

Case Law

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LAZIO REGIONAL ADMINISTRATIVE TRIBUNAL – ROME, DIVISION III ter – Ruling no. 6068 1st August 2005 – *President Corsaro, Draftsman Fantini*
Marzano (represented by solicitor Baldassare) vs. Ministry of Health, Prime Ministership, Standing Committee for relations between the State and the Autonomous Regions and Provinces of Trento and Bolzano (represented by State solicitor Gallo) with *ad adiuvandum* intervention from the Italian Federation of Bars and Catering (F.I.P.E.), (represented by solicitor Baldassare) – (sustains)

1. **Administrative Law – Judicial Appeal – Active Legitimation – From the partner of a bar – Opposition to the bill issued by Minister Sirchia 17th December 2004 regarding the ban on smoking in public places – Which obliges the owners of public places to enforce the ban – Legitimation – Existence.**
2. **Administrative Law – Decision appealable or not – Bill issued by Minister Sirchia 17th December 2004 regarding the ban on smoking in public places – Immediately appealable as not just an internal document.**
3. **Administrative Law – Decision appealable or not – Act of state – Notion – Individuation – Subjective and Objective evaluation – Necessity.**
4. **Administrative Law – Decision appealable or not – Agreed by the State Standing Committee – Regions – Appealable as not an act of state.**
5. **Industry and Commerce – Universality – Freedom of economic initiative – Article 41 of the Constitution – Dual provisions of article 41 (conditions of freedom of competition as provided by law).**
6. **Public Health – Ban on smoking in public places – Provisions of article 2, paragraph 3 of law no. 584 of 1975 – Proprietors are only obliged to clearly display No-Smoking signs which state the penalty imposed for failure to comply with the regulations – Further obligations – Do not exist.**
7. **Public Health – Ban on smoking in public places – Bill issued by the Ministry of Health 17th December 2004 and the agreement between the Ministry of Health and the Autonomous Regions and Provinces of Trento and Bolzano 16th December 2004 – If someone ignores smoking ban, proprietors are obliged to formally issue a warning that smoking is not permitted and in the case of non-compliance, report breaches to the relevant authorities – Unlawful violation of the principles of law 23 of the Constitution.**
1. **The partner of a company that manages a bar, who is jointly responsible with the other partner for payment of the penalty inflicted due to the violation of non-smoking regulations, legitimately opposes the fine imposed under article 51 of law no. 3 16th January 2003 concerning the obligations of the proprietor in upholding the ban on smoking in public places and administrative penalties imposed in the case of non-**

compliance. It cannot be denied to the managers of private places open to the public (restaurants, bars, theatres, cinemas) to provide an understanding of the interests and verify the legitimacy of an administrative ruling that directly affects their business.

- 2. The bill issued by the Ministry of Health 17th December 2004 regarding the ban on smoking in public places is not merely interpretative and therefore is not solely internal to the Administration, finalised fundamentally when uniformly approved by various offices and organisations, and contains to the contrary, “executive indications of the subsequent bans in accordance with article 51 of law no. 3 16/01/2003 ...”; therefore, the bill must be considered to be immediately and independently appealable.**
- 3. In order to integrate the legislative notion of the act of state, two requisites must be met, one subjective and the other objective: on one hand it must be treated as an act or regulation issued by the Government and on the other hand it must be treated as an act or regulation arising from the exercise of political power rather than a mere administrative procedure (1).**
- 4. The nature of the act is administrative and not political and may therefore be appealed as agreed conclusively by the seat of the Standing Committee for relations between the State and the Autonomous Regions and Provinces (2).**
- 5. The dual provisions of Article 41 of the Constitution concerning freedom of private economic initiative allow for limits to be imposed if in the public interest and as formally provided by law (3).**
- 6. In accordance with article 2, paragraph 3 of law no. 584 1975 concerning the ban on smoking in public places, proprietors are only obliged to clearly display No-Smoking signs which state the penalty imposed for failure to comply with the regulations. There are no further “positive obligations” prescribed by this regulation besides the obligation to display No-Smoking signs.**
- 7. The bill issued by the Ministry of Health 17th December 2004 and the agreement between the Ministry of Health and the Autonomous Regions and Provinces of Trento and Bolzano 16th December 2004 are unlawful in that (item 4 of the agreement and items 4 and 5 of the bill) if the ban is ignored, the proprietors of private places open to the public, or their employees, are obliged to formally issue a warning that smoking is not permitted and in the case of non-compliance, report breaches to the relevant authorities for them to act on and record the violation (4).**

