CONSEIL DE L'EUROPE———
———COUNCIL OF EUROPE

TRIBUNAL ADMINISTRATIF
ADMINISTRATIVE TRIBUNAL

Appeal No. 557/2014 (Gunilla HEDMAN v. Secretary General)

The Administrative Tribunal, composed of:

Mr Giorgio MALINVERNI, Deputy Chair,
Ms Mireille HEERS, Judge,
Ms Lenia SAMUEL, Deputy Judge**,**

assisted by:

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

has delivered the following decision after due deliberation.

PROCEEDINGS

1. The appellant, Ms Gunilla Hedman, lodged her appeal on 18 September 2014. It was registered on the same day as no. 557/2014.

2. On 19 November 2014, the appellant filed further pleadings in which she asked for Rule no. 1364, in particular Article 27, to be annulled.

3. On 22 December 2014, she filed amended pleadings to replace those of 19 November 2014; in this document she now only asked for Article 27 of Rule no. 1364 to be annulled.

4. On 20 February 2015, the Secretary General submitted his observations on the appeal.

5. The appellant submitted a memorial in reply on 4 May 2015. The public hearing took place on 26 June 2015 in the Administrative Tribunal's hearing room in Strasbourg. The appellant was represented by Ms Carine Cohen-Solal, lawyer at the Strasbourg bar, and the Secretary General by Ms Ekaterina Zakovryashina, Head of the Legal Advice Division of the Directorate of Legal Advice and Public International Law, assisted by Mr Patrick Buchmann, administrator in the

Directorate of Human Resources, and Ms Sania Ivedi, administrator in the Legal Advice Department.

6. During the proceedings, Ms Lenia Samuel, deputy judge, replaced Mr Ömer Faruk Ateş, who was unable to be present (Article 2 of the Statute of the Administrative Tribunal – Appendix XI to the Staff Regulations).

7. The Tribunal considered that it was unnecessary to recommence the part of the proceedings preceding this replacement (Rule 33 of the Tribunal's Rules of Procedure).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The appellant is a former Council of Europe staff member who retired on 1 December 2012. When she retired, she was on step 7 of grade A6 and had worked for the Organisation for 10 years, which entitled her to a retirement pension. In this appeal, she asks for the revision of Article 27 of Rule no. 1364 of 28 January 2014 on contributions towards collective insurance premiums, and for the re-establishment of the basis for assessing contribution rates provided for in Rule no. 1325.

9. In accordance with the Pension Scheme Rules (Appendix V to the Staff Regulations), each year of full-time employment grants entitlement to a rate of pension equivalent to 2% of the salary corresponding to the last grade held by the staff member and the last step held in that grade. Having completed ten years of full-time employment, the appellant is entitled to a pension rate of 20%.

10. The appellant settled in Switzerland and the monthly salary for step 7 of grade A6, based on the Swiss scale, was 21 371.95 Swiss francs (CHF) in 2014 and CHF 21 719.46 in 2013.

11. With regard to medical coverage in retirement, in its discussions with the appellant in 2012 prior to her departure the Directorate of Human Resources (hereafter the "DHR") informed her that, under the Organisation's rules, she was entitled to supplementary medical coverage with the Allianz insurance company at a rate of 1.491%, on top of the Swiss basic insurance.

112. She was also told that, notwithstanding the above rules, she could, on request and subject to her bearing the additional cost that this would entail for the Organisation, opt to retain the full basic and supplementary coverage provided by Allianz, at a rate of 9.546%.

13. The appellant asked to remain in the Organisation's private scheme at a rate of 9.546%, as of 1 December 2012. Meanwhile, the Organisation commenced a wide-ranging reform of medical and social coverage for serving staff and pensioners, which came into operation on 1 January 2014, at the same time as its three-year group insurance contract. One consequence of the changes brought about by this reform was that, from that date, the appellant's contribution rate was reduced from 9.546% to 5.964%.

14. When she received her January pension on 29 January 2014, the appellant realised that the amount of her pension was significantly less than usual. She thought that this was probably the result of an error and, on the same day, sent an email requesting explanations to an official of the Organisation for Economic Co-operation and Development responsible for pensions.

