1. Evictions in Belgium, a neglected yet pressing issue*

**Jana Verstraete, Pascal De Decker and
Diederik Vermeir**

1. INTRODUCTION

The EU Survey of Income and Living Conditions (SILC) 2012 shows 0.27 per cent of the Belgian population had moved in the preceding five-year period because of an eviction.¹ Regrettably, with this record, Belgium ranks in third place for the highest rate of evictions among the 28 countries of the European Union.² Despite this ranking, the extent and nature of evictions remain a blind spot in Belgium. Twenty years ago, a ‘General Report on Poverty’ criticized the lack of official data on the number of evictions.³ In 2005, the same critique was raised by the research agency charged with alleviating poverty, social insecurity, and social exclusion. After yet another decade, not much has changed. Data on the matter is both limited and fragmented. Hence, a clear picture of the number of evictions, the profile of those evicted, and the housing paths following an eviction is indeterminate. In this contribution, an attempt is made to consolidate existing data and to shed light on this phenomenon.

* We wish to thank Prof. Dr. Nicolas Bernard (l’Université Saint-Louis – Bruxelles) for his profound reading of and valuable comments on previous versions of this text.

¹ European Commission, *European Union Survey of Income and Living Conditions (EU-SILC)* (2012).

² P Kenna, L Benjaminsen, V Busch-Geertsema and S Nasarre-Aznar, *Pilot Project – Promoting Protection of the Right to Housing – Homelessness Prevention in the Context of Evictions* (Brussels, European Commission 2016).

³ Koning Boudewijnstichting, ATD-Vierde Wereld België and VVSG, *Algemeen Verslag over de Armoede* (Brussel, Koning Boudewijnstichting 1994).

As a background to the research, the chapter starts with a brief discussion of the Belgian housing market and Belgian housing policies. Thereafter an overview of the different eviction procedures that apply for different situations is provided including: judicial procedures to evict owner-occupiers, social and private renters, and squatters; temporary dispossessions in the case of family disputes and administrative eviction procedures related to housing quality. The chapter then elaborates on the judicial eviction of both owner-occupiers and renters. A discussion on the extent of the problem for these tenure types as well as the profile of those involved, their rehousing trajectories and risk factors for evictions is then provided. An outline of a limited number of ‘good practices’ in preventing eviction or in mitigating its harmful consequences is presented. The chapter concludes with some final observations on the issue.

2. POLICY BACKGROUND

2.1 General Housing Policy Related to Evictions

Belgium is a country of homeowners. Ever since the initiation of a public housing policy during the nineteenth century, the Belgian government has encouraged and supported the construction or the purchase of a home of one’s own.⁴ This objective has been pursued in policy ever since and the share of homeowners has continually risen. In 2015, 64.8 per cent of all Belgian households were owner-occupiers.⁵

2.2 Structural Factors Related to Evictions

Nonetheless, homeownership is not attainable for all. This especially applies to low income households who are not in an equal position to purchase a property.⁶ The rental sector offers a solution for those unable

⁴ L. Goossens, *Het sociaal huisvestingsbeleid in België: een historisch-sociologische analyse van de maatschappelijke probleembehandeling op het gebied van het wonen* (PhD, Leuven Faculteit Sociale Wetenschappen KU Leuven, 1982).

⁵ Housing Europe, *The State of Housing in the EU 2015: A Housing Europe Review* (Brussels, Housing Europe, the European Federation for Public, Co-operative and Social Housing 2015).

⁶ The Foundation Abbé Pierre and FEANTSA, *Second Overview of Housing Exclusion in Europe 2017* (2017) <<http://www.feantsa.org/en/report/2017/03/21/the-second-overview-of-housing-exclusion-in-europe-2017>> accessed 14 April 2017.

(or unwilling) to become a homeowner and whose income is below a certain threshold. However, the provision of social rental housing has always been a goal of secondary importance.⁷ As a result, social rental housing has remained a lacking sector, representing only 6.5 per cent of the housing market. Approximately 186 000 households are registered on waiting lists to be assigned a social rental dwelling.⁸ Consequently, those unable to enter the social rental sector (SRS) have to find alternative housing. Some of them, who may be called buyers under duress, resort to homeownership. They purchase a dwelling of inferior quality but do not have sufficient financial means to make the necessary improvements.⁹ Others without access to social rental housing turn to the private rental sector (PRS). The PRS can, therefore, be seen as a last resort for those looking for housing and unable to enter homeownership or social rental housing.

Unsurprisingly, problems that violate different aspects of the right to housing, affordability, quality and security, are mostly found within the (private) rental market. First, a remarkable share of renters bear a very high rent burden. For instance, in Flanders, one out of two private renters (51.7 per cent) spend more than 30 per cent of their income on rent. For the 20 per cent lowest-income group, the share is no less than 78.1 per cent. In the SRS, rent prices are set in relation to income. Nonetheless, one-third (34.5 per cent) of its renters cannot afford a dignified lifestyle owing to lack of money after paying their rent.¹⁰ Secondly, quality problems are concentrated on the rental market as well. Almost half of both private and social rental dwellings (47 per cent and 44 per cent respectively) in Flanders do not meet the official housing quality criteria.¹¹ Thirdly, tenure security is limited. Legally, the length of leases in the PRS is nine years, however (under certain conditions) short-term contracts are permitted and landlords can relatively easily, that is, cheaply, terminate an existing lease.¹² Until recently, tenure security for

⁷ Goossens (n 4).

⁸ Housing Europe (n 5).

⁹ L Vanderstraeten and M Ryckewaert, 'Het verhaal van noodkopers en 'captive renters' in P De Decker, B Meeus, I Pannecoucke, E Schillebeeckx, J Verstraete and E Volckaert (eds) *Woonnood in Vlaanderen, Feiten/Mythen/Voorstellen* (Antwerpen, Garant 2015) 87–106.

¹⁰ K Heylen, *Grote woononderzoek 2013. Deel 2. Deelmarkten, woonkosten en betaalbaarheid* (Leuven, Steunpunt Wonen 2015).

¹¹ Vanderstraeten and Ryckewaert (n 9).

¹² M Dambre, 'Woninghuur in Vlaamse handen: nieuwe kansen voor het grondrecht op behoorlijke huisvesting?' in B Hubeau and T Vandromme (eds)

social renters was assured by lifelong contracts. However, as of March 2017, this principle was abolished and nine-year contracts will now be applied in the SRS also. As an eviction can be seen as an abrupt end to housing security, its magnitude can be considered an indicator of housing (in)security. The sections following will show that evictions are, by far, most common in the private rental market. Importantly, evictions in Belgium are closely linked to affordability and quality issues, as rent/mortgage arrears (judicial procedures) and a lack of quality (administrative procedures) are the key reasons leading to an eviction.

3. LEGAL AND CONSTITUTIONAL BACKGROUND TO PROTECTION AGAINST EVICTIONS

In Belgium, no one can be evicted from their home without the authorization of a judge, except for renters who can be evicted after a decision of a municipal or regional administration in case of an inhabitable dwelling. In any other case, specific judicial procedures are installed by federal and regional legislation. Legal frameworks differ according to the housing tenure. Before expounding on these procedures, a brief discussion on how the right to housing is enshrined in Belgian law is presented.

3.1 Housing as a Fundamental Right

International declarations of the right to housing have been largely ratified in Belgium. Article 25 of the Universal Declaration of Human Rights, Article 11 of the International Covenant on Economic, Social and Cultural Rights and Article 38 (3) of the EU Charter of Fundamental Rights have been approved at federal (and regional) level.¹³ However,

Vijftien jaar Vlaamse Wooncode. Sisyphus (on)gelukkig? (Brugge, Die keure 2013) 273–282; P De Decker, ‘Jammed between housing and property rights: Belgian private renting in perspective’ (2001) 1 (1) *European Journal of Housing Policy* 19–39.

