ADMINISTRATIVE TRIBUNAL
TRIBUNAL ADMINISTRATIF

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

# Appeal No. 773/2025

**J. C.**

**v.**

**Secretary General of the Council of Europe**

*******

# JUDGMENT

**5 June 2026**

The Administrative Tribunal, composed of:

Lenia SAMUEL, Chairing Judge,
Thomas LAKER,
Yves GOUNIN, Judges**,**

assisted by:

Christina OLSEN, Registrar,
Dmytro TRETYAKOV, Deputy Registrar,

has delivered the following judgment after due deliberation.

## INTRODUCTION

1. The present appeal concerns the Organisation's decision to no longer regard the appellant's spouse as his dependant from the time she started drawing a German pension and, on that basis, to refuse to grant her free primary cover under the Council of Europe medical and social insurance scheme (hereinafter "CEMSIS").

## THE FACTS

2. The appellant is a former staff member of the Organisation, who has been retired since 1 May 2025. He resides in Germany with his spouse, who is a German national.

3. On 11 December 2024 the appellant received an e-mail from the Directorate of Human Resources (hereinafter "DHR") informing him about the Council of Europe medical cover available to pensioners and their spouses or registered partners, pursuant to Rule No. 1398 on benefits relating to medical expenses.

4. Over the following weeks and months, the appellant had several exchanges with the DHR about his spouse's situation. In January and March 2025, he wrote to them, stating that from 1 June 2025, his spouse would receive a modest German pension which would not entitle her to health insurance, as she had not paid sufficient contributions. Initially, the DHR suggested that the appellant's spouse should be eligible for German medical insurance under the "Beihilfe" scheme. The DHR also informed the appellant that the Organisation's free primary insurance, from which she had benefited until then, would cease as soon as she started drawing her German pension; she could, however, continue to be covered on a complementary basis, upon payment of a premium, provided she had basic primary insurance.

5. By e-mail dated 15 April 2025, the appellant sent the DHR the German Pensions Office's decision dated the same day, informing him that his spouse was not entitled to join the statutory public health insurance scheme for pensioners, as she had not paid sufficient contributions to that scheme. Nor, he added, would his spouse be eligible for "Beihilfe", as that insurance was only for German civil servants, whether serving or retired. In an e-mail reply sent the same day, the DHR reiterated that, with effect from 1 June 2025, the appellant's spouse would no longer qualify for the Organisation's free primary cover and that her affiliation to the Council of Europe's complementary insurance scheme would be conditional on her taking out

basic insurance outside that scheme. In the same e-mail, the DHR mentioned the option of taking out private health insurance in Germany. The appellant then requested a meeting with the DHR to discuss possible solutions.

6. The DHR contacted the appellant again by e-mail on 23 April 2025 and reaffirmed its position that, if she were not entitled to join the German social security scheme, the solution would be for his spouse to take out basic private health insurance, so that she could continue to be covered by the Organisation's fee-based complementary scheme.

7. In an e-mail dated 25 April 2025, the appellant informed the DHR that private insurance would be very expensive and asked for a formal decision denying his spouse access to the Organisation's primary medical insurance to be sent to him so that he could contest it.

8. In response to this request, the Head of the Department for the administrative, social and financial management of staff, in an e-mail dated 30 April 2025, confirmed the information previously provided to the appellant by the DHR: as his spouse was due to start drawing a national pension from 1 June 2025, she would no longer qualify for the Organisation's free primary medical cover, since she would no longer be his dependant; she could, however, take out optional complementary cover upon payment of a premium. He further informed the appellant that this reply constituted an administrative decision for the purposes of the Staff Rule on grievance procedures.

9. On 19 May 2025 the appellant requested a management review of the decision of 30 April 2025. The director of Human Resources replied on 5 June 2025, concluding that the contested decision had been adopted in the proper manner and that there was no reason to amend it.

