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Vols, Michel; Belloir, Alexandre

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## **Tackling Rogue Landlords and Substandard Housing: Local Authorities' Legal Instruments and their Effectiveness**

**Michel Vols<sup>1</sup> & Alexandre Belloir**

### **Structured Abstract**

**Purpose** – In 2011, Dutch municipalities requested supplementary legal enforcement instruments to tackle rogue landlords and substandard housing. The national government implemented new legislation granting municipalities' local authorities more legal instruments in 2015. The purpose of this paper is to evaluate the application and effectiveness of these instruments.

**Design/methodology/approach** – Using both quantitative and qualitative (legal) empirical research methods, this study establishes the frequency these instruments are employed and the manner they are applied in practice to determine their role in limiting abusive practices of rogue landlords.

**Findings** – By comparing legislation and policies with their enforcement, we pinpoint differences between the law in the books and the law in practice, and argue that the legal instruments have a stronger effect on the informal power than on formal power of local authorities. Moreover, the paper shows that the shift of responsibility from the Public Prosecutions Office to local authorities has left the Public Prosecutions Office disinterested, feeling that it no longer has to deal with substandard housing violations at all, therefore leaving the repeat offenders free to continue their activities with minor consequences.

**Originality/value** – The paper presents original data on the ways governments address substandard housing and rogue landlords. This is the first study that analyses the fight against substandard housing in the Dutch context. Whilst centred on legislation and procedures in the Netherlands the paper's findings are relevant in other jurisdictions facing similar issues.

**Keywords:** rogue landlords, substandard housing, legislation, enforcement instruments, Netherlands.

**Article Classification:** Research Paper

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<sup>1</sup> Professor Michel Vols ([m.vols@rug.nl](mailto:m.vols@rug.nl)) holds a Chair of Public Order Law at the University of Groningen. His main fields of research are public safety and housing law. He studied Law and Legal Research (LLB, LL.M honours) and Political Philosophy (BA) at the University of Groningen (RUG). He received his PhD in 2013.

Alexandre Copeland Belloir ([a.c.belloir@rug.nl](mailto:a.c.belloir@rug.nl)) is a Junior Researcher working for the Faculty of Law at the University of Groningen. He studied Sociology and Anthropology (BA) at Caen University, France, before obtaining his Master's degree in Global Criminology (MA honours). Since 2018, he has been conducting research into rogue landlords, substandard housing and evictions with Professor Vols.

## Introduction

Rogue landlords, also referred to as slumlords, remain one of the most hated figures in society due to their reputation of being exploiters of the downtrodden and harassers of vulnerable tenants (Block, 2008, p. 147). Their regular appearance in the media, along with the addressment of their conduct being a focal point of political debates, attests their unpopularity and how problematic their illegal and harmful practices that exploit tenants have become. Considering that the demand for private rental properties within the European rental sector grows due to an increase in geographic mobility, along with evolutions in the economic climate and the sphere of higher-education (Whitehead *et al.*, 2016, p. 115-116), abuse towards tenants is a more and more pressing issue that needs to be resolved. In this sense, it remains central to determine the effectiveness of legal mechanisms by establishing if they protect tenants and hinder the violation of national housing regulations.

Seeing the rise in demand for private rental housing, governments are continuously faced with calls for stricter standards and sanctions to address issues in housing quality, and more emphasis on tackling landlords that take advantage of the system. These demands from all around Europe have been met by national governments and authorities establishing policies, acts and laws in an attempt to limit abuses committed by property owners. For example, in April of 2018 a national database that records and warns of landlords convicted of housing offences was rolled out in England (Ministry of Housing, Communities & Local Government, 2018a), whilst in the same month the Irish Housing Minister received Cabinet approval for a new law that could sentence rogue landlords to jail time (McQuinn, 2018). Furthermore, the new *loi Elan* was adopted by the French Senate in July of 2018 to respond to the lack of harsh penalties imposed on *marchands de sommeil* that rent out substandard and overcrowded housing (Ministère de la Cohésion des Territoires, 2018).

Regardless of these measures, a lack of clarity around the term rogue landlord exists, with no one single concrete definition emerging from the academic or legal discourse. When looking into various definitions, it would appear that they vary from country to country consequently shedding light onto each nation's focus. We can therefore distinguish five central characteristics from the literature, in which the presence of one or multiple criteria are used to describe a rogue landlord:

- Exploitation and the unruly treatment of tenants,
- Discrimination,
- Substandard housing,
- The use of property for illegal activities,

- Tax evasion.

The exploitation and unruly treatment of tenants can be characterized as a criterion as it emerges that in the United Kingdom, property owners often tend to be christened ‘rogue’ when they resort to intimidating tenants and/or charge excessive rent. This designation can be traced back to the UK’s origins of tackling abusive landlords, when the 1950’s London property mogul Perec Rachman became infamous for ‘winkling’, best described as ‘[...] a practice whereby controlled tenants were forced to vacate their homes because of harassment or on payment of a sum of money’ (Jackson, 2017, p. 147). Discrimination in housing, illegal in a number of European countries (Harrison *et al.*, 2005), also regularly surfaces in the literature. This second criterion is central to Belgium’s definition of rogue landlord, as these property owners often knowingly rent out unsafe, cramped, or unkempt housing to individuals in a precarious situation as they’ll be less likely to speak out about the squalid living conditions (Hubeau, 2005; Loopmans *et al.*, 2005, p. 211). Although landlords here discriminate by selecting tenants who are less likely to denounce the unsatisfactory living conditions, substandard housing, which can be defined as housing that does not provide adequate space, or protection to the occupants from the elements, along with other threats to health and safety such as mould, structural hazards, and inadequate fire protection equipment (Hohmann, 2013; Vols *et al.*, 2017), can itself be considered the third criterion. This criterion is inherent to the Dutch definition, as in 2011 the municipality of Rotterdam described rogue landlords to the national Government as property owners whose ‘buildings, structures, terrains or yards can be characterized by fundamental overdue maintenance, overcrowding, cannabis cultivation and other behaviours that lead to violations of the Housing Act, the Housing Allocation Act, or the Opium Act’.<sup>2</sup> It thus seems that in the Netherlands the notions of substandard housing and rogue landlord are intimately intertwined. However, the criterion of using a property for illegal means such as drug manufacturing, illegal prostitution, or human trafficking equally remains central to their definition (Staring *et al.*, 2007). Finally, purposely renting out a property on the informal housing sector - the ‘black market’ - to evade taxes is also a factor in which property owners are labelled rogue landlords or slumlords (Bargelli and Bianchi, 2018, p. 131; Gunter and Massey, 2017, p. 50).

