

1st EUROPEAN LAW FORUM ON WINTER SPORTS

Marisella CHEVALLARD lawyer

“Protection of the activity practiced by skiers through safety and prevention, with special reference to the guarantee required of the person who takes on the task of operating the ski slopes”

Aosta Valley’s experience in safety on the ski slopes goes hand in hand with the development of winter tourism in our region, of our autonomy and the special nature of our territory.

As a forenote, it should be noted that skiing is a modern sport that cannot be compared with other sports such as running, swimming, horse riding, etc., that seem to have been practiced forever. Aosta also boasts the remains of a Roman amphitheatre, used as a stadium for sporting activities since the beginning of the last millennium and currently part of the nuns’ convent, which in Roman times was situated with very good urbanological intuition, immediately within the city walls, in the area next to the theatrical structure, with the structures used for performances grouped together, separate from residential buildings.

Skiing has developed incredibly since the beginning of the twentieth century.

A grandfather was sitting at a table in front of the “capanna Morgenrot” and was quietly drinking some chocolate when he saw his eldest son, to whom he had given a pair of skis so that he could enjoy himself during the holidays in the mountains, pass over the roof of the hut. At the time, the sport really was self-taught and there were no installations, so skiers had to climb up on foot, descending in fresh snow in any way possible. The concept of ski slopes was still far away, almost nonsensical, and safety meant everyone looking out for themselves. It may have been because the snow then was softer and more abundant, or that people were stronger, or cared less about their own integrity, but the fact is that at the time nobody was particularly bothered about it.

It is not surprising that when the Aosta Valley broke away from the Piedmont region to become an autonomous region, one of the subjects referred by statute to the region’s primary legislative authority was that of ski slopes, ski instructors and mountain guides. It is evident that this type of subject appeared to be insignificant and of very little importance to the Roman government and the Constituent.

It was at this time that the first ski instructors signed an agreement to found the Aosta Valley’s association of ski instructors, and it is more than likely that they did it with more of a sporting spirit than a corporate one.

The first law of the Aosta Valley related to ski schools and instructors also leaves room for thought. The law had a very brief history, rejected by the Constitutional Court that declared it illegitimate in various points, one of which was the knowledge of French, it was soon forgotten. However, it is symptomatic to think that the law invested the ski instructors and mountain guides not only with rescue duties and the task of raking the ski slopes, but also with ski slope maintenance (art.3 R.L. nr. 2/1951).

The first cableway installation in the Aosta Valley goes back to 1936 when the Breuil-Cervinia/Plan Maison cable railway was opened, followed in 1939 by the Plan Maison/Plateau Rosa trunk.

Courmayeur followed with the sledge lift from Dolonne to Plan Checrouit, on which the central nucleus of the Valley’s skiing area is still developed. The cable railway from Entrèves to Colle del Gigante was constructed in 1942, but for military use, and was only opened to the public after the war in 1949. From that time onwards people started to use the mountain for skiing (1949 La Thuile / Les Suches chairlift; 1950 Gressoney St. Jean /Weismatten) until, in the 1960’s/1970’s, many resorts in the Aosta Valley, even at low altitude, were equipped with installations. Only in the very beginning was the capital prevalently private, because the Aosta Valley Region invested in cableway installations, considering the activity to be an important economic support for regional development, and purchased shares in almost all of the cableway installation companies, intervening with subventions to support the main industry of tourism.

Cableway installations provide the user with a transport service and this type of activity is covered by the typical transport contract regulated by the civil code (1678/1681 Civil Code). The transporter or the “carrier” is obligated against compensation to transfer people from the point of departure to the point of arrival. During the course he must take great care that the person transported remains

unharmful, in fact he is responsible for accidents to people and damage to things in accordance with art.2050 of the civil code, unless he can prove to have “adopted all possible measures in order to avoid the damage”.

Eventual clauses inserted in the travel document aimed at limiting the carrier’s responsibility, in accordance with regulatory provisions, shall be deemed not to have been inserted.

The cableway installations in our region also act as connections for resorts that cannot be reached by road and offer a public service, as clarified by the regional legislation in force (R.L. 1/9/1997 nr. 29 – “Norme in materia di trasporto pubblico di linea” or Public transport regulations); they are not a merry-go-round or a playground. Regional recognition as a public service also imposes that regulations governing public transport are applied to cableway installations and the carrier is therefore obligated to offer equal conditions to all users and supply the service to anybody who requires it within limits compatible with the installation. At this point, the special nature of cableway installations emerges, characterised by a higher level of risk compared to surface transport and by the fact that they require the user’s collaboration. Less collaboration is required for cable railways, more for gondolas that require the passenger to mount whilst the vehicle is moving, and still more for chairlifts in which the passenger is raised from the ground at a height that can vary from 2.5 to 15 metres and must close the retention bar. This makes such installations difficult to use for children of less than 1.25 metres in height, who are forbidden to use the installation by the regulations unless accompanied by an adult who can take care of them. The responsibility assumed by the accompanying person is controversial, but cannot go beyond simple assistance, without this exonerating the carrier from his responsibility, in fact, it is still the carrier’s obligation to arrange as much as possible to ensure the safety of the little passenger.

