D. Legal Consequences of Annulment

The declaration of a marriage as being "annulled" does not change the rights of children of such a marriage, according to Article 46, Section VI of the Family Code.

The other legal consequences of the annulment of a marriage vary, depending on the guilt of the parties. The marriage is annulled from the date of entry into the marriage. Persons who remain in a legally non-existent marriage have no rights from such a relationship, nor do they have legal obligations. Division of property acquired during such a relationship is governed by civil rather than family law: those provisions dealing with common property. Nevertheless, if one party hid the fact of a prior marriage from the other, he or she can be obligated by the court to pay the alimony to the other party in cases of need in accordance of family law, even though the marriage was annulled. Courts can also use the norms of the family law, under such conditions, for division of property acquired prior to the annulment of the marriage. The person who was in good faith may also be permitted to retain the family name. These legal norms are utilized as sanctions against the party who acted in bad faith *vis a vis* the other. This in particular applies to the division of property which has been registered in the name of only one of the spouses — house, car, saving accounts, etc. Thus, if the savings accounts is in the name of the spouse who acted in good faith, the party who was in bad faith will be denied his or her share of the money. According to Section 395 of the Civil Code of the R.S.F.S.R., a savings account cannot be part of the common shareable property of a citizen. Only the spouse at the time of division of the property or award of alimony can have a share in such an account. In the case of a dispute over a house, the party who acted in bad faith carries the burden of proof as to his or her share in the amount of work and contribution to the building or buying of that house. If the house and savings account are in the name of the party who acted in bad faith, then the share of the innocent party can be determined according to the family law rather than Civil Law. In this way, the innocent party benefits from the presumption of an equal share in the property.[85]

In all cases of annulment of a marriage, the court sends a copy of its decision to the ZAGS office in which the marriage took place.

IV. RIGHTS AND OBLIGATIONS OF SPOUSES

A. Equality of Personal Rights

A distinction is made in Article 3 of the Fundamentals between the personal and property rights and obligations of the spouses.

> In their family relations, men and women enjoy equal personal and property rights. The equality of rights in Family Law is based on equal rights of man and woman, as laid down in the Constitution of the U.S.S.R. in all spheres of government, socio-political, economic and cultural life of the country.

It must be said that there is a noticeable difference between the legal pronouncement and real life.

85. V. Danilin, *"Otlichitel'nye Cherty Obshchei Sobstvennosti Suprugov"* (On Distinctive Features of Common Property of Spouses), 23 *Sovetskaia Iustitsia* (Soviet Justice) (1969) 20.

Although a sociological analysis of the position of women in the U.S.S.R. is beyond the scope of this article, it may be noted that the higher the official position, the lower the proportion of women occupying such positions. In the highest decision-making bodies of the U.S.S.R., the Politburo of the Central Committee of the Communist Party, and the U.S.S.R. Council of Ministers, there is not a single woman. It is interesting that an admission of the unequal position of women in the U.S.S.R. may be found in the programme of the C.P.S.U., in the section that deals with the necessity of relieving and reducing the amount of *"female* labour in housework" (emphasis added) by means of wider distribution of various home appliances. Apparently it was difficult for the members of the editorial committee and the entire Party Congress to imagine that, with equality of the sexes, housework is not only a female responsibility, but the common responsibility of both spouses, depending on their inclinations and mutual agreement.[86]

The personal rights and obligations are those which do not carry any economic consequences. The personal rights of one spouse give rise to the corresponding obligations of the other not to obstruct these rights. According to Articles 18 and 19 of the Family Code, personal rights of the spouses include the choice of a name upon marriage, co-determination of all family problems including raising children, and self-determination of profession, employment and place of residence.

Some personal rights mentioned in the Family Code belong to all citizens of the U.S.S.R. whether or not married. According to Article 10 of the Civil Code, all citizens have the right to determine their profession, employment and place of residence. Inclusion of these rights in the Family Code simply stresses the fact that marriage cannot undermine these rights. This repetition also has a symbolic meaning, underlining the idea that personal rights in the Soviet Union are different from those in prerevolutionary Russia, and in many contemporary capitalist countries. This comment is repeated in all works of scholars on family law in the U.S.S.R. One example may be found in a text book on Soviet family law published in 1978, where the following statement was made: "Even in the developed capitalist states of Europe, America (U.S.A. and Canada) and Asia (Japan), it is a very long way yet to the entire equalization of married women in spousal rights."[87] The pot calling the kettle black. Not all, and not always can personal rights be protected by courts. The party and trade union organizations play a much greater role in regulating family affairs than the judiciary. Some conflicts emerging from the problems of rearing children may be determined or considered by government agencies, such as the Office of People's Education or Guardianship. Nevertheless, courts are called upon from time to time to enforce personal rights. Comrades' Courts, which operate in the place of work as well as the place of residence of the spouses, are also empowered to consider cases of undignified treat-

86. *Supra* n.12, at 100. This reproduced the translation by the Soviet translator. The phrase "female labour in housework" *(Zhenskii Trud V Domashnem Khoziaistve)* was improperly translated there as "domestic work of women."

87. G.K. Matveev, *Sovetskoe Semeinoe Pravo* (Soviet Family Law) (Moscow, 1978) 140. *See also,* Beliakova and Vorozheikin, *Supra* n.1, at 27-30; Ioffe, *Supra* n.1, at 219.

ment of women and failure to fulfill childrearing responsibilities.[88] Even if a violation of the personal rights of a spouse is not severe enough to be a subject of separate judicial determination, the behaviour of the spouse may be taken into consideration by the court in resolution of a divorce case or custody dispute.

Upon marriage, spouses may take a common name, or each may keep his or her own name. Until the enactment of the new Family Codes, it was also possible to use a double name consisting of the names of both spouses. In the R.S.F.S.R., this law was changed because hyphenated names complicate relationships, especially where there is divorce and remarriage. In some other Republics there is still the option of using both names. The only limitation is that one cannot use a double name if one or both of the spouses already has a hyphenated name. The change of name by one spouse does not mean that the other must change his or her name during the marriage.

