# REPORTS AND INQUIRIES

## Dismissal Procedures

### III : U.S.S.R.[1]

GENERAL PRINCIPLES AND STATUTORY SOURCES

The Soviet Constitution, in its article 118, guarantees for all citizens the "right to work" i.e. "the right to guaranteed employment and payment for their work in accordance with its quantity and quality".

[1] For the first two articles in this series, dealing respectively with dismissal procedures in France and the United States, see Vol. LXXIX, No. 6, June 1959, and Vol. LXXX, No. 1, July 1959.

The Soviet books and articles consulted are the following : *Социалистический труд*, ежемесячный журнал Государственного комитета Совета Министров СССР по вопросам труда и заработной платы (Moscow) (*Socialist Labour*, monthly organ of the State Committee on Labour and Wages of the Council of Ministers of the U.S.S.R.), cited hereafter as *Sotsialisticheski Trud*; *Советская юстиция*, ежемесячный журнал Министерства юстиции и Верховного Суда РСФСР (Moscow, Государственное издательство юридической литературы) (*Soviet Justice*, monthly organ of the Ministry of Justice and of the Supreme Court of the R.S.F.S.R.), cited as *Sovetskaya Yustitsia* ; *Сборник законодательных актов о труде* (Moscow, Государственное издательство юридической литературы) (*Digest of Labour Legislation*), cited as *Sbornik zakonodatel'nykh aktov o trude* ; *Собрание постановлений правительства Союза Советских Социалистических Республик* (Moscow, Управление делами Совета Министров СССР) (*Digest of Decrees of the Government of the U.S.S.R.*), cited as *Sobranie SSSR* ; Н. Г. Александров : *Советское трудовое право* (Moscow, Госюриздат, 1954) (N. G. ALEKSANDROV : *Soviet Labour Law*), cited as ALEKSANDROV ; А. Е. Пашерстник : *Рассмотрение трудовых споров* (Moscow, Госюриздат, 1956) (A. E. PASHERSTNIK : *Settlement of Labour Disputes*), cited as PASHERSTNIK ; *Социалистическая законность*, орган прокуратуры СССР (Moscow, издательство " Известия советов депутатов трудящихся СССР ") (*Socialist Legality*, monthly organ of the Soviet Public Procurator's Department), cited as *Sotsialisticheskaya Zakonnost*; *Советское государство и право*, орган Института права им. А. Я. Вышинского Академии наук СССР, ежемесячный журнал (Moscow, издательство Академии наук СССР) (*The State and Soviet Law*, monthly organ of the Vyshinsky Law Institute of the Academy of Science of the U.S.S.R.), cited as *Sovetskoe Gosudarstvo i Pravo* ; *Ведомости Верховного Совета Союза Советских Социалистических Республик* (Moscow, Верховный Совет СССР) (*Gazette of the Supreme Soviet of the U.S.S.R.*), cited as *Vedomosti SSSR* ; А. Ф. Клейнман : *Советский гражданский процесс* (Moscow, Издательство Московского университета, 1954) (A. F. KLEINMAN : *Soviet Civil Law Procedure*), cited as KLEINMAN ; Академия наук СССР, Институт права : *Советское государственное право* (Moscow, Юридическое издательство Министерства юстиции СССР, 1948) (*Public Law in the U.S.S.R.*, published by the Law Institute of the Academy of Science of the U.S.S.R.), cited as *Sovetskoe gosudarstvennoe pravo* ; *Радянське право*, орган Міністерства юстиції УРСР, прокуратури УРСР, Верховного Суду УРСР, Сектора держави і права Академії наук УРСР (Kiev) (*Soviet Law*, monthly organ of the Ministry of Justice, the Procurator-General's Office and the Supreme Court of the Ukrainian S.S.R.), cited as *Radianske Pravo* ; and *Бюллетень Верховного Суда СССР* (Moscow, Госюриздат) (*Bulletin of the Supreme Court of the U.S.S.R.*), cited as *Byulleten Verkhovnogo Suda SSSR*.

This provision is held in the Soviet Union to imply that workers who are already in employment are entitled not to be deprived of it without a legally recognised reason duly established in accordance with the prescribed procedure.[1] In other words the decision to dismiss them must always be based on one of the grounds specifically laid down by the law, and where necessary this must be proved to the arbitration tribunals or the courts.[2]

The dismissal procedure—like the whole of Soviet labour law—is based on statutory regulation [3] to the exclusion of any customary or traditional practice, and leaves little room for either individual or collective contractual arrangements.[4] Apart from the provisions of the Constitution current Soviet regulations governing dismissal are to be found mainly in the following texts:

(1) the Labour Code of the R.S.F.S.R., chapter V, articles 37, 47 and 49, and the corresponding provisions of the labour codes of the other constituent republics of the Union [5];

(2) decree dated 6 February 1928 respecting dismissals in the event of a reduction of staff [6] and various other enactments respecting the fixing or reduction of staff under the system of national economic planning;

(3) decree dated 25 April 1956 annulling the penal liability of wage and salary earners who leave their employment of their own free will [7];

(4) decree dated 31 January 1957 approving regulations for the procedure to be followed in examining labour disputes [8];

(5) decree dated 15 July 1958 defining the responsibilities of works councils and local trade union committees [9]; and

(6) directives of the Supreme Court respecting the examination by the courts of civil suits involving labour matters.[10]

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[1] Soviet workers are divided into two main classes, namely *(a)* wage earners proper, paid on time or piece rates, and *(b)* workers belonging to agricultural or handicraft production co-operatives whose earnings are derived from the latters' income. This article is wholly concerned with wage earners in the public sector of the economy, i.e. to follow Soviet terminology, those employed in " public and social undertakings, establishments, institutions or organisations ".

