



Labour law in public services in the UK

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Background of relations in the public sector

- Pre-nineteenth century
 - Patronage
 - No department was responsible for the State employees

Nineteenth century

- Growing role of the State
- Shift of control from Monarch to Parliament and government

Background of relations in the public sector

Shift from Crown to Parliament leads to the idea of the conception of permanent, politically neutral civil service

Patronage however remained

Northcote Trevelyan report in 1853:

- open examination
- promotion by merit
- a good idea to enact a Civil Service Act

Background of relations in the public sector

Twentieth century:

- Civil Service remained a competence of the Crown where no legislation was enacted
- Thatcher years: a strong privatisation which led to lesser jobs in the public sector

Nature of the employment relationship

- Civil servants (a small group of Crown servants at the top of the administration): not explicitly stated as contracts of employment
- The same counts for police officers
- The opposite counts for the NHS (explicitly mentioned contracts)

Nature of employment relationships

- Difficult debate which led to different judgments:
 - 1) contractual relationship:
 - Hambrook-case: recovery of revenue of taxi officer due to an accident. The Court resolved the problem based upon “common” employment law.

Nature of the employment relationship

2) No contractual relationship

- Bruce-case: there exist terms of appointment in the employment relationship with civil servants
- However: Nangle-case: appointment does not include the intention to set up contractual relations

Nature of employment relationships

Constitutional Reform and Governance Act of 8 April 2010:

- no clear choice has been made: there has not yet been mentioned that there exist a real contract of employment in the public sector
- However: it is considered to be at least a contractual nexus:
The TULRCA and ERA are applied in case of litigation

Nature of employment relations

- CRGA 2010 constitutes a legal basis for the objective recruitment of the best civil servants
 - Recruitment linked to civil service commission
 - Objective recruitment based on merit

Nature of employment relations

The CRGA 2010 has modified some important and detailed elements:

- a statutory basis for a code of conduct
- basic principles of neutrality, loyalty and duty to obey are transmitted into a guideline

Industrial relations

- One of the major issues concerns the right on freedom of association
- Restrictions are still made for police and military services

Industrial relations

- Collective negotiations were considered to be crucial until the Thatcher years:
 - GCHQ-case (1984): MI5 and MI 6 servants were excluded from the possibility to join a trade union.
 - This exception was accepted by judges based on the principle of national security

Industrial relations

- Queries remain on the impact of the exception
 - With regard to the case law in Demir and Baykara and Yapi Yol Sen (EctHR)
 - What are the current limits of article 11 ECvHR?

Conclusion

- The UK has never known a distinction
 - Major similarities with private sector
 - CRGA has not yet fully determined the debate
 - Importance of integrity and objective recruitment procedures