The rights of the spouses to determine family problems jointly, and to choose freely an occupation, profession and place of residence, require some short comment. Neither spouse is to consider any of these issues without consulting the other. Neither is to dictate his or her will to the other. Differences of opinion as to the upbringing of children or about the surname of the child if the names of the parents are different, are, in accordance with Articles 54 and 56 of the Family Codes, considered not by courts, but by the Child Welfare Agency, with the participation of the parents. This procedure is also followed if one parent is living separately from the children, and there is a disagreement concerning the participation of the absent parent in the upbringing of the children. In these cases, however, if the parents do not follow the decision of the administrative Agency mentioned above, then the Agency has the right to refer the case to the court for a decision. Courts, in adjudicating such cases, are not bound by the decisions of the administrative Agency. The violation of personal rights of one spouse by the other might also constitute grounds for divorce. Thus, for example, Mrs. K. petitioned for divorce on the grounds that her husband demanded that she should give up her job as a school teacher, in order to devote all her time to house maintenance and children.[89]

The above-mentioned right of each spouse to a choice of separate place of residence also existed in the previous Family Code. As early as 1930, the Supreme Court of the U.S.S.R. stated that "remaining in the marriage does not require common residence."[90] In 1954, the Supreme Court of the U.S.S.R. stated in the same spirit that "neither of the spouses is obliged to follow if one of them changes the place of residence."[91] One cannot, however, say that this principle has always been followed in Soviet legislation. For instance, the U.S.S.R. Council of Ministers issued a Statute

88. *Polozhenie o Tovarishcheskikh Sudakh* (Statute on Comrades' Courts). *See* 12 *Vedomosti Verkhovnogo Soveta R.S.F.S.R.* (News of the R.S.F.S.R. Supreme Soviet) (1977) s.254. Also found in Family Code (1975) 98: "Comrades' Courts consider cases on: . . . 3. Greeting of the woman with indignity, avoidance of the duties to bring up the children."

89. VI *Sudebnaia Praktika Verkhovnogo Suda S.S.S.R.* (Judicial Practice of the U.S.S.R. Supreme Court)(1950) 18.

90. 2 *Sudbenaia Praktika Verkhovnogo Suda S.S.S.R.* (Judicial Practice of the U.S.S.R. Supreme Court) (1931) 5.

91. 4 *Sotsialisticheskaia Zakonnost'* (Socialist Legality) (1954) 91.

November 19, 1950, ordering the Administration of Housing to remove family members of a person who moved to another city, if they had not voluntarily followed "the head of the family." This unpublished order of the Council of Ministers was in effect for five years.

Under certain conditions marriage does not create the obligation to live together, nor the right of the spouses to a common residence. For example, a husband left his wife and settled with his mother and two children from his previous marriage. The reason for his establishing a separate residence was the poor relationship between his wife and the children. The wife subsequently asked for an order stating her right to be included in the new residence of her husband, on the grounds that she has "a right to live at the place of residence of her husband." Her petition was granted in a decision of the Peoples' Court, but the decision was reversed on appeal to a Plenary Session of the Supreme Court of the Azerbeidjan Republic. That decision was obviously approved by higher authorities, since it was published in the Journal *Socialist Legality,* which is a publication of the U.S.S.R. Supreme Court and Procuratura.[92]

The right to live separately was also curtailed after emigration from the Soviet Union became not just a dream but a real possibility. In cases where one spouse was refused permission to emigrate, the other had to obtain a divorce before leaving the U.S.S.R. This was necessary even though the couple did not want to divorce and intended to reunite after the difficulties of emigration were overcome.

B. Property Rights

The law divides property belonging to spouses into two categories; common property of the spouses, and personal property of each spouse. The legal consequences of different kinds of matrimonial property have their own peculiarities. In cases of common property, the spouses have equal rights of possession, use, and disposition. Common marital property is usually the central issue in divorce cases when division of property is involved. As a rule, each spouse's personal property is in his or her exclusive possession, and that spouse has exclusive rights to dispose of it. This kind of property cannot be divided at the time of a divorce. In theory, and in judicial practice, opinion varies as to the extent of personal property of the spouses.

1. Personal Property of the Spouses.

According to Section 22 of the Family Code, the personal property of a spouse consists of: 1) property which belonged to the spouse prior to the marriage; 2) property acquired by either spouse as the result of an inheritance, commonly consisting of houses, furniture and bank accounts; 3) personal gifts, premiums, and prizes. Under some circumstances, the personal property of spouses can be considered common property if, during the marriage, the contribution of the other spouse to such personal property is of great significance. This pertains mainly to improvements on a house or other property. Although this rule did not exist in the previous Family

92. 9 *Sotsialisticheskaia Zakonnost'* (Socialist Legality) (1966) 85.

Code, it was recognized by judicial practice prior to the enactment of the new Family Code. It is commonly applied in the division of a house belonging to one spouse.

If property is acquired by both spouses, but is used by only one of them, it is considered to have become personal property. Determination of ownership does not constitute any problem regarding goods which are personally used, such as clothing. This, however, does not apply to jewelry and other kinds of property considered to be luxury items. These items are considered common property, even if they are used exclusively by one spouse as a result of a mutual agreement. The designation of a certain item as "an object of luxury" is determined by the courts in individual cases. This, of course, varies a great deal depending on the various customs and standards of living prevailing in different regions of the Soviet Union. In the literature, luxuries are those things which are expensive and not necessities of life.

There is a disagreement in the Soviet literature as to the character of "tools of trade" and professional materials acquired during the marriage for use and possession by one of the spouses; for instance, the medical instruments of a doctor, musical instruments of a musician, cameras of a photographer, etc. There are two points of view. According to the first, such things are personal property.[93] According to the second, such things are common property but at the time of the division of property are given to the spouse who is using them.[94] It appears that the second point of view has more advocates, and also has found its way into the Family Codes of the Ukraine (Article 26) and Kazakhstan (Article 22).

There are also various opinions as to the status of personal property acquired while the spouses lived separately. The authors of a recent Soviet textbook on family law in the Soviet Union state that separation of the spouses does not undermine the general principle of joint ownership of property acquired during the marriage. This applies, they say, even where separation indicated the *de facto* cessation of the marriage.[95] This point of view, however, can be disputed. In my opinion, where spouses capable of work have decided to live separately, terminating their common household, the property subsequently acquired by each of them ceases to be (using the words of Section 20 of the Family Code) "acquired by spouses," that is to say, resulting from the common work, or from income acquired from common work, even if one spouse is a housewife. The Supreme Court of the U.S.S.R. has stated that "property acquired by one of the spouses during the time of their separate residence is the personal property of that spouse alone."[96] This point of view remains valid today.

Common property of the spouses is defined according to Article 21 of the Family Code as "that property acquired through the combined income from the work of both spouses." Thus, property acquired by one spouse,

93. *See e.g.*, Tarkhov, *Supra* n.5, at 147; or E.M. Vorozheikin, *Pravovye Osnovy braka i sem'i* (Legal Fundamentals of Marriage and Family) (Moscow, 1969) 62.

94. *See e.g.*, G.M. Sverdlov, *"Sovetskoe Semeinoe Pravo"* (Soviet Family Law) (Moscow, 1956) 35-36.

