

# SOVIET FAMILY LAW†

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## I. THE COMMUNIST FAMILY

### A. Ideological Background

Soviet theoreticians of family law are of the unanimous opinion that the ideological principles of Soviet family law as a body of theory and legal norms are based on Marxist-Leninist writings about the family.<sup>1</sup> This point of view, however, needs further elaboration. Certainly in the works of most, if not all theoreticians of family law, one finds a uniform description of the family, its main features and development. All of these are based on eight works of Marx and Engels, written together or separately by these two authors.<sup>2</sup> With regard to Lenin's contribution, there is not a single book or separate article devoted to the family or family law, although specific references to family law and the family can be found in 15 or 20 of his works dealing with other subjects.<sup>3</sup> All these references can account for no more than 40 or 50 pages. The climate of the first years of the Soviet Regime and the reason for the dearth of writings on this subject is expressed well by the words quoted in Professor Harold Berman's *Justice in the U.S.S.R.*: "The Family is ceasing to be a necessity both for its members and for the state," wrote Alexandra Kollontai, *enfant terrible* of the Russian Revolution, in 1919.<sup>4</sup>

References to the Marxist-Leninist tradition in the development of Soviet family law appear in reality to be based not on the genuine contribution of Lenin to the field, but rather on what can be referred to as the "cult of Lenin's personality." In analyzing the Marxist-Leninist concepts of family law, as in other branches of the political and social sciences, one must distinguish and carefully separate the contributions of Marxism and Leninism from those of the official party and government interpretations of Marxist-Leninist concepts. These interpretations, of course, are changed with the necessities and demands of any given time. Thus, for example, the reader will find in the works of Soviet jurists references to Marxist-Leninist

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1. O. Ioffe, 3 *Grazhdanskoe Pravo* (Civil Law), Pt. 2, "Semeinoe Pravo" (Family Law), (Leningrad University, 1965) 170-75; V.A. Riasentsev, *Semeinoe Pravo* (Family Law) (Moscow, 1967) 5-8; A. Beliakova and E. Vorozheikin, *Sovetskoe Semeinoe Pravo* (Soviet Family Law) (Moscow, 1974) 7-8.
2. The works of Marx and Engels in which the problems of family and family law are mostly fully discussed include:
  - a) K. Marx, "Philosophical Manifesto of Historical School of Law" (1842);
  - b) K. Marx, "Critique of the Fabian Philosophy of Law" (1843);
  - c) K. Marx, "Conspectus on the book, *Ancient Society*, by Lewis H. Morgan" in 9 *Archives of Marx and Engels* (1941, Russian ed.) 1-192;
  - d) K. Marx and F. Engels, *The German Ideology* (1845-46);
  - e) K. Marx and F. Engels, "Communist Manifesto", 1848; see also, F. Engels, "Draft for Communist Manifesto" (1847);
  - f) F. Engels, "Anti-Duhring" (1878);
  - g) F. Engels, *The Origin of the Family, Private Property and the State* (1884).
3. *A Bibliography on Soviet Family Law*, published by the Staff of the Faculty of Law of the University of Leningrad in 1962, cited quotations from fifteen various works, speeches and letters of Lenin, dealing with questions on family law. All quotations add up to no more than 30 pages, the longest being ten pages. It is entitled "Who are 'friends of the peoples' and how do they fight against social-democrats," (1894). This book contains 220 pages.
4. H.J. Berman, *Justice in the U.S.S.R.* (Cambridge, Mass., 1963) 330.

concepts in support of contradictory positions. On the one hand, Marxism-Leninism is used to justify identical treatment of legitimate and illegitimate children, and on the other hand, the same principles of Marxism and Leninism are later used to justify a legal position which only gives minimal rights to illegitimate children.

Marxism, as a body of original thought belonging to Marx and his partner Engels, related in general to questions of family development, and in particular to the critique of 19th century family law. Soviet family law is best described as being based on "institutional" Marxism, which undergoes pragmatic changes from time to time at the discretion of the ideological leadership of the Communist Party of the U.S.S.R.

