

# Gender equality in women's professional sport. Progress and pending challenges

## Igualdad de género en el deporte profesional femenino. Avances y retos pendientes

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## Abstract

Despite the progress made in terms of gender equality in all areas, there are still numerous difficulties and challenges that professional athletes continue to face. In this regard, it is important to determine if there are effective legal tools to achieve this equality in real and effective terms. To do that, we analyze the legal framework of employment relationship of professional athletes, with special reference to male and female sports collective agreements and the new Sports Law of December 30, 2022. As main results we found that there have been clear advances in this area. of equality in the sporting field, but there are still challenges to conquer. An example of this is that the regulatory instruments that specifically regulate the collective rights of professional athletes depend on the gender of worker. An aspect only occurs in sports and is especially striking. Furthermore, they appear insufficient. Especially in some sports disciplines that do not even have a female collective agreement that regulates the content of the employment relationship according to their sporting singularities.

**Key words:** Women, professional sport, collective agreements, equality.

## Resumen

A pesar de los avances producidos en materia de igualdad de género en todos los ámbitos, aún son numerosas las dificultades y desafíos a los que se siguen enfrentando las deportistas profesionales. Por ello, es clave determinar si existen herramientas jurídicas eficaces para la consecución de esta igualdad en términos reales y efectivos. En el presente estudio se analiza el marco jurídico regulador de la relación laboral de las deportistas profesionales, con especial referencia a los convenios colectivos deportivos masculinos y femeninos y la nueva Ley del deporte de 30 de diciembre de 2022. Los principales resultados muestran que se han producido claros avances en materia de igualdad en el ámbito deportivo, pero aún quedan retos por conquistar. Un ejemplo de ello es que los instrumentos normativos que específicamente regulan los derechos colectivos de las personas deportistas profesionales difieren según el género de la persona trabajadora. Aspecto que tan sólo se da en el deporte y que resulta especialmente llamativo. Además, se muestran insuficientes. Especialmente en algunas disciplinas deportivas que ni siquiera cuentan con un convenio colectivo femenino que regule el contenido de la relación laboral de acuerdo con sus singularidades deportivas.

**Palabras clave:** Mujeres, deporte profesional, convenios colectivos, igualdad.



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## Introduction

Sport serves as a reflection of both the progress that has been made in society in terms of gender, as well as the inequalities and the road still to be travelled towards real and effective equality. This is due to the fact that women's participation in professional sport is still marked by the inequality and discrimination that has traditionally existed in this field, where the design and implementation of legislation, policies and public funds were constructed from an eminently male perspective, in accordance with traditional educational models or social stereotypes and gender roles, which have given rise to imbalances and glass ceilings for women in society and in working and sporting life (Vázquez Gómez & Alfaro, 2020).

Women's professional sport has been subject to discriminatory practices related to segregation; the pay gap; under-representation in management positions within sports organisations - 40% on the Board of Directors for Sports Federations -, which have indirectly resulted in a lower presence of women's sport in the media and greater obstacles to accessing economic resources, women's professional leagues or sponsorships (Torres & Mirón, 2020); non-existence of women's professional leagues, according to sporting disciplines; or sexual harassment (Association for Women in Professional Sport & Thomson Reuters Foundation, 2020, p. 17). All of these circumstances place these female workers at a clear disadvantage compared to their male counterparts.

In addition to the above, another of the difficulties that professional sportswomen have traditionally faced has been the compatibility between the development of their sporting careers and motherhood. Both in terms of reconciling work and family life, as in other areas of work, as well as pregnancy itself and the physiological changes produced by it (Hinojosa-Alcalde et al., 2023). This is a particularly singular issue in the professional sports field, where the body and physical capacities play a central role in the professional career.

Thus, it is worth referring to practices such as the denial of calls for training sessions, training camps or championships to others who are not pregnant or do not have children, or the most serious of these, the anti-pregnancy clauses that some clubs, governed exclusively by economic and profitability parameters, have been including in employment contracts, penalising pregnancy with non-compensated dismissal. This, under the premise of considering that pregnancy implies a loss of physical conditions that translates into worse sporting performances and a temporary interruption of the sporting career (Conde, 2018, p. 180). In other words, the physiological changes associated with pregnancy are penalised more, even if they are of a temporary nature, than others such as a sports injury, which can keep athletes away from the field of play for similar periods of time and with no guarantee of full recovery.

