

**MARITIME DISCIPLINARY COURT
OF THE NETHERLANDS**

**ANNUAL
REPORT
2020**



MARITIME DISCIPLINARY COURT OF THE NETHERLANDS

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**MARITIME
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NETHERLANDS**



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GENERAL

It will be inconceivable for any organisation not to mention the words corona or COVID-19 in its 2020 annual report. The Maritime Disciplinary Court is no exception to this. The global pandemic initially led to the cancellation of our anniversary meeting in March 2020. Also, the first hearings were not possible until the autumn when the initial lockdown was over and we had established a safety protocol. In the final months of the year, we still managed to handle seven cases, four of which before a full tribunal. Taking advantage of the opportunity given in the Second Comprehensive COVID Act-19, the hearings in the last two cases were held online on 18 December 2020. You will find the rulings in next year's annual report.

Summaries of the first five cases are given further on in this annual report. These summaries give only an impression of the cases handled. You will see that we have now included several practical recommendations in almost all cases!

The full text of the rulings can be found in Dutch at www.tuchtcollegevoordescheepvaart.nl and in English at www.mdcn.nl.

In 2020 the ILT submitted 12 new petitions.

There were various personnel changes during the year under review.

Diederik Bos, who has been our permanent deputy secretary from the start, was succeeded by two new colleagues: Kiki Bouchla and Noortje Dooting. In addition, Toine Barten (hydrographer) and Jack Spaan (hydraulic engineer) were appointed to replace Theo Hamburger and Jan Preesman, respectively.

Regular (online) consultations are held with the Maritime Affairs Directorate, Shipping Department, of the Ministry of Infrastructure and Water Management, and with the Shipping Domain of the Human Environment and Transport Inspectorate and the National Office for Serious Fraud, Environmental Crime and Asset Confiscation.

Amsterdam, 28 February 2021



Peter Santema (presiding judge)

NEW CASES AND SETTLED CASES

Year	Petitions of the Minister	Complaints	Preliminary investigations	Number of cases settled by the presiding judge's decision	Number of cases ruling
2010	8	0	4	0	0
2011*	2	1	1	1	6
2012	7	0	2	1	6
2013	10	0	0	0	6
2014*	5	0	0	0	12
2015	10	0	0	0	6
2016	10	0	0	0	6
2017	10	0	0	0	12
2018	13	0	0	0	12
2019	3	0	1	0	7
2020	12	0	0	0	5
Total	90	1	8	2	78

* In 2011 one case and in 2014 two cases were withdrawn by the minister.

RULINGS OF THE MARITIME DISCIPLINARY COURT OF THE NETHERLANDS IN 2020

All of the cases heard addressed the question of whether there had been any acts or omissions that came into conflict with the duty of care of the person concerned expected of a good seaman in respect of the persons on board, the vessel, the cargo, the environment and shipping within the meaning of Article 55a of the Dutch Seafarers Act.

ALANA EVITA

RULING OF 20 NOVEMBER 2020
NO. 1 OF 2020
CASE 2019.V1-ALANA EVITA

Person concerned: the captain

In the night of Wednesday 20 March to Thursday 21 March 2019, an incident took place in which part of the crew of the Dutch freighter Alana Evita left the vessel on the lifeboat/MOB boat and went to the mainland (Barry-UK). In an attempt to return to the vessel they became lost and were eventually found after a SAR operation by the British Coast Guard.

The Inspector made the following accusations against the person concerned:

- he chose to leave the vessel, together with others, including the chief mate. As a result, the vessel was left without a crew or an officer of the watch.
- Of the remaining crew on the Alana Evita, only the AB on the bridge had been informed of the actual departure.
- The person concerned did not ensure that the conditions for keeping a safe anchor watch on the bridge were met.
- He had not made proper preparations for the trip to Barry and back and had not consulted the weather forecast.
- The person concerned tried to sail back on the MOB boat to the Alana Evita in the dark, in the mist and without navigational aids. In so doing, he put the other crew members at risk.

The person concerned acknowledged the facts and the objections and accepted responsibility for them. After examining the petition and hearing the person concerned, the Disciplinary Court also found the aforementioned allegations of the Inspector to be well-founded. The Disciplinary Court stated that the captain had failed to ensure that his ship was kept on a safe anchor watch. Furthermore, he and the chief mate could not be contacted for many hours by the seaman keeping the bridge watch.

The most serious charge was that the person concerned and chief mate failed to prepare the trip with the MOB boat to the mainland, as a result of which they endangered themselves and the third person on board. As well as the weather, they had also misjudged the current, the distance to shore and the weight of the boat, as a result of which they had insufficient fuel on board. Moreover, because they were not equipped with adequate navigation equipment, they lost their way and the authorities were compelled to carry out a search and rescue operation.

