

**1st EUROPEAN LAW FORUM ON WINTER SPORTS**

**Gerhard DAMBECK lawyer**

# **EUROPEAN LEGAL SNOW FORUM**

## **Introduction to the State of the Law, the Literature and the Venue in Germany**

German law does not prevalently consist of special legal provisions for winter sports and skiing, on the contrary: the German venue still works with state and federal laws formed in an abstract manner, that can be applied to all possible circumstances and, therefore, also to legal questions concerning snow sports.

The most important legal provisions are found in the Bürgerliche Gesetzbuch (BGB – the civil code), regarding civil rights for compensation of physical and moral damages, and the Strafgesetzbuch (StGB – the criminal code) regarding the application of criminal law, especially in cases of personal injuries and death (culpable).

In addition to the definitions of constitutional and administrative law, the guidelines issued by the European Union, which have been transformed to provisions of national law, are also applied.

Naturally, Germany also produces a considerable amount of provisions at the level of regulatory systems: an interesting reference to this can be found in Bavaria, where, effectively, some provisions and legal rules exist that specifically regard winter sports. On this subject, it is clear that Bavaria, characterised by many mountain regions, is the primary region for winter sports in Germany.

### **I. The Structure of the Ski Slopes**

In Germany, private property of ground and lands, and their protection, carries an important role. It cannot be taken for granted that snow sports can be practiced on all foreign territories, all the same, in our constitution the relative social constraint of the property is bound to the protection of the property <1>: this has led to the development of an ample regulatory section to regulate the tense relationship currently present between the exploitation of the landscape and its protection. The provisions appointed for protection of the natural environment at federal level (Frame Directive <2>) and state level (Implementation Provisions <3>) regulate the right to accede and exploit the

landscape for relaxation purposes <4>, but also the obligation, in this case, to make the maximum effort to help interventions in favour of nature conservation. Consequently, not only the legal requirements defined on a European level are considered, but, during an audit on ecology held by the Deutsche Skiverbands (DSV) (German Ski Federation), these principles have been scientifically updated and today constitute competent criteria for the planning of skiing areas and for extensions of permits, at the time of expiry, for the operation of snowmaking systems.

All the same, for ski slope installations it is impossible only to consider nature's tolerability, as the paying guest is also due the following:

- Cableway installations with low waiting time, rapid transport and variable opening of the skiing areas.
- Ski slopes with various grades of difficulty, identified from blue to black, differentiated courses for skiers, snowboarders, etc., but also alternative structures within the area of the ski slopes (e.g. a fun park) and outside of it (variant area)
- Ski slopes continuously maintained for the best result and as free as possible from any danger.

To create all of these requirements is not yet always possible in German skiing areas that are often limited in terms of space. Despite this, the ski slope operators must never compromise, above all in questions of safety.

## **The obligation of safety on the ski slopes**

The operator's obligation to ensure safety on the ski slopes derives from the fact that, in certain areas of the territory, they offer the possibility of practicing sport on the snow against payment of compensation in the form of money: consequently, he is responsible for his client and must therefore guarantee to them that they will not be exposed to dangers that they are not able to face. The obligations of the operator include two areas: the ski slopes and the skiing itineraries <5>.

Firstly, there is an obligation to guarantee safety on the ski slopes, which is not limited to the area of the ski slope within the marked border, on which most accidents occur, but also includes a marginal area of approx. two metres. Consequently, the expectation of guarantee of the user of the ski

slope in terms of safety must extend to this point, in such a way as to still be acceptable on an economical level for the ski slope operator. Therefore, the total area to be insured includes ski slopes, ski slope margins and skiing itineraries and is suitably re-elaborated by the definition of the **organized skiing area**.

The objective of the obligation to guarantee safety on the ski slopes is pursued in three moments:

- **ex ante:**  
During planning of the ski slope attention must be paid to ensure that the skiing areas are disposed in such a way that, normally, there can be no threat from mountain dangers (e.g. avalanches, falling masses) and that the course is not already dangerous, despite the relative grade of difficulty.
- **in concreto:**  
For effective operation of the ski slopes, the operator is obligated to create all acceptable organisational and individual presuppositions in order to recognise, eliminate or minimise real situations of arising danger that may occur.