The existence of these actions, which obviously reduce the possibilities of competition and professional promotion of these sportswomen, has meant that many of them have had to face the dilemma of having children or continuing with their sporting careers and delaying the option of becoming a mother until they finally retire. As an example of this scenario, mention the case of women's football, where in 2017 only 2% of players were mothers compared to 47% who said they would do so when they left football, citing the lack of childcare services as an important reason for this decision (Fifpro, 2019, p. 40). Likewise, the experiences suffered by sportswomen such as the athlete and Olympic medallist Allyson Felix, the sailing Olympian Blanca Manchón, or the tennis player Serena Williams, among others, who suffered discriminatory experiences due to the fact that they chose to exercise their right to motherhood, either as a result of a contract termination, a worsening of working conditions, or because the rankings they had at the time of motherhood were not respected in the tournaments (El País, 2019).

It is therefore a fact that women's professional sport has traditionally been characterised by the widespread use of unlawful practices that have increased the discriminatory factors linked to maternity in comparison with other professional fields. Practices that, of course, violate women's fundamental right to equality in the framework of the employment relationship. This is even though maternity is an asset that is widely protected by both legislation and jurisprudence.

Thanks to the visibility of this problem and the numerous demands that have been made in this regard by many elite sportswomen and sports organisations, this panorama is fortunately beginning to change. In fact, there are more and more cases that show that compatibility between a sporting career and motherhood is possible. Among others: Maider Isarri, an Osasuna player, trained until the end of her pregnancy and returned the following season after a period of readaptation after giving birth; Teresa Portela and Ona Carbonell had to face great difficulties and challenges in order to make their recent maternity compatible with the Olympic Games (Morgado, 2022; Hidalgo, 2020); or Ana Peleteiro, who after her recent maternity and a 15-month break has played the 2023 European Games (McAlister & Aragón, 2023).

Likewise, the various initiatives promoted by different institutions - both governmental and non-governmental - as well as scientific activity itself, have contributed to the greater involvement and visibility of women in professional sport in order to make this problem visible and contribute to the promotion of women's sport (Castro-García & López-Villar, 2022; González et al., 2022).

In this line, special mention should be made of the Brighton Declaration of 1994, organised by the British Sports Council, supported by the International Olympic Committee, and signed by various sports organisations from

82 countries - both governmental and non-governmental - which has become a reference treaty in support of a fairer and more equitable system of sport. Today it updates the Brighton plus Helsinki Declaration, with the cooperation of more than 800 delegations from almost 100 countries (IWG Women&Sport, 2014).

In the same sense, ORDER PRE/525/2005, of 7 March, adopting measures to promote equality between women and men, which in the field of sport, established actions such as the creation of a permanent unit within the Consejo Superior de Deportes (CSD) to develop the Women and Sport programme; the signing of an agreement between the Consejo Superior de Deportes and the Instituto de la Mujer to promote women's sport; or the assignment to the Consejo Superior de Deportes to apply the principle of parity in all campaigns or exhibitions for the promotion of sport (at. 6).

Thus, in 2009, the CSD presented the Manifiesto for Equality and the participation of women in sport, which pointed out the need to introduce the principle of equal opportunities as a maxim of quality in the management of all those institutions or entities related to physical activity and sport, urging the collaboration of all Sports Federations (Consejo Superior de Deportes, 2009).

Along the same lines, Organic Law 3/2007, of 22 March, for effective equality between women and men - hereinafter referred to as LOI - which, among other provisions in favour of gender equality, establishes the obligation for women's sport to be promoted, with a real opening up of sporting disciplines to women, through the development of public sports programmes that incorporate the effective consideration of this principle of equality between women and men.

It is therefore necessary to carry out an analysis of the legal framework applicable to the labour relations of women athletes from a gender perspective, with the aim of making further progress in the debate and raising awareness of the importance of the gender perspective in the labour rights of professional sportspersons. All of this, with special reference to the evolution that has been taking place in this regard through collective bargaining in some sporting disciplines.

