

Summary

1. Introduction

According to media reports, Dutch customs encounter about ten shipments of childlike sex dolls a year, and also the police and the Public Prosecution Service are familiar with this phenomenon.¹ Presumably, these 10 shipments are just the tip of the iceberg. As it does not concern prohibited goods, these dolls can currently not be confiscated and persons who import, transit, possess, etc. childlike sex dolls cannot be prosecuted. The newspaper report *'Walgelijk, maar ook nuttig?; Justitie zint op maatregelen tegen kindersekspoppen'*² led to questions in Parliament to which former Minister of Justice and Security Grapperhaus responded by promising to explore the subject.³ The former minister called the emergence of childlike sex dolls in the Netherlands 'a worrying development', which, due to the 'normalization' of a 'subculture of sexual abuse of children (...) conflicts with the responsibility to protect our children' and announced an investigation into the question of 'whether a ban on child sex dolls is desirable and possible'.⁴

2. Problem statement and research questions

This study aims to answer the question as to whether a ban on childlike sex dolls is desirable and possible. Given the fact that childlike sex dolls are now also encountered in the Netherlands and given the controversy surrounding the question whether these objects should be banned in the first place, it is time to examine the subject more closely. This study has five central objectives:

- 1) to come up with a definition of childlike sex dolls and childlike sex robots;
- 2) to identify possible international and European developments that are relevant to the question of whether childlike sex dolls should be prohibited;
- 3) to investigate whether Dutch law already offers possibilities to combat childlike sex dolls;
- 4) to provide insight into the laws applicable to childlike sex dolls in other countries and the underlying reasons for their adoption;
- 5) to identify and analyse all the arguments for and against banning childlike sex dolls, using the principles of criminalisation.

The specific research questions are clustered according to these five central objectives (see report, section 1.4.).

3. Research methods

Several research methods were employed in this study:

- 1) Desk research: The subject was first extensively explored by means of a desk research. This included an analysis of academic literature, parliamentary documents, commentaries and relevant case law concerning the criminalisation of childlike sex dolls.

¹ E. Van den Berg & E. San Giorgi, 'Kinderseksrobots: de Nederlandse douane ziet ze regelmatig', NPO3, 26. juli 2019, <https://www.npo3.nl/brandpuntplus/kinderseksrobots-de-nederlandse-douane-ziet-ze-regelmatig-9c71eac0-6081-424a-a245-650547120c53>, (laatst bezocht op 24-06-2022).

² V. Bartels & K. Nederhof, 'Lokken kindersekspoppen pedofilie uit?', *Telegraaf*, 31. aug. 2020, <https://www.telegraaf.nl/nieuws/1562200158/lokken-kindersekspoppen-pedofilie-uit> (laatst bezocht op 24-06-2022).

³ TK 2020/2021, nr. 553.

⁴ TK 2020/2021, 31015 nr. 223.

2) Interviews with Dutch experts: Semi-structured in-depth interviews were done with a total of 16 experts in the field of childlike sex dolls, child pornography and moral laws. These included experts from customs, the police, the Public Prosecution Service, criminal lawyers, as well as academics and experts in psychological and forensic care.

3) Comparative study: Finally, we chose to examine and discuss the laws and practices of six countries in which childlike sex dolls are currently prohibited in one way or another: Germany, Norway, Denmark, the United Kingdom, Australia and Austria.

4. Results

4.1. Definition of a childlike sex doll/robot

- 1) What is a childlike sex doll or childlike sex robot (i.e. when can a doll/robot be classified as a childlike sex doll or childlike sex robot)?
 - a. How are childlike sex dolls and robots defined in academic literature?
 - b. What kind of dolls are classified as childlike sex dolls or childlike sex robots in other countries?
 - c. Are only realistic (anatomically correct) dolls or also non-realistic dolls considered as childlike sex dolls?

Combining various definitions from academic literature, we arrived at the following working definition for childlike sex dolls and robots:

A childlike sex doll is a three-dimensional object that:

- *represents (parts of) a (realistic) child (<18 years);*
- *that can be used for the purpose of sexual stimulation and/or sexual release;*
- *and that - in the case of a sex robot - thanks to a computer programme can show or imitate acting in a particular manner.*

The explicit prohibitions in Australia, Germany and Denmark do not provide a detailed definition of a 'childlike sex doll'. The Australian ban describes a childlike sex doll only as "doll or other object [that] resembles a person who is, or appears to be, under 18 years of age; or a part of the body of such a person; and a reasonable person would consider it likely that the doll or other object is intended to be used by a person to simulate sexual intercourse." In Germany, the ban on childlike sex dolls refers to "physical replica of a child or a part of a child's body in view of its characteristics intended for the performance of sexual acts". And in Denmark, a childlike sex doll is described as a "doll that resembles a child and is intended for sexual purposes".

