

Summary

Bound hand and foot

Abuse and misunderstandings in BDSM-scenes and adequacy of justice and aid arrangements

The Minister of Security and Justice has asked, in response to a concrete case, for a study of possible abuses in the world of sadomasochism or, as practitioners nowadays use to say, BDSM. This abbreviation includes the phenomena bondage, discipline, dominance, submission, sadism and masochism. The terms BDSM and SM are often used as synonyms for each other and stand for a sexual preference and a form of sexual expression that, under the assumption of mutual consent, makes use of physical constraints imposed, intense nerve impulses and fantasies of power play.

The study focuses on five research themes, namely:

1. Nature and extent of BDSM practice in the Netherlands.
2. Extent, nature and consequences of BDSM abuses in the Netherlands and the involvement of young and/or vulnerable people.
3. Judicial framework in regard to BDSM in the Netherlands and neighboring countries.
4. Available care in case of BDSM abuses in the Netherlands and neighboring countries.
5. Functioning of the Dutch system in case of BDSM abuses.

Several research methods are used to answer the research questions, like internet and media research, case law study, police and judicial data (27 cases), web survey (among members of two BDSM websites, n = 597), expert interviews (thirteen respondents), target group interviews (eighteen respondents) and fieldwork. In addition, cooperation is sought with researchers in Belgium, Germany and the United Kingdom. These foreign researchers have each written an essay. Together, the essays form the second part of the report. In this summary, however, we focus on part one: the main study. We do this by giving the main findings for each research theme. Before doing so, we look briefly into the phenomenon of BDSM.

BDSM may be seen, depending on the perspective, as paraphilia, perversion, sexual orientation, variation, lifestyle or leisure. Sexologists are particularly interested in the extent to which BDSM gives excitement and sexual pleasure to the person involved and whether it is harmful to the person or others. It is a pronounced intermediate, a game, a role which allows fantasies and acting within a structure, a strict form, and becomes a ritual.

1. Nature and extent of BDSM practice in the Netherlands

The focus of this study is on that part of the BDSM scene that is manifest on the Internet, in clubs and at parties. The internet is of great significance; in the field of information, but also as a social medium. In addition, the Internet is an important meeting place for establishing a first contact. Digital or not, the social control is – reportedly – considerably and seems to meet a

need: after all, BDSM is a game with boundaries and there should be kept a sharp eye on mutual respect. Internet forums serve as a platform for discussion, but also as a (warning) system of regulating and behavior correction.

The BDSM scenes have obvious hetero- and homosexual variants, although there are interrelationships. However, there seems hardly to be a lesbian BDSM scene. Within the heterosexual BDSM scene seems to exist a certain dichotomy, or at least an area of tension between the older and the younger BDSM' practitioners. Youngsters would rather not hear again and again 'how to practice BDSM' and in addition they find it more comfortable to be 'among themselves'; to avoid situations where mainly older men hunt for younger women. There are, however, associations or situations where young people and older people do work together. Within the gay BDSM scene this generation gap does not seem alive.

The BDSM subculture is to some extent a counter-culture, with a critical attitude towards the prevalent sexual (equality) morale, which offers pride and identity. This raises the question whether the participants of the BDSM subculture are interested in a process of emancipation and acceptance. The BDSM community may be, if its struggle for emancipation is successful, after all, at risk for losing a large part of its 'subversive' character. The downside of social cohesion and control within communities is that someone who has an unpleasant experience outside the community may be accused of carelessness (blaming the victim) and may therefore be restrained to seek help from aid agencies or police. Fear to be regarded as a traitor of the own subculture may also play a role.

An indication of the size of the BDSM community in the Netherlands is dependent on the domain over which such estimation is made. Is it about people who have BDSM fantasies, the number of one out of ten inhabitants is often heard. An indication of the size of the actual community is of course dependent of how BDSM is defined. Our estimate of the size of the (hard) core BDSM scene, in other words, those who regularly go to parties and/or are active in social media, is in between five to ten thousand BDSM practitioners in the Netherlands.

