CONSEIL DE L'EUROPE
COUNCIL OF EUROPE

TRIBUNAL ADMINISTRATIF
ADMINISTRATIVE TRIBUNAL

Appeals Nos. 571-576 and 578/2017
(JAMES BRANNAN and others v. Secretary General of the Council of Europe)

The Administrative Tribunal, composed of:

Mr Christos ROZAKIS, Chair,
Ms Mireille HEERS,
Mr Ömer Faruk ATEŞ, Judges,

assisted by:

Mr Sergio SANSOTTA, Registrar,
Ms Eva HUBALKOVA, Deputy Registrar,

has delivered the following decision after due deliberation.

PROCEEDINGS

1. The Tribunal received seven appeals, lodged and registered on the following dates:

- Mr James BRANNAN (II),	Appeal No. 571/2017, submitted and registered on 6 March 2017
- Mr Günter SCHIRMER,	Appeal No. 572/2017, submitted and registered on 20 March 2017
- Ms Tanja KLEINSORGE,	Appeal No. 573/2017, submitted and registered on 20 March 2017
- Ms Aiste RAMANAUSKAITE,	Appeal No. 574/2017, submitted and registered on 20 March 2017
- Mr Rudiger DOSSOW,	Appeal No. 575/2017, submitted and registered on 21 March 2017
- Mr Schnutz DÜRR,	Appeal No. 576/2017, submitted and registered on 21 March 2017
- Ms Monique BECRET (V),	Appeal No. 578/2017, sent on 20 March 2017 and registered on 29 March 2017

2. On 7 April 2017, the seven appellants ("the seven appellants") filed supplementary pleadings: the appellant in appeal 575/2017 ("the fifth applicant") filed a document specific to his appeal while the other six appellants ("the six appellants"), assisted by the same counsel, submitted a single document. In the latter document, the six appellants raised arguments common to the six appeals while three of them (applications nos. 571/2017, 572/2017 and 576/2017, "the three appellants") put forward two additional arguments relating to a change disputed by them.

3. On 17 May 2017, the Secretary General submitted his observations.

4. On 19 June 2017, the seven appellants filed memorials in reply (one document for the fifth applicant and one document for the six applicants).

5. On 11 July 2017, the Chair authorised Ms Sonia Parayre, a Council staff member considering lodging a voluntary application to intervene (Article 10 of the Statute of the Administrative Tribunal), to consult the files for these appeals.

6. When asked to examine the corresponding application on 17 July 2017, the Chair authorised Ms Parayre to intervene in the proceedings (Article 10 of the Statute of the Administrative Tribunal) on 20 July 2017. In these circumstances, she submitted written observations on 27 July 2017 as an intervening third party, requested anonymity and also lodged a request with the Tribunal for the reimbursement of all the costs arising from her intervention.

7. On 9 August 2017, the Chair decided not to grant anonymity but did decide, however, that the medical data concerning the intervener would not be communicated to the parties or made public.

8. On 1 September 2017, the Secretary General submitted his comments on this intervention, arguing that it was inadmissible [reply in the operative part with costs].

9. The public hearing for the eight appeals took place in the Tribunal's courtroom in Strasbourg on 25 September 2017. The six appellants were represented by Ms Carine Cohen Solal, lawyer practising in Strasbourg while the fifth appellant presented his case in person. The Secretary General was represented by Mr Jörg Polakiewicz, Director of Legal Advice and Public International Law (Jurisconsult), assisted by Ms Sania Ivedi, administrative officer in the same department.

On 2 November 2017, the third-party intervener informed the Tribunal that she wished to withdraw from the case. Her statement was worded as follows:

> "Following the conclusion, on 31 October 2017, of a settlement agreement proposed by the Secretary General, represented by the Directorate of Human Resources, with a view to resolving the dispute which is the subject of my intervention, I hereby inform you that I wish to withdraw my intervention in appeals 571-576 and 578/2017".

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

10. The seven appellants are Council of Europe staff members working at the Organisation's headquarters. They are all permanent members of staff assigned to various departments of the Council. They benefit from the Organisation's private social insurance cover.

11. The appellants are seeking, variously, the annulment either of one or of two changes made to the medical cover from which they benefit as Council staff members.

12. The changes in question necessitated amendments to Appendix XII to the Staff Regulations. Those amendments, adopted by the Committee of Ministers on 18 October 2016 at the 1268th meeting of the Ministers' Deputies, entered into force on 1 January 2017; they resulted in the Secretary General's adoption, on 15 and 20 December 2016, of three Rules (nos. 1384, 1385 and 1387) which also entered into force on 1 January 2017.

13. The first change is disputed by the seven appellants and entails the halving of the rights of the appellants receiving the household allowance in the event of death or invalidity.

Up until 31 December 2016, staff in receipt of the household allowance were granted a capital sum equivalent to 48 months' salary in the event of death or category-three disability, and 24 months' salary in the event of category-one or -two disability. Staff not receiving the household allowance were granted a capital sum equivalent to 24 months' salary in the event of death or category-three disability, and 12 months' salary in the event of category-one or -two disability.

As of 1 January 2017, the capital sum paid in the event of death or invalidity is now the equivalent of 24 months' salary in the event of death or category-three disability, and 12 months' salary in the event of category-one or -two disability, irrespective of whether or not the staff member receives the household allowance.

This alignment of the two groups of staff results in a 50% cut in the capital sum and a slight decrease in the death/invalidity contributions payable by the appellants.

14. The second change relates to supplementary medical cover for spouses or partners who are permanently, wholly and solely supported by staff members and pensioners. It is challenged by the three appellants.

15. Up to 31 December 2016 this cover was free in the same manner as the primary part of the cover. As of 1 January 2017, this supplementary cover is now optional and subject to payment of a flat-rate monthly contribution.

16. On 1 December 2016, the four appellants received an e-mail concerning this change from the Directorate of Human Resources. Without going into the various administrative details, it is sufficient to say that each of the four appellants subscribed to this supplementary cover.

17. Between 6 and 21 December 2016, the appellants lodged administrative complaints. Between 5 and 20 January 2017, the Secretary General rejected their administrative complaints (Article 59 of the Staff Regulations), deeming them inadmissible and unfounded.