A skier's collaboration when using a ski lift is even more important. This type of installation is going into disuse, however it is essential on glaciers, where for technical reasons it is impossible to create fixed structures, and is especially suitable for the first learning stages. The anachronism is that in the first few hours of skiing, the skier finds himself going up faster than he can come down, and he has to learn to guide his skis, keeping them aligned. The International Organisation for Transportation by Rope (OITAF) is trying to obtain a common provision to cover cableway installations and an international bill has been presented.

The cableway installation must have an operator, who must maintain an efficient installation so that it may be used in safety and in conformance with the provision (DPR 18/10/1957 n.1367 General regulation for aerial cableways and public transport services), last amended by the L.D. 12/6/2003, n.210, for the activation of the EEC directive n.200/9 CE.

In the distribution of duties within companies that deal with winter tourism in the case of developing winter stations.

The age-old problem of a skier’s safety must be faced by starting with a global consideration of the station and the various services offered to the skiers. Considering that the user’s integrity must be guaranteed during the phase of transport, the question to ask is whether, and to what degree, the companies that manage cableway installations must predispose a ski slope for the skier’s descent to the Valley and with what sort of preparation. Part of the doctrine sustains that the principle "Eius commoda, cuius incommoda" is correct, others exclude it, the law was divided above all on the subject of glaciers and high altitude ski slopes.

In the meantime, the progression of competitiveness continues to introduce new elements. The competition ski slopes are controlled by international federal (FIS) and national regulations, that define the characteristics of ski slopes dedicated to the various competitive disciplines and are composed of technical dispositions that aim to establish the width, the vertical drops, the number of gates and the distance between them in terms of the vertical drop/slope length ratio, but also the safety equipment for protection of the skiers.

In 1966, during the Italian senior championships at Courmayeur, a heavy snowfall put the mens downhill event into serious difficulty. The ASIVA (Aosta Valley’s regional committee for winter sports) trainer Gigi Panei, together with the young and promising Renato Rosa, who had gone to the

summit of the ski slope to see what could possibly be done, were swept away by a snow-slide. In fact, at the time, no form of protection existed against considerable snowfalls: there were no technical means that permitted the ski slopes to be reclaimed and made safe.

The fact had no legal consequences because, on the contrary to what is normal practice these days, mountain tragedies rarely finished in court.

Athletes attempting high-speed disciplines really did have the sensation of facing something exceptional and objectively dangerous. The parents didn't always realise the sort of danger that they were exposing their athletic children to at the time when they bought them a helmet. In the winter of 1980/1981 at Pila, right on the Renato Rosa slope, homologated for downhill competitions, an 18-year-old boy fell and finished up off the ski slope where he hit a tree and died on the spot. This time the magistracy became involved in the problem, and opened a dossier in which the duties of those in charge of the competition's organisation were examined, following to which the arbitrating judge was charged with manslaughter.

"Human life has an immense value" wrote the Judge reading the sentence, and cannot be endangered in a foreseeable and preventable situation, but he didn't give any parameters on which to base these criteria, whilst during the trial it had been effectively proved that the ski slope was homologated for downhill events and all of the prescriptions required for the homologation of the ski slope had been fulfilled, and this was sufficient for Turin's Appeal Court to reform the sentence and acquit the arbitrating judge.

But in the meantime it was clear for all that safety on the ski slope could have been drastically improved and that if the ski slopes dedicated to competitive skiing were given a minimum amount of attention, the same attention should also be given to the tourists, but nobody had assumed this task until that time and the homologation requested for competitions had nothing to do with tourist skiing, with the consequence that modern protection such as the expensive and difficult to maintain protective nets would seldom be used only for the competitions, above all for the less sponsored ones and however the question is who would do it, given that the club organisers didn't have any funds and lived on voluntary work and the cableway installation companies very often exhausted their commitment by making the ski slopes available.

The dyscrasia between the two realities was underlined by another great tragedy that occurred in the Aosta Valley, in the town of Courmayeur, when in February 1991 a snow-slide of a considerable size swept the ski slope that ran from the cable railway's intermediate station of Punta Helbronner to La Palud (a fraction of Courmayeur). Thirteen people lost their lives, one of whom was a baby girl, but there was even a mountain guide in the group. In this case, the families of the victims set to work to find out the reasons behind the disaster, and the Public Prosecutor's Office opened a legal enquiry.

