



Regulations governing the Maritime Disciplinary Court of the Netherlands

Preamble

The Regulations of the Maritime Disciplinary Court of the Netherlands do not constitute a product of legislation originating from the Disciplinary Court; the Disciplinary Court is not assigned any regulatory powers in the Dutch Seafarers Act (*Wz*).

The Regulations largely comprise statutory provisions applicable to the Disciplinary Court. Not all of the statutory provisions have been taken over. In particular, the statutory provisions that were not frequently applied by the Dutch Maritime Court (and later the Maritime Disciplinary Court) or applicable by analogy have not been taken over. The Regulations also indicate how the Disciplinary Court proposes to substantiate the statutory powers conferred on it. For this substantiate inspiration has been sought first and foremost in the official draft of the draft paper of the Act containing rules on disciplinary law in respect of legally regulated professionals – the Disciplinary Law Framework Act (official draft).

This is given as a source for various articles of the Regulations. Where no reference is made to a source, the Disciplinary Court has itself provided the substantiation. This has only been done in a small number of cases.

In cases where the statutory provisions have (inadvertently) been deviated from, the statutory provisions take precedence.

In view of this introduction, the Regulations may appear superfluous. The Disciplinary Court does however believe that that is not the case since the Regulations are intended first and foremost as a guide to stakeholders, including seafarers, for whom the relevant legislation may prove somewhat inaccessible in the event of a complaint being filed.

This is especially true of foreign seafarers. The Regulations have been translated into English for them. The Regulations could serve to meet a need for the vast majority of non-Dutch seafarers.



The Regulations will need to be adapted in keeping with legal amendments. If this takes place at a later date, the amended legislation will take precedence over the Regulations.

Article 1: Definitions

(articles 1 and 55a and h of the Dutch Seafarers Act [Wz])

The following definitions are operated for the purpose of these regulations:

Our Minister: Our Minister of Infrastructure and Water Management;

Dutch vessel: a vessel with the right under Dutch rules of law to fly the flag of the Kingdom;

fishing vessel: a Dutch vessel designated or used for the commercial catching of fish or other living marine resources;

captain: the person in command of a Dutch vessel;

ship's officer: a member of the crew, other than the captain, who holds the position on board a Dutch vessel of navigating officer, marine engineer, maritime officer or radio operator;

managing owner: a natural person or a legal entity responsible for the day-to-day management of the vessel from an establishment of a shipping company in the Netherlands, as well as the persons who manage a fishing vessel as a member of a partnership;

person on board: any person on board the vessel whilst the vessel is underway;

crew: the captain, the ship's officers, the ship's company and the other persons on board who are named in the crew list;

navigation competency: authorisation to serve on board a vessel in one or more positions;

navigation licence: a document issued by Our Minister attesting to navigation competency;

disciplinary court: the maritime disciplinary court within the meaning of Article 55a, paragraph two, of the Dutch Seafarers Act (*Wz*);

petition: a petition by Our Minister to bring a case before the Maritime Disciplinary Court (*article 55h, paragraph 1, Wz*)



petitioner: Our Minister, as the party submitting a petition to the maritime disciplinary court;

complaint: a complaint filed by a stakeholder to bring a case before the Maritime Disciplinary Court (*article 55h, paragraph 1, Wz*)

complainant: the person submitting a complaint to the disciplinary court;

the person concerned: the captain or ship's officer to whom a petition or complaint relates (*article 55h, paragraph 2a, Wz*).

Article 2: Scope of disciplinary law

article 55a Wz)

The captain and the ship's officers are subject to disciplinary rules with regard to any act or omission contrary to the care expected of a good seaman in respect of the persons on board, the vessel, the cargo, the environment and shipping.

Article 3: Proceedings in the first instance

article 55h, paragraph 1, Wz)

A case is brought in the first instance before the disciplinary court when petitioned by Our Minister or through a complaint filed by an interested party.