¹³ Belgium also ratified the European Convention on Human Rights. It is well known that the right to housing is not formally protected by this Convention, but has gained relevance as a protectable interest at the very least. N Van Leuven and F Vanneste, ‘De inroepbaarheid van het recht op wonen’ in N Bernard and B Hubeau (eds) *Recht op wonen: naar een resultaatsverbintenis?* (Brugge, Die Keure 2013) 221–252; F Tulkens and S Van Drooghenbroeck, ‘Le droit au logement dans la Convention Européenne des droits de l’homme. Bilan

Belgium did not ratify Article 31 of the Revised European Social Charter (RESC) (Right to Housing). As a result, the right to housing is only protected under the RESC as part of the right of the family to social, legal and economic protection¹⁴ and the right to protection against poverty and social exclusion,¹⁵ both of which have been ratified by Belgium.¹⁶

In 1994, the right to housing was enshrined in the Belgian Constitution. Article 23 declares that everyone has the right to a decent living, which includes, among other economic, social and cultural rights, the right to decent housing. In the Belgian legal doctrine it is often assumed that this article has no direct effect and that it is up to the competent legislator to implement this fundamental right. Some case law, however, shows that this should be put into perspective. First, the right to housing is frequently invoked when balancing the interests of the tenant and the landlord. References to Article 23 of the Constitution are then made to underpin the interests of the tenant and, among other possible goals, contest the appropriateness of an eviction.¹⁷ In addition, the right to housing gives direction for the interpretation of (open) legal norms, while it also constitutes a standard for the assessment of their legality.¹⁸

Further, Article 23 (3) of the Constitution states that the different branches of government are responsible for the realization of the right to housing, each within the limits of their powers. This is important as housing is a regional policy matter. Consequently, the right to housing is also endorsed in the Housing Codes of all three regions. The Flemish Housing Code (Article 3) confirms that everybody has the right to

et perspectives' in N Bernard and C Mertens (eds) *Le logement dans sa multidimensionnalité. Une grande cause régionale* (Namur, 2005) 311–324.

¹⁴ Art 16 RESC.

¹⁵ Art 30 RESC.

¹⁶ For example, ECSR, International Federation on Human Rights Leagues (FIDH) against Belgium, nr. 62/2010 (21 March 2010). See also N Moons, *The right to housing in Flanders-Belgium: international human rights law and concepts as stepping stones to more effectiveness* (doctoral thesis) (Antwerpen, Universiteit Antwerpen, 2016); Van Leuven and Vanneste (n 13).

¹⁷ Eg Voorz. Rb. Namen 11 May 1994, *Dr.Q.M.* 1995, 54, note Fierens, J.; Peace Court Elsen 6 March 1995, *TBBR* 1996, 296, note B. Hubeau. See also: Moons (n 16) and N Bernard, 'L'article 23 de la Constitution: pas une botte secrète, mais pas non plus dénué de toute effectivité (judiciaire)' (2015) 23 *JLMB* 1080–1089.

¹⁸ For example, a measure implying that social leases could be annulled without authorization of a judge was found incompatible with Art 23 of the Constitution (Constitutional Court, nr. 101/2008, 10 July 2008).

dignified housing. For this purpose, the provision of an adapted dwelling of good quality, in a decent environment, against an affordable price and with housing security, should be promoted. The Housing Code of the Brussels-Capital Region (Article 3) includes the right to housing as well. To reach this goal, the code prescribes that accessibility, minimal quality and security standards and a decent living environment have to be pursued. The Walloon Housing Code (Article 2) imposes on the regional and other authorities, within their competences, to realize decent housing as a place to live, to emancipate and the development of individuals and the families. Each region also has its own administration and institutions to monitor the right to housing and the housing situation in practice.

In all three regions, municipalities and public local organizations are also responsible for the right to housing. A key partner in this regard is the Public Centres for Social Welfare (PCSW), and these agencies will be discussed in the sections following dealing with social support for households that are threatened by an eviction.

3.2 Law Relating to Owner-occupation

Owner-occupiers can only be evicted in cases where they fail to redeem their mortgage. Before a judicial procedure is started, the creditor (bank) and debtor (owner-occupier) usually come together to find a solution on how to prevent arrears from accumulating and on how to rearrange the mortgage agreement. When no solution is found, or in the event the debtor does not meet the new arrangements, the bank can follow a certain legal procedure. The Law on Mortgage Loans regulates, among other things, the course of this procedure.¹⁹

First, a prerequisite is that the arrears accrue up to three months. When this condition is met, the bank has to inform the debtor by registered mail about the consequences of defaults by virtue of Article 45 Law on Mortgage Loans. The bank also has to inform the Central Individual Credit Register, which will register the client as a defaulter and retains this information for one year. If the debtor is, thereafter, still unable to repay his/her mortgage, the creditor has to start a procedure before the Attachment Court. Here, an attempt at reconciliation, for instance spreading out repayments over time, is compulsory and has to precede any attachment of property.²⁰

¹⁹ Wet op hypothecaire kredieten, 04/08/1992 (Law on Mortgage Loans).

²⁰ Art 59 Law on Mortgage Loans.

If no agreement is found, the creditor can exploit all guarantees given by the debtor (for example an attachment of earnings or other property), or the creditor can start a procedure of executory attachment of the property. This execution of attachment has to be preceded by a command to pay, noticed by the bailiff, stating that non-payment will result in an executory attachment. The command also notifies the debtor that he can inform the judge of any offer to buy his property by first hand sale.²¹ An important legal consequence of the command is that the debtor can no longer alienate his ownership on the property by any means. The command itself expires after six months, unless it is followed by a writ of attachment.²² Within 15 days after the command, no executory attachment is possible.²³

The writ of attachment has to be registered to the mortgage registry office under Article 1569 of the Judicial Code. Within a month following registration of the writ, the creditor is obliged to ask the Attachment Court to appoint a notary to sell the house. The notary is authorized by law to access the dwelling; for example, to visit it with potential buyers, under Article 1580 of the Judicial Code. The property will be assigned to a buyer on one court hearing, by auction. Within 15 days after this hearing, anyone can make a higher bid.²⁴ When the house is sold, the client has to leave within a legally defined period of time, usually four months after the agreement on the sale.

3.3 Law Relating to Private and Social Renting

In Belgium, a single procedure exists for both renters in the private and the social rental market. Yet it should be noted that some differences exist in the broader legal framework. First, additional and legally binding prevention measures have been introduced in the SRS and these will be discussed in the sections following. A second (but somewhat related) issue is that social housing agencies conduct a task of public interest (providing affordable and decent housing), linked to the right to housing and the right to human dignity. Consequently, the eviction of social renters is seen as an *ultimum remedium*.²⁵ Finally, the regions are

²¹ Art 1564 Judicial Code.

²² Art 1567 Judicial Code.

²³ Art 1566 Judicial Code.

²⁴ Arts 1587 and 1592 Judicial Code.

²⁵ T Vandromme, 'Het kraken van panden bekeken vanuit grondrechten, het strafrecht en het burgerlijk recht (inclusief het procesrecht)' (2014) 2014-2015 nr. 35 *Rechtskundig Weekblad*, 1363–1378. This means that an eviction will only be

competent to make amendments to the procedure for rental disputes since 2014.²⁶ At the time of writing however, the ‘federal’ procedure discussed below is still applicable for all three regions.

