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NEIGHBORS FROM HELL:  
PROBLEM-SOLVING AND HOUSING LAWS IN THE NETHERLANDS

Michel Vols\*

I. INTRODUCTION .....	507
II. THERAPEUTIC JURISPRUDENCE AND PROBLEM-SOLVING JUSTICE .	511
III. DUTCH HOUSING LAW AND HOUSING RELATED ANTI-SOCIAL BEHAVIOR.....	512
A. <i>Dutch Housing Law, as Written</i> .....	513
B. <i>Dutch Housing Law in Action</i> .....	515
IV. THERAPEUTIC JURISPRUDENCE ANALYSIS.....	517
A. <i>Anti-Therapeutic Consequences on the Perpetrator</i> .....	517
B. <i>Anti-Therapeutic Consequences for the Victims</i> .....	520
C. <i>Problem-Generating Approach Towards Housing Related         Anti-Social Behavior</i> .....	522
V. MOVING TOWARD A MORE SOLUTION-ORIENTED APPROACH TO TARGET ANTI-SOCIAL BEHAVIOR.....	522
VI. CONCLUSION .....	526

I. INTRODUCTION

Neighbors can enrich, but also ruin your life. Housing related anti-social behavior such as noise nuisance, harassment, hoarding, the cultivation of cannabis and small-scale drug dealing can have devastating effects on neighbors (hereafter: “victims”). Unfortunately, the number and scale of these kinds of problems have undergone an enormous growth.

For that reason, the past decade has seen the rapid development of various ways of tackling this kind of anti-social behavior all over the world. For example, in the United Kingdom and Australia, registered social landlords and local authorities are entitled to request that a court give a “civil preventative court order” that prohibits people from acting in an anti-social manner.<sup>1</sup> In the

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<sup>1</sup> See HOME DEPARTMENT, PUTTING VICTIMS FIRST: MORE EFFECTIVE RESPONSES TO ANTI-SOCIAL BEHAVIOR, 2012, Cm. 8367 (U.K.); ANDREW MILLIE, ANTI-SOCIAL BEHAVIOR (2009); Thomas Crofts, *The Law and (Anti-Social Behavior) Order Campaign in Western Australia*, 22 CURRENT ISSUES CRIM. JUST. 399 (2011); John Flint & Judy Nixon, *Governing Neighbors: Anti-*

United States, local authorities started “nuisance abatement programs” to combat problem behavior.<sup>2</sup> In Belgium, the local authorities have the power to issue a “Municipal Administrative Fine” to nuisance neighbors.<sup>3</sup>

In the Netherlands, the local authorities are entitled to issue closure orders, which result in the closure of a home and the homelessness of the “neighbor from hell” (hereafter: “perpetrator”).<sup>4</sup> Moreover, Dutch landlords have the power to obtain an eviction order from the housing court if a perpetrator causes serious nuisance to his victims. After obtaining this eviction order, the landlord is entitled to remove the anti-social tenant from the premises.

The subject of tackling housing-related anti-social behavior has grown in importance in the light of recent developments in the Netherlands. In Amsterdam the housing associations (the landlords that provide public/social housing), the local authority and the police have agreed on the multi-agency “Harassment Approach” (“Treiteraankpak”): a perpetrator who harasses his neighbors, will be harassed by the authorities. They will unleash all their powers from private and public law on the perpetrator.

According to the burgomaster of Amsterdam, a perpetrator has to stop bothering his victims or has to leave the town.<sup>5</sup> In August 2013, the Harassment Approach “celebrated” its first success. A family that had caused serious trouble for over thirteen years had to leave their home after the housing associ-

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*social Behavior Orders and New Forms of Regulating Conduct in the UK*, 43 URB. STUD. 939 (2006).

<sup>2</sup> See ELI B. SILVERMAN, NYPD BATTLES CRIME: INNOVATIVE STRATEGIES IN POLICING 135-37 (1999); William J. Bratton, *The New York City Police Department’s Civil Enforcement of Quality-of-Life Crimes*, 3 J.L. & POL’Y, 447, 448-50 (1995); Terance J. Rephann, *Rental Housing and Crime: The Role of Property Ownership and Management*, 43 ANNALS REGIONAL SCI. 435, 435-51 (2009).

<sup>3</sup> See Tom Meeuws, *Toegegeven: er is Overlast in Antwerpen* [Anti-social behavior exists in Antwerp], in MARK COOLS ET AL., OVERLAST EN DE MAATSCHAPPELIJKE AANPAK ERVAN [The tackling of anti-social behavior in society] (2008); ELKE DEVROE, A SWELLING CULTURE OF CONTROL? DE GENESE EN TOEPASSING VAN DE WET OP DE GEMEENTELIJKE ADMINISTRATIEVE SANC-TIES IN BELGIË [A Swelling Culture of Control? The Rise and Application of the Municipal Administrative Fines in Belgium] (2012).

<sup>4</sup> See MICHEL VOLS, WOONOVERLAST EN HET RECHT OP PRIVÉLEVEN: DE AANPAK VAN OVERLASTVEROORZAKERS IN NEDERLAND, ENGELAND, WALES EN BELGIË [Housing Related Anti-social Behavior and the Right to Respect for Private Life: The Tackling of Anti-social behavior in the Netherlands, England, Wales and Belgium] (2013); Jan G. Brouwer & Jon E. Schilder, *Woonoverlast en de Persoonlijke Levenssfeer: Naar een Balans Tussen Bescherming en Beperking* [Housing Related Anti-social Behavior and the Right to Respect for Private Life: Towards a Balance Between Protection and Restriction], 36 NJCM-BULL. 307, 307-24 (2011) (Neth.).

<sup>5</sup> See CITY OF AMSTERDAM, ACTIEPLAN: DE TREITERAANKPAK [Action Plan Harassment Approach] (2013).

ation obtained (with the support of the burgomaster and police) an eviction order from the housing court.<sup>6</sup>

This family is only one of many perpetrators that face homelessness because of causing a nuisance. In the Netherlands, housing associations request approximately 1500 eviction orders from the courts because of serious housing related anti-social behavior every year.<sup>7</sup> In all these cases, a neighbor's problem behavior seriously harms a victim's well-being. Recent research by the Dutch Central Statistical Office ("CBS") found that 6% of the 72,000 respondents were suffering constantly from serious anti-social behavior from their neighbors and 13% said they occasionally experienced a nuisance.<sup>8</sup>

In the Netherlands, questions have arisen concerning the lawfulness of the instrument of expulsion (as the result of an eviction or closure order) in tackling housing related anti-social behavior.<sup>9</sup> Strangely enough, the huge financial impact on (public) housing agencies and local authorities—the costs of a house expulsion are estimated at 60,000 Euros<sup>10</sup>—in relation to the problem-solving capability of an "eviction oriented approach," has never been the subject of a serious debate. This lack of debate is even more surprising, when we consider that most of the time, perpetrators, (and victims) are simultaneously dealing with various other problems: e.g., substance abuse, (mental) health problems, lack of social skills, family issues, unemployment and poverty.<sup>11</sup>

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<sup>6</sup> See Hof's-Amsterdam 8 augustus 2013, Case No. ECLI:NL:RBAMS:2013:4935, available at [www.rechtspraak.nl](http://www.rechtspraak.nl) (last visited Apr. 1, 2014) (Rochdale/Defendants) (Neth.).

<sup>7</sup> See *Huisuitzettingen 2012*, AEDS.NL, <http://www.aedes.nl/binaries/downloads/schuldulpverlening/huisuitzettingen-2012/20130319-huisuitzetting-2012.pdf> (last visited Apr. 1, 2014).