15. She was then informed in an email from the Council of Europe DHR that she would soon be receiving a note addressed to all pensioners setting out the new methods of calculating insurance premiums. On the same day, the appellant received the note, in which the Organisation's pensioners were informed of the entry into force of Rule no. 1364 of 28 January 2014 on contributions towards collective insurance premiums, which made substantial changes to the arrangements for contributing to the Council's medical and social insurance scheme.

16. The note to former staff referred to the possibility of seeking further information from the Organisation's Pensions and Social Insurance Unit, in response to which, on 5 February 2014, the appellant sent an email to the DHR asking for further details on the level of premiums.

17. On 6 February 2014, the appellant received Rule no. 1364 in the post, thus enabling her to determine the method used since 1 January 2014 to calculate the collective insurance premiums, and the provisions that specifically concerned her. On the same day, she received a reply from the DHR to her email of 5 February 2014, which simply reiterated what had been said in the January 2014 note.

18. In response to this situation, on 25 February 2014 the appellant lodged an administrative complaint asking for Rule no. 1364, signed by the Secretary General on 28 January 2014 and applicable from 1 January 2014, to be revised. At her request, the complaint was submitted to the Advisory Committee on Disputes (Article 59 of the Staff Regulations).

19. On 2 July 2014, the Advisory Committee on Disputes concluded that the appellant's complaint was ill-founded and partly inadmissible.

II. THE RELEVANT LAW

20. Article 3 of the Staff Regulations (Non-discrimination) states that:

> "1. Staff members shall be entitled to equal treatment under the Staff Regulations without direct or indirect discrimination, in particular on grounds of racial, ethnic or social origin, colour, nationality, disability, age, marital or parental status, sex or sexual orientation, and political, philosophical or religious opinions.
>
> 2. The principle of equal treatment and non-discrimination shall not prevent the Secretary General from maintaining or adopting, in the context of a predetermined policy, measures conferring specific advantages in order to promote full and effective equality and equal opportunities for everyone, provided that there is an objective and reasonable justification for those measures."

21. Article 33 (Basis of Calculation) of Appendix V (Pension Scheme Rules) to the Staff Regulations states that:

"1. Pensions provided for in the Rules shall be calculated by reference to the salary defined in Article 3 and to the scales applicable to the country of the staff member's last posting.

2. However, if the former staff member settles subsequently:

i) in a Member country of one of the Co-ordinated Organisations of which he is a national, or

….

iii) in a country where he has served at least five years in one of the Organisations listed in Article 1,

he may opt for the scale applicable to that country.

The option shall apply to only one of the countries referred to in this paragraph, and shall be irrevocable except where paragraph 3 below is applicable."

22. Article 16 (Affiliation) of Appendix XII (Regulations on the medical and social insurance scheme) states that:

"1. Subject to the provisions of Article 21, paragraph 3, below, the following persons shall be affiliated to the Organisation's Medical and Social Insurance Scheme:

- former staff in receipt of retirement pensions under the Organisation's Pension Scheme and aged at least 60;

- former staff in receipt of early retirement pensions under the Organisation's Pension Scheme, regardless of age;

- former staff in receipt of disability pensions under the Organisation's Pension Scheme, regardless of age;

- surviving spouses in receipt of survivors' pensions within the meaning of, and subject to the conditions and limitations provided for in, the Organisation's Pension Scheme;

- orphans or other dependants of staff members who die while still working or after qualifying for a disability pension or an immediate or deferred retirement pension, who are in receipt of orphans' or other dependants' pensions under the Organisation's Pension Scheme Rules and Article 5 of Appendix IV to the Staff Regulations.

2. Apart from the cases expressly listed in paragraph 1, a former staff member of any age may be affiliated at his/her own expense to the Organisation's Medical and Social Insurance Scheme, if he/she has so requested prior to expiry of his/her contract with the Organisation, under the special conditions laid down by the Secretary General.

