1st EUROPEAN LAW FORUM ON WINTER SPORTS

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Italian skiing law

I. Skiing law: the last to be enacted…………………………………...p.1

II. Genesis and development of Italian skiing law…………………….p.3

III. The Law of 24.12.2003, No. 363 – General profiles………………p.7

IV. Equipped skiing areas ……………………………………………p.10

V. Obligations and responsibilities of managers……………….. … . p.12

VI. On behaviour regulations for users ……. ……………..……….p.13

VII. Penalties and controls ……………………………………………p.16

VIII. On off-slope skiing and ski-mountaineering ………………………p.18

IX. Skiing instructors and schools ……………………………………p.20

Bibliographic review ……………………………………………………..p.24

I .- Skiing law: the last to be enacted

Although there is no law in the Italian Constitution which expressly mentions sport, nevertheless sporting activities are indirectly or by mediation disciplined in Italy's fundamental Charter. This discipline can be discerned in numerous provisions, to which sports activities seem to be clearly linked as socially significant pursuits, and therefore, worthy of interest by the legislator, both in terms of public and private law.

The first constitutional parameter is certainly to be found in art. 32, which entrusts the protection of health to the State, as "a fundamental right of the individual and as an interest of the collectivity". I need say no more here than affirm that sporting activity is good for physical well-being (and not only that) and, therefore, for the health of the individual. Further references can be found in articles 2 and 3, sub-paragraph 2 (which put forward the notion of sport as a subjective right to practice it), and in article 18, which concerns the associations, an unfailing organisational complement in the promotion of sports activities assigned to the State[1].

These rapid introductory notes, which may at first sight not seem to be linked to the specific themes that are the subject of this report, do however justify the first appearance of skiing law, as a sub-category of sports law and to justify - as we shall see - certain decisions made in the relevant discipline.

Given that the law does no more than assimilate phenomena of social reality that deserve to be protected, and which should be regulated, this promptly explains the priority attention initially addressed by the State to non-skiing sports disciplines, which, due to their number of participants, the wider spread of the disciplines and the involvement of economic interests, were worthy of special attention. And the abstract, generic character of the laws is insufficient not to let us perceive who were the first real recipients of some of those laws.

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[1] On the subject of sport and the Constitution, see Paola Di Salvatore - Il diritto nello sport - Libreria dell'Università Editrice Pescara 2001 p. 19.

It can therefore be said that skiing law, as an organic complex of state, regional and provincial regulations which regulate its various aspects (ski lifts, slopes, behaviour of skiers, safety, first-aid, etc) has today achieved its own dignity, due to the breadth and importance of the phenomenon. This law is the last to be enacted, but is certainly not, as a result, the last in the scale of values, in the broad, composite scenario of sporting law. On the contrary, this sports sector offers lawyers a more stimulating field of investigation and action.

II.- Genesis and development of Italian skiing law

Snow sports in Italy, to put it mildly, have developed by leaps and bounds since the early 60s. Numerous factors have contributed to this: the improved economic and social well-being of the people, the expansion of tourism through its home and international flows, the expansion of the building industry seen in the ownership of 'second homes' in the holiday districts, the gradual increased interest of 'citizens' in mountains, which had been the undisputed kingdom of the 'suitcase travellers', the wider spread of skiing via television, which brought top level competitions to people's homes, the numerous successes of our national teams, the new articles on offer in the equipment sector (just think of the snow table, and carving), followed by that extraordinary invention - scheduled snow - not to mention others.

As a result, we have seen the strengthening of the existing winter tourism stations, the creation of new ones, and not just in the Alpine range, the improvement

of ski lifts, thanks to the new technologies which have exponentially increased their capacity.

The number of skiers is now close on three million. The commercial and tourism-hotel chain is highly significant in the country's general economy, especially in the mountain areas.

The world of law, in its regulatory, jurisprudential and doctrinaire components, could obviously not remain indifferent in the face of this phenomenon.