A first point of interest is how a judicial procedure to evict a renter can be prevented. This is possible by a ‘reconciliation’; an informal and voluntary procedure before a justice of the peace. If no agreement is found, there are no consequences. If, however, a compromise is found, the agreement is translated into a *procès-verbal*, which makes it binding under Articles 731–733 of the Judicial Code. From 2002 onwards, this reconciliation procedure was an obligatory prerequisite and without a foregoing reconciliation attempt, a judicial procedure for a rental dispute could not be initiated. However, the obligation was discontinued in 2008. Alternatively, the landlord and renter can agree to refer their dispute to a (professional) mediator under Articles 1727–1737 of the Judicial Code or an arbitration procedure.²⁷

A judicial procedure itself can be started in three ways: (1) both parties can agree on appearing voluntarily, (2) landlords can submit an appeal, and (3) landlords can involve a bailiff to cite renters to court (Articles 701, 706 and 1344bis Judicial Code). The judicial procedure is held at the Court of the Justice of the Peace (Article 591 Judicial Code).

The procedure starts with a session in the Court of the Justice of the Peace. It is important for the tenant to attend this session, as failure to do so can result in a claim for eviction by default (in absentia) under Articles 802–806 Judicial Code. When both parties are present, the judge will first make an attempt at reconciliation.²⁸ If reconciliation fails, the judge examines whether the renter protests the claim. If not, the judge can pass an immediate verdict. The judge can then help find a solution or approve the eviction under Article 735 Judicial Code. If any of the claims are contested by either of the parties, a period of time will be allowed for the parties to formulate their arguments and a subsequent session will be scheduled. During that next session, the judge may render a verdict or

authorized when ‘sufficiently severe reasons’ exist, thereby taking into account the consequences of an eviction, the possibilities of finding decent housing afterwards and the public interest (including, among other issues, the right to housing of other (candidate-)renters).

²⁶ B Hubeau, T Vandromme and D Vermeir, ‘Het huisvestingsbeleid’ in B Seutin and G Van Haegendoren (eds) *De bevoegdheden van de gewesten* (Brugge, Die Keure 2016) 85–119.

²⁷ Arts 1676–1723 Judicial Code.

²⁸ Art 1344septies Judicial Code.

accept an alternative solution proposed by one of the parties.²⁹ It is also possible for the judge to propose a solution (in reality, it would typically be a payment plan) to avoid eviction. In several follow-up sessions, the judge then evaluates the tenant's compliance with the agreement. If the tenant fails to comply, the judge can, at any time, pass an eviction verdict.

When a court renders the verdict of eviction, the tenant must be served with a writ to that effect by a bailiff.³⁰ The eviction cannot take place until one month has passed from the date the order was served. In exceptional circumstances, the landlord or tenant may petition to shorten that period, for instance when the landlord can show that the tenant has already vacated the dwelling, or, extend it. The bailiff has to inform the tenant of the exact date and time of the planned eviction at least five working days before an eviction may be carried out under Article 1344quater of the Judicial Code.

A bailiff and the police must be present on the day of the eviction. Municipal services will remove any remaining items from the dwelling and put them out on the street. If the items form a nuisance in the public space, they may be stored for up to six months by the municipality. The tenant will be charged for the cost of all these actions. Hence the bailiff has been tasked by law to inform the tenant in advance about the fate of any remaining items.³¹

3.4 Law Relating to Unauthorized Occupancy

In Belgium, squatting is subject to debate and many challenge the fact that squatters cannot be expelled immediately by the police as 'unfair'. Often it is also asserted that squatting is not a criminal offence and that changes to the law should be made to make squatting an offence. Although squatting itself was not a crime in Belgium in the examined

²⁹ Arts 736–763 Judicial Code.

³⁰ Due to a recent amendment, the Judicial Code upholds as a general principle that a provisional enforcement of a verdict (ie eviction) is possible, even when an appeal has been filed (Art 1397 Judicial Code). The Judicial Code also states that he or she who requests the provisional enforcement is responsible for the restoration to the initial situation when the appeal was successful (Art 1398 Judicial Code). In case of evictions, however, the consequences of a provisional enforcement seem hard to repair.

³¹ Art 1344quinquies Judicial Code.

period of time,³² a number of observations can be made in relation to it. First, the right to property is (and always has been) protected by criminal law. Hence squatters can, among others, be liable for damage to the dwelling or ‘theft’ of utilities, for instance water and electricity. Secondly, the inviolability of the home is guaranteed, as home invasion (‘huisvredebreuk’) is a criminal offence. Yet this requires the dwelling to be inhabited under Article 439 of the Criminal Code.

Squatters themselves do not have any title to occupy a dwelling. Consequently, evicting squatters is relatively easy. Nonetheless, legal procedures are in place, and as the inviolability of the home also applies to squatters, an authorization of a judge is necessitated for an eviction.

Whether a squatter(s) can or cannot be identified by the property owner, determines which procedure regulates the eviction. If squatters are not identifiable, the owner can submit a one-sided appeal before the President of the Court of First Instance under Article 584 of the Judicial Code.³³ The President will order the eviction and decides on the anticipated time before the actual eviction of the squatters takes place. To give notice to the squatters, a bailiff typically posts the eviction order at the squatted building and following the anticipated timeframe, the property can be emptied.

In the case where squatters are identifiable by the property owner, the owner has to start a contradictory procedure before the Justice of the Peace,³⁴ or, in cases of urgency, before the President of the Court of First Instance.³⁵ The procedure must be commenced via a notification by a bailiff. There will be a hearing, where squatters can defend their case. When the judge orders an eviction, she or he usually determines that the identified squatter(s) can be evicted ‘together with everyone else in the dwelling’.³⁶ The judge will also prescribe the period that has to be respected before the actual eviction. No official rule or guideline on the respected time exists. However, according to one Judge of the Peace, this

³² As a result of the ongoing discussion, squatting itself became a crime as of November 2017.

³³ In some cases, squatters intentionally identify themselves or even request a legal domicile. This prevents a one-sided appeal and makes it relatively harder for the landlord to evict them (K De Greve, ‘Gekraakt leven – processuele actiemogelijkheden in het burgerlijk procesrecht’ (2014) 1 *Huur* 7–20).

³⁴ Art 590 Judicial Code.

³⁵ Art 584 Judicial Code.

³⁶ De Greve (n 33).

usually entails a one-month period, similar to the procedure of private and social renters, in view of humanitarian eviction and the right to housing.³⁷

Squatters have little basis to defend their occupation and sometimes the right to housing is invoked. However, according to a judge and a housing activist working with Roma families squatting in Ghent, a balancing test between the right of ownership and the right to housing often finds in favour of the owner.³⁸

Lastly, a 'precarious lease' ('bezetting ter bedē') with the owner is used as a measure for owners to prevent squatting. For squatters this can be a way to ensure their right to stay for a specific period of time. From a legal perspective, this 'lease' is not equal to a rental contract (for instance, quality standards for rental dwellings do not apply and the notice period is not regulated by law), however it is a legal agreement that states that the occupier can stay until a certain date or under certain conditions.³⁹ According to a Brussels housing scholar, increasingly, squatters in Brussels have such 'precarious leases'. The Brussels Regional Housing Code has even included the possibility for the Regional Housing Association to

³⁷ In future, due to the legislative amendment of November 2017, a distinction must be made depending on the fact whether the dwelling is inhabited or not. In case of an inhabited dwelling, police officials can immediately evict the squatters. When this is not the case, but a complaint has been filed against the squatting, the police can request an authorization of a judge for the eviction. The squatters can then protest the decision before the Justice of the Peace.

