habitation with Nadia and the existence of his daughter from that relationship. However, he did not hide that relationship from his neighbors in the vicinity of the cottage, he called the baby his daughter, and she referred to him as father. The deception was assisted by the fact that after 1954, his legal wife did not come to the cottage even once. These facts were confirmed by the testimony of witnesses. Two years prior to his death which occurred in 1967, he transferred title to the cottage to Nadia Erikova. Other factual data, such as trips taken by Mr. Golovin with Nadia and the child and pictures taken in which Mr. Golovin appears with the child, all confirmed the petition of the mother and were considered as an admission to paternity on the part of Mr. Golovin.<sup>159</sup>

Petitions for the establishment of paternity can be brought, not only by the mother of the child, but also by the guardians. Mr. V. had a child from extramarital relations. The child, born prior to October 1968, was raised in his family. After his death his wife was appointed as guardian of the child. Since she knew that her deceased husband was the natural father of the child, in her capacity as guardian, she petitioned the court for establishment of the admission of paternity on the part of her deceased husband. The court granted the petition.<sup>160</sup>

### 3. Court Action

Family law also outlines conditions under which the parentage of a child can be established through court action, where the child was born after October, 1968. According to Article 16, paragraph 3 of the Fundamentals, for a child born out of wedlock, in the absence of a joint statement of the parents, paternity may be established by a court. The Family Code stipulates that a petition for the establishment of paternity can be brought to court either by one of the parents, by guardians, custodians, or by the people who do the actual upbringing, of the child. It appears that once the child has reached the age of majority, no one but the child himself can bring such an action into court. The reference in the Family Code to both parents being entitled to bring an action for the establishment of paternity means that the father can bring such an action, even in cases where the mother objects.

The Fundamentals state certain facts which must be proved to establish paternity: (1) either cohabitation and a common household by the mother

159. 9 *Bulleten' Verkhovnogo Suda R.S.F.S.R.* (Bulletin of the R.S.F.S.R. Supreme Court) (1969) 5-6.

160. O. Ivanov, "*Dela ob Ustanovlenii Otsovstva i Faktu Priznania Otsovstva*" (Cases of Establishment of Paternity and of the Fact of Recognition of Fatherhood), 12 *Sovetskaia Iustitsia* (Soviet Justice) (1969) 11.

and respondent prior to the birth of the child; or (2) joint maintenance, or joint upbringing of the child; or (3) other admissible evidence, if it authentically proves an admission of paternity by the respondent. One has to emphasize that in this way, only the admission of paternity, and not *de facto* paternity is established. It is not necessary that cohabitation and a common household continued up until the birth of the child, since there are many instances where the man leaves the woman when he learns about her pregnancy. In the literature, however, one can also find the opposite point of view.<sup>161</sup> Cohabitation and a common household can also start after the conception of the child. Instances of establishing a common household after an intimate relationship occur quite frequently.

The judicial practice in establishing paternity considers the presence of one of the above mentioned elements as sufficient evidence. For instance, participation of the father only in the child's upbringing without paying maintenance, or vice versa, financial support of the child without participation in upbringing is considered sufficient evidence of paternity. Due to the housing crisis in the U.S.S.R., married couples very frequently live in separate households. Therefore, the fact of separate households by itself, cannot negative the establishment of paternity. According to the binding interpretation by the Plenum of the Supreme Court of the U.S.S.R. of December 4, 1969, other proof sufficient to the establishment of paternity can be: "Documents, letters, applications of the respondent, and other data which can sufficiently establish the fact of the admission of paternity on the part of the respondent." In this interpretation, the Supreme Court refers to Article 17 of the Fundamentals of Civil Procedure in the U.S.S.R., which enumerates admissible evidence in civil cases, including: testimony of witnesses, documentary proof, exhibits and expert findings. It also states that "circumstances of the case which the law requires to be proved by one type of evidence may not be proved by any other type of evidence." In this light, the admission of paternity on the part of the respondent can be proved by the petitioner with the assistance of witnesses. Medical experts can establish the time of conception of the child, in order to determine whether it occurred during the cohabitation of the petitioner and the respondent. The most decisive test is medical evidence excluding the possibility of the respondent being the father of the child. In cases where a child was born before October 1, 1968, establishment of paternity can also take place even if the father died before or after the birth of the child.

Thus, in respect to the establishment of the paternity of a child born prior to the enactment of the Fundamentals on October 1, 1968, the fact of an admission of paternity on the part of a deceased person must be established by the court. In respect to a child born after October 1, 1968, the court must establish the fact of paternity. A reliably proved admission of paternity by the respondent will be considered as evidence of this fact. In other words, an admission by a dead person of paternity of a child born before the Fundamentals came into effect does not require additional investigation pertaining to fatherhood itself. On the contrary, admission of

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161. A. Grachev and I. Grishin, "Sudebnoe Rassmotrenie del ob Ustanovlenii Otsovstva" (Cases of Establishment of Paternity in Courts), 22 *Sovetskaia Iustitsia* (Soviet Justice) (1974) 8.

paternity of a child born after October 1, 1968, requires deeper analysis as it is simply evidence of paternity.

Let us consider two similar situations. First, the mother of a child born out of wedlock before October 1, 1968, brings to the court as evidence an authenticated letter of a deceased person who recognized his paternity of her child. It is known that the deceased person was wounded and could not have been the father because he was unable to have sexual intercourse. In this case the court does not have to inquire further into details and has to be satisfied with the admission in the letter, thus establishing the fact of this admission. This admission here leads to the legal presumption of paternity. The ZAGS office will register the paternity on the basis of the court's recognition of this admission. In the second case, with a child born out of wedlock after October 1, 1968, if the mother brings the same authenticated letter and the respondent shows medical evidence that he could not have been the father, the court, in distinction from the first case, has to inquire into this matter. The evidence of the impossibility of the respondent being the father will outweigh the authenticated letter of admission. Some examples of judicial decisions will clarify the requirements for the establishment of paternity.

The Court of the city of Togliatti of Kuibyshev province, received a petition of Mrs. Biakirova against Mr. Bikeneev for the establishment of paternity. The Court found that the parties did not live together, maintained separate households, and did not acquire goods for mutual use. The respondent admitted that on some occasions he had visited the petitioner in order to watch T.V., but at no time had he the intention to enter into a family relationship with the petitioner. This petition was rejected.<sup>162</sup>

In another case, the Court established paternity, even though the petitioner lived in a dormitory and the respondent in another place. He not only visited her but also spent nights with her, and they had meals together. This, in the opinion of the Court, created a family relationship between the respondent and the petitioner.

The following cases are illustrations of the establishment of paternity by proving an admission of paternity on the part of the respondent. In one case, prior to the petition to the Court, the mother of the petitioner wrote a complaint to the *Komsomol* organization (Communist Youth League) at the place of work of the respondent. Under the threat of expulsion from the *Komsomol* which would have had a negative impact on the career of the young engineer, he wrote a letter to the executive of the *Komsomol* in which he admitted paternity, and informed it of his intention to register the marriage. Later he repudiated these promises. The petitioner, the mother of the child, submitted this letter to the court as evidence. The Court admitted it as an indisputable fact of admission of paternity on the part of the respondent and found accordingly.<sup>163</sup> In another case, the Court accepted as sufficient evidence of an admission of paternity, the fact that the respondent complied, when asked by the petitioner who was then pregnant, to submit to a

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162. 6 *Bulleten' Verkhovnogo Suda R.S.F.S.R.* (Bulletin of the R.S.F.S.R. Supreme Court) (1973) 7.

163. *Ibid.*

blood analysis to establish that there was no RH problem. The Court stated that this would have been done only by the father of the child.<sup>164</sup>

Statutory provisions dealing with the establishment of paternity artificially limit the number of instances in which such evidence can be accepted. According to the Statute and the actual court practice, even if the paternity of the child is evident, but the necessary elements, such as common household before the birth of the child, or common upbringing or mutual maintenance of the child, or the admission of paternity on the part of the respondent *are not* established, the petition for the establishment of paternity shall be refused.<sup>165</sup> Such decisions are not always convincing. Meanwhile, the reasonableness of the court decision is a necessary requisite in the theory of both Criminal Procedure and Civil Procedure Law in the U.S.S.R.

In the literature, one point of view holds that if the birth of a child is the result of a sexual relationship with a minor, or the result of rape, the court can state the paternity without the presence of the above mentioned necessary elements. The court cannot, of course, establish paternity in such cases in the presence of medical evidence excluding the possibility of paternity.<sup>166</sup>

Usually, the petitioner in a case for the establishment of paternity also petitions the court for an award of alimony. The Court considers both actions at the same time, and may grant alimony at the time of establishing paternity. Refusal to establish paternity should be followed by refusal to grant alimony.