95. Beliakova and Vorozheikin, *Supra* n.1, at 1-9, 130.

96. 3 *Sotsialisticheskaia Zakonnost'* (Socialist Legality) (1967) 45.

during a separation caused by the *de facto* termination of the marriage, should be considered the personal property of that spouse. When the law talks about property acquired during the marriage, it obviously has to mean not just the legal fiction of marriage, but a real marriage in all its social, economic, and legal contexts. If the parties are only connected through the official fact of registration of their marriage, it cannot be considered that the property each acquired separately is communal.[97]

There are also conditions under which property acquired by one spouse prior to the marriage becomes common. Article 13 of the previous Family Code allowed private agreements between the spouses to determine, within the law, all arrangements as to the property which each had prior to the marriage. The removal of this provision from some of the Family Codes is purely an editorial change. The right to determination of property arrangements between the spouses seems to be part of the broader right to legal self-determination. According to Article 8 of the Fundamental Principles of the Civil Legislation in the Soviet Union, "the civil legal capacity shall belong equally to all citizens of the U.S.S.R." Thus, entering into a marriage cannot cause a loss of these rights. As a rule, agreements between spouses as to the joining of personal property are oral. Nevertheless, the intention of such agreements can be determined through analysis of the use of the property by the spouses. An illustration of this principle is found in the decision of the Supreme Court of the U.S.S.R. in the case of *Gurevich* v. *Brodskaia.* The plaintiff Brodskaia claimed that certain property belonging to the defendant Gurevich before entering into marriage was now common property in accordance with their mutual agreement. She provided unchallenged evidence that prior to the marriage a piano and several other items she owned were sold by her and the defendant, and that the proceeds were then used for "family needs." This was done because they did not need two pianos and other similar items. The Supreme Court stated that such an agreement between spouses as to the disposition and re-distribution of personal property is legal and the court has to determine from the actions of the spouses the actual character of property even if acquired before the marriage.[98]

2. Common Property of the Spouses

Article 12, Sections 1 and 3, of the Fundamentals read as follows:

> [P]roperty acquired by the spouses during their marriage shall be their common property. The spouses shall enjoy equal rights to possess, use or dispose of such property. In case of division of common property, the share of each of the spouses shall be recognized as equal to the other's share. In certain cases the court may depart from the principle of equality of shares of husband and wife on *account of the interests of minors, or the reasonable interests of either spouse.*

Thus, in contrast to the Civil Code where shares of common property are always determined prior to the division of property between the partners, the common property of spouses belongs to both parties. This common pro-

97. V. Fedorov, *Obshchaia Sobstvennost' Suprugov* (Common Property of Spouses), 9 *Sotsialisticheskaia Zakonnost'* (Socialist Legality) (1959) 45.

98. 1 *Sudebnaia Praktika Verkhovnogo Suda S.S.S.R.* (Judicial Practice of the U.S.S.R. Supreme Court) (1958) 36-37.

perty is owned jointly and severally. Soviet Jurists call it "common joint property of spouses."

Community of matrimonial property occurs only as a result of marriage.[99] Common Law marriage does not produce such property relationships. Both parties of a Common Law relationship have to prove their title to personal property, as well as their share of the common property.

To illustrate the principles stated above, consider this case: Mr. and Mrs. Abalakov were married for ten years. At the time of the marriage, Mr. Abalakov did not disclose that he was already married. His first wife died five years after his illegal marriage. Five years later, Mr. Abalakov petitioned the court for a divorce and division of property. His wife petitioned the court for annulment of the marriage, and introduced evidence that she did not know about the first marriage of Mr. Abalakov. The Court declared the marriage annulled only from the day of the registration of the marriage until the day of the death of Abalakov's first wife. With respect to the division of property, the Court applied various legal principles. Dealing with the property acquired in the latter, valid five years of the marriage, the Court divided the property according to the Family Code, giving equal shares to both spouses. For the first five years (during which the Court declared the marriage to be annulled), the Court applied the principles of the Civil Code, the rules of division of property among partners. The main property under dispute with respect to the first five years, was a car registered in the name of Mrs. Abalakov. Since Mr. Abalakov was unable to prove to the satisfaction of the Court that the car was purchased with his financial contribution, the Court declared that it became the sole property of Mrs. Abalakov. If the same car had been divided between divorcing spouses according to the Family Code, the results would have been entirely different. Because Mr. Abalakov was the only member of the family holding a driver's licence, he probably would have received the car, and Mrs. Abalakov would have received 50% of the value of the car at the time of the division of property.[100]

The common property of the spouses can consist only of property acquired from the income from their labour *(trudovoi dokhod)*. Neither spouse is relieved from the duty to work. The maintenance of the household and care of children is equal to the work of the other spouse whose work results in salary or income. Only where "valid reasons" exist can a spouse who does not work at all be entitled to common property acquired during marriage. Among such valid reasons are illness or attendance at an educational institution. If both spouses work outside the home, the difference in their incomes in no way affects their respective shares of the property in case of its division.

99. The Fundamentals of the Civil Legislation of the U.S.S.R., Art. 26. There is, however, one exception. The property of the household of peasants and collective farmers belongs to all members of the household and not only to spouses as joint property.

100. *Id.*, at Art. 27. This case, in the Court of the City of Leningrad, was heard in 1972. The author was involved in this case as a counsel.

One doubt, however, always nagged at me during my years of practice. Let us take two cases of division of common property. In the first case, Mr. X works and brings income home and Mrs. X is a housewife and handles the household and the children. Their property will usually be divided equally. In the second case, both spouses work outside and bring their incomes home, but in addition Mrs. Y carries out the household tasks, including the same child care. The question is why in this second case is the property divided into two equal parts? Where did the woman's housework disappear from the eyes of the court? In such cases, is the declaration of equality not a fiction?

Family Law presumes that the property of the spouses is common. The burden of proof lies with the party claiming to the contrary. Private agreements to restrict community of future property of spouses are invalid. Such agreements can be entered into with respect to particular property which the spouses own at the moment of agreement, but cannot apply to future common property. Property acquired after such an agreement is considered common property if a new agreement covering this new property is not made.[101] The principle of common property of married persons cannot be changed, either by private agreement or by the decisions of the courts.

The common property of spouses consists not only of assets (including salary, honorarium, pension, etc.) but also of debts, if such debts were entered into during the marriage and were related to the maintenance of the common property in the normal course of events. For example, Mr. Startsev received a loan from the State Bank in order to build a house. He died before he had repaid this loan and the Bank petitioned the Court to require the widow to repay the loan. The Court allowed recovery of part of the loan from the estate inherited by the widow. The higher Court reversed this decision and decided that the loan had to be recovered not only from the property belonging to the deceased Mr. Startsev but also from the property belonging to his widow if it were established that the widow had used the loan as well as her deceased husband.[102]

On the division of common property, the registration of the title of particular property, when required, or the name of the holder of a bank account is irrelevant. The literature raises the question as to the time from which the income of a spouse becomes common property. There are three possibilities. It is from the time the money is due, from the time the money is actually received or from the time the money is brought into the family.[103] The author holds the opinion that the salary or income becomes common property from the moment it is due, rather than from the moment of actual receipt or investment into the family, since there exists from that moment both a legal obligation on the part of the employer or other person who is to pay the money and a concomitant right of the employee to receive this money.

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101. *Supra* n.75, at 51.

102. 3 *Biulleten' Verkhovnogo Suda R.S.F.S.R.* (Bulletin of the R.S.F.S.R. Supreme Court) (1962) 15.

103. Ioffe, *Supra* n.1, at 226-27; N.V. Rabinovich, *Lichnye I Imushchestvennye Otnoshenia V Sem'e* (Personal and Property Relations in a Family) (Leningrad, 1952) 61.