<sup>8</sup> See *Alle huishoudens, overlast door directe burens*, CENTRAAL BUREAU VOOR DE STATISTIEK, <http://www.cbs.nl> (last visited Apr. 1, 2014).

<sup>9</sup> See Brouwer & Schilder, *supra* note 4. Cf. DAVID COWAN, *HOUSING LAW AND POLICY* (2011); John Flint & Hal Pawson, *Social Landlords and the Regulation of Conduct in Urban Spaces in the United Kingdom*, 9 *CRIMINOLOGY & CRIM. JUST.* 415, 415-35 (2009); Caroline Hunter, Judy Nixon & Michele Slatter, *Neighbors Behaving Badly: Anti-social Behavior, Property Rights and Exclusion in England and Australia*, 5 *MACQUARIE L.J.* 149, 149-76 (2005); Jan Luba, *Eviction by the Magistrates: the New Closure Orders*, 13 *LANDLORD & TENANT REV.* 171, 171-73 (2009).

<sup>10</sup> See ROB BOGMAN & FRANK VAN SUMMEREN, *PREVENTIEVE WOONBEGELEIDING: EVALUATIE VAN DE PILOT WOONBEGELEIDINGSPROJECT [Preventative Supervised Housing: Evaluation of the Pilot Supervised Housing]* 5-7 (2010).

<sup>11</sup> See Maureen Crane & Anthony M. Warnes, *Evictions and Prolonged Homelessness*, 15 *HOUSING STUD.* 757, 757-73 (2000); Caroline Hunter & Judy Nixon, *Taking the Blame and Losing the Home: Women and Anti-social Behavior*, 23 *J. SOC. WELFARE & FAM. L.* 395, 395-410 (2001); Igor van Laere et al., *Evaluation of the Signalling and Referral System for Households at Risk of Eviction in Amsterdam*, 17 *HEALTH & SOC. CARE COMMUNITY* 1, 1-8 (2008); Igor van Laere et al., *Preventing Evictions as a Potential Public Health Intervention: Characteristics and Social Medical Risk Factors of Households at Risk in Amsterdam*, 37 *SCANDINAVIAN J. PUB. HEALTH* 697, 701-03 (2009) [hereinafter Laere et al., *Preventing Evictions*]; Gert Schout &

Making a perpetrator homeless does not solve the underlying causes of anti-social behavior. An eviction does not have any therapeutic effect for the perpetrators or for his victims. At a macroeconomic level, evicting families is a waste of money and time. For that reason, I address in this paper the following question: could Dutch housing law be applied in a more solution-oriented way? Is it possible to apply private law in a more therapeutic way in order to combat anti-social behavior and its underlying causes at an early stage? Is it possible to reduce the number of evictions and reserve the instrument of expulsion for exceptional cases in which therapy and dialogue are no longer a solution?

This Article tries to answer these questions by analyzing Dutch housing (landlord-tenant) law with the help of findings of therapeutic jurisprudence (hereafter: "TJ") and research on problem-solving justice. The analysis and the recommendations may be of use for other jurisdictions that evict tenants exhibiting housing-related anti-social behavior, such as Australia,<sup>12</sup> Belgium,<sup>13</sup> Canada,<sup>14</sup> China,<sup>15</sup> Finland,<sup>16</sup> Germany,<sup>17</sup> the Republic of Ireland,<sup>18</sup> the United Kingdom,<sup>19</sup> and the United States of America.<sup>20</sup>

This Article is divided into four parts. The first part gives a brief introduction of TJ and problem-solving justice in the United States. The second part will examine Dutch housing law and the current eviction oriented approach. The third part contains a TJ analysis of the Dutch way of dealing with housing-

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Gideon de Jong, *Leren van Huisontruïmingen* [Lessons from Evictions], 20 J. SOC. INTERVENTION: THEORY & PRAC. 21, 23 (2011).

<sup>12</sup> See Hunter, Nixon & Slatter, *supra* note 9.

<sup>13</sup> See WONEN AAN DE ONDERKANT [Living at the bottom of the housing market] 337 (Pascal de Decker, Luc Goossens & Isabelle Pannecoucke eds., 2005).

<sup>14</sup> See LINDA LAPOINTE, ANALYSIS OF EVICTIONS UNDER THE TENANT PROTECTION ACT IN THE CITY OF TORONTO: THE NON-PROFIT HOUSING SECTOR 4 (2004).

<sup>15</sup> See Yung Yua, *On the Anti-social Behavior Control in Hong Kong's Public Housing*, 26 HOUSING STUD. 701, 701-22 (2011).

<sup>16</sup> See David P. Varady & Harry Schulman, *Social Disorders in the Early Stages of Public Housing Decline: A Helsinki Case Study*, 22 HOUSING STUD. 313, 313-32 (2007).

<sup>17</sup> See Martin Häubli, *BGB § 569 Außerordentliche fristlose Kündigung aus wichtigem Grund*, in 6 MÜNCHENER KOMMENTAR ZUM BGB vol. 3, ch. 5 (2012).

<sup>18</sup> See Michelle Norris & Cathal O'Connell, *Local Authority Housing Management Reform in the Republic of Ireland: Progress to Date—Impediments to Future Progress*, 2 EUR. J. HOUSING POL'Y 245, 257-60 (2002).

<sup>19</sup> See HOUSING, URBAN GOVERNANCE AND ANTI-SOCIAL BEHAVIOR (John Flint ed., 2006); David J. Hughes, *The Use of the Possessory and Other Powers of Local Authority Landlords as Means of Social Control, Its Legitimacy and Some Other Problems*, 29 ANGLO-AM. L. REV. 167, 167-201 (2000).

<sup>20</sup> See Gerald Lebovits & Daniel J. Curtin, Jr., *Nuisance Holdovers in New York*, 33 N.Y. REAL PROP. L.J. 68, 68-77 (2005); Nicole Strand, *Restructuring Public Housing: an Examination of the Strict Interpretation of the "One Strike and You're Out" Policy*, 24 HAMLINE J. PUB. L. & POL'Y 111, 111-46 (2002).

related anti-social behavior. The fourth part offers suggestions for adjusting the eviction approach and establishing a problem-solving way to tackle anti-social behavior.

## II. THERAPEUTIC JURISPRUDENCE AND PROBLEM-SOLVING JUSTICE

Therapeutic jurisprudence sees the law as “a therapeutic agent.”<sup>21</sup> This means that the law is a social force that can have “therapeutic or antitherapeutic consequences.”<sup>22</sup> TJ proposes, “the exploration of ways in which, consistent with principles of justice, the knowledge, theories, and insights of mental health law and related disciplines can help *shape* the development of the law.”<sup>23</sup> It uses “social science to study the extent to which a legal rule or practice promotes the psychological or physical wellbeing of the people it affects.”<sup>24</sup>

TJ provides the theoretical foundation for problem-solving courts and solution-oriented approaches.<sup>25</sup> Problem-solving courts are “specialized tribunals established to deal with specific problems, often involving individuals who need social, mental health, or substance abuse treatment services.”<sup>26</sup> According to Winick and Wexler, “judges performing in a problem-solving capacity, dealing as they do with human problems, need to understand some principles of psychology, the science of human behavior,” just as “judges dealing with anti-trust cases need to understand basic principles of economics, and judges dealing with patent cases need to understand basic principles of engineering.”<sup>27</sup>

Courts involved in problem-solving justice are characterized by “active judicial involvement and the explicit use of judicial authority to motivate individuals to accept needed services and to monitor their compliance and progress.”<sup>28</sup> They use “their authority to forge new responses to chronic social, human and legal problems—including problems like family dysfunction, addiction, delinquency and domestic violence—that have proven resistant to conventional solutions.”<sup>29</sup> Problem-solving courts are not focused on just settling a

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<sup>21</sup> LAW IN A THERAPEUTIC KEY xvii (David B. Wexler & Bruce J. Winick eds., 1996); REHABILITATING LAWYERS: PRINCIPLES OF THERAPEUTIC JURISPRUDENCE FOR CRIMINAL LAW PRACTICE 6 (David B. Wexler ed. 2008) [hereinafter REHABILITATING LAWYERS].