Albeit this lack of distinction surrounding the definition, there exists a growing body of research on the various (legal) strategies that authorities use to fight problems caused by troublesome landlords. Some authors question the effectiveness of legislation and interventions via public policy: Eijlander *et al.* (2000) state that legislation is not always effective and thus not the sole solution. Rather, alternatives should be found outside of legal intervention altogether. Others state that the quality and effectiveness of legal intervention can be lost in legislation, thus making it irrelevant (Tjeenk Willink, 2005). This is somewhat

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<sup>2</sup> Letter to the Government from the Municipality of Rotterdam, 7 March 2011, reference 620727.

reflected in the literature on housing issues, as Cowan (1999) suggested reconsidering non-severe penalties for harassment due to the number of claims of landlords harassing their tenants (approximately 150'000 a year) compared to the number of prosecutions (181). Moreover, research has been conducted on the criminalisation of Rachmanism (the exploitation and intimidation of tenants) in the United Kingdom and its role in the tackling of rogue landlords (Cowan and Marsh, 2003; Jackson, 2017; Nelken, 1983). On the other side of the Atlantic, Desmond and Bell (2015, p. 21) detailed the large-scale improvement in housing quality since policy changes in the 1960's where the landlord became responsible for safe and decent housing. However, since then, the lack of ethnographic research into legal regulations' application and effects in practice has led to lawmakers 'blindly' establishing regulations, creating an array of practices that have not especially benefitted or improved housing quality. On the theme of safety, Bartram (2018) states that mandatory housing inspections for rental properties are not infallible as was seen with the Grenfell Tower disaster. Carr *et al.* (2017) also stated that the law was an insufficient tool as it was based on the notion of risk, a term that can be subject to different interpretations by regulators and occupiers due to its subjectivity. One study however endorsed legal intervention, depicting how the court system in Washington DC has become a reliable and effective medium for tenants in substandard housing (Steinberg, 2017).

Considering these studies, it thus remains central to determine the effectiveness of legal measures, by establishing whether or not their implementation assists in stemming the exploitation of tenants and violations of national housing regulations. This is especially interesting since the Netherlands adopted the trend of transferring power from criminal law to administrative law, allowing for local authorities, rather than public prosecutors and courts, to issue sanctions and tackle violations, under the pretext of making it a simpler and less timely process by not having to go through the criminal law procedure (Garland, 2001; Vols & Fick, 2017). In this paper we thus analyse new legislation established in the Netherlands in 2015, enabling local authorities to impose a larger number of sanctions on individuals that violated housing health and safety codes and regulations: the 'Improvement of the Housing Act's Enforcement Instruments Act' (*Wet versterking handhavingsinstrumentarium Woningwet*). To do so, we base this paper upon the results of a two year legal and empirical research project concerning this legislation, where we focus on the legal instruments for tackling rogue landlords and demonstrate how they are applied in practice, thus shedding light upon the effectiveness of this new legal measure for tackling rogue landlords. Considering that this research was conducted in the Netherlands, we use the Dutch definition of rogue landlord in that the central criteria is the renting out of substandard housing.

It is important to take into account that legislation that deals with substandard housing varies from country to country. In France for example, landlords renting out substandard housing can be taken to court if

they fail to respond to the Commission départementale de Conciliation's (CDC)<sup>3</sup> requests for reparation. They then risk a fine of up to €50,000, and having to pay back part of the already received rent, along with lowering the rent until the property meets required standards (Berteaux, 2017; Verdenne, 2015). The United Kingdom also warns landlords that they risk a civil penalty of up to £30,000 if their property poses a health and safety threat to tenants, and since April of 2018, they can be banned from renting it out or placed on a national database that blacklists rogue landlords (Ministry of Housing, Communities & Local Government, 2018b). Consequently, by evaluating Dutch legislation regarding substandard housing, we thus position the results of this evaluation as an example for other countries by posing the question: what can we learn on the effectiveness of legal measures for tackling rogue landlords from this evaluation of Dutch legislation?

To answer this question, following this introduction, this paper shall begin by providing an overview of what the law in the books states and the powers legally granted to local authorities. The second section shall present the methodology, followed by a depiction of how these laws are implemented. This is done in two sections, where we first elaborate upon the quantitative findings based on the results of a survey sent to these municipalities, followed by the qualitative findings detailing civil servants' testimonies on the use of these instruments in practice. We shall then provide a short conclusion and discussion on the effectiveness of these enforcement instruments in the Netherlands in a third section, before highlighting the various aspects and principal elements that can be retained from the Dutch situation.

### **Law in the books: the legal framework**

Before delving into how the legal instruments are used in practice, we shall first develop the legal framework surrounding substandard housing and rogue landlords, and detail the enforcement instruments at the disposal of the relevant authorities to address health and safety regulation violations in the Netherlands.