3. Affiliation shall cease when the persons concerned cease to fulfil the conditions for affiliation."

23. Article 21, paragraph 3b (Expenses for medical treatment) states that:

"Nonetheless, a person entitled to a benefit provided for in this chapter who wishes to waive his/her right to protection under one or more other compulsory social schemes may do so, provided that he/she meets any and all additional costs incurred by the Organisation."

24. Article 24 states that:

"Persons affiliated to the Organisation's Medical and Social Insurance Scheme under Article 16, paragraph 1, of these Regulations shall contribute one-third of the cost of cover for benefits provided by the Scheme.

However, in the cases specified in Article 21, paragraph 3b., they shall pay the entire cost of cover from the first euro, less the part payable by the Organisation in respect of supplementary affiliation.

> The Secretary General shall determine the extent to which part of the cost of cover for the affiliated persons referred to in Article 16, paragraph 1, will be borne by the compulsory insurance scheme for serving staff.
>
> Persons affiliated to the Organisation's Medical and Social Insurance Scheme under Article 16, paragraph 2, of these Regulations shall pay the full cost of their insurance."

25. Article 27 of Rule no. 1364 of 28 January 2014 on contributions towards collective insurance premiums, entitled "Former staff in receipt of a retirement pension, an early retirement pension or an invalidity pension payable under the Organisation's pension schemes or having benefited from Resolution (92)28", states that:

> "Contributions shall be assessed on the amount of the pension (household allowance included). This shall be not less than 50% of the last basic salary on a full-time basis for pensioners coming under the Co-ordinated Pension Scheme or the [New Pension Scheme] and 43.75% of the last basic salary on a full-time basis for pensioners coming under the [Third Pension Scheme]."

THE LAW

26. The appellant asks for Article 27 of Rule no. 1364 of 28 January 2014 on contributions towards collective insurance premiums to be annulled. She also asks the Tribunal to find that the correct basis for calculating her collective insurance premiums was her retirement pension, as provided for in Rule no. 1325.

27. The Secretary General asks the Tribunal to dismiss the appeal.

A. Admissibility of the appeal

28. The Secretary General notes that after the appeal had been lodged on 18 September 2014, the appellant filed further pleadings on 19 November 2014. Once these pleadings had been filed, and as provided for in Article 7 of the Statute of the Administrative Tribunal (Appendix XI to the Staff Regulations), the Chair set 30 January 2015 as the deadline for the Secretary General to submit his written observations.

29. However, on 22 December 2014 the appellant filed amended pleadings which replaced the previous pleadings and changed the arguments contained therein. The initial pleadings asked for Rule no. 1364 to be annulled. However, in the amended pleadings, the appellant simply asks for Article 27 of this Rule to be annulled and acknowledges that the Secretary General has the requisite authority to modify the contribution arrangements to the Organisation's medical insurance scheme.

30. In the light of these developments, in his written observations the Secretary General questions the appellant's course of action in producing unsolicited "amended" pleadings during the proceedings. At all events, he notes that she is also asking for her collective insurance premiums to be calculated on the basis of her retirement pension, as provided for in Rule no. 1325.

31. The Secretary General also maintains that the appellant has no interest in bringing proceedings in respect of the situation of other pensioners and any prejudice they might have

suffered, which she adduced as an argument in her administrative complaint. Such an approach constitutes an *actio popularis,* which is inadmissible before the Tribunal. However, he notes that she acknowledges in her further pleadings that she can only represent her own interests, and he does not therefore consider it necessary to expand on this point. Nevertheless, in his submissions, he asks the Tribunal to declare the appeal inadmissible, in whole or in part.

32. At the hearing, the Secretary General stated that he stood by all the arguments adduced in his written observations on the appeal, but he did not make any submissions as to its admissibility, and confined himself to requesting that it be declared ill-founded.

33. In the written proceedings, the appellant stated that her amended pleadings were intended to clarify her appeal by confining it to the annulment of Article 27 of Rule no. 1364, while maintaining her request that collective insurance premiums continue to be calculated on the basis of the retirement pension, as provided for in Rule no. 1325.

34. In reply to the Secretary General's argument that the appeal was inadmissible because it constituted an *actio popularis*, she said that she had raised this point in her administrative complaint because she was not the only retired staff member to be affected by the subject of this dispute. This appeal was only concerned with her own interests.