### *The new Law 39/2022, of 30 December, on sport, from a gender perspective*

There are several novelties introduced by the new Law 39/2022, of 30 December, on sport, which repeals the old and obsolete previous law, from 1990, whose precepts needed to be updated in accordance with the socio-economic reality that has been taking place in the field of sport since then.

Focusing on the object of this work, it is worth mentioning that, in contrast to the absence of references to the principle of equality and prohibition of discrimination

on grounds of sex in the previous law, this law expressly recognises the right of all sportspeople to equal treatment and opportunities in the practice of sport, without any discrimination on any of the grounds considered discriminatory, including sex (art. 22.1. a). Furthermore, Article 4 sets out a specific framework for the promotion of effective equality in sport that urges public administrations to carry out public policies that guarantee equality in access to and practice of physical activity and sport, including in positions of responsibility, with the aim of achieving a balance between men and women in management bodies. It also includes the need to promote equality in terms of visibility in sporting events, without sexual objectification or sexist stereotypes.

The aim is to promote effective equality through policies that prevent, identify and sanction situations of discrimination against women carried out by sports entities in labour, sporting, administrative or any other kind of relations. In this way, it establishes the obligation for professional federations and leagues to draw up an annual report on equality - to be submitted to the Higher Sports Council, the Women's Institute, the Council for the Elimination of Racial or Ethnic Discrimination, as well as to the sportspersons' commissions created within the respective federation, associations and sportspersons' unions - as well as to have a prevention and action protocol for situations of discrimination, abuse and sexual or gender-based harassment, among others.

With regard to professional sport, it also regulates the consideration as null and void of any contractual clause that allows or favours the unilateral termination of the contract due to pregnancy or maternity of sportswomen which, as has already been said, has traditionally been one of the reasons that has most hindered the promotion and professional development of sportswomen who decided to opt for maternity. In other words, this new law adapts to the new sporting context and introduces measures that are in line with those stipulated by other regulatory instruments that have been adapting their provisions in accordance with the social advances made in the field of equality - as will be explained throughout this work. This was undoubtedly more than necessary.

In this regard, as measures aimed at reducing the loss of rights of sportswomen who decide to opt for maternity, the maintenance of voting rights in general assemblies is also recognised, as well as their rights as top-level sportswomen once this period has elapsed. In addition, Spanish sports federations and professional leagues are obliged to draw up a specific plan for work-life balance and co-responsibility with specific protection measures in cases of maternity and breastfeeding.

Likewise, and as it could not be otherwise, a sanctioning regime is set up that is updated to the current reality of sport. Thus, a set of infringements and sanctions are determined, whose public authority can be exercised by the

Spanish sports federations and professional leagues within the scope of their competences, in the same way as the Administrative Court of Sport in very specific cases referring to the commission of infringements by the governing bodies of the sports federations and professional leagues. In addition, a preventive mechanism is set up to favour transparency and exemplarity in the management of sport, through the code of good conduct for managers (Title VII).

Specifically, in terms of equality, it is regulated that any unilateral decision by sports entities that implies direct or indirect discrimination with respect to sportspersons to whom they are linked by an employment relationship constitutes a very serious infringement (104.2 i) punishable according to the provisions of the Law on Infringements and Penalties in the Social Order (hereinafter LISOS).

## Results

### *Legal framework of the employment relationship of sportspersons from a gender perspective. Special reference to collective bargaining*

The starting point for the analysis of this employment relationship is the definition that Law 39/2022, of 30 December, on Sport itself makes of professional sportspersons, which includes those who voluntarily and habitually engage in sporting activity and are remunerated for it, whether or not they are subject to a special employment relationship as professional sportspersons. In other words, it includes both employed and self-employed persons.

However, this paper will focus on those who carry out this professional sporting activity within the framework of an employment relationship, according to the terms that will be developed along the following lines, whose governing regulation is the Royal Legislative Decree 2/2015, of 23 October, which approves the revised text of the Workers' Statute Law (Estatuto de los Trabajadores in Spanish) -hereinafter ET-.

In line with the above, it is necessary to consider the classification that the ET makes of this employment relationship of professional sportspersons (art. 2), whose consideration as a special relationship implies its regulation by means of a specific body of legislation, in accordance with the singularities of this field of work. Thus, the legal instrument of reference to be examined is Royal Decree 1006/1985, of 26 June 1985, which regulates the special employment relationship of professional sportspersons, with special reference to its scope of application.

