Sex work with rights

A Proposal for Decriminalisation and Inclusion in Labour and Social Security Law

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BEYOND MORALITY:
Reality

"Sex work is... So much work! To overburden it with our inherited morals."

Putas migras,
OnA ediciones. 2021

The aim of this study is to elaborate a possible legal solution for sex work in Spain from and for sex workers.

The approach taken is pragmatic in nature: how to improve the situation of sex workers and guarantee their rights. **We do not intend to make a value judgement about whether sex work is moral or immoral. Making a judgement in the abstract only hinders the search for solutions and worsens the situation of sex workers. Sex work exists, even if it is prohibited. It is just another job that is carried out under the same logic of working to survive as other professions: there is no work that is carried out for pleasure and will, but we generally work because we need to survive. Everything that makes sex work unworthy in comparison to other professions is the result of the fact that those who do it freely and voluntarily have no labour, social security, economic and social rights. Sex work needs to be considered as just another job.**

This is a proposal for the decriminalisation of sex work and its inclusion in the legal system of labour and social security. We propose to decriminalise sex work and its environment, to recognise the occupational nature of the profession, and thus to unblock access to economic, social and labour rights for sex workers. Along with these measures, we must also call for the repeal of the law on foreigners, which adds another layer of criminalisation of sex workers.

We are aware that demanding rights is not the solution, nor does it automatically solve all problems. But having labour, economic and social rights is a tool that allows us all to fight for better conditions. That is why demanding rights for all is a necessary commitment to improve the starting point.

It is curious how certain feminists point to the dignity of women in order to discredit our profession and lead us back to the right path. They forget that for many people, having sex with strangers is not a problem at all. Under this premise of dignity, they try to twist the concept of the workforce. **Absolutely all people who exercise a profession or trade put their body and mind at the disposal of that activity.** They do not sell themselves, as some people pretend we sex workers do. Well, to paraphrase our colleague Ninfa (a street whore for 30 years), if what is considered unworthy is that we use our genitals, our sexuality, to do our work, what is really being pointed out is that the essence of a woman (what must be preserved at all costs) is between her legs, and this premise is deeply patriarchal.

In the eagerness to justify their imaginary and ideology, they end up supporting the idea they claim to fight against: the only importance of women is in sexuality. With this in mind, it is easier to understand why there is an eagerness to talk about prostitution and not sex work, why the other modalities that form part of sex work are not mentioned, or why prohibitionist and/or abolitionist legislation completely ignores men in prostitution.

We want to clarify this point, sex work is an umbrella term for all forms of work in the sex industry between and for adults.

Namely:

→ PORN AND AUDIOVISUAL CONTENT FOR ADULTS

→ DOMINATION AND/OR BDSM PRACTICES

→ PROSTITUTION (SELF-EMPLOYED AND EMPLOYED)

→ WEBCAMERS

→ STRIPERS / POLEDANCE / EROTIC DANCING

This legislative proposal aims to cover all these modalities.

INTRODUCTION

These pages are the result of work coordinated by the OTRAS trade union. We want to explain how it is possible to design a system to protect the rights of sex workers within the framework of the existing legal system of the Spanish state, to analyse the legal obstacles and to demonstrate that if it is not legislated, it is merely because of a moral and classist problem. **This report is made by and for sex workers. For its elaboration, meetings and interviews were held with sex workers from all the different existing sectors who have supervised the proposal and participated in its elaboration.**

Sex work is mainly carried out by women, people with dissident and queer sexualities. It is also carried out, to a lesser extent, by men. Women and men are understood as all those who identify with these categories. The text is written in the feminine, as women make up the majority of sex workers. However, we ask that the words sex worker, whore and prostitute be understood inclusively.

The text has three parts. Part I provides an overview of the historical and current legal situation, the issue of borders and immigration rules, stigma, and existing legal models for dealing with sex work. Part II provides an analysis of the current legal framework for sex work, and the possibilities it leaves open for including sex work in labour and social security law. Part III presents and comments on the OTRAS union's pro-rights, anti-punitivist proposal for sex work with rights.

Part I

STARTING POINT

I. WHERE WE COME FROM AND WHERE WE ARE

History

The position of the Spanish state's legal system with regard to prostitution has varied on numerous occasions. We can date the beginning of its inclusion in the rules to the 13th century, when its exercise was considered as *an "inevitable social evil"* which had to be *"therefore regulated for the common good, allowing to avoid major sins and excesses and to defend the established social order, but not to prohibit"*.[1]

After centuries of permission, sex work was officially prohibited during the reign of Philip IV by means of two Pragmatics issued in 1623 and 1661. The first of these established that *"henceforth in no city, town or place in these kingdoms may it be permitted or allowed in any brothel, public house, where women earn with their bodies".[2] The second ordered the "seclusion of lost women* (prostitutes) *from the Court and their confinement in the Galera"*.[3]

The Spanish Penal Code of 1822 criminalised clandestine prostitution in Articles 535 and 542. Subsequently, the Penal Code of 1848 in Article 357 did not criminalise prostitution per se, but whoever *"habitually or with abuse of authority facilitates the prostitution or corruption of minors to satisfy the desires of another"*, and seemed to refer to the activity being controlled by *"police regulations concerning public women"*.

The regulations developed by the authorities of the city of Madrid, *Reglamento para la represión de los excesos de la prostitución (1847)*, together with those of Zaragoza in 1845, were among the first to appear. In order to better understand the inherited public policies of criminalisation of sex work, we will talk about the Madrid City Regulation. In it, prostitutes were classified into *harlots* and *whores*, the former being those who prostituted themselves to more than one man and the latter those who cohabited with a man without being married.[4] This regulation tolerated the exercise of sex work but subject to obligations for prostitutes, and without recognising any rights for them. However, not all sex work

[1] Pulido Fernández, A.: *Bosquejos médicos sociales para la mujer*. Madrid. Imprenta a cargo de Victor Saiz, 1876, pp. 115-116.
[2] González Del Río, José María: *El ejercicio de la prostitución y el derecho del trabajo*. Editorial Comares, 2013.
[3] Deleito y Piñuela, José: *La mala vida en la España de Felipe IV*. Madrid, Espasa-Calpe, 1967. Guereña, Jean-Louis: *"Los orígenes de la reglamentación de la prostitución en la España contemporánea. De la propuesta de Cabarrús (1792) al Reglamento de Madrid (1847)"*, Dynamis, no 15, 1995, pp. 401-441.
[4] *Reglamento para la represión de los excesos de la prostitución, Imprenta de Corrales y Compañía, Salón del Prado, núm. 8. 1847.* Article 2.

was permitted. The *first kind of whores*, who were street prostitutes who prostituted themselves "in more or less public places", were prosecuted and deprived of their liberty in correctional centres.[5] These regulations also had a clear punitive and stigmatising approach. They required special registers in which sex workers had to be registered (Articles 25 to 32), as well as medical checks they had to undergo.[6] They went so far as to regulate aspects of their private life by prohibiting them, for example, from living in the company of a man, even if he was their father, brother, husband, or their children over the age of seven (Articles 38, 40 and 41). Their freedom of movement was restricted by establishing the times and reasons for which they could leave the house, the clothing and attitude they had to adopt[7] , and they were forbidden to sit in the streets and squares while walking (Article 51). Article 25 recognised the right of prostitutes to request to leave the registry *at any time they wished to leave their bad life*. Women were either owned (husband or father) or were public, considered bad women. There seemed to be no other possible alternative.

At the beginning of the 20th century, an abolitionist stance began to develop on the part of Spanish state institutions as a consequence of the international commitments assumed, and in 1902 the Real Patronato para la Represión de la Trata de Blancas[8] was created, which practically equated voluntary prostitution with the white slave trade.

[5] The whores of the first kind were mainly street prostitutes, who, as always, were the most criminalised and persecuted. The punishment if they were detected exercising their profession was deprivation of liberty. Specifically, the *Regulation for the repression of the excesses of prostitution* in the city of Madrid stated the following:

The harlots of Madrid included in the same species will be detained for the space of one month in the house of correction to be discussed below, the first time they are brought in; for three months the second time; and handed over to the courts, the third time, as incorrigible.
The harlots of the first kind who are not natives of Madrid will be taken by transits of justice to the towns of their nature, the first time they are taken; they will suffer three months' detention in the house of correction, the second time, and when this is finished they will again be taken to the towns of their nature.
If they reoffend a third time, they shall be handed over to the courts as incorrigible.

[6] *Ibid.* Articles 63 to 68.
Article 75 provided that a woman who had transmitted a venereal disease to a client could be sentenced to arrest or even expulsion from the city.

[7] *Ibid.* Article 49: *Tolerated harlots are allowed to go out of their houses during the day, but only to attend to their business if they have any, and in no way to walk in the streets. Daytime outings are to be made in decent dress, with the exclusion of those who by their rarity or dishonesty may cause scandal.*

[8] Nicolás Lazo, Gema, PhD Thesis: *La reglamentación de la prostitución en el Estado español. Genealogía jurídico-feminista de los discursos sobre prostitución y sexualidad*, Departament de Dret Penal i Ciéncies Penals, Universitat de Barcelona, 2007, p. 407.

During the Second Republic, the abolitionist position prevailed and in 1935, all the regulations concerning prostitution were repealed and it was considered illegal as a means of earning a living.[9]

With the arrival of Franco's regime, prostitution was again re-glaminated, and it was not until 1956 that an abolitionist turn was taken, again driven by the international commitments and interests of the Spanish state. In 1941, the regulation of prostitution was re-established by decree through regulations that were enforced by the police. The theological-moral discourse of the dictatorship rescued the doctrine of the lesser sea[10] and as Gema Nicolás Lazo recounts, *"A hypocritical double standard was strongly implanted in a country that proclaimed morality and decency in all its corners, while prostitution establishments proliferated where the créme de la créme of the regime gathered"*.[11] We will dwell a little more on this historical moment because it immediately precedes the current legal situation of sex work, as well as because it continues to sow an ideology about women and sex, and the ways of dealing with sex work in the legal system of the Spanish state.

The Patronato de Protección a la Mujer made four recommendations in its 1942 Report which were the guidelines for Franco's policy on prostitution: *"Public prostitution, the visible one, was to be prohibited because of its injustice and public scandal. Private prostitution, i.e. the invisible, was to be thoroughly regulated. Clandestine prostitution was to be prosecuted and punished, and finally, female prostitutes were to be redeemed as "fallen women"*[12] . Thus, prostitution was dealt with through local regulations (ordinances) aimed at tolerating prostitution while safeguarding morality, which implied the prosecution of clandestine and street prostitution. Prostitutes in registered brothels had to remain locked up and controlled in the brothels, but their existence was tolerated. Working conditions for street and clandestine prostitutes and for those working in registered brothels were equally bad. However, for clandestine and underground sex workers, and for those working in registered brothels, working conditions were just as bad.

[9] The regulations were repealed by the Decree of 28 June 1935, which in Article 1 stipulated: *"The regulation of prostitution, the exercise of which is not recognised in Spain as a lawful means of livelihood, is hereby abolished"*.

[10] Nicolás Lazo, Gema, op. cit., p. 582.

[11] *Ibid*. On p. 577, the author quotes the collected statement of a prostitute arrested at the time: "Brave sons of... these judges. I know them well, very well, madam. And if you were to see them in their underwear, drunk, rowing the chairs, and they don't pay for their sleep, and most nights they do the work for free, but no one says anything to them".

[12] *Ibid*., p. 583.

The police had even more powers to discriminate against them: they *could be detained for up to fifteen days without charge, or be identified as "fallen women" and locked up in a special prison for prostitutes or in a reformatory under the Patronato de Protección a la mujer for "redemption which could last from two months to two years"*[13] , *or be charged with the crime of public scandal; or be deprived of liberty under the Ley de Vagos y Maleantes (Law of Vagrants and Malefactors)*[14] . Ultimately, these regulations and the aforementioned Patronatos were created to control the devastating situation in which many women found themselves in the post-war period, occupying the streets and seeking ways to survive extreme poverty. It was a whole institutional framework that remained in place during the dictatorship in the service of disciplining and controlling poor women.

On 3 March 1956, a new abolitionist Decree-Law was passed which ordered the closure of "tolerance centres" (as brothels and brothels were historically known). This decree had its raison d'être in Spain's entry into the UN in 1955, which required the ratification of numerous provisions, among them the International Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949)[15] . However, Franco's abolitionism was really a prohibitionism that criminalised prostitution in an arbitrary way, as self-employed prostitutes and the most impoverished women were persecuted .[16]

The adoption of the previous Decree of 1956 entailed the modification of the current Penal Code. It introduced the unlawfulness of the so-called "*tercería locativa"*[17] , which criminalises profiting from the prostitution of others.

[13] "The two governmental institutions which, as heirs of the Patronato de la Represión de la Trata de Blancas, were in charge of managing the repression of "fallen" women were the Patronato de Redención de Mujeres Caídas (Patronato de Redención de Mujeres Caídas) and the Patronato de Protección a la Mujer (Patronato de Protección a la Mujer). The Patronato de Redención de Mujeres Caídas administered the special penitentiary centres for female prostitutes, while the Patronato de Protección a la Mujer dealt with young women on the streets, with preventive functions in marginal areas with respect to underage women and the general competence of guarding public morality. Between the two institutions they created a whole extraordinary network of centres, prisons and interventions in the lives of poor women". *Ibid*., p. 587 and 595 (Article 3 of Decree 6 November 1941).

[14] *Ibid.*

[15] Article 5 of the Decree Law of 3 March 1956.

[16] Gema Nicolás Lazo, op. cit. on the system put in place in 1956 to deal with prostitution:

"Prostitution managed by intermediaries who kept it relatively hidden was allowed and autonomous women who practised prostitution in the street or in their flats were persecuted and criminalised. Police repression of prostitution took place in an arbitrary manner, especially in the lower, poorer environments, those of street prostitution, the most visible and vulnerable (...) Prostitutes, as underground workers, were, more than before, criminals".

[17] González Del Río, José María, op. cit., p. 52.

But the practice of sex work was not directly criminalised, and prostitution came to be conceived within the sphere of activities that constituted a crime of public scandal (Article 431.1). Although the Decree Law made it possible to close brothels, this did not mean an end to prostitution, but rather that sex work, once again, took on more camouflaged or clandestine forms, as prostitutes *"worked hidden as waitresses in bars, shop assistants in fashion shops, or as maids in hotels and guesthouses"*[18] . Ultimately, *what this de facto illegalisation did was to drive sex workers into the underworld of crime and marginalisation*[19] , relegating them to the underground and increasing the number of pimps and women's dependence on them .[20]

At the end of Franco's regime, the Law of Danger and Social Rehabilitation (1970) was passed. This law established as *dangerous states* those persons who had prostituted or corrupted themselves and foresaw internment as a security measure, which could consist of up to three years of deprivation of liberty[21] . However, sex work had to produce a significant alteration to the community and public morality for it to be considered a dangerous activity, since otherwise it was reduced to an intimate and invisible sphere considered by the Dangerousness Law to be outside its limits. In this way, the *social dangerousness* of prostitution served once again to persecute visible and street prostitution, which was ultimately the most vulnerable .[22]

After the approval of the Spanish Constitution in 1978 and the formal repeal of the Law of Dangerousness and Social Rehabilitation by the Penal Code of 1995 (currently in force), sex work continues to be regulated in Spain by penal and administrative norms. There is no univocal legislation on sex work, although the institutionalised ideological position is abolitionism and partial or soft pro-hibitionism. The regulations differ according to whether it is autonomous (independent) or salaried sex work (work for third parties), as we will see below.

[18] Nicolás Lazo, Gema, op. cit., p. 611.
[19] Vázquez García, F. and Moreno Mengíbar, A.: *Poder y prostitución en Sevilla*, Tomo II, Universidad de Sevilla 1996, page 309.
[20] González Del Río, José María, op. cit., p. 52.
[21] Ibid. p. 53.
[22] Nicolás Lazo, G, op. cit. Page 610.

I. WHERE WE COME FROM AND WHERE WE ARE

News

At present, there are different forms of sex work. The phenomenon is very broad and complex, and factors such as social class and administrative status determine part of the reality of the profession.

Sex work can be performed:

— Autonomously or independently.

— To third parties, such as prostitution in clubs, flats and hotels, and in the case of actresses and actors in the pornography sector.

— Through worker organisation.

SEX WORK IN THE CURRENT REGULATIONS

Sex work for third parties (employed or salaried)

When talking about sex work for third parties, we will differentiate between prostitution and pornography (generically understood as the creation of sexual content for adults when it is done in a paid manner).

Pornography made by adults, commonly defined as audiovisual material depicting erotic and/or sexual acts, is legal. The OTRAS union colleagues involved in pornography allude to the need to take into account the special character of this artistic work and the unique effort involved in rehearsing and recording sexual scenes. They insist on the importance of a fair distribution of image rights, so that workers are not deprived of receiving royalties for their work. Most of their demands are matters for collective bargaining, such as a maximum number of shooting hours, remuneration for rehearsals, minimum health and safety conditions, a minimum wage, and, surprisingly, equal treatment, as men are paid less and treated less well in pornographic work.

Third-party sex work in its dimension of *paid prostitution* (workers in clubs, brothels, brothels, flats), which is the most commonly mentioned in the public debate, **is**

is ambiguously penalised by Article 187.1 paragraph 2 of the Penal Code, which considers it a crime *to profit by exploiting the prostitution of others even with the consent of the prostituted person*, which is known as *lucrative prostitution*, as opposed to so-called *coercive prostitution*.

The intention of the legislator is not entirely clear, but it seems that **this article considers pimping to be what we normally find in a club, flat, hotel, brothel, house or dating agency: an entrepreneur who directs, organises and manages the human resources (sex workers) and material resources (the establishment: rooms, facilities or common areas, bar, car park...) necessary for the provision of sexual services to clients .**[23]

Likewise, **the Supreme Court does not consider prostitution to be work and has been obliged to declare the labour nature of hostels in order to recognise the rights of the workers in these establishments, so that forced labour cannot be legitimised in Spain in the 21st century .**[24]

Hostelling consists of attracting clients to encourage them to drink in the bar, with the limit being carnal access. Therefore, only one part of the activities involved in prostitution is accepted as work: that of encouraging consumption in the bar. However, the boundary between "alterne" and prostitution is fictitious, a jurisprudential creation. **In reality, this boundary, apart from being ambiguous and unrealistic, as most of the "alternees" also provide sexual services, is deeply flawed and discriminatory, as it leaves the most particular part of prostitution unprotected.**

[23] As analysed by María Gavilán Rubio in *Delitos relativos a la prostitución y a la trata de seres humanos con fines de explotación sexual. Algunas dificultades en la fase de instrucción, Anuario Jurídico y Económico Escurialense*, XLVIII 2015, pages 103-130, the Supreme Court in its ruling 445/2008 established the requirements for there to be a crime with the profit from the prostitution of others consented to by the prostituted person, pointing out that not all profit should be punished in the same way. In the amendment of the Criminal Code in 2015, the scope of the term exploitation was specified. For a crime to be committed, the victim must have been forced to work *using violence, intimidation, deception or abuse of a situation of vulnerability or need*, and the profit extracted from this activity must come directly from the service of the prostitute and must be repeated. This does not include one-off or sporadic cases.

[24] This is what we heard from trade union colleague Evelyn Rocher, who was upheld by the Supreme Court against the club where she worked. She was able to prove that she had worked for many years as a salaried employee, under the direction and organisation of the club. However, she was only recognised as working as a hostess (attracting customers and encouraging them to drink on the premises). As she told us, the Court's failure to recognise the work of the hostesses would have meant accepting that employers in Spain can have people working for them without being insured and without labour rights.

and specific to sex work: sexual services .[25]

Since it is criminalised to profit by exploiting the prostitution of others even with the consent of the prostituted person (Article 187.1 paragraph 2), employers, in order to avoid being accused of pimping, claim that sex workers are their guests, to whom they rent rooms so that they can work with their clients[26] .

Moreover, with the proposals that have been debated in Congress in recent years aimed at banning third-party renting[27] , the situation of sex workers will only worsen as they will be forced even further underground and persecuted[28] **. It is common knowledge that clubs, flats, hotels, agencies, brothels and similar establishments have as their main activity the offer and management of the provision of services to the public.**

[25] In addition, as Irene Adán writes in the research report *"Las prostitutas hablan de violencias: A qualitative-quantitative research with 318 participants"*, by CATS Association, 2024, page 52:

"In order for workers to be able to prove the existence of this employment relationship, it is necessary for them to have contracts of employment as a sex worker, and employers refuse to formalise them, thus avoiding the costs of social security and the recognition of their rights. Moreover, in the Spanish sex market, most of the workers are migrant women, and the situation of criminalisation and vulnerability is worsened by the fact that they find themselves in the crossroads created by the law on foreigners, which does not allow access to a job without first having a residence permit, and which in turn does not allow (in general) access to a residence permit without first having a job.

[26] In fact, as Paula Sánchez Perera reports in *Crítica de la razón Puta*, p. 103: *After the criminal modification of 2003, which redefined lucrative pimping as a criminal offence, many brothels modified their working systems to avoid the criminal sanction, ceasing to pay the percentage of the drinks to the workers in order to avoid the remuneration note.* [27] *Third-party renting punishes those who, with a profit motive and on a regular basis, cede real estate, establishments or premises to favour the exercise of prostitution*. That is to say, the persons who, in principle, are punished under this concept are the owners of the clubs, premises and flats where sex workers carry out their work.
An interesting analysis can be found in the following articles: https://www.newtral.es/que-es-terceria-locativa-castigo-penal-prostitucion/20220520/
https://www.pikaramagazine.com/2024/03/solo-se-castigara-a-los-proxenetas/

[28] https://cesida.org/blog/en-los-medios/en-los-medios-terceria/, as CESIDA stated in 2022 in an article to Europa Press:

The State Coordinator of HIV and AIDS (CESIDA) has expressed its concern on Monday about the inclusion of the "tercería locativa", the measure that penalises those who profit from the transfer of property or premises for the exercise of prostitution, in the law guaranteeing sexual freedom or the "only yes is yes" law, considering that this measure could lead to the criminalisation of those who practice prostitution. [...]
It not only goes against the spirit of the law but also contributes to "reinforcing the stigma of prostitution and making it difficult to distinguish between voluntary prostitution and forced prostitution". CESIDA warns that the locative third party in the 'only yes is yes' law criminalises those who engage in prostitution. [...]
Similarly, CESIDA stresses that, given that prostitutes often live in the same place where they work, the criminalisation of third party occupation can constitute a barrier to access to housing. [...] Other consequences of such criminalisation are the increase in police presence in these spaces, with the consequent consequences for migrants in an irregular situation.
Read more: https://www.europapress.es/epsocial/igualdad/noticia-cesida-advierte-terceria- locativa-l ey-solo-si-si-si-criminaliza-quien-ejerce-prostitucion-20220214171510.html

sexual services. The operation and means of the business are organised for the provision of sex for payment, and the profits of the business are primarily and mostly obtained through the work of the prostitutes. They are not just bars, hotels or houses, where sex workers go in search of or with clients, but are their workplaces and are governed by organisational and operational rules decided by the business side .[29]

In this way, the Criminal Code regulation makes it impossible to recognise the labour rights of prostitutes and generates a double benefit for the employers: it avoids the costs derived from the obligation to register these workers with the Social Security, thus denying them access to any benefits, and ensures that they are the ones who pay for the costs of renting the work space, PPE (condoms, lubricants), even electricity and laundry services.

As the CATS Association points out, the paradox lies in the fact that while the buying and selling of sexual services in brothels is not recognised either by the sex industry or by law, the authorities grant permits and licences for the opening of these premises, where it is common knowledge that their main activity is the offer and management of sexual services in exchange for a price .[30]

[29] In these premises, it is the employer who, using its organisational and managerial power, decides the opening and closing hours, as well as the working hours, the working calendar, among others.

[30] Adán, I. (CATS Association): *Las prostitutas hablan de violencias...*, op. cit., p. 52.

SELF-EMPLOYED OR INDEPENDENT SEX WORK

The practice of self-employed sex work is legal as it is neither directly permitted nor prohibited by a legal norm.

The recognition of *freedom* as the supreme value of the Spanish legal system (Article 1.1 of the Spanish Constitution), typical of the rule of law, means that whatever is not expressly prohibited by law is permitted, regardless of whether or not it is regulated .[31]

However, independent or autonomous sex work, especially street prostitution, is persecuted and hindered by local and state administrative sanctioning laws, which, as we will see below, generate a punitive environment that drives these workers underground and the need to work for others who paradoxically protect them from the criminalising and persecutory consequences of abolitionism.

