

The Administrative Tribunal,

Considering the complaint filed by Ms L. G. against the European Organization for Nuclear Research (CERN) on 11 October 2005 and corrected on 25 October 2005, the Organization's reply of 2 February 2006, the complainant's rejoinder of 7 March and CERN's surrejoinder of 5 April 2006;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions and disallowed the complainant's application for hearings;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. The complainant, who was born in 1978, held Moroccan nationality at birth. Following her marriage to a Swiss national, she was able to apply for Swiss naturalisation.

On 9 March 2004, when she had been working for CERN already for several months under a service contract, the complainant applied for the post of Administrative Assistant in the Finance Department. The vacancy notice stipulated that nationals of all Member States could apply. On her application form the complainant stated that her first nationality was Swiss and her second nationality Moroccan. Following the selection procedure she was offered the post and given a three-year limited-duration contract starting on 1 October 2004.

On 6 October the Organization asked the complainant to produce a copy of her Swiss identity card. After receiving a reminder on 22 October, the complainant informed the Administration on 26 October 2004 that she was to meet the person handling her naturalisation papers the following day. The Administration continued in the weeks that followed to request proof of her naturalisation, but without success.

On 29 March 2005 the Director of Finance and Human Resources wrote to the complainant that it appeared from a memorandum of the Head of the Human Resources Department that she had "deliberately misled the Organization" regarding her nationality at the time of her recruitment, that she had failed to clarify the facts when requested and had even continued to supply false information after having taken up her appointment, and that her case ought to be referred to the Joint Advisory Disciplinary Board. After receiving the complainant's comments, the Director decided to submit the case to the Board. The complainant obtained Swiss nationality on 7 April 2005.

In its report of 11 July, the Board pointed out that in the course of a hearing the complainant had admitted that she had made a false declaration. Noting that she had "continued with the deception" without making any attempt to be "open and clear" with regard to her nationality and her application for Swiss citizenship, the Board considered that the complainant's attitude was unacceptable "in view of its lack of integrity and evident unfairness to other potential applicants". It therefore recommended that the complainant be dismissed in accordance with Article II 5.02 of the Staff Rules. By a letter of 29 July 2005, which constitutes the impugned decision, the Director-General informed the complainant that he had decided to follow the Board's recommendation and to dismiss her as from 30 September 2005.

B. The complainant asserts that her hearing before the Joint Advisory Disciplinary Board was an ordeal and that, in order to end it as quickly as possible, she "agreed to all the Board's requests, without realising the implications of her statements". She adds that she cannot be accused of having failed in her duties and obligations under the Staff Rules. According to her, the Organization was aware from the start that she was a Moroccan national, that she was entitled to "facilitated naturalisation" because she was married to a Swiss national and that the naturalisation process was almost completed.

For her main claims, the complainant asks the Tribunal to set aside the decision of 29 July 2005, to reinstate her in her former post and to order CERN to pay costs. Subsidiarily, she claims compensation "equivalent to two years on

the same financial terms as those she would have enjoyed in her former post”.

C. In its reply CERN contends that since the complainant cites no breach of the terms of her contract or the applicable rules and procedures, her complaint is devoid of merit.

In the Organization’s view, the complainant’s dismissal for disciplinary reasons was perfectly lawful, since the correct procedure was applied, and was justified on the grounds that the complainant failed to fulfil her obligations by making and maintaining a false declaration concerning her nationality. According to the defendant, she proved to be disloyal and her behaviour is incompatible with the standards expected by CERN of its staff. It points out that it gave the complainant several opportunities to prove that she had obtained Swiss nationality, thereby showing “a considerable degree of patience and tolerance”, given that the charges brought against her would have justified the immediate termination of her contract. CERN draws attention to the fact that the details given on candidates’ application forms are checked only when they take up their duties, and it submits that the complainant has not proved that the Administration was aware that she did not have Swiss nationality at the time of her recruitment.

Referring to Judgment 2034, the defendant argues that her reinstatement is inadvisable insofar as it has valid reasons for having lost confidence in its former employee. It leaves it up to the Tribunal to decide whether, in view of the fact that the complaint is clearly unfounded, the complainant should be ordered to pay costs.

