

Case 101/87

**P. Bork International A/S, in liquidation,  
and Others**

v

**Foreningen af Arbejdsledere i Danmark,  
acting on behalf of Birger E. Petersen,  
and Junckers Industrier A/S**

(reference for a preliminary ruling  
from the Danish Højesteret)

(Safeguarding of employees' rights in the  
event of transfers of undertakings)

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Summary of the Judgment

- 1. Social policy — Approximation of laws — Transfers of undertakings — Safeguarding of employees' rights — Directive 77/187 — Scope — Existence of a contract of employment at the time of the transfer — Assessment based on national law — Limits — Dismissal in breach of the directive  
(Council Directive 77/187, Art. 4 (1))*
- 2. Social policy — Approximation of laws — Transfers of undertakings — Safeguarding of employees' rights — Directive 77/187 — Scope — Lease/operation — Termination — Dismissal of staff — Sale of the undertaking's premises, plant and machinery — Resumption of operation by the purchaser — Engagement of over half of the staff dismissed — Inclusion — Conditions  
(Council Directive 77/187, Art. 1 (1))*

1. Although it is true that, unless otherwise expressly provided, Directive 77/187 relating to the safeguarding of employees' rights in the event of transfers of undertakings may be relied upon solely by workers whose contract of employment or employment relationship is in existence at the time of the transfer, and that the existence or otherwise of such a contract or relationship must be assessed on the basis of national law, it is still necessary to comply with the mandatory provisions of the directive concerning the protection of employees from dismissal as a result of the transfer.

Accordingly, the employees whose contract of employment or employment relationship was terminated with effect from a date prior to that of the transfer, contrary to Article 4 (1) of the directive, must be regarded as still in the employ of the undertaking on the date of the transfer, with the result, in particular, that the employer's obligations towards them are automatically transferred from

the transferor to the transferee. In order to ascertain whether the employees were dismissed solely as a result of the transfer, it is necessary to take into consideration the objective circumstances in which the dismissal took place such as, in particular, the fact that it took effect on a date close to that of the transfer and that the employees in question were taken on again by the transferee.

2. Article 1 (1) of Directive 77/187 is to be interpreted as meaning that the directive applies where, after giving notice bringing the lease to an end or upon termination thereof, the owner of an undertaking retakes possession of it and thereafter sells it to a third party who shortly afterwards brings it back into operation, which had ceased upon termination of the lease, with just over half of the staff that was employed in the undertaking by the former lessee, provided that the undertaking in question retains its identity.

## REPORT FOR THE HEARING delivered in Case 101/87 \*

### I — Facts and written procedure

1. Council Directive 77/187/EEC of 14 February 1977 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the

event of transfers of undertakings, businesses or parts of businesses (Official Journal L 61, p. 26) aims to 'provide for the protection of employees in the event of a change of employer, in particular, to ensure that their rights are safeguarded' (second recital in the preamble).

\* Language of the Case: Danish.