Under Dutch law, housing quality is regulated in several pieces of legislation. Both private law and administrative law contain provisions that lay down rules concerning the quality of housing. For example, Dutch tenancy law requires that landlords take care of renovation and maintenance of the rented building. This paper, however, focuses on the most important requirements that are codified in Dutch administrative law. Originating at the beginning of the 20<sup>th</sup> century, the Housing Act remains one of the principal administrative laws surrounding the quality of housing in regards to health, safety, and habitability in the Netherlands to this day (Vols, 2012). Despite having undergone multiple adjustments and amendments, the Housing Act's primary objective remains eradicating or at least impeding the occupation of unsafe and

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<sup>3</sup> The *Departmental Conciliation Commission* in English.

deficient homes.<sup>4</sup> Subsequently, this Act is central when dealing with health and safety issues that can arise in relation to substandard housing, and thus indirectly rogue landlords.

Since 2007, the substantive requirements that property owners need to comply with can be found in two articles of the Housing Act. In short, Article 1b of the Housing Act explicitly forbids property owners from violating the Buildings Decree 2012 (*Bouwbesluit 2012*). This decree established by the Dutch national government stipulates detailed requirements and regulations regarding health, safety, usability, energy efficiency, waste disposal and the environment (Ministerie van Binnenlandse Zaken en Koninkrijksrelaties, 2012). Article 1a serves more as a ‘safety net’ in the sense that in the event that Article 1b of the Housing act does not provide sufficient grounds for enforcement action in the case of hazardous or unsafe situations, Article 1a of the Housing Act is there to cover these violations. Being much broader, Article 1a simply highlights the notion of the ‘duty of care’ of property owners to ensure that no threat to the health or safety of others is posed.

Whereas Articles 1b and 1a constitute the substantive legal requirements that property owners need to comply with, other articles of the Housing Act describe the various enforcement instruments local authorities are entitled to use to address violations of the Housing Act. Over the last decade, the number of enforcement instruments has grown significantly. In 2007, the legislator introduced new enforcement instruments. Still, local authorities such as the municipality of Rotterdam continued to request additional instruments to address substandard housing and rogue landlords. An evaluation of the Housing Act in 2013 showed that extra enforcement instruments were needed.<sup>5</sup> As a result, the ‘Improvement of the Housing Act’s Enforcement Instruments Act’ which came into effect in January 2015 gave local authorities a number of ‘instruments’ to better tackle violations of the Housing Act. Through this new Act, local authorities are now able to use a larger number of instruments under Administrative Law, which mostly include the imposing of remedial sanctions. These range from imposing Incremental Penalty Payments, and can escalate to more drastic actions such as expropriation.

Although these instruments are not classed in the law by severity, a guide issued by the Dutch government to municipalities in 2015 presented an ‘escalation ladder’ classing the enforcement instruments from least to most severe (Ministerie van Binnenlandse Zaken en Koninkrijksrelaties, 2015). The least radical sanction is considered to be the Incremental Penalty Payment (*last onder dwangsom*) where the property owner must pay a monetary sum for every day that the violation has not been undone or corrected (for example repairing an unsafe building). Local authorities are also entitled to issue an Administrative

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<sup>4</sup> Law of 22 June 1901 containing legal provisions concerning public housing, Bulletin of Acts No. 266.

<sup>5</sup> Parliamentary document II 2013/2014, nr.3, p. 6.

Enforcement Order (*last onder bestuursdwang*) in which they take matters into their own hands and undo the violation themselves. The property owner must consequently reimburse the local authority the price of this undoing. These two sanctions, the Incremental Penalty Payment and the Administrative Enforcement Order, can be interchanged as it is the local authority's choice as to which sanction to impose. If this sanction appears to be insufficient, harsher penalties can be issued such as a Closure Order; a Management Order in which the local authority takes over management of the premises; and finally, an Expropriation Order wherein the owner is dispossessed of the property or premises.

All these enforcement instruments fall under administrative law, and are characterized as remedial sanctions. This means that local authorities can impose one of these sanctions, as they aim to repair wrongdoings committed by the offender, rather than punish violations. Remedial sanctions thus aim to remedy a situation and are a reparative measure. Since 2015 however, local authorities can also issue an Administrative Fine. Although the fine also falls under administrative law, it is characterized as a punitive sanction. Contrary to the remedial sanction, this sanction's objective is to punish the violator rather than to remedy a situation. As a result, it can only be imposed in cases where the violator has repeatedly offended, and where the violation was intentionally committed. The Administrative Fine is therefore solely imposable in cases where an Incremental Penalty Payment has already been imposed and remedial sanctions proved to be unsuccessful.

Besides that, since 2007, extreme and severe violations of the Housing Act can equally be considered as 'economic offences' punishable under criminal law according to Articles 1a sub 2 of the Economic Offences Act (*Wet op de Economische Delicten*). Unlike the remedial sanctions issued by municipalities, sanctions imposed under criminal law are punitive and are thus aimed at offenders who repeatedly offend, or commit more serious offenses. Consequently, these harsher sanctions do not fall under the jurisdiction of local authorities and are in the hands of the Public Prosecutions Office (*Openbaar Ministerie*). Furthermore, the severity of the punishment under criminal law lies in the violator's intent. If deemed intentional, the violation will be punished as a serious offense (*misdrif*); otherwise it will be considered a simple violation. Sanctions can be just as well aimed directly at the violator (a prison sentence, community service, or a monetary fine) as at the violator's business (suspension of the company, the confiscation of goods, and the confiscation of criminal profits).