The legal principle of common property means that both spouses can exercise all the rights, including disposition, of the common property *in toto,* rather than in shares. These rights may be exercised by either spouse in the common interest of both. The presumption is that if one spouse transfers the title of some common property, he or she does so with the agreement of the other spouse. With some statutory exceptions, there is no need for a power of attorney from the other spouse. There are three exceptions to this general rule:

1. Alienation of a house, an apartment in a co-operative house or a car requires consent of the other spouse in written form.[104] The Supreme Court of the R.S.F.S.R., for example, declared invalid a transaction in which Mr. Zhil'tsov alienated a cottage to a co-operative organization without consent of his wife. The reason submitted by the co-operative that it acted in good faith was not considered a valid one.[105]
2. The presumption of consent of the other spouse can be rejected by the court if there is evidence that the purchaser knew about the lack of consent of the other spouse.[106]

   The classic illustration of this rule is the transaction in which one spouse sold the family cow to a third party. The buyer knew very well that the other spouse was out of town for many months and could not know about this proposed deal. The transaction was annulled by the Court. The presumption is not always rejected in such circumstances, however, there are exceptions which prove the rule. One example is the case of Mrs. Lankovsky who sold some common property to a party who knew that the husband was absent, and knew that he would not consent to the transaction. Mr. Lankovsky then petitioned for annullment of the transaction and was initially successful. The Supreme Court of the U.S.S.R. found the lower court's decision in favor of Mr. Lankovsky in error. The Supreme Court pointed out that the lower court did not take into account the fact that the husband had not supported his wife and children for three years prior to the transaction, and that she was therefore compelled to sell the property in order to maintain the children.[107]

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104. The requirement may be found in the legislation which regulates contracts for the purchase and sale of buildings, Civil Code of the R.S.F.S.R., Art. 44, and also in the Instructions to Notaries issued by the Ministry of Justice of the R.S.F.S.R. In the U.S.S.R., transactions involving buildings and automobiles must be certified by a notary in all cases. *See* Article 10 of the Statute on State Notary of the U.S.S.R. and the Instructions for State Notaries adopted by the Ministry of Justice of the R.S.F.S.R. on June 30, 1975.

105. A. Nemkov, *Imushchestvennye Pravootnochenia V Sem'e* (Property Relationships in a Family) (Perm', 1966) 61. *See also Supra* n.43, at 31. The opposite view may be found in N.M. Ershova, *Voprosy Sem'i V Grazhdanskom Prave* (Family Problems in [Soviet] Civil Law) (Moscow, 1977) 87-88.

106. *E.g.,* the R.S.F.S.R. Supreme Court declared null and void a contract for the sale of a cow by one spouse without the agreement of his wife who was in the hospital, because the buyer knew about the situation, and thus had no ground to presume that she agreed to the sale. 9 *Biulleten' Verkhovnogo Suda R.S.F.S.R.,* (Bulletin of the R.S.F.S.R. Supreme Court) (1966) 4. A similar opinion regarding the significance of bad faith on the part of the buyer was expressed by the Supreme Court of the U.S.S.R. in the case of the Korshunovs regarding the annulment of a contract for the purchase of a house, 9 *Sudebnaia Praktika Verkhovnogo Suda S.S.S.R.,* (Judicial Practice of the U.S.S.R. Supreme Court) (1951) 34.

107. Beliakova and Vorozheikin, *Supra* n.1, at 133, 5 *Sotsialisticheshaia ZaKonnost'* (Socialist Legality) (1960) 87.

3. According to well-established judicial practice, the common property of the spouses cannot be the subject of a gift without the consent of the other spouse. In case of a dispute, such a gift can be declared null and void by the court. This ruling applies at least to that part of the property which belonged to the spouse who disputes the gift.[108] The courts apparently consider such a transaction void because there is no consideration.

The sale of a house by one spouse can sometimes be declared invalid in part only. There are several reasons for this. The first is to be found in the law of the purchase and sale of houses. In all cases where a house is owned by two or more people, regardless of whether they are spouses, and one decides to sell his part, the others have a pre-emptive right to buy his part. Let us suppose that the house which was sold by one spouse is very large and that the other spouse does not want to use the entire space, and that the buyer is a more likeable co-owner than the spouse or ex-spouse. In this case, the plaintiff spouse may ask the court to declare the transaction null and void as to his part only.

One spouse can apply to the State Notary for a transfer of the title of property, even without the agreement of the other spouse. The following procedure is applied in such cases. The State Notary is obliged to ask the other spouse for his or her consent to the sale of his or her share of the house. If the party called by the Notary to give his or her consent does not appear, without a valid reason, the Notary can transfer the title to the property under the authority of only one spouse. In this case, it is irrelevant in whose name the property is registered.[109]

3. Division of Common Property

Common property can be divided by an agreement between the spouses, which can be certified by a State Notary. In such a case, the Notary can give each spouse a certificate of ownership of a share in the common property. In case of dispute as to the division of property, such division can be made by the Comrades' Court under mutual agreement of the spouses.[110] If there is a dispute as to the jurisdiction of the Comrades' Court, the case comes under the jurisdiction of the People's Court. The division of common property between spouses generally need not be connected with divorce.[111] The court cannot refuse a request of one or both spouses for division of common property, even if such division is not part of a petition for divorce. There is one exception to this provision — shares in a housing co-operative. The statute on co-operative housing provides for two conditions of division of shares — divorce and separate rooms for the spouses in

108. IV *Sudebnaia Praktika Verkhovnogo Suda S.S.S.R.* (Judicial Practice of the U.S.S.R. Supreme Court) (1948) 28.

109. *Instruktsia O Poriadke Sovershenia Notarial'nykh Deistvii* (Instructions for State Notaries issued by the Ministry of Justice of the R.S.F.S.), Arts. 43, 44, June 13, 1975; *Supra* n.43, at 31.

110. *Supra* n.88, Art. 7.

111. Statute of the Plenary Session of the R.S.F.S.R. Supreme Court, Feb. 21, 1973, Art. 5; *See* Family Code (1975), 91.

their apartment.[112] After division of this kind of common property, the tenancy by the entirety is terminated, and is converted to a tenancy in common.

If common property was not divided at the divorce proceedings, it can be divided within the next three years. This is one of the few instances when time limitations are applied to legal relationships resulting from marriage. According to Article 9 of the Family Code, the principal time limitations are not applied to disputes based on marital and family law relationships. The limitation period, however, begins to run not from the time of divorce, but from the time when the person realized or should have realized that his or her rights were violated.[113]

Article 36 of the Family Code prohibits division by the court of the common property of the spouses in divorce cases if such division would affect the rights of third parties. This rule was introduced because only common property of the spouses may be divided upon divorce; division of other commonly owned property where third parties are involved must be settled in a separate civil, rather than divorce, proceeding.

