

Summary of LOWI opinion 2017-10

Keywords: admissibility of complaint, compliance with preliminary decision taken by the Board

Relevant provisions: Article 9:8(1)(a), Article 9:23(b), and Article 9:4 of the General Administrative Law Act (Awb), and Article 8.3 of the LOWI Regulations

Petition

By defining a discipline-specific term in a particular way in his dissertation, the Interested Party misrepresented matters, causing damage to the Petitioner. The Interested Party failed to amend the passages disputed by the Petitioner before submitting the dissertation, even though the Board had already ruled in a preliminary decision that the Interested Party had been negligent. The Interested Party also failed to quote the Petitioner or quoted him inadequately, even though the Board had ruled that the Interested Party should be more considerate and show due care towards a colleague. The Interested Party is also avoiding engaging in scientific debate.

Opinion of the Research Integrity Committee (RIC) & decision by the Board

The RIC recommended that the Board should rule the complaint inadmissible. All four subsidiary complaints concern a repeat complaint on which the RIC and the LOWI had already issued opinions. At the time that the Interested Party submitted his dissertation, no final decision had been issued that he would have been obliged to take into account. The Petitioner had submitted the matter to the LOWI. In general, it is not necessary to consider a preliminary decision at that point. It is only after the LOWI issues its opinion and the Board takes a final decision that the Interested Party can be accused of having ignored the decision. The Board decided to adopt the RIC's conclusions.

The Petitioner's most relevant objections are as follows:

- The Petitioner does not agree that his complaint is inadmissible, because it does introduce new facts and circumstances. The Interested Party should have taken the Board's preliminary decision into account: the ruling in that decision that the Interested Party should have shown due care is not disputed.

Below are the most relevant considerations in the LOWI's opinion:

- The LOWI agrees with the Board that the first, third and fourth subsidiary complaints are repeat complaints that do not introduce any new facts or circumstances. The second subsidiary complaint is admissible, however: it concerns a new complaint about a new act or omission, i.e. noncompliance with the considerations of due care and considerateness set out in the preliminary decision.
- The LOWI then considered whether the Interested Party should have taken the preliminary decision into account. There is no indication in the Complaints Procedure that a preliminary decision does not take effect immediately. Neither does the Complaints Procedure indicate that submitting a petition to the LOWI puts the preliminary decision on hold. In the LOWI's opinion, there are no legal grounds for the Board's view. In the present LOWI proceedings, the Interested Party indicated that he had good reasons not to extend good will, for example because doing so would be unfavourable in the event of court proceedings. If this had indeed prevented the Interested Party from complying with the decision, then he could have let his objections be known by petitioning the LOWI at that point as well. He did not do so, however. He therefore acquiesced in the considerations underpinning the preliminary

decision. Needless to say, these were not superfluous considerations, worded in such a way that they could be construed as being free of all obligation. The scope of the relevant considerations extends beyond a mere opinion concerning the past. The preliminary decision is a judgement of past conduct, and claiming that this ruling does not constitute instructions for future conduct is too narrow an interpretation.

- Unlike the Board, the LOWI considers that the Interested Party should have acted in accordance with the preliminary decision. His behaviour is not a violation of the principles of research integrity, however, because there are no formal grounds for such a ruling. Neglecting (culpably) to comply with a decision concerning a complaint is not conduct that falls within the scope of the Netherlands Code of Conduct for Academic Practice.

LOWI ruling and opinion:

The petition is clearly unfounded with regard to the first, third and fourth subsidiary complaints. The second subsidiary complaint is founded, but reflection on its substance did not lead the LOWI to conclude that the Interested Party violated the principles of research integrity. The LOWI recommends that the Board should take its final decision with due regard to the LOWI's considerations.

Final decision by the Board:

The Board agrees with the LOWI's ruling that the second subsidiary complaint is admissible. However, the Board regards this complaint as unfounded: the consideration that the Interested Party could have acted with due care and considerateness is superfluous. The Board is less convinced than the LOWI that the Interested Party should have taken this into account when writing his dissertation. The Board does see reason to encourage scientific debate between the parties.