Jurisdiction was the first to be called upon to deal with the problems linked to skiing. Admittedly, skiing is an evolving sport, but often entails interference of trajectories and, therefore, contact among skiers, or it records other types of accidents. The regulations which were issued at the time, mainly addressed the public law aspects of ski lifts and slopes, but hardly ever dealt with the conduct of skiers. An exception to this were some generic provisions to be found here and there in regional or provincial regulations (see for example art. 19 of the Provincial Law of Bolzano of 26.2.1981, No. 6) or other regulations concerning the behaviour of skiers on ski lifts (see Ministerial Decree of November 1970 on the use of ski lifts). Consequently, when the judges, who have to rule also in situations where laws are lacking, were forced to undertake some difficult manoeuvres to adapt positive law to the specificity of the subject. In this delicate operation, civil disputes obviously offered greater space. As the problems concerning collisions between skiers were clearly located in the sphere of non-contractual liability, there were contrasting opinions as to which title such problems should be linked.

One should recall a spontaneous attempt - immediately abandoned - to analogically apply the highway code regulations to ski traffic, by means of an untenable

equalisation of slopes to roads and skis to vehicles.[2] There is also a great deal of jurisprudence, still to some extent in use to day, which applies the presumption of responsibility connected to dangerous activities (art. 2050 of the Italian Civil Code)[3]; this theory is certainly useful in overcoming evidential difficulties, but which, in my opinion, is derived from a very debatable assumption: i.e. that skiing, when considered intrinsically, is a dangerous activity, but is not dangerous for contingent situations (on crowded slopes above all), although it can become so. Additionally, this theory overlook a key aspect - i.e. the justifying reason of presumption, which is the protection of the extraneous third party in the exercise of the dangerous activity. Therefore, this theory was and is applied in connection with subjects who both exercise this activity considered dangerous.

As concerns accidents due to slope preparation and maintenance faults, in addition to the decidedly prevailing recourse to ordinary principles on public non-contract liability, (in which sphere, the criteria of indicting generic blame - negligence, unskillfulness and imprudence - do not always allow for a correct solution of disputes), and to the assumption of responsibility for damage caused by things in custody (art. 2051 of the Italian Civil Code), and slopes would be considered as such, it was also attempted to frame such accidents within a contractual paradigm of the relationship between slope users and managers. This theory, with which I have personally always agreed, is based on the elementary observation that the skier - who although he formally pays a fee solely to use the ski lift - is at the same time offered the use of the slope by means of unmistakable types of advertising which

[1] Tribunal of Bolzano 5.4.1975; Tribunal of Turin 11.11.1983:

[3] Among the first judgements: Trib. of Ferrara 7.7.1965; Trib.of Aosta 2.5.1975

amount to an offer to the public (art. 1336 of the Italian Civil Code) and which thus create a true contract.[4]

A system of regulations whose source is half-juridical helps judges out of this embarrassing situation in civil and criminal litigation arising from collisions among skiers: the regulations on the conduct of skiers drafted by the Legal Committee of F.I.S (Italian acronym for the International Skiing Federation), whose definitive text was approved in Beirut in 1967. The authoritativeness and prestige of the organisation that drafted them, the reasonableness they were inspired by and their extreme concision made these regulations immediately successful, and led to their full acceptance and unanimous consent by all countries were skiing is practised. The FIS regulations express nothing more than the principles of common prudence, and summarise all the previous juridical experience.

Renowned lawyers[5] have commented on the nature of the regulations and on their assimilation in individual laws. But in spite of the wide variety of positions that were taken on this subject, the conclusion by the lawyers of full and legitimate applicability was unanimously agreed. This led to the creation of a fundamental aim: the certainty of law on this specific subject. This annotation is very important and is useful in this Forum, which intends not only to compare the laws of different countries, but, above all, to verify if and in what terms a uniform discipline of regulations can be achieved.

[1] PRADI Lo sviluppo del diritto sciistico e le regole FIS quali norme di diritto positivo (documents of the 15th Ski Lex Sesto Pusteria 1987)
PICHLER Zur Rechtsnatur der Skiregeln-Skirecht 1972- Essen 1972
STIFFLER Die rechtliche Bedeutung der FISregeln aus Schweizer Sicht–Skirecht 1972 Essen 1972
LEER Zur rechtlichen Bedeutung der FIS-Verhaltungsregeln nach deutschen Recht

In common with other countries, the contribution of doctrine was decisive in the development of Italian skiing law. The lawyers who took and interest in the subject, almost always mountain lovers and skiers themselves, thanks to this made a very effective contribution, permeated and stimulated by direct, personal knowledge of the different problems involved in skiing. Various types of studies, seminars and conventions, notes and sentences: considerable material, not always easy to draw from. In this connection, the bibliographic summaries are useful. They can be found in some texts, sometimes in monographs or in degree theses. But, in order not to disperse what has been done, it would be even more useful to establish an IT documentation centre.