18. On 7 December 2016, the author of appeal no. 571/2017 lodged an application with the Chair of the Tribunal for a stay of execution of the act complained of pursuant to Article 59 paragraph 9 of the Staff Regulations.

19. In an order of 20 December 2016, the Chair rejected the application for a stay of execution.

20. On the dates indicated in paragraph 1 above, the appellants lodged their appeals in accordance with Article 60 of the Staff Regulations.

II. THE RELEVANT LAW

A. The disputed measures

21. The disputed measures were introduced by a resolution adopted by the Committee of Ministers of the Council of Europe and three rules of the Council of Europe Secretary General.

1. Resolution CM/Res(2016)18

22. On 18 October 2016, the Committee of Ministers adopted Resolution CM/Res(2016)18 amending the Regulations governing staff salaries and allowances (Appendix IV to the Staff Regulations) and related provisions.

23. In that Resolution, paragraphs 8 to 12 of Article 2 amend the Regulations on the medical and social insurance scheme (Appendix XII to the Staff Regulations)

24. These paragraphs 8-12 read as follows:

> "8. In Article 12, paragraph 1, of the Regulations on the medical and social insurance scheme (Appendix XII to the Staff Regulations), the terms "if he/she is not receiving the household allowance, and to four years' salary if he/she is receiving that allowance" shall be deleted.
>
> 9. In Article 12, paragraph 2, of the Regulations on the medical and social insurance scheme (Appendix XII to the Staff Regulations), the terms "if he/she is not receiving the household allowance, and to two years' salary if he/she is receiving that allowance" shall be deleted.
>
> 10. In Article 13 of the Regulations on the medical and social insurance scheme (Appendix XII to the Staff Regulations), the terms "if he/she was not receiving the household allowance, and to four years' salary if he/she was receiving that allowance," shall be deleted.
>
> 11. In the footnotes 3 and 4 of the Regulations on the medical and social insurance scheme (Appendix XII to the Staff Regulations), the words "the basic family allowance", preceded by a comma, shall be inserted after the words "the household allowance".

12. In Article 9, paragraph 2 b) of the Regulations on the medical and social insurance scheme (Appendix XII to the Staff Regulations), the following phrases shall be inserted after the first phrase:

"In such cases, cover shall be limited to the amounts refundable under the local rules of the French Social Security Scheme in Alsace-Moselle. However, supplementary cover for health care costs may be extended to that person on payment of an additional contribution borne entirely by the staff member."

25. Article 3 stipulates that the resolution will enter into force on 1 January 2017.

26. The same article establishes that a number of provisions of Appendix IV to the Staff Regulations, which the resolution replaces with other less favourable measures, will continue to apply to staff members serving when the resolution takes effect. Accordingly, the new provisions expressly state that they are applicable to staff members recruited on or after 1 January 2017.

2. Rule No. 1384 of 15 December 2016 on contributions towards collective insurance premiums

27. The preamble reads as follows:

"The Secretary General of the Council of Europe,

(…)

Having regard to Rule No. 1385 on benefits related to medical expenses (Rule No. 1385);

(…)

Decides:

(…)."

28. The articles of this Rule set out the different rates of contribution applicable as of 1 January 2017.

29. Part VI of the Rule is devoted to optional medical cover. Its Article 21 reads as follows:

Article 21 - Extensions

"Serving staff, former staff, judges of the European Court of Human Rights and the Commissioner for Human Rights may request an extension of complementary cover to certain members of their family under the conditions laid down in Rule No. 1385, on payment of an additional fixed monthly premium the amounts of which shall be as follows:

Type 1 extension	Spouse affiliated to the French general social security scheme or to the local Alsace-Moselle scheme or benefiting from primary cover under the contract as a dependent of a staff member	79.11 euros
Type 1 *bis* extension	Spouse affiliated to a national social security scheme other than the French scheme	101.03 euros

(…)".

3. Rule No. 1385 of 20 December 2016 on benefits related to medical expenses

30. This Rule relates to medical expense-related benefits and replaces Rule No. 1317 of 3 September 2010 governing the same area.

31. Its Article 6 governs the issue of optional extension of cover and is worded as follows:

Article 6 - Optional extensions of cover

"1. Any principal beneficiary shall be entitled, in exchange for payment of an additional monthly premium, to extend the complementary cover to a family member not considered a beneficiary entitled through a principal beneficiary or covered only on a primary basis, under the following conditions:

a. Extension type 1: This extension shall be available to spouses, unmarried partners or registered partners who are insured under the primary CEMSIS scheme through a principal beneficiary or are affiliated in their own right to the general French social security scheme or the local Alsace-Moselle scheme or who have their own primary medical insurance cover under a third scheme with a level of cover at least equivalent to that of the general French social security scheme. The extension shall be subscribed for a minimum of twelve months and shall be renewed tacitly on a monthly basis. It may not be terminated in advance, except in the event of changes in the personal situation of the extension beneficiary (for instance, death or affiliation to a compulsory insurance scheme).

Extension type 1 bis: This extension shall be available to spouses, unmarried partners or registered partners who are affiliated in their own right to a national social security scheme other than the French scheme. The extension shall be subscribed for a minimum of twelve months and shall be renewed tacitly on a monthly basis. It may not be terminated in advance, except in the event of changes in the personal situation of the extension beneficiary (for instance, death or affiliation to a compulsory insurance scheme).

(…)

2. Reimbursements due in respect of the optional extensions of complementary cover types 1 and 3 (as described respectively in paragraphs 1.a and 1.c above) shall be confined to the complementary share alone, whatever the level of reimbursement obtained from the social security organisation covering the primary share and shall preclude any reimbursement from the first euro. For the purpose of calculating complementary insurance reimbursements, the minimum "notional" primary share to be taken into account shall be equivalent to the reimbursement provided for under the rules of the general French social security scheme. The minimum amounts shown in the table of benefits shall be fully applicable solely when the insured person has obtained at the least a primary reimbursement of the level provided for under the general French social security scheme. When the reimbursement obtained in respect of the primary share is lower than that level, the insured person shall not be entitled to a complementary reimbursement exceeding that which would have been payable if he/she had received the primary reimbursement provided for under the general French social security scheme, including through application of the minimum amounts.

3. The reimbursements due in respect of the optional extensions of complementary cover 1bis and 3bis (as described respectively in paragraphs 1.a. and 1.c. above) shall include the coverage of medical expenses on a supplementary basis in relation to a national social security scheme other than the French scheme, including from the first euro where the expenses are not covered by that scheme, within the limits laid down in the collective insurance contract."

