



**Urgent  
action to  
support  
people  
engaged  
in prostitution**

Colombia has a historical debt with this population. The Public Actions Group (GAP, by its acronym in Spanish) of the Universidad del Rosario filed a public action of unconstitutionality against the Colombian Police Code.

By Claudia Jasmin Flechas

Photos 123RF, Milagro Castro.

DOI [https://doi.org/10.12804/dvcn\\_10336.37615\\_num6](https://doi.org/10.12804/dvcn_10336.37615_num6)

**T**he case: the *Pro Gender Equity* collective went to the Public Actions Group (GAP) of the Faculty of Law at the Universidad del Rosario in search of advice on protecting people engaged in prostitution. They find that how articles 43 (partial) and 44 (partial) of Law 1801 of 2016, which creates the National Code of Police and Coexistence, are presented discriminates and imposes additional charges, such as fines and police abuse on these people, since it is not clear if the responsibility for compliance falls on them or on the establishments where they work.

**The mission:** to demonstrate to the Constitutional Court, through a public action of unconstitutionality, why it should eliminate from the legal system the articles of the aforementioned code, which are contrary to the Magna Carta, since when the policy is applied, the rights of people engaged in prostitution are violated. For this purpose, national and international public and private academic institutions and social organizations were consulted. The action was constructed with contributions from different organizations and signed by three members of Congress.

**The result:** while the ruling of the Constitutional Court was inhibitory, a pronouncement was made that constitutes a protection of the rights of people engaged in prostitution. [Ruling C-293/19](#) limits the possibility of assigning duties and imposing sanctions on those who are in such a situation and, in addition, establishes the applicability of restrictions and duties to those who seek services or engage in such practices.

**The added value:** the Constitutional Court recognizes that there must be an in-depth analysis by the Colombian State to approach and try to resolve the issue of prostitution as well as admits that these individuals are subject to special protection because they are exposed to various types of violence and systematic discrimination. In short, it validates that the State is indebted to them.

←  
While Colombian law has ruled and some measures have been adopted within the legal framework, there is still no in-depth debate to address the problem in a comprehensive manner.

### Prostitution: a complex problem

Prostitution is a highly complex social phenomenon with severe human rights impacts and economic, moral, cultural, and personal implications that greatly affect those who engage in it. Physical and psychological violence, sexual abuse, pornography, forced consumption of psychoactive substances, and mental health repercussions (including psychiatric clinical conditions) are just some of the adverse effects or risks of this work.

However, in legal terms, it is not clearly regulated in this country. While Colombian law has ruled and measures have been adopted within the legal framework, such as [ruling T-594 of 2016](#), which prohibits discrimination against sex workers, a substantive debate to address the problem in a comprehensive manner has yet to occur.