35. At the hearing, following discussion of her submissions and those of the Secretary General, the appellant stated that it was no longer necessary to consider this ground of inadmissibility.

36. The Administrative Tribunal considers that the appellant's submissions show clearly that the purpose of her amended pleadings was simply to clarify the purpose of her appeal, and in no sense to expand her original pleadings. Moreover, the Secretary General had not asked for these amended pleadings to be declared inadmissible but simply "questioned" the appellant's course of action.

37. The Tribunal also notes that, in the instant appeal, the appellant only presents arguments concerning her own situation. In the light of the parties' submissions, the Tribunal does not consider it necessary to rule on the admissibility of the appeal, since it is not contested.

B. The merits

I. SUBMISSIONS OF THE PARTIES

A) Discrimination based on length of service

a) The appellant

38. The appellant notes that according to Article 27 of Rule no. 1364, the basis for determining the level of insurance premiums "shall be not less than 50% of the last basic salary on a full-time basis for pensioners coming under the Co-ordinated Pension Scheme or the NPS [New Pension Scheme] and 43.75% of the last basic salary on a full-time basis for pensioners coming under the TPS [Third Pension Scheme]". It was the first figure that applied to her.

39. In the January 2014 note to all pensioners, the DHR stated that the 50% rate corresponded to 25 years' service. Since each year of service gave entitlement to a retirement pension equivalent to 2% of the salary corresponding to the last grade held by the staff member for not less than one year before cessation of his appointment and the last step held in that grade (Article 10, paragraph 1, of Appendix V – Pension Scheme Rules), the 50% figure corresponded to the pension paid to a staff member with 25 years' service in the Organisation (25 years x 2% = 50%).

40. The appellant submits that there is no objective reason why a pension corresponding to 25 years of employment at the Council of Europe should be chosen as the criterion. The amount of pension actually received was previously used as the basis. Such a basis was undoubtedly objective and compatible with the principle of equality between pensioners, whereas setting a contribution base that is quite unrelated to each individual's situation cannot be deemed compatible with this principle. The only pensioners affected by this increase are those with fewer than 25 years' service. Inevitably, among the latter group those most affected are the ones who were on the highest grades, which is clearly the case with the appellant, who was on grade A6.

41. The appellant considers that the Secretary General has provided no justification whatsoever for this decision, which cannot be explained by developments in the collective insurance contract and the results obtained. Indeed, in its June 2013 notice to Council of Europe pensioners, the DHR stated clearly that: "the level of health spending [had] further stabilised in 2012". It also said that "following a steady rise between 2008 and 2010, reimbursements have stabilised over the last 3 years, even though the number of persons covered has increased slightly. This remarkable result compares very well with medical inflation in France, which was 2.5% in 2010 and 2.7% in 2011". According to the appellant, there is nothing to justify a significant increase in contributions for pensioners with fewer than 25 years' service in the Organisation.

42. The appellant also argues that if the 50% rate was applicable to her for the month of January 2014, there was nothing to prevent the Secretary General from varying this rate as he saw fit over the following months or years. While the lower and upper limits for retirement pensions are clearly laid down in the Staff Regulations, this is not the case for the collective insurance contribution rates, in contrast to other organisations. According to a 1996 article entitled "*La couverture sociale des fonctionnaires et agents des organisations internationals*" (the social coverage of officials of international organisations), at UNIDROIT (the International Institute for the Unification of Private Law) officials' contributions could not exceed 10% of their salaries and at the FAO (United Nations Food and Agriculture Organisation) this limit was set at 5% of gross salary for officials and 4% for retired staff. In the European Economic Community it was 2% of the salary.

b) The Secretary General

43. The Secretary General notes that, in place of a contribution system based on a percentage of the emoluments actually received by pensioners, Article 27 provides for one with a minimum basis for contributions, namely a pension corresponding to 25 years' service in the Organisation, even if the individual concerned has worked there for fewer than 25 years.

44. The Secretary General refers to three elements that influenced the assessment of the appellant's contributions, one of which is the Organisation's structural reform of its system of medical and social coverage, which includes, in particular, the introduction of a minimum basis for pensioners' contributions and an intermediate contribution rate for pensioners with supplementary insurance residing outside of France.