However, in all the examined countries, the legislative history, legal guidelines and/or case law provide law enforcement authorities with guidance in determining whether a doll can be considered a childlike sex doll. Two questions are important in distinguishing illegal childlike sex dolls from legal sex dolls with an adult appearance or ordinary dolls (e.g. kid's toys): (1) can the doll be considered *childlike*, and (2) can the doll be considered a *sex doll*? In the examined legal systems, both questions must be assessed objectively, based on the general appearance of the doll, using the standard of the reasonable person. This includes an assessment of the doll's proportions and characteristics, clothing, accessories and functions for sexual use (e.g. body openings and/or human body temperatures), as well as its marketing. The motives and intentions of the person ordering/possessing the doll is not to be taken into account in this assessment.

In none of the countries analysed is it required that the doll is completely anatomically correct in order to be considered a childlike sex doll. What counts is the general appearance of the doll. Thus, a doll that not only has childlike but also adultlike features (e.g. large breasts or make-up) or has unrealistic features (e.g. pointed ears, unusually large eyes, anatomically incorrect small waist) may still fall under the definition of a childlike sex doll. In Australia and Germany, the ban on childlike sex dolls is not only limited to complete dolls, but explicitly also applies to parts of a doll. The Australian ban also explicitly mentions "other objects" developed using emerging technology, such as childlike sex robots.

4.2. International and European developments

2) Which international and European law instruments and developments are relevant for a possible ban on childlike sex dolls?

A number of international legal instruments oblige States Parties to criminalise the production, distribution, consumption and possession of child pornography material: The 2000 Optional Protocol to the UNCRC on the sale of children, child prostitution and child pornography, the 2001 Council of Europe Convention on Cybercrime (Budapest Convention), the 2007 Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention), as well as the EU Directive 2011/93/EU on combating the sexual abuse and sexual exploitation of children and child pornography. However, none of these instruments explicitly oblige States Parties to prohibit the import, distribution, possession, etc. of childlike sex dolls.

Such an obligation can arguably also not be 'read into' the international framework on child pornography either. The definition of child pornography in some legal instruments (the OPSC 2000, the Lanzarote Convention 2007 and Directive 2011/93/EU) could be interpreted as referring to depictions of sexually explicit behaviour with a childlike sex doll or depictions of a naked childlike sex doll. However, childlike sex dolls as such seem to fall outside the scope of the international instruments. Hence, the Netherlands is currently not obliged under international or EU law to criminalise the production, distribution, consumption and possession of child-sex dolls.

in 2020, the EU Commission has adopted an EU strategy for a more effective fight against child sexual abuse for the period 2020-2025. One of the eight initiatives included in this strategy aims to identify legislative gaps, best practices and priority actions at EU level in the fight against child sexual abuse. According to the Commission, the issue of the sale of childlike sex dolls in the context of the fight against child sexual abuse will be addressed in this process. So far, however, this has not led to any concrete agreement on an EU-wide ban on the sale of childlike sex dolls.

Even though the international legal framework on child pornography does currently not provide a legal basis for banning childlike sex dolls, several countries have criminalized the import and export of these objects. Arguably, international trade law and EU law do not exclude such a ban. The 1994 General Agreement on Tariffs and Trade (GATT) and the Treaty on the Functioning of the European Union (TFEU) generally prohibit quantitative restrictions on trade. Hence, Member States are not allowed to impose restrictions on the import and exports of goods from and to other Member States. However, both legal instruments allow for exceptions.

Article XX(a) of the GATT allows WTO Members to adopt GATT-compatible measures "necessary to protect public morality" and Member States have quite some latitude to determine what public

morality means in their own societies. If another WTO member state were to challenge the import/export ban on childlike sex dolls, the restricting member state would need to prove that the ban is necessary, that there are no less restrictive but equally effective alternatives, and that it is not applied in a manner constituting arbitrary or unjustifiable discrimination between Members or a disguised restriction on international trade. Arguably, it is not likely that countries like China or Japan, in which these products are manufactured and sold, will object to such a ban. There are only a few cases in the WTO in which it was held that trade restrictions that were adopted based on public morals breached GATT rules. And in those cases, the import and export ban affected products whose exportation was important to the objecting member state's economy. This can most likely not be said about childlike sex dolls.

A ban on childlike sex dolls could arguably also be justified on grounds of public morality and public policy, according to article 36 TFEU, and would thus be compatible with the freedom of goods enshrined in articles 34 and 35 TFEU. Both exceptions do not depend on a common conception shared by all Member States and the ECJ does allow some discretion as to their interpretation. Yet, a quantitative restriction on childlike sex dolls "shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States." This means that Member States need to make sure that not only the importation of childlike sex dolls is prohibited but that also the manufacturing and marketing of these products is proscribed in their own territory.

4.3. Dutch laws and policies and practice

- 3) What are the experiences of the Dutch police, prosecution and customs with childlike sex dolls and childlike sex robots?
 - a. In what situations did they encounter these objects?
 - b. In connection with which criminal acts did they encounter these objects?
 - c. What characteristics did these dolls have (realistic or not? also robots? etc.)?
 - d. How often did they encounter them (do they have any idea of the extent of the phenomenon?)

