

## Summaries

*Justitiële verkenningen* (Judicial explorations) is published eight 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. 3, 2012) is *Tapping and infiltration*.

### **Who's still calling? The changing results of the telephone tap**

*G. Odinot and D. de Jong*

In the past decades, telecommunications traffic has grown explosively. There has been an enormous expansion of the use of mobile phones. In addition, the way in which these phones are used has changed as well. An ever growing number of mobile phones is connected to the Internet, and a growing share of communications take place through the Internet. As a result, communication gets increasingly fragmented, because of the various ways and channels available for communication. In this article, the authors discuss the possible implications of these developments for the use of the telephone tap as an investigative tool during criminal investigations. Furthermore, the authors examine the ways in which the internet tap can support or replace the use of the telephone tap. Finally, alternative investigation tools are discussed that might compensate the changing results of the telephone tap.

### **Possibilities and limitations of internet wiretapping**

*J.J. Oerlemans*

The future of wiretapping is threatened by encryption and developments in the telecommunications industry. Internet communications changed the wiretapping landscape fundamentally. In practice it is often impossible to wiretap all possible internet connections. Not all communication providers are obliged to execute wiretap orders. This limits the use of a wiretap in an increasingly digital world. Although the content of certain encrypted Voice-over-IP communications and private messages might not be visible to law enforcement officials, the traffic data are. These traffic data show when the suspect connects to certain communication services,

which provide important clues to proceed in a criminal investigation. It is important to have a discussion whether our wiretap laws need to be amended to better fit the needs of law enforcement. However, to make such a debate possible we need transparency. A good first step is to provide details and statistics about the use of internet wiretaps.

### **Criminal investigation methods and privacy. An international comparison**

*J.B.J. van der Leij*

The Dutch regulation of phone tapping has a great deal of safeguards built in to ensure that this investigation method isn't used flippantly. Despite this, it appears that phone tapping is far more commonly used in The Netherlands than in any other western nation, including England, Sweden and Germany. This study shows that, due to differences in registration of phone tapping statistics, it is difficult to compare various countries' practices. However, it does appear that the Dutch authorities don't perceive to have viable alternatives to phone tapping. The limited alternatives that they do (perceive themselves to) have, such as infiltration, pose even greater ethical considerations, making them less attractive. Authorities in England, Sweden and Germany appear to use alternative investigation methods much more frequently than those in The Netherlands. Some examples of the types of alternatives more often resorted to in other countries are the use of traffic data, (intrusive) surveillance and various forms of infiltration. A comparison of the regulations in all four countries showed differences in the degree to which phone tapping is perceived to pose ethical considerations (posing a threat to the privacy of citizens) as an investigatory method.

### **Undercover operations: a necessary evil? Past, present and future of a controversial method of investigation**

*E.W. Kruisbergen and D. de Jong*

An important part of the scientific literature looks upon undercover policing from a normative, critical point of view. These studies frequently problematize undercover operations as a *necessary evil*. Yet what do we actually know about the practice of the execution of undercover operations and about the results they yield for criminal investigations? Not much. Little empirical research has been done on this subject. This article analyses the implementation and

results of undercover operations in the Netherlands. The empirical data consist of all covert policing operations in the Netherlands in 2004. The authors address the following questions: how often is this method of investigation deployed; what different types of undercover operations exist; and what results have these operations produced? Furthermore, they examine the history of undercover policing and look into the legislative debate. Finally, they explore some possible future developments in the use of undercover operations.

### **The exfiltration of accused and convicted criminals**

#### *C. Fijnaut*

The Dutch Code of Criminal Procedure and the related guidelines of the College of Procurators-General are for all sorts of historical and ideological reasons heavily restrictive when it comes to the use of cooperative witnesses in criminal proceedings. What strikes most is that even in very serious cases it is not possible to grant a witness complete or partial immunity in exchange for his important cooperation. This contribution describes the problems arising sometimes in criminal cases wherein prosecutors, despite the existing narrow framework, make a deal with such a witness. The article outlines not only the historical and international background of the use of cooperative witnesses, but also its contemporary legal framework in the United States, Italy, the United Kingdom and Germany. The outcome of this comparative exercise is that at least the current legal provisions should be evaluated and that this evaluation should take into account the system and experiences in other countries as well as the problems of serious crime in the Netherlands and the leniency policies that govern the efforts to contain serious white collar crime like e.g. cartels.