[INITIALS]

Supreme Court of Justice of the Nation

Buenos Aires, October 27, 2015.

Proceedings reviewed: "Nobleza Piccardo S.A.I.C. y F. v. Santa Fe, Province RE: action to declare unconstitutionality," from which the following

Result is given:

I) On page *2/45*, Nobleza Piccardo S.A.I.C y F., a company engaged, among other activities, in the purchase, processing, sale, importation and exportation of tobacco, cigars, cigarettes and related items or items for smokers, with an address in the Federal Capital, has filed the action indicated in Art. 322 of the Procedural Civil and Commercial Code of the Nation, before Federal Court n° 1 in Santa Fe, against the Province of Santa Fe, in order to have the unconstitutionality of local Law 12.432 declared, which creates the tobacco control program.

It questions local laws insofar as – in its view – it prohibits the carrying out of advertising and promotion of tobacco products and derivatives intended for human consumption and the sponsorship of sporting and cultural events, which violates national Law 23.344 and its supplementary Law 24.044, which regulates cigarette advertising at the national level, and, consequently, the principle of supremacy established in Art. 31 of the National Constitution, and as also set forth in Arts. 14, 16, 17, 18, 19, 28, 32, 75, 121, 126 and concordant items of the National Constitution; Decree P.E.N_ *2284/91* ratified by Law 24.307; the American Convention on Human Rights; the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

The Plaintiff asserts the unconstitutionality of the provincial law based on the province's lack of standing to legislate on this point, given that -in its view- the exercise of the policing power in this matter has been delegated to the Nation, and it concerns a premise of interjurisdictional trade, which involves the economic interests of the entire population, pursuant to Arts. 75, sub-paragraphs 12, 13, 18 and 19 of the Constitution.

It argues to this effect that even when it is considered that the policing power in matters of "public health and hygiene" falls within the concurrent competency of the Nation and the provinces, as of the moment when the National Congress exercised it, upon sanctioning Law 23.344 on consumption and advertising for tobacco-related products, such extremes have been subordinated to the federal order. It believes that provincial authorities should abstain from interfering in a matter that has been regulated by the federal body, particularly when greater restrictions than those set forth therein have been established.

It also claims the unconstitutionality of the provincial law because it violates constitutional principles and guarantees, for it underscores that the total and arbitrary ban instituted by the local law is the opposite of reasonable regulation, which exceeds the power of local police, injures reasonableness, wounds the principle of equality, and impairs freedom of expression and free enterprise.

It does not impair, however, the corporate responsibility of Nobleza Piccardo in connection with the informed consumption of to-

bacco by adults, as well as the adjustment of its activities to international standards.

It concludes that the Province of Santa Fe cannot, under the pretext of exercising its policing power over health, invade a sphere attributed to the Nation, thus obstructing the exercise of national authority, with injury to its rights insofar as such proceeding – in its unreasonable view – causes it grave economic damage, considering that it violates the exercise of a commercial activity that is held to be legal.

It requests that an injunction be issued ordering the province to abstain from enforcing local Law 12.432, that is being challenged here, and to issue whatever act or measure can modify the current *status quo*, until a definitive ruling can be handed down in the present case.

11) On page 46, the federal judge hearing the matter declared himself without standing considering that a province is being sued in a case of obvious federal content – concerning the unconstitutionality of a provincial law- considering that the proceeding should be taking place in the original venue of the Supreme Court of Justice of the Nation in accordance with Arts. 116 and 117 of the National Constitution.

111) On page 72/75, the Court declared its standing to hear these matters in an original venue, issued notification of the complaint and refused to issue the requested injunction.

IV) On page 129/150, the Province of Santa Fe responded to the complaint.

In expressing a general negative regarding the questions put forward, it does not recognize the action brought because in its view it does not meet the requisites that would provide it with legitimacy, given that the plaintiff has not provided any convincing element that would demonstrate the existence of an incipient act or that would give provide any indications the effects of an act of implementation have been realized.

It states that the National Constitution did not confer on the Nation an exclusive regulatory authority in matters of health, but rather that in this context, the responsibility could be construed as not having been delegated or at least, as concurrent and cooperative.

It further states that federal regulation does not entail the displacement of local competencies, for otherwise this would implicitly entail upholding the repeal of Art. 19 of the Constitution of the province, which recognizes the guardianship of the right to health and the obligations undertaken by the provincial government deriving therefrom.

It contends that tobacco consumption (both active and passive) poses a grave risk to public health; and that such consumption is closely linked to advertising because of its misleading representation of the consequences that such consumption brings in its train.

It adduces that it is not valid to assert the preeminence of the trade and progress clauses as an impediment to the exercise of local policing power for health enforcement.

It claims that the exercise of the policing power in a strict sense in matters of health, morality and security, has been recognized since the origins of the constitution as a legitimate local competency.

It explains that, given that national Law 23.344 does not adjust to international covenants -such as the Framework Convention for Tobacco Control of the World Health Organization (hereinafter, the FCTC)-, there occurred, along the same lines as the judgment of Inter-American Court of Human Rights in "Olmedo Bustos and others v. Chile," of February 5, 2001, a situation of a decline in the Nation's competencies in favor of local authorities, which justified the province exercising its guardianship over the right to health.

It emphasizes that the content and mandate of Law 12.432 are restricted to provincial competence in matters relating to public health.

Finally, it asks the Court to assess the possibility of convening a public hearing in attention to the public interest involved and the significance of the matter for the comprehensive protection of human rights (p. 150).

V) On page 502, Madame Attorney General found in her opinion that "In light of what has been promulgated in the domain of national Law 26.687, which regulates advertising, promotion and

consumption of products made from tobacco, at the same time that it is repealing Law 23.344 and its amendment Law 24.044 –whose provisions the plaintiff had taken into consideration, when it brought the action for a declaration of unconstitutionality, which collided with local Law 12.432- and bearing in mind the fact that the pronouncements of the Court should be confined to the circumstances in effect at the time that the judgment is pronounced (Judgments: 311: 787)...," it was appropriate to notify the parties in order for them to state their position on the matter.

VI) While the case was being heard before this Court, the Congress of the Nation sanctioned Law 26.687 in June of 2011, to regulate the advertising, promotion and consumption of products made from tobacco, whose Art. 41 ordered the repeal of Law 23.344 and its amendment, Law 24.044.

VII) On its merits, on p. 503, through its order the Court served notice on the parties to state their views on the incidence of the new national law on these proceedings.

