CONSEIL DE L'EUROPE———

———COUNCIL OF EUROPE

TRIBUNAL ADMINISTRATIF
ADMINISTRATIVE TRIBUNAL

Appeal No. 625/2019
(James BRANNAN (IV) v. Secretary General
of the Council of Europe)

The Administrative Tribunal, composed of:

Ms Nina VAJIĆ, Chair,
Ms Françoise TULKENS,
Mr Christos VASSILOPOULOS, Judges**,**

assisted by:

Ms Eva HUBALKOVA, Deputy Registrar,

has delivered the following decision after due deliberation.

PROCEEDINGS

1. The appellant, Mr James Brannan, lodged his appeal on 10 December 2019. On the same day, this appeal was registered under No. 625/2019.

2. On 16 March 2020, the Secretary General submitted her observations on the appeal. The appellant submitted a memorial in reply.

3. The parties having agreed to waive oral proceedings, the Tribunal decided on 15 June 2019 that there was no need to hold a hearing. The appellant conducted his own defence. The Secretary General was represented by Mr Jörg Polakiewicz, Director of Legal Advice and Public International Law (Jurisconsult).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The appellant is a staff member of the Council of Europe, working at the Organisation’s headquarters. He is affiliated to the Organisation’s medical and social insurance scheme. The appellant has three children. This case concerns the medical cover of his daughter Estelle, aged 18, who is currently studying at university in the United Kingdom.

i. Background to the case

5. The French law of 21 December 2015 on the financing of social security for 2016 sought, among other things, to modernise social protection and strengthen social rights. This law established a universal health protection scheme (hereinafter “PUMa”) which radically simplified the entitlement to and guaranteed continuity of health insurance rights, regardless of any changes in a person’s occupational or family situation. The reform also included the gradual abolition of the status of adult entitled person (“ayant droit majeur”). Consequently, since 2016, with the introduction of the PUMa, any person who is settled and lawfully residing in France will be insured on an autonomous basis as soon as he or she reaches the age of majority. As a result, for those over 18, the concept of entitled person (“ayant droit”) disappeared. Adults who were entitled persons through an insured person before the introduction of the PUMa could retain this status until 31 December 2019 and, in such cases, become insured on an individual basis on that date.

6. In view of these changes to the concept of entitled person in the French social security scheme, and given the parallel between the medical and social insurance scheme in the Council of Europe and the French social security scheme with respect to entitled persons, it was necessary to make changes to the medical and social insurance scheme in the Council of Europe.

ii. Particular circumstances of the present case

7. On 22 July 2019 the appellant received an email from the Directorate of Human Resources (hereafter “DHR”) informing him of changes to be made regarding the medical cover of dependent children and asking him to check whether the situation of his children required some action on his part. The email included the following information:

> “**Your child is studying outside France in one of the Council of Europe Member States (other than France and other than your country of assignment in the case of staff members working outside France)**
>
> His/her primary cover
>
> Due to the reform of the French Social Security and its consequences on our staff rules, children studying outside France are no longer considered as dependants. This change will apply at the latest on 1 January 2020.
>
> Your child will therefore have to register with the country’s national social security scheme or a private insurance. In certain countries, registration with a student social security scheme or a national social security scheme is compulsory (this is the case in Germany and Switzerland). In others it is optional.
>
> Your child may benefit from Henner’s primary insurance until 31 December 2019. We would like to point out that in some countries registration with the country’s national social security scheme is only possible up to the start of the university year and it may no longer be possible to register at a later date.

> His/her complementary cover
>
> Your child will no longer be insured with you for complementary health insurance. However, permanent staff members (CDD or CDI), TLDs and former staff members receiving a Council of Europe pension can, if they wish, extend the complementary cover until the end of the academic year by payment of a fixed monthly premium of €47.83 until 31 December 2019 and €77.57 as of 1 January 2020. Staff must sign up annually to this extension for the entire academic year. Extensions can only be made up to his/her 26th birthday.
>
> If your child is under 20 years of age on 31 December 2019, his/her complementary insurance will remain free of charge until 31 December 2019.
>
> Staff members interested in this insurance are required to fill out Multi-Service Assistant form 3902, by 15 October 2019 at the latest. Requests received after this date will not be accepted."

8. The Secretary General stated that the reason why DHR communicated the information as early as July 2019 was to enable staff to take the necessary steps to prepare in advance for these changes in the light of their children's specific situation. In point of fact, as affiliation to the national or university health insurance scheme in some countries is possible only at the start of the academic year and cannot be arranged at a later date, it was therefore necessary to inform staff before the start of the academic year.