### *1. The Function of the Family according to Marx and Engels*

To Marx and Engels, the family appears to be the basic "social unit" in a society, a "molecule of society," which combines individual and social functions. The individual function is primarily biological: procreation, that is, the continuation of the race. Yet at the same time Marx and Engels consider this biological function a social form of "production of life."<sup>5</sup> The social character of the production of life in separate families is explained by the "co-operation of many individuals."<sup>6</sup> The family was established in the distant past as a result of the material developments of society. The character of the family, its substance and peculiarities of development, are determined by the features of the class, that is, by the politico-economic type of society in which it exists.

As is well-known, Marx and Engels divided social formations according to the relationships in the process of production, where the ownership of the means of production provides class distinctions and characteristics. Division of labour gradually led to the emergence of private property. The beginning of private ownership of the means of production led to the division of society into the classes of exploiters and those who are exploited. In turn, the need arose to create the state as an apparatus of coercion by which the exploiters could rule the exploited. With the emergence of the state, the law as an instrument of class oppression was created. The law, according to Marx and Engels, is a set of norms expressing the will of the ruling class.

Depending upon the relationships in the process of production, Marx and Engels singled out three exploitive formations — slavery, feudal society and capitalist society. Each one of these has its own mode of production, and its own type of government and law. Obviously, each of these exploitive formations has its own form of family: "Given the definite development of the process of production, exchange, and consumption, we will find a corresponding social system, a corresponding organization of the *family*. . . ."<sup>7</sup> However, in all three exploitive formations, the family also has a common denominator based on the notion of private property. The appearance of private property caused the following peculiarities:

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5. K. Marx and F. Engels, 21 *Collected Works* (Russian ed.) 74.

6. K. Marx and F. Engels, 3 *Collected Works* (Russian ed.) 28.

7. K. Marx and F. Engels, *Selected Letters* (Moscow, 1947) 23.

1. Monogamous marriage.<sup>8</sup> This creates a certainty that property passed to children will go to the true offspring of the male.<sup>9</sup>

2. The unequal rights of spouses. The economic priority of the male as owner gave him full power within the family and turned him into the sole master. A wife became an oppressed member of the family, without any rights. Marital authority and paternal power are both manifestations of male supremacy preserved by the law of capitalist society.

3. Marriage became a means of concentrating capital, ownership and the disposition of property, changing a voluntary association based on mutual love, into a legally determined economic concept. The economic dimension of marriage reinforced by the legal system is obvious, particularly in the period of capitalism. "The bourgeoisie has torn away from the family its sentimental veil, and has reduced the family to a mere money relation."<sup>10</sup>

## 2. Comparison to the Capitalist Family

These generalizations do not describe the position of all families within capitalist society. Marx and Engels juxtapose a proletarian and a bourgeois family in capitalist society. The proletarian family is characterized by a lack of private property and by poverty. "The proletarian is without property; his relation to his wife and children has no longer anything in common with the bourgeois family relations. . . ."<sup>11</sup> The marriage in a proletarian family is based upon love and a free relationship rather than on property relationships, especially where women and teenagers have to work. Their relationships are based on *mutual dependence* on *each others'* labour; the family depends on the labour of the wife equally to that of the husband. The proletarian family is a model for the future socialist family. It should be noted, however, that Marx and Engels refrained from describing the future socialist family in order to avoid charges of Utopianism. Development of that model belongs to the Soviet theoreticians, and is based on the concepts of above-mentioned institutional Marxism and Leninism.

As in all other historical social formations, the nature of the socialist family is determined by the relationships in the process of production. However, similarities with the past end there. The socialist society is the first one which is not based on private property and exploitation of one class by another. The character of the socialist family can be determined by pointing out three basic characteristics and relationships which are changed in socialist society: marriage, spousal relations, and relationships between parents and children. Marriage becomes a relationship based on love and mutual respect of the partners. It ceases to be an economic contract. Marital relationships are characterized by full equality, mutual respect, and the economic independence of the woman. The equality of the woman in the

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8. *Supra* n.4, at 65.

9. K. Marx and F. Engels, 4 *Collected Works* (Russian ed.) 4-7.

10. K. Marx and F. Engels, "The Communist Manifesto" (1848), in *Birth of the Communist Manifesto* (D. Struik ed., 1971) 92.