VI Ir) On page 506/509, the Province of Santa Fe responded to the notification ordered by the Court and asserted that the action instituted had not become lost its relevance, considering that the plaintiff is questioning provincial competence to exercise the policing power in matters of health and hygiene, in addition because Law 26.687 has ratified the reasonableness of the content of the provisions of provincial Law 12.432, even being more strict than the latter. In conclusion, it believes that the conditions of this proceeding have not been substantially modified, for it has been demonstrated that: (i) it did not act outside its competency in sanctioning the local ordinance, considering that responsibilities

in matters of health are concurrent or cooperative; (ii) the prerequisites for an action that is merely declarative are not present, nor has the plaintiff proven in the course of the proceeding a damage with sufficient substance to substantiate a legal case; (iii) the reasonableness of the local legislation not only currently has support in the law sanctioned by the National Congress, but that also, prior to it, it was preceded by international commitments and the province's own studies that were cited in the proceeding; (iv) the sole circumstance that the Nation has not previously adjusted its legislation to the Framework Convention, proved sufficient justification for the province to establish the pertinent prohibitions and restrictions as it did when it sanctioned Law 12.432.

IX) On page 511/531, the plaintiff responds to the notification ordered on p. 503. It affirms that even when Law 26.687 imposes greater restrictions on the manufacture and commercialization of products made from tobacco, it is not appropriate to question the constitutionality of the law cited in this process, since it goes beyond the purpose of the complaint and would entail a substantial modification of the litigation.

In its view, the provincial law contains regulations that are more restrictive of its constitutional rights than the new national law. It states that it has a real and current interest in the continuation of the complaint registered in the proceedings, not only with respect to the violation of national competencies to issue legislation on the matter, but also with regard to the direct impairment of its constitutional rights and

guarantees of property, the enjoyment of economic freedoms and freedom of expression.

Accordingly –it explains- the principal questionings aimed against provincial Law 12.432, with respect to its limitations in matters of communication and the conduct of promotional activities, have not been altered by the new regulations established in Law 26.687, but rather – in its view – quite the opposite is occurring, since the sanction of the new law constitutes glaring evidence that the Province of Santa Fe has invaded and is invading the competencies properly belonging to the federal government.

While it admits that the exercise of the policing power for purposes of promoting the general welfare, regulating social and economic life to satisfy the requirements of society for the sake of the common good, and looking out for the life, health, morality, property and security of its inhabitants has been attributed to both the Nation as well as the provinces, it believes that in this case, such exercise only belongs to the former.

It bases its position on the following arguments: a) the exercise of the policing power for purposes of regulating tobacco activities is intended to satisfy a generic need of the entire population of the National territory, and not of each province or municipality in particular, and any measures that are adopted will have an impact on the general economic interests of the country. This idea is underscored by the fact that advertising for tobacco was regulated at the national level by Law 23.344, and now it is regulated by Law 26.687; b) the new national law calls for a

comprehensive policy on the matter, which is no longer confined to the issue of publicity and advertising, but also incorporates other aspects of fundamental importance, such as (i) particular requirements for the trade in products made from tobacco; (ii) precautions regarding the packaging and production of these same products; (iii) the establishment of an enforcement authority on a national scale, and imposition on the provinces of the legal regimen in terms of prohibitions, sanctions and allocation of fines and (iv) regulation of aspects associated with job safety and hygiene, etc.

It also notes that: a) the purpose sought with these laws is directly related to the general interest of the entire population, and as such should exhibit uniform characteristics throughout the country. This is the case considering that this kind of measure has an effect on the national economy and on popular consumption (Judgments: 252:39); b) The exercise of the policing power, in these cases, falls within the competence of the Nation, in virtue of what is set forth in Art. 75, sub-paragraphs 13, 18 and 19 of the National Constitution; c) The provisions of Law 12.432 exceed the regulation of "merely internal commerce" in the province, since the latter exists when an "article is produced, sold or consumed in a province" (Judgments: 239:343), whereas in the former case, commerce that extends to more than one province is involved; d) the Nation has already regulated the consumption and advertising involving tobacco-related products through Law 23.344, and currently Law 26.687 has established an even more detailed and restrictive regulation of this matter; e)

Considering that the Nation has exercised its policing power on the basis of the articles on progress and development (Art. 75, sub-paragraphs 18 and 19), provinces and municipalities cannot interfere in a matter that is already regulated.

The foregoing is inferred from the fact that in this Instance, faculties are involved that have ceased to be concurrent, which means that these are attributions conferred upon the Federal State, and while they are being exercised by it, they are forbidden to the provinces, particularly when what is involved is establishing greater restrictions than those already set forth by national law.

It contends in its complaints that in in cases of effective incompatibility between such faculties, the Court has said that as long as the attribution has been exercised by the national authority within the Constitution, the federal precept shall prevail (Judgments: 239:343). In terms of its merit, it adduces, the provinces cannot, under the pretext of exercising the policing power, invade the sphere of the Nation, impeding or obstructing the exercise of the competency of the Congress, or depriving any inhabitant of freedoms recognized by the Constitution, without respecting the restrictions of its Arts. 19 and 28.

In another order of ideas, it interprets Art. 39 of Law 26.687 as reserving provincial regulatory faculties solely for the domain of its exclusive competency, and for such reason it believes that, in this case, the Province of Santa Fe can only issue supplementary provisions relating to everything concerning the enforcement authorities in the provincial domain, to whether or not it is possible to smoke in provincial public

buildings, to the incorporation of additional aspects regarding this matter in educational settings or other analogous situations.

Furthermore, and finally, it emphasizes that Law 26.687 has come to reaffirm that a total and absolute ban on commercial advertising, as is imposed by Law 12.432 – in its view – is unconstitutional.

X) On page 533/537, there appears the opinion of the Attorney General of the Nation regarding the proposed constitutional questions.

Whereas:

1) The present complaint falls within the inherent competence of this Court, in accordance with what is set forth in Arts. 116 and 117 of the National Constitution.

2) The firm Nobleza Piccardo S.A.I.C. y F. is filing a declaratory action against the Province of Santa Fe for the purpose of having the unconstitutionality of local Law 12.432 declared, in which prohibitions and restrictions have been established concerning advertising and promotion of tobacco derivative products, their consumption and sale. It contends that its enforcement impairs constitutional provisions and the scope of validity of national Law 23.344, which regulates the terms and conditions for the advertising of tobacco products.

