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Press and Information

PRESS RELEASE No 10/08

26 February 2008

Judgment of the Court of Justice in Case C-506/06

Sabine Mayr v. Bäckerei und Konditorei Gerhard Flöckner OHG

**A DISMISSAL ESSENTIALLY BASED ON THE FACT THAT A WOMAN IS AT AN
ADVANCED STAGE OF *IN VITRO* FERTILISATION TREATMENT IS CONTRARY
TO THE PRINCIPLE OF EQUAL TREATMENT FOR MEN AND WOMEN**

It is for the referring court to determine whether the dismissal is, indeed, essentially based on the fact that the woman is undergoing that treatment

Ms Mayr was employed as a waitress by Bäckerei und Konditorei Gerhard Flöckner in Salzburg from 3 January 2005. In the course of attempted *in vitro* fertilisation, and after hormone treatment lasting for about one and a half months, a follicular puncture was carried out on Ms Mayr on 8 March 2005. Her general practitioner certified her sick from 8 to 13 March 2005.

On 10 March 2005 Flöckner informed Ms Mayr by telephone that she was dismissed with effect from 26 March 2005. By letter of the same date, Ms Mayr informed Flöckner that, in the course of *in vitro* fertilisation treatment, the transfer of the fertilised ova into her uterus was planned for 13 March 2005. On the date when Ms Mayr was given notice of her dismissal, her ova had already been fertilised with her partner's sperm cells and, therefore, *in vitro* fertilised ova already existed.

On 13 March 2005, that is three days after Ms Mayr had been informed of her dismissal, two fertilised ova were transferred into her uterus.

Ms Mayr then claimed payment of her salary and pro rata annual remuneration from Flöckner, maintaining that, from the date on which *in vitro* fertilisation of her ova took place, she was entitled to the protection against dismissal provided by Austrian legislation.¹

As the dispute concerns, in essence, the issue of whether Ms Mayr benefited, at the date she was given notice of her dismissal, from the protection against dismissal granted to pregnant workers, the Oberster Gerichtshof seeks to ascertain whether, under the Directive on the safety and health

¹ Paragraph 10 of the Austrian Mutterschutzgesetz (Law on Maternity Protection).

at work of pregnant workers,² a woman is pregnant before her fertilised ova have been transferred into her uterus.

In its judgment of today's date, the Court holds that, for reasons connected with the principle of legal certainty, **the protection against dismissal established by the Directive on the safety and health at work of pregnant workers cannot be extended to a pregnant worker where, on the date she is given notice of her dismissal, the *in vitro* fertilised ova have not yet been transferred into her uterus.** If such a premiss were allowed, the benefit of the protection could be granted even where the transfer of the fertilised ova into the uterus is postponed, for whatever reason, for a number of years, or even where such a transfer is definitively abandoned.

However, **a worker who is undergoing *in vitro* fertilisation treatment can rely on the protection against discrimination on grounds of sex granted by the Directive on equal treatment for men and women.**³

On that basis, the Court points out that treatment such as that which Ms Mayr has undergone directly affects only women. The dismissal of a worker essentially because she is undergoing a follicular puncture and a transfer of fertilised ova into her uterus therefore constitutes direct discrimination on grounds of sex. The dismissal of a worker, in a situation such as that of Ms Mayr, would, moreover, be contrary to the objective of protection pursued by the Directive on equal treatment for men and women.

The Oberster Gerichtshof must now determine whether the dismissal of Ms Mayr was, indeed, essentially based on the fact that she was undergoing *in vitro* fertilisation treatment.

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Languages available: BG ES CS DE EL EN FR HU IT NL PT PL RO SK SL

The full text of the judgment may be found on the Court's internet site

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-506/06>

It can usually be consulted after midday (CET) on the day judgment is delivered.

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Pictures of the delivery of the judgment are available on EbS "Europe by Satellite", a service provided by the European Commission, Directorate-General Press and Communications,

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² Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (OJ 1992 L 348, p. 1).

³ Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (OJ 1976 L 39, p. 40).