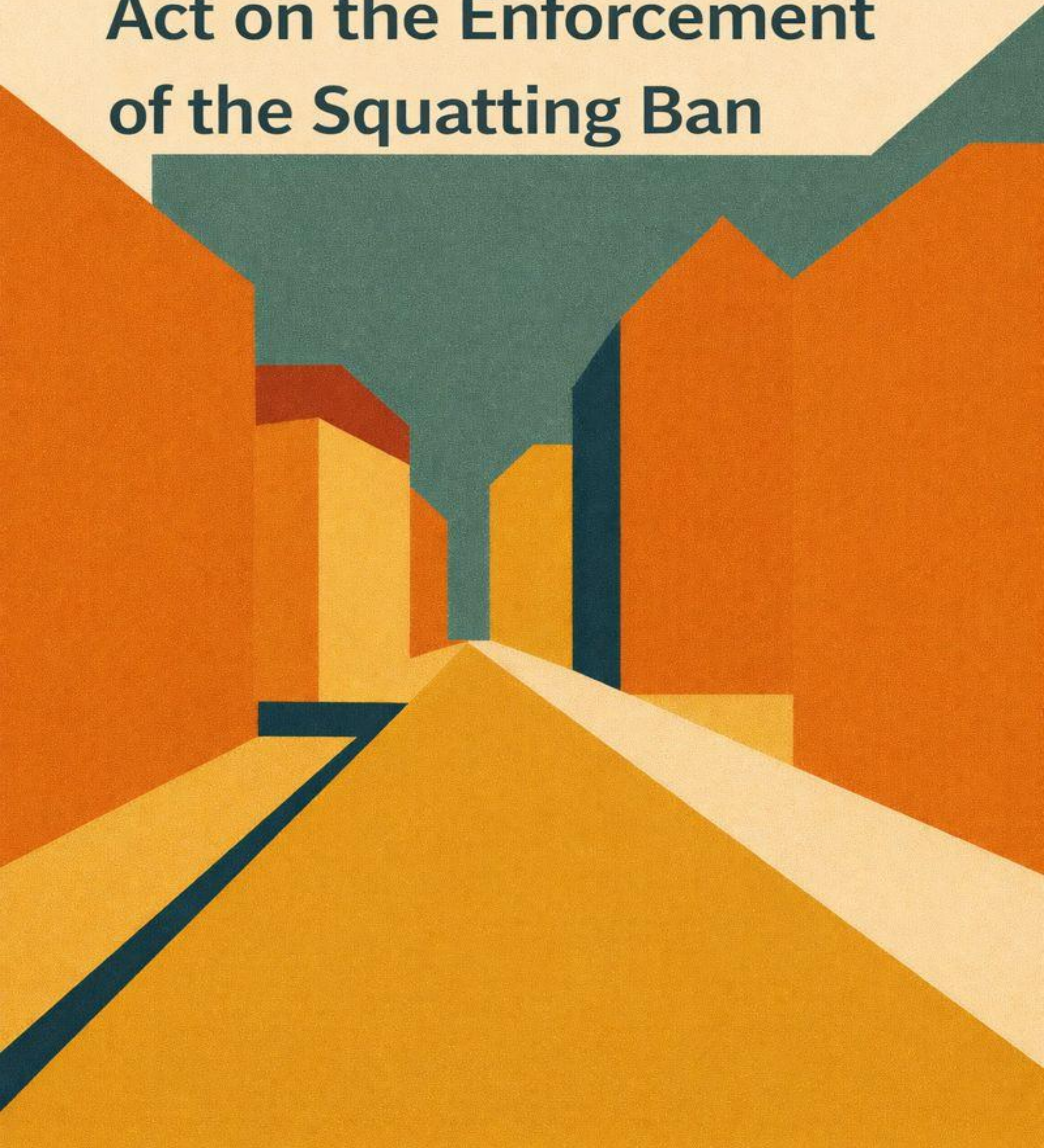
SUMMARY
Final Evaluation of the Act on the Enforcement of the Squatting Ban



On behalf of
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Cover
Paul Gruter [in consultation with ChatGPT 5.2. Prompt: create an abstract cover for the report on the evaluation of the new anti-squatting law. The cover features housing blocks with contours that suggest a city street.]