Within this rather disjointed and uncertain framework, the Italian legislator intervened through the law of 24.12.2003, No.363, with the intention of making the subject organic. It resolved a long-standing dilemma: is it dutiful or even merely appropriate to subject skiing to precise legal regulations on conduct, by prescribing specific penalties and, consequently, adequate controls? Or is it preferable to give skiers the broadest freedom and trust their discipline and self-responsibility?

III.- The Law of 24.12.2003, No. 363 . General profiles

The law we are commenting dictates regulations on safety in the non-competitive practice of the winter sports of downhill and cross-country skiing, including the essential principles for the management and safety of skiable areas.

During its path through parliament and after its enactment, the law was accompanied and followed by a very lively debate which involved ski-lift and slope managers, those

responsible for tourist structures, skiing law experts, the skiers themselves, and, marginally, also ski schools and instructors. This debate concerned not only the merit of certain provisions, but, first and foremost, the opportunity of imposing behaviour rules on skiers, including penalties and the need for controls. These rules entail a great deal of interference in a sport which, by its extremely free nature, in view of the places where it is practised, does not therefore easily withstand impositions, least of all of a regulatory nature.

Law No. 363 is the not always harmonic result of a series of parliamentary initiatives, which were subsequently unified. Its issue was, at least in part, unquestionably influenced by recurring press campaigns. In recent years these campaigns have excessively emphasised the periodic bulletins on skiing accidents, often accompanied by statistics drawn up without any criterion) e.g. by simply comparing the number of accidents occurring with the number of skiers registered in a given district, instead of, as should be the case, with the number of travels effected on individual ski lifts). But while we overlook the arguments and, in any event, confirm that the sport of skiing is certainly not at the top end of the statistics of the most dangerous disciplines, we cannot but appreciate the legislator's intention of containing accidents and the related social burdens, and, in any case, to put the matter into a certain order.

This European forum provides further proof of the interest aroused by the subject beyond our frontiers too. The forum aims not only to compare the legal regulations of different countries, but, as a collorary of this, to evaluate if it possible to give European skiing a uniform set of rules. This is an absolutely primary need in a high

mobility discipline, which sees an ever increasing mass of skiers travelling from one country to another.

Law 23 consists of 23 articles: a section is dedicated to the management of skiable areas and to the obligations and responsibilities of slope managers; another section dictates behaviour rules for skiers, with the relevant penalties, and disciplines responsibility in case of collisions; the last part deals with controls, the adaptation of regional regulations and financial coverage.

In the part in which it dictates the general principles, the law is a kind of 'outline law' and has the following peculiar characteristic: in certain points it intervenes on matters already regulated on a regional level, whereas the declaration of principles should precede and not follow the detailed regulations.[6]

Regions and provinces must adapt as necessary within six months (art. 22). So far, only a few have done so (the Lombardia region, and, marginally, the Trento Province).

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[6] The following are among the first regional and provincial regulations for skiing slopes:
Law of the Autonomous Province of Bolzano of 26.2.1981 No.6
Law of the Autonomous Province of Trento of 21.4.1987 No.7
Law of the Veneto Region of 6.3.1990, No.7
Law of the Friuli-Venezia Giulia Region of 24.3.1981, No.15
Law of the Lombardia Region of 23.4.1985, No.17
Law of the Val d'Aosta Region of 17.3.1992, No.9

IV.- Equipped skiable areas

In defining equipped skiable areas as "the snowy areas, including those covered with artificial snow, open to the public and including slopes, ski lifts and snow supply systems, habitually reserved for the practice of non-competitive snow sports" (skiing, snowboarding, cross-country skiing, sleighs and sleds, and any other sports to be identified by the regions), art. 2 sub-paragraph 1 of Law 363 does no more than repeat the definition, with different nuances, already present in the various regional regulations on skiing slopes. In particular, the public destination of these areas is confirmed. But the novelty is the inclusion within the skiable areas, of areas required for artificial snow coverage systems, which have become an essential complementary structure of the slopes.

