



**RULING OF THE MARITIME DISCIPLINARY COURT OF THE
NETHERLANDS OF 8 MARCH 2017 (NO. 1 OF 2017)
IN THE CASE 2016.V5 – SCHELDEGRACHT**

As petitioned by:

the Minister of Infrastructure and the Environment in The Hague,
petitioner,
authorised representative: M. Schipper,
inspector at the Human Environment and Transport Inspectorate,

versus

T. G.,
the person concerned,
defence counsel: Mr M. Starmans.

1. The course of the proceedings

On 4 July 2016, the Maritime Disciplinary Court received a petition from Mr M. Schipper, inspector at the Human Environment and Transport Inspectorate/Shipping, for a disciplinary hearing of the case against the person concerned as the third mate of the Dutch seagoing vessel Scheldegracht. Thirteen appendices were added to the petition.

The Disciplinary Court has notified the person concerned of the petition by letter, enclosing a copy of the petition with appendices and has informed the person concerned of the right of appeal.

On 5 August 2016 an email was received from the person concerned with his statement as an attachment.



The presiding judge stipulated that the oral hearing of the case would be held at 11.00 hours on 25 January 2017 at the offices of the Disciplinary Court in Amsterdam. The petitioner and the person concerned were summoned to appear at the hearing of the Disciplinary Court.

The court hearing was held on 25 January 2017. M. Schipper, inspector at the ILT/Shipping appeared at the hearing for the petitioner. The person concerned appeared, represented by his lawyer.

2. The petition

The following forms the basis for the petition.

The Dutch seagoing vessel Scheldegracht ran aground in the Langelandsbaelt in Denmark on 19 December 2015 (incorrectly stated as 2016 in the petition). At the time of grounding, the person concerned was the officer on watch.

Prior to the grounding the person concerned had changed course to starboard in order to overtake another vessel. The person concerned failed to take sufficient account of one or more of the following factors, thus depriving himself of the opportunity to avoid a certain grounding: the actual depth of the shipping lane on the new course, the draught and the possibility of extra squat effect owing to the reduced Under Keel Clearance (UKC), the exact position of the vessel between the change of course and the grounding.

The person concerned is charged with acting in breach of the principles of good seamanship within the meaning of Section 55a of the Dutch Seafarer's Act.



3. The position of the person concerned

The person concerned has admitted that, viewed in retrospect, he should have carried out the overtaking manoeuvre later in order to avoid the shallows and that this was a factor that he underestimated.

4. Assessment of the petition

A. A Statement of Facts (appendix 10 to the petition, p. 24) – rendered in summarised and concise form in Dutch – includes the statement of the Captain:

On 18 December 2015 the vessel departed from Rauma, Finland, and was on its way to Skagen (Denmark) to bunker, and from there to Eemshaven in the Netherlands. On departure the ship's draught was 8.70 m fore and 9.70 m aft. Since the draught was less than 10 m, the vessel was to follow the southern part of Storebelt route H.

On the evening of 19 December 2016 the person concerned was keeping the bridge watch as third mate from 20.00 to 24.00 hours ((ship's time + UTC + 2). An able seaman was posted on the bridge as a lookout. The ship was sailing at full speed ahead, at a speed of around 17 knots, in the knowledge that it might be necessary to reduce speed if the ship entered shallow waters. The position was determined at around 23:12 hours. The person concerned decided at that time to overtake another vessel, the St Pauli, on her starboard side. The course was changed slightly to starboard in order to pass that vessel at a safe distance.

The speed was reduced to about 15 knots owing to the reduced UKC.

At a given point in time it became clear to the person concerned that there was not enough time or space to complete the overtaking manoeuvre and decided to quickly reduce speed and change course to port in order to allow the St Pauli to pass in front of the Scheldegracht.

At 23.23 hours a strong vibration was felt, the ship's speed sharply reduced and the ship came to a complete halt at 23.25 hours.



The ballast tanks were checked. No intake of water was established. The bow thruster compartment was found to be dry.

B. A Statement of Facts (appendix 11 to the petition, p. 25) – rendered in summarised and concise form in Dutch – includes the statement of Able Seaman J. M.:

He began his watch as lookout on the bridge at 22.00 hours, ship's time. At 23:00 hours he observed another vessel just to the port side. The third mate said that he intended to overtake the ship. Miguel noticed that the distance to that ship was reducing. At around 23:15 hours he saw the third mate change course to starboard. At around 23:22 hours he felt the ship juddering. He saw that the other ship was just in front of him to the port side.

C. A copy of the sea chart for the area in question used and kept on board the Scheldegracht (appendix 8 to the petition) shows that the ship's position was charted at 23:12 and 23:27 hours. At 23:12 hours the ship was well within the indicated route H in the shipping lane for northerly traffic. At 23:27 hours the ship was to the east of this route, indicated in the 10 m line in the chart.