<sup>22</sup> JUDGING IN A THERAPEUTIC KEY 7 (Bruce J. Winick & David B. Wexler eds., 2003).

<sup>23</sup> LAW IN A THERAPEUTIC KEY, *supra* note 21, at xvii.

<sup>24</sup> Christopher Slobogin, *Therapeutic Jurisprudence: Five Dilemmas to Ponder*, 1 PSYCHOL. PUB. POL’Y & L. 193, 196 (1995).

<sup>25</sup> Bruce J. Winick, *Therapeutic Jurisprudence and Problem Solving Courts*, 30 FORDHAM URB. L.J. 1055, 1062 (2002).

<sup>26</sup> JUDGING IN A THERAPEUTIC KEY, *supra* note 22, at 3.

<sup>27</sup> *Id.* at 7.

<sup>28</sup> *Id.* at 5.

<sup>29</sup> GREG BERMAN & JOHN FEINBLATT, *Problem-solving Courts: A Brief Primer*, in JUDGING IN A THERAPEUTIC KEY, *supra* note 22, at 73.



case, but on “achieving a variety of tangible outcomes associated with avoiding reoccurrence of the problem.”<sup>30</sup> A number of jurisdictions (e.g., the United States and Australia) have good experiences with establishing problem-solving courts and implementing problem-solving techniques in mainstream courts.<sup>31</sup> The Netherlands does not have ample experience with problem-solving courts, but the Dutch Council for the Judiciary (“Raad voor de Rechtspraak”) declared itself openly in favor of solution-focused justice.<sup>32</sup>

Although TJ and problem-solving justice approaches are used to analyze nearly every area of law, it seems that it has not been applied to housing law extensively.<sup>33</sup> The aim of this Article is to fill this existing knowledge gap and to determine whether TJ and problem-solving justice approaches can be useful in analyzing and applying housing law. However, before a comprehensive TJ-analysis of the Dutch approach towards housing related anti-social behavior can be made, it is necessary to have a better understanding of the Dutch housing law system.

### III. DUTCH HOUSING LAW AND HOUSING RELATED ANTI-SOCIAL BEHAVIOR

In 2012 the Dutch housing stock consisted of nearly 7.5 million homes.<sup>34</sup> Compared with other European countries and the United States of America, the Netherlands has a high percentage of rented housing. Almost 56% of the

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<sup>30</sup> JUDGING IN A THERAPEUTIC KEY, *supra* note 22, at 5.

<sup>31</sup> See JOHN FLEINBLATT & GREG BERMAN, GOOD COURTS: THE CASE FOR PROBLEM-SOLVING JUSTICE 23 (2005).

<sup>32</sup> See RAAD VAN DE RECHTSPRAAK, VISIE OP DE RECHTSPRAAK [View on the Administration of Justice] 30 (Frans van Dijk et al., eds., 2010). Cf. SUZAN VERBERK, PROBLEEMOPLOSSEND STRAFRECHT EN HET IDEEAAL VAN RESPONSIEVE RECHTSPRAAK [Problem-solving Criminal Law and the Ideal of Responsive Administration of Justice] (2011); Stijn Franken, *Probleemoplossende Rechtspraak als Alternatief voor Strafrechtelijke Repressie* [Problem-solving Justice as Alternative for Repression in Criminal Law], 34 RECHT DER DERKELIJKHEID 66, 70-71 (2013).

<sup>33</sup> The importance of housing to successful reintegration of ex-offenders that return from prison is acknowledged in TJ literature. See Tamar M. Meekins, *You Can Teach Old Defenders New Tricks: Sentencing Lessons From Specialty Courts*, in REHABILITATING LAWYERS, *supra* note 21, at 143, 144. Furthermore, eviction and TJ have been linked in Australia. According to the president of the Victorian Civil and Administrative Tribunal, “Self-represented tenants are still evicted by justice institutions following therapeutic jurisprudence approaches. But the way it is done is intended to be dignified and humane. That might involve giving advice about emergency housing assistance. Hence the significance, in therapeutic terms, of the tribunal’s recent initiative of making a social assistance data base available on the desktop computer of all members.” KEVIN BELL, VICTORIAN CIVIL & ADMIN. TRIBUNAL, ONE VCAT: PRESIDENT’S REVIEW OF VCAT 82 (2009).

<sup>34</sup> See *Woningvoorraad naar bewoning; regio 2008-2012*, CENTRAAL BUREAU VOOR DE STATISTIEK (Mar. 4, 2014), <http://statline.cbs.nl/StatWeb/publication/?VW=T&DM=SLNL&PA=81293NED&D1=a&D2=0&D3=a&HD=140407-1102&HDR=T&STB=G1,G2>.

homes were owner-occupied and 44% were rented from housing associations and private landlords.<sup>35</sup> The housing associations especially are powerful players in the rental market. In 2010, the housing associations owned 2.3 million homes (31% of the total housing stock and 74% of all the rental homes).<sup>36</sup>

Since 1993, the housing associations have been considered private enterprises; however, they are still obliged to provide affordable housing to the public and are highly regulated by government. The Government Regulation on the Social Housing Sector (“Besluit Beheer Sociale-Huursector,” hereafter: “BBSH”) prescribes the conditions under which a landlord is considered a housing association.<sup>37</sup> The BBSH obliges the housing associations to provide housing to people with a relatively low annual income (up to \_ 34.229 in 2013) and vulnerable persons like elderly and/or handicapped people.<sup>38</sup> Moreover, BBSH Article 12(a) compels housing associations to improve the quality of life in the neighborhoods where they are active.<sup>39</sup> Because of this last obligation, housing associations work together with local authorities to tackle housing related anti-social behavior. Amsterdam’s Harassment Approach (mentioned above) is just one of many examples of such a public-private partnership.<sup>40</sup>

#### A. Dutch Housing Law, as Written

According to Dutch housing law, a tenant is not allowed to be involved in housing-related, anti-social behavior.<sup>41</sup> Most of the time, the landlord and tenant include provisions in a written tenancy agreement (“huurovereenkomst”) that prohibits the tenant from causing nuisance to other people while using the premises. Because freedom of contract is one of the foundations of Dutch private law, the landlord and tenant enjoy extensive freedom to include provisions in the tenancy agreement. However, according to Article 13 of Book 3 (3:13)

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<sup>35</sup> See *Woningvoorraad naar eigendom*, CENTRAAL BUREAU VOOR DE STATISTIEK (Mar. 4, 2014), <http://statline.cbs.nl/StatWeb/publication/?VW=T&DM=SLNL&PA=71446NED&D1=0-2,4-5&D2=0,5-16&D3=a&HD=140407-1104&HDR=T,G2&STB=G1>.

<sup>36</sup> See *Eén op de drie woningen eigendom van woningcorporatie*, CENTRAAL BUREAU VOOR DE STATISTIEK (Dec. 5, 2011), <http://www.cbs.nl/nl-NL/menu/themas/bouwen-wonen/publicaties/artikelen/archief/2011/2011-3520-wm.htm>.

