

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 juridisch. 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. 2, 2018) is *Banishment and new forms of exclusion*.

Banishment from semi-public places. Exclusion orders from a legal perspective

Mandy van Rooij

The semi-public domain covers the places that are accessible to the public but which are controlled by private entities. Shopping malls, public transport, bars and sports events are examples of such places. In case of misconduct, the private manager may impose exclusion orders. This sanction relies on legal contracts and the exclusive nature of the right to property. The legal framework consists therefore primarily of private law. Exclusion orders may not be imposed without reason. Prevention of disorder and harm may be a legitimate reason. The length and range of the ban must relate to the gravity of the disruption. In addition to this, public laws on non-discrimination and privacy are applicable. The civil court is competent to check the exclusion orders in the semi-public domain. The author sees added value in complaints committees, in which both public and private actors partake. Complaint committees can thrive if their assessment frameworks are transparent.

Good riddance. On the sociology of banning orders and the Collective Shopping Ban in practice.

Marc Schuilenburg

In this article the author reports on an ethnographic research conducted on the Collective Shopping Ban, a measure taken in the Netherlands in an effort to make shopkeepers co-responsible for maintaining safety and security. By describing the practice of the Collective Shopping Ban in The Hague, he investigates how the involved shopkeepers are dealing with offenses like theft, nuisance, intimidation, and van-

dalism. The author describes the sociological background of banning orders and what the banning of people means in terms of purification of public space.

Legal protection against the accumulation of private and criminal banning orders

Benny van der Vorm

There are different types of banning orders (criminal, administrative and private banning orders) and also various procedures for imposing these orders. According to the case law of the European Court of Human Rights (EctHR) it is unlikely that the private banning orders can be labelled as a criminal charge. The nature of the private banning orders is not punitive. These orders are to be regarded as recovery sanctions. However, applying the 'Engel criteria' will lead to the conclusion that some criminal banning orders are to be considered as a criminal charge. Accumulation between criminal and private law banning orders might be troublesome, but it is possible. It is recommended that the Public Prosecution Service is cautious when it comes to demanding a criminal banning order, when a private banning order has already been imposed.

Using the banning order as a weapon against the spreading of jihadist ideas

Jan Brouwer and Jon Schilder

In mid-August 2017, the Minister of Justice and Security prohibited the controversial preacher Jneid from exhibiting in the vicinity of 'his' bookshop, annex mosque in the Schilderswijk in The Hague. By means of this ban, the minister wanted to prevent Jneid from carrying out his 'intolerant' message any longer in an environment where many young people are susceptible to radicalization. The Temporary Act on Counterterrorism was supposed to provide an adequate basis for such a ban. This article argues that a measure restricting the freedom of movement with the aim of preventing someone from conveying his message is against the constitutional prohibition of censorship and may therefore not be imposed.

Banishment and expulsion in Northwest Europe since the early modern period

Margo De Koster

To supplement recent debates concerning the expulsion of criminal foreigners and the repelling of poor refugees with longer-term insights, this contribution examines banishment practices in early modern and modern Northwest Europe. It argues that banishment, a sanction involving a person's geographical and social exclusion, served both to punish deviants and to monitor mobile newcomers. Expulsion practices were shaped mainly by concerns about the regulation of access to the labor market and poor relief. The profile of the expellee displays remarkable continuity across time: the poor unwanted stranger, lacking social bonds and, in the case of female migrants, perceived as being prone to prostitution. Albeit banishment often proved only temporary and thus not effective, authorities continued to rely on it because of its symbolic function, displaying their diligence in purifying and protecting local society. This was much to the detriment of the expellees, who were driven into marginality and illegality.

Crimmigration and the expulsion of criminally convicted immigrants.

Jelmer Brouwer

This article analyses to what extent current responses to crime committed by immigrants can be seen as a modern version of the classical practice of banishment. To that end it analyses three recent policy developments directed at criminally convicted immigration. The analysis shows that during the last ten years there has been a sharp increase in the number of immigrants losing their residence permit following a criminal conviction. Moreover, punishment aimed at criminally convicted immigrants without a legal right to stay is increasingly aimed at permanent exclusion through the practice of deportation. Drawing on the theoretical notions of crimmigration and bordered penalty, it is therefore argued that criminally convicted immigrants increasingly see themselves confronted with punishment practices that are the modern equivalent of the classical practice of banishment. This raises important questions about where we should draw the line between insiders and outsiders.

Statelessness as a modern form of exclusion. Towards an enduring solution for stateless people in the Netherlands

Marlotte van Dael, Jelle Klaas and Loïs Vaars

This article maps the current Dutch practice on statelessness, and tries to expose the current issues in particular. The published legislative proposal for a statelessness determination procedure in September 2016 is an attempt by the Dutch government to solve part of these problems after wide criticism from, among others, the Advisory Committee on Migration Affairs (ACVZ) in 2013. The introduction of a statelessness determination procedure is a long awaited development and a step in the right direction with a view of improving current practice and law for stateless persons residing in the Netherlands. However, significant deficiencies in the legislative proposal risk to greatly undermine the operation and value of the new procedure, especially for those currently left in limbo and excluded from society. This article focuses on the shortcomings in the procedure and provides recommendations how to revise these to ensure that stateless persons are enabled to demonstrate their statelessness adequately and obtain the rights associated with it as intended in the Statelessness Conventions signed by the Netherlands.

Exclusion and self-exclusion from the labor market

Elina van 't Zand-Kurtovic

In the Netherlands, the number of criminal record screenings performed each year skyrocketed to more than one million. Yet, empirical evidence on its effects has been largely absent. In this article the author addresses parts of the findings of her PhD research, which aimed to fill this gap, by providing a subjective perspective of how having a criminal record impacts the process of re-entry into society, particularly into the labor market, for young adults. It is based on the lived experiences of 31 young adults having a criminal record who were followed during their process of reintegration into the labor market. The vivid, real-life stories of young adults' strategies of dealing with the stigma of a criminal record, and how this subsequently influences their position in the labor market, highlight the counterproductive effects of increasingly widespread criminal record screening. They provide evidence that many young adults adopt self-exclusion as a strategy for avoiding rejection and exclusion.