

Summary of LOWI opinion 2017-05

Keywords: violation of duty of confidentiality, online publications, social media, competence to discontinue complaints proceedings

Relevant provisions: Article 2(4) of the VSNU Model Academic Integrity Complaints Procedure, Article 10 of the LOWI Regulations

Petition

The Petitioner has submitted a petition concerning the decision by the Board to discontinue complaints proceedings owing to the Petitioner's failure to fully observe his duty of confidentiality.

Opinion of CWI & decision by the Board

The Board decided to discontinue the complaints proceedings because the Petitioner had ignored an injunction to remove all online communication about the complaint within a specified period. Because the Petitioner had violated his duty of confidentiality, the CWI was unable to conduct an independent investigation and could not perform its task properly. Confidentiality is a critical component of complaints proceedings and makes it possible for the relevant parties and the CWI to communicate confidentially and openly with one another. Any complaint, justified or not, can seriously damage the Defendant's academic reputation.

The Petitioner's most relevant objections are as follows:

- The Complaints Procedure does not provide for the discontinuation of proceedings if the duty of confidentiality is violated. The Petitioner did not ignore the CWI's injunction; he simply overlooked a link.

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

- The LOWI has reviewed whether the Board was correct in deciding to discontinue the complaints proceedings. In previous opinions, the LOWI explained the importance of complying with the duty of confidentiality during proceedings. Premature disclosure of an accusation of the violation of the principles of research integrity can seriously damage researchers' reputations and impede careful consideration of the complaint.
- Although the text of the confidentiality provision in the Complaints Procedure is not entirely clear, the Board and the CWI explained the substance and scope of the provision in a letter to the Petitioner, and how he had violated the duty of confidentiality. After receiving this explanation, the Petitioner could not reasonably question the intent of the duty of confidentiality.
- The screenshots submitted by the Board provide sufficient evidence that the Petitioner did not comply (in full) with the CWI's injunction. The LOWI then assessed whether the CWI and the Board were competent to discontinue the complaints proceedings for that reason. According to the LOWI, the Board's letter is the deciding factor in this respect. Not only does the letter explain what the duty of confidentiality entails, but in it the CWI and the Board make clear that failure to comply with that duty would lead to the immediate discontinuation of the complaints proceedings. The Petitioner could have no doubt about what his (continuing) violation of the duty of confidentiality would mean for the course of proceedings.

LOWI ruling and opinion:

The LOWI has recommended that the Board should adopt its preliminary ruling unamended as its final decision. The LOWI also asked the Board to consider amending the text of the duty of confidentiality so that it is possible to take immediate action when a violation of that duty has been observed.

Final decision by the Board:

The Board will comply the LOWI's opinion. On 21 March 2017, it finalised the preliminary decision to discontinue the complaints proceedings owing to a violation of the duty of confidentiality.