The registration of the child in a State Registry book can be the subject of a dispute before a court of law. The mother or father of the child can contend being registered as parents of the child within one year from the day they have learned — or should have learned — about the registration. This limitation period is one more of the few exceptions to the general rule that limitation periods do not apply to family law. Such an exception was made in the belief that it is necessary for a child to have a certainty about the identity of his or her parents. Furthermore, Article 49(5) of the Family Code sets out a special rule for parents who are under 18. If a minor is registered as the mother or father, the one-year limitation period runs from the date of the 18th birthday of such a person. This is the first and only reference in the Code admitting the possibility of establishing the paternity of a minor. Some theoreticians of family law are of the opinion that a minor can be registered as the father of the child, only upon the supposed father achieving the age of 15; other theoreticians say the age of 16 is more appropriate. The age of 15, according to Article 13 of the Civil Code, is the age at which minors achieve limited legal capacity. The age of 16 is the age to which marital age may be lowered.

164. V. Kolymysev, "Otsenka Sudom Dostovernosti Dokazatel'stv, Podtverzhdaushchikh Priznanie Otvetchikom Otsovstva" (The Court Assessment of the Credibility of Evidence Confirming the Fact of Recognition of Fatherhood by the Defendant), 2 *Sovetskaiia Iustitsia* (Soviet Justice) (1974) 20.

165. *Supra* n.75, at 155; 8 *Biulleten' Verkhovnogo Suda R.S.F.S.R.* (Bulletin of the R.S.F.S.R. Supreme Court) (1971) 2.

166. *Supra* n.43, at 70.

167. Riasentsev, *Supra* n.114, at 163; S. Ia. Palastina, *Registratsia Aktov Grazhdanskogo Sostoiania* (Registration of Instruments of Civil Status) (Moscow 1978) 34, 35; Beliakova and Vorozheikin, *Supra* n.1, at 190.

According to the letter of the law, guardians or parents of a minor, or guardians of mentally incompetent persons, do not have a right to bring an action disputing the registration of paternity of the minor or incompetent due to the particularly private nature of this affair. An exception is made in those cases where the legal incapacity occurred prior to the registration of the paternity, and a legally incompetent person was at that moment incapable of expressing his or her will. E. Posse and T. Faddeeva doubt the validity of the reasons stated in a court decision where a woman brought suit for establishing paternity of the mentally incompetent respondent. She took the care of him upon herself. He moved to her accommodation. They later began cohabitation. As a result three children were born. The court rejected this suit stating that the law prohibits marriages with legally incompetent persons. The authors argued that legal incompetence excludes neither certain rights nor certain duties of the legally incompetent individual. His paternity, which is both a legal concept and a biological one, does not depend on marital relations with the mother of the child.<sup>168</sup>

As in all cases in civil law, the limitation period can be stayed, suspended or extended, according to Articles 55 to 58 of the Civil Code of the R.S.F.S.R. The limitation period stipulated in Article 49(5) of the Family Code does not cover however, cases where a person of his or her own accord registers the birth of a child, and then later discovers that he or she is not *de facto* the parent. It is logical to assume that the one-year term should run from the time such a person learns, or should have learned, of the mistake as to the paternity, and not from the moment of registration. On the other hand, according to V. Riasentsev, if a husband, knowing that a child is not his, agrees to register the child as his own, and the mother does not dispute this, the husband loses his right to dispute the paternity.<sup>169</sup> Judicial practice, however, does not always adhere to this point of view. In the Iziwmchenko family a child was born and the husband registered as the father of that child. Five years from the birth of the child, Mr. Iziwmchenko brought an action denying paternity. The Court established that indeed he could not be the father of the child. Nevertheless, the Presidium of the Supreme Court of the R.S.F.S.R. denied his petition and reversed the judgment of the court of first instance. The decision was based not only on the fact that he had agreed to the registration of the child in his name, but also on the fact that the limitation period had run out.<sup>170</sup>

Another ground on which a petition for the establishment of paternity may be rejected is found in the following decision of the Supreme Court of the R.S.F.S.R. A child was born as the result of the use of artificial insemination, with the agreement of both spouses. The Supreme Court of the R.S.F.S.R. rejected the petition of the husband to deny his paternity, not on the ground of the expiration of the limitation period, but on the ground

168. *Supra* n.43, at 69.

169. *Supra* n.114, at 177, 178.

170. *5 Sovetskaiia Iustitsia*, (Soviet Justice) (1958) 77.

that the insemination occurred with his initiative. The Supreme Court stated that the husband appeared to be "an intellectual father" of the child.<sup>171</sup>

In cases where there was also an action for alimony, and the alimony was granted, the party against whom the alimony was assessed cannot later challenge the registration as a parent. This could possibly be done only during the initial petition for alimony. In assessing alimony, the court assumes the paternity of the respondent.<sup>172</sup> The proper course of action is first to appeal the decision assessing alimony, and then, only in the case of a successful appeal, to bring an action challenging paternity.

There is no procedural difference in challenging paternity or maternity. Of course, disputes of maternity are much more rare in the practice of the courts. If the birth of a child is registered by a woman other than the natural mother, the limitation period runs from the day of registration, in cases where the actual mother of the child has knowledge of this registration. In other cases, the limitation period runs for one year from the time the mother learned, or should have learned, of the mistake leading to the denial of her rights as a mother. Cases of dispute of maternity were more common in the Soviet Union following World War II, and following the 1955-57 rehabilitation of people oppressed during Stalin's terror. Many people at that time attempted to save children of those who "disappeared" as the result of arrests and to register themselves as their parents.

Unlike cases of the establishment of paternity, cases contesting maternity do not have special evidentiary requirements. Theoreticians of family law in the U.S.S.R. have different explanations for the possibility of establishing paternity against the wish of the parent. A. Pergament did not forget to mention that all the principles of family law are to be viewed in the context of Marxism and Leninism, and should conform to "the present requirements of building of communism." He defends these artificial limitations by explaining that they are due to the difficulty in establishing the paternity of a child. V. Shakhmatov and B. Haskelberg disagree with this latter point of view and hypothesize that these limitations were designed to increase the birth rate in Common Law marriages. They also pointed out that the opposite may result.<sup>173</sup>

The surname of the child is determined by the surname of his parents. If the surnames of the parents are different, the child can have either surname depending on the agreement of the parents. In cases where parents disagree as to the surname of the child, ZAGS registers the name of the child according to the decision of the Child Welfare Agency. The first name of the child is also given to him upon agreement by the parents. The Family Codes does not stipulate the jurisdiction of the Child Welfare Agency in cases of disputes between parents regarding the first name to be given to the child. Family Codes of some Republics follow the procedure applied to disputes regarding the surname of the child. If the chosen name sounds

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171. The Case of Mr. K. which was heard in 1963 and which is within the personal knowledge of the author.

172. See 9 *Sovetskaia Iustitsia* (Soviet Justice) (1959) 84.

173. A.I. Pergament, "Osnovaniia vozniknovenia i sushchnost' roditel'skikh prav" (Basis of Origin and Essence of Parental Rights), *Pravovye voprosy sem'i i vospitania detei* (Legal Problems of Family and Childrearing) (Moscow, 1968) 61; *Supra* n.75 at 150-55.



“disharmonious” or if it is “incompatible with rules of socialist communal life and communist morality,” the opinion of Child Welfare Agency is conclusive. The patronymic name is given to the child according to the name of the father. If the father is unknown, the patronymic name of the child is decided by the mother.

The cessation of a marriage does not carry with it an automatic change of name for the children of that marriage. However, if the parent in whose custody the children remain wishes, the Child Welfare Agency can change a child's name for the convenience of the child, particularly in cases where the parent who has custody changes his or her name. Such a change does not require the agreement of the other parent. The children remaining with one parent can have their names changed in cases where that parent remarries, or can change their names according to the general regime covering change of name.<sup>174</sup>

### *B. Obligations and Rights of Parents in the Upbringing of Children*

This is the heading of Chapter 8 of the Family Code which is devoted to the personal rights and obligations of parents in the upbringing of their children. The very structure of this part of the Family Code deserves attention. It starts with a statement of *obligations* of parents in the upbringing of their children. Then, the rights and interests of the children, equality of rights and obligations of the parents, residence of children in cases of separate residence of the parents, and deprivation of parental rights are specified. There is, however, no article specifically referring to *personal* rights of the parents. This is not an accident. The roots of this can be found in Article 52 of the Family Code, which refers to the content of the obligations of parents in the upbringing of children. This Article is a verbatim repetition of Article 18 of the Fundamentals of the Legislation of Marriage and Family. “Parents shall bring up their children in the spirit of the moral code of the builders of communism, attend to their physical development, schooling, preparation for socially useful activities. Parental rights may not be implemented against the interests of the children.” As can be seen, the parental *right* to bring children up with a certain standard in mind is changed to a parental *obligation* to bring up the children in the spirit of the ideology of the Communist Party. “Moral code of the builders of communism,” refers to the notion of the correct rules of behavior adopted by the XXII Congress of the Communist Party of the U.S.S.R. and included in the above mentioned Programme of the Party.<sup>175</sup>

Regardless of their political convictions, spiritual values, and religious creed, the parents are obliged to bring up their children “in organic unity with their social education, in the spirit of devotion to the country, a communist attitude towards work, and preparation towards active participation in the building of communism.”<sup>176</sup> Parents, then, do not have a right to give religious education to their children, and cannot prohibit or object to the atheist education of their children in the schools. They are obliged to

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174. Family Code, Art. 51; *Supra* n.25, at 91; *Supra* n.75, at 150-55; Palastina, *Supra* n.167, at 28.