<sup>37</sup> See *Besluit Beheer Sociale-Huursector*, RIJKSOVERHEID, available at <http://www.rijksoverheid.nl/documenten-en-publicaties/besluiten/2005/07/01/besluit-beheer-sociale-huursector-bbsh.html> (last visited Apr. 12, 2014).

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> Cf. Kevin J. Brown, *The Developing Habitus of the Anti-Social Behavior Practitioner: From Expansion in Years of Plenty to Surviving the Age of Austerity*, 40 J.L. & SOC’Y 375, 396-400 (2013).

<sup>41</sup> A.M. KLOOSTERMAN ET AL., HOOFDLIJNEN IN HET HUURRECHT: MET VRAGEN EN ANTWOORDEN (2008); H. HIELKEMA, BURENOVERLAST. REMEDIES TEGEN DE OVERLASTGEVENDE HUURDER (2d rev. 2012).

of the Dutch Civil Code (“DCC”), a tenancy agreement may not violate public order or public morals.<sup>42</sup>

Furthermore, some statutory provisions prohibit the tenant from acting in an anti-social manner. First, DCC Article 7:213 obliges the tenant to use the dwelling as a “prudent tenant.”<sup>43</sup> For instance, this means that the tenant may not cause nuisance to his neighbors or use the home as a place to deal drugs. Second, DCC Article 7:214 compels the tenant to use the dwelling for housing and not for commercial purposes, such as growing cannabis or breeding dogs.<sup>44</sup> Third, DCC Article 7:217 obliges the tenant to repair the premises if necessary.<sup>45</sup> Fourth, DCC Article 7:219 holds the tenant responsible for the acts of others, if they cause nuisance in and around the premises.<sup>46</sup>

If the tenant is involved in housing-related, anti-social behavior, the landlord is entitled to annul the tenancy agreement. However, DCC Article 7:231 provides comprehensive judicial protection to the tenant against the loss of his home.<sup>47</sup> A tenancy agreement can only be annulled by a housing court (“kantonrechter”), except in the case where the local authority issues a closure order and closes the premises because of drug dealing or a serious violation of public order.<sup>48</sup>

According to DCC Article 6:265 and case law of the Dutch Supreme Court, the housing court must annul the tenancy agreement if the landlord proves that the tenant has breached the tenancy agreement or violated the aforementioned statutory obligations.<sup>49</sup> However, the tenant is allowed to defend himself: he can raise the defense that the anti-social behavior was not serious enough to annul the tenancy agreement; or that the annulment has serious and disproportional consequences for him and his family members. If a tenant raises such a defense, the court is entitled to reject the request of the landlord to annul the tenancy agreement. In the event that the landlord proves that the tenant acted in an anti-social manner and a defense of the tenant is dismissed, the court will annul the tenancy agreement and issue an eviction order. After issuing such an order, the tenant will be granted a period—generally two weeks—to vacate the premises. If the tenant remains at the property after this

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<sup>42</sup> Burgerlijk Wetboek [BW] [Civil Code] art. 3:13 (Neth.).

<sup>43</sup> *Id.* art. 7:213.

<sup>44</sup> *Id.* art. 7:214.

<sup>45</sup> *Id.* art. 7:217.

<sup>46</sup> *Id.* art. 7:219.

<sup>47</sup> *Id.* art. 7:231.

<sup>48</sup> See Brouwer & Schilder, *supra* note 4; Michel Vols & Suzanne D. van Wijk, *Wet Victor en de Proportionaliteitstoets uit Artikel 8 EVRM* [Extrajudicial Termination of a Tenancy Agreement and the Proportionality Requirement of Article 8 ECHR], 20 WR TIJDSCHRIFT VOOR HUURRECHT 128 (2011).

<sup>49</sup> See HR 22 Oktober 1999, NJ 1999, 197 (De Bruin/Meiling) (Neth.).

given period expires, the landlord is allowed to evict the tenant with the assistance of the police.

Under certain circumstances, the housing association does not execute the eviction order but applies a “last chance policy” (“laatste-kansbeleid”).<sup>50</sup> In that case, the housing association offers the perpetrator a new place to stay, on condition that the perpetrator signs a “last chance tenancy agreement” with additional, specific clauses about (the prevention of) anti-social behavior.<sup>51</sup> The perpetrator must refrain from certain types of behavior or must act in certain way; e.g., he must take an anger management course.<sup>52</sup> If the perpetrator fails to comply with the new tenancy agreement, the housing association is entitled to obtain an eviction order from the housing court.<sup>53</sup>

### B. Dutch Housing Law in Action

In daily life, three levels of housing-related, anti-social behavior may be distinguished. In a figurative sense, these three levels constitute a pyramid.<sup>54</sup> The first level—the foundation of the pyramid—consists of nuisance incidents that have a relatively low impact on the victims. In the majority of all such cases, the neighbors are able to reach a solution together or with a little help from mediators, police officers, or housing association staff.

The second level—the center of the pyramid—consists of anti-social behavior cases, in which the victims are seriously affected by the behavior of the perpetrator. Unfortunately, the neighbors are not able to reach a solution because, for example, the perpetrator is not willing (or able) to speak to the victims or housing association staff. In this type of case, a more serious intervention by an authority such as the housing court is needed. However, the housing association will not request an eviction order because the anti-social behavior is not serious enough to justify the loss of the perpetrator’s home. For that reason, the housing associations start obtaining as much evidence of the nuisance as possible in order to obtain an eviction order. Nevertheless, this can take months and even years. For example, in the aforementioned case about

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<sup>50</sup> See Sten-Åke Stenberg et al., *Locked Out in Europe: A Comparative Analysis of Evictions Due to Rent Arrears in Germany, the Netherlands and Sweden*, 5 EUR. J. HOMELESSNESS 39 (2011).

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> See *id.*; Cf. Jill Morgan, *Family Intervention Tenancies: the De(marginalization) of Social Tenants*, 32 J. SOC. WELFARE & FAM. L. 37, 37-46 (2010).

<sup>54</sup> See Michel Vols, *Dwing Veroorzakers van Burengerucht Hun Gedrag te Veranderen* [Obliged Nuisance Neighbors to Improve Their Behavior], TROUW (July 15, 2013, 5:27 PM), <http://www.trouw.nl/tr/nl/4492/Nederland/article/detail/3476131/2013/07/15/Dwing-veroorzakers-van-burengerucht-hun-gedrag-te-veranderen.dhtml>.

the Harassment Approach, a troubled family was able to cause serious nuisance for thirteen years.<sup>55</sup>

The third level—the top of the pyramid—consists of incidents that end up in housing courts. In these cases, the housing association considers the anti-social behavior serious enough to request an eviction order. The eviction procedure at housing courts has been insufficiently studied and no systemic data has been collected in the Netherlands.<sup>56</sup> Nevertheless, Aedes, the umbrella organization of the Dutch housing associations, has published some rudimentary data on requested eviction orders. According to Aedes, the housing associations lodged 23,700 requests for eviction orders in 2012.<sup>57</sup> The majority of these requests (more than 90%) are based on arrears of rent.<sup>58</sup> In almost 1400 cases, the request for an eviction order was the result of housing related anti-social behavior.<sup>59</sup>

Because of the lack of detailed data, I analyzed all of the available case law from 2000 to 2012 concerning eviction orders and housing-related, anti-social behavior, which was published on the website of the Dutch judiciary and in the relevant housing law reviews.<sup>60</sup> In total, I found and analyzed 244 cases. In the majority of cases, (90%), the landlord requesting the eviction order was a housing association. From the data in Table 1, it is apparent that the landlords are relatively successful in convincing the housing court to grant eviction orders: in 69% of all the cases the housing court granted the eviction order. What is interesting in this data is that housing courts seem to be harsh towards perpetrators involved in drug-related, anti-social behavior. The courts seem to be less strict if the housing association is only able to prove that the perpetrator caused noise nuisance.