11. *Id.*, at 100.

family is reinforced by her equality in all aspects of life — work, politics, etc. Relationships between parents and children are not based on material grounds, but on the obligation to raise the children according to the principles of the “Moral Code of the Builders of Communism.” This “Moral Code,” which was developed during the 22nd Congress of the Communist Party of the U.S.S.R. in 1961, stipulates the following as the guiding moral principles of family relationships: “Mutual respect in the family and concern for the upbringing of the children.”<sup>12</sup>

Thus, as distinguished from the capitalist family, the socialist family is defined to be: “recognized and supported by the state and society, a union of two people based on marriage for love or for reciprocal natural closeness, and maintained with the purpose of providing future generations with communist upbringing and mutual material help.”<sup>13</sup> It is a political definition; the legal definition will be discussed later.

### *B. The Structure of Soviet Family Law*

First, Soviet family law, as in previous societal formations, is a manifestation of the will of the governing class. In the U.S.S.R. the laws is said to manifest the will of the working class — the will of the majority.<sup>14</sup> On a more technical level, Soviet jurists claim that family law is a collection of laws which regulates “material” and “non-material” relationships emerging from marriage, birth of children, kinship, adoption or custody over children. Such a description is used by most, if not all, Russian theoreticians of family law. There are minor differences between Soviet scholars, with respect to whether family law is a separate branch of law, or a part of the larger body of civil law.<sup>15</sup> The structure of family law in the Soviet Union suggests that it is a separate branch of law.

Statutes constituting family law in the U.S.S.R. can be graphically described in the form of a pyramid. The top of the pyramid consists of the Fundamentals of Legislation of the Soviet Union and Union Republics on Marriage and the Family, enacted on October 1, 1968, (hereinafter referred to as the Fundamentals). The Fundamentals declare the basic principles of family law and the general principles of its institutions; 1. marriage, 2. family, 3. acts of registration, 4. application of the Soviet family law to foreigners and stateless persons, 5. application of matrimonial laws of foreign states and international agreements dealing with family law.

Below the Fundamentals are found Family Codes adopted in all Union Republics, dealing with family law, and in particular with marriage. Family Codes primarily regulate matters dealing with marriage delegated by the Fundamentals to the jurisdiction of the Republics. In addition, the Family

12. “The Moral Code of the Builders of Communism”, found in the Programme of the Communist Party of the Soviet Union, which was adopted by the 22nd Party Congress on October 31, 1961. English translation in “Program of the Communist Party of the Soviet Union”, (New York, 1961).

13. Ioffe, *Supra* n.1, at 175.

14. *Teoriia Gosudarstva i prava* (The Theory of State and Law) (Moscow, 1974) 96.

15. See Ioffe, *Supra* n.1, at 178; Riasentsev, *Supra* n.1, at 15; V.A. Tarkhov, *Sovetskoe Semeinoe Pravo* (Soviet Family Law) (Saratov, 1963) 12; K. Mamaeva, *Problema Razgranicheniia Semeinogo Prava ot Grazhdanskogo Prava* (The Problem of Differentiation between Family Law and Civil Law), *Uchenye Zapiski Azerbaidzhanskogo Gosudarstvennogo Universiteta*, (Scholarly Journal University of Azerbaidzhan) (Baku, 1972) 35-47.

Codes deal with matters not regulated by the Fundamentals. It can be said that the Family Codes of the Republics simply carry out the basic principles of the Fundamentals. For example, the first eight articles of the Family Codes in all Republics correspond exactly to the first part of the Fundamentals. The Fundamentals leave to the Republics determination of conditions under which one spouse is relieved of the responsibility for support of the other (Article 13 of the Fundamentals), determination of the consequences of annulment of marriage (Article 15 of the Fundamentals), determination of adoption (Article 24 of the Fundamentals) and determination of custody (Article 36 of the Fundamentals).<sup>16</sup> There are fifteen cases in which references are made, or matters are delegated, to the Republican Family Codes. The second chapter of the Family Codes, dealing with limitations of actions serves as an example of matters which are left to the Republics, and not even mentioned in the Fundamentals.