As we have said, the most persecuted and punished are street sex workers, which is why, in addition to the inclusion of sex work in the labour law, the repeal of the regulations on foreigners and the fight against stigma, it is necessary to demand the repeal of the punitive regulations that criminalise street prostitutes and that they be listened to and given the power to negotiate in the decisions on the areas where street prostitution is practised.

[31] García de Dios, R, *"Por el mal camino?" In La prostitución a debate: por los derechos de las prostitutas*, Talasa, Madrid, p. 131. 2007.

I. WHERE WE COME FROM AND WHERE WE ARE

Borders and anti-immigration rules

"For punitivist feminists, the problem is commercial sex, which produces trafficking; for us, the problem is borders, which produce people who either have no or hardly any rights as they travel and work".[32]

BORDERS AND TREATS
WHATEVER ITS PURPOSE

The right to migrate, to freedom of movement and to establish residence in a specific place in order to develop one's life project, is a right of all people who inhabit this planet. **The OTRAS Union is against laws that criminalise migration and we advocate for a world without borders. It is necessary to repeal the immigration law that prohibits freedom of movement and criminalises migrants in an irregular administrative situation.**

The mass migrations of the 21st century from the Global South are motivated by the need to flee human-made disasters: the climate crisis, poverty, armed conflicts. However, despite the fact that the climate crisis, poverty and wars are more the responsibility of the countries of the Global North and their capitalist policies, the response from these countries is a denial of the right to migrate. Specifically in the case of the European Union, on 14 May 2024 the European Parliament adopted the Pact on Migration and Asylum, which entails a complete revision of migration policies. This Pact, far from reinforcing and guaranteeing the right to asylum, entails the consolidation of "Fortress Europe" by reinforcing external borders and limiting the entry of migrants into the European Union.[33]

As sex workers Juno Mac and Molly Smith argue, the problem of discrimination, exploitation and insecurity begins at the borders. The fact that there is a need to migrate for survival and anti-immigration policies means that there is a huge business to be made out of it, as there is a

[32] Mac Juno and Smith Molly: *Insolent whores. The Struggle for Sex Workers' Rights*, Traffickers of Dreams. 2020, p. 142.

[33] This Pact externalises external borders to other states, streamlines migration management procedures at the expense of the individual right to asylum and facilitates deportations. Among the various mechanisms that are intended to be put in place, we mention, for example: a mandatory border procedure that will quickly assess asylum applications in order to reject them when they are considered unfounded or inadmissible, and persons subject to this border asylum procedure are not allowed to enter the territory of the member state. In addition, a return border procedure is also proposed (which continues along the lines of encouraging and allowing the detention-deprivation of liberty of migrants whose applications for international protection have been rejected in order to facilitate their deportations), greater control of persons who want to migrate and w h o are in an irregular administrative situation through control at external borders *(Screening)* by subjecting them to health, identification and security tests, as well as fingerprinting and registration in the Eurodac database. For further information, please contact https://www.cear.es/wp-content/uploads/2024/04/Pacto-Europeo-de- Migration-and-Asylum-re cough-and-threats.pdf

The demand for migration is driven by the need to survive, and the supply is minimal if it is done legally. In other words, it is the existence of borders and rules that criminalise migration that generates the business of people smuggling and trafficking .[34]

Borders and immigration rules determine who can and cannot freely enter and live i n a territory. For those whose entry is restricted, migration becomes complicated and insecure. Some people choose not to migrate in the face of anti-immigration policies, but many others migrate despite the harshness of these rules. Migration rules make the border more insecure because people who want to cross the border, unable to do so legally, are forced to turn to and depend on people or organisations that, in exchange for a large amount of money, pass them from one side to the other precariously. Likewise, even if the border is crossed legally, as happens with those who decide to migrate starting with a tourist visa, after the 90-day period of validity of the visa they become irregular and begin to run the risk of being identified and deported[35] . Or subjected to forced labour are those who initially sought to migrate.

Most of the people who end up being exploited legally or subjected to forced labour are people who wanted to migrate and have been trapped in this systemic reality because, being in an irregular administrative situation - without papers - they have hardly any rights and cannot defend themselves against the injustices they suffer[36] . Moreover, **in the Spanish state, being in an irregular administrative situation-without papers-has almost no rights and cannot defend themselves against the injustices they suffer .**

[34] We find it very pertinent and illustrative to mention the analogy that Junio Mac and Molly Smith draw between the right to migrate and abortion in *Insolent Whores*, page 120:

"This game is familiar in other contexts. When abortion is criminalised, women seeking abortions turn to clandestine abortionists, some of whom may be altruistic, though many of whom are unscrupulous [...] Rather, the criminalisation of abortion has directly created a market [...] Rather than police repression alone, the political solution that has taken them out of circulation, where it has been implemented, has of course been access to safe, legal and free abortion services. [...] People in places like England and Canada who can access free abortion are not likely to pay people to perform a dangerous, clandestine procedure on them. [Likewise, people who can legally cross a border do not pay someone to help them cross clandestinely. Like those who perform illegal abortions, smugglers are not unaccountable evildoers; rather, the issue is that the criminalisation of undocumented migration has directly created a market for human smuggling".

[35] The most typical way to reach the Spanish state is through a 90-day tourist visa, either with the disinterested help of friends and family or through the profit of agencies, moneylenders or individuals. The visa is valid for 90 days, after which the person has to leave the country or submit to being in an irregular administrative situation - without papers - with the risk of being identified, fined and deported. There is also the risk of being locked up in a CIE, a detention centre that is often described as "worse than a prison" by people who have been there.

[36] Juno Mac and Molly Smith, op. cit., p. 113.

This means that they are persecuted and criminalised and that they are afraid to denounce the violations they suffer because they run the risk of having an expulsion order issued against them and/or ending up in a CIE (Centre for the Internment of Foreigners)[37] . This should not lead us to blame people who, despite knowing the difficulties, decide to migrate, but to conclude that the only way to prevent them from being exploited and/or abused is to allow them to migrate legally and with rights .[38]

The money a person has and his or her nationality are the two factors that determine the possibility of migrating and staying in a country safely. Citizens of EU or Schengen countries can enter and leave freely, while citizens of third countries can do so depending on the country of their passport and the money they have to cover the costs of visas and other financial requirements that may be demanded by the states or by the application procedure for travel and residence permits.

The phenomenon of trafficking, whatever its purpose, appears here: it has its raison d'être in anti-immigration policies. In the sex workers' rights movement, we strive to differentiate trafficking from sex work, even though we are aware of the complexity of the reality of the sex industry and its relationship with migration. Meanwhile, abolitionist or prohibitionist sectors try to equate the two, making it difficult to find solutions to the problem. Migrant women in prostitution are often portrayed as victims of trafficking[39] . For abolitionists, there is no migrant woman who engages in prostitution because she wants to. However, this denial of migrant women's agency and their infantilisation is far from the reality. Tamara González says that in a project in which she took part, she was involved in

[37] In fact, as Tamara González Fernández recounts in an article in which she compiles the work carried out through the first-person accounts told to her by sex workers:
"The fear of being caught in an irregular situation has the main consequence that migrant sex workers do not go through legal channels to manage any area of their lives. This leads to situations of abuse and neglect. Asking for exorbitant amounts of money to obtain documentation or selling false documentation are some of the examples these women have experienced, but the LOE - Ley de Extranjería - has left them with no other option".
In *Inequalities and Discrimination of Migrant Sex Workers,* Universitas 2022, no28, pp. 74-97, 2022.
[38] Juno Mac and Molly Smith, op. cit., p. 114.
[39] Nina, Porn L. and Sudhra K.: *Putas migras*. OnA editions. 2021. P. 13.

with irregular migrant sex workers, all of the accompanied women had decided, organised and carried out their own migration projects on their own, with sex workers in mind[40] . There is even the double stigmatisation of migrant groups depending on their nationality, as is the case with Ukrainian and Romanian women[41] , who are portrayed in the media as victims of organised crime, which is by no means always true[42] **. This is not to deny the existence of victims of trafficking and, as we say, we are radically against trafficking. Just as the story of a foreign woman who begins her migration journey in order to engage in sex work should not obscure or negate the story of a trafficked person, so too the story of a trafficked person cannot and should not serve to deny agency and infantilise female sex workers.** Sex work is not trafficking because in sex work there is no coercion: a person freely and voluntarily chooses to provide sexual services for pay, or to engage in pornography. Trafficking in any form exists because of the discriminatory and cruel system of borders and immigration regulations. Trafficking exists because migration is illegal. Anyone who cannot cross a border with their passport is vulnerable to trafficking and smuggling. **We strongly believe that abolishing anti-immigration rules and recognising labour rights for those who work in the labour market is the best way to prevent trafficking and smuggling.**

The fight against sexual trafficking involves combating all forms of trafficking for whatever purpose.

[40] In *Inequalities and Discrimination of Migrant Sex Workers, Universitas* 2022, no28, 2022. Pp. 74-92:
"It is important to highlight this initiative to undertake a migration process that includes activities related to the sex industry because it displaces the monolithic role that both institutions and NGOs have given to trafficking networks. From the stories of these women, it is clear that these networks are in fact made up of all kinds of actors: family members, friends, tourism entrepreneurs, sex industry entrepreneurs, managers, lawyers and transporters, among others".

[41] José López Riopedre notes that interviews with this group of sex workers highlight this, in *Trabajo sexual transnacional: consecuencias de las políticas criminalizadoras de la prostitución y de la crisis económica española sobre las trabajadoras sexuales migrantes*, REDUR 14, December 2016, p. 76.

[42] Solana and Riopedre: *Trabajando en la prostitución. Doce relatos de vida*, Granada, Comares. 2012.

ALIENS RULES

Data on sex work in Spain are deficient. For this reason, the work of associations and groups of sex workers and those who support and accompany them is very valuable, such as the CATS Association's research report, *Trabajo sexual en primera persona: Análisis de las experiencias y vulneraciones de derechos en España*, which shows through sociological studies that the sex work labour market is mainly made up of migrant women .[43]

This report shows how the majority of Spanish women who engage in prostitution decide to do so independently or autonomously, while sex work for third parties is usually the choice of migrant women[44] . This is due to several reasons, including the fact that women with Spanish nationality are not subject to the limitations and repression imposed by the rules on foreigners, so they have greater power and autonomy, for example, to be able to access a house in which to offer their services, or to pay for a website on which to advertise themselves. They also feel safer because they are not under the double persecution of being a sex worker and being in an irregular administrative situation .[45]

The non-recognition of sex work as work drives many women in an irregular administrative situation underground. It adds even more difficulties to the exercise of basic rights such as access to housing, as it is impossible to guarantee the payment of a house to a bank or a landlord if you do not have a salary, it can mean that if you are found to be working you will be issued a preferential expulsion order and locked up in a CIE to ensure compliance within 72 hours[46], or it implies being at risk of having the social services withdraw custody of your daughter[477]. It also means no access to justice

[43] Adán, I. (CATS Association): *Las prostitutas hablan de violencias..., op. cit.*, page 12.
[44] *Ibid.*, p. 17.
[45] In the report by Blanca Bernardo Egea, María Paramés Bernardo and María Peñalosa Méndez, *Represión y encierro. Análisis interseccional de la violencia en el internamiento de personas extranjeras,* states the following:
53% of the women locked up in a CIE -Centro de internamiento de Extranjeros- in 2021 and 2022 were sex workers, being this the activity in which the largest number of women inmates were engaged, with a large difference with respect to the others.
[46] *Ibid.,* p. 28: "of the eleven female inmates who had a preferential expulsion order, eight were sex workers (two were day labourers and one was a domestic and care worker)".
[47] Martínez Cano, María: *Violencias hacia las personas que ejercen la prostitución en la Región de Murcia*, Revista del Laboratorio Iberoamericano para el Estudio Sociohistórico de las Sexualidades, 2020, pages 227-251.

for fear of reprisals. This is already the case for the entire group of sex workers who are denied credibility for the fact that they have been assaulted: the stigma means that a prostitute can never be sexually assaulted because she has always asked for it. In the case of migrant sex workers, the violence by the police is intensified as this lack of credibility is compounded by the risk of being identified at the police station and sanctioned with a deportation order .[48]

But why is it so difficult to gain access to residence and work permits legally? The Organic Law on the Freedom and Rights of Foreigners in Spain and its implementing regulations regulate the procedures .[49]

A person who does not have Spanish nationality or nationality of a country of the European Union or Schengen Area, in order to enter Spanish territory and remain there beyond the tourist or study visa, must obtain one of the permits provided for by law. Most of these permits[50] require the person to have a permanent job offer.

However, the state, with these same laws, makes it extremely complicated to obtain permits: starting with how difficult it is to get a permanent employment contract nowadays, as well as an employer who wants to process the procedure and wait for it to be resolved before you join, as employers want to hire according to the needs of their business. Applications cost money (around 200 euros in fees, plus the possible costs of seeing a lawyer or advisor, which is often necessary to undertake the arduous bureaucratic universe of the administration), the resolution period can extend to more than six months in which you must have sufficient savings to support yourself without working - since working without a permit would be illegal - and, finally, the application has to be favourably resolved by the Ministry of Labour, which is not always the case. It is also the case that many migrants who have qualifications and studies find that

[48] Tamara González, *op. cit.*

[49] We are going to talk fundamentally about the residence and work permit as an employee, which is the most common permit because it is the one that generically recognises access to the possibility of residing in Spanish territory and working as a salaried employee. This permit can be accessed in several ways, such as: before entering Spanish territory, as long as there is a job offer that meets the requirements; once in Spanish territory; or through the exceptional circumstances of being settled in Spain.

[50] There are exceptions, for example: leave for victims of gender-based violence and leave for victims of trafficking in human beings, or leave for asylum and international protection.

cannot enforce them and homologation is necessary. The process to homologate a degree is another slow and costly bureaucratic process. Currently, several organisations of affected migrants denounce that the Ministry of Universities is taking more than two years to respond to applications, while the legal deadline cannot be more than 6 months. Furthermore, the group *Manifestación por la Homologación Justa* estimates that there are approximately 100,000 cases still pending resolution[51] . Dolores Juliano argues that we live in a *labour society*:

the means of achieving full citizenship - rights and duties - is through our paid participation in the legal labour market. Therefore, and this applies to sex workers as a whole, the non-recognition of sex work as work is a major obstacle to the enjoyment of rights and the development of the personality. The only way to avoid this and to ensure that people are able to regularise their situation is to recognise sex work as work.

What would the recognition of sex work as work and its inclusion in labour law imply in relation to all of the above?

> ***"In some media and in some political environments it is argued that migration leads to lower wages. However, the current system, in which undocumented people are unable to assert their wage rights and, as a result, are highly vulnerable to exploitation in their jobs, drives down wages by ensuring that there is a pool of workers whom employers can underpay or otherwise exploit with impunity. The low***

[51] Information on this can be found in the following articles:
— Lorda Jesus: *Las consecuencias del retraso en la homologación de títulos: "Nos dedicamos a lo que se puede"*, Valencia Plaza, 2024: https://valenciaplaza.com/consecuencias-retraso-homologacion-titulos
— Alba Maria Claudia: *Profesionales con títulos extranjeros denuncian los retrasos en las homologaciones frente al Ministerio de Universidades*, ElDiario.es, 2022: https://www.eldiario. es/desalambre/profesionales-titulos-extranjeros-protestan-frente-ministerio-universidades- denunciar-retrasos-homologaciones_1_9624092.html

> ***Wages and labour exploitation are addressed through working class organisation and labour law, not through attempts to limit migration, which produce undocumented workers who lack labour rights".*** [52]

When a person is in an irregular administrative situation, either because the visa with which he or she entered has run out or because he or she has been there since entry, the most common way to get out of this situation is through one of the exceptional circumstances for regularisation. Among these are the famous "arraigos": *labour, social, family and training*. Among the requirements are *that they must have been in the Spanish state for two or three years, not have a criminal record, and have one or several offers of a permanent and almost full-time job (no less than 35 hours/week)*. In addition, the labour roots also require being able to prove having had an employment relationship lasting no less than 6 months, and social roots require being "integrated", which is usually justified with an integration report issued by the corresponding social services.

Until sex work is recognised as work-related, the regularisation of sex workers in an irregular administrative situation will always be excessively complicated, if not impossible. In the case of employment status, no matter how many years (some people even more than 20) sex work has been carried out, it is not enough to prove the existence of an employment relationship. The same is true for the regularisation procedure due to social roots: they cannot rely on an employment contract for sex work even if they have been doing sex work for years on a regular basis and as a livelihood. Without the recognition of the employment status of sex work, they are condemned to be permanently illegal.

Furthermore, **for those who argue that many sex workers want to get out of sex work but cannot, sex workers' collectives argue that, should they want to leave sex work, it would be easier for them to do so if it were considered a job, as sex workers are more likely to be able to do sex work if it is considered a job.**

[52] Juno Mac and Molly Smith, op. cit., p. 116.

sex workers would have access to labour and social security rights, as well as basic social and economic rights. This would mean more economic and life autonomy, access to unemployment, a retirement pension or temporary or permanent incapacity when necessary. In addition, they would be granted the right to freedom of association, which would mean the possibility of organising in trade unions to improve their working conditions without being persecuted and criminalised for their existence[53]. The alternatives offered by the institutions that belong to the rescue industry are usually precarious and feminised jobs, false alternatives that keep these people in economic and social exclusion.

Ninfa often says that if there is trafficking in street prostitution, it is because the police allow it, as they have control over all street sex workers. In the case of clubs, flats, premises and sex work establishments, if there were an obligation for workers to have an employment contract and to be registered with social security, it would be much easier to identify possible victims of trafficking, and it would help to fight against the clandestinity to which the sex industry is subjected. There would be real labour inspections[54] , and workers would be less afraid to report for reprisals, and trade unions would be able to access these spaces more easily than they do now.

OTRAS believes that it is impossible to understand our proposal for sex work with rights without a change in the Law on Foreigners that guarantees the right to safe migration for all. In our legislative proposal we try to address the problem by proposing several solutions such as the *social and labour integration* of people who have been sex workers in recent years, the *formalisation of existing labour relations*, as well as the *regularisation of* all those who currently work in sex work.

[53] Although we will discuss this in more detail later, it should be recalled that the Supreme Court when it legalised the Union's statutes made it clear that its scope of action would be self-employed sex workers, and not employed sex workers. The Court relied on the argument that sex work for hire or reward is not permitted under Spanish law.

[54] We use the adjective "real" to highlight the fact that the inspections that are currently carried out do not address the totality of what happens in these workspaces, as labour inspectors can only monitor compliance with the rights of sex workers as sex workers, leaving aside everything related to the provision of sexual services.

However, in order to eradicate discrimination, a radical change in the rules on foreigners is needed.

I. WHERE WE COME FROM AND WHERE WE ARE

Stigma whore

> ***"The prostitute has been fundamental in the construction of the image of the witch: the woman who asks for money for her sexual services, the woman who asks for money for reproduction is the most evil, she is the servant of the devil. This is very effective in disciplining all women. If you are a woman, you don't have access to salaried work which is masculine, but you are left with marriage where sex cannot be paid for, but it is part of the pact as well as the rest of the domestic chores".*** **– Silvia Federici [55]**

It is recurrent when organising discussions with sex workers that when asked "what is the worst thing about your job" or something similar, the majority answer is "stigma". More specifically, the whore stigma.

According to Paula Sánchez in her book Crítica de la razón puta, stigma operates as a control mechanism whose purpose is to divide women according to their sexual reputation. On the one hand, there are the "saints" or women considered good, whom the author describes as mothers, wives and virgins; on the other hand, there are the "whores", who include any delegitimised woman. In this way, the stigma attached to prostitution contributes to maintaining the patriarchal definition of male and female roles, labelling women who cross these boundaries as socially "tainted". Stigma works outwards, in the face of society, marking women as "tainted".

The person affected by social stigma is reduced to that label, ignoring other aspects of their context, motivations and desires. The person affected by a social stigma is reduced to that label, ignoring other aspects of their context, motivations and desires, "we stop seeing them as a whole and ordinary person and reduce them to an inflicted and despised being"[56] .

In the case of sex work, the stigma has a lot to do with the idea of the inviolability of the body, especially with regard to the immorality of selling it, and more especially when it comes to something considered as sacred as sex and genitalia, an idea that we will develop in this section.

[55]Alabao, N.: *Sex for women has always been a job*. Full interview: https://ctxt.es/en/20181114/Politica/22841/silvia-federici-el-sexo-ha-sido-un-bajo-para-las-las-

mujeres.htm

[56] Sánchez Perera, P.: *Crítica de la razón puta: cartografías del estigma de la prostitución*, Madrid, La Oveja Negra, 2022.

This moral prohibition on the sale of sex can be linked to the maintenance of a type of society and mode of production in which there is a clear separation between the public and the private, which is transferred to the economy in the form of a productive sphere and a reproductive sphere. This second sphere, the reproductive, has been associated, as we have said, with the private, with something that has to be outside the market and social debate, as it belongs to the most intimate part of each person or family. Sex work transcends this frontier, placing sex, the private sphere, as a service that can be sold and not something exclusive to the home and the family. This is where we see the stigma appear. But perhaps the sphere of reproduction has never been as private as it has been made out to be. The idea of the economic has historically been constructed as a sphere that is isolated from the social, and the sphere of the economic has been reduced to a series of dynamics that take place within the boundaries of the market, but do not affect beyond that sphere. This limited understanding of the economic has led to the neglect of other types of relationships that are crucial for subsistence, such as care. **Care has come to be understood as something natural and a moral obligation, far removed from the economic sphere.** As such, care - another type of reproductive work - if it is the fruit of love, does not have to be remunerated. **However, in a world in which women have already been incorporated into productive work through paid work, this means a double working day for them: the reproductive workday of care, which is understood as natural for women, and the productive workday of the market in exchange for a wage[57].**

As Federici says, the hypocrisy of the criminalisation of the Sex work lies in the fact that it has been the work done by all women historically since the capitalist system began to take root. Women have been and are the ones who take care of the house, feed the worker and procreate the future worker. But only sex work that is done outside marriage and for money is penalised; women who break the norm and decide to sell their labour force through sex work as a means of livelihood are persecuted. As pro-rights collectives have been advocating, if we are against the sale of the body, we must be against all wage labour. In this way, sex, like care, is sacralised as something that

[57] Comas, D.: *Care and rights: moving towards the democratisation of care.* Cuadernos de antropología social, (49), 2019, pp. 13-29.

is solely and exclusively the fruit of love, something that is immoral to commercialise. In the same way that marriage involves the cloaking of care under the cloak of love, for Fortunati prostitution would be the other side of the coin. There are various positions that reflect this sense of immorality, ranging from those that portray the prostitute as a woman whose very essence is deemed unworthy, to those that depict her as a victim devoid of agency.

Feminists such as Gayle Rubin or Gayl Pheterson oppose this narrow idea of oppression and argue that, despite the structures of domination that are part of violence against women, thinking of women only in terms of danger, without recognising the nuances, could reproduce a conservative view of female sexuality that does not take into account desire, pleasure, consent and, ultimately, agency .[58]

The process of victimisation of sex workers stems from the conception that female sexuality is intrinsically associated with danger. From this perspective, it is impossible to recognise that some women consciously instrumentalise their erotic capital. Socialisation around sexual risk is linked to the idea that female sexuality is constantly under threat, leading to the belief that we must control and monitor our sexual expression in order to avoid both male violence and social devaluation.

In addition, a sexual panic develops in which women's sexuality is considered mainly in terms of being possible victims of sexual violence. This panic implies the extension of a sexual terror, generating a social alarm about prostitution, not only as a reflection of gender inequalities, but also as responsible for existing sexual violence. **If sex workers do not perceive themselves as victims, they are labelled as accomplices of the system.**

So how can they report the crimes they are victims of if prostitution is considered to be a violation in itself? **Stigma is present whenever a sex worker chooses not to go to the police to report sexual abuse, even if it occurs outside her workplace, because of the fear that prostitution will be turned against her as evidence.**

[58] Garaizabal Cristina, Macaya Laura, and Serra Clara: *Alianzas rebeldes: un feminismo más allá de la identidad,* Barcelona, Bellaterra, 2022.

incriminating. If prostitution itself is perceived as a violation, it is understandable that they have somehow accepted it, because it is a natural part of their work. Because victims are innocent and pure, they "deserve rights, reparation, protection and justice"[59] , and prostitutes who have chosen to engage in prostitution are not good victims, and are therefore excluded from the guarantee and protection of their rights.

