

Case C-29/91

Dr Sophie Redmond Stichting

v

Hendrikus Bartol and Others

(Reference for a preliminary ruling
from the Kantongerecht, Groningen)

(Safeguarding of employees' rights in the
event of the transfer of an undertaking)

Report for the Hearing	I - 3190
Opinion of Advocate General Van Gerven delivered on 24 March 1992	I - 3196
Judgment of the Court, 19 May 1992	I - 3212

Summary of the Judgment

1. *Social policy — Approximation of laws — Transfers of undertakings — Safeguarding of employees' rights — Directive 77/187/EEC — Scope — Legal transfer — Definition — Transfer of activities between two bodies subsidized by public authorities following a change in the grant of subsidies — Covered (Council Directive 77/187, Art. 1(1))*
2. *Social policy — Approximation of laws — Transfers of undertakings — Safeguarding of employees' rights — Directive 77/187 — Transfer — Definition (Council Directive 77/187, Art. 1(1))*

1. Article 1(1) of Council Directive 77/187 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 is to be interpreted as meaning that the expression 'legal transfer' covers a situation in which a public authority decides to terminate the subsidy paid to one legal person, as a result

of which the activities of that legal person are fully and definitively terminated, and to transfer it to another legal person with a similar aim.

2. The expression 'transfer of an undertaking, business or part of a business' contained in Article 1(1) of Directive 77/187 refers to the case in which the entity in question has retained its identity.

In order to ascertain whether or not there has been such a transfer, it is necessary to determine, having regard to all the factual circumstances characterizing the operation in question, whether the functions performed are in fact carried out or resumed by the new legal person with the same or similar activities, it being understood that activities of a special nature which constitute independent functions may, where appropriate, be equated with a business or part of a business within the meaning of the directive.

REPORT FOR THE HEARING in Case C-29/91 *

I — Facts and Procedure

1. *Applicable Community legislation*

According to Article 1(1) of 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 (OJ 1977 L 61, p. 26), the directive is applicable to 'the transfer of an undertaking, business or part of a business to another employer as a result of a legal transfer or merger'.

The first subparagraph of Article 3(1) of the directive provides that 'The transferor's rights and obligations arising from a contract of employment or from an employment relationship existing on the date of a transfer within the meaning of Article 1(1) shall, by reason of such transfer, be transferred to the transferee'.

In addition, under Article 4(1), 'The transfer of an undertaking, business or part of a business shall not in itself constitute grounds for dismissal by the transferor or the transferee. This provision shall not stand in the way of dismissals that may take place for economic, technical or organizational reasons entailing changes in the workforce'.

* Language of the case: Dutch.