At this point, an area of conflict arises between the skier's right to the guarantee of safety on the ski slopes and his obligation of personal responsibility:

1. The demand to use safe ski slopes is created with the stipulation of the contract related to transport to the station above. In this way, the skier also acquires the right (accessory) to be able to descend to the station below in safety and without putting his physical safety or his life in danger.

The compensation of physical and moral damages due to personal injuries incurred following to violation of the obligation to guarantee safety on the ski slopes cannot, in any way be demanded through contractual claims, but only with the help of the principles of criminal claims deriving from an action not permitted (culpable) <6>. The evidence must be produced by the injured party.

The legal forms of the crime of personal injuries (culpable) or of death correspond to the institution of civil right of the action not permitted <7>.

2. However, the demand for the guarantee of safety on the ski slopes is not unlimited: considering that a skier practices a sport in the open, the

condition of the ski slope at the time in which the skier is on it must conform to the grade of difficulty indicated. He must then successfully pass the challenges found on the ski slope with the means available to him (above all, in full respect of the FIS provisions 2 and 8) <8>, which represent the criterion of accuracy used to evaluate whether it is the ski slope operator or the skier himself that is responsible for the damage suffered.

3. The ski slope operator's obligation to guarantee safety on the ski slopes begins where the area of responsibility of the skier ends, therefore also in cases of sources of danger that cannot be considered typical of ski slopes or skiing, but are **atypical**. In this case, they are dangers that a skier, despite his responsible behaviour, is unable to avoid as the danger is neither recognisable nor foreseeable and therefore becomes a **trap** for him. Regarding the elimination of such dangers, the skier is conceded a corresponding expectation of trust (**trust on the ski slopes**).

- **ex post:**

Every year numerous cases caused by specific transgression of the obligation to guarantee safety on the ski slopes are pending in our courts and the activity of public ministers. The reasons for the requests for compensation for damages at a civil or criminal level are cases of personal injuries or culpable death. Consequently, the question frequently asked is whether safety measures were purposely not respected or if the same victim of the accident infringed the principle of personal responsibility.

Unfortunately, some German courts have highlighted the tendency, when examining certain accidents, of referring much more to the responsibility of the ski slope operator than to that of the skier. It has frequently been ascertained that blame has been attributed, mainly or completely, to the obligation of guaranteeing safety on the ski slopes in a way that is not objectively adequate.

It is evident that these courts, confronted with the fate of a single individual, are guided more by social emotion than by the neutral evaluation of the facts because the operator or his insurers dispose of a higher economic capacity. The support of this reasoning is counterproductive in the face of personal responsibility, which is not well developed in our society.

## **II. Transport Systems**

### **Construction and Operation**

In this case, mainly cable railways for the transport of passengers (funicular railways, cable railways, aerial cableways, chairlifts and ski lifts). Their **construction** is carried out considering two important points of view: respect for the environment and the guarantee of safety for the passengers. To be specific, for that related to safety requirements, in the meantime the legal standard in Germany has been made uniform: the EU Directive dated 20th March 2003 <9> that regulates the operation of cable railways for the transport of passengers has been transformed into a national law <10> and the unified CEN provisions have been integrated into the German system of provisions.

### **Management and Control**

Effective operation of these systems is also carried out in conformance with national provisions on the subject: also in this case, the mountain Laender (federal state) of Bavaria has issued provisions <11>, which, partly integrating the EU regulations currently in force, represent the criteria for the guarantee of safety in the construction and operation of cable railways and ski lifts. These are applied to the whole of the German territory and the same applies for a provision that regulates the operation of conveyor belts in fashion for some time <12> (and that are not covered by the EU directive mentioned).

### **Questions of civil responsibility**

The legal foundations at the basis of the requests for compensation of damages presented against the cable railway operators are not unequivocal in Germany: with the exception of ski lifts and conveyor belts, all means of transport (as for, for example, trains) are covered by the law for responsibility <13> and are subject to responsibility for blame that is independent from the cause. The operators of ski lift or conveyor belt installations, on the contrary, are only considered responsible in the event that their bad management of the installation or negligence can be demonstrated <14>.