10. On 23 June 2025 the appellant sent the DHR a certificate dated 30 May 2025 confirming that his spouse was affiliated to the German public health insurance fund Barmer. The appellant explained that this cover was exorbitantly expensive and that "it did not arise from any entitlement on the part of [his] spouse as a pensioner, but from a discretionary decision by the said fund under a provision for 'humanitarian' cases, following multiple attempts and numerous refusals". The certificate stated (in German) that the appellant's spouse was affiliated to this public health insurance fund with effect from 1 June 2025 pursuant to Section 5(1)(13) of Book 5 of the German Social Code.

11. On 27 June 2025 the appellant lodged an administrative complaint against the decision to refuse to affiliate his spouse to CEMSIS for primary cover with effect from 1 June 2025.

12. On 28 July 2025 the Secretary General rejected the appellant's administrative complaint on the ground that it was unfounded.

**PROCEEDINGS**

13. The appellant lodged his appeal on 26 September 2025. The appeal was registered under number 773/2025.

14. On 19 December 2025 the Secretary General submitted his observations on the appeal.

15. On 20 January 2026 the appellant filed submissions in reply.

16. On 20 February 2026 the Secretary General submitted a rejoinder.

17. A public hearing was held on 24 March 2026 in the Palais de l'Europe in Strasbourg. The appellant represented himself. The Secretary General was represented by Sania Ivedi, head of the Litigation division of the Directorate of legal advice and public international law, assisted by Benno Kilian, head of the Legal advice and litigation department, and Suzanne Paulus, assistant lawyer in the same department.

## THE LAW

### I. THE RELEVANT LAW

18. The relevant provisions of the Staff Regulations and Staff Rules read as follows:

- as regards the ratione personae admissibility conditions under which available remedies may be exercised in order to contest an administrative decision adversely affecting the appellant:

**Staff Regulations**
**Article XIV – Grievance procedures**

(…)
14.3. Staff members who consider that an administrative decision is prejudicial to their interest and conflicts with their terms and conditions of appointment, or with any pertinent provisions of the Staff Regulations, Rules, Instructions or Policies, may initiate the process of management review, allowing for the correction of an improper decision or, where a decision was properly taken, its confirmation along with a reasoned explanation. The modalities of the review shall be set out in Staff Rules adopted by the Secretary General.
14.4 After pursuing management review, staff members who are not satisfied with the outcome thereof may lodge a formal complaint with the Secretary General against the contested administrative decision adversely affecting them, provided that they have a direct and existing interest in doing so. The modalities of the complaints procedure shall be set out in Staff Rules adopted by the Secretary General.
14.5 The Secretary General's decision on the complaint may be appealed to the Administrative Tribunal of the Council of Europe in accordance with the provisions of the Tribunal's Statute. (…)
(…)
14.10 In addition to staff members, the complaints and appeals procedure shall be open mutatis mutandis to:
14.10.1 former staff members of the Council of Europe;
14.10.2 persons claiming through staff members or former Council of Europe staff members;
(…)

- as regards the medical and social security scheme applicable to spouses of Council of Europe staff members, and spouses of former staff members of the Organisation:

**Staff Regulations**
**Article IX – Social Security**

1 The Secretary General shall establish a scheme of social security for serving and, where applicable, former staff, including provisions for covering health care expenses, temporary incapacity for work, disability, dependency and death, as well as benefits in the case of maternity, paternity or adoption. The Scheme shall be financed jointly by the Organisation and staff.
(…)

**Staff Rule on Social Security**

**910. DEFINITIONS**

910.1 "Council of Europe Medical and Social Insurance Scheme" or "CEMSIS" is the Organisation's own insurance scheme, guaranteeing benefits equivalent to those provided by French social security and/or additional benefits provided as complementary cover.

910.2 "Local scheme" is the French social security scheme in force in Alsace and Moselle which, in exchange for a contribution additional to those payable under the French general scheme, grants a reimbursement ceiling higher than that applicable under the general scheme.

(…)

910.6 "Primary cover" is the basic cover provided by the local scheme or, by extension, the basic cover provided by CEMSIS which is equivalent to that provided by the local scheme.

910.7 "Complementary cover" is additional cover wholly or partly complementing the primary cover.

(…)

910.9 A "principal beneficiary" is a staff member or former staff member of the Organisation, or the recipient of a secondary pension under one of the Organisation's pension schemes and who is affiliated in this capacity to CEMSIS.