175. Programme of the Communist Party of the Soviet Union, *Supra* n.12, at 28.

176. *Supra* n.25, at 92.

prepare their children for "socially useful activities." However, what constitutes "socially useful activities" is determined not by the parents, but by the Leadership of the Party. Parental rights should be exercised "in the interests of the children." According to the Commentary to the Family Code "the interest of the children" should be interpreted as "ensuring their correct upbringing and developing those roles *set for the system of education in our country in general.*"<sup>177</sup> There exists a large arsenal of pressures against parents who avoid or abuse their duties in bringing up the children. These will be examined carefully in the following sections dealing with deprivation of parental rights and kinds of criminal responsibility.

The Family Code declares equality of rights and obligations of both parents; the father and mother shall have equal rights and duties with respect to their children. The parents continue to have the same rights and obligations after divorce. All questions pertaining to the upbringing of the children are to be determined by agreement of both parents. Disputes are adjudicated by the Child Welfare Agency, with the parents participating in the proceedings. Thus, neither of the parents can determine, without the permission of the other, many of the important issues in the life of the child, for instance, to send the child to relatives for the summer, to transfer the child to another school, and so forth.

The parent living separately from the children, not only has the right, but also the *obligation* to participate in raising the children. If the parents cannot agree with each other as to the participation of the parent living separately from the children, the question is determined by the Child Welfare Agency, with both of the parents present. Often, such disagreements are about visiting rights of the parent living separately from the children, the rights of that parent to take a child for visits and vacations, etc. If the Child Welfare Agency determines that the contacts with that parent have a bad effect on the child, the Agency can deny visiting rights for a certain period of time. If the parents violate such a decision, then the Agency can turn to the courts for a decision. If the parent living separately from the children, does not participate in the upbringing of the children, he or she can still be held responsible for any damages resulting from acts committed by the children. This responsibility can be waived only if it is established that the absent parent did not participate in the upbringing of the children because of obstruction from doing so by the parent with whom the children reside.<sup>178</sup> The equality of rights and obligations of both parents is also applicable to cases where the child was adopted or where the paternity was established by the court.

The new Family Code gives the right of social contact, not only to the parents but also to the grandparents. In many divorce actions in the U.S.S.R. in general, and in the Russian Republic in particular, the parent who obtained custody of the children, sought to prohibit the children from having contact with the ex-spouse's parents. This would not only cause unfair frustrations to the grandparents, but could also have a bad impact on

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177. *Ibid.*

178. 1 *Biulleten Verkhovnogo Suda R.S.F.S.R.* (Bulletin of the R.S.F.S.R. Supreme Court) (1968) 2 and 3; Civil Code of the R.S.F.S.R., Arts. 450; *Supra* n.25, at 98.

the normal upbringing and development of the children. The new Family Code has a provision that in cases of a parent's refusal to allow contact between the children and their grandparents, the Child Welfare Agency may obligate the parents to make such contacts possible, if such contacts have no damaging effect on the children and do not endanger their normal development. At the same time, the Child Welfare Agency determines the procedure and conditions under which grandparents can see the grandchildren.<sup>179</sup> As examples of "bad influence," the Commentary to the Family Code gives the following: "When the grandparents set the children against one of their parents or if they give the children anti-social attitudes, such as taking the children to a meeting of a religious group."

Although the law states that the Child Welfare Agency may oblige parents to facilitate the meetings between grandparents and grandchildren, nevertheless, this Agency according to the authors of the official Commentary to the Family Code, cannot *force* parents to provide for meetings between grandparents and grandchildren. The Code does not entertain the possibility of determining the rights of grandparents through court action.<sup>180</sup> This position reflects the general tendency of Soviet law of civil procedure to limit the jurisdiction of the court to only those cases which are specifically provided for in the statutes. It is more in conformity with the letter of the statute to permit citizens to petition the court with requests to seek the defense of any of their rights, unless the law specifically prohibits court action. Fundamentals of Civil Procedure of the U.S.S.R. state in particular that:

Any party in interest, shall have the right, in the manner established by law, to invoke the court for protection of an infringed or contested right or lawful interest. The court shall have jurisdiction over disputes arising out of civil [and] family . . . relations, where at least one of the parties to the dispute is a Soviet citizen . . . except where the law refers the hearing of such disputes to administrative or other organs.<sup>181</sup>

### *C. Protection Accorded to Parental Rights*

Section 58 of the Family Code provides that parents shall be entitled to demand the return of their children from any persons who have detained them without legal permission or on the basis of a court decision. This, of course, does not refer to the dramatic situation of kidnapping. The most commonly sought protection of parental rights deals with a petition for the return of children from their guardians or foster parents. This usually involves the relatives of one of the parents.

Under conditions of Soviet life, where several hours a day are spent in stores just purchasing necessities and household appliances are either of poor quality or totally lacking, and the number of kindergartens is insufficient; it is very difficult for young parents to combine work or study with the raising of a family. These difficulties cannot be exaggerated. Analysis shows that the decline of the birthrate is due to the above-described difficulties in living. Many young women do not want to have children until

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179. Family Code, Art. 57.

180. *Supra* n.25, at 101.

181. Fundamentals of Civil Procedure of the U.S.S.R. and the Union Republics, Arts. 4 and 5.

they have finished their education, or at least until they are economically secure. For various reasons, some women have their first child at such an advanced age, that it is too late for them to have a second child. Some do not want to have a second child, after the harsh experience of rearing the first child. Under such conditions, it has become a common occurrence for children to be placed with their retired grandparents or other relatives.

Cases dealing with the return of the children commonly occur where there has been a divorce or the death of one parent if, at that time, the child was being cared for by some other person. Family law does not give any advantages to the parents in such situations: "In the adjudication of such cases, the court has the right to refuse the petition of the parents, if the court reaches the conclusion that it does not correspond to the interest of the child."<sup>182</sup> The court can come to such a conclusion not only in cases where the parents were unable to participate in the upbringing of the children, but also on the basis of the degree of the child's attachment to the family in which he is being reared. In such cases, removal from the family can have a bad effect upon the child's development.

Such cases are considered by the court in the presence of representatives of the Child Welfare Agency. Prior to the hearing of the case, the court instructs the Agency to conduct an examination and to prepare a report indicating which of the two contending parties should receive custody of the child. Special workers called "Inspectors of methods of upbringing of children" conduct an investigation of the living conditions of both parties and interview the parties, the neighbors, and the child. They then prepare a written report in which they summarize the results of the investigation and make a recommendation as to whether the parents or the other party should receive custody of the child. The activity of these workers-inspectors will be discussed in detail when the cases dealing with the relationship between parents and children are examined.

In accordance with Section 65 of the Family Code, the Child Welfare Agency should appear before the court in all cases dealing with conflicts over the upbringing of children. In the determination of such cases, courts usually examine the reason why the child was not under parental guidance, how long the child was under the guardianship of the third parties, and how the parents related to the child throughout that time. The court also ascertains the material conditions of each of the parties. More important, however, is the kind of upbringing which can be guaranteed to the child by each of the parties to the dispute.

There are cases in which the court decided that neither party to the dispute was capable of providing the child with a proper upbringing. In the Family Codes of some of the Republics, there is a provision that under such conditions, the court should deny the petition and remove the child from the custody of both parties to the case. The guardianship of the child is then placed with the Child Welfare Agency, even though the Agency did not make such a petition.<sup>183</sup> The Family Code of the R.S.F.S.R. does not con-

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182. Family Code, Art. 58, Pt. II.

183. See e.g., Family Code of Estonia, Art. 72, Pt. II.

tain such a provision. In such cases, the R.S.F.S.R. courts in denying the petition for the custody of the child, are obliged to inform the Child Welfare Agency of the necessity of determining the guardianship of the child. For example, as the result of such court information, the Department of Education in the City of Saratov brought an action to court for the denial of guardianship to a grandmother, Mrs. Valkhonina, of her eleven-year-old granddaughter, on the grounds that the grandmother was raising the child in a religious atmosphere. The Court of the Province of Saratov confirmed the facts and granted the petition.<sup>184</sup>

The previous Family Code enacted in 1926, contained analogous provisions. Therefore, reference to judicial decisions prior to the enactment of the new Family Code still has relevance. In 1963, the Plenum of the Supreme Court of the R.S.F.S.R. laid down the following guidelines for these cases:

If a dispute concerning the custody of children is between parents and other persons, relatives or guardians, etc., the parents have a preferential right to custody of their children. The claims of parents for return of their child can be denied only in cases when the transfer of the child will adversely affect him or will entail significant worsening of the conditions of his life and of his upbringing.<sup>185</sup>

Following are a few examples of the denial of the return of the child to his parents. In refusing the petition brought by a father to obtain custody of his children, from their stepmother, the Supreme Court of the U.S.S.R. stated:

[I]n the interest of the children, they are to remain in the custody of the stepmother, because the material conditions in which the children are being brought up appear to be good, the relationships between the guardians and the children are excellent, the stepmother loves the children, and the children are attached to her, and refer to her as their mother.<sup>186</sup>

Consider also the case where a mother left her five-year-old daughter to be brought up by her husband's parents, and did not pay any attention to the child for a period of eight years, although she did have the opportunity to participate in the upbringing of the child. On the basis of these findings, the Court refused the petition for the return of the child, also taking into consideration that at the time of the petition, the daughter was already 13 years old, and in fact, did not wish to live with her mother.<sup>187</sup> In another case, a mother left her ten-month-old child with her parents where the child received good care. According to the testimony of the mother, she could not combine teaching in the university with the upbringing of the child. The mother visited the child and spent holidays with her. The petition of the father to obtain custody of the child was denied.<sup>188</sup>

It is also necessary, in resolving such cases, for the court to take into consideration the wishes of the child, if the court finds that this wish is based on a national assessment and on good grounds.