(1) State Council, Division IV, 29th February 1996, ruling no. 217

(2) Constitutional Court, 31st March 1994, ruling no.116

(3) Constitutional Court, 6th February 1962, ruling no. 4; 8th February 1962, ruling no. 5

(4) The Lazio Regional Administrative Tribunal has observed that in this case, the acts in question are in violation of the legal provisions of article 23 of the Constitution which states that “No services of a personal or capital nature may be imposed on anyone, except as

provided for by law”; however, according to this disposition, personal services may be imposed if it is in the public interest, but only *ope legis*, which requires that the authority qualified to impose the service is specified and the limits of the imposition are fixed, (respectively: subject and object of the service imposed).

It follows that, in the case in question, there was no legislative provision to impose the described duties of vigilance on the subjects, who were exercising their freedom of private economic initiative as the proprietors of a private place open to the public, and by imposition of the aforementioned obligations they have in some way become responsible for a public duty or at least for a public service.

From this viewpoint, it appears that, in the case in question, there is no basis for the sanction as the administrative acts do not serve to carry out an integrative function of the no-smoking regulations but violate the regulatory competence of the constitutional norm, which governs *ex novo* the duties of private proprietors before a patron (whether it be a consumer, employee or supplier) who is in breach of the no-smoking regulations.

Related Documents:

BILL ISSUED BY THE MINISTRY OF HEALTH – 17th December 2004 (in *G.U.* – Official Gazette of the Italian Republic – no. 300, 23rd December 2004), webpage http://www.lexitalia.it/leggi/circminsalute_2004-12-17.htm - Executive and interpretative evidence of the subsequent bans enforced by article 51 of law no. 3 16th January 2003, to safeguard the health of non-smokers.

ABRUZZO REGIONAL ADMINISTRATIVE TRIBUNAL, L’AQUILA, ruling no. 839 8-10-2003, webpage http://www.lexitalia.it/p/tar/tarabraquila_2003-839.htm (on the notion of act of state outside the jurisdiction of article 31 of the 1924 Consolidated Statute – *Testo Unico*).

(omission)

for the annulment

- of the bill issued by the Ministry of Health 17/12/2004 representative of “executive and interpretative evidence of the subsequent bans enforced by article 51 of law no. 3 16th January 2003, to safeguard the health of non-smokers”, published in Italian in *G.U.* – Official Gazette of the Italian Republic – no. 300 23/12/2004, items 2-6 of which item 3 obliges the person in charge of an establishment, whether it be the proprietor or a person designated by the proprietor to “enforce the provisions of the ban” on smoking in private places open to the public and also, if the ban is not heeded, a) “to formally issue a warning that smoking is not permitted”, b) “in the case of non-compliance, to report breaches to the relevant authorities for them to act on and record the violation”; item 5 provides that if the aforementioned individuals do not fulfil these obligations they will be liable for the penalties specified in article 7, paragraph II of law no. 584 11/11/1975 as well as those specified in article 2 of the same law no. 584/1975; where it makes mandatory to indicate on the “no-smoking” sign the name of the person or persons in charge of the establishment or those who have been designated to enforce the smoking ban;

- of the agreement of 16/12/2004 between the Ministry of Health, in conjunction with the Home Office and the Ministry of Justice, and the Autonomous Regions and Provinces of Trento and Bolzano, concerned with safeguarding the health of non-smokers, implementing article 51, paragraph VII of law no. 3 16/01/2003;
- where necessary and within reason, any existing acts governed by the Prime Minister's directive no. 37000 of 14/12/1995 which provides that "for places run by private individuals, the person responsible for the establishment, whether that be the proprietor or persons designated by the proprietor, will inform the transgressor of the prohibition and ensure that any violations are reported to the relevant public authorities under article 13 of law no. 686 24/11/1981;
- of any other related existing and/or consequential act.

(omission)

CASE

With notice served on 11/02/2005 and filed the following 24/02, the claimant, director of the company managing the bar "Lo Scaletto", situated in the vicinity of Savona Port, was fined on 14/01/2005 by Savona Metropolitan Police, as jointly liable for the violation of article 51, paragraph V of law no.3/03, the amount of 420.00 euros for failing to "enforce the cited regulations" concerning the ban on smoking in all private places open to the public.

