

EXAMINATION APPEALS BOARD

Decision of the Examination Appeals Board of Tilburg University

in the case between

X, appellant

and

Examining Board Tilburg Law School, appellee

1. Course of the proceedings

In a decision of July 4, 2018 (hereinafter: “contested decision”), the appellee rejected the appellant’s request for an extra examination opportunity for the course Introduction to International and European Law (hereinafter: “IIEL”) and Methods and Techniques of Legal Research (hereinafter: “MTLR”).

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

The parties did not reach an amicable settlement.

The appellee filed a written defense.

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.

2.2 On July 29, 2016, and on August 18, 2017, the appellee decided to postpone the issuance of a binding recommendation on continuation of studies to the appellant.

- 2.3 On February 10, 2018, the appellant submitted a request for additional examination opportunities for four courses, including IIEL (first-year course) and MTLR (second-year course). In a decision of March 21, 2018, the appellee offered the appellant an additional examination opportunity for the course Economics for Lawyers and rejected the request for extra examination opportunities for the other three courses. The appellant did not appeal against the decision of March 21, 2018.
- 2.4 On June 20, 2018, the appellant once again submitted a request for extra examination opportunities for the courses IIEL and MTLR. That request resulted in the contested decision.

3. Positions of the parties

- 3.1 On appeal, the appellant stated that she could not be present at the examination for the course IIEL because her babysitter was missing. The appellant was unable at the time to arrange care for her child. In addition, this was not a normal case of missing. The appellant informed the course coordinator and the student counselor of this, but did not submit any evidence in these proceedings because she was concerned about the safety of herself and her son.
- 3.2 Regarding the course MTLR, the appellant stated that a previous request from her for an additional examination opportunity was rejected because it concerned a second-year course and the appellant had not yet obtained 42 ECTS at the time she submitted the request. Because the appellant had meanwhile obtained 42 ECTS, she submitted a request again for an additional examination opportunity.
- 3.3 The appellee stated that the appellant already submitted a request on February 10, 2018 for extra examination opportunities for four courses, including IIEL and MTLR. The appellee rejected the request for an additional examination opportunity for the course IIEL because the missing of the appellant's babysitter was not a valid reason for granting an additional examination opportunity. The request for an additional examination opportunity for the course MTLR was rejected because it is a second-year course and at the time the appellant had not yet obtained the required 42 ECTS in first-year courses. The appellant did not file an appeal against the decision of March 21, 2018. The appellee rejected the new request of June 20, 2018 with reference to its decision of March 21, 2018, as the appellant had not put forth any new facts or circumstances. The circumstances on which the appellant relies are the same circumstances as those on which she relied at the time of the request of February 10, 2018. In addition, the appellee notes that the appellant has meanwhile indeed obtained 42 ECTS, but this does not mean that the additional examination opportunity should be granted with retroactive effect. As the appellant as obtained 42 ECTS, she is at liberty to participate in the scheduled examination opportunities of the second-year courses.

4. Findings of the Board

- 4.1 Pursuant to Article 14 of the Teaching and Examination Regulations of the Bachelor's degree programs of Tilburg Law School 2017/2018 (hereinafter: "TER") a student for whom a binding recommendation on continuation of studies has been postponed may participate in examinations of courses that do not belong to the first academic year if they have obtained at least 42 ECTS in first-year courses.
- 4.2 Pursuant to Article 15 of the TER, the opportunity to take an examination is offered twice in each academic year.
- 4.3 Pursuant to Article 13 of the Rules and Regulations of Tilburg Law School 2017/2018 (hereinafter: "R&R"), in case the student signs off in a timely fashion for an examination because of illness or another special personal circumstance, the appellee may decide that the examination can be made up at a later time under the conditions included in Appendix 2 to the R&R.
- 4.4 Pursuant to Appendix 2 to the R&R, in principle, a personal circumstance does not give a right to an alternative examination, because students must make use as far as possible of the scheduled examination opportunities. An alternative examination is possible if the appellee is of the opinion that it has been satisfactorily established that a student has not been able to take an examination because of special circumstances, which means serious private circumstances. In assessing a request for an alternative examination, the appellee examines all circumstances of the case. The appellee must be convinced that special circumstances have prevented a student from taking the examination (causal connection).
- 4.5 The Board establishes that on February 10, 2018 as well as June 20, 2018, the appellant requested an additional examination opportunity from the appellee for the courses IIEL and MTLR. The appellee decided on the request of February 10, 2018 on March 21, 2018. The appellant did not appeal against that decision, owing to which the decision has acquired formal legal effect.
- 4.6 Regarding the request for an additional examination opportunity for the course IIEL, the Board can concur with the appellee's position that the appellant has not mentioned any new facts and circumstances. In her request of June 20, 2018, after all, she relies on the same circumstances as mentioned in her request of February 10, 2018. In the opinion of the Board, the appellee was able and allowed to reject the appellant's request for an additional examination opportunity for the course IIEL, therefore with reference to the previous rejection decision of March 21, 2018.
- 4.7 Regarding the request for an additional examination opportunity for the course MTLR the Board can concur with the appellee's position that the fact that the appellant has meanwhile indeed obtained 42 ECTS does not in itself mean that her request for an additional examination opportunity should still be granted. After all, at the time of the first request, the appellant had not yet obtained 42 ECTS in first-year courses, which made it logical for the appellee to reject the

request for an additional examination opportunity for a second-year course. And at the time of the second request, the appellant was simply at liberty to participate in the scheduled examination opportunities of the second-year courses. The situation to which Appendix 2 to the R&R refers – from the time the appellant had obtained 42 ECTS in first-year courses – therefore did not exist because the missed examination opportunity did not occur after that time. For those reasons, in the opinion of the Board, the appellee therefore rightly rejected the appellant's request for an additional examination opportunity for the course MTLR.

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.