MARITIME DISCIPLINARY COURT OF THE NETHERLANDS

RULING OF THE MARITIME DISCIPLINARY COURT OF 7 JUNE 2019 IN THE CASE 2018.V11 – JAN SENIOR ARM 7 (NO. 2 OF 2019)

As petitioned by:

the Minister of Infrastructure and the Environment, now the Ministry of Infrastructure and Water Management,
in The Hague,
petitioner,
authorised representative: K. van der Wal,
inspector at the Human Environment and Transport Inspectorate (ILT)/Shipping in Zwijndrecht;

versus

P. G.,
the person concerned,
counsel: J.S. Bilgi, LLM., and R.R. Crince le Roy, LL.M.

1. The course of the proceedings

On 9 July 2018, the Maritime Disciplinary Court received from M. Schipper, inspector ILT/shipping, a written petition for a disciplinary hearing of the case against the person concerned, P. G., as the chief engineer of the Dutch seagoing fishing vessel Jan Senior. Twenty-one appendices were attached to the petition.

Once the disciplinary board had informed the person concerned of the charges against him, the following persons identified themselves as his authorised representatives:
J.S. Bilgi, LL.M. and R.R. Crince le Roy, LL.M. On his behalf, those lawyers submitted a statement of defence (with appendix) dated 21 September 2018. The inspector replied (with appendices) in a letter dated 14 December 2018,

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after which a rejoinder (with appendices) was filed on behalf of the person concerned in a letter dated 22 January 2019.

The court hearing was held on 05 April 2019. The shipping Inspector, K. van der Wal, accompanied by Inspector S.E. Bakker appeared for the petitioner. The person concerned appeared in person, assisted by his aforementioned counsel, who spoke in accordance with the written pleadings submitted by them. An image recording they brought with them was also shown. The following witnesses were heard at the hearing: reporting officer G. d. M., fisheries inspector at the Netherlands Food and Consumer Product Safety Authority (hereinafter referred to as: NVWA) and K.J. v.d. G., at the time of the event a crew member on the fishing vessel.

At the end of the hearing, in consultation with the person concerned and the inspector, the date of the decision was determined as today's date.

2. The petition

In summarised form, the following forms the basis for the petition.

In the night of Monday 28 to Tuesday 29 August 2017, inspectors of the NVWA intended to carry out a fisheries inspection on board the Dutch-flagged seagoing fishing vessel 'Jan Senior', fishery number ARM 7. J. S. was the captain, also a watchkeeping officer on this vessel (hereafter: the ARM 7), which was sailing in the territorial waters of France. Among other things, he, or the ARM 7, is accused of attempting to evade this inspection, and of allowing a dangerous situation to arise in the process. The dangerous situation was caused by hauling the nets above/inside and continuing to sail while an RHIB (Rigid Hull Inflatable Boat), that was being used to take the inspectors on board the ARM 7 was located alongside the ARM 7, causing the RHIB's propeller to become entangled in the nets, make a rotating movement and, with the two crew members and one of the inspectors on board at that time, be pulled backwards by the ARM 7, partly under water. The accusation

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against the person involved, who had officer rank and was a chief engineer, is that he did not intervene in order to prevent or put an end to the dangerous situation by urging the captain to stop his dangerous action. In the opinion of the inspector, the actions and omissions of the person concerned are contrary to the provisions of Article 4, paragraph 4, in conjunction with Article 55a of the Seafarers Act (standards of good seamanship).

3. The position of the person concerned

The person concerned does not agree with the accusations made against them, for which, in his opinion, there is no evidence. The core of his defence is that he did not notice the RHIB and the danger it was facing or only did so at a late stage, and he cannot therefore be held accountable for what happened.

4. The assessment

annexes to the application

4.1 We first refer below (A to O) to some parts of the annexes to the application which, to a greater or lesser extent, give rise to the findings set out in point 5. It is not the intention to be exhaustive. The fact that other sections have not been mentioned does not mean that they are irrelevant and/or have been disregarded in that respect. In so far as evidence can be derived to the advantage of the person concerned from these other and cited parts, this has also been considered and taken into account in the assessment.

A. The following is known about the ARM 7's vessel data.
The ARM 7 is a Dutch registered fishing vessel from 1987, with a length of 45.68 m and a width of 9.02 m, a gross tonnage of 560 and an engine power of (2000 hp) 1492 kW.

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The following officers must be on board: a captain, a deputy captain and a helmsman/chief engineer.