9. Staff wishing to subscribe to the extended supplementary cover for their children up to the age of 26 would be required to pay a fixed monthly premium. At the end of August 2019, the appellant submitted an application in this respect by completing the relevant form. In this application, he stated that his daughter was affiliated to a primary insurance scheme in the United Kingdom, adding that he was asking for her to be affiliated to the Council of Europe complementary insurance scheme. However, in his application he wrote that he refused *"to pay the premium from 01/01/2020 as there [was] no justification for this premium for those under 26 years of age. If the amount [was] nevertheless debited, [he would] file an administrative complaint."*

10. On 11 September 2019, the appellant filed an administrative complaint, making the following points [original English]:

> "My complaint is based on the two principal aspects of the announcement:
>
> (1) The organisation's decision to remove primary cover from my daughter.
>
> (2) The organisation's decision to begin charging my daughter for medical cover, a charge which cannot be justified by any French social security reform.
>
> *(1) Removal of primary cover:*
>
> My daughter's primary cover by the collective insurance contract is currently based on Rule 1385 (Article 5 § 2 (d)) and Article 9 § 2 of Appendix XII to the Staff Regulations which reads:
>
> 'Article 9 § 2 Entitlement to benefits for medical treatment shall apply to staff members and persons entitled through them, viz.:
>
> a. Dependent children under the age of 20; however, supplementary cover for medical treatment may be extended, on payment of an additional contribution borne entirely by the staff member, to dependent children aged more than 20 and less than 29 who are covered by Social Security schemes in their own right ...;'

Even though it is not made clear in the announcement, the removal of primary cover appears to be explained by the application of Article 9 § 3 [of Appendix XII to the Staff Regulations]:

> 'For the definition of persons entitled through staff members, reference shall be made to the French Social Security legislation in force when these Regulations are adopted and to any subsequent changes in such legislation.'

It should be noted in passing that the amendment of Article 9 § 2 will be required if the system of 'supplementary cover' for the 20-29 age-group is to apply henceforth also to the under 20s.

I submit that it is erroneous to rely on Article 9 § 3 and any reference to the French Social Security legislation to change the current system in respect of my daughter for the following reasons.

Article 9 § 3 was arguably not intended to be used to restrict rights but only to extend cover as and when the French system of dependants was so extended. The fact that France may no longer consider some dependent children to be 'ayant droit' is a purely formal and technical redefinition, not foreseeable when Article 9 was drafted. More importantly, however, it is clear that the French Social Security has not totally abolished the notion of dependent child, contrary to the organisation's interpretation.

The French Social Security 'Améli' website ... specifically for students ... indicates that students already registered as dependants last year, as was the case with my daughter, continue with no change this year: 'Rien ne change pour vous, vous demeurez rattaché gratuitement au même régime de sécurité sociale ... jusqu'à l'âge de 24 ans'. Incidentally, students under 20 who study outside the EU/EEA remain dependent on their parents' social security: 'Vos frais médicaux urgents sont remboursés par la caisse d'Assurance Maladie de vos parents'.

I therefore submit that the change of primary insurance for my daughter should not be an obligation under the organisation's insurance scheme, as there has been no automatic and sudden change in the French social security legislation.

...

(2) The new charge for 'complementary' cover:

Even assuming that such an obligation for my daughter to change primary cover is justified, the same ground of a reform of French legislation cannot be relied upon in order to introduce a charge of 77.57 euros per month for her, being part of the under-20 age-group which previously received full cover free of charge. There is no reason why the cost-free cover by the collective insurance contract could not have been maintained for this age-group, and I suggest that it is a means of saving money in the context of the new insurance contract beginning on 1 January 2020. I submit that unless the organisation's regulatory instruments had already been amended, the organisation had a duty to publish a call for tender and negotiate a new contract based on the existing system of beneficiaries.

I would also note that the charge for such 'complementary' cover (for students abroad) will be considerably increased, from 47.83 to 77.57 euros, in relation to the existing charge under the second sentence of Article 9 § 2 and which remains applicable until 31 December. ...

Lastly, the change complained of was totally unforeseeable and I submit that it is an acquired right under my contract that my dependent child remains covered by the organisation's medical insurance at least until the age of 20. ..."

11. On 11 October 2020, the appellant's administrative complaint was rejected in the following terms:

"First of all, reference should be made to Article 9, paragraph 3, of the Regulations on the medical and social insurance scheme (...).