2. Extent, nature and consequences of BDSM abuses in the Netherlands and the involvement of young and/or vulnerable people

There is not a representative survey among the population to answer the question of how many BDSM practitioners are victim of abuse. We do have conducted a web survey among members of the BDSM websites Fetlife and BDSMzaken. We consider the results as indicative; after all, we do not know how representative the web survey is. This survey shows that 23 percent of the participating respondents have felt themselves abused at least once. "Felt abused" is not a unique characteristic of BDSM. Also in other non-BDSM relationships abuse occurs. A large majority of respondents to the web survey believes that abuse is less prevalent in BDSM than the vanilla (regular) world. Respondents explain less abuse in the world of BDSM by the explicit need for discussion about wishes and boundaries in regard to the BDSM-play and the relatively strong social control within the BDSM scene.

Further analysis shows that the probability for (experienced) abuse is greatest for women and people who make their debut in the world of BDSM as a minor. Interviews with experts and BDSM practitioners also indicate that inexperience increases the risk of abuse. Furthermore, vulnerable person with a mental disorder have an increased risk of abuse, because they know their own limits insufficient. The question whether people with a mental illness feel extra attracted to the world of BDSM is contradicted by the - albeit limited – available scientific literature.

About two-thirds of the experienced abuse may be characterized, on the basis of the web survey, as a consent violation. Usually it are sexual or psychological consent violations and less often physical violations. One-thirds of the abuse may be characterized as relational, like playing the game under false pretenses, so that the respondent (afterwards) feel abused. The abuse usually feels like a negative experience and not more than that. The psychological consequences are greater if the abuse takes place in a more structural way and when it is difficult to break free from this relationship. Several respondents have withdrawn from the world of BDSM; others say to consider this. Physical consequences of abuse are occasionally reported, but this is the exception rather than the rule. BDSM can however lead to physical injury because of an accident. About one in seven respondents to the web survey indicates that they had ever visited a doctor because of BDSM-related injuries.

BDSM practitioners, who have experienced a consent violation, usually discuss this first with their ‘play partner’. If this call is successful, the consent violation will probably not be labeled as abuse. However, if the person does not listen to the other it probably will be felt as abuse. More than 60 percent of those who have felt abused, discuss the event with other BDSM practitioners, family and/or; an informal way of care. Only a small percentage (around 5 percent) reports the abuse to the police and/or a healthcare agency.

Abuse may be reported to the police, but there are also other reasons for BDSM practitioners to go to the police. For instance to report abuse of other BDSM practitioners, threats or stalking as result of a BDSM-relation or BDSM-contact. A total of 26 respondents of the web survey reported as case to the police. A search in the police system gives almost the same result in number, namely 27 cases in the period 2010 to early 2014. Although we could not associate with certainty the web survey and the search by the police together, it looks as – based on the description – that several cases are similar.

Eleven of the 27 cases are traced by the Public Prosecutor. These cases may be characterized as sex crimes as well as violent crimes. Although only few cases are involved, the results support the idea that it is difficult to present sufficient evidence in case of a sexual offense in the framework of BDSM. However, a conviction for violence (assault) seems more feasible. If the court comes to the verdict of ‘guilty’ imprisonment is imposed in all cases (five).

3. Judicial framework in regard to BDSM in the Netherlands and neighboring countries

BDSM practice in the Netherlands is, in principle, with the mutual consent, not punishable if it involves simple assault (with pain and/or minor injury). Police investigation and public prosecution of BDSM practitioners is, in theory, possible if there is (risk of) serious bodily injury; mutual consent is in fact not simply a justification for assault with (potentially) serious injuries. However, this seems to be a theoretical option, as we have not found criminal cases in the Netherlands where the state has initiated prosecution because of serious injury in BDSM. In the event that any of those involved in BDSM reports abuse, rape or any other criminal offense to the police, there is obviously a different situation. In such a situation, the question arises whether the allegations are proven; coercion not always proved easy in a legal practice.

There are differences of emphasis in the legal framework of the Netherlands in comparison with the three neighboring countries. Germany appears – from BDSM perspective – the most advanced in the legislation, while Belgium is the most restrictive. The Netherlands and the United Kingdom take a middle position. These differences in emphasis mainly relate to the question to what extent consensual BDSM is seen as justification for assault.