In this regard, it should be noted that the purpose of this rule is to regulate the special employment relationships of professional sportspersons, defined as those who, by virtue of a regularly established relationship, voluntarily engage in the practice of sport on behalf of and within the scope of the organisation and management of a sports

club or entity in exchange for remuneration (art. 1). In other words, it regulates those employment relationships that are established on a regular basis between the sportsperson and the sports club or entity, as well as between sportspersons and firms or with companies whose corporate purpose consists of organising sporting events, provided that they comply with the labour-related characteristics that define and delimit the scope of employment relationships (art. 1.1. ET). This, also bearing in mind that this includes all work and labour with a direct connection to and impact on the sporting results obtained. In other words, both sportspersons and those who form part of the technical staff -coach, physical trainer, physical trainer, injury rehabilitation, etc., who carry out their activity on a regular basis- are included within its scope of application (Aznar, 2019).

On the other hand, specific relationships such as those occurring in sports like golf, where a company organises an open and, by way of a claim and/or exhibition, invites a player to participate in exchange for a financial payment, but the relationship between the two ends at the end of the event, would be excluded. Likewise, relationships established between athletes and National Federations - whether national, provincial, regional, etc. - through the integration of teams - representations or selections - organised by them. Likewise, the so-called "compensated amateurs", who are those people who carry out a sporting activity but do not receive a salary, but rather compensation to cover the expenses derived from the practice (Mercader, 2016).

However, it should be noted that due to the numerous references that this Royal Decree makes to the ET and other generally applicable labour regulations, which are supplementary to the provisions of the Royal Decree (art. 21), the study of the legal regime regulating these professional relations from a gender perspective includes the study of other bodies of law such as collective agreements, where they exist, and the general rules on employment discrimination. This, bearing in mind that it is precisely in this question, that of referring to collective agreements, where part of the problems of inequality in professional sport are to be found. Given that in Spain we do not have many of them. This aspect will be developed in greater detail in the following pages.

In contrast, it should be noted that the provisions of these legal texts make little use of inclusive language as a legal formulation. Thus, instead of using, for example, the reference to "the special employment relationship of female sports workers", "female workers" or "leave of absence to care for children", the traditional masculine form is used to refer to both sexes (it is important to notice that in Spanish there are masculine and feminine forms for verbs, names and articles, and the laws mentioned are written in Spanish). In fact, only some provisions of the ET -such as those relating to the consideration of the nullity of the termination of the contract produced in the context

of circumstances associated with the birth and care of a child (art 55), among others-, which were modified by Royal Decree-Law 6/2019, of 1 March, on urgent measures to guarantee equal treatment and opportunities between women and men in employment and occupation, do so. In this sense, it would have been advisable for this text to have modified these provisions throughout the entire labour legislation, rather than only with respect to some of them.

### *Legal framework for gender equality in the workplace*

The principle of gender equality and non-discrimination as a universal right is enshrined in various international and domestic legal provisions. As far as the domestic legal system is concerned, the Spanish Constitution of 1978 itself proclaims the principle of equality and non-discrimination on grounds of sex in Article 14, while establishing the obligation of the public authorities to promote the conditions for equality to be real and effective (Article 9.2.). This recognition is complemented by other specific provisions on gender equality such as the LOI of 2007, which establishes specific actions and positive actions to avoid situations of discrimination based on sex in all spheres of life (arts. 1-2).

This recognition implies the right of all persons to equal treatment and opportunities and the absence of any discrimination on grounds of gender. Or, to put it another way, it implies that equal cases are treated identically in their legal consequences, so that if there are differences there is sufficient justification in terms of reasonableness and proportionality, with the burden of proof falling on the person who assumes the defence of the same SSTC 126/1997, of 3 July -rec.661/96-, FJ 8; 3/2007, of 15 January). Likewise, discrimination can occur both directly and indirectly.