At the bottom of the pyramid of family legislation in the U.S.S.R. and in the Republics are found various other All-union and Republican acts which did not find their way into the Fundamentals or the Family Codes, but which are nevertheless related in substance to both. The Fundamentals refer to them as "other legislation."<sup>17</sup> They are mentioned twice in the Fundamentals, first in Article 22, referring to income and alimony and related matters, as being under the jurisdiction of the U.S.S.R. Council of Ministers. Second, Article 29 gives power to the U.S.S.R. Council of Ministers to determine all rules of state registration.

The Family Codes of the Republics also refer some issues to other specific bodies. Thus, for example, the Ministers of Health and Finances are empowered to determine the administration of an estate of minors by their guardians. Article 147 of the Family Code determines the conditions under which government tax is to be collected, and states that the amount of that tax is to be established by the U.S.S.R. Council of Ministers. The Republican Family Codes are supplemented by explanatory notes that are legally binding and contain official interpretations of the statutes. These notes are quoted as part of the legislation pertaining to family law within other acts, and are appended to the codes. The abovementioned All-union and Republican legislation are also included in this Appendix. In some instances, the full text of the legislation is provided, in other cases only excerpts. For example, Article 147 of the Family Code on taxes cites only that part of the U.S.S.R. Council of Ministers legislation which relates to the family and the estate tax.

This is a brief description of the structure of family law in the U.S.S.R.; it is not a comprehensive analysis. It does not embrace legislation in other branches of law which, although beyond the strict scope of family law, often enough affects family relations. A few examples will be considered below.

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16. The Fundamentals do not mention the Codes of the Union Republics but instead refer to the legislation of the Union Republics: e.g., "shall be settled by legislation of the Union Republics" or "Legislation of the Union Republics may provide for . . .". Nevertheless a comparative analysis of the Fundamentals and the Family Codes of the Union Republics leads one to conclude that the legislators had the Family Codes of all Union Republics, particularly in mind.
  17. The Fundamentals, Art 7; Family Code of the R.S.F.S.R. (Russian Soviet Federated Socialist Republic) (Hereinafter referred to as the Family Code. References to the Codes of other Republics will be noted.).

In some instances, Family Codes refer to other legislation pertaining to family relationships. For example, in Article 3 of the Family Code "The equality of man and woman in family relationships" refers to the Constitutions of the U.S.S.R. and the R.S.F.S.R.<sup>18</sup> It is interesting to note that the latest edition of the leading textbook on family law includes among constitutional norms having "special meaning for the regulation of family matters" Article 12 of the U.S.S.R. Constitution 1936: "It shall be the duty and honor of every able-bodied citizen in the U.S.S.R. to work according to the principle 'he who would not work, neither shall he eat.' The U.S.S.R. shall apply the socialist principle of 'from each according to his ability, to each according to his work'." In the official Russian text of the Constitution, there are no genders "he" and "she" and the principle of the obligation to work is considered by the authors of the mentioned textbook as applicable to both sexes.<sup>19</sup> This view was evidently supported by the text of Article 60 of the U.S.S.R. Constitution 1977 according to which socially useful work and strict observance of labour discipline is the duty of "every able-bodied U.S.S.R. citizen" regardless of sex.

Also several articles of the Family Codes refer to the Civil Code and Code of Civil Procedure. For example, Article 50 of the Family Code, referring to the consequences of the deprivation of parental rights, states the possibility of eviction of the parent deprived of parental rights (if by behaviour, he or she makes a normal life impossible for the child) in accordance with Section 333 of the Code of Civil Procedure of the Russian Socialist Federal Soviet Republic. Article 66 of the Family Code, indicates the necessary measures prescribed by Article 406 of the Civil Code, in cases when the parent or another person obstructs a court order pertaining to the transfer of a child.