[2] On the other hand the worker is usually at liberty to break the contract binding him to the undertaking and to leave his job on condition that he gives two weeks' notice (cf. section 5 of decree of the Presidium of the Supreme Soviet of the U.S.S.R. dated 25 April 1956 annulling the penal liability of wage and salary earners who leave on their own responsibility, *I.L.O. Legislative Series*, 1956—U.S.S.R. 3).

[3] It should be made clear, however, that the term " regulation " is interpreted here (in accordance with Soviet practice) in a very broad sense covering not only the regulations issued by the legislative and administrative authorities, including the planning authorities, but also the standard-setting decisions of the senior party and trade union bodies and the instructions of the supreme courts, which are usually considered to be a source of law.

[4] On collective agreements see G. MOSKALENKO in *Sotsialisticheski Trud*, No. 2, Feb. 1958, pp. 11-20. This author foresees an extension of the standard-setting function of collective agreements concluded in Soviet undertakings, but the proposed reforms do not affect the dismissal procedure.

[5] The provisions of these codes, which were originally promulgated in 1922, are considered to be obsolete or inapplicable in certain respects and a new federal code is now being drafted (see, for example, *Sovetskaya Yustitsia*, No. 2, Apr. 1957, p. 25). In preparing this article the 1936 edition of the R.S.F.S.R. Code (*I.L.O. Legislative Series*, 1936—Russ. 1) and the 1955 edition of the Byelorussian S.S.R. Code have chiefly been used.

[6] *Izvestia NKT RSFSR*, Nos. 9-10, 1928.

[7] *I.L.O. Legislative Series*, 1956—U.S.S.R. 3.

[8] Ibid., 1957—U.S.S.R. 1.

[9] *Industry and Labour* (Geneva, I.L.O.), Vol. XX, No. 7, 1 Oct. 1958, pp. 252-257.

[10] *Byulleten Verkhovnogo Suda SSSR*, No. 5, 1957.

In describing these regulations we shall discuss in turn the legal grounds justifying dismissal, the procedure to be followed in carrying it out (i.e. by agreement with the trade union), the management's obligations with regard to the dismissed workers (notice, compensation, etc.), the effect of dismissal, the appeals procedure and its enforcement.

## Legal Grounds for Dismissal

Under section 47 of the Labour Code a contract of employment may only be terminated at the employer's request in such cases as are prescribed by law, an exhaustive list of which is given. Every dismissal must be justified by reference to a statutory provision, and the circumstances of the case must fit the legal definition.[1] On the other hand, once all the circumstances warranting dismissal exist, the process becomes virtually automatic and the manager concerned is required to order it.[2]

Soviet legislation also grants certain classes of workers privileged treatment, and in some cases forbids their dismissal altogether. These provisions will be analysed further in conjunction with the various statutory grounds for dismissal.

### *Reduction of Staff*

Under section 47 *(a)* of the Labour Code a worker may be dismissed " in case of entire or partial winding up " of the undertaking [3] as well as in case of " reduction of work ". But it should be noted that the wording of this section dates back to 1922, when the Soviet Union still had a mixed economy. Since the thirties, however, the economy has been entirely nationalised and planned, and this has profoundly modified the importance of this provision.

Under the present system the staff or " establishment " [4] (or " employment ceiling ") of each Soviet undertaking is fixed under the state plan and cannot be changed except by higher authority. In other words, an undertaking is in much the same position as the average government department whose establishment is fixed in the budget. Thus dismissal cannot lawfully take place merely as a result of a fall in the volume of work (or the winding up of the undertaking) caused by fluctuation in the economic situation : there must be an

[1] Thus, in Sergeeva Z.G. v. Handicraft Training Centre No. 6, the Supreme Court of the R.S.F.S.R. cancelled the dismissal and ordered reinstatement of the plaintiff on the ground that the reason given by the employer (violation of the principle of collective management and wrong teaching methods) could not be held to be based on the legal provision quoted by the management (section 47*(d)* of the Labour Code ; see below) (*Sovetskaya Yustitsia*, No. 1, Mar. 1957, p. 73).

Under the model internal regulations for workers in state, co-operative and social undertakings and institutions (issued by the State Committee on Labour and Wages of the Council of Ministers of the U.S.S.R. in agreement with the Central Council of Trade Unions) the entries that the management is required to make in each individual's workbook when he leaves the undertaking " must be worded in exactly the same way as the relevant legal provision or with reference to this provision " (decree of 12 January 1957, section 8 ; see *Sbornik zakonodatel' nykh aktov o trude*, text 63).

[2] Although dismissal is only optional in the event of sickness (see below).

[3] In order to avoid repetition, the term " undertaking " is used throughout where the regulations refer to " undertakings, institutions, establishments, organisations, etc.".

[4] See for example the decree of 13 May 1935 concerning the fixing and control of establishments (*Sobranie SSSR*, No. 26, 1935, text No. 208) ; on the system now in force in industrial undertakings, see *Sotsialisticheski Trud*, No. 8, Aug. 1958, pp. 142-147.

actual decision by the proper authorities [1] (within the framework of the economic plan) to the effect that the establishment shall be reduced. In other words the dismissal can only be based on an administrative order cutting the staff of the undertaking, but this need not necessarily be related to a " reduction of work ".[2] The latter in itself does not, therefore, constitute a valid reason for dismissal.