4. Rule No. 1387 of 20 December 2016 on benefits in the event of death, permanent and total disability, permanent and partial disability or long-term care

32. Following the changes made by Appendix XII to the Staff Regulations, Rule No. 1387 replaced Rule No. 1332 of 25 May 2011 governing the same area.

33. As regards the subject of the present dispute, Rule No. 1387 differs from the previous instrument in that it provides for a capital sum equalling 24 months of salary for all staff. The new instrument contains no reference to the "supplementary capital sum" – which previously doubled the basic amount – for staff members in receipt of the household allowance.

B. Lodging of an administrative complaint (requisite for referral of a case to the Tribunal)

34. Under Article 59 paragraph 2 of the Staff Regulations,

> "2. Staff members who have a direct and existing interest in so doing may submit to the Secretary General a complaint against an administrative act adversely affecting them, other than a matter relating to an external recruitment procedure. The expression "administrative act" shall mean any individual or general decision or measure taken by the Secretary General or any official acting by delegation from the Secretary General."

THE LAW

I. JOINDER OF THE APPEALS

35. As the eight appeals are closely interconnected, the Administrative Tribunal orders their joinder under Rule 14 of its Rules of Procedure.

II. EXAMINATION OF THE APPEALS

36. In global terms, with no distinction between appellants disputing one change and those disputing two changes, the six appellants have asked the Tribunal to:

a) declare the appeals admissible;
b) annul the changes made to Articles 9, 12 and 13 of Appendix XII to the Staff Regulations as adopted by Resolution CM/RES(2016)18 of the Committee of Ministers of 18 October 2016;
c) annul the measures taken to implement them, namely Rules No. 1384 of 15 December 2016, No. 1385 and No. 1387 of 20 December 2016 changing the CEMSIS medical insurance cover in respect, on the one hand, of the capital sum paid in the event of death or invalidity and, on the other hand, of the supplementary insurance for a dependent spouse;
d) award the appellants the sum of € 7,000.- by way of reimbursement of all the costs resulting from the appeal.

37. The fifth appellant asks the Tribunal to annul the Secretary General's decision to reduce his death and invalidity assurance as of 1 January 2017.

38. The Secretary General, for his part, asks the Tribunal to:

a) declare appeals Nos. 571 to 574/2017 and 576 to 578/2017 inadmissible insofar as they have been made against the change to the capital sum that is paid out in the event of death or invalidity and, secondarily, ill-founded as a whole, and to dismiss them;
b) declare appeal No 575/2017 inadmissible and, secondarily, ill-founded, and to dismiss it.

A. As to the admissibility of the complaints about the decision to change the amount of the capital sum paid in the event of death or invalidity

1) The Secretary General

39. The Secretary General argues that the seven appeals do not meet the admissibility requirements laid down by Article 59 paragraph 2 of the Staff Regulations (paragraph 34 above) as they have been made against the decision to change the capital sum paid in the event of death or invalidity. This objection relates to appeals Nos. 573, 574, 575 and 578/2017 as a whole and to appeals nos. 571, 572 and 576/2017 in respect of this specific claim.

40. The Secretary General takes the view that the appellants are not in any of the situations that give entitlement to the death or invalidity capital sum. In the absence of an administrative act which directly and currently affects them adversely, the appellants therefore have no interest in taking action against the change in the medical and social cover in relation to the capital sum that is paid in the event of invalidity or death.

41. The Secretary General adds that the change in the medical and social cover in relation to the capital sum paid in the event of invalidity and death is a general management act which is not directly targeted at the appellants and which was not applied specifically to the appellants. Accordingly, the appellants would have no direct and current interest, within the meaning of Article 59 paragraph 2 of the Staff Regulations, in challenging the decision to change the capital sum for death or invalidity.

42. To support his argument, the Secretary General refers to international case-law (ILO-AT, Judgment 1852, recital 3, Judgment 2793, recital 13) and the Tribunal's own case-law (appeal No. 394/2007, Sawyer v. Secretary General, judgment of 3 July 2008) the principles of which apply, *mutatis mutandis*, to this case.

43. Finally, the Secretary General points out that if the question arose in the event of death, the dependants of the appellants would themselves be able to challenge the administrative act that may affect them adversely in accordance with Articles 59 and 60 of the Staff Regulations.

44. In conclusion, in the view of the Secretary General, these appeals are inadmissible as they have been made against the decision to change the capital sum paid in the event of death or invalidity, which was not implemented individually, and the appellants have not demonstrated an interest in acting.

2) The six appeals

45. These appellants (paragraph 2 above) state that the Secretary General's argument is not consistent with the Administrative Tribunal's case-law, which holds that, while a staff member is

not entitled to act in the interests of legality or of the Organisation, only personal grievances can be raised to support an appeal.

46. The appellants believe that this is manifestly the case here, since each of them is personally affected by these new measures, which concern only those staff members receiving a household allowance.

47. They add that their entitlements are furthermore directly affected by these changes since, in their capacity as insured individuals, they must make monthly payments for their insurance contributions, which are debited directly from their salaries, and the capital sum paid if the risk is realised will be halved.

48. In their eyes, it is clear in the light of the aforegoing that they are acting to defend their own interests.

49. The appellants add that the Secretary General's position amounts to assuming that the only individuals able to assert an interest in submitting a complaint are ultimately either disabled staff members or persons entitled through a deceased staff member.

50. They believe that the Secretary General would undoubtedly argue that such an appeal would be inadmissible as it would be out of time and that the staff member concerned should have appealed within 30 days of the date on which these measures were adopted, namely 18 October 2016.

51. In this connection, the appellants remind the Tribunal that, when examining their complaints, the Secretary General had raised the objection that these appeals were inadmissible for being out of time – an argument nevertheless not maintained by the Secretary General before the Tribunal – as they had not lodged their complaints within 30 days of that date.

52. They claim that, whatever the circumstances, the Secretary General is denying any possibility of appeal not only to staff members, as in the present proceedings, but also to persons entitled through them, in any future proceedings, even though these persons would have a period of two years in which to dispute the measures, since, in his words, such a case would not be an *actio popularis*.

