

**MARITIME DISCIPLINARY COURT  
OF THE NETHERLANDS**

**ANNUAL  
REPORT  
2011**





**MARITIME  
DISCIPLINARY  
COURT OF THE  
NETHERLANDS**



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## MARITIME DISCIPLINARY COURT OF THE NETHERLANDS

Oudebrugsteeg 11, 1012 JN Amsterdam

Telephone number : 020 - 622 04 77

Fax number : 020 - 626 42 52

Email address : [secretariaat@tuchtcollegevoordescheepvaart.nl](mailto:secretariaat@tuchtcollegevoordescheepvaart.nl)

Website NL : [www.tuchtcollegevoordescheepvaart.nl](http://www.tuchtcollegevoordescheepvaart.nl)

Website ENG : [www.themaritimedisiplinarycourtofthenetherlands.com](http://www.themaritimedisiplinarycourtofthenetherlands.com)



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# GENERAL

The Maritime Disciplinary Court of the Netherlands used the year 2011 to continue to give shape to the disciplinary court's procedure. The rules of procedure were published on the website and thus put into effect on 24 November 2011. The Regulation for the Maritime Disciplinary Court of the Netherlands is not a legislative product originating from the disciplinary court itself. The Dutch Maritime Crews Act (Zeevaartbemanningwet) has not conferred any legislative authority on the Disciplinary Court. The Regulation largely comprises statutory provisions applicable to the Disciplinary Court's activities. The Regulation also sets out how the Disciplinary Court proposes to substantiate the statutory authority conferred on it. For this substantiation inspiration has been sought first and foremost in the official draft of the Act containing rules on disciplinary law in respect of legally regulated professionals – the Disciplinary Law Framework Act.

The Regulation is intended first and foremost as a guide for stakeholders, including seafarers, for whom the relevant legislation may prove somewhat inaccessible in the event of a complaint being filed. An English translation of the Regulation is available for foreign seafarers. The translation is also published on the website.

The production of the Regulation was seriously delayed by the death of the former secretary of the Disciplinary Court, D.J. Pimentel, on 15 November 2010.

It was not until the appointment of the current secretary, E.H.G. Kleingeld, on 1 March 2011 that the work on the Regulation was resumed and completed. Since Mr Kleingeld had to entirely familiarise himself with what was to him a new subject matter, it was not until the date given above that the Regulation saw the light of day.

In January 2011 the chairman of the Disciplinary Court gave two courses on Curaçao for the Maritime Disciplinary Court of the Netherlands and the Committee of Inquiry (for maritime accidents) on Curaçao. Both courses covered the applicable or pending national ordinances on Curaçao and practical exercises on the hearing of cases in court session. Each course covered 5 sessions and was concluded with the presentation of certificates to the participants who successfully completed it.

On 1 March 2011 E.H.G. Kleingeld was appointed secretary of the Maritime Disciplinary Court of the Netherlands. The cutbacks did not leave the Disciplinary Court unscathed. 1 November 2011 saw the departure of management assistant J.C. Konz and the discontinuation of the position she held. In 2011 a start was made with transferring the archive of the Maritime Court of the Netherlands to the National Archive. The main reason for this was the fact that the archive's current location is not sufficiently protected against fire. A fire at the offices of the Disciplinary Court would result in the loss of the archive. Also, there are uncertainties about the development of the current location, and the Disciplinary Court wanted to avoid a situation where the - highly undesirable - forced relocation of the archive would have to take place at an accelerated rate and at great expenses elsewhere.

In 2011 consideration was given to ways of making more intensive use of the Disciplinary Court's localities, in particular for the Ministry of Infrastructure and the Environment. Since November 2011 there have been four meetings at the Disciplinary Court's rooms. The intention is to have the rooms of the Disciplinary Court used for meetings again in 2012. The secretariat of the Disciplinary Court will provide the facilities needed for this purpose. Since November 2011 the Disciplinary Court has also provided space as a teleworking station for an employee of the Ministry of Infrastructure and the Environment. The Disciplinary Court will also be providing this facility in 2012.