³⁸ This information was provided during interviews with a Judge of the Peace and a housing scholar/activist (see section 4 for more information on the interviews conducted by the authors). Both interviews took place in May 2014. See also P Debruyne, E Vandeputte and S Beunen, 'Uit de Marges van het Woonbeleid. De Strijd voor het Recht op Wonen in Gent' (2014) 5 (2) *Ruimte en Maatschappij* 9–45 and T Vandromme, 'Het kraken van panden bekeken vanuit grondrechten, het strafrecht en het burgerlijk recht (inclusief het procesrecht)' (2014) 2014–2015 nr. 35 *Rechtskundig Weekblad*, 1363–1378 on this matter.

Relevant questions for a judge are both related to the condition of the squatters (do they have any other option to realize their right to housing?) and the situation of the landlord (does (s)he have any plans with the dwelling?). In the case law we know, the right to housing will only prevail when the answer to both questions is negative.

³⁹ Because of the compulsory nature of the (house) rental legislation, however, a judge can reclassify any so called 'precarious lease' into a regular rental contract when the actual terms of the agreement rather indicate the existence of the latter. As a result, the provisions of the rental legislation, with a fixed length of the lease and statutory notice periods, will be applicable.

close precarious leases for dwellings for which a renovation is planned and for which the inhabitants receive social support.⁴⁰

3.5 Law Relating to Temporary Dispossession

In case of disputes between married or legal partners, ‘urgent and temporary measures’ can be taken to alleviate the situation under Articles 223 and 1479 of the Civil Code. Previously, the Justice of the Peace was responsible for this matter; however, since 2014, the new Family Courts are responsible.⁴¹ The judge can ascribe the right of residence of the family home, irrespective of the tenure type, to one of the partners. According to research carried out by the authors, in those cases, the person who should leave the family home is assigned a period to find a new place of residence.⁴²

Moreover, a new law on domestic violence was adopted in 2012, which anticipates the possibility to evict any adult member of a household from the joint home in cases where the safety of other family member(s) is at issue. In contrast to the aforementioned ‘urgent and temporary measures’, this law is not restricted to married couples or persons officially living together. The public prosecutor can command an immediate restraining order for ten days. Within this period, a judge evaluates the measure and can either withdraw or lengthen this restraining order to a maximum of three months. In 2014, this jurisdiction was also transferred from the Justice of the Peace to the newly founded Family Court.

3.6 Uninhabitable Dwellings

Dwellings that do not meet minimal quality standards can be declared uninhabitable, in which case, the inhabitants can be evicted by an administrative instead of a judicial procedure. The eviction is based on the Belgian Municipal Law or on the Housing Codes of all three regions.

The Belgian Municipal Law is valid for all three regions. Based on Article 135 of the Municipal Law, the mayor himself can declare a dwelling uninhabitable in the case of acute risk or in view of the public

⁴⁰ Art 67 Brussels Housing Code.

⁴¹ Art 572bis Judicial Code.

⁴² Information provided by our respondent (Justice of Peace), interview May 2014. The same respondent, however, is not aware of any case in his jurisdiction where a person had been actually evicted by a bailiff due to such a measure.

interest, for instance if there is a fire risk. The mayor can declare any dwelling uninhabitable, regardless of the tenure status of inhabitants.

All three regions have their own Housing Codes that include minimal quality norms. Regional inspection services are responsible for technical controls to investigate whether dwellings meet these norms. In Flanders and Wallonia, the responsible administrations advise the mayor to declare a dwelling uninhabitable if necessary, based on their technical reports. This is the case when severe risks to the health and safety of the inhabitants exist. If the mayor declares a dwelling uninhabitable on the advice of the administration, the residents have to leave the dwelling.⁴³ In the Brussels-Capital Region, the responsibility is at the regional level under Article 6 of the Brussels Housing Code.

While there is no interference by a judge *prior* to an eviction order in these administrative procedures, a judge may be involved once a decision to evict a household is taken and the parties involved can appeal against this decision. An appeal against a regional decision has to be lodged with the regional governments at first instance; and to the Council of State in second instance. The decision of a mayor can be challenged at the Council of State.

In the Brussels-Capital Region and the Walloon Region, public landlords are restricted from evicting their tenants in winter. Both regional governments have recognized a 'winter ban'. In the Brussels-Capital Region, such a ban was established in 2001.⁴⁴ From 1 December until 28 February, a 'winter prohibition' is in operation. Evictions are not prohibited outright; however, the eviction procedure becomes harder during this period. A household can only be evicted in cases of severe behavioural problems against other renters or staff of the social housing organization, and in the event that the renter does not respond to measures taken by the social housing organization.⁴⁵ Following Brussels, the Walloon Region has more recently recognized a stricter winter ban that interdicts public landlords from evicting renters. If a household is in receipt of social support by the PCSW, they will not be evicted between 1 November and 15 March.⁴⁶ If an eviction is ordered, it will only be executed after these dates. In Flanders, no winter ban has been established yet.

⁴³ Arts 15–17 Flemish Housing Code and Arts 3–13 Walloon Housing Code.

⁴⁴ Circulaire du 16 Novembre 2000.

⁴⁵ N Bernard and L Lemaire, *Expulsions de logement, sans-abrisme et relogement* (Brussels, Larcier 2010).

⁴⁶ Art 94 §1 Walloon Housing Code.

4. EXTENT OF EVICTIONS OVER THE PERIOD 2010–2015

4.1 Introduction

Sourcing data on evictions in Belgium has been a difficult task. Data on the number of evictions, the profile of those evicted and rehousing paths, is not gathered at a central level. Instead, the information derives from a number of different sources and accordingly is fragmented. To gather as much information as possible, the authors have (1) analysed related legislations, (2) collected existing reports by scholars, NGOs, policy administration, etc, (3) contacted over 60 organizations including associations of renters, landlords and bailiffs, anti-poverty organizations, local police offices, local governments, local social services, NGOs and ministries, (4) reviewed parliamentary debates on evictions, and (5) interviewed a limited number of respondents, each with a different link to eviction procedures.⁴⁷ Data was mainly collected in two periods: March–June 2014 and October–November 2014. An additional yet limited search for data was held in February–March 2017. This research has provided information on judicial evictions of owner-occupiers and renters. Therefore, the remainder of the chapter focuses on these groups. As no data has been found on the extent of evictions in situations of unauthorized occupancy or in the light of family law, nor on the profile of those involved in these specific types of evictions, we will not come back to these issues.

To shed light on the magnitude of evictions in the Belgian housing market, we have focused on three phases during the judicial procedures: (1) the initiation of an eviction procedure in court; (2) the authorization of an eviction by a verdict of a judge; and (3) the actual eviction.

4.2 Evictions from Mortgaged Property

There are no figures on the extent of evictions from owner-occupied houses as a result of mortgage enforcement. On the contrary, there are no indications that such evictions happen frequently. The fact that no public attention or debate was/is going on, may be an important indicator; given the importance of home ownership in Belgium.

⁴⁷ The respondents included two social workers from different PCSWs, a social scientist, a housing activist, a law professor, a Judge of the Peace and a bank clerk.

Evictions from owner-occupied dwellings result from the incapacity to redeem the mortgage. Therefore, an examination of the number of households confronted with this difficulty is outlined. Table 1.1 shows that only a minority of all mortgages are not redeemed as planned. The number of households with arrears has been rather stable, just above 1 per cent of all debtors. Two important remarks have to be made here. First, mortgage arrears rarely lead to actual evictions as alternative solutions are mostly pursued. Second, there is no distinction in the data between first or second homes.