BDSM-abuse is most often prosecuted as assault and/or sexual offense. In case of assault the legal framework is equal for everyone, but with sexual offenses specified groups enjoy additional protection. Sex with children under the age of twelve is prohibited (Article 244 Penal Code). Is the young person under the age of sixteen years, but more than twelve years, then sex is prohibited in principle (Article 245 Penal Code), but it is not the intention of the legislature that consensual sex between a 15-year and 17- old is prosecuted. An unwritten rule is that the age difference between the older and younger person (under the age of 16 years) should not exceed five years (pedophilia criterion according to DSM). If there is a marital relationship, the prohibition does not apply. The age of sixteen years old is also the standard in our neighboring countries (Belgium, Germany and the United Kingdom).

Dutch criminal law also has a number of differentiations. Article 249, section 1, punishes fornication with a person's own minor (step/foster) children, as well as sexual abuse of minors entrusted to someone. So here is the age at eighteen years old. The same applies to prostitution (cf. Article 248a and 250 Criminal Code). Article 249, section 2 punishes fornication in dependency relationships without an age limit. Finally, Article 243 of the Penal Code protects persons who are unconscious (in part) or have a learning disability.

In case a third party (family, friends, acquaintances or others) want to use the law to act against a BDSM relationship, against the will of the persons involved, the possibilities are limited to specific protected groups, namely young people under the age of sixteen, persons with a mental disability or minors in a dependency relation. This does not hinder any person having knowledge of a crime, no matter who is the victim, to report this case to the police.

4. Available care in case of BDSM abuses in the Netherlands and neighboring countries

There are several reporting and advice services in the Netherlands for victims of BDSM abuse. These services are not only meant for victims of BDSM-related abuse, but have a broader perspective. Access to specialized care is usually made available through someone's family doctor (general practitioner). Since the change of January 1, 2014, there is added a mental health practitioner to the general practice. It is still too early to determine how this gatekeeper acts around BDSM issues. If there is demand for specialized care, is this care usually not derived from abuses in BDSM, but rather of general psychological problems. The results of the web survey shows that most respondents who seek mental care associated with their BDSM preference (eventually) end up with a psychologist. In our neighboring countries there are no specific care services for victims of abuses in BDSM. As in the Netherlands, they rely on the regular care structures. There are, however, both in the Netherlands and neighboring countries kink friendly therapists who specialize in treating clients with BDSM preference.

5. Functioning of the Dutch system in case of BDSM abuses

The overall conclusion about the Dutch system of legal and care services in case of BDSM abuse is that there are barriers for a substantial part of the surveyed BDSM community to benefit from these services. There are three main reasons for this phenomenon identified. The first reason is a positive one, namely the existence of a highly developed form of self-help constructions within the BDSM community. The other two, less positive, reasons are closely related, namely a poor acceptance of BDSM in society and ignorance or lack of understanding about BDSM.

Not all BDSM practitioners are (therefore) open about their preference to family, friends and colleagues, and the move to a counselor or the police therefore more difficult because of the risk for detection of their BDSM preference. Also some BDSM practitioners with children fear for a notification to youth care services because of their preference. Counselors and police officers know not enough about BDSM in the minds of BDSM practitioners. They expect a negative response if they consult these professionals because of a case of abuse; an expectation that is too often true in their eyes.

There seems to be no need for the strengthening or expand of the legal framework to address abuses in BDSM. But the fact remains that parents are empty-handed when the persons concerned indicates that they are satisfied with the situation. Only if there are objective facts that indicate coercion, prosecution could be the case. A section of the law that would give parents the power to intervene in the lives of their adult children undermines one of the basic principles of the (Dutch) law, namely self-determination, as enshrined in the ECHR.

About a third of the surveyed BDSM practitioners who have reported a case to the police are not satisfied with the treatment by the police. Although the numbers are small and it is not clear to what period this experience is referring, it seems fair to ask for attention to possible improvements in the performance of the police.

In regard to the health care system we do not see much improvement in the system itself, but in its implementation. A better overview of counselors specialized in BDSM could be considered, for example in the form of a national overview that is accessible to everyone who works in healthcare, so that referrals to kink friendly counselors may happen in a more appropriate manner. Furthermore is the establishment of a peer supervision group of kink friendly workers in the framework of further professionalization is one of the possibilities.