45. The Secretary General states that the reform is intended to secure greater equality of treatment by offering everyone, serving staff and pensioners, whether healthy or sick, a high standard of coverage. The lack of a minimum level of contributions resulted in anomalies in the system, since certain pensioners were benefiting from coverage (from the first euro or on a supplementary basis) at a derisory rate compared with the benefits available. Until recently, pensioners had all served full careers on a full-time basis, but the Organisation has evolved. During the 80s and 90s part-time employment became more common, together with shorter Council careers as a result of the abolition of the 35-year age limit for applications and the consequent recruitment of older persons, the use of renewable fixed-term contracts for staff on A6-A7, and the inclusion of judges of the European Court of Human Rights with fixed terms of office in the Council of Europe's social coverage system. These shorter careers have resulted in reduced pensions, but this has not affected the level of medical and social coverage, which has remained the same.

46. The statutory bodies therefore recommended the establishment of a minimum level of contributions, based on a pension corresponding to 25 years of full-time service. The Secretary General points out in this connection that all the co-ordinated organisations have introduced similar provisions to those contested by the appellant, or even ones that are less favourable. He reaffirms that the measures taken by the co-ordinated organisations, and thus the Council of Europe, are legal, justified and non-discriminatory. Moreover, the assessment basis for contributions was agreed by all the members of the Supervisory Committee, including current and former staff representatives, following numerous meetings and discussions. The introduction of a minimum contribution level has made it possible for costs to be apportioned more fairly between all the beneficiaries of the collective insurance scheme.

47. In this case, the Secretary General notes that, in the absence of a minimum contribution level, until 1 January 2014, the appellant was paying 3.5 times less than a pensioner with a full career in the Organisation, while benefiting from identical medical coverage.

48. Turning to the appellant's argument that the 50% rate referred to Rule no. 1364 constitutes a minimum and that no ceiling has been fixed, the Secretary General states that the Supervisory Committee made no recommendation in this regard and that the introduction of such a ceiling would call into question the effectiveness and indeed the very purpose of the reform.

49. The Secretary General also dismisses the appellant's fears that there might be variations in the minimum contribution base by stating that the changes introduced form part of a structural reform aimed at securing long-term results. However, possible future reforms of the system cannot be ruled out if its long-term viability is threatened.

50. In response to the appellant's contention that it was unnecessary to increase her contribution since the results of the 2011-2013 contract apparently showed that expenditure levels were stable, he states that there is nothing in the document produced by the appellant to show that the Council's insurance contract is in balance. They merely show that, compared with previous years, 2012 expenditure was stable and that the Organisation's performance is better than that observed elsewhere, particularly in the French sickness insurance system.

51. The Secretary General refers to Article 21, paragraph 3 a) of the Regulations on the medical and social insurance scheme (Appendix XII to the Staff Regulations) and notes that pensioners who do not wish to be affiliated to their national social security scheme can benefit from the Council of Europe's private insurance. However, this personal choice necessarily entails higher premiums than those stipulated for the supplementary portion alone.

52. He points out that after being duly informed of these conditions, the appellant asked to be affiliated to the Council's private scheme. Furthermore, after being clearly informed in January 2014 of the increase in her contributions, she did not take any steps to replace the Council of Europe's primary and supplementary cover at a rate of 5.964% (collective insurance with cover from the first euro) with the Swiss primary medical insurance plus the Organisation's supplementary medical cover at the intermediate rate of 2.296%.

B) The retroactive nature of Rule no. 1364

a) The appellant

53. The appellant submits that Rule no. 1364 was signed by the Secretary General on 28 January 2014. It came into effect on 1 January 2014, since the new contribution arrangements for the medical insurance scheme were applied to the appellant's pension from January 2014.