In this sense, the LOI defines direct discrimination on grounds of sex as “the situation in which a person is, has been or could be treated less favourably than another person in a comparable situation because of his or her sex” (art. 6.1.). Also, any scenario of gender-based harassment, understood as “any conduct conducted on the basis of sex with the purpose or effect of violating the dignity of a person and of creating an intimidating, degrading or offensive environment” (Art. 7), or “any unfavourable treatment of women related to pregnancy or maternity” (Art. 8). This is in line with case law, which states that the protection of the biological condition and health of the worker must be compatible with the preservation of her professional rights, so that the undervaluing or prejudice caused by pregnancy or subsequent maternity constitutes a case of direct discrimination on grounds of sex (STC 182/2005, 4 July -rec. 2447/2002-).

However, cases of discrimination are not limited to the above, but extend to those situations or provisions which,

although apparently neutral, place persons of one sex at a particular disadvantage compared to persons of the other, unless such differentiation can be objectively justified by a legitimate aim and the means of achieving that aim are necessary and appropriate (Art. 6.2. LOI; (SSTJCE of 27 June 1990, Kowalska case; 9 February 1999, Seymour-Smith and Laura Pérez case; SSTC 145/1991, of 1 July -rec. 175/89-; 240/1999, of 20 December -rec. 2897/95-). This case could include the impact that certain labour rights or apparently neutral business decisions have on the employment of female workers, as is the case with the exercise of the right to conciliate work and family life. This is due to the fact that rights such as reduced working hours, leave of absence for childcare or other suspensions of the employment contract can have repercussions on aspects of the employment relationship such as professional promotion, salary or the amount of a future retirement pension (Maldonado, 2019).

Likewise, any adverse treatment or prejudice suffered by a person because of the presentation of a complaint, claim, denunciation, lawsuit, or appeal aimed at avoiding discrimination is considered discrimination on the grounds of gender (art. 9 LOI).

Finally, and regarding the legal consequences and guarantees for those who are subject to situations of gender discrimination, it should be noted that both the LOI (Art. 10) and, about the labour sphere, the ET (Arts. 17.1 and 55.5), establish the nullity of acts, clauses or business decisions that lead to direct or indirect discrimination on the grounds of gender. Thus, actions such as the dismissal of a worker who is pregnant or who exercises her rights to conciliation can be classified as fair or null and void, but never unfair, depending on their causality (STS (Social), 25 January 2013 -rec. 1144/2012- (Casas, 2017).

### *Collective agreements in women's professional sport*

As mentioned above, the constant references made by the 1985 RD to other supplementary rules such as collective bargaining agreements are part of the problem of inequality in professional sport since, to date, Spain does not have many of them.

Specifically, at national level, only five sports can boast of having a collective agreement - basketball (IV Collective Agreement for professional basketball ACB, 3 March 2021), cycling (Collective Agreement for professional cycling, 17 March 2010), football (Collective Agreement for professional football, 23 November 2015), handball (IV Collective Agreement for professional handball, 11 January 2017) and futsal (Collective Agreement for futsal, 22 March 2017). Meanwhile, in other sports we can find collective agreements of clubs or entities for their sport discipline.

These state collective agreements, as in the case of ordinary employment relationships, regulate aspects relating to employment, economic conditions, working hours, rest periods, holidays and other special leave,

among others. However, it is fair to point out that insofar as these provisions apply to the professional relations between players and clubs or sports entities attached to the corresponding sports league depending on the discipline, we are faced with the problem that the employment relations are or are not regulated by these specific legal instruments depending on the existence or not of these leagues.

Well, if we consider the general non-existence of women's professional leagues and the fact that, if they do exist, these agreements do not include them in their scope of application, as they only include men's leagues, we find that in practice these regulatory provisions do not govern the employment relations of sportswomen. Even the basketball collective bargaining agreement expressly limits its personal scope of application to "players participating in professional men's basketball competitions" (Art. 4).

This exclusion has meant that in recent years sportswomen have been demanding their own collective bargaining agreements, which have been approved in the areas of basketball and football. Thus, women's sport, to date, has the Collective Agreement for the professional basketball activity of the Women's League organised by the Spanish Basketball Federation (agreement code no. 9916915), which was signed on 22 October 2007, and the Collective Agreement for women footballers who provide their services in the first division of women's football clubs (agreement code no. 99100245012020), which was signed on 31 July 2020.

