of laws. The French court further said that the divorce was in fraud of the New York law as well as in fraud of the rules of French conflicts of law and international public policy. Since this decision, the New York Court of Appeals has recognized as valid Mexican bilateral divorces obtained by New York domiciliaries.[25] However, even though such divorces now can no longer be said by a French court to be in fraud of New York law, it remains unclear whether the New York Court of Appeals decision will influence the French Courts favorably toward recognition of such Mexican divorces. It would appear possible that they may continue to refuse exequatur to them in view of French insistence on a foreign divorce being in accord with French conflicts of law principles and French and international public policy.

[25] Rosenstiel v. Rosenstiel, and Wood v. Wood, 16 N.Y. 2d 64, 209 N.E. 2d 709 (1965).

THE SOVIET UNION

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A divorce obtained outside the Soviet Union must meet the test established by the Fundamental Principles of Civil Law and Civil Procedure of the U.S.S.R., enacted December 8, 1961. By Art. 128 (introduced as Art. 568 into the Civil Code of the Russian Republic of June 11, 1964) "Foreign Law is not applied if its application would contradict the basic principles of the Soviet system."

In the absence of a judicial decision interpreting this provision, the author of a recent text specializing on the subject indicates that Art. 168 prevents recognition of foreign law if such recognition would violate the principles established by the U.S.S.R. Constitution of 1936, namely the full equality of women with men in the family, the full equality of citizens regardless of ethnic origin or race, the civil character of marriage, the rule of monogamy, the protection of the rights of parents exercised in the interests of their children, and state protection of the interests of mother and child. A marriage or

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divorce violating these principles will not be recognized in the U.S.S.R., regardless of the citizenship, domicile, or residence of the parties concerned.

A second principle is that Soviet citizens, wherever they may be, must conform their domestic relations to the principles of Soviet law. This does not mean that they may not marry abroad under the provisions of some foreign law, nor that they may not obtain a divorce decree abroad. It means that if either event occurs, the circumstances must meet the test established for marriage or divorce by Soviet law. For marriage these are set forth in the various codes of the 15 republics on marriage, the family, and guardianship as requirements of age, health, voluntariness, and absence of an existing marriage. For divorce the requirements are those of the law of July 8, 1944, as amended by law of December 10, 1965, namely that "The district (city) court is obliged to establish the motives for the submission of an application for divorce and to take steps to reconcile the parties" (Art. 25). It is current Soviet policy to discourage divorce and to grant it only if the court finds "that the couple's further life together and preservation of the family have become impossible." Soviet courts consider that they have the right to scrutinize a foreign decree to determine whether strict Soviet morality has been violated.

If one of the parties to a marriage is a foreigner and one a Soviet citizen, the rule concerning marriage is defined by two republics in their codes (Ukraine, Art. 107 of Family Code and Turkmen, Art. 4) and by the others through practice, that marriage is recognized if it conforms either to the local or to Soviet law. This is subject to the Constitutional provisions establishing the fundamental principles which may not be violated. Thus, if a wife on arrival on Soviet territory were to claim that her union had been involuntary or was polygamous, the Soviet court would hold it a nullity, even though it was valid under the place of contracting.

Divorce granted outside the U.S.S.R. to persons neither of whom is a Soviet citizen, or to parties one of whom is a Soviet citizen, is governed by treaties executed with the Eastern European People's Democracies. As regards other countries, there is no guide, either in statute or instruction, but a Soviet author concludes that,

> Since the legality of a marriage concluded by Soviet citizens abroad is recognized in the Soviet Union if it is formulated in accordance with the requirements of local laws, there is no basis for refusing to recognize a divorce decree of a foreign court when one of the parties is a Soviet

citizen. From the general principle of Soviet conflicts law recognizing within the U.S.S.R. legal relationships (especially marriage relationships) as coming into being by virtue of the effect of a foreign legal system, the conclusion should follow that the termination of marriage relations in law by virtue of the act of a competent foreign organ also will be recognized in the Soviet Union. Any other approach to this question would lead to the result that under a decree issued by a foreign court the spouse who is a foreigner would be considered divorced while the spouse who is a Soviet citizen would continue to be considered as married.

The opinion is based on two cases in which Soviet citizens who had been taken to France during the war by the Nazis as involuntary laborers had married Frenchmen. In both cases the women decided to return to their homeland, and the husbands later obtained divorces. One woman left with her five children and with the consent of her husband. The other had to steal away, leaving her child behind, to be awarded to the husband. In both cases the Soviet court subsequently recognized the French divorce decrees, on the ground that to do otherwise would be to countenance different legal results of the French divorce for the French and Soviet citizen-spouses.

Neither case is, however, accepted by the Soviet author as evidence that a Soviet court might not scrutinize the circumstances of a foreign divorce to determine whether fundamentals of Soviet law have been violated. The author concludes that "any other conclusion would lead to the unfounded expansion of the jurisdiction of bourgeois courts over cases touching the interests of the Soviet citizen defendant, and to a groundless denial to Soviet citizens of their right to turn to a Soviet court with a request to terminate a marriage with a foreigner." Presumably, the Soviet court, if it has jurisdiction over children or property in the U.S.S.R., might refuse to accept the terms of a foreign decree on such matters.

A divorce granted to non-Soviet citizens abroad will be recognized within the U.S.S.R. under the provisions of Art. 141 of the Russian Republic's Family Code which reads, "Documents issued to foreigners as proof of divorce, executed in accordance with the laws of the responsible states, shall be recognized as equivalent to entries from the books recording divorces."

The practice under this article is that the foreign decree is recognized only as evidence of the fact of divorce. The consequences upon the territory of the U.S.S.R. are to be determined by Soviet law. Thus, the author concludes that if the French husband should visit the U.S.S.R. with the child awarded to him by the French divorce

decree, the Soviet court is in no way bound by the French decree if the mother seeks custody. The commentator believes that the result would be no different if both parties had been foreigners. Thus a Soviet court would not recognize a prohibition of remarriage included in a foreign divorce decree granted to foreigners if one later sought to remarry within the U.S.S.R. (Comments cited are from N.V. Orlova, *Voprosy Braka i Razvoda v Mezhdunarodnom Chastnom Prave*/Questions of Marriage and Divorce in International Private Law/[Moscow, 1960] pp. 137-167.)

Applying these provisions to Mexican divorces such as the one obtained and litigated in *Rosenstiel v. Rosenstiel,* a Soviet court can be expected to recognize the divorce as evidence of the fact of divorce of non-Soviet citizens, although any provisions considered antagonistic to Soviet morality would not be enforced in the U.S.S.R. if the matter were brought before a Soviet court. If one of the parties were a Soviet citizen resident with his or her spouse for a long period outside the U.S.S.R. the same would apply. If both parties were Soviet citizens, the decree might not be recognized even as to the fact of divorce if a Soviet court should conclude after return of the parties to the U.S.S.R. that a possibility of reconciliation remained. The likelihood of such a refusal to recognize a Mexican decree would be increased if the parties were not resident for a long time outside the U.S.S.R. at the time of the decree, but obtained the decree during brief residence or when on tour.