B. An official report attached to the petition, dated 30 August 2017, drawn up truthfully by G. d. M. and R.F. D., officials of the NVWA, also sworn special investigators in the field of the environment, welfare and infrastructure, (appendix 5, p. 16 ff.), contains the account given by them, in paraphrased form:

On Monday 28 August 2017, the two reporting officers, together with their colleague A.C. F., were present on board the patrol vessel Barend Biesheuvel; G. d. M. and A.C. F. as fishery inspectors and R.F. D. as fishery inspector, also 'mission commander'. Around 18:15 hours the Barend Biesheuvel left the port of Scheveningen to carry out fishery inspections in the North Sea. On the basis of a risk analysis, it was decided to inspect the ARM 7. The VMS showed that the ARM 7 was in French waters. The ARM 7 did not transmit an AIS signal. The French authorities gave their approval for the inspection to be carried out. An RHIB (the AID-5) was to go to the ARM 7 from the Barend Biesheuvel. The equipment of this RHIB, such as the radar and the VHF radio, was tested and found to be in order in Scheveningen. At about 19:45 hours the reporting officers, together with colleague A.C. F., were launched in the RHIB. The crew of the RHIB consisted of W.A. v.d. P. and P.M.P. O. At around 23:50 hours two ships were detected from the RHIB. The RHIB sailed at full speed to one of the ships, the ARM 7 as it turned out, with the navigation lights switched on and then went alongside the ARM 7. The deck lighting of the ARM 7 was not switched on, but the light in the bridge was. There was also light under the space near the bow. In the bow area, where the catch is sorted, cleaned and processed, a number of people were busily walking back and forth. They were wearing T-shirts and were not wearing waterproof, easy to clean clothing. Eye contact was made with one of those people. Reporting officer R.F. D. called up the ARM 7 several times via VHF channel 16. However, these calls were not answered. The ARM 7 continued to sail at a speed of 5 to 6 knots. W.A. v.d. P. shone a spotlight from the RHIB on the

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bridge of the ARM 7, to attract the attention of the captain of the ARM 7. In the absence of a response from the captain, the Reporting officer R.F. D., in his capacity as 'mission commander', ordered the RHIB to be placed alongside the AMR 7, in order to board the ARM 7. The RHIB was then placed against the port side of the ARM 7 at approximately 23:58 hours, after which the reporting officer G. d. M. was the first to board the ARM 7, followed by the reporting officer R.F. D. On board the ARM 7, the reporting officer G. d. M. saw the captain, whom he knew, standing on the bridge, behind the middle window at the front of the bridge, which had been opened. He heard an increase in engine noise from the ARM 7. Reporting officer R.F. D.saw that the AMR 7's booms went up at the moment of boarding. The RHIB was located between the port side of the bow of the ARM 7 and the hauled nets. Reporting officer R.F. D. heard W.A. v.d. P. shouting loudly: “Booms down, booms down" and, and to P.M.P. O.: "Put the engine in neutral.
Reporting officer R.F. D.saw the RHIB floating backwards in relation to the ARM 7. He also heard and saw that the ARM 7 increased speed. He saw that someone from the ARM 7 used the boathook to pick up the net rope (a connection between the pulse wing and the end of the net), but that it was not possible to tie the net rope around the winch. From the port side of the aft deck, reporting officer R.F. D. saw that the RHIB was being pulled backwards by the ARM 7 through the water, with the stern of the RHIB regularly disappearing under water, causing the RHIB to make water. The crew of the RHIB – A.C. F., W.A. v.d. P. and P.M.P. O. – were sitting on the prow of the RHIB. Reporting officer R.F. D., who heard that Reporting officer G. d. M. loudly demanded that the captain stop the ARM 7, went to the bridge and shouted to the captain that the power of the engine had to be cut, which the captain did. Reporting officer G. d. M. had already shouted at the captain on several occasions that the ARM 7 had to be brought to a standstill. He also saw that the booms of the ARM 7, on which the nets are attached, were brought up on both sides. He's heard reporting officer A.C. F. shouting from the RHIB: “stop, please stop, this is going wrong. “Take me off.” When the ARM 7 finally came to a standstill, the reporting officers walked to the port side deck bulwark. There they saw that the RHIB was connected to the

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ARM 7 with a net rope. The RHIB was full of water. A.C. F., W.A. v.d. P. and P.M.P. O. were very emotional. Inspector A.C. F. boarded the ARM 7. Reporting officer R.F. D. told the captain and the other crew of the ARM 7 that fishing was no longer allowed, in order to ensure the safety of the RHIB drivers. The crew of the ARM 7 behaved aggressively and used threatening language. After the captain was confronted, the threatening behaviour stopped. Reporting officer G. d. M. told the captain that he could not haul in until the Barend Biesheuvel had come alongside and the broken RHIB had been recovered. On the bridge equipment, the Reporting officer G. d. M. established the position of the ARM 7: 51.13.599 N and 002.06.952 O, being French territorial sea territory. In the space under the bow (the forecastle) of the ARM 7, the reporting officer G. d. M., together with Inspector A.C. F., saw that a lot of fish was lying on the floor there. There were also empty fish boxes, scattered randomly, and undersized sole was present in the chute. On Tuesday 29 August 2017 at around 03:45 hours the Barend Biesheuvel came alongside. With the help of a second RHIB the broken RHIB was towed to the Barend Biesheuvel. Subsequently, the reporting officer R.F. D. asked the captain to haul in (bring the fishing nets on board). The reporting officers then observed that prohibited net equipment (inner nets with meshes of 4 to 5 cm) were present. When putting the nets overboard again, a crew member made a cutting movement. When the nets were retrieved again, the inner pits appeared to have disappeared. At around 04:45 hours Reporting officer R.F. D. sailed with a spare RHIB from the ARM 7 to the Barend Biesheuvel. Reporting officer G. d. M. and Inspector A.C. F. stayed behind on the ARM 7 and took their seats in the crew quarters. Sometimes they also went to the bridge for a while. The ARM 7 was steamed to Scheveningen by order of the public prosecutor. Once the ARM 7 had been unloaded there, the police arrested the crew. A.C. F., W.A. v.d. P. and P.M.P. O. reported attempted manslaughter against them.