The above article 51 has established a general ban on smoking in all enclosed areas except for those places which are "private and not open to consumers or the general public" or "reserved for smokers and clearly marked as such" and provides for the relevant sanctions.

In observance of paragraph VII of article 51, the Standing Committee for relations between the State and the Autonomous Regions and Provinces of Trento and Bolzano, has adopted an agreement to set out "possible infraction proceedings and the paperwork required to impose the sanctions as well as individuating the authorities qualified to carry out all necessary procedures from receiving reports under article 17 of law no. 689 24/11/1981 to inflicting the penalties"; this agreement stipulates that the proprietors of the aforementioned places and their employees are obliged to enforce the regulations and to report any transgression to the public authorities indicated in the agreement.

Besides active obligations, (i.e. displaying the name of the person in charge on the no-smoking sign), it sets out the details of the "positive" obligations to caution (to not smoke) and to report violations to a public official, which must be carried out by private citizens (the proprietors of private places open to the public) exercising their constitutional freedom (the freedom of private economic initiative under article 41 of the constitution).

The unlawfulness of these obligations, and in particular that which is prescribed by items 4, 2.5 and 3 of the contested Agreement becomes even more explicit in their interpretation in the bill issued by the Ministry of Health 17/12/2004, which states that the transgressor must be "formally" cautioned.

Grounds for the appeal are as follows:

1) Illegality of the contested acts in violation of legal principles, (articles 23, 25 and 41 of the Constitution; article 51 paragraph VII of law no. 3/2003) and the incorrect application of the above dispositions.

Item 4 of the contested Agreement provides that the proprietors or their employees are obliged to enforce the non-smoking regulations by “cautioning the transgressor that smoking is prohibited and immediately reporting infractions to the authorities indicated in items 2.5 and 3”.

Equivalent dispositions have been set out in the bill which is equally contestable.

To summarise, proprietors and managers of private places have been burdened with three separate, albeit related, obligations: a) to be generally vigilant of the ban on smoking within their establishments; b) to actively intervene by dissuading and cautioning transgressors; c) to report infractions to police officials or to the authorities in charge of assessing and charging transgressions and inflicting the relevant sanctions.

Therefore, contrary to the provisions made by law, private citizens are obliged to carry out specific duties of vigilance as a public service, which cannot be validated for the violation of a legal principle.

Under article 23 of the Constitution, the above “duty of vigilance” is considered to be a “service of a personal nature” and therefore violates the provisions made by law.

The same conclusion may be applied to the prospect of applying limits to the freedom of private economic initiative considering that said application violates the legal principles guaranteed by article 41 of the Constitution.

More acute violations are attributable to the “administrative penalties”, which contravene article 25 of the Constitution.

The only legal disposition which theoretically may be invoked is that implemented by article 51, paragraphs V and VII; paragraph VII refers to a State – Region Committee agreement the specification of the necessary procedures for assessing and charging transgressors of the no-smoking ban; this regulation does not make reference to the above duty of vigilance nor to the obligation of the private citizen but deals only with the procedures (assessing infractions and the relevant paperwork) to be followed by the authorities (police officials) in the event of an infraction.

2) Illegality of the contested acts in violation of legal principles, (articles 23, 25 and 41 of the Constitution ; article 51 paragraph V of law no. 3/2003 and articles 7 and 21 of law 584/1975) and the incorrect application of the above dispositions.

The bill justifies the legality of the duty of vigilance as a service of a personal nature and the corresponding obligations imposed on the proprietors of private establishments by invoking article 51 , paragraph V of law no. 3/03, which refers to article 7 of law no. 584/1975, which in turn refers to article 2 of the same law.

This regulation stipulates that the proprietors of private establishments “enforce the ban by clearly display No-Smoking signs which state the penalty imposed for failure to comply with the regulations”.

The bill is blatantly incorrect in its interpretation of article 2 of law 584/75 (the validity of which is questionable following the implementation of law no. 3/03) giving no grounds for preceptive measures.

It is plain to see that there are no legal grounds for the positive obligations that the bill imposes on private proprietors; article 2, paragraph III of law no. 584/75 provides a legal basis only for the obligation to display no-smoking signs.

3) Illegality of item 4 of the agreement and equally of the bill issued by the Ministry of Health 17/12/2004 for excess of power, inequality of treatment, inconsistency, contradiction, incoherence, deviation of power, incorrect interpretation, false representation of the facts and false application of the law.

