



REAL
SOCIALISM.
THEORY
AND
PRACTICE

Nikolai Malein

**Civil Law
and the Protection
of Personal
Rights in the
USSR**



PROGRESS
PUBLISHERS
MOSCOW



REAL
SOCIALISM.
THEORY
AND
PRACTICE

Born in 1926, Nikolai Malein, D. Sc. (Law), is a Professor at the Institute of State and Law of the USSR Academy of Sciences.

A specialist in Soviet civil, economic and family law and the theory of law, he has written over 120 works, including monographs, textbooks, articles and pamphlets, some of which have been translated into English, French, German, and other languages.

Among his published monographs are *Civil Law and Personal Rights in the USSR* (Moscow, 1981), *Liability in Economic Relations* (Moscow, 1968), *Compensation for Personal Injury* (Moscow, 1964). He is the author of several chapters in the textbook *Economic Law* (Moscow, 1967, 1970, 1983) and a coauthor of the monograph *The Civil Status of the Individual in the USSR* (Moscow, 1975).

Malein participated in the preparation of the Fundamentals of Civil Legislation of the USSR and the Union Republics, and attended international jurists' conferences in Moscow, Berlin, Prague, Warsaw, and Budapest.

Nikolai Malein

Civil Law and the Protection of Personal Rights in the USSR

Citizens of the USSR shall enjoy in full the social, economic, political and personal rights and freedoms proclaimed and guaranteed by the Constitution of the USSR and by Soviet laws.

Constitution (Fundamental Law) of the Union of Soviet Socialist Republics, Art. 39



PROGRESS
PUBLISHERS
MOSCOW

Translated from the Russian by *Benjamin Rifkin*
Designed by *Nikolai Kondrashov*

Николай Маленн

**ГРАЖДАНСКИЙ ЗАКОН И ОХРАНА ПРАВ
ЛИЧНОСТИ В СССР**

На английском языке

© Издательство «Прогресс», 1985
English translation © Progress Publishers 1985

Printed in the Union of Soviet Socialist Republics

М $\frac{1203050000-441}{014(01)-85}$ 82—85

CONTENTS

	<i>Page</i>
<i>From the Author</i>	9
<i>Chapter I.</i> GENERAL DESCRIPTION OF CITIZENS' PERSONAL RIGHTS AND THEIR PROTECTION BY LAW . .	14
The Significance of Spiritual Interests (14). Property Relations and Personal Non-Property Relations (18). The Nature of Personal Non-Property Rights (19). The Absolute Nature of Personal Legal Relations (21). Criteria for the Appraisal of Personal Rights (24). Protecting Personal Rights (26). Statute of Limitations (32). Citizens, Passive and Active Capacity (33).	
<i>Chapter II.</i> THE PROTECTION OF HONOR, DIGNITY, AND NAME	40
The Concepts of Honor and Dignity (40). Conditions for the Defense of Honor and Dignity (42). Parties to Suits for the Defense of Honor and Dignity (47). Means of Defense and Periods for Execution of Court Judgments (52). The Correlation Between Criminal and Civil Law Defense of Honor and Dignity (56). The Right to a Name (60).	
<i>Chapter III.</i> THE PROTECTION OF PERSONAL INVIOABILITY	65
The Protection of Personal Life (65). Advocate Secretary (67). Secrecy of	

Money Deposits and Notary Deeds (69). The Confidentiality of Adoption (70). Medical Confidentiality (71). The Privacy of Correspondence, Telephone Conversations, and Telegraphic Communications (76). The Privacy of Letters, Diaries, and Notes (78). The Right to One's Own Likeness (79). Inviolability of the Home (81). The Protection of Personal Freedom (83).

Chapter IV. PROTECTING HUMAN LIFE AND HEALTH 90

The Special Nature of Civil Responsibility (92). General Prerequisites for Rights and Obligations to Make Restitution for Injury (95). The Responsibility of Owners of Sources of Increased Hazard (104). Responsibility for Injury Committed by Minors and Those Lacking Active Capacity (114). Determining the Extent of Harm Subject to Restitution (117). Compensation for Harm in the Event of Death (132). Compensation for Injury Sustained During an Attempt to Rescue Socialist Property (139).

Chapter V. PROTECTING PERSONAL INTERESTS IN PROPERTY AND PERTINENT NON-PROPERTY RELATIONS 142

Personal Non-Property Relations Pertinent to Property Relations (142). Protecting Personal Rights of Authors of Works of Science, Literature and the Arts (145). Protecting Personal Rights of Authors of Inventions, Innovative Proposals, Industrial Designs and Discoveries (157). Protecting Citizens' Per-

sonal Welfare and Interests in Property Relations (167).

Chapter VI. PROTECTION OF PERSONAL INTERESTS BY FAMILY LEGISLATION 172

The Conditions for Contracting a Marriage (174). Invalidation of a Marriage (178). Establishing Children's Parentage (180). Adoption (184). Personal Legal Relations Between Parents and Children (185). Deprivation of Parental Rights (189). Personal Legal Relations Between Spouses (193). Personal Non-Property Relations Between Other Members of the Family (195). Dissolution of Marriage (196). Family Property Relations Pertinent to Personal Relations (202). Alimony and Child Support: Rights and Duties (207). Trusteeship and Guardianship... (215).

Chapter VII. THE JUDICIAL SYSTEM AND JUSTICE 218

Administration of Justice by the Court Alone (220). The Constitution of All Courts on the Electivity Principle (222). The Collegial Hearing of Cases in Court (223). The Independence of Judges and Their Subordination Only to the Law (225). Citizens' Equality Before the Law and in Court (226). The Administration of Justice in a National Language (227). The Procurator's Office and the Bar (227). Civil Procedure (229). The Protection of Civil Rights by Agencies Other than the Court (233).

Afterword 238

FROM THE AUTHOR

The issue of the rights of the individual is one of the most significant and relevant problems of our time. It is an issue of national and global concern. In 1948, the United Nations General Assembly proclaimed the Universal Declaration of Human Rights. Human Rights Day, the 10th of December, is celebrated in many countries all over the world, including the USSR. In 1973, the Soviet Union ratified the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and in 1975 signed the Final Act of the Helsinki Conference on Security and Cooperation in Europe.

These international acts proclaim and recognize the rights of all people to life, liberty, personal inviolability, and dignity, freedom of conviction, speech, and conscience, peaceful assembly and association, participation in governing one's own country, the right to work, rest, education, social security, and the defense of one's moral and material interests. Every individual may only be limited in the exercise of his or her rights and freedoms by law in the interest of the due recognition and respect of other citizens' rights and freedoms, for the satisfaction of the just demands of morality and public order, and for the general welfare in a democratic society.

The Constitution of the USSR, adopted in 1977, recognizes and legally confirms all the rights and freedoms of Soviet citizens proclaimed in these international covenants and guarantees their real implementation in Soviet society. The Soviet Constitution declares that all power in the USSR is vested in the people (Art. 2), that the Soviet state and all its bodies function on the basis of socialist legality, ensure the maintenance of law and order, and safeguard society's interests and individual citizens' rights and freedoms (Art. 4), and that work collectives take part in discussing and deciding state and public affairs (Art. 8).

Citizens of the USSR enjoy in full the social, economic, political and personal rights and freedoms proclaimed and guaranteed by the Constitution of the USSR and by Soviet laws. Among these, political and personal rights and freedoms, that is, values of a non-economic character, are quite significant. When these values and interests are incorporated in and guaranteed by the Constitution, they assume a legal character, and social relations which arise pertaining to these values and interests become legal relations covering the rights of one party and the corresponding duties of the other.

The right of citizenship, the electoral right, the right to participate in the administration of governmental and social affairs, the right of association, freedom of conscience and religious belief, freedom of speech and of the press, freedom of assembly, meetings, street processions and demonstrations are all political rights and freedoms guaranteed in Chapter 7 of the Constitution of the USSR. These constitutional rights and freedoms are regulated in detail pri-

marily by Constitutional law as a branch of Soviet law.

Another category of rights includes those rights which are inalienable from the individual, which protect various aspects of the individual's life and privacy. These are the rights to protect one's honor, dignity, good name, health, and the right to privacy, including the privacy of the family, etc.; such rights are guaranteed by the provisions of Chapter 7 of the Constitution of the USSR.

Relations arising in connection with these rights and interests of the individual are regulated and protected primarily by civil and family legislation and, in some cases, by provisions of other branches of Soviet law (for example, by criminal or administrative law). That is why the norms of civil law are first of all considered in this book.

The source of civil law is the Fundamentals of Civil Legislation of the USSR and the Union Republics, a law adopted by the USSR Supreme Soviet on December 8, 1961.¹ The Fundamentals of Civil Legislation, as implied by their very name, are the law in which the fundamental provisions of law are established, in accordance with the Constitution of the USSR; the provisions of the Fundamentals are subject to be enforced throughout the territory of the USSR.

The Soviet Union is a multinational state in which fifteen Union republics are federally united. Each

¹ *Gazette of the Supreme Soviet of the USSR*, 1961, No. 50, item 525. After adoption of the new Soviet Constitution in 1977 this Law was amended; see *Gazette of the Supreme Soviet of the USSR*, No. 44, 1981, Item 1184.

Union republic legislates on its own territory and, among other things, has its own civil code (CC) as a sovereign Soviet socialist state.

The civil codes of the fifteen Union republics reflect the provisions of the all-Union Law—the Fundamentals of Civil Legislation and itemize the rights, duties and responsibilities of parties engaging in civil relations on the territory of the given republic.

Thus, the Civil Code of the Russian Soviet Federative Socialist Republic (CC RSFSR), which will be referred to below, has 569 articles, while the Fundamentals of Civil Legislation of the USSR and the Union Republics have only 129 articles.

Family law, which, primarily, regulates relations within the family unit, is very close to civil law. Soviet family law is an independent branch of law, and is not incorporated into civil law, as is the custom in some other countries. The Fundamentals of Legislation of the USSR and the Union Republics on Marriage and the Family, adopted by the USSR Supreme Soviet on June 27, 1968,² and the Union republic codes on marriage and the family (CMF) are the sources of family law in the USSR.

Like the Union republic civil codes, the Union republic codes on marriage and the family define legal relations within the family in accordance with the national customs of the given republic. Thus, the Fundamentals of Legislation of the USSR and the Union Republics on Marriage and the Family have only 39 articles, while the CMF of the Russian Soviet Federative Socialist Republic has 169 articles.

² Ibid., No. 27, 1969, Item 241.

Personal and property relations are also regulated by civil law. The bulk of civil law is concerned with property relations: the right of ownership, the right to make transactions and contracts regarding sale and purchase, exchange, lease, housing, and so forth. A significant part of Soviet juridical literature is dedicated to the analysis of civil property rights, obligations and responsibilities; some of these works have been translated by Progress Publishers and perhaps the foreign reader is already familiar with them.

Soviet juridical literature has less frequently concerned itself with the regulation of personal non-property relations and for this reason the foreign reader is less acquainted with this branch of Soviet law. It is hoped that this study will fill that gap.

We will begin with a general comparison of personal non-property relations and property relations and then analyze the relevant provisions of the Soviet Constitution, civil law and other fields of law, designed to protect the personal rights of Soviet citizens. In the last chapter we will provide the reader with some information concerning the Soviet judicial system and procedure law, the democratic nature of which is most important in the protection of personal rights. For the sake of clarity, throughout our discussion theoretical questions will be illustrated with examples taken from Soviet courts.

CHAPTER I

GENERAL DESCRIPTION OF CITIZENS' PERSONAL RIGHTS AND THEIR PROTECTION BY LAW

The Significance of Spiritual Interests. Property Relations and Personal Non-Property Relations. The Nature of Personal Non-Property Rights. The Absolute Nature of Personal Legal Relations. Criteria for the Appraisal of Personal Rights. Protecting Personal Rights. Statute of Limitations. Citizens' Passive and Active Capacity.

The Significance of Spiritual Interests

...“Mankind must first of all eat, drink, have shelter and clothing, before it can pursue politics, science, art, religion, etc.”³ Engels' words refer to society as a whole as well as to each individual within society who has biological and spiritual qualities. Human beings are biosocial beings: each is conceived biologically but develops socially as a person. Within each one of us biological and social qualities combine to form one individual.

As a biological organism, every human being requires food, clothing, and shelter, but the human being is first and foremost characterized by his consciousness and his social and spiritual qualities, with-

³ Frederick Engels, “Speech at the Graveside of Karl Marx”, in Karl Marx and Frederick Engels, *Selected Works* in three volumes, Vol. 3, Moscow, Progress Publishers, 1977, p. 162.

out which neither individual nor society as such can exist. The more human society develops, the more intensively individuals' social qualities develop, becoming more and more significant. The value of this social element grows accordingly and it becomes increasingly essential to protect it legally.

The significance of biological and social needs and interests changes with the development of each individual and the society as a whole. In the first stage of the genesis and development of human society, demands for food, clothing and shelter prevailed over spiritual interests, although the latter were not alien to human beings at that time either, as evidenced, for example, by drawings on cave walls. Similarly, a contemporary newborn child needs food, clothing and shelter first and foremost. The infant has no spiritual interests, nor does it think about its need for food, clothing, and shelter. As consciousness develops, so do the spiritual needs and interests of the individual and the society as a whole. This process characterizes the human being as both an individual and a social phenomenon and is characteristic of human society as a whole. The development and the increasing significance of spiritual needs and interests is a trend which conforms to the principles of the progress of human society. Socialist society recognizes and protects this tendency by guaranteeing it politically, economically, and legally.

The USSR is a developed socialist society characterized by powerful productive forces and progressive science and culture. The welfare of the Soviet people is constantly improving as more and more favorable conditions are provided for the multifaceted development of each and every individual citizen. This is

a highly organized society of mature socialist relations, an ideologically motivated society of conscientious workers, a society in which the law of life is the concern of all for the good of each and the concern of each for the good of all. This is a society of genuine democracy, the political system of which guarantees the effective management of public affairs, the increasingly active participation of working people in running the state, and the combination of citizens' real rights and freedoms with their obligations and responsibilities to society.

In such a society, the citizenry's social demands and interests grow ceaselessly and this, in turn, gives rise to the need for the development of legislation designed to regulate relations based on non-material interests and welfare. Soviet law, including civil law, is developing in this direction.

The legal status of the Soviet citizen, as the totality of the basic and equal socio-economic, political and personal rights and freedoms proclaimed and guaranteed by the Constitution of the USSR and Soviet laws, does not depend on his financial status. The majority of fundamental rights of Soviet citizens, established by the Constitution of the USSR in Chapter VII, are political, moral, and spiritual in nature. These are:

- the right to health protection (Art. 42) ;
- the right to education (Art. 45);
- the right to enjoy cultural benefits (Art. 46);
- the freedom of scientific, technical and artistic work (Art. 47);
- the right to take part in the administration of state and public affairs (Art. 48);
- the right to submit proposals to state bodies

and mass organizations for improving their activity and criticizing the shortcomings in their work (Art. 49);

—freedom of speech, of the press, of assembly, meetings, street processions and demonstrations (Art. 50);

—the right to associate in mass organizations (Art. 51);

—freedom of conscience, that is, the right to profess or not to profess any religion (Art. 52);

—the right of the family to enjoy the protection of the state (Art. 53);

—personal inviolability (Art. 54);

—sanctity of the home (Art. 55);

—privacy of citizens, of their correspondence, telephone conversations and telegraph communications (Art. 56);

—protection by the courts against encroachments on honor and reputation, life and health and personal freedom (Art. 57);

—the right to lodge a complaint against the actions of officials, governmental and non-governmental bodies (Art. 58);

—respect for the individual and protection of the rights and freedoms of citizens by all state bodies, mass organizations and officials (Art. 57).

These rights are closely related to the economic and property rights guaranteed Soviet citizens in the Constitution:

—the right to work (that is, to guaranteed employment and pay in accordance with the quantity and quality of work) (Art. 40);

—the right to rest and leisure (Art. 41);

—the right to maintenance in old age, in sickness,

and in the event of complete or partial disability or loss of the breadwinner (Art. 43);

—the right to housing (Art. 44).

The non-material and economic rights of Soviet citizens are often inseparable. For instance, for the overwhelming majority of working people, the right to work and work itself are not only a source of livelihood, but also a vital need. Work in the USSR is a matter of honor for every able-bodied citizen. The right to housing is also a real, material right enjoyed by all Soviet citizens. At present, people in the USSR are concerned with improving their housing and this question pertains to both citizens' material and spiritual interests. Thus, spiritual, personal interests exist independently as such and combine with economic interests, adding to them a social dimension inherent to the individual citizen of the developed socialist society. This again emphasizes the significance and the necessity of their protection by law.

**Property Relations
and Personal Non-
Property Relations**

Soviet civil legislation regulates property and pertinent personal non-property relations. In cases stipulated by law civil legislation also regulates other personal non-property relations. For example, Art. 1 of the Fundamentals of Civil Legislation of the USSR and the Union Republics and Art. 1 of the civil codes of the Union republics state that civil legislation regulates two kinds of social relations: property relations and personal non-property relations. The latter are in turn divided into two categories: personal relations linked to and not linked to property relations.

Property relations are social relations which bear

upon some property. They concern the ownership, use and distribution of property. Some of these relations arise from commodity-money relations and therefore have a commodity equivalent and involve compensation. Sale and purchase, leasing of property, carriage, rendering of mending services and so forth are relations in which one party provides property or services and the other party provides, in exchange, money or other property. Other property relations are not characterized by exchange, for example, relations involving a contract of bestowal or inheritance of property.

Property relations arise between socialist organizations as juridical persons, between juridical persons and individual citizens, and between individual citizens.

Personal non-property relations, subject to regulation by law, arise in connection with citizens' interests in a spiritual, as opposed to material, sense. Every citizen has the right, as affirmed and protected by the law, to enjoy life, health, name, honor, integrity, reputation, personal inviolability and privacy. Thus, there arise social and, accordingly, legal relations pertaining to these blessings. These are juridical relations covering the rights and obligations of a non-property character as well as the responsibility for having damaged a citizen's rights, for having encroached upon his non-property interests.

The Nature of Personal Non-Property Rights

Personal rights are of a non-material nature and are therefore referred to as non-property rights. Such rights relate not to specific objects of the material world but to values of a spiritual nature.

Material welfare, that is things and property, has measurable parameters and, accordingly, property interests and rights can be measured objectively in such a manner that everyone, including the bearer of these property rights and all other persons, can understand. Non-material blessings and personal rights do not share these qualities.

Personal rights and blessings are of a very specific nature, valued by everyone; however, spiritual values and personal rights cannot be measured, weighed or defined in monetary terms or in any other units applied to property valuables.

Personal values and rights are socially meaningful, since without them there can exist neither the individual nor the society as a whole. At the same time, these values are personal, since each citizen bears them individually. It follows that these rights and values are of individual as well as social worth; societal and individual appraisals of some or another of these personal values and rights, however, do not always coincide.

Thus, each individual citizen has a specific conception of his own honor and dignity, but this conception may or may not coincide with the opinion of other citizens or the collective. One person may suppose that something others might say or do is damaging to his own honor and dignity, while another citizen might be indifferent to the same actions or words.

The spiritual qualities of people of specific groups may coincide in the whole, principally, generally, in a class sense, professionally, or in other ways and, moreover, each person is a unique individual with his own traits which only he enjoys.

Property and property rights may be acquired and

sold; they are separable from the person. A person's property rights change quite often since people are compelled every day to enter into many different property relations, acquiring or transferring property. Financial status and material interests, acting with other important factors, may influence and determine the spiritual qualities of a given individual.

As distinct from property rights, non-material values and personal rights individualizing each person are inalienable from the individual; they cannot be transferred from one person to another. A person who does not enjoy spiritual interests, values and rights is deprived of his personality. It is impossible to transfer, sell or bestow one's honor, dignity or life without losing one's personality. One's health may suffer, one's honor may be blackened, but in all such cases, a citizen, a human being, does not fully lose his spiritual qualities as an individual.

These qualities of an individual change under the influence of different factors such as age, social status, occupation, milieu, education, upbringing, family status, and other factors, and are under the influence of global factors on the scale of nation, states and the world. The evolution of the personality is a regular process of development, not the atrophy of spiritual life. Spiritual values and spiritual qualities of the personality individualize the personality and distinguish it from other.

The Absolute Nature of Personal Legal Relations Civil rights and civil legal relations are customarily divided not only into property and personal rights and relations, about which we have already spoken, but also into relative and absolute rights and relations.

In relative legal relations the subject of a right faces a specific party with a concrete obligation who carries the responsibility for not fulfilling some obligation. The majority of civil rights and civil legal relations which arise from various contracts and deals (sale and purchase, exchange, leasing of property, sub-contract, insurance and others) are of this type. Consider, for example, civil legal relations arising from a contract of sale: here, the creditor has a right and the debtor a duty to perform only in relation to each other, that is, a legal connection (rights, obligations and responsibilities) exists between two specific parties.

Absolute rights, on the other hand, are enjoyed by an unspecified number of persons. Thus, an individual with the absolute right to use his own personal property has the right to prohibit any person from committing an act disturbing the owner's right to possess, use and dispose of his property as he sees fit. The owner may demand the judicial defence of his infringed right from any other person.

Thus, in relative civil legal relations both subjects are specified from the moment the relations between them arise, but in absolute civil legal relations only one subject is specified while there exist an unspecified number of people who are obligated subjects. Only when an absolute right is violated does the obligated party-violator become specified as the responsible subject. The two kinds of civil legal relations as a legal connection between people may be compared to two different kinds of communication; the telephone (a relative connection between two specified parties) and the radio (a source of information for an unspecified number of listeners).

Personal non-property rights and civil legal relations arising in connection with such rights are absolute rights and relations. This means that every citizen enjoys a set of personal rights and all other citizens and institutions are obligated not to violate these rights. In the event of the violation of such rights a violator is specified and the sanctions of the law are applied to him.

It is important to note that absolutely all citizens, officials and organizations without exception must respect personal rights and that these rights can be defended against any and every violation without exception. The absolute character of personal rights also means that each subject enjoys them without any kind of special permission.

In some instances the law may establish limits on the enjoyment of personal rights in the interests of other parties or society as a whole. For example, the law provides for the privacy of the home: no one may intrude into another person's home or dwelling without the consent of those who live there. The right to privacy of the home is a personal non-property right (as distinct from the right to have a home). In strictly defined circumstances, the law does, however, provide for such intrusion in order to search premises, when a warrant has been issued by a procurator or a court. Such a limitation of personal rights is justified from the point of view of society and other citizens, since search warrants are granted in order to discover crimes and, thus, such searches are made in the interests of society as a whole.

Criteria for the Appraisal of Personal Rights

As to the violation of property rights (e.g., the damage or theft of goods), even if there is some disagreement on the degree of the damage to material interests, the size of the property loss is determined with a great deal of precision on the basis of objective criteria, the value (or price) of the damaged property or item.

As distinguished from property interests, spiritual interests cannot be accurately measured, especially in universal monetary terms, and even though the value society places on such interests is, on the whole, absolute, their value is actually relative in each concrete case. Accordingly, the question arises as to whether to use objective or subjective criteria for appraising the value of such interest and the harm inflicted to them.

Subjective criteria evaluate blessings and the damage inflicted to them from the point of view of the person whose interests are damaged (the victim), taking into account his individual views and subjective features. Objective criteria focus on the determination of the social significance of such non-material values and the moral damage. In some cases the objective approach is used, while in other cases, the subjective approach is applied.

Thus, every citizen whose personal interests have been harmed has the right to initiate his own defense, using his own particular subjective opinion in doing so. For instance, a citizen might consider that his honor has been defamed and might bring suit to defend his honor and dignity. No matter how the judge evaluates the facts of the case he may not refuse to hear the lawsuit, since such a ruling would

result in justice not being done. Therefore, at this stage in the legal process the objective criterion is not applicable.

During the court's hearing of a case on its merits, due to the controversial principle of civil procedure, both parties, the plaintiff and the respondent, bring evidence to bear on the case and evaluate this evidence subjectively.

However, before the court makes its decision it must consider not only the subjective opinions of both parties, the plaintiff and the respondent, but also the concrete circumstances of the case in question, the social significance of the harm to the particular citizen's interests, and the degree and means of violation of his interest. The court must take into account the preventive and educative significance of the judgment as it bears on the respect accorded for personal rights, not only for participants in the trial, but for others as well. This is to say that the court also applies the objective criterion at this stage of the case. Thus, in its decision of such a case the court applies both objective and subjective criteria.

The objective criterion weighs more heavily than the subjective, but both affect legislative activity when the law includes (or does not include) standards regulating personal non-property relations, in this way determining the range of non-property interests protected by the law.

Such is the general character of personal spiritual interests, rights and relations, as compared to property or economic interests and legal relations. The distinctions made here do not denote any opposition or negation of either of the two groups of

rights and interests. Citizens need material and spiritual values and therefore must and do enjoy them.

Protecting Personal Rights

In Soviet juridical literature, the concepts of *protection* and *defense* of rights are distinct. The *protection of rights* is a broad concept including all legal rules concerning a given right or interest.

When one or another kind of social relations is regulated by law this is evidence that such relations are considered to be of special significance and they are safeguarded by the state. The state protects citizens' spiritual interest and their corresponding right to it by establishing legal standards for the scale and limits of behavior relevant to a particular blessing, determining the rights and obligations of those participating in legal relations, their desirable (from the society's point of view) behavior and the consequences of undesirable or forbidden acts.

The term the *defense of rights* is understood to mean measures stipulated by the law to be applied in those cases when the law has already been violated: measures of legal responsibility (for example, claims for damages) and other sanctions are measures of the defense of a given right (for example, the restoration of violated rights may mean recognition of a party's authorship).

Measures to protect rights may be divided into two categories. The first category is those measures designed to prevent the violation of the law and which are applicable *before* a violation is committed. The second category of measures includes those which *follow* a violation, those measures applied *after* the right has been violated.

Some personal non-property rights, once violat-

ed, may be restored or rehabilitated after such violation, e.g. the restoration of defamed honor or an author's name. Other personal rights are difficult or impossible to restore once violated, e.g. injury to a person's health or death, publication of a work with distortions or corrections without the author's consent, and other such violations. The development and practical application of legal norms designed to prevent the violation of personal rights are therefore of primary importance. For example, norms designed to prevent pollution of the environment and protect the health of the population are actively applied during the planning and start-up phases of any new factory, transportation system, or any other industrial projects.

Some means of protection are applicable only after a right has been violated, among which are measures of legal responsibility for such violation, e.g. requiring a party who inflicts an injury to pay damages. Such legal measures of responsibility not only compensate victims after his rights have been violated, they also serve as a disincentive to prevent such violations in the future and punish the guilty party. Thus, the financial compensation for injuring the victim's health not only improves the victim's financial status (compensation), but also worsens the guilty party's financial status (punishment) and, at the same time, warns others against committing similar violations (prevention).

These functions of responsibility as a means of the defense of rights can be effective only if they are applied for every infringement of the law. In this we see the most important principle of Soviet justice, the *inevitability of responsibility* for the vio-

lation of the law, not the gravity or cruelty of such responsibility.

The inevitability of responsibility means that *every* person who violates the law is ultimately and unavoidably made legally responsible for *each and every* violation in accordance with the degree of public danger, the harmfulness of the delict, the form of the guilt and other factors which individualize the measure of responsibility. Neither the social status, the occupation of any job or position, services rendered in the past or present, nor any other factors can release a violator of the law from being made responsible for his acts; such factors can only be taken into account during the determination of the measures of responsibility.

The observance of the principle of the inevitability of responsibility is the most important factor in preventing violation of the law.

As we have already noted above, prevention of violations of the law is especially important for the defence of personal non-property rights.

Economic welfare is incarnated in things of the material world, which are visible, tangible, measurable, and subject to appraisal in monetary terms. Losses incurred to material welfare and interests are just as measurable. Even those citizens who are ill-acquainted with jurisprudence, know that if someone should damage their property or refuse to repay a debt they can appeal to the court for the defense of their material interests. The responsible party will be made to pay for the destroyed or damaged property or repay the debt. The defense of property rights is sufficiently and effectively guaranteed by the system of substantive and procedural norms of

civil law established by the Soviet state. In instances of violations of material interests especially dangerous to citizens and society (for example, the theft of property) criminal law sanctions become applicable.

Non-property, spiritual rights and interests are defended somewhat differently. The violation of spiritual interests carries no less or, in some cases, even significantly more harm to the individual than the violation of property rights. However, as we have already noted, by their very nature, these interests are not measurable in any precise way and damage to them is of a moral, psychological nature which is not always remediable.

Furthermore, although the defense of property interests is sufficiently guaranteed by traditional legislation, this is not the case with personal interests. Specifically, civil legislation containing a small number of legal norms regulating relations in connection with blessings and the protection. Furthermore, these norms are not always systematized, not always gathered together in one code, but scattered in civil codes which themselves have no special section for personal rights and their defense.

All these factors complicate the protection of spiritual interests and in this sense civil law has room for the development of norms designed to protect these spiritual interests more effectively. At present, Soviet jurists are working in this field.

Art. 6 of the Fundamentals of Civil Legislation specifies the various means of defending civil rights. This article is also written into all the Union republic civil codes. Civil rights may be defended in the following ways:

—the recognition of these rights (e.g. the recognition of the right to own a disputed object);

—the return to a condition existing prior to the violation of the law (e.g. the return of an object to its rightful owner);

—the cessation of actions violating the law (e.g. vindicatory suits for the defense of the right of ownership);

—imposition of some obligation to perform some act (e.g. the removal of an object from a lessor and its return to the lessee);

—the termination or alteration of legal relations (e.g. the cessation of legal relations concerning housing by means of the resettlement of some parties or a change in the term of a given lease);

—imposition of a fine or penalty on the violator who has caused losses or damages as in the majority of civil law contracts; and

—other means as stipulated by the law (e.g. for a debtor's failure to fulfill his obligation to perform some work the creditor has the right to perform such work himself at the debtor's expense).

All such measures itemized in the law are applied for the defense of violated property rights, but not all of them are suitable for the defense of non-property personal rights.

Thus, personal rights, once violated, cannot be rehabilitated by compensation for losses, since these rights cannot be appraised financially, as indicated above. Soviet legislation does not grant parties whose non-property rights have been violated the right to collect for losses; but if the violation of personal rights is combined with the violation of property rights, collecting for losses is possible. For example,

when a copyright has been violated the law calls for the reparation of the personal right of the author and the compensation for material losses. If some party injures another's health, the guilty party is obligated to compensate the victim for earnings foregone as a result of his or her injury.

Other means of defense are applicable only to certain and not all violations of personal rights. For example, the return to a condition existing prior to the violation of a right is possible in the defense of someone's honor, but is certainly not always possible in the event of injury to someone's health. Specific means of defense, as stipulated by law, for different kinds of personal rights will be reviewed in the chapters which follow.

Art. 6 of the Fundamentals of Civil Legislation and the corresponding articles of the Union republic civil codes specify that civil rights are to be defended, in the established procedure, by the court, arbitration, or mediation board, and comrades' court, trade union and other social organizations; in certain special cases the law calls for civil rights to be defended administratively.

The jurisdiction of these organizations and courts involved in the defense of civil rights is discussed in Chapter VII of this book. Here we only want to emphasize that the fundamental and most characteristic place where civil rights are defended is the court. Defense in the court is also the most desirable defense due to the precise legal regulation of the trial, the democratic nature of court procedure and its accessibility to the public. The judicial procedure of considering the cases guarantees the defense of rights once they have been violated and

prevents future violations. The public trial has a public resonance of significance: the very fact that some state official or individual citizen has been made legally responsible affects not only the guilty party, but others as well, forming public opinion, convincing the public to be careful and respectful of other citizens' personal rights and interests.

The Constitution of the USSR stipulates that "Citizens of the USSR shall have the right to protection by the courts against encroachments on their honor and reputation, life and health, and personal freedom and property" (Art. 57). "Actions by officials that contravene the law or exceed their powers, and infringe the rights of citizens, may be appealed against in a court in the manner prescribed by law" (Art. 58).

Statute of Limitations

Personal non-property rights enjoy enhanced legal protection by the state as expressed in the non-applicability, as a rule, of the statute of limitations to the violation of such rights.

Limitation of actions is the time period during which violated rights may be defended. According to the law, the time begins to run at the moment a person discovers or should have discovered the violation of his right, and continues for three years in cases where one or both parties to the suit are individual citizens and one year when both parties to the suit are state, cooperative, or social organizations.

Six-month-time limits are also established for certain disputes (e.g. disputes about the quality of products or goods, the imposition of a fine or penalty, etc.)

If the time limit expires for good reason, it can be reestablished, prolonged or suspended. The expiration of this period without good reason before the filing of a suit is valid grounds for the dismissal of an action (Arts. 78-91, CC RSFSR).

These rules govern suits concerning property rights. However, the statute of limitations is generally not applicable to cases arising in the defense of personal non-property rights (Art. 90 CC RSFSR) except those cases as specifically stipulated by the law (the statute of limitations is applied to cases involving compensation for losses as a result of an injury, and in disputes on the rights of inventors). Therefore, a suit filed for the defense of infringed personal non-property rights may be heard by the court at any time, regardless of when such rights were violated (Art. 81, CC RSFSR).