C. An official report of findings, dated 30 August 2017, under oath of office drawn up by G. d. M., referred to above, as attached to the petition (Annex 6, p. 36 ff.), as the account of this reporting party, includes, among

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other things, a repetition of what was cited from the official report referred to under B above:

"I saw one of the [the active people under the bow compartment] looking at the RHIB [..] I had eye contact with him. I recognized that person as J.J. G. and I estimate him to be between 25 and 30 years old. [..] I'm not sure about what period of time everything took place in. It seemed to take an eternity but eventually there was a time span of 2 to 3 minutes between going on board the ARM 7 and reducing the speed of the ARM 7. [..] In July 2016, the ARM 7 was also reported by a reporting officer for fishing with prohibited net facilities'

D. An official report of the hearing of the witness, dated 29 August 2017, attached to the petition, drawn up under solemn affirmation by a senior police officer, National Unit (appendix 7, p. 35 ff.), contains as the testimony of R.F. D. referred to above (in addition to what has already been quoted from the official report referred to under B), among other things:

"We arrived with the RHIB at the ARM 7 around midnight. I saw that it appeared to be sailing at fishing speed, about 5 knots. I saw that no lights were on deck, the navigation lights were on, as were the lights on the bridge. I called up the ARM 7 several times via VHF channel 16. We then sailed alongside about 30 metres from the port side. [..] The VHF had been tested on departure. Because I didn't get an answer, we shone our spotlight to the bridge to let the captain know we were there. I didn't see anyone on the bridge with that spotlight. After this I called the ARM 7 several times via channel 16 and announced ourselves. Because I didn't receive an answer again, I ordered the RHIB driver to go alongside the ARM 7. [..] While we were sailing, I saw that there were four men walking on the foreship. I saw they were not dressed in oilskins and boots. [..] Colleague G. d. M. climbed via the prow of the RHIB over the railing of the ARM 7 and boarded. I then saw that the port boom went up. [..] As I walked forward I saw that the pulse wing with the nets came up. I then boarded the ARM 7. I heard the navigator of our

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RHIB shout to the captain of the RHIB that he had to put the propeller in neutral. I then saw the crew of the ARM 7 with oilskins and boots coming out of the dressing room under the bridge. I saw one of the men, who later turned out to be called W., grab the net rope with a boat hook. I then saw two men putting that rope around a winch. After this I saw that they started to haul in the net rope. When the hook was attached to the winch and had to be paid out, I saw that the RHIB was apparently stuck due to the tension in the net rope. I was surprised that the speed was increased while the nets were being hauled. I saw that the RHIB was apparently being pulled by the fishing vessel. While I was on my way to the bridge I saw that the three RHIB passengers were sitting on the bow and that the back of the RHIB was making water. I also saw that the RHIB was turned around and pulled along. [..]"

E. An official report of findings attached to the petition, dated 30 August 2017, under oath of office drawn up by A.C. F. (appendix 8, p. 38 ff.), includes the following as the account of this reporting officer:

'After this, P.M.P. O., as driver of the RHIB, sailed the RHIB at full speed to the ARM 7. At the same time, I saw that the lights of the RHIB had also been switched on. [..] I saw that W.A. v.d. P. shone a spotlight on the bow or the bridge. I saw from the spotlight that the fishing vessel was indeed the ARM 7. In accordance with the regulations, the RHIB sailed alongside the ARM 7. I heard colleague R.F. D. calling the captain of the ARM 7 via channel 16. [..] W.A. v.d. P. as referred to above also shone a spotlight from the RHIB on the bow and bridge of the ARM 7 in order to get the attention of the captain. I saw that the deck lights on the ARM 7 weren't on. I saw that only the light in the bridge as well as weak light under the space at the bow was lit. [..] Around 00:00 hours I heard and saw that the ARM 7 was moving. I heard by the engine of the ARM 7 that the speed was increased. I saw that we were being pulled backwards. [..] I've shouted at least 10 times "stop, the captain has to stop, this is going to go wrong. Get me off." [..] I went to the front of the RHIB and sat there on the prow. [..] I saw P.M.P. O. sit on the right side of