Table 1.1 Mortgage arrears in Belgium (2010–2015)

	Number of mortgages	Number of arrears	%
2010	2 501 787	27 678	1.06
2011	2 689 587	28 974	1.08
2012	2 753 225	30 509	1.11
2013	2 797 148	32 340	1.16
2014	2 846 568	34 005	1.19
2015	2 900 013	33 709	1.16

Source: National Bank of Belgium, *Centrale voor kredieten aan particulieren Statistieken* (2016) 23.

4.3 Evictions From Private/Social Rented Housing

The search for data on the number of evictions taking place on the rental market in Belgium has been difficult, as mentioned above. This difficulty is highlighted in Table 1.2, where all the data is gathered. After an intensive search, the authors were able to obtain at least a partial view of the situation in Flanders and Wallonia. Nonetheless, owing to the lack of data, Table 1.2 is fragmented. The situation in the Brussels-Capital Region remains completely unknown.

The Association of Flemish Cities and Municipalities (VVSG) collects data from all PCSWs⁴⁸ on the number of judicial procedures that are commenced on a yearly basis (Table 1.2).⁴⁹ Until 2012, the number of eviction cases had increased slightly, a trend that started earlier on from

⁴⁸ As we will discuss later, PCSWs are informed whenever an eviction case is started at court.

⁴⁹ More specifically, the data refers to all cases whereby eviction was demanded as from the start of the procedure. The data does not contain those

2008. In 2012, a peak of 13 561 new procedures were registered. In the year following, the number of cases fell back on estimate, to 12 000 procedures a year. This translates to 230 procedures a week or 33 procedures per day.

Data from 2013 permits the comparison of the number of initiated procedures and the number of households in the (private and social) rental stock in Flanders. No less than 1.76 per cent of all tenants (households) were threatened with an eviction in that year.⁵⁰

It is unknown how many verdicts resulted from this large amount of initiating activity. In the SRS and the social rental agencies (SRAs) respectively, 496 (in 2015) and 138 (in 2012) households were actually evicted by the bailiff (Table 1.2). To gain insight into the number of evictions that ensued in the entire rental stock, we have to rely on estimates. While some of the informants in our own investigation estimated that one out of three initiated procedures eventually ended with an eviction, a news item on the website of the Flemish public television VRT⁵¹ asserted that no less than 90 per cent of all initiated procedures ended with an eviction. Depending on the estimation that is followed, between approximately 4000 and up to 10 800 households lost their rental dwelling owing to an eviction in 2015, which translates to between 76 and up to 207 evictions per week.

The authors were unable to ascertain how many judicial procedures had been initiated in Wallonia (Table 1.2). For two housing segments, namely public housing, among which the social housing associations account for 80 per cent, and SRAs, the overview provided by Deprez and Gérard (2015) is incomplete. While the authors contacted all public housing services⁵² and all SRAs, the response rate was quite low. Therefore, the given figures of 1096 procedures in the public housing

procedures that started as a mere rental dispute and that evolved into a demand for eviction (filed during the procedure).

⁵⁰ Flanders counted 2 707 723 private households in 2014 (D Luyten and K Heylen, 'Hoe wonen gezinnen in Vlaanderen' in D Luyten, K Emmery, I Pasteels and D Geldof (eds) *De sleutel past niet meer op elke deur Dynamische gezinnen en flexibel Wonen* (Antwerpen/Apeldoorn, Garant 2015) 91, 100). In 2013, the most recent year for which data is available, 27.1 per cent of all Flemish households were tenants (ie 733 793 households), of which 20.4 per cent were in the private rental sector and 6.7 per cent in the social rental sector (K Heylen, *Grote woononderzoek 2013. Deel 2. Deelmarkten, woonkosten en betaalbaarheid* (Leuven, Steunpunt Wonen 2015)). In 2013, a judicial procedure for eviction was initiated against 12 938 tenants.

⁵¹ F Bruggeman, 'Elke week belanden zo'n 250 Vlaamse gezinnen op straat' *De Redactie*, 10 June 2014 <www.deredactie.be> accessed 11 June 2014.

⁵² Sociétés de Logements de Service Publics (SLSPs).

stock and 122 for the SRAs in 2012, understate the real magnitude. Neither were these authors able to obtain complete figures for the two subsequent stages. Within the part of the public sector for which they obtained data, 786 cases resulted in a verdict to evict, of which 134 were eventually carried out by the bailiff in 2012. The 122 initiated procedures by 15 SRAs, ended with 84 verdicts, resulting in 35 actual evictions that same year.

Table 1.2 Evictions on the rental market in Belgium (2010–2015)

Flanders				Wallonia*				
Number of initiated procedures for eviction								
	Total	Private rental	Social rental**	SRA	Total	Private rental	Public rental****	SRA
2010	12 566		1539				869	89
2011	12 740						976	85
2012	13 561						1096	122
2013	12 958							
2014	12 000***		1542					
2015	12 000***		1431					
Number of claims for eviction								
	Total	Private rental	Social rental	SRA	Total	Private rental	Public rental****	SRA
2010							695	65
2011							717	65
2012							786	84
2013								
2014								
2015								
Number of actual evictions***								
	Total	Private rental	Social rental	SRA	Total	Private rental	Public rental****	SRA
2010			463	99			151	30
2011				127			153	21
2012				138			134	35
2013								
2014			499					
2015			496					

Notes:

* Data for Wallonia are only partial. The calculations are based on only 26 of the 64 SLSPs and 15 of the 28 SRAs.

** Data for the social rental sector for the period 2014–2015 are only partial. A survey was sent to all 90 social housing companies, 77 of which returned the survey. These companies cover 90% of the entire sector.

*** The total number of eviction cases in Flanders (2014–2015) is an estimation by the VVSG (Association of Flemish Cities and Municipalities). All 308 PCSWs were contacted, of which 57% responded – including all large(r) PCSWs (in municipalities with a high(er) population). Based on data that had been collected, an estimation for the whole of Flanders is made.

**** Data cover the entire public rental sector. Social rental housing represents the large majority of this sector.

Sources: A Deprez and V Gérard (2015), Calculations by the Institut Wallon de l'Evaluation, de la Prospective et de la Statistique; H Ledegen, 'OCMW-barometer staat op betaalbaar en goed' wonen' *Lokaal* 2016 62–63; B Mallants, 'Uithuiszettingen door sociale huisvestingsmaatschappijen: focus op preventie' (2016) 107 (7) *De Gids op Maatschappelijk Gebied* 60–64; VVSG; VMSW; Annual reports VOB.

The amount of reliable data is clearly limited. Still, some general trends can be identified. First, the majority of the tenants threatened with eviction are in the PRS. In both Flanders and Wallonia, about 80 per cent of the eviction procedures are initiated by a private landlord.⁵³

Secondly, the eviction procedure can be seen as a funnel. Households drop out throughout the procedure for various reasons, such as an agreement reached between a landlord and a tenant, a payment plan devised by a judge, or a landlord deciding not to have the bailiff serve and execute an eviction order. However, the gap between the number of initiated procedures and the number of actual evictions is not only the result of such 'solutions' that prevent the tenant from having to move. In some cases, tenants just disappear when they are summoned to appear in court or when a verdict is rendered so as to avoid the experience of an eviction.⁵⁴ One of the respondents in the research carried out by the authors stated that clients are advised to take such a course of action. The number of tenants who are forced to move after the initiation of a procedure is therefore higher than the number of actual evictions.

