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Anti-social behaviour and European protection against eviction

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Abstract

Purpose – The purpose of this paper is to assess the implementation of the minimum level of protection against the loss of the home that arises from Article 8 of the European Convention on Human Rights in The Netherlands. The paper focuses on anti-social behaviour-related cases in which the landlord requests the court to issue an eviction order.

Design/methodology/approach – The paper is based on a statistical analysis of nearly 250 judgements concerning housing-related anti-social behaviour.

Findings – A significant difference is found in the court's attitude against drug-related anti-social behaviour and other types of nuisance. Moreover, it is found that in two-thirds of the cases, the tenant advanced a proportionality defence. Although the European Court stresses the need of a proportionality check, the Dutch courts ignore the tenant's proportionality defence in 10 per cent of the cases and issue an eviction order in the majority of all cases. Advancing a proportionality defence does not result in any difference for the court decision.

Originality/value – The paper presents original data on the legal protection against eviction in cases concerning anti-social behaviour. This is the first study that analyses the approach towards housing-related anti-social behaviour in the context of the European minimum level of protection. Whilst centred on legislation and procedures in The Netherlands, its findings and discussion are relevant in other jurisdictions facing similar issues.

Keywords The Netherlands, Anti-social behaviour, Article 8 ECHR, Eviction, Proportionality defence, Tenancy law

Paper type Research paper

Introduction

As a result of population growth and urbanization, people are more increasingly living together. Denser living conditions may cause housing-related anti-social behaviour (Heath, 2001), and implies a serious threat to the quality of life in residential areas

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(Paquin and Gambrill, 1994). As in other countries (Flint, 2006), one of the main strategies to address anti-social behaviour in The Netherlands is oriented towards eviction: landlords requests court to force the anti-social tenants to leave their home when the situation has become unbearable for the neighbours (Vols, 2014b).

Eviction serves as a pathway to homelessness. Losing one's home not only causes stress and unhappiness but also seriously disrupts the lives of all of the family members (Nettleton, 2001; Bright, 2010). Moreover, the evictees will lose the psycho-social benefits from having a home (Kearns *et al.*, 2000). Furthermore, eviction often just displaces the anti-social behaviour. Consequently, the eviction-centred approach is at odds with the right to housing (Hohmann, 2013), which appears, for example, in Article 8 of the European Convention on Human Rights and Articles 10 and 22 of the Dutch Constitution. Thus, it seems imperative that eviction is avoided whenever possible. On the other hand, the interests of the landlord and neighbouring residents should be taken into account too[1]. For every non-eviction of an anti-social tenant, there is, at the very least, one upset neighbour (Donoghue, 2013). Hence, a fair balance should be struck between the rights and interests of the tenants and those of their neighbours and landlord (Fox, 2007).

The European Court of Human Rights (hereafter: European Court) has established a minimum level of protection against the loss of the home. Since 2008, the European Court characterizes the loss of one's home as "a most extreme form of interference with the right to respect for the home" that is codified in Article 8 ECHR[2]. According to the European Court, any person at risk of losing his or her home should:

> […] in principle be able to have the proportionality and reasonableness of the measure determined by an independent tribunal in the light of the relevant principles under Article 8 of the Convention, notwithstanding that, under domestic law, his right of occupation has come to an end (Remiche, 2012)[3].

Although there will remain differences in the safeguards against eviction that national tenancy laws provide, all member states of the Council of Europe are obliged to comply with this minimum level of protection in their national jurisdictions (Nield, 2013; Vols, 2014b).

