Summaries

Justitiële verkenningen (Judicial explorations) is published nine times a year by the Research and Documentation Centre of the Dutch Ministry of Justice in co-operation with Boom Juridische uitgevers. Each issue focuses on a central theme related to judicial policy. The section *Summaries* contains abstracts of the internationally most relevant articles of each issue. The central theme of this issue (vol. 29, nr. 8, 2003) is Mediation.

Mediation in the judicial infrastructure

C.J.M. Combrink-Kuiters en E. Niemeijer
Promoting Alternative Dispute Resolution (ADR) is part of justice policy in the Netherlands. Within the scope of this policy two comprehensive mediation projects were initiated, one concerning referral to mediation within a court procedure and one concerning the referral of clients by the legal aid service. This article describes the main results of the evaluation study of both these projects. It appears that during the course of the court-based project almost 1000 cases were referred to mediation. The legal aid project was less productive, almost 200 cases. In the court based project an agreement was reached in 61% of the mediations, whereas in the legal aid project 78% was successful. The conclusion of the research is that often room for negotiation exists both within and before a court procedure. How much room there is, depends on the financial and other conditions on which mediation is offered to parties.

Court connected mediation; towards an effective and adequate conflict resolution

M. Pel
During the last four years experiments have shown that court connected mediation in the Netherlands works. The results of the pilot projects give enough groundwork for the institution of a durable and high quality referral system connected to all courts. Specific legislation is not necessary for this purpose. The choice for mediation should be mainly the responsibility of the parties involved. This yields the best

results. The research shows which types of oral and written referral could be most adequate. A few measures are necessary to ensure quality in referral and mediation, like the deployment of qualified referral functionaries and mediators. Also a good financing structure is necessary, one that offers a few hours of mediation to persons seeking justice. Finally public support for this facility is of great importance. Therefore, adequate internal and external public relations and communication are crucial.

Judicial policy and ADR; looking for the limits of judicial responsibility

M. Brandsma

The present government makes a strong appeal to the responsibility of citizens and institutions. In case of conflicts therefore parties themselves are first of all responsible for a solution. Stimulating parties in trying to reach a solution in an early stage may prevent unnecessary escalation of conflicts and moreover the workload of the Courts can be limited. That's why the ministry of Justice stimulates the use of alternative dispute resolution, particularly mediation. A wide availability of mediation and the introduction of the possibility to refer to mediation within the judicial system should stimulate parties in trying to reach a solution for their problems themselves in the earliest possible stage. These actions are not an aim in itself. They are part of a set of measures that all together should contribute to a better handling of conflicts and minimise the consequences.

Mediation in England and Wales

H. Genn

Since the mid 1990's, mediation providers have carried out a vigorous campaign of promoting the value of mediation for civil and family disputes. In the context of concerns about cost and delay in the civil courts and exponential increases in the legal aid bill, the asserted potential of mediation has captured the interest of government and the judiciary. There have been a number of local neighbourhood initiatives, government pilots, and experimental court-based schemes. The government is now committed to increasing the number of civil

and family disputes resolved without resort to the courts. The judiciary, through appellate-level decisions, have reinforced the message that litigants involved in civil and commercial disputes must attempt or at least consider mediation. The findings of empirical evaluations of mediation in family and civil contexts suggest high levels of satisfaction among users but consistently low levels of demand. The legal profession, outside of large commercial practice, is reluctant to recommend mediation to clients. Successful mediation has the potential for saving legal costs but unsuccessful mediation may increase costs. Issues currently under debate are the possibility of making mediation mandatory in certain circumstances and the government's role in meeting the cost of mediation services.

Mandatory or voluntary mediation?

R.W. Jagtenberg and A.J. de Roo

In the first part of this contribution, six variations are identified as to the mandatory or voluntary character of the referral of litigants to mediation schemes. The effectiveness of each of these variations is analysed, with the following pattern ensuing: the more voluntary the referral, the higher the percentage of mediated settlements. However, this does not exclude that mandatory referral may occasionally result in higher absolute numbers of mediated settlements. In the second part of this contribution, the mandatory/voluntary problem is analysed from a normative stance, notably the fundamental right of access to court. As to mandatory referral systems, no problems are expected in terms of delays and costs. Where mediated settlements do not lend themselves to effective judicial review, however, mandatory referral to mediation will infringe upon the right of access to court. In the third and final part, the authors conclude, that the best possible referral system for the Netherlands will be the so called variation 2b, where a judge merely portrays mediation as an option, but not without explaining its merits (and limitations) to the parties, possibly in combination with a 'self-test'. Obviously, this requires a basic insight in mediation on the part of the judiciary.