

The “Spanish Model” of Non-Smoker Protection in Hospitality Venues: A Failed Approach

Background

Since August 2007, Germany's federal states have been gradually introducing laws to protect people from the dangers of passive smoking. The legislation also covers health protection in hospitality venues. However, the majority of states gave larger restaurants the option of allowing smoking in adjoining rooms that are structurally separate. Proprietors of smaller businesses, that only have a single room, considered themselves at disadvantage by this exception and reported a huge loss in trade. Tobacco lobbyists and the Hotel- und Gaststättenverband, the professional association of Germany's hotel and restaurant proprietors, are propagating the so-called "Spanish model" of non-smoker protection in hospitality venues as a suitable alternative to the laws passed in Germany ^{2,6,14,15,26}. This model enables owners of smaller establishments to decide themselves whether guests may or may not smoke and to designate their businesses accordingly. A few other associations and lobby organizations, as well as some politicians, are furthering this claim ^{5,17,23,34}. Constitutional challenges that have been brought before the Federal Constitutional Court and various state constitutional courts by bar and restaurant owners also demand “freedom of choice” and “mandatory designation”. However, none of the above-mentioned legal opinions has demonstrated to what extent the “Spanish model” of non-smoker protection has actually proved effectual in practice. An overview of the relevant expert opinions and first-hand reports is discussed below.

The Anti-Tobacco Law of 2006

The Spanish government towards the end of 2005 passed a comprehensive anti-tobacco law drew based on the latest research on the dangers of both active and passive smoking. The law which came into force on January 1, 2006, bans smoking in public buildings and on public transport as well as in enclosed workplaces. It also imposes the prohibition of tobacco advertising and

restrictions on the sale of tobacco products ²⁷. However, only the hospitality industry consumers – but not the workers – are exempted from the general smoking ban in indoor workplaces. The special status granted to the hospitality business is attributed to intervention by the pro-tobacco lobby and the Spanish association of restaurant, cafe and bar proprietors ^{13,24,29}.

The exceptions applying to restaurants in Spain depend on the size of the establishment ²⁷. The size of the establishment is determined by the floor space accessible to the restaurant's patrons and does not include kitchen, bar, storage or office space. If the floor space thus defined is less than 100 sq. meters, the owner may choose to declare the establishment either a smoking or a non-smoking venue. The only obligation for smaller businesses is mandatory designation: It must be made clear at the entrance whether or not smoking is permitted inside.

If the floor space exceeds 100 sq. meters, smoking is permitted only in a separate room. There are strict rules governing the establishment of such a smoking area.

The smoking area

- may not comprise more than 30 percent of the total floor space available to customers;
- may not be a room through which non-smokers must pass;
- must have an independent ventilation system;
- may not be accessed by children and people under the age of 18.

Taking infants and young children into a smoking bar, on the other hand, is not forbidden ⁴.

The main drawback in the “Spanish model” is based on a classification of restaurants and bars according to size. Whereas small venues may declare themselves to be smoking bars simply by putting a sign on the door, larger venues are obliged to invest in costly building alterations if they wish to prevent a loss of business among smoking guests.

Special national rules

In addition to the unequal treatment of small and large hospitality venues, the large number of special supplementary rules makes the “Spanish model” confusing and virtually unworkable ²⁷. Among these “exceptions to the exception” are the following:

■ Hospitality venues that manufacture and sell food products

In bakeries, butcher’s shops and other businesses that produce and distribute food products as well as running a bar or restaurant, the exception is suspended and smoking is forbidden under all circumstances.

■ Hospitality venues in shopping centers

Small establishments within shopping centers may not be designated smoking venues, whereas larger establishments within shopping centers are allowed to set up smoking rooms.