53. The appellants deduce, therefore, that the Secretary General's line of argument is clearly contradictory and irrelevant.

54. In their observations in reply, the appellants emphasise that, while the Secretary General initially considered that action against the disputed changes could be taken only by beneficiaries, he has clearly gone back on that position and now takes the line that any appeal would be inadmissible.

55. The appellants consider that the Tribunal should realise that the Secretary General has adopted differing positions with the sole aim, whatever the circumstances, of denying any possibility of appeal to serving and retired staff members, and now their beneficiaries.

56. They then refer to the Secretary General's claim that they are not directly affected by the changes in insurance-linked benefits. In their opinion, if his logic is followed, the appellants could never challenge the halving of the capital sum paid in the event of invalidity, as it had been announced on 21 November 2016, and the deadline for lodging a complaint was 21 December 2016. However, were the onset of invalidity to have occurred prior to 31 December 2016, the old contract applied. It would be impossible, therefore, to challenge the measure even if invalidity had occurred.

57. According to the appellants, the change in medical and social cover could not be considered as a "general organisational decision", as claimed by the Secretary General with reference to the Tribunal's case-law.

58. They point out that the aforementioned Sawyer v. Secretary General judgment related to a challenge to a procedure to reclassify a post, deemed by the Tribunal to concern the management of the Council's jobs structure and not directly affect the staff member. In the present case, however, it would be certain that a change to one or more guarantees directly impacting the rights and interests of serving and retired staff members is indeed an administrative decision adversely affecting them.

59. Furthermore, the appellants point out that international administrative case-law has already held that the complaints that may be made by officials necessarily acting individually include the irregular nature of the procedure of preparing a regulatory act not complying with the obligation to consult the staff (ILO-AT 15 July 1992, judgment 1200, Kheir et al.; ILO-AT 14 July 1993, judgment 1279, Almazan-Aguirre and consorts and judgment no. 1280, Jibaja and Rota), and this is the crux of one of the arguments developed by them.

60. In the light of the aforegoing, the appellants conclude that their appeals are admissible and the objection of inadmissibility should be rejected.

3) The fifth appeal

61. The fifth appellant (paragraph 2 above) points to the erroneous nature of the Secretary General's claim that he is not affected by the halving of benefits in the event of death or invalidity, as he is still alive and proceedings could otherwise be lodged by his surviving spouse and children.

62. In his view, the surviving spouse and children could only lay claim to the entitlement arising from the contractual relations between the Organisation and the staff members concerned, ie the concrete contractual rights accepted by a staff member. It is therefore for staff members – during their lifetime - to decide whether or not to accept a change in their contractual rights, even if it is third parties that could theoretically benefit from those rights in the event of death.

63. In this appellant's opinion, Rule No. 1387 has a direct and existing effect on him because, if he wanted the same cover he had enjoyed in over 20 years' service with the Organisation, he would have to find a private insurance. However, as pointed out in his written submissions, he could not subscribe to such a private insurance for a number of reasons.

4) Decision of the Tribunal

64. The Tribunal is mindful that a staff member may lodge an administrative complaint against an administrative act adversely affecting them – and subsequently an appeal – only if they have a "direct and existing interest" in so doing (Article 59 paragraph 2 of the Staff Regulations – paragraph 34 above).

65. The Tribunal notes that, in their conclusions (letters b) and c) of paragraph 36 above), the six appellants ask the Tribunal to annul:

- the changes made to Articles 9, 12 and 13 of Appendix XII to the Staff Regulations as adopted by resolution CM/RES(2016)18 of the Committee of Ministers of 18 October 2016;
- the measures taken to implement them, namely Rules No. 1384 of 15 December 2016, No. 1385 and No. 1387 of 20 December 2016 changing the CEMSIS medical insurance cover in respect, on the one hand, of the capital sum paid in the event of death or invalidity and, on the other hand, of the supplementary insurance for a dependent spouse.

66. Even though the Secretary General raised no objections on this point, the Tribunal notes from the outset that, in line with its constant case-law, it does not have the power to rule on decisions of the Committee of Ministers but only on administrative acts of the Secretary General implementing such decisions (ATCE (formerly the Appeals Board), appeal No. 101-113 – Stevens and others v. Secretary General, judgment of 15 May 1985, paragraph 54, final indent, appeal No. 118-128 – Jeannin and others, judgment of 30 April 1985, paragraphs 62-68).

67. In this case, the request to annul changes made to Appendix XII to the Staff Regulations goes beyond the Tribunal's statutory competence and must be declared inadmissible.

68. With regard to the implementing measure, namely Rule no. 1387 – and this also applies to Rules nos. 1384 and 1385 – the Tribunal notes that the Secretary General did not submit arguments in respect of the nature of the administrative act within the meaning of Article 59 paragraph 2 of the Staff Regulations but merely argued that the appellants could not show that they had an interest. For its part, the Tribunal considers that it does not have a duty to raise this question *ex officio* in the present case.

69. As regards the argument of not having an interest, the Tribunal notes that Article 59 paragraph 2 of the Staff Regulations requires the complainant to demonstrate a "direct and existing interest" in initiating a dispute.

70. In the case at hand, it is clear that none of the appellants is in a situation of requesting payment of a capital sum in respect of death or invalidity, in which case they lack an existing interest in the dispute. This finding renders the question of whether the impugned act is a "general organisational decision" or a "measure of a general nature" within the meaning of Article 59 paragraph 2 of the Staff Regulations (and as such would therefore relate to all staff receiving a household allowance) irrelevant at this stage.

71. Notwithstanding all the appellants' efforts during the dispute to demonstrate that, owing to their specific pathologies, it would be impossible for them to take out private insurance providing the same cover, that impossibility is not due to a decision of the Organisation which may be challenged before the Tribunal but rather the consequence of a decision of a third party which is free to decide whether or not to offer an insurance policy.

72. Accordingly, in the present case it must be said that the appellants do not have an existing interest in lodging a challenge against the disputed change.

73. The facts that the change affects only those benefiting from a household allowance and, in their capacity of insurees, they are required to pay a monthly insurance contribution are not arguments that may have a bearing on the Tribunal's decision.

74. The Tribunal should point out that the scope of the present decision is no obstacle to the appellants or indeed any other staff members believing that they are affected by the disputed change or persons entitled through them – although the Tribunal obviously hopes that the latter scenario would not arise – being able to lodge a challenge were they to consider that they were wronged by this change.

