

## Summaries

*Justitiële verkenningen* (Judicial explorations) is published six times a year by the Research and Documentation Centre of the Dutch Ministry of Security and Justice in cooperation with Boom Lemma 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 (no. 1, 2014) is *Accessible justice*.

### **Access to justice under the rule of law. Benchmarks for a concrete design**

*G. Corstens and R. Kuiper*

As a core element of the 'rechtsstaat' (a country under the rule of law) the importance of the principle of access to justice is widely agreed upon. Nevertheless it is complicated to reach an agreement on subjects that are pivotal to the implementation of this principle in practice. The needs of society change over time and the factors that influence the concrete accessibility are many (costs, length, complexity of procedures, etc.). Furthermore, as a result of the coming into being of ADR and new forms of law enforcement the use of the civil and criminal trial has declined. To evaluate the current state of access to justice against the backdrop of these factors and developments the central question should be whether the judge is still able to fulfil his function in a rechtsstaat of providing legal protection, whilst functioning as a counterbalance to the executive and law-making powers of the state.

### **Citizens in objection and appeal procedures. On the accessibility of Dutch administrative law**

*A.T. Marseille*

This article contains an analysis of changes in the access to justice in administrative law disputes in the Netherlands. In analysing these changes, it is necessary to look not only at court procedures, but also at the objection procedure that precedes them. A large majority of administrative law disputes are resolved in such an informal objection procedure. The analysis shows that, more than the legislator and the administrative courts, administrative authorities are responsible for changes concerning (the interpretation and execution of the rules on)

access to justice. They increasingly use their discretionary powers in the objection procedure to try to solve conflicts about their decisions by interpreting and using the rules of access in a flexible way.

### **The role of lawyers during police detention and questioning.**

#### **A comparative study**

*J. Hodgson*

Drawing on the findings of a recent empirical study conducted across four jurisdictions, this article considers the ways in which legal assistance is provided to suspects who are held in police custody for formal questioning. It sets out, very briefly, the legal framework developed by the European Court of Human Rights and now the EU, and the legal provisions in place in the four jurisdictions post *Salduz*. It then goes on to consider the kinds of factors that, in practice, promote or constrain the provision of effective legal assistance. These include the occupational cultures of police and lawyers and the availability of human and financial resources. Whilst the criminal processes of the four jurisdictions are different, there are many similarities in the working practices of police and lawyers and a lack of agreement among police and lawyers, as to the value of legal assistance to suspects before and during police interrogation.

### **Flow diversions in the Dutch dispute resolution delta. Looking back and ahead with two interlocutors**

*A. Klijn*

What do citizens do when they think they have a problem that involves the law? Just like 40 years ago the main bottleneck in such a situation is where to find good advice on which steps to take. However, the difference compared to 40 years ago is the existence of more and a greater variety of organisations offering legal advice. This article describes the evolution of legal aid in the Netherlands, supplemented by comments of two people who have been personally involved in this development, Peter van den Biggelaar and Maurits Barendrecht. Mr Van den Biggelaar is director of the Dutch Board for Legal Aid, while Mr Barendrecht is research director of Hiil Innovating Justice and law professor at the University of Tilburg.

### **Access to shifting justice. On citizens and their problem solving strategies**

*M. ter Voert*

Both in public policy and in scientific research, the concept of access to justice has been subject to change. In the seventies access to justice was mainly understood as access to a lawyer and a judge. In the nineties the perspective widens to alternative forms of dispute resolution, self-help and juridification of problems. The present article focuses on access to justice for citizens who experienced civil and administrative problems. Firstly, it illustrates the change in public policy with respect to dispute resolution. Secondly, it describes the shifting views on access to justice in empirical research. Furthermore it presents the results of socio-legal research into the dispute resolution of citizens and discusses what these results tell us about access to justice.

### **The technology of access to justice**

*J.H. Verdonschot*

Current trends in the delivery of legal services create the opportunity to develop a new generation of access to justice platforms. On the basis of two examples, the author illustrates how this can work. M-Sheria is a technology-based access to justice service that serves the poor in Kenya. It combines state of the art information technology (USSD, SMS, internet) and human technology (community paralegals and pro bono advocates) to help slum dwellers solve their legal problems. Rechtwijzer 2.0 is an internet-based platform that provides online human and technology-facilitated support to people with a legal problem in the Netherlands. These examples show how processes and professionals can be innovated to facilitate dispute resolution in delivering information and interventions just in time.

### **The Dutch legal aid system in turbulent times**

*S.L. Peters and L. Combrink-Kuiters*

For years it has been stated that the Dutch legal aid system is balanced and performs well. Supply and demand seem to be matched and the quality of the system is judged as good. Serious problems seem to be lacking, although there is a constant increase in the number of certificates issued. The most important threat to the system are the ever shrinking government budgets together with the increasing use of the system. To date, the Dutch legal aid system has utilised open-end-

financing. The Ministry of Security and Justice is in search of measures in order to contain the number of certificates, and thereby also the ever increasing costs. At the moment it is discussed if vital system changes are necessary. Will the system as we know still exist in the near future? Or will major changes need to be made? However, changes can also lead to improvement of the system.