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<sup>55</sup> See Hof's-Amsterdam 8 Augustus 2013, Case No. ECLI:NL:RBAMS:2013:4935, available at [www.rechtspraak.nl](http://www.rechtspraak.nl) (last visited Mar. 27, 2014) (Rochdale/Defendants) (Neth.).

<sup>56</sup> See Laere et al., *Preventing Evictions*, *supra* note 11; Stenberg et al., *supra* note 50.

<sup>57</sup> See *Huisuitzettingen 2012*, *supra* note 7.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.* The number of cases where anti-social behavior plays a role is probably higher, because in a number of cases about anti-social behavior the housing association has the option to obtain an eviction order because of rent arrears without mentioning the anti-social behavior. *Cf.* Hunter, Nixon & Slatter, *supra* note 9, at 165.

<sup>60</sup> See generally DE RECHTSPRAAK, HOGE RAAD DER NEDERLANDEN, <http://www.rechtspraak.nl> (last visited Apr. 1, 2014); *Kort Geding* (source is a journal that publishes case law—on file with the author); *WR Tijdschrift voor Huurrecht* (source is a journal that publishes case law—on file with the author). Together, these three sources are used to collect all available case law regarding eviction of anti-social neighbors in the Netherlands.

TABLE 1<sup>61</sup>

TYPE OF ANTI-SOCIAL BEHAVIOR	TOTAL CASES	COURT REJECTS EVICTION ORDER	COURT GRANTS EVICTION ORDER	PERCENTAGE OF ORDERS GRANTED
<b>Combination (noise, drugs nuisance &amp; violent behavior)</b>	66	16	50	75%
<b>Only drugs nuisance</b>	105	30	75	71%
<b>Only violent behavior</b>	27	8	19	70%
<b>Only noise nuisance</b>	25	12	13	52%
<b>Other types</b>	21	10	11	52%
<b>Total</b>	244	76	168	69%

#### IV. THERAPEUTIC JURISPRUDENCE ANALYSIS

In the Netherlands, the majority of housing-related, anti-social behavior cases do not end up in housing court. Most of the time, this lack of court intervention makes sense because perpetrators and victims come to a solution together. However, in a significant number of cases intervention by the housing association or housing court is necessary to eradicate the nuisance. If the case eventually ends up in the housing court, the perpetrator will likely be evicted. In this paragraph, I will perform a TJ analysis of the eviction-oriented approach towards housing-related, anti-social behavior.

##### A. *Anti-Therapeutic Consequences on the Perpetrator*

Firstly, the court procedure and the threat of eviction have several anti-therapeutic consequences, which are likely to aggravate the problems the perpetrator causes and the problem behavior in which he is involved. If a housing association seeking an eviction order takes a perpetrator to the housing court, both the procedure and the threat of eviction can be a traumatizing, intimidating experience for the perpetrator and his family. The threat of losing one's home causes considerable stress, unhappiness, and seriously disrupts the lives of all of the family members.<sup>62</sup>

<sup>61</sup> See generally sources cited *supra* note 60.

<sup>62</sup> See SARAH NETTLETON ET AL., JOSEPH ROWNTREE FOUND., *THE SOCIAL CONSEQUENCES OF MORTGAGE REPOSSESSION FOR PARENTS AND THEIR CHILDREN* (1999); SHELTER, *EVICTION OF CHILDREN AND FAMILIES: THE IMPACT AND THE ALTERNATIVES* 3-4 (2009); Sarah Nettleton, *Losing a Home Through Mortgage Repossession: the Views of Children*, 15 *CHILD. & SOC'Y* 82, 82-94 (2001); Schout & De Jong, *supra* note 11, at 29; Stenberg et al., *supra* note 50, at 41.

Secondly, the procedure used to eradicate the anti-social behavior will take a long time; because, obtaining an eviction order at an early stage is not an option. Research shows that during this period of time the relationship between the perpetrator and housing association staff deteriorates.<sup>63</sup> The perpetrator becomes upset because of the “meddlesome behavior” and “threatening attitude” of the housing association staff.<sup>64</sup> The staff members become annoyed with the perpetrator because the anti-social behavior does not stop and they cannot help the victims.<sup>65</sup> As a result, the staff begins collecting as much evidence as possible to obtain an eviction order and encourage the victims to do the same. Obviously, this strategy focuses on escalation and is not beneficial for the relationship between the victim and the perpetrator.

Thirdly, targeting anti-social behavior by eviction fails to deal with the underlying causes of the problematic behavior; and, essentially serves as a pathway to homelessness. A home provides shelter—one of the basic human needs. Moreover, most people derive psycho-social benefits from having a home. Their home is a haven, a site of autonomy, which provides them with social status.<sup>66</sup> If the housing association executes an eviction order, the perpetrator and his family members will lose their home and the psycho-social benefits. For this reason, research unsurprisingly shows that eviction and homelessness have several negative consequences,<sup>67</sup> which will not aid in finding a solution for the problems of the perpetrator. Lee and Schreck found that “homeless people are victimized disproportionately often, both in an absolute sense and compared to their domiciled counterparts.”<sup>68</sup> Other research demonstrates that the stress resulting from the uncertainty of not knowing when one will have permanent housing can also be characterized as anti-therapeutic.<sup>69</sup> Furthermore, the perpetrator and his family will be isolated from their support network and the children’s education will be disrupted.<sup>70</sup> Because homelessness will deepen the problems of the perpetrator and his family, the eviction

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<sup>63</sup> Schout & De Jong, *supra* note 11, at 29.

<sup>64</sup> *Id.*

<sup>65</sup> See Schout & De Jong, *supra* note 11, at 28-30.

<sup>66</sup> See Ade Kearns et al., #Beyond Four Walls#. *The Psycho-social Benefits of Home: Evidence from West Central Scotland*, 15 HOUSING STUD. 387, 387-400 (2000).

<sup>67</sup> See, e.g., *id.* at 388 (“[S]tress and stress-related illnesses are associated with insecure home ownership.”); see also Barrett A. Lee & Christopher J. Schreck, *Danger on the Streets: Marginality and Victimization Among Homeless People*, 48 AM. BEHAV. SCIENTIST 1055, 1056 (2005) (detailing various challenges homeless people face as described in the research); see also SHELTER, *supra* note 62, at 9 (noting that “eviction and housing problems . . . can have a detrimental affect on adults’ physical and mental health . . .”).

<sup>68</sup> Lee & Schreck, *supra* note 67, at 1074.

<sup>69</sup> See SHELTER, *supra* note 62, at 7.

<sup>70</sup> See *id.* at 7-9; Laere et al., *Preventing Evictions*, *supra* note 11; Anita Palepu et al., *Quality of Life Themes in Canadian Adults and Street Youth Who are Homeless or Hard-to-house: a*

will probably transform the housing-related, anti-social behavior into more serious anti-social behavior on the street.

Obviously, in a number of cases the “last chance policy” and “last chance tenancy agreements” will mitigate the anti-therapeutic effects of the eviction for the perpetrator. In fact, these second chance instruments can have therapeutic effects for the perpetrator and his family. However, these instruments are not used in every case; and, if they are applied, the situation has already escalated and the housing court has granted an eviction order. It would be beneficial to both the perpetrators and the victims to use these kinds of instruments at an earlier stage.