D. The course followed by the vessel is shown in a chart showing the Scheldegracht's AIS track issued by the Danish authorities (appendix 7 to the petition, p. 20). This shows that at around 22:13 hours (CET = UTC+1) the ship changed course slightly to starboard and sailed roughly on that new course to the position at which the ship came to a standstill (in the same position as indicated in the sea chart referred to above at 23:27 hours).

E. The "Notice of Detention" of the Danish authorities (appendix 4 to the petition, pp. 13/14) shows that the position where the Scheldegracht ran aground is in the Langelandsbaelt.



F. At the hearing, rendered in summarised and concise form, the person concerned made the following statement:

On 19 December 2015 at 20:00 hours (ship's time, UTC+2) the person concerned – the third mate on board the Scheldegracht – came to the bridge for his watch. When handing over the watch the first mate told him that the ship was to follow the northerly lane of route H, a sub-traffic separation scheme for vessels with a draught of less than 10 m. The person concerned did this. The vessel was sailing at a speed of approximately 17 knots. As well as the person concerned, an able seaman (Miguel) was on the watch as a lookout that evening.

The weather was calm with a slight wind, a calm sea and there was light rain. The person concerned was not affected by the weather or the tidal current.

The person concerned charted various positions of the Scheldegracht based on the GPS information on the bridge. At a certain point in time the lookout saw another vessel sailing ahead of the Scheldegracht, the St Pauli, also travelling in a northerly direction. The person concerned decided to overtake the St Pauli on her starboard side. He changed course slightly to starboard for that purpose.

At a certain point in time the person concerned also reduced speed in response to vibrations in the ship caused by a reduced under keel clearance.

After some time the person concerned broke off the overtaking manoeuvre because it was taking too long. He intended to return to route H, i.e. move to port. That is the point at which the ship ran aground. The position of the grounding where the ship came to a halt is shown in the chart. The shallows to the east of route H were shown in the chart. A 10 m line for the water depth was drawn in the chart.



After the grounding the ballast tanks and the bow thruster compartment were checked. There were no signs of water or leakages. No damage to the ship was found.

The ship was detained by the Danish authorities, but was released later following an investigation. Assistance was provided by a tug. The ship was able to continue on its voyage. There were no personal injuries. No environmental damage was established.

Consideration was given to how to cross the navigation area in Denmark in the voyage preparation. Route H was noted as the route to follow in the voyage preparation. The person concerned had also seen in the chart that there was a reason to follow route H, i.e. the shallows in the area.

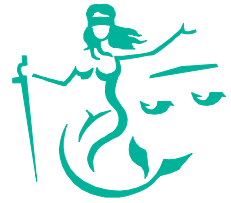
The ship's draught was not checked again after loading in Finland.

There are no meters on board showing the ship's draught by remote. The only way of checking how much water is under the ship or for shallows is to use the echo sounder on board. The draught of this ship is established by reading the draught marks on the hull at the fore, aft and amidships part of the ship.

The person concerned did not establish the ship's position before turning to starboard. He was however aware of the situation, especially of the shallows on the starboard side, and he looked at the paper chart on turning to starboard. There was no electronic chart. There was no ECDIS on the bridge, and therefore no acoustic alarm for shallows or a system in which ECDIS could be used to set safe depths.

There was however an echo sounder on the bridge. There was an alarm on the echo sounder and it was activated, but he does not know which depth the alarm had been set for. He says that he did not hear an alarm.

Radar was also activated, but this did not show a chart or video map. The AIS details of other ships were however shown on this. The radar does not show the shallows.



The difference in speed between the two vessels was approximately 5–6 miles an hour.

The person concerned could see the distance between the vessels on the radar.

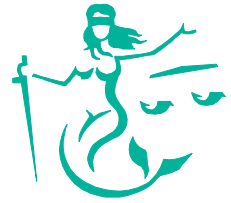
The person concerned checked the margins before turning to starboard. He was focusing on the other ship, the St Pauli, and especially on the safe passing distance on the starboard side of that ship. This was half a mile in front of him. He therefore paid less attention to other means of navigation. The person concerned says that he misinterpreted the scale on the chart.

The person concerned initially considered passing the St Pauli on her port side. However this did not appear to be advisable because he was in a traffic separation scheme. There was no other shipping, in particular no oncoming shipping.

When the watch was handed over the person concerned was briefly told that he was to maintain the current course at the same speed. The weather conditions were good and did not affect the situation. He was to follow route H. No other remarks were made. Nothing else was said about continuing on the current course at a certain speed.

The person concerned simply continued ahead at the same speed. At a certain point in time he reduced speed to 15 knots when he felt the ship vibrating. It appeared that there was insufficient water under the keel. The ship was still responding at that time. The ship did not immediately come to a halt.

