

DECISION 24 – 017

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of the Examination Appeals Board of Leiden University
in the matter of the administrative appeal of

██████████ from ██████████, appellant

against

the Board of Examiners of the Master's Programme in Law, respondent.

1. The course of the proceedings

In its decision of 6 December 2023, the respondent assessed that the appellant committed fraud in four assignments. The fraud was found in assignments for the *Capita Selecta of European Law* and *EU Institutional Law & General Principles of EU LAW* course units and in two assignments for the *EU Internal Market and Competition Law* course unit.

The results for *Capita Selecta of European Law* and *EU Institutional Law & General Principles of EU LAW* have been declared invalid. Furthermore, the appellant was barred from further participation in the *Capita Selecta of European Law* course unit in the 2023-2024 academic year. Since the appellant did not complete the *EU Internal Market and Competition Law* course unit with a passing grade, the results for this course unit were not invalidated.

By letter dated 14 January 2024, the appellant lodged an administrative appeal against this decision.

The respondent investigated whether an amicable settlement could be reached. A conversation to this effect took place between the respondent and the appellant on 1 February 2024. No amicable settlement was reached.

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On 7 February 2024, the respondent submitted a letter of defence.

The appeal was considered on 28 February 2024 during a public hearing of a chamber of the Examination Appeals Board. The appellant appeared at the hearing. [REDACTED], [REDACTED] the Board of Examiners, and [REDACTED], [REDACTED] the Board of Examiners, appeared on behalf of the respondent.

2. The position of the appellant

The appellant disagrees with the decision to exclude him from further participation in the *Capita Selecta of European Law* course unit.

The appellant did not intend to commit fraud. He showed the assignments on his laptop to the fellow student. The fellow student suffered from a lot of stress and the appellant wanted to help him. The appellant does not know exactly how that fellow student managed to copy his work.

The appellant holds that a distinction should be made between the person who wrote the work and the person who copied it, when imposing a sanction. The appellant wrote the assignments himself. He did not copy any work. The same sanction was imposed on the fellow student. The appellant believes that a lighter sanction should be imposed on him than on the fellow student.

The appellant's individual circumstances were not sufficiently taken into account. An overlap was observed only with the work of one and the same fellow student. The appellant is from [REDACTED]. He has to make great sacrifices to pay for the master's programme in Leiden. Exclusion from the *Capita selecta* course unit means he will have to retake that course unit in 2024-2025, leading to study delays and high additional costs.

3. The position of the respondent

The respondent believes that the appellant is as guilty of fraud as the fellow student. The appellant showed his work to the fellow student during three course units. According to the respondent, it follows that the appellant knew that the fellow student would make use of his work and did not object. In any case, he should have taken that possibility into account.

The respondent did take the appellant's personal circumstances into account when imposing the sanctions. If a student has cheated multiple times, the Board of Examiners will usually exclude the student from participating in all examinations of the Programme for a certain period of time.

The appellant resides in the Netherlands on the basis of a residence permit for study. To retain the permit, the appellant must obtain at least 50% of the credits per year. Exclusion from participation in examinations for a certain period of time could thus have disproportionately affected the appellant. Therefore, the respondent decided to impose a much lighter sanction.

The appellant was enrolled in the master's programme from 1 February 2023. He has achieved 20 credits to date. The appellant can take the *Capita Selecta of European Law* course unit in the first semester of 2024-2025. The respondent understands that the appellant's residence permit has been extended until January 2025. Only if the appellant passes all the course units next semester could the exclusion for this course unit lead to an additional study period of up to six months.

4. Considerations

In accordance with Article 7.61, paragraph two, of the Higher Education and Academic Research Act (*Wet op het Hoger onderwijs en Wetenschappelijk onderzoek*, "WHW"), the Examination Appeals Board must consider whether the contested decision contravenes the law.

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Imposing a measure within the meaning of Article 7.12b, paragraph two, of the WHW is a measure that is reviewed by the Examination Appeals Board without restraint - also in view of its far-reaching consequences. This concerns both whether a student is guilty of fraud and whether the measure imposed is proportionate to the conduct committed.

The basic principle of the Examination Appeals Board, and of the University itself, is that fraud in any shape or scope whatsoever cannot be tolerated in an academic environment. Academic enterprises will flourish as long as the integrity of scientists is undisputed. Imposing a sanction for fraud does not require a student to have committed the fraud intentionally (see CBE 21-072 ruling). If fraud was not committed with intention, or only to a limited extent, this must be taken into account in the nature and scope of the sanction to be imposed.