Citizens' Passive and Active Capacity

The following chapters of this book are dedicated to an analysis of the defense of particular personal non-property rights.

We shall now discuss two major juridical categories which participants in social legal relations enjoy and which are, on the one hand, very important general personal rights, and on the other hand, an essential prerequisite for existence of all other rights and obligations. These are the passive and active civil capacities.

These categories are defined by law in Art. 8 of the Fundamentals of Civil Legislation: passive civil capacity is the ability to have civil rights and duties. It begins at birth and ceases at death. Passive capacity is equally recognised in all citizens.

To have passive capacity is to have the oppor-

tunity to enjoy all rights and duties in accordance with existing legislation in force. Citizens of the USSR enjoy in full the socio-economic, political and personal rights and freedoms proclaimed by the Constitution of the USSR and by Soviet laws (Art. 39). Citizens of the USSR are obliged to observe the Constitution of the USSR and Soviet laws (Constitution of the USSR, Art. 59).

All citizens have the same capacity to enjoy rights as stipulated by law, regardless of their age, health, sex, occupation, property status, race, nationality or other factors.

All people enjoy passive capacity. A person cannot be fully deprived of his passive capacity; otherwise, he would not be able to participate in social relations and would turn into a "talking thing". Only in certain cases, strictly limited by the law, may a person's passive capacity be partially limited (but not annulled in full). For example, according to a court's sentence on a criminal charge, a convicted party can be deprived of the right to work in certain, clearly defined positions.

Thus, passive capacity is the universal, equal opportunity for all citizens to enjoy rights and obligations as established by the law.

Legal norms form abstract behavior rules containing authorizations and prohibitions, rights and obligations. Legislation is the source of law, its norms are addressed to an unspecified number of people and reflect the general scale and model of behavior, desirable or obligatory for all. In this sense, the legislative norms form objective law.

On the basis of and in accordance with the norms of objective law, citizens may acquire individual

rights and obligations which, as they belong to particular subjects, are subjective rights and obligations. Thus, according to the law, citizens may possess their own homes on the basis of the right to hold personal property. The right to have one's own home is an objective right, belonging to all citizens as an element of their passive capacity. But, for various reasons, not all citizens possess their own homes and, in consequence, not all of them enjoy the subjective right to possess their own home. Such a right arises only due to a particular juridical fact: the sale and purchase of a home, the inheritance of a home, and so forth. A particular citizen, owning a particular home, enjoys the subjective right to possess his own home. Consequently, the subjective right is the existing concrete right.

For the acquisition of a subjective right it is essential that, first, such an opportunity be established in the norms of objective law and that, second, the particular citizen enter the corresponding legal relation (sale and purchase, rent, contract, etc.).

Only those citizens who enjoy active capacity may enter into legal relations.

Active civil capacity is the citizen's capacity, using his own actions, to acquire rights and incur civil obligations for himself. This capacity arises in full when citizens reach majority (18 years of age). The concept of active capacity includes the capacity to bear responsibility for actions committed or omitted which violate the law.

Active capacity can be enjoyed by persons with a sufficient level of consciousness capable of acting logically. Persons not capable, due to their age or mental impairment, of acting consciously and re-

sponsibly are declared fully or partially lacking active capacity.

Accordingly, all citizens enjoy passive capacity, but not always do all citizens enjoy full active capacity. Full active capacity is granted to each citizen when he or she reaches 18 years of age.

Full active capacity, under family law, also begins at the time a citizen reaches 18 years of age.

The labor active capacity, that is, the legal possibility of entering labor relations, begins at the age of 16 and in certain cases, with the permission of trade union bodies, at the age of 15.

Criminal law considers 16-year-olds legally responsible, and persons 16 or older must therefore serve sentences for crimes they have committed. For some (few) crimes, 14-year-olds are considered legally responsible.

Persons under the age of 15 or persons suffering mental illness of feeble-mindedness are declared to be fully without active capacity. Persons under the age of 15, however, may independently enter minor transactions such as the purchase of school supplies or the deposit of money in a credit institution.

Persons from 15 to 18 years of age have partial active capacity for entering civil rights relations. They may independently enter small scale everyday transactions (for small sums), dispose of their earnings or stipends, exercise their copyrights and inventor's rights, deposit money in credit institutions and they bear responsibility for damages they incur (for more detailed discussion of this point, see Chapter IV below).

The court may limit the active capacity of a citizen who, in consequence of the improper use of

alcohol or narcotics, puts his family in dire financial straits.

Inasmuch as all citizens enjoy passive capacity from the moment of their birth, all citizens enjoy rights, but citizens enjoying full active capacity acquire rights and obligations independently, by means of accomplishing various legal acts.

Citizens who do not enjoy active capacity may enjoy various rights, but they acquire such rights by means of the efforts of other persons who do enjoy full active capacity, such as their parents or guardians. For example, a young child can have the right to possess his own home, coming to possess a home through inheritance, but his parents and guardians must take legal steps in a notary office to accept this inheritance in his behalf.

Citizens with partial and limited active capacity may make transactions with the permission of their parents or trustees. Thus, the representatives of those citizens without active capacity, their parents, guardians, and trustees, act on behalf of these citizens, while citizens with partial and limited active capacity acquire rights with the assistance of their trustees (on guardianship and trusteeship see Chapter VI below).

The concept of active civil capacity is most significant for property relations (the potential to enter into various property transactions and contracts) but at the same time it is valuable for relations of a personal, non-property nature.

Let us remind the reader that passive capacity is the abstract potential of all citizens to enjoy rights from the moment of their birth, but real, subjective, personal spiritual rights, as a rule, are already

enjoyed at birth, although citizens at birth do not enjoy active capacity, and citizens enjoy these rights without the help of representatives such as parents, guardians, or trustees.

Specifically, citizens enjoy such personal rights as the rights to life, health, honor, reputation, privacy, and copyright, regardless of whether or not they enjoy active capacity. Children do not need active capacity to enter family legal relations with their parents.

Other personal non-property rights are accorded citizens when they reach the age of 18 or are simply not granted at all. For instance, citizens get the right to marry when they reach the age of 18; persons declared judicially to be lacking active capacity do not have this right at all (they may receive it only if they recover from mental illness and the court accordingly declares that they have recovered active capacity). The reduction of the age of active capacity is typical of family law. Thus, to change the surname or nationality, to adopt a child it is essential to have the child's consent if the child is 10 years of age or older; by special decision of the Soviet of People's Deputies the marriage age may be lowered (but not by more than two years), and in such a case a person may marry before he or she reaches the age of 18.

Active capacity in personal civil and family relations bears an obligatory significance for the defense of personal rights. If the rights of citizens with active capacity are violated, such citizens engage in the defense of their rights independently, filing suit on their own behalf; those lacking active capacity cannot speak in court and their repre-

sentatives (parents, guardians, trustees) defend their personal rights in court and in other establishments.

Not only private citizens but juridical persons also enjoy active and passive capacities. As distinguished from private citizens, for whom passive capacity and active capacity do not materialize simultaneously, juridical persons, after they have been organized, simultaneously acquire passive and active capacities. As we will see later, juridical persons can participate in property and personal non-property relations. For example, juridical persons can own certain author's rights and can be responsible for the violation of citizens' personal interests and so forth.

CHAPTER II

THE PROTECTION OF HONOR, DIGNITY, AND NAME

The Concepts of Honor and Dignity. Conditions for the Defence of Honor and Dignity. Parties to Suits for the Defense of Honor and Dignity. Means of Defence and Periods for Execution of Court Judgments. The Correlation Between Criminal and Civil Law Defense of Honor and Dignity. The Right to a Name.

The Concepts of Honor and Dignity

Every person is characterized by personal qualities of honor and dignity.

Honor is society's opinion of an individual, the measure of a citizen's social and spiritual qualities as a member of society. Society's appraisal of a given individual depends first of all on the individual himself, since this opinion is formed on the basis of the individual's behavior, his actions and his attitude toward the interests of society, the state, the work collective, and other individuals.

A citizen's behavior and his actions are constantly under review at work, in the family, in daily life, and as he participates in political, economic, and cultural life. Using the socialist community's standards of good and evil, fairness, and humanism, society judges each individual by his behavior, forming opinions of his morals and ethics as he interacts with other members of the society or the collective in which the given individual works,

In this way a person forms his self-image and his internal world, his position, and other citizens, and collectives appraise him from the outside, judging, among other things, such qualities as his honor.

Every individual has a sense of honor as an integral part of his personality. Different people are evaluated differently by society as a whole. Society's evaluation of a given person can change, depending on the actions and behavior of that person, but every person still enjoys a sense of honor.

Individuals are aware of their position in society or within their collective; every individual has self-respect and demands the respect from others. This internal self-appraisal of one's own capabilities, talents, world view, and their societal significance are the *dignity* of each individual. Every individual realizes his place in society and this in many ways accounts for his actions; hence society is not indifferent to the individual's self-image.

Every individual is characterized by consciousness and self-consciousness as well as his own dignity. Every person's moral and ethical self-appraisal is individual; it may or may not coincide with society's appraisal of the given person.

Honor, as a social criterion of the individual, and dignity, as an intrinsic individual criterion, can be adequate or inadequate on the whole. Nevertheless, honor and dignity personify the individual and are inalienable from him, comprising his most important spiritual interests.

Honor and dignity characterize the individual and reflect specific social relations between the individual and the society. Therefore, honor and dignity bear

much social significance and are protected by the law against all violations.

According to Art. 57 of the Constitution of the USSR Soviet citizens have the right to the court's defense against encroachment of their honor and dignity.

**Conditions for the Defense
of Honor and Dignity**

Citizens' honor and dignity are protected by civil law. The Fundamentals of Civil Legislation establish, in Art. 7, that citizens have the right to sue by law for retraction of statements defamatory to their honor and dignity, where the person circulating such statements fails to prove them to be true.

From the law it follows that each citizen's honor and dignity are subject to the court's defense if they are violated by means of circulation of false rumors demeaning to the spiritual qualities of the given citizen. Accordingly, three conditions are essential prerequisites for pressing a suit for the defense of one's honor or dignity: information should be demeaning or defamatory in nature, it should be false, and it should be circulated.

Let us examine each of these conditions.

The first condition is that information must be demeaning or defamatory to the honor or dignity of a given person, compromising him in public opinion, in the eyes of his collective or other individual citizens from the point of view of the observance of the laws, rules and morals of socialist community life. Such information may relate to particular behavior on the part of the given citizen and to his characterization (public appraisal). In other words, such information must concern the commission or failure

to commit some specified actions and show whether or not this person has certain moral qualities. For example, a citizen could be falsely accused of violating standards of behavior at work, in public, at home, with respect to members of his family or others, of committing some criminal act, of committing slander, of being an alcoholic, of acting dishonestly, or of being unable to fulfill his obligations.

As an objective category, honor is formed in accordance with the conscious and willing behavior of a given individual. Therefore, the judgment of a person's qualities which do not depend on his will or consciousness cannot be grounds for a suit for defense of one's honor and dignity. For instance, if it is said that a particular person has no musical ear or has some physical defect, this may be unpleasant but in no way provides grounds for a suit for the defense of one's honor or dignity. Defamatory information must concern concrete facts and/or acts which compromise a citizen but which are not in themselves such judgments as "he wrote an uninteresting book", "he is a weak student", "he is a bad artist", and so forth.

Let us examine some examples.

Plaintiff M., in a people's court in Minsk, brought suit against the editorial board of the magazine *Energetika* to force the respondent to publish a retraction of information published in two articles in which the plaintiff's scholarly works were described as incorrect. The court mistakenly took cognizance of the case. During the court's hearing it became clear that the dispute at hand did not involve questions of civil law, but of science. The case was dismissed.

A regional newspaper published an article inform-

ing readers that P. was a villainous poacher. P. pressed a suit for a retraction of this information. The people's court took cognizance of the case and investigated it in a trial.

The second condition for a case to be heard, according to Art. 7 of the Fundamentals of Civil Legislation, is the falsity of information circulated about a citizen, the lack of truth. The honor and dignity of a given citizen are damaged under exactly such circumstances, when the information circulated about him is utterly false. If the information is unpleasant but is an accurate representation of reality, then its circulation does not indicate that somebody has damaged the given citizen's honor and dignity, although it could mean that the particular citizen himself damaged his own dignity with his own behavior.

During the court's hearing the plaintiff must prove the fact of the circulation of defamatory information but he is not obliged to prove that such information is false; the proof of the truth of such information is the burden of those who circulated it. If the respondent cannot prove the truth of the information, the court finds for the plaintiff.

The editorial board of a newspaper published an essay informing readers that M. used his position at work for personal ends. M. turned to the court, suing for the retraction of such information. The editorial board could not prove the truth of the material it had published: the authors of the essay did not appear in court. The court found for plaintiff M.

Unproven defamatory information is recognized false because every citizen is considered deserving no reproach, unless trustworthy evidence has been estab-

lished to the contrary. Soviet courts strictly observe the presumption of honesty of citizens.

The validity or invalidity of information is determined by the court as a whole, not by a sole judge personally when the action is brought. If this rule is violated, the rider of the judge is annulled.

A people's judge in the Magadan Region refused to hear a case brought by schoolteacher E. Plaintiff demanded the retraction of information spread by the director of his school at a meeting of the local trade union committee. Plaintiff claimed the director spoke falsely about plaintiff's immoral behavior and, specifically that plaintiff beat his wife. The judge refused to hear the case, stating that the director's speech was constructive criticism and that the facts contained in the speech corresponded with reality. The Magadan Regional Court overruled this decision, finding that the truth or falsity of the information should have been determined in court, not by the judge personally. The case was sent to the people's court for trial.

If, as according to the law, a competent organ establishes the validity of information in question, then there are no grounds for a court hearing.

Husband and wife A. (residents of the Moscow Region) brought suit in a town people's court against the editorial board of a local newspaper for the retraction of information published in an article in the newspaper. The article stated that plaintiffs had violated rules of socialist community life. The published facts were established as valid and true in a decision made in a comrades' court. The judgment of the comrades' court was upheld by the local committee of the trade union to which plaintiffs had also

complained. In accordance with Art. 129 of the Civil Procedure Code of the RSFSR, the judge of the people's court refused to hear the case, since the comrades' court had already decided it: plaintiff and respondent were the same parties, the dispute between them was the same, and the grounds were the same.

The third condition for the filing of a suit to restore one's honor and dignity is the circulation of untrue, defamatory information.

By the term "circulation" it is understood that information is passed on to a third party or several persons or to an unspecified number of persons. Information passed on to only one person, to precisely that person whom such information concerns, does not constitute circulation, for a private conversation can in no way influence, including negatively, public opinion of the honor of a given individual.

There are many means of circulating information: in writing, in speech, in official and unofficial circumstances. Written dissemination is understood to mean publication in the press, in letters, in applications, complaints, in documents issued by organizations and their officials, and so forth. Publication is the placement of information in an article, note, essay, or report in any newspaper, magazine, or other organ of the press, including all newspapers, magazines and other publications on the all-Union level, the republican level, or the local level, wall newspapers posted in enterprises, establishments, and organizations, whether typed on a typewriter or written out in longhand.

Oral dissemination of information can take place at meetings, gatherings, councils of state agencies and

social organizations, or privately by person to person at work, school, home, or in other locations.

In the examples given above, information was circulated in written form in newspapers and magazines. In legal practice one finds cases in which information damaging to an individual's honor and dignity was circulated orally in speeches at workers' meetings in an enterprise or in a work team, at a trade union committee meeting, etc.

**Parties to Suits for
the Defense of Honor and
Dignity**

There are two parties to legal relations and civil cases: the victim-plaintiff and the infringer respondent. Several persons may constitute each party. For instance, in the example above concerning the defense of honor and dignity of spouses A., both husband and wife spoke out in court as plaintiffs in the case. The respondent may also be more than one person. For example, the Plenary Session of the Supreme Court of the USSR noted that if a suit is brought for the retraction of information published in the press, both the author of the piece and the press organ (the editorial board or publishing house) must participate as respondents. If the court finds for the plaintiffs in such a case, both the author and the editorial board or publishing house are obliged to retract false information defaming plaintiff's honor.⁴

⁴ See *Resolution of the Plenary Session of the Supreme Court of the USSR* "On Application of Art. 7 of the Fundamentals of Civil Legislation of the USSR and the Union Republics on the Defence of the Honor and Dignity of Citizens and Organizations in Legal Practice", December 17, 1971, *Bulletin of the Supreme Court of the USSR*, No. 1, 1972, Item 12.

Not only individuals, but organizations can file suits as plaintiffs to defend their honor and dignity, as these qualities are inherent not only in individuals but also in organizations as collectives interested in a high public evaluation of their activity.

Thus, in 1978, the State Committee of the Council of Ministers of the USSR for Television and Radio Broadcasting filed a suit against the American newspaper correspondents Harold Piper of *The Baltimore Sun* and Craig Whitney of *The New York Times* because they published false information in their newspapers about a trial broadcast on Soviet television. In their articles, respondents asserted that the broadcast was a "composite" edited together from various fragments by Soviet television technicians. The case was heard in a Moscow city court, according to Art. 7 of the Fundamentals of Civil Legislation, on the defense of the honor and dignity of the USSR State Committee for Television and Radio Broadcasting. The American journalists sent written explanations to the court but did not themselves appear for the trial.

The court investigated the explanations of the plaintiff's representative, the depositions from the respondents, the articles of the correspondents, a video recording of the television broadcast, and heard the testimony of the accused whose trial had been broadcast. The accused declared that the television recording was made with his consent and completely and fully corresponded to what he had said in court.

On the grounds of these data the Moscow city court found for the plaintiff, declaring that information published in the American newspapers was injurious to the honor and dignity of the USSR State

Committee for Television and Radio Broadcasting. The court obliged the respondents to publish retractions with five days' time in the same American newspapers or in the Soviet press and required them to pay the legal costs associated with the case.

The respondents did not do as the court ordered and a fine was imposed on them. Later the Moscow city court ordered to terminate the further actions for the execution of the court judgment, since the trial had been sufficiently discussed in the Soviet and foreign press.⁵

In practice, enterprises, establishments, and organizations rarely file claims as plaintiffs in such cases. In the majority of such cases the victims-plaintiffs are private citizens.

As explained above, when defining the concept of honor and dignity, these qualities are inherent in those who act consciously. A child does not act consciously and, therefore, information circulated about him more often than not is injurious not to the child's honor, but to the parents' honor, who themselves bring suit.

Minors, however, that is, persons under the age of 18, may still be sufficiently mature to have the necessary degree of spiritual development to suffer injury to their sense of honor and dignity. In such cases, parents may appeal to the court for the defense of the child's honor and dignity as representatives of his interests. For instance, a mother can file suit to defend the honor and dignity of her 17-year-old daughter, about whom false rumors were circulated concerning her moral behavior.

⁵ See *Izvestia*, June 28, July 19, August 19, 1978.

In this and other similar cases, the circulation of false defamatory information about one person can injure the honor and dignity not only of that one person, but of others as well, e.g. the members of his family.

By law, every interested party has the right to appeal to the court in the established manner for the defense of a violated or disputed right or interest protected by the law (Art. 5 of the Fundamentals of Civil Procedure of the USSR and the Union Republics). Family members are, of course, interested in the restoration of the honor of one of the members of their family and thereby the interests of all members of the family.

Every citizen has the right to bring suit for the defense of the honor and dignity of a deceased person. Thus, a son sued for the retraction of false information published in a book concerning the collaboration of his late father with the occupying forces during the Second World War. The satisfaction of the suit meant the rehabilitation of the honor and dignity of the deceased father and his son.

Respondents may be both private citizens and juridical persons in such cases. A private citizen-respondent is a party directly disseminating false information defaming others. Juridical persons become respondents disseminating such information in documents originating in establishments, enterprises, organizations, and in published materials.

We have already noted that should a suit be brought for the retraction of information published in the press, the author and the organ of the press (whether an editorial board or a publishing house) are named as respondents. If information was pub-

lished under a pseudonym or anonymously and the editorial board or publishing house does not give the real name of the author of the publication, then the editorial board or publishing house, i.e. a juridical person, becomes the sole respondent in the case. If the court finds for the plaintiff its judgment for retraction can be imposed on the author and the editorial board or on the editorial board alone.

Publishing houses and editorial boards of district, regional or national newspapers are juridical persons, that is, they enjoy civil passive capacity: they own property and, in their own name, can acquire property and personal rights and obligations, become plaintiffs and respondents in court and arbitration, and can maintain their own bank accounts. They can appear in court as respondents or plaintiffs in cases concerning the defense of honor and dignity.

The editorial boards of newspapers published by establishments, organizations, and enterprises, as a rule, are not juridical persons and in cases being heard by the court they cannot be named as respondents. Therefore, when a suit is filed concerning the publication of libelous material in such newspapers, the authors of relevant articles and the agency publishing the newspaper, that is, the establishment, organization or enterprise, are named as respondents.

The problem of the retraction of information contained in written character references signed by several persons—by the manager of an establishment, organization or enterprise and by the representatives of the social organizations in the given establishment—is solved in a similar way. Persons signing the given reference and the establishment, organization or enterprise itself may all be named as respondents.

**Means of Defense and
Periods for Execution
of Court Judgments**

In the above mentioned Resolution of the Plenary Session of the Supreme Court of the USSR dated

December 17, 1971 it is stipulated that when the court finds for the plaintiff it is obliged to determine the means of retraction of defamatory information declared by the court to be false and the date by which such retraction is to be made. In the Law itself (Art. 7 of the Fundamentals of Civil Legislation) two means of retraction are established for two kinds of cases: where statements defamatory to the honour and dignity of a citizen or organization are circulated through the press they must, if found untrue, be retracted in the press as well; if statements found untrue and defamatory to the citizen's honour and dignity are contained in a document issued by an organisation, the said document shall be replaced.

The courts adhere strictly to these rules of the law.

The Klaipeda people's court (in the Lithuanian Republic), having heard the case of K. vs. G. and O. about the retraction of defamatory information contained in a written character reference, declared such information regarding the theft of both state and personal property to be false, and ordered the respondents to write another reference excluding such insinuations.

A district newspaper published a small article in which it was written that some automobile drivers, including citizen S., have a barbaric attitude to the environment; they drove into trees, destroying them, and rode over seeded areas and meadows, ruining

crops and hay. S. appealed to the court, bringing suit for the defense of his honor and dignity. The people's court (in the Sverdlovsk Region) declared the published information to be false and obliged the editors of the newspaper and the article's author to publish a retraction, indicating the date by which the respondents were required to publish such retraction.

The law does not determine other means of retraction of defamatory information. It is clear that the means of retraction should be adequate, as far as it is possible, to the dissemination of the same information, that is, the nature of the retraction should correspond to the nature of the dissemination of the defamatory information, i.e. it may be oral or written.

Thus, when the courts find for the plaintiff in such cases, they usually oblige respondents to make a public apology to the victim-plaintiff in the same auditorium, collective, or at the same meeting, where false defamatory information about him was first disseminated. If the dissemination was of a written nature, the courts order respondents to write a new letter or declaration retracting defamatory information to the same establishment, organization or state official who or which received the original letter or declaration containing such false information.

In all cases, regardless of the means of retraction, the court imposes a time limit and setting for the respondents' retraction. The sooner the retraction is made, the faster the victim's honor is restored and the greater becomes the educative significance of the court's decision. The time limit imposed by the court must be realistic and feasible.

Thus, retraction in a newspaper or magazine must be made in the issue immediately following the court's decision; public oral retraction must be made at the next such meeting following the court's decision, and so forth.

A people's court obliged respondent A. to apologize in public within one month's time to Sh. for groundlessly accusing Sh. of immoral behavior in front of a group of citizens of the village in which A. and Sh. lived.

For failure to perform the court's decision bearing full force of the law, the court may impose a fine. According to Art. 406 of the Civil Procedure Code of the RSFSR a fine of up to 50 roubles may be imposed in such cases and such money becomes state income. Payment of a fine does not release a party from performing the court's decision. Therefore, with the imposition of a fine the court establishes a new deadline for retraction.

For successive and repeated failure to comply with the court's decision by the time established by the court, the court may impose another fine, but the total sum of fines cannot exceed 300 roubles.

A people's court in the Murmansk Region ordered M. to apologize to Z. at a work team meeting in the presence of persons who had earlier heard false defamatory information about Z. The respondent did not comply with the court's decision and, accordingly, the court levied three fines, each for 50 roubles.

The court's decision for the plaintiff in and of itself restores his honor and dignity, but all parties who read or heard defamatory information later declared by the court to be false do not always come to

court to hear the case in question and how the court rules on it. Moreover, failure to comply with the court's decision not only means the failure to remedy damage already done; failure to comply also means contempt of court. In such cases when the court imposes a fine on the respondent it also discusses the question of changing the means and manner of fulfilling the court's decision.

For example, according to the judgment of a people's court (in the Gorky Region) respondent M. was obliged to retract in writing information disseminated at N.'s work place in which she falsely accused plaintiff of the theft of the property. The respondent did not comply with the court's decision. The court, fining the respondent, recommended to the management of the establishment where plaintiff was employed, that management publish a retraction on its wall newspaper.

The court extracts payment of legal fees associated with the case in question from the party against whom it decides.

Thus, in the suit of A. vs. Zh., for the defense of A.'s honor and dignity, it was necessary to carry out a handwriting examination by experts and summon several witnesses. Since the court later found for the plaintiff, the respondent was obliged to defray the costs of the expert examination and the subpoena of the witnesses.

Let us once again remind the reader that the statute of limitations does not apply to cases concerning the defense of honor and dignity. This means that a suit may be brought and must be investigated by the court at any time after the dissemination of false, untrue information.

**The Correlation Between
Criminal and Civil Law
Defense of Honor and
Dignity**

Hearing a civil case, as prescribed in Art. 7 of the Fundamentals of Civil Legislation, the court orders that the infringed

honor and dignity must be restored accordingly, regardless of the guilt of the person (natural or juridical) who has disseminated the false information. The honor and dignity of a victimized citizen must be restored regardless of whether the disseminator acted in good faith or not.

In some cases the disseminator of information does not know or is really confused about the truth of information about some other person. For example, an article in a newspaper concerning a particular person's unworthy behavior may have been written on the basis of a negative reference about him, signed by the heads of the management and social organizations of an establishment. The court, nevertheless, obliges to retract false information not only the parties who signed this reference but also the author of the newspaper article despite the fact that he was misled and there is no guilt in his actions.

In a local paper an article was published concerning T.'s immoral behavior on and off the job. His name and patronymic were not mentioned. However, at the same enterprise where T. worked there was one other person with the same surname and readers of the newspaper could, therefore, relate the information in the article to either of the two individuals. In this case, the second man with the same surname has the right to defend his honor and dignity by demanding that the author of the article and the newspaper clarify who was being criticized,

even though in this instance honor and dignity were injured unintentionally.

Thus, in civil law, every citizen can defend his honor and dignity when these are injured intentionally and unintentionally by other parties.

Sometimes a person's honor and dignity are disparaged intentionally, in especially gross, cynical and dangerous forms. In such instances, the guilty person may be made criminally responsible for his insult, slander, or libel according to Arts. 130 and 131 of the Criminal Code of the RSFSR and the relevant articles of the other Union republic criminal codes.

An insult is premeditated damage to a citizen's honor and dignity expressed in a vulgar form (Art. 131 of the Criminal Code of the RSFSR). Such an insult may be made orally or in writing. The insult is considered vulgar if the negative appraisal of an individual is made in such a cynical way as to violate the mores of social courtesy. An insult may be made in public, in the presence or even absence of the victim, but in a way so that the victim is made aware of the insult.

An insult is always and only a premeditated crime and is punishable by corrective labor for up to one year, a fine up to 200 roubles, or the imposition of the obligation to remedy the damage done to the victim's honor and dignity, or a public censure, an insult may entail the application of certain measures by a social organisation (for example, the case may be transferred to a comrade's court).

Calumny is the dissemination and/or fabrication of false rumors defaming another person (Art. 130 of the Criminal Code of the RSFSR).

Calumny is a premeditated crime, usually committed for motives of revenge, jealousy, and other base emotions. Slandorous accusation of a party of having committed a serious criminal offense is especially dangerous.

Taking into account the *corpus delicti* and the personality of the criminal in a slander case, the court may sentence the criminal to up to two years' corrective labor, a fine of up to 300 roubles, and up to 5 years' deprivation of liberty in especially dangerous cases.

Thus, the *corpora delicti* of criminal insult and calumny are objectively similar to civil torts as stipulated by Art. 7 of the Fundamentals of Civil Legislation: in all cases the object of such breaches of the law is the honor and dignity of a citizen which have been damaged orally or in writing.

These criminal and civil infringements are similar also because both are initiated by a complaint or application of the victim himself (in especially malicious cases of calumny the procurator may press criminal charges). In both criminal and civil procedure the court may issue an order to remedy any damage proceedings done to the victim's honor and dignity (i.e. make apologies or retractions).

The fundamental distinction between the criminal and civil infringements discussed here consists in the subjective side of their *corpus delicti*: the criminal offense is always committed with guilty knowledge, while the civil tort may or may not contain guilt. Therefore, if the honor and dignity of a citizen are violated without guilt by another citizen, the victim may appeal only to a court by way of civil proceed-

ings, on the basis of Art. 7 of the Fundamentals of Civil Legislation. If the disseminator of defamatory information knew that such information was false while disseminating it (guilty by malice of forethought), the victim has the right to institute criminal or civil proceedings as he chooses.

In the case of P. vs. R., P. sought to force R. to retract her false claim that P. had extorted money for a private room in a hotel. The people's court dismissed the case, ruling it was a criminal matter, not a civil one. The Supreme Court of the Estonian Republic overruled the lower court's decision, finding that the latter had no grounds to refuse to hear the case according to the plaintiff's wishes and to Art. 7 of the Fundamentals of Civil Legislation.

A criminal case initiated by a victim does not necessarily end in a judgment of conviction. For instance, if a court does not establish the guilt in the form of intent of the accused to insult or slander the plaintiff, the court does not render a judgment of conviction. But the refusal to initiate a criminal case and the rendering of a judgment of acquittal cannot prevent the plaintiff from instituting civil proceedings in the same case.

During a hearing the court may pass a rider, in addition to its judgment, addressed to, for example, an editorial board or publishing house which on more than one occasion damaged the honor and dignity of other citizens. The court passes such a rider in order to make such organizations take steps to put a stop to this unwelcome practice and discipline the parties responsible.

Thus, the constitutional right of Soviet citizens to defend their honor and dignity is effectively protect-

ed by the standards of Soviet civil law and other branches of law.

The Right to a Name

The right to a name is an inalienable personal right of every person. The procedure for the conferral of the given name, patronymic and surname and for changing such names is established in the norms of family and administrative law. But these norms regulate only the procedure for changing and conferring names, whereas the right to a name is considered a personal (non-property) civil right.

Honor and dignity belong to every human being and people are personified through their names. Here is the implication of the right to a name: it is the right to an honest name, in accordance with the presumption that each citizen is upstanding, his name, unless and until otherwise established in the procedure specified by law.

A specific individual bearing a name may wield the most important and most general civil law qualities—passive and active capacities. It is unthinkable that a person could participate in political or public life, in civil turnover, in concluding all sorts of deals, or marry without a name. Each citizen of the USSR has his or her own given name, patronymic, and surname. Thus, the concept of “the name” consists of three parts.

Every person is conferred a given name upon birth; this given name is entered into the Registry of Civil Status by the State Registrar's Office (SRO) under the Executive Committee of the district, town, township or rural Soviet of People's Deputies at the child's place of birth or at the parents' place of res-

idence not later than one month after the child's birth.

Parents are obliged to name their children but the choice of each child's given name is entirely up to them, regardless of rules concerning events, rituals or the names of relatives and so forth. The SRO may recommend a name or advise parents that they have made an unfortunate choice, which might make the child unhappy in the future, but the SRO may not force the parents to choose a name.

Many Russian given names (for example, Ivan, Piotr, Andrei, Boris, Viktor and others) are very common and may coincide with the given names of other people, but it is much more unlikely that a person's full name, that is, the given name, patronymic, and surname, will coincide with someone else's full name.

Each child's given name is complemented with his or her patronymic, a name formed from his or her father's given name. Here the parents have no choice: if parents choose the given name Andrei for their son and the father's name is Boris, the child will be called Andrei Borisovich.

The given name and patronymic are complemented by the surname. The surname is not chosen either, but is determined by the parents' surname. Thus, if our hypothetical parents' surname is Krasnov, then the full name of their son would be Andrei Borisovich Krasnov.

Just like the child's given name, his patronymic and surname are entered into the Registry of Civil Status.

If parents have different surnames they may choose either the surname of the mother or the surname

of the father to be the child's surname. If a child is born to a single mother (a woman who was never legally married) and the paternity of the child is not legally established, the mother may choose the child's given name and patronymic and the child is given its mother's surname.

The given name, patronymic and surname of a person are his for the duration of his life, but in certain circumstances they may be changed.

A citizen may change his given name at his request after he reaches the age of 18. A child's surname is changed if both parents change their surnames. If one parent changes his or her surname the child's surname may be changed or may remain as it was, according to the parents' agreement.