75. On the latter point, the Tribunal has duly noted the Secretary General's assertion that no problem of admissibility on grounds of lateness linked to the disputed change would arise in connection with the possibility of heirs lodging a challenge.

76. Accordingly, the objection of admissibility raised by the Secretary General must be sustained, and the appeals based on this claim alone, namely appeals Nos. 573, 574 and 575/2017 must be declared inadmissible. Inversely, where the other appeals, namely appeals nos. 573, 571, 572 and 576/2017, are concerned, only this claim must be declared inadmissible, and the Tribunal should examine whether the second claim is founded.

B. Merits of the claim

77. In their second claim, the seven appellants challenge the decision to make staff pay for the supplementary insurance for their spouse.

78. The arguments of the parties, insofar as they relate to the second claim, may be summarised as follows:

1. The three appellants

79. The three appellants (paragraph 2 above) consider that:

a) the disputed measures were adopted following an invalid procedure,
b) the measures aimed at changing supplementary insurance are arbitrary and discriminatory in nature;
c) these measures are a breach of acquired rights and the principle of legitimate expectation.

a) Invalid procedure

80. Concerning the invalidity of the procedure, the appellants point to three flaws:

i. no call for tenders;
ii. no opinion from the Staff Committee and, finally,
iii. inadequate information provided to the Committee of Ministers.

i. *No call for tenders,*

81. The appellants point out that the rules for awarding tenders at the Council of Europe are laid down by the Financial Regulations and Supplementary Provisions of the Council of Europe.

82. Article 40 paragraph 1 of those Regulations states that "contracts, framework contracts and framework agreements for the supply of goods, services, intellectual service provision or works and the selection of prime contractors to the Organisation shall be concluded following an international public call for tenders".

83. After a call for candidates, the collective insurance contract was awarded to an insurance company and benefits manager for a period of 3 years dating from 1 January 2014. However, the Organisation decided to renew the collective insurance contract with the current insurer and benefits manager for a further period of three years, from 2017 to 2019, without issuing another call for tenders.

84. The appellants express serious doubts about the validity of this renewal, especially as it was not simply a contract renewal with the same benefits and cover but entailed a fundamental change in the organisation of the contract, seemingly with the aim of respecting the principle of zero nominal growth applied by the Committee of Ministers.

85. The appellants consider that the Secretary General should firstly account for the option of renewing the initial contract. It would be expedient here to see the specifications sent to tenderers and the relevant clauses of the renewal contract signed. The appellants believe that the Council agreed, for the sake of saving costs, to revise downwards some guarantees – in this case the rules applicable to supplementary insurance, – of the collective insurance contract granted to the most vulnerable staff members in view of their family circumstances (dependent spouse or partner). However, in this situation, it was incumbent on the Council of Europe to protect the interests of its staff and to seek, through a new call for tenders, the service provider that best met the needs of these staff and the Organisation.

ii. *No opinion from the Staff Committee,*

86. In the view of the appellants, it is clear from Article 6 of Appendix I to the Staff Regulations (Regulations on Staff Participation) that the Staff Committee has to be consulted by the Secretary General before any draft alteration or amendment of the Staff Regulations is submitted to the Committee of Ministers.

87. However, they claim that, while the Directorate General of Administration did indeed send the Staff Committee a statutory consultation request on 4 August 2016, the Staff Committee was unable to deliver an opinion on the disputed measures.

88. The appellants come to this conclusion because of the heading of the memorandum concerned, whose main body referred only to the changes made to Appendix IV to the Staff Regulations, and it was in respect of this issue that the Staff Committee issued an opinion on 22 August 2016 relating solely to the measures concerning Appendix IV.

89. At no time did the Staff Committee give an opinion on any changes to Appendix XII to the Staff Regulations.

90. Consequently, the appellants believe that the changes made to Appendix XII to the Staff Regulations were made at the end of an invalid procedure.

91. It must be emphasised that consultation constitutes a significant safeguard for the staff, who are entitled to request the fullest possible information on a proposal on which they are consulted, failing which no informed opinion can be given (OEEC Appeals Board, Decision No. 29, 5 July 1957).

92. Therefore, the failure to consult the Staff Committee necessarily renders void the disputed measures of Resolution CM/Res(2016)18, and Rules nos. 1384, 1385 and 1387 adopted in the wake of Resolution CM/Res(2016)18 are consequently rendered void with regard to the measures concerned and must be annulled.

iii. *Inadequate information provided to the Committee of Ministers*

93. The appellants further deplore a lack of clear information for the Committee of Ministers from the Secretary General, firstly apparent from the wording of his draft amendment to the "Regulations governing staff salaries and allowances (Appendix IV to the Staff Regulations) and related provisions". These "related provisions" included the disputed measures amending Appendix XII to the Staff Regulations.

94. According to the appellants, by associating these measures with a proposal aimed mainly at amending Appendix IV to the Staff Regulations), the Secretary General sought to avoid any publicity or debate concerning Appendix XII to the Staff Regulations.

95. Given the importance of the changes to Appendix XII to the Staff Regulations, it was incumbent on the Secretary General to supply the Committee of Ministers with clear information about what was being proposed. Such information was not provided honestly and fairly to the Committee of Ministers, since it was concealed among a large number of changes being requested at the same time from the Committee of Ministers, changes that were entirely unrelated to the collective insurance contract.

96. In support of their claim, the appellants refer to the working document which makes no mention of amending the collective insurance provisions in its preamble.

97. Thus it is claimed that the disputed measures were concealed, in a manner of speaking, from the Committee of Ministers because the changes to the medical insurance were not "related" to the changes to Appendix IV. These measures thus resemble a "rider" whose legality has to be disputed.

b) The arbitrary and discriminatory nature of the measures amending the supplementary insurance for dependent spouses

98. On the issue of the arbitrary and discriminatory nature of the disputed measures, the three appellants emphasise that, prior to the amendment of Appendix XII to the Staff Regulations, supplementary insurance for dependent spouses or partners was automatically included with the primary insurance for an all-in fixed cost.

99. From 1 January 2017, the insurance offered to dependent spouses has been split into two and is made up of primary insurance and supplementary insurance. This supplementary insurance has therefore become optional and must be paid for.