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184. See 2 *Sovetskaia Iustitsia* (Soviet Justice) (1968) ii.

185. Statute of the Plenum of the Supreme Court of the R.S.F.S.R. (Aug. 5, 1963.) *O Sudebnoi praktike po grazhdanskim delam, svyazannym s vospitaniem detei*, (Re: Judicial Practice in Civil Cases pertaining to Childrearing); 10 *Biulleten' Verkhovnogo Suda R.S.F.S.R.* (Bulletin of the R.S.F.S.R. Supreme Court) (1963).

186. 6 *Sudebnaia Praktika Verkhovnogo Suda S.S.S.R.* (Judicial Practice of the U.S.S.R. Supreme Court) (1950) 22.

187. 4 *Sovetskaia Iustitsia* (Soviet Justice) (1958) 87.

188. 3 *Sudebnaia Praktika Verkhovnogo Suda S.S.S.R.* (Judicial Practice of the U.S.S.R. Supreme Court) (1956) 5-7.

#### *D. Conflicts between Parents over Children*

If, due to divorce or other causes, parents live separately, the place of residence of minor children is determined by agreement of the parents. If the parents cannot agree, their dispute is settled by the court. As in other cases, the courts are guided by the interests of the children. Soviet family law does not follow a presumption that either the mother or the father has a preferential right to the custody of the child. However, Soviet judicial practice indicates that custody of children is more commonly given to the mother. This occurs particularly with breast-fed babies, but also includes small children and even older children. Nevertheless, these decisions are not based on the right of the mother, but on the interests of the child. The court is empowered to give a breast-fed baby to the family of the father, if it determines that this action would be in the best interests of the child.

From judicial practice, the following principles which govern cases dealing with the custody disputes may be extrapolated. The court initially has to ascertain the moral qualifications of the parents, first determining which parent is better equipped to "prepare a child for a socially useful life." Better material circumstance and living conditions of one parent are not considered to be a crucial factor in the court's decision, since the less affluent parent can be financially assisted by an award of alimony against the other. In cases where the living conditions of both parents are similar or identical, the court would look to the existence of a closer relationship between one parent and the child. Frequently, courts will consider the causes of the family quarrel or dispute, in determining the custody of the child. In addition, the courts try to decide whether the action for custody is merely an attempt to avoid payment of maintenance. For this reason, many barristers recommend to their clients who have custody to commence an action for maintenance before an action for custody of the child is brought by the other parent. On the other hand, if the child lives with the other parent, voluntary payment of maintenance is advised, before an action for custody is brought.

As a rule, the court will not separate children from each other. From the point of view of the interests of the children, the courts will award custody of all the children to one parent. In making this decision, courts usually take into consideration the attachment of the children to each other. If, however, the children were living separately over a long period of time, due to the agreement of the parents, the courts will award custody of some children to the mother and some to the father. It is assumed that the children are already accustomed to this arrangement.

As in all other cases dealing with the custody of the children, the court orders the Child Welfare Agency to investigate the living conditions of all of the children. The court seeks recommendations from the Agency as to which parent should receive custody of the children. In fulfilling the court order, the Agency is governed by the Instructions issued in 1945, by the Ministry of Education of the R.S.F.S.R.<sup>189</sup>

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189. Methodical Instructions issued by the People's Commissariat on Education of the R.S.F.S.R. (Dec. 22, 1945), *Spravochnik po voprosam okhrany deistva*, (Reference Book on Child Protection Questions) (Moscow, 1945) 159.

These Instructions state that before making its recommendation, the Agency must seek the opinion of the child, if he or she has reached the age of ten. In some Republics the court conducts an informal interview with the child. In others, the Agency communicates this information to the court *in camera*. If the court doubts the accuracy of the assessment of the wishes of the child, it can re-assess the findings of the Agency *in camera*. This procedure has been established by the Instructions of the Supreme Court of the R.S.F.S.R. to ensure that a meeting between the court and the child will take place in informal surroundings.<sup>190</sup> The courts do not give as much weight to the wishes of the child, as might be suggested by the Instructions of the Ministry of Education. If it is determined that "the parent to whom the child is more attached, and with whom the child wants to live, is not capable of giving the child a proper upbringing, the courts can ignore the wishes of the child, regardless of his/her age."<sup>191</sup>

The court's determination of custody of the children should not be governed by the fault (including adultery) of one parent in the break-up of the marriage. A poor spouse can nevertheless be a good parent. In one case, the Supreme Court of the U.S.S.R. held that "in deciding custody over the children, the court should primarily be concerned in determining the conditions of the upbringing of the child, and should not concern itself with the intimate details of the life of the parents, if those details bear no relation to the upbringing of the child."<sup>192</sup>

The Family Code establishes specific procedures for transferring children from one parent to the other, or to another person, as the result of custody decisions. The goal of these procedures is to reduce the psychological trauma to the child caused by the change. Execution of the custody order must take place in the presence of the Child Welfare Agency worker. The Agency should have a meeting with the child, in order to prepare the child to live with the person who has been awarded custody. In order to reduce the trauma in specific cases, the court can order a transitional period. During this period the child may be placed, for example, in a special house where children live while under the custody of the State. In the execution of the court order, force should not be used. This was emphasized in the 1963 Instruction to the court executors but was omitted from the new Instruction issued in 1973.<sup>193</sup> In the professional experience of the author, in a case where the Court awarded custody to the mother, the transfer of custody from the father and grandmother was unsuccessful because the child actively resisted the decision.

All of these rules may be ignored in cases which have political aspects. In recent years, this has occurred, for example, when one parent wished to emigrate from the U.S.S.R. and the other parent wished to remain. In one

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190. Statute of the Plenum of the R.S.F.S.R. Supreme Court (Aug. 5, 1963), *Supra* n.185, ss.1 and 4.

191. N. Sergeeva, "O sudebnoi praktike po grazhdanskim delam, svyazannym s vospitaniem detei" (Re: Judicial Practice in Civil Cases Pertaining to Childrearing), 18 *Sovetskaiia Iustitsiia* (Soviet Justice) (1963) 4.

192. *Sbornik postanovlenii Plenuma i opredelenii Kollegii Verkhovnogo Suda S.S.S.R.* (Collected Statutes and Rulings of the Plenum and Divisions of the Supreme Court of the U.S.S.R.) (Moscow, 1940), 249-50.

193. Instructions on Execution of Court Decisions issued by the Ministry of Justice of the R.S.F.S.R., Art. 21, cited from Riasentev, *Supra* n.114, at 193. New Instructions issued by the Ministry of Justice of the U.S.S.R. on April 24, 1973, Art. 142. *Sbornik Normativnykh aktov po semeinomu Zakonodatel'stvu* (Collection of Legal Norms of Family Law) (Minsk, 1975) 99.

instance, custody was awarded to an alcoholic father, because the mother wanted to leave the Soviet Union. In another, a father who applied for emigration from the U.S.S.R. lost custody of his fifteen-year-old daughter who had expressed the wish to remain with him. There was also the case of a child who was returned to the father even after having been adopted by the stepfather simply because he and the mother had applied for emigration visas.

### *E. Responsibility for Neglect or Avoidance of Parental Obligations*

"Upon the parents there lies an obligation of communist upbringing of children, the government cannot avoid assessing how that obligation is fulfilled", states V. Riasentsev, the author of the textbook on family law.<sup>194</sup> The governmental control over the education of children in the U.S.S.R. is conducted by a wide network of government agencies. Among them are: kindergartens, schools, the Child Welfare Agency, Komsomol, trade unions, party organs and Commissions of Juvenile Affairs. Cases of refusal to give children the proper political education are under the jurisdiction of Comrades' Courts.

The obligation of parents in this area is governed by many statutes including criminal law. However, the discussion in this section will be limited to family law, civil law and administrative law.

#### *1. Comrades' Courts.*

Poor fulfillment of parental obligations in the upbringing of children can be adjudicated by Comrades' Courts. The Comrades' Court can give the parents a "warning," a social reprimand, or a reprimand with or without announcement in the press. The Comrades' Court can also fine parents up to ten rubles.<sup>195</sup> The Praesidium of the U.S.S.R. Supreme Soviet emphasized in its Statute of February 18, 1977, the utmost importance of this activity.<sup>196</sup>

#### *2. Commissions for Juvenile Affairs*

These Commissions are established at all levels of administration, and are affiliated with the Executive Committees of the Soviets. They have the following powers in dealing with parents who do not perform the obligations towards their children: (1) social censure; (2) an order of repayment of damages caused by a juvenile, if the damage exceeds 20 rubles; (3) fine against the parents of not more than 30 rubles.