The person concerned acknowledges that viewed in retrospect he should have stayed behind the St Pauli and should not have tried to overtake. He felt that he was doing the right thing at the time. He has learnt a lot from the incident. He was concentrating on maintaining a safe passing distance. He was however aware of the depths and shallows, but was not really aware of how far he had moved away from route H. He should have analysed the



system more closely beforehand and determined his position more accurately. He could have read his position on the GPS – whether or not in combination with the radar distance readings – and also his deviation from route H. In the end he was sailing about one mile away from route H. He did not make use of the parallel index technique. Nor was that included in the voyage preparation.

The person concerned stated that his employer has penalised him for the grounding. He was demoted for two months, from third mate to apprentice. After that he resumed his duties as third mate with the same shipping company. He is currently holding that position.

5. The ruling of the Disciplinary Court

Based on the statements and the documents referred to above the following case has been made in this regard.

On 19 December 2015 at around 23:27 hours (UTC+2) the Dutch seagoing vessel Scheldegracht ground in the Langelandsbaelt in Denmark in shallows. At the time of grounding, the person concerned was the officer of the watch. He started his watch at 20:00 hours.

The following were available on the bridge of the Scheldegracht: the sea chart of the area in question, a radar on which the echoes of other ships with their AIS details could be seen, a device showing the GPS position and an echo sounder showing the water depth under the ship. There was no ECDIS with an electronic chart on the bridge.

The ship had been following route H in the lane for northerly traffic for some time.

Another vessel, the St Pauli, was sailing ahead of the Scheldegracht in the same direction. The difference in speed was approximately 5–6 knots. The person concerned decided to overtake the St Pauli on her starboard side and intended to pass her at a safe distance. For that purpose at about 23:13



hours he changed course slightly to starboard. He had read his GPS position in the chart just before that, at 23:12 hours. At that time the ship was still well within Route H. The chart showed that there was shallower water to his easterly, starboard side, indicated with 10 m line. After the change of course to starboard the person concerned continued on roughly the same course. At a given point in time the person concerned felt the ship juddering, apparently caused by the reduced UKC (squat effect). At that point he reduced speed slightly. He decided to break off the overtaking manoeuvre and intended to go back to port, to route H. However this did not take place because the ship ran aground and came to a halt shortly afterwards. The position of the grounding was within the 10 m line.

After coming on watch the person concerned should have checked the ship's position and course sufficiently frequently using the equipment available to him (radar, GPS, echo sounder) and the sea chart. This included checking the anticipated water depths and shallows. This was even more the case prior to leaving the shipping lane of route H and changing course to starboard.

The person concerned was aware of the ship's draught when leaving Finland the day before, which was 9.70 m aft. The sea chart showed that the diagonal distance between route H and the 10 mile line to starboard was less than one mile: only approximately 0.8 miles. It was therefore a risk to change course to starboard there and to leave route H. Continuing on the new course resulted in the ship heading for the shallows. It is clear that the person concerned did not take this sufficiently into account and apparently did not have a clear impression of his own position, the vicinity of the shallows or the danger of his navigation.

It can be presumed that if the person concerned had made proper use of the available navigation equipment he would have noticed in time that after the change of course to starboard the ship would soon enter the area with insufficient depth of water for the ship. In that case the grounding would have been avoided.



It can be concluded that the person concerned did not make proper use of the available navigation equipment before and after the change of course to starboard, which is why he failed to prevent the grounding. He thus acted contrary to the care expected of a good seaman in respect of the persons on board, the vessel, the cargo, the environment and shipping. This constitutes a violation of Sections 4.4 and 55a of the Seafarer's Act.

6. The disciplinary measure

The Maritime Disciplinary Court judges that the person concerned failed in his responsibilities as officer of the watch, which resulted in the vessel grounding. The person concerned did not act as befits a responsible officer of the watch, which meant that the safety of the crew, the vessel, its cargo, and the environment were jeopardised.

In view of the seriousness of the proven conduct, a suspension of the navigation licence would be appropriate. However, since the person concerned has already been subjected to a disciplinary measure by his employer, consisting of demotion for a period of two months and the person concerned has acknowledged his error, and also in view of his young age at the time of the incident, the Disciplinary Court has decided not to impose a disciplinary measure in this case.

7 The decision

The Disciplinary Court:

- declares the objections against the person concerned as stated under point 5 to be well-founded;
- stipulates that the person concerned will not be subjected to a disciplinary measure.



Duly delivered by A.N. van Zelm van Eldik, LL.M., presiding judge, E.R. Ballieux and R.J. Gutteling, members, in the presence of E.H.G. Kleingeld, LL.M., as secretary and pronounced by the presiding judge in public session on 8 March 2017.

A.N. van Zelm van Eldik
presiding judge

E.H.G. Kleingeld, LL.M.
secretary

An appeal against this ruling can be lodged within six weeks of the date of forwarding with the Dutch Trade and Industry Appeals Tribunal ('College van Beroep voor het Bedrijfsleven'), Prins Clauslaan 60, 2595 AJ The Hague, P.O. Box 20021, 2500 EA The Hague, the Netherlands.