The Secretary General notes that under this provision, the concept of entitled person ("ayant droit") is defined in the Council of Europe's internal regulations with reference to the French social security legislation in force. This implies, therefore, that family members who are deemed to be entitled persons under the French social security scheme are also deemed to be entitled persons under the Council of Europe's medical insurance

> scheme. It is therefore in full compliance with the applicable regulations that the changes that have taken place in recent years in the French social security system concerning the status of entitled persons have gradually been introduced into the Organisation's internal regulations.
>
> Accordingly, with the introduction of the reform of French social security legislation, all persons are insured on an individual basis as soon as they reach the age of majority. At that point, they become independent and are no longer classified, as was previously the case, as entitled persons through their parents up to the age of 20 (...). Consequently, for persons aged 18 and over, the concept of "entitled person" disappears. Only minors continue to have the status of entitled person.
>
> Your daughter (...) is 18 years old and can therefore no longer be regarded as an entitled person through you. Moreover, as she no longer has that status, she is no longer entitled to benefit free of charge from your complementary insurance. It is possible to extend cover of her health costs on a supplementary basis, but this will be subject to a premium with effect from 1 January 2020. (...)"

The Secretary General also replied in detail to the appellant's arguments concerning the information published on "Améli", the French health insurance website, and disputed the appellant's claims.

12. At a meeting held on 4 November 2019, the GR-PBA considered the draft resolution amending the Regulations on the medical and social insurance scheme (Appendix XII to the Staff Regulations). The document presented by the Secretary General included the following passages:

> "1. The Secretary General proposes hereafter three amendments to the medical and social insurance scheme of the Council of Europe (CEMSIS).
>
> 2. CEMSIS follows the evolution of the French Social Security system. For some years now, the French Social Security system has been undergoing a major reform. The changes concern, amongst others, dependants of affiliated persons, such as children and spouses. In particular, post-baccalaureate students no longer have dependant status under the French Social Security system and are now considered independent in terms of health insurance. To reflect these changes, Appendix XII to the Staff Regulations needs to be amended so that the staff members and pensioners' medical cover only includes children up to the age of 18 instead of 20 as currently provided. In addition, it is also proposed to reduce the age up to which a staff member or pensioner can opt to insure their children, by means of an additional payment, from 29 to 26 years, which is the maximum age for a child to be considered as a dependant under the Staff Regulations.
>
> (...)
>
> 5. In accordance with Article 6, paragraph 1, of the Regulations on staff participation (Appendix I to the Staff Regulations), the Staff Committee was consulted on the draft Resolution proposed in the Appendix for adoption."

13. On 21 November 2019, the Committee of Ministers adopted Resolution CM/Res(2019)46 amending the Regulations on the medical and social insurance scheme. The relevant parts of this Resolution read as follows:

> "(...)
>
> **Article 2**
>
> In Article 9, paragraph 2, subparagraph a. and Article 21, paragraph 1, subparagraph a. of the Regulations on the medical and social insurance scheme (Appendix XII to the Staff Regulations), the figure 20 shall be replaced by the figure 18 and the figure 29 shall be replaced by the figure 26.
>
> (...)

Article 4

This resolution shall enter into force on 1 January 2020."

14. The Secretary General stated that the Supervisory Board on Medical and Social Protection, pursuant to its terms of reference as set out in Rule No. 1337, and the Staff Committee, pursuant to Article 6 paragraph 1 of the Regulations on Staff Participation, had been consulted on the draft resolution, including the changes relating to entitled persons.

15. On 17 December 2019, the Secretary General adopted Rule No. 1398 on benefits related to medical expenses cancelling and replacing Rule No. 1385 of 20 December 2016. This new Rule – which had been submitted to the Supervisory Board – was also submitted to the Staff Committee for consultation pursuant to Article 5, paragraph 3 of the Regulations on Staff Participation. It came into force on 1 January 2020.

16. On 10 December 2019, the appellant lodged the present appeal.

II. RELEVANT LAW

17. The Regulations on the medical and social insurance scheme are laid down in Appendix XII to the Staff Regulations. The interpretation of the definition of the benefits and risks covered is set out in Article 4 which provides, *inter alia*:

> "2. If doubts or disputes arise concerning application of the Regulations on the Organisation's Medical and Social Insurance Scheme, reference shall be made to the French Social Security legislation in force at the time when the event giving rise to a claim for benefits occurs."

