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Switzerland: Snow Sports Law

Snow sports are fun, they provide recreational activities and they are good for our health. But unfortunately accidents happen. In Switzerland the number of snow sport accidents amounts to 45,400 skiers and 25,800 snowboarders, that equals 71,200 users of skiable areas (the average figure for the last five years). The situation in other Alpine countries where snow sports are practised will not be much different. So, what can we do?

Italy brought in the law “Safety on snow slopes” on 24th December 2003. This law mainly deals with the obligations for the management of equipped skiable areas and the rules of conduct for skiers and snowboarders. This is why my report will deal with these two subjects for which in Switzerland we do not have a law; we only have directives and regulations approved by our Federal Supreme Court.

I will start with four areas which are governed in Switzerland by laws and ordinances from the Swiss Confederation and the cantons. These four areas are:

- Land- use planning
- Uphill transportation facilities
- Snow machines
- Snow sports instructors

Land- use planning

When people first began skiing – I started in 1936 – there was no talk of snow laws. Everyone was free to practise this sport wherever they chose in the countryside. Article 699 of the Swiss Civil Code stated and still states, “*Rights of access to forests, woods and pastureland are granted to everyone. “ The “prohibitory measures that the competent authority may issue are reserved, with regard to certain properties, in the interest of the crops. “*

But now times have changed. The way in which snow sports are practised nowadays means that they require uphill transportation facilities, equipped slopes that have been groomed by snow machines,

restaurants etc. This can not be done on just any piece of land, such as land owned by a farmer, an agricultural cooperative or a municipality. The situation therefore requires regulations.

Switzerland has instituted a **federal law regarding land-use planning**. This law obliges the Swiss Confederation, cantons and municipalities to ensure that the land is used carefully. To this end the cantons and municipalities must draw up utilisation plans that define the areas that may be used for building and agriculture and the areas which are protected. Cantonal law may also provide for areas that have other uses such as areas for snow sports. In such an area uphill transportation facilities and restaurants may be built and the slopes may be prepared and groomed with snow machines; basically everything which is currently required by the snow sports industry.

On the basis of this law and of Art. 699 of the Civil Code, protected areas for wildlife may still be set aside.

Uphill transportation facilities

There are numerous laws and ordinances in Switzerland that govern uphill transportation facilities. Everything is governed by the Swiss Confederation e.g. concessionary companies for cableways and funicular railways, and their construction, business and control etc. We are currently drawing up a new law for cableways and funicular railways which should be simpler than those that we have at the moment. From a technical standpoint this law will be compatible with the European standards for cableways.

Liability connected with uphill transportation facilities is governed by the federal law regarding the liability of railway track and steamship companies and the Swiss Postal system. Art. 1 states: *“If a person is killed or injured during the construction or business of a railway track or during accessory work which is subject to inherent dangers of the railway business, the railway track company shall answer to the consequent damages unless the said company can prove that the injury was caused by circumstances beyond its control or by the fault of third parties or by the fault of the person who was killed or injured.”* So it therefore involves very rigorous strict liability. The injured party does not have to prove the fault of the management, only his injury and that the injury was caused by an uphill transportation facility.

With regard to ski lifts, the owner's liability is implicated. Art. 58 of the Code of Obligations states, "*The owner of a building or other work is bound to compensate the damages caused by construction faults or defective maintenance.*" This also exclusively involves strict liability.

Snow machines

Snow machines are motorised vehicles and are therefore subject to the federal law regarding highway traffic and to numerous ordinances.

Liability is governed by Art. 58 as follows, "*If death or bodily harm or even material damage is caused with a motorised vehicle that is in service, the owner is civilly liable for the damages.*" This is also considered as strict liability and rigorously applied as in the case of the railways.

Snow sports instructors

Snow sports instructors receive their general training and specialised training from Swiss Snowsports, a federation that unifies all snow sports instructors and schools. The instructors receive their licence from Swiss Snowsports.

In some of the cantons in Switzerland such as Grisons (with well-known skiable areas such as Davos and St. Moritz) or Valais (Zermatt, Saas Fee) the teaching of snow sports is governed by law, in other cantons such as Berne (Wengen, Mürren) it is not. This means that in some cantons not only are instructors required by law to have a licence but where and how they give instruction and how they conduct themselves is also governed by law. This is an unsatisfactory situation and we would much prefer having a unitary solution. In my opinion the conditions regarding snow sports lessons should be the same throughout the whole of Switzerland.

But the problem is much more serious. Instructors receive excellent education in all the Alpine countries (Italy, Austria, France, Germany and Switzerland). But instructors from individual countries do not have the chance to teach clients in other countries, they may only teach in the country in which they received their licences. Why don't

we find a solution so that Alpine countries recognise licences from other countries in the Alpine range? I know that the International Federation is trying to find a solution, let us hope that they will succeed.