In The Netherlands, the Civil Code provides tenants robust legal protection against both the termination of the tenancy agreement and eviction. First, Article 7:231 of the Civil Code stipulates that the termination of a tenancy agreement on the ground that tenants have failed to comply with their obligations can only take place by judicial decision. It is not only mandatory to request the court to terminate the tenancy agreement but also obligatory to obtain an eviction order from the court. Second, Article 6:265 of the Civil Code lays down the general rule that any failure of the tenant in the performance of one of his or her obligations justifies the termination of the tenancy agreement[4]. However, Article 6:265 of the Civil Code gives an exception to this strict rule. The court has the discretion not to terminate the tenancy agreement if the failure in the performance by the tenant of his or her obligations, given its specific nature or minor importance, does not justify it overall (Abas, 2007, pp. 84-92)[5]. So, the court is entitled to check whether the termination of the agreement and the eviction are proportionate or not (Sieburgh and Hartkamp, 2010, nr. 684-686). Consequently, the European requirements that arise from Article 8 ECHR become apparent in the exception to the general rule of Article 6:265 of the Civil Code (Vols, 2014b)[6].

Apparently, The Netherlands technically complies with the European minimum level of protection against the loss of the home. The already built-in proportionality check of Article 6:265 of the Civil Code enables tenants to have the proportionality and reasonableness of eviction determined by an independent court in the light of the relevant principles under Article 8 ECHR. However, the precise ways in which Dutch courts deal with the European requirements are not exactly clear.

Moreover, it is not clear what specific types of anti-social behaviour are addressed with eviction. Previous research has found that landlords are becoming more and more important in the fighting of drugs in The Netherlands. Since the beginning of this century, the government has intensified the fight against drug-related crime (Schuilenberg, 2012). Municipalities, the police and landlords have founded public/private alliances to fight drug-related anti-social behaviour such as the growing of cannabis (Sapens *et al.*, 2007). This relates to what Garland has called the responsibilisation strategy: state agencies adopt a "strategic relation to other forces of social control" such as landlords. They aim to build "broader alliances, enlisting the governmental powers of private actors, and shaping them to the ends of crime control" (Garland, 2001, p. 124).

This study examines the legal protection of anti-social tenants by analysing a large number of cases concerning eviction orders and housing-related behaviour. We analysed almost 250 judgements of the Dutch court of first instance ("de rechtbank, sector kanton"), in which the court decided whether or not to terminate the tenancy agreement and/or grant an eviction order. To the best of our knowledge, this is the first study that analyses the Dutch approach towards anti-social behaviour in the context of the European minimum level of protection against the loss of the home. Besides, this is the first quantitative analysis of case law concerning eviction of tenants because of anti-social behaviour.

The study addresses the following questions:

Q1. Which types of housing-related anti-social behaviour constitute a sufficient reason for the court to issue an eviction order?

Q2. Which differences can be found in the tenant's defence strategy in cases concerning different types of housing-related anti-social behaviour?

Q3. Which types of tenants' defences result in the refusal of the landlord's request to issue an eviction order?

To what extent does the Dutch court deal with, for example, a proportionality defence and how often does this defence result in a dismissal of the landlord's claim?

This study focuses on The Netherlands for a number of reasons. First, tenancy law plays an important role in The Netherlands where a substantial share of the housing market is formed by rented accommodation. In 2012, the Dutch housing stock consisted of 7.3 million homes. Over 45 per cent of these premises were rented from housing associations and private landlords. Especially the (non-profit) housing associations are powerful players in the Dutch rental market. In 2012, the housing associations owned 2.3 million homes (31 per cent of the total housing stock and 74 per cent of all rental homes) (CBS, 2012). Second, as in the rest of Europe, how to deal with anti-social behaviour has been a highly debated topic in The Netherlands for the past 20 years (Vols, 2013). Third,

Dutch tenancy law is analysed because of the availability and accessibility of case law about evictions and housing-related anti-social behaviour.

Our paper is organized as follows. The paper first describes the data and methodology used. Next, the key findings are presented and discussed. The final section presents the conclusions.

Data and methodology

The Dutch legal procedure with which anti-social behaviour caused by tenants is addressed can be divided in different stages. In the pre-trial stage, residents try to settle the conflict amicably or together with a mediator. However, research indicates that a high percentage of cases cannot be settled with mediation (Ufkes *et al.*, 2012.) If the situation escalates, the landlord usually starts documenting evidence to build a file with which court proceedings can be initiated (Schout and De Jong, 2011). Although Dutch landlords acknowledge that they are legally obliged to act promptly, they exercise caution in initiating proceedings because of the far-reaching consequences of eviction (Aedes, 2014).