2) It is appropriate to establish that, in accordance with what is to be gleaned from the foregoing results, the

matter proposed is confined to the examination of Law 12.432 of the Province of Santa Fe, in the light of constitutional provisions relating to the national law in force on this matter, Law 26.687, given that national Law 23.344 (and its supplementary Law 24.044) has been expressly abrogated by the latter.

3) The proceeding instituted constitutes a suitable means for engaging the intervention of this Court, for it is not a matter of providing a solution for an abstract hypothesis but of seeking to guard against the effects that the enforcement of the provincial law will produce for the legal activity of the plaintiff company, which entails attributes illegitimacy and injury for the federal constitutional regimen; to the extent that it determines the legal relations that are binding on the parties in this conflict (Judgments: 311:421; 318:30; 323:1206; 327:1034, and CSJ 481/2003 (39-A) /CS1 "Argenova S.A. v. Chubut, Province of, RE declaratory action," judgment of December 14, 2010).

Indeed, by basing this action on the Interpretation of local law, its measurement against constitutional provisions and the pertinent national provisions in connection with impairing freedom of expression and information, and to operate a legal industry – in which the offenses being denounced are subsumed - constitutes a specific, real and substantial conflict, which admits of a specific remedy through a decision of a definitive character, understood to be different from an opinion that indicates which provision should prevail in a hypothetical factual situation (Judgments: 316:1713; 320:1556 and 2851; 324:333; 331:2178 and case CSJ 481/2003 (39-A)/CS1 "Argenova S.A. v. Chubut, Province of, RE declaratory action," already cited).

5) To move forward with such an undertaking, when these actions were initiated, it was necessary to compare provincial Law 12.432 with national Law 23.344 and its supplement 24.044, although the latter were superseded by Law 26.687.

This prompted the parties to take a position in favor of continuing the proceeding, as emerges from pp. 506/509 and 511/531.

From a reading of its terms, it is easy to infer that Law 26.687 projects its effects onto the matter under dispute, to the extent that it regulates the advertising, promotion and consumption of products made from tobacco in a manner that is different than that of the local law.

Under such conditions the complaints presented have been maintained, and the consequent interest declared by the parties on p. 506/509, 511/531 and 559/560 in the resolution of the constitutional question already set forth.

6) Law 12.432 of the Province of Santa Fe – which concerns us here – orders in its Art. 7"Direct and indirect advertising for tobacco products intended for human consumption through the act of smoking is hereby prohibited in the entire territory of the province, whatever its form of dissemination may be."

It also establishes the prohibition of sponsoring sporting and cultural events and participating in them with apparel containing advertising for companies and/or brands engaged in the production and/or distribution of tobacco and its derivatives (Art.

8) and sets sanctions in the event of failure to comply (Art. 10); in this last point it invokes the penalties set forth in local Law 10.703 -Code of Misdemeanors of the Province of Santa Fe- such as fines, arrest, seizure, closing the establishment, and revocation of license, among others.

Law 12.432 was regulated through local Decree 2759/05.

7) Tobacco control at the national level is subject to the economics of Law 26.687, for the Regulation of advertising, promotion and consumption of products made from tobacco, sanctioned in June of 2011.

Its Chapter II addresses advertising, promotion and sponsorship. Accordingly, in Art. 5 "advertising, promotion and sponsorship of products made from tobacco, directly or indirectly, through any medium or form of communication, is prohibited."

Subsequently, in Art. 6 the legal "exceptions" to the said prohibition are established, which are: "a) Inside places of sale or purchase of products made from tobacco, pursuant to what is set forth in the regulation of this law; b) In commercial publications intended exclusively for persons or institutions involved in the business of growing, processing, importation, exportation, distribution, deposit and sale of products made from tobacco; c) Through direct communications to people over the age of eighteen (18), as long as their prior consent has been obtained and their age has been verified."

Furthermore, through Art. 7 it is established that, "In all cases the advertising or promotion must include one of the following health messages, whose text is to be printed, written in a legible, prominent manner, represented proportionally within a rectangle with black letters on a white background, which should occupy twenty percent (20%) of the total surface area of the materials that is the object of the advertising or promotion...," individually specifying below which warnings are to be used.

And through Art. 8, it forbids "manufacturers and merchants of products made from tobacco to engage in sponsorship and underwriting of brands at any type of public activity or event, and through any communications medium."

Noteworthy among the final provisions is Art. 39, through which the provinces and the Autonomous City of Buenos Aires are called upon to sanction, within the scope of their exclusive competence, laws of a nature similar to those promulgated at the national level.

8) The regulation of Law 26.687, is given by Decree 602/2013, of May 28, 2013, through whose Art. 1 the contents of its annex are approved, and through Art. 2, the National Coordinating Commission for Tobacco Control (*Comisión Nacional de Coordinación para el Control del Tabaco*) is created, which shall function under the auspices of the MINISTRY OF HEALTH, with the aim of advising on and coordinating intersectorial policies intended for the enforcement of the law in question. Its integration with officials of various offices and agencies of the National Executive branch is provided for therein.

In turn, the Commission is invited to participate in the programs or areas of other provincial jurisdictions and the Autonomous City of Buenos Aires relating to tobacco control, and for the provinces that have not done so, "to create Provincial Tobacco Control Programs with the aim of coordinating actions leading towards the fulfillment of the objectives of the aforesaid law at the provincial level, and with the National Program for Tobacco Control of the MINISTRY OF HEALTH at the national level."

9) In light of the foregoing, it should be recalled that the complaints of the plaintiff are directed towards questioning in the first place the competence of the Province of Santa Fe to legislate in the matter through the issuance of the law being challenged, based on Art. 75, sub-paragraphs 13, 18 and 19.

Furthermore, even in the case that such faculties were recognized to fall within the purview of the provincial authority, it is sought to have unconstitutionality declared on the basis of the total ban on advertising for tobacco that the local law contains, as an excess of the policing power and affecting the principles of reasonableness, equality, freedom of expression and economic freedom, among other rights invoked (see p. 562 dorso).

10) As a threshold for the study of the first constitutional position, it is necessary to state that the rule that configures our federal system posits the principle whereby the provinces conserve the powers that were not delegated to the federal government and all those powers that were reserved

in special covenants at the time of their incorporation; and it recognizes concurrent powers over certain matters that fall within the competence of both the federal as well as the provincial authorities, and that therefore are susceptible to cooperative agreements or accords (Arts. 121 and 125 of the National Constitution, and case CSJ 566/2004 (40-O)/CS1 "Obra Social Bancaria Argentina v. Santa Fe, Province of, RE action to declare unconstitutionality," judgment of August 1, 2013).