A number of complex rules regarding the issuing of criminal and administrative sanctions nonetheless exist. Given their remedial nature, local authorities are not required to consult with the Public Prosecutions Office to impose sanctions that fall under Administrative Law, and are thus free to impose them when and how they see fit. However, despite falling under administrative law, the Administrative Fine can only be imposed after consulting with the Public Prosecutions Office. This is due to the administrative fine's punitive



nature, and the principle of *ne bis in idem*: the prohibition of punishing an individual twice for a one and same violation. As a result, local authorities must first consult with the Public Prosecutions Office to ensure that they have not already, or are not going to, impose a punitive sanction on a violator. This prohibition is equally valid for the remedial sanctions, in the sense that local authorities cannot impose more than one sanction for a one and same violation. Still, a remedial sanction can be issued alongside a punitive one. Although the *ne bis in idem* principle prohibits punishing a violator twice, under Dutch law a remedial sanction is not considered a punishment, and can thus be given in conjunction with a punitive sanction. This can, for example, equate to a violator receiving an Incremental Penalty Payment (a remedial sanction) along with an administrative fine or a prison sentence (punitive sanctions).

On a side note, it is important to note that the Improvement of the Housing Act's Enforcement Instruments Act focuses on tackling violations relating to substandard housing. It is thus stipulated in the legislation that these administrative sanctions can be imposed in cases that relate to violations of health and safety regulations (articles 1a and 1b of the Housing Act). Consequently, these administrative instruments are reserved for these instances, and thus cannot be used to tackle other housing violations such as overcharging rent. At the time this study was conducted, landlords who overcharged rent were only faced with the possibility provided by private (tenancy) law of refunding the excessive rent charged. However, discussions in the end of 2016 and the end of 2018 sought to establish supplementary administrative legislation which could sanction these types of acts by a fine or a loss of a permit that some local authorities want to introduce (Cazander, 2016; Smits, 2018).

### **Law in action: empirical findings**

The sections above show that when it comes to substandard housing or rogue landlords in the Netherlands, tackling these problems is largely left to local authorities. Following multiple requests for additional means to address these issues, the Improvement of the Housing Act's Enforcement Instruments Act implemented in 2015 consequently reinforced local authorities' jurisdiction by granting them supplementary instruments to better tackle violations of the Housing Act. The Act therefore empowers local authorities by giving them the possibility to tackle a wide range of issues and problems such as overdue maintenance, non-compliance with fire and safety rules, pollution and decay, illegal room renting, illegal premises or house splitting, overcharging rent, intimidating residents, overcrowding, public nuisance, illegal hotels, and drug manufacturing, cultivation or dealing. The Improvement of the Housing Act's Enforcement Instruments Act, from a legal point of view, thus aims to make combating rogue landlords less troublesome and lengthy for local authorities.

In this section we present the findings of the empirical research on how Dutch local authorities apply their enforcement instruments to tackle rogue landlords and substandard housings. We shall first present the methodology on how this study was conducted.

### ***Methodology***

To study the application of the enforcement instruments in practice and their effects, a number of quantitative and qualitative methods were employed. First, a systematic content analysis of policy documents published by local authorities on their websites was conducted. A total of fifty municipalities, including the forty largest in the Netherlands and ten that were part of a focus-group organized by the Ministry of the Interior and Kingdom Relations about enforcing the Housing Act, were selected. Using certain search terms,<sup>6</sup> we collected 261 relevant documents published before the 1<sup>st</sup> of July 2016 on the enforcement of the Housing Act and / or the tackling of rogue landlords.

Secondly, a survey was sent to the same fifty municipalities. During the formulation of the Improvement of the Housing Act's Enforcement Instruments Act it surfaced that no precise numerical insight on the application of the instruments specified in the Housing Act existed. To thus gain a better perspective on the extent of which the enforcement instruments were employed in practice, a survey was sent in the beginning of 2016 and 2017 to these municipalities asking an array of questions. The objective of the survey was to reveal trends in the application of an enforcement instrument such as which instruments were the most used, the frequency in which they were used, and the type of property they were used on. The results consequently painted a detailed picture of the use of enforcement instruments by local authorities in the Netherlands, and assisted in filling the gap in knowledge that previously existed.

Semi-structured interviews were then conducted with civil servants working for these municipalities to gain an insider's perspective on the application of the enforcement instruments. By allowing the interviewees to share their experiences and perceptions, light was shone upon how the enforcement instruments were used by local authorities which in turn assisted in exposing potential obstacles or bottlenecks that could surface when applying these instruments in practice. Questions pertaining to the Public Prosecution Office's involvement and collaboration with the local authorities concerning severe violations were also asked to gain a clear depiction of the role criminal law played in tackling substandard housing and rogue landlords. The result consequently revealed issues regarding practice and procedure when it came to the imposing of punitive sanctions on offenders. The interviews took place with employees from seven

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<sup>6</sup> 'Housing Act', 'Building Decree', 'rack-renters', 'overdue maintenance', 'degradation', 'domestic nuisance', 'safety', 'Closure Order', 'Management Order' and 'Administrative Fine'.

municipalities in 2015 and six in 2016. Most of the selected municipalities were part to the ten largest in the Netherlands, and almost all of them were members of a focus-group that took place between 2015 and 2017 about enforcing the Housing Act. A total of 18 respondents were interviewed with each interview lasting approximately one hour. A topic list was sent to the respondent prior to the interview so that they could prepare. The interview took place in a semi-structured manner with prepared open-ended questions, and questions asking to further elaborate on points expressed by the interviewee. They were then transcribed and proof read by the respondents to gain their approval.

We equally asked the National Office of the Public Prosecution Service to provide insights on the total number of criminal prosecutions in 2015 due to violations of the Economic Offences Act based on a violation of the Housing Act. Unfortunately, the office stated that they could not find any information. The Ministry of the Interior and Kingdom Relations however stated that between 2010 and June of 2017 there were a number of criminal prosecutions concerning violations of Articles 1a or 1b of the Housing Act. These violations were subsequently taken into account for this study, and assisted in depicting the number of violations charged under criminal law. Furthermore, we conducted a case law analysis to gain an idea of the type of violations that were brought to criminal court. To conduct this analysis and gain as much data as possible, all existing case precedents up until the 28<sup>th</sup> of March 2017 containing the term ‘Housing Act’ were searched for via a legal database,<sup>7</sup> in which we assessed a total of 28 relevant cases.

