On 26 February 2008, the European Court of Justice (ECJ) held that articles 2(1) and 5(1) of Council Directive 76/207/EEC preclude the dismissal of a female worker who is at an advanced stage of in vitro fertilisation treatment, where it can be established that the dismissal is essentially based on the fact that the woman has undergone such treatment. The case of Sabine Mayr v. Bäckerei und Konditorei Gerhard Flöckner OHG was referred to the ECJ in 2006 following a stay of proceedings from the Austrian Supreme Court which sought direction on the scope of European Union law in respect to Council Directive 92/85/EEC (the pregnancy directive) and Council Directive 76/207/EEC (the Equal Treatment Directive).

In 2005 Ms Mayr was dismissed from her job as a waitress, following a brief period of sick leave while undergoing a medical procedure as part of her in vitro fertilisation treatment.

In its decision, the Grand Chamber of the Court clarified the scope of the Council Directive 92/85/EEC in respect to its application to in vitro fertilisation. It also provided direction on the capacity of European Union anti-discrimination law to protect against discrimination in emerging pregnancy issues through Council Directive 76/207/EEC.

While the Court found difficulty in extending the application of article 10 of Council Directive 92/85/EEC (requiring member states to take necessary measures to prohibit the dismissal of workers during the period from the beginning of their pregnancy to the end of the maternity leave), due to the requirements of the principle of legal certainty, it made it clear that:

“Articles 2(1) and 5(1) of Directive 76/207 preclude the dismissal of a female worker who, in circumstances such as those in the main proceedings, is at an advanced stage of in vitro fertilisation treatment, that is, between the follicular puncture and the immediate transfer of the in vitro fertilised ova into her uterus, inasmuch as it is established that the dismissal is essentially based on the fact that the woman has undergone such treatment.”

The Equal Rights Trust welcomes the judgement as a step forward in protecting the right to non-discrimination and equality enjoyed by women within the European Union. The ECJ in this case has interpreted the legal norm as a living instrument, reflecting the changing reality of human procreation backed by the advance of medical science.

To view the ERT summary of the case go to:

To view the full court decision go to:
http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=Rechercher&docrequire=alldocs&numaff=C_506/06&datec=&daterc=&nomuserc=&domaine=&motv=&remuvc=100