This is why Art. 121 of the National Constitution recognizes that the provinces conserve their absolute sovereignty in all things relating to powers not delegated to the Nation, a principle from which it is deduced that the provinces are exclusively authorized to issue laws on policing, and in general, any laws that they may deem conducive to their wellbeing and prosperity without other limitations besides those enumerated in Art. 126 of the National Constitution, and by reasonableness, which is a requisite for any legitimate act (Judgments: 330: 3098).

This is how the Supreme Court has interpreted the matter – in formulations that hearken back nearly to the beginning of our institutional organization, to 1869- when it stated that "it is a fact and also a constitutional principle that the police of the Provinces are under the charge of their local governments, and the powers that have been reserved for the Provinces are understood to include the power to provide what is suitable to the security, health and morality of their residents; and that consequently, they can legally issue laws and regulations for such purposes, insofar as Article 14 of the National Constitution has not guaranteed to the inhabitants of the Republic the absolute right to conduct their industry or profession, but rather as

subject to the laws that regulate their conduct" (Judgments: 7: 150).

11) All of this falls within the framework of the Federal State, which ”is a State in which unity and diversity, centralization and decentralization are combined within one dialectical unit characterized by a specific connection of relations of coordination, supraordination, subordination and inordination, in such a way that all of them are conditioned by, and reciprocally complement one another” (García Pelayo, Manuel "Derecho Constitucional Comparado,” Alianza Editores, Madrid, 1993). The subjects of this relationship, in our setting, are ”The organic and indestructible units with inherent powers that comprise the Nation" (González Calderón, Juan A. "Derecho Constitutional,” Imprenta Buenos Aires, G. Kraft, 1943). It is the organization of the autonomous government of the provinces within the Federal State that determines the purposes, forms and conditions in the exercise of local authority.

12) The Court has underscored the special characteristics with which the National Constitution has endowed the political institutional configuration of a federal nature, the rule and not the exception consisting in the existence of jurisdictions shared between the Nation and the provinces, so that the laws in consequence must be interpreted in such a way that the authorities of the one and the other should develop harmoniously, avoiding interference or friction likely to increase the powers of the central government to the detriment of the

provincial faculties and vice versa, and seeking for them to help one another rather than to destroy one another (Judgments: 334:891)

13) Having established the criteria for the sharing of competencies and the guiding principles, it should be noted that the amendments introduced by the constitutional reform of 1994 have not caused this criterion to change, but have rather accentuated it.

Indeed, Pedro José Frías, in evaluating the impact of the reform on the federal Chapter, places emphasis on the contractual rather than static character of current federalism; the greater participation of the provinces and the legislative bodies; the promotion of human development with social justice; the bases for education with identity and cultural plurality; the policing powers and imposition of the provinces on establishments of national utility as long as they do not interfere with their purposes; transfers with reallocation of resources; the original dominion of the provinces over natural resources; their right to conserve 'social security bodies for their public employees and professionals (Frías, Pedro José "El Federalismo en la Reforma Constitucional," La Ley, Tomo 1994 D. Seco Doctrina, page 1123 and following).

The establishment of concurrent competencies that the constitutional reform has guaranteed in Arts. 41, 43, 75, sub-paragraphs 17, 19 and 30, 125, among others, does not involve weakening the scope of activity of any government venue, but entails, instead, interrelationship, cooperation and functionality in a common matter of shared responsibility, as is the case with public

health, without impairment to policing power over health which is, in the first place, under the command of the provinces.

In light of this, the obligations incumbent upon the Nation with regard to health are neither exclusive nor excluding of those that fall within the competency of its political units in their spheres of activity, but rather, that in governments with a federal structure, similar responsibilities weigh upon them, which also project onto the public and private entities that develop in this setting, considering that otherwise, the laws sanctioned in this matter would not amount to anything more than emphatic programmatic enumerations bereft of any operational significance (Judgments: 331:2135).

14) As a consequence of the foregoing, it can be asserted that the matter with which the case is concerned is one of those that allows for a national and a provincial legislative authority to operate jointly and simultaneously without any violation whatsoever of any legal principle or precept deriving from such circumstance, as long as both conduct themselves with respect for the limitations that the Constitution imposes upon them (Judgments: 307: 360; and the opinion of the Attorney General, in the heading of X).

In the dynamic of the distribution of competencies in this field among both jurisdictions, the prevailing trend is towards abandonment of the technique of an absolute separation thereof between the central State and the member States – their exclusive competencies – to guarantee the scheme of shared or concurrent competencies.

In sum, in the Federal State, the provincial authorities are involved in the very subject under discussion here,

as has been indicated in the foregoing Whereas clauses, and ultimately, this affords a view of provincial law in crisis before the national law addressing the same matters.

15) Once the foundation is removed of the constitutional authorization of the Province of Santa Fe to legislate in this matter, it is appropriate to examine the scope that this regulation imposes.

In doing so, we need not look overlook the fact that within its sphere of influence, it is unquestionable that the policing power belongs to the provinces and they exercise it within their territory. Nor can we overlook the context in which tensions emerge between the provinces and the Nation, as a feature deriving from the federal process itself, which involves recognizing that federalism is no longer static, but rather makes it possible to move forward in the implementation of inter-communal policies and in an inter-governmental line of management.

16) Under this interpretation, relations and convergences among different levels of government ascribe new significance to public policy to encompass the protection of fundamental rights, in areas such as health, or otherwise, and only by way of example, in matters such as the environment in which complementary provincial action is called for in accordance with specific local circumstances (Art. 41, National Constitution).

17) With regard to the right to health, the Court has said that it is closely related to the right to life, and this is the first right of the individual

that is recognized and guaranteed by the National Constitution; man is the axis and core of the entire legal system, and as an end in himself – over and above his transcendent character – his person is inviolable and constitutes a fundamental value, with respect to which the remaining values always have an instrumental character (Judgments: 329:4918).

The guardianship of this right is responsibility enshrined by the National Constitution, and included in the provincial Constitution (Arts. 5 and 121), and by international treaties that have such a hierarchy (Art. 75, sub-paragraph 22, of the Constitution; Art. 12, sub-paragraph c of the International Covenant for Economic, Social and Cultural Rights; sub-paragraph 1 of Arts. 4 and 5 of the American Convention on Human Rights –the Pact of San José, Costa Rica; sub-paragraph 1, of Art. 6 of the International Covenant on Civil and Political Rights; and also Art. XI of the American Declaration of the Rights and Duties of Man, and Art. 25 of the Universal Declaration of Human Rights; Judgments: 330:4647, and case CSJ 670/2006 (42-S)/CS1 "Sánchez, Elvira Norma v. Instituto Nacional de Servicios Sociales para Jubilados y Pensionados y otro," judgment of May 15, 2007).