18. The relevant provisions regarding the medical cover of dependent children under 18 years of age read as follows:

Article 9 (as modified by Resolution CM/Res(2019)46 of 21 November 2019
with effect from 1 January 2020)

> "(...)
>
> 2. Entitlement to benefits for medical treatment shall apply to affiliated persons and persons entitled through them, viz.:
>
> a. dependent children under the age of 18; however, supplementary cover for medical treatment may be extended, on payment of an additional contribution borne entirely by the staff member, to dependent children aged more than 18 and less than 26 who are covered by Social Security schemes in their own right (students, job-seekers, etc.);
>
> (...)
>
> 3. For the definition of persons entitled through staff members, reference shall be made to the French Social Security legislation in force when these Regulations are adopted and to any subsequent changes in such legislation."

19. Article 6 of Rule No. 1398 on benefits related to medical expenses – Optional complementary extensions of cover (entered into force on 1 January 2020) provides that:

> "1. Any principal beneficiary may request the extension of the complementary cover to a family member not considered a beneficiary entitled through a principal beneficiary or covered only on a primary basis, in exchange for payment of an additional monthly premium the amount of which depends on the extension type concerned, under the following conditions:
>
> (...)
>
> b. Extension type 2bis : to children aged 18 or over who are dependent on the principal beneficiary and are studying in a Council of Europe member state other than France, insofar as he/she is covered in his/her own right by a national or student social security scheme, or cannot be covered by any other scheme. This guarantee can be extended until 31 August of the academic year when he/she reaches the age of 26.
>
> The extension shall be subscribed for the duration of the academic year (1 September to 31 August). It may not be terminated before the end of the academic year, except in the event of changes in the personal situation of the extension beneficiary (for instance, death, discontinuation of a course of study or affiliation to a compulsory insurance scheme).
>
> The extension shall be applied for during the month following the child's 18th birthday at the latest. For children over the age of 18, it shall be applied for by 1 December of the current academic year at the latest.
>
> In the case of children recognised as disabled by the Organisation, the further education requirement shall not apply. In this specific case, the extension shall be subscribed for a minimum of twelve months and shall be renewed tacitly on a monthly basis. No age-limit shall apply. In the event of termination, the extension may not be subscribed again during a minimum period of 2 years (from date to date) since the last termination.
>
> By way of derogation and as a transitional measure, children who are students over 26 years of age and insured by 31/12/2019 may remain insured until 31 August of the year in which they reach the age of 28 at the latest, provided that they continue to fulfil the necessary requirements."

THE LAW

20. The appellant seeks the annulment of the decision published on 22 July 2019 to amend the CEMSIS medical insurance cover for children aged 18 and 19, thereby depriving his 18-year-old daughter of the full and free cover provided for by Article 9, paragraph 2 of Appendix XII to the Staff Regulations. In the alternative, the appellant requests that the application of these amendments be suspended for a transitional period until the age of 20.

21. For her part, the Secretary General asks for the appeal to be declared partly inadmissible and for the rest to be dismissed as ill-founded.

I. ADMISSIBILITY

A. The parties' submissions

1. *The Secretary General*

22. The Secretary General considers that the appellant is complaining about the procedure for the adoption of Resolution CM/Res(2019)46, describing it as premature, given that the information submitted by the Administration to the Committee of Ministers was, he claims, inaccurate.

23. Referring to the relevant case law of the Administrative Tribunal, the Secretary General maintains that the Tribunal does not have the power to rule on decisions of the Committee of Ministers but only on administrative acts taken by the Secretary General to implement such decisions. Furthermore, this ground of appeal is also inadmissible for failure to exhaust internal remedies, as it had not been raised in the appellant's administrative complaint.

2. *The appellant*

24. In response to the Secretary General's submissions, the appellant states the following in his observations in reply [original English]:

> "... The Secretary General insists ... that it is incorrect to say that the impugned measure was implemented before the regulatory amendments were made. The original message I received in July 2019 requested me to register for the new insurance (whereas beforehand it had been automatic) by the middle of October. Staff members were informed that if they missed this deadline they would be unable to register their children for the academic year ... Therefore I reiterate my submission that this amounted to premature implementation, requiring me to take steps to apply for the insurance, if I wished to replicate the previous cover for my daughter, even before the Staff Regulations had been amended by the Committee of Ministers.
>
> ... my passing reference to inaccuracies in the explanations accompanying the draft resolution addressed to the Committee of Ministers. I merely referred to this matter as evidence that the measure had been taken in a hurry and it is therefore surprising that the Secretary General admonishes me for raising this point belatedly as if it were a separate complaint. ... As regards the time-frame, my administrative complaint pre-dated the adoption of the amendment to the Staff Regulations by the Committee of Ministers and therefore this element is part of a continuing situation to which I am entitled to refer ..."