Interviews with experts revealed that it was in 2016 that Dutch customs first encountered childlike sex dolls, which led them to examine this phenomenon more closely. Annually, customs detect \pm 30 childlike sex dolls, although there was a temporary decline during the corona pandemic. After the measures have been lifted, there was an increase again. The dolls are usually purchased *via* the internet, come mainly from China and are imported into the Netherlands by plane, often under a 'neutral' label. The dolls vary in length, but customs use a maximum length of 1.50 metres (including head) as a guideline. The dolls usually depict children between the age of 7 and 11, although 'younger' dolls are also found. To determine the age category of the dolls, the length of the doll and the child's facial expression are taken into account. But also other attributes, such as children's clothes, pacifiers and cuddly toys, that are sent with the dolls, may contribute to this conclusion.

The skin is made of silicone and some dolls even have technology to heat up the skin. Furthermore, the dolls are usually realistic, although sometimes certain intimate body parts, such as the breasts, are enlarged. The sexual purpose of the dolls is mainly deduced from the presence of body openings, but the police also find forensic traces of sexual use on the dolls or they find footage of the suspect having sex with the doll.

Currently, customs are withholding the dolls only as part of their fiscal task. As soon as the declared customs value turns out to be correct or as soon as customs duties have been paid, the dolls are released. Customs do not destroy these objects, for instance, on the basis of article 197 DWU (*Douanewetboek van de Unie*). However, a work instruction has been drawn up to make it easier for customs agents to spot shipments with childlike sex dolls. As soon as the agents suspect that they have come across a childlike sex doll, the *Douane Landelijk Tactisch Centrum* is called in. A number of experts working at this Centre will then assess whether the doll is indeed a childlike sex doll. In practice, this assessment sometimes leads to interpretation problems regarding the age and regarding the question as to whether it is a simple doll or a sex toy. In most cases, however, it is clear that it is a childlike sex doll.

In practice, the police also sometimes come across childlike sex dolls, though often by coincidence. The regional departments of the police find the dolls, for example, as by-catch in an investigation into a sexual offence. The dolls can play a role in tracing these offences - for example, during interrogations - and they can therefore be confiscated for the purpose of establishing the truth. As soon as the investigation phase ends, however, there legal basis for seizure ceases to apply. In practice, in at least one region, attempts are made to get the owners to voluntarily give up the dolls.

Despite obligations of secrecy, customs and the police have started to cooperate in this area. As soon as the *Douane Landelijk Tactisch Centrum* decides that a childlike sex doll is involved, the name and address of the recipient are passed on to contact persons within the Team Fight against Child Pornography and Child Sex Tourism of the National Unit (*Team Bestrijding Kinderporno en Kindersekstoerisme van de Landelijke Eenheid*) after consulting an internal lawyer. No other data are shared. This team then carries out a background check in the hope that the combination of the report and the check will form sufficient basis for establishing reasonable suspicion (e.g. of child pornography or child sexual abuse) and for carrying out investigative measures. So far, it was only in one case that this approach has led to the search of the suspect's home and this case is still being tried. The approach described above has been assessed internally and approved as legitimate, yet it remains somewhat artificial. The customs and police experts interviewed therefore unanimously advocate an explicit ban on childlike sex dolls in the Netherlands.

Two experts in the field of psychological care for paedophiles and paedosexuals were also interviewed. In practice, they hardly ever came across childlike sex dolls. One of the experts had, however, spoken with a few users of a childlike sex doll who believed that the dolls had a protective effect.

4) Does the current Dutch legislation provide a basis to tackle the possession, sale, importation etc. of childlike sex dolls/childlike sex robots?

With the help of desk research and interviews with Dutch experts, an attempt was made to identify provisions from criminal law, private law, customs law, administrative law and international law that could apply to childlike sex dolls. It is not certain whether all these provisions are actually applicable: no provisions have been found that explicitly refer to childlike sex dolls, nor has jurisprudence been found concerning these objects.

Criminal law: As far as criminal law is concerned, we concluded that article 240 of the Dutch Criminal Code (distribution of indecent images or objects), article 240a (distribution of pornography to minors) and article 240b (distribution of child pornography) could, in certain circumstances, be applicable to behaviours involving childlike sex dolls. However, all these criminal provisions have important

limitations and will, thus, probably only play a minor role in practice. Article 240 of the Dutch Criminal Code is limited to behaviour in public, article 240a only applies if the dolls are shown to 16-year-olds, and article 240b only refers to realistic sexual images of childlike sex dolls. The majority of the behaviour regarding childlike sex dolls do therefore not fall within the scope of these criminal offences. The recently proposed article 240c of the Dutch Criminal Code (providing the opportunity, means or information for child abuse) seems to be applicable in special circumstances only, for example, when the dolls are used as demonstration material during information sessions.

Private law: Private law also offers various possibilities, yet its application is limited in practice, too: in the absence of a direct interested party, the civil law options will often remain unused. If the childlike sex doll is modelled after a real existing child, it is probably possible to use article 21 of the Copyright Act (*Auteurswet*). Should this not succeed, for instance, because there was no required publication, article 6:162 of the Dutch Civil Code may serve as a catch-all provision in this situation. Furthermore, contracting parties to an agreement concerning childlike sex dolls may be able to contest the legal act due to a violation of good morals (article 3:40 of the Dutch Civil Code). After all, there is a good chance that childlike sex dolls are contrary to current sexual morals. Nevertheless, most contracting parties will have no reason to contest the contract. Finally, article 3:305a paragraph 6 of the Dutch Civil Code offers (idealistic) interest groups the possibility to fight against childlike sex dolls in order to protect collective interests.