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me. I saw that W.A. v.d. P. kept calling several times, on channel 16. I saw that at that moment W.A. v.d. P. was already in the water up to his waist. I saw W.A. v.d. P. drop the mobile phone and sit on the left side next to me. I saw that the RHIB was two-thirds flooded. I saw that we still had 1.5 m on the RHIB. I thought at the time we were going to end up in the water. I was scared, I was very anxious! Then I heard that the engine of the ARM 7 was declining sharply. I saw that the RHIB was slowly rising. I saw that the RHIB was full of water. [..] Around 00:11 hours I saw that the RHIB came to a standstill, on the port side near the fishing gear. [..] Around 00:23 hours I saw one of the crew members throwing a weighted rope. This allowed us to get the RHIB on the port side of the ARM 7. [..] I climbed out of the RHIB and jumped aboard the ARM 7. [..] My colleague G. d. M. and I awaited the arrival of the inspection vessel and looked at the space under the bow (the forecastle). We saw that there was a lot of fish on the ground in that room. As I saw, several empty fish boxes lay randomly on the floor of the room below the bow. [..]. I, as well as colleague G. d. M., then saw that there were undersized sole in the chute. [..] On Tuesday 29 August at around 03:45 hours I saw the inspection vessel lying alongside. [..] Subsequent to this, R.F. D. requested that the nets be hauled in. [..] When I boarded the waists on the port and starboard side I saw that there were forbidden net facilities in both waists. [..]'

F. An official report of the hearing of the reporting party, dated 29 August 2017, attached to the petition, drawn up under solemn affirmation/oath of office by senior police offices of the National Unit (appendix 9, p. 43 ff.), contains the following statement of W.A. v.d. P. above:

'[..] I have been a RHIB driver since 1 April 2010. [..] On August 28, 2017 around 20:00 hours we departed with the RHIB. [..] I had made an agreement with my colleague that I would navigate and he would sail. Apart from me and my colleague, there were 3 people from the NVWA. [..] Around 23:50 hours we approached a fishing vessel. By means of a spotlight we saw that it was the ARM 7. [..] Then an employee of the NVWA called the ARM 7 via VHF

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channel 16. [..] While this call was being made we shone the spotlight on the wheelhouse of the ARM 7 to attract attention. [..] The distance from us to the ARM 7 was about 30 metres. We saw people on deck of the ARM 7 walking in front of the ship to the forecastle. [..] The ship was only lit under the ship's forecastle. I saw the ship had navigation lights on. [..]. My colleague indicated that we could come alongside the ARM 7. Then [we] came to port side, at the level of the deckhouse, alongside the ARM 7. This is normal procedure for us. [..] One employee then boarded. When the second officer tried to board and hung on the bulwark of the ARM 7, I saw that the booms were raised. I immediately called on VHF channel 16 to the ARM 7 to stop hauling the nets [..] However, my call was not answered. [..] The moment we lowered the RHIB to the back I saw that the net rope was picked up. This rope is located from the dragnet to the lifting strap of the net and is under water. This rope ended up in the propeller of the RHIB so we were pulled to port side and pulled in reverse direction by the stern of the RHIB. I then called the ARM 7 at least 8 times on VHF channel 16 and demanded that he stop sailing because [..] a life-threatening situation had arisen. [..] There was [..] no response at all to my call to the ARM 7. [..] The RHIB was filled with water because it was carried backwards. At the time of coming alongside we were sailing at a speed of out 5 to 6 knots. I had the impression that at the time of the dragging of the RHIB the speed was increased. [..] I came behind the RHIB at chest height under water and had no control over the RHIB and ended up in a very dangerous situation. [..]. Then I noticed that the ARM 7 stopped sailing. The period of dragging lasted about 1.5 minutes. [..] I saw [..] several people walking on deck of the ARM 7 [..] I heard one of these people say, "Cut that net rope through because we want to fish." [..] Words [..] were heard reacting fiercely and aggressively [..]. I felt threatened by this and the atmosphere was very threatening. [..] Until the Barend Biesheuvel arrived at around 03:45 hours I stayed on board the RHIB with my colleague. [..] The captain and possibly other crew members must have noticed this at the time of the call for inspection and then the [...] coming alongside at the ARM 7. This is because the captain had been called several times on VHF channel 16, the spotlight of the RHIB on the wheelhouse and because at the time of the call I

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saw several people coming on deck and walking towards the bow of the ARM 7. [..] When [..] the net rope touched the propeller, the crew member who operated the rope must have noticed this by the weight of the RHIB, which is 4.5 tonnes in the water. [..]"