In division of common property, the spousal shares are presumed to be equal. There are some exceptions, however. According to Article 21 of the Family Code:

> [I]n certain instances the court may deviate from this rule taking into account interests of under-aged children or valid interests of one spouse. The share of one spouse may be increased at the expense of the other share in particular when the other spouse avoided socially useful work or spent common property in detriment to the interests of family.

The concept of "interests of under-aged children" is interpreted by practitioners and theoreticians to be broad enough to cover almost any situation. Some authors conclude that the court is empowered to deviate from the presumption of equal shares of spouses and to increase the share of one of them for one reason only: if one spouse will have custody of under-aged children.[114] This view has been disputed in recent years.

The Supreme Court of the Estonian Republic changed the decision of the lower court according to which the share of Mrs. Pirs was increased at the expense of Mr. Pirs because their common child remained in her custody. The reason stated by the Supreme Court of Estonia are of considerable interest:

> [T]he law emphasizes permissibility of deviation from the principle of equality of the shares of the spouses in one instance only. Such deviation for the sake of interests of children is permissible where the common property of the spouses contains such things which must be left with the spouse who has custody of the children and at the same time the share of the other spouse cannot be raised to

112. *Primernyi Ustav Zhilishchno-Stroitel'nogo Kooperativa* (Model Statute on Housing Construction Cooperative), Art. 25. *Pravo Na Zhiluiu Ploshchad': Sbornik Rukovodiashchikh Normativnykh Aktov i Sudebnoi Praktiki po Primeneniiu Zhilishchnogo Zakonodatel 'stva (Prakticheskoe posobie Dlia Iuristov)* (Right to Housing: Collection of Laws and Court Decisions on Application of Housing Legislation (Practical Guidance for Lawyers), compiled by Ia. I. Gornstein (Leningrad, 1973) 255.

113. Family Code, Art. 10; *Supra* n.43, at 35-36.

114. *Supra* n.43, at p. 31; V.A. Riasentsev, *Semeinoe Pravo* (The Family Law) (Moscow, 1971) 102; 6 *Biulleten' Verkhovnogo Suda R.S.F.S.R.* (Bulletin of the R.S.F.S.R. Supreme Court) (1970) 14 and 9 *Biulleten' Verkhovnogo Suda R.S.F.S.R.* (Bulletin of the R.S.F.S.R. Supreme Court) 5.

> equal value due to lack of other common property. Also pecuniary compensation to equalize the shares from the spouse who has custody of the children would leave this spouse in a difficult material situation.
>
> Deviation from the principle of equality of shares when the joint common property is divided cannot reduce maintenance obligations. Mr. Pirs was obligated by the court to pay alimony and this payment will secure maintenance of the child. Mr. Pirs is not obliged by law to give supplementary support to the child in addition to his alimony duties. The People's Court deviated from the principle of equality of spouses' shares without valid reasons. Therefore this decision has to be changed and the common property of spouses has to be divided into equal shares. Having divided all things into equal shares the People's Court granted Mrs. Pirs the larger part of the saving accounts. She received 1,218 rubles more than she was entitled if the savings account were shared equally. This amount has to be recovered from Mrs. Pirs to the benefit of Mr. Pirs.[115]

The position of the Estonian Supreme Court seems to be well-grounded, as Soviet family law has always subscribed to two principles: community of the property of spouses and, conversely, a separate regime of the property of parents and children. (An exception is made for the property of collective farmers and peasants only.) While their parents are alive, children have the right to maintenance or support but not to the property of their parents. Thus, neither the children nor the parent with whom they live have the right to personal property which belonged to the other parent. When speaking of "interests of children," the law implies that they must be provided with the necessary conditions for their upbringing but does not call for material compensation upon divorce to the parent who bore the expense of the upbringing. Therefore, deviation from the principle of equality of spousal shares upon division of marital property may be permitted only if the necessary conditions for maintenance and upbringing of the children cannot be secured without such deviation. Such a situation might arise, for instance, when a house or common shares in co-operative housing are divided. If the equal division would not provide the child with necessary housing, the spouse who has custody of the child can be granted a larger part of the house or of the shares in the co-operative apartment house. However, even in this case the deviation from the principle of equal shares will be permitted only when there is no possibility of compensating the other spouse with money or with other items from divided property. The same principle applies when the spouse who has custody must retain an expensive musical instrument because the child is learning music. In other words, the Supreme Court of Estonia singled out two situations in which it would be appropriate to deviate from the principle of equality of shares when dividing marital property: (a) Where particular items of property must be transferred to the spouse who has custody of the children because they are necessary to provide for the interests of the children; (b) Where there is no possibility of compensating the other spouse with other property or with money, owing to the specific composition of the marital property which has to be divided on the one hand, and the material situation of the spouse who has custody of the children on the other.[116]

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115. 1 *Sovetskoe Pravo* (Soviet Law) (1975) 91, found in *Kommentarii Sudebnoi Praktiki za 1975* (Commentary to Judicial Practice of 1975) (Moscow, 1976) 88.

116. A.I. Pergament, "Problems of the Family Law" (Commentaries to Judicial Practice for 1975) All-Union Research Institute on Soviet Legislation, (Moscow, 1976) 89-90.

It is interesting that compensation of one spouse by money instead of property in the course of dividing common property is considered in theory undesirable, albeit Article 21, Part 2 of the Family Code does provide for such a possibility:

> In the event of a division of property in the common joint ownership of spouses the court shall determine which articles are subject to being transferred to each of them. In instances where an article's value exceeds the share due or transferred to one spouse, the other spouse may be awarded appropriate monetary compensation.

The basis, both in theory and in judicial practice, for considering monetary compensation an exception rather than a rule is rooted in political-economical conditions. In contrast to Western countries, the citizenry of the U.S.S.R. own personal but not private property, *i.e.:*

> property intended for the satisfaction of their material and cultural requirements. Each citizen may have in personal ownership, labour income and savings for a dwelling house (or part thereof) and subsidiary household economy, household articles, and articles of personal use and convenience. Property in the personal ownership of citizens may not be used to derive non-labour income.[117]

This is why the courts take into account the use of the articles of personal property of citizens and apply monetary compensation for the share in the property as a last resort only.[118]

Pursuant to Article 21, Part 1 of the Family Code, the second ground for deviating from the general rule of equal spousal shares is the "interests of one spouse which deserve attention." The share of one spouse might increase, for example, if (a) the other spouse avoided socially useful labour or (b) the other spouse spent common property to the deteriment of family interests. The Supreme Court of the U.S.S.R. issued a statute in which working disability was cited as an interest deserving attention. Courts in their practice also take into account lack of material security of the spouse.[119]

4. Division Resulting from Indebtedness

Monetary obligations can also lead to the division of common property. The problem of recovery of debt from the common property of the spouses is regulated by Article 368 of the Code of Civil Procedure, as well as by Article 23 of the Family Code. Theory and practice distinguish three sorts of debts, which can lead to garnishment of the common property of the spouses.