It was discovered that the ski slope in question was situated in an area that was dangerous in itself and subject to avalanches; all the same, the same ski slope had been homologated for giant slalom competitions. It was therefore once again evident that the criteria for homologation of the ski slopes responded to technical requirements and had nothing to do with safety problems. Some studies had been prepared for an alternative route required for the installation of an alternative ski slope, but the projects had ground to a standstill long before, and for this reason the Public Prosecutor's Office had called Gigi Panei to give evidence during the trial, as he had contributed to the study of an alternative ski slope, without realising that he was also the victim of a similar accident happened years before.

International consultants, given the task of defining the cause of the snow-slide, battled for the various parties in the trial: the prosecutor, the victims and the accused.

The episode started a real din. The Public Prosecutor's Office, with an incredible provision, used the only means at its disposal to safeguard the citizens and that is the institution of preventive sequester art.321 C.c.p. that is allowed when free availability of something can extend or worsen the consequences of a crime or favour the commission of other crimes. In the case being examined, the ski slope in question appeared to be dangerous if newly opened to the public. The whole south

side of Mount Blanc was sequestered, meaning that the installation could not be used for sport, creating disappointment not only for skiers but also for mountaineers.

On a legal plane, the provision that not only confronted private property, but also the highest mountain in Europe, was perplexing, but it was only derequisitioned at the end of the season.

The accused parties in the trial were the regional and local authorities as holders of policing power in the territory and guarantors of the citizens' safety, who were acquitted by a shortened trial, the legal representative of the company that owned the cableway installations and some of the personnel in charge of services on the ski slope. The sentence established compensation in favour of the families of the victims forming the civil part, but the amount, calculated in accordance with parameters for biological damage, for the number of people involved, was very high and the cable railways were forced to pay with their own funds, as even the insurance had been underestimated compared with the size of the accident.

The old legal representative of the company did not live to see the trial's conclusion. It is very likely that this matter also had an effect on his health. Very often the punishment is not the penalty inflicted by the judge, but the anxiety and anguish that accompany criminal action, and when the crime in question is culpable, very often the accused not only never wanted the event for which he is responsible for to happen, but above all is the first person to feel pain and disappointment for it.

After the sentence, the necessity for better organisation of the ski slopes had become evident, necessary and urgent.

The provision issued by Aosta Valley's regional council appeared in the first few months of the following year, but it causes some perplexity where it highlights a greater desire to indicate responsibility than to put some order into the subject and establish the duties of all concerned.

The question of whether whoever operates or places at disposal an installation for carrying skiers up the mountain must also equip his installation with an adequate ski slope remains unresolved; on the contrary this law divided the two tasks as if they were autonomous from each other.

In this way, they lost the occasion to give a clear response to a common need to establish once and for all that carrying people with skis up a mountain also means preparing safe conditions for their subsequent descent.

However, it was also true that the law was organised in such a way that it could be applied both to cross-country courses, where cableway installations are not usually foreseen, and to downhill ski slopes.

This resulted in a variety of characters that are, in some way, placed as guarantors of safety.

The owner of the cableway installations remains in the background and is not contemplated directly, whether a joint stock company founded for exploiting an area for tourism, or an association of various tour operators, cooperative society.

As transport operators they are governed exclusively by the procedure of civil code that regulates transport, which requires that the passenger's safety must be guaranteed by the carrier during the transport and therefore in the case of cableway installations on the line going up, inside the vehicle (cable railway, chairlift, gondola), until the passenger has effectively dismounted the vehicle, with or without skis. From this point on begins the task of the ski slope operator. This character appears in the regional law in question as being separate from the carrier, in fact the law attributes the task of ski slope operator to "he who requests the classification of the ski slope", even if incidentally the operator of the cableway installations is considered eligible to present the request for classification of the ski slope.

In fact, with a term that is completely incongruent with the reality and purpose, a ski slope can only be opened to the public after an administrative act that is not an authorisation to open, but a simple "classification" that attributes a level of difficulty, which may be easy (blue run), of medium difficulty (red) or difficult (black) calculated according to the gradient of the downhill ski slope and according to various parameters, including vertical drops for cross-country courses.

However, it is at this time that the skier's safety is finally taken into consideration, because amongst the requirements for ski slopes for which the classification is requested, in art.3 paragraph 5 second part nr.5 "methods of protection against accidents" are finally mentioned.

The problem of exposure to the risk of avalanches is not dealt with, even though an official from the regional avalanche office, part of the civil protection of the Chairman of agriculture, forestry and natural resources, has been correctly included in the Commission foreseen for the classification of the ski slopes.

The regional law does not foresee denial to open these structures, but a simple classification according to difficulty, meaning that it will always be possible to open the ski slope, all that is necessary is to classify it as a black run.