In order for a dismissal under section 47 *(a)* of the Code to be legal—and for the courts to be satisfied as to its legality—the reduction in staff (including both the administrative decision ordering the reduction and the action taken to put it into effect) must, first of all, have taken place in accordance with the prescribed procedure.[3] The dismissal is illegal if another worker is taken on for the same job.[4] On the other hand, the Soviet courts have recognised in principle the right of managements in the event of a reduction of staff to reorganise the work in accordance with operating needs and, if necessary, to replace a dismissed worker by transferring another worker already on the staff.[5]

In dealing with such cases the Soviet courts are required not only to ascertain whether a reduction of staff has actually taken place (failing which a dismissal order becomes null and void [6]) but also to check whether, as sometimes happens, the dismissals have not been carried out for an improper reason, e.g. by managements wishing to get rid of certain troublesome employees.[7]

When it is decided to reduce the staff the management, provided it cannot offer the workers alternative employment in the same undertaking [8], must select the workers to be dismissed " having regard to operating needs ".[9] In the first place they must take account of the efficiency and skill of the workers liable to be affected.[10] Qualifications being equal, those in any of the following categories must be dismissed

[1] Under the Act of 10 May 1957 reorganising the Soviet economy there has been large-scale decentralisation of responsibility for fixing the plans for individual undertakings; these plans are now, as a rule, drawn up by the regional economic councils or, in the case of the smaller undertakings, by the district authorities. A decree of 9 August 1955 enlarging the powers of managements grants the latter the right " to fix and alter the personnel distribution and establishment in workshops and offices within the framework of the plan for the undertaking, i.e. to allocate the total number of persons on the establishment to different departments as they think fit.

[2] According to A. TROSHIN (*Sovetskaya Yustitsia*, No. 1, Mar. 1957, p. 64) a " reduction of staff " is now deemed to take place when " one or more jobs are abolished in accordance with the prescribed procedure or the employment ceiling is lowered irrespective of any drop in the volume of work ".

[3] Directives of the Supreme Court of the U.S.S.R., 1957 (point 16); see also A. KAFTANOVSKAYA in *Sotsialisticheski Trud*, No. 10, Oct. 1958, p. 36.

[4] ALEKSANDROV, p. 177.

[5] Ibid., p. 178. This right of managements also derives from the provision of the decree of 9 August 1955 (referred to earlier) extending the powers of managements.

[6] For example the Supreme Court of the R.S.F.S.R. in Brokmiller v. the All-Union Coal Research Institute (see A. TROSHIN, loc. cit.).

[7] Thus " cases may occur where the management first of all increases the establishment in order to be able later, under pretext of reducing it, to get rid of some members of the staff to whom it objects for one reason or another " (commentary by A. TROSHIN, loc. cit.); see also P. LOGINOV in *Sovetskaya Yustitsia*, No. 3, May 1957, p. 60.

[8] It should be noted that the management is first of all required to explore the possibility of transfer before taking any steps towards dismissal. The workers can enforce this right in the courts.

[9] Directives of the Supreme Court of the U.S.S.R., 1957 (point 16).

[10] Decree of 6 February 1928 and directives of the Supreme Court 1954, (point 14); seniority may also be taken into account as a subsidiary criterion (see PASHERSTNIK, pp. 61-62).

last of all : war disabled and ex-servicemen ; women living alone with young children to support ; and workers with two or more dependants whose families contain no other wage earner.[1]

While there is no particular problem about giving preferential treatment to these categories, the determination of relative efficiency or skill is quite another matter. Case law on this point is far from being uniform and the question has not yet in fact been properly settled. Thus, some of the courts have gone so far as to order tests to be held, not only for workers who have been dismissed but also for other workers who have been kept on. According to some commentators it is for the courts " to ascertain whether the management has not dismissed more highly skilled workers who would be more useful in production, while keeping less qualified workers in their jobs ".[2] Others, however, contend that only the management (in consultation with the trade union) is qualified to assess the workers' qualifications in the event of a reduction of staff.[3] This seems to be the line taken in a number of decisions given by Soviet courts, although it is flatly rejected by the author of a recent article published in an official Soviet review.[4]

The safeguards by which the worker benefits under the foregoing legislation in his relations with the management clearly depend on the general economic policy pursued by the authorities and the central planning agencies, which in practice may have far-reaching effects on individual employment relationships and may affect the stability of a particular type of undertaking or section of the economy.[5]

### *Suspension of Work*

Under article 47 *(b)* of the Labour Code, dismissal may take place " in consequence of the total suspension of work for a period of more than one month for reasons of an industrial nature ".

Nowadays, this ground for dismissal appears to have fallen into disuse and there are no examples of court decisions on the subject.[6]

### *Unfitness for Work*

Under article 47 *(c)* dismissal may take place in case of a worker's unfitness for the work to be performed. For Soviet commentators,

[1] Decree dated 6 February 1928 and point 14 of the directives of the Supreme Court, 1954 ; regarding various other privileged categories, see below.

[2] A. TROSHIN, op. cit., p. 65. The same view, although arguing from the need to safeguard the workers' rights, is also held by A. KAFTANOVSKAYA (loc. cit.) and by the Moscow Supreme Court in the case of Guseva v. Moscow Petroleum Refinery No. 1, in which the plaintiff's dismissal was cancelled on the ground that she was classified in a higher grade of skill than other workers in the same undertaking who had been kept on (A. TROSHIN, loc. cit.).

[3] For example V. PANIUGIN and S. I. BARDIN, members of the Supreme Court of the U.S.S.R., as quoted by A. KAFTANOVSKAYA (loc. cit.).

[4] A. KAFTANOVSKAYA (loc. cit.)