(…)

910.11 A "beneficiary entitled through a principal beneficiary" (or "*ayant droit*") is a person entitled to medical cover on account of their relationship with the principal beneficiary of the cover.

910.12 A "dependant" and "dependent" refer to a person who is wholly and solely supported by the beneficiary and who receives no income in any country corresponding to paid employment, unemployment benefit, fees for a professional activity, an allowance, a pension, an annuity or other private income.

910.13 A "spouse" is the spouse of a principal beneficiary resulting from a marriage recognised by a member state.

(…)

**Rule No. 1398 on benefits related to medical expenses**
***(repealed by Secretary General Decision of 8 December 2025 with effect on 1 January 2026)***

(…)

**Article 2 - Definitions**

The following definitions shall apply to this Rule:

Primary cover: basic cover provided by the local Alsace-Moselle scheme of the French social security system. By extension, basic cover provided by CEMSIS, equivalent to that provided by the local Alsace-Moselle scheme.

Complementary cover: additional cover wholly or partly complementing the primary cover.

**CEMSIS (Council of Europe Medical and Social Insurance Scheme)**: the Organisation's own private insurance scheme providing for benefits equivalent to those paid by French social security and additional benefits paid as complementary cover.

(…)

Local scheme: the French social security scheme in force in the départements of Alsace and Moselle which, in exchange for a contribution additional to those payable under the French general scheme, grants a reimbursement ceiling higher than that applicable under the general scheme.

(…)

Dependant: a person who receives no income in any country corresponding to paid employment, unemployment benefit, fees for private practice of an occupation, an allowance, a pension, an annuity or other private income and who is wholly and solely supported by the principal beneficiary.

Principal beneficiary of cover: staff member, former staff member, monthly temporary staff member, long-term temporary staff member, pensioner, specially appointed official, judge of the European Court of Human Rights or Commissioner for Human Rights, affiliated in this capacity to the Council of Europe's medical cover, in accordance with Article 3 of this Rule.

Beneficiary entitled through a principal beneficiary: Person entitled to medical cover on account of their relationship with the principal beneficiary of the cover ("*ayant droit*").

Spouse: the spouse of the principal beneficiary of the cover under a marriage recognised by a member state.

(…)

**Article 5 - Beneficiaries entitled through a principal beneficiary and scope of their cover**
1. Persons affiliated as beneficiaries entitled through a principal beneficiary shall also be covered for medical expenses under the Organisation's scheme. Depending on the circumstances, this cover may take the form of primary cover only, primary and complementary cover or complementary cover only. In addition, such cover may, depending on the case, be free of charge or subject to a premium under an optional extension.
2. Beneficiaries entitled through a principal beneficiary covered by CEMSIS
a. A spouse or registered partner, as well as unmarried partners insured as beneficiaries entitled through a principal beneficiary ("*ayant droit*") by 31 December 2019, provided that they continue without interruption to fulfil the requirements to be entitled, who are dependent on a principal beneficiary of CEMSIS shall be covered on a primary basis.
(…)

## II. THE PARTIES' POSITION

### A. The appellant

19. In his appeal, the appellant seeks annulment of the decision of 30 April 2025 refusing to insure his spouse under the primary CEMSIS scheme from 1 June 2025, as subsequently confirmed at the stage of the management review and administrative appeal. He also requests that the Tribunal order the Secretary General to revise Articles 2 and 5, § 2.a of Rule No. 1398 "with a view to bringing them into line with the principles of proportionality and non-discrimination" and "to grant, on the basis of an interpretation of Rule No. 1398 in the light of [these] principles (…), [his] spouse primary and complementary cover under the CEMSIS scheme".

20. In support of his appeal and in the absence of any dispute as to its admissibility, the appellant essentially relies on two grounds. He complains that the Organisation: (1) failed to comply with the principle of proportionality and (2) breached the principle of non-discrimination.