G. An official report of the hearing of the witness, dated 29 August 2017, attached to the petition, drawn up under oath of office by a senior police officer, National Unit (appendix 10, p. 47 ff.), contains as a statement of P.M.P. O. as referred to above:

"[..] On Monday, August 28, 2017, at around 23:45 hours, I saw that we were approached by the [..]
ARM 7. I saw [..] the contours of the ship and we shone the ship with our spotlights. [..] According to our established procedure, I was sailed alongside on the port side. From that moment on I kept the same speed as the ARM 7. Before that, we as crew had already made several calls to the crew of the ARM 7 [..] via the usual radio frequency number 16. This frequency is mandatory for all vessels. None of the calls, at least 7 to 9, were responded to. We shone the spotlight and the flashlights on board on the wheelhouse of the ARM 7 several times, but again there was no response. I then placed the RHIB next to the fishing vessel and maintained about two-thirds of the length of the ARM 7 as a position. [..] While we were there I saw at least 5 or 6 crew members of the ARM 7 walking there. Given that we had all the lights on, I'm sure they must have seen us. [..] The sea was calm and visibility was about 10 to 15 metres but it was clear. Our spotlights made sure that I could see where we were but also that the crew of the ARM7 could see us. [..] I suddenly saw that the booms of the ARM 7 went up [..] I didn't have a chance to steer the RHIB away from the ARM 7. At that time I [..] had [..] eye contact with the ARM 7 crew members who were on deck. We shouted several times as loudly as possible that they had to lower the booms. [..] I decided to put the engine in neutral [..] I saw and felt that we were now being dragged along and partly lifted by the nets of the ARM 7. I had no control over the RHIB. I saw and felt that we were turning and that the RHIB was flooded. [..] I saw

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and felt that the ARM 7 continued at the same speed. [..] At that moment I realized that I, A.C. F. and W.A. v.d. P. were in danger of our lives. [..] In the meantime, we kept shouting: "Stop, stop!". [..] I saw and felt that the speed of the ARM 7 slowed down and after a while it came to a standstill. At that moment the booms were also hanging still but they had already been lifted. I saw and felt that we were lying horizontally again [..]. I had oral [..] contact with some crew members of the ARM 7. I heard they wanted us to cut the RHIB free because they wanted to continue fishing. [..]"

H. An official report of the hearing of the witness, drawn up under solemn affirmation and signed on 29 August 2017 by a senior police officer, National Unit, attached to the petition, contains a statement by A.C. F. as mentioned above, containing;

"I think we were dragged for about 10 minutes."

I. From an official report of the hearing of the suspect attached to the petition, drawn up under oath of office and signed on 29 August 2017 by an inspector of police, Unit Zeeland-West Brabant (appendix 14, p. 70 ff.), it appears that P. G. has invoked his right to remain silent in response to substantive questions about the incident. This was also the case when he was questioned a day later by a superintendent and sergeant of the police National Unit, as can be seen from a police report drawn up by them at the time under solemn affirmation (appendix 14A, p. 73 ff.). However, he stated that he is a chief engineer and that he has been doing this work for 37 years.

J. An official report of the hearing on 29 August 2017, attached to the petition (appendix 19, p. 97 ff.) of the person concerned, by two NVWA officials, who are also special investigators, states, among other things, that the captain did not wish to answer to the questions submitted to him at that time as to why he did not have AIS and VMS switched on and why he did not respond to calls on VHF channel 16. When asked, he stated that he sails on a beam trawler vessel with pulse gear. An official report of the hearing of the

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suspect on 30 August 2017, attached to the petition, made under oath of office/solemn affirmation on that day and signed by two police superintendents, National Unit (appendix 19A, p. 101 ff.) shows as his (the captains's) response to questions submitted to him, among others, (Q = question; A = answer):

'Q: What is your position on [the] [..] ARM 7?
A: I'm the captain. I also have command of the ship.
Q: How long have you been working on the ARM 7?
A: I think about 12 years and a long period before that.
[..]
Q: Where were you on the night of Monday 29 August to Tuesday 30 August 2017 between 23:45 and 00:45?
A: I was on the bridge of the ARM 7.
Q: What was the location of the ARM 7 in the above period of time?
A: Within the Sandettie bank. This lies between France and England [..] slightly higher than the Calais Dover line.
[..]
Q: What work were you doing in the above period [..]?
A: I was hauling in the nets.
Q: From [...] the fast motorboat several calls were made to the ARM 7 via the radio [..]
A: I didn't hear anything. I was hauling in the nets. For this I have to go to the controls on the front of the bridge. I'm not in the chair from where I navigate. When I want to operate the booms I have to walk forward from the navigation chair to operate the booms. I can oversee the deck from there.
Q: So when you're working on the boom, you don't hear any VHF communication?
A: No, because there's too much noise from the fishing winch.
Q: The crew of the fast motorboat shone the ARM 7 in the spotlights to force contact with the ARM 7. Why wasn't there a response?
A: I was hauling in the nets. They were almost above water.
Q: But you didn't see any light?

