



## European network of legal experts in gender equality and non-discrimination

### NEWS REPORT

<b>Country:</b>	<b>Spain</b>
<b>Title:</b>	The National Court rejects the right of a sex workers association to create a union
<b>Date:</b>	13 December 2018
<b>Expert:</b>	María Amparo, Ballester Pastor
<b><u>Context</u></b>	
<b>Issue at stake:</b>	The judgment of the National Court of 19 November 2018 annulled the statutes of a sex workers' union arguing that prostitution cannot be considered a job and that, therefore, whoever exercises it cannot rely on the freedom of association to create a union
<b>Ground of discrimination:</b>	Sex
<b>Source:</b>	Case Law
<b>Field:</b>	Employment
<b>Applicable law:</b>	Article 1 of the Freedom of Association Organic Law ( <i>Ley Orgánica de Libertad Sindical</i> ), Organic Law 11/1985, of 2 August 1985

### **Content**

In the summer of 2018 the organisation OTRAS (organisation of sex workers) requested the General Directorate of Labour to be registered as a union, for which it carried out the established procedures, among which was the presentation of its statutes. It was established in these statutes that the union had as its purpose the defence of the labour interests of the persons who carry out activities related to sex work in all of its aspects. This broad scope of action includes, therefore, prostitution, although it also refers to other activities such as those of porn actors. In accordance with Spanish legislation, which recognises the freedom of association in the Freedom of Association Organic Law (Organic Law 11/1985, of 2 August 1985), public authorization for the creation of unions is not necessary, but the Labour Authority may refuse to register a union or may require the applicant to make corrections, when the application does not comply with the current legislation. It should also be borne in mind that the OTRAS organisation was already legally recognised as an organisation, but by registering as a union it was requesting to be able to defend the interests of sex workers in the workplace, mainly against employers but also in front of the public administration, including the social security administration. The registration of the OTRAS union would have had, therefore, consequences of great relevance. It would imply that the activities of sex workers could give rise to ordinary labour contracts. In Spain prostitution is neither recognised nor prohibited although the activity of pimps constitutes a crime. When the application for registration was filed, the Labour Authority admitted it, probably by mistake, given that the change of government had taken place recently and the new authorities had just been appointed. In fact, the Minister of Labour and Social Security admitted that "they had scored a goal" and the Minister insisted on the fact that the Government was firmly against legalising prostitution.

Two human rights associations and the public prosecutor's office filed a complaint against the statutes of OTRAS, alleging that it is illegal to hire people to practice prostitution and that, therefore, the union's end is illegal. In contrast, however, the OTRAS organisation and some feminist organisations maintained that the labour defence of prostitutes was convenient and even that women should be free to use their bodies in any way they want. Most feminist organisations, however, considered that prostitution is a form of exploitation of women and that it should be abolished. Both positions clashed in a debate that has concluded, for now, with the ruling of the National Court of 19 November 2018, which states that it is not possible to register a sex workers' union.

In its judgment the National Court states that *it is not possible under our law to conclude an employment contract the purpose of which is prostitution for an employee, that is, a contract under which the worker assumes the obligation to maintain sexual relations as indicated by the employer, with designated clients in exchange for a remuneration, and the contract that thus takes place must be considered null*. In its judgment the National Court states that, although the right to freedom of association is a fundamental right, it can only be granted to the person who holds the status of worker, and this condition of worker presupposes the existence of a legitimate employer in relation to whom one can exercise the rights that freedom of association implies. According to this judgment of the National Court the existence of a sex workers' unions would mean that this union, together with the pimps and their associations, can collectively negotiate the conditions under which the activity of the persons employed in prostitution should be conducted. That would affect the right of sexual freedom, understood as the right of every person to decide with which specific person they want to maintain a sexual relationship, at what time and the type of practice or practices that such relationship should consist of. For this reason, the National Court in its judgment considers that the statutes of the OTRAS union are null, which implies that the OTRAS union is also null.

**Key points of analysis:** The judgment of the National Court of 19 November 2018 has stated that, under Spanish Law, the existence of a sexual workers' union is null given that it is not possible to conclude an employment contract for the purpose of prostitution for an employee, that is, a contract under which the worker assumes the obligation to maintain sexual relations as indicated by the employer.

**Internet link sources:**

<http://www.finanzas.com/noticias/20180904/dimite-directora-general-trabajo-3902846.html>.

[https://www.eldiario.es/economia/Audiencia-Nacional-estatutos-sindicato-prostitutas\\_0\\_838166337.html](https://www.eldiario.es/economia/Audiencia-Nacional-estatutos-sindicato-prostitutas_0_838166337.html).