The identification of these areas, assigned as in the past to the regions, in conformity with the procedures established by the regions, is equivalent to a declaration of public usefulness, of something that cannot be put off, and of urgency, and is the pre-condition for the compulsory setting up of the relevant slope easement (sub-paragraph 3). This declaration is highly significant, because it formally consecrates also the practice of snow sports as of public interest, in view of the importance they have by now achieved in the broad scenario of sporting activities. The explicit reference to the so-called "slope easement", of which the declaration of public usefulness is a pre-condition, also blows away any doubts advanced about the fact that these compulsory slope easement were also specified in the regional regulations. It was said that this was not within their competence, and would eventually affect the civil regimen compulsory service personnel subject to a numerical limit. However it could be objected that it was not a question of private but

public service personnel, which could be linked to the 'ablative' procedures in the broad sense of the term. Now there is no reason for this question to exist.

Law 363 very conveniently refers to the thorny matter of ski-snowboard coexistence, but only with reference to training sessions and acrobatics, specifying:

a) that, in areas with more than three slopes, served by at least three ski lifts, the municipalities should identify sections of the slope to be reserved for snowboard training sessions, imposing clear separation from other slopes by adequate protective means. The regulations also concern ski training sessions, something which should of course be appreciated, in view of the danger of mutual interference. We also consider it reasonable to assign the identification of such areas to the municipalities instead of to the managers of the slopes.

b) in areas with more than twenty slopes, served by at least 10 ski lifts, specific areas must be reserved for ski and snowboard acrobatics. The delimitation and protection obligations referred to in point a) also apply to these areas. It remains to be clarified if the numerical limit of slopes and systems refers to a single manager, or if it takes into consideration also areas interconnected to each other.

Also worthy of note, is the possibility to arrange for some slopes to be forbidden, also temporarily, for snowboarding (art. 2 sub-paragraph 2).

This limitation is assigned to regions when they identify the skiable areas, whereas it too should be reserved for the slope managers, who are able to evaluate, in relation to contingent situations, the advisability of permanently or even only temporarily, forbidding the use of specific slopes for snowboarding.

V.- Obligations and responsibilities of managers

Referring the subject to the report by lawyer Marisella Chevallard, I shall merely list the obligations, followed by some annotations.

Articles 3, 4, 5 and 6 of the law are dedicated to this subject.

The managers of the skiable areas must:

a) preventively stipulate a specific insurance contract for public liability;

b) ensure the rescue and transport of injured users along the slopes;

c) keep an analytical list of accidents, where possible indicating the relevant dynamics;

d) make the slopes safe as prescribed by the regions;

e) arrange for routine and extraordinary maintenance of the slopes, and to close them in case of danger or unfitness for use;

e) arrange the prescribed signals, and exhibit the classification of the slopes and the rules of conduct.

A provision in article 4 arouses some puzzlement:, since it expressly declares the principle whereby the manager of equipped skiable areas is legally liable for regularity and safety. The provision is in itself superfluous according to the general principles regarding responsibility: As this responsibility is a necessary consequence of the failure to observe the obligations imposed upon a subject, it could lead one to doubt that the legislator wished to introduce, if not quite a possibility of objective responsibility, at least a new figure of presumed responsibility, from which the manager could release himself by offering contrary evidence.

VI.- On the behaviour regulations for users

The most innovative part of the law is dedicated to this subject. Through the formal assimilation of the rules of conduct, this law has transformed them from meta-juridical regulations into true juridical regulations. This has reinforced the imperativeness and certainty of the relevant precepts, but the practical effects are almost insignificant. We have already said that, up to now, Italian jurisprudence has constantly and uniformly applied the FIS regulations. As a result of this, the transformation will exclusively affect the title of imputability of responsibility, i.e. the ascertained breach of a regulation of conduct, which is a cause or contributory cause of a civil or criminal offence, will no longer be considered as "generic" negligence, meaning a breach of the common rules of diligence, skilfulness and prudence (art.43 of the Italian Criminal Code), but "specific negligence". The consequences will not change very much as a result of this, with the exception that, in criminal law, where, in applying the sentence, the judge must, among other factors, also take into account the gravity of the negligence (art. 133).

Of much greater significance is the introduction, in ski traffic, of the presumption of equal responsibility in the event of a collision among skiers (art.19). This provision, borrowed from road traffic discipline (art.2054 of the Italian Civil Code), intends to remedy the evidential difficulties which are often encountered in the reconstruction of accidents.