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A: I saw a light from behind but when I am operating the fishing winches I can't do any other work. I have to keep my eyes on the deck. Because this is where my crew are. I have to stop the levers myself [..]
Q: [..] Why did the crew on deck [..] not respond to the [..] signals from the inspectors?
A: They were also in the process of bringing in the nets. One of my crew members, J.J. G., held the rope to bring in the tail of the fishing net. He was already working on this. The zodiac got its propeller caught in the rope and because of this the rope pulled tight and the rope touched his arm. [..]
Q: How long does it take for the nets to be hauled in?
A: This takes about 6 to 8 minutes.
Q: Who serves the booms that hold the fishing nets?
A: That's me.
[..]
Q: Why was the speed of the ARM 7 increased while the fast motorboat became entangled in the fishing nets?
A: As soon as the fishing nets come out of the water, the ship automatically increases its speed. [..]
Q: By retrieving the tail rope and increasing the speed of the ARM 7, the fast motorboat was turned 180 degrees and the back of the fast motorboat hit the water. What was your perception of this?
A: I can't see that from where I'm standing to operate the fishing nets. I look at the side of the woodwork of the bridge as I look down.
Q: And the crew didn't see them?
A: Someone said there was something stuck in the tail rope.
[..]
A: I asked myself what to do about this. I said: “the power will certainly be taken off". He didn't even know what to do himself. We also threw a rope to the zodiac ourselves. I thought K.J. v.d. G. I ordered him to throw a rope to the zodiac [..]
Q: Did you see a rope thrown?
A: Yes, I saw that?
Q: When the inspector was in the wheelhouse [...]

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A: The inspector wasn't in the wheelhouse yet. They weren't there yet. The inspector was on the port side and that door is locked. There was just talk.
[..]
Q: Do you have AIS on board [..]?
A: "Yes, I have [..].'

K. A hearing by two superintendents of police, National Unit, under oath of office/solemn affirmation
dated 31 August 2017 of
suspect K.J. v.d. G. (Appendix 13, p. 64 ff.) includes questions put to him in his statement, including:

'Q: Where were you on the night of Monday 28 August to Tuesday 29 August 2017 between 23:45 and 00:45?
A: On board the ARM 7 [..] I was lying in bed [..]
[..]
Q: What did you know about the incident with the fast motorboat?
A: I was woken up.
Q: By whom?
A: J.A. v. H.
Q: Why were you woken up?
A: He said: "K. there's an inspection on board"
[..]
Q: Can you [..] tell me what happened?
A: I got out of bed. I got a cup of coffee and a cigarette first. I went outside to the deck. [..] I saw a fast motorboat lying there next to our ship. With two men and a woman in it. I asked what was going on. And they were there with a rope from our net in the propeller. We threw a rope to the zodiac so it could come alongside. I threw the rope.
Q: Did you throw the rope of your own volition or were you ordered to do this?
A: I did this on my own.
[..].'

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L. Annex 17, page 88 ff. attached to the petition, report of the questioning of the suspect dated 30 August 2017, made under solemn affirmation by a superintendent and sergeant of Police, National Unit, contains as the statement of J.J. G.:

'Q: Where were you on the night of Monday 28 August to Tuesday 29 August 2017 between 23:45 and 00:45?
A: In the forecastle. [..]
[..]
Q: What work were you doing [..]
A: Stripping fish [..]
Q: According to the inspectors on the fast motorboat they saw the crew of the ARM 7 on deck. Why didn't you and the rest of the crew react [..]
A: I don't know about that. We came to the deck because he was going to haul in. I didn't see a fast motorboat or a floodlight [..]
[…]
Q: Do you want to make any other statement [..]?
A: We were hauling in. I was hauling in the tail rope with my mate. I saw that the Zodiac was behind the ARM 7 [..]
Q: Did you see the Zodiac spinning around [..]?
A: No [..] just that he was probably caught up. I heard that one of the inspectors on deck said: "What's to be done now?" He called this to the Zodiac crew. They shouted back that they didn't know either. Then one of the inspectors called out to the crew on the Zodiac: “Try a channel to the captain". Then the inspector on deck said: “Stop". We, the crew of the ARM 7, also called: “Stop", to the captain of the ARM 7. Then the ship stopped.

M.1 Annex 12 (page 55 ff) contains the report of the hearing on 29 August 2017 of A. v. B., a seaman on board the ARM 7, attached to the petition, contains his response to the questions put to him:

'Q: When and how did you first see the RHIB [..]?
A: For the first time when it floated alongside [..]

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Q: Was the ship still moving at that time?
A: No, we were still then.
[..]
Q: When was the first time you saw that the RHIB [..] was stuck?
A: about 10 minutes after I got out of bed.
[..]
Q: At a certain point, there was a call to stop the ship. Did you hear this call?
A: No comment.
Q: You didn't respond to it. Why not?
A: No answer. [..]'