Furthermore, the Commissions have the power to petition the court to deprive one or both parents of their parental rights, or to declare one or both parents of limited legal capacity. Section 16 of the Civil Code of the R.S.F.S.R. states that citizens who, as a result of the abuse of alcohol or narcotics, put their family in difficult material conditions, can be limited by the courts in their legal capacity, and placed under *popechitel'stvo* (curatorship). As a result of such a ruling, that person cannot dispose of his proper-

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194. Riasentsev, *Supra* n.114, at 183.

195. Compare Art. 15 of the 1961 Regulations on Comrades' Courts with Art. 7 of the 1977 Regulations S.P.R.S.F.S.R., s.254. See also XXIX Current Digest of the Soviet Press, No. 39, at 15.

196. 7 *Vedomosti Verkhovnogo Soveta S.S.S.R.* (Gazette of the U.S.S.R. Supreme Soviet), (1977) s.121.



ty or receive a salary or pension, without the permission of his curator (with the exception of minor expenses). In most cases the spouse is appointed as the curator.

In cases of vandalism committed by juveniles between the age of 14 and 16, the parents can be assessed a fine from 10 to 30 rubles. This fine is imposed in an administrative procedure by the Chief of District Police. A juvenile over the age of 16, can be fined for acts of hooliganism. However, if he does not have a source of income, this fine can be collected from his parents. Parents can also be fined if children are found drunk in public places. For acts of minor hooliganism, juveniles can be subject to arrest for up to 15 days. The cost of such arrests and maintenance of the juvenile while in jail are collected from the parents. If, from acts of hooliganism, the victim sustains bodily injury and is temporarily unable to work, the resulting expenses can be recovered from the parents of the juvenile, as well as the sick-leave pay which such a person receives.<sup>197</sup> Parents are responsible for damage to property caused by their children, if they are unable to prove that they did not neglect their children.

#### *F. Deprivation of Parental Rights*

The most severe measure against parents who do not fulfill their obligations in the upbringing of their children, or who abuse their children, is the denial of parental rights. The loss of parental rights is a result of culpability only. According to Section 59 of the Family Code, one or both parents can be denied parental rights if it can be established that they avoided their obligations in rearing their children, abused their children, were cruel towards them, set a bad example by immoral or antisocial behavior, or were chronic alcoholics or drug abusers. Avoidance of parental duties in the upbringing of children is defined as neglecting the health of the children, not providing maintenance, or education and preparation for socially useful activities, or not sufficiently overseeing the behavior of the children. Among specifically stated abuses of parental rights are found prohibition of learning and prohibition of participation in social activities.

There are frequent cases of the deprivation of parental rights in instances where parents attempted to give the children a religious upbringing. Authors of the book *The New Family Code in the R.S.F.S.R.*, in giving a specific example of deprivation of parental rights, refer to the Spouses G. who were described by the authors as being fanatic sectarians. From the facts in the case, however, it was obvious that the parents simply were deeply religious and were attempting to provide their children with religious education counteracting the atheistic education they received in school.<sup>198</sup> The picture would not be complete without mentioning the source of the author's information. It stems from local newspaper and magazine accounts which blamed the parents and created an atmosphere of hostility.

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197. Decree of the Presidium of the Supreme Soviet of the U.S.S.R. "Re: application of the edict of the Presidium of the Supreme Soviet of the U.S.S.R." (July 26, 1966) "On Reinforcement of Responsibility for Hooliganism", 30 *Vedomosti Verkhovnogo Soveta S.S.S.R.* (News of the U.S.S.R. Supreme Soviet) (1966) 596.

198. *Supra* n.75, at 163.

Examples of cruel treatment of children are frequently stated as follows: "abuse" of corporal punishment, denial of the dignity of the child and forcing the child to perform exhausting and degrading work. The word "abuse" appears in quotations, because it occurs in many commentaries on family law. The use of this word must be interpreted as meaning that Soviet family legislation and theory allows for corporal punishment, but not to an excessive degree. The literature gives examples of anti-social behavior which have a bad influence on the children. These include prostitution, begging, and a parasitic style of life. Chronic alcoholism and drug abuse are the only cases where the parents can be deprived of their parental right without culpability, since both of these conditions are considered to be illnesses. In all other cases guilt of the parent must be established before he or she can be deprived of parental rights. Thus, for example, Mrs. Khrapunava took all the necessary precautions to make sure that her son did well in school, and behaved properly. She was a widow and physically unable to control the child. For this reason she placed her son in a boarding school. He was then expelled from the school for bad behavior. Upon petition from the boarding school, Mrs. Khrapunava was deprived of her parental rights. On appeal, the Supreme Court of the R.S.F.S.R. reversed the decision of the lower court, and stated that there was no evidence of guilt in Mrs. Khrapunava's actions. She did not avoid her parental responsibilities, but was only incapable of performing them in full.<sup>199</sup>

Deprivation of parental rights is an extreme measure and should be used only if all other measures of educating the parents have been exhausted. Deprivation of parental rights can only be imposed by court order. The petition for deprivation of parental rights can be brought to court, not only by one of the parents, guardians or custodians of the child, but also by government and social organizations. For example, a petition can be brought by the Department of Education, the Child Welfare Agency, the Commission of Juvenile Affairs, or trade unions at the place of work of the parents. Also, the petition for deprivation of parental rights can be brought by the Procurator. The law requires that cases for deprivation of parental rights must be considered in the presence of the Procurator and Child Welfare Agency. In the R.S.F.S.R., unlike many other Republics, criminal law does not consider deprivation of parental rights as a penalty for wrongdoing. Nevertheless, the commission of a crime against the juvenile by a parent, would be considered *res judicata* in a future civil action for deprivation of parental rights. The court will not have to redetermine facts which have already been established by the Criminal Court and will take them as granted.

The Family Code states that parents who are deprived of parental rights lose all the rights derived from the relationship to their children. They lose the right to live together with the children, to determine their education, to represent their interests, to protect them, to determine their residence, and to participate in the determination of their future. They lose the right to take the children back from persons who are caring for them. They no longer have the right to possible future support from their children,

and also lose the right to adopt any children in the future. However, deprivation of parental rights does not relieve a parent from parental obligations. Therefore, the court in declaring the deprivation of parental rights, must also resolve the issue of support for the child. The majority of authors are of the opinion that deprivation of parental rights has a permanent and not a temporary character. This, however, seems to be a doubtful supposition. It would be more correct to state that deprivation of parental rights extends to future relationships when the children reach adult age. After that relations between children and their parents are more dependent on the attitudes of the children than on the decisions of the courts or Child Welfare Agency. Even parents who are not deprived of parental rights, sometimes lose most of those rights when the children reach adult age, because of the poor relationships between them and their children.

According to Section 531 of the Civil Code, persons deprived of their parental rights also lose the right of statutory inheritance from deceased children. Although they cannot inherit by law from such children, nevertheless they can inherit as the result of a will, or if they were permanently disabled and had been voluntarily supported by their child for not less than a year before the death of the child. According to Section 532 of the Civil Code, permanently disabled people who were supported by the deceased, are among statutory inheritors.

The parent deprived of parental rights does not acquire pension rights in the event of the death of an adult child whom the courts have previously removed from the parent's custody. This applies to cases where such a child was supporting the parent prior to death, and the parent was disabled and unable to work. Parents will also not be eligible for damages from a negligent third party causing the accidental death of a child, if that child had been removed from the parents' custody.

The deprivation of parental rights may be only in respect of a specific child. Thus, for example, where one child has been abused by a father who doubts his paternity, the father might be deprived of parental rights over this particular child, but still maintain his rights over the remaining children. The deprivation of parental rights does not apply to any future children of a marriage.

In cases where the parents live separately, and one petitions for deprivation of parental rights; the court is obliged to seek out the other parent to give him or her the chance to participate in the proceedings. Failure on the part of the court to seek out the other parent results, as a rule, in reversal of the decision by a higher court. The court must also determine whether the other parent would be capable of raising the children. The following case can serve as an example. Dealing with the appeal of Mrs. Iablochkina against the deprivation of her rights as a parent, the Supreme Court of the R.S.F.S.R. reversed the decision of the lower Court, and indicated that "the father of the child was not a party to the case, and the court did not determine the possibility of the future upbringing of the child by the father. Therefore the lower court decision was reached on incorrect grounds."<sup>200</sup>

The Court might find that the other parent should not be given custody of the child, and in such cases is obliged to place the child in the custody of the Child Welfare Agency. Upon the request of parents deprived of rights, the Child Welfare Agency can grant them visiting privileges. This request will be granted in cases where contact between parents and children will not have an ill effect upon the minors. Granting of visiting privileges usually occurs after some period of time, if there are indications that the parents have changed their behavior or attitudes toward the children, and this permission is considered to be the first step toward reinstatement of parental rights.