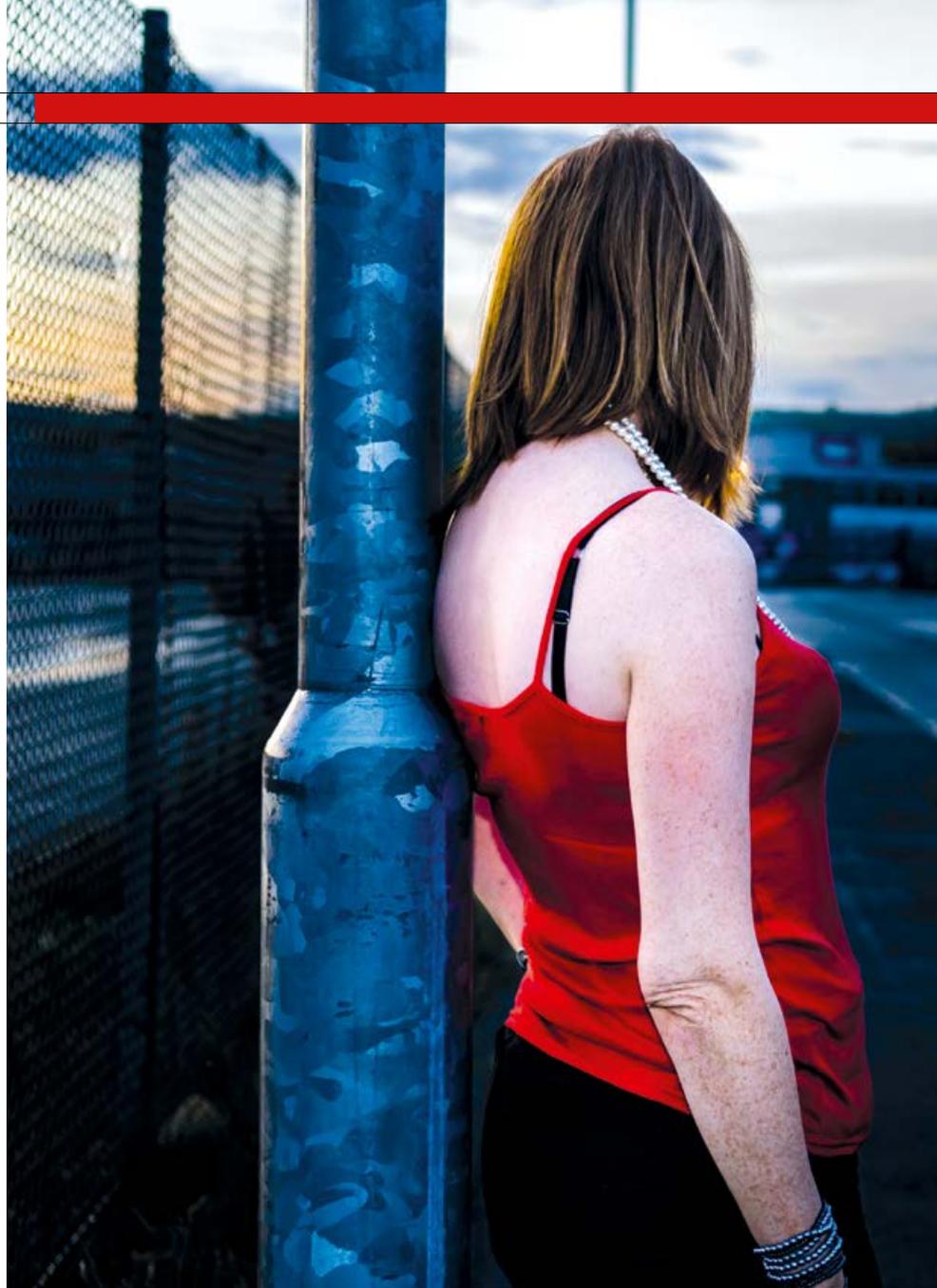
In the world, the panorama ranges from countries in which this practice is recognized as a formal job, which is regulated, to others in which models are applied that support its prohibition and total abolition.

In Colombia, prostitution is not prohibited for persons of legal age and for those who engage in it voluntarily, but there is no clarity regarding the obligations that apply to these people, to those who promote it, and to those who seek the services.

The Congress of the Republic and the Constitutional Court have only taken a stance on very specific issues, such as the promotion of health measures and the territorial planning aimed at establishing zones for prostitution and making it a crime to induce another to engage in prostitution. But not so much in labor matters, since doing this work is not subject to the protection of the rights of access to healthcare and social security.

In this sense, all persons, regardless of whether they have a formal job or work, have access to the social security system in terms of healthcare through the subsidized system, and most of the people in prostitution are in the subsidized health system and not as contributors. With regard to the social security system in terms of pensions and occupational risks, few prostitutes are self-employed and would therefore be covered by the system; however, in practice, this is all too uncommon.

The truth is that Law 1801 of 2016, sanctioned by the President of the Republic on July 29, 2016, creates the [National Code of Police and Coexistence](#), which entered into force in January 2017 and in which a section is dedicated to “Engaging in prostitution.” It recognizes that the voluntary practice of



↑ In Colombia, working in prostitution is not prohibited for those of legal age and for those who do the work voluntarily, but there is no clarity regarding the obligations that concern these people, those who promote it, and those who seek the services.

prostitution by adults does not give rise to the application of corrective measures, although it does specify restrictions and sanctions for this work that restrict rights such as freedom of movement, equality, non-discrimination and, in general, the right to protection of the vulnerable population.