[5] For details of recent measures of this kind, see below.

[6] In his manual of Soviet labour law (op. cit., p. 179), ALEKSANDROV, notes : " In view of the uninterrupted development of the national economy, this clause is hardly applicable. Nevertheless, stoppages of this kind may occur in some institutions, such as rest homes or sanatoria, owing to climatic conditions and article 47 *(b)* would therefore be operative." In addition, an explanatory note inserted after this clause in the Labour Code of the Byelorussian S.S.R. (1955 edition) appears to indicate that the clause could be applied (at least in this Republic) in the event of *major repairs* or *re-equipment.*

the law here refers to unfitness for the job and not to cases involving, for instance, breaches of discipline or spoilage due to negligence.

Examples of lawful dismissal based on this clause are failure by a worker to pass the proficiency test needed to qualify for permanent appointment or withdrawal of a certificate or diploma needed for his job (e.g. his driving licence in the case of a car driver). The stipulation that the worker must pass certain tests must, however, be made when his personal contract of employment is signed [1] or must be a statutory obligation (e.g. in certain posts which must be filled by physicians).

A similar case may occur when a worker refuses to accept the responsibilities associated by law with his post.[2] The same applies to a worker holding an elective office who is not re-elected.[3] Workers who handle valuables in cash or in kind may also be dismissed if they have "forfeited their employer's confidence"[4], it being understood that the management can always be taken to court.[5]

Two other possibilities may also occur: where the individual's capacity for work has diminished to such an extent that he can no longer perform his usual job and where his skill has become inadequate, owing to technical change.[6] Unfitness may also, in exceptional cases be due to a legal safeguard such as the ban on the employment of women underground in mines and on building sites.[7] The management's obligation to deal with such cases by means of transfer to less arduous or less skilled work, or by giving the individual concerned an opportunity to take further training in his particular skill, is of cardinal importance in Soviet law and practice.[8]

In view of the complexity of cases of this kind, and the need to make allowance for a variety of factors, dismissal under article 47 *(c)* may only be ordered (under the Labour Code) with the consent of a joint arbitration committee, i.e. after a full hearing and with the assent of the trade union representatives.[9]

### *Breach of Labour Discipline*

Article 47 *(d)* of the Code authorises dismissal in case of "persistent failure on the part of the employee to fulfil the duties incumbent upon him under the contract or the rules of employment, without any sufficient reason for this".

[1] Thus the Supreme Court of the U.S.S.R. cancelled the dismissal of a legal adviser for which the only reason given was his lack of specialised training (ALEKSANDROV, p. 180).

[2] Thus, for example, the decree of the Labour Commissariat dated 29 October 1930 (section 30) allows a worker to be dismissed if he refuses to sign a statement making him responsible for the loss of any valuables entrusted to his care.

[3] See, for example, the decision of the Central Council of Trade Unions dated 11 October 1937, respecting trade unionists who leave their jobs as a result of union elections.

[4] Decree of the Labour Commissariat, dated 6 November 1930. For a discussion of the practical problems arising out of this clause (e.g. the grounds for loss of confidence and, above all, the definition of the type of post covered by the clause), which do not yet appear to have been fully settled, see YA. YANOVSKI in *Sotsialisticheskaya Zakonnost*, No. 5, May 1957, pp. 55-56.

[5] By a decision of the Supreme Court of the U.S.S.R. dated 21 February 1955 there cannot be any "loss of confidence" on the ground of a previous conviction if the individual concerned has been pardoned (*Sovetskaya Yustitsia*, No. 3, May 1957, p. 79).

[6] ALEKSANDROV, p. 179.

[7] *Industry and Labour* (Geneva, I.L.O.), Vol. XX, No. 11, 1 Dec. 1958, pp. 423-424. On the provisions safeguarding the rights acquired by workers, see below.

[8] See below.

[9] See Remark 1 on article 47 of the Code, and A. KAFTANOVSKAYA, op. cit., p. 38. For further details, see below.

In order to be valid, the dismissal must be based on some definite circumstance and not simply on the management's general impression of the individual's behaviour over the period concerned.[1] The charges against him must be directly connected with his work.[2]

Moreover the infringement of labour discipline must be " persistent ", i.e. repeated, unless a specific provision of the law prescribes dismissal as punishment for a single breach of labour discipline [3], e.g., taking a whole working day off without good reason, drunkenness on the job [4] and certain other cases defined by special regulations.[5]

It is for the courts to decide how far the breaches of discipline have been systematic. Soviet case law makes it clear that other disciplinary action must first have been taken before the worker is dismissed (e.g. warning and reprimand) as provided by the works regulations [6]; there can, of course, be no question of combining these penalties with dismissal for the same offence.[7] Point 17 of the directives issued by the Supreme Court in 1957 also makes it clear that before a worker can be lawfully dismissed, he must first have been the subject of disciplinary action, or of " social corrective action " by a special body known as a " comrades' court ".[8]

Lastly, the conduct of which the worker is accused must constitute a breach of a contract or regulation ; and the worker himself must be to blame through either commission or omission. The dismissal is null and void if the accusation does not refer to his employment obligations [9] or if the worker can produce " valid reasons ", e.g. that he lacks the qualifications or skills needed to perform the job assigned to him.[10]

### *Criminal Offences*

Article 47 *(e)* of the Code provides that a worker may be dismissed if he commits a criminal action which is directly connected with his work and which is established by an enforceable verdict, or after he has served two months' detention ; the worker may, however, be relieved of his post and his wages suspended in the meantime. If he is sub-

[1] PASHERSTNIK, p. 73.