In view of the seriousness of the conduct, the Disciplinary Court considered it right and proper to suspend the navigation licence for eight weeks. Since the person concerned had been dismissed as a result of this incident and as a young captain appeared to have learned his lesson, four of the eight weeks were imposed conditionally.

Practical recommendations:

When using a lifeboat/MOB-boat it is important to ensure that the boat is equipped with a compass, life jackets, a radar-reflector, a flashlight, a medical kit, bailing instrument, etc. in accordance with SOLAS.

In practice, this equipment is usually kept outside the open MOB boat to protect it from the weather. However, this equipment must be on board on each occasion that the boat is used.

ALANA EVITA

RULING OF 20 NOVEMBER 2020
NO. 2 OF 2020
CASE 2019.V2- ALANA EVITA

Person concerned: the chief mate

Case: see above.

The Inspector made the following accusations against the person concerned:

- The person concerned chose to go with the captain to the mainland and leave the Alana Evita. As a result, the vessel was left understaffed and without a watch officer.
- Of the remaining crew on the Alana Evita, only the AB on the bridge had been informed of the actual departure.
- The person concerned had not appropriately prepared for the trip to Barry and back. The weather forecast was not checked.
- He had left his phone a board the Alana Evita, making him unreachable by the remaining crew.

The person concerned did not respond to the summons to the hearing and did not appear at the hearing. After examining the petition and accompanying documents, the Disciplinary Court considered the above-mentioned allegations of the Inspector to be well-founded and further found that - although the captain was responsible for keeping a safe anchor watch on the bridge - in this case, it had not been stated nor demonstrated that the chief mate had alerted the master to his obligation.

The most serious charge was that the person concerned and captain failed to prepare the trip with the MOB boat to the mainland, as a result of which they endangered themselves and the third person on board. Despite the fact that the person concerned had not taken his telephone with him and was therefore less reachable, the Disciplinary Court considers that it would be going too far to judge that he, too, acted contrary to the principles of good seamanship. Instruments other than a private telephone are more appropriate for navigation and communication purposes.

In view of the seriousness of this conduct, the Disciplinary Court considered it appropriate to withdraw the navigation licence of the person concerned for a period of four weeks, of which two weeks conditionally.

Practical recommendations:

See in this respect case 2019.V1-ALANA EVITA.

VLISTDIEP

RULING OF 20 NOVEMBER 2020
NO. 3 OF 2020
CASE 2020.V2-VLISTDIEP

Person concerned: the captain

On 9 May 2019, the Dutch-flagged cargo ship Vlistdiep had a collision with the anchored ship Copenhagen, flying the flag of Antigua Barbuda, on leaving the port of Georgetown in Guyana.

The Inspector made the following accusations against the person concerned:

- A: That he had made the departure plans. Although the bow thruster was out of order, this did not affect his departure plans.
- B: He left in a hurry, under pressure from the agent. Because the ship had to leave so quickly, it was not possible to make use of one or more tugboats.
- C: On departure, the person concerned relinquished command of the ship to the (senior) pilot.

When asked, the Inspector clarified at the hearing that the first and second objections were to be viewed in their mutual relation, i.e. a non-operational bow thruster and the pressure of time that caused a hasty departure, while there was little room to manoeuvre. The third objection is to be interpreted in such a way that it accuses the captain of having transferred the command to the (senior) pilot and that it does not directly blame the captain for the manner of manoeuvring which led to the collision.

The person concerned has stated that he will not be making any protest and will not be appearing at the hearing. Leave was granted to proceed in default of appearance against him. The Disciplinary Court found that it is not in itself unseamanlike to depart with a defective bow thruster and without tugs. Even without outside pressure, this is not necessarily irresponsible. According to the Disciplinary Court, under certain circumstances (currents, wind, proximity of other ships, etc.), this may be the case, but other circumstances have not been described sufficiently precisely by the Inspector in her objections to the person concerned.

The Disciplinary Court did however find that the captain had indeed relinquished control - in the sense of ultimate responsibility - of the ship upon departure. Not only does the captain remain ultimately responsible for navigation within the meaning of the law; he must also monitor whether manoeuvring is safe in practice. In this case he controlled the propulsion and did not appear to have a sufficient overview of the safety of the manoeuvre himself. In view of the seriousness of the conduct, the Disciplinary Court considered it right and proper to suspend his navigation licence for one week.

Practical recommendations:

Because of his or her knowledge of the situation at the location, the pilot advises the captain on how to navigate. In many ports it is customary for the pilot to give the commands. However, the captain remains ultimately responsible and should fulfil this responsibility by keeping a clear overview of manoeuvring so that he can intervene immediately if necessary.