In many instances, however, legislation pertaining to family matters is not referred to in the Family Code, in spite of its importance to problems pertaining to family law. One of the primary examples is inheritance law, which is part of the Civil Code and not part of family law. Criminal law at many points is closely related to family law. It is enough to mention such crimes as malicious avoidance of paying alimony, (Article 122 of the Criminal Code); malicious avoidance of providing maintenance for parents, (Article 123 of the Criminal Code); abuse of duties by guardians, (Article 124 of the Criminal Code); refusal to employ or firing of a woman because she is pregnant, or because she is breast-feeding a child, (Article 139 of the Criminal Code); obstructing or prohibiting a woman from entrance into a marriage, or forcing a woman into a marriage (Article 233 of the Criminal Code). In labour law, where pensions and sick benefits depend on family relationships to the individual, other examples may be found which relate to family law. These examples of other legislation pertaining to family law, do

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18. Article 34 of the Constitution of the U.S.S.R. (1977) states: "Women in the U.S.S.R. are accorded all rights on an equal footing with men in all spheres of economic, government, cultural, political and other social activity. The possibility of exercising these rights is ensured by women being accorded the same rights as men to work, payment for work, rest and leisure, social insurance and education, and also by state protection of the interests of mother and child, state aid to mothers of large families and to unmarried mothers, maternity leave with full pay, and the provision of a wide network of maternity homes, nurseries and kindergartens."

19. Beliakova and Vorozheikin, *Supra* n.1, at 78.

not alter the general structure of family law described earlier. Provisions of other statutes do not change the family relationships prescribed by family law, but rather protect and reinforce the principles contained in family law.

Soviet jurists include in the body of family law not only legislation, but also the Plenary decisions of the Supreme Court of the U.S.S.R. and the Plenary decisions of the Supreme Courts of various Republics.<sup>20</sup> These decisions interpret both the All-union and the Republican legislation in the field of law. They usually provide guidance for all lower courts in specific legal matters, and result from the comprehensive analysis of the decisions of the lower courts. In this way they generalize from the experience of lower courts with decisions in specific areas of law. Such decisions of Supreme Courts are binding on all lower courts. These are the only instances where the decisions of the Supreme Courts are binding on lower courts, since generally Soviet jurisprudence does not recognize the principle of precedent. Court decisions are more in the nature of instructions, since according to Article 121 of the 1977 Constitution of the U.S.S.R., the interpretation of the statutes is under the exclusive jurisdiction of the legislators. An appropriate example of a Supreme Court decision pertaining to the explanation of the family law is a decision of the Plenary Session of the Supreme Court of the U.S.S.R. issued December 4, 1969, supplemented on January 12, 1973, under the heading of "On the practice of the application of the Fundamentals of Family Law in the U.S.S.R." Some of these decisions will be analyzed when discussing specific issues in the field of family law.

How is the legislation of the various Union Republics to be applied? What if there is a collision of laws? The general theory of law in the U.S.S.R. deals with these problems in the following manner: in cases of conflict between legislation enacted by the same body, the later law prevails. In cases of conflict of laws enacted by different levels of legislatures the law enacted by the higher organ prevails over that enacted by the lower one. As already mentioned, each Republic has its own Family Code. Conflicts between Family Codes in different Republics are resolved in the following manner:<sup>21</sup>

(a) Entering into a marriage, relationships between spouses, relationships between parents and children, adoption, establishment of paternity, alimony, guardianship, custody, divorce, and registration of vital statistics are regulated by the legislation of the Republic whose organs registered or determined the relationship, or where the court action originated.

(b) Validity of marriage, validity of adoption, validity of custody and guardianship, and validity of acts of registration are governed by legislation of the Republic where the marriage, adoption, or custody and guardianship was entered into, or where the particular occurrence was registered.

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20. See e.g., Beliakova and Vorozheikin, *Supra* n.1, at 83; Ioffe, *Supra* n.1, at 180.

21. The Fundamentals, Art. 8.

### *C. Legal Definition of the Family*

Neither the Fundamentals nor the Codes of various Republics define the family and its composition. These matters are either the subject of theoretical works in jurisprudence or are determined by specific statutes in other areas of law. The family circle is defined in various ways depending on the particular rights and duties involved. For example, the Civil Code of the R.S.F.S.R. limits the circle of statutory inheritors in the following manner:

1. Heirs of the first order: children including adopted children, spouses and parents including adopting parents, of the deceased.