### **Suggestions from the DSV for skiers that use chairlifts and ski lifts.**

Many accidents could be avoided by skiers and snowboarders: in order to promote a responsible mentality that limits the number of accidents on the ski slopes, the Deutsche Skiverband (German Ski Federation) has prepared some practical DSV recommendations that have just been published in the new version and can be read in the attached brochure.

### III. Traffic on the snow

For this “unlimited” dimension, the only discussion that can be considered interesting refers to the **Ski slopes and relative marginal areas**, as it clearly evidences the interaction between responsible use of the ski slope and the obligation to guarantee safety on it.

#### Equipment for Sliding on the Snow

To begin with, the following question must be answered: what equipment is required in order to be able to use a ski slope in conformance with that defined in the interpretation of German law? The reply involves the consideration of two meanings.

First of all, it is indispensable to consider the interest of the users of the ski slope in their own safety on it; they must be able to rely on general conditions of reliability that are all noted as binding: they are the **10 rules of behaviour established by FIS for skiers and snowboarders**. If these rules are respected, accidents caused by collision, and those caused by the user of the ski slope even without the involvement of third parties, can be avoided. For this reason, in order to comply with the interpretation of German law, all users of the ski slopes must objectively be able to conform to that foreseen in the 10 FIS rules mentioned above.

This leads, inevitably, to the second implication in the reply to the previously posed question: it is only possible to respect the FIS rules, if the behaviour conforms to the rules on a technical level. The rules that regulate movement (FIS rules 2 and 5) presume that the equipment used to practice a sport on snow can be controlled and stopped in a reliable manner. This guarantee is only present if there is an adequate mechanical condition (edges), therefore in the presence of skis, snowboards, snowbikes and any piece of equipment designed for practicing the sport of sliding on snow that can be controlled in a similar manner. This means that other types of equipment used for sliding on snow, such as snowtubes (rubber tires used as sledges), etc., remain excluded, as they are considered “unsuitable for ski slopes”.

#### Sleighs and Sledges

For the above-mentioned equipment it is possible, by applying the previously defined criteria, to underline a small problem: they are not without any form of control like a snowtube, however, according to their respective conformation, they may have a degree of control more or less similar to that of a pair of skis or a snowboard.

The legal venue and the literature produced in Germany have not yet managed to find a safe relationship with this type of sporting equipment and the idea that the FIS rules should also be applicable to sledges is constantly re-presented. Despite this, the fact remains that sleighs and sledges are not covered by **the effective field of validity of the FIS rules**. In addition, the relative FIS rules (here 2 – 4) must be conformed with in the event that determined operations must be carried out accurately, above all proceeding visibly, at a suitable speed and with respect for the other skiers below.

## **Areas of Validity of the FIS Rules**

### **Individual Validity**

The only attribute required is the practice of mountain sports: the responsibility of skiers or snowboarders is mirrored in the expectations of the other users of the ski slope with respect to the FIS rules and is requested of every skier, whether young or old, an expert or a beginner, by themselves or in a group (for example during skiing lessons). In particular, there are no privileges for skiers that are particularly able or for those that are not.

### **Open Choice of Ski Slope**

Consequently, every skier or snowboarder has the right to freely choose the preferred ski slope for his descent and cannot be accused in any way if, in this manner, he becomes an obstacle for other people. Only at the time in which the same skier or snowboarder is no longer able to respect the FIS rules due to having overestimated his ability, and damages another individual, can he be blamed.