The Family Code provides for a reinstatement of parental rights if it would be in the best interests of the child or children. Reinstatement of parental rights is also under the jurisdiction of the court. The law provides that parents or the Procurator can petition the court for reinstatement of parental rights. Reinstatement will occur if there is evidence that the parent deprived of rights has significantly changed his or her behavior and will become a model parent. For example, Mrs. K., who had been deprived of her parental rights, took every possible step to maintain contact with her children. She regularly sent them gifts and books, took great interest in their education, visited them and was interested in all their achievements. The Court agreed to hear a petition for reinstatement of her parental rights. In the case of Mrs. J., the outcome was different. Mrs. J. changed her behavior radically, stopped abusing alcohol, took an interest in her work, but she did *not* express an interest in her children and did not support them financially. The Court rejected her petition for reinstatement of her parental rights.<sup>201</sup>

As with the deprivation of parental rights, the reinstatement of parental rights can and does refer to a specific child. Insofar as the reinstatement of parental rights can be ordered only in the interests of the children, it is necessary to establish that the child, or children remember and love the parent. Thus, the reinstatement of parental rights cannot occur in cases where the child was adopted by other persons, following the court order of deprivation of the parental rights of the natural parents. The fact of adoption creates new rights and obligations both on the part of the children and the adoptive parents. A petition for reinstatement of parental rights would have deleterious effects if granted. The Family Codes of Estonia and Lithuania, though, are different from that of the R.S.F.S.R. and make reinstatement of parental rights conditional upon agreement of the child, providing the child has reached the age of ten.

There are instances where leaving children with some person, in particular with the parents, can be detrimental to the children. This might occur if the parents or other persons having custody of the children have a mental or other chronic disease. In such cases there are not necessarily any reasons for deprivation of parental rights, but there may be good reasons for the removal of the children from such a situation. Article 64 of the Family Code provides the court with the power to remove the children from the parents without deprivation of parental rights, and to place the children in the custody of the Child Welfare Agency, if such action is necessary for

201. A. Nechaeva, "Vosstanovlennii Roditel'skikh Prav" (Re-establishment of the Parental Right), *12 Sotsialisticheskaia Zakonnost' (Socialist legality)* (1968) 17.

the well-being of the children. Unlike the deprivation of parental rights, this action is not based on the culpability of the parents of immoral behavior. The court in such cases takes the child away from the parents, and then leaves to the Child Welfare Agency determination of the specific placement of the child. Upon petition from the parents or the Procurator, the court can return the child to the parents, if the conditions which led to the removal of the child have subsequently ceased to exist. The Commission for Juvenile Affairs can place the children in a boarding school or other place without parental consent when the child is removed because the parents are sick, or convicted of a crime, avoided their duties, or if the child violated the law but no criminal charges were brought.

### *G. Maintenance of Parents and Children*

The obligation of parents to maintain their minor children as well as adult children who are permanently disabled and who are in need of maintenance, is based on Article 19 of the Fundamentals, which is restated in all 15 Republican Family Codes. The obligation to maintain parents was recently declared in the new U.S.S.R. Constitution: "Children are obliged to take care of their parents and to help them." This, by the way, appeared in Article 66 of the Constitution as an amendment to the widely publicized draft. Article 20 of the Family Code creates the obligation of adult children to support and maintain needy and disabled parents. The obligation of adult children extends further than the financial maintenance, and also includes the obligation to take care of their parents. Children can be relieved of this obligation only by judicial order establishing that the parents had avoided their responsibilities. The term "parents and children" includes those who have adopted children; the legal rights of adopted children are equal to those of natural children.

In order to obtain maintenance for children, it is not necessary to obtain a divorce. The fact of avoidance of maintenance of a child on the part of one parent constitutes sufficient grounds to petition the court for maintenance. Petitions for maintenance have to be supported by documentary evidence of parentage. In the Soviet Union, such a document is a birth certificate issued by the ZAGS office. This document must indicate both parents of the child. Although, in law, both parents are responsible for the maintenance of their children; in judicial practice, there are very rare instances of seeking maintenance from the mother. In the great majority of cases, the respondents in such actions are the fathers. In cases where one of the parents is deprived of his or her parental rights, maintenance can be sought from the deprived parent by the other parent or the guardian or custodian of the children. If both parents are deprived of parental rights, the maintenance on behalf of the children is sought by the Child Welfare Agency in whose custody the child is placed. If the Child Welfare Agency appoints a custodian for the child, or sends the child to a boarding school, that custodian or school can petition for maintenance on behalf of the child.

The amount sought may be expressed either as a percentage of income, or as a specific amount. In some instances, both methods are used. However the percentage of income method is used in most cases to deter-

mine maintenance for minors. The amount to support one child is established at a level of one-quarter of the income of the respondent; for two children, one-third of the income; for three or more children, half the income. Soviet specialists in family law consider this method to be the easiest way to assess maintenance payments. In all other cases, a specific sum of money is decided upon, depending on the material conditions and family relationship of the people.

The percentage of income method is based on the net income of the respondent. The method of calculating maintenance from members of collective farms is somewhat more complicated. Members of collective farms obtain the greatest part of their income not in money but in produce. In such cases, maintenance is paid as a percentage of the produce. In cases where this is complicated due to the variety of produce which the farmer receives, a court-appointed evaluator establishes the share of the child. The usage of both the percentage of income method and the specific sum method of establishing the total amount of support applies primarily to people living in the country. Frequently, people employed in the country have their personal plots of land from which they obtain a subsidiary income. In such cases, after establishing the percentage of income as part of support, the court assesses the income from such a plot of land, and establishes an additional amount of money in a specific sum. This is provided for by Article 72 of the Family Code.

Upon the petition of those who seek maintenance, Article 71 of the Family Code allows for a change in the system of assessment from a percentage of the income to a specific amount. This is particularly applicable to situations where the parent from whom maintenance is sought has an irregular income or frequent changes in his or her income. In the literature, one can find as examples of this situation, professionals such as writers, composers, and other artists. There are also cases where people receive part of the income in produce, and part in money. For example, trappers in the far North receive part of their income in various goods in exchange for furs. The literature states that it is very difficult to establish the income of some occupational groups such as gold prospectors. This perhaps refers to the irregularity of their income.

Although the statute provides that the change from a system using a percentage of the income to a system of using a specific sum can be done at the request of those who seek maintenance, judicial practice in the past allowed for such a change at the request of those who *make* maintenance payments. This practice was common prior to the enactment of the new Family Codes. The literature does not reflect this judicial practice. Such cases were not published in the Bulletins of the U.S.S.R. or R.S.F.S.R. Supreme Courts. These cases are of particular interest because they illustrate the great disparity of income in the Soviet Union between the masses and the Party-Government elite, as well as the intellectual or artistic elites. In 1964, Mr. M. and Mr. N. petitioned the Supreme Court of the R.S.F.S.R. for a change in the amount of maintenance to be paid. They stated in their petitions that the one-quarter of their incomes which are paid to their ex-wives for maintenance of their children, far exceeded the national average income. Furthermore, they claimed that this amount far ex-

ceeded the needs of their children, and therefore, their maintenance payments were supporting a wide range of relatives and associates of their ex-wives. They argued that public policy as stated in the law, was being perverted. The Court agreed with their arguments and changed their payments to a set amount of money, 100 rubles per month in both cases.<sup>202</sup>

The establishment of maintenance as a specific sum is also used in cases where each parent has some of the children under his or her custody. For example, consider the case where a mother has two children in her custody, and the father only one child. The court determines maintenance on the basis of the relative affluence of the two parents. In an actual situation, a mother with two children in her custody had an income of 100 rubles per month, while the father with one child in his custody had an income of 180 rubles. The Court first established the amount of maintenance for each child. The mother was required to pay 25 rubles per month for the child remaining with the father. In return the father was required to pay 60 rubles per month for the two children remaining with the mother. In the final analysis, the father had to make maintenance payments amounting to 35 rubles per month.

Family law does not provide what income should be included in establishing the amount of maintenance. Article 22 of the Fundamentals states that the definition of income will be provided by the Instructions of the Council of Ministers of the U.S.S.R. The Council of Ministers in turn delegates this authority to its Committee on Work and Pay, and to the Union of Professionals Associations (*VTSSPS*). Such Instructions were issued on January 22, 1969. The basic idea of these Instructions is that all income subject to insurance is included in the calculation for the purpose of maintenance. It is almost impossible to catalogue all the forms of the income upon which maintenance is assessed, and perhaps it is more worthwhile to state a few examples of income which is *not* included in calculating maintenance. One example is premiums for intellectual activity, Lenin's prizes or State prizes. Maintenance cannot be assessed against money obtained for inventions, fees for a patent, or other forms of income which do not have a permanent and systematic character.

It is interesting to note the method of obtaining maintenance payments from Soviet workers abroad. There are two groups of such workers. The first group includes specialists working under contract abroad, who pay maintenance calculated on the basis of 100% of their income prior to their departure from the Soviet Union. The second category includes people employed in Soviet enterprises or diplomatic missions abroad. Their payments are calculated on the basis of 200% of the average salary in an analogous position in the Soviet Union.<sup>203</sup>

In specific circumstances, parents can be assessed for additional payments over and above the normal monthly payments. For example, if the child requires special medical treatment, the courts can require payment

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202. Within the author's professional experience.