In the case that landlord and tenant do not agree to terminate a tenancy by themselves amicably, the landlord has to initiate court proceedings to terminate the tenancy agreement and acquire an eviction order. In The Netherlands, this procedure has been insufficiently studied and no systemic data have been collected (Van Laere *et al.*, 2009). The umbrella organization of the Dutch housing associations estimates that housing associations lodged 23,700 requests for an eviction order in 2012. More than 90 per cent of these requests were based on arrears of rent. In approximately 1,000-1,500 cases, the request for an eviction order was based on housing-related anti-social behaviour (Aedes, 2012).

Dutch courts do not publish all their judgements. If they publish a selection of their judgements, these are published on different websites and in different journals. The majority of the judgements are published on the website of the Dutch judiciary (www.rechtspraak.nl). A small number of judgements about housing law are published in two journals dedicated to tenancy law (*Kort Geding* and *WR Tijdschrift voor huurrecht*).

A team of legal researchers searched the different online databases with fixed search terms to find all the available judgements. This team traced 239 judgements published in the period January 2000 to December 2012. The following search terms were used: anti-social behaviour, cannabis, cannabis growing, drugs, drug dealing, stench, assault, tenancy agreement, termination and eviction. All the judgements of the court of first instance concerning anti-social behaviour and the termination of a tenancy agreement and obtaining an eviction order were selected. All relevant judgements ($n = 239$) were analysed statistically in combination with characteristics like dates and hearing location, the types of housing-related anti-social behaviour that resulted in the request for an eviction order, the defences of the tenants in the specific case and the reasoning of the court.

Because the study uses a relatively small sample, the Fisher exact test is applied. This is a statistical significance test that computes the precise probability (p-value) that you would see a given pattern in the data simply as a result of chance. It calculates deviance from the null hypothesis that assumes that there is no relationship between variables (e.g. type of anti-social behaviour and type of court decision). Below, all p-values are based on the Fisher exact test. The null hypothesis is rejected if the p-value is below 0.05 (Lawless *et al.*, 2010, pp. 227-261).

Results

Types of procedures

Dutch tenancy law distinguishes substantive proceedings from summary proceedings. If a case is of urgent importance, the landlord is entitled to request preliminary relief. However, in summary proceedings, the landlord is only allowed to request an eviction order from the court. In summary proceedings, the same requirements apply as in the standard procedure, but the court has to check whether the case is of urgent importance and is not allowed to terminate the tenancy agreement. If the court allows the preliminary eviction order, the landlord has to commence substantive proceedings in which the court has to decide whether or not to terminate the tenancy agreement. However, in the majority of cases, landlords do not initiate these substantive proceedings because the tenant already vacated the premise. At the same time, the tenant does not initiate substantive proceedings because there are no reasons to expect the outcome to be different from the summary procedure (Kloosterman *et al.*, 2014).

Our sample consists of 121 summary proceedings and 118 judgements in substantive proceedings. In 88 of the 121 (72.7 per cent) summary proceedings, the court issued an eviction order. In the majority of the substantive proceedings, the court also allowed the landlord's claim. In 77 of the 118 (65.2 per cent) substantive proceedings, the court terminated the tenancy agreement and issued an eviction order. Consequently, no significant differences in the court decisions were found between the different types of procedures ($p = 0.13$).

Types of anti-social behaviour and obtaining an eviction order

The general rule under Article 6:265 of the Civil Code is that every failure of tenants in the performance of one of their contractual or statutory obligations justifies the termination of the tenancy agreement. To convince the court to terminate the tenancy agreement and/or issue an eviction order, landlords have to prove conclusively that the tenant is in breach of his or her obligations by causing anti-social behaviour. Causing anti-social behaviour can most of the time be characterized as a breach of the statutory obligation that arises from Article 7:213 of the Civil Code[7]. According to this Article, the tenant is obliged to use the leased property as a prudent tenant, which means that tenants should not cause nuisance to their neighbours. Besides, most of the tenancy agreements contain specific provisions that, for example, prohibit noise nuisance or forbid the growing of cannabis[8]. Consequently, if tenants act in an anti-social manner, they fail to comply with both statutory and contractual obligations[9].