### ***Findings***

When looking into the various policy documents we collected, it appeared that slightly more than half (28) of the fifty studied municipalities clearly specified they encountered problems with rogue landlords. This encompassed a number of issues such as substandard housing, illegal (room) renting, illegal hotels, cannabis cultivation, overcrowding, and charging too much rent. Considering this, it did not surface as surprising that twenty-three of the fifty had thus specifically formulated policies aimed at tackling these landlords. However, although the Improvement of the Housing Act’s Enforcement Instruments Act grants municipalities more enforcement instruments, less than a fifth (nine out of fifty) had specifically included this new Act in their policy. As a result, although many municipalities state that they are regularly faced with issues caused by rogue landlords and rack-renters, paradoxically, only a minority of them have actually drawn up policies concerning the very instruments that were implemented to allow them to more effectively deal with this issue.

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<sup>7</sup> <http://uitspraken.rechtspraak.nl>.

### 1. *Quantitative Findings*

The results of the survey assist in gaining a better overview of the use of the enforcement instruments in practice and the frequency of their application. The following table depicts the number of times a certain instrument was used by municipalities in 2015 and 2016.

**Table 1.** Use of Legal Enforcement Instruments in 2015 and 2016 based on the Survey

*\*Insert Table Here\**

The survey was positively received as in 2015 94%, and in 2016 88% of the recipients replied, allowing us to draw up a fairly accurate depiction of the use of the instruments in the Netherlands during this time. However, although only nine of the fifty municipalities had explicitly drawn up policy regarding the Improvement Act, paradoxically, it appeared that the majority had imposed one of its sanctions. Although municipalities are free to impose whichever sanction they see fit, except for certain exceptions,<sup>8</sup> results of the survey show that the Incremental Penalty Payment appears to be the most commonly applied instrument with a total of 989 impositions in 2015, and 1090 in 2016. Although the Administrative Enforcement Order is also considered to be one of the less radical enforcement instruments, it is only the second most used with 282 applications in 2015 and 437 in 2016<sup>9</sup> despite it being interchangeable with the Incremental Penalty Payment and issuable as a first remedial sanction.

The Administrative Fine imposable under Article 92a of the Housing Act was only imposed 20 times in 2015 and 23 times in 2016 reflecting its low usage. This is explained by the Administrative Fine's intended use: although the Incremental Penalty Payment and the Administrative Enforcement Order are considered to be remedial sanctions under Administrative Law, the Administrative Fine is a punitive sanction (also imposable under administrative law) to be used in cases where a remedial sanction is considered not effective enough, yet where a criminal sanction is considered to be too harsh. As a result, the Administrative Fine is reserved to specific cases, and cannot be issued as 'easily' as other remedial sanctions, hence it lower use.

Closure Orders can be imposed on the grounds of multiple acts, however survey results and the interviews show that Closure Orders are mostly issued with drug-related crimes that takes place in the

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<sup>8</sup> As detailed previously, local authorities must consult with the Public Prosecutions office to impose an Administrative Fine.

<sup>9</sup> It is important to note that this large increase in 2016 is mostly the result of a one-off project in some of the surveyed municipalities in which water pipes were replaced. This consequently led to the sharp increase in the number of imposed Administrative Enforcement Orders.

premises (Article 13b of the Opium Act). Although there were 7 closures in 2015 and in 2016 under Article 17 of the Housing Act, it surfaced that the majority of closures took place under Article 13b of the Opium Act with 593 closures in 2015 and 793 in 2016. Half of these Closure Orders concerned homes. This consequently shows that the majority of the closures were enacted in cases where drugs were found on a premises. As a result, it would seem that closures are a sanction almost exclusively reserved for cases involving drugs, rather than a means for tackling other violations such as substandard housing, or safety infringements.

Another of the so-called last resort measures is the Management Order in which management of a premises, company, or association is taken-over by the local authorities, or a third party such as a commercial company or a housing association. The survey results reflected that no Management Orders were issued in 2015 or 2016 by any of the studied municipalities, nor were any reported by the interviewed civil servants. The principal reason for this is that issues are reportedly often solved with less drastic sanctions. The final most severe measure, expropriation, as the Management Order, had never been used. Accordingly, it seems that with the exception of the Incremental Penalty Payment and the Closure Order under Article 13b of the Opium Act, sanctions are seldom imposed by local authorities.

## 2. *Qualitative Findings*

Although certain instruments were reportedly not used, the semi-structured interviews assisted in shedding light upon the use of the instruments, detailed their advantages and disadvantages, and explained why some instruments were used in favour of others. Many civil servants expressed that they found the implementation of the Improvement of the Housing Act's Enforcement Instruments Act beneficial due to its effectiveness in tackling violations of the Housing Act. However, it seems that its effectiveness did not always entirely stem from the actual imposing of a sanction. During the interviews, it surfaced that a number of civil servants working in various municipalities stated that the threat of using one of the enforcement instruments is an effective instrument in itself. When faced with a violation, civil servants often decide to first have an informal friendly conversation with the perpetrator to give them the opportunity to reverse the wrongdoing. This initial 'friendly phase', as referred to by one of the respondents, seems to be an effective tactic when it comes to dealing with occasional violators, as most issues are resolved with this warning, removing the need to impose an actual sanction. If this initial friendly approach fails however, civil servants held that the extended legal toolkit gives more weight to their words by warning the perpetrator that they could receive a sanction if they do not rectify the violation.