B. The Tribunal's assessment

25. With reference to the explanations set out in the appellant's observations in reply, the Tribunal considers that he was not presenting a separate ground of appeal concerning the procedure whereby Resolution CM/Res(2019)46 had been adopted. Insofar as the objection as to inadmissibility relates to the lawfulness of the process of adopting Resolution CM/Res (2019)46, it follows from the appellant's statements in his reply that he was not alleging that the Resolution as such was unlawful. The Secretary General's objection as to inadmissibility is therefore based on an erroneous premise.

26. Consequently, the objection as to inadmissibility raised by the Secretary General must be rejected.

II. ON THE MERITS

A. The parties' submissions

1. *The appellant*

27. The appellant argues that the Organisation is depriving his 18-year-old daughter of primary cover under the collective medical insurance scheme on the grounds that she is no longer entitled to "entitled person" status, and that it is making the rest of her medical cover, which is

currently free of charge, as provided for in the Staff Regulations, subject to a higher rate for students abroad.

28. He maintains that the measure at issue is not justified by Article 9, paragraph 3, of Appendix XII, as the Secretary General claims. In his view, the purpose of this internal provision was in no way to restrict or abolish the right to medical cover for the dependants of the Organisation's staff members, but rather to extend such cover to certain categories in line with developments in French legislation. A restrictive change in the concept of entitled person in France, in the area of health insurance, was unforeseeable.

29. The change in the system of "attachment" in France is of a purely technical nature; it involves giving an individual social security number to each beneficiary, who becomes independent in terms of cover. This change does not in any way mean that the French social security system will no longer cover the child in question free of charge. Moreover, the administration has failed to indicate the precise provision of French legislation that relates to this "modification". The attached draft resolution merely refers to a "major reform", without any details, and it is doubly wrong to say that "post-baccalaureate students have lost their status as dependants", because, according to the draft resolution, the disputed measure concerns children from the age of 18 and does not correspond at all to the concept of "dependant" but to that of "entitled person". Similarly, the Secretary General's reply of 11 October 2019 speaks not only of "reform" but also of "changes that have taken place in recent years in the French system", without referring to either the relevant texts or practice.

30. The appellant concludes that the Organisation could have sought another solution or, if necessary, even an amendment to Article 9 paragraph 3 of Appendix XII, in order to maintain the existing statutory cover for the dependent children of its staff members, rather than amending Article 9 paragraph 2 of the said Appendix in a restrictive manner; or it could have granted an exemption to staff members such as the appellant, whose children were already part of the disadvantaged category, especially since the social security instructions show that the registration of those having reached the age of majority in their own right is being phased in gradually.

31. The appellant also argues that the contested measure is contrary to the general principle of parallelism with the French system. In his view, even if the interpretation of Article 9 paragraph 3 of Appendix XII were justified, that interpretation would conflict with the general principle of parallelism with the French system, as reflected in Article 4 paragraph 2 of Appendix XII. Irrespective of the concept of entitled person, the administration cannot disregard the key element of parallelism, namely the reality of primary cover by the French social security system, free of charge, for the dependent children concerned.

32. Referring to Article D160-14 of the Social Security Code, the appellant points out that under the French system, the children in question continue to be covered by their parents' medical insurance scheme and fund; consequently, in order to comply with the principle of parallelism, the child should continue to be covered by his or her parent's medical insurance, in other words by the Organisation's collective insurance scheme. In addition, French social security does not apply to foreign students who are covered by the scheme of an international organisation;

accordingly, this means that the children of staff members who go abroad to study should not have to be covered by a national scheme, again in order to uphold the principle of parallelism.

33. Next, the appellant considers the financial consequences of the measure in question to be unjustified. He maintains in this respect that free insurance for children under 20 years of age had been provided for under the Staff Regulations from the time of his recruitment by the Organisation until the recent amendment. In his view, when the Organisation negotiated the new contract with Henner, which took effect on 1 January 2020, it had a duty to maintain the existing statutory conditions, especially as the contract was signed before the internal regulations were adopted.

34. The appellant then argues that the particularly high rate applied to his daughter is discriminatory. He refutes the Organisation's argument that the monthly premium of €77.57, which is significantly higher than the €46.72 per month for students in France, is justified by the fact that "*health insurance schemes abroad are often less efficient or more restrictive than the French social security system*". He alleges that the decision to charge him a premium for his daughter's cover is solely the result of the administration's decision to deprive her of her primary cover. Moreover, the administration cannot claim that there is a difference in cover "abroad" without distinguishing between countries, because some countries guarantee more extensive primary cover than France. It would be incorrect to say that the higher tariff is justified by "higher costs" and "higher benefits" if the country of study provides more comprehensive and free cover. The appellant submits that medical cover is an area in which the Organisation is careful to maintain equality of treatment for all staff members.