Thus, until the negotiation of these women's collective agreements, the employment relationships of these sportswomen, who performed the same work activity as their male counterparts, were without a collective agreement to regulate numerous aspects relating to the employment relationship. The same scenario is currently found in the rest of women's sporting disciplines, which have no agreements. And even in these disciplines, depending on the level at which the sporting activity is carried out, as is the case with women's second division footballers.

Therefore, we are faced with the peculiarity that the legal instruments governing each sporting discipline are distinguished according to the gender of the worker. This only occurs in the field of sport, as in the rest of labour relations the delimitation of the personal scope of a collective agreement does not include any criteria linked to gender (UGT, 2015).

## Discussion

### *A step towards equality or towards the perpetuation of inequality?*

A comparison between the collective agreements for men and women in the sports disciplines that have such instruments for both sexes, i.e. basketball and first division

football, highlights issues such as the different minimum annual remuneration set in each, or the different amounts of compensation in the event of death or absolute permanent incapacity at work, which is higher in the case of the men's agreements. Likewise, the different provisions on annual leave in the case of basketball, with 45 calendar days of annual leave in the case of men as opposed to 30 in the case of women. Special mention should be made of the guarantees that both agreements establish in terms of reconciling work and family life or pregnancy, since, as has been stated, there are numerous situations of gender discrimination in this area.

With regard to work-life balance, both women's agreements, unlike the men's, add a specific section dedicated to it. In the case of basketball, a commitment is established on the part of the club, entity or sports limited company to finance, even if only in part, the custody of children under 8 years of age or the costs generated by having to look after parents or relatives. In addition, it is stated that the possibility of part-time employment shall be facilitated (Art. 34). The football agreement, on the other hand, merely makes a generic reference to the fact that "both parties undertake to make their best efforts to adopt appropriate measures to reconcile the family and professional life of the football player" (Art. 39). A legal formula which, given its generic and unspecific content, subject to the understanding between both parties and "their best efforts", seems insufficient for the sake of legal certainty for the worker and could be improved.

Undoubtedly, the establishment of any measure that favours work-family reconciliation must be considered positive and represents a step forward from the perspective of decent work. However, it should also be noted that the fact that they are only referred to in the case of women and not men is a sign of the still sexist nature of gender roles, where it is taken for granted that women are the ones who take on all aspects of family care. It is for this reason that, apart from the fact that, as has been pointed out, any stipulation that facilitates this aspect is a step towards achieving greater quality of work, from a perspective that protects fundamental rights, equality would be achieved by establishing this type of measure in a regime of co-responsibility in the agreements of both genders.

Of course, the fact that collective agreements for men do not expressly refer to the reduction of working hours linked to reconciling work and family life does not mean that there is no such right, since everything not provided for in them is governed by the supplementary legislation, i.e. the Royal Decree of 1985, and failing that, the ET, which recognises it indistinctly for workers of both sexes (art. 37.6.). However, it cannot be ignored that any specific provision in a collective agreement which takes into account the peculiarities of each work activity, as opposed to the generic reference made in the ET for all professions regardless of their nature, translates into a greater possibility of reconciliation. In other words, in practice, this means that if two parents

involved in professional basketball, a man and a woman, have to decide who will opt for a reduction in working hours, even to the detriment of their professional career, it is more likely that it will be the woman who does so, as her collective agreement contains specific tools that favour this situation in accordance with the particularities of this professional sport.

On the other hand, and in this case with regard to pregnancy and other measures for the protection of women, it is worth mentioning that the football agreement is more protective than the basketball agreement. This is due to the fact that the former establishes mechanisms aimed at protecting cases of gender violence and harassment, such as: the adaptation of the timetable within the club's possibilities; financial aid; psychological support; or the inclusion of a harassment prevention protocol as an annex to the agreement itself. Likewise, with regard to the protection of sportswomen and maternity, it establishes that when pregnancy occurs during the last season of the contract, the sportswoman will be able to choose between renewing her contract for an additional season, under the same conditions as before, or not renewing it. This provision is close to the provisions of FIFA in order to protect the continuity of the professional career of the footballer and to avoid the existing problem of anti-pregnancy clauses.