The contested acts obligate the proprietors of private establishments to carry out duties of vigilance and surveillance in the public interest, (to safeguard public health).

To confer on a private citizen exercising the freedom of private economic initiative a duty of vigilance, in the public interest, of associates of equal standing (contractual), as private citizens, be they clients, employees, suppliers etc, creates an unequal position of authority and over-rule and shows the contested act to be contradictory and arbitrary; the equal standing of both manager and client as private citizens does not allow one to be in a position of authority over another and to specify otherwise is irrational and contradictory.

The contradictory nature of conferring public duties on private proprietors whilst not affording them public power of any kind is evidence of the irrationality of imposing the obligations in question on private citizens.

Furthermore, the imposing acts infer the surreptitious legal metamorphosis of a private citizen (proprietor) into a public authority, or rather, as a person responsible for a public duty or public service; this indicates a deviation of power.

4) Secondary questioning of the constitutional legality of article 51 of law no. 3/2003 and of article 7 of law no. 584/1975 as amended by article 52, paragraph XX of law no. 448/2001, for the violation of articles 2, 3, 23, 25, 41 and 43 of the Constitution.

Where it is assumed that the contested administrative acts, which comprise the obligations of private proprietors in enforcing the ban and reporting transgressions, represent a coherent application of article 51 of law no. 3/2003 and of the other regulations provided for by that law, it is relevant to put forward the question of their constitutional legality under articles 2, 3, 23, 25, 41 and 43 of the Constitution.

The Italian Federation of Bars and Catering (F.I.P.E.) has officially intervened *ad adiuvandum* in the case and has reached the same conclusion as the claimant.

The above Administrations have been brought to the attention of the tribunal in objection to the inadmissibility of the case due to the absence of active legitimation and interest on the part of the recouper, as well as taking into consideration the nature of the contested acts and the lack of jurisdiction of the administrative judge which has rendered them groundless and lacking in merit.

Deliberations were held at the hearing of 07/07/2005.

PROCEEDINGS

1 – Preliminary examinations were carried out of the objections of inadmissibility of the sanction measures taken from the contested acts.

First and foremost, the objection to the absence of active legitimation must be dismissed, as it is clear from information given by the claimant and from the report of the proceedings written by Savona Metropolitan Police that Sig. Massimiliano Marzano is a partner in a company which manages the bar “Lo Scaletto” and is therefore jointly liable with the other partner Sig. Fabrizio Grosso for the payment of the fine inflicted following violation of the no smoking regulations.

However, as proprietor he is qualified to contest the acts that, allegedly implementing article 51 of law no. 3 16/01/2003, govern the details of the obligations imposed on private citizens with regards to upholding the ban on smoking in public places and administrative penalties imposed in the case of non-compliance.

It cannot be denied to the managers of private places open to the public (restaurants, bars, theatres, cinemas) to provide an understanding of the interests and verify the legitimacy of an administrative ruling that directly affects their business.

1.1 – Equally unfounded is the objection of inadmissibility against the bill issued by the Ministry of Health 17/12/2004.

In truth, with regards to the case in question the bill is not merely interpretative and therefore is not solely internal to the Administration, finalised fundamentally when uniformly approved by various offices and organisations, and contains to the contrary, “executive indications of the subsequent bans in accordance with article 51 of law no. 3 16/01/2003...”

It is noted that the obligations imposed on people in charge of an establishment or their delegates are mainly provided for by the agreement of 16/12/04 mediated at the seat of the Standing Committee for relations between the State and the Autonomous Regions and Provinces of Trento and Bolzano, and even by the preceding Prime Minister’s directive 14/12/95 but it cannot be ruled out that, as far as content is concerned, the bill, for reasons of clarity and practicality, includes third party restrictions outside the Administration, which is potentially injurious and renders the bill autonomously contestable.

1.2 – By the same token the objection of inadmissibility against the (above) agreement of 16/12/04 based on the grounds that the act is political and not administrative, arbitrated by matters of constitutional relevance is also dismissed.

It is fitting to point out how the consensual relations between the State and regions embody the principle of loyal collaboration that Constitutional jurisprudence has elaborated to be used as an instrument in case of interference in legislative or administrative competence.