Stigma accompanies sex workers from the moment they wake up to the moment they go to sleep, and it branches out and affects many areas and aspects of their lives and their daily lives. Once again, from OTRAS, we have to point out to those feminist abolitionist sectors who like to talk about the terrible violence to which sex workers are subjected (nothing is said here about the men who work as sex workers), but nobody stops to listen to them. If they really did, they would know that violence against them is that one of the markers used by Social Services to w i t h d r a w custody of minors is that of prostitution. Feminism should confront this bad woman/good woman dichotomy head on and not feed it with its discourse. Apparently, to be a good mother you have to fulfil each and every one of the patriarchal and hegemonic requirements of what it means to be a woman.

Stigma is not telling your family doctor what you do for fear that, from then on, any pain and discomfort you have will be due to the fact that you are a whore. And then, if you are a mother, we are back to square one, you will live in fear that Social Services will contact you and take away custody of your children.

Stigma is having to lead a double life, lie, keep quiet and hide so that you don't get fired from your job (if you combine it with sex work), harassed or blackmailed. Stigma is that the social imaginary of prostitution is so negative that you do not tell your environment what you do for fear of being rejected or denigrated. That is why OTRAS and sex workers' collectives talk about sex work, because it is essential to re-awareness of this work activity and to accompany it with the rights that correspond to it. This will be a fundamental step towards putting an end to the stigma and violence to which sex workers are subjected.

[59] *Ibid.* Paula Sánchez Perera.

sexual violence they face. **If as a society we perpetuate the idea that people who do this work are not worthy of rights, we will be giving carte blanche to all the violence we face as a result of lack of recognition and visibility.**

II. MODELS LEGAL

Brief analysis of the existing models

There are different legal and ideological models for addressing the phenomenon of sex work. Within the typology of sex work, which we recall includes porn, it is prostitution that has historically been the focus of legislation. The following legal models have been drafted with prostitution as a focus, although all of them directly or indirectly affect sex work as a whole.

PROHIBITIONIST MODEL

Prostitution is seen as a crime, illegal and amoral and must be eradicated through punishment. Any third party who profits from the prostitution of others (such as managers or landlords) is usually considered a pimp, even with the consent of the prostitute. Pimping is prohibited and criminalises both the sex worker and any third party who profits from the consensual prostitution of others .[60]

Prohibitionism emerged in the 19th century heavily influenced by Italian Positivist Criminology .[61]

The prohibitionist model is in force in countries such as the United States (with the exception of a few counties in Nevada), Kenya, Uganda, Russia, Iran, Pakistan and China .[62]

PARTIAL OR SOFT PENALTY/BAN MODEL

The buying and selling of sex services is legal, but many aspects of sex work (especially the visible ones) are criminalised, such as the supply and demand of services on the street, or several people working in the same flat. In this model, as in virtually all models, self-employed street sex work is the most heavily prosecuted. It is prevalent in countries such as England, Scotland and Wales .[63]

[60] Molina Montero Alba: *El régimen jurídico de la prostitución y sus diferentes modelos ideológicos,* Crítica penal y poder: Observatorio del Sistema Penal y los Derechos Humanos, No15, 2018, pp. 130-149.
[61] González Del Río, José María, op. cit., page 11.
[62] Juno Mac and Molly Smith, op. cit., p. 185.
[63] Juno Mac and Molly Smith, op. cit., p. 147.

In Spain, there is a soft prohibitionist model in relation to street sex work[64] . We speak of soft prohibitionism because it is approached from the point of view of administrative sanctioning law and not so much from the criminal law point of view. The Organic Law for the Protection of Public Safety and Municipal Ordinances make it possible to fine street sex workers and this has been the trend in many cities .[65]

ABOLITIONIST MODEL

Sex work is conceived as a form of gender-based violence exercised by men towards women (understood in an exclusive way). The sex worker (always in the feminine) is a victim of male domination of her .[66]

It is based on a moral judgement of sex work: it is an activity that violates the dignity and equality of the sex worker[67] . The abolitionist position understands that by eradicating the demand - the clients - prostitution ceases to exist, which is why it chooses to criminalise the client. The fundamental difference with prohibitionism is that this model does not directly criminalise the prostitute as a victim of the relationship of domination, and, in theory, it focuses on preventing and punishing everything that surrounds prostitution, even if it is consensual[68] . However, in practice, criminalisation ends up extending to the sex worker and the sex worker becomes a victim of the abolitionist system itself[69] . Thus, while abolitionism aims to protect the sex worker, it is not the sex worker who is the victim of the abolitionist system.

[64] Villacampa, Carolina: *Prohibiciónismo suave para abordar el trabajo sexual callejero: ordenanzas cívicas y ley mordaza*, RELIES, Revista del laboratorio iberoamericano para el estudio sociohistórico de las sexualidades, 2020. pp. 113-120.

[65] The CATS Association carried out an *evaluation report on the Ordinance to combat prostitution in the municipality of Murcia*. The report points out that 76% of a total of 83 sanctioning files are for offering sexual services while 24% are for demanding such services. Thus, the person who engages in prostitution is fined more than the client. Access to the report: https://www.asociacioncats.es/wp-content/uploads/2018/04/EVALUACI%C3%93N-DE- LA-ORDENANZA-CONTRA-LA-LA-LA-LA- PROSTITUCI%C3%93N-EN-EL-MUNICIPIO-DE-MURCI A.pdf

[66] Alba Molina Montero, op. cit., p. 134.

[68] González Del Río, José María, op. cit., p. 12.

[69] Reports by the Swedish and Norwegian governments evaluating abolitionist measures on the lives of sex workers paradoxically found that abolitionism put their safety more at risk.

"In the case of Sweden, the Swedish National Board of Health and Welfare stated in its Prostitution in Sweden Report 2007, 2008, p.48 that "fear of clients - being fined - […] makes it more difficult to find safe meeting places […]. Meeting places are increasingly remote […]". Available at: socialstyrelsen.se

The factual consequences are the opposite[70] . Abolitionism is today an indirect form of prohibitionism.

Countries such as Sweden, Norway, Iceland, France, Canada and Northern Ireland have versions of this legal model (also known as the "Nordic model"), in which the client is penalised by being prohibited from purchasing sexual services.[71]

In the case of Norway, the report Purchasing Sexual Services in Sweden and Netherlands: Legal Regulation and Experiences, 2004, by the Norwegian Ministry of Justice and Public Security concluded that:
"Swedish street prostitutes are going through a very hard time. They are more often exposed to dangerous clients, while [legitimate] clients are afraid of being arrested (...). They have less time to evaluate the client, because the deal is closed in a hurry due to the fear the client has."
Consultation available at: regjeringen.no

[70] Juno Mac and Molly Smith, op. cit., pp. 229-230:

"Those who defend the Nordic model are right when they say that the client benefits from an immense imbalance of power; what they fail to take into account is that penalising the client exacerbates this imbalance of power. This may come as a surprise; as human rights lawyer Wendy Lyon writes: One might intuitively assume that, in a transaction, penalising only one party benefits another party. However, this overlooks the crucial fact, which we will not tire of repeating, that the sex worker needs to sell sex to a far greater extent than the client needs to buy it. This asymmetry of needs is essential to understanding the real impact of the Nordic model. And indeed it is intensified the more precarious the sex worker.

[71] *Ibid*., p. 219.

REGULATORY MODEL

It starts from the assumption that prostitution is an evil that cannot be eradicated and that its prohibition would not be effective, and opts for the establishment of regulations to control the activity and make the problems it causes less harmful. The two typical forms of control through regulation are: on the one hand, subjecting sex workers to rigorous controls in order to protect public health, and on the other hand, safeguarding public safety, public order and social morality by regulating the location of prostitution venues (also known as *zoning*) .[72]

This model, while establishing obligations for these workers, such as submission to specific health and police controls, leaves out the recognition of their rights. Furthermore, space control measures generate a climate of criminalisation and worsen the conditions of their exercise[73] **. It has been a legal model frequently applied in the Spanish State through the Municipal Ordinances[74] with which they have persecuted and criminalised fundamentally the street sex workers.**

[72] Alba Molina Montero, op. cit., p. 147.

[73] María Barcons Campmajó. *Las Ordenanzas Municipales: entre la regulación y la sanción de la prostitución en España.* Journal Crítica Penal y Poder. 2018, no15. OSPDH. University of Barcelona:

"...the bargaining power of sex workers has worsened due to the pressure that by-laws put on women in the public space, causing them to negotiate and agree on services more quickly for fear of being sanctioned or having clients sanctioned. [...] the criminalisation of sex work has led to changes in the place where sex work is performed, shifting the activity from public space to private space or to a more hostile public space such as the peripheral areas of cities, industrial estates or parks. This displacement of the place of exercise, whether it is a change of areas of the city or a change of cities/towns, has provoked a worsening of women's working conditions: moving from a known place to an unknown place implies difficulties that may involve the loss of the network of female colleagues, the loss of regular clients, among others [...]".

[74] The zoning of places where brothels or establishments where sexual services are permitted has been carried out in many cities in the state. For example, *the Bilbao Ordinance on Public Establishments Dedicated to Prostitution, 1999* (amended in 2002), in Article 4.1 regulates the minimum distance between brothels as 500 metres.

REGULATORY MODEL

It implies the legalisation of prostitution, albeit from a perspective of control rather than recognition of the rights of sex workers.

The words regulation, legalisation and decriminalisation are often equated. However, they are not at all the same. Regulation means that a human activity or conduct is regulated through legal rules. Legalisation makes sense in contrast to criminalisation: legalisation means that something illegal becomes legal, when something is legal it means that it is permitted, not prohibited, regardless of whether it is regulated or not. Decriminalisation means taking the practice of buying and selling sexual services out of the realm of criminal or punitive law.

In this model, it is understood that the sex worker decides of her/his own free will to provide sexual services in exchange for a price in the labour market, either as a self-employed person or as an employee (to third parties/salaried).

It has similar overtones to regulation. In countries where it is in force, the areas where sex work is permitted are usually regulated, as well as the obligation for sex workers to undergo a health consultation that allows them to apply for a certificate attesting that they are 'healthy', which is necessary for them to be registered in a special register of prostitutes .[75]

In the case of Germany, for example, there is legalisation and regulation of both employed and self-employed sex work. In principle, prostitutes are granted labour and social security rights. However, the regulatory overtones of the German model increase the *stigma of prostitution*. Compulsory health checks are approached from a sanitising and controlling perspective, rather than as medical examinations.

[75] In Germany, as can be consulted on state websites or on websites supporting prostitution workers (e.g. https://www.cara.nrw/es/nuestros-temas/leyes/ prostitution-in-germany), there are requirements regarding registration, health checks and certificates for prostitution. These include:
- The obligation to register sex workers (*Anmeldepflicht*), who may only apply for registration after passing a health check with a German authority.
- The duty to carry the registration certificate (*Anmeldebescheinigung*) at all times.
- The obligation to undergo health consultations varies according to age: for 18-21 year olds the consultation must be repeated every 6 months and the registration must be renewed after 12 months, for those over 21 years of age the consultation must be repeated every 12 months and the registration must be renewed every 2 years.

The duty to apply for special registration reflects an attitude of singling out and control. The duty to apply for registration in a special register reflects an attitude of signalling and control, as it is not an obligation common to all other workers, but specific to sex workers.

II. LEGAL MODELS

The case of New Zealand

In 2003, the *Prostitution Reform Bill* was passed in New Zealand, which decriminalises sex work and addresses it from a pro-rights perspective. The *Prostitution Reform Bill* (hereafter LRP) was created directly by the NZPZ (sex workers) in collaboration with the public authorities.

As Gillian Abel and Lynzi Armstrong put it: **"The New Zealand model of decriminalisation assumes that sexual services are freely bought and sold, that sex workers are not directly or indirectly criminalised, nor are clients or third parties"**. It differs from regulatory or regulatory models in, among other ways, explicitly seeking to enable sex workers with rights to fight violence and exploitation, and in having as its basis a commitment to harm reduction in the sex industry .[76]

The consequences of the passage of New Zealand's law are constantly being evaluated by public authorities, independent institutions, as well as sex workers themselves. Research conducted three years after its implementation concluded that decriminalisation with a pro-rights perspective has numerous positive impacts on sex workers:

> *For example, the findings highlighted a clear awareness of their rights among respondents, with 90% of the 772 sex worker respondents reporting that they felt they had more rights under the LRP than under the previous legal framework. The research also highlighted a more equal balance of power between sex workers and clients, with 65% of participants reporting that they felt more able to refuse clients since the law had changed. There were also positive effects between sex workers and law enforcement, with more than half of the participants reporting that the police had a better attitude towards them after decriminalisation.*
>
> *The overall conclusion of the Prostitution Law Review Committee [...] which conducted the review of the LRP was that the*

[76] Gillian Abel and Lynzi Armstrong: *Sex work with rights. A decriminalisation alternative*, Virus, 2022. P. 32.

sex workers were in a better position in terms of their safety and well-being than they were previously .[77]

Studies and research in Sweden (where the abolitionist model is in place) conclude that sex workers are forced to speed up interaction with clients to avoid being seen by the police, which severely affects their ability to filter out potentially problematic and/or dangerous clients[78]. However, in the case of New Zealand, where sex workers are not afraid of being detected by the police, a qualitative study with street-based sex workers found that participants can take their time in deciding whether or not to leave with a client, which translates into being able to ask more detailed questions and assess clients' behaviour - detecting possible dangerous or problematic situations - before leaving with them .[79]

However, the New Zealand pro-rights model is also flawed, particularly in relation to foreign nationals who wish to engage in sex work[80] . We believe that decriminalisation along the lines of the New Zealand model, but taking into account those in irregular or regular administrative status without nationality, is a first step towards legally recognising sex workers as citizens and guaranteeing their access to labour rights, social security and economic and social rights.

At the international level, a growing number of organisations are warning of the ineffectiveness of addressing sex work through criminal law, and are proposing risk reduction measures such as decriminalisation .[81]

[77] Gillian Abel, Lynzi Armstrong, *Sex Work with Rights… op. cit.* pp. 34-35.
[78] Levy and Jakobsson: *Sweden's abolitionist discourse and law: Effects on the dynamics of Swedish sex work and on the lives of Sweden's sex workers, Criminology & Criminal Justice,* vol. 14, 2014.
[79] Lynzi Armstrong, *Screening clients in a decriminalised street-based sex industry. Insights into the experiences of New Zealand sex workers, Australian and New Zealand Journal of Criminology*, vol. 47, no2, 2014, pp. 207-222.
[80] Section 19 of the *Prostitution Reform Act 2003* expressly prohibits migrants from working in the sex industry. This section is being rethought and is in the process of being amended to safeguard the rights of all persons, regardless of their legal status. Available here: https://www.parliament.nz/mi/pb/research- papers/document/00PLSocRP12051/prostitution-law-reform-in-new-zealand/
[81] Adán, I. (CATS Association): *Las prostitutas hablan de violencias…,* op. cit., p. 68.

Organisations such as Amnesty International[82] or GAATW (Global Alliance Against Trafficking[83]) defend a pro-rights stance and deeply believe that criminalisation is not the way to safeguard the rights of sex workers.

The same position of decriminalisation and recognition of rights is recommended by organisations such as the WHO, UNFPA (United Nations specialised agency)[84] and UNAIDS .[85]

[82] *The human rights of sex workers, what is Amnesty International's commitment*, 2022:
"One such measure is the decriminalisation of all aspects of sex work performed by adults without coercion, exploitation or abuse. Amnesty calls on states to remove criminal and other punitive regulation of consensual adult sex work, as criminalisation has been shown to reinforce marginalisation, stigma, discrimination and impede access to justice. Furthermore, states must uphold the human rights of sex workers not only when they leave sex work, but also during sex work.
Access: https://www.es.amnesty.org/en-que-estamos/blog/historia/articulo/los-derechos-human-sex-worker-sex-workers/

[83] Global Alliance Against Traffic in Women (GAATW). *Anti-Trafficking Review. No. 12 Special Issue - Sex Work:* https://gaatw.org/resources/anti-trafficking-review/990-no-12-special-issue-sex-work

[84] WHO, UNFPA, UNAIDS, NSWP (2012). *Prevention and treatment of HIV and other sexually transmitted infections for sex workers in low- and middle-income countries: Recommendations for a public health approach*.

[85] UNAIDS (2021). *HIV and sex work* [Brochure].

II. LEGAL MODELS

Our proposal: pro-rights model

The legal model that we defend in the OTRAS Union is the pro-rights system. This model **understands the prostitute as just another worker who freely and voluntarily decides to carry out sex work as a means of subsistence. It is based on the fight against poverty and social exclusion, and on equal treatment and non-discrimination of all people.**

We start from the recognition of the worker's agency: the decision to voluntarily engage in prostitution is just as legitimate as the decision to engage in any other work.

The world we live in is a world of constant conflict between a ruling class and a working class. While the members of the latter work in order to survive (to have access to a house, to food, to rest...), the employers seek to maximise profits with their businesses. All jobs are traversed by this same problem: we work in exchange for a wage that allows us to survive.

Within the neoliberal logic of the labour market, the work contract that a person signs because of a situation of economic need or vulnerability is not considered null and void. Working people are always in a situation of vulnerability vis-à-vis the employer, because without working they will have difficulties to live in the economic system in which we are immersed[86] . Labour law exists with its tuitive or protective character to balance the unequal power relationship between employers and workers and thus prevent an abuse of power by the former.

Article 35 EC declares the right and duty to work. This dual nature of the right and duty to work means that access to basic social and economic rights is conditional on our being, in addition to being citizens, working people.

The pro-rights model that we defend recognises sex work as a trade or profession, so that sex workers must do so with respect for and guarantee of their labour rights and social security.

It requires the decriminalisation and legalisation of prostitution and its inclusion in labour law and social security regulations. Without the existence of special registers and con

[86] Montoya Melgar: *Derecho del Trabajo,* Tecnos, 2011, p. 305: "The possible situation of constraint that obliges the worker to enter into an employment contract lacks legal relevance and cannot be accepted as an authentic vice of consent".

health-police trolleys. It also requires the repeal of punitive administrative regulations and municipal ordinances that are used to prosecute and criminalise street-based sex work, and the recognition of street-based sex workers' bargaining power in decision-making about urban sex work areas.

THIS MODEL ASSUMES:

— Decriminalisation of sex work. Removing it from the Penal Code, administrative sanctioning law, local ordinances and/or any other legislation that deals with it in a prohibitive or persecutory manner .[87]

— Their inclusion within the regulatory framework of labour law and social security, so that the rights of sex workers are guaranteed on an equal footing with other workers.

[87] Without prejudice to the fact that, as with all work, *Title XV. Crimes against workers' rights, Book II* of the Penal Code.
This Title contains articles that punish conducts such as: The imposition of illegal conditions at work; Illegal trafficking of labour; Labour discrimination; Against the safety and health of workers; Against freedom of association and strike, among others.

III. STEPS TOWARDS A PRO-RIGHTS SYSTEM

in the Spanish legal system

Taking into account the current Spanish legal system, we propose the following three parallel steps to achieve a pro-rights system:

1

REPEAL ARTICLE 187.1 PARAGRAPH 2 OF THE PENAL CODE AND RECOGNISE BY LAW THE LAWFULNESS OF PAID SEXUAL ACTIVITY, WHICH CAN BE CARRIED OUT UNDER THE DIFFERENT MODALITIES OF SELF-EMPLOYMENT OR INDEPENDENT (PROFESSIONAL) WORK, AS AN EMPLOYEE (WHEN THERE IS AN EMPLOYER FOR WHOM ONE WORKS) OR THROUGH WORKER COOPERATIVES.

2

INCLUDE PAID SEX WORK WITHIN THE FRAMEWORK OF LABOUR AND SOCIAL SECURITY LAW, ESTABLISHING WHERE NECESSARY A SPECIAL LEGAL FRAMEWORK TO GUARANTEE THEIR RIGHTS.

3

REPEAL THE LEGISLATION CRIMINALISING OR PUNISHING PROSTITUTION, CONSISTING MAINLY OF ARTICLE 187(1)(2) OF THE CRIMINAL CODE, ARTICLE 36(5), (6) AND (11) OF THE CRIMINAL CODE AND ARTICLE 36(5), (6) AND (11) OF THE CRIMINAL CODE.
ORGANIC LAW ON THE PROTECTION OF PUBLIC SAFETY, AND THE LAST PART OF ARTICLE 11(1) OF THE ORGANIC LAW ON THE COMPREHENSIVE GUARANTEE OF SEXUAL FREEDOM, TOGETHER WITH THE LAST PARAGRAPH OF THE SECOND SUBPARAGRAPH OF ARTICLE 3(A), SECOND PARAGRAPH OF ARTICLE 3(A) OF THE GENERAL PUBLICITY LAW, AND ALL MUNICIPAL ORDINANCES OF MUNICIPALITIES THAT ADDRESS SEX WORK FROM A PUNITIVIST PERSPECTIVE.
AND CRIMINALISING.

Part II

SEX WORK AND THE EXISTING LEGAL SYSTEM

With this Part II **we aim to demonstrate that a pro-rights system is possible within the legislative framework of the Spanish legal system.** To this end, we analyse how sex work in its different forms is dealt with in EU and Spanish law: how it is conceptualised, how it is prosecuted or permitted, and what the courts have said about it.

We distinguish analysis according to the modalities in which it is exercised:

A

SELF-EMPLOYED OR FREELANCE SEX WORK

B

SEX WORK FOR OTHERS OR FOR HIRE OR REWARD

C

SEX WORKER COOPERATIVES

A. SEX WORK SELF-EMPLOYED

Community law: European Union

The need for the Court of Justice of the European Union (CJEU) to take a position on sex work began in 1981. It was addressed in its prostitution aspect (buying and selling of sexual services).

Since its first ruling on the issue, the CJEU has considered sex work to be a lawful economic activity to be carried out by any person, leaving it to the rules of each State to prohibit or permit its exercise. In the cases in which the CJEU has ruled, the persons affected were EU citizens, citizens of the Schengen Area or citizens of countries with which inter-State agreements have been signed. This is relevant because once again a categorical differentiation is made based on nationality, which in practice determines unequal access to rights. While persons belonging to EU countries have the right to freedom of movement and residence in all EU member states, those from third countries do not.

The CJEU recognises prostitution as a lawful economic activity and includes it within the set of activities that may be carried out under the *right to freedom of establishment and freedom to provide services*, recognised in Articles 26 (in relation to the internal market), 49 to 55 (freedom of establishment) and 56 to 62 (freedom to provide services) of the TFEU (Treaty on the Functioning of the European Union). The limit imposed by the Court is that the activity must be lawful or not prohibited in the particular member state in which it is intended to be carried out[88] . Therefore, if prostitution is not prohibited in Germany, an EU citizen may apply for a residence permit to engage in self-employed sex work on German territory. In the case of Spain, it seems that a permit subject to the exercise of self-employed sex work could also be applied for, as this activity is not directly prohibited.

1.1. Judgments of the CJEU

Two of the CJEU rulings that marked this liberal line and the recognition of certain rights were:

[88] Paragraph 56 of the Jany Judgment: https://curia.europa.eu/juris/document/document.jsf?docid=46850&doclang=en

— **Adoui case (1981):** The Belgian authorities refused the residence and work authorisations requested by two French nationals to engage in sex work in Belgium. Virtually all residence authorisations are subject to having a job, in this case, that job was sex work. As a result, the authorisations were refused. After the decision was challenged before the CJEU, the Court ruled that for the first time prostitution was recognised as an economic activity that could justify the right of establishment and residence of another EU citizen, on the grounds, among others, that Belgian legislation did not consider it unlawful and therefore, in order to respect the principle of equality and non-discrimination between EU citizens, it had to be accepted that it was possible to obtain a residence and work permit by practising prostitution.[89]

— **Jany case, (2001):** Six women of Polish and Czech nationality were sex workers in Amsterdam, renting a shop window and engaging in self-employed sex work while complying with the relevant tax obligations. They applied for a residence permit to work as prostitutes in the Netherlands and were refused. The reason for the refusal *was that prostitution was a prohibited activity, or at least not a socially accepted form of work, and could not be considered regular work or a liberal profession*[90] . The workers appealed the decision on the grounds that the principle of non-discrimination between EU citizens in relation to their right to engage in and pursue self-employed economic activities, as well as the right to set up and run businesses, was being infringed. The CJEU stated in its judgment that: prostitution constitutes the provision of services for remuneration [...] *falling within the concept of economic activities, so that the activity of prostitution exercised independently may be regarded as a service provided for remuneration and therefore falls within the concept of "self-employed economic activities" or "self-employed activities"*[91] .