100. According to the appellants, this measure is detrimental to staff members with a dependent spouse or partner in that it reduces the guarantees offered in principle (since the supplementary insurance has become optional) and therefore increases the cost of this insurance in order to maintain the same guarantees that existed previously.

101. It is only staff members with a dependent spouse or partner, representing approximately 375 staff members of the Council of Europe, who are targeted by this measure.

102. Beyond the argumentation put forward by the Council, the appellants highlight the fact that statutory medical cover for dependants has always been guaranteed as a whole with no distinction between the "primary" part and the "supplementary" part and this cover was provided for by the Staff Regulations by virtue of the principle of solidarity between staff members, regardless of their family situation.

103. In addition, the staff members concerned were informed on 1 December 2016 that they had to indicate their decision as to whether or not they wished to take out the optional supplementary insurance by 21 December 2016.

104. The appellants claim that, owing to the late notification and the tight deadline, they were unable to take an informed decision in accordance with their interests. They were unable to look for alternative insurance providing equivalent guarantees at a lower cost. It was only to guarantee an equivalent level of social protection that each of the staff members took out this supplementary insurance as newly offered by the Organisation, despite the additional cost that was incurred.

b) Interference with acquired rights and the principle of legitimate expectation

105. The three appellants point out that they are inevitably suffering a financial loss due to the change in the rules on supplementary insurance for dependent spouses. This is because, in order

to retain entitlements and guarantees equivalent to those they enjoyed in previous years, the appellants must now pay an additional contribution of EUR 80 per month.

106. The appellants therefore believe that this measure interferes with their acquired right to receive the salary that is owed to them in accordance with their respective grade and step. In accordance with the principle of legitimate expectation, the staff members were here too entitled to expect that they would continue to receive medical and social cover without incurring an additional cost.

107. Referring to the Hedman judgment (ATCE, appeal N° 557/2014 – Hedman v. Secretary General, judgment of 10 December 2015, paragraphs 75-76), the appellants claim that, for the Tribunal, the change in the medical and welfare cover leads *ipso facto* to interference with the rights of the staff members concerned. In this case, the medical and welfare cover received by the appellants has indeed been changed. A breach of their rights and the very principle of legitimate expectation should therefore be recognised.

108. They believe that this new situation undermines their medical and social cover in that it reduces their guarantees and increases the financial costs for staff members who are already vulnerable because of their family responsibilities.

109. In conclusion, the appellants request the cancellation of the disputed measures insofar as they were adopted following an irregular procedure, and they are also discriminatory and arbitrary, cause unnecessary and excessive harm to vulnerable staff members for reasons which are not reasonable, and are contrary to the principle of legitimate expectation.

110. Accordingly, they ask the Tribunal to:

a) annul the changes made to Articles 9, 12 and 13 of Appendix XII to the Staff Regulations as adopted via Resolution CM/RES(2016)18 of the Committee of Ministers of 18 October 2016;

b) annul the measures to implement them, namely Rules no. 1384 of 15 December 2016, no. 1385 and no. 1387 of 20 December 2016 altering the coverage of the CEMSIS medical insurance in relation to the supplementary insurance for dependent spouses.

2. The Secretary General

a) Procedural irregularities

111. Concerning the alleged irregularity of the measures due to the lack of a call for tenders, the Secretary General maintains that the collective insurance contract was renewed entirely in accordance with the relevant provisions of the Financial Regulations of the Council of Europe. The possibility of renewal existed as from the Tenders Board’s decision of 21 May 2013 which authorised the conclusion of the contract for an initial period of three years. The offer for the renewal of the contract made by the service provider was assessed by the Tenders Board, which decided, after considering all of the relevant factors, to authorise the renewal of the contract for a period of three years.

112. Contrary to what the appellants assert, there is nothing to indicate that conducting a new call for tenders would have been in the interests of the Organisation and staff members, or that it would have made it possible to identify another service provider who could offer more favourable financial terms for maintaining an identical level of cover.

113. The renewal offer made by the provider, notwithstanding the increased cost, was considered to be competitive, financially consistent with economic realities and the imbalances in the contractual cover, and justified in the light of the loss ratio for each risk category. This assessment was confirmed by an advisor specialising in the insurance field who was engaged by the Organisation to negotiate the terms of the renewal.

114. The cost and administrative burden of organising a call for tenders for a contract of this scale are considerable, not to mention the fact that a change of insurer and manager would have a negative impact on all the beneficiaries and the cost of the contract.

115. Concerning the alleged irregularity of the measures due to the non-consultation of the Staff Committee, the Secretary General points out that, on 4 August 2016, the Director General of Administration sent a memorandum to the Chair of the Staff Committee in connection with the statutory consultation process on the draft resolution amending the Regulations governing staff salaries and allowances (Appendix IV to the Staff Regulations) and related provisions.

116. He states that the memorandum was accompanied by the draft resolution submitted for consultation by the Staff Committee, and also the reports of the Co-ordinating Committee on Remuneration (CCR) on the reform of family allowances. That memorandum summarised the main amendments contained in the draft resolution concerning the reform of family allowances, without going into the details of the amendments to Articles 9, 12 and 13 of the Regulations on the medical and social insurance scheme which were included in the draft resolution. In the Secretary General's view, this circumstance does not make the statutory consultation of the Staff Committee irregular, as the Staff Committee was consulted on the contents of the draft resolution and not on the memorandum accompanying the draft resolution.

117. Furthermore, it is important to underline that the Staff Committee was already fully informed, at the time of the statutory consultation, of the contents and impact of the changes concerned.

118. Finally, the Secretary General draws the Tribunal's attention to the fact that the Staff Committee was also consulted on Rules no. 1385, 1386 and 1387 reflecting the changes made to the medical and social insurance scheme, in accordance with Article 5 paragraph 3 of the Regulations on staff participation. In its opinion issued on 19 December 2016, the Staff Committee pointed out that the contents of the rules in question had already been discussed and negotiated and that it had already expressed its comments on the changes concerned within the framework described above.

119. Concerning the alleged irregularity of the measures due to the alleged inadequacy of the information communicated to the Committee of Ministers, the Secretary General disputes the appellants' allegation that the Committee of Ministers was not clearly informed of the

amendments to the Regulations on the medical and social insurance system during the consideration and adoption of the reform of family allowances.