While referring you to the communication of lawyer Marco Del Zotto, I will merely note that the guilty skier could well draw advantage from this presumption, but, at the

same time, the innocent skier who is unable to demonstrate the exclusive negligence of the antagonist could also draw advantage, if only partly.

On closer examination, the assimilation of the FIS rules of conduct, presents some gaps. For example, art. 9, which disciplines speed, fails to include, among the other parameters which measure its adequacy (slope characteristics, environmental situation, crowding, poor visibility, crossings), also technical skill, which is among the most decisive parameters. Furthermore, it is amazing that the rule (however obvious), which imposes on the skier about to enter the slope, to give right of way to those already skiing on the slope.

The prohibition to move along the slopes on foot (except where necessary, in which case one has to keep to the edge), is specified by art.15. The regulation referring to ascending the slope while wearing skis is ambiguous. Although this practice is generally forbidden (sub-paragraph 5), but is permitted in case of urgent need, the regulation specifies a departure (no mention of which cases it is applicable to) if authorised by the slope manager - so much for the principle of reliance for the other users, who may not know anything at all about the authorisation!

As regards the use of mechanical means (art.16) - the discipline of which seems badly placed among the behaviour rules of users - as these rules more readily concern the safety of the skiable area, the general prohibition of traffic is declared, with the exception of the means used for servicing and maintaining the slopes and, as a rule, not during opening hours, and always subject to the use of suitable light and sound signalling devices.

As regards the obligation to rescue (referred to in art. 14), we should point out an interesting novelty. While the obligation specified and sanctioned by art.593, sub-paragraph 2 of the Italian Civil Code remains applicable, and which imposes the duty to give the necessary assistance to an "injured person or one otherwise in danger", an identical duty was introduced also toward persons "in difficulty" (although neither injured nor in danger). This duty can be quoted in the event of the failure of a device which prevents continuing the descent, of a skier detached from the ski lift in an impassable zone a long way from the slope route, and if we wish, also in the case of an inexpert, imprudent skier who, as s/he faces an excessively difficult slope, is at a certain point in a sorry plight.

In my opinion, the regulation should be completed with the rigorous obligation to stop in case of a collision among skiers, similarly as specified for road traffic in art. 189 sub-paragraph 1. In fact, it may well happen that the collision neither causes any apparent damage, leading to the application of the obligation to rescue as specified in art.593 sub-paragraph 2 of the Italian Criminal Code, nor puts the actors in a difficult situation. But it is also true that often physical damages emerge later on, in which case it is almost impossible to trace the identity of the person responsible for the damage. The obligation to stop should obviously also include the exchange of personal data, if the police did not intervene in the rescue.

We were excepting the legislator to address a rather thorny phenomenon, a widespread one in certain areas, which is often the cause or contributory cause of serious accidents. I am referring to the immoderate use of alcoholic beverages, which notoriously dull reflexes, produce euphoria, and exalt exhibitionism. Hopefully, this omission will be remedied!

VII.- Penalties and controls

For the breach of various provisions, law 363 specifies solely administrative pecuniary penalties. For some offences, the penalty is fixed by the law, for others fixing is assigned to the regions, and is in the range from a minimum of € 20 to a maximum of € 250 (art. 18 sub-paragraph 2). The following are some of the most significant breaches of regulations on the safety of skiable areas:

- failure to stipulate the public liability insurance contract (from 20,000 to 200,.000 € - art. 4 sub-paragraph 2°)
- failure to activate the rescue and transport service for the injured persons (from 20,000 to 200,000 € - art. 2 sub-paragraph 3°)
- failure to exhibit the classification of the slopes, the signs and the rules of conduct (to be fixed by the Regions from a minimum of € 20 to a maximum of 250 € - art. 5 sub-paragraph 3 and 18 sub-paragraph 2)
- failure to close the slopes in case of danger or unfitness for use (from 5,000 to 50,000 € -art 7 sub-paragraph 4°).

The non-observance of all the rules of conduct, without distinction, is subjected to penalties, based on a quite debatable choice, as you will see when we address the controls.

We a re concerned with the provisions on speed (art 9), right of way (art. 10), overtaking (art. 11), crossing (art. 12),parking (art. 13), failure to rescue (art.14), use of the slope by pedestrians (art.15). For all the above, with the exception of articles 14 and 18, a pecuniary penalty is imposed from a minimum of € 20 to a maximum of

€250 is specified, to be fixed by the regions. This criterion is also open to criticism, as there could be different penalties for the same breaches in different regions. We can do no more than trust that a uniform line will be used when the regional laws are adapted.