It was while reviewing this legal compilation that the idea of advancing this research arose: [Deuda histórica del Estado colombiano frente a las personas en situación de prostitución: acción de inconstitucionalidad en contra del Código de Policía. \[Historical debt of the Colombian State toward persons in prostitution: unconstitutionality action against the Police Code\]](#)

“The GAP is a legal clinic created 22 years ago and made up of 8th and 9th semester students in the legal office and by a supervisory team. Its objective is to defend the public interest and human rights within the framework of students’ professional training.



According to the court ruling, the fines stipulated in the Police Code that could apply to a person engaged in prostitution can only be imparted on the establishment that allows them to conduct the activity.

The *Pro Gender Equity* collective learned about our work and contacted us,” says [Paola Marcela Iregui Parra](#), research leader, professor at the Faculty, and supervisor of the GAP.

The scope of this research was purely legal, and its objective was to analyze how the regulation, based on how it was issued, is not correct since it opens the door for National Police agents to exercise abusive controls (unjustified fines, searches without a clear reason, etc.) as well as physical, verbal, and psychological abuse. “For this reason, they opted for a public action of unconstitutionality, given that, in their opinion, the regulation from the Police Code is contrary to the constitutional text and should not be in the legal system,” adds Iregui.

### Who should be fined?

Chapter 3 of the Police Code regarding working in prostitution refers to the rules for three key instances: establishments where prostitution is conducted, persons engaging in prostitution at will, and those who seek the service. “Articles 43 and



“The GAP is a legal clinic created 22 years ago and made up of 8th and 9th semester students in the legal office and by a supervisory team. Its objective is to defend the public interest and human rights within the framework of students’ professional training. The Pro Equidad de Género collective learned about our work and contacted us,” says Paola Marcela Iregui Parra, research leader, professor at the Rosario Faculty of Law.

44 place burdens, such as fines and warnings, on people in situations of prostitution because they are not clear in identifying who is responsible for non-compliance with the regulation,” says Iregui.

Article 42 refers to persons engaged in prostitution and states that they are subject to special protection and are potential victims of violence.

Article 43, on the other hand, talks about the owners, holders, or administrators of real estate establishments or places where prostitution is conducted, as well as the personnel who work in them. That is, it covers those who work in tasks such as surveillance, cleaning, and administrative operations.

Article 44 refers to behaviors related to engaging in prostitution that affect coexistence and that should not be carried out by persons engaged in prostitution. Several behaviors are listed such as engaging in the activity outside the established areas and hours, or without adequate protective measures, and the law states that if the guilty parties—without spec-

ifying—are found guilty, they will be subject to corrective measures or fines.

“This helped us to show the Court that it should clarify whether these fines can be imposed on anyone who works in this place or if they are exclusive to the owners or administrators of the establishments,” says Iregui.

The Police Code addresses prostitution as a public health issue; however, this approach, in the opinion of the experts participating in the GAP initiative, does not solve the problem. It only identifies that there is a problem that impacts public health and does not go beyond that. “This is worrying because it infers that the State has no interest in dealing with the problem in depth and, like the Constitutional Court, makes decisions that, in our opinion, are precarious, tangential, and do not provide solutions to the various problems involved in the practice of prostitution,” says the researcher.

### What does the Ombudsman say?

It is important to note that the study includes pronouncements not only from international organizations but also from institutions such as the District’s Secretariat of Health, the Cundinamarca Secretariat of Health, the Cali Municipal Public Secretariat of Health, and the Ombudsman’s Office, which provided the Constitutional Court with their perspective on the lawsuit.

In the opinion of the Ombudsman’s Office—to cite one of these institutions—it is not equitable that those who engage in prostitution assume the burden of obtaining the healthcare certificate issued by the Secretariat of Health, of providing or distributing condoms, among others. In addition, it is a disproportionate treatment to require them to comply with the requirements established for properties where prostitution is conducted.

As for measures that seek to safeguard the physical health of those who work in prostitution, such as conducting awareness and education campaigns on sexual and reproductive rights, the Ombudsman’s Office recognizes that they are in line with a constitutionally valid purpose. However, it believes that while these campaigns are important, they are not sufficient to guarantee rights due to the vulnerability of the people who conduct this work.

In summary, the purpose of the unconstitutionality action was fulfilled because

- According to the Court’s ruling, the fines stipulated in the Police Code that could be applied to a person engaged in prostitution can only be imposed on the establishment that accommodates them to conduct this work.