35. The appellant asks to be granted a transitional period at least until the end of the 2019/2020 academic year, as his daughter is already part of the affected cohort of dependent children under 20 years of age. In his view, it is contrary to the principle of good administration to make such a change in the course of the academic year and the choice of date cannot be justified by the entry into force of a new contract with the insurer.

2. *The Secretary General*

36. As to the lawfulness of the contested measure, the Secretary General points out first of all that the Council of Europe's medical and social insurance scheme, like the other regulations contained in the Staff Regulations, falls within the regulatory authority of the Committee of Ministers, which, as the author of the statutory provisions governing the matter, has the power to amend them. Similarly, the Secretary General has discretionary power to adopt provisions to implement the Staff Regulations.

37. In the present case, the decision at issue is a deliberate decision based on the application of the principle of parallelism between the Council of Europe's medical and social insurance scheme and the French social security scheme. The decision places an emphasis on this principle of parallelism between the two schemes, which was considered of crucial importance from the moment the Organisation set up its own private insurance scheme. The Organisation has incorporated this principle into its internal regulations, in particular by introducing Article 9, paragraph 3 of Appendix XII. Under this provision, the concept of "persons entitled" is defined

in the Council of Europe's internal regulations with reference to the French social security legislation in force. This therefore means that family members considered as entitled persons under the French social security scheme are considered to be entitled persons under the Council of Europe's medical insurance scheme.

38. With regard to the appellant's reference to Article Dl60-14 of the Social Security Code, the Secretary General explains that the sole purpose of this provision is to determine which of the various schemes existing in France the child will be affiliated to once he or she has reached the age of majority, i.e. 18. This article does not deviate from the principles laid down in the Code for the individual affiliation of children to a social security scheme, namely Article L160-13 of the Social Security Code, which lays down the principle of affiliation on the basis of residence and establishes the principle of ensuring the autonomy of all insured persons, and Article L 160-2 of the Code, which stipulates, by way of derogation from the preceding article, that children are considered as entitled persons up to the age of 18.

39. Adding that the reform in question was part of a package that had been carefully examined and discussed by the Supervisory Board, the Secretary General concludes that the changes made to the French social security system concerning the status of entitled person had been incorporated into the Organisation's internal regulations in full compliance with the applicable regulatory provisions. These changes were applied to the appellant's situation in a completely lawful manner.

40. With regard to the allegedly unjustified and discriminatory nature of the measure modifying the primary and complementary insurance for children aged 18 and 19, the Secretary General states that, as from 1 January 2020, the medical insurance for the appellant's daughter aged over 18 is split into two parts, consisting of personal affiliation to the United Kingdom's public health insurance scheme, as she can no longer be attached to her father as an entitled person for primary cover, supplemented by complementary insurance which is now optional and subject to the payment of a premium under the Council of Europe's medical and social insurance scheme.

41. As to the appellant's argument concerning the high cost of complementary insurance, which he regards as discriminatory treatment, the Secretary General notes, firstly, that the cost of the extension of complementary cover for the appellant's daughter, who is studying and residing in the United Kingdom, amounts to €75.06 per month (type 2bis extension); and that the cost of this extension for children affiliated to the French social security scheme amounts to €45.96 per month (type 2 extension).

42. However, as regards the fact that the extension of optional complementary cover for students outside France is more expensive than for students in France, the Secretary General takes the view that the situations in question are not comparable and it cannot be argued that the difference in treatment constitutes a violation of the principle of equal treatment. Health insurance schemes outside France are often less efficient or more restrictive than the French scheme. In order to ensure an equivalent level of medical cover between beneficiaries for equivalent care, it is necessary to provide for the cover of medical costs incurred by students outside France from the first euro. In their case, this is not exclusively complementary cover that tops up the primary cover, as is the situation in France. As complementary cover from the first euro entails higher costs, it is normal and fully justified that this should be reflected in the price paid for students outside France,

to enable them to benefit from medical cover that includes benefits that are higher than the complementary cover provided to students in France.

