

Nordic Prostitution Policy Reform

A comparative study of prostitution policy reform in the Nordic countries

- [Field Notes](#)
- [Neighbours](#)
- [Project news](#)
- [Prostitution policy news](#)
 - [Denmark](#)
 - [Elsewhere](#)
 - [Finland](#)
 - [Norway](#)
 - [Sweden](#)
- [Relevant Literature](#)
- [Upcoming Events](#)

The sale of sexual services in Norway: legal, but still illegal?

Posted by [Gregg Bucken-Knapp](#) on 10/07/11 • Categorized as [Norway, Prostitution policy news](#)

by [**Sunniva Schultze-Florey**](#)

The sale of sexual services has been a legal act in Norway since 1902. With the law reform of 2009, criminalising the purchase of sexual services, politicians once again underlined that the sale of sexual services should not be punishable. But even though selling sexual services in and of itself is not criminalised, some aspects associated with selling sexual services are not legal. One example is that prostitutes are not granted the right to damages for loss of income generated by prostitution.^[1] This question has been the focus of some recent court decisions, and there has been an important shift in the way this question has been addressed by the courts.

The right to damages for loss of income generated by prostitution

There has been a series of court cases before the Borgarting County Court (*Borgarting*

Lagmannsrett) regarding damages for loss of income that would have resulted from prostitution. The cases involve prostitutes who have been unable to work after an assault, and where they have claimed damages before the court. Generally, the main rule in the law on damages is that perpetrators must pay damages he or she has caused to another person.[2]



Borgarting County Court (Photo by Anne-Sophie Ofrim)

The first set of cases regarded assaults that had happened before the law criminalising the buying of sexual services came into force. In May 2006, Borgarting County Court ruled that income generated from prostitution was included in the right to damages, and granted four prostitutes damages for loss of income by prostitution.[3]

Similarly, in May 2007, the same court ruled that the law on damages protected income generated by prostitution.[4] The majority stated that there were no reason for excusing the perpetrator from the responsibilities following from having made someone unable to work, simply because the income was generated by prostitution. In its dissent, the minority argued that the law on damages could not protect undocumented income resulting from work performed by an illegal immigrant in a sector that some consider undesirable.

A third case was brought before Borgarting County Court in May 2008, and here too, the court was divided.[5] The majority held that income generated by prostitution was legally protected, granting the two prostitutes damages. By contrast, the minority argued that a contract regarding prostitution was

immoral and that damages claim were therefore not legally protected.

Yet, following the adoption of the Norwegian ban on the purchase of sexual services in 2009, the court opted for a different stance when considering similar cases. The first case to reach the courts following the adoption of the sex purchase ban was in March 2010.^[6] Here, the court held that income generated by prostitution would not be included as part of damages, with the court arguing that prostitution was immoral and therefore not protected by the law. The court was unanimous when ruling that income generated by prostitution is not legally protected under the Norwegian law. The case concerned a prostitute who lawfully could reside and work in Norway, who had been assaulted and therefore was unable to work as a prostitute for a period of time. The court argued that even though the sale of sexual services was legal, prostitution as such was seen as an unwanted activity in Norway. The court held that by criminalising the act of buying sexual services, the parliament had highlighted that prostitution was unwanted. The main argument from the court was that a contract regarding prostitution was to be deemed as against honour, or immoral, and thereby not binding between the parties, cf. the Norwegian Act of 1687, section 5-1-2.^[7] As such, the court held that if the contract did not have legal protection, and buying was criminalised, it would not be consistent to grant legal protection to the prostitute's loss of income.

The state as a public pimp

Another interesting aspect with the legal regulation of prostitution in Norway is that the prostitutes are under the duty to pay tax from income generated by prostitution. Under Norwegian tax law, all income and money on bank accounts must be declared for taxation purposes. Where one cannot declare the source of the income, one will have to pay an estimated tax. Income from prostitution is assessed for tax, and prostitutes have to pay tax on the money in their accounts.^[8] This is a tricky subject, because by imposing tax on this income, the state profits from their prostitution, not dissimilar to a pimp. In some situations, the prostitutes will have to continue to work as prostitutes to work off the tax^[9], making the difference to an ordinary pimp small. Kristin Halvorsen, the Minister of Finance at the time, **stated in 2006** that she would consider proposing a tax-exemption for income generated by prostitution. A law reform has not yet been adopted.

None of these subjects, neither taxes nor damages, has come before the Supreme Court yet. The discrepancy of being a legal business on the one hand and the lack of rights on the other hand does create a problematic legal situation. These cases have show that, even though prostitution is legal in

Norway, there is a discrepancy in the regulation when it comes to income generated by prostitution. Had the prostitutes generated the said income from other sources, they would have been granted damages for their loss. The person, who assaulted the prostitute, does under the current legal regulation have to pay less in damages for assaulting a prostitute, as someone having income from other sources. A clarification from the Supreme Court, or a clearer regulation adopted by the Parliament would be helpful.

(Sunniva Schultze-Florey has a Masters in Law from the University of Bergen, Norway, and is currently a Ph.D. student at Humboldt University of Berlin, Germany. She can be contacted at: [sunniva.schultze.florey \(at\) gmail.com.](mailto:sunniva.schultze.florey@gmail.com))

[1] Other criminalised aspects are soliciting, the act of attracting clients for prostitution, and publicly advertising for prostitution, are criminalised. See the Norwegian Criminal Code section 378 and section 202(3).

[2] The Damages Act section 3-1(1), Norwegian name Skadeerstatningsloven.

[3] LB-2005-138054.

[4] RG-2007-1083.

[5] RG-2008-1137.

[6] LB-2009-93028.

[7] Norwegian title, Kong Christian den Femtis Norske Lov, “Alle Contracter som frivilligen giøris af dennem, der ere Myndige, og komne til deris Lavalder, være sig Kiøb, Sal, Gave, Mageskifte, Pant, Laan, Leje, Forpligter, Forløfter og andet ved hvad Navn det nævnis kand, som ikke er imod Loven, eller Ærbarhed, skulle holdis i alle deris Ord og Puncter, saasom de indgangne ere”.

[8] The Tax Assessment Act of 1980 section 8-2, Norwegian name Ligningsloven, cf. the Tax Act of 2000 section 2-1(9), Norwegian name Skatteloven.

[9] Gregar Berg-Rollness Bestikkelser/korrupsjon og uønskede aktiviteter – skatteplikt for ulovlig inntekt, in Skatterett, 2007 number 3, pp 198-215, p 199.

Related posts:

1. [Contra bonos mores and the sex purchase ban in Norway](#)
2. [Norway bans the purchase of sexual services](#)
3. [UK Legal Rulings: Sex Trafficking Victims and Sex Workers](#)
4. [Race and prostitution in Norway](#)
5. [Evaluating the Swedish Ban on the Purchase of Sexual Services: The Anna Skarhed Report](#)

Tagged as: [norway](#), [prostitution policy](#)

Leave a Response