An absolute novelty - in the field of personal protection measures - is the obligation for minors under 14 to wear a protective helmet when performing alpine skiing and snowboarding (art. 8). We cannot fail to welcome this regulation.

The true efficiency of all regulation systems, which specify a penalty for non-observance, is linked to the effectiveness of the controls.

In fact, adequate surveillance of all skiable areas is impossible - these areas are sometimes very large and are used every day by thousands of skiers - unless one uses a huge amount of control personnel, which would not be realistic. In this case, there would only be occasional contestations and few offences. Here is an example for all: if you look at a slope, at any time of the day, you would naturally see most of the skiers on the move, but many others are motionless, for a variety of reasons, and certainly not at the edge of the slope, as art.13 with its penalties would specify. What on earth could the controlling personnel do in this situation? Therefore, it would have been decidedly more reasonable and effective to select the most serious types of conduct, and only apply penalties to these, if necessary, making use of the American or Canadian model, i.e. immediate expulsion from the slope, which is more of a deterrent than a small pecuniary penalty.

Art. 21 assigns the control of the observance of the provisions and the linked power of contestation to the State Police, the State Forestry Corps, the Carabinieri, the Tax Police, and to the Local police corps. These are mainly bodies which also

provide the rescue service, which will inevitably affect the efficiency of the system. It goes without saying that the personnel must be good skiers.

Ski instructors have been assigned the right/duty to report (but not to contest) dangerous speeds only (art.21 sub-paragraph 2 in relation to art. 9 sub-paragraph 1). This choice, which is quite debatable, invites two types of comment: it can distract the instructor from his work and from the linked obligations to protect pupils and, furthermore, as this right/duty does not contain the power to contest an offence, it deprives the party involved of the right to immediate cross-questioning.

VIII.-. On off-slope skiing and ski-mountaineering

The two provisions on the subject in law 363 art. 17, invite us to make some brief comments on the subject.

As a premise, we should point out that off-slope skiing and ski-mountaineering have this in common: descent is on unprepared snowy surfaces, outside the skiable areas defined by art. 2. They differ in the following respects: in ski-mountaineering, climbing up slopes is done on skis, and, if necessary, using technical instruments, such as seal skins, and crampons, cords, etc, whereas in generic off-slope skiing, skiers use ski lifts.

This premise gives rise coherently to the principle, affirmed in sub-paragraph 1, whereby concessionaires and managers of ski lifts " are not responsible for accidents which may occur on off-slope routes served by the said systems. Unless, we are duty bound to add, the off-slope is part of an offer appropriately advertised by the manager, as happens in some stations.

The introduction in ski-mountaineering - rather improvised, since it is located in an unsuitable “*sedes materiae*" - is the compulsory use of appropriate electronic systems to guarantee suitable rescue. This use is, among other things, prescribed only when "evident risks of avalanches exist", and this limitation is clearly absurd, in addition to being of scarce educational value, because evident risk keeps the ski-mountaineer well away, whereas the risk is greater when it is not evident!

IX.- Schools and ski instructors

The professional figure of ski instructor - duly considered by the Consolidated Text of the Public Safety Laws on equal terms with the alpine guide (an activity which art.124 included among "itinerant trades"), it too also formerly subject to a public safety licence (abolished in the meantime), has its juridical definition and its discipline in the law of 8 March 1991, No. 81. This is an outline law, which has dictated the fundamental principles to be assimilated by individual regional regulations. Furthermore, as in the case of the slope regulations, the Regions had already passed laws on the subject, well and some time ago, and, therefore, they had to limit themselves to an operation of merely adapting the relevant regulations.

By dutifully taking into consideration the technical evolution of skiing, the law concerns the teaching of skiing techniques in all their specialisations, performed with any type of appliance.

Professional performance does not have to be either continuous or exclusive.

The clear prevalence of the teaching aspect in the work of ski instructors, qualifies the activity as an intellectual profession. The exercise of the profession is subject to registration in a regional list and to demonstrated possession of a specific technical-teaching-cultural (art.6) qualification. This qualification is obtained after attending specific courses (which include skiing techniques, teaching, dangers of the mountains, topographic orienting, the mountain environment, knowledge of the regional territory within the instructor's competence, knowledge of medicine and first

aid, the rights, duties and responsibilities of the category, professional laws and regulations) and the passing of a specific examination. As can be seen, the technical-cultural mix is very broad, and is inspired by the re-evaluation and improvement of the category' s professionalism.