203. 10 *Sovetskaiia Iustitsia* (Soviet Justice) (1973) 32.

of the medical expenses already incurred as well as future expenses.<sup>204</sup> In some cases where there is no dispute as to paternity, the court is empowered to order interim payments prior to the conclusion of the case. This is to secure the material interests of the child, especially if the determination of permanent maintenance will take some time, or if the case is postponed or adjourned. This may occur if the respondent asks the court for a remand due to illness, travel, or the necessity to search for documents. This occurs most frequently in divorce cases when the Court postpones the case with the purpose of effecting the possible reconciliation of the spouses. In such cases, the interim maintenance can be assessed either as a percentage of income or as a specific amount of money.

Interim payments are not subject to return or re-adjustment upon the final resolution of the case. This even applies to cases where the court rejects the petition for maintenance. Interim maintenance is not subject to refund. However, if the court at a later date assesses larger amounts for maintenance, then the difference between the interim payments and the final amount awarded, will have to be paid retroactively.<sup>205</sup>

In Sections 68 and 75 of the Family Code three situations are indicated in which a parent can petition the court for a reduction in the amount of maintenance. The first situation is if the maintenance payments would result in an inequality of the standard of living of the children staying with one parent, as compared to that of the children staying with the other parent. The parent making the payments can file a petition for reduction of the amount. In such cases, the court has to determine the part of the income to be spent on the children in the form of maintenance. In its assessment, the court must take into account whether the person making the appeal has other people dependent upon his support, including parents who are unable to work, etc. The court then either accepts or rejects the petition for lowering the payments. Lowering the amount of maintenance would be effective from the date of the court's decision, not from the date of the petition. It is not retroactive and cannot be credited against future obligations.

There are special rules governing the situations in which a person makes maintenance payments as a result of various court orders. This frequently applies in cases where people have been married several times, and have children from these marriages. The general rule is that maintenance payments cannot exceed 50% of the income of a person. Thus, if the total amount assessed by various courts against the same respondent exceeds 50% of his income, he can petition the court to reduce the various claims against him. In considering this kind of petition, the court must examine all previous petitions on behalf of the children of various mothers. All of the mothers who have claims against the respondent, should be brought into court. The payments to each are then proportionately lowered.

The Bulletin of the Supreme Court of the R.S.F.S.R. discusses the following case heard in 1976. Maintenance was awarded against the respondent Klimov for three children in the amount of 50% of his income. At a

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204. Art. 20 of the Statute of Plenum of the U.S.S.R. Supreme Court (Dec. 4, 1969).

205. *Supra* n.25, at 125.



later date, another court awarded maintenance for a child from another marriage, in the amount of one-sixth of his total income. He petitioned the court asking that the payments for his first three children be reduced from one-half to one-third of his income. The court granted his petition. As a result of this ruling, the first three children were each receiving one-ninth of the father's income. The case contained a judicial error, since the second wife of Mr. Klimov was not a party to the case. The Supreme Court of the R.S.F.S.R. ordered a trial *de novo*. It stated that in the first proceeding the second wife of Mr. Klimov was not a party to the case, and her child was awarded one-sixth of Mr. Klimov's income. Therefore, her child was receiving a higher amount of maintenance than each of the three children of the first marriage. In the new trial both mothers had to be involved. The new court order awarded maintenance of one-eighth of Mr. Klimov's income for each of the four children. The total amount awarded did not exceed 50% of his income.<sup>206</sup>

In judicial practice there are many cases where the second wife of a man already making maintenance payments, sues him for alimony and then he in turn petitions the court to lower the amount to be paid to the children of his first marriage. In such cases the court is obliged to determine whether the petitioner actually pays alimony to his second wife. Real relations between the petitioner and his second wife are examined by means of the testimony of neighbors. In order to establish whether the petition is genuine, the court also seeks information from the place of work of the petitioner, in order to verify the actual payments of alimony on his part.

The second condition for lowering the amount of maintenance is if the parent who is obligated to make payments is an invalid, of first or second class. Invalids of the first or second class are defined as sick people who are unable to work. The difference between the two classifications lies in the fact that invalids of the first class are not only working disabled, but also require personal assistance. A pension which such invalids receive is always lower than their previous income. The fact of being an invalid does not automatically result in a reduction of maintenance payments, but is the subject of judicial discretion. For example, the court can establish that the parent's pension is adequate if he or she has large savings which would provide the same level of income.

The third condition under which maintenance payments can be lowered is if the children work and have adequate means of support. Under modern conditions in the Soviet Union, there are many youngsters between the ages of 15 and 17 who are in the process of learning a trade and who receive salaries which are adequate for their support. In such cases the court must first determine why the young person is working instead of continuing his or her education. If the court determines that the fact of gainful employment on the part of the minor is due to difficult material conditions, then it will refuse to lower the amount of maintenance. In all cases where the amount is

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206. 4 *Biulleten' Verkhovnogo Suda R.S.F.S.R.* (Bulletin of the R.S.F.S.R. Supreme Court) (1976) 16.

reduced, a petition for reinstatement of the full amount can be made, if the condition which brought about the reduction no longer exists.

Article 69 of Family Code prescribes a special regime under which support can be obtained for children placed in a boarding school. If children are placed in the custody of the State or Social Organizations, the expenses of the State or Social Organization can be recovered from the parents. The court is empowered to relieve parents of all or part of these expenses depending on their material conditions. If payment is assessed against one parent, and then later the child is placed in the custody of the State, payment to the other parent automatically ceases. The court then determines the amount to be paid directly to the State to recover the expenses for the maintenance of the child. The Supreme Court of the R.S.F.S.R. declared that "alimony to recover the expenses of the State can be sought only from the parent and not from other persons."<sup>207</sup> For example, this means that maintenance cannot be assessed against those who actually previously took care of the children, such as guardians, custodians, etc.<sup>208</sup>

In the Soviet Union there are many institutions which are devoted to child care. If the children are placed in an institution which charges a fee, that fee is collected in lieu of maintenance. Boarding schools are included in this category. Children are placed in such schools according to the wishes of their parents. Juvenile delinquents can be placed in special "educational work colonies" for minors. State expenses for maintaining juvenile delinquents are recovered from the combined income of both parents according to the Instructions of the Minister of Finances of the U.S.S.R. Single mothers of juvenile delinquents placed in educational colonies, are not assessed this fee.<sup>209</sup> Nor is there recovery of State expenses for the upbringing of children of single mothers, including cases where the mothers have been deprived of parental rights. As a general rule, the fee is recovered from parents who have neglected their children, including parents deprived of their parental rights by the courts. However, depending upon the material conditions of the parents, the courts can relieve them from payment of the fee involved in the placement of the child in a State institution. The same ruling applies to specialized institutions such as cadet schools, and special schools for children with mental or physical disabilities.

There are known cases where the courts made exceptions to this general rule. Such court decisions vary, depending on specific situations. Thus, for example, Mr. M. petitioned the court for relief of maintenance paid to his wife on behalf of his son, when the son was accepted in military cadet school. Courts of different instances reached different decisions in this case. The Supreme Court of the R.S.F.S.R. relieved Mr. M. of payments, and indicated that since his son was fully supported in the cadet school, the need

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207. Art. 12 of the Statute of the Plenum of R.S.F.S.R. the Supreme Court (Feb. 21, 1973).

208. Instruction of the Ministry of Finance of the U.S.S.R. (Sept. 18, 1962) No. 956 *Sbornik normativnykh aktov po semeinomu pravu* (Collected Rules of Family Law) (Minsk, 1975) 130.

209. Statute of the U.S.S.R. Council of Ministers, Jan. 1975 (S.P. S.S.S.R., 1975) No. 4, s.2; *11 Biulleten' Verkhovnogo Suda R.S.F.S.R.* (Bulletin of the R.S.F.S.R. Supreme Court) (1970) 6.

for maintenance no longer existed.<sup>210</sup> Another case involved the placement of a child in a special school for the mentally retarded. The Supreme Court of the R.S.F.S.R. pointed out that although there was no fee for placement of a child in a school for the mentally retarded, it was necessary to determine whether the mother had additional expenses connected with the maintenance of the child. The Supreme Court reversed the decision of the Court of first instance, and decided in favor of continuing maintenance payments.<sup>211</sup>

The issue of maintenance for adult but permanently disabled children is resolved differently. Maintenance for adult children depends on their degree of disability and their material conditions. In such a case, maintenance is set not as a percentage of the income, but as a specified amount per month. The material and family conditions of the parents is also relevant. In such cases, only the adult children themselves can bring a petition.

As mentioned before, the rights and obligations of maintenance between parents and adult children are reciprocal. In Soviet family law, these obligations always have a mutual character and cover a wider range than obligations between spouses. Article 20 of the Fundamentals states not only the obligation on the part of the children to financially support their disabled parents, but also requires them to be responsible for the physical care of their parents. This obligation to take care of their parents is a separate one from the alimentary obligation. It is not enforceable by a legal sanction, and therefore cannot be subject to litigation. It is considered to be only of a declaratory and educational character.