This was all complicated by the fact that the regional law, that seemed as if it would be the panacea of all problems, was to be used in an active and vital context, with existing ski slopes, long-since structured and fully working.

If the regional law 17/3/1992 n.9 was published in BUR on 24/3/1992 and foresaw (art.16) an emergency declaration and immediate enforcement, if it is true that the effective operators of the ski slopes had six months (art.13), that is until September, to notify the list of the ski slopes in operation, it was obvious that the classification would never be concluded before the beginning of the winter season.

In fact the normal procedure foresees that the competent Chairman verifies the regularity of the request after which it is sent within sixty days (two months) to the consulting Commission, which must make a decision within ninety days (three months), then after transmission of the Commission's decision the Chairman issues the decree of classification of the ski slope within one month.

The technical time required is therefore six months, without calculating the material time required for transmission of the dossier between the competent organisations and eventual requests for clarification and completion of documentation that is always possible during the first phase of presenting the request to the Chairman.

The problem was obviated using a transitory provision that allowed the ski slopes to continue operating by simply communicating their existence and nominating a chief of ski-patrol.

After which, the ski slope operators would have to present the request for classification within a year.

No specific sanction is foreseen by the law in the case of "wrongful" management of the ski slope, and the criminal sanction foreseen for wrongful opening of places of performance or entertainment foreseen by art.681 of the criminal code, a contravening offence resulting in a warning or arrest, cannot be analogically extended.

The serious problem of avalanches was also not resolved for ski slopes already in operation.

There is currently a nivological office in the region that, among other things, takes care of the cartography that must be constantly updated, for new ski slopes, subjected to scrutiny for the evaluation of environmental impact (R.L.4/3/1991 n.6) expressly mentioned in art.3 of the laws regarding the ski slopes n.9/1992, but nothing could be done about this problem for existing ski slopes. Following to an incident that occurred in 1996 in Val Veny in the area of Courmayeur, and the case that arose from it, it was discovered that Val-Veny's re-entry ski slope, hit and hidden by an avalanche of considerable size with the consequent loss of human lives, had been regularly classified as a sky-weg or re-entry ski slope.

The sentence issued by the Court of Aosta to the chief of ski-patrol referred to a generic duty of prudence, for having opened the ski slope without taking the necessary precautions.

So it is clear that the chief of ski-patrol appears to be the scapegoat in the event that everything goes "wrong" at a station.

The chief of ski-patrol is the person who assumes full responsibility, he must always be present and omnipresent, though he is not the owner, as for the operator of the installations, but he is dependent on him from an economical and organisational point of view, but it is on his indication and thereby

his responsibility that the ski slope operator must close the ski slope in case of impracticability and especially when in danger of avalanches.

Even the opinion of the local avalanche committee, purposely formed by the law in question, has a purely consultative value and is not binding for decisions to be taken by the chief of ski-patrol, who must decide whether the ski slope remains open or must be closed in case of danger.

And then the necessity to be omnipresent due to the task of coordinating even the more routine operations such as flattening and maintenance, that imposes that this person should be chosen from within the corporate structure making it impossible to resort to the use of an external professional who may have more experience, and without doubt greater freedom and autonomy compared to the entrepreneur represented by the operator of the cableway installations who has assumed the role of operator of the ski slope or ski slopes.

As coordinator, the chief of ski-patrol also has the highest role in the subjects of safety and rescue on the ski slopes.

It took five years to realise that the system as it stood would never be able to work without suitable training of safety workers and the construction of a professional role equal to such an ungrateful task.

Ski slope management and rescue activities were finally structured by the regional law 15/1/1997 n.2 that also refers to better-trained professional personnel.

The provision made progress with the maturity of awareness of civil protection that could not leave a large section of the national territory uncovered.

The duties attributed to the operators of the ski slopes and the chiefs of ski-patrol could not be carried out incompetently and the citizen could not be denied a more competent and safer intervention.

In the mountains the mountain rescue structures, flanked by the mountain guides had long since made good progress and boasted experience and competence.

The law finally established training courses designed to supply personnel with the minimum knowledge necessary for an effective rescue, which ranges from good technical ability on skis enabling the conduction of a toboggan, up to the first rudiments of first aid with the exclusion of types of intervention reserved to the medical profession.

We call these operators "pisteur secouriste" borrowing a name used in France in stations confining with ours. From the role of pisteur, it is possible to become a chief of ski-patrol.

The idea is good, but the reality encounters various political, economical and social problems. The law is too generic and it has lost the occasion to create a professional role equal to the task of safety that must be assumed by the candidate.

The training courses are aimed at people of adult age, so the choice was made to prepare people for a job and not a real qualification for a delicate profession.

For the pisteurs, completion of mandatory schooling is sufficient (lower secondary school), only for the chief of ski-patrol is a higher secondary school diploma required.