It goes without saying that insofar as these employment relationships are also governed by the rest of the labour legislation that is not incompatible, the guarantees provided by the ET and equality legislation are applicable. Therefore, even if no specific provision is made in these agreements, any discriminatory act such as the establishment of anti-pregnancy clauses in the employment contract will be considered null and void (arts. 17.1. and 55.5. ET). In other words, the dismissal of a sportswoman whose only cause is pregnancy could be judicially declared null and void - through the ordinary procedure or the special procedure for the protection of fundamental rights (art. 177 to 184 Ley Reguladora de la Jurisdicción Social -LRJS-), which results in the cessation of the discriminatory act and possible compensation for the damages caused.

In addition to this, another means of protection available to the worker is the possibility of requesting the termination of the employment relationship with compensation, under the protection of the provisions of art. 50.1. a), designed to protect the worker against substantial changes in working conditions that undermine their dignity. There is also the possibility of resorting to administrative channels by means of a complaint to the Labour and Social Security Inspectorate.

Similarly, the application of labour legislation allows clubs that make use of discriminatory practices to be sanctioned for committing a very serious offence (art. 8.12. LISOS). Even in criminal proceedings, through Article 314 of the Criminal Code - Organic Law 10/1995, of 23 November, of the Criminal Code -, with a prison sentence of six months

to two years or a fine of 12 to 24 months, if after a warning or administrative sanction the situation of equality is not restored and the economic damage caused is not repaired. Likewise, through article 512, which condemns those who, in the exercise of professional or business activities, deny a person a benefit to which they are entitled for discriminatory reasons, including gender, with a penalty of special disqualification from the exercise of a profession, trade, industry or commerce for one to four years.

Despite these systems of protection, the practical problem that arises in relation to the use of discriminatory practices is to be found in relation to their proof, because although an anti-pregnancy clause expressly provided for in the contract does not pose a problem in this aspect, it is different in the case where discrimination is produced by indirect acts such as the denigration of those sportswomen who exercise maternity compared to those who do not.

It is undeniable that the inclusion of these clauses in the women's football agreement - the basketball agreement makes no mention of them whatsoever - are completely new and essential in order to move towards effective equality for women in sport. However, it is also true that they seem insufficient, especially with regard to the protection of pregnancy. In fact, it is striking that the only mention of this is in the case of football and, moreover, with only a generic article that gives rise to numerous interpretative doubts as to the concreteness and scope of the protective measures. Accordingly, these are tools which, on the one hand, represent a great first step towards material equality in sport and, on the other hand, reflect the still existing inequalities between women and men in professional sport, whose employment relationship is governed by different normative instruments, with different content, exclusively as a consequence of the gender of one or the other. This is only the case in the field of sport.

## Conclusions

Women's professional sport is growing steadily worldwide in terms of both participation and competitiveness. However, there is still a long way to go to achieve real and effective equality.

The new law on sport is a clear advance in terms of gender equality in sport compared to the previous law, which made no reference to this aspect. Although the labour regime described is somewhat generic, the fact that any violation of the principle of equality, whether directly or indirectly, is expressly defined as a very serious offence is a great step forward towards reducing and eliminating the abusive practices that professional sportswomen have traditionally suffered. It remains to be seen how effectively this is monitored and whether real sanctions will be imposed if such behaviour continues to occur.

However, an example of the challenges that are still pending in terms of equality in this area is the fact that we are faced with a scenario in which the regulatory

instruments that specifically regulate the collective rights of professional sportspersons differ according to the gender of the worker. This is an aspect that only occurs in sport and is undoubtedly particularly striking. Even more so, taking into account that in recent years, in line with the progress that has been made in terms of gender equality in society, the trend has been to eliminate any reference to gender in the regulation of a right in favour of an inclusive language formula. Moreover, it should be noted that these collective agreements are proving to be insufficient. Especially in some women's sports disciplines that do not even have these normative instruments or regulations such as the one approved by FIFA in 2021.

Raising awareness of this problem of discrimination has been and continues to be a fundamental tool for change, as it urges both the establishment of measures to promote and support professional women's sport and the use of the law as a vehicle for equality. For this reason, any initiative carried out in this sense becomes an instrument that contributes to the sustainability and growth of this field of sport and to the achievement of a fairer and more equitable society.

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