2. Heirs of the second order, those who may inherit in the event of lack of heirs of the first order: brothers and sisters, grandparents of the deceased, grandchildren and great grandchildren if their parents would have been inheritors but died before the death of the testator.<sup>22</sup>

Thus, the establishment of kinship or family relationships gives rise to rights of inheritance. This however, does not define membership in the family, because relatives can live in separate families but nevertheless have a right to inheritance. In addition, the Civil Code describes other inheritors who are not members of the family and who are not relatives, *e.g.*, people who are unable to work, who were supported by the deceased one year prior to his death. Since cousins, nephews, nieces, uncles or aunts have no statutory right to inheritance, their family relationship has no legal meaning in that context.

Looking at the part of the Civil Code which deals with housing law, another definition of family membership can be found. Living together and maintaining a common household is here more important than blood relationships. For example, Article 301 of the Civil Code refers to members of the family of the tenant who have tenancy rights as spouses, parents, and children who live together. Others who are supported by the tenant, relatives and non-relatives alike, are included as members of the family if they not only live together, but also maintain a common household. On the one hand, the second order of relationship such as grandparents does not in itself assure membership in the family, according to the housing law, in the absence of living together in a common household. On the other hand, even distant relatives or non-relatives may be considered family members if they are permanently disabled or supported by the tenant. Another definition of "family" is found in a law dealing with pensions and privileges for the families of members of the armed forces.

Yet another method of defining the family circle is established by the laws prohibiting certain relationships on the basis of consanguinity or affinity. The index of the Family Code does not include the term "consanguinity" and "affinity". Nevertheless, legal relationships between the following persons are prescribed: brothers and sisters — including half-brothers and half-sisters (Article 82); stepparents and stepchildren (Article 81); grandparents and grandchildren (Articles 83 and 84); people who ac-

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22. Civil Code of the R.S.F.S.R., Art. 532.



tually do the upbringing of and provide maintenance for the children, and those who are raised by them (Articles 85 and 86) as well as custodians and guardians and their charges (Articles 119 and 139). As far as affinity is concerned, Soviet law with two exceptions does not recognize this concept at all. The first exception is to be found in family law, and as mentioned above, deals with the relationships between stepparents and stepchildren. The second exception can be found in labour law: Section 20 of the Labour Code prohibits employment of people who are close relatives or in close affinity, in cases where their relationship would be one of subordinate and superior, or control of one over the other.

Thus it is possible to conclude that to determine the circle of people who are covered under the term "family" in a legal sense, does not usually present great difficulty. Nevertheless, the determination of family in Soviet law is sometimes a problem, not only theoretically but also practically. Article 43 of the Family Code, among grounds for the annulment of a marriage, lists the following "registration of the marriage without the intention of *establishing* a family (fictitious marriage)." In cases where court action for the annulment of a marriage is brought, that action will be dismissed "if, in fact a family was *actually established* prior to the court case."<sup>23</sup> However, the Code does not give any indication as to what constitutes the establishment of a family, therefore this matter is left to the subjective assessment of the judge in each individual case.

The definition of a family in the Soviet theory of state and law, also remains open and debatable. Thus for example, A.M. Beliakova and E.M. Vorozheikin view living together and having children as a necessary part of the definition of family.<sup>24</sup> Yet, according to Article 11 of the Fundamentals, each spouse is free to choose a place of residence, and is not obliged to follow the other spouse. "To stay in marriage does not carry for the spouses an obligation to live in a common household." This statement can be found in the authoritative commentary to the Family Code.<sup>25</sup> In large Soviet cities, married couples living separately is quite a common occurrence, not by choice but due to the current housing crisis in the U.S.S.R.<sup>26</sup> On the other hand, having children is not an obligatory element of the notion of family, no matter how desirable it is from the social point of view. The obligations of living together and having a family as described by the two authors mentioned earlier, as the criteria determining the Soviet family, would deprive many Russian spouses of the right to call themselves families.

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23. Emphasis added.

