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A GLIMPSE INTO THE LEGAL WORLD

Legal insecurity and lack of regulation of sexual services in Ecuador



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In the 21st century, the absence of labor regulation in Ecuador regarding sexual services represents a severe legislative and legal omission that perpetuates discrimination and the lack of protection for a historically marginalized group. Unlike other labor sectors, sexual services in Ecuador have no specific regulations or jurisprudence to govern or protect them, leaving those who engage in this activity in a situation of total informality, without rights or guarantees.

Although Ecuador's Constitution establishes the right to work and the prohibition of discrimination (Arts. 33 and 326 CRE), the practice of providing sexual services is not regulated in the Labor Code or any other specific regulation. This creates a legal vacuum that facilitates the exploitation and precarious conditions of those who engage in it.

The main issues arising from this lack of regulation include:

- **Lack of labor recognition:** Even though many individuals offering sexual services work in establishments like bars, brothels, and nightclubs, there is no legal framework that recognizes them as workers. This prevents them from accessing basic labor rights.
- **Lack of state control:** There is no regulation, oversight, or state inspection of the conditions

under which prostitution is practiced. This facilitates exploitation and human trafficking.

- **Absence of social security:** Without a labor contract, individuals providing sexual services cannot join the Ecuadorian Social Security Institute (IESS), which means they lack healthcare coverage, pension plans, or protection in case of disability.
- **Lack of protection in case of dismissal:** There are no mechanisms to guarantee job stability, compensation, or special protection for pregnant individuals or those in vulnerable situations.
- **Exposure to violence and exploitation:** The lack of regulation prevents the state from intervening to prevent and punish abuse by pimps and owners of establishments who profit from prostitution without offering any guarantees to the workers.

As shown, one of the main issues faced by those in this profession is the absence of effective public policies that guarantee their safety, rights, and dignified working conditions. The lack of an adequate legal framework leaves them in a vulnerable position, exposed to abuse, exploitation, and violence, without access to protection mechanisms or basic labor guarantees.

"The Ecuadorian State must assume its responsibility and guarantee decent working conditions."



In this regard, the case of Colombia serves as a relevant reference in comparative law, as its Constitutional Court has recognized labor rights for individuals providing sexual services when the elements of a labor relationship are met. In ruling T-629/10, the Court determined that when a person provides sexual services under subordination, with a schedule, under orders, and with compensation, a reality contract is formed, and thus the employer must recognize labor rights.

The most significant points of the ruling include:

- **Recognition of the labor relationship:** If an individual providing sexual services is tied to an establishment and meets the requirements of an employment contract (subordination, personal service provision, and compensation), the labor relationship must be recognized.
- **Special protection for pregnant individuals:** The Court ordered compensation for an individual providing sexual services who was dismissed during their pregnancy, recognizing their right to maternity protection.
- **Social security affiliation:** It was determined that the

employer must guarantee the affiliation of individuals providing sexual services to the social security system, allowing access to health care and pensions.

Unlike Colombia, Ecuador has no jurisprudence or law recognizing labor rights for individuals providing sexual services. There are also no rulings from Ecuador's Constitutional Court interpreting the lack of regulation as a violation of fundamental rights. This absence of regulation leaves those offering sexual services in total legal insecurity.

If a case similar to the one resolved by Colombia's Constitutional Court were presented in Ecuador, there would be no judicial precedent to protect the individual providing sexual services. Instead of recognizing a labor contract, Ecuadorian courts would likely reject the claim on the grounds that there is no regulation governing prostitution.

The lack of state control also allows brothel and bar owners to exploit workers without any legal consequences. In practice, individuals engaged in prostitution have no rights, while the owners of establishments benefit financially without assuming



any responsibility.

Conclusion:

The absence of jurisprudence and legislation in Ecuador regarding sexual services is a form of institutionalized discrimination that perpetuates the exploitation and vulnerability of individuals offering sexual services. Colombian jurisprudence demonstrates that it is possible to guarantee certain rights without promoting prostitution.

Ecuador needs fair regulation with a human rights perspective, recognizing the provision of sexual services as an activity that must be regulated, with access to labor rights; a social security system that allows individuals providing sexual services to access health care, pensions, and protection in case of dismissal; and state inspection and control of the establishments where prostitution is practiced.

Denying the existence of this issue does not eliminate it; rather, it worsens it. The Ecuadorian state must assume responsibility and guarantee dignified working conditions for those engaged in this profession, without prejudice or exclusion. Access to labor rights is not a privilege but an obligation of the state.

In conclusion, it is essential for governments to develop inclusive public policies that not only recognize the provision of sexual services as a legitimate activity but also establish mechanisms for the protection and well-being of those who engage in it. Regulation with a human rights perspective is the way to ensure that no individual's dignity and integrity are compromised while engaging in this activity.



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