

EXAMINATION APPEALS BOARD

Decision of the Examination Appeals Board of Tilburg University, the Board

in the case between

X, appellant

and

the Dean of Tilburg Law School, appellee

1. Course of the proceedings

In a decision of August 2, 2018 (hereinafter: “contested decision”), the appellee gave the appellant a negative binding study advice (hereinafter: “BSA”).

The appellant filed a notice of appeal in time against the contested decision.

The parties did not reach an amicable settlement.

The Examining Board of Tilburg Law School (hereinafter: “Examining Board”) filed a written defense on behalf of the appellee.

On September 18, 2018, therefore outside the period set to do so, the appellant submitted additional documents. At the hearing, when asked, the appellee stated that they did not object to the late delivery of the documents and the Board therefore included the documents in its handling of the case.

On September 20, 2018, the Board handled the appeal at the hearing. The appellant was present at the hearing. Y and Z appeared on behalf of the appellee.

2. Facts and circumstances

2.1 The appellant was enrolled in the Bachelor’s degree program Global Law from September 1, 2015 through August 31, 2018. In connection with personal circumstances, the BSA was postponed in the academic year 2015/2016 as well as in 2016/2017, which meant that the appellant had to pass 70% of the still outstanding courses from the first year in the academic year 2017/2018. This comes down to 70% of 30 ECTS = 21 ECTS. In the academic year 2017/2018, the appellant earned 12 ECTS in first-year courses.

3. Positions of the parties

- 3.1 On appeal, the appellant asserted that she did not have a chance to make her objections known regarding the negative BSA. In addition, the appellant stated that there were special circumstances substantiated by evidence that were reported to the student counselor, owing to which she was unable to meet the standard for a positive BSA. These concern the missing of her babysitter, adultery by her husband and the experience of stalking. At the time of the re-examination of the course Economics for Lawyers on May 23, 2018, the special circumstances concerned the death of her grandmother. Moreover, the appellant asserts that she had not had equal opportunities as other students to be able to take the examinations she needed to pass in order to obtain a positive BSA. At the hearing, the appellant explained that, by this, she meant that she was unable to take as many examination opportunities as other students because of her special circumstances.
- 3.2 At the hearing, the appellant confirmed that, even if she had obtained an additional examination opportunity for one course and had completed that course with a satisfactory grade, she would still have obtained too few ECTS to meet the standard for a positive BSA. The appellant would, however, have a right to more examination opportunities, which would make it possible for her to meet the standard for a positive BSA.
- 3.3 The appellee stated that the Examining Board held two discussions with the appellant after she had filed an appeal against the negative BSA, and that the appellant was therefore given sufficient opportunity to make her objections known regarding the negative BSA.
- 3.4 The appellee stated as well that the appellant contacted the student counselor on June 27, 2018, and that in connection with special circumstances, which allegedly occurred as of May 2018, she would not have passed the (third) re-examination of the course Economics for Lawyers on May 23, 2018. On July 25, 2018, the student counselor confirmed that special circumstances existed at the time of the re-examination. Because the BSA had already been postponed twice, and there was still no clarity regarding any additional examination opportunity to be granted for a first-year course, it was not possible for the student counselor to give further advice on the BSA. The Examining Board, however, was not convinced of the special circumstances that prevented the appellant from meeting the standard for the BSA. After all, the special circumstances, owing to which the appellant did not pass the course Economics for Lawyers, applied to only one course worth 6 ECTS, whereas the appellant needed to pass at least two 6 ECTS first-year courses for a positive BSA. At the hearing, the appellee explained that they could imagine that the other circumstances the appellant presented had serious consequences for her life, but that these are not special circumstances within the meaning of Article 31 paragraph 7.1 of the Teaching and Examination Regulations of the Bachelor's degree programs of Tilburg Law School 2017/2018 (hereinafter: "TER") which, pursuant to Article 31 TER, should be included in the opinion on a postponed BSA.
- 3.5 Finally, the appellee stated that all students had equal opportunities to meet the standard for a positive BSA.