[2] In other words, the dismissal is illegal if it is based on the individual's behaviour in, for example, a hostel or a public conveyance (ibid., p. 74) ; see also ALEKSANDROV, p. 181.

[3] PASHERSTNIK, p. 72.

[4] Decree of 25 April 1956, section 7, subparagraph *(c)*, and model works regulations dated 12 January 1957 (section 23).

[5] For example a decree of 7 July 1932 provides against failure by the executive staff to observe the regulations regarding the general protection of the premises, fire precautions, or the preservation of records (see also PASHERSTNIK, p. 72).

[6] As in the Sergeeva case (see above, p. 175, note 1).

[7] The Supreme Court of the R.S.F.S.R. in a decision dated 30 July 1953 quashed the dismissal of K., at the request of the Procurator-General, on the ground that the evidence that he had persistently broken the rules was based on two disciplinary measures inflicted in the course of four days as a result of the same action which served as the reason for dismissal (PASHERSTNIK, p. 73).

[8] A. KAFTANOVSKAYA, op. cit., p. 41. As its name indicates, this " court " is made up of workers employed in the same undertaking. It operates under the auspices of the trade union and gives verdicts on cases of breaches of discipline referred to it by the management whenever the latter decides to waive its right to take disciplinary action itself.

[9] As in the Sergeeva case referred to earlier, in which the plaintiff had been accused of violating the principle of collective management in a teaching establishment, whereas according to the relevant regulations the establishment was run on the " single-manager principle ".

[10] ALEKSANDROV, p. 181.

sequently acquitted by the court or his case is quashed, he must be reinstated in his previous job and paid back wages for the whole of the time he was absent from his job (according to a Supreme Court directive of 1957, this back payment may not be for a period exceeding two months).[1]

*Prolonged Absence Caused by Temporary Disability*

Under section 47 *(g)* of the Code, absence from work on account of temporary loss of working capacity constitutes a ground for dismissal on the expiry of the second month following the date on which disability began or, in case of pregnancy, following the day on which maternity leave ended.[2]

As the Supreme Court of the U.S.S.R. emphasises in its interpretation of 8 July 1953 [3], dismissal in such cases (contrary to the general rule) is not automatic but optional, and in the Court's view can only be justified by overriding production needs.

The practice of Soviet arbitration tribunals and courts of law seems to be that dismissal because of temporary absence must be cancelled if it occurs on the same day as, or a short time before, the ending of disability, or if the individual's job has not been filled by the time he becomes available for work. " Disability " is taken in a very broad sense, since it covers not only sickness on the part of the worker himself but cases in which he takes time off to look after a sick member of his family.[4]

*Refusal to Accept Transfer to Another Undertaking or District*

Under article 37 of the Labour Code no worker may be transferred to another undertaking or district by unilateral decision of the management ; on the other hand, if he refuses, his contract of employment may be terminated by either party.

According to the interpretation given by the Supreme Court in the directives it issued in 1954 (point 6) [5], dismissal is only valid in such a case if it can also be justified on one of the grounds set out in article 47 of the Labour Code.

*Dismissal at the Request of the Trade Union*

Under article 49 of the Code a worker can be dismissed at the request of the trade union, subject to the proviso that the management can appeal through the ordinary machinery for dealing with disputes arising out of dismissals.

It is usually held that, when this clause was adopted (1922), it was designed to help the trade unions to " fight capitalist elements operating against the interests of the working class, i.e. strike breakers, anti-trade union groups, etc.". It never appears to have been considered applicable to dismissals intended to replace non-trade unionists by

[1] The soundness of this rule is, however, disputed by some writers. See A. EPSTEIN in *Sotsialisticheskaya Zakonnost*, No. 2, Feb. 1958, and A. KAFTANOVSKAYA, op. cit., p. 42.

[2] Under the Code of the Byelorussian S.S.R. notice may only be given *four months* after the onset of disability or the expiry of maternity leave.

[3] A. KAFTANOVSKAYA, op. cit., p. 39.

[4] Ibid., pp. 39-40.

[5] *Sbornik zakonadatel'nykh aktov o trude*, p. 448.

union members, this being considered incompatible with the principle of voluntary union membership.[1]

In later years this clause remained virtually inoperative for a very long time and it is now considered to be obsolete and inapplicable to " ordinary workers " with no special responsibilities. Various rulings of the Central Council and central committees of the Soviet trade unions clearly bear out this point of view.[2] Such cases may nevertheless occur, as is shown by a recent order of the Plenum of the Supreme Court of the U.S.S.R.[3], in which the Court rejected the view that the trade unions have sole power to deal with cases of this kind ; it thereby confirmed the right of the courts to rule on the substance of any such cases. In the Court's opinion such a dismissal is only lawful if the union's request is based on one of the grounds specified in article 47 of the Code (analysed above) ; article 49 on its own does not, therefore, constitute a ground for the dismissal [4] of ordinary workers.

This, however, does not apply—to judge by the recent practice of Soviet trade unions—to certain workers in managerial posts who are guilty of serious dereliction of duty, particularly in safety and welfare matters or in their relations with the trade unions themselves. During the last three years there has been a sharp increase in the number of trade union demands, under article 49 of the Code, for the dismissal of managers or other persons holding posts of responsibility.[5]

Under a decree dated 13 May 1929 [6] the demand made by the union in accordance with article 49 of the Code is not valid unless submitted by the area trade union committee or a still higher body. However, according to a recent order [7], even works or local trade union committees may, if necessary, request the authorities to remove managers who ignore their obligations under collective agreements, display a bureaucratic spirit, permit slackness or violate labour laws. But this provision does not refer to article 49 of the Code, and it would therefore seem that the authorities are not bound to act on a request of this kind from a works or local trade union committee, although it could constitute a ground for the dismissal of the executives in question.