DINTELSTROOM

RULING OF 20 NOVEMBER 2020
NO. 4 OF 2020
CASE 2019.V3-DINTELSTROOM

Person concerned: the captain

On Monday 17 September 2018 an industrial accident took place in which the chief mate of the Dutch tugboat Dintelstroom was seriously injured. During the rewinding of a new towing wire, this towing wire suddenly ‘whipped’ over the towing pin and struck the chief mate. He sustained serious injuries (e.g. dislocated knee, perforated lung and broken ribs).

According to the Inspector:

- the person concerned chose not to hold a toolbox meeting prior to the work.
- The person concerned chose to steer the vessel using the autopilot, knowing that the gyrocompass was malfunctioning.
- Despite the fact that three-quarters of the towing wire had already been wound up, the person concerned had not yet made any preparations to switch to manual steering, even though he had thought in advance that he would have to control the last 200 to 300 metres (more than a quarter of the wire) manually.
- The person concerned did not switch to manual steering until the autopilot alarm sounded, but when he did so he failed to ascertain the rudder angle for manual operation.
- The person concerned did not make any clear agreements about who was in charge of the work on the aft deck.
- As a result of the above, the person concerned endangered the other crew, and the chief mate was seriously injured.

In view of the (formal) defences put forward by the counsel for the person concerned, the Disciplinary Court found that the Dintelstroom was sailing under a Dutch flag in foreign waters and therefore fell within the scope of the Seafarers Act and the standard of good seamanship for which it provides. On the basis of the contents of the documents and the statements made by the person concerned at the hearing, the Disciplinary Court accepted the Inspector’s accusation that the person concerned had not held a toolbox meeting with an accompanying risk analysis prior to spooling, although this was necessary in view of the high-risk nature of the work. The person concerned chose to carry out the spooling operation for the first time using the autopilot, but had not prepared this method sufficiently and did not discuss it adequately with the crew. Moreover, the person concerned did not make clear agreements about who was in charge and supervising the work on the aft deck. The crew’s experience does not detract from the importance of such agreements. When the autopilot alarm sounded, the person concerned should have responded adequately by switching to manual steering immediately and communicating this to the crew. Instead, he gave priority to stopping the alarm sound as soon as possible. The person concerned thus endangered the other crew members and the chief mate was seriously injured as a result. The chief mate cannot return to his former duties.

The Maritime Disciplinary Court judged that the person concerned failed in his responsibilities as captain, which resulted in the accident. The person concerned did not act as befits a responsible captain when spooling the towing cable, thereby endangering the safety of those on board. Since the person concerned felt responsible for the accident and learned from the incident, the Disciplinary Court decided to impose the measure on a partly conditional basis. Disciplinary Court suspended the navigation licence of the person concerned for eight weeks, of which four weeks conditionally.

Practical recommendations:

- High-risk activities such as spooling a new towing cable are always subjected to a Job Safety Analysis, followed by a Risk Assessment, a possible Last Minute Risk Assessment and a Toolbox talk. The topics covered are: the management (overall and at the specific location), division of tasks, communication, visual contact, no-go areas and agreements on when an operation will be stopped. The snap-back zones must be defined before commencing activities involving towing cables under tension.
- If an alarm sounds, the first step is to neutralise the hazard and then check the alarm and communicate to the crew.
- In the case of risky activities such as spooling a towing cable, visual contact must be maintained at all times from the bridge with the crew members on deck. Objects that obstruct the view should be removed or turned away as much as possible. Remaining blind spots that make work on the bridge difficult are resolved with the aid of cameras.
- The person in charge on deck should keep the overall overview on deck and communicate with the bridge.
- In the case of one-man operation on the bridge, the winch should preferably be operated on deck during spooling so that the captain can focus on manoeuvring.

JYDEN

RULING OF 21 DECEMBER 2020 NO. 5 OF 2020 CASE 2020.V5-YYDEN

Person concerned: the captain

The Inspector's request related to a collision between the Dutch m.s. Jyden and the m.s. Celina, sailing under the flag of Antigua and Barbuda. The collision took place on Friday 22 March 2019 in dense fog in the run-up to IJmuiden, at the entry to the piers. Twelve passengers were on board the Jyden with the person concerned as the master, his son and an assistant. The collision caused damage to both vessels and manoeuvring problems arose on board the Jyden. There were no personal injuries.

The Inspector made the following accusations against the person concerned:

1. The person concerned deliberately chose to register his vessel with various authorities as a pleasure craft or for recreational use, despite the fact that he intended to operate it commercially.
2. The person concerned deliberately chose to sail with paying passengers without a valid navigation certificate.
3. The person concerned chose to use the ship commercially without the proper ship's papers, i.e. a national safety certificate and a crew certificate.
4. The person concerned chose to take an 'assistant' on board, without any maritime qualifications.
5. The person concerned did not carry out the 'tight turn around the south pier' despite communicating his intention to do so with the radar station.
6. The person concerned did not sail at a constant speed in the almost ten seconds before the collision and even changed course significantly ten times. Through this behaviour, he created a situation where a collision could occur.
7. As a result, the person concerned seriously endangered himself, his son, his assistant, twelve passengers and the Celina.
8. Moreover, both the Jyden and the Celina sustained material damage as a result.
9. The person concerned did not report the collision to the ILT.
10. In the period after the collision, the person concerned made a conscious decision to continue offering commercial activities, even though he was aware that he did not have the correct papers for this. Also, the Jyden was not in a seaworthy condition.