18) According to the report of the representative of the Pan-American Health Organization (OPS - *Oficina Panamericana de la Salud*) (p. 438/447), there is sufficient known scientific evidence concerning the pernicious effects on health caused by tobacco consumption and exposure to the smoke it produces, as well as the health impact that it has on the life of individuals and on the economy of countries, and of the need for strategies and actions geared towards preventing them.

In this light it should be noted that the Framework Convention for Tobacco Control of the World Health Organization (FCTC), adopted on May 21, 2003, and which entered into force on February 27, 2005, constitutes the first international treaty in this matter (p. *332/3A6)*. It was drafted in response to the problem created by tobacco consumption, and opens new legal prospects for international cooperation in this field.

Although the FCTC is in the process of legislative approval -the Draft Message and law ratifying the said Convention were introduced before the Congress of the Nation through Message n° 778 of June 22, 2004 (p. 332/346 and 347/349), according to the report by Parliamentary Secretary, Dr. Juan H. Estrada (p. 350/351)-, since it has not been approved, it is not currently in force for the Argentine State. In consequence, its principles can only serve as an interpretative guide, but it does not constitute a part of Argentine law.

19) In our country the right to health as a condition for a life that must be protected, is susceptible to the highest level of protection at the constitutional level.

The Court has underscored the undeferrable duty the government has to guarantee this right with positive actions, without impairment to the obligations that must be assumed for its fulfillment by local jurisdictions (Judgments: 321:1684; 323:1339; 324:3569; 326:4931 and 328:1708). Accordingly it has indicated in Judgments: 323:3229 and 328:1708, cited previously, the responsibility incumbent upon provincial jurisdictions

in the protection of health, in line with the recognition of concurrent faculties.

Art. 19 of the Constitution of the Province of Santa Fe places health in this same range, which it characterizes "…as a fundamental right of the individual and of collective interest. To this end, it establishes the rights and duties of the community and the individual with regard to health, and creates the technical organization suitable for the promotion, protection and restoration of health, in collaboration with the Nation, other provinces and private national and international associations."

20) In these constitutional contexts, as well as through Law 12.432, the province has paid special attention to the subject under consideration, and has driven the creation of the Tobacco Control Program (*Programa de Control del Tabaquismo*) under the auspices of the province's Ministry of Health, whose actions are geared towards primary and secondary prevention of the smoking habit, with the aim of reducing mortality in the population caused by active and passive consumption of tobacco in any of its forms, with the provisions concerning this being a matter of public order (Art. 1 of Law 12.432).

21) Incidentally, the production, distribution and sale of tobacco resources by the company are not discussed in the proceedings, but rather its advertising and promotion at the local level. Considering that, owing to its purpose, this faculty is shared with the Nation, the provincial government exercise that portion of state power that corresponds to it; the policing power in its proper sphere implies ascribing to the province a regulatory capacity whose modeling for promoting the common welfare allows for recognition of a degree

of local government enhancement in terms of the special purpose of a preventive nature that it seeks, the protection of health.

The manner in which it does so should be respected, except in cases of irreparable constitutional incompatibility.

This is what the national legislator had in mind when sanctioning Art. 39 of Law 26.687, whereby provision was made to call upon the provinces and the Autonomous City of Buenos Aires to sanction rules at the level of their exclusive competency, of a nature similar to those set forth by the aforesaid legislation at the national level.

22) It is feasible to adduce elements demonstrating this recognition of the exercise of provincial faculties and that comprise part of the parliamentary debate. Thus, the Senator from Salta, Dr. Romero, in his remarks stated, "Now, briefly, I wish to address two technical articles. Obviously, I share and second the words of the members who held the floor before me. They are two very important articles. One is Art. 27, on the authority for enforcement, where the concurrence between the Nation, the provinces and the municipalities is made very clear; and the other is Article 39, which calls upon the provinces and the Autonomous City of Buenos Aires to sanction within their exclusive competency a variety of rules of a nature similar to that set forth in the law. While it is true that, fortunately, many provinces and municipalities have already moved forward in this matter, this will make it so that all jurisdictions will have to adhere to the law, which is a valuable thing.'

'Here it has been stated that the very pernicious habit of smoking has to do with the culture of society and the times; but also, we should say that this culture is changing, because today we see that in places where the ban on smoking in public places has been implemented, this law has been fulfilled. I was skeptical five years ago when Tucumán promulgated this ban, because knowing the idiosyncrasies of northern Argentina, I thought this law would not be upheld. Perhaps this prompted Salta to delay a while longer with such implementation. To be sure, it is here that compliance, abiding by the law and the lack of sanctions comes into play, and also, due to the non-violent reaction of people who do not smoke, but who are asking not to have their space invaded with smoke.'

'Now then, returning to the subject of provincial and municipal faculties, I believe that it is very important to recognize that the policing health matters constitutes a provincial or municipal faculty -in many cases- as occurs with the licensing of advertising in the public thoroughfare. There are already laws for this. But the public thoroughfare and promotion are municipal and provincial faculties. And use and consumption also have to do with health. By the same token, the operation of commercial establishments, in turn, constitutes a local faculty. And if these two Articles -27 and 39- were not in place, truly, we would be inflicting damage on the separation of powers and faculties that the provinces never delegated, and that we ought not to be replacing with a law" (Senate Chamber of the Nation 16th meeting – 11th ordinary session – August 25, 2010).

23) In the framework of French constitutional oversight, in its Decision N° 90-283 DC of January 8, 1991, the Constitutional Council declared Art. 2 of the law for the control of tobacco and alcoholism, which prohibits any publicity or advertising, directly or indirectly, of alcohol or tobacco products, as well as any free distribution thereof, to be in accordance with the French Constitution. According to the Council, a legislative decision of this nature is constitutional, since it is based on (i) the state's authority, also existing in French law, to regulate advertising of goods and services; and (ii) a limitation of this nature has a direct impact on the guarantee of the constitutional principle of protection of the public health.

It was affirmed, moreover, that the ban could not be construed as impinging on free enterprise, inasmuch as restrictions can also be imposed on this right in connection with the public interest and, in any case, the legislation analyzed does not place restrictions on the production, distribution and sale of tobacco resources.