Warnings are mostly effective on occasional violators, but have also proved to be somewhat efficient in tackling rogue landlords. However, these warnings must be more compelling than the ones given to occasional violators to have a positive impact. For example, the direct threat of imposing an Administrative Fine has shown to be an effective tactic, as the risk of receiving a monetary sanction seems to convince violators to comply before further steps need to be taken. It thus seems that this initial phase of informal talks and warnings appears to be an unexpected benefit of the Improvement of the Housing Act's Enforcement Instruments Act, as it consequently proves to be a successful measure for deterring landlords from committing violations without having to actually impose a sanction.

If casual conversations and warnings are ignored, local authorities tend to issue a remedial sanction. As reflected in the surveys, the first sanction often issued was the Incremental Penalty Payment, which many respondents qualified as being 'standard procedure'. This is due to the less drastic nature of the instrument compared to others, and, in their words, the proven effectiveness of tackling an occasional or structural violator by 'targeting their wallet'. As issuing an Incremental Penalty Payment is considered to be 'standard procedure', it was the most frequently used enforcement instrument. Furthermore, the majority of violations are solved after the imposing of this first sanction, removing the need to resort to other sanctions. Another option at their disposal, the Administrative Enforcement Order, was however not as frequently issued, as civil servants regard it to be too time-consuming, estimate that it takes away the offender's sense of responsibility, and mentioned that in the past recuperating the money was often troublesome.

Another enforcement instruments positively received by the civil servants was the Administrative Fine. As mentioned above, many civil servants approve of the fine as their warnings and threats have become more compelling. As a result, many violations were corrected by the perpetrators themselves before having to impose a sanction. Not only were their warnings more persuasive, but the nature of the fine also allows local authorities to sanction multiple violations simultaneously. This makes the tackling of rogue landlords more effective as they are easily dissuaded from committing violations when faced with the possibility of receiving a fine. Subsequently, despite being rarely utilized due to bureaucratic complications such as having to consult with the Public Prosecutions Office and the fact that many violations are resolved before the need for enforcement, the fine is regarded by the civil servants as one of the more effective instruments.

Closure Orders are regarded as being a last resort measure as they instantly put an end to a premises' activities, and are usually only imposed after a long and versatile trajectory with the violator. Despite this, they were the second most used enforcement instrument in 2016 and 2017. However, they are predominantly used for drug violations (the Opium Act), rather than health and safety violations (the Housing Act or

Municipalities Act).<sup>10</sup> According to the interviewed civil servants, the frequent use of the instrument is due to the simplicity of closing down a premises under the Opium Act compared to the others. Unlike the other acts which can be more restrictive and time-consuming, the Opium Act authorizes closures under Article 13b if quantities of drugs larger than those legally considered to be for personal use are found on the premises. The Housing Act and Municipalities Act require other criteria (such as the infringement of safety measures) which, in the words of the interviewees, made them too complicated to enforce in practice. As a result, closures under the Opium Act are imposed when possible due to their ease of enforcement.

Besides its lack of employment, not much was spoken about the Management Order as issues were usually solved with other instruments before having to resort to such drastic measures. Many interviewees stated that they would be hesitant to use this measure unless absolutely necessary as they worried about administrative, judicial and practical obstacles such as how the Management Order works in practice, and if the local authorities have the necessary expertise to manage a property.

Expropriation had never been used. According to the civil servants, this was for three major reasons. First of all, interviewees stated that either violations have been resolved with other sanctions, or that they have never been serious enough to require its use. Secondly, the act of expropriation in itself is expensive as local authorities must pay the market value for the property the individual is being expropriated from. Finally, the legal texts concerning expropriation were not yet finished at the time of the interviews, so they had not yet been worked into local authorities' practices or policies.

### 3. *Sanctions Issued under Criminal Law*

Although the tackling of substandard housing has principally been left to local authorities by enabling them to impose a number of sanctions under Administrative Law, severe, repeatedly committed offences by the *repeat offenders* are centrally sanctioned by the Public Prosecutions Office under Criminal Law. As explained, these sanctions are punitive rather than remedial, and include an array of more drastic sanctions which vary from the suspension of the violator's business, to a prison sentence. Considering their nature and reservation for extreme cases, it is important to see how frequently they are imposed to gain an idea of the role they play in tackling rogue landlords.

Despite a lack of numbers on the National Office of the Public Prosecution Service's behalf, the Ministry of the Interior and Kingdom Relations reported that between 2010 and June of 2017 there was a total of 78 recorded prosecutions due to violations of Articles 1a or 1b of the Housing Act. The case law precedents study also initially yielded similar results, presenting 68 cases up until the 28<sup>th</sup> of March 2017

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<sup>10</sup> See Table 1.

containing the term 'Housing Act', but this was refined for relevance, and as a result a total of 28 cases were judged pertinent. These relevant cases presented a range of serious health and safety regulation violations which often concerned the death of residents, and were therefore met with a severe judicial response. Regardless of their severity, the quantitative results however reflect the minor proportion of violations that are sanctioned under Criminal Law and therefore how most violations are handled before any serious measures need to be taken.

Interviews with civil servants shed light upon sanctions under Criminal Law and the relationship between local authorities and the Public Prosecutions Office. Considering that these sanctions reserved for extreme cases are punitive and fall under Criminal rather than Administrative Law, they must consequently be dealt with by the Public Prosecutions Office. During the interviews, it however became apparent that most municipalities have no set arrangement with the Public Prosecutions Office regarding the enforcement of the Housing Act and the tackling of rogue landlords. In the respondents' opinion, the tackling of rogue landlords and the enforcement of the Housing Act is perceived to be a task that has fallen under their responsibility due to the powers now granted to them under Administrative Law. They equally believe that the Public Prosecutions Office therefore feels that all issues concerning substandard housing and rogue landlords are to be dealt with by these local authorities, despite the fact that authorisation to impose punitive sanctions under Criminal Law lies solely with the Office. As a result, it surfaced that on a national scale very few meetings regarding criminal sanctions are held between local authorities and the Public Prosecutions Office. Many civil servants expressed their frustration towards this lack of involvement and definitive procedures between the local and national authorities, mentioning that to be more effective, the Public Prosecution Service should take over or act in the most serious cases which concern violations with the structural involvement of the rogue landlords in crime.