43. The Secretary General points out that the appellant does not put forward any evidence in support of his appeal such as to contradict this conclusion. With regard to the appellant's criticism of the Organisation for not making a distinction between the countries concerned, it should be pointed out that such an undertaking would be very cumbersome from an administrative point of view and could not be justified, since all countries, other than France, are in the same situation with regard to the guarantee of cover from the first euro, even where there is no national social security cover. Lastly, the complementary insurance offered by the Council of Europe is optional and if the appellant considers the cost too high, he is entirely free to take out a different complementary insurance policy for his daughter offering more favourable conditions.

44. Consequently, the Secretary General believes that the payment of a monthly premium of €75.06 for insurance cover as is applicable in this case for the appellant's adult daughter who is studying in the United Kingdom cannot be said to be arbitrary or discriminatory.

45. With regard to the absence of transitional measures, the Secretary General considers that the appellant has not shown why such a period would be necessary or warranted. She points out in this respect that the appellant and all the other staff concerned received the information from DHR in July 2019, i.e. before the start of the new academic year and five months before the entry into force of the contested changes. Up to 1 January 2020, his daughter, despite being over 18 years of age since mid-May 2019, had been fully affiliated to the Council of Europe insurance scheme free of charge.

46. The Secretary General believes that the time granted to the staff members concerned was sufficient for them to make the necessary enquiries and take an informed decision in their own best interests. More specifically, the appellant submitted his request for the extension of his daughter's complementary cover on 26 August 2019, i.e. only two weeks after he became aware of the disputed changes and well before the deadline for doing so, which was initially 15 October 2019. When he submitted his application, he made no mention of needing more time. He stated that his daughter was affiliated to a primary insurance scheme in the United Kingdom, but his only objection raised was to the payment of a premium under the type 2bis extension.

47. As regards the appellant's claim that a transitional period should have been introduced since transitional measures had been granted for two other categories of dependants, namely dependent cohabitants and children aged 27 and 28, the Secretary General considers that the comparison is unfounded.

48. With regard to the reference to Article 6, paragraph 1 b) of Decree No. 1398, which provides that *"by way of derogation and as a transitional measure, children who are students over the age of 26 and insured by 31/12/2019 may remain insured until 31 August of the year in which they reach the age of 28 at the latest, provided that they continue to fulfil the necessary requirements"*, the Secretary General notes that this article concerns optional complementary extensions to the Organisation's cover and is not relevant for arguing that a transitional period should be applied to ensure free complementary cover for the appellant's daughter until she reaches the age of 20.

49. Lastly, regarding the appellant's complaint that the Organisation, when concluding the new group insurance contract with the Organisation's new insurer, should have negotiated the maintenance of the same guarantees and the introduction of a transitional period in this respect, as the contract had been negotiated prior to the statutory and regulatory changes, the Secretary General notes that this was simply not considered necessary in view of the circumstances and interests at stake.

50. With regard to the appellant's complaint that both his acquired rights and the principle of legitimate expectations had been violated, the Secretary General considers, with reference to the case law of the Administrative Tribunal, that it cannot be argued that the contested measures relate to a fundamental and essential condition of employment which induced the appellant to take up his employment. The appellant has not submitted any argument to justify his right to continue to receive fully free medical cover for his daughter until she is 20 years old (see *mutatis mutandis* ATCE, Appeals Nos. 571-576 and 578/2017, Brannan and Others v Secretary General, Decision of 14 November 2017, paragraph 158). Consequently, he cannot justifiably argue that the contested decisions had violated his acquired rights. Moreover, the contested measures do not in any event disproportionately affect the appellant's interests since his daughter's primary insurance remains free of charge as a student under the National Health Service and only the sum corresponding to the complementary insurance amounting to €75.06 per month is paid by him.

51. Consequently, the Secretary General concludes that the measures at issue are not contrary to the general principle of law protecting acquired rights nor to the principle of legitimate expectations.

52. In the light of these considerations, the Secretary General submits that the present application is unfounded.

B. The Tribunal's assessment

53. The Tribunal notes first of all that any measure adopted by the Organisation which directly or indirectly affects its staff must have a legal basis. It further notes that the procedure preceding the adoption of a particular measure must be transparent to all staff members concerned and must follow the established rules of procedure.

54. In the present case, the Tribunal notes that the measure in question consists of a change to the primary and complementary insurance for children aged 18 and 19. The appellant submits that the measure is based on an erroneous interpretation of Article 9 paragraph 3 of Appendix XII, which includes the principle of parallelism regarding the concept of entitled person. In other words, the contested measure is not justified by said provision on the definition of entitled person.

55. First, the Tribunal observes that the Council of Europe's medical and social insurance scheme falls within the regulatory authority of the Committee of Ministers, which, as the author of the statutory provisions governing the matter, has the power to amend them, and that the contested decision in the present case falls under the implementation of those measures by the Secretary General, who is required to apply the provisions adopted by the Committee of Ministers.