54. According to the appellant, it is not disputed that in his reply of 11 July 2014, the Secretary General regretted that the Administration had not been able to inform staff and pensioners earlier of the changes to the arrangements for contributing to the Organisation's medical insurance scheme, but made no proposals whatsoever for compensating those concerned for any adverse effects. The Secretary General's explanations regarding the time taken to carry out the necessary work cannot offer any justification for derogating from the principle of the non-retroactivity of administrative regulations, particularly as the Administration has itself stated that work on the arrangements for the invitation to tender for the collective insurance contract applicable from 1 January 2014 started in the second half of 2011. The appellant states that the previous Rule no. 1325 had been signed by the Secretary General on 14 December 2010. Moreover, a specific provision of this Rule specified the precise date when it would enter into force, namely 1 January 2011. Rule no. 1364 contained no such provision. The Administration thus deliberately gave retrospective effect to Rule no. 1364, to the detriment of the interests and rights of the Organisation's serving staff and pensioners. The appellant considers that this Rule should not have been applicable as of January 2014 and that contributions in excess of those payable under the system previously in force must be reimbursed.

b) The Secretary General

55. In reply, the Secretary General draws attention to the preamble to the Rule, which states that the Council of Europe has concluded "with effect from 1 January 2014, a collective insurance contract … and that it is necessary to adjust on the same date the contribution rates to the Medical and Social Insurance Scheme". Since the collective insurance contract took effect on 1 January 2014, the contribution rates of the beneficiaries of the services provided came into force on the same date. Any alternative approach would result in a legal vacuum that would pose a threat to the required legal certainty in this area, and to the interests of the individuals concerned, in that they might not be properly covered for certain risks.

56. The Rule was signed on 28 January 2014 and provided – as is not disputed by the appellant – for the collective insurance contract to enter into effect on 1 January 2014. Its provisions therefore became applicable to serving staff and pensioners on the same date without there being any question of retroactivity. The deductions provided for in the Rule were applied to the January 2014 salaries and pensions and cannot in any sense be deemed to be retrospective. The appellant was covered by the Organisation's new insurance contract from 1 January 2014, so it was impossible not to apply to her the new method of assessment from that date. She was entitled to benefits under the new contract as of 1 January 2014 and was liable for the new contributions from the same date.

57. The Secretary General states that the Administration regrets that it was unable to inform serving staff and pensioners earlier about the changes to the arrangements for contributing to the Council's medical insurance scheme. In any event, this delay did not adversely affect the appellant, who obtained the information necessary and sufficient to lodge her administrative complaint, and then this appeal, and to present her case. Moreover, if she considered the level of her new premiums to be excessive or the information supplied unacceptable, she could have opted, from February 2014, for just supplementary medical coverage, at a much lower cost. So far, she has not done so.

C) Breach of acquired rights

a) The appellant

58. The appellant alleges finally that Article 27 of Rule no. 1364 has infringed her acquired rights with regard to social insurance. She acknowledges that the contribution rate may legitimately vary, but this cannot be the case with the basis on which her insurance premiums are assessed. The appellant opted for collective insurance cover from the first euro precisely on account of the full extent of the coverage of this insurance and its cost. The appellant was not obliged to choose this insurance in its comprehensive form; she could also have opted simply for the supplementary element and so become affiliated to the Swiss medical insurance system. In any event, the Administration had a duty to inform pensioners, and more specifically the appellant, of her rights with regard to the Organisation's collective insurance.

59. It is clear that, quite apart from coverage, the level of contributions is by itself a key factor in a pensioner's choice of insurance scheme. The Secretary General could not therefore alter the basis on which contributions are assessed without breaching the appellant's acquired rights, particularly as this alteration entailed a substantial increase in her premiums, of about 54%.

b) The Secretary General

60. The Secretary General refers to international administrative case-law, according to which "the amendment of a provision governing an official's situation to his or her detriment constitutes a breach of an acquired right only when such an amendment adversely affects the balance of contractual obligations, or alters fundamental terms of employment in consideration of which the official accepted an appointment, or which subsequently induced him or her to stay on".