[89] Access to the judgment of the Court of Justice of the EU: https://eur-lex.europa.eu/legal-content/EN/TXT/? uri=CELEX:61981CJ0115
[90] González Del Río, José María, op. cit., p. 41.
[91] Access to the Jany Judgment: https://curia.europa.eu/juris/document/document.jsf?docid=46850&doclang=en

The current approach to sex work in EU countries varies. It is legal in states such as the Netherlands, Germany, Belgium or Austria, and prohibited in France, Sweden or Norway. But in no country is there a real pro-rights model.

The recognition of the status of economic activity by the CJEU is a positive precedent and, above all, it is important because it leaves open the possibility of moving towards the pro-rights legalisation of sex work.

A. SELF-EMPLOYED SEX WORK

Domestic law: Spanish legal system

2.1. Sentence OTHER.

The Supreme Court's cassation ruling on the challenge to the statutes of the OTRAS trade union recognised the lawfulness of self-employed sex work.

The Supreme Court held that the right to freedom of association of self-employed sex workers had to be respected. It declared the legality of the union's statutes, arguing the superiority of the right to freedom of association of those engaged in independent sex work. On paid prostitution, it ruled that the statutes of the Union were not applicable to sex workers.

The statutes would not be applicable or extendable to those who exercise it as long as their employment status (which can be the subject of an employment contract) is not recognised by a legal norm .[92]

2.2. Constitutional law .

Freedom and equality and non-discrimination

Freedom is recognised as the supreme value of the Spanish State in Article 1.2 EC, and in relation to the principle of legality, it implies that *everything that is not expressly prohibited by law is permitted.* On this basis, judicial doctrine has positioned itself in favour of recognising the legality of self-employed prostitution, fundamentally the Supreme Court in the judgement in which it legalised the OTRAS trade union and in which it legalised the association of the ANELA Sex Employers' Association.

Likewise, respect for the right to freedom of enterprise, enshrined in Article 38 of the Constitution, has served as a basis for judgments recognising the exercise of sexual activity as an economic activity not prohibited by law .[93]

Specifically, the Audiencia Nacional indicated that under the freedom to conduct a business, the exercise of an economic activity cannot be made conditional on it being regulated or contemplated.

[92] Social Division of the Supreme Court, Judgment no. 584/2021. Access to the judgment: https://www.newtral.es/wp-content/uploads/2021/06/Sentencia-estima-recurso-sindicat o-OTRAS.pdf?x73247

[93] A neoliberal rationale addressed by the jurisprudence of the Supreme Court. However,

OTRAS believes that it is more appropriate to link it to equality and access to fundamental rights and public freedoms, economic and social rights.

by law. It went on to point out that prostitution is regulated in the Penal Code negatively, i.e. by stating in what "form" it is prohibited, but not by prohibiting all kinds of prostitution .[94]

According to the Audiencia Nacional, everything on which the Penal Code and other laws are silent is permitted, since otherwise it would be contrary to the principle of legality (Articles 9.3 and 25 of the Spanish Constitution), which establishes that for a conduct to be sanctioned, it is necessary for its illegality or condemnation to be recognised by the legal system and specifically by a law.

For the Audiencia Nacional, the boundary between legal and illegal independent prostitution is not determined by whether it is paid or unpaid, but by the freedom of the person providing it, i.e. their consent[95]. In turn, the Audiencia Nacional considered that the CJEU judgment in the Jany case cited above, which recognises remunerated sexual activity as a lawful economic activity, is *"perfectly applicable to a legal system which, like ours, does not expressly prohibit such economic activity"*. The Supreme Court accepted all these arguments in its ruling on the appeal lodged against the judgment analysed.

From the OTRAS trade union, beyond the right to freedom of enterprise, we believe that it is important to base the defence of the inclusion of sex work on the right to equality and non-discrimination of all persons (Articles 9 and 14 EC). Both are recognised in the Constitution as fundamental rights and values of the Spanish legal system and on the basis of these we demand the total decriminalisation of sex work, in a way that

[94] Judgment of 23 December 2003, Audiencia Nacional (AS 2003, 3692).

[95] Judgment of 23 December 2003, Audiencia Nacional (AS 2003, 3692). Fifth legal basis: "Nor does it make sense to make the exercise of an economic activity conditional on its being regulated; the Constitution recognises freedom of enterprise without making it dependent on the greater or lesser regulatory diligence of the public authorities. But what is more, the concept of regulation is relative. And proof of this is precisely the activity of prostitution. From the perspective of the democratic rule of law, it is a regulated activity insofar as the Penal Code, as a negative constitution, criminalises prostitution which it considers incompatible with constitutional ethics, and, a contrario sensu of its text, outlines that which it permits. To this effect, the borderline is not set by the altruistic or remunerative nature of the sexual exchange, but by the freedom with which it is provided. The relationship is therefore not unlawful, either for causal reasons (the "chalaneo prestacional") or because of the object of the exchange, but only with regard to the consent with which the sexual favour is provided, either because the capacity of the lessor is limited - minors or incapable persons - or because his will is vitiated, in the case of those who are capable".

persons who engage in sex work are covered by the rules of labour and social security law[96] . In the case of self-employed sex work, although it is not expressly prohibited, it is prosecuted and punished through administrative sanctions and hindered by regulations such as those contained in the Organic Law on the Integral Guarantee of Sexual Freedom, which prohibits advertising, as we will see below. Bearing in mind that access to basic social and economic rights is conditional on working and being insured by Social Security, the obstacles and persecution against self-employed sex workers generate discrimination and inequality in access to fundamental, economic and social rights for the group with respect to other professionals and/or workers[97] . For this reason, decriminalisation and inclusion in the labour order would imply an advance in the equality of rights for all people.

[96] *Spanish Constitution of 1978:*
- Article 9: [...]
2. It is incumbent upon the public authorities to promote the conditions for the real and effective freedom and equality of the individual and of the groups to which they belong; to remove obstacles that prevent or hinder their full realisation; and to facilitate the participation of all citizens in political, economic, cultural and social life.
3. The Constitution guarantees the principle of legality, the hierarchy of norms, the publicity of rules, the non-retroactivity of punitive provisions that are not favourable or restrictive of individual rights, legal certainty, responsibility and the prohibition of arbitrariness of the public authorities.
- Article 14:
Spaniards are equal before the law, and no discrimination may prevail on the grounds of birth, race, sex, religion, opinion or any other personal or social condition or circumstance.

[97] Thus, for example, access to a period of medical leave due to temporary disability is only possible after having completed a qualifying period (of days previously paid into the Social Security system); in order to access a retirement pension it is a requirement to have a minimum number of years of paid contributions, etc. In the case of sex work, prostitutes, although de facto they fulfil these requirements - because they have been working for years - de jure they do not, because sex work is not recognised as work, and also because of the stigma attached to it. Thus, for example, they are often forced not to reveal the source of their income, either because of stigma, or because there is no CNAE (National Classification of Economic Activities), or a clear recognition of its legality, or to protect themselves from possible attacks by law enforcement officials.
The same applies to access to housing. In order to be able to sign a rental contract for housing or a bank loan to buy a house, it is often a prerequisite to have a valid employment contract or pay slips that demonstrate a solvent source of income. Self-employed sex workers, because they are not clearly legalised, cannot make use of such instruments.
These are examples of how the rights of sex workers are hindered and affected by the underground nature of sex work.

2.3. Administrative law sanctioning.

Municipal regulations

There is a wide range of abolitionist and mildly pro-hibitionist (as it is prosecuted through administrative rather than criminal law) municipal legislation passed by local councils that primarily affects street sex workers.

These local regulations were approved in Spain from the 2000s onwards. Its approval was justified by the need to deal with different social phenomena (street prostitution or street drinking) for which there was no specific legal response .[98]

Many municipalities followed the pattern of the Barcelona Ordinance, passed in 2005, which was implicitly taken as a model by the Spanish Federation of Municipalities. These types of ordinances sanction the offering, solicitation, business or acceptance of sexual services on public streets when these practices exclude or limit the compatibility of the different uses of public space, as well as carrying out these activities in spaces located at less than a certain distance from educational or teaching centres, prohibiting paid sexual relations in public space in general .[99]

Among the consequences of regulations of this type, some studies highlight: increased police control in the areas where they are exercised, a decrease in clients, a decrease in income or greater difficulty and loss of power to negotiate with the client.[100]

[98] Villacampa, Carolina: op. cit., pp. 113-130.
[99] *Ibid.*, pp. 113-130.
[100] Moreover, as Carolina Villacampa Estiarte and Nuria Torres Rosell point out in *Políticas criminalizadoras de la prostitución en España. Effects on sex workers*. Revista electrónica de ciencia penal y criminología, ISSN-e 1695-0194, No. 15, 2013:

"The results of the research show that the application of prohibitionist policies, even in a mild version such as the one adopted in our country, fundamentally constitute an agent that makes the conditions of sex workers' activity even more precarious and therefore victimises them, far from abolishing, as is supposedly intended, the exercise of this activity. The fears expressed by sex workers' collectives and sex workers' welfare organisations that the offensive against street prostitution would fundamentally contribute to the criminalisation of poverty could thus be confirmed".

Organic Law on the Protection of Public Security

In those localities where there is no specific municipal regulation on sex work, the so-called Gag Law is often applied to prosecute sex work[101] . Therefore, although independent sex work is legal and the Supreme Court has ruled that sex work is lawful on the basis of the principle of legality, it is prosecuted and hindered by numerous sanctioning provisions contained in the Organic Law for the Protection of Public Safety and in the aforementioned municipal regulations.

The *Gag Rule* extends its effects mainly to the field of street sex work, which is punished by subsuming it under different offences[102] . The power to impose fines lies with the police, which is the authority in charge of ensuring public safety.

Its entry into force resulted in the imposition of numerous fines on street sex workers under Article 36.1 paragraph 11, which establishes as a serious offence "*the solicitation or acceptance of paid sexual services in areas of public traffic near places intended for the use of minors, such as educational centres, children's playgrounds or recreational spaces accessible to minors, or when these actions, due to their location, may represent a risk to road safety*"[103] .

[101] Barcons Campmajó, M., op. cit., p. 97.

[102] The following offences are commonly used:

- Article 36 Citizen Security Law:

6. Disobedience or resistance to the authority or its agents in the exercise of their functions, when they do not constitute a crime, as well as refusal to identify oneself at the request of the authority or its agents or the allegation of false or inaccurate data in the identification processes.(...)

11. The solicitation or acceptance by the complainant of paid sexual services in public traffic areas in the vicinity of places intended for use by minors, such as educational centres, playgrounds or leisure areas accessible to minors, or when such conduct, due to the place where it is carried out, may generate a risk to road safety.

- Article 37. 5: Carrying out or inciting to carry out acts that infringe sexual freedom and sexual indemnity, or performing acts of obscene exhibition, when it does not constitute a criminal offence.

[103] For a better understanding of the dynamics of this infraction-sanction, we turn to Paula Sánchez Perera's account in *Crítica de la razón Puta*, op. cit:

Article 36.6 punishes disobedience to authority with fines of 600 to 30,000 euros, and is a sort of catch-all for penalising basic freedoms in public space through police arbitrariness. Sex workers in Villaverde described that the usual practice of UCRIF (Central Unit for Illegal Immigration Networks and Documentary Falsification) agents was to first warn them to refrain from offering sexual services in those areas where the article that fines the clientele sanctions them, citing the risk to road safety. If the police, on returning to patrol the area, still found them in the industrial estate, whether they were working in their work area or waiting for the bus-canary bus, they were warned to refrain from offering sex services in those areas which the article fining the clientele penalises, citing the risk to road safety.

As stated by the CATS Association, although a priori it appears that the law aims to penalise the client who demands sexual services, the same law states that *"law enforcement officers shall require persons offering such services to refrain from doing so in such places, informing them that failure to comply with such a requirement could constitute a violation of paragraph 6 of this article"*. Thus, the penalty affects the client and the worker under the threat of imposing a sanction for "disobedience or resistance to authority", with fines ranging from 100 to 30,000 euros. During the first year of this law, the Hetaira collective reported that fines in the Polígono de Villaverde (Madrid) reached 30 per day .[104]

Although recent years have seen a decrease in the imposition of administrative sanctions, this has not led to a decrease in police hostility:

> *"The simple presence and patrolling of police in areas where prostitution takes place - a measure typical of the abolitionist paradigm - has a deterrent effect on clients. This leads to a decrease in the income of the workers, who in turn are forced to reduce their rates.*
>
> *From the surveys, as many as 41% reported experiencing police abuse, and 36% reported not receiving help from the police when they needed it".* [105]

In addition, street-based sex workers complain that the sanctions imposed on clients include their names, aliases and other identifying information, which further compromises their safety and privacy .[106]

Therefore, disobedience to authority constitutes a theoretical-administrative subterfuge to also sanction the practice of prostitution, with the same amount imposed on the client.

[104] *Ibid.*, p. 114.

[105] As stated in the CATS Association Research Report, *Las prostitutas hablan de violencias...*, op. cit:

"The main police abuses reported are; raids on their workplaces (26%), verbal abuse (10%), fines (9%), arrests (6%) and the imposition of deportation proceedings (6%). Of all those who are or have been victims of trafficking, they have suffered raids (31%), fines (10%) and the imposition of expulsion proceedings (4%). "

[106] *Ibid.*, p. 42.

2.4. Organic Law 10/2022 on the Comprehensive Guarantee of Sexual Freedom.

The so-called "Solo sí es sí Law" sanctions as illegal the advertising of prostitution in the measures it contains on "pre- vention and awareness-raising in the field of advertising".

The consequence of this near-banning development has been the closure of websites where sex workers advertised their services. The independence and power of sex workers is diminished by measures of this kind, as by limiting their easy access to advertising media, sex workers are increasingly forced to go to third-party venues to work, such as clubs or hostess establishments that have their own advertising and client attraction .[107]

[107] Establishments where sex work is carried out for hire or reward are commonly known to the public, which makes it easier for clients to identify them. In addition, brothels, bars or massage parlours have their own advertising media, such as signs, posters, lights.

B. THIRD-PARTY SEX WORK

Community law: European Union

We will begin by explaining the concept of salaried work: what are the characteristics that define it and what requirements must be met for it to fall within the scope of labour law and other labour and social security regulations.

1. CONCEPT OF WORK FOR THIRD PARTIES (SALARIED, EMPLOYED).

The characteristic features of waged work are that it *is personal, voluntary, dependent, salaried and paid*[108] . In sex work for third parties - both in prostitution and porn - these characteristics are practically the same as in other types of work, with nuances in terms of the fact that it is outside and dependent.

The power of dependence and dependence are related to the management and organisational power of the employer, as recognised in Article 20 of the Workers' Statute. This power implies that it is the employer that has the power to take the decisions it deems appropriate to direct and organise the human and material means of production (the company): opening and closing times, the working calendar and the dress code, among others. In the OTRAS union proposal, we argue that in the case of sex work, this power needs to be nuanced and limited due to the particularities that it entails.

Alienation and dependence

The Supreme Court and other state courts have ruled on many occasions not recognising the possibility that the object

[108] Cruz Villalón, J.: *Compendio de Derecho del Trabajo*, Tecnos, 2022, p. 33: Personal: "... the work must be performed personally by the service provider him/herself, that is to say, by the worker. (...)",
Voluntariness: freedom of decision to commit to provide such a service.
The result of the work or, to be more precise, the economic benefit of the provision of services is assigned from its origin to the employer, insofar as through this contractual relationship the employee places his labour power at the disposal of the employer and, therefore, the result of his effort belongs to the employer (...). (The employer then remunerates him).
Dependence (legal subordination of the worker): "...is manifested in the fact that the worker places his or her labour power at the disposal of the employer, so that he or she has to perform his or her services under the organisational and managerial powers of the employer. Paid: The provision of services is in exchange for money paid by the employer to the worker.

The non-recognition of sex work as an employment contract is often based on moral issues and/or issues related to the dignity of the prostituted person. This non-recognition of the labour nature of sex work is usually based on moral issues and/or issues related to the dignity of the prostituted person. As we will see below, **morality and decency are changing concepts, and what is considered immoral at one time may be considered moral years later, and vice versa.** For example, **until not so long ago, the right of men over women was recognised, and the Spanish Civil Code treated women as minors who were dependent on their parents until they married and became dependent on their husbands. They were not recognised as having full capacity to act and male violence was accepted and even defended.**

Analysing the current legal system and the arguments of the judgments that follow in order to overcome the moral stalemate allows us to imagine and understand sex work within the current legislative framework as a special employment relationship between the sex worker and the employer, in which dependence and outside employment concur in a different way to how they do in ordinary employment relationships.

- In the field of labour law, the concept of "*ajenidad"* means that the result of the work that the worker performs belongs to the employer from the outset. The worker puts his/her labour power at the disposal of the employer, who pays a salary in return. The economic benefit of the work performed, i.e. the result of the worker's effort, belongs to the employer .[109]

In the case of sex work, it is often argued to deny its labour character that there is a sale of the body of the prostituted person, as if this sale of the body were a particularity of sex work and not the common characteristic of all waged work. This argument, which is made exclusively about sex workers, is wrong. **In the capitalist system in which wage labour is embedded, all workers are subject to the commodification of their bodies.**

[109] *Ibid,* Cruz Villalón, J..: the "patrimonial utility of the provision of services is assigned from its origin to the employer, to the extent that through such contractual relationship the worker places his/her labour force at the disposal of the employer/employer and, therefore, the result of his/her effort belongs to the employer/employer (...). The employer remunerates this labour power through the previous wage or remuneration".

bodies and sell their labour power for a price. Sex work also involves the sale of labour power. The client does not pay for the woman's body, for her consent or for her vagina, as is often argued from abolitionist and transgender sectors. To argue that a sex worker cannot sell her labour power in the sexual sphere is a profoundly patriarchal position, as it gives this part of the body - primarily the crotch - a superiority and again falls into linking women's dignity with "her crotch". The labour power that is sold in sexual economic exchange is the same and has the same value as that sold in all other forms of paid work. If we are against the sale of labour power in sexual exchange, then we should be against any sale of our labour power, and we would be abolitionists of wage labour in general, not just in the sex industry.

- *Dependence* is the legal subordination of the worker to the employer and "...is manifested in the fact that he/she places his/her labour power at the disposal of the employer, so that he/she has to perform his/her work under the organisational and managerial powers of the employer"[110] .

Dependency in sex work is relative, as its limits are the consent of the worker and the non-coercion by the employer: the worker has the power to decide on aspects related to the time and manner of providing sexual services, which practices she performs and which she does not, and to which clients she provides her services. Relative dependence implies the limitation of the employer's power in favour of the worker's ius resistentiae (right of resistance).

[110] *Ibid*, Cruz Villalón, J.

Entrepreneurial (managerial and organisational) power

This power of the employer consists of a set of legal powers in favour of the employer .[111]

In the case of sex work, it must be limited by the worker's individual consent to perform a particular sex service. Consent must be service-specific, and the employer may not interfere with the worker's decision as to which services to perform or whether to provide services to a particular client.

The employer can decide on aspects such as working hours, working timetables, the place of service provision, dress codes, etc. The employer cannot, however, decide on the mode of service provision or compel any worker to provide sexual services where there is no consent. However, he/she may not decide on the mode of service provision, nor may he/she compel any worker to provide sexual services in the absence of consent.

We tell all this to help you understand that it is possible to contemplate sex work as work, and that in practice it already has the characteristics of paid work, but without the consequent recognition of rights for sex workers.

We now turn to an analysis of sex work for hire or reward and the Spanish legal system.

[111] Management powers (such as the capacity to organise the activity within the company, giving orders and instructions on the timetable and place where the services are to be provided; 2. Control powers, which entails checking that the worker complies with the orders given; 3.)

2. PAID SEX WORK IN THE FRAMEWORK OF THE EUROPEAN UNION

From now on, the analysis will focus on paid sex work in the form of prostitution, i.e. the provision of sexual services in return for payment.

Directive 2011/36 on preventing and combating trafficking in human beings and protecting its victims established the abolitionist ideology at EU level. It equates trafficking and sex work.

In addition, there are two contradictory and ambiguous developments on sex work in Europe:

— The European Parliament resolution of 14 September 2023 on the regulation of prostitution in the European Union with a clearly abolitionist slant: the European Parliament in its resolution of 14 September 2023 on the regulation of prostitution in the Union with a clearly abolitionist slant: the European Parliament in its point 42. *calls on Member States to ensure that the exploitation of the prostitution of another person, even with that person's consent, is punishable as a criminal offence.*

— At the end of summer 2023, the European Court of Human Rights (ECtHR) admitted the complaint of 361 prostitutes against the French abolitionist law (French Law no. 2016-444 of 13 April 2016). The complaint filed by the sex workers denounces the criminalisation of the purchase of sex, including consensual sex between adults, in the French law that has been passed. The ECtHR has recognised for the first time that *"the mere existence of the law has a negative impact on sex workers" and adds that "the applicants have submitted evidence which amply indicates that the clandestinity and isolation induced by this criminalisation increase the risks to which they are exposed"*.

We are awaiting the ruling of the ECtHR as the decision could go in the direction of considering abolitionist proposals as contrary to human rights, which would be a major step towards a pro-rights system in the EU framework.

3. SPANISH LAW AND SEX WORK AS AN EMPLOYEE

3.1. Law Criminal Law

The prohibition of sex work for hire or reward in the Penal Code is unclear.

The term exploitation is used, which is very ambiguous and criticised for the legal uncertainty it generates[112] . As we will see below, depending on whether we interpret the term exploit flexibly or strictly, the constituent fact of the offence in the legal type in relation to remunerated sexual activity changes.[113]

3.2. Law civil

For the construction of the following headings, we have followed the very accurate analysis made by José María González del Río in his book. [114]

Is an employment contract for the purpose of providing sexual services for remuneration possible? The biggest obstacle to an affirmative answer is often found in the general theory of contract contained in the Civil Code. Article 1275 Civil Code (CC): *"Contracts without cause, or with an unlawful cause, have no effect. The cause is illicit when it is contrary to the law or morality"*. Arguments usually revolve around the fact that the sex work contract has an unlawful cause and object because it opposes morality, and is therefore null and void.

[112] José María González del Río. P. 107.

[113] If the term exploit is interpreted in the strict sense, we would be talking about the fact that it is illegal for a person to make a profit from the consensual prostitution of the latter, but only if there is exploitation, i.e. abuse of position in relation to the prostituted person. In this way, the profit of a third party from the prostitution of another's consented prostitution would be outside the criminal offence. If, on the other hand, it is interpreted more broadly, any person who intervenes in and profits from the voluntary prostitution of others can be incriminated.

[114] José María González, op. cit., *Ibid.*, pp. 99 ff.

a. Unlawfulness of cause and object

Article 1261 CC establishes consent, object and cause as essential conditions of the contract, without them the legal transaction is null and void, which means that it does not exist in accordance with the law and has no effect.

The problem, as José María González del Río points out in his book, *"lies in determining whether the provision of remunerated sexual services on which the cause and object of the agreement between the parties revolves allows the valid conclusion of the employment contract"*. Judicial doctrine tends to answer this question in the negative by referring to Articles 1271 and 1275.

Article 1271 states that *"all services which are not contrary to law or morality"* can be the object of a contract, and Article 1275 that *"Contracts without cause, or with an illicit cause, do not produce any effect. The cause is illicit when it is contrary to law or morality"*.

These two possible obstacles will be discussed below:

- Contrary to the law

To elucidate whether the sex work contract has an object contrary to the law, we have to go back to the **obstacle of Article 187.1 PC**. This article provides:

"Anyone who, using violence, intimidation or deception, or abusing a situation of superiority or the victim's need or vulnerability, determines a person of legal age to engage or remain in prostitution, shall be punished with a prison sentence of two to five years and a fine of twelve to twenty-four months.

A prison sentence of two to four years and a fine of twelve to twenty-four months shall be imposed on anyone who profits by exploiting the prostitution of another person, even with that person's consent. In any case, exploitation shall be understood to exist when any of the following circumstances are present:

The victim is in a situation of personal or economic vulnerability.

That burdensome, disproportionate or abusive conditions are imposed for its exercise.

Depending on the interpretation of the term exploiting prostitution for hire or reward, it may or may not be completely outside the employment contract. If it is given a flexible meaning we would be

The courts have not accepted the express prohibition that there can be an employment relationship in prostitution, but if it is given a strict meaning, such conduct would be prohibited when there is abuse of position on the part of the person who unduly exploits the prostitute, even if he or she does so with his or her consent. However, it seems that the Courts have not accepted the flexible or broader interpretation.