56. The Tribunal notes that the principle of parallelism as regards the concept of entitled person between the Council of Europe's medical and social insurance scheme and the French social security scheme is clearly laid down in Article 9, paragraph 3, of Appendix XII (see paragraphs 10 and 18 above). In the light of the foregoing, it therefore considers that the steps taken by the Organisation to amend the relevant regulations were entirely appropriate and justified.

57. As to the practical and institutional form of the procedure followed by the various entities of the Organisation, the Tribunal observes that the staff members concerned by the prospective amendment of the regulations were informed well in advance of the entry into force of those regulations and, where relevant, of the beginning of the 2019/2020 academic year (see paragraphs 7, 13, 18 and 19 above). Furthermore, both the Supervisory Board on Medical and Social Protection and the Staff Committee were consulted on the amendment to the regulatory provisions in question, including the one concerning the concept of entitled person (see paragraphs 12, 14 and 15 above).

58. The Tribunal accepts that the amendment to Article 9, paragraph 2, of Appendix XII, and Rule No. 1398, were drawn up and adopted, and entered into force subsequent to the steps taken by the Organisation in connection with the change to the concept of entitled person (see paragraphs 12, 13 and 15 above), which could cast doubt on the lawfulness of the measure in question. However, the Tribunal observes, on the one hand, that the children concerned, including the appellant's daughter, could benefit from their parents' primary cover with HENNER until 31 December 2019. The Tribunal considers, in that context, that the fact that, in some countries, affiliation to the national or university insurance scheme is possible only at the beginning of the academic year and that it cannot be made subsequently does not, in itself, render the measure in question unlawful as such [/affect the lawfulness of the measure in question as such]. On the other hand, the Tribunal notes that the optional extension of complementary cover through the payment of a higher fixed monthly premium was effective from 1 January 2020, i.e. on the date of entry into force of the regulatory provisions in question.

59. In the light of these considerations, the Tribunal is of the opinion that the measure modifying the primary and complementary insurance for children aged 18 and 19 does indeed have a legal basis.

60. The appellant also questions the allegedly unjustified and discriminatory nature of the measure modifying the primary and complementary insurance arrangements for children aged 18 and 19. He is particularly concerned about the amount that is charged for complementary insurance for children studying abroad as compared with the amount charged for those studying in France.

61. The Tribunal would point out in this respect that discrimination cannot be established unless it is proved that staff members in identical situations have been treated differently (see ATCE, Appeal No. 617/2019, Barbara Ubowska v. Secretary General, paragraph 35, Decision of 17 December 2019 with further references). The Tribunal considers, however, on the basis of the body of evidence in the present case, that even assuming that staff whose child is studying abroad, such as the appellant's daughter, and those studying in France are in comparable

situations, the monthly premium of €75.06 for insurance cover for the appellant's daughter, who is studying in the United Kingdom, is neither arbitrary nor discriminatory; moreover, in the Tribunal's view, the financial implication for the appellant is not significant.

62. With regard to the appellant's claim that his acquired rights and the principle of legitimate expectations have been violated, the Tribunal, referring to its established case-law (see ATCE, Appeal No. 557/2014, Gunilla Hedman v. Secretary General, paragraphs 75-77, Decision of 10 December 2015; Appeals Nos. 571-576 and 578/2017, Brannan and Others v. Secretary General, paragraphs 158-159, Decision of 14 November 2017), and on the basis of the whole of the present case file, considers that the appellant's arguments have not been substantiated.

63. Finally, as regards the absence of transitional measures, the Tribunal, referring to the submissions of the Secretary General and to those of the appellant, considers that the appellant has not substantiated his complaint with arguments clearly proving that a transitional period would have been justified.

III. CONCLUSION

64. In conclusion, the objection as to inadmissibility raised by the Secretary General must be rejected, as the appeal is ill-founded and must be dismissed.

For these reasons, the Administrative Tribunal:

Considers that the Secretary General's objection as to inadmissibility must be rejected;

Declares the appeal ill-founded and dismisses it;

Decides that each party shall bear its own costs.

Adopted by the Tribunal by videoconference on 27 October 2020 and delivered in writing in accordance with Rule 35, paragraph 1, of the Tribunal's Rules of Procedure on 30 November 2020, the French text being authentic.

The Deputy Registrar of the Administrative Tribunal	The Chair of the Administrative Tribunal
E. HUBALKOVA	N. VAJIĆ