



Colombia: Legal Framework Governing Prostitution

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COLOMBIA

LEGAL FRAMEWORK GOVERNING PROSTITUTION

Executive Summary

Prostitution is not considered to be a criminal offense in Colombia. However, inducement to prostitution and pimping are considered crimes. Prostitution-related crimes involving minors are punishable with fines and imprisonment. Prostitution services are regulated by local governments to protect the public health and social order. The Constitutional Court has recently ruled that even though prostitution is not encouraged by the State, it is a legal economic activity when performed according to legal standards.

I. The Legal Framework

The legislative approach to prostitution in Colombia may be characterized as one of “regulated tolerance.”¹ Although there are a few norms on prostitution at the national level, detailed regulation is left up to the local governments (*asambleas y concejos*).² Prostitution is regulated by law imposing zoning restrictions and authorization requirements in order to preserve public health and social order. Prostitution services may only be authorized within a predetermined zone (*zona de tolerancia*),³ and those providing sex services are required to go through periodic checks within the public health system in order to prevent the spread of sexually transmitted diseases.⁴ The aim of the State in regulating prostitution is to prevent it from going underground and evading enforcement of existing laws.⁵

¹ ADA TRIFIRÓ, MUJERES QUE EJERCEN LA PROSTITUCIÓN 36 (Espacios de Mujer, Medellín, Colombia, 2003).

² *Id.*

³ Decreto 335/2009, Aug. 4, 2009, Alcaldía de Bogotá [Bogotá Mayor’s Office], on the Location of Areas of High Impact, such as Prostitution and Related Activities, <http://www.alcaldiabogota.gov.co/sisjur/normas/Normal.jsp?i=36970>.

⁴ *Vigilancia en Salud Pública: Salud Sexual y Reproductiva—VIH e ITS* [Vigilance in Public Health: Reproductive and Sexual Health—HIV and STDs], SECRETARÍA DISTRITAL DE SALUD DE BOGOTÁ [THE DISTRICT DEPARTMENT OF HEALTH OF BOGOTÁ], <http://www.saludcapital.gov.co/sitios/VigilanciaSaludPublica/Paginas/SaludSexualyReproductiva.aspx> (last visited May 3, 2012).

⁵ GUSTAVO CORONADO PINTO, CÓDIGO NACIONAL DE POLICÍA COMENTADO 178 (Publicaciones Santa Fe, Bogotá, 1989).

In 1970, the Código Nacional de Policía (CNP), the National Police Code,⁶ expressly declared that prostitution is not a criminal offense.⁷ According to the CNP, a person who, on a regular basis, traffics his or her body, for the erotic satisfaction of others in order to secure, supplement, or improve his or her own or others' subsistence, is engaged in prostitution.⁸ By referring to a "person," the CNP includes both men and women in its definition of a prostitute.⁹

Although prostitution is not a crime, the exercise of prostitution is not an activity that is encouraged by the State. Therefore, the CNP specifies that the State will use all available means of social protection to prevent prostitution and facilitate the rehabilitation of prostitutes.¹⁰ A number of rehabilitation programs, such as *Aduldez con Oportunidades*¹¹ (Opportunities for Adults) in the Bogotá district through the Secretaría de Integración Social (Secretary of Social Integration), have been implemented to provide training and personal development assistance for adults engaged in prostitution. In 2011, a total of 2,480 people were trained in cooking, beauty and hairdressing skills, sewing, computer skills, etc., quitting the business of prostitution to engage in these types of productive work.¹²

The Criminal Code¹³ deems as criminal prostitution-related activities involving minors below the age of eighteen. These crimes include pimping of minors,¹⁴ forced prostitution in aggravated form,¹⁵ incitement to prostitution of minors,¹⁶ solicitation of commercial sexual exploitation of a minor,¹⁷ sex tourism,¹⁸ use or facilitation of the media to offer sex with minors,¹⁹ and failure to report prostitution-related crimes with minors.²⁰ Some of these crimes

⁶ CÓDIGO NACIONAL DE POLICÍA [C.N.P.] [NATIONAL POLICE CODE], Decreto 1355, Sept. 4, 1970, DIARIO OFICIAL, Sept. 4, 1970, http://www.secretariasenado.gov.co/senado/basedoc/decreto/1970/decreto_1355_1970_pr004.html#178.

⁷ *Id.* art. 179.

⁸ *Id.* art. 178.

⁹ TRIFIRÓ, *supra* note 1, at 38.

¹⁰ C.N.P. arts. 181, 182.

¹¹ "Aduldez con Oportunidades" Secretaría Distrital de Integración Social y CENASEL, CENTRO EDUCATIVO NACIONAL DE ASESORÍAS SOCIOECONÓMICAS Y LABORALES (CENASEL) (Sept. 18, 2009), <http://www.cenasel.com/%E2%80%9CAduldez-con-oportunidades%E2%80%9D-secretaria-distrital-de-integracion-social-y-cenasel.html>.

¹² *Habitantes de Calle y Personas Vinculadas a la Prostitución Culminan Sus Estudios* [Street Walkers and People Associated with Prostitution Finish Their Studies], ALCALDÍA DE BOGOTÁ (Dec. 9, 2011), http://www.bogota.gov.co/portel/libreria/php/x_imprimir.php?id=47834.

¹³ Ley 599/2000, July 24, 2000, arts. 213–219-B, CÓDIGO PENAL [CRIMINAL CODE], http://www.secretariasenado.gov.co/senado/basedoc/ley/2000/ley_0599_2000.html.

¹⁴ *Id.* art. 213-A.

¹⁵ *Id.* art. 216(1).