In 2011 the Maritime Disciplinary Court of the Netherlands published 5 rulings and a chairman's decision. It was notable that alcohol played a role in half of the published cases. Alcohol played an important role in two of these cases. In these cases, the navigation licence of those concerned was suspended for a longer period of time. Another notable aspect was that foreign subjects generally left the Dutch merchant navy following the incident in which they were involved and could not be reached again or placed themselves out of reach after initial contact was made with them. The measures taken were limited to the Netherlands. The Disciplinary Court finds it unacceptable that people who have had their navigation licence revoked for longer periods of time for instance for excessive alcohol consumption are able to continue their careers elsewhere in the European Union without any consequences and calls for an inquiry into an arrangement in this regard. One petition for a disciplinary hearing was withdrawn shortly before the hearing by the Minister of Transport, Public Works and Water Management, now the Minister of Infrastructure and the Environment.

In 2011 two cases were filed by the Minister of Transport, Public Works and Water Management, now the Minister of Infrastructure and the Environment. The Disciplinary Court has been given to understand that there are more cases that lend themselves to a petition for a hearing by the Disciplinary Court but that they are not filed owing to a lack of manpower. The Disciplinary Court regards this situation as being undesirable: the optimisation of safety in merchant shipping and sea fishing is ultimately one of the principal aims of the Disciplinary Court's work, and that aim cannot be achieved if eligible cases are not heard.

The first complaint was received in 2011. A preliminary inquiry was conducted in this case. When hearing the cases the Disciplinary Court came up against various points requiring improvement in the Dutch Maritime Crews Act. These points have been reported to the Ministry of Infrastructure and the Environment for inclusion in legislative amendments.

In 2011 stakeholders asked the secretariat of the Disciplinary Court on several occasions for assistance with investigating causes of the Maritime Court of the Netherlands. Most of these stakeholders had a personal interest in these cases. The archive of the Maritime Court of the Netherlands was also consulted regularly by journalists, authors and historians in 2011. A total of 23 written requests for information were submitted in 2011. The requested assistance was given wherever possible.

On 1 February 2011, A.J. Both was given an honourable discharge as a member of the Disciplinary Court upon reaching the age of seventy. A.J. Both died on 6 March 2011, before the Disciplinary Tribunal was able to bid him an appropriate farewell. A.J. Both served as a member of the Maritime Court of the Netherlands and the Disciplinary Court of the Netherlands for many years.

A.J. Both was succeeded as a member of the Disciplinary Court by R.J. Gutteling. At his own request E.G.D. Verbeek was granted an honourable discharge as a deputy member of the Disciplinary Court on 30 November 2011. R.J.N. de Haan was appointed as his successor on 1 December 2011.

The maritime library of the Disciplinary Court was updated during the year under review. The members of the Disciplinary Court continued to familiarise themselves with the various shipping authorities and existing contacts were intensified. In particular, contact was made with educational institutes. In 2012, these institutes will be given information about the activities of the Disciplinary Court on request.

The Disciplinary Court will continue its activities in 2012. The secretary will complete a course as a maritime investigator in 2012.



D. Roemers, chairman  
Amsterdam, February 2012



# NEW CASES

In 2011 two new cases were filed by means of a petition of the Minister Transport, Public Works and Water Management, now the Minister of Infrastructure and the Environment. One case was filed in the form of a complaint by a person on board a ship.

A comparison of the 2011 figures with those of 2010 is given in the table below.

Year	Petition of the Minister	Complaints	Preliminary investigations	Number of cases settled by chairman's decision	Number of cases investigated at a hearing and published
2010	8	0	4	0	0
2011	2	1	1	1	5*

\* In 2011 one case was withdrawn by the Minister

The rulings of the Maritime Disciplinary Court have been available since 2011 on Tuchtrecht.nl: [www.tuchtrecht.nl](http://www.tuchtrecht.nl)

and on the website of the Maritime Disciplinary Court of the Netherlands: [www.tuchtcollegevoordeschepvaart.nl](http://www.tuchtcollegevoordeschepvaart.nl).

The rulings translated into English are given on the English site of the Disciplinary Court: [www.themaritimedisciplinarycourtofthenetherlands.com](http://www.themaritimedisciplinarycourtofthenetherlands.com).