120. In his eyes, the disputed measures were adopted in an entirely lawful manner by the Committee of Ministers in accordance with the applicable statutory and regulatory provisions. It cannot be alleged that, when the Committee of Ministers adopted Resolution CM/Res(2016)18 on 18 October 2016, it adopted this resolution without full knowledge of the facts.

121. Moreover, no evidence was provided by the appellants to corroborate their allegations.

b) The allegedly arbitrary and discriminatory nature of the measures amending the supplementary insurance for dependent spouses

122. Firstly, the Secretary General gives an indication of the amounts at issue and points out that staff with dependent spouses or partners pay only part of the share due in return for full medical cover for their spouse.

123. This measure cannot be regarded as discriminatory within the meaning of Article 3 of the Staff Regulations because it is an adequate and proportionate measure to achieve a legitimate goal, i.e. to achieve a fairer distribution of the costs of medical and social insurance between scheme members. In the context of the financial difficulties encountered in maintaining an adequate guarantee level for all beneficiaries, the Organisation had to end advantages which had become incompatible with a fair distribution of the costs of medical and social insurance.

124. In deciding that the supplementary medical cover for dependent spouses and partners should from now on be paid for, the Organisation selected an objective criterion enabling it to treat all staff members and pensioners fairly. This entailed ending treatment which favoured staff members with dependent spouses because they did not pay any financial compensation for services which their dependent spouse or partner received.

125. The Secretary General adds that, if the cost of the supplementary cover or the level of the guarantees provided by the Council of Europe's collective insurance contract is deemed unsatisfactory by the staff members concerned, they are free to take out, for their dependent spouse, supplementary insurance other than the cover offered by the Council of Europe.

126. With regard to the excessively short period that the appellants were given to decide whether or not they wished to retain the supplementary cover, the Secretary General points out that the staff members who complained to Human Resources that the period was too short were informed that they would be allowed to stop subscribing to the Council of Europe supplementary cover in 2017 if they decided to affiliate their spouses or partners to another insurance scheme – whether this decision was made solely for the supplementary cover or for both the primary and supplementary cover.

c) The alleged breach of acquired rights and the principle of legitimate expectation

127. The Secretary General also refers to the same paragraphs of the aforementioned Hedman v. Secretary General judgment to point out that, in accordance with the principles set out by the

Tribunal in this regard, it cannot be asserted that the disputed measure relates to a fundamental and essential condition of employment which induced the appellants to take up their employment.

128. In the opinion of the Secretary General, the appellants have not put forward any arguments that could justify their right to retain entirely free medical cover for their dependent spouses throughout their career at the Council of Europe and then throughout their retirement. Consequently, they cannot validly claim that the decision to charge the cost of supplementary insurance for dependent spouses breached their acquired rights.

129. In his view, while it is true that the appellants previously had an advantage in that they were exempt from paying any contributions for the supplementary services for their dependent spouses, this was an advantage which could not be retained indefinitely in view of the need to guarantee the economic balance and sustainability of the medical and social cover offered by the Council of Europe to all beneficiaries, in the absence of any other financing possibilities. This advantage was regarded as incompatible with a fair distribution of the costs of medical and social cover in a context where sources of savings needed to be identified.

130. However, the disputed measure does not have a disproportionately adverse effect on the appellants' interests because the greater part of the cost of the medical and social cover for dependent spouses is still borne by the community and no financial charge is made for it. Only a limited part of the cost is covered by the staff member concerned.

131. Finally, the Secretary General maintains that medical and social cover cannot be regarded as a system that is fixed once and for all, at the risk of paralysing its operation. Medical and social cover reflects the development of society, technical progress and medical and scientific advances. This is reflected in the adjustment of social and medical cover in terms of both its functioning and also its services. Adjustments are constantly necessary and these adjustments, of the type that is being considered in this case, can affect staff members to varying degrees without it being possible to regard them as breaching the principle of legitimate expectation or acquired rights.

3. Intervening third party

132. Having concluded that the claim relating to the change of the capital sum paid in the event of death or invalidity, the Tribunal believes it pertinent to summarise the argument put forward by the intervening third party referring to the second claim here.

133. After explaining her personal circumstances, the intervener develops lines of argument that support the appellants' arguments concerning the claim relating to the change in the amount of the capital sum paid in the event of death or invalidity. However, since that claim has been declared inadmissible it is unnecessary to summarise those arguments here.

Nevertheless, in her conclusions the intervener supports the request that the disputed measures be annulled insofar as they relate to changes concerning supplementary insurance without making specific points.

134. For his part, the Secretary General notes that the intervener sets out facts and legal grounds that are specific to her own personal circumstances and differ from those put forward by the appellants. In his view, the intervention goes beyond merely supporting the appellants' conclusions.

135. Accordingly, he believes that the intervention does not meet the criteria set forth in Article 10 of the Statute of the Tribunal and must be declared manifestly inadmissible.

136. After the oral proceedings, the third-party intervener expressed her wish to withdraw. The appellants objected, claiming that this statement could not apply retroactively, while the Secretary General stated that he had no objections.

III. THE TRIBUNAL'S ASSESSMENT

137. As regards the intervener's request to withdraw, the Tribunal notes that the intervener may withdraw only in respect of the continuation of the proceedings, but it is not possible to give retroactive effect to its request.

138. The Tribunal therefore concludes that there is no need to rule on the Secretary General's plea of inadmissibility or to take account of the intervention insofar as it does not exceed the limits laid down in Article 10 of the Staff Regulations.

a) Invalid procedure

140. Where the well-foundedness of the claim is concerned, the Tribunal must firstly consider the three allegations made against the validity of the procedure.

141. Regarding the lack of a tender as an invalidating factor, the Tribunal must make the preliminary point that it was not a new contract but a renewal of the existing contract reaching expiry.

142. In this context, it has to be said that the original contract did contain a renewal clause and the Supervisory Board expressed its agreement both at the time of the initial contract and upon its renewal.

143. It is true that two changes have been made to guarantees but, where the change to the amount of the supplementary insurance is concerned – the only question that must be examined in the present judgment – it could not be regarded as such a fundamental change in the organisation of the contract as to justify the launch of a new call for tenders.