I always tell people to make sure that they go away of their own accord. Certainly, if it concerns a family when children are involved. (...) There is police, with a bailiff. Everyone in the street is watching. Just not a good

⁵³ E Meys and K Hermans, *Nulmeting dak- en thuisloosheid* (2014) Steunpunt Welzijn, Volksgezondheid en Gezin (Leuven); A Deprez and V Gérard, *Les expulsions domiciliaires en Wallonie: Premier état des lieux* (IWEPS, Belgrade Namur 2015).

⁵⁴ Deprez and Gérard (n 53).

experience. Avoid that, and we'll agree that you leave the key somewhere.
(Social worker PCSW)

In this regard it is important to mention that initiated procedures in the SRS are not always meant to actually evict a tenant, rather they are used as a last resort to pressure tenants 'to face up' to existing problems, as stated by respondents in the research. This strategy seems to be effective when rent arrears are the motive for a procedure. When rent arrears are the main motive for an eviction procedure, only one out of three initiated procedures lead to an actual eviction. Yet when 'behavioural problems' are the main motive, tenants are evicted in almost six out of ten cases. A combination of both motives leads to an actual eviction of about 80 per cent of all procedures.⁵⁵ According to Deprez and Gérard, the strategy of pressuring tenants by a judicial procedure is also used by some private landlords in Wallonia.⁵⁶

4.4 Profile of Those Evicted

An owner-occupier can only be evicted where they fail to redeem their mortgage. Information regarding the profiles of the small group of those who fail to do so is limited. However, recent data from National Bank of Belgium reveals that mortgage arrears are most common among people aged between 35–44 years and those aged between 45–54 years.⁵⁷

A study by Meys and Hermans in 2014 was the first in Flanders to sketch a profile of renters confronted with an eviction on a large scale.⁵⁸ Records of the procedures initiated by 179 of the 308 Flemish PCSWs were examined, and the analysis showed that men run the highest risk of eviction and account for over half of all eviction orders served (53.3 per cent). The study found however that only one in five (21.4 per cent) of evictions are served to a couple of a man and a woman. Furthermore, tenants threatened with eviction are mostly in the age groups of between 30–39 years (28.5 per cent) followed by those in the 40–49 years age bracket (21.4 per cent). Thirdly, the study reveals that single persons

⁵⁵ B Mallants, 'Uithuiszettingen door sociale huisvestingsmaatschappijen: focus op preventie' (2016) 107 (7) *De Gids op Maatschappelijk Gebied* 60–64.

⁵⁶ Deprez and Gérard (n 53).

⁵⁷ National Bank of Belgium, *Centrale voor kredieten aan particulieren. Statistieken* (Brussel, Nationale Bank van België 2016) 41.

⁵⁸ Meys and Hermans (n 53).

without children run the highest risk of eviction (39.2 per cent). Nevertheless, children are involved in one out of four (26 per cent) eviction claims.⁵⁹

No large-scale survey has been undertaken in Wallonia or Brussels. The PCSW of Namur, a city of approximately 110 000 inhabitants in Wallonia however, has gathered detailed information on households threatened with an eviction that are supported by the centre. Even though the city of Namur is not representative of the whole of Wallonia, it gives an indication of the profiles of people threatened by eviction. Data for 2010 gives the most detailed insight into the profile of the households threatened by an eviction and supported by the PCSW.⁶⁰ The data reveals information on the number of people reached by the PCSW, the household type, age, income and gender of those involved. In 2010, 312 initiations of eviction cases were reported. Following the notification of the procedure, the PCSW has been able to reach 236 persons.⁶¹ In Namur, evictions mostly affect people aged between 25–34 (30 per cent) and between 35–44 (39 per cent). Figures show single persons (36 per cent) to be the most vulnerable in terms of being confronted with an eviction procedure, yet children are involved in half of all cases (52 per cent). Furthermore, most people involved in an eviction procedure are dependent on social benefits (mostly unemployment benefits and living wage⁶²), and only one out of five have an earned income (22 per cent). The ratio of men and women are equal in eviction cases.

5. RISK FACTORS IDENTIFIED LEADING TO EVICTIONS

As stated above, very few owner-occupiers fail to redeem their mortgage. It has been asserted that information regarding the profile of those involved in evictions is scarce. No information on risk factors, except for the age factor shown in the previous section, are identified.

⁵⁹ Ibid.

⁶⁰ The PCSW of Namur has not published a report on evictions but has shared its data with the authors for the sake of the research.

⁶¹ The number of people reached by the PCSW is higher than the number of initiated procedures due to the fact that the PCSW counts the number of persons in each household it supported.

⁶² The living wage is the minimal financial allowance provided by the Belgian state.

The main cause of evictions in the private rental sector (PRS) is rent arrears. Therefore, an examination of the factors leading to arrears is necessary in order to understand the large number of eviction cases. The lack of affordable housing is a key element. As mentioned above, many tenants bear a high rent burden. Moreover, data on housing quotes⁶³ do not include the necessary expense(s) for heating and electricity and many households experience difficulties paying these utility costs.⁶⁴

It becomes more difficult to cover all costs when a financial setback occurs. This can be the case, for instance, when a renter loses his or her income because of unemployment. A second example of a 'financial setback' is a relationship breakdown. If one of the partners stays in the rental accommodation while the ex-partner moves out, the former will have to pay all housing expenses with a tighter budget. Extra (un-anticipated) expenses, such as hospital bills or instalments for paying off debts, might put pressure on the available household budget. Accordingly, some households often have trouble making ends meet. In the research carried out by the authors, social workers identified such unexpected costs as a risk factor. When households choose to not pay rent, a large sum of money is released to pay other costs such as the electricity bill, the hospital bill etc.

Furthermore, respondents in the research expressed that rent arrears are often combined with other debts. Not paying rent is used to free an amount of money to pay off other debts, as the following citation illustrates. In addition, households underestimate the consequences of rent arrears and the risk of an eviction, which makes rent arrears grow.⁶⁵

Because people chose to pay the bailiff who is knocking at the door, to pay him as much as possible. And to buy food. And then they don't pay rent. Because they have to make choices and they chose to fix the machine ...
(Social worker PCSW, own translation)

⁶³ The housing quote is an indicator for housing affordability. The quote is determined by assessing the percentage of the household income that is spent on housing, usually the monthly rent or mortgage repayment. In international research, 30 or 40 per cent is generally used as an indicator of affordability, meaning that a household spending more than 30 or 40 per cent of its income on rent/mortgage repayment is experiencing affordability problems.

⁶⁴ The Foundation Abbé Pierre and FEANTSA (n 6).

⁶⁵ L Verbeeck, 'De gerechtelijke uitzetting uit het duister gehaald' in P De Decker, L Goossens and I Pannecoucke (eds) *Wonen aan de onderkant* (Antwerpen-Apeldoorn, Garant 2005) 337–350.

Frisque asserts that caution should be exercised in blaming individual tenants for the risk of an eviction and that the bigger picture should be kept in mind.⁶⁶ As affordable housing is lacking, households are forced to accept rent prices that place a constraint on their budget. In 2013, the average rent in the Flemish PRS was €562 per month. The average rent paid by the households in the lowest income quintile was only €40 less (€520). That same year, the ‘living wage’, a financial minimum benefit, was set at €817.36 per month for a single person and at €1089.82 per month, for a couple. Clearly, this tension between rent and income generates a great financial risk for many households in the PRS.