M.2 Attached as annex 12A (page 59 ff.) to the petition is an official report of the questioning of the accused dated 31 August 2017, which includes in the statement of A. v. B. as mentioned above: 'Q:

How long have you been working on the ARM 7?
A: 3 years.
[..]
Q: At midnight 24:00 hours on Monday 28 August 2017, the fast motorboat of the coastguard Barend Biesheuvel called the ARM 7 via [...] VHF channel 16 for the inspectors to come on board for an inspection under the fisheries law. What can you say about that?
A: Nothing [...] Because I was asleep.
[..]
Q: What do you remember when you woke up and came on deck? [..]?
A: I went to starboard on deck. Because starboard is my place. Everyone has their own place on board. I wanted to start hauling in the nets but I saw that the rig was still partly in the water. [..] I waited another five minutes and then I went to port to check it out. I saw the fast motorboat floating there. [..] then Joan called the captain to say that a rope had to be thrown to it. I then got a rope and K.J. v.d. G. threw that rope to the RHIB [..].
[..]

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Q: What can you tell me about the speed of the ship when the rigs and nets are picked up?
A: When they're almost in, the ship's speed slows down. [..]'

N. Annex 15 (page 78 ff.) attached to the petition, report of the questioning of the suspect dated 31 August 2017, under oath of office/solemn affirmation made by two superintendents of police, National Unit, contains a statement of J.A. v. H.:

'Q: How long have you been working on the ARM 7?
A: Since 2007 [...]
Q: Where were you on the night of Monday 28 to 29 August 2017 between 23:45 and 00:45?
A: I was on deck.
[..]
Q: What activities were you working on in the aforementioned period of time on the ARM 7?
A: At that time I was still working on fish processing and almost finished.
[..]
Q: According to the inspectors on the fast motorboat they saw the crew of the ARM 7 on deck. Why didn't you and the rest of the crew respond to the [..] signals from the inspectors?
A: We were hauling in the nets and they were almost in, and then you can't just stop [..]'

O. An official report of the hearing of the witness (annex 20, pp 111 ff.) attached as appendix to the petition, contains as a statement by J.W. G., senior advisor or fleet manager of Rijksrederij, contains the following:
"I [..], on behalf of Rijkswaterstaat [..], report damage to the engine and further inventory of the RHIB CALLED "AID 5". [..] The engine, the electrical wiring and the complete inventory of the RHIB "AID 5" were under water and destroyed. The RHIB "AID 5" is a total loss [...]'

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from the statements made at the hearing and the video clip shown

4.2.1 At the session of the Disciplinary Court, G. d. M. confirmed the accuracy of the account of his findings (included in the appendices to the petition) as a witness. He denied that - as one of the crew members stated - he, or his colleague R.F. D., from the ARM 7, asked the crew of the RHIB what had to be done. What had to be done was absolutely clear: the power had to be cut off. According to him, tightening the net rope was 'the culprit'; if this had not happened, the RHIB would have remained in control of the situation. The AIS was not switched on aboard the ARM 7, but this had already been observed earlier in the evening.

4.2.2 Witness K.J. v.d. G. stated at the hearing that from the place where the captain stood, the RHIB, which was located alongside/behind the ARM 7, could not be seen. According to him it is also not possible to operate the engine of the ARM 7 from there.

4.3 The person concerned, stated at the hearing that at the time of the incident he was a chief engineer on board the ARM 7. He was processing fish at the time. When, as is the case now, the nets are hauled in, his fixed position is on the starboard side of the ARM 7. He has no sight in his left eye. It was only when the ARM 7 was stationary that he heard someone calling. The RHIB had got caught. Panic had broken out.

4.4 The video clip shown at the hearing, made from the RHIB, shows, among other things, that part of the net is already above water. The RHIB is sailing alongside the ARM 7. The net rope has not yet been pulled into the screw at that moment.

5. The ruling of the Disciplinary Court

5.1 On the basis of the contents of the documents referred to above, the statements of the person concerned and the (further) proceedings at the

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hearing, the following information has emerged with a sufficient degree of certainty in this case.