Customs legislation: Customs can currently stop the dolls in case there are questions regarding the customs value. However, once the correct value has been determined and the compulsory customs duties have been paid, the dolls must be released again. As long as childlike sex dolls are not banned, they cannot currently be confiscated or destroyed on the basis of article 197 and 198 *DWU*.

Administrative law: Municipality laws (*APV's*) offer the opportunity to prohibit open forms of offering, selling etc., childlike sex dolls in sex shops. Presumably, however, the sale and rental of the dolls cannot be prevented *via* this route on its own, as there is no link with public order.

International law: Finally, in the context of international obligations, the 1923 Convention for the Suppression of the Circulation of and Traffic in Obscene Publications and the 1964 Universal Postal Convention were examined. The first convention does oblige its contracting states in Article 1 to criminalise 'obscene objects', but since the Netherlands terminated the convention in 1985, this obligation no longer applies to the European part of the Kingdom. However, the Universal Postal Convention is in force and a best efforts obligation to prohibit the sending of childlike sex dolls can be derived from it. Possibly PostNL can already stop such 'obscene' shipments.

4.4. Childlike sex dolls in other countries

- 5) In which countries has a discussion about a ban on childlike sex dolls/childlike sex robots taken place in the last five years?
- 6) How has a ban on childlike sex dolls/childlike sex robots been implemented in six different countries?
 - a. Do any legal exemptions to the ban apply (e.g. art exemption)?
 - b. What is the prosecution policy?
- 7) What is known about the application of the prohibitions in practice? For example, do suspects have to be prosecuted or is diversion possible? If diversion is possible, in what kind of situations? What punishment is imposed?

Although there is currently no empirical evidence of the harmfulness of childlike sex dolls, more and more countries have prohibited this phenomenon or are considering a prohibition. Australia, Germany and Denmark are examples of countries that have introduced an explicit ban on the possession, etc., of childlike sex dolls. Portugal, the Czech Republic, Norway and Sweden have chosen a different approach: in these countries, existing criminal provisions on (virtual) child pornography have been interpreted in such a way that they also cover childlike sex dolls. In Canada, the United Kingdom and Austria, the import, sale, etc. of childlike sex dolls is prohibited according to customs and obscenity laws. In the US, the criminalisation of childlike sex dolls was considered, but a bill was ultimately rejected. Also in Denmark, a bill to criminalise the purchase and possession of child-sex dolls was rejected in 2016. Yet, a ban was eventually adopted in 2022.

We have analysed and discussed the laws and policies of six countries in which childlike sex dolls are currently prohibited in one way or another: Australia, Germany, Denmark, Norway, the United Kingdom and Austria. In many of the examined legal systems, reports about the phenomenon of childlike sex dolls started to emerge in 2016. In the UK, Norway and Australia, customs officers sounded the alarm about the discovery of childlike sex dolls. In Germany, law enforcement agencies came across these objects during investigations of child sexual abuse. The examined countries adopt different approaches to dealing with this newly emerging phenomenon. Whereas, in Australia, Germany and Denmark, the legislator adopted an explicit prohibition of childlike sex dolls, the law enforcement authorities in the UK, Austria and Norway apply existing laws to childlike sex dolls. In the UK, importing, distributing and selling these objects is considered an offence contrary to customs and obscenity laws. Also in Austria, childlike sex dolls are covered by obscenity laws. In Norway, the existing criminal provision on child pornography is used to prosecute and convict individuals that import childlike sex dolls.

Scope of the offences: The scope of the offences applicable to childlike sex dolls differ in the examined legal systems. In Australia, Germany, Norway and Denmark, the prohibitions cover a wide range of behaviours, including producing, advertising, distributing, selling or in any other way transferring childlike sex dolls as well as acquiring and possessing these objects. In the UK, only importing, distributing and selling a childlike sex doll is an offence, whereas the simple possession of such an object is not. Also in Austria, the simple possession of childlike sex dolls is currently not a criminal offence. Only producing, importing, offering and distributing these objects is but only if the individual engages in these behaviours with the intention to profit. Thus, individuals that acquire and import childlike sex dolls for their personal use are not covered by the Austrian prohibition.

Protected legal interests: The national laws that are applicable to childlike sex dolls pursue a variety of legal aims. In Germany, the explicit prohibition of childlike sex dolls was adopted with the objective to protect children from sexual abuse. The newly introduced offence is based on the assumption that childlike sex dolls will increase the danger of indirectly promoting the sexual abuse of children. In addition, the German ban seeks to prevent the sexualisation of children and the normalization of child sexual abuse. Also the Australian legislator was convinced that the use of childlike sex dolls would increase the risk of sexual abuse of children. Yet, the explicit prohibition of these objects sex dolls does not only seek to protect children's freedom from sexual abuse. It is also based on ideas of moral protection and the need to robustly stamp out an 'abhorrent new trend'. In Denmark, the legislator did not specifically mention the protection of children from sexual abuse as the *ratio legis* of the ban on childlike sex dolls. The prohibition solely aims to prevent the normalisation of sexual abuse of children and the sexualisation of children. Also in Norway, childlike sex dolls are considered to sexualize children and are therefore classified as child pornographic material. The Norwegian offence

relating to child pornographic material aims to protect children's freedom from sexual assaults. In Austria and the UK, childlike sex dolls are currently considered as obscene or indecent articles, according to customs and obscenity laws. These laws have a clear moral basis, aiming to protect public morals rather than to prevent inciting crime.