24. Beliakova and Vorozheikin, *Supra* n.1, at 34.

25. Commentary on the Family Code of the R.S.F.S.R. (Moscow, 1971) 48 (hereinafter referred to as Commentary).

26. If they live together part of their housing space may be taken away from them. In the cities of the U.S.S.R. the law establishes a limit for housing space which is rented by tenants in State owned facilities. According to Art. 316 of the Civil Code of the R.S.F.S.R. this limit is 9 square meters per person. If a single person remains in possession of two rooms with separate entrances and if each room is more than 9 meters, then one of these rooms may be taken away from him. In addition, according to Article 306 of the Civil Code of the R.S.F.S.R., a tenant who is absent from his domicile for more than six months may be deprived of that domicile. This is why couples who marry subject themselves to two risks: if one spouse moves in with the other, he or she may lose that room. Should they exchange their two separate rooms for two adjoining rooms and if one of the new rooms is more than 20 square meters, they run the risk of losing the other room since 20 square meters is considered enough for two people. Thus the maintenance of separate residences by spouses in the U.S.S.R. is not a result of their own inclinations but of objective circumstances.

Probably the most general and least political notion of family was that developed by V.A. Riasentsev, in 1967. He describes the family only in legal terms, and is not concerned with the existing political, sociological or economic factors in the U.S.S.R. which might have an impact on the family. According to his definition, a Soviet family is a union of people based on free and equal marriage, or close relations, or kinship, or adoption, or other means of raising children. It is characterized by community of interests of people who possess certain rights and obligations.<sup>27</sup>

## II. MARRIAGE IN THE U.S.S.R.

### A. Legislative Definition of Marriage

Family law does not define what a marriage is. Theoreticians of family law describe marriage in various ways. Very commonly they do not talk about what marriage is, but rather about what marriage ought to be. Marriage is described as "a life-long union of a man and woman with the goal of having and raising children."<sup>28</sup> Although these two conditions are not obligatory, they are desirable. From here, it is necessary to turn provisions in the legislation concerning marriage.

Article 1 of the Family Code provides the goal of a marriage as "The building of family relations on the voluntary marital union of man and woman . . . ." Article 6 of the Fundamentals states that legal regulation of the matrimonial and family relations belongs to the government. Marriage can be entered into only by registration in the State Registry Office, referred to by Professor Berman as "the Bureau of Vital Statistics" or "Agencies which register acts of civil status."<sup>29</sup> The word ZAGS is the abbreviation for this office (*Zapis' Aktov Grazhanskogo Sostoianiiia*). However, in some instances the law recognizes marriages which are not registered. The Fundamentals also recognize church marriages, if the marriage was entered into prior to the establishment of the Soviet Union, or before the restoration of Soviet power during the time of World War II and the civil war.<sup>30</sup>

Marriages of foreigners entered into in the embassies and consulates accredited in the Soviet Union are also recognized. Two conditions must be met: (1) observance of Soviet law dealing with marriages, and (2) reciprocity, *i.e.*, recognition by the government of the embassy or consulate of marriage of Soviet citizens in their country, entered into in an embassy or consulate.<sup>31</sup>

27. Riasentsev, *Supra* n.1, at 47.

28. See *e.g.*, Beliakova and Vorozheikin, *Supra* n.1, at 87.

29. *Supra* n.4, at 341. H.J. Berman and J.W. Spindler (trans.), *Soviet Criminal Law and Procedure, The R.S.F.S.R. Codes* (Cambridge, Mass., 1972) 185 (hereinafter referred to as ZAGS).

30. Since Soviet power was established or re-established at different times in different regions of the U.S.S.R., a special circular of the People's Commissariat for Internal Affairs of the U.S.S.R. was issued in 1926 and is attached to the current Family Codes. This circular lists the various regions of the country and indicates in each case in what year Soviet power was established or re-established in the given region. The difference is rather significant. For example, in the Province of Leningrad religious marriages concluded before December 20, 1917 are considered valid. On the other hand, in certain regions of Sakalin Island religious marriages concluded before 1925 are considered valid. In the case of some provinces (for example, Tambov) the circular states: "No information available."

31. Family Code, Art. 161.