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| Agenda item | 9 |
| | AIS data used as evidences at court cases |
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Use of AIS data in court – Denmark

General remark

There are no Danish law restrictions on the use of AIS data or other technical evidence as evidence in court proceedings. It is up to the courts to decide how much weight to be given to particular evidence.

Collisions with buoys

In case of collisions with buoys, AIS data, radar tracks as well as paint remains on the buoy or the ship are used as evidence. Normally, criminal proceedings will not be instituted. In recent years, it has not been necessary to institute civil proceedings since the issue of who is to pay has been solved through talks between the parties. During these talks, AIS data have been presented to the one responsible for the accident together with any radar tracks and reports of paint remains.

Cases related to pilotage issues

In cases related to pilotage issues – both cases on violations of mandatory pilotage requirements and previous cases where pilots have not respected landmarks – AIS data are of major importance. The first thing that the Danish Pilotage Authority does is to request such data. The AIS data form the basis of the Danish Pilotage Authority's decision whether to require any further information and whether to hand over the case to the police.

The prosecution at the Police of Northern Jutland and at the Police of Copenhagen has directly indicated to the Danish Maritime Authority that AIS data are of great value because they provide an exact overview of the incident very fast.

By far most cases related to pilotage issues are decided out of court through the adoption of a fine notice. The actual sequence of events is not questioned by the ships. Cases are normally referred to court for legal reasons (disputes over mandatory pilotage requirements or over the penalty level). AIS data are presented in all court proceedings, but they are normally not mentioned in the judgment.

Examples of court cases:

Case 1

A ship arrived from the North Sea carrying a cargo of oil and cast anchor in Aalbæk Bay in outer territorial waters. Another ship arrived from Gothenburg and cast anchor next to the first ship and had some of the oil reloaded (STS operation), and subsequently the first ship returned to Gothenburg. The ship owners were of the view that they did not have to take a pilot, partly due to the regime of the straits, partly because the ships had not been sufficiently close to the coast. In the court proceedings, AIS data were used to show the ships' routes before and after the STS operation (had not passed the straits), that the ships cast anchor right next to each other (performed an STS operation) and the ships' position during the STS operation (in outer territorial waters). The AIS data meant that the real facts of the case did not constitute an issue during the court proceedings.

Case 2

A ship carrying a cargo subject to mandatory pilotage had ordered a pilot, but had subsequently cancelled the order again since there was no berth in the port. Then, the ship proceeded to waters with mandatory pilotage and cast anchor while waiting for a berth in the port. Though the ship intended to order a pilot as soon as there was a berth in the port, the ship was found guilty of having proceeded to the anchorage without a pilot. The navigational pattern was substantiated by means of AIS data.

Cases related to ship wrecks

Recent years have not seen any criminal proceedings in the area of ship wrecks where AIS has been used.

As regards civil proceedings, the Danish Maritime Authority has in recent years had one case (Elkana) where the Danish Maritime Authority has required the expenses incurred in connection with wreck removal reimbursed.

Case 3

A ship was under tow from one port to another port where it was to be scrapped. However, the ship foundered on its way, and subsequently the Danish Maritime Authority required the expenses incurred in connection with the salvage operations reimbursed, inter alia by the towage company. Initially, the towage company claimed that a high-speed ferry had created unusually high waves and that these waves were the reason for the loss. As early as during the preparation of the case, the Danish Maritime Authority therefore presented AIS data showing that there had not been any high-speed ferry in the vicinity. During the main negotiations, the towage company had changed its explanation. Furthermore, the AIS data were presented in court.

Cases related to collisions

There is one civil case in which the Danish Maritime Authority is involved (Helle Søj). The case is about a collision between two dredgers in foggy weather (one owned by the Danish Coastal Authority and one privately owned). Over the radio, the ships had agreed to sail in a specific manner in relation to each other, but instead one of the ships sailed according to the regulations for preventing collisions at sea. AIS data were used to map their navigation, but one important issue in the marine investigation report was why one of the ships had not used the AIS system during its voyage. The case has not yet progressed so much that it is possible to make a summary as such.

Cases related to alcohol abuse

Case 4

In a court case on alcohol abuse involving a foreign cargo ship and foreign master, AIS data was used to determine the ship lurching path.