(a) Personal Debts

In addition to debts incurred by each spouse before entering into marriage, personal debts may also arise within the marriage. First, this occurs when one spouse goes into debt for his or her individual needs rather than

117. Civil Code of the R.S.F.S.R., Art. 105.

118. E. Maslow, *Imushchestvennye Otnoshenia V Sem'e,*(Property Relations in the Family) (Khar'kov, 1974) 41; *Supra* n.43, at 32.

119. Statute of the Plenary Session of the Supreme Court of the U.S.S.R., Dec. 4, 1969, "On Judicial Practice of the Application by the Courts of the Fundamentals of the Legislation of the U.S.S.R. and Union Republics on Marriage and Family", Art. 14; *See* Family Code (1975) 84-89; Beliakova and Vorozheikin, *Supra* n.1, at 143.

for family needs; for instance, when a spouse borrows money to buy or to improve his own personal property (buying clothing or improving or rebuilding the house belonging to the spouse personally). Personal debt can also arise when it is necessary to compensate for a loss caused by the spouse during the performance of his working duties. If the material damages were caused by an automobile accident, the debt will be considered a personal one only if the car belonged to the spouse who caused the damage but not to both spouses. The debt is also considered a personal one when one spouse is obliged to pay alimony. In all these cases, the spouse's liability extends to his personal property and to his share in the common spousal property.

(b) Common Debts.

Common debts pertain first to the transactions concluded by both spouses and second to the obligations arising from the damage caused by both spouses to the life, health or property of others. Debts resulting from damage caused by a source of increased hazard, *e.g.*, an automobile, belonging to both spouses as common property are common debts regardless of which spouse actually caused the damage. According to Article 454 of the Civil Code of the R.S.F.S.R., the liability for such damage is imposed on the *owner* of the source of increased hazard. Common debt obligation also arises from the acquisition or saving of property at the expense of another person without sufficient grounds thereto (so-called "groundless enrichment").

The Civil Code of the R.S.F.S.R. does not contain provisions for borrowing by one spouse in the interests of both spouses or all the family. This omission, however, has to be considered editorial. Fortunately, Family Codes of the several Union republics have formulated this aspect of the common liability of spouses. For example, the Family Code of Latvia pointed out that spouses are liable to the extent of their common property for the debt obligation of one spouse if the court establishes that the values acquired through this obligation were acquired in the interest of the whole family. The Family Code of the Ukraine speaks also of the debt obligation made in the interest of the whole family and to be used for the needs of the whole family. Courts of the R.S.F.S.R. follow the same practice. Thus, one of the District Peoples Courts of the City of Leningrad, in a case of separation of property, considered a debt of one spouse to be a common one. This spouse borrowed 800 rubles for a vacation for both spouses. The court decided to enlarge the share of this spouse by one-half of the sum of the debt.[120] Soviet family law specialist V. Riasentsev supposes that the amount of liability of each spouse is different in this instance: the one who concluded the transaction is liable for the amount of the debt owed to the extent of both his own personal property and his share in common property. The other spouse is liable only to the limit of what he or she acquired from the transaction and to his or her share in common property. This point of view, which is open to argument, is based on the assumption that there are different grounds of liability: the first spouse's obligation is based on the transaction itself while the second spouse's stems from the enlargement of the common property resulting from the transaction. This concept apparently

120. *Supra* n.43, at 37.

did not take into account that the transaction concluded by one spouse in the interest of both is presumed to be concluded on behalf of both spouses. One should also take into account that the value acquired through the debt obligation of one spouse may be used not for the enlargement or improvement of the common property but of the personal property of the second spouse. One instance is the buying of clothes for one spouse with money borrowed by the other one.

(C) Co-responsibility for Damages Caused by Criminal Acts

According to Article 23, paragraph 2 of the Family Code, damages caused by the commission of a crime by one spouse can be recovered from common property of the spouses if the court establishes in the criminal trial that the common property was enriched as a result of the crime. When the property is confiscated by the State, it is extremely difficult for one spouse to establish his or her share of such property. The same difficulties are experienced by spouses who try to establish rights to the property on behalf of the children or as personal property. The frustrations begin from the moment officers of the prosecution arrive to list all valuables in the home. Some property is excluded from confiscation under the Criminal Code but this exclusion does not apply to cases where damages result from crime.[121] Analysis of several thousand cases indicates those persons seizing property do not take into consideration the statements of spouses claiming that particular items belong to them or to the children, *e.g.*, a gift from Granddad. The officers usually explain that the spouse is entitled to ask the court for exclusion of the property from seizure. The difficulties are compounded by the fact that the person claiming such an exclusion has to pay a fee, which

121. Appendix to the Criminal Code of the R.S.F.S.R.: List of property not subject to confiscation by judgment of court. The following kinds of property and articles belonging to a convicted person by right of personal ownership or constituting his share in common property which are necessary for him and his dependents shall not be subject to confiscation:

1. Dwelling house and apartment buildings or separate parts thereof, for persons whose basic occupation is agriculture, if the convicted person and his family live permanently therein.
2. For persons whose basic occupation is agriculture, a single cow; in the absence of the cow, a single heifer; in households having neither a cow nor a heifer, a single goat, sheep, or pig; for collective-farm workers, in addition, sheep, goats and pigs up to half the norm established for a collective-farm household by the Charter for the Agricultural Artel, and also poultry. In the taiga and tundra districts of the far north, mother and young reindeer and also draught reindeer in the amount of 25 head per household.
3. Feed for cattle (if the cattle are not subject to confiscation) necessary until the harvest of new feed or until the cattle are turned out to pasture.
4. For persons whose basic occupation is agriculture, feed necessary for regular sowing.
5. Articles of household, furniture, utensils and clothes necessary for the convicted person and his dependents:
(a) clothes for each person: one summer or fall coat, one winter coat or sheepskin coat, one winter suit (for women, 2 winter dresses) one summer suit (for women, 2 summer dresses), one hat for each season (for women in addition to summer kerchiefs and one warm kerchief or shawl), other clothes and headgear in use for a long time and not having any value;
(b) footwear, underwear, bedding, kitchen and table utensils in use (with the exception of articles made of valuable materials or articles or artistic value);
(c) furniture; one bed and chair for each person; one table, one cupboard, and one trunk for the family;
(d) all children's belongings.
6. Food products in an amount necessary for the convicted person and his family until the new harvest, if the basic occupation of the convicted person is agriculture; otherwise food products and money in an aggregate amount of the extent of monthly wages of the convicted person, but not less than 100 rubles.
7. Fuel necessary for preparation of food and heating of the family living quarters during the cold season.
8. Supplies (including manuals and books) necessary for continuing the professional occupation of the convicted person except when the convicted person is deprived by judgment of the court of the right to engage in a particular activity or when the supplies have been used by him for the illegal pursuit of a trade.
9. Shares in co-operative organizations, if the convicted person is not excluded from membership in a co-operative.
10. In the event of confiscation of a convicted person's share of the common property of the peasant household (collective-farm, or individual, the size of the share shall be determined after exclusion of the following property: dwelling house in which members of the household live and appurtenant buildings, seed necessary for regular sowing, one cow or, in the absence of a cow, one heifer (and in a collective-farm household also sheep, goats, pigs and poultry up to half the norm established by the charter of the Agricultural Artel), and feed necessary for the remaining cattle.