*1. First ground of appeal: breach of the principle of proportionality*

#### (a) Disproportionate nature of the contested decision

21. In the first limb of this ground of appeal, the appellant contends that the impugned decision to deny his spouse primary cover under CEMSIS fails to observe the principle of proportionality. By refusing to affiliate his spouse to CEMSIS for primary cover on the sole ground that she was receiving a national pension, the Administration, it is alleged, adopted a measure that was excessive in the light of his spouse's specific circumstances, without striking a proper balance between the interests at stake.

22. The appellant argues that the Administration failed to take account of the following factors: (a) the fact that his spouse was not actually entitled to health insurance in her state of residence; (b) his spouse's advanced age, her fragile state of health, and the practical difficulties and distress she experienced in obtaining national health insurance, with the serious risk of finding herself temporarily or permanently without any health insurance at all; (c) the low amount of the pension received by his spouse (659.25 euros per month), relative to the level of contributions required for affiliation to the scheme provided for in Article 5(1)(13) of Book 5 of the German Social Code, which, according to the appellant, amount to 438.06 euros per month (plus 82.69 euros deducted directly by the Pensions Office), i.e. 520.75 euros, equivalent to nearly 80 per cent of the pension.

23. The appellant also points to the inappropriate and opaque nature of the information and advice provided by the Administration regarding the options for taking out private insurance or joining the German "Beihilfe" scheme, as well as the Administration's successive and contradictory positions regarding his spouse's access to complementary cover under CEMSIS and the possibility of combining this with private primary insurance. In the appellant's view, these circumstances, taken in conjunction, show the disproportionate nature of the contested decisions.

**(b) Non-compliance of the relevant regulations with the principle of proportionality**

24. In the second limb of this ground of appeal, the appellant submits that the Tribunal must be able to exercise judicial review over the regulations at issue, this power being necessarily limited by compliance with the fundamental principles recognised by both the European Court of Human Rights and the Court of Justice of the European Union (CJEU), such as the principle of proportionality.

25. The appellant contends that the breach of the principle of proportionality does not arise solely from the individual decisions taken in respect of his spouse, but also stems from the very structure of Rule No. 1398. By limiting eligibility for primary cover under CEMSIS to spouses regarded as dependants of a principal beneficiary of that scheme (Article 5, § 2, a) and by restricting the concept of "dependant" to persons with no income of their own and who are financially supported by the principal beneficiary (Article 2), Rule No. 1398 prevents consideration being given to criteria that are nevertheless decisive in assessing spouses' circumstances, namely: (a) whether or not they are actually entitled to primary health insurance at national level and (b) the exact amount of the spouse's income, rather than the mere fact of its existence.

26. By disregarding these factors, Rule No. 1398 results in some spouses being automatically disqualified from the primary CEMSIS scheme solely on the ground that they receive income, however modest, thus compelling them to seek cover under a more costly national scheme or putting them at risk of being unable to access any suitable cover. By preventing a case-by-case assessment of spouses' individual circumstances, such an across-the-board approach is contrary to the principle of proportionality. The appellant goes on to state that the Organisation remains bound to comply with this principle in the application of its internal regulations, irrespective of the fact that the eligibility criteria for national health insurance schemes are governed by states' national law.

27. The appellant alleges that the current arrangements encourage many staff members to engage in concealment by failing to declare or exercise their rights to a pension or national health insurance, so that they may continue to be covered on a primary basis under CEMSIS upon retirement. Such effects, it is argued, upset the economic balance of the group insurance scheme and penalise pensioners who have acted transparently, by imposing a disproportionate burden on them.

28. In support of this ground of appeal, the appellant points out that, by contrast, the scheme for European Union officials and their spouses sets an income threshold below which persons on modest means are treated as having no income at all and does not require consideration to

be given to private insurance in the case of persons whose income is below the threshold, as an alternative to national public schemes.

29. According to the appellant, the above factors demonstrate the structural problems afflicting the current health insurance scheme, thereby justifying the revision of Articles 2 and 5 of Rule No. 1398.

*2. Second ground of appeal: breach of the principle of non-discrimination*

30. The appellant contends that Rule No. 1398 gives rise to discriminatory treatment. He contends that, as applied in the present case, this rule contravenes the principle of non-discrimination enshrined in Article 14 of the European Convention on Human Rights, and in Article 1 of Protocol No. 12 to that Convention.