61. The Secretary General recognises the importance for staff and pensioners of issues relating to their medical and social coverage. It is precisely to safeguard the right to medical and social coverage that the Secretary General has had to reform the Organisation's collective insurance scheme. Introducing a minimum level for the basis on which contributions are calculated undoubtedly entails certain changes to the sum deducted for medical coverage, and as such is detrimental to the appellant's interests. However, this is not sufficient to constitute a breach of an acquired right. It cannot, therefore, be maintained that the level of the contribution payable to secure medical coverage, which is subject to variation, concerns an employment condition of a "fundamental and essential nature".

62. Nor can there be a breach of acquired rights when, as in this case, the purpose is to rectify an unjustified advantage. The appellant has, of course, suffered a rise in her contributions, but this rise – which is less pronounced than in the case of other international organisations – is justified and has the legitimate aim of ensuring a fairer apportionment of the costs of the medical scheme among those affiliated to it and of securing its long-term viability. The Organisation had a duty to put an end to an advantage that had become incompatible with a fair sharing of the cost of the scheme.

II. THE TRIBUNAL'S ASSESSMENT

63. The Tribunal notes first that, according to the relevant provisions of the Staff Regulations and its Statute (Appendix XI to the Staff Regulations), it can only annul administrative decisions that are detrimental to applicants. Its authority does not extend to annulling regulations. It will, therefore, only consider the grounds of appeal concerning Article 27 of Rule no. 1364, which the appellant asks to be annulled, in so far as it was applied to her when it came into effect, namely on 1 January 2014.

A) Discrimination based on length of service

64. The Tribunal notes that the principles of non-discrimination and equal treatment form part of the Council of Europe's essential values. All discrimination is strictly forbidden by Article 3 of the Staff Regulations. The non-discrimination principle is also a key element of numerous Council of Europe instruments.

65. In this case the Tribunal considers, like the Secretary General, that when it introduced the reform that the appellant is challenging the Organisation set in train a system that treats all retired staff equitably. The Tribunal acknowledges that, since the reform of the medical and social coverage scheme, the appellant has been treated less favourably than under the previous system,

but her situation - resulting from the fact that she did not complete what is termed a “long career” in the Organisation – cannot be deemed to be discrimination within the meaning of Article 3 of the Staff Regulations. By taking length of service as a basis for setting the level of contributions, the Organisation adopted an objective criterion that enables it to treat all pensioned staff on an equal footing, thereby putting an end to the disadvantageous treatment suffered by retired Council of Europe staff who, unlike the appellant, spent their entire careers in the Organisation.

66. The Tribunal also notes that the appellant could have benefited from the primary medical coverage of Switzerland, the country in which she settled, in conjunction with the Council of Europe’s supplementary medical insurance scheme. Instead, she opted quite freely for primary and supplementary cover under the Organisation’s private insurance, in full awareness of the financial consequences of this choice, namely a level of contributions that is higher than that applicable to the supplementary scheme taken alone. In this context, the Tribunal agrees with the Secretary General’s contention that the appellant has taken no steps since January 2014 to replace the Council of Europe’s primary and supplementary cover at a rate of 5.964% with Swiss primary medical insurance plus the Organisation’s supplementary scheme at an intermediate rate of 2.296%.

67. In the light of these circumstances, the Tribunal considers that this ground of appeal is ill-founded and rejects it.

B) The retroactive nature of Rule no. 1364

68. The appellant maintains that since Rule no. 1364 was signed by the Secretary General on 28 January 2014 but came into force on 1 January 2014, it was applied retrospectively.

69. The Tribunal notes that the principle of non-retroactivity is a corollary of the concept of legal certainty, according to which Council of Europe staff should be able to determine, in advance and precisely, the rights, benefits and disadvantages arising from rules and regulations adopted by the Organisation.

70. In this case, the Tribunal finds that although it came into force on 1 January 2014, the Secretary General only signed Rule no. 1364 on 28 January 2014. Moreover, the appellant only became aware of it on 29 January 2014, when she received her January 2014 pension, and it was only a week later, on 6 February 2014, when she received a copy of this Rule in the post, that she was able to discover the new method of calculating the collective insurance premiums, and the provisions that concerned her.