- The problem exceeds the analysis that the Constitutional Court can offer, but it assured that they are subject to special protection, that they are in a serious situation of vulnerability, and that therefore the State has an obligation to promote spaces for discussion that include this population and the collectives that work with and for them.

On this occasion, the Court’s statement was related to public health, but it is necessary to delve deeper and cover all aspects of this group’s reality.

The action was built with contributions from different organizations and signed by three members of Congress, lawyers from the Corporación [Sisma Mujer](#) (Sisma Mujer Corporation), la Comisión Colombiana de Juristas (the [Colombian Commission of Jurists](#)), Colectivo de Abogadosthe “José Alvear Restrepo” (Cajar) (the “José Alvear Restrepo” (Cajar) Lawyers’ Collective, activists from the Citizens’ Initiative for Gender Equity and the GAP at Universidad del Rosario.

## A look at the international scene

During the judicial process, more than 20 institutions, including academic institutions, social organizations, different individuals and public and private agencies, both national and international, intervened to offer elements of the issues raised in the unconstitutionality lawsuit.

Those who intervened told the Colombian Constitutional Court that it is essential to intervene urgently in favor of the rights of persons engaged in prostitution. However, it is up to Congress to take the reins so that a structural policy can emerge to guarantee the fundamental rights of this community, which works in completely unfavorable conditions. But thus far, it all comes down to one section of the Police Code.

In the opinion of the Ombudsman's Office and the speakers of the unconstitutionality action, it is not equitable that those who work in prostitution assume the burden of obtaining the healthcare certificate issued by the Secretariat of Health, of providing or distributing condoms, while the pimps profit from their work.

### Prostitution is not illegal in Colombia

Prostitution is a highly complex social phenomenon with serious public health and human rights impacts.

Colombia's historical debt is precisely the lack of in-depth regulations regarding the problem.

Colombia has issued some regulations, such as the Police Code, which expressly states that prostitution is not an illegal activity and people cannot be punished for this work.

It has also been stated that persons engaged in prostitution should be protected by the legal system due to their vulnerability. In this sense, it is clearly not an illegal activity.

Formally, all people, regardless of whether they have a formal job or work, have access to the social security system in terms of healthcare through the subsidized system. Most people working in prostitution are in the subsidized health system and are not contributors.

With regard to the social security system in terms of pensions and occupational hazards, few prostitutes are contributors as independent workers and would therefore be covered by the system, but this is all too uncommon.

One of the organizations involved is the University of Massachusetts, which proposes a study from the two perspectives of regulation that currently exist in relation to prostitution:

**Regulation in Germany, the Netherlands, and New Zealand.** These countries have chosen to regulate prostitution in such a way that allows the business to be carried out formally. But the results show that the desired objectives have not been achieved, at least not fully.

In the [Dutch](#) case, there is an increase in violence against sex workers, illegal human trafficking has not declined, women continue to be controlled by pimps, and organized crime related to this sector has not decreased.

In [Germany](#), the growth of the sex industry has not been controlled as expected, and the situation of sex workers has not been formalized. The economic benefit of the business has remained only with the managers or owners. In addition, the situation has not been monitored due to the autonomy granted to the establishments.

[New Zealand, for its part](#), decriminalized prostitution in 2003, becoming the first country to do so. Nevertheless, the results of the study conducted by the participants are quite similar to the experience of Germany and the Netherlands. For example, the exploitation and labor vulnerability of sex workers has intensified.

**The Nordic model: Sweden, Norway, and France.** This model has been successful in meeting its objectives. In this model, women "sex workers" acquire the status of victims in prostitution, and in that sense, their conduct is decriminalized in its entirety. The activity is not legal, since pimps, administrators, and other individuals who profit from this business are penalized for their conduct.

With the implementation of this model, these countries have achieved: a decrease in prostitution, dignified treatment for sex workers, and a decrease in access to these services by men, mainly due to strong legal and social sanctions.

In conclusion, after presenting the two models, those who filed the action urge the Constitutional Court to order the rethinking of the articles in the Police Code that, in their opinion, violate the fundamental rights of persons engaged in prostitution. Based on their perspective, these even go against the provisions of the **Colombian Penal Code**, which stipulates penalties for people who profit from sexual activity, such as pimps. Finally, it welcomes the fact that a bill is underway to fully adopt the Nordic model to regulate the prostitution business. ■