The courses are fairly brief and are certainly inadequate to train a professional figure, maybe it is better to think of it as aimed at verifying the ability already possessed by the individual, in fact the courses are limited to sixty hours for the pisteurs and ninety hours for chiefs of ski-patrol, in any case, on completion of the course the student must pass an exam.

The subjects are not fixed, but are decided on each occasion by regional orders, which also establish the calendars, nominate the commissions and decide if and how to use structures within or outside the regional administration for the execution of the courses.

However, constant updating of the personnel qualified is foreseen.

Because the forces of order also train personnel in safety, it is possible that the qualifications acquired in these areas may be recognised.

The criticisms that can arise are very easy, because of the lack of a serious and predetermined training programme, a course of a duration that enables serious learning, the possibility for

personnel with such responsibility to be trained at school age (pisteur) or at university (chief of ski-patrol) so that the individual can receive serious training.

The notions required by these people are various and range from piste grooming, with or without mechanical means, which signifies knowing how to drive the means, to more specific ones that presume the knowledge of competition trails, as the organisation of events, even international ones, is normal routine in skiing areas, to knowledge of the mountain and orienteering, nivology and to conclude rescue activities starting from simple accidents that require transportation without any special precautions, to more serious accidents where the first aid given can determine the well-being of the person as in cases of traumatic injuries to the spine or serious fractures, or in the case of recovery of people buried by an avalanche where immediate intervention is necessary in order to conserve the minimum vital functions, where the life of the injured person depends strictly on he who provides the first intervention.

In 1992, the seriousness of the tasks that were being entrusted to the piste operators had escaped the regional legislator.

Before the winter season begins, by the 30th September every year, they must communicate who the ski-patrol staff are for the area under their competence and these roles must be occupied by personnel who possess the qualification of "pisteur" or chief of ski-patrol attained on the courses or in any case recognised and in order with the purposely organised prescribed three-yearly updates. The law is severely lacking though when it does not at least specify a relationship between the capacity of the ski slopes, the affluence of skiers and the number of personnel required, and there is no contractual protection for these employees, who are often employed at irregular intervals without a stable contract and salary.

On the other hand, the contribution received from the Region by the operators of the installations for the services entrusted to them by law do not clarify a very net differentiation between the general tasks of piste grooming and installation of safety devices that should be distinguished from specific rescue operations, resulting in wide-spread discontentment and misunderstanding between the operators and the various employees.

Analysis of the tasks of the pisteurs, shows above all the tasks related to rescuing the injured. In fact they are expressly delegated to rescue operations (R.L.n.2/1997 art.2) with a commitment that starts from the call for help and is only concluded when the injured person is handed over to medical staff, to the ambulance, to a medical centre even if private, unless the injured person or his/her relatives choose to cease the rescue operation, assuming full responsibility for this action.

The pisteurs, in addition to rescue operations, are also delegated to accident prevention and in fact by express regulatory provision they must ensure that the ski slopes are in good condition, check that warning signs are correctly positioned, in particular identifying particularly dangerous points and positioning signs warning people to slow down, they must verify that the fixed safety structures, such as the fixed nets, are positioned correctly, using mobile safety structures if required in accordance with the conditions of the snow, all presided over by the chief of ski-patrol, who in the Aosta Valley is definitely the person with the most responsibility in the ski station.

This could also be one of the operator's employees, but in this case his position of responsibility does not adapt well to the critical task of judging the safety conditions, consider the task of establishing whether or not the station is dangerous in the case of unstable nivological situations and the consequent risk of avalanches, and the decisions to be taken regarding the opening or closing of the ski slopes that go against the company's interest in terms of maximum productivity.

Although it is true that the chief of ski-patrol can be assisted by an "Avalanche Committee" purposely created by the law, it is only held to express a consultative opinion whilst the final decision is always the chief's duty.

The tasks of the pisteurs exclude all aspects of vigilance and surveillance. The regional law delegates these tasks to the police force or in reality to the Councils with their guards and the Aosta Valley's Corps of Foresters, with personnel purposely stationed on the ski slopes.

For this purpose not even the state law considers these operators, but it opens towards the duty of the ski instructors to whom it delegates the task of “warning” (art.21 L.n.363/2003) users against imprudent behaviour.

But it is the delicateness of the task related to rescue operations that should have warned the legislator of the necessity to clarify the tasks better and to make a greater commitment for the training of these personnel.

In the Aosta Valley, events in this field have really put the structures to the test.

On the date of 3/3/00 in Cervinia, a person lost their life due to a badly managed rescue operation.

In this case, the person was not injured, simply lost. Having asked for help by telephone, it appeared that the rescue would be easy and immediate, vice versa the problem had been underestimated. Who thought of looking for her on the ski slopes obviously didn't find her, because she was lost, the closure of the ski slope, carried out as routine on the ski slope being scoured, would not solve the problem, as indeed it didn't.