Prescribed sanctions: The prescribed penalties strongly differ in the examined legal systems. In Germany and Denmark, the sanctions for producing, advertising, selling or in any other way transferring a childlike sex doll (fine or max. 5 years/fine or max. 1 year) is higher than for acquiring and possessing them (fine or max. 3 years/fine of max. 1 year). Arguably, this is because the possession of such objects, which remains private and does not involve others, is less culpable than their production and distribution. In Germany, the sanctions prescribed for offences involving a childlike sex doll are significantly lower than those for offences relating to child pornographic material. In Denmark, on the contrary, the penalty for possessing a childlike sex doll does reflect the penalty prescribed for possessing and distributing actual child abuse material. In both Norway and Australia, childlike sex dolls are classified as child abuse material. The penalties prescribed for offences involving a childlike sex dolls are equivalent to offences relating to actual child abuse material (fine or max. 3 years/max 15. Years). In addition, no distinction is made in terms of penalties between acquiring and possessing child abuse material, on the one hand, and producing, publishing, selling etc. such material, on the other hand.

Mens rea: The national offences relating to childlike sex dolls differ with regard to the fault element. In the UK, for the offence contrary to the CEMA to be committed, there must be a "knowing acquisition" of a childlike sex doll. Thus, the prosecution must prove that the defendant, who acquired a childlike sex doll, knew that the importation and exportation of such an object is currently prohibited. The German and Danish ban on childlike sex dolls require the offender to act with intention, negligence is not sufficient. Thus, the prosecutor must prove that the offender knew that he acquired a doll with childlike features and a sexual purpose or that he was at least aware of and accepted the risk that the doll that he bought might be a childlike sex doll (*dolus eventualis*). Unlike in the UK, prosecutors in Germany and Denmark do not need to prove that the offender knew that the acquisition of such an object is illegal. In Norway, negligence is sufficient for the offence in § 311 NCC to be committed. Hence, the offender is already criminally liable for acquiring and possessing "a depiction that sexualises children" if he acted negligently. Australian law differs greatly in that it does not require any knowledge of the defendant. The ban provides for an objective test requiring that "a reasonable person would consider it likely that the doll or other object is intended to be used by a person to simulate sexual intercourse". However, the individual acquiring and possessing a childlike sex doll is not required to know that the doll is to be used for sexual purposes.

Legal exemptions: In all examined legal systems, there are exemptions from the ban on childlike sex dolls. In Australia, an individual is not criminally responsible for possession such an object if this was of public benefit. This is the case if law enforcement or security officers, or individuals assisting the administration of justice engage into the unlawful conduct as part of their duties. Furthermore, criminal liability does not arise if an individual possessed a childlike sex doll for scientific, medical or education research that has been approved by the Australian Federal Police Minister in writing. In Germany, an individual is not liable for transferring or possessing a childlike sex doll if this "exclusively serves the lawful fulfilment of state duties or official or professional obligations". The *travaux préparatoires* do not clarify whether a childlike sex doll can also be possessed for scientific, medical or educational purposes, like in Australia. Norwegian law knows rather wide legal exemption. It provides that the offence criminalizing "depictions of sexual assault against children and depictions that sexualize children" does not apply to "depictions that are considered justifiable from artistic, scientific,

informative, or similar purposes". In the UK, an individual will not be liable for selling or disturbing a childlike sex doll within the UK if he did so for an artistic, educational or scientific purpose. However, such a defence does not apply to the importation of childlike sex dolls into the UK. In Denmark and Austria, no legal exemptions are applicable to offences involving a childlike sex doll.

Enforcing the offences: In the UK, Australia and Norway, a number of individuals were already prosecuted for offences involving a childlike sex doll. In Germany and Denmark, on the contrary, there is no case law on the recently introduced ban on childlike sex dolls available yet. In Austria, the discovery of a childlike sex doll by UK border forces in one case led to investigations based on the suspicion of sexual abuse of children. In all examined legal systems, producing, distributing and selling childlike sex dolls constitutes a criminal offence. Yet, looking at the accessible case law available in these three countries, individuals were so far almost exclusively prosecuted for importing, acquiring and/or possessing these objects. The manufacturers and distributors are usually located in other jurisdictions (China and Japan), where childlike sex dolls are often not prohibited, which is why law enforcement authorities in the receiving countries usually only target the end users of childlike sex dolls.