### **Handicapped Users**

As for skiers whose ability is scarce or are beginners, there are no exceptions for handicapped users. Certainly, any handicapped person can participate in skiing activities on the slopes despite the type and grade of handicap that he may suffer from, but other skiers must be certain that their safety will not be at risk and they will not be damaged (FIS rule 1). If the handicapped person uses the slope independently, he also has some individual responsibilities; whereas if he is wholly entrusted to the custody and help of an assistant, the latter must assume full responsibility both for the handicapped person and for himself. In the case of handicapped adults, it is possible that they may be partially able to act responsibly and in the event of an accident that questions who should be held responsible for the transgression of FIS rules, this causes problems in the definition as a legal presumption exists according to which damage caused by a person needing assistance has been provoked by

wrongful violation of a custody obligation. However, the assistant may produce valid justification to prove that they are not to blame <15>.

### **Parents and Other Guardians**

The assistance that parents and guardians are obligated to give to a child also includes teaching them to respect the FIS rules or entrusting them to another person's custody (e.g. a ski instructor). Also in this case, the general principle applied is that the adult assumes full responsibility for the child's behaviour, at least for as long as the child, due to age or scarce ability to comprehend, is unable to act responsibly <16>.

### **Training and Competitions**

The courses for training and competitions in reality form "protected areas", within which every single participant can push themselves to the limit of their ability, or even exceed it. Fundamentally, they must be able to rely on the fact that nobody else will be encountered during their descent whilst training or competing and therefore the FIS rules have no significant role for them; all the same, if another person finds himself on the same slope, they must, despite all their individual rights, account for their own personal safety. Obviously, this also applies during a competition, when trying to win or establish the best time: in this case, the participant must slow down or stop in the event that he risks hurting a competitor who has fallen and has been unable to leave the slope in time before he arrived <17>. The possibility to repeat the competition is of little consolation.

### **Effective Validity**

The new edition of the 10 FIS rules, published in 2002, imposes that, in addition to skiers, snowboarders must also abide by the same rules; all the same, this area of validity has not yet been described explicitly. The following is the abstract definition:

the FIS rules apply to all types of sporting equipment that, for their respective sliding properties and in the context of their respective use along slopes for sliding using the force of gravity, allow a descent comparable to that of a skier.

### **Validity Regarding Occupation of Space**

This area of validity does not just include the organised ski area, but also the area where skiers proceed on foot and where another skier can arrive suddenly. Consequently, it is necessary to bear in mind that there are often many skiers and snowboarders in the deep snow or freeriding areas, just like on the slopes. Whoever enters such areas must be fully aware that they are moving in an area where no rights are in force.

## Fun parks

These special areas equipped with artificial obstacles and halfpipes are often integrated into the normal ski slope: here skiers and snowboarders can try out and practice special movements, undisturbed and above all with the certainty that they won't hurt themselves. The use of fun parks is consequently characterised by two phenomena: first of all, it is possible to descend and make risky jumps and secondly, training often proceeds with an up and down rhythm due to the greater or lesser loss of control after a fall or failed landing.

Respect of the law begins with the premise that the FIS rules also apply to users of fun parks even though it is evident that, in this case, there is much tension between the FIS rules 2 and 6. In addition, rule 5 has a particular importance in this area: even if the fun park is integrated into the ski slope area, it is still a special area as marked differences in "typical skiing behaviour" exist when within the course and when outside of it.

At this point the obligation to guarantee safety returns, having to ensure that only those who wish to can enter the fun park: access to the area by any other person must be prevented, whether the entrance is voluntary or casual. This means that the entrance of the course and its borders must be well marked and that, if required, mechanical barriers must be positioned to prevent access to the confined areas or the same downhill slope.

## Excursionists on the Ski Slopes

In the last few years, the trend of excursionists climbing the ski slopes has also been seen in Germany: this practice is not forbidden in our country, all the same it is only allowed if carried out in accordance with a series of recommended general conditions <sup><18></sup>.

On a legal level, the following points must be remembered:

- Whilst the **ski slopes are open** skiing is the dominant activity: normal users of the ski slope (skiers) must account for the possibility that, at any time, they may find a climber on foot on the slope before them. They must be urged to respect the FIS rule 7 and proceed in a line at the side of the slope. If it is necessary to cross the ski slope due to ground conditions, the excursionists must act in conformance with FIS rule 6 and avoid areas that are narrow or have poor visibility. In addition, in this case they must proceed at a distance between one another that is sufficient to allow the descending skier to pass between them, safely avoiding them.