Establishing fraud

Imposing a measure within the meaning of Article 7.12b, paragraph two, of the WHW should, as stated above, be regarded as a measure that the Examination Appeals Board must review for proportionality without restraint. The measure must be based explicitly on facts, circumstances, and statements that can support the measure (see CBHO decision of 7 January 2015 in case CBHO 2014/217, <https://www.raadvanstate.nl/overrvs/bestuursrechtspraak/studentenzaken/jurisprudentie-cbho/>).

According to the respondent's Rules and Guidelines (*Regels en Richtlijnen*), fraud is 'any act or omission that makes it wholly or partly impossible to form a correct opinion about someone's knowledge, insight, skills, general attitude, professional attitude or reflection, including in any case: d. exchanging information with another person during an examination or digital examination or practical exercise'.

As the Examination Appeals Board has previously considered in its ruling in cases CBE 17-397 and CBE 17-398, it may also qualify as fraud if a student provides others with an opportunity to commit fraud or plagiarism. This can be done, for example, by allowing cheating during an exam or making an assignment available

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to a student before the submission deadline. By making an assignment available before the submission deadline, the student accepts the possibility that the other person will use the material to cheat or plagiarise. Even if the appellant believed - wrongly, as it turned out - he could trust his fellow student not to copy his work, he gave his fellow student the opportunity to copy reasoning and analysis from his own assignment in his own words. Such appropriations also fall under plagiarism according to Leiden University's plagiarism code of conduct.

First, it is submitted that the respondent has no doubt that the appellant shared his 'own work' with his fellow student. To that extent, in the opinion of the Board, he was not guilty of plagiarism himself. But by sharing assignments made by him in several cases with a fellow student before the submission deadline, he does bear responsibility for providing an opportunity for plagiarism.

Proportionality of sanction

The respondent imposed a sanction on the appellant. The Examination Appeals Board considers that the respondent has provided sufficient justification for the sanction imposed. The following is relevant here.

The appellant is enrolled in a master's programme and has stated that he has previously completed a master's programme. He could therefore be expected to know what is meant by fraud and plagiarism. The fact that the appellant completed his prior education in another country does not alter this. Standards with regard to academic integrity are the same internationally; the appellant should know these. Moreover, it would be reasonable for the appellant to familiarise himself with the rules that apply there when he starts studying in another country in case they differ from what he was used to in his previous studies.

Even if it is taken into account that the appellant was 'only' guilty of facilitating fraud or plagiarism, the imposition of a sanction cannot be waived (compare the ruling in cases CBE 17-397 and CBE 17-398). In the process, the appellant showed his assignments to his fellow student four times. The fact that he was

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caught only once does not negate the fact that he took the risk of being caught repeatedly.

This means that, in the opinion of the Examination Appeals Board, the sanction imposed by the respondent is not disproportionate to the nature and extent of the fraud/plagiarism found. In doing so, the respondent took the appellant's personal circumstances into consideration to a considerable extent. As the appellant resides in the Netherlands on the basis of a residence permit for study, the respondent imposed a relatively mild sanction to prevent this right of residence from being jeopardised by the sanction. In imposing the sanction, the respondent did not distinguish between the appellant and his fellow student because it wanted to avoid the sanction to affect the residence permit in both cases. The Examination Appeals Board could have imagined that the respondent would have imposed significantly heavier sanctions had those consequences not occurred. It would also have been reasonable in that case for the fellow student to have been given a more severe sanction than the appellant. But the fact that the respondent took into account the impact on the residence permit in both cases does not mean that the - already reduced - sanction for the appellant is disproportionate and should be further reduced.

Furthermore, the appellant has not shown that the study delay he will incur is caused solely by the contested decision. Having managed to complete only 20 credits after one year, it is by no means certain that he will have successfully completed all the required courses by the end of the 2023-2024 academic year apart from the *Capita selecta* course.

The Examination Appeals Board concludes that the respondent made a sound and thoroughly substantiated decision and that the sanction imposed is not disproportionate or unreasonable. The administrative appeal is unfounded and the contested decision is upheld.

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The decision

The Examination Appeals Board of Leiden University

holds the administrative 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: O. van Loon, LL.M., (Chair), Dr A.M. Rademaker, J.D. Kuster, BSc, Dr B. Siegerink, and S. Waberi (members), in the presence of the Secretary of the Examination Appeals Board, F.M.Y. Coladarci, LL.M.

O. van Loon, LL.M.
Chair

F.M.Y. Coladarci, LL.M.
Secretary

Sent on:2024

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