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Final Evaluation of the Act on the Enforcement of the Squatting Ban

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Summary

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On 1 July 2022, the Act on the Enforcement of the Squatting Ban entered into force. The main objective of the new Act is to shorten the processing time for eviction under criminal law of a squatted property. Whereas squatters previously had the possibility to initiate preliminary injunction proceedings before the interim relief judge against the intended eviction, it is now the examining magistrate who decides within three days on the request for eviction. In this way, the legislator seeks to prevent the use of squatting as a "housing model".

The evaluation consists of three sub-studies: the baseline measurement (Kruize & Gruter, 2023), the one-year measurement (Kruize & Gruter, 2024), and this final evaluation. For the final evaluation, data collected for the baseline and one-year measurements were also used. The twofold problem statement for the final evaluation reads as follows:

> What are the (intended and unintended) effects of the Act on the Enforcement of the Squatting Ban? And to what extent does the Act contribute to the efficient and effective enforcement of the squatting ban, while maintaining an effective legal remedy for squatters in so far as it concerns the application of the eviction provision in the Act?

To enforce the squatting ban, the Act provides both an offence description with a criminal provision (Article 138a of the Criminal Code) and an eviction provision (Article 551a of the Code of Criminal Procedure). After a report of squatting, the public prosecutor may file a request with the examining magistrate for authorisation to evict since Article 551a CCP. The examining magistrate then decides within 72 hours. During this period, the examining magistrate, if possible, gives the squatters the opportunity to be heard. However, this procedure only applies if the squatters have established residential rights. If this is not yet the case, eviction can take place immediately (flagrante delicto eviction). In addition to eviction under criminal law, it is also possible for the owner to initiate preliminary injunction proceedings (the civil route). Eviction may also occur because living at that location violates the zoning plan (the administrative route). A final possibility is that the squatters and the owner reach an agreement without judicial intervention and jointly determine the moment at which the squatters will voluntarily leave.

Four research questions were formulated to address the problem statement. In this summary we discuss the research findings along these four questions, but we first address the research methods.

Research methods

For the study, we used a combination of three research methods: (1) desk research, (2) file research, and (3) interviews.

Ad 1) Jurisprudence, relevant studies, and (social) media reports were examined.

Ad 2) Using search terms, BVH, the police administration system, was searched for possible squatting incidents. In the baseline measurement (the situation prior to the legislative amendment), files from 2021 were examined (n=128). In the one-year measurement

(2023, n=108) and the final measurement (2024, n=120), the situation after entry into force of the Act on the Enforcement of the Squatting Ban was examined. In cases in which one or more suspects were arrested for squatting (Articles 138, 138a, or 139 CC), the police case-tracking system (BOSZ) was used to map the disposition by the public prosecutor.

Ad 3) Interviews were conducted during all three sub-studies. In total, interviews were held with representatives of police units (5), judicial districts (7), the Public Prosecutor's Office (1), lawyers assisting squatters (2), property owners (3), and legal experts (2). Some respondents were interviewed during multiple measurement rounds. In addition, informal conversations were held with squatters.

Nature, extent, and enforcement of squatting

There are no indications that the introduction of the Act on the Enforcement of the Squatting Ban has influenced the nature or extent of squatting incidents. None of the parties involved mentioned such an effect, and the collected numerical data also show a more or less comparable picture both before and after the introduction of the new Act with regard to the number of squatting cases, the type of object squatted, and the type of owner of squatted properties.

We do observe that, after the introduction of the Act, property owners report squatting more frequently. Owners may be filing reports more often in the expectation that—under the new Act—the property will be quickly evicted on order of the public prosecutor. At least some of the reports do (in)directly indicate that the owner is steering toward such an outcome.

Eviction under criminal law

It is not possible to precisely determine the proportion of eviction under criminal laws. This is partly because some squatted properties had not yet been evicted at the time we examined the documents. It is also often unclear in the police administration how a squatting incident ended if the eviction occurred outside the view of the police/prosecution service. Based on the cases we were able to trace, eviction under criminal law accounted for 47 percent (2021), 50 percent (2023), and 44 percent (2024) of cases. If we assume that the unknown cases are (or will be) resolved by means other than the criminal route—and there is reason to make that assumption—then the percentages are as follows: 36 percent (2021), 30 percent (2023), and 22 percent (2024).