A citizen's surname may be changed upon marriage. As a rule, people marrying have different surnames. Upon the registration of their marriage each spouse may keep his surname or take the surname of his or her spouse. Both men and women have the right to adopt their spouse's surname, but most often spouses choose the husband's surname. Upon the dissolution of a marriage, former spouses have the right to keep their current surnames or to adopt their former, premarital, surnames (for more details, see Chapter VI).

The termination of marriage between the parents does not necessarily call for the changing of a child's given name, patronymic or surname. However, if after a divorce, a child's mother changes her surname, adopting her former surname, she may ask the SRO to change the surnames of children living with her.

This rule is provided for in the legislation of all

the Union republics (with some small distinctions).

In order to protect the secrecy of adoption, at the request of the foster parent and with the consent of the adopted child, when he or she is over 10 years of age, the child's given name, patronymic and surname may be changed to reflect the names of his adoptive family.

The surname and given name may be changed if one spouse requests to have the same name as the other spouse or their children, or to return to a pre-marital surname, if these questions were not raised during the conclusion or dissolution of a marriage, if a child wishes to adopt the surname of his tutor (if the child was raised by someone other than his parents) or if a particular surname or given name is difficult to pronounce or does not sound pretty, or according to some other valid reasons.

Without good reason, given names and surnames may not be changed, since the unlimited changing of names would disorganize social relations and civil turnover. This fact in itself once more emphasizes the importance of a name in civil law.

Out of respect for citizens' names and privacy, examples used in this book to illustrate our discussion do not use full names, but only initials. For the same reason we have chosen not to indicate the precise place of residence and the exact court involved in each case.

Citizens use their given names, patronymics, and surnames while participating in social relations, including juridical relations. There are some spheres of social relations where one's given name, patronymic and surname are protected by special provisions, including the right to a name as a distinct specific

right belonging to authors of scientific, literary and artistic works, and the rights belonging to inventors and innovators.

The concept of an author's right to a name, its content, significance, use, and protection are discussed in Chapter V below in this work.

CHAPTER III

THE PROTECTION OF PERSONAL INVIOABILITY

The Protection of Personal Life. Advocate Secrecy. Secrecy of Money Deposits and Notary Deeds. The Confidentiality of Adoption. Medical Confidentiality. Privacy of Correspondence, Telephone Conversations, and Telegraphic Communications. The Privacy of Letters, Diaries and Notes. The Right to One's Own Likeness. Inviolability of the Home. The Protection of Personal Freedom.

The concept of personal inviolability in its broadest sense includes spiritual interests and rights characterizing the individual as well as the protection and inviolability of the individual. In the narrower sense, this concept refers to the protection of the privacy of various aspects of the individual's personal and intimate affairs and the inviolability of his personal freedom. These questions are reviewed in this chapter.

The Protection of Personal Life

In socialist society, citizens' personal interests coexist in harmony with the interests of the society as a whole. This combination does not exclude but presupposes the existence of specific aspects of each individual's life which are free from society's direct interference.

The individual freedom of personal life is one of the most important components of personal freedom. Socialist society grants and respects the freedom of

the individual citizen, and, accordingly the individual's right to enjoy a personal life. Citizens' personal lives are of social significance inasmuch as every aspect of the individual's life is at the same time a manifestation of the *life of the society*.

It is impossible to live within society and be free of it. Therefore, within society, it is inevitable that some limits be placed on freedom in general and specifically on the freedom of personal life.

The law does not regulate all social relations and all aspects of the individual's life. The state does not regulate many aspects of personal life if public interests do not call for such regulation. Relations of a deeply personal nature are either completely unregulated by the law or the law prohibits the intrusion of third parties into such relations. Thus, personal privacy rightfully coexists with manifest social relations. Every citizen is guaranteed the privacy of his personal life by means of the establishment and observation of rules which determine the limits of individual personal freedom and the limits of the interference in the individual's private affairs by other persons, organizations and the state.

It does not mean that private life with its secrets is absolutely out of public control. People's behavior in such private affairs is conditioned by the nature of social relations, the spiritual maturity of the society, and the existing moral and legal standards. Even if they do not directly regulate some aspect of the individual's private affairs, moral and legal standards nevertheless exert indirect influence on these affairs.

Since the relations arising in the domain of pri-

vate life are usually governed by moral norms, it is difficult to establish precise legal criteria for private life. Nevertheless, some of these relations require legal regulation and protection, for this corresponds to the interests of both private citizens and the society as a whole. Without legal protection, it would be quite difficult to sustain personal life and maintain its privacy.

Among the legal standards protecting private life, the most important are the articles of the Constitution of the USSR which guarantee the privacy of citizens' correspondence, telephone conversations and telegraph communications (Art. 56), and the sanctity of the home (Art. 55), and the standards of the Union republic civil codes concerning the confidential nature of personal documents (letters, diaries, notes) and the right to one's own likeness, standards of other branches of legislation on the privacy of personal and intimate life, medical and notary confidentiality, the secrecy of adoption, and so forth. These standards are designed to provide Soviet citizens their constitutional right to the protection of their personal lives.

Advocate Secrecy

In Chapter II we have spoken about the responsibility for the dissemination of false and defamatory information. In some circumstances the law prohibits the circulation of information about a person which is neither defamatory nor false. This prohibition concerns the affairs of an individual considered to be personal, private, and intimate. The law specifically allows for an exception from the principle of public court hearings, established in Art. 157 of the Constitution of the USSR.

The Law on the Bar in the USSR (Art. 7) forbids attorneys from circulating information confided to them in connection with the execution of their professional duties. Accordingly, attorneys may not disseminate information relating to the intimate affairs of a participant in a civil or criminal case without that person's consent.

The public nature of trials means that every citizen may enter the courtroom and be present there during the investigation of any case being heard in that court, whether it be a civil or criminal case, even if the citizen is not a participant in the given trial. The absolute majority of all legal cases are heard in public.

In some cases the law provided for the hearing of a case in camera, but, in so doing, all the procedural rules must be observed. During sessions of a court in camera only those directly involved in the case (plaintiff and respondent, the accused, the counsel for defense, etc.) are present in the courtroom; strangers are not admitted. Art. 11 of the Fundamentals of Civil Procedure and Art. 12 of the Fundamentals of Criminal Procedure call for closed court hearings in order to prevent the dissemination of information bearing on an individual's private or intimate affairs.

Usually at the request of the participants of a given trial, the court may order that a case be heard in camera in order to protect the said participants' rights to privacy, *e.g.* during a divorce trial or a sex crime trial, so that the information and facts reviewed in the trial are not widely disseminated. Nevertheless, in all cases the court's decision of a civil suit is publicly announced.

**Secrecy of Money
Deposits and Notary
Deeds**

The Law on State Notary Offices in the USSR and the Statute of State

Labor Savings Banks stipulate that notaries public and savings bank employees must respect the secrets of citizens who use their services.

According to the Law on State Notary Offices in the USSR (1973) notaries public are obliged to keep all notary deeds confidential. In population centers where there are no notary offices, officials from the Soviet of People's Deputies authorized to notarize documents are also obligated to keep such documents and deeds confidential.

Citizens in hospitals, on board ships at sea, in expeditions, in military service, in places of confinement and so forth, may not have the opportunity to find a notary public. Should they need a notary's services for the certification of some document, e.g. a will, this document is to be notarized by the head doctor, the ship's captain, the expedition chief, the military commander, or the head warden, respectively. These officials are similarly obligated to maintain the confidentiality of the deeds they notarize.

The Statute of State Labour Savings Banks of the USSR (1977) stipulates the confidentiality of information concerning clients and their financial operations and savings-bank accounts.

Information concerning notary deeds or savings-bank accounts may be given only to courts and procurators offices as a consequence of criminal and civil proceedings currently in progress, for instance, during the division of joint property in a divorce case or the imposition of alimony payments (for more detail on this topic, see Chapter VI below).

The Confidentiality of Adoption

The law provides special procedures to maintain the confidentiality of adoption. An adopted child is accorded all the rights and responsibilities of a child by birth. For normal family life, however, this is not always enough. In order to avoid mental anguish, the law establishes regulations which guarantee the confidentiality of adoption.

Union republic marriage and family codes stipulate the following steps which may be taken to protect the confidentiality of adoption. At the request of the adoptive parent, the adopted child may be given the surname and patronymic of his adoptive family and may even have his given name changed. At their request, the adoptive parents may be registered as the child's natural parents in the Registry of Births, even though, of course, the adopted child was really born to other parents. In both cases, the consent of the adopted child is required if the child has reached ten years of age. Moreover, in order to guarantee the confidentiality of adoption the law stipulates that adoptive parents may also request that the child's birth records be changed as to the child's place and date of birth (but not by more than six months).

Finally, the dissemination of the fact of adoption without the consent of parents and child is punished both in administrative and criminal proceedings (Art. 124¹ of the Criminal Code of the RSFSR).

Medical Confidentiality Art. 42 of the Constitution of the USSR guarantees that Soviet citizens have the right to health protection; this right is ensured by free qualified me-

dical care provided by state health institutions (polyclinics, hospitals, medical institutes and centers and so forth) for medical assistance according to their place of residence, of employment, and when necessary, they may summon a doctor to make a house call. In all these instances the patients do not pay fees either to the medical establishment or to the doctor.

Usually doctors and patients enjoy relations of a confidential nature. The patient believes his doctor and in order for the doctor to make an accurate diagnosis and prescribe the proper treatment, the doctor must know much about the patient's way of life, the nature of his work and rest, relations within his family, and so forth. All this information, gathered from the patient himself and his relatives as well as from other sources, including the doctor's own observations, is considered to be confidential. Doctors and other medical workers do not have the right to pass on such information to third parties.

Illness is not a shame, but a misfortune, and unfortunately, a very real part of life. Despite the sincerity and uncompromising character of medical information, such information may not be disseminated without the patient's consent.

The Fundamentals of Public Health Legislation of the USSR and the Union Republics provide that doctors and other medical workers shall not divulge information about a patient's illness and the details of his intimate and family life which they come to know in the execution of their professional duties (Art. 16).

The obligation to maintain medical confidentiality is included in the oath each doctor swears, "The

Soviet Doctor's Oath", which was confirmed by decree of the Presidium of the USSR Supreme Soviet on March 26, 1971.

Exception to this rule may be permitted according to strict interpretation of the law (Art. 16 in the Fundamentals of Public Health Legislation) in such instances as are determined to be in the public interest. Thus, managers of medical establishments are obliged to inform the proper health authorities of an illness in instances where the health of the population is at stake; where the courts and investigation agencies demand such information they are entitled to.

In the first case it is essential for the prevention of epidemics, and for the adoption by the state of prompt prophylactic measures. In the second case, information about a patient is essential in order to establish the truth as regards certain categories of criminal offenses so as to deliver a fair judgment, acquit or convict a defendant. In both instances, confidential information about a given patient, including his surname, may not be made public. State agencies privy to such information are obligated to maintain confidentiality.

The question of medical confidentiality has several aspects.

The first, which we have already reviewed, is regulated quite precisely by the law, which prohibits the dissemination of confidential information concerning the patient and his illness.

The second aspect is the necessity of the doctor and other medical workers, for the sake of advances in science and technology, to discuss cases with colleagues in medicine and sciences related to it (biology, chemistry, genetics and so forth).

Unfortunately, medical science is not omnipotent. It has to its credit known huge successes, but it has also known some failures. The medical establishments of many different nations now use new and different techniques for making diagnoses and providing treatment, transplanting organs and tissues, using new kinds of medicines. The population must be informed about this and about the preparation and execution of new experiments. The patient's right to confidentiality, however, must not be violated in this case. Such information may be disseminated without divulging relevant names, if patients have not consented to it.

Thus, there is no reason to confuse the patient's right to confidentiality with the need for medical scientists to communicate and discuss medical theory and practice.

The third aspect of the problem of medical confidentiality concerns the relations between the patient and the doctor. Does the patient have the right to know the exact nature of his illness and is the doctor obliged to provide his patient with complete information in all cases? In other words, does medical confidentiality apply to the patient himself?

In many cases, when the life of the patient is not in danger, this question does not arise and doctors may offer detailed information to their patients. However, this question becomes significantly more complex when a patient is dangerously ill, especially when his death is imminent and inevitable, despite the adoption of all known conceivable methods of treatment.

The law has not decided this question, and medical literature offers different opinions. Some writers

speak out categorically against informing the patient of his approaching death, considering such information to be immoral in that it exacerbates the patient's psychological and physical suffering speeding up the progress of his illness and the approach of his death.

Others argue that the patient has the right to hear the "half-truth", that is, he may be told about his critical condition in general terms, without being informed of the hopelessness of his situation and the approximate time left him to live.

Still a third group (to which this author adheres) argues as follows. "The holy lie", telling the patient false or half true diagnoses, deprives him of his right to know everything about himself and, moreover, does not always calm the patient. Such secrecy or lying could create an atmosphere of mistrust between doctor and patient, which would be harmful to the patient's condition. Furthermore, Soviet doctors have to reckon with the fact that Soviet citizens are well acquainted with various spheres of knowledge, not just with their own professional specialization, and the bulk of the population listens to and watches various radio and television broadcasts about medicine and medical progress. All Soviet citizens have right to use free libraries where they may read medical literature and learn about different diseases and their symptoms. The nature of the medical establishment itself, for instance, an oncological hospital, often indicates to the patient the nature and seriousness of his illness. Finally, how can a doctor lie to his patient if the patient is himself a doctor?

In our opinion, in trying to solve this problem one should stress the patient's right rather than the doctor's obligation. This means that it is not necessary

to oblige the doctor every time, as soon as the inevitability of his patient's death becomes known to him, to tell the given patient about this immediately. The doctor should have no such obligation. But every patient, as a citizen, should have the right to know the truth of his medical condition. Those patients who believe that they are better off not knowing need not demand information from their doctor. The doctor should not inform his patient the complete truth especially in those cases when the patient's state of mind is disturbed, or when the patient has no clear understanding of what is going on, and so forth. In such circumstances informing the patient is a senseless and even morally questionable step.

People are individual, however, having different occupations, family, and financial situations, and psychological characteristics. If a patient with a highly developed consciousness and inner strength, of sound mind, categorically demands that he be informed of the complete and precise truth about his illness, about the potential and possibly risky methods of treatment, about his chances, then such a patient must be granted the right to know the complete and utter truth about his health, including the actual diagnosis, of an inevitable and imminent death.

A patient might have various reasons for demanding such information. It is possible that a scholar might want to know how much time is left him in order to complete some project or paper, to communicate his ideas to other, his colleagues or students; other patients might want to know how much time is left them to wind up some personal affairs, e.g. to register a marriage, adopt a child, draw up a will, pass on some information, and so forth.

The patient's motives may not have decisive significance for any given case as the patient is not obliged to tell the doctor what his motives are for demanding information about his own health. We consider that under the circumstances described above there should be no secrets kept from the patient.

**The Privacy
of Correspondence,
Telephone
Conversations,
and Telegraphic
Communications**

Citizens use state-owned means of communication with one another for their own personal goals and interests. According to Art. 56 of the Constitution of the USSR the privacy of correspondence, telephone conversations, and telegraphic communications is protected by the law. This does not apply to official correspondence, conversations and communications, but to personal communications, which are guaranteed as part of the privacy of personal affairs.

The Communication Charter of the USSR⁶ stipulates work guidelines for communication agencies, as well as their rights, obligations, and responsibilities to their client-citizens. Art. 12 of this Charter reproduces and specifies the constitutional provision of the privacy of correspondence, telephone conversations and other communications made through communication agencies. Any information about post, telephone, and telegraph communications can be divulged by the communication agency only to the addressor, addressee, or to a party participating

⁶ *Collected USSR Government Decisions*, No. 10, 1971, Item 83.

in the given conversation, to the owner of the telephone, or to his legal representatives.

Thus, in the interests of protecting privacy, third parties are forbidden from examining letters, telegrams, transcripts of telephone conversations and it is also forbidden to divulge information about such communications (for instance, who spoke, when, with whom, who wrote a letter or telegram, to whom, and when it was written, etc).

Only in circumstances as provided for by the law are the investigation agencies and courts permitted to inspect and seize post and telegraph communications and receive information about such correspondence. In this case, too, the exception to the rule protecting the privacy of post and telegraph correspondence is permitted only in the public interest or in the interest of persons for whom establishing the truth is significant for a criminal case under review.

According to Art. 174 of the Criminal Procedure Code of the RSFSR correspondence may be seized in post and telegraph agencies only with the procurator's warrant or a court decision.

Any violations of the rights of client-citizens of the post or telegraph offices may be subject to appeal; disciplinary and administrative measures may be applied against those persons who are guilty of such violations.

The violation of the privacy of correspondence, that is, acquainting oneself with the post, radio, or telegraph correspondence of a given citizen without first obtaining his consent, or the divulgence of the contents of the correspondence by a person responsible for the delivery or handling of such correspondence, is considered to be a criminal offense and is

punishable by up to 6 months of corrective labor, or fine of up to 100 roubles, or public censure (Art. 135 of the Criminal Code of the RSFSR).

**The Privacy of Letters,
Diaries, and Notes**

Many citizens reflect their personal lives, their actions, thoughts, and ideas in various documents of a personal nature. The right to such letters, diaries and notes belongs to their author. Only with the author's consent may another person examine that author's materials, circulate or publish them.

Publication of such documents is permitted only with the author's consent. Letters may be published only with the consent of both author and addressee. In the case of the death of one of these parties, the consent of the surviving spouse or children must be obtained before publication of the deceased's correspondence.

In such cases the privacy of the contents of letters and other documents which were written but not mailed are protected by law. Thus, the privacy of postal correspondence is complemented by the right to the confidentiality of the letters and other such documents of a personal nature.

After the death of the author of such written documents their confidentiality is entrusted to the closest relatives of the deceased author; these persons have the right to decide whether such documents may be made public or not.

The privacy of documents of a personal nature is protected regardless of the nature of their contents or the value of the information therein recorded. All citizens enjoy this right, regardless of their social status, job, popularity, and other factors.

Should diaries, notes, and letters be prepared for publication without the author's consent or the consent of his relatives, the author and/or his relatives have the right to sue for the prohibition of this publication or the removal of already published materials (including books, magazines, motion pictures and television films) from sale.

**The Right
of One's Own Likeness**

Individuals have specific physical as well as spiritual characteristics.

Both traits deserve respect. The juridical institution of the right to one's likeness evolved on this basis.

The law protects each person's right to his own likeness. Many people would like to have their portraits published in a popular magazine or in some other organ of the press. This is their right. But others prefer that magazines do not publish their portraits. This is also their right.

Art. 514 of the Civil Code of the RSFSR provides regulations for the protection of the interests of citizens whose likenesses are depicted in a work of graphic art: such images may be published, reproduced and disseminated only with the citizen's consent, and after his death with the consent of his children and the surviving spouse. Such permission is not necessary when an image is published in the state's or the public's interest, or when the citizen was paid for posing for the likeness.

There are many possible reasons which explain why a citizen might not want his likeness to be reproduced and published. Some consider an image or photograph to be an unsuccessful copy of the original. Sometimes, for example, during the filming of sports competitions an athlete can be photographed

in a particularly unfortunate pose or with an unpleasant facial expression. Others might not like the surroundings or company in which they were photographed. There are still others who are opposed on principle to the dissemination of their likeness.

In all cases, the fact that a citizen objects to such dissemination is of juridical significance, while the motives for such objection are not significant.

Strictly speaking, the rule in Art. 514 of the Civil Code of the RSFSR prohibits the use of another's likeness only in the works of fine art (paintings, sculptures, etc.). In literature and in real life, this rule is interpreted extensively to include all forms of images—photographs, motion pictures, television, and so forth. Publication of a given citizen's likeness in such media is also permitted only with the subject's consent, that is, consent is considered to be the failure on the part of the subject to complain against publication. Active explicit consent is required only for the exhibition of an artist's work which includes somebody's painted portrait. If a citizen poses for pay, such contract denotes consent to publication or dissemination of his likeness. After the death of a citizen whose likeness has been depicted according to such a contract, the surviving wife and children have the right to give or withhold their consent to further such publication or dissemination.

Publication without such permission is allowed only in public's interest, when, for example, photographs are shown on television in order to locate a fugitive criminal.

The defense of the right to one's own likeness is realized by means of filing suit to remove a likeness from a photograph gallery, art gallery, and so forth,

and to withdraw an edition of books, magazines, or newspapers from circulation.

**Inviolability
of the Home**

Art. 55 of the Constitution of the USSR guarantees Soviet citizens inviolability of the home. This right is closely connected with the right of Soviet citizens to own a home. In order to realize the inviolability of the home, one must first possess a home.

The right of citizens to a home was for the first time fixed in the USSR Constitution of 1977.

This right is ensured by the development and upkeep of state- and socially-owned housing; by assistance for cooperative and individual housing construction; by fair and just distribution, under social control, of the housing that becomes available through fulfilment of the program of building well-appointed dwellings, and by low rents and low charges for utility services. (Art. 44 of the Constitution of the USSR).

The bulk of housing in the USSR is in buildings belonging to the state. Such buildings are under the jurisdiction of the local Soviets of People's Deputies, and ministries, departments, enterprises or establishments. There is also socially-owned housing, i.e. the houses belonging to collective farms, trade unions and other cooperative and social organizations.

Apartments in state- or socially-owned buildings are granted to citizens for perpetual renewable use and for the lowest monthly rent in the world (32 kopecks per square meter.).

Moreover, with the help of credit from the state, citizens, using their own means, join together in housing cooperatives to build apartment houses. A significant portion of housing in the USSR owned by

citizens who are still entitled to receive state credit for building a house; join together in housing cooperatives to build apartment houses. Thus in the USSR the right to a home is a real right: all Soviet citizens have accommodations. Soviet society is now faced with the task of further improving housing conditions and providing all citizens with well appointed apartments.

The inviolability of the home is significant in these circumstances. It means that no one has the right to enter someone's home without the consent of those who live in it, as stipulated in Art. 55 of the Constitution of the USSR.

Persons living in private homes, homes belonging to the state or to social and cooperative organizations enjoy inviolability of the home. All citizens living in their own homes, apartments, rooms, hotel rooms, dormitory rooms also enjoy this right.

No one, under any pretext, may violate the inviolability of the home. Employees of house-management bodies may not enter a home without the permission of those living in it. Violation of the inviolability of the home is punishable according to administrative and criminal law.

Intrusion into the home without the consent of those living in it is permitted only in circumstances strictly provided for by the law, and then only according to a statutory procedure. Rules in Arts. 168-171 of the Criminal Procedure Code of the RSFSR specify the grounds and procedure for searching premises by investigation bodies in order to find fugitives, weapons and other items and documents as necessary for the investigation of criminal cases. Searches may be carried out by a justified decision of the in-

investigator and only with the sanction of the procurator. In urgent cases, the investigator may authorize a search, but he must inform the procurator within twenty four hours of the search. The presence of witnesses is obligatory during the search.

An illegal search violating the inviolability of the home is a criminal offense, punishable according to Art. 136 of the Criminal Code of the RSFSR.

There are very rare cases when a person violates the inviolability of another's home by staying there for a long time, removing the lawful owner's property from the premises and expelling him from his own home. In such cases the lawful resident has the right to file suit to remove obstacles to the lawful enjoyment of his own home.

An illegal eviction of a citizen from his home, whether or not such dispossession is officially sanctioned, is considered to be a violation of the inviolability of the home and is punishable as a criminal offense according to Art. 136 of the Criminal Code of the RSFSR.

**The Protection
of Personal Freedom**

Art. 54 of the USSR
Constitution guarantees
Soviet citizens personal

inviolability. No one may be arrested without a court decision or a procurator's warrant.

Art. 57 of the Constitution of the USSR guarantees the right of citizens of the USSR to protection by the courts against encroachments on their personal freedom.

In both articles personal inviolability is understood to mean the inviolability of the personal freedom of every citizen.

The constitutional provisions on personal inviola-

bility are reproduced and supplemented by the standards of criminal court procedure and criminal law. These rules strictly limit the application of such measures as detention and remanding in custody of those suspected and/or accused of having committed criminal offenses. Such measures may be adopted only by the court and the procurator. The organs of investigation and inquiry may adopt such measures only under the procurator's authority. Only a court may order the deprivation of liberty as a penalty for the commission of a crime.

The Fundamentals of Legislation of the USSR and the Union Republics on Administrative Offenses, adopted by the Supreme Soviet of the USSR on October 23, 1980¹, provide for administrative arrest for up to 15 days as a measure of administrative responsibility. Only a people's court or a people's judge may impose such a limitation on personal freedom.

Illegal confinement and wittingly illegal arrest or detention of a citizen are considered to be a crime and are punishable according to criminal law (Arts. 126 and 178 of the Criminal Code of the RSFSR).

The court may limit personal freedom for citizens who have committed socially dangerous acts in a state of non-imputability (or who went insane before the sentence has been passed or when serving sentence), limit the personal freedom of alcoholics and drug addicts as a compulsory medical measure. (Art. 58-62 of the Criminal Code of the RSFSR). The court may also limit the personal freedom of minors as a compulsory measure of educative

¹ *Gazette of the Supreme Soviet of the USSR*, No. 44, 1980, Item 909.

character (Art. 63 of the Criminal Code of the RSFSR).

Mandatory treatment and education are used both in the public interest and in the interest of the aforementioned categories of persons and may be applied only by a decision of a court.

Thus, the law guarantees the protection of citizens' personal inviolability, strictly defining the instances when personal freedom may be limited and listing the agencies which may take measures to limit the personal freedom of particular citizens in the public interest.

Criminal law also provides rules designed to protect each citizen's personal inviolability from other citizens. Thus, hijacking (Art. 213² of the Criminal Code of the RSFSR), kidnapping and substituting another's child (Art. 125 of the Criminal Code of the RSFSR) are considered to be criminal offenses. The widespread practice, in some other nations, of taking hostages in order to demand a ransom or the fulfilment of some other demands, has no place in our country.

Such are the regulations of criminal law and criminal court procedure guaranteeing citizens their constitutional right to personal inviolability.

If personal inviolability is nevertheless illegally infringed (for example, as a result of the abuse of authority or as a consequence of an error by the court) the victim is guaranteed the restitution of his personal and property interests.

In accordance with Art. 58 of the Soviet Constitution on May 18, 1981 the Presidium of the Supreme Soviet of the USSR adopted the decree "On the Restitution of Individual Citizens' Losses Ensue-

ing from Illegal Actions on the Part of Government and Non-Government Organizations as well as by Officials Performing Their Duties", which confirmed the Statute on the Procedure for the Restitution of Losses incurred on citizens by illegal actions by organs of inquiry and preliminary investigation, the procurators office and/or the court.⁸

The respective guarantees are also stipulated in Art. 89 of the Fundamentals of Civil Legislation. These acts contain the following provisions.

Losses accruing to a citizen as a result of unlawful conviction, illegal prosecution, illegal measure remanding in custody as a restrictive measure and imposition of administrative penalty such as arrest or corrective labor, are to be redressed by the state in full, regardless of the guilt of officials conducting inquiry or preliminary investigation, procurator's office or the court.

The right to restitution of losses arises on the condition that the court passes the judgment of acquittal, dismisses a criminal case for lack of the event of a crime, for lack of corpus delicti in the act or for lack of proof that the citizen concerned participated in the given crime, or closes an administrative case.

Restitution of losses is not provided for if, during inquiry and preliminary investigation, or during the trial itself, a citizen, by means of false self-incrimination, has purposefully misled the court, trying to prevent it from establishing the truth, promoting, in this way, the legal consequences in the form of his confinement.

⁸ *Gazette of the Supreme Soviet of the USSR*, No. 21, 1981, Item 741.

Thus, citizens are rehabilitated regardless of the reasons for the adoption of measures limiting their freedom, regardless of the guilt or innocence of officials involved in the given case. The fact that such measures were unlawfully adopted with respect to an innocent citizen is the only significant factor.

The guilt of a victim is taken into account only under one condition: if he consciously incriminates himself and officials cannot establish the falsity of his incrimination. However, even in such circumstances, the victim is rehabilitated in that his personal rights are fully restored. He loses only the right to compensation for material losses.

The following material losses are subject to compensation: wages and other income from labor, which are the citizen's principal means of livelihood, lost as a result of unlawful actions (minus wages which have been received during the time a citizen was suspended from work or was confined); pensions and allowances, the payment of which was stopped in connection with the unlawful incarceration; property (including money and securities), if confiscated, is returned in kind or in money equivalent; fines, court costs and other sums paid by the citizen in connection with the illegal actions applied to him; living space occupied earlier by the citizen, or other equally valuable housing.

In the event of the death of a citizen (posthumous rehabilitation) his heirs inherit the right to the restitution of wages, property and fines paid and his family members inherit the right to his pension, according to the relevant pension legislation.

Rehabilitated citizens are entitled to restitution of their personal and labor rights as follows: the res-

toration of honor, dignity, good name, by means of repeal of an unlawful judgment; if information about the punishment of a citizen was published in the press, the citizen (or in the event of his death, his relatives) has the right to demand that the relevant organs of the press publish information about his rehabilitation and inform the citizen's work collective or the social organization in the citizen's place of residence in writing about his rehabilitation; with respect to a citizen who, in connection, with an unlawful conviction, was stripped of military ranks or other titles, orders and medals of the USSR, according to the decision of the court repealing the sentence and dismissing the case, the law provides for the restoration of ranks and titles and the return of orders and medals; rehabilitation of the working honor of the citizen: if he was removed from his job in connection with unlawful prosecution he is entitled to be returned to the same or an equivalent position; the period of remanding in custody, serving the sentence and removal from the job is included in the citizen's general length of service, in seniority in his profession and continuous seniority, since restoration of seniority is important for the amounts of the sick benefits, disability and old-age pensions.

The agency repealing an unlawful conviction decides questions involving the restitution of property, labor and personal rights of the given citizen.

If a citizen does not agree with the agency's decision (for example, on the restitution of his property losses, or housing rights, etc.) he has the right to file a civil suit against this agency.

Family legislation also guarantees citizens' personal freedom. According to the rules of family law,

every spouse has the right to choose his or her place of residence. If, for some reason, husband and wife live separately, then neither spouse has the right to detain the other or compel him or her to change his or her place of residence, with or without the assistance of some official agencies, inasmuch as this would be a violation of personal freedom.

A citizen may enjoy the right to own property, but he has no right to the personality of another citizen.

CHAPTER IV

PROTECTING HUMAN LIFE AND HEALTH

The Special Nature of Civil Responsibility. General Prerequisites for Rights and Obligations to Make Restitution for Injury. The Responsibility of Owners of Sources of Increased Hazard. Responsibility for Injury Committed by Minors and Those Lacking Active Capacity. Determining the Extent of Harm Subject to Restitution. Compensation for Harm in the Event of Death. Compensation for Injury Sustained During an Attempt to Rescue Socialist Property.

Soviet legislation is based on the premise that citizens' life and health are the most precious of all valuables. Accordingly, human life and health are protected by all branches of the law.

Arts. 42, 43 and 57 of the Constitution of the USSR establish the right of all citizens to health protection, to the court's protection against any infringement of that right, and to financial maintenance in the event a citizen is disabled or in the event of the loss of the breadwinner.

These constitutional provisions are specified in many branches of Soviet law which establish effective guarantees of citizens' rights to the protection of these values.

Thus, the standards of criminal law establish severe responsibility for crimes against life and health: for negligent manslaughter or intentional murder and bodily injury (Arts. 102, 103, 106, 108, 109, 112

of the Criminal Code of the RSFSR and corresponding articles of the other union republic criminal codes); criminal responsibility is also stipulated for pollution of the environment (Arts. 223 and 223¹ of the Criminal Code of the RSFSR).

Administrative legislation is the source of traffic regulations and provides rules to prevent traffic accidents, establishing administrative responsibility for traffic violations in the form of fines, deprivation of the right to drive motor vehicles and so forth (Art. 12 of the Fundamentals of Legislation of the USSR and the Union Republics on Administrative Offenses).

Injured citizens are guaranteed highly accessible, free and qualified medical care provided by state health protection establishments (Art. 3 of the Fundamentals of Public Health Legislation of the USSR and the Union Republics).

Should injury cause material loss due to the injured citizen's inability to work (i.e. his consequent loss of wages) or other losses and expenses, the victim is guaranteed financial assistance. Thus, according to the Law on State Pensions (1956) citizens have the right to receive disability pensions and pensions for the loss of the breadwinner. While temporarily disabled, such employees are freed from work and are entitled to receive social benefits. Moreover, citizens may receive financial assistance from the agencies of the State Insurance Company of the USSR (Gosstrakh) if prior to injury they were the holders of life and/or health insurance policies. There also exist mandatory forms of insurance, for example, for passengers of transportation services (Arts. 78-82 of the Fundamentals of Civil Legislation of the USSR and the Union Republics).

The Fundamentals of Legislation of the USSR and the Union Republics on Marriage and the Family establish the obligation of spouses, parents, children and other family members to provide financial assistance (e.g. alimony) to other needy members of the family who are disabled (see Chapter VI).

The Soviet Union is taking important measures to protect and improve the environment in the interests of the welfare of the current and future generations as described in Art. 18 of the Constitution of the USSR.

The Fundamentals of Civil Legislation and the union republic civil codes provide special rules on financial responsibility for inflicting injury. In accordance with the goals of our work we will review these standards of civil law on the protection of life and health in detail, having made a few general, opening remarks on the subject.