Article 4: Procedure for the filing of petitions and complaints

(article 4.1 of the official draft and article 55h Wz)

1. Petitions and complaints are submitted in writing or by electronic means, setting out the grounds, to the president of the disciplinary court.
2. The postal address of the disciplinary court is:
Tuchtcollege voor de Scheepvaart, Damrak 387, 1012 ZJ AMSTERDAM
e-mail: secretariaat@tuchtcollegevoordescheepvaart.nl
3. The date of submission is the date on which the petition or complaint was received by the secretariat of the disciplinary court.
4. The time of submission to the disciplinary court is the determining factor regarding with the petition or complaint has been filed on time.



5. The secretary will send the person filing the petition or the complaint written confirmation of receipt as soon as possible following receipt of a petition or a complaint.

Article 5: The content of the petition or complaint

(article 55h. paragraph 2a to d, Wz)

1. The petition or complaint shall in all cases state:
 - a. the name, the forenames or initials, the address, the postcode and the place of residence of the party filing the petition or complaint;
 - b. the name of the person concerned and, if known, his or her forenames or initials, address, postcode, place of residence and work address, as well as his or her position on board the vessel at the time of the contested act to which the petition or the complaint relates;
 - c. the name and, if known, the type of vessel on board which the contested act took place;
 - d. if known, the name and the place of establishment of the managing owner of the vessel referred to under c.;
 - e. a description of the contested act to which the petition or complaint relates, as well as an indication of the time at which it took place;
 - f. a brief and concise description of the accusation made by the petitioner or complaint against the captain or ship's officer concerned;
 - g. the date of the petition or the complaint;
 - h. the name and signature of the submitting party;
 - i. if the complainant has assigned an authorised representative: the name, address details and telephone number of this authorised representative.
2. If the complaint does not contain the details provided for under subsections a. to i., or if those details are apparently incorrect, the person filing the complaint will be given the opportunity to supplement or rectify those details in writing within a period of time set by the president of the disciplinary court.



3. If requested by the complainant, the secretary of the disciplinary court will assist him with the formulation of the complaint.
4. The disciplinary court will not accept a petition or a complaint if the contested act to which the petition or the complaint relates took place more than two years prior to the filing of the petition or the complaint. *article 55h, paragraph 4, Wz)*

Article 6: Provision of assistance and representation

(article 55n, paragraphs 4 to 6, Wz)

1. The person concerned can have himself assisted by defence counsel. *(article 55n, paragraph 5, Wz)*
2. The person filling the petition or complaint can have himself represented at the hearing by a person authorised for that purpose or can have himself assisted by defence counsel. *(article 55n, paragraph 4, Wz)*
3. The disciplinary court can refuse to admit persons, who are not a lawyer, as counsel or as an authorised representative at the hearing. In the event of such refusal, the disciplinary court will adjourn the case until a subsequent court session. *(article 55n, paragraph 6, WZ)*

Article 7: Rejection of a petition or complaint by the president of the court

1. The president can reject a petition or a complaint forthwith following a summary investigation in a decision, setting out the grounds, if he judges that the person filing the petition or complaint is manifestly inadmissible, or if the petition or the complaint is manifestly unfounded. *Article 55j, paragraph 1, Wz)*
2. The secretary will send a copy of the written decision of the president to the person filing the petition or the complaint without delay. *Article 55j, paragraph 2, Wz)*
3. The person submitting the petition or the complaint can lodge a written or electronic objection to the disciplinary court within two weeks of the date on which the decision of the president rejecting a petition or



complaint was sent. The decision of the president will be set aside as a result of the objection. *Article 55j, paragraph 3, Wz)*

Article 8: Out-of-court settlement

1. If the president of the court judges that a petition or a complaint is open to an out-of-court settlement, he will summon the party submitting the petition or complaint and the person concerned in order to attempt to reach such a settlement. *Article 55j, paragraph 4, Wz)*
2. If an out-of-court settlement is concluded, it will be put down in writing and signed by the person concerned and the petitioner or the complainant. A copy of this document will be forwarded to the secretary of the disciplinary court. *(article 4.8:2 official draft)*
3. If an out-of-court settlement is reached, the petition or complaint will be withdrawn. *Article 55j, paragraph 4, Wz)*

Article 9: Withdrawal of the petition or the complaint

(article 4.7 official draft)

1. The person submitting the petition or the complaint can, before a decision is made in its regard, withdraw it at all times by notifying the disciplinary court as such in writing.
2. If the petitioner withdraws his petition or the complainant withdraws his complaint, the disciplinary court will inform the person concerned of this as soon as possible.