Different types of housing-related anti-social behaviour can be distinguished (Millie, 2009). Landlords refer to eight types of anti-social behaviour to support their request to terminate the tenancy agreement and/or issue an eviction order: drug-related anti-social behaviour[10], violent/harassing behaviour (including assault, physical and mental violence, threats, intimidation and vandalizing)[11], noise nuisance[12], filthiness[13], odour nuisance[14], fire hazard[15], prostitution[16] and the suspicion of sexual abuse (of children)[17].

Table I shows that more than half of the cases have to do with drug-related anti-social behaviour. In 123 cases, drug-related anti-social behaviour is the basis of the landlord's request for the termination of the tenancy agreement and/or an eviction order. Moreover, in 49 cases, drug-related anti-social behaviour is the sole basis for the landlord's request for termination of the tenancy agreement and an eviction order. In only 21 cases,

violent/harassing behaviour is the sole basis of the landlord's request and noise nuisance in only 18.

Courts consider drug-related anti-social behaviour a convincing argument for the termination of the tenancy agreement and/or issuing an eviction order, see Table II. In 73 of the 116 cases (62.9 per cent) concerning other than drug-related anti-social behaviour, the court terminated the tenancy agreement and/or issued an eviction order. In 74.8 per cent of the cases concerning drug-related anti-social behaviour, the court allowed the landlord's claim. Consequently, a significant difference is found in the court decisions between the cases concerning drug-related anti-social behaviour and cases where other types of anti-social behaviour are concerned ($p = 0.03$).

Types of defences of the tenant and court decisions

The tenant uses different types of strategies to oppose the landlord's claim. In summary proceedings, tenant may state in their defence that there is no pressing interest in dealing with the case quickly. If this procedural defence succeeds, the court does not deal with any meritorious defence and has to refuse to issue the eviction order. In 50 cases of summary proceedings, the tenant argued that no pressing interest existed. In only 9 cases, the court agrees with the tenant and refuses to issue an eviction order.

Consequently, the court had the opportunity to examine meritorious defences in 230 cases. Two types of meritorious defences can be distinguished. First, tenants may dispute that they have failed to comply with their contractual or statutory obligations and, therefore, no reason exists to terminate the tenancy agreement and/or to issue an eviction order. Second, the tenant may argue that the termination of the tenancy agreement and/or eviction is not justified and disproportionate. This defence is known as the proportionality defence and is based on Article 6:265 of the Civil Code and Article 8 of the ECHR[18]. For instance, tenants may admit they have failed to comply with their obligations, but at the same time argue that according to Article 6:265 of the Civil Code, the anti-social behaviour does not justify the termination and its legal effects because of

Table I. Type of anti-social behaviour as ground for landlor's claim

Type of anti-social behaviour	No. of cases where type is the sole basis	No. of cases where type is a basis
Drug-related anti-social behaviour	49	123
Noise nuisance	18	88
Violent/harassing behaviour	21	83
Fire hazard	3	58
Filthiness	5	33
Odour nuisance	2	28
Prostitution	3	5
Suspicion of sexual abuse (of children)	2	2

Table II. Court decisions in drug and not-drug related cases

Anti-social behaviour	Eviction order granted	Eviction order refused	Total
Drug related	92	31	123
Other than drug related	73	43	116
Total	165	74	239

its specific nature or minor importance (Vols, 2014a). Tenants may, for example, argue that eviction has serious negative consequences for them and their family[19].

Table III shows that in 25 cases the tenant decided not to put up any meritorious defence. However, in 6 of these 25 cases, the tenant did put forward the procedural defence that no pressing interest existed in dealing with the case quickly, and convinced the court. Consequently, in 19 cases, the tenant decided to advance neither a procedural nor a meritorious defence.