Sectors of criminal and labour doctrine defend the same approach as in the case of self-employed sex work[115] . In other words, by virtue of the principle of legality, it is not possible, in a state governed by the rule of law such as the Spanish state, to make a restrictive interpretation of the rules that would have as a consequence the limitation of people's rights. Therefore, if an activity is not explicitly stipulated as prohibited or illegal by law, the freedom to carry it out must be respected.

- Contrary to morality and decency

Morality or decency (terms often used against sex work) are **undefined and abstract concepts** that have not been clearly defined by the Courts that have ruled on them. The Constitutional Court has the competence to interpret the Constitution, and the scope of the provisions or terms contained therein. Regarding morality, it has pointed out ***that it is susceptible to different concretisations according to different times and countries***, *so it is not something immutable from a social perspective.*[116]

[115] José María González del Río, op. cit.
[116] STC 62/1982, 15 October 1982.

b. Dignity of the prostitute.

The argument that the exercise of sex work is contrary to the dignity of the prostitute has been constantly used by Spanish courts to deny the legality of the purchase and sale of sexual services. On the basis of this argument, the vast majority of the jurisprudence of the Spanish courts have taken a position against the possibility of considering sex work as work. **The fiction and jurisprudential construction of "alternego" has been recognised as the only possible work activity in the context of prostitution for hire or reward. In this way, the recognition of rights has been limited to the exercise of the activity of "alternego", leaving workers unprotected in the most specific dimension of sex work: the provision of sexual services.**

Human dignity is an abstract concept whose value also changes over time, taking into account the different values of society. What may be considered unworthy at one time may be socially accepted at another. There are several examples that can help us to understand this, among them, the prohibition of toplessness that existed in Spain and its consideration by society as an undignified or immoral act until a few decades ago. Nowadays, however, we find women of all ages on beaches all over the state carrying out this practice without considering it to be undignified or immoral. The same can be said about marriage or divorce. Until recently, not getting married or divorced was a source of stigma and social rejection faced by women.

In a different vein, the Criminal Policy Study Group has used the argument of respect for human dignity in favour of those who choose to engage in sex work. The GEC points out that it is necessary to generate a framework for reflection on the regulation of sex work ***and "this reflection must be guided by the inescapable distinction between morality and law. The recognition of human dignity as a supreme value enshrined in our Constitution requires respect for the will of the adult who freely decides to provide paid services of a sexual nature. To deny outright the possibility of such a choice being valid is a paternalistic treatment of women (and men) as persons incapable of making decisions about their own lives.***

adult decisions. Moral discourse based on the degrading nature of prostitution is superfluous.[117]

Moreover, giving public powers and authorities the power to determine when a person of full legal age and capacity to act violates his or her dignity takes us into the dangerous realm of legal paternalism[118]. Ultimately, it is an invalidation of their agency, their person and their freedom, and paradoxically, their dignity. It means deciding to forcibly protect any person who does not conform to the prevailing morality.

3.3. Jurisprudence on sex work.

The following are a few rulings from state courts that have addressed the phenomenon of sex work. The arguments and explanations of the dynamics and functioning of sex work contained in these judgments help us to understand that it is possible to recognise sex work as work within the existing legal system.

The Criminal Chamber of the Supreme Court in its ruling of 14 April 2009 established that **the question of voluntary prostitution under conditions that do not involve coercion, deception, violence or subjugation, either on one's own account or depending on a third party who establishes working conditions that do not violate** ***the rights of workers cannot be solved with moral approaches or ethical-sociological conceptions, since they affect aspects of the will that cannot be restricted by the law without further qualification.***[119]

This Supreme Court ruling, which is so right and in line with our approach, left the way open for paid prostitution to be formalised by means of an employment contract. According to the judgement, moral and ethical conceptions should not

[117] Criminal Policy Study Group: *Proposal for the regulation of voluntary adult prostitution,* 2010, p. 13.
The GEP, made up of judges, magistrates and high-profile criminal lawyers, also came out in 2006 in favour of regulating prostitution as a job: https:// politicacriminal.es/manifiesto-a-favor-de-la-regulacion-el-ejercicio-voluntario-el-ejercicio-voluntario-de -prostitution-among-adults
[118] José María González del Río, op. cit. Page 248.
[119] STS RJ 2009, 3197.

The Supreme Court has, however, gone backwards in recognising the rights of prostitutes, as we have already analysed in the judgement legalising the statutes of the OTRAS trade union, or in the judgement legalising the statutes of Evelyn, in which we have already analysed the case of Evelyn. **However, the Supreme Court has gone backwards in the recognition of rights, as we have already analysed in the judgement that legalised the statutes of the OTRAS Union, or that of the colleague Evelyn, in which the protection of the rights of sex workers is limited to the alterne.**

In 2015, the High Court of Justice of Catalonia addressed the case of a worker in a massage parlour where prostitution was practised[120] and for the first time recognised the labour nature of sex work for hire or reward.

The Social Security Treasury sued the owner of the massage parlour and three of her workers, requiring them to prove the employment nature of the services they provided. The businesswoman invoked the argument so often used by the sex industry to call her own workers guests. According to the employer, she simply rented out the rooms to the workers so that they could work independently. However, the workers had guidelines from the company that were part of an employment relationship, such as a timetable set by the company. Also, the clients came through a web page managed by the company and the workers received an amount of money for the service provided.

Paradoxically, the company used the content of the articles of the Civil Code on the unlawfulness of the object and cause in contracts to deny the employment nature of the legal relationship existing between it and its workers, citing the fact that the sexual services were contrary to morals and good customs. However, in this case, the magistrate of the court considered, based on the aforementioned STS 14 April 2009, that **an employment relationship of p r o s t i t u t i o n for hire and reward exercised freely and voluntarily cannot be approached from the point of view of morality, as it affects aspects relating to the will of both parties.**

[120] Available at: (https://vlex.es/vid/561306474)

3.4. Jurisprudence on alterne

The Courts have only ruled in favour of recognising the rights of those who carry out sex work in their role as sex workers, limiting it to carnal access and limiting the scope of application of the labour nature to the figure of the alter- neur. However, as we have been defending, **it is generally known that, hidden under the alter- neur, there is practically always a concrete labour reality: the provision of sexual services in exchange for remuneration.** This implies a huge loss of rights, as the reality of sex work goes beyond that of "hostelling" (both in terms of the practices involved, their physical and emotional demands, as well as in terms of working time and pay). **Recognising sex work only as work does not take into account the specific specialities and dimensions of sex work that sex workers actually and effectively carry out. In this way, the workers are left helpless in the day-to-day development of their work and are driven underground and hidden.**

In the following, we will refer to various court decisions on "alternego" because, bearing in mind that, together with the activity of "alternego", sexual services are also usually provided, understanding its dynamics and how it has been constructed legally and in terms of labour law allows us to understand the dynamics of the labour nature of sex work. That is to say, **understanding how the figure of the "alterne" has been constructed and the recognition of its employment status allows us to imagine how to understand and legally fit the employment relationship of prostitution within the framework of existing labour law from a pro-rights perspective**.

3.4.1. Definition of alterne according to doctrine and case law

Hostelling consists of "the services of attracting customers with accompaniment in order to induce them to consume drinks, for which they receive a commission". In other words, the hostess accompanies and entertains a client in order to induce him/her to consume drinks in a venue, which subsequently pays the hostess a commission for these drinks. It is the owner of the premises, either by himself or through managers, who decides the percentage that the hostesses receive from the drinks consumed by the customer. Hostess services can be more broadly defined as "those in which a person, usually a woman, is linked to a venue by agreeing to stay in the establishment to liven up the atmosphere and encourage the consumption of drinks (usually alcoholic) through her sexual attractiveness, obtaining in exchange a payment, which will usually consist of a percentage of the amount of the drinks"[121] .

But this definition does not work, it is a defective definition because it leaves out the activity that is the main source of profit and gain for the brothels: paid sexual activity.

In practice, hostess contracts are usually for only a few hours, leaving out part of the ordinary working day that these workers actually carry out. In other words, for a large part of their working day, they are not insured and therefore do not contribute to social security benefits when they need them.

Also, to reiterate what has already been said, everything related to sexual activity is left out. **The employer claims that his employee is his guest, to whom he rents a room. In this way, it avoids numerous economic costs and forces the worker to bear them (the costs of renting the room, paying for electricity, laundry service, etc.). It is also the worker who, contrary to the basic rules of legislation on the prevention of occupational hazards, assumes responsibility for the protection of her health and safety, as it is normal for the workers themselves to take the necessary measures to protect their own health and safety.**

[121] José María González del Río, op. cit.

The costs of the work equipment and personal protective equipment (toys, lubricant and condoms) necessary for the activity are borne by the workers themselves, who are also responsible for their own security and look after each other against possible attacks by clients while providing services[122] .

Once again we affirm that the non-inclusion of sex work within the scope of labour and social security law is what generates labour exploitation and the possibility of abuses, as it prevents workers from accessing the generic protection of their health and safety at work, they cannot report labour abuses, nor if they are assaulted by a client. They cannot take the leave days provided for in labour regulations to go to official examinations, to attend a doctor's appointment or to accompany a family member after surgery. Nor can they access social security benefits such as maternity/paternity leave, unemployment benefit, or incapacity leave (they are often forced to work sick if they do not even want to pay for the days of incapacity). In short, the fact that sex work is not recognised as work means that sex workers are subjected to a world of labour exploitation, inequality and discrimination in relation to other workers.

3.4.2. Some ground-breaking rulings

These rulings, although they limit the recognition of the nature of work in the sex work, with the analysis and conclusions they draw on the labour reality of female prostitutes, they generate the possibility of better understanding how the characteristics of salaried work in third-party prostitution occur and how a pro-rights legal framework can be constructed for this special employment relationship.

The first decision that recognises the legal employment relationship between a woman worker and her employer is a Supreme Court ruling from 1981[123] . In it, it is established that the female worker, by virtue of the legal employment relationship to which she was subject, was obliged to go to the party hall where

[122] Information given by different interviewed women workers belonging to the union Others.
[123] STS 2517/1981.

She worked as a hostess and prostitute with a fixed schedule established by the company, and received a fixed monthly payment for it, as well as commissions for the customers' drinks.

The Supreme Court in 2004[124] gave a flexible interpretation of the worker's dependence on the employer. It recognised the existence of an employment relationship of "alternego" due to this flexible dependence. This judgement marks a line of jurisprudence on the note of dependence that subsequently allows many employment relationships of women alternadoras to be considered as employment relationships. In this case, the existence of dependence was controversial as the worker did not have fixed working hours, which may be common in third-party prostitution. It was concluded that it was not strictly necessary to have fixed working hours and a defined working day for dependency to exist, but that it was sufficient to work (be) under the direction and organisation of the employer, and **in this specific case the worker's subjection to the employer's power of direction and organisation was manifested in that the employer made decisions regarding the behaviour she should have with clients, or the type of clothing she should wear to increase the clients' consumption.**

Along the same lines, and broadening the concepts of **dependence and dependence**, we have the following judgments:

In a judgment of the High Court of Justice of the Valencian Community,[125] **, the existence of the dependence was concluded, alleging, among other elements, the fact that the employer made lockers available to the workers to store their personal belongings and street clothes.**

In 2019 the High Court of Justice of the Region of Murcia[126] points out that in relation to dependence and ajenidad:

"Precisely the activity of "Alterne" is characterised by the special skill or quality of the workers in attracting clients, and hence they enjoy freedom in terms of the clothes or attire chosen, as this work requires more personal initiative and freedom of action than other activities that require greater control by the company in their performance, but this does not imply that the provision of services is not dependent, and that the workers act autonomously.

[124] STS 7437/2004.
[125] STSJ CV 7877/2010.
[126] STSJ MU 2774:2019.

The same applies to the fact that the fruits of their labour are not shared, since the alternadoras are paid on commission, but so is the employer, whose profits are higher in proportion to the greater number of customers attracted, which is increased precisely because of the incentive that the services provided by the alternadoras provide for the customers who come to the premises.

The notes of dependence, dependence and remuneration were established by the inspectors in the manner indicated above with respect to all the workers mentioned in the first fact, and in the accredited conditions that are also stated, and therefore the existence of an employment relationship is considered to be accredited for all the workers concerned with the exception of those who appeared in court and stated that they had not received any amount from the company".

In 2020, the **Galician High Court of Justice ruled that the employment relationship of several female alternators who received a co-mission for each drink, worked during the opening and closing hours of the club (18.00 to 4.00 hours) and carried out their activity wearing special clothing, met the requirements of labour law.**

In 2021, the Supreme Court ruled in the case of the colleague Evelin and recognised only the employment nature of the alternego. Among the facts that contributed to this recognition were that *"her services were carried out on the business premises, during the hours set by the company and subject to its instructions"*. Therefore, the analysis of the current legal system can only lead us to conclude that the non-consideration of sex work as work and its inclusion in the labour law rules is exclusively due to a moral issue.

We insist, it is not possible to legislate with morality. Continuing not to redefine sex work as work or prohibit its practice will only increase the situation of helplessness and violation of sex workers' rights, as well as continue to place obstacles to collective organisation and the struggle for decent working conditions.

Part III

ON THE PROPOSED LEGISLATION

The **pragmatic approach** taken results in an **anti-punitivist pro-rights legislative proposal** that leaves prosecution out of criminal law.

Since the creation of the OTRAS Union in 2018, our main objective has always been to achieve the approval of pro-rights legislation in Spain. That is to say, the recognition of our work as a labour activity and, therefore, to provide it with all the rights that correspond to it as such and the decriminalisation of this activity in all its forms.

We were very conscious that the proposal to be put forward had to come from our collectives and that no political party should do it in our place, because no one knows what we need and what we want as well as we do. We also knew that no other organisation than a trade union was going to give it the approach of guaranteeing the rights of the working class, training and self-organisation of the working class that OTRAS guarantees.

It is from this trade unionist, class, transfeminist, anti-racist and pro-rights perspective that the legislative proposal we are presenting has been generated.

The phenomenon of sex work is vast and the situation of sex workers is very diverse. In trying to address this complexity as far as possible, the aim of our project is to ensure **equal treatment and non-discrimination** for sex workers, to **minimise the harm** suffered as a result of persecution and lack of rights, to establish **legal mechanisms to combat stigma, and to ensure the human rights of all sex workers.**

There are three ways in which sex work can be carried out: *for third parties (employed or salaried) (1); on one's own account (2); and by associating workers through worker cooperatives (3).*

INCLUSION IN LABOUR LAW AND SOCIAL SECURITY RULES

The **principle** we have followed has been to **include sex work within the framework of existing labour law**. In other words, we have opted for a generic referral of the regulation of sex work to the rules common to all work. **In** this way, **where the particularities of sex work allow it** because it does not require a more specialised regulation, **existing labour and social security law will be applicable**, as well as the **rules regulating self-employment and occupational health and safety regulations.** However, given the specialities involved in this activity, we have been obliged to draw up specific provisions that are only applicable to this activity.

CUSTOMS AND CUSTOMS

Bearing in mind that **sex work exists and has specific dynamics**, i.e. a broad application of the customs and practices of the different workplaces, we propose that these should be **applied preferentially in everything** that our legal proposal includes **that is most beneficial to the worker.**

STRUCTURE FOLLOWED

The proposal is **divided into 5 titles**:

— The **first Title** is devoted to **decriminalisation and other general issues** (object, principles, definitions and scope of application, among others).

— The **following three Titles** deal separately with the **specialisations of the different forms** of sex work.

— The **last Title** is devoted to **Social Security**.

— It ends with a series of **additional, transitional and final provisions**.

The most significant aspects of each Title are explained below.

I. DECRIMINALISATION

PART III ON THE PROPOSED
LEGISLATION

The **first Title** contains **general and fundamental provisions** for the decriminalisation of sex work and its **inclusion in labour and social security law**. It establishes:

The **object** of the legislative proposal: The decriminalisation o f sex work and its inclusion in labour and social security law.

The **principles** underlying the proposal. Among others: The fight against poverty, the right to dignity and free development of the personality. equal treatment and non-discrimination.

Fighting stigma: any stigmatising action or omission or behaviour will be considered discriminatory.

Definitions of the different actors and spaces that make up the universe of sex work to help understand the phenomenon and establish the scope of this proposal.

Scope of application and exclusions.

1. ON THE SCOPE OF APPLICATION

Subjective: To whom it applies

***Working party*: *Persons who voluntarily and freely engage in sex work*.**

A person is considered to be a sex worker:

Prostitutes, who are persons **who provide sexual services for payment** (self-employed or salaried);

Actors and actresses in the pornographic sector who perform an **artistic activity with sexual content in the performing, audiovisual and musical arts** on behalf of and within the **scope of the organisation and direction of an employer** in exchange for remuneration.

Employer: In the case of **commercial sex work, employer shall mean any natural or legal person or community of property receiving services from the persons referred to in the previous paragraph**.[127]

In the case of the pornography sector: To those persons **who organise or produce an artistic activity with a sexual content**.

Objective: What it applies to

Paid sexual activity, consisting of the **free and voluntary provision of a service of a sexual nature**, in exchange for a **price or salary**, in its autonomous, salaried and independent modalities.

In the pornography sector, sex work is considered to be the **free and voluntary provision of artistic activity with sexual content** carried out within the framework of **the performing, audiovisual and musical arts**.

Exclusions

Subjective: Sex work by persons under the age of 18 is prohibited.

Objective: Sex work shall not be considered as sex work if it is performed without the free will of the worker.

Consent

We propose to recognise and define the right of sex workers to refuse, at any time and for any reason, the right of sex workers to

[127] Taking into account the complex phenomenon of sex work in **our proposal we broadly define what is considered to be an entrepreneur**:
a) All natural or legal persons or communities of property that manage, organise and/or direct a business in which remunerated sexual activity is carried out, consisting of the provision of services of a sexual nature by the persons referred to in the previous paragraph, in order to obtain economic benefits, and who hold the power of direction and organisation.
b) The natural or legal person owning the set of productive factors (human, technical and financial) organised and coordinated by the management, engaged in the business whose main activity is the provision of services or activities of a sexual nature.
c) The natural or legal person organising and/or coordinating the set of productive factors (human, technical and financial) organised and coordinated by the management, dedicated to the commercialisation of activities of a sexual nature.

The right of a person to provide or continue to provide sexual services, without payment for services amounting to payment for consent.

Pimping

Excluded from the scope of sex work **are sexual exploitation, pimping or forced labour** (in this case sex work).

These concepts shall be interpreted in accordance with **ILO Convention 29 on forced labour**, which defines forced labour as *"all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily"*.

Within the framework of the National Action Plan against forced labour, approved by the Council of Ministers on 10 December 2021, forced prostitution or sexual exploitation would be: *Any work or sexual activity exacted from a person that is performed under the threat of any penalty and for which the person does not offer himself or herself voluntarily*.

2. VALIDATION OF CONTRACTS AND EMPLOYMENT ROOTS

Validation of contracts

Given that **many sex work employment relationships already exist**, we propose that contracts, in whatever form, between sex workers and the employer that are not legally formalised as a result of criminalisation should be validated, provided that the worker consents to this and in accordance with the entire proposal (unless the conditions agreed are better).
This involves registering them **with the Social Security** and, if they are persons in an irregular administrative situation, **regularising their situation**.

Employment roots

In view of the existence of sex work relationships between workers in an irregular administrative situation and employers, it is proposed that the recognition of "arraigo" be granted

The following conditions must be met in cases where the above-mentioned requirements are fulfilled.

Social roots

With the decriminalisation of sex work, the **possibility to opt for regularisation of administrative status** may be subject to the sex work contract.

3. FIGHTING STIGMA

Part of the anti-stigma measures we propose starts with the **basic rights** of all **workers**. Particularly in the case of sex workers, taking into account Article 5.2 c) of the Workers' Statute, we would add discrimination on the grounds of the so-called "whore stigma":

Persons engaged in sex work have the right ***"not to be discriminated against directly or indirectly for employment or, once employed****, for reasons of marital status, age within the limits set by this law, racial or ethnic origin, social status, religion or belief, political ideas, sexual orientation, sexual identity, gender expression, sexual characteristics, membership or non-membership of a trade union, language within the Spanish State, disability, sex, including* ***unfavourable treatment of women or men for the exercise of the rights of women or men in the exercise of their sex work****, sexual characteristics, membership or non-membership of a trade union, on the grounds of language within the Spanish State, disability, on the grounds of sex, including unfavourable treatment of women or men for the exercise of the rights of reconciliation or co-responsibility of family and working life,* ***as well as for stigmatisation as a sex worker***.

4. CUSTOMERS

We propose a section of articles dedicated to clients with the aim of **improving existing dynamics and securing the rights** of sex workers as a whole.

The client, his **obligations and responsibility** are **defined**.

Stigmatising actions or omissions are **prohibited and safe sexual practices are promoted, as well as information and**

education for them by the authorities.

competent public authorities.

It establishes the obligation, already existing in the customs and practices of sex work, that **payment must be made in advance** of the performance of the service.

II. WORK TO THIRD PARTIES
(employed, salaried)

PART III ON THE PROPOSED
LEGISLATION

Following the principle of **including sex work within the legislative framework of common labour law**, as far as possible we have referred the regulation of salaried prostitution to the Workers' Statute and its implementing regulations. However, taking into account that sex work entails singularities in relation to, among other aspects, the autonomy of the worker, consent, working time and salary, we propose a special employment relationship in order to be able to better address its particularities.

Proposing to recognise sex work as paid work implies unblocking the situation of lack of rights that currently exists for people who carry out sex work for third parties. As we have been arguing, third-party sex work exists, it is a fact. It is necessary for sex workers to be able to have the same rights as other workers.

1. EMPLOYMENT RELATIONSHIP OF A SPECIAL NATURE

Article 2 of the Workers' Statute recognises a list of **special employment relationships**. In these relationships, one or more of the essential assumptions of the employment relationship (that the work is *personal, voluntary, dependent, salaried and paid*) is given in a different way than in the vast majority of common salaried relationships.

Each of these special relationships has its own **specific rules that take into account the particularities of each activity** and the Statute is usually applicable when there is an express reference to it and/or in a subsidiary manner. Some examples are: Family home services, Professional sportsmen and women, Artists in public performances, Senior management personnel in companies.

In the case of **sex work for hire or reward, *the fact of being an employee* and dependence** are the two essential characteristics of wage labour that are present in **a different way** in the sphere of its exercise.

Therefore, in order to address it, we propose to establish it as a **special employment relationship** that allows us to make specifications and adjust the law to the reality of the phenomenon.

The categorisation of third-party sex work as a special relationship is a **technique** that makes it possible to **take into account the peculiarities** of sex work for hire or reward and to **imagine and generate a right accordingly**.

Relative dependence: Limitations on entrepreneurial power

Sex workers have a relative dependency relationship with the employer of the establishments in which they provide sexual services (in third-party prostitution), or the employer who organises or produces an artistic activity with sexual content (in the pornography sector).

One of the most important particularities lies in the relativeness of this dependence, which we can translate into the **necessary limitation and nuance of the management and organisational power of the employer**.

The employer's power must be limited by the consent and freedom of the worker. Consent, which will be specific to each sexual service, depends exclusively on the worker. **It can be withdrawn at any time prior to or during the provision of** the service, without the worker being subject to reprisals.

Therefore, the other side of the coin of the limitation of corporate power is the increase and guarantee of the worker's right to resistance.

Indemnity guarantee

Like all other workers, sex workers are entitled to a guarantee of indemnity. The guarantee of indemnity is a fundamental right that protects workers against reprisals for complaining to the employer. In the specific case of sex workers, we propose that this mechanism should protect their consent and their right to resist against possible excesses of the employer's power of organisation and management. The guarantee of indemnity will be considered to be violated when they suffer reprisals for making **any verbal or written complaint or claim** to the employer against the **excesses of their employer's organisational and managerial power.**

The worker may be subjected to **disciplinary and/or discriminatory action** against the worker in response to: withdrawal of consent, refusal to perform sexual services in general or a particular service or type of sexual service. This is without prejudice to any liability that may arise in other orders.

2. ON JOINING WORK

2.1. Data protection. Prohibition of stigmatising searches

One of the requirements and foundations of the rights system is equal treatment and non-discrimination of sex workers in relation to other workers.

