

Question referred

Having regard to the general principle of equality and non-discrimination, is there no objective justification for the difference in treatment created by Article 33.2 of the Workers' Statute and, consequently, must compensation for dismissal payable to an employee pursuant to extra-judicial conciliation be included in the ambit of Council Directive 80/987/EEC ⁽¹⁾ on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer, in the version amended by Directive 2002/74/EC ⁽²⁾ of the European Parliament and of the Council of 23 September 2002, given that Article 33.1 of the Workers' Statute recognises this type of conciliation in relation to the payment by the guarantee institution of the 'salarios de tramitación' which also arise from the dismissal?

⁽¹⁾ OJ L 283, 1980, p. 23; EE 05/02, p. 219.

⁽²⁾ OJ L 270, 2002, p. 10.

Reference for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 14 December 2006 — Sabine Mayr v Bäckerei und Konditorei Gerhard Flöckner OHG

(Case C-506/06)

(2007/C 56/24)

Language of the case: German

Referring court

Oberster Gerichtshof (Austria)

Parties to the main proceedings

Appellant: Sabine Mayr

Respondent: Bäckerei und Konditorei Gerhard Flöckner OHG

Question referred

Is a worker, who undergoes *in vitro* fertilisation, a 'pregnant worker' within the meaning of the first part of Article 2(a) of 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 ⁽¹⁾ (tenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) if, at the time at which she was given notice of termination of employment, the woman's ova had already been fertilised with the sperm cells of her partner and '*in vitro*' embryos thus existed, but they had not yet been implanted within her?

⁽¹⁾ OJ L 348, 1992, p. 1.

Reference for a preliminary ruling from the Oberlandesgericht Innsbruck lodged on 13 December 2006 — Malina Klöppel v Tiroler Gebietskrankenkasse

(Case C-507/06)

(2007/C 56/25)

Language of the case: German

Referring court

Oberlandesgericht Innsbruck

Parties to the main proceedings

Applicant: Malina Klöppel

Defendant: Tiroler Gebietskrankenkasse

Question(s) referred

Must Article 72 of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self employed persons and to members of their families moving within the Community ⁽¹⁾ (OJ, English special edition: Series I Chapter 1971(II) p. 416) in the version amended and brought up to date by Regulation (EC) No 1386/2001 of the European Parliament and of the Council of 5 June 2001 ⁽²⁾ (OJ 2001 L 187, p. 1) in conjunction with Article 3 of that regulation and Article 10a of Regulation (EEC) No 574/72 of the Council of 21 March 1972 fixing the procedure for implementing Regulation (EEC) No 1408/71 ⁽³⁾ (OJ, English special edition: Series I Chapter 1972(I) p. 0159) in the version amended and brought up to date by Commission Regulation (EC) No 410/2002 of 27 February 2002 ⁽⁴⁾ (OJ 2002 L 62, p. 17) be interpreted to the effect that periods of drawing family benefits in one Member State (in this case the national child-raising allowance in the Federal Republic of Germany) must be treated equally in relation to the entitlement to draw a comparable benefit in another Member State (in this case child-care allowance in Austria) and accordingly must be characterised as domestic periods of drawing for the purposes of entitlement in a second Member State if during those periods of drawing both parents should be regarded as employed persons under Article 1(a)(i) of Regulation No 1408/71?

⁽¹⁾ ABL L 149, S. 2.

⁽²⁾ ABL L 187, S. 11.

⁽³⁾ ABL L 74, S. 1.

⁽⁴⁾ ABL L 62, S. 17.