144. With regard to the Secretary General's reference to the complexity of organising a new call for tenders and the resulting cost for the Organisation, the Tribunal would point out that this argument could not be applied to more substantial changes or a set of small changes sufficient in number to upset the general framework of staff contributions to the collective insurance system. The fact that this concerns supplementary cover which is optional for staff cannot constitute an argument having any bearing on the Tribunal's judgment on grounds of the benefits that are

inherent in subscription to collective guarantees and, as such, likely to be a contributing factor in a decision to join the Organisation's staff.

145. Accordingly, this ground of appeal put forward by the appellants must be dismissed.

146. As to the alleged lack of an opinion from the Staff Committee, the Tribunal notes that this staff representative body has not indicated, during the present dispute, by whatever means thought most appropriate, whether it considered that it had been consulted in the context of the adoption of Resolution CM/RES(2016)18 only on the changes relating to Appendix IV to the Staff Regulations or also on the changes concerning Appendix XII to the Staff Regulations.

147. Whatever the case may be, it has to be said that the draft resolution transmitted by the Organisation included all the changes to the Staff Regulations envisaged and the covering note did not restrict consultation to part of that draft. Moreover and above all, it was for the Staff Committee to decide on the scope of the opinion it was being asked for.

148. Accordingly, this ground of appeal put forward by the appellants must be dismissed.

149. Finally, where the inadequacy of information provided to the Committee of Ministers is concerned, the Tribunal feels bound to observe that, indeed, in the preparatory documents seen by it, the Secretary General does not appear to have adequately drawn the attention of the Committee of Ministers to the link between Appendix IV and Appendix XII and also the changes to the latter appendix.

150. This lack of clarity appears important in that the next phase (adoption of the disputed rules) took place without the involvement of the Committee of Ministers.

151. However, in its examination of the appellants' claim, the Tribunal can but reiterate here its conclusions regarding the impossibility of ruling on acts of the Committee of Ministers. That conclusion also applies to the preparatory acts falling within the remit of the Committee of Ministers.

152. In the light of this conclusion, the Tribunal must dismiss the ground of appeal put forward by the appellants.

b) The arbitrary and discriminatory of the measures amending the supplementary insurance for dependent spouses

153. In view of the appellants' complaint that this change is detrimental to them because it reduces in principle the guarantees offered and therefore increases the cost of the insurance in order to maintain the same guarantees that existed previously, the Tribunal notes that this argument has more to do with the argument relating to acquired rights. Accordingly, the Tribunal will take it into consideration when examining that related argument.

154. On the point regarding solidarity between staff with no distinction between primary and supplementary guarantees, the Tribunal does not see how a decision to start treating two differing situations differently could constitute "arbitrary and discriminatory" behaviour.

155. Finally, where the lateness of notification is concerned, the Tribunal notes that the Council had informed staff complaining of the short deadline that it was prepared to terminate their subscription once they had found another supplementary insurance cover.

156. In view of these observations, the Tribunal concludes that the disputed measure was not arbitrary and discriminatory in nature.

c) The alleged breach of acquired rights and the principle of legitimate expectation

157. Regarding this claim, the Tribunal reiterates, where the breach of acquired rights is concerned, that "a right is acquired if its holder can enforce it, regardless of any amendments to a text. A right conferred by a rule or regulation and significant enough to have induced someone to join an organisation's staff must be deemed an acquired right. Curtailment of that right without the holder's consent is a breach of the terms of employment which civil servants are entitled to assume will be honoured" (previously quoted Hedman judgment, paragraph 75).

158. However, the Tribunal notes that, as was the case in the Hedman appeal, in the present case, contrary to the appellants' claims, the introduction of a contribution forming a percentage of the amount actually paid to the service provider affected neither the status of staff nor the medical and social cover from which they might benefit. Furthermore, the appellants have not put forward any arguments that might justify their right to have a benefit maintained throughout their career. This measure does not breach the acquired right to receive the salary due to them in accordance with their respective grade and step, as the granting of supplementary insurance for the spouse is not taken into account in the calculation of their salary. Moreover, the change introduced has not had a disproportionately adverse effect on their interests, and the appellants have not demonstrated that the benefit in question constituted for them a job-related advantage that had induced them to accept the Organisation's offer of employment.

159. Regarding the breach of the principle of legitimate expectation, the Tribunal does not exclude the possibility that if the appellants had imagined, when signing their respective contracts, that the Organisation might find itself in an uncomfortable financial situation some years later, they would not have considered when taking their decision to join the Organisation that such measures as making supplementary insurance for their spouse subject to payment of contributions would be taken. However, this does not constitute a breach of the principle of legitimate expectation any more than it would be a breach of acquired rights (ATCE, Appeals Nos. 492-497/2011, 504-508/2011, 510/2011, 512/2011, 515-520/2011, 527/2012 – BARON and others v/ Secretary General, Tribunal judgment of 25 September 2012, paragraph 54).

160. In the light of these considerations, the Tribunal finds that the contested measure has not breached the general principle of law which protects acquired rights or that of legitimate expectation. It therefore dismisses this ground of appeal.

161. In conclusion, the appeals are ill-founded and must be dismissed.

V. CONCLUSION

162. In conclusion, the appeals are ill-founded and must be dismissed.

For these reasons,

The Administrative Tribunal:

Orders the joinder of the appeals;

Rules that there are grounds for taking the intervention by the intervening third party into account insofar as it remains within the framework of Article 10 of the Statute of the Tribunal;

Declares the request of the appellants in appeals nos. 571-574, 576 and 578/2017 seeking the annulment of changes made to Appendix XII to the Staff Regulations inadmissible;

Declares appeals nos. 573, 574, 575 and 578 /2017 inadmissible;

Declares the claim relating to the capital sum paid in the event of death or invalidity put forward in appeals nos. 571, 572 and 576/2017 inadmissible;

Declares the claim relating to the change made to supplementary insurance challenged in appeals nos. 571, 572 and 576/2017 ill-founded;

Dismisses appeals nos. 571, 572 and 576/2017;

Decides that each party shall bear its own costs.

Adopted by the Tribunal at Strasbourg on 10 November 2017, and delivered in writing in accordance with Article 35 paragraph 1 of the Tribunal's Rules of Procedure on 14 November 2017, the French text being authentic.

Registrar of the Administrative Tribunal	Chair of the Administrative Tribunal
S. SANSOTTA	C. ROZAKIS