In order to avoid a regulatory model, it is essential that special police and/or health registers are expressly prohibited. The existence of police-health registers implies the assumption that sex workers are a group to be monitored and controlled. These registers differentiate sex workers from other sex workers, thereby generating and increasing the "whore stigma" that considers sex workers as a group to be corrected and controlled.

The role of the public administration and the treatment of the data of prostitutes must be the same as for other workers.

The existence of registers and any kind of lists must be considered discriminatory, as it affects a particular group just because they carry out an economic activity historically judged as immoral.

2.2. Role of Public Employment Services

The efforts and actions of the Public Employment Services (PES) will be aimed at improving the social, economic and employment situation of sex workers, whether they are active or not.

already withdrawn.

No jobs will be offered in sex work.

In the implementation of these activities, PES shall **involve sex workers and sex worker collectives at all stages.**

3. TYPES OF CONTRACTS

3.1. Statute of the Workers

In general, all types of contracts existing within the common labour relations of the Workers' Statute are recognised.

3.2. System plaza

Within sex work there is a **special form of temporary contract**, known as the Plaza System.

Under this system, workers are placed in a n establishment dedicated to the provision of sexual services for a duration that can vary from approximately 10 to 21 days. They then rest for 7 days.

Mobility is part of sex work, both because of the dynamics of demand and because of the needs or preferences of sex workers themselves.

During the time that a person is providing services under this type of contract, there are two possible scenarios: that he/she is **independent or that he/she is under the organisation and management of the company.**

In the case of employees, we propose **mechanisms to prevent the possible fraud** of using temporary contracts for a disguised permanent employment relationship or cases of false self-employment. These mechanisms are limits to the chaining of contracts by a worker with the same company within a specific time period.

4. LABOUR CONTRACT FOR ARTISTIC SEX WORK (PORNOGRAPHY SECTOR)

It is intended for performers who carry out their sexual activity in the performing, audiovisual and musical arts. The employer is the person who organises or produces an artistic activity of a sexual nature. We are referring to the porn sector or the creation of sexual content for hire or reward.

It is a **mixed** type of **contract** that contains elements of the typical contract for performers in the performing, audiovisual and musical arts and the legal regime that we propose for sex work. **The idea is to address the particularities of sex work within the adult arts industry and to be able to safeguard the rights of the people who perform sex work.**

such activity.

Taking into account that there is already an existing work dynamic and customs, as long as they are more favourable, they will be applicable and we have not regulated specifications in order to leave a wide margin for collective bargaining. Among the demands most frequently mentioned by the sex workers involved in pornography who have participated in the meetings are: the requirement that employers register the people who participate in the scenes with the Social Security, the prohibition of free rehearsals and the limitation of the time of rehearsals and recording of scenes, a fair distribution of image rights, clear and concise information prior to the recording of the scenes that are going to take place.

5. CONTENT OF THE SPECIAL EMPLOYMENT RELATIONSHIP OF SEX WORK

5.1. Reference to the Workers' Statute Workers' Statute

With the idea of equalising and including sex workers in labour law, we refer almost completely to the basic rights and duties, and the rights and duties derived from the contract provided for in the Workers' Statute.

5.2. Obligations of the employer

We have taken up the employer's obligations that the Workers' Statute already provides for common employment relationships, adapting those that are necessary for sex work.

Business obligation

- To **ensure that the work** is carried out under proper **health and safety conditions, respecting the privacy of the workers**.

In particular, they have an obligation to promote safe sexual practices and to ensure that the workspace is properly equipped for this purpose.

In order to comply with the above, it shall take **appropriate and effective measures**, taking due account of the **specific characteristics of the practices** carried out in the establishment (e.g. if BDSM practices are carried out, it shall have specific measures in place).

Failure to comply with these obligations shall be just cause for termination of the employment relationship on the part of the worker, without prejudice to the responsibilities of the employer that may derive from the regulations on the prevention of occupational hazards.

Obligation of sufficient provision and maintenance of means, equipment and working tools

The employer's obligations are set out as follows:

—The obligation to provide workplaces or establishments where sex work takes place with sufficient facilities to ensure that sex work is carried out under optimal health and safety conditions.

— The obligation to provide sex workers with sufficient equipment and tools to carry out paid sex work in optimal conditions of safety and health.

We propose that, as in the case of common labour relations, an inventory of what is deemed necessary in terms of installations, equipment, means and working tools can be drawn up by collective agreement. In any case,

The following shall be considered compulsory: those provided for as such in occupational health and safety regulations:

– Facilities: beds, bed linen, shower and/or washbasin.
– Tools: lubricants.
– Personal protective equipment: condoms.

— The employer shall be responsible for the maintenance and cleanliness of the workspace, including all facilities, and for providing sex workers, free of charge, with the appropriate tools and equipment necessary for sex work.

— The prohibition and nullity of any pact or agreement in which the employer and the employee agree that it is the employee who assumes the cost derived from the fulfilment of the above obligations.

6. WORKING TIME

To address working time in third-party sex work, specifically we are thinking of prostitution, we propose the differentiation between two types of working time: actual working time and presence time.

Time in attendance can be considered as availability time: time when the worker is available to perform the work, but is not actually performing it (e.g. waiting for customers in the establishment).

The **actual working time** is the time during which the worker is performing the service that is the subject of her contract (sexual activity).

In order to record the total working hours of each worker, we propose that either the mechanisms already in place in workplaces should be respected as long as they do not violate the rights of workers, or that the obligations to record working hours common to all other jobs should be applied.

6.1. Conflicts with the alterne

The **distinction of working times** creates **problems** in the area of "call girls" as before the sexual activity there are other tasks that a sex worker has to do (first contacts with the potential client, incitement to drink, etc.). However, taking into account that the **object of the employment relationship** within sex work is the **provision of sexual services**, and that there is a **qualitative difference** between the tasks of "incitement to drink, first contacts" and "sexual practice", we believe that it is relevant to use this **time distinction as a double tool**: (1) to be able to establish a **higher remuneration for sexual service time** and (2) to **be able to limit the working hours** to the particularities imposed by the physical-emotional effort of sex.

The hours spent in attendance will be paid at least the Minimum Interprofessional Wage and are paid, as is the case in other jobs where they exist, such as Home and Care Services and Work at Sea.

6.2. Concrete proposals to be achieved in collective bargaining: Jor- ness and breaks

The following proposals are not included in the proposed text as they are aspects to be dealt with in collective bargaining. However, the Union considers it essential to mention a proposal on maximum working time and working hours that aims to guarantee labour rights and health and safety at work.

Hours in presence:

We propose a maximum of 5 hours of effective work per day.

The hours spent in attendance, in accordance with the provisions for Home and Care employment, may not exceed an average of 20 hours per week per month. This maximum figure applies to a full-time worker; if the working day is less, it will be reduced by the proportional part that corresponds to the agreed working day.

Maximum working day:

The maximum ordinary working week shall be 25 hours of actual work, without prejudice to any time at the employer's disposal that may be agreed between the parties.

After the end of the daily working day and, where applicable, the agreed attendance time, the employee is not obliged to remain at the workplace.

The Workers' Statute applies to rest periods between shifts: Minimum 12 hours.

Rest periods:

A weekly rest period of 48 consecutive hours to be agreed by collective agreement or by mutual agreement between the parties.

7. TERMINATION OF THE EMPLOYMENT RELATIONSHIP

We make a generic reference to the causes of termination of the employment contract in common employment relationships, although with some particularities:

7.1. Unsubscribe voluntary

We advocate for the recognition that sex workers can terminate their employment contract at any time without just cause, and that this should be considered a legal situation of unemployment under the terms of the General Law on Social Security.

In this way, workers will be entitled to unemployment benefits if the other requirements of the law are met. As in the case of ordinary employment relationships, they are not entitled to severance pay, but are entitled to severance pay.

We believe that such measures should be required for all employment relationships. Any person who has fulfilled the stipulated contribution period to qualify for the benefit should be entitled to the benefit.

The unemployment benefit should be able to be paid without having to be dismissed if you want to leave your job. This measure encourages people to look for jobs with better conditions, as it allows everyone to stop and look for a job without losing income.

7.2 Within the voluntary termination for just cause by part of the worker.

In addition to those provided for in Article 50 of the Workers' Statute, we propose **two other causes** that derive from the speciality of sex work, fundamentally from **respect for the autonomy of the worker and her non-discrimination**:

– The **overreach of corporate power**, which is qualified in this organic law to the degree of attempt.

– Have suffered stigmatising behaviour, action or omission on the part of the employer or another worker.

8. INFRINGEMENTS AND PENALTIES. ITSS. COMPETENT JURISDICTION

8.1. Referral to LISOS

Labour law has its own means of sanctioning conduct that is considered reprehensible within this branch of law. We therefore propose that Royal Legislative Decree 5/2000, of 4 August, which approves the revised text of the Law on Offences and P e n a l t i e s in the Social Order (LISOS), be applied in its entirety.

8.2. Specific to sex work (proposed)

However, we believe that it is appropriate to introduce the following as specific offences within sex work in the LISOS:

In the field of industrial relations

With the aim **of safeguarding the** worker's **right of resistance** and **limiting the company's power of organisation and direction**:

Consider as a very serious infringement any action or omission intended to exceed the limits of the employer's powers of management and organisation.

To **fight stigma**:

Stigmatising or stigmatising decisions and actions or omissions by the employer, another worker or a third party against the sex worker should be considered discriminatory in employment relations.

On subcontracting and secondment of workers

Consider it a very serious infringement for temporary employment agencies and a very serious infringement for user companies to formalise contracts for the provision of sex work .[128]

On employment

To consider as discriminatory the carrying out of stigmatising actions or omissions on the part of employers, employment agencies, training entities or those that take on the organisation of vocational training actions for employment programmed by companies and the beneficiaries of aid and subsidies in the field of employment and aid for the promotion of employment in general.

8.3. Competences

As in the case of ordinary labour relations, the Inspectorate would be responsible for verifying infringements.

[128] Under the terms of Article 18.3 b) in the case of temporary employment agencies and Article 19.3 b) of the LISOS for user companies that formalise contracts for the provision of services.

The competent jurisdiction for hearing matters arising from non-compliance would be that of the labour and social security authorities, and the competent jurisdiction for hearing matters arising from non-compliance would be that of the social order.

III. SEX WORK SELF-EMPLOYED

PART III ON THE PROPOSED
LEGISLATION

Independent or self-employed sex work is in principle not prohibited by Spanish law. However, as discussed in Part I. and Part II. of the report Sex Work with Rights, sex work is criminalised, persecuted and hindered.

Within this modality of exercise, the most persecuted are street sex workers, who are prevented from working and punished with administrative sanctions derived from the Organic Law for the Protection of Citizen Security and the municipal ordinances of the City Councils.

With regard to the autonomous modality, we believe that it is essential to repeal all the prohibitionist and abolitionist regulations that are scattered throughout the Spanish legal system, and that they should be given negotiating power to make decisions about the areas where street sex work is carried out. This is what we include in our proposal for legislation.

1. LOW-INCOME SEX WORKERS OR CASUAL SEX WORK.

Before discussing some of the particularities of the Title on self-employed sex work, it is essential to draw attention to those **sex workers with low incomes or who engage sporadically in sex work, whose obligation to register with the RETA[129] may be disproportionate to their level of income**.

The high costs of self-employment, which affect not only sex workers but all liberal professions, are a major obstacle for low-income independent workers, such as street-based sex workers, or those who engage in sporadic self-employed sex work.

In addition to the **recognition of bonuses**, a possible solution is to be found in the **case law of the Supreme Court**, which states that, if income is not at least equal to the Minimum Interprofessional Wage through the exercise of an activity

[129] Special Regime for Self-Employed Workers.

There is no obligation to register in the Special Regime for Self-Employed Workers (RETA), and therefore, the self-employed person would not have to pay the self-employed quota .[130]

2. COMMON PROVISIONS PROTECTIVE PROVISIONS

In order to expand the protective wing of this legislative proposal to all those engaged in prostitution, it will apply to them:

The general provisions contained in the Title dedicated to Decriminalisation, the provisions relating to clients, and the rest that are expressly provided for, as well as the rules on Occupational Risk Prevention and improvements in Social Security.

[130] The case law of the Supreme Court has had to limit the extent of the obligation to register and contribute to the RETA, establishing as a criterion the income obtained from the activity carried out and linking it to the habitual nature of the activity. Specifically, it was the Supreme Court ruling of 29 October 1997 that set the line.
We will cite another more recent judgment dated 20 March 2007 which states:

"The criterion of the amount of the remuneration is suitable for assessing the requirement of regularity. As has been pointed out in contentious-administrative case law (STS 21-12-1987 and 2-12-1988), this requirement refers to a professional activity carried out not sporadically but with a certain frequency or continuity. When specifying this frequency or continuity factor, it may seem more accurate in principle to resort to time modules than to remuneration modules, but the virtually insurmountable difficulties of specifying and proving the time units that determine regularity have led the courts to accept the amount of the remuneration as an indication of regularity. This recourse to the criterion of the amount of remuneration, which for obvious reasons is easier to calculate and verify than that of the time spent, is also useful in view of the experience that in the activities of the self-employed or self-employed, the amount of remuneration is normally closely correlated with the time spent working.
"It should be added to the above statement that exceeding the minimum wage threshold in a calendar year may be an appropriate indicator of regularity. Although it is a figure laid down for the remuneration of salaried work, the legislator uses it very frequently as a threshold of income or activity in various fields of social policy, and specifically in Social Security matters, so that in the current legal situation it is probably the most usual operational criterion for the purpose of measuring income or activity. Exceeding this figure, which is set precisely for the remuneration of a full day's ordinary work, may also reveal its application to self-employment.
In other words, professionals who carry out an activity independently and do not earn an income equivalent to 75% of the Minimum Interprofessional Wage should not be obliged to register and pay contributions to the Special Regime for Self-Employed Workers.
Other examples where this doctrine has been applied include:
- Street vendor of kitchenware (Judgment of the TSJ of Castilla - La Mancha, 26/11/2005 and STS of 20 March 2007).
- Owner of a pig fattening and breeding farm (Judgment of the Supreme Court of Castilla y León, Burgos, 11 November 2003).
- Psychologist (Judgment of the TSJ of Castilla y León, Burgos, 17 September 2002).

3. REFERENCE TO THE LEGISLATION ON SELF-EMPLOYMENT SELF-EMPLOYED

The provisions of Article 3 of the Statute for Self-Employment shall apply, provided that this is compatible with the protective provisions of the legal proposal we are defending.

4. ADVERTISING

It is essential to **repeal the last part of Article 11(1) of the Organic Law on the Comprehensive Guarantee of Sexual Freedom and the last clause of the second paragraph of Article 3.1(a) of the General Law on Advertising.**

The lawfulness of advertising used by sex workers to advertise their sexual services must be recognised.

IV. WORKER COOPERATIVES

A co-operative is defined as a company formed by persons who join together, on a free membership and voluntary deregistration basis, to carry out business activities, in this case relating to the provision of sexual services, aimed at satisfying their economic and social needs and aspirations, with a democratic structure and functioning.

We propose this **associative form of work** as one of the three forms of practice. The worker cooperative would allow sex workers to **organise themselves and manage their work** collectively and democratically as self-employed or salaried workers, **without being subject to the power of any employer**.

Its regulations do not differ from those of the other worker cooperatives, although in this case **the common minimum requirements for sex work must be respected**, so that the rights of workers are guaranteed.

Legislative competence over cooperatives has been ceded to the Autonomous Communities and practically all of them have drawn up their own regulatory law. The OTRAS trade union has observed the rules contained in the General Law 27/1999 on Cooperatives, especially articles 80 to 87, which are dedicated to the worker cooperative class.

V. SOCIAL SECURITY

PART III ON THE PROPOSED
LEGISLATION

We then propose Social Security legislation for sex work that differentiates between sex work under the special regime of self-employment and paid sex work.

A) SEX WORKERS UNDER THE SPECIAL SELF-EMPLOYMENT REGIME

1. Framing

They would be included in the RETA, as has been the case up to now. Their rights and contribution obligations would be governed by the common Social Security regulations for self-employment. We propose that the **contribution rebates** foreseen for all persons in the special self-employment regime be applied to them.

2. Action protective

Linking it to the Right to Health and Safety at Work, it should be borne in mind that the intensity and particularity of the provision of sexual services means that from a certain age onwards it is a job that requires physical and emotional effort that can exceed the physical condition of the person who performs it or even be incompatible. For this reason, as is the case in the coal mining sector, we propose that a percentage reduction in the retirement age be applied to them, which will also be applicable to employed work.

B) EMPLOYED SEX WORKERS (THIRD PARTY/EMPLOYED)

1. Special System of paid sex work

We propose the creation of a **Special System for employed sex work within the General Social Security System**.

The raison d'être of this system is to better accommodate the contribution and settlement of social security rights of sex workers, who do not earn the same income every month as they do not perform the same number of sexual services every month.

It is not a Special Regime.

For its elaboration we have mixed aspects of the common General Regime and of the Special Systems of Artists in Public Performances and of the Home and Care Service. None of what we propose is something that is not already applied in Spain for special groups of workers.

2. Framing

Sex workers shall be included in the Special System.

3. Quotation and settlement

The dynamics of sex work require us to think of **a different way** of paying contributions and entitlements. **A sex worker does not provide the same number of sexual services or performances** (pornography sector) **from one week to the next,** and therefore **the wage they receive may vary from month to month.**

Working time is divided into actual working time and attendance time. Both will vary on a weekly and monthly basis. In particular, actual working time, i.e. sexual services rendered, may vary, giving rise to the following entitlements

different incomes each month.

We therefore propose that contributions and settlements be made in the same way as in the Special System for artists in public performances. According to this system, the employer is responsible for informing the General Treasury of Social Security on a monthly basis of the salaries actually paid to each worker. We believe that in the case of sex work this is the most appropriate way to pay contributions and settle entitlements.

4. Action protective

We propose **two improvements** in **unemployment** and **retirement.**

Retirement

This is **a measure which is included in our legal system and which is currently applied** (in the rules for the improvement of coal mining).

We propose to **lower the minimum age for pension entitlement**.

Unemployment

We advocate for the recognition that **sex workers** can **terminate** their employment contract at any time **without just cause**, and that this should be considered a **legal situation of unemployment under** the terms of Article 267 of the General Law on Social Security.

Thus, as we have already explained in relation to voluntary redundancy, these people will be **entitled to unemployment benefit** if they meet the other requirements set out in article 266 of the aforementioned law.

VI. RISK PREVENTION

1. REFERENCE TO OCCUPATIONAL HEALTH AND SAFETY LEGISLATION

Our proposal aims to equalise the rights of all workers, so that the rules of labour law apply to sex workers. All this provided that it is not detrimental to the specialities of sex work.

For the respect and guarantee of Occupational Health and Safety in the field of sex work, we propose to refer to the application of all the regulations on Occupational Risk Prevention, specifically Law 31/1995 and its implementing regulations.

2. RIGHTS AND DUTIES OF WORKERS

Workers' Statute

Article 4.2(d) of the Workers' Statute recognises the right "to their **physical integrity** and **to an adequate occupational risk prevention policy**".

Article 5(b) establishes that it is the duty of workers to "**observe the occupational risk prevention measures adopted**".

Law 15/1995 on the Prevention of Risks at Work

Chapter III. **Rights and obligations** of the law, among other aspects, states that:

— **Workers are entitled to effective occupational health and safety protection**, and **it is the employer who has a corresponding duty to** protect workers from occupational hazards.

— In compliance with the duty to protect, **the employer shall ensure the safety and health of his or her employees** in all aspects of their work.

— Among other actions**, it shall carry out the prevention of**

risks through the integration of preventive activity in the company and the adoption of as many measures as are necessary for the protection of the health and safety of workers, with the specialities set out in the articles of this Chapter III regarding the occupational risk prevention plan, risk assessment, information, consultation and participation and training of workers, action in cases of emergency and serious and imminent risk, health surveillance, and through the constitution of an organisation and the necessary means under the terms established in Chapter IV of this law.

— The **employer shall comply with the obligations laid down in the regulations on the prevention of occupational hazards**.

— The **cost of** occupational safety and health measures **shall in no way be borne by workers**.

This means that it is the employer who has to bear the costs of personal and collective protective equipment that up to now have been borne by sex workers.

3. PARTICIPATION OF SEX WORKERS' COLLECTIVES AND OTHER SUPPORTIVE COLLECTIVES

We believe that **sex workers**, as well as **groups** such as CATS or Bizkaisida, among others, who have been working for years on health and safety in this field, should be **involved** in the **development of prevention measures**. We **call on** the **National Institute for Health and Safety at Work and the National Institute of Social Security** to take into account the above-mentioned agents in order to draw up preventive measures that can be specified in a regulatory text that specifically addresses the risks to which sex workers are exposed, as well as the specific occupational accidents and diseases to which they are exposed.

those which are exposed.

VII. ADDITIONAL, TRANSITIONAL AND REPEALING PROVISIONS

1. ADDITIONALS

1.1. Carrying out Impact Assessments involving sex worker groups or sex workers.

The purpose of Impact Assessments is to evaluate in order to improve rights.

1.2. The enforcement of liability for infringements and penalties in the social order from its entry into force in accordance with the provisions.

2. TRANSITIONAL

2.1. Contracts in force

We propose to give a **period** of **6 months to formalise in writing existing employment contracts** which, as a consequence of the new regulation, must be concluded in writing.

The same was done with the employed persons engaged in Home and Care Services.

2.2. Most beneficial condition

This proposal shall not affect existing more favourable conditions, without prejudice to the provisions on compensation and absorption of salaries in Articles 26.5 and 27.1 of the Workers' Statute.

3. REPEALS

- Penal Code. The second subparagraph of Article 187(1), second paragraph, of the Criminal Code is repealed .[131]

[131] This paragraph would read as follows:
"Anyone who, using violence, intimidation or deception, or abusing a situation of superiority or the victim's need or vulnerability, determines a person of legal age to engage or remain in prostitution, shall be punished with a prison sentence of two to five years and a fine of twelve to twenty-four months.
2. The penalties provided for in the preceding paragraphs shall be imposed in their upper half, in their respective cases, when any of the following circumstances apply:
a) When the guilty party has taken advantage of his or her status as an authority, agent or public official. In this case, the penalty of absolute disqualification of six to twelve years shall also be applied.
b) Where the offender belongs to a criminal organisation or group engaged in such activities.

— **Organic Law on the Protection of Public Security.** Articles 36(11) and 37(5) are repealed.

— **Publicity.** The last part of section 1 of Article 11 of Organic Law 10/2022 of 6 September on the comprehensive guarantee of sexual freedom[132] is hereby repealed. The last subparagraph of the second paragraph of Article 3.1 (a) of the General Law on Advertising is hereby repealed.[133].

— **General regulations.** All state, autonomous and municipal regulations of lower rank than organic law that are contrary to the matter are repealed.

c) When the guilty party has endangered the life or health of the victim, either intentionally or through gross negligence.

3. The penalties indicated shall be imposed in their respective cases without prejudice to those applicable to the sexual aggression or abuse of the prostituted person.

[132] To be worded as follows:

"Article 11. Prevention and awareness-raising in the field of advertising.

1. Advertising that uses gender stereotypes that promote or normalise sexual violence against women, girls, boys and adolescents shall be considered illegal.

[133] To be worded as follows:

"Likewise, any form of advertising that helps to generate violence or discrimination in any of its manifestations against minors, or promotes stereotypes of a sexist, racist, aesthetic or homophobic or transphobic nature, or on grounds of disability, shall be understood to be included in the above provision. [...]".

CONCLUSIONS

"Our struggle is not sectoral.
Georgina Orellano, trade unionist sex worker

"There is no migrant solidarity without prostitute solidarity and there is no solidarity among prostitutes without solidarity with migrants. The two struggles are inextricably linked to each other".

Juno Mac and Molly Smith

We will be brief in our conclusions as these are reiterated throughout the text. Yes, a system in which sex work is recognised as work and the rights of sex workers are protected and guaranteed is possible. We are aware that demanding rights is not a revolution, nor does it imply that all the problems created by the capitalist system will be solved automatically. But it is undeniable that having labour, economic and social rights is a tool that allows us all to fight in better conditions. That is why demanding rights for all is a necessary commitment to improve the starting point.

It is necessary to fight together for the decriminalisation of sex work. If the issue has so far not been addressed from a pro-rights and anti-punitivist perspective, it is because of a lack of will and because the false debate is entrenched in morality. It is necessary to leave aside bourgeois anti-rights feminism and embrace a feminism for all where all lives matter.

