

Case T-75/89

Anita Brems

v

Council of the European Communities

(Official — Dependent child —
Person treated as such — Child of the official
— Illegality of general implementing rules)

Judgment of the Court of First Instance (Third Chamber), 14 December 1990 900

Summary of the Judgment

- Officials — Remuneration — Family allowances — Dependent child allowance — Grant — Circumscribed power of the administration — Person treated as a dependent child — Discretionary power of the administration — Article 2(4) of Annex VII of the Staff Regulations — Scope*
(*Staff Regulations of Officials, Art. 67; Annex VII, Art. 2*)
- Officials — Staff Regulations — General implementing rules — Power of the institutions — Limits*
(*Staff Regulations of Officials, Arts 67 and 110; Annex VII, Art. 2(4)*)

1. The Staff Regulations confer upon the appointing authority a circumscribed power to grant the allowance provided for in Article 2 of Annex VII of the Staff Regulations in respect of a dependent child within the meaning of that provision where one of the conditions set out in Article 2(3) and (5) is fulfilled. Article 2(4), on the other hand, confers

upon the administration a discretionary power to decide, in exceptional cases, to treat as a dependent child any person whom the official has a legal responsibility to maintain and whose maintenance involves heavy expenditure.

It is apparent from that difference in the nature of the administration's powers and

from the general terms of Article 2(4) of Annex VII that the Community legislature did not intend to exclude from the scope of that provision, merely because he is the legitimate, natural or adopted child of an official or of his spouse, a child who does not satisfy the conditions for the grant of dependent child allowance under Article 2(3) and (5).

Any other interpretation would not be in conformity with the principle of equal treatment, which prohibits discrimination based solely on the status of a person, and would be even less justified since the family bond linking an official to his child is stronger than that linking him to other persons who may be treated as dependent children.

2. The general implementing rules adopted under the first paragraph of Article 110 of the Staff Regulations may lay down criteria capable of guiding the administration in the exercise of its discretionary power or explain more fully the scope of provisions of the Staff Regulations which are not wholly clear. However, they cannot, by way of explaining more fully a clear term of the Staff Regulations, reduce the scope of those regulations.

The Council Decision of 15 March 1976 adopting general provisions for applying Article 2(4) of Annex VII of the Staff Regulations is illegal in so far as it excludes from the scope of that provision any person who is between the minimum and maximum age-limits which it imposes and thus deprives the administration of the opportunity to exercise its discretion in each individual case.

JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber) 14 December 1990 *

In Case T-75/89,

Anita Brems, an official of the Council of the European Communities, residing in Relegem (Belgium), represented by Jean-Noël Louis, of the Brussels Bar, with an address for service in Luxembourg at the office of Fiduciaire Myson SARL, 1 rue Glesener,

applicant,

* Language of the case: French.