The Special Nature of Civil Responsibility

The civil law regulates relations arising after injury or death has been inflicted. The law calls for the compensation of the victim's losses at the cost of the party inflicting injury or death.

Thus, civil responsibility, for the most part, serves as an instrument of compensation. However, the exaction from the person who has caused an injury of a specific sum to the victim not only compensates the victim for his losses, but simultaneously punishes the trespasser, for it represents his own financial loss, and therefore serves as an instrument of prevention and instruction for the person who has caused the injury, as well as for other citizens, with a view to respecting and preserving human life and health.

Thus, civil responsibility for inflicting injury, like administrative and criminal responsibility, plays a preventative role in the protection of the individual's well-being in the most important sense.

Civil law requires, as a rule, that restitution for injury be made when the person inflicting this injury has been determined to be at fault. This obligation is called "the civil law responsibility". But in some cases, for example, involving injury incurred by a source of increased hazard, the obligation of the owner of this source to make restitution for injuries occurring there arises regardless of whether or not he is at fault. In these cases the legal standard is designed only to compensate the victim; it does not pursue the purpose of punishing and preventing, since the innocent trespasser is not deserving of punishment.

Soviet civil law rules, as opposed to the legislation of many other countries, establish relatively precise conditions for the determination of the extent of compensation for damage. The court makes its decision based on precise data regarding the salary (or income) of the victim and the percent of his disability in accordance with the conclusions of medical experts. Therefore, the court's discretion is kept to a minimum. This leads to uniformity in resolving cases in judicial practice, reducing to the minimum the number of errors in determining the extent of reparations to be made. This procedure guarantees the victims' rights to restitution.

There is still one more special characteristic of civil responsibility. As is well known, the presumption of innocence figures in criminal law and criminal procedure; accordingly, citizens (defend-

ants) are considered innocent unless the opposite has been proven. The representative of the accusation is obliged to prove the defendant's guilt in each case, while the court establishes the guilt. The civil law, on the other hand, establishes *the presumption of the guilt of the inflictor of injury and the presumption of the innocence of the victim*. The presumption of the victim's innocence guarantees restitution for injury the victim has incurred; it would be difficult and sometimes impossible for the victim to prove the guilt of the injurer. In the event of injury, between injured and injurer there arise relations with respect to financial restitution for the injury. These relations are superficially analogous to property relations.

However, these two kinds of relations are different in that civil law standards regulating injured-injurer relations are designed to defend human life and health, that is, the most important aspect of the individual's personal welfare. Therefore, in its essence, civil law protection of the population's health is first and foremost the protection of non-property interests, although in the form of the protection of property interests.

**General Prerequisites
for Rights and Obligations
to Make Restitution for
Injury**

Injury to persons or damage to property is subject to reparation in full measure by the party inflicting such injury or damage if such party does not prove he is not at fault for such injury or damage (Art. 88 of the Fundamentals of Civil Legislation).

From the text of this article it follows that there are four prerequisites for the materialization of the

obligation (responsibility) to make restitution for injury to the life, health, or property of other citizens:

—the fact of harm;

—illegality;

—the existence of a causal relationship between the behavior of the alleged injurer and the resulting injury; and

—the fault of the responsible party.

Let us review each of these prerequisites, sometimes called "the causes of civil responsibility" which together make up the *corpus delicti* of a civil tort.

HARM is a social category. Every violation of the law breaks society's statutory rules of behavior and is dangerous in that it thus damages the social order. Harm is the damage or injury to, impairment, destruction or annihilation of some value.

The nature of harm may vary. Harm may be inflicted upon personal spiritual interests or property interests, the interests of an individual citizen, of a collective or an organization, or of the state. Harm may be measurable or immeasurable (in units or money). The term *damage* is sometimes used as a synonym for harm. Financial expression of damages or harm is called *losses*. Losses (arising from damage or harm) are understood to mean expenses incurred by the victim, the loss of or damage to his property, as well as lost income which he would have received had some accident not occurred (Art. 36 of the Fundamentals of Civil Legislation, Art. 219 of the Civil Code of the RSFSR). Expenses born by the victim with respect to some accident are called *positive losses* and income which he would have received were it not for such accident are called

lost income. Harm may be caused to life, health, and property.

Injury to health may cause disability, temporary or permanent, partial or full, with an appropriate loss of earnings for the injured party. Full or partial, temporary or permanent loss of wages (or other earned income) by the victim is one of the aspects of harm subject to restitution.

Injury to health may cause the victim to incur expenses related to treatment, special diets, prosthesis, and nursing care. These expenses also enter into the reckoning of the extent of restitution for harm as part of the victim's positive losses.

When death is inflicted, injury is expressed in the loss by non-able-bodied dependents of the deceased and his provision for them of their livelihood (lost wages) and in expenses related to the funeral (positive losses).

Harm is a prerequisite for the materialization of the right of the victim and the obligation of the injurer for restitution. If an accident causes no economic harm, neither civil rights nor obligations materialize to make restitution. From oldest times the law has tried to solve the problem of so-called "mental anguish". Property damage does not always arise in every case, but injury to human life and health always involve anguish.

For example, a victim's face may be injured, but he or she may not lose his or her capacity to work for this reason; therefore the victim does not suffer a loss of earnings. In such cases, there is no property damage and, accordingly, an obligation to make restitution cannot arise. However, such a trauma undoubtedly causes the victim anguish. Mental an-

guish is relevant to all kinds of injury to health, including death, with or without property damage.

Anguish is defined to be the physical and psychological suffering of the victim and his or her closest family members.

The problem of anguish is solved differently in the legislation of different countries. In many nations, both capitalist and socialist, the law stipulates that restitution be made for anguish. This restitution is expressed in the payment of a lump sum to the victim or to his closest surviving relatives (for example, the widow of the deceased victim) at the expense of the party who inflicted injury or death. The size of this sum is usually determined by the court in each case, as it takes into account the nature of the injury and other pertinent circumstances, within the limits of the minimum and maximum sums as established by the law.

Soviet civil law does not provide for the obligatory restitution of anguish. There are different points of view on this issue in Soviet juridical literature. Opponents of compensation for anguish maintain that the victim's suffering cannot be measured and expressed in monetary equivalents; therefore, anguish should not be subject to restitution.

Those arguing the contrary, call for amending existing Soviet legislation to establish responsibility for inflicting anguish. This opinion is based on the argument that in instances of anguish, one must not be concerned with monetary measurement (which is, of course, impossible), or with restitution; one should be concerned with repairing the damage, undoing it, relieving at least in part the suffering of the victim, helping him, rehabilitating him phys-

ically and emotionally, guaranteeing him the possibility of reestablishing contact with people around him, contact which may have been severed as a consequence of a serious mutilation. One must take into account the concrete circumstances of every individual case.

For example, if someone is completely paralyzed in an automobile accident and becomes bedridden, restitution for property losses, i.e. lost wages, in no way compensates him for the changes in his lifestyle. It might be fair in this case to make compensation for anguish, let us say, to the extent of acquiring a television set for the victim at the cost of the party inflicting his injury. According to this theory, a victim who loses his vision might be entitled to be awarded a musical instrument.

Another argument in favor of compensation for anguish is the fact that if injury to health causes only anguish but no property losses, the inflictor of such harm is essentially unpunished. It might be fairer for him to be fined some specific amount of money, given either to the victim or collected for the benefit of the state budget.

The second prerequisite for the materialization of the obligation to make restitution for injury is the *illegality* of the behavior of the party inflicting the injury. Behavior is considered to be illegal, if it infringes the norms of civil, administrative, or criminal law which protect life, health and property. The law may be violated by commission as well as by omission, i.e. by acting as well as by failing to act.

Harm inflicted as a result of legal actions is not subject to restitution, except in those circumstances

specially defined by the law. Thus, injury inflicted on a person making an assault on a victim defending himself is not subject to restitution.

Acts of necessary defense are considered to be actions taken in the defense of the interests of the state, society, individual, or the rights of a person defending himself. A party may find himself in a position where he must take measures for his own self-defense and in so doing may injure or harm his attacker, for example, during robbery, violence, embezzlement, etc. Necessary defense is permitted by law and, therefore, harm inflicted on an attacker, whose behavior is illegal, is not subject to restitution (Art. 13 of the Criminal Code of the RSFSR, Art. 448 of the Civil Code of the RSFSR).

Acts performed during an emergency are also considered lawful. This is an instance when the special norms of the law (Art. 449 of the Civil Code of the RSFSR) provide for restitution for harm either by the party inflicting harm or by a party in whose interests the injurer acted (union republic civil codes provide different rules for such cases). But a court may release the inflictor of harm from obligatory restitution as well as the third party whose interests were defended.

The third prerequisite for the materialization of relations with respect to restitution is the existence of a *causal relationship* between the illegal behavior of the party inflicting harm and the harm incurred by the victim. The cause-effect relationship is a relationship existing objectively between natural phenomena and society. All natural phenomena are mutually contingent. They can be understood and explained by ascertaining how they interrelate. One

event is the consequence of another. Every event is preceded and caused by another event; event-consequence, in turn, may cause a third event. A given phenomenon may occur due to the interaction of many different factors and, in turn, may give rise to many other phenomena.

Harm, as a rule, is the result of the interaction of several factors. Therefore, in every individual case it is essential to establish if it is possible that the illegal behavior (commission or omission) can be considered sufficient reason for the damage incurred.

For example, let us say that an automobile accident took place: an automobile ran over a pedestrian. No harm would have been done that day had the victim not left his home or had he chosen another route, or had the driver not bought the car or had he not violated the traffic regulations. In this case, and in most cases similar to it, it is not difficult to recognize that the causal relationships between the given factors and the accident are quite different. The law does not admit every causal relationship, distinguishing between essential and random relationships. It is obvious, in our example, that the essential (direct) causal relationship exists between the violation of the traffic regulations and the pedestrian's injury; other relationships are of a random (indirect) nature and are thus not admissible in court.

However, in legal practice, one meets much more complex situations. For example, let us say that the victim of an automobile accident was taken to a hospital, but, once there, for some reason, he was not admitted promptly and proper medical measures

to save his life were not taken. The victim died. Whose actions or failure to act caused the victim's death: the driver of the automobile or the hospital? Who among them is obligated to make restitution? In such situations the existence or lack of existence of a direct or causal relationship admissible by law between the different factors and the injury is established by the court with the help of experts.

The fourth prerequisite for the materialization of civil law responsibility is the *fault of the injurer*. The behavior of a person, his actions, including those which cause harm (commissions or omissions) are committed consciously and willingly. If a person consciously and willingly acts in such a way as to harm other persons, then his consciousness and will are vicious and reproachful and his behavior is guilty from the point of view of society and the individual citizens within it.

The conscious and willing injury of social and individual interests, the disrespectful attitude toward such interests on the part of a person violating the law enables the state to take steps against such a lawbreaker; he or she becomes juridically responsible as stipulated by the law.

Fault is understood to mean the reproachful psychological attitude of a party to his illegal actions and their consequences. There are two forms of fault: intent and negligency.

In the case of fault in the form of intent a person understands the socially dangerous nature of his actions, foresees their harmful consequences and wishes or allows the occurrence of these consequences.

As distinct from intent, negligence implies no intention to commit an act against the law, but such

a lawbreaker foresees or should have foreseen the possibility of the negative consequences which ensue from his acts. Depending on the degree of the lawbreaker's negligence of his obligations and the rights of others, his lack of attentiveness and caution, his negligence may be called gross or ordinary.

Gross negligence is characterized by a party's failure to take elementary, minimally essential measures for the prevention of some violation of the law and its consequences.

Ordinary negligence involves the failure to take the maximally possible and essential measures to prevent some violation of the law and its consequences.

If there is no established fault in a person's behavior, neither intent nor negligence, then we have what is called fortuity or fortuitous (innocent) harm in civil law.

In accidents it often happens that a party at fault is himself a victim. The victim's fault may affect his right to claim restitution for harm, as well as the extent of restitution to which he is entitled. If the accident occurred as a result of the intent of the victim himself then no one is obliged to make restitution for harm.

The victim's fault in the form of ordinary negligence does not release the injurer from making restitution for harm in full.

Only when the victim's gross negligence promotes or provokes the damage or harm may the court reduce restitution or refuse to order that restitution be made to the victim. In this case, joint responsibility (mixed fault) ensues.

The court appraises each party's behavior and determines the form of the fault of each during the

hearing of the given case, taking into account the actual circumstances of each case.

Let us now examine some examples from legal practice.

Citizen O., under the influence of alcohol, fell asleep on a country road in the evening and was run over by an automobile and traumatized. The court declared his behavior to be grossly negligent and refused to hear his case for restitution for harm, since, according to Soviet legislation, his state of drunkenness aggravates his fault, just as it would aggravate the injurer's fault, had he, too, been under the influence of alcohol.

A people's court in the Moscow Region found for plaintiff G., a widow, against respondent A., the owner of an automobile, for reparations for harm, namely, the death of the breadwinner. The deceased ran across the road directly in front of moving traffic in a location where pedestrian crossing was not permitted. Finding for the plaintiff, the court declared the victim to have demonstrated ordinary negligence. A higher, regional court overturned the lower court's decision, finding that the victim's behavior was grossly negligent. He had been drunk and, as a driver by profession, should have understood the dangerous nature of his behavior. One might suppose that, had the victim not been a driver, the court might have found his fault to be ordinary negligence.

**The Responsibility
of Owners of Sources
of Increased Hazard**

Art. 90 of the Fundamentals of Civil Legislation provides a special rule: organizations and citizens whose activity is attended with increased hazard to other persons (transport organizations, industrial

enterprises, building sites, owners of motor-cars, etc.) must repair the harm caused by the source of increased hazard, unless they prove that the harm was the result of *force majeure* or intent on the part of the injured person. Thus, the owner, or manager, of a source of increased hazard must make reparations for injuries regardless of whether or not he is at fault for such harm.

Enterprises, construction sites, transport organizations, automobiles, motorcycles, dangerous substances (including radioactive substances, explosives, and flammables), wild animals (not domesticated animals) and so forth are all considered sources of increased hazard. They are deemed so because they are harmful and are not fully controllable. Contemporary science and technology have progressed to the point where some objects of the material world and aspects of human activity are not fully controllable by man and, therefore, the risk of accidents occurring due to possession of transport or such materials is not excluded. Such objects and activities are thus considered to be increased hazards to human life and health.

For example, a driver, despite his automobile's maneuverability, cannot always prevent an accident if someone from the street suddenly runs in front of his moving vehicle or if an automobile in front of him suddenly decelerates. Contemporary technology still offers no solutions to the problem of stopping a moving vehicle in an instant, a vehicle moving at great velocity with significant weight and inertia, in order to prevent an accident.

In our opinion, what Art. 90 of the Fundamentals of Civil Legislation stipulates is not increased re-

sponsibility (without fault) for owners of sources of increased hazard, but their obligation to compensate for harm.

The concepts *responsibility* and *obligation* are not identical. Any legal responsibility (criminal, administrative, or civil) can ensue on the condition that there exists some guilt on the part of the lawbreaker. Responsibility ensues as the state's negative response to the illegal behavior of private citizens, officials, and juridical persons. The application of measures of responsibility is the state's condemnation of reproachful, guilty behavior which violates the interests of society, collectives, and individual citizens.

As opposed to responsibility, the concept of *obligation* is not connected with the guilty illegal behavior of some obligated party, and the state's condemnation of this party. The distinction between these two concepts is of serious social significance. After all, the inflictor of harm is not indifferent to the social, moral and juridical evaluation of his behavior. He may have to bear the responsibility for guilty, harmful behavior, condemned by society, or he may have the obligation to make restitution for some random harm, even though his behavior was declared reproachless.

The law imposes the obligation to make restitution for harm on owners of sources of increased hazard. Such sources may or may not be the holders of property, juridical or private citizens.

The most common source of increased hazard owned by private citizens is the automobile. Let us, therefore, examine the citizen who owns a car as the owner of a source of increased hazard.

Citizens owning automobiles as personal property

and driving them are designated the owners of the given automobile, and in the event of harm or damage such owner is obligated to make redress for such harm or damage, as the automobile inflicts.

Possession and use of an automobile need not coincide. According to civil legislation, every citizen may become the proprietor of an automobile as a result of sale and purchase, gift, and inheritance, but not every citizen may have the right to drive an automobile due to the condition of his health, age, or some lack of special knowledge. Other car owners do not want or cannot operate their automobiles, due to some other reasons. In such cases an automobile may be given to another person by its owner temporarily under a contract in the form of a letter of attorney.

The person who has given the letter of attorney remains the proprietor of the automobile, and the person in whose name the letter has been issued becomes the owner (temporary user) of that automobile. This person, though he is not the proprietor of the car, is recognized as the owner of the car, and if he inflicts harm when operating the car he must compensate the harm regardless of his fault. The proprietor of the automobile who has given the car by letter of attorney to another person does not bear any responsibility for the harm inflicted.

We must distinguish the transfer of an automobile by its proprietor with the right of ownership to another party from simply "handing over the wheel" of the automobile. For example, if the owner of the automobile, in the car, gives the steering wheel to another party, or gives the car to a relative or friend without writing a letter of attorney, then he is still

considered the owner and user of the automobile and, juridically speaking is not released from responsibility for any harm inflicted.

Legal literature has long discussed the problem of the "guest in the carriage". The question here concerns the responsibility of the owner (proprietor) of the automobile before a party whom the owner agreed to transport without fee. If, during such a trip, the owner and his passenger are involved in an accident due to the owner's fault, his obligation to redress harm incurred by his "guest" is indubitably fair.

If the accident takes place with the car's owner not at fault, even more so, if, in consequence of the accident, the driver and his automobile are seriously damaged, the imposition on the driver-owner of even more burdensome obligations for restitution of harm to the passenger, to whom the driver-owner tried to be of assistance, is considered unfair by some authors, who claim that this is not compatible with the rules of socialist community life and comradely mutual assistance.

The discussion of this question will probably continue for a long time. For the time being, according to legislation now in force, the owner of a source of increased hazard, regardless of his fault, is obligated to redress harm and damage sustained by all other parties, including parties, passengers in his vehicle.

Here is an example from the courtroom. P. requested K., the proprietor of an automobile, to drive him to work one day. While approaching an oncoming vehicle, K. was blinded by its headlights and drove into a log on the asphalt road. As a result of the accident, the proprietor of the automobile and

his passenger were seriously injured. Investigators established that K. was not at fault and the criminal case against him was terminated. The court nevertheless fined K. 100 roubles a month in P.'s favor for restitution for injury sustained by P.

The proprietor of an automobile is not responsible for harm sustained by a victim when the car is not in his control due to the illegal actions of third persons. Thus, during the theft of an automobile, responsibility for harm inflicted by the automobile is borne by the person illegally operating someone else's automobile.

If the owner of an automobile loses the possession of it due to the illegal actions of third persons, and due to some fault of the owner himself, the person using the vehicle and/or the owner may be held responsible for damages, depending on the specific circumstances of each case.

The responsibility of the owner of the automobile may ensue due to his own fault if he fails to guarantee and secure fitting safeguards. A "fitting safeguard" is understood to mean not some special protection, but merely the observation of elementary caution on the part of the owner of the automobile.

For example, an adolescent who had stolen a car injured someone. The court found the proprietor of the automobile also at fault for that injury, because he had left the car unlocked with the key in the ignition. The court might also find the garage responsible for the injury if it failed to provide security at the garage exit, allowing garage workers or third persons to use automobiles left in the garage at will for their own personal affairs, causing injury to other citizens.

The lawful owner of an automobile is responsible for harm only when he is guilty of lack of caution in guarding the automobile, while the parties who use an automobile illegally bear responsibility for injuries they may inflict whether or not they are at fault for the accident in which injury is sustained (although, of course, if they are guilty of unlawful use of the automobile).

Accidents sometimes occur due to the fault of a person who himself has not suffered but created an emergency situation in which the accident took place and thus caused others to be injured.

For example, a pedestrian suddenly runs across the road. While trying to avoid hitting him, the driver of a passing automobile abruptly turns into a sidewalk, injuring a citizen standing there. The owner of the automobile is legally responsible before the victim as an owner of a source of increased hazard. However, the driver has the right to file suit for the return of money he paid to the victim, pressing a claim for reimbursement from the party who created the emergency situation in which the accident took place. The court will find for this plaintiff only if it is established that the accident did indeed take place due to the fault of the specified third person.

In a two-car collision injury to life and health can be sustained by third parties (for example, automobile passengers or pedestrians) as well as by the owners of the automobiles themselves. The owners of the automobiles bear responsibility before injured third parties. They are considered joint inflictors of injury and are jointly responsible regardless of who is at fault.

In cases of joint responsibility, the victim has the right to demand damages from all the owners of all the automobiles involved or from anyone among them. A single respondent, having made full restitution to a victim for damages, has the right to file suit against his co-respondents for partial reimbursement. At the hearing of such a case, the court may decide that sums paid to the victim are to be divided among all the owners of the automobiles in proportion to the extent of the fault of each one of them.

The proportional degree of fault also determines the losses accruing to the owner or owners of automobiles involved in a collision.

The law establishes that citizens using automobiles by rental contract from a transport organization are recognized as owners of these automobiles. In this case it is they (and not the organization) that are responsible for damages arising as a result of an accident. The transport enterprise may be found responsible for damages only if it is established by the court that the accident took place in direct consequence of the enterprise's rental of an automobile in poor working order.

Juridical persons may also be owners of sources of increased hazard.

In the USSR, the basic means of production in industry, agriculture, construction, transportation and communication belong to the state, which means that they are owned by all the people. The state creates state enterprises which have the right to operate plants, buildings, equipment, machinery, raw materials and other property essential for economic activity. State enterprises are not proprietors, but

operative managers (owners) of this property, and they bear responsibility for damage incurred by it. Cooperative and social organizations are proprietors and owners of their property and are responsible for any damages this property may inflict.

Thus, if damage is sustained by a source of increased hazard, managed by a socialist organization, including state, cooperative and social organizations, such organization is responsible as a juridical person. It must redress harm sustained by third parties (be they citizens or other organizations) regardless of who is at fault.

The law establishes an exception from the general rules for restitution for harm for those cases when injury is sustained by employees of the same juridical person which is the owner of the source of increased hazard where such injury occurs.

If a worker is injured in the line of duty due to some fault of his organization-employer, the very organization which pays contributions for him for state social insurance, his injury must be redressed by this organization (Art. 91 of the Fundamentals of Civil Legislation).

Thus, enterprises, establishments and organizations become obliged to make restitution for injuries inflicted only when six conditions are met: The first three conditions are the general prerequisites: 1) illegality, 2) harm, 3) causal relationship. The second three are supplementary prerequisites: 4) the existence of labor relations between the organization and the victim, 5) the relation of the injury to performance at the job, and 6) the organization where the victim worked and which pays the victim's social insurance contributions is at fault for injury.

The organization which is the owner of a source of increased hazard is obliged to redress harm sustained by its workers and other employees while at the job only if such organization is found to be at fault for such injury. If the organization is not found to be at fault, the workers and other employees disabled temporarily or partially have the right to receive full wages as disability benefits accorded those treated by medical establishments as well as the right to receive increased pensions. They do not have the right to receive additional restitution from their employer organization, which is not at fault. This rule is applicable to all cases of injury, including those in which harm is sustained by a source of increased hazard.

If a source of increased hazard, owned or managed by a juridical person, inflicts injury on persons other than those employed by the juridical person or to its workers while such are not on the job, the juridical person is responsible for redressing injury regardless of whether or not it is at fault for such.

The law releases owners of sources of increased hazard (individual citizens and juridical persons) from responsibility for injury if the victim himself is at fault, in the form of intent, for his injury, or due to the action of some *force majeure*.

We have already discussed guilt in the form of intent. Intent of the victim to inflict injury upon himself is a quite unusual phenomenon.

The injurer is released from making restitution for harm if he proves that the harm was sustained as a consequence of some *force majeure*.

A *force majeure* is an extraordinary and objectively unpreventable event, given the circumstances,

arising externally independently of and externally with respect to a source of increased hazard, including the spontaneous forces of nature, that is, hurricanes, floods, and the like, which do not yield to man's efforts to prevent or control them. Thus, if a moving automobile is struck by lightning, the driver is not obliged to repair harm sustained by passengers seated in his car or pedestrians involved in the accident ensuing from the lightning.

Here is an example from legal practice. A moving automobile got caught in a blizzard. The next day the car was found, covered with snow, the driver and passengers dead, having suffocated from inhalation of carbon monoxide. The Supreme Court of the RSFSR determined that cause of death was the driver's incorrect actions; he should have known of the effect of carbon monoxide on human beings and had the opportunity to avoid the danger by opening his vent. The death of the passengers was not due to the *force majeure*, the blizzard. The court ordered that restitution be made by the owner of the automobile, the automobile enterprise.

The court does not accept *force majeure* as an explanation for injury if the owner of an automobile knew or, according to the conditions of a given place and time, should have known that a *force majeure* could take place (for example, by listening to the radio or television about the imminence of a hurricane, blizzard, or flood).

Intent on the part of a victim or a *force majeure* fully release the owner or manager of the source of increased hazard from the obligation to redress harm (Art. 90 of the Fundamentals of Civil Legislation).

If the gross negligence of the victim himself has

contributed to the occurrence of the injury, an alternative is possible: the inflictor of injury may be released from making restitution or may be permitted to make reduced restitution for injuries sustained by the victim (Art. 93 of the Fundamentals of Civil Legislation). Ordinary (light) negligence on the part of the victim does not exempt the owner of a source of increased hazard from responsibility for injury there sustained.

**Responsibility for Injury
Committed by Minors and
Those Lacking
Active Capacity**

Injury is sometimes sustained as a result of the actions of minors or sick persons.

According to Arts. 11 and 14 of the Civil Code of the RSFSR, minors under the age of 15 lack active capacity, that is, they are not yet capable of judging the significance of their actions and the consequences of such actions. Therefore, harm inflicted by them is redressed by their parents or guardians unless the latter prove that the minors were not at fault for such harm. If a minor inflicts harm at a time when a school, another educational institution or a medical center was responsible for him, these organizations become responsible for such harm, unless they prove that they were not at fault for such (Art. 450 of the Civil Code of the RSFSR).

Accordingly, the question of illegality and the fault of minors under the age of 15 is not subject to discussion and proof, and the minor, in any case, does not bear civil responsibility, which is borne by persons charged with the supervision of such minor, but failing to provide such supervision properly: parents (including foster parents and guardians), kindergartens, children's homes, schools, pioneer camps,

hospitals, that is, those persons and establishments, in whose care the minor was placed, when harm was sustained.

Minors between the ages of 15 and 18 are responsible on general grounds for harm they themselves inflict, that is, just as adults, they are obliged to redress harm, whether or not they are at fault for such. In cases when a minor between the ages of 15 and 18 has no property or earnings with which to make restitution, harm must be redressed by the minor's parents or guardians to the extent to which minors themselves cannot redress it, unless they prove that they were not at fault for the harm. This obligation terminates when the inflictor of the harm comes of age, or if he, before reaching the age of 18, acquires some property or earns income sufficient to redress the harm (Art. 451 of the Civil Code of the RSFSR).

Thus, parents and guardians may bear only additional responsibility when they are at fault. Parents' failure to supervise their children should not be understood as a violation of an obligation to be with their children at all times.

The Supreme Court of the RSFSR, in its resolution of February 7, 1967, explained that by the fault of natural and foster parents, guardians, and trustees responsible for harm inflicted by minors is to be understood both as the failure to provide adequate care for the children at the moment they inflicted such harm and as an irresponsible attitude toward raising the children or the abuse of their rights as parents, guardians or trustees. As a result of such failure to provide adequate care, irresponsibility, or abuse, the children behaved badly, injuring someone (conniving to be or encouraging mischievous-

ness, hooliganism, lack of supervision for the children, lack of attention to them, and so forth).

Judges declare parents guilty of failing to supervise and raise their children properly when parents pay no attention to the fact that children systematically stay out all night, appear in public under the influence of alcohol, smoke, quit school, or if the parents themselves expel their children from the home, deny them food and clothing, encourage mischief and hooliganism and so forth.

Educational and medical establishments guilty of failing to supervise children properly are considered such only at the moment at which the children inflicted damage.

If it is proven that minors inflicted some harm through the neglect of their parents, foster parents, guardians, trustees, educational or medical establishments, the harm is redressed according to the principle of sharing the responsibility and restitution proportional to the extent of the guilt of each involved party (parents, establishments).

For harm committed by a citizen declared by the court to be legally incompetent due to mental illness, the guardian or organization responsible for supervising this citizen (for example, a hospital) is responsible for restitution unless they prove that they are not at fault.

Sometimes damage is caused by a citizen who cannot understand the significance of his actions and is in no position to control himself (for example, when a citizen suddenly loses consciousness or during a serious illness), although this citizen has not been declared by the court to be legally incompetent. In such a situation the injurer is released from making resti-

tution, since there is no fault, unless he himself induced the said loss of consciousness, for example, by taking alcohol, drugs, or by some other means.

**Determining the Extent
of Harm Subject
to Restitution**

Harm sustained by persons and damage sustained by property are subject to restitution in full by the party inflicting such harm or damage (Art. 88 of the Fundamentals of Civil Legislation).

Restitution in full for harm means the material return of the victim to that situation which he enjoyed prior to the accident. In other words, the victim has the right to demand from the injurer all sums of money which he lost or did not receive, and/or was forced to spend due to the accident. This is the essence of the principle of full restitution for damage.

If the victim lost some or all of his wages due to disablement as a result of the accident he is entitled to the restitution of those wages, other expenses accrued in connection with the injury to his health or death, as well as recompense for damage to his property.

The first and foremost issue to be considered in a case when the victim's health is injured is the restitution of lost wages.

The victim of an accident may turn to a medical establishment for assistance and the doctor there determines if the victim is capable of returning to work. If not, the medical establishment releases the victim from his work by issuing him a document, a disability certificate, which indicates the term of his disability.

While disabled, the victim receives full disability benefits from the social insurance agency, as a rule,

in the amount of his average monthly wage. If benefits for temporary disability are not paid or if they are not paid in full (depending on his seniority) the victim has the right to seek restitution from the injurer in the amount of the difference between his lost monthly wages and the disability benefits he received. In both cases the victim is compensated in full for his injury.

If it is determined during treatment that the victim cannot fully recover (e.g. if the victim loses a limb or an organ) the victim turns to medical experts who determine the degree of his permanent disability, establishing the percent of his loss of work capability. If this is great, the victim is declared an invalid of group I, II or III (in accordance with the degree of disability). The victim is then entitled to receive a pension from a social security agency according to his invalid classification and he ceases to collect disability benefits from the social insurance agency according to his certificate of disability.

The victim, declared to have lost in some part (percent) his capacity to work, has the right to sue the inflictor for restitution for damages.

Thus, when medical experts determine the victim's permanent disability, the extent of the restitution for lost income is derived from the average wage at the time of the accident, the degree of the disability, the size of the designated pension, and the victim's wage after the accident should he continue to work.

Let us review each of these factors.

The average wage of the victim who is a worker is calculated on the basis of wages earned in the twelve months preceding the injury. When the victim is a person receiving an apprentice's wage (i.e.

victim was an apprentice at the job), the extent of the restitution paid to him is determined on the basis of the wages paid to a full-fledged worker in his chosen profession.

There are certain differences in the calculation of the amount of damages paid to victims if they are persons who are not factory or office workers. Thus, the average wage of a victim who is a member of a collective farm is calculated by dividing the victim's yearly income in the preceding fiscal year by twelve. The average monthly wage of victims who are engaged in liberal professions (i.e. writers, artists, craftsmen, etc.) is calculated by dividing the income for the year preceding the accident by twelve.

If, during the two years preceding the accident, the victim had no source of income, the size of restitution for damage is calculated on the basis of the minimum wage as established by law for the given region. Victims who were not working for a long time and those who were never employed (e.g. housewives, persons who have left work for family reasons and others) are included in this category. For example, the extent of restitution paid to victims who are house wives is calculated on the basis of the wages paid to nannies or governesses; or, if a person has some special qualification, on the basis of the wage of the workers with the same qualification.

Minors under the age of 15 do not work and, therefore, at the moment of injury, do not suffer damages in the form of lost wages. They or their parents are paid restitution for expenses incurred in connection with treatment, special diets, and the like which are caused by the injury.

The law, however, takes into account the fact

that an injury at an early age may affect a person's work capability in the future. Therefore, in the case of injury sustained by a minor under the age of 15, the size of compensation is calculated at the time the minor reaches the age of 15 on the basis of the average monthly wage of an unskilled worker. This right materializes whether or not the 15-year-old victim has worked. After he begins to work, in accordance with his qualifications, he has the right to demand an increase in compensation, based on the wages of a worker with his qualifications.

Ten-year-old B., traumatized in an accident, was awarded compensation based on the average wage of an unskilled worker until the time she reached the age of 15; afterwards, B. became a skilled seamstress, and, accordingly, earned the right to an increase in compensation, taking into account the wage of her new trade.

Restitution for injury also depends on the degree of the victim's disability. Work capability is divided into two categories: professional and general. Professional work capability is understood to mean the ability to work in a specific trade or profession; general work capability is understood to mean the capability to perform tasks of unskilled labor.