- Once the **ski slope is closed**, the obligation to guarantee safety on the slopes terminates and, usually, maintenance work begins. This is also the time in which, after the closure of the installations, numerous excursionists climb the slopes that sooner or later they will have to come back down on: their lives are endangered, not so much by the presence of snowcats that, being equipped with headlights and emergency lights, are able to identify the excursionists on foot on the slope in the dark, and can consequently avoid them. What are particularly dangerous are the steel cables, often more than 1,000 metres long, used during winch maintenance: they are placed in the snow so they are not visible, without considering that, in addition, if the snowcats carry out particular manoeuvres, they can spring upwards or to the side like whips.

In Germany, it is not generally forbidden for excursionists to travel along the slopes even in these conditions: essentially, every single excursionist is held responsible for all measures necessary for ensuring that nobody is hurt. All the same, there is an important information campaign ongoing (e.g. advice from DSV for behaviour related to snowcats <19>) with continuous appeals to the good judgement of the sportsmen and women.

In addition, in order to protect themselves from the start against eventual requests for compensation of damages, ski slope operators have positioned warning signs at key points (parking areas, the beginning of the climb or the descent, side access points) to stimulate the personal responsibility of the excursionist on the ski slope.

In determined conditions, the authorities may decide to **close the ski slopes** for safety reasons: in these cases infractions will be punished with a fine <20>.

- Unfortunately, it happens evermore frequently that the descent on freshly packed ski slopes leaves deep furrows in the fresh snow that remain frozen until the morning: this is not only very irritating for the ski slope operators and their clients, but, in extreme cases, it may even create cases of atypical danger that are a further, expensive burden for the guarantee of safety.

### **Alternation Between Packed and Unpacked Surfaces.**

An interesting discussion has been started in Germany regarding an accident caused by a collision. The course that the accused party was travelling on was a skiing area that was completely free of obstacles and had good visibility: most of the course had been adequately packed, whilst the adjacent

area hadn't been. On the day of the accident, the difference in height between the packed and unpacked snow was from 10 to 50 cm: all along the margin of the difference in height, warning signs had been placed at a distance of 50 metres from one another. Therefore, whoever was arriving from above was free to choose whether to continue on the area with packed snow or on the unpacked snow: it was found that statistically the percentage of choice is practically identical for the two options. The change from a packed to an unpacked area or vice versa could happen at any point in the course.

The subject of the discussion regarded determining whether if, in a similar situation, a change of course passing from a surface of packed snow to one of unpacked snow represents a case for which to apply the FIS rule 5 (Access to a ski slope) or the FIS rules 2 and 3 (proceed visibly, give way to skiers above). The opinion of the majority swayed strongly towards the ski slope concept and approved, in this specific case, application of the FIS rule 5.

The minority were unable to impose their opinion for two reasons: first of all, the objective of FIS rule 5 is to ensure that the skier going down the ski slope avoids unpredictable behaviour (for example suddenly appearing from a shadowy area at the margin of the slope, starting suddenly from a point after stopping); secondly, the borders of the slope should still assist orientation only for the preparation in an extensive skiing area where there is apparently only one possibility for descent. Instead, the skiing area represents a meeting point for skiers and snowboarders where they can move as they please from one side to another. The awareness of not having to proceed in the case of "crossing the border", in conformance with FIS rule 5, cannot exist in this case, but it would make more sense to apply behavioural models established by the FIS rules 2 and 3 to the whole area. With the objective of guaranteeing the safety of users who decide to go down a ski slope of packed snow, it would be best not to succumb to the temptation of believing that they are in a legally privileged area, as it is always necessary to turn your responsible attention (also!) to the ski traffic in the adjacent areas.