31. According to the appellant, his spouse, although she receives a modest pension, is in a situation comparable with that of a retired staff member's spouse who has no income and no actual entitlement to national public health insurance.

32. The appellant points out that, solely by virtue of the fact that she receives income, regardless of the amount, his spouse is not eligible for primary cover under CEMSIS, yet has no access to national public health insurance either. The appellant therefore maintains that the difference in treatment, based exclusively on the existence of income, without regard to its actual amount, causes disproportionate and therefore discriminatory harm to his spouse.

**B. The Secretary General**

33. As a preliminary point, the Secretary General points out that the right to Council of Europe medical cover extends to persons entitled through staff members and pensioners, and in particular to their spouses and partners, only under the conditions determined and accepted by the Organisation. In this particular case, the absence of any income is a condition that must be met for a spouse to be considered a dependant of a staff member or pensioner within the meaning of Rule No. 1398 and so qualify for free primary cover under CEMSIS.

34. The Secretary General points out that the appellant's spouse enjoyed primary and complementary cover under CEMSIS between 2000 and 2016, and then free primary cover from 2017 to 2025 pursuant to Articles 2 and 5 of Rule No. 1398. From the time when, on 1 June 2025, she started drawing a German pension and could no longer be regarded as the appellant's dependant, the refusal to affiliate her to CEMSIS for primary cover was the result of a strict, mechanical application of the clear, foreseeable and objective rules laid down in Articles 2 and 5 of Rule No. 1398. The decision in question did not involve any discretionary assessment and was taken in accordance with the principle of tu patere legem quam ipse fecisti, according to which an organisation is bound to follow the rules that it itself has laid down.

*1. Alleged breach of the principle of proportionality*

**(a) Disproportionate nature of the contested decision**

35. In the Secretary General's view, the arguments put forward by the appellant in the first ground of appeal are unsubstantiated. This particularly applies to the argument that his spouse's membership of the public health insurance fund Barmer under Section 5(1)(13) of Book 5 of

the German Social Code arises not from an entitlement, but from a discretionary decision reserved for so-called “humanitarian” cases. The Secretary General interprets this provision as creating a subsidiary right to membership for any person who has no other entitlement to health insurance, whether public or private. He adds that, since the appellant’s spouse was allowed to join that health insurance fund, this argument is irrelevant, and that, furthermore, the appellant has not shown that his spouse’s membership is liable to be revoked in the future.

36. In his rejoinder, the Secretary General points out that the actual amount of the monthly contribution to the Barmer health insurance fund is lower than the amount claimed by the appellant and came to 362.57 euros in 2025 (388.51 euros in 2026), after deducting 75.49 euros in 2025 (80.89 euros in 2026) for long-term care insurance, which is not covered by CEMSIS, and a further sum of 82.69 euros, which is essentially a deduction that is made by the German Pensions Office directly from the appellant’s spouse’s pension, irrespective of the insurance scheme to which she belongs. The Secretary General further notes that the aforementioned contribution is calculated not solely on the pension of the individual concerned, but on the total household income, including the appellant’s income, which explains the size of the contribution and weakens the claim that the cost is disproportionate in relation to his spouse’s pension alone.

37. As regards the appellant’s allegation that the impugned decision is disproportionate, the Secretary General defends a deliberate decision by the rule makers to ensure the long-term financial viability of the CEMSIS scheme by not extending it to persons who are covered by national health insurance by virtue of the fact that they receive income from employment or a pension. He points out that any difficulties encountered by the spouses concerned in obtaining health insurance under national schemes cannot be attributed to the Organisation, as CEMSIS is not intended to replace such schemes, or to compensate for their shortcomings. Nor is it the responsibility of the Organisation to ensure proportionality between a national pension and the cost of membership of a national health insurance fund.

**(b) Non-compliance of the relevant regulations with the principle of proportionality**

38. The Secretary General objects to the appellant’s request for Articles 2 and 5 of Rule No. 1398 to be revised, arguing that the Tribunal’s jurisdiction does not extend to either the annulment or the revision of a regulatory provision. He concludes that this request manifestly exceeds the Tribunal’s jurisdiction, as the Tribunal cannot act in place of the competent regulatory authority and must limit its review to verifying the legality of the impugned decision in relation to the applicable regulatory provisions.