In an eviction under criminal law, there may be an eviction for being caught in the act (in situations in which residential rights have not yet been established), an eviction where residential rights have been established (hearing before the examining magistrate required), and eviction due to urgent necessity (only oral authorisation of the examining magistrate required). The latter category, evictions based on urgent necessity (previously termed "special circumstances"), concerns almost exclusively cases of trespassing. That is, the property was still in actual use by the owner.

The decline in the number of evictions for being caught in the act in 2023 and 2024 may be attributable to the legislative amendment. It is possible that the rationale is that the route via the examining magistrate can be taken quickly, but we tend instead to the explanation that the

police and public prosecutor have become more aware that, in cases of doubt, a judge must be involved. Considering only eviction under criminal laws after residential rights have been established, these evictions account for 20 percent (2021), 23 percent (2023), and 18 percent (2024) of the total number of squatting cases in the respective year.

Authorisation by the examining magistrate

In most cases, the public prosecutor receives the requested authorisation from the examining magistrate to evict the squatted property, but the prosecutor's request has also been rejected several times. In our research material, the prosecutor's request was rejected three times both in 2023 and in 2024. In two of these cases, the authorisation was granted on appeal. The reason for rejection was always the absence of a concrete plan by the owner for the squatted property that could be realised within a foreseeable timeframe, or a plan that would ensure that the property would not remain vacant for an extended period. It is notable that the rejections by the examining magistrate originate from only three judicial districts—East Netherlands, Rotterdam, and East Brabant (each with two rejections). In the Amsterdam district, where most squatting cases occur, not a single request by the public prosecutor was rejected.

Arrests

Before the legislative amendment, police made arrests in 20 of the 128 squatting cases (16 percent). In total, 45 squatters were considered suspects. After the legislative amendment, police made arrests in 25 of the 228 squatting cases (11 percent), involving 53 suspected squatters in total. Both before and after the legislative amendment, most cases in which squatters were considered suspects can be characterised as being caught in the act or trespassing cases. The higher percentage of arrests in 2021 compared to 2023/2024 can be explained by the fact that, before the amendment, there were relatively more arrests being caught in the act than after entry into force of the new Act.

Objectives of the Act on the Enforcement of the Squatting Ban

Main objective

The main objective of the Act is rapid and effective enforcement of the squatting ban. As a result, squatting as an illegal "housing model" is discouraged, property owners' rights are more effectively protected, and there is less property damage due to faster eviction.

The main objective contains two elements: rapid and effective. The first element refers to the time between the eviction and the announcement or request for eviction in cases where residential rights have been established (excluding evictions due to urgent necessity). The evaluation shows that this period was five to six weeks in the period we examined before the amendment and three days after the amendment. This objective of the Act has therefore been achieved.

However, during the bill's debate, it was pointed out that the preliminary phase—the period prior to the prosecutor's decision to request authorisation from the examining magistrate—would take longer, because a file must be compiled. This objection proved correct. Ultimately, there is still a time saving after the amendment when measuring the entire period, from the moment of squatting to the moment of eviction. The median time period was nearly halved due to the amendment: from 79 days before the amendment to 37 days after entry into force.

The second element of the main objective—effective enforcement—refers to the desire for more frequent criminal enforcement. The evaluation shows that this objective has not been achieved. On the contrary, the share of eviction under criminal laws has decreased rather than increased.

Derived objectives

The first derived objective concerns squatting as an illegal "housing model". The idea is that before the amendment, organised groups of squatters misused the suspensive effect of preliminary injunction proceedings to systematically and deliberately violate the law. The evaluation shows that, although there is a kernel of truth in this claim, it is also an extremely marginal phenomenon. With the entry into force of the new Act, there is no longer a suspensive effect when appealing the examining magistrate's decision.

The wish to "protect the property rights" of property owners more effectively is reflected in the title—"Enforcement of the Squatting Ban"—attached to the Act. This links the legislation to criminal law. As also discussed under the main objective, the public prosecutor may request authorisation for eviction, but this is not necessarily the outcome of the prosecutor's weighing of interests. The evaluation shows that this instrument is not being used more frequently. This means the goal of "more effectively protecting property rights" does not appear to be achieved.

The aim of reducing damage inside and to the squatted property by evicting more quickly is likely also not, or only partially, achieved. Although eviction takes place somewhat more quickly as a result of the new Act, this concerns only a small number of cases. Moreover, it is questionable whether any such damage is actually related to the speed of eviction. We found no indications of this—neither in the files nor in the interviews.