## **Legal Importance of the FIS Rules**

The application of the laws in force in Germany recognises that the rules defined autonomously in 1967 by the FIS association (whose basic elements have remained unchanged to this day) are not only binding for the associations that are part of the International Ski Federation, for the relative subdivisions and the single members of the association. Given that these rules, in a few appropriate fundamental principles, describe the sort of behaviour, generally considered to be correct, that a skier must maintain on the ski slopes and how it must be done, the venue and the literature

immediately assigned a level of general validity to these rules for every skier, even those who are not part of an association. In the courts' legal practice, these rules form concrete criteria for the accurate definition of that which is necessary, for the subject of snow sports, in order to evaluate the cause and the blame when defining the previously mentioned personal and third part responsibility.

In Germany, the current prevalent interpretation considers the FIS behavioural rules to be representative of common law.

## **Snow Motor Vehicles**

For the use of snowcats and snowmobiles (skidoo), an operator must satisfy a few legal requirements, whose principle objective is to pursue the highest guarantee of safety. The main safety directive applicable is the DIN 30770 standard (Equipment for the preparation of ski slopes – safety requirements). To comply with the law of the Laender of Bavaria, the importance of safety and environmental protection in the use of motorised vehicles on snow are considered with the same force and are fixed on a legal level <21>.

A note clearly indicates that the use of vehicles must be limited, **as much as possible**, to moments of reduced skiing activity. From another point of view, this indicates that the use of motor vehicles on ski slopes whilst people are skiing is not forbidden in our country.

## **Snowcats**

Ski slopes would not be able to operate as they do today without the use of snowcats, above all when talking about the preparation of the slopes. In some cases though, it is possible that their use be forbidden for reasons connected with the guarantee of safety. In addition, it may be necessary to use these means for passenger transport (for example, of injured people).

This means that the user of the ski slope, whilst skiing, must always consider the possibility that he may encounter a snowcat at any time. Warning signs remind him of this constantly.

## **No Atypical Danger**

Encounters with snowcats are, therefore, foreseeable and controllable with the means used for skiing, and consequently they do not represent an **atypical danger**. If the skier puts personal responsibility into practice, above all proceeding visibly with coherence, he runs no risk of collision. This applies even if the means is not yet visible, but is in a valley or behind/under a curve in the ground: to proceed without slowing down, or even to jump on the slope

without knowing if there are any obstacles in the area below where you intend to land, is one of the worst transgressions of a skier's obligations.

### **Special Safety Measures**

In any case, snowcats, whilst skiing, are **a factor of disturbance and an obstacle**: they generally move in the opposite direction to the general flow of skiers going downhill and they can appear suddenly from valleys in the ground; their movements and steering are awkward like those of a tank, braking conditioned by the state of inertia is often problematic and the drivers do not have good visibility. Therefore, there is no doubt that snowcats are consequently a **particular source of danger**: therefore, their operation calls for the ski slope user to exercise personal responsibility, but also for particular safety provisions in relation to the specific situation.

### **Preparation with the Winch**

Preparation of ski slopes using the winch is normally only carried out after the slopes have been closed to the public or blocked and, consequently, it is not legally relevant in relation to the dangers related to the use of slopes during skiing activity (refer to the paragraph "Excursionists on the ski slopes").

### **The Foundations of Responsibility**

Accidents caused by a collision between a skier and a snow motor vehicle are rare, but in most cases have serious consequences. Compensation for physical and moral damages connected to it can only be considered valid on the basis of criminal responsibility and the requests are usually orientated against the driver of the motor-vehicle involved, the owner and the third party insurance that are jointly, severally liable: the victim of the accident must be able to demonstrate that the damage suffered was caused by unauthorised activity and the proof of guilt (negligence) is often very difficult to present in a trial. All the same, in Germany, recall to **responsibility for the danger independent from the blame** has no place in any methodical legal principle.

### **DSV Recommendations for Behaviour related to Snowcats**

For a skier the best trial is the one in which he doesn't have to participate in as the accused (naturally, the profession of legal consultants sees this point under a different light): therefore, respecting the relative DSV recommendations will permit him to always be in the right.

## **IV. Ski Schools and Ski Instructors**

Snow sports are taught by ski, snowboard and Nordic (cross-country) ski instructors (hereafter called “Ski instructors”). Conceptually, in Germany, there is a distinction between **nationally qualified ski instructors and the associations’ ski instructors**. Only the Laender of Bavaria has formed the legal foundations for taking the national examination <22>, which is the qualification necessary to be able to give skiing lessons on a professional level and is recognised on a national level in Germany.

