

Note on the use of AIS data as evidence in court proceedings

Country report from Germany

1. General remarks

AIS data or other technical evidence can be used as evidence in German court proceedings. It is the decision of the court if the evidence can be used and to what extent. The collection of data in any form needs a legal basis to be considered as evidence in legal proceedings. In general AIS data, radar tracks and VHF recordings can be used in any legal dispute concerning maritime incidents (civil and criminal court proceedings as well as negotiations out of court). However only the Federal Waterways and Shipping Agency has the right to collect and store AIS, radar and VHF data within certain limits (see below).

2. Using AIS as a tool to prosecute speeding

Even though AIS was in fact used to investigate maritime incidents, there was no court decision dealing with the use of AIS.

a) the incident on the Kiel Canal

The Kiel Canal is an artificial waterway connecting the Baltic Sea with the North Sea. There is a speed limit (speed over ground) for the majority of ships of 8.1 kn (15 km/h). MV XX was passing several ships bunkering at a nearby pier. In cases like these passing ships are obliged to maneuver with great care in order to avoid waves. The pilot aboard the passing ship was accused of not advising the captain on board properly about the appropriate speed. The speed of the vessel, 8.7 knots over ground, was calculated based on AIS positions generated by the Federal Waterways and Shipping Agency. In the end the court decided that there was no misbehavior by the pilot. However long remarks about the use of AIS, the legal basis and the use in court proceedings were made by the court including an extensive professional expertise by an independent scientist. The approach of the Federal Waterways and Shipping agency was fully supported.

Legal basis for the data collection and short time storage of AIS data is § 9 of the "Seeaufgabengesetz" (Federal law), permitting the Federal Waterways and Shipping Agency as the only institution to collect AIS data. AIS data are considered personal data to some extent under German law due to the fact that it is possible to generate certain information about personal details of the crew etc. and the movement of the ship itself which is connected to the freedom of movement and economic interests. Therefore a legal basis is needed for collecting the AIS data.

Moreover the court emphasized the accuracy with which the AIS data are being collected. Reference was being made to the used navigational tools, like GPS, DGPS etc. in addition to the documentation of technical failures during the transmission of the signal. In case the prosecution, the police or any other competent authority requests the AIS data of an incident the relevant AIS data are being looked at manually in order to guarantee that the data are plausible and without technical failures or inaccuracies due to shadowing effects, eg bridges across the Kiel Canal etc. In that case explanatory notes from the competent authority are being given with the AIS data including "safety reductions" when deemed necessary.

Considering the calculated speed based on AIS data the court decided additionally that a "safety reduction" of 1 kn needs to be applied to the calculated speed.

b) lessons learned

Although the Federal Waterways and Shipping Agency lost the case, we gained a court decision that fully supported the collection, storage and use of AIS data to calculate the speed of ships and therefore prosecute regulatory and even criminal offences. Even though the decision was made by a lower court, it remains the only decision so far to deal with the use of AIS data. After the decision the calculation of speed was adapted and supplemented by the “safety reduction” of 1 kn to the calculated speed. Until today the legality of AIS data collected and used by the Federal Waterways and Shipping Agency was not challenged again.