In the vast majority of cases (205), the tenant put forward a meritorious defence. Three different types of defence strategies can be distinguished. First, tenants argued that they did not fail to comply with their statutory and/or contractual obligations in almost two-thirds of the cases. In approximately 25 per cent of the cases, this was the only meritorious defence the tenant advanced. Second, the tenants relied on the proportionality defence in approximately two-thirds of the cases as well. Tenants argued that the termination of the tenancy agreement and the issuing of an eviction order would not be justified and/or would have disproportionate consequences. The tenant decided to rely solely on the proportionality defence in approximately 25 per cent of the cases. Third, a large number of tenants chose to put forward both the meritorious defences: in nearly 40 per cent of the cases, the tenants argued that they had not failed to comply with their obligations and also advanced the proportionality defence.

Yet, a central issue remains and that is whether the court examines the defences of the tenant in detail and decides to terminate the tenancy agreement and/or issue an eviction order. Obviously, the court will first consider whether the tenants have failed to comply with their obligations before it examines the proportionality defence. If the court reaches the conclusion that the tenant did not fail to comply with his of her obligations, the conclusion will be that the landlord's claim must be dismissed and there is no need to deal with a proportionality defence.

Table IV combines the data about the tenant's use of the proportionality defence, the type of anti-social behaviour and the court response to the proportionality defence. It

Table III.
Types of meritorious defences of the tenant

	Tenant disputes non-compliance		
	Yes	No	Total
Tenant advances proportionality defence			
Yes	88	58	146
No	59	25	84
Total	147	83	230

Table IV.
Tenant advances proportionality defence, types of anti-social behaviour and response of court

	Tenant advances defence		Tenant does not advance defence		
	D*	N**	D*	N**	Total
Court examines whether eviction is proportionate					
Yes	73	38	9	9	129
No	12	23	24	42	101
Total	85	61	33	51	230

Notes: *D = drug related anti-social behaviour; **N = other than drug related anti-social behaviour

shows that the court examined the proportionality defence in 111 of the 146 cases (76 per cent), in which the tenant did advance this specific defence. Moreover, in 18 other cases, the tenant did not put forward the proportionality defence, but the court still examined the proportionality of the termination of the tenancy agreement and/or the eviction. Consequently, the court examined whether the loss on the tenant's home was proportional in more than half of the 230 cases.

The table also shows that the court did not check whether the eviction was proportionate in 101 cases. This result is not surprising, given that in 66 of these cases the tenant did not put forward the proportionality defence. In 35 of these cases, however, the court did not examine the proportionality of the eviction, while the tenant did advance the proportionality defence. In 5 cases the court, nonetheless, refused to issue an eviction order, because the tenants have not failed to comply with their obligations.

Still, in 30 cases, the court simply ignored the tenant's proportionality defence. In all these cases (12 substantive proceedings and 18 summary proceedings), the court decided to terminate the tenancy agreement and/or to issue an eviction order. The majority of cases in which the court ignored the tenant's proportionality defence concerned other than drug-related anti-social behaviour. In 23 of these 35 cases (65.7 per cent), the landlords based their claim on other than drug-related anti-social behaviour, whereas in the 12 other cases (34.3 per cent) the landlords based their claim on drug-related anti-social behaviour. This difference in court response is found to be significant ($p = 0.001$).

Table V combines the data about different types of anti-social behaviour and the different types of meritorious defences that the tenant put forward. Interestingly, tenants decided to argue solely that they did not fail to comply with their obligations in 21 of the 118 cases (17.7 per cent) concerning drug-related anti-social behaviour and in 38 of the 112 cases (33.9 per cent) concerning other than drug-related anti-social behaviour. Consequently, tenants accused of other than drug-related anti-social behaviour rely significantly more on this denial strategy than tenants that are accused of drug-related behaviour ($p = 0.003$).

