

DECISION 18 - 035

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of the Examination Appeals Board of Leiden University
in the matter of
the appeal of [name] from Essex (United Kingdom), appellant
against
the Board of Examiners of the Leiden Law School, respondent

1. Origin and course of the proceedings

In its decision of 14 February 2018, the respondent rejected the request from the appellant for an individual retake of the Criminal Justice, Human Rights and EU Criminal Law course unit.

The appellant sent a letter on 5 March 2018, which was received on 13 March 2018, to lodge an administrative appeal against this decision with the Examination Appeals Board.

The parties discussed the possibility of reaching an amicable settlement on 21 March 2018. However, this did not result in the appeal being withdrawn.

The respondent submitted a letter of defence on 23 March 2018.

The appellant sent a letter on 25 March 2018, which was received on 26 March 2018, submitting a more detailed document.

The appeal was considered on 28 March 2018 during a public hearing of a chamber of the Examination Appeals Board. The appellant appeared in person at the hearing. [name], Deputy Chair of the Faculty's Board of Examiners, and [name], member of the Faculty's Board of Examiners, appeared on behalf of the respondent.

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2. Considerations with regard to admissibility

The appellant lodged a timely appeal against the decision of 14 February 2018 by means of the letter that was received by the Examination Appeals Board on 13 March 2018. Furthermore, the letter of appeal also meets the requirements as stipulated in the General Administrative Law Act ("*Awb*", *Algemene wet bestuursrecht*) and the Higher Education and Academic Research Act ("*WHW*", *Wet op het hoger onderwijs en wetenschappelijk onderzoek*). Consequently, the administrative appeal is admissible.

3. Relevant legislation

Article 4.8 of the Rules and Guidelines (Regels en Richtlijnen, "R&R") of the Board of Examiners of the Crime and Criminal Justice ("R&R") Programme stipulates:

Article 4.8 Individual retakes ('last course regulation')

4.8.1 At the request of a student who has successfully completed all but one of the course units of the master's curriculum, the Board of Examiners may grant permission for an individual retake for a previously failed examination if:

- the student has submitted the final version of the thesis, for which the supervisor has indicated that the award of a pass grade can be expected;
- and the student would have had to wait at least four months for the next available examination for the particular final course unit (excluding the period between 1 July and the middle of August);
- and the student obtained a grade of five at least once at an earlier examination for the relevant course unit.

This provision does not apply to course units that are designated as 'Privatissimum' and/or 'Practicum' as intended in Article 4.1.1 of the OER. Permission can be denied when the student has not, without valid reason, made use of an earlier regularly scheduled examination opportunity for the relevant course unit. Permission will be denied if in that same academic year, the student attempted a retake after having obtained a pass grade at an earlier instance for the particular last course (Article 4.1.8.1 et seq. of the OER).

4. Considerations with regard to the dispute

In accordance with article 7.61, paragraph two of the WHW, the Examination Appeals Board must consider whether the contested decision contravenes the law.

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The appellant started the Master's Programme in Criminal Justice in February 2017.

On 2 February 2018, the appellant submitted her thesis for the Master's Programme in Criminal Justice.

On 6 February 2018, the respondent received the request from the appellant for an individual retake of the Criminal Justice, Human Rights and EU Criminal Law course unit.

Article 4.8.1 of the R&R (the so-called last course regulation) stipulates three conditions which must have been complied with for the Board of Examiners to allow an individual retake of an interim examination which a student failed to pass when he or she had completed the curriculum of the Master's except for one course unit.

The contested decision is based on the point of view that the appellant did not comply with two of the three conditions as referred to in article 4.8.1 of the R&R. First of all, the appellant did not have to wait at least four months for the next examination opportunity for the relevant last course unit since a regular examination was scheduled on 24 April 2018. Secondly, the appellant was not awarded at least a five at an earlier examination of the relevant course unit.

In short, the appellant argued that it would be justified to allow her to participate in an individual retake. First of all, she was indeed awarded a five for the course unit in an earlier examination, so she does meet this criterion. Besides, she stated that she cannot be required to sit the examination on 24 April 2018. This is because she has been abroad on an internship as of 5 March 2018 and renewed participation in the education programme and sitting a written examination is too onerous for her. Moreover, she deems that she has wrongfully been disadvantaged in comparison with students who started the programme in September since a September starter has more opportunities to resit a course unit. A fellow student who had started in September was allegedly granted an individual retake.