The Disciplinary Court ruled - in summary - that the person concerned was insufficiently aware of the position of the Jyden and that by moving a considerable distance away from the southern pier he actually caused a collision situation. By acting thus, he endangered the lives of those on board the Jyden. It is also objectionable that the person concerned denied his responsibility for this and made accusations against others, the traffic control centre and the Celina. After all, the person concerned was at all times first and foremost responsible for his own navigation behaviour, even in dense mist and with strong currents. Moreover, the traffic control centre alerted him

on a number of occasions to the other shipping traffic and gave him an instruction to hold to the southern pier as closely as possible, which was also the stated intention of the person concerned. The person concerned subsequently did not at any time indicate to the traffic control centre that he had altered this intention or was unable to implement it. Nor did he draw this to the attention of other shipping traffic, give other signals, or call for help in good time.

The Disciplinary Court further ruled that the Jyden complied with the rules for flying the Dutch flag and that it was sufficiently plausible that on 22 March 2019 commercial activities were conducted with the vessel. The Inspector therefore rightly took the view that the person concerned should have a valid (merchant navy/fishing) certificate and the other ship's papers required. This was not the case. It was also correct that the person concerned had an obligation - which he did not fulfil - to report the collision to the ILT.

The Disciplinary Court found the conduct alleged against the person concerned proven. The fact that, in the period after the collision, the person concerned did not comply with the agreement to cease to offer the Jyden for sea fishing was blameworthy and testified to a nonchalant attitude, against which action was rightly taken, but did not give rise to any additional charges under disciplinary law.

The person concerned did not act as befits a responsible master, thereby seriously endangering in particular the safety of the passengers and other persons on board the Jyden. In view of the seriousness of the proven conduct, the Disciplinary Court considers a fully unconditional fine of €2,500 to be appropriate, as well as a conditional revocation of the navigation licence for a period of six months.

The person concerned has lodged an appeal against this judgment.

COMPOSITION OF THE MARITIME DISCIPLINARY COURT OF THE NETHERLANDS IN 2020

PRESIDING JUDGE

P.C. Santema
Senior judge A District Court in Rotterdam

H. van der Laan
Captain

R.A. Oppelaar
Captain

DEPUTY PRESIDING JUDGES

J.M. van der Klooster
Senior justice at the Court of Appeal in the Hague

R.E. Roozendaal
Captain

C.R. Tromp
Captain

W. van der Velde
Lector Maritime Law at Maritiem Instituut Willem Barentsz

D. Willet
Chief Engineer

MEMBERS

MEMBERS
E.R. Ballieux
Captain

S. Kramer
Skipper in marine fishing

E.R. IJssel de Schepper
Captain

J.L. Schot
Skipper in marine fishing

P.L. van Slooten
Skipper in marine fishing

C. Kuiken
Ship's officer

J.W.T.C. de Vreugd
Chief engineer in marine fishing (deep sea fishing)

DEPUTY MEMBERS

A. Aalewijnse
Chief Engineer

W.A. Barten (member as of 1 September 2020)
Hydrographer

J. Berghuis
Captain

G. Jansen
Chief Engineer

T.W. Kanders
Ship's officer

O.F.C. Magel
Captain

D. Roest
Captain

P.H.G. Schonenberg
Ship's officer

J.J. Spaan (member as of 1 September 2020)
Hydraulic engineer

J. van Vuuren
Captain

J.K.J. Bout
Skipper in marine fishing

H. Hakvoort
Skipper in marine fishing

H.J. Ijpma
Skipper in marine fishing

H. Schaap
Formerly skipper in marine fishing

T.S. de Groot
Registered pilot

R.J.N. de Haan
Registered pilot

T. Hamburger (Member until 1 September 2020)
Hydrographer

A.J. de Heer
Former shipowner

N.P. Kortenoeven-Klasen
Hydrographer

J. Preesman (member until 1 September 2020)
Former hydraulic engineer

C.J.M. Schot
Shipping company

E. E. Zijlstra
Hydraulic engineer

SECRETARY

E.H.G. Kleingeld, LL.M

DEPUTY SECRETARY

D.P.M. Bos (until 1 September 2020)

V. Bouchla (since 1 September 2020)
E.M. Dooting (since 1 September 2020)