Nationally qualified ski instructors are trained at the Deutsche Skilehrerverband (DSLVL – the German Association of Ski Instructors), whilst the associations’ ski instructors are trained at the Deutsche Skiverband (DSV). An agreement signed in 2002 allows ski instructors qualified by the DSV to pass over to the professional training course for nationally qualified ski instructors, during which, thanks to the qualification previously acquired, the teaching of some fundamental technical principles will be dispensed with.

The training courses of both of the associations contain various teaching levels: passing the final examination authorises the respective participants to teach determined types of lessons (beginners, etc.).

**Ski schools** can be only be managed by nationally qualified ski instructors; ski instructors of the association are only authorised to teach lessons to members of their own association and associations belonging to it (not to other people).

However, the activity of German ski instructors in skiing areas of European countries has not yet been clarified on a legal level: for nationally qualified ski instructors there are no problems, however the activity of ski instructors in training and ski instructors of the associations have been blocked by legal barriers in the other adjacent German skiing areas, alleging a series of presumed doubts about safety in justification. Verification of the compatibility of these provisions with those issued by the European Community will clarify the matter.

## **V. Off-Piste Skiing**

It must again be noted that the obligation to guarantee safety also exists outside the area of the ski slope; however, when a skier reaches the off-piste mountain area, he is considered to be abandoned to himself both from an effective and a legal point of view, especially with regards to the dangers connected with detachments of banks of snow and avalanches: but whilst the skier assumes exclusive responsibility for himself and his own safety, nobody, in Germany, can prevent him from exposing himself to danger of any kind.

Consequently, a skier is not even obligated to take electronic searching and localisation devices with him.

### **Partial Validity of the FIS Rules**

The **FIS rules** require different behaviour: in conformance with the previously described applications relative to the area of validity in terms of space, these rules apply, above all, to areas where it is possible to descend, therefore, also to off-piste areas and, not least, to freeriding areas, although this is naturally limited by the fact that the requirements of accuracy requested and conditioned by the situation are less than those for the ski slopes: whoever decides to practice off-piste activity, assumes a much larger personal responsibility and also, correspondingly, a considerable expectation of reliability towards others.

### **Excursionists with Snow Rackets**

Clearly, these excursionists are not covered by the objective area of validity of the FIS rules as they are pedestrians and it can only be hoped that they move sensibly within the area: during the climb these excursionists should leave imprints and not walk in the tracks of previous climbers in the same skiing area, and during the descent they should avoid, as much as possible, the downhill ski slope areas so as not to steal the deserved joy of the skiers. All the same, it is only possible to make appeals on the subject, as the behaviour of such excursionists, in this area, is not liable for prosecution.

### **Areas Adjacent to the Slopes**

Unfortunately, to this day, in Germany there is no legal way of avoiding the access to and travel in mountain areas, even when this would put the safety of other people at risk. On various occasions, skiers and snowboarders have travelled in open areas above the ski slopes, even though there was clearly a risk of detaching banks of snow: in some cases, their passage caused detachments of masses of snow that partially buried the ski slopes and consequently put other skiers into real danger. At the moment, not even the organs of safety can intervene preventatively by keeping these irresponsible people away from such areas with the motivation of abstract danger (starting from danger level 3); the state of the law in some Austrian regions is, in this case, much more extensive (for example the Vorarlberg law on sport). At the moment, Bavaria hopes for an amendment that corresponds to its own legal foundations.

## **VI. A European Law for Snow Sports?**

A European homologation of **all** of the legal areas related to snow sports does not seem advisable: various special situations exist that, due to their origin, only make sense on a regional level and cannot be adapted to application in other regions, but their contents should not be put into discussion by higher authorities either. Therefore, the creation of a European law for snow sports is not advisable at any cost as, in this way, even EU countries that have no competence in the subject would have the right to speak.