Decree Legislation no. 281 28/08/1997, in corroboration of the agreement of the Standing Committee for relations between the State and the Autonomous Regions and Provinces of Trento and Bolzano, has adopted the Constitutional model, by distinguishing between cooperation (article 3) and agreement (article 4).

The latter, in so far as can be inferred, appears to assume prevalence in the administrative field, which can also be deduced from the *littera legis* which makes reference to the agreement concluded at the seat of the State – Regions Committee, “in pursuit of the objectives of functionality, economy and efficiency of administrative action”, “with the purpose of coordinating the activities of the respective competences and executing activities that are in the common interest”.

On an objective level, the “administrative dimension” inherent in such agreements tends to cancel out the characteristics of an act of state.

It should also be noted that the Standing Committee for relations between the State and the Autonomous Regions and Provinces is a non-governmental organisation and does not belong to either the State or Regional apparatus but operates on a national level as a cooperative instrument (Constitutional Court ruling no. 116 31/03/1994).

Although in accordance with the jurisprudence created by article 31 of the *T.U.C.S.* – National Accounting Consolidation Act – (Royal Decree no. 1054 26/06/1924) political characteristics of the act are also ruled out by its subjectiveness, removal from jurisdictional control of subjectively and formally administrative acts is theoretically objectionable on the premise that they are representative of the fundamental function of the political direction and address of the Country.

More specifically, administrative case law considers that to integrate the legislative notion of an act of state, two requisites must be met, one subjective and the other objective: on one hand it must be treated as an act or regulation issued by the Government and on the other hand it must be treated as an act or regulation arising from the exercise of political power rather than a mere administrative procedure (State Council, Division IV, 29/02/1996, ruling no. 217).

Neither of the two requisites of an act of state appears to characterise the agreement concluded in those offices.

However it is perceived that if, hypothetically speaking, one would want to sustain the political nature of the agreement in question, it would be practical to contest the bill which, in so far as can be inferred, serves to specify and reproduce the content of the agreement.

2 – Proceeding to examination of the merit of the appeal.

Firstly, it needs to be clarified that the object of the appeal is not the smoking ban, a restriction imposed on the people in order to safeguard the right to health, a primary asset that is the fundamental right of every human being and will be protected as such (Constitutional Court ruling no. 399 20/12/1996) but only the “positive obligations” (to caution and report to a public official) that have been imposed on the proprietors of private places open to the public by the contested acts.

Secondly, it should be noted that the appeal, the obligations may be examined as a single entity given that they are closely associated and articulated by the same judicial presentation, suggests that a legal principle, more specifically the legal provisions of articles 23, 25 and 41 of the Constitution, has been violated in that the duties of vigilance, cautioning and reporting to police officials, that the contested acts impose on the owners of private establishments (or their formal delegates) are lacking in legal grounds.

The appeal is justified and therefore worthy of evaluation.

To clarify, it is opportune to once again remember that the obligations which fall to the persons in charge of an establishment or their delegates are: a) to formally issue a warning that smoking is not permitted; b) “in the case of non-compliance, to report breaches to the relevant authorities for them to act on and record the violation”.

Therefore, a specific personal service has been imposed where there are no legal grounds to do so.

In truth, article 51, paragraph VII of law no. 3/2003 only establishes that “within 120 days from the date of publication of this law in the *G.U.* - Official Gazette of the Italian Republic, approved by the Standing Committee for relations between the State and the Autonomous Regions and Provinces of Trento and Bolzano on the Ministry of Health proposal, in conjunction with the Home Office and the Ministry of Justice, the possible infraction proceedings and the paperwork required to impose the sanctions as well as individuating the authorities qualified to carry out all necessary procedures from receiving reports under article 17 of law no. 689 24/11/1981 to inflicting the penalties will be redefined”.

Not even paragraph 5 of article 51, which mentions the sanctions which may be applied in the case of infraction of the no-smoking regulations in reference to article 7 of law no. 584 11/11/1975, defines the details of the obligations of those who are supposed to carry out duties of vigilance.

In fact, article 7 of law no. 584/75, second paragraph, only specifies the amount of the financial penalty; article 2 of law no. 584/75 in reference to article 7 of the same legislative act is the only “substantial” regulation that defines the details of the obligations of the proprietors of establishments is that these people “enforce the ban by clearly displaying No-Smoking signs which state the penalty imposed for failure to comply with the regulations”.