Article 10: Change to the scope of the complaint

(article 4.31 official draft)

1. The petition or the complaint can be changed on the request of the person submitting the complaint or petition up until the hearing of the petition or the complaint. In the latter case provisions of articles 4, paragraph one (filing procedure), 12 (copy), 13 (defence), 14 (reply, rejoinder) and 16 (joinder and division) are applicable *mutatis mutandis*.



2. The complaint or the petition cannot be changed until the person concerned has been given the opportunity to be heard on this subject.
3. The change to the complaint or the petition may be refused if contrary to the principles of due process.

Article 11: Death of the person concerned

In the event of the death of the person concerned, the hearing of the complaint or petition will be discontinued.

Article 12: Copy of the petition or the complaint

(article 55m, paragraph 1, Wz)

1. The secretary of the disciplinary tribunal will forward a copy of the petition or the complaint and the accompanying documents and any additions as soon as possible to the person concerned.
2. If the person concerned is a foreign captain or ship's officer, the petition or complaint will be translated into English.

Article 13 Defence

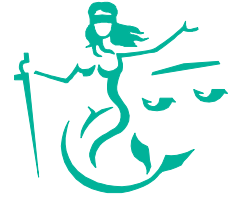
(article 55m, paragraph 3 Wz, Article 4.12 official draft)

1. The president of the court will give the person concerned the opportunity to submit a written or electronic defence to the disciplinary court within six weeks of the date on which the copy of the petition was forwarded. The president can extend this term on the request of the person concerned. *(article 55m, paragraph 3, Wz)*.
2. The secretary will forward a copy of the defence to the petitioner or complainant as soon as possible.

Article 14: Reply and rejoinder

(article 4.12 official draft)

1. The president of the court may give the petitioner or the complainant the opportunity to reply within six weeks of the copy of the statement



- of defence being forwarded by the secretary. The secretary will send a copy of the reply as soon as possible to the person concerned.
2. If the first paragraph is applied, the president will give the person concerned the opportunity to enter a rejoinder within a period of six weeks of the statement of reply being forwarded by the secretary. The secretary will forward a copy of the rejoinder to the petitioner or complainant as soon as possible.

Article 15: Extension of the terms

(article 4.12 official draft)

The president can extend the terms provided for in articles 13 and 14 or have them commence at a different time if he judges that there is sufficient reason to do so.

Article 16: Joinder and division of cases

(article 4.14 official draft)

1. The disciplinary court can on its own initiative or on request joinder cases on the same or a related subject and divide joindered cases.
2. A request to joinder or divide cases can be made until the hearing of the petition or complaint at the court session ends.

Article 17 Institution of a preliminary investigation

(article 55i, Wz, Article 4.15 official draft)

1. The president can order a preliminary investigation to be carried out prior to commencement of the hearing of the case.
2. The president will charge one or more members or deputy members or the secretary or the deputy secretary of the disciplinary court to carry out the preliminary investigation.
3. The president can give the preliminary investigator instructions.
4. The preliminary investigation will be concluded when the preliminary investigator issues a written report to the president of the court.
5. The president of the court can decide to suspend or close the preliminary investigation before the report is issued.



6. The petitioner or the complainant and the person concerned will be notified as soon as possible after the president has decided that a preliminary investigation is to be conducted.