Table VI combines the data about the different types of anti-social behaviour, the different defence strategies that the tenant may use and the court decision. In 80 per cent of the cases in which the tenant decided not to advance a meritorious defence, the court decided to terminate the tenancy agreement and/or issue an eviction order. Furthermore, the court allowed the landlord's claim in more than two-thirds of the cases, in which tenants disputed solely that they did not comply with their obligations. In the majority of cases in which the tenant advanced solely a proportionality defence, the court dismissed this defence: in 82.3 per cent of the cases, the court terminated the tenancy agreement and/or issued an eviction order. Moreover, in more than two-thirds of the

Table V. Types of defence strategies and types of anti-social behaviour

Type of defence of tenant	Drug-related anti-social behaviour	Other than drug-related anti-social behaviour	Total
No defence	12	13	25
Solely disputes non-compliance	21	38	59
Solely advances proportionality defence	35	23	58
Combination of both defences	50	38	88
Total	118	112	230

cases, in which the tenant put forward both meritorious defences, the court terminated the tenancy agreement and/or issued an eviction order.

A significant difference was found in the context of the proportionality defence. The tenant put forward the proportionality defence in 85 of the 118 cases (72 per cent) concerning drug-related anti-social behaviour and in 61 of the 112 cases (54.4 per cent) concerning other than drug-related anti-social behaviour, the tenant put forward the proportionality defence. Consequently, tenants accused of drug-related anti-social behaviour rely significantly more on the proportionality defence strategy than tenants that are accused of other than drug-related behaviour ($p = 0.004$).

It can be seen from the data in Table VI that no significant difference in court decision was found between cases in which the tenant did put forward a proportionality defence and cases in which the tenant did not advanced this defence ($p = 0.053$). Nonetheless, a significant difference was found in the court decision between cases in which tenants argued that they did not fail to comply with their obligations and cases where the tenant did not advance this defence ($p = 0.003$).

The most striking result is that a significant difference in court decision is found between the cases concerning drug-related anti-social behaviour, in which the tenant decided not to advance a meritorious defence and cases about other than drug-related anti-social behaviour, in which the tenant decided not to advance a meritorious defence. In the cases related to drug-related anti-social behaviour, the court allowed the landlord's claim significantly more than in cases concerning other than drug-related cases ($p = 0.002$).

Discussion and conclusion

In this paper, we analysed the court procedures regarding the tackling of anti-social behaviour, the termination of tenancy agreements and the issuing of eviction orders in The Netherlands. The most striking finding to emerge from this study is that in the majority of cases the court allowed the landlord's claim to terminate the tenancy agreement and/or issue an eviction order.

Drug-related anti-social behaviour is a convincing reason for the court to award the landlord's claim and issue an eviction order. We found a significant difference in court decisions between cases concerning drug-related anti-social behaviour and cases concerning other types of anti-social behaviour, such as noise nuisance or violent/harassing behaviour. This finding confirms the growing importance of tenancy law in the more intense fight against illegal drugs in The Netherlands.

Table VI.
Types of meritorious defences, types of anti-social behaviour and court decisions

Type of defence of tenant	Eviction order granted		Eviction order refused		Total
	D*	N**	D*	N**	
No defence	12	8	0	5	25
Solely disputes non-compliance	17	23	4	15	59
Solely advances proportionality defence	28	18	7	5	58
Combination of both defences	35	24	15	14	88
Total	92	73	26	39	230

Notes: *D = drug-related anti-social behaviour; **N = other than drug-related anti-social behaviour

Moreover, this study has found that, in the majority of cases, the tenant put forward a meritorious defence. In nearly 64 per cent of the cases, the tenants argued that they did not fail to comply with their obligations. The tenant put forward the proportionality defence in nearly 63 per cent. In approximately 38 per cent of the cases, the tenant advanced both meritorious defences. This study has found two significant differences in the tenant's defence strategy in cases concerning different types of anti-social behaviour. The first significant difference concerns the use of the tenant of the denial of non-compliance-strategy. In approximately one-fifth of the cases concerning drug-related anti-social behaviour and in one-third of the other than drug-related cases, the tenants argued solely that they did not fail to comply with their obligations. The second significant difference concerns the use of the proportionality defence. The tenant put forward the proportionality defence in nearly three-quarters of the cases concerning drug-related anti-social behaviour and in approximately half of the cases where other types of anti-social behaviour are concerned. A possible explanation for these differences might be that it is more difficult for tenants involved in drug-related anti-social behaviour to deny that they failed to comply with their obligations than for a tenant who is involved in other types of anti-social behaviour. In most cases about drug-related anti-social behaviour, it is relatively easy for the landlord to provide convincing and objective evidence (e.g. photographs of a cannabis farm or a police report concerning the discovery of illegal drugs in the premise). If the landlord provides persuasive evidence, tenants choose not to deny their failure to comply with their obligations, but decide to advance a proportionality defence. In cases concerning other than drug-related anti-social behaviour, such as noise nuisance, the landlord usually encounters more difficulties to provide objective evidence of the anti-social behaviour. Therefore, in these cases, the tenants try to challenge the landlord's claim that they are involved in anti-social behaviour.