However, in some areas, thanks to some EU directives and resulting provisions, the general conditions that regulate the practice of snow sports have already been defined: in this case, it becomes a national question to convert these provisions and directives into real legislation valid on a national level.

From Germany's point of view, it would also be advisable to create homogeneous legal standards to regulate ski schools and ski instructors.

All the same, a lot could be gained if the countries of the European Union where snow sports are practiced agreed to apply the behavioural rules established by the FIS with the consequent legal effects. This desire refers less to practical application in skiing areas, which is prevalently a reality, and more to the standardisation of legal evaluation of the requests for accuracy in the area of conflict between third party and personal responsibility.

- 1            **Grundgesetz für die Bundesrepublik Deutschland (GG – Constitution of the German Federal Republic)**  
Art. 14 Para. II: Obligation regarding property. Its use must simultaneously be at the service of collective well-being.
- 2            **Gesetz über Naturschutz und Landschaftspflege (BnatSchG – Law regarding environmental protection and safeguarding the landscape)**
- 3            For ex. **Bayerisches Gesetz über den Schutz der Natur, die Pflege der Landschaft und die Erholung in der freien Natur (BayNatSchG – Bavarian law on nature protection, safeguarding the landscape and open-air rest)**
- 4            For ex. Art. 21 foll., above all 24 of the BayNatSchG. This law even has value Bavaria's legal system: Art. 141, Para. III of the **Legal System of the Free State of Bavaria**
- 5            **German standard DIN 32912**  
**Ski slopes** are usually courses, accessible for descent suitable for and designed for skis, marked, controlled, insured against atypical dangers, in particular avalanches, and prepared in line with the possibilities.  
**Skiing itineraries** are generally routes, accessible for descent suitable for and designed for skis, that are only guaranteed against the risk of avalanches, but do not have to be prepared or even controlled. For marking, the use of "Skiing itinerary" signs are recommended.

- 6 **BGB § 823**
- 7 **StGB § 222**
- 8 **FIS behavioural rules for skiers and snowboarders** (2002), see the attached brochure.
- 9 **2000/9/EG Directive of the European Parliament and Council.**
- 10 For ex. **Bayerisches Eisenbahn- und Seilbahngesetz (BayESG – Law on cable railways and railways in Bavaria)** in the edition of 9th August 2003, accepted until the end of 2004 by all German Laenders).
- 11 **Vorschriften für den Bau und Betrieb von Seilbahnen (BOSeil) und Schlepp-liften (BOSchlepp) – Provisions for the construction and operation of cable railways and ski lifts.** November 2004 Edition; **Executive provisions** attached)
- 12 **Vorschriften für den Betrieb von Förderbandanlagen – Provisions for the operation of conveyor belts (January 2005)**
- 13 **Haftpflichtgesetz – Law on responsibility § 1 Par. I**
- 14 s. 6, 7
- 15, 16 **BGB § 832**
- 17 cfr. **IWO – International Competition Structure**, Art. 623.2.2
- 18 **DAV-Regeln für Skitourengeher auf Skipisten** (DAV = Deutscher Alpenverein e.V.) – **DAV rules for excursionists on ski slopes** – DAV = German Mountain Association – registered association)
- 19 see brochure attached
- 20 **Bayerisches Landesstraf- und Verordnungsgesetz (BayLStVG – Criminal Law and Provisions of Bavaria)** Art. 24 Para. II P. 1, Para. VI Num. 1
- 21 - **BayLStVG** Art. 24 Para. II P. 2, 3  
- **Bayerisches Immissionsschutzgesetz (BayImSchG – Law on protection of emissions of Bavaria)** Art. 12 Para. II
- 22 - **Gesetz über das Erziehungs- und Unterrichtswesen (EUG – Law on public and scholastic education)** Art. 128 Para. II P. 1  
- **Ausbildungs- und Prüfungsordnung für Fachsportlehrer im freien Beruf – Systems for the training and examination of specialised sporting instructors that carry out a professional activity)**  
- **Verordnung über die Ausübung des Unterrichts als Skilehrer – Decree on the development of lessons as a ski instructor.**