The Constitutional Court of the Federal Republic of Germany, for its part, in considering the different regulations in this field, characterized the obligation of the tobacco companies to place warnings on their products on the danger to health posed by smoking as a relatively mild interference. On the other hand, it found that a total ban of any kind of tobacco products would constitute a severe interference. On the side of contrary arguments bearing on the hazards of smoking, is the importance of the reasons that justify a high level of

interference (BVerfGE 95, 173, decision of the Second Federal Constitutional Court, of January 22, 1997, Alexy Robert, "La construcción de los derechos fundamentales," Ed. ADHoc, Buenos Aires, 2012, pages 27 and following).

24) From the foregoing legal decisions cited by way of example, it can be gleaned that in comparative law there is a tendency towards upholding the *prima facie* validity of legislative measures aimed at restricting, and even banning – as in the case of the current proceedings – the commercial advertising of tobacco products.

The common features of these different decisions are related to the admissibility of such restrictions, based on the public health effects caused by tobacco consumption; the possibility that for these constitutionally valuable purposes, restrictions can be imposed on business and on the protected domain of commercial speech; and the need to exercise a judgment of proportionality to determine the validity of the balancing of means and ends, in terms of the limitation imposed on advertising for tobacco and the discouragement of consumption, particularly in consideration of subjects of special protections.

25) In the present case the provincial measure justified on the basis of the right to health, can reasonably be interpreted as an extension of the content set forth in national Law 26.687, in such a way that the provincial legislator may be seen to have anticipated events by incorporating, although with greater strictness, boundaries that the former would call for later, although in a different way (the national law imposes a prohibition -Art. 5,

but with exceptions -Art. 6, and the provincial law, only the provision imposing the ban contained in Art. 7).

Indeed, in accordance with the constitutional principles under examination, the normative content of national Law must be regarded as one that does not limit local authority, nor does it impede its development to ensure the health of its inhabitants, by discouraging the consumption of tobacco products, in the exercise of local powers in this domain that, in this case, the law must recognize, without this entailing its impairing the framework of reasonableness set by Art. 28 of the National Constitution.

Definitely, the faculty exercised by the Province of Santa Fe through Law 12.432 to regulate that which relates to the advertising of tobacco does not show itself to be disproportionate with the end it seeks of the public good; on the contrary, the provincial legislator has exercised his faculties in a reasonable, and not an arbitrary manner, for he has based himself on the aims of public health and has had international standards as his guide, in this way anticipating national regulation, as an option – with certain incidental variations - that ought to be construed as legitimately adopted within the provincial jurisdiction, without its constituting an infringement of the constitution, bearing in mind the rights that are affected.

It is on this basis that the Province of Santa Fe moved forward with its regulations, and reduced still further the scope of companies' activities when it comes to their advertising; by the same token, its regulatory decree upholds this approach, and both involve a barrier shielding the right to health guaranteed by

legislative formulations and the action of the local policing power, a genuine expression of the local authorities.

Finally, the constitutional challenge of Art. 7 of the local law cannot be upheld.

26) The same attitude should be adopted with respect to the approach to Art. 8 of Law 12.432, concerning the prohibition of promotion and sponsorship of sports and cultural events, and of taking part in them with apparel containing advertising for companies and/or brands engaged in the production and/or distribution of tobacco and its derivatives. Although it differs from the letter of Art. 8 of the national regimen, prohibiting "manufacturers and merchants of products made from tobacco to engage in sponsorship and underwriting of brands at any type of public activity or event, and through any communications medium," it appears to be an appropriate restriction as a curtailment of certain sporting activities, considering that it falls – for the reasons set forth heretofore – within the purview of the provinces to authorize them in the domain of their respective jurisdictions. In consequence, the complaint invoked on this score can also not be upheld.

Accordingly, and having heard the Attorney General, the following is hereby resolved:
To reject the complaint filed by Nobleza Piccardo S.A.I.C. y F., against the Province of Santa Fe, and to declare the validity of

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[INITIALS]

Supreme Court of Justice of the Nation

-//-Arts. 7 and 8 of Law 12.432. With costs (Art. 68, Procedural Civil and Commercial Code of the Nation). Let notification be given hereof, let a copy be forwarded to the Office of the Attorney General of the Nation and let it be filed in a timely fashion.

[illegible signature]

RICARDO LUIS LORENZETTI

[illegible signature]

ELENA I. HIGHTON de NOLASCO

[illegible signature]

JUAN CARLOS MAQUEDA

VO-//-

-//-FROM PRESIDENT DON RICARDO LUIS LORENZETTI

Whereas:

The undersigned concurs with Whereas clauses 1 through 9 of this statement.

10) With reference to the constitutional faculties of the Province of Santa Fe to legislate in this matter, it is necessary to recall that, in accordance with the distribution of competencies that emerges from the National Constitution, the powers of the provinces are inherent and undefined (Art. 121), whereas those delegated to the Nation are defined and explicit (Art. 75) (Judgments: 304:1186; 312:1437; 329:976; 332:66, among many others).

This implies that the provinces can issue such laws and Statutes as they may deem conducive to their wellbeing and prosperity, without other limitations beyond the prohibitions enumerated in Art. 126 of the Constitution, and reasonableness, which is a requisite for any legitimate act (Judgments: 7:373; 289:238; 320:89, 619; 322:2331 and 330:3098, with dissent from Judges Lorenzetti and Zaffaroni).

In such conditions, it is logical to conclude, as the Court has done since its very beginnings, that the acts of the legislature of a province cannot be invalidated except in those cases where the Constitution grants the National Congress in express terms an exclusive and excluding power; or in those cases where the exercise of identical powers has been expressly prohibited for the provinces; or when there is a manifest and

irreparable incompatibility between the provincial law and that of the Congress, in which case the latter must prevail by virtue of the principle of national supremacy enshrined in Art. 31 of the National Constitution (Judgments: 3:131; 302:1181; 320:619; 322: 2331, among many others).

11) The regulation of advertising and the promotion of products whose consumption signifies a risk to the health of the population does not fall within any of the faculties that the legal system in force recognizes as exclusive and excluding for the Congress of the Nation. Nor does it address any matter expressly prohibited to the provinces. Finally, the conclusion is unavoidable that a competence is involved of shared and concurrent responsibility.

Without impairment to the foregoing, in this case, the concurrent competency is also founded on the principle of effective enforcement of consumer rights, as occurred in the precedent of Judgments: 330:3098.