39. The Secretary General further submits that the criteria set out in Article 2 of Rule No. 1398 for defining the concept of “dependant” pursue a legitimate objective, namely the maintenance of the financial stability of CEMSIS, by not extending the primary scheme to persons who, because they receive income, have access to national health insurance schemes. As regards the comparison made by the appellant with the scheme for European Union staff, the Secretary General points out that each international organisation enjoys a high degree of autonomy in determining its own social protection scheme and that there is no obligation to align or harmonise arrangements across individual international organisations. Referring to the appellant’s allegations concerning cases of concealment of national pension entitlements, the Secretary General notes that such allegations go beyond the scope of the present dispute and that, if the appellant was aware of any fraudulent conduct, he was under an obligation to report it.

*2. Alleged breach of the principle of non-discrimination*

40. In response to the second ground of appeal, the Secretary General contends that Rule No. 1398 complies with the principle of non-discrimination.

41. Firstly, the Secretary General argues that the comparison put forward by the appellant is not relevant. The appellant's spouse receives a pension and is covered by public health insurance in Germany, meaning that her situation is objectively distinct from that of a spouse who has neither income nor any national health cover. The Secretary General concludes that objectively different situations do not call for identical treatment and that therefore no discrimination can be found on that ground alone.

42. Secondly, and in the alternative, the Secretary General contends that, even supposing a difference in treatment were to be established, it would be based on an objective and relevant criterion. He asserts that the receipt of income, whether from employment or a pension, generally presupposes access to a national health insurance scheme, and that disqualifying spouses in this situation from CEMSIS pursues a legitimate aim, namely to avoid placing an excessive burden on the scheme. The Secretary General further asserts that the absence of a minimum threshold is neither arbitrary nor disproportionate; in his view, the criterion of being in receipt of income ensures that all spouses are treated in a fair, predictable and uniform manner.

III. THE TRIBUNAL'S ASSESSMENT

**A. Alleged breach of the principle of proportionality**

*1. Disproportionate nature of the contested decision*

43. Firstly, it should be noted that, in taking the contested decision and refusing to grant the appellant's spouse primary cover under CEMSIS from the date on which she started drawing a national pension, the Organisation acted in strict accordance with the relevant provisions of Rule No. 1398, in particular Articles 2 and 5 thereof. These regulatory provisions clearly and unambiguously set out the conditions under which a spouse may be considered a "dependant" and so qualify for primary cover under CEMSIS. Pursuant to these provisions, the receipt of any kind of pension precludes the spouse from being recognised as a "dependant".

44. It is important to emphasise that Rule No. 1398 leaves the Organisation no discretion in determining whether a person is a "dependant" in cases where income is received.

45. As acknowledged by the Secretary General himself (see paragraph 42 above), the Tribunal recognises that the thinking behind the definition of "dependant" set out in Article 2 of Rule No. 1398 is that the receipt of income generally presupposes access to a national health insurance scheme. As it stands, however, this rule does not make recognition of "dependant" status contingent upon the absence of entitlement to national public health insurance; nor, conversely, does it make the loss of such status dependent on income conferring an actual entitlement to national cover against the risks of illness.

46. Within this regulatory framework, the Organisation had no margin of discretion, was bound by the principle of tu patere legem quam ipse fecisti to apply the rules it had itself laid

down and could not accord differential treatment to the appellant's spouse. It thus acted in strict accordance with the letter of the applicable regulatory provisions, with no scope to temper their application through a discretionary assessment or by having regard to the specific circumstances in which the appellant's spouse found herself (see, in this connection, European Civil Service Tribunal, judgment of 30 November 2009, Voslamber / Commission, F-86/08, paragraphs 52, 54-55, 60, 75-76).

