

**MARITIME DISCIPLINARY COURT
OF THE NETHERLANDS**

**ANNUAL
REPORT
2010**



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DISCIPLINARY
COURT OF THE
NETHERLANDS**



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MARITIME DISCIPLINARY COURT OF THE NETHERLANDS

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GENERAL

The amendment to the Dutch Merchant Shipping Act (*Schepenwet*) came into effect on 1 January 2010 and the Maritime Disciplinary Court of the Netherlands was established on the same date. Since then the Disciplinary Court has been competent to hear cases against captains and ship's officers regarding their acts or failures to act in contravention of the duty of care befitting good seamanship in respect of the crew and passengers, the vessel, its cargo, the environment and shipping.

A case is brought before the Disciplinary Court either upon submission of a petition by the Minister of Transport, Public Works and Water Management or in response to a complaint lodged by an interested party. The Disciplinary Court can also institute cases of its own volition.

The chairman, one vice-chairman, the members and the deputy members were appointed by decree of the Minister of Transport, Public Works and Water Management of 8 February 2010, with retrospective effect to 1 January 2010. On 12 February the first session of the Disciplinary Court was held in the courtroom of the *Beursgebouw* in Amsterdam, during which the court was inaugurated and the chairman, a vice-chairman and the members and deputy members present were sworn in.

The court was completed and all of its members sworn in by 1 July 2010.

Until 1 July 2010, the Disciplinary Court shared the secretariat with the Dutch Maritime Court (*Raad voor de Scheepvaart*). During the first half of 2010 the secretariat's activities were focused primarily on the Dutch Maritime Court. The Court spent this period settling current cases. During this same period the Court held its final session and the closing festivities were organised. Secretarial tasks for the Court continued to be performed after 1 July 2010. Not only had all of the activities relating to cases not yet been brought to a full conclusion on 1 July 2010, the Court's final annual report had not yet been completed on this date either. Also, the Court archive was completely updated and completed after 1 July 2010, and a start was made with digitising the Court's rulings prior to 1995. These final activities had still not been completed at the end of 2010.

Once the first session of the Disciplinary Court had been organised, a start was made with structuring its activities. Comments were submitted on the official draft of the Disciplinary Jurisdiction Framework Act (*Kaderwet Tuchtprocesrecht*), with the Court expressing its concern about the possibility of its operational procedure being radically changed so soon after its establishment. It also emerged that the Court's competence to bring a case of its own volition appears to be at odds with the requirements set by the European Convention on Human Rights for legal proceedings such as disciplinary proceedings.

A start was made with the formation of rules of procedure. A large number of foreign nationals work in the Dutch fleet. They cannot be expected to gain in-depth knowledge of the applicable laws. For that reason it has been decided to consolidate the relevant legal provisions in rules of procedure. As well as these provisions, the rules of procedure will contain stipulations in which the Disciplinary Court clarifies how it will use its authority as and when required. This will generally be done in keeping with the official draft Disciplinary Jurisdiction Framework Act. Once they have been completed the rules of procedure will be translated into English so that foreign mariners will be able to take note of them. It was not possible to complete the rules of procedure in 2010 owing to the sudden death of the secretary of the disciplinary court, D.J. Pimentel on 15 November 2010. They will be completed in 2011.

A website in Dutch and English was built during the year under review. Its contents include a model complaint in Dutch and English.

The working method was also set up during this period. Standard letters in Dutch and English were developed for the various steps to be taken in legal proceedings.

The procedure operated by the Disciplinary Court in accordance with the Maritime Crews Act (*Zeevaartbemanningswet*) is very different from that of the Dutch Maritime Court. Whereas the Dutch Maritime Court was provided with a more or less complete file by the inspector, it is sufficient to provide the Disciplinary Court with the petition or complaint and a number of documents. In some cases a preliminary inquiry is held. Because this was something new, it was also necessary to gain experience in this respect. In the meantime, an initial hearing of witnesses has been conducted in this context. A witness has also been heard by email.