> Indeed, the challenged provision seeks to protect the health of those who smoke cigarettes, who constitute an especially vulnerable group, to the extent that – for many of them – the habit of smoking has been transformed into an addiction. In such conditions, Art. 42 of the National Constitution also justifies the existence of supplementary provincial provisions for the purpose of achieving, together with national laws bearing on the matter, a more effective enforcement of consumer rights.

In view of all the foregoing, the wellbeing of the citizenry, federalism, institutional decentralization, and the effective enforcement of consumer rights constitute a structure of principles that is sufficient to uphold concurrent competence (Judgments: 330: 3098, with dissents from Judges Lorenzetti and Zaffaroni, Whereas clause 8).

12) Having established this, and given that both jurisdictions have regulated the same matter, it remains only to analyze whether there is an absolute and irreconcilable incompatibility between the local and national laws, which would lead to declaring the lack of validity of the former.

On this point, the plaintiff contends that such incompatibility applies, since the provincial law imposes greater restrictions than the national law with relation to advertising for this type of product.

This statement, however, is not consistent with the jurisprudence of the Court.

The Court has found, since its beginnings, that the simple fact that both jurisdictions regulate the matter in different ways is not sufficient to invalidate the local law, but rather it is necessary for there to be an "actual clash," an "irreparable conflict" that occurs when the enforcement of the provincial legislation gives rise to an "obstacle to rule and to the objectives of the national Law of protection, in such a way that the only course open to this Court is to take away the validity of local laws in order to re-establish the precedence

of federal law (jurisprudence of Judgments: 3:131; 137:212; 239: 343; 300:402 and 333:1088, dissent by Judge Argibay).

In line with these guidelines, the plaintiff should not have invoked the simple disparity between the laws, but rather proven that the enforcement of the provincial law severely undermined the national policy set in Law 26.687.

None of this took place in the proceedings. On the contrary, both laws are marked by the same tendency and establish the fundamental principle of prohibiting the advertising of products made from tobacco. A comprehensive and harmonious reading of the two regulations enables the conclusion that they are complementary provisions that seek to move forward in the implementation of shared public policies in order to protect fundamental rights of the population and, in particular, of consumers.

With regard to the rest, the fact that the local law – in contrast to the national one – does not provide exceptions to the rule, does not suffice to demonstrate an "actual clash" in the terms of the jurisprudence of this Tribunal. A different interpretation would be completely incompatible with the breadth of attributions that the provincial legislatures have reserved for themselves to promote the wellbeing of their populations and with the consequent proscription of any extensive interpretation of those laws that introduce limits on the said provincial authority.

13) Once the complaint is set aside concerning the constitutional authorization of the Province of Santa Fe to legislate on the matter under consideration, it remains to be ascertained whether the provincial

regulation, by prohibiting all kinds of advertising for cigarettes based on the protection of the right to health, constitutes an unreasonable and, ultimately, unconstitutional regulation. In particular, it is necessary to assess whether the challenged provision entails a disproportionate restriction on the company's economic freedom and freedom of commercial expression guaranteed in the National Constitution.

In this regard, it should be recalled that, since the former precedent in Judgments: 31:273, the Court has recognized the Legislative Branch's prerogative to restrict the exercise of the rights established in the National Constitution in order to preserve other goods also contemplated therein. This is so because our legal system does not recognize the existence of absolute rights but they are instead limited by the laws that regulate their exercise, with the sole condition of not altering them in substance, and respecting the limits imposed by the standards of a superior hierarchy (Arts. 14, 28 and 31 of the National Constitution and Judgments: 249:252; 257:275; 262:205; 296:372; 300:700; 310:1045;311:1132; 316:188; among many others).

From this perspective, the Court has established that the substantial limit that the Constitution imposes on all state acts, and in particular on laws that restrict individual rights, is one of reasonableness (Judgments: 288:240 y 330:3098, with dissent from judges Lorenzetti and Zaffaroni).

According to the Court, this implies that laws must pursue a valid end in the light of the National Constitution; that restrictions imposed must be justified in terms of the

reality they seek to regulate; and that the means chosen must be proportional and suitable to achieve the proclaimed objectives (Arts. 14 and 28 of the National Constitution, and jurisprudence of Judgments: 248:800; 243:449; 334:516; 335:452, among others).

Furthermore, it should be recalled that proportionality entails that any restrictions that may be imposed should not be enforced in the abstract, but rather based on the function of the charitable institution that one seeks to protect. (jurisprudence of Judgments: 313:1638; 330:855 and 334:516).

14) In light of the foregoing, it should be recalled that the right to health is closely related to the right to life, the latter being the first right of the individual that proves to be recognized and guaranteed by the National Constitution; this is so because man is the axis and core of any legal system, with his life and his person as fundamental values, with respect to which the remaining values always have an instrumental character (Judgments: 302:1284; 310:112; 316:479; 323: 3229; 329:4918).

Furthermore, the Court has held that the guardianship of this right is a responsibility enshrined in the National Constitution and by international treaties that have such a hierarchy, which entails an undeferrable obligation for the National State to uphold with positive actions, without impairment to the obligations they must assume in their compliance with local jurisdictions, social welfare activities or the institutions of so-called pre-paid medicine (Judgments: 321:1684; 323:1339, 3229; 329:1638 y 330:4647; and Art. 75, sub-paragraph 22, of the Constitution; Art. 12, sub-paragraph c, of the International Covenant on Economic, social and Cultural

Rights; sub-paragraph 1 of Arts. 4 and 5 of the American Convention on Human Rights –Pact of San José, Costa Rica-; sub-paragraph 1 of Art. 6 of the International Covenant OF Civil and Political Rights; as well as Art. XI of the American Declaration of the Rights and Duties of Man, and Art. 25 of the Universal Declaration of Human Rights).

Finally, and insofar as it concerns this case, the right to health is also recognized and protected in Art. 19 of the Constitution of the Province of Santa Fe, which characterizes it "as a fundamental right of the individual in the collective interest. To such end, it establishes the rights and duties of the community and the individual in health matters, and creates a technical organization that is suitable for the promotion, protection and restoration of health, in collaboration with the Nation, other Provinces and private national or international associations."

15) The plaintiff does not dispute the fact that there is sufficient known scientific evidence concerning the pernicious health effects caused by tobacco consumption and exposure to the smoke it produces, as well as the health impact it has on people's lives; moreover, it admits it (see claim on p. 4/5 of the case file).