Side effects of the Act on the Enforcement of the Squatting Ban

We distinguish three side effects of the Act; these were (partly) raised in advance during the parliamentary debate. They concern the following:

1. Loss of time due to compiling a file
2. Increased workload for involved parties
3. Strengthening of squatters' legal position

Ad 1. This point was already discussed under the main objective. Although there is considerable time saving due to the three-day period between the prosecutor's request and the examining magistrate's decision, this is partly offset by the time the prosecutor needs to compile the file. The suggestion by the bill's initiators that compiling a file "is not a major task" has proved incorrect. The examining magistrate expects a well-substantiated case. Moreover, the Public Prosecutor's Office explicitly communicated this during the bill's debate.

Ad 2. The increased workload for involved parties—public prosecutors, squatting lawyers, and judges—results partly from the fact that under the new Act, all planned eviction under criminal laws must be assessed by the examining magistrate. This increases the number of cases. This was also acknowledged during the bill's debate.

The increased workload also concerns the distribution of tasks. Before the amendment, the state advocate represented the state in preliminary injunction proceedings initiated by squatters. The state advocate compiled the file for the proceedings, with police and the public prosecutor providing material. Under the new Act, compiling the file is the responsibility of the public prosecutor.

There may also be increased workload for examining magistrates. They must balance the property rights of the owner against the residential rights of the squatters. This is a civil-law balancing act, whereas the examining magistrate operates within the criminal-law domain. This means the examining magistrate must study the relevant civil-law framework, and depending on prior experience with civil law, this leads to additional workload. Furthermore, the incidental nature of squatting cases prevents examiners from developing routine, which also makes the cases relatively time-consuming.

Ad 3. During the bill's debate, the discussion centered on whether the new Act sufficiently safeguards squatters' legal position and would withstand review by the European Court of Human Rights. As far as we know, no one pointed out that the new Act might strengthen squatters' position. Yet this appears to be the case (see below).

Legal protection of squatters under the Act

The evaluation shows that all involved parties we interviewed—public prosecutors, squatting lawyers, and judges—are of the opinion that squatters' legal position is not undermined in practice. The examining magistrate weighs the interests in a manner comparable to the interim relief judge before the amendment.

Due to the legislative amendment, the legal position of squatters has in fact become stronger. On the one hand, this is because all criminal-law evictions must now be submitted to the investigating judge. Before the legislative amendment, the court became involved only if the squatters initiated summary proceedings; this was possible only if there were no special circumstances (now: urgent necessity). On the other hand, this is due to the "role reversal" in the legal proceedings. In the old situation, the squatters were the claimant party and had to demonstrate the unlawfulness of the announced eviction, whereas in the current situation the public prosecutor is the claimant party who must demonstrate that the desired eviction is lawful.

A point of criticism regarding the new Act in this context concerns a possible imbalance between the prosecutor and the lawyer in terms of preparation time (cf. Article 6 ECHR). The prosecutor can take as much time as needed, while the lawyer, in principle, has only three days to prepare for the hearing. The Dutch Association for the Judiciary (NVvR) indicated in its advice on the bill that a period of seven days (between announcement and hearing) would align more closely with the ECHR.

Scope of Article 551a CCP

One aspect of the Act that gives rise to debate is the scope of Article 551a CCP, specifically the question of whether an eviction for being caught in the act also falls within the scope of this

Article. According to some, it does not, because residential rights have not yet been established. According to others, it does, because squatting has occurred and therefore an eviction for being caught in the act should be seen as “urgent necessity”, and in such cases the Act requires oral authorisation by the examining magistrate.

Overall conclusions on efficiency and effectiveness

The evaluation shows that there is time saving, but that this concerns only a small number of squatting incidents. The new procedure does indeed create a greater workload for the parties involved, but given the limited number of cases, this is manageable.

Overall, we also question the efficiency and effectiveness of this Act. Establishing this new procedure for a limited number of cases, submitting a civil-law issue to an examining magistrate who is primarily concerned with criminal law, and the absence of evidence that criminal enforcement of the squatting ban has actually increased as a result of the Act, brings us to the conclusion that the Act has not achieved what the parliamentary majority intended: “to underline the norm that squatting is unlawful at all times.”

Opinions in the field on the Act’s efficiency and effectiveness vary. Some embrace the Act’s objective of enabling faster eviction under criminal law and believe the Act contributes to this; others consider it primarily symbolic legislation.