

Summary of LOWI opinion 2015-10

The Petitioner asked the Board to reopen an investigation concerning two previous petitions that he had submitted. The Board found this latest petition inadmissible. The Petitioner then approached the LOWI, arguing that his complaint had never been properly investigated and that the standing opinion by the Research Integrity Committee (RIC), like the RIC's previous opinion in the same affair, had not taken all the relevant documents into account. As evidence, the Petitioner then submitted a number of documents.

At a certain point, complaint procedures must reach a definitive end. That is usually when the relevant Board takes a final decision (in some cases after the LOWI has issued an opinion in the matter). In this case, the final decision has been taken and the Petitioner has asked for that decision to be reconsidered.

Article 9:8(1)(a) of the General Administrative Law Act (Awb) serves as an important guideline when determining whether or not to honour a request for formal review. According to this article, the Board is empowered to set aside a complaint if it has already been investigated, as was the case here. There is also relevant case law, which states that one criterion for assessing a request for formal review is whether new facts have come to light or new circumstances have arisen (*nova*) since the earlier decision was issued.

The key question, then, is whether there are *nova*. The Petitioner's claim that the final decision does not take all the relevant documents into account is not a *novum* but an argument that the Petitioner could and should have advanced in LOWI proceedings concerning that final decision. The Petitioner missed the deadline for initiating such proceedings, forcing the LOWI to declare his petition inadmissible. This is not a reason to honour a request for formal review. It is also not a *novum* to draft a new document after the final decision has been issued, or to submit documents that were already available during the earlier complaint procedure. The Petitioner could have and therefore should have submitted these documents to the RIC in that earlier procedure. That he neglected to do so does not constitute a reason to honour a request for formal review.

The LOWI finds that no *nova* have been submitted or come to light, and that the Board was correct in declaring the petition inadmissible. Since LOWI proceedings can be regarded as external complaint proceedings, Title 9.2 of the Awb applies by analogy. As the petition already shows that the objections to the decision are unfounded, and that there can be no reasonable doubt about that conclusion, the investigation was discontinued pursuant to Article 9:23(b) of the Awb. The petition submitted to the LOWI is clearly unfounded. The LOWI has advised the Board to confirm its preliminary ruling (that the petition is inadmissible) in its final decision.

On 24 September 2015, the Board issued its final decision in line with the LOWI's opinion.