

Summary of LOWI decision 2017-02

Keywords: request to review, no new facts or circumstances (*nova*)

Relevant provisions: Article 7.4 of the LOWI Regulations, Article 9:1, Article 9:8(1)(a), and Article 9:23(i) in conjunction with Article 4:6 of the General Administrative Law Act (Awb)

Petition

The Petitioner has asked the LOWI to reconsider its opinions of 25 and 27 February 2009. According to the Petitioner, at the time the LOWI failed to review the case scrupulously and on its merits, but instead ruled his petition to be unfounded in order to protect the reputation of prominent scientists. The Petitioner has therefore asked the LOWI to reconsider the case from the perspective of the basic principles of good research practice.

The most relevant considerations in the LOWI's decision:

The most relevant considerations in the LOWI's ruling follow below:

- In the interests of legal certainty, one of the general principles in complaint and LOWI petition proceedings is that such proceedings must come to an end at a certain point. LOWI proceedings end when the LOWI issues its opinion to the relevant Board.
- Because the Petitioner's petition may be regarded as a request to review or as a repeat petition, the LOWI has ascertained whether any new facts or circumstances have arisen that would cause it to reconsider its previous opinions. That is not the case. The LOWI had already reviewed the Petitioner's assertion – that the negative evaluations of his dissertation were incorrect and unsubstantiated – in 2009 and ruled it unfounded. Facts and circumstances that emerge *after* a LOWI opinion has been issued cannot be regarded as new facts and circumstances. The study that has been undertaken, and whose outcome the Petitioner claims will prove him correct, and later publication of parts of the dissertation in recognised journals, do not give the LOWI cause to reconsider its opinions.
- In so far as the request to review can also be regarded as a complaint within the meaning of Article 9:1 of the General Administrative Law Act (Awb), the analogous application of Article 9:8(1)(b) of the Awb means that it will not be considered. According to this provision, there is no obligation to consider a complaint if it concerns an action that occurred more than a year before the complaint is submitted. The Petitioner has exceeded this period by a considerable margin.

LOWI ruling and decision:

The LOWI observes that no new facts or circumstances have been submitted or become evident and concludes that the request is inadmissible pursuant to Article 7.4 of the LOWI Regulations and Article 9:23(i) in conjunction with Article 4:6 of the General Administrative Law Act. The LOWI has therefore decided not to comply with the Petitioner's request to review. If the request can be construed as a complaint, then the Awb does not obligate the LOWI to consider it because it was submitted (much) too late.