Still, an interesting finding of this study is that a significant difference is observed in the court decision between cases in which the tenants argued that they did not fail to comply with their obligations and cases where the tenant did not advance this defence. With regard to this defence, no significant difference was found in court decision between cases concerning drug-related anti-social behaviour and cases where other types of anti-social behaviour were concerned. The findings of this study suggest that tenants should put forward this defence in all situations.

According to the case law of the European Court, it is mandatory to examine the proportionality defence if a tenant decides to advance such a defence[20]. In almost two-thirds of the cases, the tenant advanced such a proportionality defence. Our evidence suggests that in the majority of cases, in which the tenant put forward a proportionality defence, the court did examine this defence and thus met the requirements of the European minimum level of protection against the loss of the home. However, in just over 10 per cent of the cases, the court simply ignored the proportionality defence, issued an eviction order and, consequently, did not comply with the European requirements. We found that cases related to other than drug-related anti-social behaviour are significantly overrepresented in this 10 per cent.

The European Court emphasizes the importance of a proportionality analysis before issuing of an eviction order. Is the window of opportunity of making a proportionality defence before a first instance judge not too short to address the

goals of Article 8 ECHR? Contrary to our expectations, we did not find a significant difference in court decisions between cases in which the tenant put forward the proportionality defence and cases in which the tenant did not advance this defence. With respect to the use of this defence, this study found no significant difference in court decision between cases concerning drug-related anti-social behaviour and cases about other than drug-related anti-social behaviour as well. Contrary to Bright and Whitehouse (2014), we did not find that the judge's knowledge of the tenant's personal circumstances resulted in a more favourable outcome for the tenant. We found that the courts do assess the proportionality of the eviction but almost always conclude that the eviction is justified. One could, therefore, conclude that the European requirements are relatively meaningless procedural hurdles that the courts have to take and do not substantially improve the position of tenants. In the UK, some authors have reached similar conclusions concerning the impact of the European requirements in their jurisdiction (Loveland, 2013).

There are, however, other possible explanations for the small chance of success of the proportionality defence. Likely, landlords will only request an eviction order in the case of other than drug-related anti-social behaviour, if the relationship between the neighbours has been completely ruined following a long period of nuisance (Vols, 2014b). If landlords think the anti-social behaviour can be addressed with another instrument such as mediation or a warning letter, they will first use that instrument. Consequently, landlords will only initiate court proceedings if they believe that eviction results in a fair balance between the rights and interests of the tenants and those of the neighbours and themselves. Moreover, the small chance of success may be explained by the type of cases that landlords choose to bring before court. For instance, landlords do not regularly request an eviction order if an anti-social tenant has (young) children or is disabled. In these types of cases, proportionality issues are likely to play a role and, therefore, landlords may want to avoid court proceedings. In other words, the proportionality check also functions as a barrier to court proceedings and to eviction. A possible area of future research would be to investigate the criteria used by landlords to determine which cases they will submit to court and which cases will never be seen in court. This study should also take into account whether the tenant receives legal advice and is represented by a lawyer because this is likely to influence the outcome of the procedure (Bright and Whitehouse, 2014).