During the year under review two courses were prepared on the request for the Ministry of Transport, Public Works and Water Management for the Maritime Disciplinary Court and the Committee of Inquiry (for shipping accidents) on Curaçao. Each course comprised information about the applicable national ordinance on Curaçao with background information and practical exercises on the hearing of cases in court session.

During the year under review the court was introduced to various authorities in the shipping area. Eight cases were brought before the Disciplinary Court, all in response to a petition of the Minister of Transport, Public Works and Water Management. Under normal circumstances cases that took place at the end of the previous reporting year would not be brought before the court until the next reporting year. That was not possible in 2010.

The Maritime Disciplinary Court of the Netherlands will continue to take shape in 2011.



D. Roemers, Chairman
Amsterdam, April 2011

NEW CASES

Eight new cases were referred to the Maritime Disciplinary Court in 2010. All of them were referred by the Minister of Transport, Public Works and Water Management, the first on 21 May 2010.

A preliminary inquiry was conducted in four of the cases. In one case a witness hearing was conducted with the parties appearing in court. In another case a witness was heard by email. The parties were notified in advance of the questions that would be asked and were given the opportunity to prepare their answers.

RULINGS OF THE MARITIME DISCIPLINARY COURT OF THE NETHERLANDS IN 2010

In 2010 the Maritime Disciplinary Court of the Netherlands did not pronounce any rulings, and neither were any petitions or complaints rejected in a decision made by the chairman.



CHAIRMAN AND MEMBERS OF THE MARITIME DISCIPLINARY COURT OF THE NETHERLANDS IN 2010

CHAIRMAN

D. Roemers
State Councillor with the Council of State

E.R. IJssel de Schepper
*Dual Master / Integrated Captain at Maersk
Shipmanagement
Marine engineer / Captain in the merchant navy
(large ships)*

DEPUTY CHAIRMAN

E.A. Bik
Lawyer practising in Rotterdam

P.J. Lensen
*Chief marine engineer at Wagenborg
Marine engineer*

A.N. van Zelm van Eldik
Vice-president of the District Court in Rotterdam

J.M. Bais
Skipper in marine fishing

J. van de Berg
Formerly skipper in marine fishing

MEMBERS

A.J. Both
*Formerly captain at Shell Tankers B.V.
Captain in the merchant navy (large ships)*

J.C. Muller
Formerly skipper in marine fishing

G. Vooijs
Skipper in marine fishing

F. Karmelk
*Formerly captain at VOPAK Chemical Tankers
B.V. in Dordrecht
Formerly captain in the merchant navy (small
ships)*

DEPUTY MEMBERS

H.W.M. Linssen
*Managing Director, Keppel Verolme
Formerly marine engineer*

J.G. van Oerle
Superintendent at Maritime Performance in Barendrecht
Marine engineer

J.F. Jongbloed
Formerly captain at Jo Tankers B.V. in Spijkenisse
Formerly Captain in the merchant navy (large ships)

J.F. Krijt
Formerly commander at P&O Nedlloyd BV
Formerly captain in the merchant navy

P.L. van Slooten
Skipper in marine fishing

W. Toering
Skipper in marine fishing

J.F. de Boer
Skipper in marine fishing

A. Dekker
Skipper in marine fishing

M.J. van Overklift
Ship owner in the merchant navy (large ships)

C.J.M. Schot
General director at Scheepvaartbedrijf Schot
Ship owner in the merchant navy (large ships)

E.C. Holman
Director of Technische Dienst Boskalis B.V.
Hydraulic engineer

P.F. Vos
Formerly Fleet Manager at Oord Dredging and Marine Contractors
Hydraulic engineer

T.S. de Groot
Pilot

E.G.D. Verbeek
Pilot

F.P.J. de Haan,
sea captain
Head of Hydrography
Hydrography Division of the Royal Navy
Hydrographer

J.L.A. van Aalst,
Vice Admiral, not in service
Formerly Inspector-General for the Army
Hydrographer

SECRETARY

D.J. Pimentel

DEPUTY SECRETARY

D.P.M. Bos
Lawyer at Clifford Chance in Amsterdam

T. Tammes
Lawyer at the Royal Association of Dutch Ship Owners