71. Although, properly speaking, the instant case does not represent a traditional example of the retrospective application of a regulation, since both the Secretary General’s signing of the Rule and the application of the new contribution rate took place in January 2014, the month in which the appellant learnt of this development, the Tribunal considers this situation to be improper from an administrative standpoint. The Secretary General has provided no evidence of any administrative or other form of impediment to prevent the signing of Rule no. 1364 before its date of entry into force, namely 1 January 2014. The arguments presented to the Tribunal concerning the preparatory work and the various forms of prior consultation cannot constitute a justification, since these were activities of which the Organisation was aware from the outset. The Tribunal would add, in this

connection, that the previous regulation, namely Rule no. 1325, which came into force on 1 January 2011, had been signed by the Secretary General on an earlier date: 14 December 2010.

72. In these circumstances, the Tribunal considers that the Organisation has proceeded in a manner that is incompatible with the principle of legal certainty, one aspect of which is the non-retroactivity of rules of law.

73. The Tribunal considers that this ground of appeal is well founded and that the contested decision must be annulled, in so far as it took effect for the appellant on 1 January 2014.

C) The breach of acquired rights

74. The appellant alleges finally that Article 27 of Rule no. 1364 is in breach of her acquired rights with regard to health insurance.

75. The Tribunal points out 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 (ATCE, Baron and others v. Secretary General, Appeals Nos. 492-497/2011, 504-510/2011, 512/2011, 515-520/2011 and 527/2012, decision of 26 September 2012, paragraph 53).

76. In the instant case, the Tribunal considers that, contrary to what the appellant maintains, the change in the method of calculating her medical and social insurance contributions has not affected either her status as a retired member of the Organisation or the medical and social coverage to which she is entitled. Nor has she presented any arguments to justify her right to have her contribution rate remain unaltered throughout her retirement. The changes made have not had a disproportionately adverse effect on the appellant's interests and she has not shown that this rate of contributions constituted for her one of the factors that induced her to accept the Organisation's offer of employment.

77. In the light of these considerations, the Tribunal concludes that the impugned measure did not infringe the general legal principle that protects acquired rights. It therefore rejects this ground of appeal.

III. COSTS AND EXPENSES

78. The appellant asks the Tribunal to order the repayment of contributions wrongly paid since January 2014 and to award her the sum of 5 000 euros as reimbursement for all the costs occasioned by this appeal.

79. The Secretary General asks the Tribunal to refuse this request, because if the appellant considered that these contributions were unreasonable she should have ceased to subscribe to the option she had chosen. He also considers that the request for the reimbursement of procedural expenses should also be rejected.

80. The Tribunal points out that, in accordance with Article 60, paragraph 2, of the Staff Regulations, it has unlimited jurisdiction in disputes of a pecuniary nature.

81. In the light of its findings, the Tribunal decides that reimbursement must be confined to the difference between the contribution paid by the appellant in January 2014 and the contribution she would have paid under the former method of assessment. With regard to procedural costs, it notes that only one ground of appeal has been declared well-founded. It therefore considers it reasonable for the Secretary General to reimburse the sum of 1 500 euros (Article 11, paragraph 2, of Appendix XI to the Staff Regulations).

IV. CONCLUSION

82. In conclusion, the Tribunal declares the appeal well-founded with regard to the ground of appeal based on the retroactivity of Rule no. 1364 and rejects the other two grounds of appeal as being ill-founded. The Secretary General must reimburse the appellant the difference between the contribution she paid in January 2014 and the contribution she would have paid under the old method of assessment, and pay the sum of 1 500 euros in respect of costs and expenses.

For these reasons,

The Administrative Tribunal:

Declares the second ground of appeal well-founded;

Orders the Secretary General to pay the appellant the difference between the contribution she paid in January 2014 and the contribution she would have paid under the old method of assessment;

Declares the first and third grounds of appeal ill-founded and dismisses them;

Orders the Secretary General to reimburse the appellant the sum of 1 500 euros in respect of costs and expenses.

Adopted by the Tribunal in Strasbourg on 10 December 2015 and delivered in writing on the same day pursuant to Rule 35, paragraph 1 of its Rules of Procedure, the French text being authentic.

The Registrar of the Administrative Tribunal

S. SANSOTTA

The Deputy Chair of the Administrative Tribunal

G. MALINVERNI