# PUBLISHED RULINGS OF THE MARITIME DISCIPLINARY COURT OF THE NETHERLANDS IN 2011

## MERCHANT SHIPPING 2011

Of the 6 cases settled by the Disciplinary Court or the Chairman of the Court, there were three in which alcohol played a role. Two cases involved an accusation related to navigation. One case related to the flooding of a forepeak tank.

### “LITTLE JANE” (RULING 3 IN 2011 – CASE NUMBER 2010.V1)

*Person concerned: the captain*

The captain was accused of drunkenness in charge of a vessel on the Elbe (Germany) on 6 January 2010.

The judgement of the Disciplinary Court was that by being drunk in charge of a vessel on the Elbe at approximately 18.30 hours on 6 January 2010, the person concerned acted contrary to the principles of good seamanship.

Evidence of drunkenness was provided by the result of the breath test carried out on 6 January 2010 at 21.14 and 21.38 hours, the results of which were a blood alcohol level of 1.84 and 1.73



respectively, as well as the alcohol content of a blood test taken on 6 January at 22.50 hours, as determined by the alcohol laboratory of the University Clinic Hamburg-Eppendorf. Result: blood alcohol level 1.50.

In view of his recalcitrant, irresponsible, incomprehensible and dangerous navigation between 18.00 and 18.30 hours, no credence was attached to the mere statement of the captain that he had drunk a substantial amount of alcohol after finishing the trip between 19.00 and 20.00 hours.

The Disciplinary Court derived this navigation conduct and the attitude of the person concerned from the statement of the pilot, the report of the duty station officer of the river station Brunsbüttel to the Water Police and the radar plot of the track of the “Little Jane” as submitted by the river station.

The captain’s navigation licence was suspended for a period of one year.

### “SINGELDIEP” (RULING 2 IN 2011 – CASE NUMBER 2010.V2)

*Person concerned: the chief engineer*

The person concerned was accused of deactivating a bilge alarm between 28 February and 3 March 2010, as a result of which the bow thruster compartment was able to fill up with (sea)water (unnoticed) during the voyage.

The Disciplinary Court judged that no plausible case had been made to the effect that the person concerned deactivated the bilge alarm during the stated period. The court judged that the unsigned statement said to have been made by the person concerned to the two inspectors of the Netherlands Shipping Inspectorate, which the person concerned denied with substantiation in his defence, as being insufficient for this purpose.

The objection against the person concerned was dismissed.

### “EEMS SKY” (RULING 5 IN 2011 – CASE NUMBER 2010.V3)

*Person concerned: the captain*

The captain was initially accused of sailing under the influence of alcohol on the Westerschelde on 21 February 2010 and that he left the bridge under the influence of alcohol during this voyage.

Following an amendment to the petition the captain was accused of not being available to correctly perform his duties as a result of excessive alcohol consumption.

The Disciplinary Court judged the amendment to the petition to be admissible since the petition related to the same body of facts following its amendment.

The Disciplinary Court found it proven that as a result of his excessive alcohol consumption on 21 February 2010 the person concerned was under the influence of alcohol from 6 am to the time of the breath test at 1 pm and was unable to properly perform his duties. The person himself had relinquished his duties and left the watch to the first mate. He thus evaded his obligations as duty officer and left the mate, who had spent a long time on watch and was relatively inexperienced, to attend to the navigation in pilot waters. In the view of the Disciplinary Court, this constituted an additional risk.

Evidence of drunkenness was provided by the result of the test carried out on 21 February 2010 as provided for in article 27, paragraph 2a of the Shipping Traffic Act, with a result of 1155 ug/cl, the statements of the person concerned and the first mate and the statement of the police officers who carried out the investigation on Sunday 21 February 2010.

The captain was suspended for 12 months, with a conditional period of 3 months. The operational period was set at 2 years.