The empirical findings in this first statistical analysis provide a new understanding of the court procedures and legal reasoning in cases about anti-social behaviour, the termination of tenancy agreements and eviction orders in The Netherlands. This information can be used to improve the compliance with the European minimum level of protection against the loss of the home. However, a limitation of this statistical analysis is that the number of cases analysed is relatively small. Therefore, we are preparing a number of future studies using the same set up and a more representative sample of case law. A number of courts of first instance have already agreed to cooperate and to grant access to their archives. Further research should be done to investigate the specific characteristics of cases, in which the tenant puts forward various types of meritorious defences and the specific reasoning the court uses to reach its conclusion. A further study could, for example, assess specific proportionality defences in detail and might explore which of these specific proportionality defences is the best to advance.

Notes

1. Under Dutch law, landlords are obligated to address serious anti-social behaviour caused by tenants. See Hoge Raad 16 October 1992, *Nederlandse Jurisprudentie* 1993, 167.
2. *McCann v. United Kingdom* (2008) 47 EHRR 40 at para 50.
3. *McCann v. United Kingdom* (2008) 47 EHRR 40 at para 50. See also *Stanková v. Slovakia* Application No 7205/02, Merits, 9 October 2007; *Ćosić v. Croatia* Application No 28261/06, Merits, 15 January 2009; *Zehentner v. Austria* (2011); 52 EHRR 22; *Paulić v. Croatia* Application No 3572/06, Merits, 22 October 2009; *Kay e.a. v. United Kingdom* (2012); 54 EHRR 30; *Kryvitska & Kryvitskyy v. Ukraine* Application No 30856/03, Merits, 2 December 2010; *Igor Vasilchenko v. Russia* Application No 6571/04, Merits, 3 February 2011; *Rousk v. Sweden* Application No 27183/04, Merits, 25 July 2013; *Winterstein v. France* Application No 27013/07, Merits, 17 October 2013.
4. See Hoge Raad 10 October 1992, *Nederlandse Jurisprudentie* 1993, 167.
5. See Hoge Raad 31 December 1993, *Nederlandse Jurisprudentie* 1994, 317; Hoge Raad 22 June 2007, *Nederlandse Jurisprudentie* 2007, 343.
6. See Gerechtshof Arnhem-Leeuwarden 27 August 2013, ECLI:NL:GHARL:2013:6811 at para 4.3.
7. See Hoge Raad 10 October 1992, *Nederlandse Jurisprudentie* 1993, 167.
8. See Rechtbank Roermond 1 July 2009, ECLI:NL:RBROE:2009:BJ1209.
9. See Rechtbank Utrecht 18 March 2011, ECLI:NL:RBUTR:2011:BP8113.
10. See Rechtbank Breda 29 February 2012, ECLI:NL:RBBRE:2012:BV8562.
11. See Rechtbank Groningen 17 July 2012, ECLI:NL:RBGRO:2009:BJ3829.
12. See Rechtbank Rotterdam 26 March 2010, ECLI:NL:RBROT:2010:BM0967.
13. See Rechtbank Arnhem 30 August 2011, ECLI:NL:RBARN:2011:BW4421.
14. See Rechtbank Maastricht 17 November 2011, ECLI:NL:RBMAA:2010:BO5220.
15. See Rechtbank Haarlem 12 January 2012, ECLI:NL:RBHAA:2012:BV2071.
16. See Rechtbank Arnhem 11 June 2012, ECLI:NL:RBARN:2012:BW8054.
17. See Rechtbank Alkmaar 8 October 2009, ECLI:NL:RBALK:2009:BK1181.
18. See Hoge Raad 31 December 1993, *Nederlandse Jurisprudentie 1994, 317; Hoge Raad 22 June 2007, Nederlandse Jurisprudentie 2007, 434.*
19. See for example Rechtbank Roermond 13 May 2008, ECLI: NL:RBROE:2008:BD1799.
20. See *McCann v. United Kingdom* (2008); 47 EHRR 40 at para 28 and 54; *Orlic v. Kroatië* Application No 48833/07, Merits, 21 June 2011 at para 66; *Brežec v. Croatia* Application No 7177/10, Merits, 18 July 2013 at para 46.

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