Article 18: The preliminary investigator

(article 55i, Wz, Article 4.16 official draft)

1. The person conducting the preliminary investigation is empowered:
 - a. to gain admittance to any place he considers necessary to carry out an investigation, if necessary with the assistance of the police, with the exception of a home without the permission of its occupant;
 - b. to inspect all written documents and data in computerised works that are located on board, the inspection of which he considers to be in the interests of the investigation, and to make copies thereof;
 - c. to interview the complainant, as well as the captain or ship's officer involved;
 - d. to hear witnesses and experts;
 - e. to request all information regarding a case mentioned in article 3 of the Regulations.
2. The person carrying out the preliminary inquiry shall not take part in the hearing of the case during the court session.

Article 19 The court session

(article 55n, paragraph 1 Wz, Article 19 official draft)

The president of the disciplinary court will determine the time of the verbal hearing of the complaint or petition in court session.

Article 20: The summons

1. The secretary will summon the petitioner, the complainant and the person concerned at least four weeks prior to the date of the court session by registered mail. The person concerned will also be summoned by letter sent by ordinary mail.
2. The person concerned is obliged to obey the summons. This will be stated in the summons.



3. The summons will state in all cases:
 - a. the date, time and place of the court hearing;
 - b. the names, the place of residence and, if necessary, the profession of the witnesses and experts summoned to the court session;
 - c. the notification that the person concerned and the petitioner or the complainant can make a request to the disciplinary court to hear witnesses and experts.
4. The summons will be accompanied by a copy of the complaint or the request and all documents relating to the case insofar as they have not already been sent.
5. If the person concerned does not answer the summons to appear in court, the disciplinary court can grant leave to proceed in default of appearance or make a request to the public prosecutor to serve a summons on the person concerned. The person concerned is obliged to appear after receiving the summons. *(article 55n, paragraph 2, Wz)*
6. If the captain or ship's officer named in the summons fails to appear at the hearing, the disciplinary court can make a request to the public prosecutor to summons the person concerned with a warrant to bring the person concerned before the court. Article 55b of the Netherlands Code of Criminal Procedure (*WvSv*) is applicable *mutatis mutandis*. *(article 55n, paragraph 3, Wz)*

Article 21: Inspection of documents

(article 55m, paragraph 7 Wz, article 4.17 official draft)

The person concerned and his defence counsel will be given the opportunity to inspect all documents relating to the case at least two weeks prior to commencement of the court hearing.

Article 22: Composition of the disciplinary court in session

(article 55k Wz)



1. Five members will participate in the hearing of a case in session of the disciplinary court, being the president or one of his deputies and:
 - a. the four members within the meaning of Article 55b, third paragraph, of the Dutch Seafarers Act if the petition or the complaint relates to the captain or a ship's officer of a vessel other than a fishing vessel, with the option of substitution, or
 - a. the four members within the meaning of Article 55b, fourth paragraph, of the Dutch Seafarers Act if the petition or the complaint relates to the skipper or a ship's officer of a fishing vessel, with the option of substitution.
2. If required by the case, the president can stipulate that one or two deputy members as provided for in Article 55b, fifth paragraph, of the Dutch Seafarers Act take part in the hearing of that case at the disciplinary court session instead of the members designated for the hearing in paragraph 1a and 1b.

The deputy members provided for in the first sentence do not cast a vote when a decision is made.
3. The president can stipulate if he considers a case appropriate for this purpose that, contrary to the provisions of the first paragraph, three members will participate in the hearing of that case at the disciplinary court session, being the president of the court or one of his deputies, as well as two of the four members provided for in paragraph 1a or 1b.
4. In the hearing of a case at a disciplinary court session following an objection within the meaning of article 55j, paragraph three, of the Dutch Seafarers act and article 7, paragraph 3, of these regulations, the president will be replaced by one of his deputies.

Article 23: Challenge and recusal

(article 55l, Wz, article 4.24 official draft)

1. On the request of the person concerned or the petitioner or complainant, a member, including the president of the disciplinary court hearing the case, can be challenged on the grounds of facts and



circumstances that could adversely affect the impartiality of the disciplinary court.