47. Consequently, the principle of proportionality, which may play a role in mitigating the effects of a discretionary power, was not applicable in this case. The basis of the complaint alleging that the contested decision was disproportionate cannot be accepted, therefore, since no margin of discretion existed at the time of its adoption. It also follows that, in taking the contested decision, the Organisation could not usefully consider the personal circumstances of the appellant's spouse, relating to her advanced age and state of health, and the practical difficulties she encountered before being admitted to the Barmer health insurance fund, however trying those difficulties may have been.

*2. Non-compliance of the relevant regulations with the principle of proportionality*

48. The appellant's ground of appeal alleging a lack of proportionality also concerns the relevant provisions of Rule No. 1398 insofar as they make access to primary cover under CEMSIS conditional upon the spouse having no income whatsoever.

49. It is true that it is not for the Tribunal, within the scope of its powers, to take the place of the Organisation in assessing the appropriateness or fairness of the rule defining the conditions under which spouses or partners of retired staff members may access primary cover under CEMSIS. In particular, the appellant's request that the Tribunal order the Secretary General to revise Articles 2 and 5 of Rule No. 1398 falls outside the Tribunal's jurisdiction. Pursuant to Articles 2.5 and 14.2 of its Statute, the Tribunal may only annul administrative decisions that are detrimental to appellants and has no authority to annul or amend general regulatory provisions (see, in this connection, ATCE, Appeal No. 557/2014, Hedman v. Secretary General of the Council of Europe, decision of 10 December 2015, § 63). This claim must be dismissed, therefore.

50. The Tribunal recognises the broad discretion enjoyed by the Organisation in establishing the social and medical protection scheme for staff members and persons claiming through them, particularly in view of the budgetary and financial stability considerations that come into play. It also recognises the regulatory autonomy enjoyed by the Council of Europe in relation to European Union institutions: the Organisation may draw inspiration from the regulations in force at other comparable bodies, taking into account its own specific circumstances and constraints, but it is under no obligation to do so.

51. That said, it is settled case law that international administrative tribunals may decide not to give legal effect to a piece of secondary legislation derived from the Organisation's constituent instrument in cases brought before them, if they consider that such legislation is incompatible with a general principle, even in the absence of an express provision to that effect (see Thévenot-Werner, Rapport de synthèse sur les principes généraux tels qu'appliqués par les tribunaux administratifs internationaux, March 2026, pages 47 and 48). The Tribunal has taken a similar position (see, for example, Appeals Board of the Council of Europe, Appeal No. 8/1972, Artzet (I) v. Secretary General of the Council of Europe, decision of 10 April 1973).

52. In this case, with respect to the breach of the principle of proportionality, the appellant essentially raises two substantive complaints: firstly, the failure of the relevant provisions of Rule No. 1398 to consider whether or not there is an actual entitlement to national insurance cover in the state of residence; and, secondly, the failure of that rule to take into account the actual amount of the spouse's income and, in particular, the fact that there is no minimum threshold.

53. The Tribunal notes that these complaints essentially overlap with those raised by the appellant under the second ground of appeal. The Tribunal will therefore examine them together under this head.

### B. Alleged breach of the principle of non-discrimination

54. The Tribunal notes that the rule of non-discrimination is one of the general principles of law which prevails in the legal system of the Council of Europe where it is enshrined in Article 14 of the European Convention on Human Rights. This rule protects individuals, placed in analogous situations, from discrimination and prohibits different treatment for which there is no objective and reasonable justification. A breach of the principle of equal treatment is deemed to have occurred when two categories of persons whose situations in fact and in law display no essential differences are treated differently and there is no objective justification for such difference in treatment (ATCE, Appeals Nos. 739/2023, 740/2023 and 741/2023, E. T. and Others v. Secretary General of the Council of Europe, judgment of 22 March 2024, § 71; ATCE, Appeal No. 719/2022, Gurin v. Secretary General of the Council of Europe, decision of 31 January 2023, § 59; ATCE, Appeal No. 557/2014, cited above, § 64).

55. The Tribunal observes, as a preliminary point, that in order to assess whether the application of the impugned rules to the present case has the effect of infringing the principle of non-discrimination, it is not a matter of comparing the situation of the appellant's spouse with that of a spouse who has no income and no actual entitlement to national public health insurance, as the appellant suggests. As noted above (see paragraph 45), the provisions in question do not make recognition of "dependant" status conditional upon the absence of such entitlement, unlike the rules cited by the appellant in relation to the social security scheme for European Union officials.