It is also noteworthy that in almost all cases investigated, the suspects were found guilty not only of acquiring and/or possessing a childlike sex doll, but also of possessing child abuse material. According to estimates by the UK National Crime Agency, the discovery of childlike sex dolls would indeed lead to searches in 75% of cases where actual child pornography material in digital format was found in the suspect's home. However, it is also likely that law enforcement agencies in the countries investigated mainly prosecute suspects who have not only acquired and possessed a childlike sex doll, but also actual child pornographic material.

In Germany and Denmark, no case law is available yet on the prohibition of childlike sex dolls. This is because in both countries the bans only recently came into force, in July 2021 and March 2022 respectively. German experts believe that in the future, too, people will not be prosecuted simply for acquiring and possessing child-sex dolls. They argue that the offence of possession in §184I(2) *StGB* will serve as an "investigative provision" (*Ermittlungsparagraf*): if in the course of an investigation against a person suspected of possession of a childlike sex doll child pornographic material can actually be found, the person can be prosecuted for possession of child pornographic material, according to § 184b *StGB*, a crime punishable by a more severe penalty (imprisonment from one to five years). It remains to be seen to what extent the newly introduced ban on childlike sex dolls will be enforced in Denmark.

	offence	prohibited object	scope	prescribed penalties	legal exemptions
Norway	§ 311(1) NCC	a depiction that sexualizes children	produce, publish, offer, sell, transfer to another, make available, or in any other way attempt to distribute, acquire, import, or possess or intentionally gain access, give a public lecture, or organises a public screening or exhibition	fine or max. 3 y	if justifiable from artistic, scientific, informative, or similar purpose, films or videogames approved by Media Authority
Australia	sec. 273A.1ACCA sec. 233BAB(5) and 233BAB(6) CA Subdiv. B of Div. 471, Subdiv. D of Div. 474 ACCA	a doll or other object that resembles (i) a person who is, or appears to be, under 18 years of age; or (ii) a part of the body of such a person child abuse material"	posses intentionally import/export possess, control, produce, supply or obtain	max. 15 y 2,500 fine or max. 10 y max. 15 y	if it is of public benefit: part of state duties; for scientific, medical or education research upon approval of Ministry
Germany	§ 184I GCC	a physical replica of a child or a part of a child's body which, by its nature, is intended for the performance of sexual acts	manufacture, offer or advertise, trade or transport into or through the territorial scope of this Act, or without trading, sell, transfer or otherwise place on the market acquire, possess or transport into or through the territorial scope of this Act	Fine or max. 5 y fine or max. 3 y	if it exclusively serves the lawful fulfilment of state duties or official or professional obligations
Denmark	§ 235a DCC	a doll that appears as a child and which is designed for a sexual purpose	manufacture or sell or otherwise hand over posses	fine or max. 2 y fine or max. 1 y	no
UK	sec. 42 CCA and sec. 170(1)(a) CEMA sec. 2(1) OPA sec. 85(3)(b) PSA	indecent or obscene articles whose import or export is prohibited obscene article indecent or obscene material	knowingly acquire possession whether for gain or not, publish or have for publication for gain send postal packets by post	fine and/or max. 5 y fine and/or max. 5 y fine and/or max. 12 months	 if in the interests of science, literature, art or learning
Austria	§ 1 Pornography Law	obscene articles	production, import and distribution with the intention to profit	max. 1 y (and fine)	no

4.5. Possible criminalization of childlike sex dolls

- 8) Which arguments for and against criminalizing childlike sex dolls play a role in the Netherlands and abroad?
- 9) What are the criteria for criminalizing childlike sex dolls?

Buisman's version of the principles of criminalization was used to structure and analyse all the arguments for and against legally banning childlike sex dolls that were found in academic literature and mentioned in the interviews with Dutch and foreign experts. We did not expect to arrive at a clear answer to the question as to whether or not childlike sex dolls should be prohibited: after all there are good arguments both for and against criminalisation. The final choice will partly depend on the relative importance that the legislator attaches to the various principles and arguments. In addition, a number of arguments were found that did not fit into the framework one-to-one, but which can be important to the legislator if a decision is made to criminalise. The table below summarises all the arguments:

Threshold criteria: harm, unlawfulness and legal interest	
Harm principle	Arguments against criminalization
	There are no direct victims; there is no direct harm.
	There is no empirical evidence whether or not the use of childlike sex doll would prevent or encourage the sexual abuse of children. There is also no empirical evidence to support the assumption that childlike sex dolls normalise sex between adults and children. According to some experts, the dolls do not have a normalising effect because of their 'creepy' appearance. Parallels can possibly be drawn with studies on pornography and the increase or decrease of sexual violence against adults or the influence of porn on attitudes towards women, but these studies are also inconsistent in their conclusions and the question remains whether they can be applied to childlike sex dolls. Thus, before we proceed to criminalisation, the (causal) connection between the two must first be investigated.
	If it were to turn out that childlike sex dolls have a protective effect, criminalisation would be counterproductive.
	Criminalisation is an infringement on the individual freedom of sexual self-development or expression of users. Since we do not know whether childlike sex dolls are indirectly harmful, we cannot make a proper assessment in light of the principle of tolerance.
	Since the harmfulness of childlike sex dolls cannot be established, only moral grounds remain. These are insufficient for criminalisation because of the infringement on individual freedom (<i>in dubio pro libertate</i>).
Harm principle	Arguments for criminalization
	It is possible that childlike sex dolls increase the risk of sexual abuse of children (for a certain subgroup of users). As long as we cannot exclude this risk, we should ban these objects for the sake of certainty and in the interests of the child.
	There is evidence of a link between childlike sex dolls and other criminal offences against children. In England, law enforcement authorities found child pornography in 75% of the searches carried out when a childlike sex doll was found by customs.