occasionally goes as high as 6% of the value of the goods. If the spouse applies to the court for exclusion, he or she carries all the problems of a plaintiff, including the burden of proof. It is worth noting that it is general practice in the Soviet Union to pay by cash rather than by cheque. Furthermore, when property is transferred, formal documentation is rarely secured. In a country where there is no private property, as distinct from the capitalist nations, the awareness of the citizens, particularly in the field of law of contracts and property, is very low. The legal requirement of registration of title to property or gift, through a State Notary, is commonly ignored. Thus, people who receive gifts are often incapable of demonstrating their title to the court. In instances where the transfer of property requires written documentation, they are precluded from establishing their right to the property in question by relying on the testimony of witnesses.[122] In one case, Dentist "X" was accused and sentenced for conducting a prohibited business as well as violation of rules dealing with transactions in foreign currency. (He treated private patients in the State Clinic where he was on staff and made caps for them from his own gold.) Among the property seized was a piano given to his daughter on her sixteenth birthday by her grandfather. The piano had been seized because the Court required from the plaintiff (wife) on behalf of her daughter a submission of a written contract certified by a Notary attesting that the piano was really a gift.[123]

Owing to the scarcity of consumer goods, the market value of many items is much higher than the nominal price. However, in cases where such goods are seized, the value is determined by the nominal price minus amortization. Such goods are then sold in special stores, at even lower prices. In such cases the spouse who has a share in such property will receive a miniscule fraction of the actual value of the goods. In instances of confiscation or seizure of the property of one spouse, which formerly was common property, the other spouse cannot petition the court for payment of a share or for the right to redeem and retain the property. As a rule, the party who opposes the action for recovery of seized or confiscated property is a government agency (frequently financial agency) or an enterprise which belongs to the State. The procurator always participates in such cases. Usually the courts find for the government agency or state enterprise, leaving the sad impression of partiality. An article in one Soviet legal journal from 1969, reported that according to court statistics, in nine out of ten actions for recovery of seized property, the courts granted recovery fully or in part, and excluded from seizure more than half of the property under dispute. Without commenting on the reliability of this data, it is nevertheless reasonable to mention two points: on the one hand, the author does not know of even one case within his own or his colleagues' practice where the court granted full exclusion from seizure. On the other hand, partial exclusion of property can be explained by the fact that usually the seizure includes *all* property, whereas there are statutory exclusions from seizure. The following case appears to be typical: Collective Farmer Romanayskas was

122. Civil Code of the R.S.F.S.R., Art. 46.

123. Within the author's professional experience.

sentenced to a jail term, confiscation of property and the obligation to repay damages caused. In the list of property, the bailiff included the house, which had been built jointly by the man and his wife. This situation was, however, covered as long ago as 1927, by a statute which prohibited seizure of a house, in cases where such a house belonged to people employed in agriculture.[124] This statute should have been well-known to the bailiffs and the prosecution. The wife of the sentenced man was forced to bring an action for the restitution of the house and other property. Her action was partly successful, but to achieve this result, she had to go through many appeals to reach the Supreme Court of the U.S.S.R., which finally determined that the petitioner lived in a rural community and was a member of the *Kolkhoz*. Under those conditions, a house or other property excluded by statute could not have been seized to satisfy damages.[125] The lower courts could not force themselves to make such a simple judgment.

C. Maintenance of Spouses and Ex-spouses

1. General Principles

Spouses are obliged to maintain each other. This is an equal and mutual obligation, which is also considered by the Soviet law to be a moral duty. In cases of refusal to maintain a spouse, the spouse incapable of work and in need of maintenance can obtain a court judgment for alimony, provided that the other spouse is capable of paying. The right to alimony belongs also to women during pregnancy and for one year after the birth of the child. In order to obtain alimony, the following must be established: (a) existence of the marriage; (b) the need for alimony; (c) inability to work; (d) capability of the other spouse to pay the alimony. If any of these elements is lacking, alimony will not be secured. During pregnancy and for one year after the birth of a child, the wife must establish that she is in need. There is, however, a presumption that she is not capable of working during this period.

In one case, Mrs. B. gave birth to a child in 1971, and received alimony from her husband. She then petitioned the court for alimony for herself on the grounds that she was not going to work until the child reached the age of one. The defendant claimed that Mrs. B. was capable of work. The District Court in Moscow City granted her the alimony. The Moscow Court of Appeal affirmed the judgment of the court of first instance. The Court of Appeal said that the material conditions of the plaintiff were irrelevant. The Supreme Court of the R.S.F.S.R. reversed the judgment of the Court of Appeal and stated that "a woman will receive alimony during pregnancy and in the first year of the life of the child, only if she is in material need."[126]

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124. *Postanovlenie Tsik i SNK SSSR* (Statement of the Central Executive Committee and Council of the People's Commissars of the U.S.S.R.) (Aug. 10, 1927). *See* Code of Civil Procedure of the R.S.F.S.R. (Moscow, 1975) 132.

125. 2 *Sudebnaia Praktika Verkhovnogo Suda S.S.S.R.* (Judicial Practice of the U.S.S.R. Supreme Court) (1953) 46. Court executors as well as police and procurators' investigators are obliged to consider their chief task the location and placing under seal for future disposition by the court of the defendant's property for purposes of compensation to the State for damages caused by the defendant. This is one of the chief indicators of the success of their work. They are punished for laxity and rewarded for active performance. They are not reprimanded for violations of the law such as occurred in the Romanauskas case.

126. 1 *Biulleten' Verkhovnogo Suda R.S.F.S.R.* (Bulletin of the R.S.F.S.R. Supreme Court) (1973) 5-6.

The right to alimony exists even if the real marital relationship has ceased, and if the spouses live separately. The right to alimony is not nullified by the fact that one spouse is co-habiting with a third person. This point of view is reinforced by the Plenary decision of the Supreme Court of the U.S.S.R. on September 20, 1967, in the case of "N".[127] A Common Law marriage, however, does not create a right to alimony. In cases where a marriage has been annulled, the awarding of alimony is resolved differently in various Republics. In the R.S.F.S.R., the only condition creating the right to alimony is when the spouse seeking alimony did not know that the other spouse committed bigamy. In Tadzhjkistan and Lithuania, the annulment of the marriage excludes the possibility of an award of alimony. In Georgia, the right to alimony is limited to the spouse who did not know about the conditions which led to the annulment of the marriage. In Armenia and the Ukraine, the right to alimony is limited to the spouse incapable of work if that incapacity occurred during the time of the annulled marriage. In Turkmenia and Uzbekistan, the right to alimony remains with the partner in a marriage who was forced or deceived into that marriage.