## **Discussion**

This study into the Improvement of the Housing Act's Enforcement Instruments Act and its enforcement sheds light upon a number of elements regarding the tackling of rogue landlords, substandard housing, and how violations of national regulations are handled by relevant authorities. We have thus pinpointed four central aspects that we regard to be the most eye-opening and relevant in regards to what can be learnt from the use of legal instruments for tackling rogue landlords and substandard housing.

The Improvement of the Housing Act's Enforcement Instruments Act bestows supplementary powers unto local authorities by granting them additional instruments to sanction violations of the Housing Act. When looking into the application of these instruments in practice however, it appears that their



implementation is rather limited. The survey results show that the instruments at local authorities' disposal prior to the Improvement Act's deployment in 2015 (the Incremental Penalty Payment and the Administrative Enforcement Order) were the most commonly used tools with close to 3000 applications over 2015 and 2016. This reflects authorities' hesitation to utilize the supplementary instruments and powers granted to them under the Improvement Act that they requested. This paradox can mostly be explained by civil servants' perception of them as last resort measures, unfamiliarity with their functioning, and / or administrative shortcomings regarding their implementation. Nevertheless, it emerges from the interviews that despite the sparse application of the enforcement instruments in practice, they are however frequently used in a more informal, extra-legal manner, by being used as a threat which equally leads to violators redressing their wrongdoings. It subsequently seems that the Improvement Act has an unexpected beneficial impact, in that it has proven to be an effective piece of legislation without having to actually be applied. We can therefore discern a dichotomy between the *law in the books* and the *law in action*, as although the law empowers civil servants with a number of instruments to tackle these violations, it surfaces that in practice, their application is seldom due to the threat of imposing them often being sufficient. This consequently shows how the law can be used to indirectly stem harmful practices by acting as a deterrent, rather than solely acting as a punitive response. Furthermore, this goes to challenge notions of the law and legislation's ineffectiveness in tackling violations by demonstrating how legal intervention can also prove to be efficient without having to actually be applied. However, it seems that the threat of imposing, and the actual imposing of a sanction, is only effective on a certain type of offender: the occasional violators.

This leads us to our second main finding. According to the interviewed civil servants working for the local authorities, major differences can be seen in the type of offender. A clear distinction can be made between the occasional violators (*the one-shotters*) and the structural violators (*the repeat offenders*). Although the *one-shotters* tend to intentionally violate health or safety regulations, it seems that they only occasionally commit violations and rarely repeat them. When they realise that local authorities are aware of their violations and are informed of the illegality of their actions, the majority tend to undo the violation to avoid being sanctioned. As a result, not all property owners who violate housing health and safety norms can be labelled rogue landlords. On the other side of the spectrum are the *repeat offenders* who, as the name suggests, structurally violate these regulations and are thus considered to be rogue landlords, slumlords, or rack-renters. *Repeat offenders* can be characterized with multiple criteria. They usually own multiple rental properties, sometimes in different municipalities. Attempting to gain as much profit in as little time possible, they tend to 'milk' their assets by providing little to no maintenance when renting them out. In doing so, they result in structurally and repeatedly violating diverse laws and acts that regulate housing, public nuisance,

and health and safety; and usually disregard warnings or initial sanctions issued by local enforcement authorities. It is thus the *repeat offenders* that we qualify as ‘genuine’ rogue landlords, as they purposely disregard warnings and violate regulatory measures.

*Repeat offender* rogue landlords and their refusal to adhere to housing norms brings us to our third point. The empirical results from this study show that local authorities tend to impose the Incremental Penalty Payment or the Administrative Enforcement Order, and rarely, if not ever, one of the other instruments. *Repeat offenders* are aware that they can be sanctioned, and have calculated that being sanctioned from time to time is more cost effective than adhering to the regulations and renovating their properties to the necessary standards. Considering this, the possibility or threat of being sanctioned therefore does not deter them from (re)offending. Thus, it seems that in a paradoxical manner, these instruments that were created specifically for tackling rogue landlords are largely ineffective, and are rather more performant in tackling occasional violators. One of the core motivations behind the Improvement Act’s creation was the deterrence of *repeat offenders* from violating the Housing Act, by granting local authorities an array of instruments that sanction violations. Seeing that *repeat offenders* continue violating the Housing Act, it appears that the Improvement Act has partially failed in fulfilling its central purpose.

Our fourth and final main finding resides in the fact that the Improvement Act’s lack of effectiveness for tackling *repeat offenders* stems partially from the jurisdiction of administrative law. Although some previously mentioned authors speak of the effectiveness of legal intervention in tackling housing violations, it seems that the transfer of authority from criminal to administrative law has not just allowed for enforcement to become a more efficient, simpler, and less time-consuming process, but, much like Desmond and Bell’s (2015) findings on ‘blindly’ established housing regulations, has also had unintended consequences that have not improved the situation. First of all, the shift from criminal to administrative law has had a large backlash, as not all sanctions, such as the punitive sanctions, are imposable by local authorities. This means that whilst local authorities have been able to clamp down on occasional violators by issuing warnings or using administrative instruments, the *repeat offenders* have continued their unlawful activities as they have little effect, and punitive sanctions under criminal law must be imposed by the Public Prosecutions Office. It thus seems that the shift of responsibility from the Public Prosecutions Office to local authorities has left the Public Prosecutions Office disinterested, feeling that it no longer has to deal with substandard housing violations at all, therefore leaving the *repeat offenders* free to continue their activities with minor consequences. Second of all, the powers of local authorities are restrained to geographical boundaries. They cannot operate outside of their jurisdiction, meaning that if *repeat offenders* own properties in multiple municipalities, they are able to commit violations without other municipalities being aware, let

alone intervene. Consequently, they can simultaneously commit violations in multiple municipalities without risking punitive sanctions under criminal law that are imposed in cases dealing with repeatedly committed violations, as local authorities are not permitted to act upon or take into consideration violations committed in other municipalities.

