

Europe and the equal treatment of workers

Address by Jan Cremers at the Ceremony in the Royal Festival Hall, 12 November 2013.

Honourable chair, honourable vice-chancellor and governors, dear graduates, friends and relatives, it is with great delight that I received the award of an honorary degree, and I am thankful for the great honour and the appreciation related to this degree. I am proud of the fact that the grant is directly connected to my services in the field of European Social Policy. I would like to dedicate my reaction to this policy.

The ideal of the European cooperation was from the very beginning underpinned with the notion that citizens should gain from the creation of the economic and financial community. The 1957 Rome Treaty establishing the European Economic Community contained for instance several provisions to ensure free movement of workers (Treaty of Rome, 1957, Articles 48-51). Free movement of workers meant in particular that workers who were nationals of one Member State had the right to go to another Member State to seek employment and to work there. After the Treaty of Rome was signed European citizens obtained the right to work in all Member States of the European Community. The Treaty underpinned the extension of residence, labour and equal treatment rights. In the last 25 years I have been dealing with the question whether we succeeded.

In the field of working conditions and labour law the basic idea was that the mobility of workers from one country to another would bring the worker under the application of the so-called *lex loci laboris* principle, which means that for pay and conditions of employment in the case of free movement for work purposes the country of employment principle applies; according to that principle discrimination on grounds of nationality is prohibited. An exception to this principle was the so-called posting of workers, where workers temporarily stayed in another member state in order to provide services (under the subordination of their posting company in the home country). As these posted workers were not supposed to seek permanent access to the labour market their position with regard to the applicable working conditions and labour rights was at least ambiguous. I was involved in the work that resulted in the conclusion of the Posting of Workers Directive in 1996, which aimed to bridge this gap.

Although the European Commission has on a number of occasions reported that the expectations of the mid-eighties about mobility in Europe have not been realised, the Commission at the same time has acknowledged that the opening up of the markets in Europe brought with it some unexpected side effects. Recruitment of a foreign workforce brought with it the risks of unequal treatment and social dumping, while the relocation of production and competition waged in the sphere of taxation and social security created new tensions between regions. The partial application of the *lex loci laboris* principle within the framework of free movement of persons led to a series of debates with the legislator about the home versus the host country. The debate is on the one hand related to applicable social rules of persons moving within the EU that pursue activities in other Member States than the country of origin. On the other hand evidence of bypassing the applicable rules through the establishment of post box companies has been recorded that led to question marks related to the role of agencies in a deregulated market and the possibility to keep the *lex loci laboris* principle upright in the field of labour law, pay and working conditions.

In the eyes of many scholars and business scientists that glorify the economic freedoms, even at the cost of fundamental workers' rights, labour is only seen as a commodity. In that philosophy the strengthening of fundamental social rights becomes a barrier for the development of our market. In my work I have found a lot of evidence to refute this vision. The results of the one-dimensional believe in the functioning of the market, once in a while with almost religious characteristics, are poor quality and growing societal inequality. The risks for business are reputational damage and low productivity, combined with recruitment difficulties and high supervision costs. It is neither good for our society, nor for the company and the stakeholders that keep it upright.

Dear chair, I end my address by thanking my friends and colleagues from the Westminster Business School and the Department of Architecture and the Built Environment for a fruitful cooperation over the years. And to the graduates I would like to say: see Europe as a challenge, not a threat. Thank you very much for listening.