But the problem regarding free travel still remains. Soon instructors who are not from the Alpine range will be able to teach clients with or without a licence. So how can we find a solution to this problem? Well, we definitely will not find the answer in the “Safety on snow slopes“ law.

Under Swiss law the contract between a snow sports instructor and the client is a commission. As the commissioned party the instructor is responsible for carrying out the work that he has been commissioned to do for the principal faithfully and diligently (Art. 298 of the Code of Obligations). This means that the snow sports instructor must:

- give quality lessons which are suited to the client’s capabilities;
- have equipment and materials which are suited to the sport [and he must check that the clients are also suitably equipped];
- safeguard the clients from danger, above all from the dangers which are related to the mountains;
- not only teach the clients to be good skiers and snowboarders, but he must also teach them to be good sportspersons who are fully aware of the FIS rules and the SKUS directives so that they know how to behave correctly on the slopes;
- exemplify the ideal skier or snowboarder.

The instructor is governed by strict liability as a professional to provide the perfect service.

The management’s civil liability – Their duty to ensure the public’s safety on snow sport slopes

Switzerland – unlike Italy – does not have a law that obliges the management to ensure the public's safety on the slopes. Nevertheless the Swiss Commission for the Prevention of Accidents on Snow Sport Runs (SKUS) had already begun in 1969 to issue directives for the planning, management and maintenance of snow sport slopes. Today

the 2002 edition of these directives is in force [Internet: http://shop.bfu.ch/pdf/779_42.pdf]. The content can be summarised as follows:

The personal responsibility of users of snow sport runs: Users must adapt the way in which they practise the sport to their ability, and to the general conditions of the slope, visibility and snow.

The division of snow sport runs: snow sport runs are organised into **pistes** and **itineraries**. The pistes and the itineraries are marked and protected against the dangers which are associated with the mountains. Furthermore, pistes are marked in accordance with their relative degree of difficulty. The pistes are prepared, groomed and controlled. – The area beyond the pistes and the itineraries is considered a **non-controlled area**.

Correct use of the runs: The runs are supposed to be used by skiers and snowboarders. They are not supposed to be used by sledders, cross-country skiers, “bikers”, walkers, dogs etc.

Opening hours for the runs: The opening hours for the runs corresponds with the opening hours for the cable cars. The company which is responsible for the safety of the runs should carry out any maintenance work and above all groom the runs outside opening hours. The runs are therefore closed whilst these activities are going on.

Marking the runs: The runs are marked according to their degree of difficulty; easy runs are blue, runs of medium difficulty are red and difficult runs are black. The runs must be marked centrally or at both sides.

The sides of the runs: When runs are marked on both sides, the markings indicate the sides of the run. The runs are therefore laterally defined. The edge of the run is not differentiated when the run is centrally marked. The sides of the run are defined by the grooming done by machines or by the lie of the land. In the event that obstacles threaten the users’ safety or if there is a danger of falling objects then the sides of the run need to be well defined and an area of at least two metres width beyond the sides of the run also needs to be prepared. Creating space for possible landslides is not necessary.

Safety measures against artificial or natural obstacles: Any obstacles on the runs that the users can not see, despite their vigilance, should be removed or warning signs should be installed if the obstacle can not be removed.

The use of snow machines: Whenever possible snow machines should be used outside the cable car facilities' opening hours. In the event that snow machines are in use during said opening hours then appropriate safety measures must be taken on stretches which are narrow or have poor visibility. Snow machines equipped with winches and frontal tillers represent a high risk to slope users and therefore should only be used outside the opening hours of the cable car facilities or on slopes and runs which are closed to the public.

Safety measures in the event of avalanche danger: Slopes which are likely to be subject to avalanches should be closed to the public immediately. No entry should be displayed on the information signs on marked slopes. No-entry signs should be used to warn skiers and snowboarders that a slope has been closed.

The No. 8 (danger of avalanches in uncontrolled areas) warning sign must be displayed at every mountain station in order to warn users who are skiing or snowboarding outside of the marked runs in the uncontrolled areas. Flashing avalanche lights can be used to improve the warning system.

Freeride Checkpoints are very important. They remind the user that he is practising his sport entirely at his own peril on slopes which are unmarked and which have not been secured i.e. uncontrolled areas.

Protective measures against rock falls etc.: Sheer rock faces, precipices and steep transversal routes etc. must be clearly signed. Furthermore slope users should be protected against the danger of rock falls etc with solid railings, protective nets or other devices of this nature in the event that the slopes, itineraries and signage have not been designed to avoid these dangers.

Slope and rescue services: The transport companies have safety procedures and use slope and rescue services. The slope and rescue services prepare and control the slopes; they are also responsible for slope maintenance. They will also administer first aid and evacuate injured users from the runs and the itineraries.

Information signs: The information signs must be positioned at the start stations and at every main station in the snow sports area. These signs must include a map of the area, indicating the cable car facilities, the sled slopes and runs and warn of any avalanche dangers, protected wildlife areas (established by the municipality or by the canton) and general information (the rescue services only supervise and control the runs which are marked and open).