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INDEX

TITLE I
Decriminalisation

CHAPTER I
General provisions

Section 1. Object and guiding principles

Article 1. Object of the law.

1. The purpose of this law is to decriminalise sex work and create a legal framework that safeguards the human rights of sex workers, protects them from exploitation, promotes occupational health and safety, and promotes public health.

2. Decriminalisation is not based on a moral judgement of sex work, but follows a pragmatic, gender-sensitive perspective. harm reduction for sex workers. Its ultimate aim is to combat poverty, discrimination and social exclusion, and to enable sex workers to have and access the same rights as other workers.

Article 2. Decriminalisation.

1. Decriminalisation consists in the recognition of the legality of the exercise of paid sexual activity and its consumption in its independent, self-employed and employed modalities.

2. The exercise of sex work shall be regulated by labour laws when it is a salaried activity, applying this law and subsidiarily the regulations of Labour Law and Social Security, and by the regulations applicable to Self-Employment in appropriate cases.

Article 3. Guiding and inspiring principles.

1. Respect, protect and guarantee the human rights and fundamental rights of sex workers as set out in international human rights treaties.

2. Free choice of profession or trade under the terms of Article 35 of the Spanish Constitution.

3. Combating poverty, social exclusion and discrimination.

4. Combating trafficking for the purpose of sexual exploitation.

5. Harm reduction perspective for sex workers. Public institutions shall have a harm reduction perspective in addressing sex work, both in the design of public policies and actions and in measures taken to decriminalise sex work, that contributes to to remove the stigma of sex work and, without using a criminalising or moralistic approach, aims to reduce the risks associated with sex work.

6. Prohibition of discrimination. Public institutions shall ensure that the rules provided for in this organic law are applied without any discrimination on grounds of sex, gender, racial or ethnic origin, nationality, religion or belief, health, age, social class, sexual orientation, sexual identity, disability, marital status, migration or administrative status, or any other personal or social condition or circumstance.

7. Guarantee and promotion of the right to health of sex workers in terms of non-discrimination and equality. The right to health of sex workers is recognised in terms of Article 43 of the Convention on the Elimination of All Forms of Discrimination against Women.
The Spanish Constitution and its implementing regulations prohibit discrimination on grounds such as racial or ethnic origin, nationality, disability, sexual orientation, sexual identity, age, health, social class, migration, administrative status or other circumstances that place certain sectors at a disadvantage in the effective exercise of their rights.

8. Promoting safe sexual practices in the field of Health and Safety at Work.

9. Fight against stigma. Public institutions shall carry out actions aimed at eradicating sex worker stigma, and actions or omissions that generate such stigma shall be considered discriminatory. They shall consult and involve sex worker groups and associations in the design and implementation of actions.

10. Participation. In the design, application and evaluation of the norms and public policies foreseen in this organic law and in the provisions that are dictated in the matter, the participation of sex workers and collectives and associations constituted by sex workers will be guaranteed.

11. Empowerment. All regulations and policies adopted in implementation of this organic law shall put in place the sex workers' rights at the centre of all measures.

Article 4. Reference to labour, self-employment and social security legislation.

1. The free and voluntary exercise of paid sexual activity is not regulated by criminal law, although TITLE XV, Crimes against workers' rights, Book I, Organic Law 10/1995, of 23 November, of the Penal Code and other regulations for the protection of workers are applicable to it.

2. The employment relationship of sex workers is proposed to be regulated as special in accordance with article 2.1.b) of the Law of the Statute of Workers, Revised Text approved by Royal Legislative Decree 1/1995, of 24 March.

3. Self-employed sex work shall be regulated by this law, by the Law on the Statute of Self-Employment and by the rest of the specific regulations that may be applicable.

Section 2. Definitions Article 5.

Function of the definitions.

The definitions found in Article 5 will guide the scope of the concepts and notions mentioned throughout the law. The lists shall be of an expository and non-exhaustive nature, provided that it is not detrimental to the worker, and all situations shall be deemed to be subsumed under them.
or legal relationship that meets the requirements of the scope of application of this law.

Article 6. Definitions.

1. Sex work: Activity consisting of the free and voluntary provision of a service or activity of a sexual nature by a person, in exchange for a price or salary, in its autonomous, employed and independent modalities.

2. Sex worker: A person over 18 years of age who freely and voluntarily chooses to provide sexual services for payment or remuneration in any form.
Some different figures that fall under this denomination depending on the place or sector in which they provide services are:

- Club workers.
- Bar and whisky workers.
- Flat workers.
- Massage parlour workers.
- Agency workers.
- Self-employed workers.
- Self-employed street workers.
- Self-employed workers.
- Pornography workers, actresses and actors.
- All those who carry out the activities covered by this law under the conditions set out in t h i s law.

3. Business side / entrepreneur:

Employer shall mean,

a) Any natural or legal person or community of property who manages, organises and/or directs a business in which remunerated sexual activity consisting in the provision of services of a sexual nature by the persons referred to in the previous section, in order to obtain economic benefits, and who hold the power of direction and organisation with the limitations and nuances established in this law.

b) The natural or legal person owning the set of productive factors (human, technical and financial) organised and coordinated by the management, engaged in the business whose activity is the provision of services or activities of a sexual nature.

c) The natural or legal person organising and/or coordinating the set of productive factors (human, technical and financial) organised and coordinated by the management, dedicated to the commercialisation of activities of a sexual nature.

d) The employer or company that organises or produces an artistic activity with sexual content.

4. Clients: Users who enjoy the sexual services provided by the worker in exchange for a price, acting for purposes unrelated to their trade, business, craft or profession.

5. Service payers: Persons who hire and pay for sexual services for themselves or for a third p a r t y .

6. Sex work establishment:

A place where paid sexual activity takes place on a free and voluntary basis, either on one's own account or for others. It may consist of premises, a group of flats, a flat, a group of rooms, a room or any other physical space.

The place or establishment shall be considered as a place of work

for the purposes of labour and social security regulations.

7. Sex industry: This encompasses all activities related to sexual services. It may fall into areas of the economy such as: personal services, leisure, entertainment, among others, while respecting the application of labour and social security legislation specific to sexual services.

8. Safe sex practices: Refers to all sexual practices that are carried out in compliance with labour law and occupational health and safety regulations.

10. Consent to sex work. Manifestation of the express will of the worker regarding a specific act, which externalises his or her consent to that act, in this c a s e , the provision of sexual services.

11. Whore stigma: This is the negative characterisation of sex workers as a group that imposes a distinction between sex workers and other people, based, among other things, on a moralistic and criminalising perspective that relegates sex workers to the realm of the morally wrong and therefore something to be eradicated. The effects of this characterisation are dehumanisation, and the displacement of the group to a situation of social inequality and discrimination.

Within stigma is the sanitising perspective, which defines sex workers as a group that carries infections. This perspective focuses on the control of the sex worker population through, for example, registration and medical testing, dehumanising and stigmatising sex workers.

Section 3. Validation of contracts and employment roots

Article 7. Validation of contracts.

Contracts, whatever their form, that exist between sex workers and employers that are not legally formalised as a result of the penalty will be validated as long as the worker consents to it and must comply with the provisions of this law in accordance with the first and second Transitory Provisions.

Article 8. Employment roots.

1. Taking into account the existence of employment relationships by

In the case of sex workers in an irregular administrative situation and employers prior to the legal decriminalisation of sex work, it is proposed that the recognition of employment roots be granted in those cases in which the requirements set out in the following paragraphs are met.

2. Foreign sex workers who can prove that they have been in Spain for a continuous period of at least two years, that they have no criminal record in Spain and in their country of origin or in the country or countries where they have resided for the last five years, that they can prove the existence of employment relationships lasting no less than six months, and that they are in an irregular situation at the time of the application, may obtain an authorisation.

In order to prove the employment relationship and its duration, the interested party must present any means of proof of the existence of a previous employment relationship.

CHAPTER II

Scope of application

Section 1 Subjective scope of application and exclusions

Article 9. Self-employed sex workers.

Natural persons over eighteen years of age who habitually, personally, directly, on their own account and outside the sphere of management and organisation of another person, carry out an economic or professional activity of a sexual nature for profit, whether or not they employ employees, are included in the scope of application of this law.

Article 10. Employed sex workers.

1. This Act shall apply to workers who are
(b) persons over eighteen years of age who voluntarily provide paid sexual services for hire or reward and within the scope of organisation and management of another person, called an employer or entrepreneur, with whom they have a special employment relationship.

Sex workers include those who carry out their artistic activity with sexual content in the performing, audiovisual and musical arts.

2. A special employment relationship of sex work is considered to be that which is entered into between the employer and the worker who provides paid sexual services on behalf of the employer.

This includes that between the employer who organises or produces an artistic activity with sexual content and those who voluntarily carry out an artistic activity with sexual content on behalf of and within the scope of the employer's organisation and direction in exchange for payment.

Article 11. Self-employed workers.

Sex workers are sex workers who engage in sex work on a sporadic, self-employed basis, without
The minimum monthly or annual wage is the monthly or annual minimum wage.

It will not be compulsory to register them in the Special Regime for Self-Employed Workers as they do not fulfil the requirement of regularity as their sexual activity does not reach the SMI.

Article 12. Exclusions.

Under no circumstances may persons under 18 years of age perform work related to sexual services.

Section 2 Objective scope of application and exclusions

Article 13. Sex work and remunerated sexual activity.

1. Sex work is defined in article 6 of this organic law. It is the activity consisting of providing
free and voluntary provision of a service of a sexual nature, by one person to another person for his or her enjoyment, in return for payment or wages, in its autonomous, employed and independent forms.
Artistic activity with sexual content carried out within the framework of the performing, audiovisual and musical arts is considered sex work.

2. Paid sexual activity. It encompasses the different sexual services provided freely and voluntarily by a sex worker to another person, called a client, in exchange for remuneration, either a salary in its salaried form or a price in its autonomous or independent form.

Article 14. Exclusions.

Sex work shall not be considered as sex work if it is performed without the free will of the worker.

Article 15. Forced prostitution and other forms of procuring.

1. Forced prostitution as well as other forms of pimping shall be interpreted in accordance with the provisions of Article 2 of ILO Convention 29 on forced labour, with the following specialisations:

Forced prostitution or sexual exploitation is sexual activity or work demanded of a person that is provided under threat of any penalty and for which the person does not volunteer.

a. Forced activity": By sexual activity is to be understood any service, activity or human effort of a productive or merely useful nature, it being decisive that it is demanded by a third party and provided under his or her dependence.

b. "Required from a person": It is irrelevant whether the person is a national or not, as well as his regular or irregular administrative status.

c. The "threat of any penalty": This covers a wide range of means used to compel someone to provide a service. It includes both the imposition of criminal sanctions and the use of various forms of direct or indirect coercion,
physical violence, psychological threats, non-payment of wages, withholding of documentation, restriction of movement, constant surveillance, and the like. The "penalty" can also be a loss of rights or privileges (such as promotion, transfer or access to a new job).

d. "(No) voluntariness": Refers to the absence of sex worker consent in both the
The relationship is not only about the initial establishment of the relationship but also about the possibility of being able to leave it at any time he or she chooses.

TITLE II

Employees

CHAPTER I

Speciality of the employment relationship

Section 1. Limitations on the employer's power

Article 16. Power of direction and organisation.

1. The power of management and organisation granted to the employer by Article 20 of the Workers' Statute is qualified in this special employment relationship due to its characteristics.

2. In order to determine the conditions for the performance of sex work, the employer shall comply with the provisions of this Act and other applicable regulations, taking into account occupational health and safety regulations.

3. The employer does not have the power to unilaterally decide on the practices to be carried out, nor to impose the form or mode of execution of the sexual activity, being the sole decision of the worker the practices that he/she carries out and those that he/she does not.

In this case, practices are understood to mean not only sexual practices but also those that are directly related to them, and
affecting the integrity, privacy or dignity of the worker.

4. Any behaviour aimed at exceeding this management power shall be considered a very serious infringement in labour or occupational risk prevention matters, as the case may be, without prejudice to any administrative, civil and criminal liability that may arise.

For these purposes, a new section will be introduced in Article 8. Very serious offences in the labour sphere of the Consolidated Text of the Law on Offences and Penalties in the Social Order, and in Article 13. on offences in matters of occupational risk prevention.

5. The employer may not take any action against the employee that is intended to punish or repress decisions such as: withdrawal of consent, refusal to perform

sexual services in general, a specific service or type of sexual service.

Article 17. Indemnity guarantee.

1. This fundamental right is recognised for sex workers on an equal footing with other workers.

2. In the specific case of sex work, in addition, workers will be protected by the guarantee of indemnity when making any verbal or written complaint or claim to the employer against his or her excesses of power, or against the measures taken by the employer.
The following are responses to: withdrawal of consent, refusal to perform sexual services in the workplace or to the worker's refusal to perform sexual services in the workplace.
a particular service or type of sexual service. This is without prejudice to any liability that may arise in other orders.

Article 18. Power of direction and control.

The employer may adopt the measures he/she deems most appropriate for monitoring and control in order to verify the worker's compliance with his/her obligations and duties at work.

In the adoption and implementation of such measures, due consideration shall be given to the dignity of workers and shall take into account the provisions of this law, especially with regard to the prohibition of stigmatising behaviour.

Section 2. Clients

Article 19. Obligations and liability of customers.

1. A client is a person over eighteen years of age who enjoys paid sexual services for his or her own account or for the account of another person, whether paid for by the client or by a third person, acting with
a purpose unrelated to their trade, business, craft or profession.

2. The client is obliged to respect and comply with the occupational health and safety obligations set out in the occupational risk prevention regulations, as well as those established by the establishment in order to promote safe sexual practices.

3. The customer has to perform diligently and in good faith

payment obligations.

4. Failure to comply with any of the obligations will result in appropriate administrative, criminal and civil liability.

Prohibition of stigmatising actions and promotion of safe sex practices.

The client is subject to a prohibition on stigmatising actions and an obligation to promote safe sex practices.

Article 21. Information, training and education.

1. In relation to Article 17 of the Texto refundido de la Ley General para la Defensa de los Consumidores y Usuarios y otras leyes complementarias, it should be noted that, in the event that the state-owned media dedicate non-advertising spaces and programmes to the information and education of consumers and users in this area, they should involve active sex workers and/or groups made up of sex workers in the design, preparation and implementation of these programmes.

2. Information and education will be aimed at promoting safe sex, combating stigma and ensuring respect for standards.

Article 22. Payment.

1. Payment for the sex service shall always be paid in advance and in a manner to be determined by the worker, the company or, failing this, as agreed between the owner of the establishment and the workers.

2. In no case shall payment for the service entitle the sex worker to enjoy the service when the sex worker withdraws his/her consent at any time prior to or during the provision of the service, without it being necessary to justify the withdrawal of consent.

Article 23. Autonomous and independent activity.

The client provisions of the preceding articles shall apply to self-employed and independent sex work.

CHAPTER II

Entry to work

Section 1. Data protection and public services Employment

Article 24. Data protection.

Any person who enters sex work has the right to have their personal data treated in the same way as other workers in any other sector or activity, in accordance with the Spanish Constitution, labour, social security and personal data protection regulations.

Article 25. Prohibition of Stigmatising Registers.

Stigmatising sex worker registries and police sex worker registries are prohibited.

For these purposes, in any case, records that have a sanitising or criminalising perspective on sex workers shall be considered stigmatising.

Article 26. Public Employment Services.

1. Public employment services will have an active role to play in improving the working and socio-economic conditions of sex workers and should collaborate, consult and involve them in this process.
active role for sex workers' organisations and collectives.

2. Public employment services will carry out training actions for sex workers that will be created, coordinated and carried out with the indispensable participation of collectives or organisations constituted by sex workers.

3. No sex work positions shall be offered through Public Employment Services. No person seeking employment and/or unemployment shall be forced to engage in sex work.

Section 2. Contract

Article 27. Capacity to contract.

1. Persons over 18 years of age who have the capacity to act in accordance with civil law have the capacity to contract as workers.

2. Persons over 18 years of age who have the capacity to act according to civil law, as well as legal persons or communities of property, have the capacity to enter into contracts as entrepreneurs.

3. Those who have been convicted of crimes against workers' rights, sexual violence, gender-based violence, human trafficking, human smuggling or equivalent offences may not be hired as an employer, whether they are natural or legal persons.

Article 28. Prohibition of assignment and subcontracting.

In order to avoid abuses and occupational hazards, the transfer of workers and subcontracting in this economic activity is prohibited.

It will be included in the Texto Refundido de Infracciones y Sanciones en el Orden Social as a very serious infringement.

Section 3. Types of contract and probationary period

Article 29. Indefinite-term contract and permanent discontinuous contract.

1. Indefinite-term contracts shall be regulated in accordance with the provisions of Article 15 et seq. of the Workers' Statute, as well as with what may be established by means of collective agreements or individual contracts.

2. Permanent-discontinuous contracts may be concluded in accordance with Article 16 of the Workers' Statute.

Article 30. Temporary contracts. Place system.

1. Temporary contracts may be concluded in accordance with the provisions of Article 15 et seq. and Royal Decree 2720/1998, and other applicable regulations.

2. Plaza system.
In principle, it lasts 21 days, and its conclusion depends on the acceptance of the worker.

Workers who are on a placement will have the same rights as other workers.

In order to prevent abuse by the employer, when the same worker spends more than 30 days covering a post, or has two contracts for the same post in the same place, he/she will acquire permanent status provided that he/she expresses his/her wish to do so.

Article 31. Probationary period

1. A trial period of not more than one week's duration may be arranged.

2. During the probationary period, the sex worker shall have the same labour and social security rights and obligations as those hired for an indefinite period of time, with the only exception that no just cause shall be required to terminate the employment relationship. Without prejudice to the economic rights, such as severance pay, related to the termination of the employment relationship.

CHAPTER III

Article 32. Definition.

1. Artistic labour contract with sexual content is the contract of sex workers working in the performing, audiovisual and musical arts.

2. Those who carry out the technical or auxiliary activities necessary for the development of the activity shall not be considered sex workers, and their legal employment relationship is governed by Royal Decree 1435/1985 of 1 August 1985, which regulates the special employment relationship of artists in public performances.

Article 33. Artistic employment relationship in sex work.

1. It is the one established between the employer or entrepreneur who organises or produces an artistic activity with sexual content, and those who voluntarily carry out their artistic sexual work, on behalf of and within the scope of the organisation and direction of the employer, in exchange for payment.

2. Employers or entrepreneurs who organise or produce an artistic activity with a sexual content are subject to the rules on the limitation and limitation of the entrepreneurial power of the

Title II. Chapter I. Speciality of the employment relationship. Section 1. Limitations on the employer's power.

3. The articles of Title II apply. Chapter II. Entry to the work.

Article 34. Form of the contract.

The contract shall be formalised in writing and shall comply with the provisions of Article 27 of this Organic Law.

Article 35. Duration and modalities of the artistic employment contract of a sexual nature.

1. The employment contract of sex workers who carry out their activity in the performing arts, audiovisual activity and music, may be concluded for an indefinite duration or for a specific period of time. The provisions of this organic law and of article 5 of Royal Decree 1435/1985 of 1 August 1985, which regulates the special employment relationship of artists in public shows, apply to them.

2. The probationary period shall be in accordance with the provisions of Article 4 of the aforementioned Royal Decree, and may be agreed for contracts lasting more than ten days.

Article 36. Rights and duties.

1. The rights provided for in this organic law and in Royal Decree 1435/1985 of 1 August 1985, which regulates the special employment relationship of artists in public performances, apply to the worker.

2. The worker is obliged to carry out the artistic activity of sexual content for which he/she was hired, on the dates indicated, applying the specific diligence that corresponds to his/her personal artistic aptitudes, and following the instructions of the company with regard to the organization of the
The company's business power is subject to the limits set out in this organic law.

3. It is up to the worker to decide which sexual practices he/she does and does not engage in.

4. Article 6(3) and (4) of Royal Decree 1435/1985 of 1 August 1985, which regulates the special employment relationship of performers in public entertainment, concerning the right to effective occupation and the full dedication pact, applies to them.

Article 37. Remuneration and working hours.

1. Article 7 of Royal Decree 1435/1985 of 1 August 1985 regulating the special employment relationship of performers in public performances on remuneration applies.

2. The working day shall include the actual performance of his or her artistic activity and the time when he or she is under the company's orders, for rehearsal or recording of performances.
In any case, the obligation to carry out tests free of charge shall be excluded.

3. The duration and distribution of the working day shall be governed by the provisions of the collective agreement or individual agreement, and by Article 8 of Royal Decree 1435/1985 of 1 August 1985, which regulates the special employment relationship of performers in public performances with regard to remuneration.

Article 38. Termination of the contract.

The termination of the contract shall be governed by the rules laid down in this organic law, and when it is more beneficial, by the provisions of Article 10 of Royal Decree 1435/1985, of 1 August, regulating the special employment relationship of performers in public performances.

CHAPTER IV

Content of the special employment relationship of employed sex work

Section 1. Workers' basic rights and duties

Article 39. Workers' rights.

The worker shall have the labour rights and duties established in this law and in Article 4 of the Workers' Statute, with the specifications derived from this law.

Article 40. Duties of workers.

Workers shall have the duties set out in Article 5 of the Workers' Statute with the qualifications provided for in this law.
The duty not to compete with the activity shall not apply.

of the company.

Article 41. Rights and duties arising from the contract.

Sex workers have the right to non-discrimination in employment relations, to the inviolability of the worker's person, to safety and health at work, to
privacy in relation to the digital environment and to disconnection, in the terms of Articles 17, 18, 19 and 20 bis of the Workers' Statute.

Article 42. Remuneration and salary.

1. The remuneration of sex workers will not be subject to the Minimum Interprofessional Wage as it is considered a special activity that is already currently remunerated at considerably higher amounts.

2. With regard to remuneration, in particular the prices for sexual services, the net allowances currently existing in accordance with custom and practice shall be respected, provided that they are accepted by the worker.

Section 2 Obligations of the employer

Article 43. Corporate obligation.

1. The employer is obliged to ensure that the work is carried out under safe and healthy conditions, respecting the privacy of the workers.

In particular, they have an obligation to promote safe sexual practices and to ensure that the workspace is properly equipped.

2. It shall take appropriate and effective measures to achieve the above, with due regard to the specific characteristics of the sex work taking place in the establishment.

3. Failure to comply with these obligations shall be just cause for termination of the employment relationship on the part of the worker, without prejudice to the rest of the employer's responsibilities that may derive from the regulations on the prevention of occupational risks.

Article 44. Obligation of sufficient provision and maintenance of means, equipment and work tools.

1. The employer has the obligation to provide workplaces or establishments in which sex work takes place with sufficient facilities for sex work to take place under optimal health and safety conditions.

2. The employer has the obligation to provide sex workers with sufficient equipment and tools to carry out paid sex work in optimal conditions of safety and health.

3. An inventory of what is deemed necessary in terms of installations, equipment, means and working tools may be drawn up by collective agreement.

In any case, the following shall be considered obligatory: those provided for as such in the occupational health and safety regulations, and the following:

- Facilities: beds, bed linen, shower and/or washbasin.
- Tools: lubricants.
- Personal protective equipment: condoms.

4. The employer shall be responsible for the maintenance and cleanliness of the workspace, including all facilities, and for providing sex workers, free of charge, with the appropriate tools and equipment necessary for sex work.

5. Any pact or agreement in which the employer and employee agree that the employer and employee shall be the party to the agreement is prohibited and shall be null and void.
The cost of fulfilling the above obligations is borne by the worker.

CHAPTER V

Working time Article 45.

Effective working time.

Effective working time in sex work is the time during which the worker is performing the service that is the object of the employment contract. Time spent performing services or activities of a sexual nature is considered effective work.

Article 46. Time in presence.

Time in attendance is the time when the worker is not performing work, but is at the workplace at the employer's disposal and/or waiting for clients.

Article 47. Rest periods.

1. Sex workers are entitled to a weekly rest period of 48 consecutive hours to be agreed by collective agreement or by mutual agreement between the parties.

There shall be a minimum rest period of 12 hours between the end of one working day and the beginning of the next.

2. The worker shall be entitled to the holidays and leave provided for in Article 37 of the Workers' Statute.

CHAPTER VI

Modification, suspension and termination

Section 1 Geographical mobility, and substantial modification of working conditions and suspension

Article 48. Geographical mobility.