When a victim is injured he can lose professional and general work capabilities, fully or partially, permanently (for a long period) or temporarily. These factors are significant in the calculation of compensation.

As noted above, medical establishments determine temporary disability by issuing a certificate of disability. The victim is considered to be temporarily but completely disabled. If, because of this, he receives

disability benefits less than his monthly earnings, the injurer may be obliged to pay the difference as restitution to the victim.

Permanent disability and its relation to a given accident is determined by medical experts in percentage. If medical experts determine that a victim has sustained a partial loss of professional work capability he is entitled to compensation accordingly.

For example, if experts declare that as a result of an accident a victim lost 70 percent of his professional work capability and 40 percent of his general work capability, and if his average monthly earning had been 180 roubles before the accident, the victim's loss of earnings is established to be 126 roubles per month (70 percent of 180 roubles). The loss of general work capability is not applicable in the given example.

After the calculation of the average monthly earnings and the degree of disability, it is determined whether or not the victim has been awarded disability benefits in connection with the permanent loss of his work capabilities as a result of the accident. This is essential to the process, because, according to the law (Arts. 91 and 92 of the Fundamentals of Civil Legislation), the victim has the right to compensation for losses of wages in that part, exceeding the sum of the benefits paid to him according to his disability certificate or pensions he received after injury that causes permanent loss of work capability, since the injury is in part compensated by such pensions.

If a victim is insignificantly permanently disabled he is not classified as an invalid and is not entitled to receive a pension. Hence, compensation for inju-

ry is calculated on the basis of the average monthly earnings of the victim and the degree of his disability.

For example, if a worker earned an average monthly wage of 180 roubles, lost 10 percent of his professional work capability and received no pension, he is entitled to receive 18 roubles per month from the party inflicting the injury (10 percent of 180 roubles).

If a victim is significantly disabled he is declared an invalid of 1st, 2nd, or 3rd group and is awarded a pension in accordance with the Law on State Pensions.

If the sum of the pension is equal to or greater than the lost earnings, the victim has no real loss. In this case, the court grants the victim the right to compensation only if his pension should be decreased or his disability should become aggravated in the future.

If the sum of pensions does not fully compensate for the loss of earnings, the injury (harm) is compensated in the amount equal to the difference between the pension the victim receives and the average monthly earnings he lost.

As in the preceding example, if our worker earned an average of 180 roubles a month and lost 70 percent of his professional work capability, his loss of wages would be 126 roubles per month; if the victim were awarded a pension of 65 roubles per month, the amount of harm to be compensated by the injurer would be 61 roubles per month ($126 - 65 = 61$).

Not delving into the fine details of this matter, let us nevertheless examine the fundamental rules

governing the calculation of pensions. Only those pensions must be considered which are awarded to and received by the victim subsequent to the accident. Any pension received by the victim prior to the injury (for example, old-age pensions, pensions paid in the event of the loss of the breadwinner, military pensions, etc.) are not to be taken into account, inasmuch as pensions received prior to the time injury was sustained can in no way compensate for such injury and there is no causal connection between such pensions and the loss of work capability and earning after the accident.

As noted above, the injurer and the injured may both be at fault for an accident. In such a case jurists use the concept of joint responsibility.

If the victim's fault is established in the form of intent (which happens very infrequently in such cases) then the said victim is not entitled to compensation for his injury. If the victim is at fault in the form of ordinary negligence the injury must be compensated in full. If the victim's fault is in the form of gross negligence the court may choose to refuse to grant compensation or to grant reduced compensation. The extent of the fault of the injurer and the injured is calculated in shares (in percent use), taking the specific circumstances of each case into account.

Let us consider these issues in a hypothetical example.

Let us say that as a result of an accident a victim lost 70 percent of his professional work capability; his average monthly earnings had been 150 roubles; and he is awarded a pension of 50 roubles. It has been established that the injurer, e.g. the owner of

the automobile, is 75 percent at fault for the accident, and the victim is 25 percent at fault. First, the loss of wages is calculated: 70 percent of 150 roubles = 105 roubles. This sum is reduced in accordance with the degree of the victim's own fault: 25 percent of 105 roubles = 26.25 roubles. Subtracting this sum from 105 roubles, we get 78.75 roubles. The pension awarded the victim (50.00 roubles) is subtracted from this sum and the victim receives compensation in the amount of 28.75 roubles per month.

The victim is entitled to compensation for loss of earnings in connection with injury. When the decision is passed on the amount of the victim's loss of earnings, i.e. his or her future earnings are still unknown. Compensation is calculated conditionally on the premise that the reduction in the victim's earnings will correspond to the degree of his or her disability. However, in practice, this assumption is not always justified. Sometimes the victim's earnings subsequent to injury remain the same or increase.

For example, if a bookkeeper or teacher lost a leg as the result of an accident, such a person could return to his old job after some time of convalescing and earn the same salary he earned prior to the accident.

It is possible that the victim might even get a raise, for example, in connection with his transfer to another, higher-paid job, an improvement in his qualifications, the completion of school or training, or for some other reason.

However, compensation for harm means recompense for lost earnings; if earnings do not actually diminish subsequent injury, payment to the victim

of additional money would constitute overcompensation, unfounded enrichment, a violation of the principle of full and fair compensation. To avoid this, the law takes into account the contingency of the calculation of the degree of disability under the *right of credit* of the victim's wage rule. According to this rule, if the victim works, then that part of his earnings together with his pension and the compensation awarded him by the court, which exceeds his average monthly income prior to the accident in which he sustained the injury, is subject to be taken into account towards the payment of compensation. In other words, compensation paid to the victim together with pensions and earnings should not exceed the victim's general preinjury earnings. Thus, compensation, as determined by the court, is not always paid in full.

Let us review this right to credit in an example.

Let us say a victim has average monthly earnings of 160 roubles and loses 50 percent of his professional work capability. He receives a 40 rouble monthly pension. Compensation in this case will be calculated to be 40 roubles (50 percent of 160 = 80 roubles, 80-40 = 40 roubles). This is contingent upon the victim's being able to earn 50 percent of his former wage or salary, that is 80 roubles.

If, subsequent to injury, the victim's earnings do not exceed 80 roubles a month, he is paid compensation in full. The general income of the victim would then be 40 roubles (compensation) + 40 roubles (pension) + 80 roubles (new wage or salary) = 160 roubles per month (equal to earnings prior to injury).

If subsequent to injury, the victim's earnings exceed

80 roubles per month, the compensation paid to him or her decreases by exactly the same amount. For example, if after his injury, he (she) earns 100 roubles, the victim loses 20 roubles of his compensation so that his (her) total income stays at the pre-injury income level: 20 roubles (compensation) + 40 roubles (pension) + 100 roubles (earnings after injury) = 160 roubles (equal to earnings prior to injury).

Restitution for injury is not made when earnings equal 120 roubles a month or more in this case, since the victim's earnings and pension together would then be equal to earning prior to injury (120 roubles + 40 roubles = 160 roubles).

Victims may be compensated fully or partially for losses due to injury by state insurance. Insurance may be mandatory or elective.

Mandatory insurance is required by law, regardless of citizens' will or desire and is provided by the agencies of Gosstrakh, the State Insurance Agency. Thus, passengers on different kinds of transport are subject to mandatory state insurance against accidents during their trip or while they are in the station (or at the port, terminal, or pier). Insurance premiums up to 25 kopecks, depending on the length of the journey, are included in the cost of the ticket. Insurance is not required of passengers on international, suburban, or intracity trips.

An insured passenger who is completely and permanently disabled, losing 100 percent of his general work capability as a result of a transportation accident, is paid 1,000 roubles by Gosstrakh. If a citizen loses his work capability partially, but permanently, he is paid a proportional part of this sum. In the

event of a passenger's death, the same sum is paid to his heirs.

Private citizens may choose to sign an elective state insurance contract with Gosstrakh. Specifically, a citizen may decide to contract health and life insurance. Should impairment of health or death then ensue, the insured person or his heirs would be compensated by Gosstrakh according to the sum of the insurance policy and the degree of disability.

Sums received by the victim from Gosstrakh agencies, in cases of mandatory and elective personal insurance, are not taken into account while determining the amount of injury, i.e. of the compensation for injuries which must be paid by the injurer. Compensation paid by the injurer to the victim does not in any way affect the sum of the insurance compensation paid to the victim by Gosstrakh.

There is one exception to the principle of full compensation. The court may reduce the compensation for harm caused by a citizen depending on his property status (Art. 93 of Fundamentals of Civil Legislation).

The reduction of the amount of compensation is only possible in those cases when the injurer is an individual citizen; a juridical person is obliged to make full compensation in all cases.

The law provides only for reduction of compensation made by a private citizen, consequently he or she cannot be completely released from his or her obligation to redress the harm done. The court may decide to reduce compensation by taking into account the defendant's material position: his or her earnings, the number of his dependents, his health and other relevant circumstances. The decision to reduce

compensation payments can be reviewed subsequently should the defendant's material situation change.

The victim's compensation for injury, as determined during the first hearing of a case, may be subsequently changed. The grounds for such a recalculation could be a change of conditions affecting the calculation of compensation after the court's first decision, including a change in the degree of the victim's disability, and the pension he receives from social security agencies.

A citizen's disability after injury is dynamic. It may change depending on biological and social factors, i.e. the person may become more or less disabled as time passes. In order to follow the medical history of the disability, medical experts must review the victim's condition regularly. If experts determine that the degree of disability has changed since the first medical examination, this may lead to a change, removal or onset of the victim's classification as an invalid of 1st, 2nd or 3rd group, and, accordingly, the pension he gains from the social security bodies. The court must accordingly recalculate the sum of compensation awarded the victim in the first hearing. During subsequent reviews of compensation cases the compensation for lost earnings is calculated in accordance with the latest conclusions of medical experts; compensation may be increased, decreased, or left as it was (if the degree of disability and the amount of the pension have not changed since the preceding hearing).

The injuror may also ask the court for a reduction in compensation he pays for an injury he inflicted if, after the last hearing, his material status has taken a significant turn for the worse. If the court

judges that the inflictor's material position prevents him from paying full compensation, decreases the victim's compensations, and then determines that the inflictor's financial status has changed for the better, the victim has the right to sue for an increase in compensation.

The court may calculate periodic compensation payments for damages in connection with loss of earnings from the day injury was sustained. In Chapter I we noted that the period of limitations is not applicable to cases involving personal non-property rights. In cases reviewed here we speak of property demands relevant to the statute of limitations. Therefore, if a suit for compensation of injury was filed after three years elapsed from the date such injury was sustained, the court determines the reason why the plaintiff allowed the period of limitations to expire; while restoring it the court satisfies it from the day on which it was filed.

Thus, the victim can turn to the court at any time. If he or she files suit two years after the accident (that is, within the period of limitations), he (she) has the right to claim compensation for injury for the preceding two years and for all time to come. If he (she) files suit after the period of limitations (three years) has expired, he (she) may claim reparations only from the date upon which the suit was filed. The court does not award him or her compensation for the time that elapsed between the date injury was sustained and the day the suit was filed.

The final term of periodic payments is the date when the victim is reexamined by medical experts; this date is indicated in the experts' conclusions. If they determine that the disability is for life, that is

without providing for the future medical reexamination of the victim, compensation for injury in installments is established as a life annuity. In this case, it is possible for the court to change the amount of the compensation, as stated above, should the financial status of the defendant (e.g. a private citizen who owns a car) change.

In accordance with the principle of full compensation for harm, the victim, aside from his or her right to compensation for lost earnings, has the right to be reimbursed for expenses incurred associated with paid nursing care, special dietary supplements, prosthesis, treatment in a sanitarium or resort and other expenses, if by the conclusion of competent agencies, the victim needs these kinds of assistance due to the injury he (she) sustained. Other kinds of expenses subject to compensation include: the cost of medicines, orthopedic footwear, cosmetic assistance, and so forth.

Medical experts may conclude that the victim requires other persons to assist him or her in simple aspects of daily life (movement, purchase of food, medicine, eating, and so forth). Care of the patient may be offered by family members or by other persons hired specially for this purpose. In both cases the victim has the right to be reimbursed for expenses for such care. This right does not exist if care is provided for free by some special organization, such as a hospital or a home for the disabled. Expenses for the care of the victim are deemed valid regardless of whether they were actually spent. The extent of such compensation is determined with the specific circumstances of each case in mind and can be reimbursed at the rate

of wages paid to hired housekeepers, orderlies, or nurses.

Expenses incurred for dietary supplements are reimbursed only when a medical establishment concludes that such supplements are necessary. Example diets are provided by the Institute of Nutrition of the Academy of Medical Sciences of the USSR. The cost of foods is confirmed by the particular grocery store.

In the USSR free medical treatment is provided in polyclinics and hospitals. Should a victim require treatment in a sanitarium or resort the cost of his or her stay there may be assumed entirely or in part by his or her trade union or at full cost. The injurer is obliged to pay for the cost of sanitarium or resort treatment of the victim who needs such, as determined by medical institutions, if the costs of the stay have not already been paid for by the trade union. The injurer is also responsible for the cost of the trip there and back. The court may also find for the victim for the compensation of earnings which he foregoes during his treatment at the sanitarium in connection with the injury he sustained, should the period of his stay there be deemed unpaid vacation by the victim's place of employment.

If injury was sustained by a small child who then requires treatment at a sanitarium or resort, his mother (or another relative) accompanying him has the right to be reimbursed for expenses incurred connected with the trip and the stay in the sanitarium. The injurer is also responsible for reimbursing the expenses for the person accompanying the child in any trips made to another city for medical consultation or expertise as well as for sending the child to

a special medical institution. For example, a mother accompanying her child to a sanitarium has the right to be reimbursed for her trip and the earnings she lost during the time spent accompanying the child.

The victim has the right to demand compensation from the injurer for expenses incurred for prosthesis, orthopedic footwear, cosmetic operations (of the face, artificial eyes, teeth, etc.), and medicines. The amount of compensation is established in accordance with the bills for such services.

In exceptional cases, when the victim requires special devices for moving about, he may request compensation for expenses incurred in connection with the acquisition of a motorized wheelchair or carriage.

Compensation for Harm in the Event of Death

As a result of an accident the victim may die.

Material harm then consists of the fact that persons who depended on the deceased have been deprived of their livelihood which the deceased had provided for them. These persons gain the right to demand compensation for harm from the party responsible for the death.

The law determines the circle of persons who have the right to compensation for harm in the event of death, the terms and amount of such compensation.

In the case of the death of the victim the right to compensation for harm is awarded to those non-able-bodied persons who were the deceased's dependents or who had the right to be supported by the victim until the day of his death as well as any posthumous child of the deceased (Art. 91 of the Funda-

mentals of Civil Legislation). For such rights for the compensation for harm in the case of death of the breadwinner to materialize it is essential that two requirements be met: the dependence on the deceased and the need for his (her) support.

Dependents are considered to be persons who completely depended on the deceased or received from him (her) constant assistance which was the fundamental source of their means of livelihood. If financial assistance was rendered once, episodically, or irregularly, persons receiving such assistance are not considered dependents of the deceased.

"Complete dependence" means that financial assistance rendered by the deceased was the only source of livelihood for these dependents. In this case it is beyond doubt that a given person was a dependent of the deceased. Financial assistance need not be the only source of the dependent's livelihood. A dependent might also receive a pension, stipend, assistance from other relatives, or a small wage or salary. Dependents gain the right to compensation for harm if financial assistance rendered by the deceased was the constant and fundamental source of their livelihood. The question is decided by examining the size of the given individual's various sources of income. Thus, a wife with a wage of 80 roubles per month may be declared a dependent of her husband who received a wage of 380 roubles per month, but if the husband's wage was only 100 roubles per month then the wife would not be considered a dependent.

The status of dependents is also conferred on the persons who were not actually dependents of the deceased, that is, who did not receive any financial as-

sistance from him while he was alive, but had the right to receive support from him before the day of his death. Such persons are also entitled to compensation for damages.

For example, the mother of a minor who lives separately did not apply for alimony payments from the father for some reasons. In the event of the father's death the child has the right to receive compensation for harm inasmuch as he had the right to alimony, although such right had not been realized before the deceased's death.

The child of a deceased victim, born after his death, is included in the category of dependents who have the right to receive compensation for harm.

The right to compensation for damages in the event of the death of the breadwinner does not adhere to all persons who were dependent on the deceased, but only to the non-able-bodied dependents.

According to the Constitution of the USSR citizens have the right to work and are obliged to work conscientiously; evasion of socially useful work is incompatible with the principles of socialist community life.

In accordance with these constitutional provisions, civil law declares that the right to compensation for harm in the event of the death of the breadwinner is granted only to those of his dependents who are disabled and require financial assistance.

Disabled citizens are those citizens who are unable to work due to their age or health, namely, persons under 16 years of age, or, if they are students, under 18 years of age, older than 60 if men, or 55 if women, or invalids of 1st, 2nd, or 3rd groups. A

parent or spouse of the deceased may be granted the privileges of a disabled person if he or she was not employed at the time of the victim's death and was fully occupied with taking care of the deceased's children, brothers, sisters, or grandchildren under the age of 8. Such persons are granted the right to compensation for harm in the minor children's interest.

Disabled dependents of the deceased who have the right to compensation for injury include the deceased's relatives as well as persons who were not related to the deceased, for example, his nanny, *de facto* spouse, or children born out of wedlock, and other needy persons who received financial assistance from the deceased while he was still alive.

The right to compensation for injury in the event of the death of the breadwinner does not belong to persons who were actually dependents of the deceased but who are capable of working.

For example, an able-bodied wife (i.e. under the age of 55 and not considered an invalid), of a deceased victim, having no children under the age of 8, who did not work during her husband's life, i.e. who actually depended on her husband financially while he was alive, does not have the right to claim compensation for damages after his death. She is not considered needy since her health condition, age, and family situation do not prevent her from working and earning her own livelihood.

The compensation for harm in the case of the death of the breadwinner consists of that part of his (her) earnings which every disabled dependent received from him (her) while he (she) was still alive. It is practically impossible to establish precisely what part of the deceased's earnings were spent on each

member of his (her) family individually, and therefore, for the purposes of determining the compensation for injury for each member of the family, it is supposed that each dependent received as equal share of the deceased's earnings.

In the event of the death of the breadwinner compensation for non-able-bodied persons with the right to receive such is calculated from the average earnings of the deceased, deducting that part of his income which he spent on himself and able-bodied dependents who have no right to compensation.

For the calculation of the amount of compensation made to each of those having the right to such, that part of the breadwinner's earnings which was spent on such persons is divided by their number; for each such person the pension for the death of the breadwinner, is deducted from his or her compensation.

Let us note that in such cases the only pensions subject to be taken into account are those received for the death of the breadwinner, other kinds of pensions are not subject to reduction from the total figure. If a dependent is not granted a pension for the death of his breadwinner, the size of the compensation is made equal to that part of the deceased's earnings which were spent on each dependent.

Let us review the procedure for the determination of the amount of compensation in several examples.

The family of a deceased victim consisted of an able-bodied but non-working wife, a son of 3 and a daughter of 8. The average earnings of the deceased was 200 roubles per month. First, that part of the earnings which were spent on each member

of the family, including the deceased, is determined: 200 roubles divided by 4 is 50 roubles per month. Underage children and the wife who takes care of them have the right to receive compensation to the extent of 50 roubles each, thus, in total, 150 roubles. The pension already granted them for the loss of the breadwinner is subtracted from this sum.

The family of a deceased consisted of an able-bodied but non-working wife and two children aged 14 and 19; the average earnings of the deceased were 280 roubles. Accordingly, each member of the family received 70 roubles per month (280 roubles divided by 4), but compensation for harm may be made only to the one minor child, the 14-year-old, to the extent of 70 roubles, with the deduction of the pension he receives for the death of his breadwinner.

A deceased had one dependent— a seven-year-old daughter. Six months after his death, his son was born. The average wage of the deceased was 180 roubles. This amount is divided by 3, and the size of compensation for damages to the daughter and the son will be 60 roubles each minus their pension for the loss of the breadwinner.

Should both parents perish, for example, as a result of an automobile accident, during the determination of the amount of the compensation the total earnings of both parents are taken into account. For example, the husband earned 170 roubles, the wife received 130 roubles; if there are three minor children the compensation awarded each of them is figured to be $170 + 130$ roubles = 300 roubles, 300 roubles divided by 5 = 60 roubles per month minus their pension for the loss of the breadwinner.

Payment of compensation for harm to disabled dependents is granted from the day of the breadwinner's death (and from the day of the birth of the breadwinner's posthumous child) and is continued for the following periods:

—to women older than 55 and men older than 60. for life;

—to minor children until they reach the age of 16 or, if they are still students at that time, until the age of 18;

—to invalids of all groups for the time during which they are disabled and, if they are permanently disabled, for life; if during review of the disability classification the disability is dropped altogether, payment of compensation ceases;

—to one of the parents or the spouse of the deceased, regardless of age or work capability if such person does not work and is fully occupied with taking care of the children, grandchildren, brothers or sisters of the deceased who are under the age of 8, until that time as such children reach the age of eight.

A minor's right to receive compensation in connection with the death of the breadwinner is also retained in the event of future adoption; compensation, granted to a spouse of the deceased, continues to be paid should he or she enter another marriage.

Aside from the financial security offered non-abled dependents, the person responsible for the death of the breadwinner is obliged to make compensation for other expenses related to the accident. All actual expenses concerning the treatment, diet, care of the victim until his (her) death as well as

expenses for his or her funeral are to be reimbursed. The right to the compensation for these sums is granted to those who incurred these expenses, that is, dependents of the deceased and other persons.

**Compensation for Injury
Sustained During an
Attempt to Rescue
Socialist Property**

In the USSR citizens attempt to rescue socialist property from some imminent danger, sometimes even risking their own health in the process.

In accordance with the principle of fairness and in order to impress upon citizens the importance of protecting socialist property, the economic foundation of the Soviet state, the law provides for special care for citizens who have sustained injuries to their health while rescuing socialist property.

According to Art. 95 of the Fundamentals of Civil Legislation, injury sustained by a citizen in rescuing socialist property from impending danger must be compensated by the organization whose property the injured person was in the act of rescuing. Accordingly, there arise between the organization and the victim relations which bear upon the compensation by such injury as is incurred. These relations are in some ways similar to tortious relations already reviewed but in some ways are distinct from them.

The following conditions must be met for the injured party to be entitled to compensation: the victim must perform acts to save socialist property from some impending danger; the injury is sustained by a citizen; the existence of a causal relationship between the former and the latter conditions; the only obligated party for such compensation is the organization (not a private citizen) and the only

subject for such compensation is the private citizen (not a juridical person).

Any state, cooperative, collective-farm or social organization whose property was in danger may be obliged to make compensation for the injury (for example, in the case of a fire, flood, assault, robbery, traffic or industrial accident on masstransit, in a factory, and so forth).

A citizen who has attempted to rescue such property is entitled to compensation for harm connected with injury and disability. The concept of harm in these cases coincides with the definition of harm in tortious obligations.

It is important to note the wording of the law, which refers to "the attempt to rescue", not about the "rescue" of socialist property. This means that rights to compensation for injury are granted to persons who merely attempt to rescue property, whether or not such attempts are successful or produce positive results, whether or not such property, in fact, is rescued.

It does not matter what the source of impending danger threatening the property was, whether due to the fault of the organization itself, the fault of third parties, or due to objective circumstances beyond human control. Thus, fault is not a condition for the obligation to make compensation for harm, especially since the victim himself was taking the risk voluntarily.

The voluntary nature of an act taken to save socialist property is an essential condition for compensation. Citizens who were obliged to take such actions due to the nature of their job, e.g. a watchman, concierge, fireman, and so forth, do not have

the right to receive compensation for injuries incurred during attempted rescue of socialist property. Such persons receive increased pensions for injuries sustained during rescue operations.

Should an employee attempt to save his or her own organization's property, but such rescue operations do not enter into his or her normal work responsibilities (e.g. if he or she were a bookkeeper, chauffeur, machinist, and so forth) then such employee does have the right to compensation for injuries.

In the event of the death of the victim during rescue operations, his or her non-able-bodied dependents are entitled to compensation for harm.

The amount of compensation is calculated according to the same rules applied in tortious obligations, derived from the average wages of the victim, the degree of his disability, taking into account any pensions he receives. Furthermore, expenses associated with treatment, special diets, prosthesis, nursing care by third parties are also reimbursed, as well as damages to property belonging to the victim.

**PROTECTING PERSONAL INTERESTS IN
PROPERTY AND PERTINENT NON-PROPERTY
RELATIONS**

Personal Non-Property Relations Pertinent to Property Relations. Protecting Personal Rights of Authors of Works of Science, Literature, and the Arts. Protecting Personal Rights of Authors of Inventions, Innovative Proposals, Industrial Designs and Discoveries. Protecting Citizens' Personal Welfare and Interests in Property Relations.

We have already explained that civil legislation regulates three different kinds of relations:

property relations,

personal relations pertinent to property relations,
and

personal relations not pertinent to property relations.

Thus far we have reviewed civil regulation and protection of the last category of relations, those that are wholly personal. Now we will acquaint the reader with the protection of two other kinds of relations, but only inasmuch as they are relevant to personal interests of a non-economic nature.

**Personal Non-Property
Relations Pertinent
to Property Relations**

The most important kind of relations included in this category are those which arise in connection with the fruits of some intellectual creative endeavour: works of science, literature, and the arts, inventions, innovative proposals, industrial designs,

and scientific discoveries. Human beings are the creators of these products of the intellect. Human beings also produce material goods which lose their individuality in civil turnover. In contrast to such goods, the products of human creativity do not lose their individuality; on the contrary, they retain their individual character and belong always to a specific person, their creator, the author. A set of relations of property and non-property nature arises between any given author (for purposes of our discussion we use this word to mean any creator, i.e. writer, composer, painter, sculptor, theorist, inventor, and so forth) and other persons.

The author's fundamental property right is the right to be paid for his work, the right to remuneration. The size of remuneration is determined by agreement between the parties, for example, the author of a given book and the publishing house, within the limits of the rates established by a state agency on authors' remuneration, taking into consideration the size and quality of the given work.

We will not review these relations in detail, since they are of an economic rather than a personal (non-economic) nature. In some cases, for example, for the writing of a scientific work as part of one's regular job responsibilities, what the authors receive is not author's remuneration but a salary from the establishment in which they are employed. In this case the copyright is of an exclusively personal, non-property nature.

When we speak of the "results or products of creative endeavour," we have in mind not material objects, but spiritual values. Thus, an individual, having written a book, has the right not to own a copy

of the published book as a material object in civil turnover, i.e. on sale to the general public for a certain sum of money, but the right to be considered the author of this book.

A book, having been purchased in a store, can belong to any or many citizens as personal property, but its author or coauthors can be only that individual or those individuals who wrote it. If an artist sells one of his paintings, the purchaser gains the right to own the painting as a thing, but the painter retains his right to the painting. Books, paintings and other objects which express an individual's creativity may be transferred from person to person, but the author's right to such products of creative endeavour remains with the author: authorship of such works is the personal, spiritual, absolute, and inalienable right of the creator of a work of intellectual creativity.

"Citizens of the USSR, in accordance with the aims of building communism, are guaranteed freedom of scientific, technical, and artistic work. This freedom is ensured by broadening scientific research, encouraging invention and innovation, and developing literature and the arts. The state provides the necessary material conditions for this and support for voluntary societies and unions of workers in the arts, organizes introduction of inventions and innovations in production and other spheres of activity.

"The rights of authors, inventors and innovators are protected by the state". (Constitution of the USSR, Art. 47).

These constitutional provisions are made more specific in the standards of civil legislation and some of the other branches of Soviet law.

**Protecting Personal
Rights of Authors
of Works of Science,
Literature and the Arts**

Copyright law, with its system of legal norms, regulates relations which arise in connection with the creation of works

of science, literature, and the arts. These norms are found in Section IV of the Fundamentals of Civil Legislation of the USSR, in the Union republic civil codes, and in bylaws. They determine the legal objects and subjects of copyrights, their rights, obligations, and the procedure for defending authors' rights.

The law establishes conditions and requirements for the emergence of a copyright.

Copyrights extend to: a) works of science, literature, and the arts; b) which are the product of creative endeavour; c) are expressed in an objective form; d) which permits the reproduction of the work.

The work is a non-material product of creative endeavour which is itself a system, a totality of ideas, thoughts (if a work of science) or a system of ideas, thought and images (if a work of literature or the arts).

Such a work is the product of individual creative effort. The creative nature is expressed in the novelty and individuality of the work; the work's content, form or both are original. A copy of a painting is not an object of a copyright, since copies repeat the content and form of the original, and, accordingly, have no element of creativity. However, for example, a collection of speeches, documents, and so forth does feature elements of creativity in its form.

Ideas, and images exist in people's consciousnesses. They become the object of a copyright only after they have been given objective form which permits others to perceive it as a work of art and reproduce it (without the author's help).

A work may be expressed in various ways: orally (in a report or speech), in writing (in a manuscript or score), or mechanically (on a recording), or in other ways.

For example, an author thinks of an idea for staging a ballet on a particular theme, but this idea is not considered a work of art and is not protected by copyright law while it is still only a thought. However, the realization of this idea on stage or the recording of the ballet composition on a film or paper by means of accepted conventional symbols is an object of copyright.

According to Art. 475 of the Civil Code of the RSFSR, the following works may be copyrighted:

oral works (speeches, lectures, reports, and so forth);

written works (literary, scientific, and so forth);

dramatic works, musical-dramatic and musical works (with or without text);

translations;

scenarios, plot outlines;

motion pictures, films for television, radio and television broadcasts;

choreographic and pantomime works with respect to whose production they are written or other instructions;

paintings, sculptures, works of architecture, graphics, applied decorative arts, illustrations, drawings, and sketches;

plans, sketches and models relevant to the sciences, technology or some dramatic or musical-dramatic stage production;

geographic, geologic and other maps;

photographs and works created photographically or in similar ways;

works of art expressed with the assistance of mechanical or some other technical recording; and other works.

Both published and unpublished works are protected by copyright law, that is, regardless of whether or not these works have been published in the press, publicly performed or demonstrated and so forth.

All creative works are protected by copyright law regardless of their intrinsic, e.g. artistic or literary value. If a work is not considered to be good art its publication is, of course, problematic. Nevertheless, works of poor quality are also protected by copyright law to prevent others from appropriating, reworking or publishing them.

If a work is of one of the categories named above it becomes subject to legal protection. This requires no registration of the work, no determination of its social value by some agency, or the establishment of its originality, priority, or other formal actions.

The law protects works regardless of the time when they were created or the originality of their theme. For example, several works may be created at once or at different times about one historical event or person; these works may be scientific works, novels, paintings, operas, ballets, or motion pictures. It is only significant that each work must be original and may not textually repeat that which was written in another work.

Only one kind of work of art requires a formality: photographs and works of art created with photographic equipment are declared to be copyrighted when the name of their author and the place and year of publication of the work are indicated on each print made.

The subject of the copyright, the author, is the creator of the work.

According to Art. 14 of the Civil Code of the RSFSR any citizen, regardless of his age, may be an author. The rights of authors under 15 years of age are exercised by their parents or trustees.

An author who has created a work within the scope of employment in some scientific organization or any other establishment, is the copyright owner in his work except for the right to remuneration and the procedure for using the work.

Both citizens of the USSR and aliens may be recognized as authors. The copyrights of Soviet citizens are recognized regardless of where their works first appear, on the territory of the USSR or abroad.

Works of foreign authors are protected in the USSR if they were first published or located in some objective form on the territory of the USSR or if they were first published or located in some objective form on the territory of some other state in accordance with international conventions signed by the USSR (Arts. 477-478 of the Civil Code of the RSFSR).

The USSR participates in bilateral copyright agreements with several socialist countries.

On May 27, 1973 the USSR adhered to the Universal (Geneva) Copyright Convention (1952); copyright subsists in works of foreign authors published

after May 27, 1973 in other countries which are signatories to the Geneva Convention.

Copyright to a work created by two or more persons (collective work) are shared by the coauthors.

For a work to be considered the product of the efforts of coauthors it is essential that the nature of each coauthor's work be creative. If someone renders an author technical help, for example, in drawing up schemes, sketches, or editing his work, this person is not considered a coauthor.

Persons who give an author an idea, a theme, or a plot are also not considered coauthors. For example, Pushkin gave Gogol the idea for *Dead Souls*, and Tolstoy's novel *Resurrection* was written according to information recounted by a famous Russian jurist, A. F. Koni. Nevertheless the authors of these ideas did not become coauthors of the written works.

Collective works may consist of parts, each of which is independent (for example, the music and libretto of an opera) or which form one inseparable whole. In the first case each of the coauthors retains his copyright to the part he created and in both cases all creators of a collective work retain the copyright to the work as a whole.

The relations between and/or among coauthors are determined by agreement between and/or among them, and in the absence of such agreement the copyright is exercised by all the coauthors jointly.

A copyright may be inherited by an authors' heirs, but, of course, not in full. Heirs do not inherit the author's name and they do not inherit the right to introduce changes or amendments into a work. The heirs inherit the power to protect an author's name and the inviolability of a work, the right to

publish it and to receive remuneration for such publication.

Copyrights remain in effect during the author's life and 25 years after his death, as of the first of January of the year following the author's death.