## Exceptions

Soviet law forbids the dismissal of—

(1) expectant mothers and women living alone with a dependent child under the age of 12 months, except in certain special cases for which the prior agreement of the union is required ;

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[1] See M. I. Nikonov and E. Cherenkov in *Sovetskoe Gosudarstvo i Pravo*, No. 8, Aug. 1958, p. 109.

[2] Ibid., pp. 110-111. Until 1957, senior trade union bodies acted as courts of appeal for disputes arising out of dismissals.

[3] Case of Kosenko (librarian of the Tashkent Industrial Technical Institute) v. the Institute (*Sotsialisticheskaya Zakonnost*, No. 10, Oct. 1958, p. 92).

[4] In this particular case the Court cancelled the dismissal because, as was established by the first judges, the real reason was the fact that the employee in question had reported certain administrative irregularities.

[5] M. I. Nikonov and E. Cherenkov, loc. cit.

[6] Joint decree of the Labour Commissariat and the Central Council of Trade Unions (*Izvestia NKT*, No. 24, 1929).

[7] Decree of the Presidium of the Supreme Soviet, dated 16 July 1958 (see *Industry and Labour* (Geneva, I.L.O.), Vol. XX, No. 7, 1 Oct. 1958, pp. 252-257).

(2) workers on annual or additional leave ; and
(3) certain classes of servicemen and workers called to the colours.

In addition, members of works trade union committees, union representatives on labour disputes boards and trade union inspectors may only be dismissed with the consent of the next higher trade union body. Members of union Committees who have been seconded to carry out their duties are entitled on the expiry of their term of office to reinstatement in their old jobs or to equivalent jobs elsewhere ; in other words their employment cannot be terminated as long as they hold office.

### Procedure to Be Followed : Consent of the Union

Under the decree of 15 July 1958 dismissal can only take place with the prior consent of the works or local trade union committee. As one Soviet writer notes, this clause is not qualified in any way and therefore applies to all cases of dismissal without any exception whatever ; nor does it give the management the right of appeal against the trade union committee's decision should the latter refuse its consent. Thus neither the courts nor the senior trade union bodies can overrule the works committee in this particular respect.[1]

On the other hand, it would appear that the works trade union committee cannot, for instance, flatly turn down a dismissal forming part of a staff cut ordered by the authorities. This is a fundamental problem for which legal practice so far does not appear to have evolved a generally accepted solution.[1] It would seem, however, that a systematic or unreasonable refusal by the trade union would, under Soviet law, be considered illegal and, failing any other means, the manager concerned could have recourse to the public procurator's office to ensure that the law was enforced.[2]

However this may be, the new enactment gives the trade union committee the final say in the choice of workers to be dismissed in the event of a staff cut, and greatly strengthens its ability to protect the workers against unlawful or unreasonable dismissal. It is expected that, as a result, there will be a sharp drop in the number of disputes over the reinstatement of workers.[3]

### Obligations of the Management towards Dismissed Workers and the Consequences of Dismissal

Normally a worker must be given at least 12 days' notice, although this is not necessary in some cases, namely breaches of labour discipline, criminal offences, or dismissal at the request of the union.

A worker dismissed under article 37 of the Code, i.e. for refusing to accept a transfer, is entitled to compensation equal to 12 days' pay. This is also granted to workers who are dismissed without notice either as a result of a staff cut or because of their unfitness for their jobs.

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[1] A. Kaftanovskaya, op. cit., p. 43.

[2] For a similar case in which, in the absence of any alternative action open to the management, this solution was proposed, see *Sovetskaya Yustitsia*, No. 5, May 1958, p. 45.

[3] A. Kaftanovskaya, op. cit., p. 36.

These normal provisions of the law are often supplemented by special measures, particularly in cases involving large-scale redundancies. Thus, for example, when the whole administration of the economy was recently overhauled, the Central Committee of the Communist Party and the Council of Ministers of the U.S.S.R. took such measures to deal with the case of workers who had lost their jobs through the staff cuts and, in some instances, the abolition of whole departments.[1] In the first place all ministers and other responsible chiefs, as well as the Party organisations, were required to make every effort to find alternative work for the individuals concerned. Secondly, special compensation—equal to two months' salary—was granted to workers thereby made redundant. Those who were obliged to acquire new qualifications were also entitled to continued payment for a period of four to six months of a salary equal to the one they were paid in their former posts (up to a maximum of 1,000 roubles). Workers in this category were also given priority in the granting of housing loans on special terms.

Similar measures, including the payment during the whole period needed for retraining of the average monthly wage which the worker received during her former employment, were taken in the case of women workers who lost their jobs as a result of the ban on female employment in mining and building.[2] The decree of 18 April 1958 reorganising the machine and tractor stations also contained a number of clauses safeguarding the rights—including payment of full wages up to the end of 1958—of workers who lost their jobs as a result of staff cuts in such stations.[3]

Apart from special exceptions such as those quoted above a dismissed worker forfeits his seniority rights [4], together with entitlement to certain social security benefits, which cannot normally be recovered until he has served six months in his new job. There is no public unemployment insurance scheme [5] since under article 118 of the Constitution of the U.S.S.R. " the right to work is ensured by the Socialist organisation of the national economy, the steady growth of the productive forces of Soviet society, the elimination of the possibility of economic crises, and the abolition of unemployment ".