4. Findings of the Board

- 4.1 Under Article 31 paragraph 1.1 TER, at the end of the first year in which a student is enrolled in the introductory phase, but by August 31 of that year at the latest, the student must receive a recommendation (recommendation on continuation of studies) on continuation of this program. This can also be a postponed recommendation.
- 4.2 Under Article 31 paragraph 3.1 under b TER, the recommendation on continuation of studies is postponed when special circumstances exist as referred to in paragraph 7. Under Article 31 paragraph 7 TER, in assessing a postponed recommendation on continuation of studies, only the following personal circumstances of the person concerned are taken into consideration:
- sickness
 - physical, sensory or other functional disorders
 - pregnancy
 - special family circumstances
 - membership, including chairmanship, of the University Council, Law School Council, board of the program or the relevant Program Committee, or another management position for which the University makes a scholarship available for student representatives,
 - top sportsman/sportswoman status recognized by the Executive Board
- if and insofar as these circumstances have resulted in not obtaining the required number of ECTS. Furthermore, these circumstances are taken into consideration only if they have been reported to the study adviser or to a student counselor by or on behalf of the person concerned as soon as may reasonably be expected, and the student who relies on personal circumstances must demonstrate them. Finally, when assessing reliance on personal circumstances, the chairperson of the Examining Board can request advice from a student counselor or an expert in the matter.
- 4.3 Under Article 31 paragraph 3.4 TER, the student whose recommendation on continuation of studies has been postponed pursuant to Article 31 lid 3.1 under b TER will receive a recommendation on continuation of studies as referred to in Article 31 paragraph 1 TER at the end of the next academic year. In this context, study results obtained during the first academic year are considered exemptions. Moreover, the Examining Board can set further requirements for the number of ECTS to be obtained.
- 4.4 Under Article 31 paragraph 1 TER, a recommendation on continuation of studies to which a rejection is attached is given if fewer than 42 ECTS have been obtained in the introductory phase (including any exemptions).
- 4.5 Under Article 31 paragraph 4 TER, as a result of an intended recommendation on continuation of studies to which a rejection is attached, a student is given the opportunity to be heard by the Examining Board before the recommendation on continuation of studies to which a rejection is attached is issued.
- 4.6 On August 18, 2017, the appellee set a standard for the appellant of 70% of the still outstanding courses of the first year. Because the appellant still had 30 ECTS in outstanding courses of the first year at the time, the standard was 70% of 30 ECTS = 21 ECTS in first-year courses. The

appellant obtained 12 ECTS in the academic year 2017/2018. Consequently, she did not obtain the required number of ECTS. The appellant also acknowledges this. It is therefore not in dispute that the appellant did not obtain the required number of ECTS.

- 4.7 The appellant put forth the missing of the babysitter, the adultery of her husband and the experience of stalking as special circumstances. Although the Board considers it plausible that such circumstances can have serious consequences for the appellant's life, the Board, with the appellee, is of the opinion that these are not circumstances within the meaning of Article 31 paragraph 7.1 TER, which should be included in the opinion on a postponed BSA.
- 4.8 Furthermore, the appellant reported special circumstances (present since May 2018) to the student counselor on June 27, 2018 which allegedly had influence on not passing the third re-examination in Economics for Lawyers on May 23, 2018. Apart from the question whether they were indeed special circumstances within the meaning of Article 31 paragraph 7.1 TER, the Board can concur with appellee's position that, even if these circumstances were indeed considered circumstances within the meaning of Article 31 paragraph 7.1 TER, they only would (or could) have led in part to not obtaining the required number ECTS. After all, even if the appellant had indeed taken the examination in Economics for Lawyers on May 23, 2018, and had received a satisfactory grade for it, she would have obtained an insufficient number of ECTS to meet the BSA standard. The appellant also acknowledged this at the hearing. Therefore, in the opinion of the Board, it cannot be said either that the appellee could not reasonably have arrived at the contested decision.
- 4.9 Perhaps unnecessarily, but for the sake of all clarity, the Board still notes in this regard that, in view of the above, the appellee's viewpoint that, in connection with her special circumstances, she was not able to take as many examination opportunities as other students, cannot succeed.
- 4.10 With respect to the appellant's viewpoint that she did not have an opportunity to make her objections known to the negative BSA, the Board notes that it has no evidence that the Examining Board had given the appellant the opportunity in accordance with Article 31 paragraph 4 TER to be heard as a result of an intended recommendation, before the negative BSA was given. Although the Examining Board should have done so, the Board is of the opinion that, in this case, that omission does not necessarily have consequences for the contested decision, as the Examining Board spoke to the appellant on August 20, 2018 and on September 3, 2018 as a result of this and another appeal by the appellant, and she was still given the opportunity during those discussions to make her objections known.
- 4.11 Based on the above, the Board comes to the conclusion that the appeal is unfounded.

5. Decision

The Examination Appeals Board declares the appeal unfounded.
Decided on September 20, 2018 by the Examination Appeals Board.

You can file an appeal against this decision within six weeks after publication of this decision at the Appeals Tribunal for Higher Education (CvBHO), P.O. Box 16137, 2500 BC The Hague. For more information, see www.cbho.nl.