In the Family Code, the term "need" is not defined. The fact of "being in need" is to be determined by courts in each individual case, on the basis of actual conditions. In Soviet legislation "need" has always been a determining condition of the right to alimony. "Only those who really cannot work, due to age of children or due to poor health shall be eligible for alimony in the amount provided for by the State," stated the R.S.F.S.R. Supreme Court as far back as 50 years ago.[128] "An obligation to maintain family members is by no means a sort of charity which is alien to our conceptions and our law." Theory and court practice define "need" as a lack of sufficient means for living.

The property of the spouse seeking alimony, including the financial position of the spouses, is then taken into consideration. For example, possession of the house in which the spouse seeking alimony resides does not limit his or her right to alimony. However, if he or she receives income from the house, as a result of renting, that income will be taken into consideration, and such a spouse can be declared as not being in need. The *possibility* of obtaining income, for example rent, cannot be taken into consideration in allowing alimony. This is derived from the notion that personal property in the Soviet Union is by law not for profit but for personal usage.

The fact of having a pension or material help from children does not limit the spouse's right to alimony, if such pension or help from children is insufficient. The fact of obtaining maintenance for a child does not deny the wife the right to alimony for herself. The fact of living in an old pensioners' home or a home for crippled people, and being fully supported by the government does not deny the spouse the right to seek alimony, if it is established that he or she needs additional support for items such as food or medicine, which are not provided by the government. The fact that the

127. 2 *Biulleten' Verkhovnogo Suda S.S.S.R.* (Bulletin of the U.S.S.R. Supreme Court) (1968) 10.

128. *Sbornik raz"iasnenii Verkhovnogo Suda R.S.F.S.R.* (Collection of R.S.F.S.R. Supreme Court Instructions) (Moscow, 1935) 137.

spouse from whom alimony is being sought has a higher income than the spouse seeking alimony, *per se,* does not establish a right to alimony.[129]

Inability to work can be determined by either illness or old age. Reaching the age of retirement constitutes a condition of inability to work regardless of the acquisition of the right to a pension. In the U.S.S.R., the age of retirement is 55 for women and 60 for men. Finally, the inability to work can be determined by a physical disability. In the U.S.S.R., there are three categories of physically disabled people, depending on the character and degree of incapacity. A physical disability has to be permanent, and not a temporary condition. The Supreme Court of the U.S.S.R., in reversing the decisions of lower courts in the case of Mrs. Erofeeva, stated, "It is necessary in the first place to determine and describe the character and extent of the disability of the petitioner. On the basis of the documentary evidence in the case before us, we find that the petitioner was permanently disabled."[130] Documents covering temporary disability are issued by physicians. Permanent disability is attested by the Medical Experts' Labor Commission (VTEK) under the jurisdiction of the Minister of Social Security in each Republic.

2. Retention of Rights to Alimony from Ex-spouses.

The right to alimony, under certain conditions, does not end with divorce. First, the right to alimony remains if the divorced spouse became disabled during the marriage or within one year after the divorce. The wife retains the right to alimony during a pregnancy and for one year after the birth of the child, if the pregnancy occurred prior to the divorce. Secondly, if the spouses were married "for a long time," the court can grant alimony to one spouse in the event of a divorce, if the other spouse acquired the right to pension, or simply reached retirement age not later than five years after the divorce. This principle applies to the right of alimony as a result of old age but not as a result of permanent disability. In particular this applies to housewives who, owing to home care and childrearing, did not acquire the right to a pension, which depends in the U.S.S.R. in addition to age requirements, on the length of work: 20 years for women and 25 years for men. Such housewives find themselves after divorce without the right to pension or other means of support. Although they are theoretically able to work, their advanced age makes it difficult for them to acquire skills and to find jobs. After divorce they can find themselves in difficult material circumstances. Legislation requires ex-husbands to support such wives, rather than giving them direct government support. The five-year period mentioned above, can under certain circumstances be "artificially" prolonged due to the fact that according to Article 40 of the Family Code divorce is declared absolute not from the time of the decision but from the time of the entry in the ZAGS Office. There is, however, no time limit in which the court declaration of a divorce has to be entered in the registry. The registration of the divorce can be done by either spouse. The statute does not determine what is meant by "long time marriage," thus leaving determination of this point to the courts in individual cases.

129. 1 *Biulleten'Verkhovnogo Suda R.S.F.S.R.* (Bulletin of the R.S.F.S.R. Supreme Court) (1973) 15.

3. Release from Obligations to Pay Alimony

The courts can relieve one spouse from the obligation to maintain the other, or can reduce that obligation to a specific term. Conditions under which such reduction or release can occur can be divided into three groups. The first group includes the cessation of conditions which originally led to the award of alimony: the spouse who needed support subsequently obtained work; improvement in the health of the previously disabled spouse; a change in health conditions and loss of income of the spouse paying alimony; or the annulment of the marriage. The second category includes "immoral" behaviour of the spouse seeking or receiving alimony. As examples of such behaviour the following can be cited: alcoholism, cruelty towards the other spouse, commission of a crime, adultery, refusal of the childless able-bodied spouse to do socially useful work, use of narcotics, etc. The immoral behaviour of the spouse can lead to denial or reduction of the payment of alimony, if that immoral behaviour occurred during as well as after the marriage. Hiding poor health prior to the marriage does not remove the obligation to pay alimony, if as a result of poor health the person is declared unable to work. Such a point of view can be found in the Editorial Review on R.S.F.S.R. Judicial Practice in divorce cases.[131] The Rule of Behaviour of the one spouse, termed in Article 27 of the Family Code "unworthy" or "undignified" behaviour, cannot exempt the other spouse from paying alimony if it had to be paid to the woman during her pregnancy and during one year after the child was born. This exclusion from the previously mentioned general rule was made because alimony for this period secured not only the well-being of the female spouse during pregnancy but also conditions for normal growing of the embryo or the child in the first year of his life. This exclusion has its own exception, however, if the mother of the child was deprived of her parental rights due to her undignified behaviour.

The third group of conditions which relieve a spouse from supporting the other includes two specific situations: (a) A short time of marriage. Where the marriage was for a short time, exemption from paying alimony must be considered by the court in every specific case. The short time of the marriage can apparently be used as a ground for exemption in instances where the working disability of one spouse resulted from an illness which this spouse hid from the other before entering into marriage. (b) The right to alimony ceases upon remarriage of the spouse receiving it.

In all instances where the duty to support the other spouse is established by the decision of the court, the spouse obligated to pay alimony or support must petition the court for exemption from this duty and carries the burden of proof.

4. Amount of Alimony

In distinction from maintenance of children, where the amount of payment is scheduled by the Statute, the amount of alimony for support of the spouse is determined by the court. The court must take into account (1) the

130. 10 *Sudebnaia Praktika Verkhovnogo Suda S.S.S.R.* (Judicial Practice of the U.S.S.R. Supreme Court) (1952) 35.

131. 10 *Biulleten' Verkhovnogo Suda R.S.F.S.R.* (Bulletin of the R.S.F.S.R. Supreme Court) (1972) 5.

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

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

5. Agreements between Spouses as to Alimony

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

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

V. DIVORCE

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

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

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

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