The place where the sixty-year old woman was, was wrongly reconstructed, aided by misunderstanding caused by language difficulties. The search in an area completely different from the area in which she was, gave no results. In the meantime, the civil protection with their helicopter, which would have been able to solve the problem within a few minutes, had not been called and after sunset could no longer intervene. The Swiss helicopter, ready for take-off, was unexplainably cancelled, in the belief that the problem could be resolved on the ground. Rescue personnel worked until late at night without success. In the end, the rescue operation was interrupted, but the next morning, in approx. half an hour, the woman was found, though at that point she was dead.

In the case examined the first degree sentence, confirmed by the appeal judges, passed the scrutiny of the Court of Cassation (fourth criminal section 16/5/05 n.416) that, whilst rejecting the appeals of the accused, presented some interesting principles, both in terms of legal suggestions, and suggestions for working towards improvements in the service.

In particular the Court confirmed that, in the case of manslaughter, or in any case culpable crimes, and with particular attention to the crime of omission, the judge must carefully evaluate the conduct or the omissions of the person being judged and must question whether the commissive or omissive behaviour can be placed in a cause/effect relation with the event from which the criminal responsibility arises.

The problem was once again resolved by the Court of legitimacy in a more rigorous and assuring manner in the wake of previous sentences and, in particular, the frequently quoted 11/9/02 n.30328 of the Court of Cassation en banc, which confirms the validity of the conditionalist theory and the necessity to proceed with counterfactual judgement. In brief, according to the Court, the damaging or dangerous event, from which the culpable responsibility in the so-called crimes of the event arises, must be placed in relation to the conduct or the omission of the guilty person according to a strict cause ratio (*conditio sine qua non*) and in addition that without such conduct the event, in the case examined, death by frost-bite, would not have occurred (counterfactual judgement).

The innovation of the legal trend mentioned is in the point in which it questions whether the cause connection is rigorously proved, according to the general principle that requires that every condemnation requires proof of the crime, that must not be limited to a generic and statistical evaluation, but must be based on hard facts or precise and concordant evidence supported by rigorous logical reasoning.

However, even in this way it is inevitable that the verification of responsibility passes through evaluations taken from the profession's specific science, as this alone can provide the criteria on which to base the factual results and rigorously logical arguments related to evidence, deductions and scientific parameters.

In the case examined the Appeal Court, in second degree, whilst confirming the first-degree sentence, had underlined the special nature of the episode and the difficulty in evaluating the

behaviour of the rescue team due to the lack of principles of experience and specific regulations governing the subject matter dealt with.

The Court of Cassation assumes that on the one hand guilt can be defined by non-observance of informal rules of conduct and therefore, in general, negligence, imprudence, inexperience, set like criteria of the event's representativeness and foreseeability, and on the other hand when dealing with specialist activities it is necessary to refer not to any man, but to a man who is "eiusdem professionis vel condicionis" and in this case the parameter then consists in the highest degree of culture and professionalism that can be demanded from the people called to fulfil those specific roles.

The resulting evaluation makes no concessions to slovenliness and negligence, demanding that the best science and knowledge available at that moment in time are used as the basis for evaluating behaviour.

The outcome of this reasoning is that in the opinion of the Court, and for the purpose of the declaration of guilt, it will be suffice not to have observed specific and professional rules and, worse still, if the shortcoming of a person charged with a crime can be attributed to imprudence that would be obvious to any man. All of this may carry its weight for the art.133 c.1.n.3 of the Criminal Code, as when assigning the penalty the Judge must evaluate the degree of guilt, within the minimum and maximum terms established by the sanction defined in the Criminal Code.

When the event cannot be attributed to a single person, as for the case examined, but to a structure, and the behaviour of various people has contributed to the occurrence of the death, it enters the delicate field of culpable cooperation. It is interesting to reflect on the position taken on this matter by the Court of Cassation.

It is evident that none of the people called to respond before the court wanted the event to happen, on the contrary, all parties concerned had in some way worked in the woman's favour, but committing errors and imprudent actions that have become criminally relevant in making the death happen.

The Court stresses that a functional connection between the behaviour has caused them to converge in a criminally relevant single figure composed of multiple individuals, as the strict interdependence of the single activities carried out or omitted, each of which, although attributed to different individuals, become a sort of ideal extension of the one previously carried out, would derive in an inevitable cause correlation between any conduct intervened at any moment and the final damaging event, making the best of the interdependence of the contributions or omissions to deduct from the cooperative structure of the process absolute elements with respect to the affirmation of a variety of single responsibilities for omission and, at the same time, inserting the various conducts in the paradigm of the contributing causes (art.41 Criminal Code). In fact, when acting in a group or within any structure, each person participates in the action in a different way and with different contributions. The Court admonishes that the behaviour of others must not be suffered or lowered in an uncritical and indolent manner, it is necessary instead to consider the result of the conduct of who is cooperating, otherwise even he who has supinely lowered and contributed to proceeding with a rescue in a totally imprudent or inadequate manner, will end up having to respond for his own more modest contribution to the cause, owing to the "awareness" of contributing to the foreseeability and avoidability of the culpable fact.