An author's heirs are his or her close relatives (heirs by law) as well as other persons according to his or her testament.

Not only private citizens, but also juridical persons (i.e. organizations) and the state may be copyright owners.

Organizations may hold copyrights on publications of collected materials they gather and release, including periodic and one-time collections, encyclopedias, dictionaries, magazines, and scholarly works, motion pictures, and radio and television broadcasts. The copyright to such collections, as collections *per se*, belongs to the organization, while the copyright to individual pieces included in a collection belongs to the individual author or coauthors (the compilers, authors of articles, scenarios, music, stage productions and so forth). Other organizations may not publish the same collected materials without permission from the organization which holds the copyright to the first edition.

Juridical persons, such as publishing houses and theatres, may acquire certain author's rights if they sign a contract with the given author on the publication of his book or the production of his drama, opera or other stage presentation.

Foreign juridical or natural persons may acquire the copyrights to a work written by a Soviet author under a contract with the Soviet author through the offices of the Copyright Agency of the USSR

(VAAP); accordingly, Soviet organizations may acquire the copyrights to a foreign author's work through the offices of VAAP.

Organizations may also acquire copyrights by inheriting them according to the will and testament of their authors.

The state may become the holder of the copyright to a given work in the following circumstances: the declaration of a work to be property of the state; obligatory purchase of the copyright; the state's inheritance of the copyright according to the author's testament; and in the absence of any heirs in the event of the author's death.

When the copyright to a given work expires the work may be declared to be property of the state, according to the decision of the Government of the USSR or the government of Union republic. This usually concerns works of great social significance which require the state's protection; the state takes care of the publication, distribution, and inviolability of the given work.

Obligatory purchase of the copyright to a given work is possible only in exceptional cases, by a special decision of the government, in reference to works which represent significant public interest and if the author or his heirs do not wish to publish the work themselves. The author is not deprived of all of his rights to the work in this case; he loses only his authority to permit publication or the public performance of his work, authority which is transferred to the state.

Authors of scientific, literary and artistic works have personal non-property and property rights. Such authors have the property right to payment

for their work (remuneration). Among their personal non-property rights, such authors have the right of authorship (i.e. the right to be considered the author of a given work), the right to a name, the right to the inviolability of their work, the right to publish, reproduce and distribute their work (Art. 479 of the Civil Code of RSFSR) and the right to authorize translations (Art. 489 of the Civil Code of RSFSR).

Of these rights, the first three belong exclusively to the author; the other rights may be transferred to the author's heirs, juridical persons, or to the state.

All of these rights are derived from one among them, the fundamental author's right, the right of authorship, the right of a work's creator to be recognized by all other persons, organizations, and the state as the author of this work.

On the basis of his right to a name, the author may publish his work with his name indicated on the work, under a pseudonym, or anonymously.

On the basis of his right to the inviolability of his work, the author has the power to forbid other persons from introducing any changes in any parts of the work, whether these changes would alter the name of the author (or his pseudonym), the title of the work, the dedication, foreword, contents, conclusion, and so forth. The author also has the right to forbid changes relevant to the form of his work. Without the author's consent it is forbidden to attach to a work any illustrations, commentaries, forewords, or explanations. Any changes may be made only by the author himself or by other persons with his or her consent.

The author alone has the right to determine if his work is ready to be published or not on the basis of his rights to the publication, reproduction and distribution of his work by any means permissible by law; without his consent his work may not be published, staged in a theatre, cinema, recorded for television or on a record or tape. The author has the same right with respect to the reproduction and distribution of his work, i.e. its reedition, duplication and the retail sale of the copies thereof.

Using an author's work, including its translation into another language, is permissible only on the basis of a written contract with the author or his successors, except as provided for by law. The law specifically defines such circumstances, for example, in the Civil Code of the RSFSR, Arts. 492, 493, and 495.

According to Art. 492 of the Civil Code of the RSFSR, an author's works may be used without his consent and without the payment to him of remuneration:

—for the creation of a new, independent, creative work (e.g. use of a theme for the creation of a new story or poem, creating a painting along the motif of a particular sculpture, and so forth), except the reworking of a narrative work into a drama or scenario and vice versa (in the last examples it is necessary to obtain the author's consent as he or she retains his or her right to remuneration);

—for reproduction in scientific, critical, and academic publications of extracts of the given work, including citations not in excess of one author's signature;

—for newspaper, magazine, cinema, radio, and te-

levision communiques about newly released publications;

—for reproduction of public speeches or reports, and published works in newspapers, motion picture films, radio and television broadcasts and for the broadcasting by radio and television of performed works from the place of their performance;

—for the reproduction (excluding mechanical contact copying) of works of fine arts displayed in public (except exhibitions and museums);

—for reprographic reproduction of printed works for non-profit scientific, educational, scholarly, academic, and instructional purposes;

—for publication in braille for the blind.

According to Art. 495 of the Civil Code of the RSFSR, a work may be used without the author's consent but with payment to him of appropriate remuneration in the following cases:

—public performance of a published work (however, if there is no admission charge, remuneration is paid only in specially established cases);

—recording (on film, disc, magnetic tape, or phonograph records or any other device) of a published work for public reproduction and/or distribution, excluding the use of works for motion pictures, radio and television broadcasts;

—use by a composer of published literary works for the creation of a musical composition with a text; in this case, the author's remuneration is paid by the organization using the new musical work;

—the use of works of the fine arts or a photograph in manufactured products (in such cases indication of the author's name is not obligatory).

Furthermore, according to Art. 493 of the Civil

Code of the RSFSR, it is permitted to use and reproduce a work of art without the author's consent and without payment to him of remuneration in order to satisfy personal demands.

An author, or his assignee may conclude an author's contract with a view to using his work. There are two kinds of author's contracts: an author's contract for the delivery of a work for use and an author's licence contract.

Under an author's licence contract the author grants an organization the right to use the work, including its translation into another language or adaptation, within certain limits and time; the organization also undertakes to use the work in accordance with the contract and to remunerate the author.

Author's contracts for the delivery of a work for use include:

- a publisher's contract—for the publication or republication of a work in the original;

- a staging contract—for public performance of an unpublished work;

- a scenario contract—for the use of an unpublished work in a cinematographic or television film (or broadcast);

- commission—a contract for the creation of a work of fine arts for public display;

- a contract for the use in industry of an unpublished ornamental work;

- other contracts—for the use of a work in any other manner.

There exist standard publication and production author's contracts, as well as other standard authors' contracts. Such standard contracts take into account

the specific variables relevant to each different kind of work and the means of using this work. They specify the conditions to which both parties agree in the contract; the rules of the standard contract are optional. Any change in the standard contract is possible, except changes to the author's disadvantage (as established by law and the given standard contract).

Basically provisions of civil law, as well as of administrative and criminal law defend authors' rights. An author (or his assignee) may demand the restoration of his rights, according to Art. 499 of the Civil Code of the RSFSR, in cases when his personal non-property author's rights have been violated, that is, when his other work has been used without a contract with the author (or the author's assignee) or the conditions of the use of a work without the author's consent have been infringed, or the integrity of the author's work has been violated.

For example, if a work is published without indication of the author's name (or with a distortion of the author's name), or under some other person's name, without the author's consent (or contract), with some distortion of the contents of the work, or with changes unauthorized by the author, the author has the right to request that the court forbid the publication of the work, that the changes be removed or repaired, that the name of the author be published in the press and information be published about the distortions made.

Moreover, an author may demand compensation for losses he suffered and may complain to official agencies about the violation of his copyright so that

the guilty officials are punished as provided for by administrative procedure.

According to Art. 141 of the Criminal Code of the RSFSR, publication of someone else's work under one's own name, whether such work be scientific, literary, musical, or artistic (plagiarism) and any other appropriation of the authorship of someone else's work, or the unlawful reproduction or distribution of such a work as well as compelling someone to be a coauthor against his will, are all offenses punishable by up to one year's deprivation of freedom or by a fine of up to 500 roubles.

**Protecting Personal
Rights of Authors
of Inventions, Innovative
Proposals, Industrial
Designs and
Discoveries**

The norms of law of invention are written into Sections V and VI of the Fundamentals of Civil Legislation and the Civil Codes of the Union Republics

as well as in special normative acts, the Statute on Discoveries, Inventions, and Innovative Proposals of 1973 and the Statute on Industrial Designs of 1981. An *invention* is considered to be any new and significantly different technical solution to a problem in any branch of the national economy, social and cultural sphere, or defense which yields an improvement. From this definition, jurists have derived the following attributes of an invention: it must solve a technical problem; it must be new; it must be significantly different; it must have a positive effect.

A technical solution to a problem is understood to be a solution by technical means in any branch of the economy, not only in industry, but also, for example, in medicine, where one may invent new instruments for treatment.

Accordingly, someone may come up with a new idea which improves on an old one, but if this idea is not of a technical nature, i.e. if it is a suggestion for the management of some organization, the reorganization of work planning, or financing, teaching methods, or methods for raising children, then it is not considered to be an invention.

One of the most important criteria is the requirement that an invention be original. A suggestion is considered original and significantly different, if in its essence it had not been demonstrated to an unspecified number of persons. The invention must be new in the global sense.

The new technical solution to the given problem must yield a positive effect, i.e. be useful, and yield better results as compared with the relevant older prototypes (e.g. an improvement in a product, reduction in the cost of manufacturing the product, higher efficiency, economy of raw and other materials, fuel and so forth). In perspective inventions a positive effect is achieved in the foreseeable future. Proposals which violate the public interest, humanism or morals are not considered to be inventions.

Innovative proposals are technical solutions of problems which are new and useful for an enterprise, organization or establishment to which they are offered. Such solutions may include changes in the design of goods, the technology of production, the application of new technology, or a change in materials used in manufacturing products. Innovative proposals must meet the same requirements as inventions, but the requirements for originality and significance for the innovative proposal are lower.

Among other things, the originality requirement has a local character, as opposed to a global one: the given idea must be new for a particular enterprise, but it could be well known and applied in other enterprises.

A handicraft rendered in a new artistically-technical way which is visually distinct, meets the corresponding requirements of technical aesthetics, promotes its realization by means of manufacturing, and yields a positive effect is considered to be an industrial design.

In Chapter I we spoke about the different procedure for the defense and protection of rights. This difference is also relevant, in particular, in the law of invention.

By itself, the fact of a technical solution of some problem is of no juridical significance as long as this solution is not registered and official documents concerning it are not drawn up and issued. The invention's priority is established on the day a declaration is submitted to the State Committee for Discoveries and Inventions of the USSR Council of Ministers or in the relevant ministry or department; if there is a dispute, from the day a declaration is received by the post office or from the day relevant materials are registered in the given enterprise, establishment, or the USSR Society of Inventors and Rationalizers. If the dates of the priority of the declarations coincide all inventors mentioned in the relevant declarations are deemed coauthors.

The *defense of authors' rights*, when such have been violated or disputed, takes place in administrative or court procedure.

Inventors' rights are protected by issuing to the

inventor or author a certificate or patent (according to the author's choice), certifying that he has been accorded such rights.

An *author's certificate* is a document made out in the name of an author or inventor which certifies that the person named is the inventor of the specified invention (industrial design); the document certifies the inventor's right to preferences and remuneration as stipulated by the law and transfers to the state the exclusive right to the invention. The inventor receives his remuneration and enjoys his preferences, but the invention (industrial design) becomes public property and can be used by any organization without the inventor's permission or consent. Author's certificates are issued by the State Committee for Inventions and Discoveries of the USSR Council of Ministers and is effective perpetually.

Inventors, who are citizens of the USSR, usually prefer this form of safeguarding their rights, the author's certificate.

A *patent* certifies: the recognition of a proposal as an invention, the priority of the inventor, authorship and the exclusive right of the owner of a patent to the invention. No one may use a patented invention without the consent of the patent owner (the inventor, his heirs, or persons to whom the patent has been transferred). Patent owners have the right to license others to use their inventions, granting such licenses for a fee or without one; they may also choose to cede their exclusive patent rights entirely. This is also applicable to the author of an industrial design. Patents on inventions are issued by the State Committee on Inventions and Discoveries of the

Council of Ministers of the USSR for a term of 15 years, and patents on industrial designs for a term of 5 years.

The author has the right to choose either of the two means of protecting his inventor's rights, the author's certificate or the patent. However, if an invention is of special significance for the state, the state may compel the author to sell the patent to the state, according to the decision of the Council of Ministers of the USSR.

The author of an invention does not have the right to obtain a patent if his invention was created in connection with his or her work at a state, cooperative, or social enterprise, on its assignment, or if the author was rendered financial or any other material assistance from such enterprises.

The author of an innovative proposal is given an author's certificate by the enterprise, organization, or ministry which has accepted the proposal.

According to Soviet legislation, persons who have authored an invention or innovative proposal with their own creative efforts, regardless of their age or citizenship, are recognized as the authors of such inventions and innovative proposals.

If a proposal is made by two or more persons, such persons are considered coauthors of the proposal. Persons who render an author technical assistance (the preparation of drawings, diagrams, charts, calculations, documentation, and so forth) are not considered to be coauthors.

An author's heirs inherit only those rights which guarantee financial reward for his or her work (e.g. the right to receive an author's certificate or patent).

Soviet juridical persons may not be considered

inventors, however, they do have certain rights and obligations in this regard. Thus, they have the rights: to use freely any unpatented invention and any innovative proposal without any permission or consent from other parties; to acquire licenses to use patented inventions; to acquire certificates and patents for inventions created in connection with the fulfillment of some work task or assignment; to use an identical technical solution which has not been formalized as an invention, without payment of fees to the inventor if such technical solution had been used before the establishment of the inventor's priority.

The state may also be the subject of the invention law. It has the right to use inventions which have not been patented or inventions whose patents have expired, as well as in instances in which it obliges an inventor to sell his or her patent to the state.

The personal rights of an inventor or an author of an innovative proposal include the right of authorship, the right to an author's name, the right to give a name to the invention, etc.

The right of authorship is the fundamental author's right from which all other rights are derived; this is the author's right to be recognized the unique creator or author of his invention or proposal, according to established legal procedure. This is an inextinguishable and inalienable personal non-property right.

The right to an author's name enables the author to demand that any information published about his invention or innovative proposal in general or in special literature or documentation mention his name.

The author of an invention has the right to give

the invention his or her own name or some special title, which is indicated in the author's certificate and other documents.

Authors whose inventions have been patented and the authors of innovative proposals do not have the right to give a name to their invention or innovative proposal.

Authors may be awarded honorary titles; authors of inventions used by society have the right to enter institutes of higher learning without going through the regular examination process. They have comments about their inventions and innovative proposals written into their work certificates. Authors of inventions who win inventors' contests are given special certificates and medals.

Authors' property rights are related to their personal rights. The fundamental author's property right is the right to remuneration. This right materializes under two conditions: first, that the author is granted an author's certificate for an invention or the certification of an innovative proposal and second, that the invention or innovative proposal is actually put to use in the national economy.

The extent of the financial reward is determined by the sum of savings made by the invention in the course of five years from the date the invention is first introduced, or, in the case of an innovative proposal, in the course of one year since the date it is first applied.

For proposals which do not cause savings and for proposals created as part of the author's regular work assignment authors are awarded lump sums for their efforts.

Inventors, having patented their inventions, rea-

lize their property rights by selling their patents or licenses.

The establishment of some objectively existing principles, properties, or phenomena of the material world, which cause fundamental changes in the level of human knowledge, and which are confirmed by theoretical or experimental calculation, is considered a *discovery*. A discovery is the result of scientific activity, new conclusions, theories or explanations of the real world. State verification and registration of discoveries allows for the establishment of the author's and the state's priority to the discovery and its use in science and technology.

Citizens of the USSR and foreign nationals may be authors or coauthors of discoveries. An application for a discovery is filed with the State Committee for Inventions and Discoveries of the Council of Ministers of the USSR, which, with the agreement of the Academy of Sciences of the USSR, issues the author a special diploma.

The discovery of social life laws is not considered a discovery deserving of legal protection by a special diploma.

The author of a discovery has the right of authorship and priority. However, such an author does not have exclusive rights to the published discovery: such a discovery can be freely developed, supplemented, and used by other persons for scientific purposes. In such cases the author of a discovery has only the right to demand that others note his name in connection with his discovery and that the essence of his discovery not be distorted. Authors of discoveries have the right to name their discoveries as they see fit, with their own name or some

special title; they also have the right to financial reward.

The rights of authors of inventions, innovative proposals, industrial designs and discoveries, as we have already explained, are defended administratively or in court. The choice of these two approaches depends on the character of relations which may arise.

Disputes between the State Committee for Inventions and Discoveries, the management of enterprises, and authors about the qualifications of proposals as inventions (industrial designs) or innovative proposals, or about the priority of an inventor are resolved administratively. Thus, if an author is not satisfied with the refusal of authorities to grant him an author's certificate, patent or a diploma for a discovery, he must apply to the Committee with a well-grounded objection. Objections are reviewed by the state scientific and technical expertise. If the author does not agree with the decision on his objection, he applies to the Control Council of Scientific and Technical Expertise, the decision of which is final.

The court resolves disputes in:

authorship or coauthorship, that is, who is the true creator of an invention, innovative proposal, industrial design or discovery;

coauthorship, that is, about whether the respondent is really the sole author;

priority to an innovative proposal in the event that the author of such does not agree with the decision of this question by the management of the given enterprise;

the distribution of financial reward among coauth-

ors for discoveries, inventions, industrial designs and innovative proposals;

and other disputes, if the law does not indicate that they are to be resolved administratively.

Let us examine some examples.

Constructor S. brought suit (in the city of Gorky) against Ya. and L. for the authorship of an invention, claiming that he worked out the technical solution which was declared an invention and that the respondents had taken his idea. Having reviewed the materials of the case, the court found for the respondents, declaring that S. did not participate in working out the invention which was created by the respondents (the reader should keep in mind, that the given technical solution had been previously recognized as an invention by the Committee for Inventions and Discoveries; without such recognition the court would not have been competent to review this dispute).

In the city of Ivanovo, R. and K. appealed to the court with the request that it recognized them co-authors of an invention for which V. was granted an author's certificate. The court established that plaintiffs had participated in the creative, not technical, process of working out the invention, and declared them to be coauthors.

Some disputes may be resolved in court only after they have been reviewed administratively. For instance, disputes about innovative proposals concerning priority, financial reward, the procedure for the calculation and payment of such rewards are all subject to such preliminary administrative review.

Authors' rights are also defended by criminal law.

According to Art. 141 of the Criminal Code of the RSFSR, public announcement of an invention before it has been submitted without the inventor's consent, appropriation of authorship to an invention or an innovative proposal and compelling someone to be a coauthor of an invention are all criminal offenses, punishable by deprivation of freedom, corrective labor for one year, or a fine of up to five hundred roubles.

**Protecting Citizens'
Personal Welfare and
Interests in Property
Relations**

The legal protection of citizens' non-property rights is not limited to non-economic relations.

Such protection also applies to other, traditionally property relations, such as those that arise, for example, from purchase-sale agreements, lease of housing, commissions, and inheritance.

Thus, the rule governing the exchange of manufactured goods purchased in retail stores stipulate the consumer's right to exchange not only poor quality goods, but also quality outer sewn and woven garments, headwear, footwear, textile piece goods, women's purses, if such goods do not fit or become the consumer for some reason or another. Goods may be exchanged within fourteen days of the date of purchase if they are still in the condition in which they were sold.

In such cases it is not only the property interests of citizens that are taken into account, for they were not violated, because the purchased item was of good quality, but the esthetic and other tastes of the consumer.

A lease of housing agreement gives rise to property

relations, for the most part; however, the standards which regulate these relations in many cases protect citizens' personal non-property interests as well. For example, the right to use housing adheres to the tenant even when he or she is absent from such quarters for a long time (having left for another location for studies or treatment). If the tenant systematically violates the rules of socialist community life, making it impossible for relatives or neighbors to live with him or her in one apartment or building, such tenant may be forced to move by the court without being offered other living quarters. Citizens who suffer from serious chronic illnesses and citizens whose work is of a special nature have the right to supplementary living space of 10 square meters or a separate room.

Some civil law property contracts are concluded on the basis of citizens' private relations, such as contracts of bestowal, permission to use property gratuitously (loan contracts), and the granting of power of attorney to another citizen to manage personal and property affairs (contract of commission), among others.

Aside from rules already mentioned, there is a special general standard, stipulated by the civil codes of the Union republics, which obligates a debtor to pay a fine or penalty if he (she) fails to repay his or her debt in cases provided by the law; however, if the size of the fine is too high in comparison with the creditor's losses, the court may reduce the fine. The court must take into consideration the degree to which the debtor has fulfilled his obligations, the financial status of both parties, and not only property interests, but all other interests of the

creditor which are deserving of the court's attention and respect.

Thus, the law regards any other property personal interests of the two parties in obligation relations to be interests deserving of the court's attention and respect.

The provisions of the law of succession, written into Section VII of the Fundamentals of Civil Legislation of the USSR and the Union republican civil codes, were designed with citizens' personal interests and their protection in mind.

In the USSR inheritance may be effected by the operation of the law or according to the deceased's last will. Every citizen may leave his property or a part thereof by will to one or several private citizens, to the state, or to state, cooperative or social organizations, at his discretion.

In the freedom to make up one's will and testament, that is, the freedom to choose one's heirs and dispose of one's property in the event of one's death, there lies an expression of the freedom of the private citizen's discretion on the basis of his or her personal interests.

The law establishes limits on the freedom to draw up one's own will only in relation to personal and family relations: minors and non-able-bodied children, parents, spouse and dependents of the deceased may not be completely deprived of their right of inheritance according to the deceased's will. In all cases they receive not less than two thirds of that which would have been due to each of them under inheritance by law (if there were no will).

Inheritance by law applies in those cases when the deceased did not leave a testament. In such a case

the closest relatives of the deceased become his heirs.

According to the law, children (including adopted children), spouses and parents (including foster parents) of the deceased, including children of the deceased born after his death, are heirs of the first class. All such heirs inherit the deceased's property in equal shares.

If there are no such heirs, if they refuse to accept their inheritance, or if they are disinherited by the testator, then secondary class relatives—brothers and sisters and grandparents (both maternal and paternal)—of the deceased become his heirs.

The law also includes among the deceased's heirs by operation of the law any non-able-bodied dependents of the deceased, regardless of whether such dependents were or were not related to the deceased, as long as such persons were dependent on the deceased for not less than one year. Such dependents are entitled to the same inheritance rights as heirs of that class upon whom the estate devolves.

Grandchildren and great-grandchildren of the deceased become his heirs under the law if by the time of the opening of succession the parent of such grandchildren and great-grandchildren, who himself would have been a lawful heir of the deceased, is no longer alive. Such grandchildren and great-grandchildren then inherit in equal shares that which their deceased parent would have inherited.

If an heir designated by the law dies after the opening of the succession without having accepted the inheritance within the established time limit of

six months, the right to his inheritance is transferred to his heirs.

Thus, citizens' private interests, their feelings for their relatives, their sympathies and antipathies, and their attachments are all taken into account during the process of inheritance. With these interests and feelings in mind, citizens may freely bequeath any property to any person they wish or deprive any person of inheritance, changing or cancelling their testaments at any time.

If a person has not drawn up a will it may be presumed that his (her) interests and will fully coincided with the inheritance procedures as determined by the law.

The interests of the testator, moreover, are protected by special standards about unworthy heirs: they do not have the right to inherit by the law or according to the testator's will. Such persons are considered to be those whose unlawful actions were committed against the testator, against one of his heirs, or against the last will of the testator, as expressed in his or her testament, when such actions caused these persons to become testator's heirs, if such circumstances can be proven in court. Parents deprived of parental rights may not inherit from their children according to the law. Moreover, parents and adult children who maliciously evaded their duty to support the testator are also not entitled to inherit, if such circumstances can be proven in court.

Thus, inheritance as a legal relation involving the transfer of property is based on and closely related to the moral principles of society and the personal interests of individual citizens.

CHAPTER VI

PROTECTION OF PERSONAL INTERESTS BY FAMILY LEGISLATION

The Conditions for Contracting a Marriage. Invalidation of a Marriage. Establishing Children's Parentage. Adoption. Personal Legal Relations Between Parents and Children. Deprivation of Parental Rights. Personal Legal Relations Between Spouses. Personal Non-Property Relations Between Other Members of the Family. Dissolution of Marriage. Family Property Relations Pertinent to Personal Relations. Alimony and Child Support: Rights and Duties.

Soviet family law is a system of legal norms which regulate family relations, that is the personal and derivative property relations which arise between and among persons due to marriage, blood relationship, adoption, guardianship and trusteeship.

Soviet juridical theory, legislation and legal practice all firmly consider that Soviet family law is not part of civil law, but is an independent and separate branch of law, part of the system of Soviet law and legislation.

Family relations are regulated by special laws: the Fundamentals of Legislation of the USSR and the Union Republics on Marriage and the Family of 1968,⁹ the Union Republican Codes on Marriage

⁹ *Gazette of the Supreme Soviet of the USSR*, No. 27, 1968, Item 241.

and the Family (CMF), and other normative acts.

The separation of the legal regulation of family relations into an independent branch of law and legislation is based precisely on the most important distinction of these relations, their personal and spiritual nature which determines the essence and content of family rights and obligations. Family property relations are derived from and subordinate to family personal relations which are the main ones.

Thus, according to Soviet law, a marriage is considered to be a legally formalized free and voluntary union between a man and a woman, and not a civil law property transaction between two partners.

The Soviet family has spiritual functions which take into account both the interests of the family members and of society as a whole. The family's functions are: reproduction; providing for the child, helping the child develop spiritually and physically; raising and teaching the child; satisfying the demands of spiritual socialization, and providing moral support to close relatives. On the basis of these, personal functions of the family, it runs a household and provides material assistance to all its members.

Thus, entering a marriage, dissolving a marriage, the relations between spouses, parents, children and other family members are first and foremost personal relations based on the family's spiritual interests and needs.

Let us review these relations, the legal conditions for them to arise, and the personal rights and duties of family members.

**The Conditions for
Contracting a Marriage**

Marriage is contracted between a man and a woman on moral grounds: mutual love, respect, and friendship between them.

In order for two parties to marry, a number of conditions, stipulated in Arts. 10 and 15 of the Fundamentals of Family Legislation, must be met. The first of these is the *mutual consent of persons entering into marriage*.

The Constitution of the USSR, which has proclaimed equal rights for men and women, guarantees the freedom and voluntary nature of marriage. Neither parents nor other parties may compel a person to marry or force him or her not to do so.

Forcing a woman to marry against her will or preventing her from marrying when she so chooses are criminal offenses. Forced marriages are declared null and void. The purchase or ransom of brides by parents or other persons is also a criminal offense.

However, criminal responsibility for the violation of laws on contracting marriage is applied only in those republics, autonomous regions, and localities of the USSR, where such practices are remnants of local pre-revolutionary customs. Such violations in other localities are not punishable by criminal law, but the courts merely invalidate such marriages.

Only *persons with active civil capacity* may marry. If even one of the persons to be married suffers from mental illness or feeble-mindedness the marriage is declared invalid. This prohibition is derived from the principle of the freedom of marriage, according to which parties agree to marry by their own free will. As for the mentally ill, they have neither will nor consciousness.

According to the same reasons a marriage involving a person temporarily incapable of understanding the significance of his actions (for example, a person under the influence of alcohol or narcotics, or a very ill person) cannot be legally registered, even though this person has not been declared by the court to be lacking active civil capacity.

The third condition for marriage is the observance of the *principle of monogamy*. Neither men nor women have the right to enter a new marriage if they are still in another legally registered marriage. A new marriage is permissible by law only after the death of the spouse, the dissolution of the previous marriage, or the annulment of this marriage according to established legal procedure.

Bigamy and polygamy are criminally punishable and entail the annulment of the second marriage.

The next legal condition for marriage is that *both parties must be of marriageable age*, i.e. they must have reached their majority, that is, 18 years of age. In the Ukrainian and Uzbek republics women may marry legally at 17 years of age. The conclusion of a marriage with a person who has not reached his or her majority is a criminal offense; such marriages are declared null and void.

The law provides for the possibility of lowering the marriageable age but not by more than two years. Questions concerning lowering the marriageable age are usually decided by the executive committee of the regional or city Soviet of People's Deputies, especially in those cases when minors have already had marital relations and/or have started a family (i.e. have had children).

Citizens who have been permitted to marry before reaching the legal marriageable age gain full active civil capacity and may exercise their personal and property rights and obligations independently and without representatives speaking on their behalf. The law establishes only a minimum age for entering into a marriage, but does not limit the maximum age and does not establish any legal difference in age for persons entering into a marriage.

Another condition for marriage is the *absence of close blood relations between the marrying persons*. Marriage of persons with direct ascendant or descendant blood relationship (daughter, father, grandfather, or mother, son, grandson), between full brothers and sisters (who have the same parents) and between half-brothers and half-sisters (having one common parent) is forbidden by law. This prohibition is grounded on ethics and biology. The marriage of close blood relatives is not permitted by traditional moral and ethical principles and often leads to unfortunate biological consequences: inherited illnesses, physical defects, and mental retardation in the children of such marriages.

Marriage of foster parents to their adopted children is also forbidden since their relations are equivalent to relations between biological parents and children.

Other relations between parties wishing to marry pose no obstacle to marriage (for example, the marriage of cousins or of an uncle and his niece are both permissible by law).

A marriage is considered to have been contracted if it *has been registered in the State Registrar's Office (SRO)*, departments of which are in the execu-

tive committees of rural, regional, and city Soviets of People's Deputies.

Religious and other marriage rituals are not forbidden by law, but they have no legal significance. This rule does not affect marriages concluded before the establishment or restoration of the State Registrar's Office, specifically, during the period of the Civil War of 1917-1920, and marriages concluded according to religious rituals on territories temporarily occupied during the Great Patriotic War of 1941-1945 against Nazi Germany, provided that such marriages were later registered in the State Registrar's Office.

De facto marital relations are not forbidden by law and are not prosecutable offenses, but the law does not accord them any juridical significance. Thus, persons living together are not considered spouses; they do not inherit one after the other according to the law; the relations between a child and his actual father are not considered to be paternal in this case; a child born out of wedlock bears the mother's surname even though it has the right to receive child support from its father; the law does not provide for inheritance after the death of the actual, but unregistered, father of children.

Marriages between Soviet citizens and aliens and marriages between aliens concluded on the territory of the USSR are concluded according to Soviet law, that is, with the observance of all the requirements listed above.

Foreign nationals living in the USSR may marry in embassies or consulates representing their states on the territory of the USSR and according to the laws of their states. The USSR also recognizes as

valid marriages concluded beyond the boundaries of the USSR according to the laws of the country where the marriage was concluded, even if the conditions of the conclusion of the marriage vary from the legislation of the USSR.

It is important to note that, aside from those conditions named above, the law establishes no other limits on concluding a marriage. In particular, national, race, religious, property and other such reasons cannot be obstacles to marriage.

Invalidation of a Marriage Violation of the conditions for marriage established by law causes a marriage to be declared invalid by the court.

Sometimes a marriage is concluded in the violation of the law on monogamy.

For example, M. registered his marriage with Sh., hiding from her and the SRO the fact that his earlier marriage with V. had still not been dissolved. The court invalidated M.'s marriage with Sh.

These days one almost never finds instances of the violation of the voluntary will rule for marriage, such as kidnapping or threatening. However, one does find cases of "fictitious marriages", when one or both parties to a marriage register(s) the marriage without real marital intentions, not intending to raise a family. People enter into fictitious marriages for some personal profit such as the right to a pension, or to be registered in the other spouse's apartment or home.

Having established the violation of the conditions for contracting a marriage, the court is not obliged in all cases to invalidate the given marriage. It may decide to take the specific circumstances of each

case into account, bearing in mind the interests of the society as a whole, the spouses in question, and their children. Specifically, the court is not obliged to declare a marriage invalid if, at the time the case is being heard, the obstacles to the legality of the marriage have ceased to exist as such.

For example, the court refused to invalidate I.'s marriage with the minor E., since, at the time the case was being heard, E. had already turned 18 and had had a child. Declaring the marriage invalid would contradict the interests of the family I. and E. had begun to raise.

The marriage of K. and L. was not declared invalid, even though the marriage had been concluded in violation of the law of monogamy. At the time the court reviewed the case, K. had already divorced his previous spouse.

If parties entering a fictitious marriage later form a family, raise children, and make a household, their marriage, too, may be declared valid.

Circumstances such as close blood relationships cannot change later and, accordingly, any marriages formed between two close blood relations must be declared invalid.

The court's invalidation of a marriage annuls the rights and duties of both spouses to each other retroactively, i.e. from the moment the unlawful marriage was concluded. Consequently, an unlawful marriage cannot give rise to personal and property rights to persons who concluded such a marriage. Such persons do not have the right to bear the surname of their spouse, to alimony inheritance, or the right to receive pensions, etc.

The law establishes an exception to this general

rule for the *bona fide* spouse. Thus, if only one of the spouses knows about the obstacles preventing marriage at the time such a marriage is contracted, the other, the *bona fide* spouse, in the event the court invalidates the marriage, is entitled to retain the surname of the first spouse. If the *bona fide* spouse is non-able-bodied, he or she is entitled to maintenance payments from the guilty spouse; if the *bona fide* spouse is a woman, she has the right to receive alimony during her pregnancy and the first year after the child's birth.