2. A member, including the president of the disciplinary court, can make a request for recusal on the grounds of facts and circumstances that could adversely affect the impartiality of the disciplinary court.
3. The other members of the disciplinary court will make a decision as soon as possible on the request for challenge and recusal of their fellow-member. In the event of equality of votes, the request for challenge or recusal will be granted.

Article 24: Witnesses and experts

(article 55o Wz)

1. The disciplinary court can summon and hear witnesses and experts at the court hearing on its own initiative or on the request of the person concerned or the petitioner or complainant.
2. The members and extraordinary members of the Dutch Safety Board (*OVV*), the general secretary and the employees of the *OVV* office, as well as experts designated by Our Minister on the request of the *OVV*, cannot be called as witnesses or experts. The secretary summons witnesses and experts to the hearing by registered mail. All persons summoned as witnesses or experts by the disciplinary court are obliged to obey the summons.
3. If a summoned witness or expert fails to appear at the hearing, the public prosecutor will serve him with a writ of summons on the request of the disciplinary court. The witness or expert is obliged to appear after receiving the summons.
4. If a summoned witness or expert fails to appear at the hearing, the public prosecutor will again serve him with a writ of summons on the request of the disciplinary court, with a warrant to bring the person before the court. Article 556 of the Netherlands Penal Code (*WvS*) is applicable *mutatis mutandis*.



5. The president administers an oath to witnesses to tell the truth and nothing but the truth. Witnesses are obliged to answer the questions put to them.
6. The president administers an oath to experts to perform their task in good conscience. Experts are obliged to substantiate the services demanded by the disciplinary court.
7. The provisions of Articles 217 to 219 of the Netherlands Code of Civil Procedure are applicable mutatis mutandis to witnesses and experts.
8. The witnesses and experts will receive compensation set by the president of the court in conformity with the provisions of or by virtue of the Dutch Criminal Cases (Fees) Act (*WTS*) on request and upon presentation of their summons or writ of summons.

Article 25 Proceedings in public session

(article 55n, paragraph 8, Wz, article 4.20 official draft)

1. The disciplinary court will hear the case in public session. The disciplinary court can rule for compelling reasons that the hearing will be held full or in part in camera.
The president of the disciplinary court presides over the court hearing.
2. Before being heard, the person concerned is informed that he is not obliged to answer questions.
3. The secretary draws up a record of the hearing, which is signed by the president and the secretary.
4. The official record of the hearing states the names of the president and the members who heard the case, of the secretary, of the parties and their representatives or attorneys who appeared at the hearing and of the persons who have assisted them, as well as the names of the witnesses, experts and interpreters who appeared at the hearing.
5. The disciplinary court can stipulate that the statement of a party, witness or expert be included in full in the court record. In that case, the statement will be laid down in writing without delay and read out to the party, witness or expert. That person can apply amendments, which are laid down in writing and read out to the party, witness or expert.



Article 26: Adjournment of the court hearing

(article 4.22 official draft)

1. The disciplinary court can adjourn the court session.
2. If the court session is adjourned, the disciplinary court will determine the time at which the hearing will be resumed as soon as possible. The secretary of the disciplinary court will inform the person concerned and the petitioner or complainant of this without delay unless the time at which the resumption of the hearing has already been decided by the disciplinary court and communicated verbally to the person concerned and the petitioner or complainant.
3. If the time of resumption has not yet been communicated in accordance with the provisions of the second paragraph, Article 20 will apply mutatis mutandis.

Article 27: Conclusion of the court hearing

(article 4.25 official draft)

1. The disciplinary court concludes the hearing once it judges that the investigation has been completed.
2. The person concerned has the right to have the last word before the hearing is brought to a close.
3. As soon as the hearing is concluded, the president of the disciplinary court announces when the ruling will be pronounced.

Article 28: Reopening of an investigation

1. If the disciplinary court judges that the investigation has not been complete, it can have it reopened.
2. The secretary of the disciplinary court will inform the person concerned and the petitioner or the complainant of this as soon as possible.



Article 29: The grounds of the ruling

(article 55g Wz, Article 4.26 official draft)

1. The disciplinary court rules on the grounds of the petition or the complaint, the submitted documents, the subjects covered in the preliminary investigation and the court hearing.
2. The disciplinary court can add legal grounds on its own initiative.