The appellant argued in the context of other circumstances – of a personal nature - that the manner of review of her first-chance interim examination did not proceed correctly and that this hampered her in performing better the second time around. The appellant explained that she was awarded a 1.7 for her first-chance interim examination and it was weighed at 70%. She was awarded an 8.5 for the written assignment, which was weighed at 30%. In the group review meeting the written assignment was given to her instead of the first-chance

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interim examination she had sat. She was allowed to see her interim examination at a later date, but not in a similar manner as during the group review meeting, according to the appellant. As such, she argued, she was not able to prepare sufficiently for the retake. She was awarded a 2.4 for the retake. Finally, she takes the point of view that the course unit in the 2017-2018 academic year differs so much from 2016-2017 that she cannot be required to participate in the course unit of the present study year. She wants an oral interim examination opportunity in order to complete the course unit, without loss of the grade of 8.5 that was awarded to the written assignment in the former study year. In that study year, the written assignment was weighed at 30% and the interim examination at 70%.

During a meeting on 21 March 2018 to discuss the possibility of an amicable settlement, the respondent proposed the following to the appellant: the appellant will be allowed to hand in an alternative and individual written assignment, in view of her personal situation. The deadline to submit this assignment is established at 6 weeks in respect of the appellant. As such, she will be granted a longer deadline than that which applies to regular students. Besides, the appellant must sit the regular interim examination on 24 April 2018 to complete the course unit. Both components will be weighed at 50% to assess the final grade, which is in accordance with the e-prospectus of the 2017-2018 academic year. The point of view that the appellant was not awarded at least a 5 for the course unit was set aside.

The appellant did not agree to this settlement proposal.

The Examination Appeals Board considered the following.

With regard to the course of affairs in respect of the review of the first-chance interim examination, the Examination Appeals Board considered that this cannot be relevant to assess the appellant's request for an individual retake. The appellant could have appealed against the grade of her second interim examination, and in doing so she could have argued in what manner she was disadvantaged. However, she did not file an appeal and, therefore, the grade of this course unit is established. The appellant's arguments in that respect can, consequently, not yield the result she would like.

With regard to the circumstances – of a personal nature – as put forward by the appellant which would entail that an individual retake should be granted to her - in spite of the fact that a regular examination opportunity is scheduled within four months - the Examination Appeals Board considered the following.

The Examination Appeals Board seconds the respondent's view that the appellant chooses to prioritise completing an internship abroad above participation in the

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regular programme in order to complete the course unit. The respondent tried to provide an alternative in the settlement proposal that meets the appellant halfway in respect of the disadvantage suffered by her from staying abroad. Instead of a group assignment, she was allowed to hand in an individual assignment with a later deadline. The Examination Appeals Board holds that the respondent made a reasonable proposal to the appellant.

The Examination Appeals Board also concurs with the respondent's view that the grade of 8.5 that was awarded to the appellant for the written assignment cannot be taken into consideration in the event of a new interim examination opportunity. As published in the e-prospectus of the 2016-2017 academic year, the partial grades are only valid during the relevant academic year. In the 2017-2018 academic year, the appellant must comply with the requirements of the course unit that apply at the time.

Furthermore, the Examination Appeals Board holds that the condition to wait at least four months for the next interim examination opportunity of the relevant course unit, as referred to in article 4.8.1 of the R&R, is not of a discriminatory nature to students that start a master's programme in February as compared to students who start in September. Students who start in September and fail to complete a course unit successfully in the first semester may also be required to wait for the regular scheduled interim examination opportunity of the first semester in the consecutive study year.

With regard to the appellant's submission that a fellow student in similar circumstances to herself was indeed allowed an individual retake, the Examination Appeals Board considers, finally, that the appellant did not make it sufficiently plausible that the circumstances of this fellow student were similar to her own. Consequently, her invocation of the principle of equal treatment is not successful.

In view of the above, the Examination Appeals Boards holds that the respondent has rejected the appellant's request for an extra retake with good reason. Since the Examination Appeals Board has not been informed of any other facts or circumstances that could lead to an alternative decision, the appeal must be held unfounded.

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5. The decision

The Examination Appeals Board of Leiden University

holds the appeal **UNFOUNDED**

in view of article 7.61 of the Higher Education and Academic Research Act.

Established by a chamber of the Examination Appeals Board, comprised of H.M. Braam, LL.M., MA (Chair), Dr A.M. Rademaker, Dr K. Beerden, R.A.W. van Pelt, LL.B., and M. Klink (members), in the presence of the Secretary of the Examination Appeals Board, M.S.C.M. Stoop - van de Loo LL.M.

H.M. Braam, LL.M., MA,
Chair

M.S.C.M. Stoop - van de Loo, LL.M.
Secretary

Certified true copy,

Sent on: