



# Summary

Evaluation of the Squatting Ban  
Enforcement Act

The Situation before the New Act

**On behalf of**

Research and Documentation Centre (WODC)

**Cover**

Cover and photo (Paul Gruter): Amsterdam, former hotel Marnix. In squatted condition: 'Hotel Mokum'. The building is squatted on Oktober 17, 2021 and evicted on November 27, 2021.

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**Title**

Evaluation of the Squatting Ban Enforcement Act.

**Subtitle**

The Situation before the New Act

**Authors**

Peter Kruize en Paul Gruter

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# Summary

The Squatting Ban Enforcement Act came into force on July 1st, 2022. The main purpose of the new law is to shorten the turnaround time in case of an eviction of a squat under criminal law. Whereas squatters previously had the option to file summary proceedings against the intended eviction with the preliminary relief judge, it is now the examining magistrate who decides on the eviction demand within three days. In this way, the legislator wants to prevent the 'housing model' behavior in squatting.<sup>1</sup>

During the parliamentary discussion of the bill, much attention was paid to the criticism of the chain partners and other parties involved on the procedure as resulting from the new law. The Board of Public Procurators, the Netherlands Bar Association, the Netherlands Association for the Judiciary, as well as the Council for the Judiciary advised negatively during the consultation round on the bill. Therefore, the Minister of Justice and Security promised to evaluate the effects of the new law within two years.

The evaluation consists of three sub-studies: the situation before the new act came into force, the situation after and the final evaluation. The present study report covers the results of the situation before the new act came into force, which maps the situation in 2021. The central question for this study is as follows:

What is the baseline situation regarding the nature and extent of squatting as well as the enforcement of the squatting ban in the calendar year preceding the entry into force of the Squatting Ban Enforcement Act?

Before the Squatting Ban Enforcement Act enters into force, the Squatting and Vacancy Act will apply and will therefore be applicable in 2021, the year of this study. In order to enforce the squatting ban, the Squatting and Vacancy Act provides, in addition to the offence description with penal provision (Section 138a of the Criminal Code), a special eviction provision (Section 551a of the Dutch Code of Criminal Procedure) on the basis of which a squatted property can be entered and evicted under criminal law. Immediately after the Squatting and Vacancy Act came into force, squatters brought a number of preliminary relief proceedings before the preliminary judge. In these, they argued, inter alia, that eviction was contrary to Article 8(2) ECHR. On appeal, the squatters won on this point. The consequence is that - barring exceptions<sup>2</sup> - no eviction may take place before the squatters have had the opportunity to challenge this intention before the preliminary relief judge. As a result, written notice must be given that the eviction will take place within eight weeks. The squatters are given the opportunity to file summary proceedings

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<sup>1</sup> 'Housing model' refers to squatters moving from squat to squat, taking advantage of legal opportunities to stay in the squatted property for as long as possible.

<sup>2</sup> There are four special circumstances where an eviction can be triggered immediately, namely: breach of domiciliary peace, other offences, dangerous situation and danger to public order.

within seven days. However, this only applies if the squatters have established house rights. If this is not yet the case, eviction can be carried out immediately (the 'red-handed eviction' or 'hot squatting'). In addition to eviction under criminal law, it is also possible for the owner himself to initiate summary proceedings (the civil law route). Or eviction may take place because living in that place violates the zoning plan (the administrative law route). Another possibility is that the squatters and owner come to a mutual agreement without interference from the courts, and determine by mutual agreement the moment when the squatters leave voluntarily.

Ten research questions were formulated to answer the central question. In this summary, we discuss the research findings using these ten questions. The research questions are about squatting incidents in 2021. We have interpreted this fact broadly, i.e. a squatting incident exists if the squatting and/or the (initiation of) eviction took place in 2021.

## Research methods

The study used a combination of six data collection methods, namely:

- Desk research. This involved studying parliamentary documents, case law, relevance studies and (social) media reports.
- File research at the police. Using search terms, BVH the police administration system was searched for possible squatting incidents in 2021. This produced a file of 128 squatting incidents.
- Insight into the settlement by the public prosecutor: In cases where one or more suspects were arrested for squatting (article 138, 138a or 139 of the Criminal Code), the Public Prosecutor's Office and the police visibility system (BOSZ) were used to map out the settlement by the public prosecutor and - where relevant - the court decision.
- Insight into summary proceedings in the preliminary relief judge. We have studied several summary proceedings instituted by the owner of a squatted property. In addition, we mapped all summary proceedings initiated by squatters by questioning the records of the state attorney (who represents the state in these summary proceedings).
- Formal interview round. This round of interviews involved 17 representatives of police units, district public prosecutors' offices, district courts and law firms.
- Informal contacts. We did speak to some ex-squatters, but we did not manage to engage with current squatters, on the topic of this evaluation. When invited for an interview, we were told, among other things, that the squatters in question did not feel that cooperating in the study could be of any benefit to them.

## Research question 1: policy logic of the new law

What is the policy logic of the Squatting Enforcement Act?

Vacancy and squatting are actually complementary concepts. Especially in times of housing shortage, long-term vacancy is socially undesirable. The legislative history surrounding squatting shows that squatting is gradually been made more difficult. In 1971, the Supreme Court ruled

that squatting is not criminalized if the property is vacant. In 1993, it is determined that squatting is not criminalized if a property has been vacant for more than one year. The 2010 Squatting and Vacancy Act takes the next step: squatting is now prohibited, but at the same time rules are drawn up around vacancy. However, the legislator is corrected by the courts: although squatting is prohibited, the right to housing must still be respected.

The construction subsequently devised to meet this is that the public prosecutor must announce an eviction and the squatters must then be given the opportunity to object to this with summary proceedings. The squatters have seven days to file that summary proceedings.

If they institute preliminary relief proceedings, this will suspend the actual eviction by several weeks. Because an eviction under criminal law - barring special circumstances - must be notified by the public prosecutor, and the squatters can file summary proceedings against this (with suspensive effect) gives the possibility to turn squatting into a 'housing model', according to the initiators of the Squatting Ban Enforcement Act.

The new law no longer allows squatters to file summary proceedings. Under the new law, the public prosecutor applies to the magistrate's court for an authorization to evict. The latter then decides within three days and gives the squatters the opportunity to be heard during that period. Squatters may appeal against the decision of the examining magistrate, but this appeal has no suspensive effect. The submitters of the bill expect the new law to lead to (1) quick and effective enforcement of the squatting ban; (2) discouragement of squatting as an illegal 'housing model' and (3) more effective protection of the right to own a property or land.

### **Research questions 2 and 3: squatting incidents in 2021**

How many squatting incidents have occurred in the Netherlands in 2021? What kind of premises are involved (type and owner)? And what is their regional distribution?

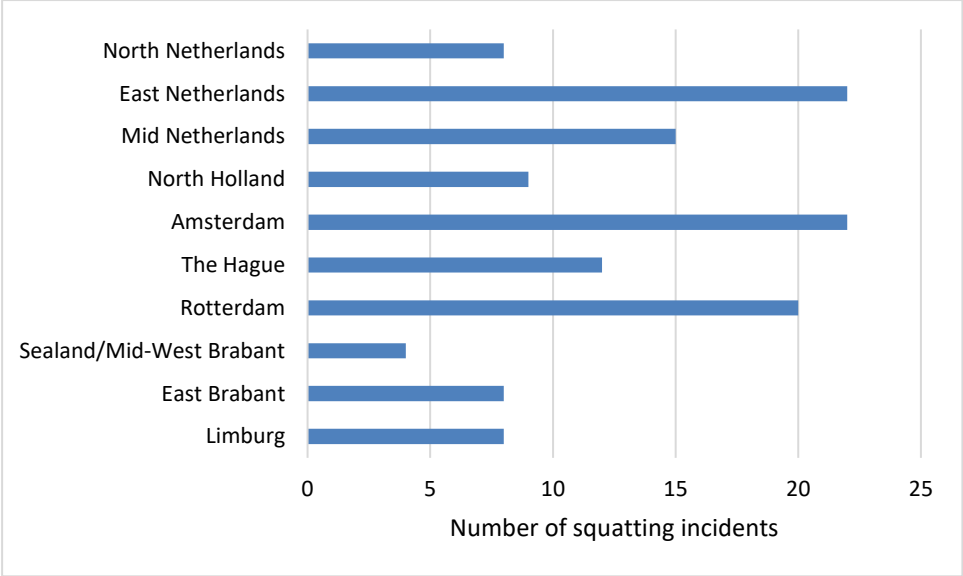
How many registered squatting incidents have occurred in the Netherlands in 2021? What kind of premises are involved (type and owner)? And what is their regional distribution?

Research question 2 refers to all squatting incidents and research question 3 deals with squatting incidents known to the police through a report and/or notification. However, the study used police records to map squatting incidents. This allows us to answer only research question 3.

In police records, squatting incidents are generally registered under the heading of breach of domiciliary peace (article 138 of the Criminal Code), as squatting (article 138a) is not a category (social class) in police records. However, we do see that immediate eviction is sometimes carried out because, according to the police and/or prosecutor - rightly or wrongly (as this is not tested by a judge) - there is a case of breach of domiciliary peace. A total of 128 squatting incidents from 2021 were mapped; 93 incidents (73%) were reported, and 35 incidents (27%) remained as reports.

The majority of squatted premises involved residential properties (59%). Non-dwellings (38%) mostly involve office, retail, catering or other business premises and public buildings. There is a diversity of owners: company (34%), private (24%), housing corporation (22%), foundation/association (9%) and municipality (9%). In 2% of the incidents, we cannot read who the owner is in the available documents. Squatting incidents were registered in all 10 police units (see Figure S.1) with East Netherlands, Amsterdam and Rotterdam as the units with the most registered squatting incidents.

**Figure S.1 Number of squatting incidents found from 2021 by police unit.**



**Research question 4: summary proceedings**

How many summary proceedings were instituted, how many of them were pursued and how many were withdrawn? How long after the commencement of summary proceedings are the latter withdrawn on average? How often is an appeal lodged after the decision in summary proceedings?

This research question relates to the situation where the public prosecutor opts for an eviction under criminal law where there is no red-handed eviction, or an eviction based on special circumstances. The study shows that this variant - in practice - is rare. In only 13 of 128 squatting incidents (10 per cent), the squat was evicted following the public prosecutor's notice. In 10 cases, the squatters initiated summary proceedings; however, seven of these are withdrawn. In three of these cases, the summary proceedings are withdrawn one day before the summary proceedings were due to take place. In the other four cases, it is two, four (2x) and five days before the scheduled summary proceedings, respectively. On average, summary proceedings are withdrawn again 2.6 days before the hearing.

There have thus been three instances of summary proceedings instituted by the squatters. Each time, the State - represented by the state attorney - was ruled in favor and the squatters had to

leave the premises.<sup>3</sup> In one case, the squatters appealed. But even on appeal, the court did not rule in their favor.

### **Research question 5: outcome of squatting cases**

What is the outcome of cases in which squatting has been reported? How often do squatters leave by themselves? How often was eviction proceeded with? How often is there any other outcome? And what outcome(s) are involved?

In 35% (in 45 incidents) of the cases, a criminal route is followed, with 20 squatting incidents being ended in the act by the police. In 12 cases, the police proceed directly to eviction due to special circumstances (public prosecutor's policy rules), and in 13 cases the eviction is served with a notice from the public prosecutor. In the remaining cases (83 incidents; 65%), squatters leave the premises in consultation with the owner or after being urged to do so by the owner. The owner may also have initiated civil proceedings (summary proceedings).

If there is a red-handed eviction or an eviction based on breach of domiciliary peace or from the security perspective, squatters are also detained with some regularity. This happens in 18 out of 32 evictions (56%). If the public prosecutor issues an eviction notice, the squatters almost always leave the premises without a fight. In 2021, the squatters at only one premises did not voluntarily leave the premises they squatted after the public prosecutor's notice or after the ruling of the preliminary relief judge.

### **Research question 6: turnaround times**

What is the average turnaround time between a notification or report and the moment the premises are empty (either after squatters left of their own accord or after eviction)?

The turnaround time strongly depends on how the eviction took place. If a squat is caught red-handed, the eviction takes place almost immediately, whereas a squat incident in which the owner and squatters get into talks about a solution may take a relatively long time; squatters are then regularly allowed to stay in the property until the owner actually does something with the property (renovation, demolition et cetera).

We usually cannot trace the date when the property is empty again in the administrations if there is an agreement (a deal) between squatters and owner or if a civil route was followed.

In the context of the evaluation of the Squatting Prohibition Enforcement Act, however, it is particularly important to determine the processing time of the cases in which the public prosecutor issued an eviction notice (n=13); in those cases, the owner always filed a report. We looked

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<sup>3</sup> However, there are also two cases - outside the 13 cases discussed - in which the public prosecutor recommended eviction but then abandoned it. In these two cases, the squatters withdrew the summary proceedings again because they could stay in the premises. Later, these premises were evicted in other than criminal proceedings. Therefore, these cases have not been included in the criminal route.

at the median processing time (measured in number of days) for these cases. The median processing time is 79 days counted from squatting to transfer to the owner. We also took a closer look at the 'intermediate steps'. It turns out that the median processing time is then as follows:

- From squatting the property to the eviction notice: 15 days
- From the report to the eviction notice: 9 days
- From notice of eviction to transfer of the property: 38 days.

### **Research question 7: squatting incidents out of police sight**

Do evictions take place without being reported? If so, how often does this happen? And how can these squatting incidents be characterized?

This study - as stated - only provides insight into squatting incidents known to the police. However, the assessment of our police respondents is that there will hardly be any squatting incidents of which the police have no knowledge. For example, there is the category of squatters who contact the police themselves to report the squat, and squatters who do not contact the police themselves also do appear on the police's radar at some point. The police are then informed through the owner or it is local residents who inform the police. And sometimes, of course, it is also the police themselves (e.g. through the neighborhood policeman) who detects the squat. Thus, although we cannot answer the research question with certainty, the estimation is that the number of incidents/evictions that take place out of police sight will be extremely low.

### **Research question 8: prosecution and conviction of squatters**

How many defendants were prosecuted and convicted? What sentences were imposed (on average per case and in total)?

Based on the interviews with police officers, prosecutors, lawyers and judges, we find that squatting is in principle not prosecuted. That is, a squatter is not arrested and regarded as a suspect in relation to 138a Sr. However, there are exceptions to this rule. The main exception is when squatters do not cooperate voluntarily in an eviction. In appropriate cases, they are then arrested and a formal settlement by the public prosecutor follows. Some point to detention in connection with recidivism; "someone who squats systematically will eventually be arrested and prosecuted for it", is the credo. It should be noted here that the identity of a non-arrested squatter is not always known, making recidivism difficult to determine.

One or more suspects were reported for squatting in 20 of the 128 squatting incidents (16 per cent). This totals 45 suspects, or an average of over two suspects per incident. However, this figure is distorted by an incident involving 14 suspects. Excluding that case, there are 1.5 suspects per squatting incident in which arrests were made.

In 21 of 45 suspects, the case is dismissed. Again, the 'disruptive effect' of the case with 14 suspects (all 14 of which were dismissed) applies. If we do not include that case, seven of 31



suspects were dismissed. Various reasons are given for this, such as 'minor fact', 'other intervention prevails' and 'minor share in fact'. 23 of the 31 suspects were summoned and one suspect's case was settled with a punishment order (€75 fine).

The sentencing guideline distinguishes between the type of premises and the degree of recidivism. For example, squatting in a home is punished more severely than squatting in a building. A first-offender is punished with a fine; a repeat offender may be given a community service or prison sentence. Of six squatting incidents, we know the sentencing. However, two incidents involve the same suspects, so five cases are sentenced. Table S.1 summarizes the sentences imposed.

**Table S.1 Penalties imposed by courts in squatting cases.**

Case number	Number of incidents	Number of defendants	Law article (court)	Verdict Court <sup>4</sup>	Judgement appeal
1	2	2	Squatting in association	CS 20 hours	acquittal
2	1	2	Squatting in association	I 30 days (voorw.)	
3	1	1	Squatting	F € 350	
4	1	3	Breach of domiciliary peace in association	F € 300 D € 730	
5	1	1	Breach of domiciliary peace	I 14 days	

**Research question 9: workload**

What is the average workload per report or report for police, prosecutors and judiciary?

We lack the data to reconstruct exactly how much time those involved spent on a squatting incident. However, we can give an estimate based on the content of the interviews and the files. The way in which a squatting incident was handled is obviously important here. Without being able to do the exact arithmetic per squatting case, however, it is evident that it is always the police organization that generally spends the most time on squatting incidents.

Table S.2 shows the average workload for the police, Public Prosecution Service (OM) and the Judiciary (RM). This is expressed as a number from 1 to 3, where 1 stands for 'low workload', 2 for 'decent workload' and 3 for 'high workload'.

Instant evictions and evictions based on breach of domiciliary peace or an unsafe situation are included in the table. Our research evidence shows that squatters are actually only apprehended in these types of evictions. And thus not in evictions following notice from the public prosecutor

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<sup>4</sup> CS = community service; I = imprisonment; F = fine; D = damages.

as the outcome of summary proceedings. It is these cases that create the biggest workload for both police and prosecutors.<sup>5</sup>

**Table S.2 Workload squatting incidents by organization.**

Case type	Police	Public prosecution	Judicial power
Owner takes care of it himself	1	1	
Civil proceedings	1	1	2
Immediate evictions without arrests	2	1	
Immediate evictions with arrests	3	3	2
Criminal proceedings (notice to Prosecutor)	3	2	2

If a property is evicted following a notice from the public prosecutor, this involves the necessary (paper) work for all parties. The police will have to take the report, ask about the owner's plans, issue the public prosecutor's notice and finally arrange for the eviction. The public prosecutor will consult with various parties and they will eventually come up with an eviction order. If the squatters initiate summary proceedings - which is what usually happens in this eviction route - the public prosecutor must compile a file (or have it compiled) and submit it to the state attorney. In summary proceedings, there is obviously a role for the judge. The judges we spoke to indicated that for the workload involved in summary proceedings, it does not matter whether the summary proceedings are brought by the owner or the squatters.

**Research question 10: 'housing model'**

A 'housing model' refers to squatters who move from squat to squat and make use of the legal possibilities - i.e. initiating summary proceedings if the public prosecutor issues an eviction notice - in order to stay in each of the squatted premises for as long as possible.

We sometimes see in the files the same people in multiple squatting incidents. And occasionally, we also read that a property has been squatted because another property has been evicted. However, this is more the exception than the rule. It seems that after an eviction, most squatters look for an alternative other than squatting housing. However, we cannot empirically support this statement other than with the observation that we do not often see the same squatters returning to the 2021 incidents we looked at.

The circumstance that squatters - if it comes to an eviction under criminal law after being served with a notice by the public prosecutor – initiate summary proceedings and then withdraw the

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<sup>5</sup> If one or more squatters are arrested, it takes quite a lot of work for the police. The suspect has to be arraigned to the auxiliary officer, passed the ID column, detained and questioned. All this has to be put on paper. A file must then be compiled, this must be sent to the public prosecutor. The prosecutor must read the file and make a decision on it, and finally, the accused - if summoned - must appear in court. These cases are generally handled by the police court judge.

request for summary proceedings does indeed occur. The idea here is presumably that the squatters can then stay in the premises for a few more weeks. However, this does not always seem to involve the same groups. It should be noted, however, that the study only covers squatting incidents occurring in 2021.

The withdrawal of the request for summary proceedings occurs in seven of thirteen premises evicted in 2021 along this route. Incidentally, in practice, this eviction route was used in only 10% of squatting incidents.

### **Final conclusion**

Compared to the years prior to the squatting ban, as well as the first years after the Squatting and Vacancy Act came into force, the number of squatting incidents is low. We have identified 128 squatting incidents for the year 2021, which is expected to cover the vast majority of squatting incidents. Squatting occurs across the country and involves both residential and other buildings. And sometimes sites are also squatted.

Eviction of a squat via criminal law occurs in only a few districts in 2021. The idea that the owner should solve it (through civil law) himself is quite widely embraced by police and the public prosecutor's office from the idea that they can better deploy their capacity on other cases.

The question of when house rights have been established (relevant for a red-handed eviction) and to what extent the entitled party is still actually using the property (relevant for an immediate eviction for breach of domiciliary peace) have proven to be flexible concepts that are interpreted differently in practice, anno 2021.

The route whereby the public prosecutor issues an eviction notice – the route central to the Squatting Ban Enforcement Act – is used in only 10% of squatting incidents. Within this 10%, squatters' ability to 'stall for time' by filing summary proceedings is indeed used in this route; on average, it leads to several weeks' delay in eviction.

Finally, by 2021, squatting in one in six squatting incidents leads to prosecution. In fact, prosecution only occurs if there has been a flagrant eviction or an eviction based on breach of domiciliary peace. The punishment imposed varies from a relatively small fine (several hundred euros) to community service or imprisonment (several weeks).