■ Hospitality venues in multiple-use building complexes

If a restaurant is located in a multiple-use building complex such as an airport, railway station, movie theater or theater, the size of the smoking area is calculated on the basis of the area that can be used exclusively by each operation. If educational establishments or other facilities to which the general smoking ban applies are located in the building complex, smoking is forbidden in the hospitality venues too. This distinction between types of building is still a cause of confusion ³³.

The “Spanish model” is a label that covers a large number of confusing exceptions and special rules for specific types of hospitality venues which are well-nigh impossible to make sense of for the layperson.

Special regional rules

Spain’s 19 autonomous cities and regions are responsible for implementing the anti-tobacco law and adapting it to the local situation. The regional authorities have therefore issued their own implementation regulations, thereby exacerbating the already daunting complexity of the “Spanish model”. A few examples are enough to illustrate the point:

■ Regional exceptions to the regulation governing the size of the restaurant

On the Balearic Islands, all restaurants, regardless of size, may set up smoking areas or designate themselves as smoking establishments ³².

■ Regional exceptions to the rule on separate rooms

In Castilla y León, Madrid and Valencia, the smoking area in larger restaurants does not have to be structurally separate, provided there are ventilation systems or other “means of preventing smoke exposure in the non-smoking areas” ^{8,9,10}.

■ Regional exceptions to the smoking ban in office buildings and other workplaces

Contrary to the general ban on smoking at the place of work, canteens in Madrid and La Rioja with more than 100 sq. meters of floor space may set up smoking areas. In Castilla y León smaller canteens may be operated as smoking bars ^{8-9,11}.

Spain’s federal structure and regional responsibility for the implementation of the anti-smoking law have created a patchwork with innumerable gaps in non-smoker protection in hospitality venues.

Practical implementation

In May 2007 – i.e. more than a year after the anti-tobacco law entered into force in Spain – the consumer protection organization OCU examined compliance with the smoking ban in about 1,000 hospitality venues ³⁰. The results of the on-site inspections in the hospitality sector demonstrate what the “Spanish model” means in practice. Smoking was forbidden in only 10% of small establishments. This is significant because it is estimated that 80 percent of Spain’s approximately 300,000 restaurants are smaller than 100 sq. meters.

Further, according to the OCU study, in the majority of larger restaurants there is no effective non-smoker protection. In 85 percent of the large restaurants inspected, the smoking area was larger than permitted by law, while in 37 percent the way in which the smoking area was partitioned off violated the legal provisions. In numerous cases, the smoking and non-smoking areas were separated by no more than a cord or signs on the tables.

The frequency of violations is noteworthy because the law gave bar and restaurant owners an eight-month transition period in which to make the necessary changes in order to comply with the regulations. In reality, however, many proprietors of larger restaurants used this period to circumvent the provisions by slyly reducing their floor space or by dividing the restaurant into two establishments^{33,3}.

In practice, freedom of choice for small establishments means that smoking continues in the majority of restaurants. Larger restaurants are not even trying to improve non-smoker protection, but instead are circumventing the law for fear of finding themselves at a competitive disadvantage.

Inspections and penalties

The law prescribes heavy fines for violations of the anti-tobacco legislation. The operator of a hospitality establishment may have to pay a fine of up to 10,000 Euros and the smoker 600 Euros. Yet such violations of the legislation governing the Spanish hospitality sector are commonplace even now. The regional authorities responsible for conducting inspections and imposing penalties vary considerably in how they approach their inspection obligations, but in most cases are fairly lax³⁰. In 2006, Catalonia carried out almost 10,000 inspections, whereas there were only about 1,000 in Andalusia. Since the regional and municipal authorities in many regions cannot agree on their responsibilities, no checks are being made at all at present, nor are the complaints received being dealt with²⁰. According to a recent estimate by the National Committee for Tobacco Prevention (CNPT), no more than 1,000 fines have levied in all of Spain in the two years after the law came into force¹⁸.