	It is possible that childlike sex dolls have a negative influence on the sexual development of children who are confronted with these dolls, or on the general perception of sex with children.
	[Alternative to Harm Principle I] Criminalisation could be based (in part) on the potential risk of harm. This happens more often nowadays. The risk of harm is usually assumed relatively easily, even when little empirical evidence is available. Through a more qualitative interpretation of the principle of harm, childlike sex dolls could be brought within the scope of the principle of harm. It is important to note that child abuse is considered to be very serious. This great importance 'compensates' to some extent for the great scientific uncertainty surrounding the link between the use of childlike sex dolls and child abuse.
	[Alternative to Harm Principle II] Criminalisation could be (partly) based on normative grounds. This also happens more often nowadays. There are good reasons to find childlike sex dolls morally reprehensible. They may affect the respect for real children and, moreover, they go against the prevailing sexual mentality in society.
	Criminalisation fits in with the current <i>Zeitgeist</i> , in which we can observe an overall 'pacification' of society and legislation based on morals.
Unlawfulness	Arguments against criminalization
	Principle of guilt: In practice, it is to be expected that suspects will defend themselves by pleading ignorance (I did not know it was a sex doll; I did not know it was a doll representing a child). However, on the basis of taking into account all kinds of attributes of the doll (length, presence of body openings, child attributes, manner of advertising, etc.) it will often be possible to construct the required intent. This also happens abroad. This does not alter the fact that doubtful cases will remain. In that case, the verdict will have to be in favour of the suspect.
	Principle of unlawfulness: The dolls may have a therapeutic effect on paedophiles and paedosexuals. In some countries, therapeutic use is therefore included in the law as a ground for exclusion from punishment. It can be argued that the interviewed therapists had never heard of such therapeutic use of childlike sex dolls and could hardly imagine such a thing. Also, there are therapeutic alternatives available and the use of a doll in this sense is not necessary. However, should future research show that childlike sex dolls do indeed have a therapeutic effect, this could rule out the possibility of punishment in individual cases (by means of dismissal or due to a lack of unlawfulness).
Unlawfulness	Arguments for criminalization
	N/A
Legal interest	Arguments against criminalization
	It is difficult to determine the <i>ratio legis</i> of a possible criminalisation because of the uncertainty regarding the potential indirect harm.
	Abroad, the legal interests that are protected by the ban on childlike sex dolls vary from keeping society safe from immoral materials, to preventing the sexualisation of children and protecting children from sexual abuse.
Legal interest	Arguments for criminalization
	Most experts support the protection of children against sexual abuse as the (primary) legal interests to be protected. For some experts, however, this only applies when the threshold-lowering effect of childlike sex dolls is scientifically demonstrated.

	Criminalisation of childlike sex dolls could - through associated investigative powers - contribute to the detection of other, much more serious criminal offences, such as possession, production etc. of child pornography or child sexual abuse. We see this use of substantive criminal law more often these days (terrorism). Critics, on the other hand, consider it an improper use of substantive criminal law.
Justification: prospective proportionality, ultima ratio, effectiveness	
Prospective proportionality	Arguments against criminalization
	Because we cannot make a substantiated estimation of the harm, it is difficult to weigh the disadvantages of criminalisation, such as infringement of individual freedom, stigmatisation, extra enforcement resources, against the intended objective.
	Criminalisation of childlike sex dolls costs extra resources and money. There is already limited resources within criminal law enforcement. Any extra resources would be better spent on fighting real child sexual abuse.
	Possible criminalisation as a sexual offence has an extra stigmatising effect.
Prospective proportionality	Arguments for criminalization
	The vulnerable position of children; the fact that child sexual abuse is seen as very serious; the fact that there are moralistic objections against childlike sex dolls and the fact the offence will (probably) require intention (<i>dolus</i>), all contribute to the conclusion that the use of childlike sex dolls is sufficiently serious for legislative action.
<i>Ultima ratio</i>	Arguments against criminalization
	We have not yet tried all alternatives to criminalisation in the fight against childlike sex dolls, such as agreements with manufacturers, awareness-raising campaigns within the logistics sector or education. Also in legal terms, we should first explore alternative routes. Based on the idea that criminal law should be used as a last resort, alternatives are preferable for the time being, until they prove to be insufficient. For that matter, this may mean that the legislator will still have to introduce changes in the law, but in other areas of the law, because at the moment not all conduct involving childlike sex dolls is 'covered' by legal alternatives to criminalisation.
<i>Ultima ratio</i>	Arguments for criminalization
	<i>Ultima ratio</i> has long ceased to be a guiding criterion.
Effectiveness	Arguments against criminalization
	Making a clear, well-defined offence description be difficult. In practice, problems are expected in defining, recognising and qualifying dolls as childlike sex dolls (more on this under legality).
	Criminalisation will probably have an impact on the appearance of the dolls and the behaviour of the users, producers, etc. More attempts will be made to disguise the sexual purpose and/or age of the doll. Moreover, in the future, users will have to use illegal routes to obtain the dolls, which makes them more likely to come into contact with other illegal materials and bad influences.
	Limited resources within criminal law enforcement reduce the possibility of an active investigation, especially in the case of private possession, and thus reduces the chance of suspects being caught. The limited resources should moreover better be used for the detection of more serious crimes. Some people are already talking about 'symbolic legislation' in this context. On the other hand, targeted checks by customs, combined with occasional random hits by the police, might already suffice