These risk factors in the PRS are also at stake in the SRS. Even though rent is adjusted to income, one out of three social renters do not have a sufficient income to have a decent life after paying rent.⁶⁷ However, payment difficulties are not the only risk factor in the SRS. Next to rent arrears, behavioural problems caused by renters is the second major motive for social rental organizations to start an eviction case.

6. LINKS BETWEEN EVICTIONS AND HOMELESSNESS

The procedures leading to an eviction and the eviction itself are serious events. In addition, what happens following an eviction also creates uncertainties as a new dwelling has to be found, and for many, this search is challenging.

As financial problems are undoubtedly a major issue leading to evictions, for both renters and owner-occupiers, the acquisition of a property is rarely an option, as it requires a relatively affluent and financially stable situation. Entering the SRS right after an eviction is hardly an alternative, due to long waiting lists.⁶⁸ Although social rental agencies allocate dwellings based on the level of urgency rather than

⁶⁶ C Frisque, *La prévention des expulsions locatives. Les paradoxes de la banalisation d'un nouveau risque* (2006). Rapport pour la DREES-MIRE, Ministère de la Santé et des Solidarités, Université Paris-X Nanterre – Institut des sciences du politique.

⁶⁷ Heylen (n 10).

⁶⁸ It should be noted, however, that the Social Rental Legislation foresees exceptions on the principle of chronology. First, a system of ‘accelerated allocation’ exists in cases of ‘exceptional social circumstances’, such as homelessness (Art 24 Social Rental Decree). Secondly, there are multiple priority rules. An example is the priority for inhabitants of uninhabitable dwellings (Art 19 Social Rental Decree).

chronology on waiting lists, the chances they can offer a dwelling immediately are small. Consequently, evicted households are, to a large extent, forced to revert back to the PRS, the same sector where most have lost their previous home.

Several issues hinder an easy search for a dwelling in the PRS. First, rent prices are high compared to incomes. Secondly, many private landlords are not eager to welcome low-income families, and certainly not if these households have a poor housing record. Research on discrimination in the PRS in Belgium has shown that some landlords contact the previous landlord or demand proof of recent rent payment at the previous address.⁶⁹ Obviously, landlords do not look favourably upon households that have been evicted after a judicial procedure.

Once again, the data that is needed to demonstrate the tedious path to rehousing is lacking; it is not possible to show how many households succeed or fail in finding an alternative rental dwelling after the eviction. From discussions with social workers, the authors learned that some do secure a new dwelling with or without aid from social service agencies; however, for others, the search remains fruitless. Households may have to fall back on unstable and temporary solutions, such as doubling up with family or friends, temporary housing, crisis shelters, or residential homeless services. For some, such an unstable solution only lasts until a suitable dwelling is found, but for others it marks the start of a much longer period of homelessness.

Researcher: Do you know whether many people quickly find a stable housing situation, or does it often remain unstable?

Interviewee: That is difficult to say. Actually, we don't keep track of that ourselves. We should really do that. (...) My gut feeling is that the situations are often not stable.

Researcher: Temporary solutions?

Interviewee: Yes indeed, many temporary solutions. Or we see young people who move back in with their parents or share with friends. Or maybe they just rent something else. But also that often fails in the end.

Researcher: And that means that people actually end up on the street?

⁶⁹ J Verstraete and P De Decker, 'Discriminatie van financieel kwetsbare huishoudens op de private huurmarkt in België' in P De Decker, B Meeus, I Pannecoucke, E Schillebeeckx, J Verstraete and E Volckaert (eds) *Woonnood in Vlaanderen. Feiten/Myten/Voorstellen* (Antwerpen, Garant 2015) 281–296.

Interviewee: What does that really mean, on the street? If someone has a couch to get some shut-eye on each night, but hangs out on the street the entire day, is that one homeless? The way I see it, yes. But not according to the law.

(Interview fragment, social worker PCSW)

7. BEST PRACTICE MODELS FOR PREVENTING, TACKLING AND REACTING TO EVICTIONS

Eviction procedures are well-defined by law for all tenure types. At different stages throughout these procedures, owner-occupiers and renters are protected against a threatening eviction and its harmful consequences, either by law or by practices developed within the field. In this final section, some key practices aimed at preventing, tackling, or reacting to an eviction are discussed.

7.1 Preventing Evictions

First, the cautiousness of both the lender and the borrower in closing a mortgage is one of the most effective anti-eviction practices in Belgium, as arrears and consequently evictions among homeowners are very rare. Financial institutions are careful in providing mortgages to future owner-occupiers. Such institutions accurately check the capabilities of monthly repayments of a household, and only allow households to spend about one third of their income on their mortgage, and often decide on a minimal amount of money that the borrower has to have after repaying the mortgage. For instance, in the case of one respondent in the authors' independent research, the bank sets a threshold at €800 a month. Research by De Decker has shown owner-occupiers are very careful as well. Buying a dwelling is only completed after thorough considerations and calculations.⁷⁰

Secondly, the Flemish regional government has imposed on social housing companies and social rental agencies, a number of basic support tasks for (candidate-) renters.⁷¹ These tasks should enhance the early identification of problems in addition to supporting renters before more serious problems arise. The list of tasks includes assisting renters who are experiencing difficulties in fulfilling their rental obligations, assisting

⁷⁰ P De Decker, 'Eigen woning: geldmachine of pensioensparen?' (Antwerpen, Garant 2013).

⁷¹ Art 6 Ministerial Order of 21 December 2007.

renters who are in rent arrears and closely monitoring their situation, and mediating in disputes where behavioural problems are the main concern. If necessary, social housing companies have to involve other (more specialized) social services to find a solution for reoccurring problems (eg addiction problems). In addition, social housing agencies in Flanders are required by decree to approach the PCSW to make a mediation attempt for tenants with a yearly income below €16 200 *before* they are allowed to initiate a judicial procedure for an eviction.⁷²

The Centres for General Welfare (CGW)⁷³ have developed preventive housing support for all renters. It aims to intervene as early as possible when problems arise. As soon as a CGW has been notified by a landlord, it will contact the renter and sets up an outreach support trajectory. The umbrella organization of all CGWs (*Steunpunt Algemeen Welzijnswerk*) has evaluated this programme. The organization states, first, that the support service reaches more social than private landlords. While the social landlords often agree on partnership, the private landlords, in general, do not. Secondly, the overall success rate to prevent an eviction once a support trajectory is started lies at 71 per cent. Results are, however, much more positive within the SRS compared to the PRS. In general, private landlords only contact a CGW at a later stage in the process, when problems have already amassed and when the possibility of negotiating has diminished; and private renters face higher rent quotes, hence less capacities to repay debts.⁷⁴

Lastly, the Flemish government introduced a 'Fund to prevent evictions'. This fund is not a general insurance for rent arrears but is applicable when a private landlord has requested an eviction due to rent arrears and the judge imposes a payment plan instead. More precisely, the financial intervention of the fund remains limited to situations where the tenant does not comply with the conditions of the plan: only the difference between the imposed and the actual reimbursement is covered. In this way, the fund aims to provide a reasonable alternative in case of rent arrears, next to dissolution of the rental agreement and eviction of the tenant. However, the system has been fiercely criticized. First, actual protection for tenants depends on whether the landlord is affiliated to the fund or not. Secondly, the fund only operates in cases where a request for

⁷² Art 33 §3 Social Rental Decree of 12 October 2007.

⁷³ The CGWs are NGOs. There are eleven CGWs spread over the Flanders and Brussels-Capital Regions.