In the Aosta Valley, this event also induced the regional legislator to make some important reflections and analyses.

In our small region, a very small reality in which news or events of any kind do not pass unnoticed, provisions are immediately adapted and evolution is possibly quicker and more sensitive compared with larger realities where problems can escape or be dispersed in the face of problems that are possibly vaster and more worrying.

So with the R.L.n.15/12/2000 n.4 it intervened to introduce amendments on the one hand to the "Discipline of rescue services on the Region's ski slopes" and on the other hand to the R.L. n.9/1992. "In consideration of the considerable public interest in the rescue services (see art.1,

paragraph 1 R.L.n.2/1997), the Region assumes, at its own expense, the costs relative to the rescue services, specifying that the responsibility for organisation and management is assumed by the ski slope operators, and can be delegated to the chief of ski-patrol (art.9 p.1 bis of the R.L. n 9/1992).

The result of this provision was that the ski slope operators found themselves working alongside the civil protection, in a front line position with regards to the activity of the skiers on the ski slopes and whilst on one side they received economic relief when they were relieved of costs that they had in any case been bearing, on the other side they found themselves held by the law to a consequent responsibility, putting into doubt their position of guarantee towards users of the ski slopes.

At that time, the training courses foreseen by the regional law on the subject of rescue discipline had trained the employees and more than 150 people were entitled to carry out this evermore important role. In 2001, the pisteurs secouristes and the chiefs of ski-patrol felt that better organisation was required and they founded the association of ski-patrollers and the chiefs of ski-patrol. One of the many tasks that the Association wishes to carry out is without a doubt the promotion of the professional qualification as foreseen in art.5 of the constitutional act signed by the founding partners in Pollein (Aosta Valley) on 21/3/2001, that states: *"reunite and represent all of those who carry out or are entitled to carry out their activity in the framework of safety of the winter stations in the Aosta Valley, protecting and promoting, in agreement with the Region, solidarity between the members, professional competence through organisation of training courses, refresher courses, work experience, in more advanced stations, and anything that may be useful in persuement of the objective and to improve quality"*.

As one of its purposes, the Association also carried out a study of guidelines for the management of rescue operations.

Three different types of intervention have been analysed, each of them connoted with different criteria for evaluating the intervention.

The first examines injuries, which must be managed and evaluated according to their seriousness, making a distinction between a personal accident and a collision between skiers, and also taking into consideration documentation of the accident with regards to the state of positions and the witnesses present, which the injured person is unable to do, and cannot be deferred to another moment in time due to the fluidity of circulation on skis and the variability of the territory covered in snow. Special care must be taken for cases of simultaneous accidents that can put the speed of rescue in crisis, but must be efficiently managed.

The second analyses cases of avalanches, when it is necessary to act at top speed because the time taken to find a person and intervene to conserve their minimum vital functions is inversely proportional to their chances of survival.

The case of lost persons differs from these cases, as it does not yet regard the persons safety, rather the cause of effective danger should the search lengthen unnecessarily, thereby placing their integrity and health in real danger.

In all of these situations, the skiers on the ski slopes and their companions must refer to whoever is close to them and they in turn must advise the authorities, using any means, as foreseen by the criminal code that traces the limits of the crime of omission.

The general rule used in criminal code to identify a crime of omission could leave some doubt both in evaluating the concept of "need for help" that is not necessarily connected with physical illness and could be due to "other causes", and regarding the authority to refer to, owing to the distance from places of care and assistance and a rare ratio between the forces of order and the area of the ski slopes.

The law relating to the ski slopes n.363/2003 at article 14, intervening with an appropriate provision on this point, clarified in the first place that the operator of the ski slope is also the referent on the ski slopes for rescue operations, to whom whoever it may be must refer to in order to fulfil their obligation to report an event.

In second place, and here the response given to the effective needs by the law leaves much to doubt, it classifies the degree of need of the person requiring help, supplying a version of the text that could be interpreted as a sort of decriminalisation.

In fact, art.593 of the criminal code is composed of three paragraphs of which the first indicates a person in difficulty, maybe due to young or old age, or “any other cause”, and this residual form could also include a tourist’s incapacity to get himself out of a difficult situation. The second paragraph examines the more serious situation of a seriously injured human being (inanimate, or seemingly inanimate, body) or if conscious in any case injured, or if not injured effectively in danger.