Fourthly, an evicted perpetrator will not be eligible for housing provided by housing associations for a period of up to five years. The housing association will blacklist the tenant and share the tenant’s record with other housing associations. For example, a perpetrator who grew hemp in his home was blacklisted for two years.<sup>71</sup> Thus, in some cases, an eviction order causes prolonged homelessness for both the perpetrator and his family.<sup>72</sup>

Fifthly, from a legal point of view, the eviction leads to an interference with the perpetrator’s right to respect for private life and home. This right is codified in Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (“ECHR”).<sup>73</sup> Over and over again, the European Court of Human Rights (hereafter “European Court”) has qualified the loss of one’s home as a “most extreme form of interference with the right to respect for the home.”<sup>74</sup> Although the eviction does not always have to result in a violation of Article 8 of the ECHR, the European Court requires that the method of correcting housing related anti-social behavior be in accordance with the principles of proportionality and subsidiarity.<sup>75</sup> Because eviction fails to deal with the underlying causes of the anti-social behavior, it is questionable whether an eviction-oriented approach is in accordance with these principles.<sup>76</sup>

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*Multi-site Focus Group Study*, 10 HEALTH & QUALITY LIFE OUTCOMES 1, 1-11 (2012), available at <http://www.hqlo.com/content/10/1/93>.

<sup>71</sup> Hof’s-Groningen 18 April 2013, Case No. ECLI:NL:RBNNE:2013:BZ7896, available at [www.rechtspraak.nl](http://www.rechtspraak.nl) (last visited Apr. 1, 2014) (Nijestee/Defendants) (Neth.).

<sup>72</sup> Cf. Hunter, Nixon & Slatter, *supra* note 9, at 169.

<sup>73</sup> EUR. CT. HUM. RTS., EUROPEAN CONVENTION ON HUMAN RIGHTS: AS AMENDED BY PROTOCOLS NOS. 11 AND 14, SUPPLEMENTED BY PROTOCOLS NOS. 1, 4, 6, 7, 12 AND 13, CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, at art. 8 (2010).

<sup>74</sup> Buckland v. United Kingdom, App. No. 40060/08, Eur. Ct. H.R. (2012) (Fourth Section); McCann v. United Kingdom, No. 19009/04, Eur. Ct. H.R. (2008) (Fourth Section); Cf. Vols & Van Wijk, *supra* note 48; Sarah Nield & Nicolas Hopkins, *Human Rights and Mortgage Repossession: Beyond Property Law Using Article 8*, 33 LEGAL STUDIES 431 (2012).

<sup>75</sup> EUR. CT. HUM. RTS., *supra* note 73.

<sup>76</sup> See VOLS, *supra* note 4.



### B. *Anti-Therapeutic Consequences for the Victims*

The majority of all cases concerning serious anti-social behavior do not end up in a housing court because the nuisance does not justify the homelessness of the perpetrator. This can be characterized as a positive effect for the perpetrators. However, the lack of action against serious anti-social behavior has detrimental effects on the victims. If the housing association manages to obtain an eviction order from the court, the eviction of the perpetrator may have therapeutic effects on the victims. Nevertheless, this “feeling of relief” will probably not compensate for the years the victims had to deal with chronic and serious anti-social behavior. Regardless of the eviction of the perpetrator, the lack of (early) intervention has serious anti-therapeutic consequences for the victim.

Firstly, experiencing anti-social behavior can have serious effects on the mental and physical well-being of the victims.<sup>77</sup> A neighbor’s noise is a valid predictor of poor mental health and vitality and can cause depression, anxiety, nausea, fears, liability, sleeping disorders, decreased appetite and stress symptoms such as increased blood pressure and cardiovascular disease.<sup>78</sup> Researchers found an increased health risk of cardiovascular disease in people who reported chronically serious housing related anti-social behavior.<sup>79</sup> The victims were also found to have an increased risk of depression.<sup>80</sup> Children suffering from the stress caused by the nuisance of anti-social behavior have an increased chance of illness in the respiratory system.<sup>81</sup> Nuisance causes stress and has direct effects on human performance. Noise nuisance, especially speech noise, has a negative effect on perceptual and cognitive tasks.<sup>82</sup> Moreover, anti-social behavior can have serious effects on sleep.<sup>83</sup> Noise nuisance causes delayed sleep onset, nocturnal awakenings, sleep stage changes, arousals and body

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<sup>77</sup> See CAROLINE HOOIJONK, AREA ENVIRONMENT AND HEALTH IN THE NETHERLANDS (2009); Gerrit Breeuwsma, *Verlos Mij van des Menschen Overlast* [Deliver me from the oppression of man], 27 JUSTITIËLE VERKENNINGEN 10, 10-24 (2001); see generally Jane Donoghue, *Reflections on Risk, Anti-social Behavior and Vulnerable/Repeat Victims*, 53 BRIT. J. CRIMINOLOGY 805 (2013).

<sup>78</sup> See Hillary Guite et al., *The Impact of the Physical and Urban Environment on Mental Well-being*, 120 PUB. HEALTH 1117, 1117-26 (2006).

<sup>79</sup> *Id.*

<sup>80</sup> *Id.* at 1125.

<sup>81</sup> See Christian Maschke & Hildegard Niemann, *Health Effects of Annoyance Induced by Neighbor Noise*, 55 NOISE CONTROL ENGINEERING J. 348, 348-56 (2007).

<sup>82</sup> See Arend W. van Gemmert & Gerard P. van Galen, *Stress, Neuromotor Noise, and Human Performance: A Theoretical Perspective*, 23 J. EXPERIMENTAL PSYCHOL. HUM. PERCEPTION PERFORMANCE 1299, 1299-1313 (1997); James L. Szalma & Peter A. Hancock, *Noise Effects on Human Performance: A Meta-analytic Synthesis*, 137 PSYCHOL. BULL., 682, 688, 696 (2011);

<sup>83</sup> See Alain Muzet, *Environmental Noise, Sleep and Health*, 135 SLEEP MED. REV., 135, 135-42 (2007).

movements and vegetative or hormonal responses.<sup>84</sup> This decreases the self-perceived quality of sleep. As a consequence, noise nuisance can cause daytime fatigue, which is associated with lowered work-capacity and an increased risk of accidents.<sup>85</sup>

Secondly, the lack of (early) intervention will seriously disappoint the victims because they feel that nobody is helping them and the authorities are not taking notice of their problems.<sup>86</sup> This may result in “secondary victimization.”<sup>87</sup> This refers to the “victimization which occurs, not as a direct result of the criminal act, but through the response of institutions and individuals to the victim.”<sup>88</sup> As a result, the lack of action by the housing association against the anti-social behavior worsens the trauma of the victims.

Thirdly, this lack of action may result in a violation of the right to private life for the victims of anti-social behavior. In that case, the authorities are failing to fulfill the “positive obligations” stemming from the right to private life of the victim. In some cases, the European Court decided that housing related anti-social behavior did result in a “third party interference with the right to private life” and characterized the lack of action against the anti-social behavior as a violation of the rights of the victims.<sup>89</sup>

Fourthly, the court’s refusal to issue an eviction order can have serious anti-therapeutic consequences for the victims. First of all, there is a possibility that the ‘victorious’ but infuriated perpetrator will take reprisals against the victims who worked together with the housing association and testified against him. There is a good chance that the anti-social behavior will become more intense because the relationship between the neighbors has been completely ruined. Furthermore, from the victims’ point of view, the level of frustration and “secondary victimization” will increase. The victim will experience the ‘inaction’ of the housing court as another example of the unwillingness of the authorities to combat the housing-related, anti-social behavior.