## “FLINTERFOREST” (RULING 6 IN 2011 – CASE NUMBER 2010.V8)

*Person concerned: the captain*

The person concerned was accused of conducting navigation without due care, without keeping a proper lookout, without an activated watch alarm and without posting a lookout, as a result of which the “Flinterforest” grounded at about 04.55 hours on 13 August 2010. The Disciplinary Court found that the person concerned had grossly neglected his duties as captain on watch. The captain was sailing in a busy, buoyed waterway, the Öresund (Sweden). He was asleep when a lookout was needed and had sent the lookout away. It was judged that no plausible case had been made to the effect that the watch alarm had been deactivated. The Disciplinary Court took the view that it was hard to imagine less careful navigation than that of the person concerned.

‘Fatigue’ was not considered plausible on the basis of any statement made by the person concerned. The person concerned had not slept during the eight hours available prior to his watch but had consumed a moderate amount of alcohol during this period and had sent his lookout away. This was not indicative of ‘fatigue’.

The Disciplinary Court judged that the accusation of navigation without due care was proven on the basis of a report of the Swedish Coastguard.

The navigation licence of the person concerned was suspended for a period of six weeks.

In sentencing the accused the Disciplinary Court assumed that the person concerned had been held to account for his alcohol consumption by the Swedish authorities.

## “RHODANUS” (DECISION OF THE CHAIRMAN OF THE MARITIME DISCIPLINARY COURT OF THE NETHERLANDS, CASE NUMBER 2010.V5)

*Person concerned: Duty officer (originating from the former Soviet Union)*

The person concerned was accused of not keeping an adequate lookout in the Strait of Bonifacio on 20 February 2010. The person concerned is said to have left the recommended route in this strait, thus risking grounding. The person concerned is said to have been asleep on watch.

The petition of the Minister of Transport, Public Works and Water Management was based on a request made by the French Embassy for this case to be investigated.

The chairman of the court rejected the petition for a disciplinary hearing as being manifestly unfounded.

His grounds for this were that the entered documents of the French Embassy (understandably) did not contain the names of the captain or the duty officer and that the documents did not contain any indications that the person concerned was the duty officer at the time of the incident.

The person concerned did not respond to the request to submit a defence. Neither was it expected that he would respond to an invitation to a hearing.

The chairman further judged that there was insufficient reason to institute a preliminary investigation to establish who the duty officer was at the time of the incident.

The Dutch Maritime Crews Act does not give the preliminary investigator the authority to request information, as a result of which it was not possible to request information from the French Embassy or the MRCC Roma mentioned in the documents.

The documents did not contain the names of people on board the “Rhodanus” who could serve as witnesses, and there was not considered to be any point in paying a visit to the ship long after the incident.

There was therefore no reason to suppose that a preliminary investigation would yield any indications to the effect that the person concerned was the duty officer at the time of the incident.

# SEA FISHING 2011

## “HERCULUS ZK 65 PBBC” (RULING 4 IN 2011 - CASE NUMBER 2010.V7)

*Person concerned: the captain*

The person concerned is accused of the following:

- that on Monday 21 June 2010 at approximately 03.10 hours UTC he did not keep an adequate lookout, as a result of which the ship ran aground on the southern pier of IJmuiden and partially flooded.
- that he failed to keep the crew list up-to-date,
- that he sailed undermanned at least during the following voyages (with a crew of two rather than three):

From	To
15-03	19-03
15-05	07-05
31-05	03-06
01-02	05-02
25-??	27-??
31-??	03-??
17-??	20-??

Based on the statement of the person concerned in his defence and the statement of the Inspector of the Shipping Inspectorate, the Disciplinary Court found that a plausible case had been made to the effect that the person concerned was not keeping a proper lookout at the time of the grounding.

Based on the report of the Inspector on the visit to the “Herculus ZK 65” and the statement of the person concerned in the defence, the Disciplinary Court found that a plausible case had been made to the effect that the person concerned failed to maintain crew lists.

Since the case file did not contain any evidence that the person concerned had sailed with a crew of two in the stated voyages, the Disciplinary Court dismissed the third objection.

The navigation licence of the person concerned was suspended for a period of two months, one month conditionally. The operational period was set at 2 years.