Maintenance for needy and disabled parents is determined as a monetary award, depending on the family and material conditions of both the parents and the children. In determining the material conditions of the parents, it is necessary to assess their ability to support each other. This provision is found in Article 19 of the Family Code of the Ukraine. The Family Code of the R.S.F.S.R. does not have such a provision, but judicial practice follows the Ukrainian norm. The fact of parents being supported by the government as, for example, in a home for the aged, does not in itself relieve the children of their obligation of maintenance. The court might come to the conclusion that the parents are in need of additional support over and above that provided by the government. Children may be relieved of their obligations to support their parents if the court finds that the parents had previously neglected their parental duties. This is applied to parents who "suddenly remember" their children, when they themselves are in need. In arriving at a decision in such cases, the court must specify how the parents neglected their duties.

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210. 3 *Biulleten' Verkhovnogo Suda R.S.F.S.R.* (Bulletin of the R.S.F.S.R. Supreme Court) (1972) 5.

211. 4 *Biulleten' Verkhovnogo Suda R.S.F.S.R.* (Bulletin of the R.S.F.S.R. Supreme Court) (1972) 5.

### *H. Maintenance of Others.*

Soviet legislation creates obligations of maintenance not only in the case of parents, spouses, and children. The obligation to maintain orphans can be the duty of grandparents, brothers and sisters, stepfathers and stepmothers. The obligation to support disabled adults in cases where they do not have children or spouses, can be extended to grandchildren and stepchildren. Family Codes of several Union Republics provide that brothers and sisters should support their disabled adult brothers or sisters, where the latter cannot obtain support from their parents, spouses, or children. The Family Codes of Belorussia, Ukraine, and Estonia provide that brothers and sisters are obliged to support only minor brothers and sisters. Stepfathers and stepmothers are obliged to support stepchildren if the children are in their care, and if the children no longer have natural parents, or if those parents are unable to support them. If stepparents who have supported and maintained the children become disabled, those children have an obligation to support the stepparents. The court can relieve the stepchildren of this responsibility if the stepparents were negligent in their duties, or if they maintained the children for less than five years.

#### *1. Grandparents*

Under Sections 83 and 84 of the Family Code, grandparents are obliged to support their minor grandchildren if they cannot be supported by their parents. This obligation extends to disabled adult grandchildren, if they cannot be supported by their parents or spouses. This obligation is enforced only if the grandparents have sufficient means. In return, if the grandchildren have sufficient means, they are obliged to support disabled and needy grandparents, if the grandparents cannot receive support from their children or spouses.

#### *2. Brothers and Sisters*

Prior to the enactment of the new Family Code, brothers and sisters were obliged to support only their minor brothers and sisters. The enactment of the new Family Code extended the obligation to include their adult disabled brothers and sisters, even if that disability occurred prior to the enactment of the new Family Code.<sup>212</sup>

#### *3. Dependents*

The obligation to maintain children may also arise where children are brought up by people not related to them by blood. Article 85 of the Family Code provides that people who raise the children, cannot subsequently avoid the responsibility for support of those children either as minors or as disabled adults, if they do not have parents, or cannot receive support from their parents. It is necessary to distinguish between people who actually rear the children and those who are legal guardians or custodians but who do not actually care for the children. The determination of the meaning of the phrase "actual upbringing" is left to the discretion of the courts. The Supreme Court of the R.S.F.S.R. indicated that the taking of children to bring them up must have been voluntary, and the decision must have been

212. Art. 14 of the Decree of the Presidium of the R.S.F.S.R. Supreme Soviet, *O Poriadke Vvedenia v deistvie Kodeksa o brake i sem'e R.S.F.S.R.* (Re: Coming into Force of the Family Code of the R.S.F.S.R.), 43 *Vedomosti Verkhovnogo Soveta R.S.F.S.R.* (News of the R.S.F.S.R. Supreme Soviet) (1969) s. 1290.

made with full knowledge of all the rights, responsibilities and obligations connected with this action. The following court decision is an interesting illustration of this situation.

Z and A entered into a marriage and A gave birth to two children. The record in the ZAGS office indicated that Z was the father of the children. He participated in their upbringing and maintenance. After ten years the couple obtained a divorce, and the court ordered Z to pay maintenance for the children. Later, he petitioned the court for a denial of paternity and succeeded in this action. The record indicating him as the father of the children was removed. Consequently, the Court's decision for maintenance was overturned and in a new trial the petition of A for maintenance was rejected. A then petitioned the Court for maintenance from Z, not on the grounds of paternity, but on the grounds that he was actually the person bringing up the children that is, the *fakticheskii vospitatel'* (actual upbringer). She introduced evidence indicating that they had lived together for 14 years, and throughout this time, Z had participated in the upbringing of the children, as well as providing for their maintenance. Z's defence was that he had not taken the children of A for upbringing and maintenance, but that he had participated because at that time he considered them to be his children. The Supreme Court determined that Z could not be the actual upbringer of the children, because he was participating in their maintenance and upbringing *in error*, considering them as his own. The Supreme Court pointed out that only knowingly and with full free will can a person be considered as an actual upbringer and only such knowledge and free acceptance of the children carries with itself the obligation of support.<sup>213</sup>

The length of time of the actual upbringing and maintenance has no bearing on the obligation to support. This obligation is reciprocal in cases where the person who brought up the children cannot receive support from his own children or spouse. In such cases maintenance is set as a specific sum of money depending upon the material conditions of both parties.

It is still necessary to describe how maintenance is paid and received. First, it can be paid voluntarily. A person can arrange with his or her place of employment that a set amount be deducted directly from his or her pay. Employers are obliged to provide this service. Even if payment is made voluntarily, in the regular manner, the recipient can petition the court for a decision with respect to the maintenance. It is worth mentioning that the cases dealing with maintenance, along with divorce cases, form the majority of all civil cases in the U.S.S.R.<sup>214</sup> Maintenance is payable from the date of the petition rather than from the date of the court judgment, and as a rule, it is not retroactive. Maintenance can only be sought retroactively in cases where the petitioner's previous attempts to obtain payments from the respondent were unsuccessful. This, however, is limited to a three-year period.

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213. 8 *Biulleten' Verkhovnogo Suda R.S.F.S.R.* (Bulletin of the R.S.F.S.R. Supreme Court) (1973) 4-5.

214. N.M. Ershova, *Alimentnye obiazannosti chlenov sem'i*, (Obligations of Family Members For Alimony) (Moscow, 1976) 53.

The petition can be brought in the court of the residence of the respondent or the petitioner. Petitions for reduction in amount can only be brought in the court of residence of the recipient of the maintenance. Petitioners for maintenance are relieved from court fees. Where a petition for maintenance is successful, the court costs are recovered from the respondent, although the court can relieve him from the fees. The court fees are established in proportion to the amount for which the action is brought into the court. The fee is established as a portion of the amount of the maintenance to be paid each year. Petitions are to be heard within ten days, if both respondent and petitioner live in the same city, but if they reside in different places, the case must be heard in no more than 20 days.<sup>215</sup>

Unlike the general rule applied to civil cases, in cases for maintenance the court might require the presence of the respondent. If the respondent does not appear, he can be fined ten rubles by the court, and the police can be instructed to bring him into court. This of course does not apply where the respondent has valid reasons for not appearing.<sup>216</sup> If the place of residence of the respondent is unknown, he can be located by the police. An obligation to search is contained in the Code of Civil Procedure.<sup>217</sup>

If maintenance is deducted at the place of employment of the respondent, payments must be made not later than three days following the pay date. The court order is executed not later than two days following the judicial decision, regardless of pending appeals.<sup>218</sup> Uncollected payments have a limitation period of three years. In cases where non-receipt of payment is due to avoidance on the part of the respondent, this limitation period does not apply, even in such cases where the child has become an adult. The limitation period does apply to cases where a search for the respondent was taking place throughout that period.<sup>219</sup> Relief from indebtedness in *toto* or in part, can only be by court order on petition of the debtor. The obligation of maintenance is reinforced by criminal sanctions.

As noted above, all inhabitants of cities must have "internal passports." The internal passports of those who have avoided maintenance payments or who have to be sought in order to comply with the court order for payment of maintenance, bear a special note of their obligations.<sup>220</sup> Such a notation on the internal passport, which is made by the police, creates an obligation on the part of the employer to make deductions and transfer the amount of the recipient. In cases where the address of the recipient is unknown, the payments are deposited in the court. Employers who do not comply with that provision can be fined up to 10 rubles. It is a legal obligation of the employer to check the internal passport of each new employee. The special character of maintenance payments is such that they

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215. Code of Civil Procedure of the R.S.F.S.R., Arts. 80, 82, 83, 99.

216. Code of Civil Procedure of the R.S.F.S.R., Art. 159.

217. Code of Civil Procedure of the R.S.F.S.R., Arts. 112, 215, 352.

218. Code of Civil Procedure of the R.S.F.S.R., Art. 210.

219. Family Code, Art. 96.

220. Family Code, Art. 93.

cannot be garnished for payment of debts, or be the subject of any other civil transactions. As a rule, the money paid for maintenance cannot be recovered, except by court order in cases where the original payments resulted from false evidence.

## **VII. CONCLUSION**

Such, then, are the main features of the Soviet family law in terms of relationships between spouses, between parents and children, and between other members of the family. As in every society, Soviet family law reflects the social relationships within the Soviet family. It is difficult to transplant legal norms from one system to another. However, that does not make it impossible to transfer some technical solutions from one legal system to another. As in all other instances, it is important that the law remain not only on paper, but that it be a living law.