In the first place, it seems evident that there has been a violation of the legal principle guaranteed by article 23 of the Constitution which states that “No services of a personal or capital nature may be imposed on anyone, except as provided for by law”.

This means that services of a personal nature may be imposed if it is in the public interest, but only *ope legis*, which requires that the authority qualified to impose the service is specified and the limits of the imposition are fixed, (respectively: subject and object of the service imposed).

For the rest, there exists a true *quid proprium* of the legal principle for which there is the need for uniformity in the sense of the law; the distinction between relative and absolute principles is based on the intensity of the legal definition, in the sense that with regards to the former the subject matter is fully regulated by its primary source whilst for the latter the fundamental discipline is broken down and applied to other areas of law, hierarchically subordinate as well as formally administrative.

In this way, legal principles and actual legality overlap and it is the responsibility of the legislator to determine the contentual boundaries of an administrative action (Constitutional Court ruling no. 34 05/02/1986).

It appears that the principle (even relative) does contain a specific link to be interpreted in the sense of the law which in this case has not been respected, not even with respect to negative boundaries, leaving them to be defined at the discretion of the Administration.

Both article 23 and article 41 of the Constitution endorse the freedom of private economic initiative, of which the boundaries may be modified only by law.

More precisely, according to the instructions of Constitutional Case Law, the dual provisions of Article 41 of the Constitution concerning freedom of private economic initiative allow for limits to be imposed if in the public interest and provided for by law (Constitutional Court ruling no. 4 06/02/1962; ruling no. 5 08/02/1962).

It follows that there was no legislative prevision to impose the described duties of vigilance on the subjects, who were exercising their freedom of private economic initiative as the proprietors of a private place open to the public, and by imposition of the aforementioned obligations they have in some way become responsible for a public duty or at least for a public service; it appears that, in the case in question, there is no basis for the sanction as the administrative acts do not serve to carry out an integrative function of the no-smoking regulations but violate the regulatory competence of the constitutional norm, which governs *ex novo* the duties of private proprietors before a patron (whether it be a consumer, employee or supplier) who is in breach of the no-smoking regulations.

The violation of the legal principle however does not constitute a hypothetical act adopted despite insufficiency of power with any consequent lack of jurisdiction of the administrative judge as stated in the proposal put forward by the opposing Administration.

In fact, if put aside the notion of absolute lack of competence, (the so-called hypothetical insufficiency) manifesting an unsatisfactory use of administrative power, there is a legitimate case, for the private citizen, to be brought before the administrative judge.

Furthermore, it cannot be sustained that item 5) of the bill of 17/12/2004, in reference (indirect) to article 2 of law no. 584/75 precedent to law no. 3/03, precludes a restrictive interpretation, that proprietors are only obligated to display a no-smoking sign, therefore the infliction of the severe penalties under article 7, paragraph II of law no. 584/75 (in the act amended by article 52 of law no. 448 28/12/2001) is unjustifiable.

In this way it is evident that the bill, in irredeemable conflict with the *littera legis*, fails to provide an “adequate” interpretation of the regulation.

Following the hermeneutic approach, sanctioned by article 12 of the prelegislation, to the grammatical significance of the words depending on their interpretation and irrespective of several other issues concerning the subjective nature of the prescription, it is without any doubt that the only obligation imposed on the proprietors of establishments by article 2, paragraph III of law no. 584/75 is to clearly display No-Smoking signs which state the penalty imposed for failure to comply with the regulations, given that the use of the gerund syntactically specifies the details of the obligation pronounced in the main clause.

Therefore the above regulation constitutes legal grounds only for displaying no-smoking signs and not for the subsequent “positive obligations” unlawfully provided for by the contested acts (more precisely item 4 of the agreement and items 4-5 of the bill).

3 – To conclude, in acceptance of the justifiable claim the contested acts are hereby annulled for the manner in which they impose on proprietors of private places open to the public, and their delegates, the obligation to formally issue a warning that smoking is not permitted and in the case of non-compliance, report breaches to the relevant authorities for them to act on and record the violation.

There is just reason to instruct that legal expenses are divided between the parties.

THEREFORE

The Lazio Regional Administrative Tribunal – DIVISION III ter in acceptance of the claim, rules that the contested acts are annulled for the above reasons.

Orders that legal expenses are divided between the parties.

Orders that the ruling be executed by the administrative Authority

Decided in Rome, in Court Chambers 7/07/2005

Filed 1st August 2005.