This reality, it should be emphasized, is what has led many countries to adopt different strategies and actions geared towards preventing such damage and restricting the demand for this type of product. As an example of this, and at the global level, it is indispensable to mention the Framework Convention for Tobacco Control of the World Health Organization (FCTC) –approved

on May 21, 2003, in force since February 27, 2005, and that has been signed by our country but has not yet been ratified by the legislature. This treaty recognizes that "tobacco use is a global problem with serious consequences for public health," that "science has unequivocally demonstrated that tobacco consumption and exposure to tobacco smoke are causes of mortality, morbidity and disability," and that "cigarettes and some other products that contain tobacco are designed in a very sophisticated way with the aim of creating and maintaining addiction, that many of the compounds that they contain and the smoke they produce are pharmacologically active, toxic, mutagenic and carcinogenic, and that tobacco addiction appears as a separate disorder in the principal international classifications of disease." Along the same lines, and on the regional level, we can cite the Resolutions MERCOSUR/CMC/DEC. n° 20/03 and 21/03 "ESTRATEGIA REGIONAL PARA EL CONTROL DEL TABACO EN EL MERCOSUR, (Regional Strategy for Tobacco Control in Mercosur)" adopted on the basis of similar factual determinations, with the purpose of "continuously and substantially reducing the prevalence of tobacco consumption and exposure to tobacco smoke in the Region, in order to reduce its devastating health, environmental, social and economic consequences."

16) In this factual and legal context, and in accordance with the criteria stated in Whereas clause 13, the provincial law is reasonable.

In the first place, because it seeks a constitutionally valid aim. The Constitution not only allows but actually obliges public authorities to adopt measures and

policies geared towards protecting the health of the population. Furthermore, the law in force in our country accepts and pursues as a legitimate objective the reduction of the demand for products made from tobacco for human consumption (see Art. 2, Law 26.687, resolutions MERCOSUR/CMC/DEC. n° 20/03 and 21/03 and the message of introduction of the National Executive Branch for a variety of draft legislation bearing on the matter added on p. 274/351 of the case file), over and above the possible disruptions this could cause for companies engaged in the chain of distribution for this type of product.

On the other hand, because the restrictions imposed are fully founded and justified in the scientific evidence on the pernicious health effects cause by tobacco consumption and exposure to the smoke it produces (see Whereas clause 15).

Finally, because the means chosen– a total ban of advertising and promotion– are appropriate and proportional. The ban on advertising proves to be conducive to achieving the reduction of the smoking habit, and in turn, does not constitute an excessive restriction of the economic freedoms of companies.

On this point, it is especially relevant to emphasize that it has not been alleged, much less proven, that the total ban on advertising impairs the economic sustainability of the company, nor that it interferes in an essential way in the production, distribution and sale of these products. It has definitely

not been demonstrated that the challenged restrictions amount to a disrespect of the right to engage in any legal industry.

Very much to the contrary, the plaintiff itself contends that, according to an accompanying academic study, "the total ban on advertising and promotion of such products… brings with it no effect that tends to diminish consumption and/or discourage the youngest in such a way. It notes, moreover, that tobacco is one of the products called 'mature' because it has a long history in the market, and so to make itself known or increase its sales, it needs no advertising" (see p. 486 dorso of the case file).

Under such conditions, the impairment alleged by the plaintiff is reduced to the company's seeing its possibilities limited of "differentiating its brand" with respect to its competitors – so that people could choose among the different brands bearing in mind the quality and price of the product, and not the messages contained in advertising.

This complaint – which amounts to nothing more than a mere quibble on legislative discretion over the utility of the measure – lacks sufficient substance to merit questioning the reasonableness of the law.

In light of all the foregoing, in considering the substance of the objectives sought by the law, and the nature of the rights in play as opposed to the degree of the restriction on the economic freedoms of the plaintiff, there is no alternative but to conclude that the provincial law is reasonable in light of the standards set in the jurisprudence of the Court.

[INITIALS]

Supreme Court of Justice of the Nation

17) As a final point, it should be noted that the analysis carried out of reasonableness is sufficient, also, to dismiss the plaintiff's complaint based on the impairment of its freedom of expression.

This is so because the speech that the plaintiff considers impaired has the sole purpose of fomenting the consumption of goods and services.

In such conditions, although it is protected by Arts. 14 and 32 of the National Constitution, the speech that the plaintiff says is impaired does not bear a close relationship with the functioning of the republic and democratic system.

This entails that there is no constitutional foundation for granting it a protection as intense as other manifestations of ideas that comprise part of the necessary participation and deliberation in any democratic society, nor for evaluating any limitations that the laws may impose on it with the particularly strict scrutiny that is customarily applied in matters of freedom of expression (see Judgments: 248:291; 311:2553; 331:162 y case CSJ 439/2013 (49-G)/CS1 "Grupo Clarín S.A. and others v. Poder Ejecutivo Nacional and other RE merely declarative action," handed down on October 29, 2013, among many others).

Accordingly, and having heard the Attorney General, the following is hereby resolved:
To reject the complaint filed by Nobleza Piccardo S.A.I.C. y F., against the Province of Santa Fe, and to declare the validity of

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-//-Arts. 7 and 8 of Law 12.432. With costs (Art. 68, Procedural Civil and Commercial Code of the Nation). Let notification be given hereof, let a copy be forwarded to the Office of the Attorney General of the Nation and let it be filed in a timely fashion.

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RICARDO LUIS LORENZETTI

[INITIALS]

Supreme Court of Justice of the Nation

NAME OF PLAINTIFF: **Nobleza Piccardo S.A.I.C. and F.**

NAME OF DEFENDANT: **Province of Santa Fe.**

Professional assistance: **Attys. Roberto Pablo Büsser, Pablo Luis Tomaselli, Rodolfo Perazzo, Juan A. Capelli, Gregorio Badeni, Carlos Laplacette, Carlos Lanardonne and Alejandro Hermo; Juan Carlos Carbone, Juan Pablo Cifre, Analía I. Colombo; Jorge Alberto Barraguirre (h), Attorney General of the Province of Santa Fe; María Nélida A. Puch Pinasco.**

PUBLIC PROSECUTOR: **Attys. Luis González Warcalde and Laura M. Monti.**

To access the opinion of the Office of the Attorney General of the Nation, go to:

http://servicios.csjn.gov.ar/confal/ConsultaCompletaJudgments.do?method=verDoc&idAnalisis=725949&interno=1