Private law could be a potential response to the lack of criminal law sanctions being imposed, because it is not bound to this geographical jurisdiction. The use of this area of law is, however, dependent on the tenants' decision to bring the landlord to justice. Tenants might decide to not bring the landlord to justice, because of fear for revenge evictions. Moreover, the lengthiness of the civil law process and its limited consequences (i.e. a request to lower the rent) lead to less severe sanctions than those issued under administrative or criminal law.

It thus seems that repeat offenders have managed to weigh the pros and the cons of their activities. First of all, they know that the profits generated by the renting out of substandard accommodation(s) are superior to the costs of renovating the property in the long run. They therefore 'gamble' on not being caught, and if they are, they are aware that the cost of the sanction will be less than those incurred by renovations. Secondly, although more severe criminal law sanctions can, technically, be issued to punish *repeat offenders*, it seems that the chance of being sanctioned is highly improbable (as reflected in the survey results), further creating a situation which appears to suit them. The combination of these two factors therefore seem to play in their favour, and consequently appear to be elements that facilitate *repeat offenders'* activities, illustrating their nonchalance towards the law and its repercussions. Overall, the shift from criminal to administrative law has proven to be effective for tackling incidental violations of the Housing Act, especially regarding substandard housing. Nevertheless, backlashes are the consequence, as *one-shotters* are mainly the ones affected by this switch, rather than the problematic *repeat offenders* this legislation was aimed at.

### **Conclusion: what can we learn from the Dutch?**

The four aspects that emerge from this study consequently provide valuable insights into the effectiveness of legal measures for tackling rogue landlords. In the Netherlands, rogue landlords are largely associated with substandard housing: one of the aforementioned five criteria used in the existing literature to describe rogue landlords. To tackle this issue, the government devised legislation which could be enforced by local authorities, taking form of a switch from criminal law to administrative law. Despite having little effect on its intended target of *repeat offenders*, civil servants' closer proximity and more direct contact with violators has elucidated happenings and the different types of offender active in the housing sector. This information is valuable, as policymakers could potentially exploit this data to create legislations specifically adapted and

more effective at tackling each type of violator. Bringing enforcement to a local level could thus provide information on the types of violations being committed and the individuals behind them, in turn leading to a greater understanding of the situation which could be translated into the creation of more effective enforcement measures.

Along with these clarifications, the enforcement instruments endowed to local authorities have proven to be a beneficial attribute, not just due to their use, but also to the ‘threat’ of their use. It thus seems that the creation of legislation that discourages infringements bears its own benefits, as dissuading individuals from violating avoids even having to employ these instruments. However, a first element we can retain from the Dutch situation is that the sanctions have to be effective at dissuading targeted violators, in this case the *repeat offenders*. Failure to do so could equate to, in worst case scenarios, legislation that is ineffective in stemming violations altogether, hence the need for empirical legal research to clarify and pinpoint the most effective means of doing so. Although on the whole violators are more effectively and efficiently tackled, paradoxically, the law does not meet its intended purpose of tackling rogue landlords. Consequently, a second important lesson can be learnt from the Dutch: legal provisions can have an overall positive impact and improve housing conditions, but this can happen in unexpected or unintended ways as seen here with tackling *one-shotters* rather than *repeat offenders*, and via the threat of imposing an instrument rather than its actual application. It is thus important to create provisions that are sufficient in dealing with their intended purpose, which can be done via research into effective deterrents for specific violations.

To conclude, overall this legislation fulfils its objective of improving the safety, health and living conditions of housing in the Netherlands. The switch from criminal law to administrative law has allowed for health and safety violations to be better and more efficiently addressed globally, attesting this legislation’s effectiveness. Nevertheless, its failure at addressing *repeat offender*’s conduct, due to the limitation of local authorities’ use of sanctions issued under criminal law, prove that supplementary procedures need to be implemented between these administrative and criminal law prosecution bodies. It is thus primordial that first, a clear procedure is created for instances where local authorities are no longer able to sanction violators (as it does not fall within their jurisdiction), or when violators are unresponsive to their sanctions. This procedure should clearly explain the steps to be taken to transfer a case to the Public Prosecutions Office. The Public Prosecutions Office should in turn recognise its duties by appropriately responding to local authorities’ request for assistance, either by dealing with the matter themselves, or by providing clear information, recommendations, and procedures so that the violator is issued a criminal law sanction. Secondly, communication and training sessions should be held with local authorities and the Public Prosecutions Office nationally, where these procedures and the tasks involved are clearly demarcated and

elaborated. By creating a procedure and specifying its process, cases concerning *repeat offenders* should consequently be handled appropriately and effectively, leaving each department to efficiently carry out their tasks.

This study provided an overall perspective and valuable insights onto the effectiveness of the Netherlands' latest legislation in tackling substandard housing and rogue landlords. Though this legislation was initially implemented following requests for better instruments for tackling an array of social issues linked to rogue landlords, it seems that in practice, it ultimately focuses on health and safety violations. Although necessary, other issues such as discrimination, harassment, or the economic exploitation of tenants seem to be left aside in favour of tackling safety and security violations. Hopefully it will be beneficial to enact similar studies on the effectiveness of legal intervention in tackling lesser studied practices such as overcharging rent, or the illegal charging of mediation fees, to gain an understanding of the situation of tenants and see if they are sufficiently protected from these abusive practices.

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