	in terms of investigative efforts. Cooperation with the private sector could also facilitate detection.
	There are no scientific studies on the general preventive effect of a ban on childlike sex dolls. However, since the behaviour stems from sexual urges, which are usually difficult to curb, there is a chance that a ban will not have a preventive effect, but will merely cause the behaviour to go 'underground'.
	Alternatives, such as counselling, may be much more effective in terms of prevention.
Effectiveness	Arguments for criminalization
	Capacity considerations are hardly an obstacle to criminalisation these days.
	It is possible that a combination of criminalisation with administrative and other measures, such as counselling, could be effective in combating childlike sex dolls.
Formulation: internal subsidiarity, legality and retrospective proportionality	
Internal subsidiarity	Arguments against criminalization
	The argument that childlike sex dolls can have a normalising effect on children does not necessitate separate criminalization of the dolls. After all, this situation is already largely covered by article 240a of the Dutch Criminal Code.
Internal subsidiarity	Arguments for criminalization
	Behaviour concerning childlike sex dolls is currently hardly/not at all covered by other penal provisions.
	The criminalisation of virtual child pornography had, among other things, the objective 1) to protect children from being enticed to have sex with an adult and 2) to combat a subculture that promotes the abuse of children or tries to present it as normal. The ban on childlike sex dolls could also contribute to these two objectives. Since the legislator has previously indicated that it wishes to protect these legal interests, other ways in which these legal interests may be threatened - in this case by means of childlike sex dolls - should also be prohibited for reasons of internal consistency. This points to a gap in criminal legislation.
Legality	Arguments against criminalization
	The study reveals a differentiated picture of how best to design a ban on childlike sex dolls: as a separate criminal offence or under an umbrella provision? Also in other countries, different options have been chosen. Although various Dutch experts have a preference for a separate offence - preferably somewhere close to article 240b of the Criminal Code - this would contribute to further expanding the 'patchwork quilt' that currently characterises the Dutch Criminal Code. This is at a time when the legislator is striving for a more coherent and compact legislative framework on sexual offences. Banning childlike sex dolls by adapting articles 240b or 240c of the Criminal Code would prevent this patchwork and also save time.
	According to some, the great variety of dolls makes it difficult to define a clearly delineated offence. Especially the sexual purpose and the age category of the dolls can cause problems, although most of the problems seem to be not so much related to the offence definition, but mainly to the interpretation of offence elements in practice. For example, criminalising dolls <18 years of age seems defensible, but in practice it will be difficult to distinguish dolls between 15 and 18 years of age from adultlike dolls, when we can only rely on the doll's appearance.
	There is disagreement as to whether unrealistic dolls should be criminalised as well. Proponents argue that also these dolls are morally reprehensible or that these dolls could also increase the risk of child sexual abuse. Others, however, point out the

	internal consistency with article 240b of the Criminal Code (virtual child pornography) that is also limited to realistic material. They refer to problems with <i>lex certa</i> or they refer to the problem that the scope of the offence could then become very broad ('all cuddly toys are punishable').
Legality	Arguments for criminalization
	There seems to be more consensus regarding other aspects of a possible criminal offence definition. If a decision is made to prohibit, then that prohibition should also apply to parts of dolls and childlike sex robots, it should apply to dolls < 18 years of age and the criminal provision should include all behaviours involving childlike sex dolls, including private possession.
Retrospective proportionality	Considerations regarding punishment
	An appropriate maximum penalty will have to be determined, based on the chosen <i>ratio legis</i> . If the main focus is on more moral objectives, such as the protection of morals, then a sanction similar to 240 of the Dutch Criminal Code (distribution of pornography) may suffice; if the protection of children against sexual abuse is the main aim, then the sanction in article 240b of the Criminal Code (child pornography) should be used.
Other considerations	
	A ban on childlike sex dolls may have a domino effect. From the perspective of the legal interest and internal consistency, consideration should at least have to be given to possible other behaviours that might also have a negative influence on public morals, the sexualisation of children and the risk of child abuse. Moreover, if the choice is made to criminalise unrealistic childlike sex dolls, article 240b of the Dutch Criminal Code may also have to be extended to unrealistic depictions of sexual behaviour with children.
	A waterbed effect is to be expected in the supply of childlike sex dolls. These objects will no longer be sent directly to Schiphol or Eindhoven, but will enter the Netherlands more often through the open borders with other EU countries. Hence, action at EU level is recommended.