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<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> See Tom de Leeuw & René van Swaaningen, *Veiligheid in Veelvoud: Beeld, Beleid en Realiteit in Rotterdams Oude Westen* [A Range of Security Issues: Images, Policy and Reality in Rotterdam-West], 6 TIJDSCHRIFT VOOR VEILIGHEID 26, 35 (2011).

<sup>87</sup> See Christian Diesen, *Therapeutic Jurisprudence and the Victim of Crime*, in TJOE I. OEI & MARC S. GROENHUIJSEN, PROGRESSION IN FORENSIC PSYCHIATRY: ABOUT BOUNDARIES 579, 586-89 (2012).

<sup>88</sup> *Social Injuries and Secondary Victimization*, VICTIMINFO.COM, <http://www.victiminfo.com/#!victimization/c87c> (last visited Apr. 2, 2014).

<sup>89</sup> See *Mileva v. Bulgaria*, App. Nos. 43449/02, 21475/04, 5 Eur. Ct. H.R. (2010) (Fifth Section); VOLS, *supra* note 4; Susan Bright & Chara Bakalis, *Anti-social Behavior: Local Authority Responsibility and the Voice of the Victim*, 62 CAMBRIDGE L. J. 305, 305-34 (2003).

C. *Problem-Generating Approach Towards Housing Related Anti-Social Behavior*

This TJ-oriented analysis of the way Dutch housing associations and courts deal with housing related anti-social behavior leads to the conclusion that the current approach is not beneficial to the perpetrator, his victims, or the housing association. Instead of working towards a sustainable solution, the procedure is focused on escalation of the situation and (the threat of) homelessness. An eviction-oriented approach fails to deal with the underlying causes of the anti-social behavior.

Finally yet importantly, in the current economic circumstances, an eviction-oriented way of eradicating anti-social behavior is not beneficial for the taxpayer as well. Evicting a perpetrator only displaces the problem and has a huge financial impact on the housing associations, courts, police, local authorities, shelters, health care agencies; and, of course, the perpetrators. In the Netherlands, the estimated cost of evicting and re-housing a perpetrator is assessed at \_60.000.<sup>90</sup> In the United Kingdom, the estimated cost of a homelessness case can range from \_12.000 to \_97.000 (£15,000 to £83,000).<sup>91</sup>

The conclusion arising from the TJ analysis is similar to the conclusion that New York State Chief Judge Kaye reached in 1999 about tackling low-level crime in New York. Judge Kaye wrote about the ‘traditional approach’ of criminal courts towards this problem behavior: “Every legal right . . . is protected, all procedures followed, yet we aren’t making a dent in the underlying problem. Not good for the parties involved. Not good for the community. Not good for the courts.”<sup>92</sup> Because of this observation, the city of New York founded several problem-solving courts, which successfully combat low-level crime.<sup>93</sup> How should problem-solving elements that are demonstrably effective be incorporated into Dutch housing law in order to combat housing related anti-social behavior in a more solution-oriented way?

V. MOVING TOWARD A MORE SOLUTION-ORIENTED APPROACH TO TARGET ANTI-SOCIAL BEHAVIOR

In order to develop a more problem-solving way to tackle housing related anti-social behavior, we need to comply with three solution-oriented principles. The first principle prescribes that we should help the victims of the anti-social

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<sup>90</sup> See BOGMAN & VAN SUMMEREN, *supra* note 10, at 5-7. Cf. Stenberg et al., *supra* note 50, at 51.

<sup>91</sup> See SHELTER, *supra* note 62, at 8.

<sup>92</sup> *Making the Case for Hands-On Courts*, NEWSWEEK (Oct. 10, 1999, 8:00 PM), <http://www.newsweek.com/making-case-hands-courts-168134>.

<sup>93</sup> *Id.*

behavior at an early stage. Because of the detrimental effects of housing-related, anti-social behavior on their mental and physical well-being, victims should be taken seriously and 'secondary victimization' must be avoided. The approach should focus on early intervention to de-escalate the situation and relieve the victims.<sup>94</sup>

The second principle states that, if possible, eviction of the perpetrator and his family should be avoided. The landlord should work together with other authorities (e.g., the municipality, mental health agencies and the housing court) and try to avoid the most serious interference with the right to respect for private life.<sup>95</sup> Instead of waiting for a long period until the situation has escalated, the main approach should be focused on early (housing court) intervention with less intrusive instruments compared to eviction. Nevertheless, in a number of serious cases of housing-related, anti-social behavior, the eviction of the perpetrator is the only possible option in order to de-escalate the situation and help the victims.<sup>96</sup>

The third principle states that the approach should be focused on tackling the underlying causes of the problem behavior. In a large number of nuisance cases, the perpetrator deals with mental health issues, substance abuse, family problems, unemployment and poverty. Instead of making an already vulnerable perpetrator more vulnerable by making him homeless, the approach should instead try to target the root of the anti-social behavior. As far as possible, the interventions of the housing court (e.g., a behavioral order that prescribes the perpetrator from refraining from a specific anti-social act or from acting in a specific way) should focus on rehabilitation and target the underlying causes of the anti-social behavior.<sup>97</sup> Of course, we should remain attentive to possible violations of the perpetrator's right to private life and of the perpetrator threatened by stigmatization, marginalization and patronizing interventions of the housing associations<sup>98</sup> or housing courts.<sup>99</sup>

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<sup>94</sup> See Cait Clarke & James Neuhard, *Making the Case: Therapeutic Jurisprudence and Problem Solving Practices Positively Impact Clients, Justice Systems and Communities They Serve*, in REHABILITATING LAWYERS, *supra* note 21, at 257, 261; SHELTER, *supra* note 62, at 11-14.

<sup>95</sup> Cf. Winick, *supra* note 25, at 1060-61; Brown, *supra* note 40, at 396-400.

<sup>96</sup> Cf. Penny Gurstein & Dan Small, *From Housing to Home: Reflexive Management for those Deemed Hard to House*, 20 HOUSING STUD. 717, 726-28 (2005).

<sup>97</sup> See FLEINBLATT & BERMAN, *supra* note 31, at 34-36; Morgan, *supra* note 53.

<sup>98</sup> See ELISABETH BURNEY, MAKING PEOPLE BEHAVE: ANTI-SOCIAL BEHAVIOR, POLITICS AND POLICY 108-14 (2d ed. 2009); JANE DONOGHUE, ANTI-SOCIAL BEHAVIOR ORDERS: A CULTURE OF CONTROL? (2010); Neil Cobb, *Patronising the Mentally Disorderd? Social Landlords and the Control of 'Anti-social behavior' under the Disability Discrimination Act 1995*, 26 LEGAL STUD. 238, 238-66 (2006); Morgan, *supra* note 53.

<sup>99</sup> See Winick, *supra* note 25, at 1071-72; Nicola Padfield, *The Anti-social Behaviour Act 2003: The Ultimate Nanny-state Act?*, 9 CRIM. L. REV. 712, 712-27 (2004); VOLS, *supra* note 4.