Restaurant owners and guests have become accustomed to a situation in which breaking the law has no consequences. According to the OCU study, 21 percent of the owners of smaller restaurants have not even bothered to affix the “Smoking permitted” sign to the outside door, as required by law³⁰. Another consumer protection organization investigated the extent to which special youth discotheques comply with the general ban on smoking and found that 60 percent of the venues violate the law¹². Ashtrays can now be found on the tables of many restaurants that initially were smoke-free,

and smoking has started again even in some hospital canteens.

The regulations of the “Spanish model” are not effectually implemented, nor are fines levied. Non-smoker protection in the hospitality sector is not taken seriously either by restaurant proprietors or by smokers.

The situation for hospitality sector employees

One year after the anti-smoking law came into effect, the concentration of carcinogenic particulate matter in the air of hospitality venues had hardly changed at all. This is demonstrated by measurements in eight autonomous regions¹. While passive smoke exposure declined by 94 percent in those few small establishments that became completely smoke-free, no significant difference was found in the larger restaurants, despite the strict regulations on the creation of separate smoking rooms. In many venues – especially pubs and discotheques – passive smoke exposure actually increased substantially after the anti-smoking law came into force. This seemingly paradoxical phenomenon can be explained by the ban on smoking at the place of work. Many Spaniards who are no longer allowed to smoke at the place of work make up for this during their lunch break or in the bar after work.

Although many waiters, bartenders and baristas are exposed to a higher levels of tobacco smoke than before, they may not themselves light up in the restaurant, bar or cafe because of the workplace smoking ban, which officially also applies to hospitality workers. One of the many inconsistencies in the “Spanish model” is the poorer protection at the workplace afforded to pregnant women in hospitality venues. Whereas previously pregnant women and nursing mothers were permitted to work only in a smoke-free environment, they now have no legal recourse at all if their employer requires them to serve in a smoking bar or smoking area³¹.

The main victims of the “Spanish model” are hospitality workers, who have no choice but to expose themselves without any protection to the dangers of passive smoking if they do not want to lose their job.

The “Spanish solution” – an obsolescent model

Healthcare experts and observers familiar with the situation at the grassroots level describe the outcome of the “Spanish model” as “chaotic”³³. Debate about new laws to protect non-smokers in hospitality venues continues:

- According to opinion polls, the majority of Spaniards are in favor of a comprehensive ban on smoking in bars and restaurants^{7,22}.
- Owners of larger restaurants have come out in favor of a uniform solution in order to correct the crass distortions of competition resulting from the law²⁵.
- In an EU-wide study comparing measures to protect non-smokers, Spain was criticized for its “weak and ineffective” legislation on bars and restaurants”²⁸.
- Already in 2007, the Spanish Minister of Health Bernat Soria, argued in favor of a more restrictive approach in hospitality venues¹⁹.

The “Spanish model” does not solve the problem of passive smoking, but merely gives rise to endless disputes about how to improve non-smoking protection and to create fair competition in the hospitality sector.

Conclusions

The model introduced in Spain in 2006 for the protection of non-smokers in hospitality venues has led to serious practical problems, some of which are listed here:

- The exceptions to the law undermine non-smoker protection and lead to massive distortion of competition at the expense of larger hospitality venues.
- Ineffectual inspections and the absence of penalties have made guests and restaurant owners accustomed to violations of the law.
- Regional disparities are increasing (patchwork).
- Hospitality workers face a growing threat to their health.
- The societal conflict between smokers and non-smokers has not been resolved.

The statements issued by the tobacco lobby give no hint of the many problems besetting the “Spanish model”. The Reemtsma Internet site “Tolerance for smokers”, for instance, claims that “in Spain a solution has been found that is fair to everyone” – although in reality, it is fair only to everyone who happens to be a smoker²⁶.

The “Irish solution” represents an alternative to the “Spanish model”¹⁶. The example of Ireland shows that a nationwide, uniform ban on smoking in the hospitality sector with no exceptions can satisfy both the requirements of health protection and equal economic opportunity.

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