

# Appeals against SNSF funding decisions: What are the key points of proceedings at the Federal Administrative Court?

## The SNSF as an agency with governmental tasks

On behalf of the Swiss government, the Swiss National Science Foundation (hereinafter "SNSF") awards grants to academic researchers in Switzerland. Although its legal form is that of a foundation under private law, it operates as an agency with governmental tasks and is obliged to respect the **principles of governmental action**. This includes, in particular:

- a fair evaluation procedure based on applicable laws, and unbiased and non-arbitrary evaluators;
- equitable distribution of research funds.

To a large extent, the scientific evaluation of research projects and the resulting funding decisions are at the discretion of the SNSF. The SNSF issues its decisions in the form of a ruling. Applicants may appeal against these rulings before the Swiss Federal Administrative Court in St. Gallen. The appeal period expires 30 days after receipt of the ruling and cannot be extended.

## What complaints can the appellant bring against the SNSF?

With regard to the funding decisions made by the SNSF, applicants can allege that:

- the SNSF has violated federal law and exceeded or misused its discretion;
- the declaration of the legally relevant facts is inaccurate or incomplete.

**Federal law** is violated if, for example, a decision taken by the SNSF is not adequately explained in the ruling. The SNSF must in all cases provide the main reasons why the proposal was rejected.

The **legally relevant facts** have been inaccurately declared if, during the evaluation, the SNSF referred to just a few publications in the relevant research field, whereas the proposal included an entire list of publications.

## Which aspects are excluded from the court proceedings?

The Court does not comment on the **scientific** evaluation conducted by the SNSF that resulted in the proposal being rejected. Such decisions are made at the sole discretion of the SNSF. The Court does not solicit any further scientific opinions. Rather it examines whether the procedure that led to the decision was free of legal or factual errors and whether the SNSF has adequately set out the reasons for the rejection.

It is important that applicants who appeal before the Court are aware of these points. Often they invest a lot of time and energy in attempting to convince the Court with scientific arguments that the SNSF

has misjudged their proposal. They juxtapose their own scientific views on the quality of the project with those of the SNSF. Such objections are of no relevance for the Court, unless the appellants can show that the SNSF has exceeded or misused its discretion in its scientific assessment of the proposal. However, the rejection of a proposal by the SNSF despite the reviews being (partly) positive does not imply that the SNSF has exceeded its discretion. Any allegation that the SNSF has exceeded its discretion can only be made successfully if the reasons for the decision are clearly missing or incomprehensible.

### **How much do court proceedings cost?**

The Court asks the appellant to pay for the estimated costs of the proceedings in advance. The amount to be paid is determined by the complexity of the dispute, the type of proceeding and the parties' financial situation. For example, the benchmark for court fees is between CHF 2,000 and CHF 10,000 in cases where the disputed amount lies between CHF 100,000 and CHF 200,000. The costs of the proceedings are stated in the judgement. If the appeal is rejected, the appellant shall bear the costs.

### **Can applicants also complain directly to the SNSF?**

The SNSF is open to feedback regarding its scientific assessments and evaluation procedures. When an application is rejected, applicants are at liberty to lodge their complaint **directly** with the SNSF. Such action generally takes the form of a **reconsideration** request. If, based on the complaint, the SNSF discovers any signs that the funding decision is flawed; it reconsiders the decision and reexamines the matter. Failing this, it does not accept the reconsideration request. In contrast to an appeal:

- there is no specific deadline for a reconsideration request<sup>1</sup>);
- applicants are not entitled to have their application considered by the SNSF;
- in the reconsideration request, applicants may also cite scientific reasons for not accepting the decision.

The applicants' right to launch an appeal by the deadline is not affected in any way by a reconsideration request. At the same time, the reconsideration request does not entail any extension of the appeal period.

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<sup>1</sup> The ruling comes into force with the ending of the appeal period. Although applicants can request reconsideration of a legally binding decision, such a request can only succeed if there are significant reasons for revision. For example, this is the case if it only becomes clear in retrospect that essential facts have been overlooked.