SKUS – for which I have been working for 36 years – is very proud of these directives which have been approved by our Federal Supreme Court (FCR No. 117 IV 417) as the standard of diligence required for the planning, management and maintenance snow sports slopes.

For the skiers and snowboarders who do not have the possibility to read all the directives' provisions (24 pages), SKUS has prepared a small booklet entitled "Guidelines for skiers and snowboarders" [Internet: http://shop.bfu.ch/pdf/136_42.pdf], where they can find everything that they need to know about practising snow sports, namely the FIS rules and the services provided by companies in accordance with the SKUS directives.

Rules of conduct for skiers and snowboarders – FIS Rules

If a number of people are practising the same activity there is a risk of collision, this applies to sport as it does to the roads. Our Federal Court already had to rule on collisions between skiers in 1954 and in 1956. The situation in neighbouring countries was the same and the decisive question for judges was always: What constitutes negligence and what constitutes recklessness on ski slopes? Art. 41 of the Code of Obligations states, "*Whoever illicitly causes damage to others intentionally or due to negligence or recklessness is required to make amends for said damage.*" Usually the parties involved in a collision claimed that their conduct was not negligent or reckless but correct according to the rules of the sport. But which were the rules of the sport?

In 1967 the Legal and Safety Committee of the International Ski Federation (FIS) drew up ten rules of conduct for skiers [Internet: [_](#)]. These rules were not invented on the spur of the moment; they actually represent the result of case law experience in Alpine countries (Austria, France, Germany, Italy and Switzerland) and the vast knowledge of FIS skiing experts. The committee was convinced

that these rules were clear, easy to understand and perfectly suited to the sport. So at the FIS Conference in 1967 the Federation established these rules not only for its members but also for everyone who practises skiing in order to avoid collisions on snow sport runs. The rules dictate the standards of caution required on said runs.

As you know these rules date back nearly forty years. The rules were slightly amended for the first time in 1990 and once again in 2002. They now apply to snowboarders as well as skiers.

In order to help people remember the FIS rules, the Swiss Commission for the Prevention of Accidents on Snow Sport Runs (SKUS) has prepared the following brief reminder:

Fundamental rule

1. Do not endanger or prejudice others.

Rules for skiing and snowboarding

2. Move in control. Adapt your speed and manner of skiing or snowboarding to your ability and to the conditions of the slopes and the weather.
3. Do not impede the route of skiers and snowboarders ahead.
4. Leave plenty of room when overtaking.
5. Look up the slopes before starting off or moving upwards.

Stopping/climbing

6. Only stop at the edge of the piste or where you can be easily seen.
7. When climbing up or down keep to the side of the piste.

Signs

8. Respect all markings and signs.

In the event of an accident:

9. Provide help and alert the rescue services.
10. Everyone who is involved in or witnesses an accident must exchange names and addresses.

For the Swiss judicial system the ten FIS rules now represent the standards of caution required on snow sport runs. This is how our Federal Court ruled back in 1991, and since then the application of these rules is common jurisprudential practice.

So therefore it is now clear what constitutes negligence or

recklessness on snow sport runs. A person who conforms to the FIS rules whilst practising this sport is not negligent or reckless, but anybody who violates the FIS rules is guilty of negligence or recklessness.

The SKUS has added the following five rules for snowboarders to the existing FIS rules [Internet: http://shop.bfu.ch/pdf/136_42.pdf]:

1. The front leg must be attached to the board with a safety leash.
2. Remove your back leg from the binding when travelling on ski- and chairlifts.
3. Before changing direction and especially before a heel turn/backside turn look behind to check the available space.
4. When not in use, the snowboard must be placed face down on the snow.
5. Do not remove the snowboard whilst on glaciers due to the danger of crevasses.

As yet the Federal Court has not had the opportunity to affirm that these rules have the same legal standing as the FIS rules.

Liability of the management – Liability of sportspersons (FCR No. 130 III 193)

In its ruling of 23rd December 2003 (FCR No. 130 III 193) our Federal Court clearly set out the reciprocal liabilities of management and sportspersons as follows:

The obligation to ensure safe circulation on snow sport runs rules that the users shall be protected against dangers which are not immediately recognisable (hazardous) and against dangers which are unavoidable even if the sportsperson has taken the necessary precautions. The limits of the obligation are represented by proportionality: for their part the management must do whatever necessary and in any way possible whilst sportspersons must recognise their personal liability, that is to say that the dangers connected with the sport are assumed at their peril and that they

must conduct themselves in accordance with the FIS rules; they must adapt their speed and manner of skiing or snowboarding to the conditions of the slopes and the weather and respect the markings and the signs.

The following adage optimally summarises the principles that we have set down in SKUS and FIS rules: “Strict liability exists for the managers of skiable areas but this liability is limited to the personal liability of the sportspersons“.

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