Invalidation of a marriage does not affect the legal status of children born or conceived in this marriage: the children retain the same rights as children born in wedlock, including the right to receive child support.

A marriage is considered to be non-feasant if the marriage registration rules were violated (for example, if the marriage is registered in the absence of one of the spouses or with other persons' documents) or if it is not registered in the SRO. For example, a marriage contracted according to religious rites is not recognized by law; but if it is later registered in the SRO, in the absence of obstacles for its conclusion, it will be recognized as valid.

Establishing Children's Parentage Parents' and children's personal and property rights and duties arise from the establishment of the children's parentage. The parentage of a child becomes a juridical fact when certified by the SRO.

A woman is declared to be the mother of a child according to a certificate of the medical establishment where she gave birth, and, in rare instances,

when a woman gives birth elsewhere on the basis of written confirmation from witnesses. Registration of the birth of a child in the SRO officially certifies maternity.

The paternity of a child is established differently, according to whether or not the mother of the child is legally married.

If the parents of the child are legally married the child is registered by the SRO in the names of the mother and her husband on the basis of the certificate from the medical establishment and the marriage certificate. In such cases it is presumed that the child was born to the woman and her husband. This presumption may be disputed by either of the spouses by officially requesting the court to invalidate the registration of the child's father (or mother). Such a request must be made within one year of the time when the spouse first learned or should have learned of this registration.

The parentage of a child born to parents not married to each other is established by the submission of a joint declaration of the child's father and mother to the SRO. On the grounds of the parents' free and willing declaration that they are the child's parents, the State Registrar's Office registers the child's birth and issues the parents a birth certificate which indicates the child's father's and mother's name, patronymic, and surname.

A child's paternity may be established in court if the child is born out of wedlock and if no joint declaration should be submitted to the SRO.

The mother, guardian, or trustee of a child, a person upon whom the child is dependent, or the child himself when he has attained his majority,

may request the court to declare a certain citizen to be the child's father.

Keeping in mind the difficulty of establishing paternity when a man denies it, the law, in Art. 16 of the Fundamentals on Marriage and the Family, indicates what evidence the court must review, in paternity cases. While establishing paternity, the court takes into account the cohabitation and the running of joint household by the mother and the respondent prior to the birth of the child, or the joint upbringing or maintenance of the child by the two, or evidence authentically proving the recognition by the respondent of his paternity.

Cohabitation and running a joint household by the child's mother and the respondent before the child's birth may be proven by circumstances characteristic of family relations: of the two persons living in one household, eating together, taking care of one another, acquiring property for mutual use and enjoyment and/or for the child.

A child may be raised by both parents when it lives with both of them or when it lives with one and is regularly visited by the other who attends to and cares for the child as a parent.

The mother and respondent are considered to be jointly supporting the child if the latter depends on both of them or the respondent renders regular assistance in the child's maintenance.

All these facts may be confirmed with various documents and witnesses' evidence. The establishment of just one of these facts may be evidence of the nature of the relationship between the child's mother and the respondent.

The absence of any of the relations named above

between the mother and the respondent is no obstacle to the court's finding that the respondent is, indeed, the child's father, if there is other evidence to prove this. In other words, documents in which the respondent admits that he is the father of the child in question may be sufficient evidence. The respondent may have written such documents to an official body (kindergarten, school, or housing agency); he may have admitted paternity in a form for some other official purpose or in a private letter. If the respondent denies the validity of all evidence brought to court against him the court may order medical tests.

After the court has exhaustively examined all evidences relevant to a paternity case it finds for the plaintiff (mother) or the respondent, that is, declaring the respondent the child's father or not the child's father. If the mother's suit is satisfied, the respondent is declared to be the child's father and information about him is recorded in the court register (name, patronymic, surname). The court's decision serves as the basis for the appropriate entry in the SRO's registry. There arise personal and property rights and obligations between the child and its father.

Should the court find for the respondent, that is, declare that he is not the child's father, the mother receives from the state an allowance for support of the child and enjoys a number of privileges and discounts.

A child's nationality is determined by the nationality of its parents. If the parents are of different nationality the child may choose the nationality of one of his parents when he or she reaches 16 years

of age (at which time he is issued a passport of the citizen of the USSR).

Adoption

Adoption gives rise to personal and property relations between a child and other persons; as a result of legal adoption between the adoptive parent (and his or her relatives) and the adopted child (and its relatives) there arise the very same rights and duties which arise between biological parents, their children, and other relatives. Accordingly, when a citizen adopts a child, the very same rights and duties arise between them as exist between the biological parent (s) and child (ren). Adoptees have the same rights as biological children.

Adoption is arranged by special decision of the local Soviet of People's Deputies at the request of the adoptive parent(s).

Only minors may be adopted and they may be adopted only in their best interests. Only persons who have attained their majority and who have not been deprived of parental rights may adopt children.

If an adopted child has living parents (or one living parent), their consent is required for adoption, unless the court has deprived them of parental rights, declared them to be lacking active civil capacity or persons missing or, in exceptional cases, if they refuse to raise or support their child. If only one spouse is adopting a child, the other spouse's consent for adoption is required. If the adopted child is 10 or more years of age his consent to the adoption is required. At the request of the adoptive parent, the child may be given a new surname and patronymic. The law protects the confidentiality of adoption.

If adoption contradicts the interests of the child it may be invalidated in a court procedure.

**Personal Legal Relations
Between Parents
and Children**

The law obliges parents to raise their children in the spirit of the moral code of Soviet society, to take care of their physical development, to encourage them in their studies, and to help them prepare for socially productive activity. The law also obliges parents to defend the rights and interests of their children (Art. 18 of the Fundamentals on Marriage and Family Legislation).

Thus, the following are the personal rights of parents, with respect to their minor children: the right to raise them, to defend their interests, and the right to name them as they are born (given name, patronymic, and surname).

All these personal non-property rights are simultaneously duties for both parents of every child. They reflect the interests of the children, the parents, and society itself. Such rights and duties have a term; they arise at the moment of the child's birth and expire when he or she attains his or her majority (at age 18).

As we have noted above, a child's birth is registered in the SRO. At this point, parents name the child according to their own wishes and discretion. The child's patronymic is formed in accordance with the given name of the child's father and the child's surname is determined by the common surname of the parents or if the parents have different surnames, one of the surnames of the parents according to their wishes. If a child is born out of wedlock, its surname is the same as its mother's; the

child's name and patronymic are chosen at the mother's discretion.

Parents have the right and duty to defend the interests of their underage children. This right and duty is established by law and, therefore, parents are the legal representatives of their children. In order to represent their children, parents need no powers of attorney nor do they need any special decision of any official agency.

Parents speak on behalf of their minor children in all establishments, including the courts, defending their personal and property interests. The right to defend a child's interests is a personal right which exists regardless of whether the interests being defended are property or non-property. (We have already spoken about legal representation in Chapter I; for more on the defense of children's honor and dignity see Chapter II).

One of the most important of parents' rights is the right and duty to raise their children, to influence their children's mentality, psychological make-up in order to help them develop the social and moral qualities necessary for the conscious members of a socialist society.

The parental right to raise one's own child is realized by making decisions essential for forming the child's personality. This right is ensured by direct contact with the child, the possibility of living with the child and personally influencing and controlling its behavior.

The right to raise a child includes the parents' right to send it to school (which is, simultaneously, a parental duty) or to give the child to the full-time care of a state establishment for its education and

upbringing. For example, a single mother may send her child to a child-welfare agency.

A parent who does not live with his or her child still retains the right to raise his child and to socialize with it. This is the case, for example, with divorced parents of a child living with one of the parents.

Parents' rights to personally supervise the raising of their child are guaranteed by securing them the right, by law, to demand that persons unlawfully holding their children be forced by the court to return such children to their lawful parents on the basis of the law or the court's decision.

Let us remind the reader that adopted children have the same rights as biological children in such matters.

The mother and father of a given child have equal rights and duties with respect to their child and realize such rights and duties by coming to agreement with each other, including those cases in which parents have dissolved their marriage. If parents cannot agree on a particular issue or question, disputes between them are resolved by a trusteeship or guardianship body.

The sharpest dispute which arises between parents is usually that of with whom the child will live. If such a dispute arises in court during the dissolution of a marriage the court, while dissolving the marriage, simultaneously announces its decision in this matter. However, this dispute can arise without the attendant dissolution of the marriage in question if, for some reasons, parents do not live together. The court also has the authority to decide this dispute.

Since parents have equal rights, the court makes

its decision largely in the child's interests. The court takes into account which parent takes better care of and pays more attention to the child, the age of the child, its attachment to each of the parents, their personal qualities, and the potential for creating a home environment with the appropriate conditions for raising a child. The court does not allow financial factors—if one of the parents has a greater income or better living conditions than the other—to be decisive in resolving the dispute.

The court may take into consideration the wishes of a child aged 10 or older to live with one of its parents; in such cases the child is not summoned to give witness in court, but its opinion is recorded with the assistance of representatives of trusteeship and guardianship agencies, school teachers, and others concerned with its upbringing.

During the divorce case of V. vs. V. in the city of Kishinev, the People's Court decided to place the couple's four-year-old daughter with her father and their two-year-old daughter with her mother. The decision was overruled by a higher court which decided that the lower court had not thoroughly reviewed the circumstances of the case and did not take the interests of the children into account. Specifically, the lower court had not solicited the opinion of trusteeship and guardianship agencies on the advisability of forcibly parting the sisters; moreover, it did not take into consideration the fact that the children's father did not have his own living quarters and lived in a hostel. The case was returned to the lower court for another hearing.

A Baku People's Court found for plaintiff B., the father of two children, in his suit for custody of his

two children. The court records indicate only that the father earned 200 roubles per month and the mother 90 roubles. The court's decision was repealed and the case was returned for a new hearing to the court, since the people's court paid attention only to financial factors, rather than the personal qualities of each of the parents and their attitude to their children. It was clear from the court records that the father abused alcohol and did not care for his children.

Deprivation of Parental Rights

The law provides parents with rights and duties to raise their children,

but these rights and duties are also established in the children's and in society's interest. The state, therefore, protects these interests and tries to ensure that parents use their rights and fulfill their duties appropriately.

Should a parent behave incorrectly, the law, in the last resort, provides for the deprivation of parental rights.

According to Art. 19 of the Fundamentals of Legislation on Marriage and the Family, parents, or one parent, may be deprived of parental rights, if it is established that they have neglected their duties in raising their children or abusing their parental rights, maltreated their children, exerted bad influence on the children with their immoral, antisocial behavior, or if the parents are chronic alcoholics or drug addicts.

The law considers that parents neglect their duties when they do not care about the moral and physical development of their children, prevent their children from studying and/or participating in so-

cial or scholastic life, or force their children to beg or to commit crimes, etc.

“Maltreatment of children” includes physical or psychological violence, beatings, and other inadmissible approaches to child-raising which batter a human dignity.

The law establishes general conditions for the deprivation of parental rights and the court in each case decides whether to apply this sanction, paying maximum attention to the interests of the children and their parents, keeping in mind the seriousness of such a punishment for the parents.

A People's Court of the Chelyabinsk Region, in the case of the deprivation of the parental rights of the spouses S., established that they abused alcohol and did not bring up their children, who often went hungry and unsupervised. In such circumstances, the court could decide to deprive the couple of their parental rights; however, keeping in view the fact that the parents changed their ways after the case had been brought to court, promising to fulfill their parental duties in the future, the court found it possible to limit itself to a warning to the couple that if they returned to their former lifestyle, they would be deprived of their parental rights.

Deprivation of parental rights is permissible only on grounds listed specifically in Art. 19 of the Fundamentals of Legislation on Marriage and the Family; this list is exhaustive and is not subject to broad interpretation.

An Ashkhabad people's court deprived G. of her parental rights with respect to her son. It had been established that after G. had divorced her husband, her son had expressed his wish to live with his fa-

ther; after this G. took to drinking. The regional (higher) court overruled the people's court's decision, since there was no reference in the court's records indicating that G. had been declared a chronic alcoholic (this is one of the criteria for the deprivation of parental rights according to the rules stipulated in Art. 19 of the Fundamentals of Legislation on Marriage and the Family).

Deprivation of parental rights means that a parent (or parents) loses all rights based on his or her or their parentage of a child, including the right to raise the child, the right to demand the child's custody, the right to give or withhold consent for the child's adoption, the right to represent the child's interests, and other such rights. Persons deprived of parental rights also lose the right to receive material assistance from their children after the latter attain their majority. However, persons deprived of parental rights are not relieved of their duty to provide financial support for their children.

At the request of parents deprived of their parental rights, trusteeship and guardianship agencies may permit parents to see their children, provided that such visitation does not harm the children. Permission may be granted only to visit the children, not to raise them.

If one parent is deprived of parental rights, custody of the children is turned over to the other parent. If both parents are deprived of parental rights, the child is turned over to trusteeship and guardianship agencies which find a trustee or guardian for the child or place it in a children's establishment.

Only a court may deprive parents of parental rights. It may decide to do so in a criminal case

while indicting the parents or in a civil legal procedure when a pertinent application is filed with the court.

One of a child's parents, state or social bodies and organizations, trustees, guardians and/or the procurator may apply to the court for the deprivation of parental rights.

The deprivation of parental rights is perpetual. However parents, once deprived of parental rights, may request the court to restore these rights. Such a request may be made by a parent deprived of parental rights or a procurator. The court grants the request if such is found to be in the interests of the children involved, when the factors which forced the court to deprive said parent of his or her parental rights are no longer a cause for the court's concern. However, such restoration is impossible if the children involved have already been adopted by other persons.

Deprivation of parental rights is used in the children's interests, at the same time such deprivation punishes guilty parents.

Sometimes the children's interests require that they be separated from their parents or from one of them regardless of any guilt on the latter's part. In such a case, the court may *choose to remove the child* and hand it over to a trusteeship and guardianship body regardless of the deprivation of the parental rights. Consequently, should there exist approximately any of the conditions for deprivation of parental rights, the court need not take this extreme measure, but may choose to remove the child from its parent or parents. The parents are then not deprived of all parental rights, but of some of them.

Specifically, they lose the right to raise their children.

In other cases, a child may be removed from its innocent parents if it is established that they suffer from some kind of mental illness, making cohabitation with them dangerous for the child.

If grounds for removing a child from its parents cease to exist, the parents themselves, or a procurator may file suit for the return of the child to its parents' custody on the basis of the child's own interests.

Personal Legal Relations Between Spouses

Personal relations between spouses are the essence of a marriage between them. Some of these relations are regulated by law and others by moral standards, but all are closely connected. Personal relations between spouses are based on the full equality of man and woman.

Personal non-property relations between spouses include: the right to choose a surname when entering or dissolving a marriage; the right to decide jointly all questions concerning the family's life; the right to choose freely one's occupation, trade or profession, and place of residence; the right to withhold or grant one's consent for the adoption of a child by the other spouse; and the right to dissolve the marriage, among other rights.

When spouses enter into a marriage they each have the right to choose the surname of one of the spouses as their common surname or each spouse may keep his or her pre-marriage surname. The Byelorussian, Uzbek, and Azerbaijan republican family codes permit couples to adopt double, hyphenated surnames. Spouses' given names and patronymics do not change as they enter into a marriage.

As we have already noted, when a marriage is annulled, former spouses may return to their pre-marriage surnames.

Spouses jointly decide questions of their family life: they agree on the running of the household, the raising of the children, the determination of the family's place of residence or the place of residence of one of the spouses. Neither of the spouses has the right to determine these questions single-handedly, they are decided upon mutual agreement, in the family's interests.

If spouses cannot reach an agreement on some or another issue each of them may apply to an appropriate agency for mediation. Thus, trusteeship and guardianship bodies of Soviets of People's Deputies help solve spouses' disagreements which concern the raising of their children. People's Courts decide disputes arising in connection with choosing a place of residence and raising a child if the spouses do not live together, and any disputes concerning property. Should the spouses so desire they may appeal to a comrades' court for mediation of a conflict.

Neither state nor social bodies decide disputes involving the choice of a surname, place of residence, trade, profession or occupation. Such questions can only be solved by the spouses themselves; if the spouses fail to agree, each of them may independently choose for him- or herself the trade or profession, place of work and residence.

As a rule, spouses live together, but there are instances when, in connection with a transfer to another job in another locality, one spouse moves there and they live separately for some time. In such cases, the other spouse is not obliged to follow against

his or her will; nor does such spouse have the right to prevent his or her spouse from moving to another place.

**Personal Non-Property
Relations Between Other
Members of the Family**

Within the family various relations exist between grandchildren and their grandparents, between brothers and sisters, between stepparents and their stepchildren, between guardians or trustees and their wards.

When a husband and wife live together with the parents of one of them there arise relations between grandparents and grandchildren with respect to supervision of the grandchildren by their grandparents. Such relations have practical, but no juridical significance.

In those cases when, for instance, a child's parents have died or live separately from children or from one another (e.g. when divorced), they may entrust the child to its grandparents. In this case there arise juridical relations between grandparents and grandchildren, specifically, the right and duties to raise the grandchildren.

In all cases the law guarantees grandparents the right to visit with their minor grandchildren. In practice, such contact takes place in the absolute majority of cases. Should parents refuse to permit such visitation, trusteeship and guardianship agencies may oblige parents to permit grandparents to visit their grandchildren, if such is not harmful to the grandchildren.

Parents have the right to demand that their children be returned to them should grandparents detain their grandchildren.

De facto personal relations also arise between a stepchild and a stepparent with whom a parent raises and maintains the child. Should a child's parent die, the stepparent may be named as the child's trustee. The same *de facto* and juridical personal non-property relations arise between minor brothers and sisters and other members of the family.

Many children were orphaned in the USSR during and immediately after the Great Patriotic War of 1941-1945 against Nazi Germany. Often people merely took children who had lost their parents into their homes and did not always formalize this as adoption or guardianship.

The law grants persons who have voluntarily taken in and supported orphaned children the right to raise them as adopted children.

Dissolution of Marriage Marriages cease a) with the death of one of the spouses; b) with a court declaration of the spouses to be dead; c) during the lifetime of the spouses the marriage may be dissolved by divorce, upon the application of one or both spouses.

In order for a marriage to cease in the event of the death of one of the spouses, the surviving spouse need only present the relevant death certificate to the State Registrar's Office.

There are cases when citizens become missing persons, disappearing for unknown reasons from their permanent place of residence for a long time. This creates an awkward situation for other persons, specifically for the members of the missing person's family in those legal relations in which he himself participated. In order to eliminate this juridical ambiguity, in the interests of other persons, the mis-

sing person himself, and the state, the court, in due process, may declare the missing person dead.

According to Art. 10 of the Fundamentals of Civil Legislation, "A citizen may be declared dead in a judicial proceeding, where no information concerning his whereabouts is available at the place of his permanent residence for a period of three years." Should a person disappear in circumstances of mortal danger or warranting the presumption of death in a definite accident, e.g. earthquake or shipwreck, he may be declared dead six months after his disappearance. A serviceman or any other citizen who disappeared in connection with armed hostilities may be declared dead two years after the day such hostilities are ended.

The court's declaration that a citizen is dead has the same juridical significance as biological death. If the court declares that a spouse is dead, the marriage is terminated.

While declaring a citizen dead, the court proceeds from the presumption of his death. Such presumption is not always the case. Should a missing person who has been declared dead appear to claim his legal rights, the court annuls its earlier decision¹ declaring him or her dead and his or her marriage is automatically reinstated as valid regardless of the spouses' wishes unless he or she has already entered another marriage.

Should such spouses choose not to return to marital relations he or she may file for divorce. A marriage contracted by a spouse after the other spouse had been declared dead also may be dissolved by the court and the former spouses may be reunited in a new marriage registered in the SRO.

While both spouses are alive, either one or both may file for divorce. A marriage may be dissolved in court or in the SRO in cases established by law.

The usual procedure is a court divorce. This procedure is used if the spouses have minor children, in the event that one of the spouses is opposed to the divorce or in dispute about children alimony, or the division of property. Petitions for divorce are filed in the People's Court in the respondent's place of residence or, should both parties agree, in the plaintiff's place of residence.

In order to protect the interests of mothers and children, the law does not permit a husband to petition for divorce without his wife's consent while she is pregnant and for a period of one year after the birth of their child.

In order to prevent hasty, ungrounded divorces the court takes measures to promote the reconciliation of spouses and has the right to postpone divorce proceedings at the request of the interested spouses or on its own initiative providing the spouses a period of up to six months for reconciliation. Should the spouses not be reconciled in such time the court will review their case in substance.

Of course, reconciliation is not always achieved by delaying a divorce case. Nevertheless, it is important to attempt to reconcile divorcing spouses, especially if there are minor children in the family.

A Vilnius People's Court delayed the divorce proceedings of the spouses D., the parents of two underage children, for four months. When this period expired the children's mother requested it be extended for another two months since she felt that there was some hope that she and her husband would

reconcile their differences. The court granted this request and by the end of this time the couple had reconciled its differences. The family's integrity was saved.

Soviet law does not establish absolute conditions which call for automatic dissolution of a marriage (for example, such as marital infidelity). Such factors may only be taken into consideration in passing the decision on a case.

The court may either dissolve a marriage or decline the suit to dissolve it.

The law does not provide any list or index of formal grounds for the dissolution of a marriage, but provides general grounds for divorce. A marriage may be dissolved if the court establishes that the further cohabitation of the spouses and the preservation of the family are impossible.

Short-lived family conflicts caused by accidental factors and not confirmed by serious reasons cannot be deemed sufficient grounds for the dissolution of marriage.

A people's court in the Tselinograd Region received a divorce application in which the plaintiff referred to the fact that "after a quarrel the wife has left for her mother".

In a people's court of the Kiev Region the plaintiff put forward a vague reason for divorce, arguing that she and her husband "have different views of life".

In both cases the arguments could not serve as grounds for dissolution of marriage, having classified the actual causes of the conflicts and the possibility of preserving the family, the court in both cases refused to dissolve the marriage.

A spouse's low earnings, lack of prestigious trade or profession, etc. also cannot serve as grounds for divorce.

In court practices there are typical causes for dissolution of marriage, including long separate habitation of the spouses, actual family relations with another person and birth of children from him (her), abuse of alcohol, and incapacity to have children.

Concurrently with dissolution of marriage, the court usually settles disputes between spouses as to who will keep custody of the children, the recovery of alimony for children and needy non-able-bodied former spouses, and division of the spouses' joint property.

Divorce cases are heard in the presence of both spouses. Spouses who were reconciled and those who have been refused a divorce may at any time petition again for divorce should their relations fail to improve.

When the court dissolves a marriage it determines the amount of the duty from one or both parties from 100 to 200 roubles to be paid at the SRO when the divorce certificate is issued. The court determines who pays and how much is to be paid, keeping in mind the financial status of both parties and the guilty behavior of one or both spouses.

While reviewing a divorce case the court exerts an educative influence on the spouses by helping them to feel responsible before their own family. In doing so, the court keeps in mind the interests of the given family as well as the state's interest in the raising of the children and the preservation of the family, since the nature of these relations affects how a person

behaves in society, his or her labor and social commitments, and moral and ethical values.

The SRO also has the authority to dissolve marriages. Simplified divorce by the SRO in an administrative procedure is permitted by law on two conditions: if the divorce is uncontested and if there are no minor children involved. The SRO is not required to determine the reasons according to which a husband and wife seek divorce. However, in order to provide couples with time for thinking over their decision, the SRO issues divorce certificates only three months after petition for divorce has been filed. The duty is exacted in the amount of 100 roubles.

Should any dispute arise between spouses petitioning for divorce through the SRO, divorce proceedings must be turned over to the court.

The SRO also has the authority to dissolve marriages in which only one spouse files for divorce if the other spouse has been declared by the court to be lacking active civil capacity due to mental illness or feeble-mindedness, if the other spouse has been declared to be missing without a trace by the court (that is, when there has been no news of such person in his place of permanent residence for one year or more), and/or when he or she has been convicted of some crime and sentenced to not less than three years' term. Such factors, by their very nature, indicate the irreversible disintegration of the primary family. If in such a case one spouse petitions for divorce with the SRO the consent of the other spouse for divorce is not required. The duty for such a divorce is 50 kopecks.

Should an imprisoned spouse or the guardian of a spouse lacking active civil capacity initiate a dis-

pute about the custody of children, alimony, or the division of jointly held property the divorce proceedings must be handed over to a court.

**Family Property Relations
Pertinent to Personal
Relations**

Family property rights and duties are derived from family personal relations and are based on marriage and kinship. These relations can be divided into two groups: relations pertaining to family property and relations pertinent to financial assistance (child support or alimony).

Property may belong to a family as a whole, to spouses jointly, or to any individual member of a family.

Under Art. 12 of the Fundamentals of Legislation on Marriage and the Family, property belonging to either spouse individually includes: (a) property which belonged to such spouse prior to marriage, (b) which was individually received during marriage as a gift, inheritance, or reward, and (c) personal effects.

The first two categories of property relate to each spouse's personal individual property since such property was acquired not as a result of the joint work of the spouses and can be assigned to one of the spouses according to the date it was acquired and the date the marriage was contracted, or according to gift and inheritance documents.

Spouses' personal property also includes items which were acquired during marriage but with funds which belonged to one of the spouses before marriage (for example, an automobile purchased after marriage is considered the personal property of one of the spouses if it is proven that it was purchased

with money earned by that spouse prior to the marriage).

Property purchased after spouses have been married is considered to be the personal effects of one of the spouses if such property is personally used by the spouse (e.g. clothing and footwear). The law provides an exception to this general rule for precious items and luxuries (e.g. gold jewelry purchased for a wife is considered joint property since such jewelry is not considered an ordinary consumer item and has great value). However, the court may declare certain expensive commonly-held items to be personal property of one of the spouses should such items relate his or her occupation or profession (e.g. a musical instrument or a scholarly library).

When both spouses consent, some part of their commonly-held property, including precious items and luxuries, may be declared the personal property of one of the spouses.

Each spouse owns, uses and disposes of his or her personal property independently. The consent of the other spouse, for example, to sell or give away a personal object as a present is not required.

Property acquired by spouses while married (excluding those items considered to be individual personal property of each of the spouses) is considered the common joint property of the couple. Such property includes household items, furniture, the spouses' home itself, dachas or summer cottages, automobiles, savings, shares in a housing cooperative, credit and so forth. Spouses legally married may hold joint property. Persons enjoying *de facto* marital relations who have not registered with the SRO may also hold joint property but such persons must prove

their right to some part of that joint property when, for example, it is divided between them.

Property acquired by persons legally married to one another is considered to be the couple's common property. Each spouse has an equal right to such property, regardless of which spouse was the wage earner, who ran the household, who took care of the children, or who was sick, and regardless of which spouse had higher earnings.

Usually common property is acquired with money earned by both spouses, by one of them, or as a gift or inheritance left to both.

Both spouses or each of them individually (with the other's consent) may own, use, and dispose of common property. In order to sell some item of this property one spouse does not need the other's written consent as such consent is implied. In cases when one spouse was unaware of his or her mate's transaction or sale of some item of common property and is opposed to such sale, this spouse may dispute the validity of the transaction in court. The written consent of both spouses for the sale of common property is required only for the sale of a house.

There are no established shares for using common property. Each spouse's specific share of common property is determined only when such property is divided (e.g. in the event of divorce).

Common property is divided by the spouses by mutual consent and in the event they disagree, by the court. The latter usually divides common property equally between husband and wife. Only in certain circumstances does it divide such property unequally, and only in the interests of minor children and one of the spouses.

For example, a husband's or wife's share of a couple's common property may be increased if that spouse has minor children after the divorce. A spouse's share of a couple's common property may be reduced if this person has evaded productive work (i.e. has refused to work, abused alcohol, or has not helped his or her family financially). However, as we have already noted, it is not possible to reduce the share of a husband or a wife who was not employed with good reason (for instance, if he or she was ill for a long time, if he or she was a student, was taking care of children or other non-able-bodied family members, or if he or she had a small income).

Spouses enter into various property relations with other persons and thus acquire not only the rights to their common property, but duties as well. They also may bear property responsibility before third persons. Under the obligation of one spouse recovery may be made only on his or her personal property, and on his or her share of the common property which he would receive in the event of the division of their property.

However, should a spouse commit a criminal offense incurring material damage, compensation for such damage may be made from all of the property jointly held by both spouses if the court establishes that such property was acquired criminally. A spouse's personal obligations include, for instance, alimony payments made with his or her earning or personal property.

The spouses common mutual obligations are those which are derived from transactions made by one or both of them in the interests of the entire family.

Such obligations to third parties are met with common property or with either of the spouse's personal property. In precisely this way, parents are responsible for damages inflicted by their minor children to the life, health, or property of other persons.

Children have no rights to their parents' property, whether individually or jointly held. Children who have reached 16 years of age have the right to work, the right to receive pensions and student stipends from academic institutions, and the right to receive property as a gift or legacy. Property thus acquired is their personal property (and not their parents' property).

Civil legislation provides a special clause concerning property in collective-farm households belonging to families, the members of which work on the collective farm, live together and run a common household. Such property includes the family's home, livestock, poultry, agricultural implements, income earned from household plots and from the collective farm and contributed to the common household budget, as well as household and personal consumption items purchased with common household funds.

Collective-farm household members also have their own personal, individual property. As opposed to the property in urban families, collective-farm households' property belongs not just to the spouses but to all the members of the given household: the spouses, the children, and other relatives and persons living together and working in the collective farm, whether or not such persons are related to the members of the household.

A similar procedure is established in relation to an individual peasant's household of his family.

Alimony and Child Support: Rights and Duties

Aside from those family property relations which we have already reviewed, that is, those pertaining to particular kinds of property, there are other property relations based on personal family relations which take into account the kinship and marital relations.

The members of one family share and maintain one household, and provide each other with financial assistance and support. Usually such assistance is rendered voluntarily as this is the natural function of the family. However, in the event that some members of a family refuse to fulfill their duties to render financial assistance to one another, the court may order them to do so by recovering alimony from one person in favour of another person, as established by law.

There are two kinds of such financial assistance obligations: (1) child support paid to underage children by their parents or guardians; (2) alimony payments made to other members of a family and other relatives.

The first kind of payment, child support, is a payment made unconditionally. Its size is determined by the court as a percentage of the parents' wages. There are some exceptions to this rule which will be discussed below.

The second kind of payment, alimony paid to other relatives when there exists some specific family relation. The size of such payments is determined as a fixed sum of money taking into account the financial status of both parties.

Let us review child support payments.

Art. 18 of the Fundamentals of Legislation on

Marriage and the Family provides that parents are obliged to maintain their underage children. This obligation is imposed on both parents living together in one household. When the home is broken some parents try to evade providing financial support for their children. In such cases, the court has the authority to order that they make child support payments. The parent who has retained custody of the child or children has the right to petition the court to order the former spouse to make child support payments. More often than not the plaintiff in such cases is the child's mother and the respondent is its father.

All underage children, born in legal wedlock or when paternity has been admitted voluntarily or established in a court procedure, are entitled to receive child support payments. The size of child support payment is established in Art. 22 of the Fundamentals of Legislation on Marriage and the Family. Child support for underage children is paid as follows: for one child, one fourth of the given non-resident parent's earnings; for two children, one-third and for three or more children, one half of such earnings.

If, for example, a respondent earns 200 roubles a month, he is obligated to pay 50 roubles per month should he have one child, 66.60 roubles should he have two children, and 100 roubles should he have three or more children. In any case the respondent is never required to pay more than half of his earnings in child support.

Child support is payable until the given child reaches 18 years of age, regardless of what the resident parent's income may be. Child support is an

unconditional moral and juridical obligation of each parent. In practice, a child's father, leaving the family, provides child support and alimony payments to the family voluntarily, not waiting for a court order to do so, by personally giving such funds to the mother, sending them to her through the mail, or having them deducted from his paycheck and sent directly to her by the bookkeeping office of his organization.

There are cases when parents evade paying child alimony. In such cases, allowances for the maintenance of the children are paid (as a rule, to the mother) by the social security agency. After the investigative organs have found the parent who has evaded paying alimony, recovery is made on his earnings in the child's favor (to the extent determined early by the court in its decision) plus 10 percent of the sum of money paid by the social security agency as an allowance (this 10 percent fee becomes part of the state budget); money received by one parent as an allowance during the time the other parent was missing are subtracted from the alimony and returned to the budget of the social insurance agency. The courts' and the State Registrar's Office's minimum fee for the dissolution of a marriage was raised from 50 to 100 roubles to offset, in part, the cost of such temporary allowances.

Such are the general rules for parental payment of child support for underage children. There are some exceptions to these rules.

Thus, the court may reduce the size of child support payments, determined as a percentage of the respondent's income, in the following cases:

if the respondent has other children who reside

with him and who would be less well off than those children who receive child support payments;

if the respondent is an invalid of group I or II;

if the children for whom child support payments are made are themselves employed and receive sufficient earnings;

if the children are fully supported by the state or some social organization (in which case the court can release the respondent from making child support payments to his former spouse, but such payments may be imposed on both parents in favour of the institution where the children have been placed). In the last case the parents may be required to make child support payments if the children were removed from them by the court.