To comply with these solution-focused principles, housing courts should incorporate a number of problem-solving justice/TJ oriented techniques into the approach towards housing related anti-social behavior.<sup>100</sup> Firstly, to make an effective early intervention possible, the housing association staff and housing court judges should be trained to identify substance abuse, mental health disorders, and other risk factors for a high likelihood of anti-social behavior.<sup>101</sup> Secondly, the housing association staff and housing court judges should apply “motivational interviewing”<sup>102</sup> and “behavioral contracting”<sup>103</sup> techniques to target the problem behavior. These techniques will motivate the perpetrator to change and have a greater sense of responsibility and accountability. Furthermore, when these techniques are implemented, the compliance rate is likely to improve and the satisfaction of people involved in the procedure increases.<sup>104</sup> Thirdly, housing courts should be involved at an early stage in order to make “the most of judicial authority.” Housing court judges should stay “involved with each case over the long haul” and “closely supervise” compliance with court orders. Judicial monitoring is a key factor in strengthening accountability and “has been central to the success of problem-solving courts.”<sup>105</sup> Fourthly, the courts should involve the social network of the perpetrator (e.g., his family, friends and neighbors) should be involved in the procedure. This social network plays a key role in supporting the perpetrator in his efforts to stop acting in an anti-social way and in increasing the likelihood of compliance with remedies such as housing court orders.<sup>106</sup>

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Cf. Andrew Horwitz, *Coercion, Pop-Psychology, and Judicial Moralizing: Some Proposals for Curbing Judicial Abuse of Probation Conditions*, 57 WASH. & LEE L. REV 75 (2000).

<sup>100</sup> See REHABILITATING LAWYERS, *supra* note 21, at 7, 19.

<sup>101</sup> See Crane & Warnes, *supra* note 11, at 767; Pascale Thys, *Housing for People Suffering Mental Distress: an Overlooked Issue in Housing Policies*, 7 PASSERELLE 81, 83-84 (2012).

<sup>102</sup> Winick, *supra* note 25, at 1080-81; REHABILITATING LAWYERS, *supra* note 21, at 8, 31; Astrid Birgden, *Dealing with the Resistant Criminal Client: a Psychologically-Minded Strategy for More Effective Legal Counseling*, in REHABILITATING LAWYERS, *supra* note 21, at 243, 243-55.

<sup>103</sup> Winick, *supra* note 25, at 1084-86.

<sup>104</sup> See *id.* at 1077, 1084-86; Amy D. Ronner, *Songs of Validation, Voice, and Voluntary Participation: Therapeutic Jurisprudence, Miranda and Juveniles*, 71 U. CIN. L. REV. 89, 94-95 (2002).

<sup>105</sup> FLEINBLATT & BERMAN, *supra* note 31, at 35-36.

<sup>106</sup> See REHABILITATING LAWYERS, *supra* note 21, at 31; David B. Wexler, *That's What Friends Are For: Mentors, LAP Lawyers, Therapeutic Jurisprudence, and Clients with Mental Illness* (Oct. 26, 2013) (unpublished manuscript), available at <http://ssrn.com/abstract=1962725>. Cf. Liliana Sousa, *Building on Personal Networks When Intervening with Multi-problem Poor Families*, 19 J. SOC. WORK PRAC. 163, 163-79 (2005); Liliana Sousa et al., *Are Practitioners Incorporating a Strengths-focused Approach When Working with Multi-problem Poor Families?*, 17 J. COMMUNITY & APPLIED SOC. PSYCHOL. 53, 53-66 (2007).

In order to implement these solution-oriented principles and techniques in the Netherlands, we must analyze whether the Dutch legal rules and legal procedures (“the bottles”) are receptive to TJ professional practices and techniques (“the wine”). If the wine cannot be poured into the bottles—cases where the legal rules are considered “TJ-unfriendly”—we must urge the legislature to revise the current legal rules and procedures.<sup>107</sup>

Fortunately, Dutch housing (tenancy) law and procedures are flexible and therefore relatively TJ-friendly. There is no statutory obligation to tackle housing related anti-social behavior with an eviction order. On the contrary, Dutch housing law offers several other provisions and instruments to use in a solution-oriented approach. For example, DCC Article 3:296 gives the housing association the power to request a “behavioral order” (“gedragsaanwijzing”) from the housing court if the tenant does not comply with statutory or contractual obligations.<sup>108</sup> The housing court is entitled to issue an order that compels the tenant to carry out a specific obligatory performance, if asked for by a plaintiff.

Housing associations and their lawyers do not frequently ask for such a specific behavioral order; however, a number of examples of solution-oriented orders are available. At the request of a housing association, a housing court compelled perpetrators to give up a barking dog instead of evicting the perpetrator because of the noise nuisance.<sup>109</sup> Another housing court granted the request to give the anti-social son of a tenant a restraining order instead of evicting his desperate parents.<sup>110</sup>

Another example of a solution-oriented instrument is the aforementioned “last chance instruments,” which aim to prevent homelessness by imposing behavioral rules on the perpetrators. At the same time, in order to tackle anti-social behavior in a more solution-oriented way, TJ techniques recommend that the “last chance agreement” be remodeled into an “Acceptable Behavior Agreement” that can be employed at an earlier stage than is currently the case. In order to develop a more solution-oriented approach, Dutch housing associations should start experimenting with these powers.

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<sup>107</sup> See David B. Wexler, *New Wine in New Bottles: the Need to Sketch a Therapeutic Jurisprudence “Code” of Proposed Criminal Processes and Practices*, 7 ARIZ. SUMMIT L. REV. (forthcoming 2014).

<sup>108</sup> Burgerlijk Wetboek [BW] [Civil Code] art. 3:296 (Neth.).

<sup>109</sup> See Ktr.-Utrecht 14 Maart 2008 Case No. ECLI:NL:RBUTR:2008:BC6701, available at [www.rechtspraak.nl](http://www.rechtspraak.nl) (last visited Apr. 1, 2014) (Mitros/Defendants) (Neth.).

<sup>110</sup> See Ktr.-Dordrecht 25 September 2008, Case No. ECLI:NL:RBDOR:2008:BF2284, available at [www.rechtspraak.nl](http://www.rechtspraak.nl) (last visited Apr. 1, 2014) (Woningstichting Union/Defendants) (Neth.).

## VI. CONCLUSION

In the Netherlands, courts use eviction orders to tackle housing related anti-social behavior. This essay has argued that this “eviction oriented approach” has detrimental and problem-generating effects for the perpetrator and his victims. The physical and mental wellbeing of the perpetrator and his family are seriously affected by the threat of homelessness. Research shows that the underlying causes of the anti-social behavior are not addressed in a problem-solving way. Moreover, eviction is a very drastic instrument, which takes away early intervention as an option. That is why the eviction-oriented approach has serious negative effects on the mental and physical wellbeing of the victims as well. Furthermore, an eviction has a huge financial impact on housing associations and local authorities.

The results of the TJ analysis support the idea that Dutch courts should adjust the current way of dealing with housing related anti-social behavior into a more problem-solving-oriented approach. Housing associations and housing courts should bear three solution-oriented principles in mind. Firstly, housing associations and housing courts should help the victims of the anti-social behavior at an early stage. Secondly, eviction of the perpetrator and his family should be avoided. Lastly, the interventions should be focused on tackling the underlying causes of the problem behavior.

These findings suggest that housing associations and housing courts should incorporate problem-solving justice/TJ oriented techniques—such as motivational interviewing, behavioral contracting and judicial monitoring—into the way they deal with housing related anti-social behavior. Fortunately, Dutch housing (tenancy) law is flexible and therefore receptive to these TJ practices and techniques.

In a significant number of other jurisdictions, eviction is the main approach as well. Further research might explore whether the housing law of other countries is receptive and suitable for a solution-oriented approach toward housing related behavior.