For the geographical mobility of sex workers, the rules foreseen in Article 40 of the Workers' Statute shall be followed:

1. The move:

Sex work is not covered by sex work, unless there is an agreement between the worker and the employer, in which c a s e it will be governed by the agreement between the worker and the e m p l o y e r , as long as the following are respected the minimums laid down in the rules of the applicable collective agreements and the Workers' Statute.

In any case, the transfer shall be possible in the cases of Article 40(3) (transfer of spouses), (4) (victims of gender violence or victims of terrorism), and sexual violence), and paragraph 5 (workers with diverse abilities).

2. Posting is governed by the rules of Article 40.

of the Workers' Statute.

Article 49. Modification of working conditions.

The provisions of Article 41 of the Workers' Statute shall apply.

Article 50. Suspension.

The causes for suspension shall be those provided for in Article 45 of the Workers' Statute and the rules provided for in Articles 45 to 48 of the aforementioned law shall apply, without prejudice to the particularities deriving from the exercise of sex work and its regulation.

Section 2 Termination

Article 51. Termination of the contract.

The termination of the contract shall be for the causes provided for in Article 49 of the Workers' Statute and the others in this Organic Law, in all cases in accordance with the special provisions of this Section.

Voluntary termination of the contract without just cause by the employee.

1. The employee may terminate the employment contract at any time without just cause.

Voluntary termination without just cause will be considered a legal situation of unemployment in the terms of article 267 of the General Law on Social Security, and workers will have the right to access unemployment benefits in the event that the rest of the requirements foreseen in article 266 of said law are met.

2. You will not be entitled to severance pay but you will be entitled to severance pay.

Article 53. Voluntary termination for just cause by the employee.

Just causes for the worker to be able to request the termination of the contract shall be those provided for in Article 50 of the Workers' Statute, with the additions:

a) Substantial modifications in working conditions carried out without respecting the provisions of Article 41 of the Workers' Statute and which result in the undermining of the worker's dignity.

b) The attempt by the employer to exceed its powers.

d) Having suffered stigmatising behaviour by the employer, another worker, or a client.

e) Any other serious breach of its obligations by the employer, except in cases of force majeure, as well as the employer's refusal to reinstate the worker in his/her previous working conditions in the cases foreseen in
Articles 40 and 41 of the Workers' Statute, where a court judgment has declared them to be unjustified.

2. In such cases, the worker shall be entitled to the compensation specified for unfair dismissal in Article 56 of the Workers' Statute.

Article 54. Termination of the contract for objective reasons.

1. The contract may be terminated:

a) Due to the worker's ineptitude, known or acquired after his or her effective placement in the c o m p a n y . Inaptitude existing prior to the completion of a probationary period may not be invoked after the completion of the probationary period.

In no case may unfitness be invoked as a consequence of the worker's withdrawal of consent, refusal to perform a certain type of sexual practice or in a certain way.

b) When any of the causes set out in Article 51.1 of the ET apply and the termination affects fewer than the number of employees established therein.

2. Workers' representatives shall have priority of permanence in the company in the case referred to in this paragraph.

Article 55. Disciplinary dismissal.

The employment contract may be terminated by decision of the employer by dismissal on the grounds of non-performance. serious and at fault on the part of the worker, in the terms provided for in Article 54 of the Workers' Statute.

The form and effects of dismissal shall be governed by Article 55.

of the Workers' Statute.

Article 56. Unfair dismissal.

It is regulated in accordance with the provisions of Article 56 of the Workers' Statute.

CHAPTER VII

Workers' rights of collective representation and assembly in the enterprise

Article 57. Right of participation in the company, right of assembly, right to premises and notice boards, and right to collective bargaining.

Sex workers are granted the rights of collective representation and assembly provided for in the Workers' Statute, as well as in matters of collective bargaining and collective agreements under Title III of the Workers' Statute and the regulations issued in its development.

CAPÍTULO VIII

Infringements and sanctions

Article 58. Referral to the Law on Offences and Penalties in the Social Order.

1. Royal Legislative Decree 5/2000 of 4 August 2000, which approves the revised text of the Law on Infractions and Sanctions in the Social Order, is applied in its entirety, and the actions or omissions in the field of sex work carried out by the different responsible parties will be subsumed under the infractions foreseen therein.

2. Specific offences within sex work derived from the provisions of this Organic Law shall be introduced into the Law on Offences and Penalties in the Social Order.

Article 59. Specific offences within sex work.

1. In the field of industrial relations.

a) Any action or omission intended to exceed the limits of the employer's powers of management and organisation shall be considered a very serious infringement. This is without prejudice to any civil and criminal liability that may arise.

b) Stigmatising or stigmatising decisions and actions or omissions by the employer, another worker or a third party against a sex worker shall be considered discriminatory in employment relations.

2. On subcontracting and temporary agency work/as.

It is considered a very serious infringement for undertakings of temporary work under the terms of Article 18.3 b) and a very serious infringement by user undertakings under the terms of Article 18.3 b) and a very serious infringement by user undertakings under the terms of Article 18.3 c). 19.3(b), entering into contracts for the provision of sex work.

3. On employment.

It is considered a very serious infringement on the part of employers, employment agencies, training entities or those that take on the organisation of vocational training actions for employment programmed by companies and beneficiaries of aid and subsidies in the field of employment and aid for the promotion of employment in general:

a) Requesting personal data in any intermediation or placement process or establishing conditions, by advertising, dissemination or any other means, which constitute discrimination in accessing employment on the grounds of sex worker stigma.

b) Requesting personal data in recruitment processes or establishing conditions, through advertising, dissemination or by any other means, that discriminate against access to employment on the grounds of sex worker stigma.

Article 60. Sanctions.

1. The penalties foreseen for each type of infringement in the Law on Offences and Penalties in the Social Order shall be applied.

2. As an accessory sanction to the infringements provided for in paragraph 2(a) and (b) of this Article, the entrepreneur shall be prohibited from owning a business in the area where the infringement is committed.

sex industry or holds any other formal or de facto managerial or organisational position within the sex industry.

CHAPTER IX

Inspection and competent jurisdiction

Article 61. Verification of infringements.

The Labour and Social Security Inspectorate is responsible for verifying infringements in the social order and those envisaged in this organic law, and shall refer the appropriate responsibilities to the authorities as appropriate.

Article 62. Competent jurisdiction.

The Social Jurisdiction is competent to hear matters arising from breaches of this law in the social order, without prejudice to the competence of the Criminal, Civil and Contentious-Administrative Courts in those cases in which there is responsibility in these orders.

TITLE III

Self-employed sex workers

CHAPTER I

General provisions

Article 63. Scope of application.

1. The subjective scope of application is that provided for in Article 6 of Title I of this Organic Law.

Self-employed sex workers who meet the requirements set out in the Self-Employment Statute Law to be considered as self-employed workers.
Chapter III of Title II of the aforementioned law shall apply to them, with the particularities deriving from the present organic law.

2. The objective scope of application is that provided for in Article 9 of Title I of this law.

Article 64. Applicable legislation.

1. Title I and Section 2 of Chapter I of Title II apply to self-employed sex work, as well as the rest of the provisions of this law when expressly provided for.

2. The provisions of Article 3 of the Statute of Self-Employment shall apply, provided that they are compatible with the provisions of this law.

Article 65. CNAE.

A new heading will be introduced in the CNAE to include sex work as a specific economic activity, Sex Industry, under which relevant divisions, groups and classes will be added. No reference to the relevant sex work heading shall appear in the sex worker's employment report.

Article 66. Lawful advertising.

1. Advertising used by workers to advertise their services shall be regarded as lawful, subject to the following restrictions

which may not be addressed to persons under eighteen years of age.

2. The regulations contained in the Sexual Freedom Act and the Organic Law for the Effective Equality of Women and Men.
(c) The right of sex workers to freedom of expression and freedom of enterprise shall not be applied or interpreted in relation to the advertising of sex work in such a way as to impair, or with the intention of impairing, the right to freedom of expression and freedom of enterprise of sex workers.

CHAPTER II

Ordinary occupational scheme

Section 1 Rights, duties and provisions applicable to the individual

Article 67. Professional rights and duties.

1. Self-employed sex workers have the rights provided for in this organic law that are applicable to them and the rights provided for in article 4 of the Law on the Statute of Self-employed Work.

2. The self-employed sex worker has the same basic professional duties as the rest as provided for in article 5 of the Law on the Statute of Self-employed Work, with the specialities that derive from this law.

3. You have the right to non-discrimination and the guarantee of fundamental rights and public freedoms under the terms of Article 6 of the Self-Employment Statute Law.

Article 68. Contract.

1. Contracts entered into by employees shall
The contract may be concluded in writing or by word of mouth for the performance of his or her professional activity.

2. The contract may be for the provision of one or more services and shall be for such duration as the parties may agree.

3. It is the worker who has the power to decide what services he/she offers and provides, and may withdraw consent at any time prior to or during the provision of the service.

4. This article is to be interpreted in accordance with Section 2. "Customers", Chapter I, Title II of this Organic Law.

Article 69. Financial guarantees and advance payment.

1. Self-employed sex workers shall have the same guarantees and responsibilities provided for in Article 10 of the Self-employed Workers' Statute, without prejudice to the particularities deriving from the "Clients" Section of this organic law.

2. The provisions of Article 22 of this Act shall apply to self-employed sex work, so that the payment of the benefit shall be paid prior to the performance of the service.

Advance payment does not entitle the worker to enjoy the sexual service when the worker withdraws consent.

Section 2 Collective rights

Article 70. Basic collective rights.

Self-employed sex workers have the collective rights provided for in Article 19 of the Self-Employment Statute.

Article 71. Self-employed workers' right to professional association.

Article 20 of the Self-Employment Statute Law applies to professional associations of self-employed sex workers. The determination of representativeness shall be governed by Article 21 of this law.

TITLE IV

Worker cooperatives

CHAPTER I

General provisions

Article 72. Worker cooperative for sex work.

1. It is recognised as one of the ways in which the provision of sexual services can be organised.

2. A cooperative is a company formed by persons who join together, on a free membership and voluntary deregistration basis, for the purpose of carrying out business activities, in this case relating to
to the provision of sexual services, aimed at satisfying their economic and social needs and aspirations, with a democratic structure and functioning, in accordance with the principles formulated by the international cooperative alliance, under the terms resulting from this Law.

3. Title I. General Provisions of the present law, as well as the rest of the precepts expressly provided for.

Article 73. Object.

To provide its members with jobs, within sex work, through their personal and direct effort, on a part-time or full-time basis, through the joint organisation of the production of goods or services for third parties.

Article 74. Applicable regulations.

The articles of the General Law on Cooperatives dedicated to the associated work modality will be applied, as well as the autonomous regulations of those Autonomous Communities that have developed the Cooperative Law.

Article 75. Prevention of possible forms of sexual exploitation.

When the members of the worker cooperative society go to the register of worker cooperative societies

Cooperatives to register the public deed of incorporation, the staff involved must inform them about the figure of the procurer and its classification in the Penal Code in order to inform them of possible fraud or deception within the Cooperative.

CHAPTER II

Worker-members

Article 76. Capacity to be worker-members.

1. Those who are over 18 years of age and have the capacity to contract for the provision of their work may be worker-members. The exclusions of articles 12 and 14 of this organic law apply to them, as well as the provisions relating to the capacity to contract in article 27, and the prohibition of article 28.

2. In the exercise of their activity as sex worker partners, the rules of protection established in this law for sex workers shall apply to them.

Article 77. Succession of companies, contracts and concessions.

1. When a cooperative subrogates the labour rights and obligations of the previous owner, the workers affected by this subrogation may join as worker-members under the conditions established in article 80.8 of the Law on Cooperatives, provided that the activity carried out by the cooperative is sex work, and if they have been with the previous company for at least two years, they may not be required to serve a probationary period.

2. A worker cooperative whose activity is sex work may not terminate a service contract or administrative concession.

3. The filing of any claim by a member in the matters referred to in paragraph 1 above shall require the prior exhaustion of the co-operative procedure, during which the computation of prescription or expiry periods for the exercise of actions or the assertion of rights shall be suspended.

TITLE V

Social Security

CHAPTER I

Registration and registration of companies

Article 78. Classification within the Special System of employed sex work.

1. The following are included in this special system
The sex workers who are subject to the special employment relationship of sex work and the employers for whom they provide services.
This special system is integrated into the General Social Security Scheme.

2. This includes worker-members of worker cooperatives whose activity is sex work,

Article 79. Registration of companies and affiliation, registrations, deregistrations and variations of data on sex workers.

Royal Decree 84/1996 of 26 January 1996, approving the General Regulation on registration, is applicable.
of companies and affiliation, registrations, deregistrations and variations in the details of workers in the Social Security, with such particularities as may be established in the rules for the development and application of this organic law.

CHAPTER II

Protective action and specialities

Article 80.

1. The concept of the contingencies protected in this Special Sex Work System shall be that which is established for each of them in the General Social Security Scheme. In any case, the persons included in this Special System are entitled to:

a) Health benefits.
b) Temporary incapacity.
c) Risk during pregnancy.

d) Risk during breastfeeding.
e) Birth and care of the child.
f) Care of children affected by cancer or other serious illnesses.
g) Permanent incapacity benefits.
h) Non-disabling permanent injuries.
i) Retirement.
j) Death and survivors' benefits.
k) Family benefits.
l) Extraordinary benefits for acts of terrorism.
m) Unemployment benefits.

2. The benefits and other benefits included in the protective action of this Special System shall be the same as those of the General Scheme and shall be applied with the same extension, form, terms and conditions as in the former, with no other particularities than those resulting from the provisions of this Act or its implementing and development rules.

Article 81. Unemployment.

The right to unemployment benefits is recognised for sex workers in accordance with the terms of the regulations
The worker may terminate the employment contract at any time without just cause, with the special provision that the worker may terminate the employment contract at any time without just cause.

Voluntary termination without just cause will be considered a legal situation of unemployment in the terms of article 267 of the General Law on Social Security, and workers will have the right to access unemployment benefits in the event that the rest of the requirements foreseen in article 266 of said law are fulfilled.

Article 82. Retirement.

1. The minimum age of 65 years for entitlement to a retirement pension shall be reduced by a period equivalent to that which results from applying to the period of time actually worked in each of the professional categories and specialities of the sex industry, the following coefficients:

- Sex workers: zero point fifty (0.50) to sex workers.
- Workers performing cleaning, security and security work, and waiters and waitresses: zero point zero ten (0.10).
- All other sex industry workers: zero.

point zero five (0.05).

2. For the purpose of calculating time actually worked within the meaning of paragraph 1, all absences from work shall be deducted, subject to the following exceptions:

a) Those due to temporary incapacity due to illness, whether common or occupational, and accidents, whether work-related or not.

b) Any other duties for which the worker is entitled to remuneration.

3. The period of time by which the worker's retirement age is lowered, in accordance with the provisions of the previous paragraph, shall be counted as having been contributed for the sole purpose of determining the percentage applicable for calculating the amount of the retirement pension to which the worker is entitled.

4. Both the age reduction and its calculation for contribution purposes, regulated in the previous sections of this article, will be applicable to the retirement of self-employed sex workers included in the RETA who have been included in the epigraph of the CNAE relating to sex work.

5. When the retirement affects workers who simultaneously fall within the scope of the pension scheme, it is application of this special system and in the application of any other system of the Social Security system, the provisions of the previous paragraph shall be applied exclusively with regard to the reduction in age.

CHAPTER III

Quotation and Settlement

Article 83. Professional category and contribution group.

In principle there will be a single occupational category within sex work called Sex Worker and a single contribution group.

Article 84. Contribution and Settlement.

In the case of sex work as an employed person, there are two possibilities for the contribution and settlement depending on the wage system of the individual worker.

a) If the form of remuneration is a fixed monthly salary, the contribution and settlement shall be governed by the rules

applicable to the General Social Security Scheme, including the maximum and minimum contribution bases.

b) Where the form of remuneration is based on actual sexual services rendered, the rules set out in the following Article shall apply.

Article 85. Contribution and Settlement when the form of remuneration is for services actually rendered.

1. The minimum and maximum bases, and the contribution and settlement of Social Security rights for sex workers shall be governed by the rules laid down in Royal Decree 2064/1995, of 22 December, approving the General Regulations on Contribution and Settlement of other Social Security Rights for the General Scheme, with the following particularities:

a) The basis of contribution for common contingencies may not exceed the maximum bases referred to in Article 26(1), in accordance with the assimilation of occupational categories in the following paragraph of this Article.

b) The minimum contribution base in each financial year for common contingencies and unemployment shall be that corresponding to the contribution group of the single professional category, which may not be lower than the minimum established for the Special Scheme for Self-Employed Workers or the Self-Employed, in which case the latter shall apply.

c) For accidents at work and occupational diseases and for the concepts of joint recovery, the bases of contribution may not be higher or lower, respectively, than the maximum and minimum ceilings referred to in Article 9(1) and (2).

2. For the purposes of contributions for common contingencies, the professional category of sex workers is included in the contribution groups of the General Social Security Scheme determined, among those established in article 26.2 of the Regulation on Contributions and Settlement of other Social Security rights, as Contribution Group 3 (Equivalent in the Special System of artists to Actors, Lyric and Light Music Singers, Caricatos, Party Hall Entertainers, Dancers, Musicians and Circus, Variety and Folklore Artists).

3. Ministry of Inclusion, Social Security and Migration

shall adapt the amounts of the minimum bases determined in the manner indicated in Article 9(4) of the Regulation on Contributions and Settlement of Other Social Security Rights, according to days and hours, for those contracts in which the contribution is expressly established by law in relation to such circumstances.

4. Notwithstanding the provisions of the preceding numbers, the maximum ceiling of the contribution bases for all contingencies and situations covered by the protective action of the General Scheme, including those of accidents at work and occupational diseases and for those of the concepts of joint collection, by reason of the activities carried out by a worker of
This group for the same company or several companies shall be annual and shall be made up, for common contingencies, of the sum of the maximum monthly bases corresponding to the single contribution group, and, for accidents at work and occupational illnesses and other jointly collected items, of the absolute maximum limit in force at any given time.

5. The following procedure shall be followed to determine the contribution base for each company's employees:

a) Undertakings shall communicate to the General Social Security Treasury the wages actually paid to each
sex worker in the calendar month to which the contribution relates.
b) By way of derogation from the previous paragraph, companies shall pay monthly contributions for all contingencies, based on the remuneration received for each day that the worker is employed.
the worker has carried out his/her activity on their behalf, on the bases established for each financial year, with application of the maximum monthly contribution ceiling for both common and professional contingencies.

If the salary actually received by the worker, on a daily basis, is less than the amounts referred to in the previous paragraph, contributions shall be paid for that salary. In no case, for the
For the contingencies of accidents at work and occupational diseases and other items of joint recovery, the contribution base may not be less than the absolute minimum ceilings indicated in Article 9(2) of the Regulation on Contributions and Settlement of Other Social Security Entitlements.

Such monthly settlements shall have the character of

provisional benefits for workers in respect of common contingencies and unemployment.

c) At the end of the financial year in question, the Social Security General Treasury, in accordance with the provisions of paragraph 4 of this Article and taking account of the
The final settlement corresponding to the workers for common contingencies and unemployment will be made by applying the general rate established for these contingencies, both that corresponding to the employer's contribution and that of the workers, and, where appropriate, the latter will be asked to pay the amount of the final settlement so that they can pay the differences in contributions within the statutory period of the month following notification. However, the Social Security General Treasury may authorise workers who so request within that month to make such payment in monthly periods deferred over one or more calendar months, up to a maximum of six, as statutory payment periods.

Once the worker has received the final settlement, he/she may choose, within the month following notification of the settlement, to pay the amount or to have the adjustment made on the basis of the bases actually contributed. If he/she does not make any communication within that period, it will be understood that he/she opts for the latter, and the Social Security General Treasury will proceed to carry out the new regularisation, rendering the first one null and void.

In the event that, once the General Social Security Treasury has made the definitive settlement of contributions to the workers, there has been an excess of contributions in the financial year, it will proceed, either ex officio or at the request of a party, to refund, as undue, the amounts paid in excess by the said workers, in accordance with the provisions of Articles 23 of the revised text of the General Social Security Act (Ley General de la Seguridad Social), and the provisions of the General Social Security Act (Ley General de la Seguridad Social).
Social Security, 44 and 45 of the General Social Security Collection Regulation, and other complementary provisions.

6. Contributions for accidents at work and occupational diseases shall be made by applying the corresponding contribution rate of the premium rate in force.

Article 86. Contribution rates.

1. The contribution rates for this Special System shall be those set in the General Social Security Scheme.

2. This contribution rate will be distributed between employers and workers, in order to determine their corresponding contributions, in the same proportion as that established in general in the aforementioned Scheme.

3. The distribution of the contribution rate for the coverage of the different contingencies and situations will be the same as that established by the Ministry of Labour for the General Scheme.

4. The percentages for determining the premiums for the contribution for accidents at work and occupational diseases shall be those established in the tariff applicable to the entire General Scheme.

Additional provisions.

First additional provision. Impact Assessments.

An Impact Assessment of the regulation must be carried out once it enters into force. In addition to the objectives that may be established subsequently, it will need to be expressly assessed:

a) The relationship of this law to the human rights situation of sex workers.

b) The relationship of this law to the possible improvement or non-improvement of social and working conditions and working and occupational health conditions.

c) The relationship of this law to the possible enhancement or otherwise of sex workers' right to health.

d) The relationship of this law to the possible improvement or otherwise of Public Health problems.

e) The relationship of this law to the fight against trafficking in human beings.

Second additional provision. Liability for infringements and penalties in the social order.

Liability for offences in the social order deriving from this organic law and from the application of the Law on Offences and Penalties in the Social Order shall be demanded from the moment of its entry into force.

Transitional provisions.

First transitional provision. Contracts in force.

1. Employers will have 6 months to put in writing existing employment contracts which, as a result of the new regulation, must be concluded in writing.

2. The provisions of this organic law shall apply to contracts in force at the date of its entry into force.

Second transitional provision. Most beneficial condition.

The provisions of this organic law shall not affect the most beneficial conditions existing at the time of its entry into force, without prejudice to the provisions on compensation and absorption of salaries in Articles 26.5 and 27.1 of the Workers' Statute.

Repeal provisions.

First derogatory provision. Penal Code.

The second subparagraph of Article 187(1) of the Criminal Code shall be repealed and the second subparagraph shall read as follows:

"Anyone who, using violence, intimidation or deception, or abusing a situation of superiority or the victim's need or vulnerability, determines a person of legal age to engage or remain in prostitution, shall be punished with a prison sentence of two to five years and a fine of twelve to twenty-four months.

2. The penalties provided for in the preceding paragraphs shall be imposed in their upper half, in their respective cases, when any of the following circumstances apply:

a) When the guilty party has taken advantage of his or her status as an authority, agent or public official. In this case, the penalty of absolute disqualification of six to twelve years shall also be applied.

b) Where the offender belongs to a criminal organisation or group engaged in such activities.

c) When the guilty party has endangered the life or health of the victim, either intentionally or through gross negligence.

3. The above penalties shall be imposed in their respective cases without prejudice to the penalties for sexual assault or abuse of the prostituted person.

Second derogatory provision. Organic Law on the Protection of Public Security.

The administrative regulations punishing prostitution, consisting mainly of Article 36 (5), (6) and (11) of the Organic Law on the Protection of Public Safety, are repealed.

Third derogatory provision. Publicity.

1. The last part of section 1 of article 11 of Organic Law 10/2022, of 6 September, on the comprehensive guarantee of sexual freedom, is hereby repealed and shall be worded as follows:

"Article 11. Prevention and awareness-raising in the field of advertising.

1. Advertising that uses gender stereotypes that promote or normalise sexual violence against women, girls, boys and adolescents shall be considered illegal.

2. The last indent of the second subparagraph of point (2) is repealed.

a) of Article 3.1 of the General Advertising Act, to read as follows:

"...] The above provision shall also include any form of advertising which contributes to the generation of violence or discrimination in any of its manifestations against minors, or promotes stereotypes of a sexist, racist, aesthetic or homophobic or transphobic nature or on grounds of disability. [...]".

Fourth derogatory provision. General regulations.

All state, regional and municipal regulations of lower rank than organic law that are contrary to the purchase and sale of sexual services in the terms foreseen in this text are repealed.

To refer to the specific case of street sex workers.

The demands are essentially:
— The repeal of state and local administrative regulations criminalising, fining and prosecuting the purchase and sale of sexual services outside private establishments (mainly included in the Repealing Provisions).
— Recognise street sex workers' bargaining power in the choice of zones. In other words, street sex workers should be heard and taken into account when decisions are made about sex work zones.

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OTHER

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