In the night from Monday 28 to Tuesday 29 August 2017, inspectors of the NVWA – G. d. M., A.C. F. and mission commander R.F. D. – intended to carry out a fisheries inspection on board the ARM 7, a Dutch-flagged fishing vessel, which was then sailing in the territorial waters of France, at the Sandettie Bank. At around 23:50 hours they set out for the ARM 7 with W.A. v.d. P. and P.M.P. O. in a RHIB (the AID 5, length over 8 meters). The sea was calm and visibility was good. The ARM 7 had the navigation lights on. The light on the bridge was also on and there was gleam in the (fish processing) area near/below the bow in front. The sailing speed of the 45.5 metre long ARM 7 was 5 to 6 miles per hour. When the ARM 7 arrived, the RHIB first started to sail with this ship. This happened at a transverse distance of 30 metres from the port side of the ARM 7. From this sailing position (and also before that), repeated calls were made to the ARM 7 from the illuminated RHIB, via VHF channel 16. Because these calls remained unanswered, a spotlight was put on the (bridge of the) ARM 7. That did not lead to contact either. From the RHIB it was seen that several people (in T-shirts) were busy in the bow space. The RHIB was then placed against the port side of the ARM 7 at approximately 23:58 hours, after which the reporting officer G. d. M. was the first to board the ARM 7, followed by the reporting officer R.F. D. The captain was on the bridge of the ARM 7 – behind the opened middle window at the front. Inspector G. d. M. called to him to stop the ARM 7. On the RHIB it was established that the ARM 7 booms/jibs were raised. From the RHIB, the radio channel 16 was used several times to call to stop hauling in the nets. G. d. M., standing on the deck of the ARM 7, also repeatedly called out to the captain that it had to be stopped. R.F. D. went up to the bridge and shouted at the captain that the power had to be cut from the engine, which was then complied with. However the RHIB was by then already entangled in the nets; while P.M.P. O. and W.A. v.d. P. lowered the RHIB, with the motor in neutral position, backwards (compared to the ARM 7), the net rope was hauled from the ARM 7, which ended up in the screw of the RHIB. The RHIB was first

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pulled to port, then turned, and pulled backwards by the travelling ARM 7. The stern of the RHIB was regularly under water, so the RHIB was flooded. This created a life-threatening situation for the three crew members of the RHIB; they were in fear of their lives. Once the ARM 7 had finally stopped, the RHIB slowly returned to a horizontal position. From the ARM 7 a helpline was thrown to the RHIB. After that, Inspector A.C. F., from the RHIB, came aboard the ARM 7. Once the nets of the ARM 7 had been retrieved, the inspectors saw that prohibited net facilities had been installed in the nets. A crew member of the ARM 7 (quickly) cut out the inner nets when the nets were brought back into the water. The RHIB, heavily damaged by the incident, was towed by another RHIB to the patrol vessel Barend Biesheuvel that appeared on site. The ARM 7 sailed to Scheveningen, where the crew was awaited by the police.

5.2 It has also been established that at the time of the event J. S. (i) was the captain of the ARM and (ii) was on watch on this fishing vessel (a beam trawler with pulse gear). He was the only one on the bridge. The inspector's charge will be judged in a separate decision taken today.

5.3 It is an established fact that P. G. has been sailing on the ARM 7 as a chief engineer for a long time. During the night of 28 to 29 August 2017 he was also present and at work, before and during the hauling of the nets, in the forecastle and outside on deck. It is sufficiently plausible that he must have noticed - seen and heard - that an inspection was imminent, that inspectors of the NVWA wanted to board the ARM 7 and that orders were given in a loud voice. He must have noticed that a spotlight was shone on the ARM 7. The statement of his son, J.J. G., also present on deck, confirms that there was a call to the captain before he stopped the ship. It is not plausible that the person concerned - who initially made a different statement - did not see anything at all and first heard/noticed something when the engine of the ARM 7 had already been stopped. Assuming that he was previously aware of the arrival of the inspectors, in view of his officer's rank, the person concerned could have been expected to have persuaded the captain to

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cooperate with the inspection and, to that end, to stop the vessel and to immediately stop hauling in the nets.

6. The disciplinary measure

The Disciplinary Court is of the opinion that the person concerned, failed in his duties as an officer on board the ARM 7. In view of his officer's rank, he could have been expected to have addressed the captain to the effect that the ARM 7 had to be stopped and that willing cooperation had to be given to the forthcoming inspection. His omissions constitute a violation of the regulation of Section 55a of the Dutch Seafarers Act in conjunction with Section 4.4 of that Act: acting or failing to act on board as an officer contrary to the duty of care expected of a good seaman in relation to the persons on board, the ship, the environment and shipping.
Taking into account the seriousness of his offence and what has been demonstrated/made sufficiently plausible, a warning will suffice for him. This is a much lighter measure than demanded. However, the demand was also based on accusations that have not been sufficiently proven, or on a degree of culpability that has not been established. The remaining charges justify the measure set out below. Account was also taken in the favour of the person concerned of the fact that he is no longer working on board a ship.

The fact that there are also criminal proceedings underway and that other sanctions have been or may be imposed, for example in connection with the presence of the inner nets, does not give rise to the waiving of a disciplinary measure.

7. The decision

The Disciplinary Court:

- declares the objections against the person concerned as stated under point 5 to be well-founded;

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- imposes a disciplinary warning on the person concerned.

Duly delivered by J.M. van der Klooster, deputy presiding judge and S. Kramer,
P.L. van Slooten, H.J. IJpma and H. Schaap, (deputy) members,
in the presence of E.H.G. Kleingeld, LL.M., as secretary and pronounced by Mr J.M. van der Klooster, LL.M., in public session on 07 June 2019.

J.M. van der Klooster
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.

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