¹⁶ *Id.* art. 217.

¹⁷ *Id.* art. 217-A.

¹⁸ *Id.* art. 219.

¹⁹ *Id.* art. 219-A.

have an aggravated penalty that in some cases results in imprisonment for as much as twenty-five years, if the crime was carried out by a tourist or a national or foreign traveler, if the minor is below the age of fourteen, or if the perpetrator is a family member.²¹

Inducement and forced prostitution involving both adults and minors are also considered crimes.²²

II. Constitutional Court Decision on the Rights of Prostitutes

The Constitutional Court addressed the legal treatment of prostitution in a decision rendered in 2010,²³ in which sex workers were given labor law protection, including maternity leave and severance compensation. The decision stated that sex workers who engage in prostitution in compliance with the law should not be subject to discrimination and should enjoy the same rights as other workers. Prostitution is legal if carried out by an adult who freely engages in such activity in exchange for previously agreed-upon remuneration.²⁴

The conclusion of the court was not intended to encourage this activity or to disregard its nonexemplary character but was aimed at protecting those who make a living and fulfill their right to work providing sex services not on their own but through a business employer.²⁵

The case which led to the decision involved a woman who was fired from a bar, where she provided sexual services, after she informed the employer that she was pregnant. She was denied the right to maternity leave and severance compensation. The lower and appellate courts' decisions denied such protection because they considered the labor contract involving sex services to have an illegal purpose and to be against moral customs (*moral y buenas costumbres*), and therefore not protected by the law.²⁶

The Constitutional Court ruling reversed this interpretation, establishing that prostitution is a legal economic activity if performed according to legal standards. As such, it is subject to commerce regulations, taxation, and civil law rules on compensation for damages.²⁷ The decision concluded that voluntary prostitution without inducement or constraint is a legal economic activity.²⁸ Therefore, sex workers must be granted basic guarantees not only with

²⁰ *Id.* art. 219-B.

²¹ *Id.* arts. 216, 217-A(1–4).

²² *Id.* arts. 213, 214.

²³ Corte Constitucional [C.C.], Aug. 13, 2010, Sentencia T-629/10, Acción de Tutela Instaurada por Lais contra Bar Discoteca Pandemo, de propiedad del señor Zoto, Bogotá, <http://www.corteconstitucional.gov.co/sentencias/2010/T-629-10.rtf>.

²⁴ *Id.* at 2.

²⁵ *Id.*

²⁶ *Id.* at 8–9.

²⁷ *Id.* at 71.

²⁸ *Id.* at 76.

regard to their safety and health by the police protective system but also with regard to social security and labor rights, including pensions and leave.²⁹

The decision concluded that since prostitution is not a forbidden activity for the prostitute or the business that offers his or her sex services, both are required to comply with their obligations, especially to make sure that prostitutes receive the same protection of the law for the enjoyment of their rights as other workers.³⁰ The Court was especially sensitive to the fact that sex workers have been and still are objects of discrimination and should receive special protection because the special circumstances of their work make them the most vulnerable party in a labor contract.³¹

In its decision, the Court ordered the employer to pay for the prostitute's maternity leave because, although there was no written labor contract, there was proof of an informal employment agreement that was unduly terminated.³²

The ruling stated that sex workers, men as well as women, are still considered no more than numbers in statistics and surveys, are subject to discrimination and the indignity of not receiving the protection of the State, and are victims of an invisible disregard of their social and economic rights. The Court called on the authorities to enforce existing public policies aimed at the rehabilitation and prevention of prostitution.³³

III. Conclusion

Prostitution is a complex social phenomenon that societies and governments have to deal with in a fair and realistic manner. Because prostitution in Colombia is not prohibited, it has been regulated in such a way that, while not encouraged, is subject to restrictions that require compliance with public health standards and rules of social order.³⁴ The Constitutional Court in its role of protector of the constitutional principles and guarantees has spoken in clear terms: legal prostitution is protected by the law and prostitutes should be granted labor, health, and social security rights comparable to that of other workers.

²⁹ *Id.* at 96.

³⁰ *Id.* at 129.

³¹ *La Prostitución También Es un Trabajo: Corte Constitucional [Prostitution Is a Job Too: The Constitutional Court]*, REVISTA SEMANA (Oct. 4, 2010), <http://www.semana.com/nacion/prostitucion-tambien-trabajo-corte-constitucional/145531-3.aspx>.

³² C.C. Sentencia T-629/10, *supra* note 23, at 130.

³³ *Id.* at 7; *see also* Alfredo Molano Jimeno & Daniella Sánchez Russo, *Prostitución, un Oficio de Varones [Prostitution, a Man's Trade]*, EL ESPECTADOR (Oct. 9, 2010, 09:00 pm), <http://www.elespectador.com/impreso/bogota/articuloimpreso-228804-prostitucion-un-oficio-de-varones>.

³⁴ For more information on prostitution in Colombia, see two interviews in Spanish with members of the Colombian nongovernment organization Fundación Tierra de Hombres involved in protection of victims of prostitution: *Prostitución en Establecimientos de Cartagena [Prostitution Establishments in Cartagena]*, EL ESPECTADOR (Mar. 21, 2011, 6:08 pm), <http://www.elespectador.com/noticias/nacional/video-258282-prostitucion-establecimientos-de-cartagena>; and *Prostitución Infantil en Cartagena [Child Prostitution in Cartagena]*, EL ESPECTADOR (Mar. 20, 2011, 5:50 pm), <http://www.elespectador.com/noticias/nacional/video-258158-prostitucion-infantil-cartagena>.

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