## “NOORDZEE GO 27” WITHDRAWAL IN CASE NUMBER 2010.V6

*Person concerned: the captain*

The person concerned was accused of acting contrary to the provisions for the prevention of collisions at sea in that on 27 October 2010, as duty officer of the “Noordzee GO27”, he collided with a ship at anchor, “Janina”, in position 51°53,6’N, 003° 29,7’.

The petition for a disciplinary hearing was withdrawn five days before the scheduled hearing by the Minister of Transport, Public Works and Water Management, now the Minister of Infrastructure and the Environment.

# COMPOSITION OF THE MARITIME COURT OF THE NETHERLANDS IN 2011

## CHAIRMAN

D. Roemers  
*State Councillor with the Council of State*

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

## DEPUTY CHAIRMAN

E.A. Bik  
*Lawyer practising in Rotterdam*

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

A.N. van Zelm van Eldik  
*Vice chairman at the District Court in Rotterdam*

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

## MEMBERS

A.J. Both (until 1 February 2010)  
*Formerly captain at Shell Tankers B.V.*  
*Formerly Captain in the merchant navy (large  
ships)*

J.M. Bais  
*Skipper in marine fishing*

J. van de Berg  
*Formerly skipper in marine fishing*

R.J. Gutteling (from 1 February 2010)  
*Head of the Port Coordination Centre, deputy  
Harbourmaster*  
*Formerly Captain in the merchant navy (large  
ships)*

J.C. Muller  
*Formerly skipper in marine fishing*

G. Vooijs  
*Skipper in marine fishing*



## 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 (until 1 December 2010)

*Pilot*

R.J.N. de Haan (from 1 December 2010)

*Pilot*

F.P.J. de Haan

*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

E.H.G. Kleingeld (from 1 March 2011)

## DEPUTY SECRETARY

D.P.M. Bos

*Legal counsel at Royal Ahold N.V.*

T. Tammes

*Lawyer at the Royal Association of Dutch Ship Owners*

## FILE VIEWED BY APPLICANT AT OFFICES

date	application by	ship's name	accident	result	action
8-mrt-11	Rijkswaterstaat, investigation related to regulation		jaren 80	no file	referred
28-mrt-11	2nd mate, on board during disaster	Taria	1953	file in archive	ruling sent
4-apr-11	stakeholder	Sophocles	1965	file in archive	ruling sent
2-jul-11	stakeholder	Anna Broere	1988	file in archive	ruling sent
4-jul-11	lawyer	Al Shaymaa	2007	only preliminary investigation SI	copy preliminary investigation sent
8-aug-11	writer	SEAM 1	1964	no file	referred
11-aug-11	family member	Leliegracht	1979	no file	referred
13-aug-11	writer	Upesi	1961	no file	
17-aug-11	family member	HD10	1919	file at National Archive	referred
4-okt-11	family member	IJM63	1918	file at National Archive	referred
2-nov-11	person on board during disaster	Metula	1976	file in archive	ruling sent
6-nov-11	writer	Merlijn	1971	file in archive	ruling sent
8-nov-11	student	Mighty Servant 3	2008	file in archive	copied and sent
29-nov-11	student	Mighty Servant 3	2008	file in archive	addition to previous application
30-nov-11	historian	Olympic Dream	1987	file in archive	ruling sent
6-dec-11	inspector Transport and Water Management Inspectorate	Annie Hillina KW170	2008	file held in archive	copy preliminary investigation sent
7-dec-11	inspector Transport and Water Management Inspectorate	Liverpool Bridge	1976	no file	
14-dec-11	student				investigation MOB cases, sent to Transport and Water Management Inspectorate
15-dec-11	historian	Hollandsch Diep	1919	file at National Archive	referred
20-dec-11	family member, surviving relative	Merlijn	1971	file in archive	ruling sent
21-dec-11	former marine engineer on board during disaster	Ham 308	1971	file held in archive	file viewed by applicant at offices
27-dec-11	journalist, research for an article in newspaper NRC	seaman's book Henk Heithuis	1957	file held in archive	file viewed by applicant at offices
30-dec-11	former fisherman, on board during disaster	Annie IJ14	1954	file held in archive	file viewed by applicant at offices