Finally, when the worker leaves his job, his workbook is returned to him. The entries made in it by the management must include a reference to the clause of the Code under which dismissal took place. In the event of dismissal on grounds of unfitness the management must likewise specify the type of job for which the individual was considered unfit.[6] The worker is entitled to apply to the courts for these entries to be changed, and he can also, if necessary, demand damages for any injury he has thereby suffered.[7]

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[1] Decree dated 28 May 1957 (*Sobranie SSSR*, No. 6, 1957, text 64); see also *Sovetskaya Yustitsia*, No. 7, Sep. 1957, p. 74.

[2] See *Industry and Labour* (Geneva, I.L.O.), Vol. XX, No. 11, 1 Dec. 1958, pp. 423-424.

[3] *Sobranie SSSR*, No. 7, 1958, text 62.

[4] Decree dated 2 March 1957 (Ibid., No. 4, 1957, text 43).

[5] The rules of the trade unions do, however, make provision for the granting of relief in exceptional circumstances, and there are also mutual benefit funds in a number of Soviet undertakings.

[6] ALEKSANDROV, p. 190.

[7] Directives of the Supreme Court of the U.S.S.R., 1957 (point 21).

## APPEALS

### *Ordinary Appeals Procedure*

Soviet law entitles any worker who feels that he has been dismissed unfairly or unlawfully to lodge appeals through the arbitration or judicial machinery.[1] The procedures described below are employed irrespective of the ground for dismissal, and through them the worker can demand reinstatement and damages, as well as any other compensation or benefits which may be due to him.[2]

In order to enforce his rights a worker must normally apply first of all to a joint works committee (the labour disputes committee), which is made up of equal numbers of representatives of the management and of the works trade union committee or (failing this) the local trade union committee.[3] The committee is required to make a full examination of the evidence and it can, if necessary, order inquiries and call witnesses. However, any decision, to be effective, must be taken unanimously, i.e. with the agreement of the representatives of both sides.

Failing a unanimous decision, or in the event of an appeal by the worker against the joint committee's decision, the works trade union committee is then asked to give a ruling. The latter, like the decision of the joint committee, becomes enforceable immediately on the expiry of the period within which the parties may lodge an appeal.

A worker who is not satisfied with the decision of the trade union committee is entitled to take the dispute to court.[4] The court then deals with the case in accordance with the ordinary rules of civil procedure. The decision of the first instance can, in principle, be reviewed at all the stages of the Union appeals machinery.[5]

It should be added that in all likelihood the working of the foregoing procedure will be simplified so as to make allowance for the clause of the decree of 15 July 1958, mentioned earlier, which requires the consent of the works trade union committee before any dismissal can

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[1] Decree dated 31 January 1957 approving the regulations prescribing the procedure for dealing with labour disputes ; see *Industry and Labour*, (Geneva, I.L.O.), Vol. XVII, No. 9, 1 May 1957, pp. 344-349, and A. KAFTANOVSKAYA and P. LIVSHITZ, in *Sovetskaya Yustitsia*, No. 3, May 1957, pp. 28-32.

[2] These procedures are open to all workers except certain persons holding supervisory posts whose appeals can only be lodged through official channels. The list of occupations and duties covered by this clause of the decree of 31 January 1957 includes directors of undertakings, together with their deputies and assistants, chief engineers, workshop superintendents, foremen, directors of administrations and their deputies, editors in chief and their deputies, professors of higher educational establishments, public procurators, persons holding elective posts in various organisations, and trade union instructors, inspectors and departmental heads. (For a full list of these occupations and functions see *I.L.O. Legislative Series*, 1957—U.S.S.R. 1 [Appendix].)

[3] The worker may, of course, apply directly to a court whenever a joint committee cannot be formed owing to the absence of a works or local trade union committee. The same is true of employees of the trade unions themselves (Directives of the Supreme Court of the U.S.S.R., 1957, point 1).

[4] The rights of the management are more restricted, since it cannot contest the trade union committee's decision in the courts except by alleging a breach of the law.

[5] While the higher courts are bound by the findings of the lower courts as regards factual evidence they are entitled not only to reverse their decisions because of shortcomings of form or procedure but also to amend them on grounds of substance. For this purpose they can accept evidence or other material which was not called upon by the court of first instance. See KLEINMAN, Chapter XVI (Appeals in Soviet civil law procedure).

be valid. Plainly, the arbitration procedure, which involves a double review of the same case by the trade union representatives (on the joint committee and on the works committee itself) is unnecessary and pointless in cases where the dismissal already has union approval. In fact, some Soviet courts in cases of this kind already allow a request for the cancellation of a dismissal to be submitted directly to the court without first going through the arbitration tribunal and the trade union committee.[1] In its 1957 directives (point 1) the Supreme Court of the U.S.S.R. formally admitted the receivability of such applications made directly to the courts from workers employed by works or local trade union committees.[2]

*Special Appeals and Review Procedure ; Personal Liability of Managers*

Under the general principles of Soviet law any judicial decision entailing a breach of the law may be referred by the public procurator or by the president of a higher court for review by the appropriate courts.[3] This applies also to decisions of trade union bodies in so far as they take part in the administration of justice. In fact, the main decisions of the highest courts in cases concerning dismissal have been taken as a result of " protests " of this kind in the interests of the law.