On an organisational level, the law has established the regional colleges (bodies of self-discipline and self-government), and the national college, which drafts the professional ethical regulations, operates as an appeal disciplinary body, and co-ordinates the activity of the regional colleges.

As it is a protected profession, its abusive practice is subject to criminal sanctions (art.18 expressly refers to art 348 of the Italian Criminal Code); for these purposes, professional teaching was considered equivalent to "paid accompaniment of customers".

The discipline concerning teaching by foreign ski instructors is rather tortuous. It is made up of both state and regional competencies. Art. 12 sub-paragraph 1 assigns to regions the regulations regarding non-occasional work by instructors not registered in regional lists. These should refer to instructors from other countries or to EU instructors who are not obliged to register for temporary work. In such cases, the foreign instructors should apply for citizenship in Italy or in another country within the European Economic Community (now the European Union).

The exercise of the profession is subject to the recognition of the equivalence and reciprocity of the titles. The recognition assigned to the winter sports federation, in agreement with the national college of instructors. Furthermore, the provision should be considered applicable solely to the instructors of other countries, because, as regards EU instructors, reference should be made to law decree No. 319 of 2.5.1994

(which was passed after law No.91) implementing Directive 92/51 of the Council dated 18.6.1992, concerning a second general system of recognition of professional education/training. The occasional exercise of the activity of instructor, (on average not more than 15 days - including non consecutive days - in the same season, which limit is in some cases reduced to 8 days or increased to 30 if it occurs in a skiing school) requires, as an alternative, the approval of the regional college or a simple preventive communication.

As regards skiing schools, whose discipline is left to the full discretion of the regions, the outline law restricts itself to declaring the following principles:

each school should tend to include all the instructors working in the same season;

the concentration of existing schools should be favoured, in order to rationalise their activity;

the internal discipline of the schools must be inspired by the democratic criterion whereby the instructors participate in management and organisation.

The doctrine and jurisprudence are substantially in agreement as concerns the subject of responsibility linked to the exercise of the ski instructor's activity, which responsibility is unquestionably contained in a contractual context.[1]

The relationship tying the instructor to the pupil can be linked to the paradigm of the intellectual work contract. While the instructor is obliged to teach the skiing technique according to the standards typical of that discipline and with the average diligence called for by the profession, on the other hand, the pupil is obliged to co-operate with the instructor, by observing the instructions taught by the instructor, and by paying

[1] See. Cass. Sectn. III, 21.12.1978, No. 6141; Cass. 5.12.1985, No. Cass.24.1.1977, No.346. On the contribution between contractual and extra-contractual responsibility in the specific field, see Cass. 17.3.1981, 1544.

the due fee.

The performance that the instructor is held to provide, totally leaves the result (the obligation of the means is typical, i.e. adequate professional behaviour) out of consideration, as the successful outcome depends not only on the instructor's technical-teaching-demonstrative capacity, but

In addition to the primary obligation deriving from the contract (to provide technical teaching), there is another, no less important obligation, to survey the conduct of the pupil, in order to guarantee his/her safety and that of others, during the period when the pupil is entrusted to the instructor. It can of course be said that the contract truly assigns the pupil's physical person to the instructor, which translates into an obligation to protect and survey, the extent of which is in inverse proportion to technical ability and age. This is a concurrent duty which springs from the principle, whereby ordinary diligence must be used in the fulfilment of every obligation (art. 1176 of the Italian Civil Code).

The applicability to ski teaching of the presumption of responsibility dictated by art.2048 of the Italian Civil Code is quite clear, concerning damage caused by the pupil to third parties. The "preceptor" is burdened with this responsibility, without prejudice to the possibility of releasing himself from this presumption by demonstrating that he could not have been able to prevent the fact or that he had done everything to prevent it.[2]

For a summary of jurisprudence on the responsibility of ski instructors and schools, I draw upon the research I presented in 1996, as part of a convention organised by the Courmayeur Foundation.

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[1] Patti- Insegnamento dello sport e responsabilità civile in Resp. Civ. 1992, pag. 509; Pret . Cavalese, 7.5.1981.

BLIOGRAPHIC SUMMARY

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