Parents may be released from paying child support to a children's establishment, for example, if a single mother or both parents were not at fault for the placement of their child or children in such an establishment.

Child support payments may be determined as a fixed sum, as opposed to a percent of the respondent's earnings, at the request of the plaintiff mother in cases where:

the respondent has an irregular income (if he is, for instance, a writer or an artist);

when the respondent earns part of his income in kind (e.g. in foodstuffs, for members of a collective farm);

when both parents retain custody of at least one child after a divorce (in such cases one parent may be obliged to make child support payments to another less well-off parent in a fixed sum determined

by the court on the basis of the financial status of both parents).

In all such cases the court determines the size of the child support payments in such a way as to approximate $1/4$, $1/3$, or $1/2$ of the respondent's wages, but not greater than half of his income.

Parents responsible for child support for underage children may be obliged to contribute to meeting costs associated with some emergency: a serious illness of the child or an injury it sustains during an accident. The parent with custody of the child may be required to make additional expenditures in such cases, despite guaranteed free medical assistance in the USSR; the child may need nutrition supplements or may need to make a trip to another city or a sanitarium, etc. Sometimes the parent with custody loses his or her earnings for that period when he or she quits work for some time to take care of a sick child.

In such cases the court obliges the other parent to take some of these expenses on himself, above and beyond child support. The extent of additional payments to be exacted is determined by the court on the basis of the given expenses and the financial status of both parents.

Such are the rules governing child support payments for minor children. Let us now review alimony relations arising between other relatives and between spouses.

Members of a family gain the right to financial assistance (alimony) on several conditions:

- 1) There exists some kinship or family relationship accordingly. Spouses, adult children, parents, brothers and sisters, grandchildren and grandparents, stepchildren and stepparents, and persons who have

taken in children to raise them all have such a right to alimony.

2) Such persons are granted the right to receive alimony only if they are in need and non-able-bodied. There is no unemployment in the USSR. All able-bodied persons are guaranteed work and, hence, their livelihood. Persons declared by medical experts to be invalids, men over 60 and women over 55 (retirement age for men and women respectively), are not considered able-bodied, that is, they are unfit to work according to their health and age, respectively.

Non-able-bodied persons (due to age or poor health) are entitled to receive alimony payments only if they are also in need. For example, pensioners who receive sufficient retirement pensions are not always considered to be needy. If the retirement pension is small and a given pensioner has to support a dependent with such funds he may be entitled to receive alimony since he is not able-bodied (due to his age) and is, in fact, needy.

3) Alimony is calculated on the basis of the financial status of the person obliged to make payments.

4) Alimony is paid in a monthly fixed sum. The court may change the size of alimony payments on the basis of some change in the financial status of both the party obliged to make such payments and the party entitled to receive them.

Keeping these general rules in mind, let us now review the concrete provisions of family legislation concerning alimony relations among family members.

The *spouses* are obliged to support each other financially. In the event one spouse refuses to provide such support, his or her non-able-bodied and needy partner (including a pregnant wife or mother

of a child under one year of age) is entitled to receive alimony payments by court's decision from another spouse, if the latter can provide them.

A needy and non-able-bodied spouse retains his or her right to alimony even after the dissolution of the marriage if such spouse became disabled before the divorce or within one year after it.

If a couple has been married for a long time the court has the right to recover alimony in favor of a divorcee even when he or she has reached retirement age not later than five years from the date the marriage is dissolved.

Pregnant wives and mothers of children under one year of age retain the right to receive alimony from their husbands if they became pregnant before the dissolution of their marriage. Let us note that in such cases it is precisely the wife and children who are entitled to alimony.

Taking into account the brevity of a marriage or the unethical behavior of the spouse who sues for alimony, the court may exempt the other spouse from the alimony obligation or limit it to a certain time period.

If a non-able-bodied needy spouse becomes capable of working once again, is no longer needy, or remarries, he or she is no longer entitled to receive alimony.

As we have already noted, underage children have the right to be supported by both their parents in all cases. Furthermore, parents are obligated to support *adult children* who have reached their majority should they be disabled and needy.

Children are also obliged to care for and support their parents. Needy and non-able-bodied *parents*

are entitled to alimony from adult children. In determining the size of such alimony, the court takes into account all the adult children, their financial status, and obliges each one to pay a certain sum. Children may be exempted from maintaining their parents if it is established in court that the parents evaded their parental duties (e.g. if a father maliciously refused to pay child support to his underage children).

Brothers and sisters who have the means to do so are obliged to support their needy underaged siblings if such cannot receive support from their parents (e.g. if the parents have died). They are also responsible for supporting needy, non-able-bodied adult brothers and sisters who are unable to receive sufficient support from their parents, spouse, or children.

Grandparents and grandchildren are mutually entitled to exact support from one another if they are non-able-bodied and needy of: underaged grandchildren cannot get support from their parents, adults cannot get support from their parents and spouses, and grandparents cannot get support from their children or spouses, respectively.

Minor *stepchildren* are entitled to support from their stepparents if they were raised and supported by the latter and if they have no parents or cannot receive sufficient support from them.

Disabled and needy *stepparents* can receive alimony from stepchildren they raised and supported. The court can exempt stepchildren from paying alimony to stepparents if the latter maintained them for less than five years or if they did not properly fulfill their duties to raise and support the stepchildren.

If any person takes a child in and raises and sup-

ports it, alimony relation may arise between this person and the child.

The *adopted child* has the right to be supported by this foster-parent if the former has no parents or cannot receive sufficient financial support from them. The *foster-parent*, should he or she become needy and disabled, also has the right to be supported by the adopted child if he or she cannot receive such support from his or her own children or spouse.

Alimony obligations do not arise between trustees and their wards, that is when the person raising and supporting the child has been officially designated its trustee.

Trusteeship and Guardianship

Trusteeship and guardianship are two of the ways that the state and citizens defend the interests of certain persons who require such defense. Children under the age of 15 are subject to trusteeship if their parents are deceased, ill, have been deprived of parental rights, or evade their parental duties. Persons declared by the court to be lacking active civil capacity, due to mental illness or feeble-mindedness, are also subject to trusteeship. †

Trusteeship is established for minors between the ages of 15 and 18 and for adults who, although not declared by the court as lacking active civil capacity, are not fully capable of exercising their rights and fulfilling their duties, due to some health condition. Trusteeship is also established for persons whose active civil capacity has been limited by the court as a consequence of the abuse of alcohol or narcotics.

The executive committee of the local Soviet of People's Deputies is the trusteeship and guardian-

ship agency which appoints trustees and guardians. Citizens may be appointed to be trustees and guardians only with their consent (if possible, they should be relatives of the wards). Such citizens must attain their majority and must be capable of fulfilling the duties of a trustee or guardian; accordingly, they must have the appropriate personal qualities. If possible, the wishes of the ward are also taken into consideration.

Persons under 18 years of age, persons who have been deprived of parental rights, persons who have been declared by the court to be lacking active civil capacity, or persons whose active civil capacity is limited cannot be appointed trustees or guardians.

The same rights and duties which arise between children and their parents arise between trustees and guardians and the minors for whom they are responsible: upbringing, education, preparation to be socially productive, the defense of personal and property rights, representation in civil relations and relations with respect to state agencies, including legal representation in court. Trustees and guardians are obliged, as a rule, to live with the minors for whom they are responsible.

With respect to wards who do not have active civil capacity due to illness, trustees and guardians must create the necessary living conditions to promote their recovery, take care of them, and defend their rights and lawful interests.

Thus, the personal non-property relations arising from trusteeship and guardianship are largely similar to the relations which arise among family members. However, there is a difference in the property relations.

As opposed to parents, trustees and guardians are not obliged to support their wards with their own funds. Instead, such wards are supported by the following funds: state pensions, child support payments made by relatives of the ward, wages earned by wards over 16 years of age, and other income (for instance, inheritance). If such funds are not sufficient for the support of the ward, the trusteeship and guardianship agency approves of an additional allowance for the ward's support.

Trustees and guardians fulfill their duties free of charge. Wards, as opposed to adoptees, cannot change their surnames or patronymics upon the designation of a guardian or trustee for them. Furthermore, there do not arise alimony and inheritance relations between wards and their trustees or guardians.

Trusteeship ends when a ward reaches 15 years of age; guardianship ends when a ward reaches 18 years of age or earlier if the ward marries with special permission for marriage at a reduced marriage age.

Trustees and guardians may be dismissed from performing their duties if the children are returned to their parents (e.g. if the parents regain their parental rights), if the children are adopted, if the children enter a state children's establishment, at the request of the trustee or guardian (if, for example, he or she should become ill), or at the demand of a ward who had earlier requested he be placed in guardianship due to ill health, or, finally, if it is established that the given trustee or guardian is not fulfilling his duties or abuses his position and violates the personal and property rights of his ward (s).

CHAPTER VII

THE JUDICIAL SYSTEM AND JUSTICE

Administration of Justice by the Court Alone. The Constitution of All Courts on the Electivity Principle. The Collegial Hearing of Cases in Court. The Independence of Judges and Their Subordination Only to the Law. Citizens' Equality Before the Law and in the Court. The Administration of Justice in a National Language. The Procurator's Office and the Bar. Civil Procedure. The Protection of Civil Rights by Agencies Other Than the Court.

In discussing the law's protection of personal rights, it is not enough to review merely the norms of substantive law: civil, family, and some other branches of legislation. The judicial guarantees of the defense of personal rights and freedoms, and the principles of the organization and activity of Soviet courts play a significant role in the protection of personal rights inasmuch as the court is the first and most important defender of civil rights.

Section VII of the Constitution of the USSR is dedicated to the organs of justice; in the articles of this section the reader will find a precise definition of the courts' place in the Soviet state and a detailed list of the courts' goals and tasks, as well as the principles of their organization and activity during the hearing of civil and criminal cases.

The Constitution's provisions relevant to these questions are enlarged and specified by other laws:

the Fundamentals of Legislation of the USSR and the Union Republics on the Judicial System of the USSR, approved by the Supreme Soviet of the USSR on December 25, 1958;¹⁰ the Fundamentals of Civil Procedure of the USSR and the Union Republics, approved by the Supreme Soviet of the USSR on December 8, 1961;¹¹ and the Union republican civil procedural codes (CPC), which incorporate the provisions of the Constitution of the USSR and all-Union laws (The Fundamentals on the Judicial System and the Fundamentals of Civil Procedure). Moreover, the provisions of these laws are specific. Thus, for example, there are 61 articles in the Fundamentals of Civil Procedure of the USSR, while there are 438 articles in the CPC of the Russian Federation.

The reader already knows that criminal responsibility is established for the violation of certain personal non-property rights. Such cases are heard in criminal proceedings in accordance with the Fundamentals of Criminal Procedure of the USSR and the Union Republics, approved by the Supreme Soviet of the USSR on December 25, 1958,¹² and the Criminal Procedure Codes (CrPC) of the various Union republics.

All these laws, together with the Constitution of the USSR, determine the democratic principles of

¹⁰ *Gazette of the Supreme Soviet of the USSR*, No. 1, 1959, Item 12.

¹¹ *Gazette of the Supreme Soviet of the USSR*, No. 50, 1961, Item 526.

¹² *Gazette of the Supreme Soviet of the USSR*, No. 1, 1959, Item 15.

the judicial system and judicial proceedings, guaranteeing the accessibility of the Soviet courts to the people.

These principles include:

the administration of justice by the court alone;
the constitution of all courts on the electivity principle;

the collegial hearing of cases in court; the participation of people's assessors and representatives of social organizations and work collectives in the judicial process;

the independence of judges and their subordination only to the law; the equality of citizens before the law and in court; and

the administration of justice in the appropriate national language.

Let us briefly review these principles.

**Administration
of Justice by the Court
Alone**

The judicial system of the USSR consists of the following courts: the Supreme Court of the USSR, the Supreme Courts of the Union Republics, the Supreme Courts of the Autonomous Republics, territorial, regional, and town courts, courts of Autonomous Regions, courts of Autonomous Regions and Areas, town district or ward people's courts, and military tribunals in the Armed Forces of the USSR. These courts alone and no other establishments may exercise the state's function of administering justice.

Justice is administered by hearing and adjudicating criminal and civil cases in judicial proceedings in which one or both parties are citizens (economic disputes between socialist organizations are decided by state arbitration agencies).

The court's activity is aimed at strengthening socialist legality and law and order, preventing breaches of the law, protecting the social systems of the USSR and citizens' personal rights as well as the rights and interests of socialist organizations.

Through all of its activity the court educates citizens in the spirit of devotion to the Motherland, the precise and undeviating observance of the Constitution of the USSR and other laws, respect for socialist property, observance of labor discipline, honest attitude to state and social duty, respect for the rights, honor, and dignity of citizens and for the rules of socialist community life.

The district (town) People's Court is the fundamental link in the judicial system. It hears the absolute majority of all civil and criminal cases (more than 95 percent) and is the court of first instance.

Territorial, regional, city courts and the courts of autonomous regions, areas, and republics hear more complicated civil and criminal cases in the first instance; these courts may also choose to hear, in the first instance, any case on the agenda for a People's Court located on the territory of their jurisdiction. Such courts hear cases concerning parties complaints and procurators' protests about district (town) people's courts' decisions, sentences and rulings which have not yet entered into legal force, functioning thus as courts of the second, cassation instance. They also examine the complaints and protests in the supervisory proceedings against the decisions, sentences and rulings of the people's courts that have entered into legal force (supervisory instance).

Union republican supreme courts are the highest courts of each republic. They supervise the judicial

activities of all courts on the territory of each Union republic and have the right to initiate legislation.

As the court of the first instance the Union republican supreme court hears civil and criminal cases which are especially complicated or are of special social significance. This court has the right to take and hear any civil or criminal case from any court in the republic. It also hears all complaints and protests in cassation and supervisory procedure.

The Supreme Court of the USSR is the highest court of the USSR and supervises the judicial activities of all Soviet courts. It may review, in the first instance, cases of exceptional social significance and cases in cassation and supervisory procedure. It has the right of legislative initiative in the Supreme Soviet of the USSR.

The Supreme Court of the USSR studies and generalizes court practice, analyzing court statistics and issuing guiding instructions to lower courts on questions of the application of legislation relevant to cases they are hearing. The guidelines and instructions of the Plenum of the Supreme Court of the USSR are binding on all courts, other agencies and officials which enforce the law about which the Plenum issued the instructions.

The Supreme Soviet of the USSR adopted the Law on the Supreme Court of the USSR on November 30, 1979.¹³

**The Constitution of All
Courts on the Electivity
Principle**

All courts in the USSR
are constituted on the
principle of electivity.

¹³ *Gazette of the Supreme Soviet of the USSR*, No. 49, 1979, Item 842.

District (town) people's courts are elected by the citizens of the given district (town) on the basis of universal, equal, and direct suffrage by secret ballot. Judges are elected for a term of five years and people's assessors are elected for a term of two and one half years.

All citizens who are 18 years of age or older and who live in a given district (or town) have the right to vote. Citizens who are not younger than 25 years of age may be elected judges, since in order to administer justice citizens must be sufficiently mature and have life experience.

District (town) courts are genuine people's courts: they are elected directly, secretly by universal ballot. These courts are close to the people and accessible to them. They administer justice in the absolute majority of cases as the court of first instance.

All higher courts are elected by the corresponding Soviets of People's Deputies for a term of five years. Thus, the regional court is elected by the appropriate regional Soviet of People's Deputies and the Supreme Court of the USSR is elected by the Supreme Soviet of the USSR.

The Collegial Hearing of Cases in Court

District (town) people's courts consist of a people's judge and people's assessors (the number of courts in district depends on the population of the given district [town]). District (town) people's courts consisting of one judge and two people's assessors hear civil and criminal cases as the court of the first instance.

At present the Soviet Union has a sufficient supply of jurists and for this reason, for the most part, citizens with a legal education are elected to be

judges. Work collectives, enterprises, establishments and other organizations of a given district nominate industrial, office and professional workers and collective farmers to be people's assessors; the latter, as a rule, do not have a legal education, but usually do have sufficient life experience for the position.

During the administration of justice people's assessors have the same rights as judges. Decisions and sentences are determined by the majority of votes and if, for example, the two people's assessors are of one mind, and the judge of another, the judgment or sentence is delivered in accordance with the opinion of the people's assessors.

As we have already noted, all higher courts may decide complicated or especially significant cases as the court of the first instance. In such cases, the court, whether it be a regional court or the Supreme Court of the USSR, is composed of judges and people's assessors.

If a higher court is reviewing a case of an appeal or a protest against the decision or sentence of a lower court, that is, in cassation or supervisory procedure, the higher court is composed only of members of the court (not people's assessors).

Representatives of social organizations and work collectives are permitted to participate in court proceedings in civil and criminal cases. The court determines when it requires the opinions of such organizations and collectives and permits their authorized representatives to participate in the relevant proceedings, become acquainted with the materials of a case, be present at court hearings, give evidence, and pose questions to others participating in the case. However, such representatives do not partici-

pate in rendering the decision or sentence in the case. In criminal proceedings, such representatives may be permitted by the court to participate in the proceedings as prosecutors and defenders.

**The Independence
of Judges and Their
Subordination
Only to the Law**

While administering justice, judges are protected from all kinds of interference in their work;

no organs of power or administration, no officials have the right to dictate to the court what decision or sentence it should pass on the case.

Judges and people's assessors resolve a case on the basis of the law, and in accordance with their consciousness of socialist law under conditions which exclude any external influence on them.

For the foreign reader, we must emphasize that Soviet law does not recognize precedent as a source of law. Decisions and sentences rendered by higher courts in analogous cases have authority, but are not mandatory models for a court reviewing a case according to its merits. Courts are not permitted to make references to precedents in their decisions and judgements which must be based only on the law.

Judges are guaranteed their independence by being elected, rather than appointed, and by making their decisions secretly in special consultation chambers to which only judges and people's assessors can gain admission.

Judges' inviolability also guarantees their independence. While executing their duties in court, they cannot be arrested or subject to measures of criminal or administrative responsibility in a court procedure without the consent of:

—the Presidium of the Supreme Soviet of the given Union republic for judges and people's assessors of people's courts, members and people's assessors of territorial, regional and town courts, and autonomous regional courts and autonomous republican supreme courts;

—the Supreme Soviet of the given Union republic, and between its meetings, the Presidium of the Supreme Soviet of the given Union republic, for members and people's assessors of Union republican supreme courts;

—the Supreme Soviet of the USSR, and between its sessions, the Presidium of the Supreme Soviet of the USSR, for members and people's assessors of the Supreme Court of the USSR.

At the same time, judges and people's assessors are responsible before the voters or the organs which elected them and must account to them. Thus, people's judges and assessors report back to workers' collectives meetings on their work.

Judges and people's assessors may be removed before the expiration of their terms only by the recall of the voters or the organ which elected them or if they are sentenced by a court.

**Citizens' Equality Before
the Law and In Court**

The constitutional principle of citizens' equal rights in all social spheres is applicable to justice as well. During court proceedings, courts apply the same laws, both substantive and procedural laws, to all citizens, regardless of their origin, social and property status, nationality, sex, education, language, attitude toward religion, occupation, place of residence, or other factors.

**The Administration
of Justice in a National
Language**

Soviet court proceedings are conducted in the appropriate national language, that is, in the language of the Union or autonomous republic, autonomous region or area or in the language spoken by the majority of the population of a given locality.

The USSR is a multinational state and the court must be accessible and understandable for every citizen. If a party participating in a case does not understand the language in which proceedings are being conducted, he must be provided with an interpreter (at the state's expense) in order to acquaint himself with the materials of the case and participate in the court's proceedings. He also has the right to speak in court in his own native tongue.

The principles listed here permeate all the activities of the Soviet court. The strict observance of these principles guarantees the legality and democratic nature of the court's work.

**The Procurator's Office
and the Bar**

Bearing in mind the exceptional significance of the observance of legality in the court's work, the law provides for the procurator's supervision of the legality of the court's decision of civil and criminal cases.

The Procurator General of the USSR and procurators under authority exercise supervision over the enforcement of the law during the hearing of cases in courts, strictly observing the principle of judges' independence and their subordination only to the law. Should a court deliver an unlawful de-

cision or sentence, the procurator is obliged to make a protest.

The law on the procurator's office of the USSR was adopted by the Supreme Soviet of the USSR on November 30, 1979.¹⁴

The Soviet Bar, acting on the basis of the Law on the Bar in the USSR, plays an important role in the administration of justice and the protection of the rights and interests of citizens and organizations. The Law on the Bar in the USSR, was adopted by the Supreme Soviet of the USSR on November 30, 1979.¹⁵ The Bar is organized into colleges (voluntary associations) of advocates.

The Bar's task is to provide legal assistance to citizens and organizations. This assistance is provided free of charge in certain cases as established by the law.

Thus, advocates provide free legal assistance to citizens who are plaintiffs in courts of the first instance for suits for alimony or child support, for compensation for injury or death sustained at the job, for drawing up petitions for the award of pensions and allowances in certain other cases.

Moreover, a citizen may be exempted fully or in part from paying for legal assistance for other cases in view of his or her financial status.

Parties involved in civil proceedings and the accused in a criminal case may choose defenders at

¹⁴ *Gazette of the Supreme Soviet of the USSR*, No. 49, 1979, Item 843.

¹⁵ *Gazette of the Supreme Soviet of the USSR*, No. 49, 1979, Item 846.

their own discretion or defend their interests themselves. Aside from members of the advocates' colleges, close relatives and other persons and the legal representatives of persons lacking active civil capacity (parents, trustees and guardians) may represent parties to civil suits and the accused in a criminal case.

Civil Procedure

Civil proceedings are characterized by the equality of both parties to a civil suit, the competitive principle of the trial, and the court's active role.

The juridical equality of parties in court means that the plaintiff and the respondent in civil proceedings have equal rights and obligations and the same opportunities to defend their respective interests.

Inasmuch as the interests of parties to civil dispute do not coincide, court proceedings are held according to the competitive principle. The equality of both parties in the trial manifests itself in their competition.

The court's active role in the hearing of civil cases is aimed at the comprehensive protection of citizens' interests in the precise observance of the law stipulating the right to defense in court, assistance to both parties in gathering evidence, and obtaining various documents (information or conclusions) from corresponding establishments on behalf of the court. The court's active role is also demonstrated in its power to deliver riders or hear a case in some location other than in the court room if deemed necessary.

If, while hearing a case, the court discovers basic deficiencies in the work of enterprises, institutions or other organizations and officials, and specifically,

violations of citizens' rights, it can deliver a rider addressed to such institutions. The recipient of a rider is obliged, in the course of one month after receipt of such, to inform the court about measures it (he or she) has taken to eliminate or correct these deficiencies. The court's rider is delivered as an independent, separate court ruling distinct from but together with the court's ruling of the case at hand.

For the same reasons the court may hear a case not in the courtroom, but in a court session held in another location, in an enterprise, establishment or organization, in order to provide greater publicity for court proceedings and to prevent analogous violations of the law in the future.

For example, if in the course of some period of time, an enterprise is systematically and repeatedly being sued for compensation for harm inflicted to a person's health, a session of the court held in the enterprise's premises may focus the attention of the work collective and administration on the violation of the rules of labor protection and technical safety and the necessity of taking measures to eliminate the deficiencies in these areas.

Any interested person may appeal to the court for the defense of violated or disputed rights or lawful interests. The procurator may also file civil proceedings in the defense of the interests of individual citizens and public organizations, and, in some cases, a state agency, trade union, enterprise, institution or individual citizen (such as a parent defending his or her child's interests) may file civil suits.

As a rule, suits are filed in the respondent's place of residence. Suits for compensation for damages in

an injury, for alimony or child support, paternity suits, and divorce petitions may also be filed in the people's court with jurisdiction in the plaintiff's place of residence.

Cases involving alimony and child support as well as suits for compensation for harm and claims arising from labor relations, if both parties are located in one town or district, must be reviewed by the court of the first instance not later than 10 days from the day the suit is filed. When parties to such cases are not located in the same town or district, the court must review the case not later than twenty days from the day the suit is filed. All other cases must be reviewed not later than one month from the day the court accepts the suit. In this way, the law prevents the court from procrastinating.

Court hearings of civil and criminal cases are open: aside from persons participating in the case, any citizens who wish to do so may be present at the court's hearing. As we have already noted, hearings in camera are conducted only in order to protect some state secret or secrets of someone's personal, intimate life. In these cases, only those persons who are participants in the case may be present at the court's session.

Persons participating in civil cases have the right to acquaint themselves with the materials of the case, make challenges, submit evidence, take part in the investigations of the testimony, question other participants in the case, make petitions, present the court with oral and written explanations, enter their objections to petitions, arguments, and observations of the adverse party, appeal the deci-

sions and opinions of the court and enjoy other procedural rights as established by the law.

The judge, people's assessor, procurator, court secretary, expert, and interpreter cannot participate in the examination of a case and are subject to be challenged if they are personally interested, whether directly or indirectly, in the case's outcome or if there are other circumstances which cast doubt on their impartiality.

The judge (or chairman) runs the court hearing. The court explains to parties participating in a case their procedural rights and duties and permits them to make declarations and file petitions, to request for new evidence and other items. The court hears the declarations of the plaintiff, respondent, experts' conclusions, and the opinions of the representatives of social organizations. The court questions witnesses and investigates evidence and then goes on to hear the debate between the parties to the case, hearing the procurator's conclusions on the merits of the case. After all this the court removes itself to its consultation chambers in order to formulate its opinion.

After the judge and people's assessors sign their opinion, the court returns to the court session hall and announces its decision.

Decisions entering into legal force are subject to execution. They enter into legal force unless they are appealed by parties participating in the case (cassation) or are protested by the procurator in the course of ten days. If a decision is not repealed by appeal or protest, it enters into legal force after being heard by a higher court.

Decisions of the Supreme Court of the USSR and

of the Supreme Courts of the Union republics enter into legal force immediately after pronouncement.

Decisions which have entered into legal force may be reviewed by a higher court in judicial supervision only on the protest of officials from the procurator's office or the court.

Citizens filing suits must pay the following state fees:

—for suits of a non-property nature (specifically, for suits in defense of personal rights), 30 kopecks;

—for suits of up to 20 roubles, 30 kopecks;

—for suits of 20 to 50 roubles, 50 kopecks;

—for suits of 50 to 500 roubles, two percent of the sum for which the plaintiff has filed;

—for suits of 500 roubles and more, six percent of the sum for which the plaintiff has filed;

—for divorce suits, 10 roubles;

—for divorce suits involving persons declared to be lacking active civil capacity, missing without a trace, or convicted to deprivation of freedom, 30 kopecks.

Cassation appeals of a court's decision require a fee of one half of the sums indicated above; appeals of decisions on divorce cases are filed without any fees.

The Protection of Civil Rights by Agencies Other Than the Court

Art. 6 of the Fundamentals of Civil Legislation of the USSR and the Union Republics states that aside from the court, civil rights shall be protected by arbitration and mediation boards and, in cases established by the law, by comrades' courts, trade-union and other social organizations. In some cases civil rights may be protected administratively.

These organizations do not make up part of the judicial system and function in accordance with special acts.

State arbitration organs settle economic disputes between socialist organizations. If one party to such a dispute is either a private citizen or a collective farm the arbitration organ does not have the jurisdiction to examine the case.

The Supreme Soviet of the USSR adopted the Law on State Arbitration on November 30, 1979.¹⁶

Mediation boards are courts formed according to an agreement between the parties in order to settle a civil law dispute arising between them; as part of the agreement the parties obligate themselves to accept the mediation board's decision. The parties do not apply to a people's court, but entrust the dispute to third parties.

Citizens and organizations may transfer disputes to mediation boards for examination and if its decision is not carried out voluntarily, it may be forcibly executed by transfer to the competent people's court which will issue a warrant of execution.

Mediation boards very infrequently deal with cases involving the defense of civil rights.¹

Comrades' courts hear certain property, labor and other cases, including cases involving the violation of citizens' personal rights, such as insult, slander, assault, and light bodily injury.

Comrades' courts are created on the decision of general meetings of collectives at the workplace, at a school or at a place of residence, in enterprises, es-

¹⁶ *Gazette of the Supreme Soviet of the USSR*, No. 49, 1979, Item 844.

tablishments, educational institutions, collective farms, and housing management offices.

When a comrades' court establishes the fact of a violation it may apply to the guilty party such measures as a comradely warning, social censure, reprimand or it may limit itself to the public hearing of a case.

The Presidium of the Supreme Soviet of the RSFSR approved the Statute on comrades' courts on March 11, 1977.¹⁷ The other Union republics adopted similar statutes.

Trade unions represent the interests of industrial, office and professional workers and collective-farm members in the sphere of production, labor, daily life and culture. Trade-union representatives may speak out in the defense of the rights and lawful interests of working people in judicial organs, including in the event of the violation of personal rights.

In certain cases the law establishes a procedure for the review of certain cases in which the participation of trade-union organs is obligatory. Thus, if a working person is injured at the job, he or she must first apply for compensation for injury with the manager of the enterprises (establishment or organization) where he or she works and where the accident occurred. The manager of the enterprise examines the application in accordance with the law and issues an order on the basis of which the book-keeping office of the enterprise pays the victim a

¹⁷ *Gazette of the Supreme Soviet of the RSFSR*, No. 12, 1977, Item 254.

certain sum or sums of money as restitution for injury.

If the victim is not satisfied with the enterprise manager's decision he must protest this decision first with the local trade-union committee. Should he or she be unsatisfied with the trade-union committee's decision, the victim may then appeal to a people's court.

This method of satisfying victim's applications under the control of trade-union organs has simplified the procedure and has brought the process much closer to work collectives while cutting down on the people's court's caseload.

Jointly the trade-union committee and the enterprise administration examine employees' complaints concerning the refusal to accept their innovative proposals, thus defending working people's personal interests.

Social organizations, including unions of creative workers, such as the Writers' Union, the Composers' Union, the Architects' Union and the Journalists' Union of the USSR, help their members in the defense of their infringed rights.

In accordance with Art. 58 of the Constitution of the USSR, citizens of the USSR have the right to lodge complaints against the actions of officials, and state and social bodies. Complaints and applications sent by citizens to corresponding agencies concerning the violation of their personal and property rights are considered in an *administrative procedure*.

Citizens often use their right to lodge complaints sometimes even when, in accordance with the law, a case belongs to the competence of a court. At the same time, in many cases the law stipulates mandato-

ry administrative examination of certain types of cases or calls for such a review before citizens may appeal to the court.

These cases were considered in the preceding chapters of this work. Specifically, these are authors' disputes concerning the recognition of a proposal as an invention, disputes which are only reviewed administratively; demands for compensation for losses arising from injury at the job are first reviewed by the enterprise administration and then, should the victim be in disagreement with the administration's decision, examined by the trade-union committee. Finally, should the need arise, such cases are brought to the attention of the people's court.

AFTERWORD

Dear Reader,

Having read through this work, you have become acquainted with the legislation of the USSR which protects citizens' personal rights. Let us remind you once again that we have not reviewed the protection of citizens' economic and political rights and freedoms. These questions have been treated in other works released by Progress Publishers. The task at hand for this book was to inform the foreign reader about Soviet legislation aimed at protecting personal, spiritual rights of the individual, rights which individualize the human being as a personality and a member of socialist society.

On the basis of the analysis of existing norms of civil, family and criminal law and procedure, the nature and structure of the Soviet judicial system, and the application of the aforementioned standards, the author tried to show the comprehensive nature of the juridical guarantees of human rights in the USSR by citing concrete examples.

The Constitution of the USSR, other Soviet laws and rules of socialist community life declare the human being to be the highest and foremost social value relative to which all other material and other values are considered secondary. Accordingly, a hu-

man being cannot be used as a means to some end. The multifaceted development of the individual is the highest goal of the Communist Party, the Soviet state, society, and law. As stated in the Constitution of the USSR, the law of life in developed socialist society is the care of all for the good of each and the care of each for the good of all. In this we find the manifestation of genuine humanism which characterizes our society and law.

Soviet citizens make full use of the juridical guarantees of their rights. We would like to point out that according to the Fundamentals of Civil Legislation (Arts. 122 and 123), foreign nationals and stateless persons enjoy the same civil passive capacity in the USSR as Soviet citizens and, consequently, their personal rights are protected by Soviet law.

We do not consider Soviet law to be a finished, ideal, hardened system. This system is constantly being perfected in accordance with the development of the society, its economic and cultural growth. The Soviet legal system is developing in the direction of the further democratization of social relations and their legal regulation.

The author would be grateful to receive any relevant comments and is ready to answer all questions pertinent to the materials treated here.

REQUEST TO READERS

Progress Publishers would be glad to have your opinion of this book, its translation and design and any suggestions you may have for future publications.

Please send all your comments to 17, Zubovsky Boulevard, Moscow, USSR.



REAL SOCIALISM. THEORY AND PRACTICE

series is a co-production by Progress Publishers, a Soviet publishing house, and publishers in a number of other socialist countries.

The series deals with philosophy, constitutional law, economics, and sociology, and examines various aspects of the socialist way of life.

The authors are prominent Soviet analysts and international groups of writers from socialist countries.

The series appears in English, Spanish and Portuguese, and is for readers interested in the theoretical and practical problems of present-day socialist society.



PROGRESS
PUBLISHERS
MOSCOW