⁷⁴ D Lescauwet and G Van Menxel, *Evaluatie van de preventieve woonbegeleiding van de CAW's gericht op voorkoming van uitzetting* (Berchem, Steunpunt Algemeen Welzijnswerk 2011).

eviction has been filed in court. The Flemish Housing Council has suggested that assisting the tenant at an earlier stage, however, could avoid such an escalation.⁷⁵ Lastly, the number of landlords applying to the fund is very low. Landlords' organizations indicate that the procedure, with several administrative steps and due dates, is far too complicated.⁷⁶

7.2 Tackling Evictions

In 1998, an amendment to the Judicial Code was launched at federal level to 'humanize' the judicial eviction procedure ('Law on the Humanization of Evictions'). The law introduces a number of measures to protect renters throughout the procedure. First, it decides on the time range in between several steps, such as the one-month period in between the judgment and the actual eviction.⁷⁷ These 'pauses' should enable households to prepare in defending their case, to search for help, or to find a new place to stay. Second, and more importantly, the law introduced the obligation for a bailiff or a court clerk to inform the PCSW when an eviction case has been initiated at the Justice of the Peace, unless the tenant explicitly objects. Thereafter, the PCSW has to 'provide support in the most appropriate manner, within its legal mandate'.⁷⁸

Consequently, at least in theory, every household threatened with an eviction should be offered social support. Yet in practice, several downfalls emerge. First, the objective of the law was that PCSWs would make an attempt to reconcile the tenant and landlord, and therefore it was anticipated that these social services would get involved from the start of the judicial procedure. In practice, the PCSWs are often not even notified until a few days before the first court session, which gives them insufficient time to take effective action and to help tenants preparing for that court session.

The main problem is that we receive the information very late. Before we get it and have it properly registered (...). The sessions are always on Tuesday

⁷⁵ Vlaamse Woonraad, 'Advies over het ontwerp van besluit van de Vlaamse Regering houdende instelling van een tegemoetkoming van het fonds ter bestrijding van de uithuiszettingen' (Brussel, 2013) 6.

⁷⁶ B Hubeau and D Vermeir, *Een evaluatie van het woninghuurrecht. Deel II. Bevindingen werkgroepen 'Toegang, selectie en discriminatie', 'Procedure en bemiddeling' en 'Huurprijs', resultaten wegingsoefening en aanbevelingen expertencommissie* (Leuven, Steunpunt Wonen 2015).

⁷⁷ Art 1344quater Judicial Code.

⁷⁸ Art 1344ter Judicial Code.

afternoon. If I'm lucky [the notion arrives] on Thursday or Friday. But sometimes I don't find it in my inbox until Monday. (Social worker, PCSW, own translation)

Secondly, no funding was attached to this new task when it was assigned to the PCSWs in 1998. This omission has been contested several times in the past.⁷⁹ Consequently, the PCSWs cannot provide everyone with adequate assistance. Instead of making contact with the affected households in person, all PCSWs can often do is send them a letter. Yet many letters remain unanswered, leaving many households without help. If a PCSW wants to offer more extensive support, it is forced to prioritize certain groups. One of our respondents indicated the manner in which she deals with the situation. She not only writes to affected families but also makes house calls. Together with the tenant, she prepares for the first court session (if time allows). If the tenant wants her to, she will join the session. But because of budget and staff constraints, such an intensive approach means prioritizing certain groups of people that need the help most, and consequently exclude others.

Thirdly, PCSWs are only informed once a judicial procedure has been initiated. Later on during the procedure, there is no requirement to involve the PCSW, neither when the justice of the peace renders a verdict, nor when the actual eviction is scheduled.⁸⁰ An enlargement of the legally obliged involvement of the PCSW at later stages would enable support to households when a threat of eviction becomes even more pressing.

7.3 Reacting to Evictions

When households, either renters or owner-occupiers, are evicted after a *judicial* procedure, rehousing support is not guaranteed within the legal procedures. Some PCSWs intensively try to support evicted renters, such as the PCSW in Namur. Here, advertisements for rental dwellings are listed and volunteers support households in their contacts with landlords and join visits to increase their chances. Yet the possibility of PCSWs investing in rehousing programmes for evicted households is often limited due to financial and staff constraints.

⁷⁹ Eg Verbeeck (n 65); Meys and Hermans (n 53).

⁸⁰ Bernard and Lemaire (n 45).

In the case of evictions through an *administrative* procedure, local or regional governments are charged with rehousing the affected household. The extent of their obligation differs from region to region.⁸¹

In Flanders, local authorities are charged with an *effort* commitment, yet only for those households who comply with the income and property requirements of the Social Rental Decree.⁸² The authorities can take an initiative to support others but are not obliged to. The commitment implies that all effort has to be done to relocate the household involved. To do so, households can be prioritized on the waiting list for a social dwelling, the municipality can collaborate with local housing associations, and it can provide transit housing or attribute a rent contribution.

In Wallonia, a *result* commitment for the local government has been introduced to relocate evicted households. Hence authorities are obliged to search for a solution. This solution has first to be found within the public housing supply within the municipality where the household was living. If unsuccessful, the dossier can be transferred to the regional social housing association, to find a social rental unit in another municipality. When relocation is not possible within public housing, a final option is to grant financial support for housing in the private sector.⁸³ Despite this result commitment, stable housing solutions are not always found. In the independent research, one respondent indicated that relocation can also include shelter in accommodation such as temporary housing or residential care settings.

In recent years, the Brussels-Capital Region adopted a mechanism similar to the obligation that exists in Wallonia; one difference, however, is that no financial support is possible.⁸⁴

8. CONCLUSION

Evictions remain an under-documented problem in Belgium, despite the far-reaching consequences for those involved. Data on the magnitude of the phenomenon is fragmented and can only be traced through myriad sources. The fact that evictions are relatively undocumented is surprising as the limited amount of data that is available proves evictions to be anything but a marginal phenomenon. In Flanders, approximately

⁸¹ N Bernard, 'Le relogement des personnes occupant un immeuble frappé par un arrêté d'inhabilité' (2013) 3 *Revue de droit communal* 34–46.

⁸² Art 17bis Flemish Housing Code and Art 3 Social Rental Decree.

⁸³ Art 7 Walloon Housing Code.

⁸⁴ Art 12 Brussels Housing Code.

12 000 judicial procedures are initiated against renters on a yearly basis. At least some of the households threatened with an eviction do not find a stable place to live afterwards. Some will succeed in re-entering the housing market after a turbulent period, but others will remain homeless for a long time.⁸⁵

Gaining a deeper insight on evictions in the rental market – the most vulnerable market segment – should not, however, require a major effort. The PCSWs are informed whenever an eviction procedure is initiated. Informing the PCSW at later stages in the procedure and, importantly, the collection of these figures at regional levels, would result in a much clearer picture.

Several measures have been developed to prevent evictions from taking place, mostly in the rental market. Due to budgetary and staff shortages, and due to less communication with private landlords, only a few of all initiated procedures for an eviction can be prevented, and only a few households are supported in their rehousing paths. Furthermore, the assistance of social support services is limited in the current rental market where problems of affordability and housing quality are commonplace. Importantly, we must not lose sight of these structural causes of the high incidence of evictions.⁸⁶ Social services can lend their support to households, while tenants can be called upon to meet their responsibilities as renters. However, as long as income and rent levels remain out of sync, there will always be people who find it hard to pay the rent each month. Assisting households in finding alternative housing is also very demanding, as long as the housing market remains so inaccessible for this group.

⁸⁵ P De Decker and K Segers, 'Chaotic, fluid and unstable. On the complex housing trajectories of homeless people in Flanders, Belgium' (2014) 29 (4) *Journal of Housing and the Built Environment* 595–614.

⁸⁶ Frisque (n 66).