Article 30: The decision and the ruling

(article 55h, paragraph 2, article 55g, article 55r, article 55s Wz and article 4.27 paragraphs 1-6 official draft)

1. The disciplinary court makes its decisions by majority vote. The deputy members provided for in paragraph 2 of Article 22 of the Regulations do not cast a vote when a decision is made. In the event of equality of votes, the president of the disciplinary court has a casting vote.
2. The disciplinary court pronounces its decision in public session and makes its ruling within two months of the conclusion of the hearing. The disciplinary court can extend this term once at the most by a period it deems to be reasonable. The secretary of the disciplinary court will inform the petitioner or the complainant and the person concerned of this extension of the term without delay. The disciplinary court will lay down its decision in writing. The decision will be based on proper grounds.
3. The written decision will be signed by the president of the court and the secretary.
4. The decision extends to:
 - a. declaring that the disciplinary court does not have competent jurisdiction;
 - b. declaring that the complaint or petition is inadmissible;
 - c. declaring that the complaint or the request is unfounded, or
 - d. declaring that the complaint or petition is well-founded.
6. If the petition or the complaint is declared well-founded in full or in part in the decision, this also constitutes a decision regarding the imposition



of the disciplinary measures provided for in articles 30 and 31 of the Regulations.

7. A copy of the written decision will be sent without delay by the secretary to the person concerned and the petitioner or complainant.
8. The person concerned will be informed that, when and with whom he can lodge an appeal.

Article 31 Disciplinary measures

(article 55p Wz)

1. The measures that can be imposed if a complaint or a petition is declared well-founded are as follows:
 - a. a warning;
 - b. a reprimand;
 - c. a maximum fine of € 4,500;
 - d. Suspension of the navigation competency for a maximum period of two years.
2. When imposing one or more of the disciplinary measures provided for in the first paragraph, the disciplinary court can also stipulate that its decision will be publicised in one or more journals or newspapers designated for that purpose in the decision, whether or not stating the grounds of the decision.
3. When imposing a fine the disciplinary court will stipulate the term or terms within which the fine must be paid. The payable fines accrue to the State. Payment shall be made to Our Minister.
4. The disciplinary measures referred to in paragraph 1c and 1d and the accompanying publication measure referred to in the third paragraph cannot be imposed until the decision of the disciplinary court has become final and conclusive.

Article 32: The conditional imposition of disciplinary measures

(article 55p paragraph 4 Wz)

1. When imposing the disciplinary measures provided for in the first paragraph of article 31, subsections c and d, the disciplinary court can



stipulate that it will not be executed, either in full or in part, unless the disciplinary court stipulates in a later decision based on the fact that the person concerned has acted contrary to the care expected of a good seaman in respect of the persons on board, the vessel, the cargo, the environment and shipping prior to the end of a probationary period of a maximum of two years stipulated during the imposition of the disciplinary measure.

2. If the provisions of the first paragraph are applied, the disciplinary court will indicate when the probationary period begins.

Article 33: Suspension of navigation competency

Article 55q, paragraphs 3, 4, Wz)

1. If the disciplinary court orders the suspension of the navigation licence of the person concerned in its decision, the secretary will inform the person concerned in a letter sent by registered mail:
 - a. the date on which the suspension commences;
 - b. the obligation to surrender his navigation licence prior to that date to the Central Register of Crew Data provided for in Article 65 of the Dutch Maritime Crews Act, and of the consequences of failing to surrender the navigation licence pursuant to the provisions of the second paragraph.
2. If the person concerned fails to surrender his navigation licence on time to the Central Register of Crew Data, the period of suspension of the navigation licence will be automatically extended by operation of law by the period that elapses between the date of commencement of the suspension and the date on which the navigation licence is actually surrendered.
3. The secretary will also send a copy of the written decision of the disciplinary court and the registered letter to the person concerned to the Central Register of Crew Data.