56. Having regard to the rules that apply at the Council of Europe, the relevant comparison is rather between the situation of the appellant's spouse and that of "a person who receives no income in any country corresponding to paid employment, unemployment benefit, fees for private practice of an occupation, an allowance, a pension, an annuity or other private income and who is wholly and solely supported by the principal beneficiary" (see Article 2 of Rule No. 1398). Because she was receiving a pension, albeit a modest one, the appellant's spouse is not in a situation comparable with that of persons receiving no income whatsoever.

57. In any event, the Tribunal notes that this ground of appeal is based on a flawed premise. It is, in fact, incorrect to assert that the appellant's spouse has no entitlement to national health insurance. Her membership of the Barmer health insurance fund derives from Article 5(1)(13) of Book 5 of the German Social Code, which establishes a right to membership for any person who has no other entitlement to health cover. The fact that this is a subsidiary provision does

not negate that conclusion. The appellant's spouse's membership has a legal basis and cannot be characterised as discretionary or humanitarian in the sense intended by the appellant.

58. The appellant criticises, on the basis of the principle of non-discrimination, not only the difference in treatment between his spouse and a spouse with no income, but also the absence of any minimum threshold in the definition set out in Rule No. 1398, which, it is alleged, leads to situations that are materially different being treated in an identical manner: that of a spouse on a modest income, for whom access to a national health insurance scheme entails disproportionate costs, and that of a spouse receiving more substantial income, enabling them to access a national scheme without difficulty.

59. The Tribunal notes, however, that the appellant has not established in what way these two situations are fundamentally different in the light of the object and purpose of the rule in question. The fact that two spouses receiving an income find themselves in unequal financial circumstances is not, in itself, sufficient to establish that they should be treated differently under the rule determining the conditions under which persons claiming through staff and former staff members may access CEMSIS for primary cover.

60. It should be reiterated that the Organisation has a wide margin of discretion in determining such conditions. The Tribunal considers that the decision to opt for a binary criterion based on whether or not a person is receiving income, rather than a criterion that is adjusted according to the level of income, is not, in itself, manifestly inappropriate, especially given the objective of not placing an excessive burden on the CEMSIS scheme. It should be added that the appellant cannot legitimately rely before the Tribunal on the significant costs associated with his spouse's membership of the German public health insurance fund Barmer. While these costs do, admittedly, represent a substantial portion of her pension, they are governed by the specific conditions of the German national health insurance system, for which the Organisation cannot be held responsible.

61. Furthermore, as these conditions are likely to vary according to the different systems and individual circumstances, the Tribunal considers that the appellant could not reasonably have expected the Organisation, and in particular the DHR, to be aware of the precise conditions under which his spouse might be eligible for German health insurance on a primary basis. It follows that the information provided to the appellant by DHR on this matter, even if incomplete or inaccurate, cannot be regarded as constituting a breach of the duty of care.

62. The Tribunal also takes note of the appellant's argument that Rule No 1398, in its current form, has the effect of encouraging certain staff members to waive their rights to a national pension in order to retain their entitlement to primary cover under CEMSIS. The Tribunal considers, however, that this argument, which is not sufficiently substantiated, is irrelevant in this case, since the existence of alleged fraudulent conduct is not, as such, a sufficient argument to demonstrate that the rule itself is manifestly inappropriate in the light of the objective it pursues.

63. It follows that the ground of appeal alleging a breach of the principle of equal treatment must be dismissed, as must the second ground of appeal alleging a breach of the principle of proportionality.

IV. CONCLUSION

64. In conclusion, the appeal is unfounded and must be dismissed.

**FOR THESE REASONS, THE ADMINISTRATIVE TRIBUNAL:**

Declares the appeal unfounded and rejects it;

Delivered on 5 June 2026, the French text being authentic.

| The Registrar of the Administrative Tribunal | The Chairing Judge of the Administrative Tribunal |
| --- | --- |
| Christina Olsen | Lenia Samuel |