D. In her rejoinder the complainant “recalls” that in her view both the terms of her contract and the provisions of the Staff Rules and Regulations were breached since everybody in CERN was aware of her nationality and of the fact that she would very soon be obtaining Swiss nationality. According to her, therefore, it was with the “full agreement” of her supervisors and of the Administration that she applied for and obtained the post she was seeking.

E. In its surrejoinder CERN maintains its position. It points out that the complainant offers no hint of any argument or evidence in support of her allegation of a breach in the terms of her contract or the provisions of the Staff Rules and Regulations.

## CONSIDERATIONS

1. The complainant was recruited by CERN starting 1 October 2004 to work as an Administrative Assistant in the Finance Department. She belonged to the “local staff” category. She had previously worked in the same department under a service contract and had replied – on 9 March 2004 – to a vacancy notice of 4 March calling for applications by nationals of all Member States of the Organization. When she filled out her application form, she stated that she held Swiss nationality, as well as Moroccan nationality as her second nationality.

2. In fact, although the complainant had indeed married a Swiss national, she had not yet acquired Swiss nationality, for which she applied only in May 2004, so that she was unable to provide CERN’s Human Resources Department, despite repeated requests, with an identity card or passport proving her naturalisation. On 29 March 2005 the Director of Finance and Human Resources informed the complainant that, in the light of a memorandum of 22 March 2005 from the Head of the Human Resources Department summing up the situation, he considered that her case ought to be referred to the Joint Advisory Disciplinary Board. The reasons he gave were that “when [the complainant was] recruited, [she had] deliberately misled the Organization regarding [her] nationality in order to obtain employment [and had] failed to respond to the Administration’s requests for clarification, continuing instead to supply false information after taking up [her] appointment”. Despite the apologies offered by the complainant, who maintained that she had acted in good faith and admitted in a letter of 6 April 2005 that she should not have “stated that [she] was Swiss”, the Director of Finance and Human Resources referred the case to the Joint Advisory Disciplinary Board, which, on 11 July 2005, unanimously recommended to the Director-General that the complainant be dismissed. The Board considered that the complainant’s attitude in making a false statement in order to obtain the post she was seeking, in the hope that her naturalisation would be completed rapidly, showed a lack of integrity which was unacceptable.

3. By a decision dated 29 July 2005 and confirmed on 5 August 2005, the Director-General followed that recommendation and dismissed the complainant as of 30 September 2005. The latter filed a complaint directly with the Tribunal asking inter alia to have the decision set aside and to be reinstated or, alternatively, to be granted compensation equivalent to two years’ remuneration. The complainant, who obtained Swiss nationality on 7 April 2005, contends that the defendant Organization was aware from the start that she held Moroccan nationality. She

points out that as the spouse of a Swiss national she was entitled to “facilitated naturalisation”, which was indeed granted in the event, and that “she had never failed in her duty of loyalty towards the Organization”.

4. The Tribunal cannot agree with this reasoning: while it is true that the fact that the complainant was married to a Swiss national should in principle have enabled her to obtain Swiss nationality under the “facilitated naturalisation” procedure, it is equally true that at the time she filled out her application form she did not hold Swiss nationality and had not even applied for it. As she herself explained, she made the statement in order to obtain an appointment for which she was not eligible owing to the fact that she was not a national of one of the Organization’s Member States. There is no evidence in the file to support the view that the relevant departments of the Organization were aware that she did not in fact hold Swiss nationality at the time of her recruitment. By making a false declaration, the complainant was guilty of misconduct which, when it came to light after her recruitment, was sufficient to invalidate her appointment and to justify the imposition of a disciplinary sanction on the grounds that she fell short of the standards of loyalty and integrity that the Organization is entitled to expect of its staff. Although the complainant maintains that by imposing the disputed sanction the defendant breached the terms of her appointment and the applicable provisions of CERN’s Staff Rules and Regulations, she does not substantiate those allegations in any way, nor does she identify any breach of the rules of procedure followed by the Organization. The complaint must therefore be dismissed.

## DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 10 November 2006, Mr Michel Gentot, President of the Tribunal, Mr Seydou Ba, Vice-President, and Mr Claude Rouiller, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 7 February 2007.

Michel Gentot

Seydou Ba

Claude Rouiller

Catherine Comtet