The powers of Soviet procurators in enforcing the law (see article 113 of the Constitution) extend to any decision by any body or person whatever (e.g. the official responsible for the dismissal, even when his decision has not been disputed by the worker or, alternatively, an illegal decision by a trade union committee or joint committee) and enable them to call for a review.[4]

This special appeals procedure, designed to ensure that the law is enforced, gives the workers an additional means of safeguarding their rights should they be prevented for one reason or another from doing so through the usual channels. In this particular instance they are able to lodge a complaint with the appropriate procurator, who naturally has full discretion to decide what action to take. Nevertheless, the investigation of complaints of this kind from workers is considered to be one of the chief duties of officials of the Public Procurator's Department, and they often devote a considerable part of their time to it. Some public procurators even appear to have set up regular specialised services dealing with the legal protection of labour.[5]

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[1] A. KAFTANOVSKAYA, op. cit., p. 45. and G. DOBROVOLSKI, member of the Supreme Court of the U.S.S.R., in *Sotsialisticheskaya Zakonnost*, No. 8, Aug. 1958, pp. 19-20. On various other problems connected with the operation of this arbitration procedure, see also A. KAFTANOVSKAYA and P. LIVSHITZ, loc. cit., and P. LOGINOV, op. cit., pp. 60-61.

[2] Under a recent decree, dated 27 January 1959, the Presidium of the Supreme Soviet of the U.S.S.R. has endorsed the practice described in this paragraph. The decree stipulates that disputes arising out of dismissals taking place on the instigation of the management and with the approval of the trade union committee can be taken direct to the courts without the need for appealing through the arbitration procedure described above. The worker must take his case to court within a month from the day on which he was notified of his dismissal. (*Vedomosti SSSR*, No. 5, 1959, text No. 53).

[3] KLEINMAN, Chapter XVII (Re-examination of orders and decisions of the courts under the review procedure).

[4] *Sovetskoe Gosudarstvennoe Pravo*, Chapter XXXVII (The Public Procurator's Department).

[5] See for example *Sotsialisticheski Trud*, No. 1, Jan. 1958, pp. 133-138 ; *Sotsialisticheskaya Zakonnost*, No. 7, July 1958, pp. 77-78 ; and *Radianske Pravo*, No. 1, 1958, pp. 33 and 71, and No. 3, 1958, p. 92.

Another feature of Soviet law worth mentioning here is the personal liability of managers in case of unlawful dismissal. According to the directives issued by the Supreme Court of the U.S.S.R. in 1957 (point 22) a court may, when cancelling the dismissal, require the manager concerned to pay damages to the undertaking to indemnify it for the compensation it has had to pay the worker.[1] Refund by the manager of compensation paid by the undertaking in the event of delay in reinstating a worker whose dismissal has been cancelled may be demanded either by the public procurator himself or by the manager's own senior (point 23 of the directives).[2] The sum which the manager is required to refund may, however, in no case exceed three times his monthly salary. Where it is proved that the manager concerned has committed a serious breach of labour law, particularly if the dismissal was due to a desire to get rid of certain individuals, the court may issue a special order prescribing disciplinary and, if necessary, criminal proceedings (point 19 of the directives).

Lastly, the trade unions, unlike managements, have no civil liability with respect to any damages payable as a result of a dismissal which has subsequently been cancelled. The management bears full civil liability even if dismissal took place at the union's request under article 49 of the Labour Code.[3] In its 1957 directives the Supreme Court of the U.S.S.R. makes it clear (point 7) that, as bodies responsible for the settlement of labour disputes, the works and local trade union committees may in no circumstances be involved by court order in judicial proceedings as defendants or third parties.

## Compensation and Reinstatement Following Unjustified Dismissal

A worker who has won his case before an arbitration tribunal or a court is entitled to compensation equivalent to his loss of earnings [4] and must be reinstated in his former job [5] subject to the same conditions as before.[6] If the undertaking delays reinstating the worker the latter is entitled to compensation for as long as he is kept out of his job.

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[1] For a discussion of some procedural problems arising out of this rule—particularly owing to the fact that the manager concerned is not a direct party to the case—see *Sotsialisticheskaya Zakonnost*, No. 7, July 1958, pp. 73-74.

[2] The sums involved are often quite substantial. Thus a single undertaking in Moscow had to pay out a sum of 20,000 roubles in two months as compensation for illegal dismissals (P. Loginov, op. cit., p. 6).

[3] M. I. Nikonov, loc. cit.

[4] According to the directives of the Supreme Court (points 9 and 20) this compensation may not exceed the equivalent of 20 days' earnings with respect to the period preceding the court's decision. If an order has been given to reinstate a worker who has been acquitted or discharged the directives (point 18) stipulate that compensation may not exceed two months' earnings.

[5] The directives of the Supreme Court for 1957 (point 20) nevertheless envisage two cases in which an order should not be made for the worker's reinstatement, namely (1) if his former job has been abolished as the result of a staff cut or administrative reorganisation ; and (2) if he has meanwhile found an equally well-paid job suited to his qualifications, and if by remaining in this new job he would not prejudice his other interests, such as seniority rights. In either case the court allows the payment of compensation for loss of wages up to a maximum of 20 days' earnings.

[6] Decision of the Moscow Central Court in Gritsaev v. No. 3 Automobile Depot (*Sotsialisticheskaya Zakonnost*, No. 5, May 1957, p. 90).

When compensation is awarded by a joint committee or the works trade union committee the latter (under the decree of 31 January 1957) is responsible for issuing to the worker a certificate stating the sum due to him. This certificate is enforceable and the money is recovered through the machinery for executing judicial decisions. A summary procedure is used whereby the certificate is presented to the state bank, which then debits the amount to the undertaking's account.[1]

[1] For details of the procedure followed by Soviet state banks in such cases, see *Sovetskaya Yustitsia*, No. 5, July 1957, pp. 52-53.