The third paragraph grafts onto the previous ones a progressive increase of the penalty foreseen for the crime, in relation to the conclusive result of the event. In fact, the basic penalty established is reclusion for up to one year and a fine of up to €.2500, but if the person suffers injuries due to the omission the penalty is increased, and in the event of death, it is doubled.

The law relating to the ski slopes has dismembered the hypothesis contemplated in the first two paragraphs and has only recalled the criminal rule with reference to the second paragraph, whereas it foresees an administrative sanction in the case of failure to assist or report a person in difficulty. This dutiful behaviour supported by a purely administrative sanction is requested of “whoever”, when skiing or practicing other sport, omits to supply the assistance required or alternatively to warn the operator.

The letter of the article, written in this way, seems to have subtracted criminal relevance from situations that could be classified under the title of “other causes” as in the first paragraph and that could be interpreted as the type of difficulty evaluated in relation to the skiers ability, contemplated by the administrative sanction.

Aside from reflections on the more or less implicit decriminalisation, it still remains that in any case a tourist or anybody, even if more qualified such as a ski instructor or a guide, who finds themselves close to a person in difficulty, can fulfil their obligations by simply referring the problem to the operator. In the Aosta Valley, this translates to “referring” to the pisteurs, who are those who carry out rescue operations on the ski slopes, in virtue of the relationship within the organisation that binds them to the operator of the ski slopes and the chief of ski-patrol purposely delegated by the operator to organise and control the safety service.

This leads to the fact that, with respect to the type of crime contemplated by art.593 of the criminal code, the position of the operator, and for him the chief of ski-patrol and the pisteurs, is different.

In fact, whilst for the tourist a simple telephone call is enough to satisfy the minimum behaviour acceptable, those who carry out rescue operations and to whom the call has been directed must act in favour of the person needing rescue and to save them, and their task only ends when they hand the person over to a medical structure or in any case when the person is safe. This is the minimum acceptable behaviour, which they cannot relieve themselves of.

As they are bound to carry out the rescue, in the event of a failed or badly managed rescue operation, the consequences are attributable to them. Art.40, second paragraph of the criminal code, specifies that not preventing an event which you have the legal obligation to prevent is equivalent to causing it.

A legal obligation to carry out the rescue operation exists in the case of the operator of the ski slope and the persons delegated by him. The person needing help may already be injured, or still unharmed. Injuries suffered by the latter, caused by or as a consequence of the rescue team’s operation, must be evaluated according to the type of culpable injury according to art.590 of the criminal code punished with the penalty of reclusion for up to three months or a fine of up to €.309, and in the case of a lethal outcome according to art.589 of the criminal code that punishes manslaughter with the penalty of reclusion for up to five years.

Comparing these sanctions with those foreseen for the crime of omission, the operator of the ski slopes may question whether it is in his best advantage to act in more serious cases, or he may

deliberately omit to rescue and leave others to take care of it, because the penalty foreseen for manslaughter is much higher than that established for the crime of omission.

But that is not correct. The ski-patrollers who are by law the consignees of the service are not only held to act but in the event that they do not act, they risk much more serious sanctions. The person needing help has been entrusted to them at the moment in which the call is made and has been received by the rescue team, and they find themselves invested with the task of “caring” by an express legislative provision, because they are indicated as title-holders of the rescue operations on the ski slopes.

The result of this is that the crime of omission could not be applied to them, but their conduct could be considered under the much more serious type of crime of “abandon of a person unable to help themselves” according to art.591 of the criminal code. In these cases the penalty foreseen in the abstract is much more serious and that is reclusion for a period of time from six months to five years, purely for abandon, but also in this case the crime is aggravated by the event, and if it led to an injury the penalty increases from one to six years and becomes from three to eight years in the case of death.

The doctrine and the law have underlined that the fraud required for the crime examined is a generic fraud consistent with the knowledge and will to abandon the person, when knowing full well that they should instead take care of him. Modern means of communication have simplified the possibility to communicate and have had a considerable effect on the moment in which the rescue service takes on their duty, which can easily occur at a distance, for example even by telephonic communication, which traces the demarcation line and the moment in which, from then on, the person is totally dependent on the good will and efficiency of the rescue.

The case in which the rescue team turn to the civil protection or mountain rescue units thereby creating a synergy of intervention is different, and their behaviour in this case is not omissive, but responsible and constructive, without relieving themselves of their tasks.

These reflections lead my work to the field of professional training.

The Aosta Valley’s regional provision, which intervened to codify the activities of the chiefs of ski-patrol and the pisteurs, creating training and refresher courses and a register in which competent people could be registered, has intervened on professional aspects creating fair expectations from both professionals and users.

These rescue workers are placed alongside other professional mountain roles such as the guides and the ski instructors.

It is a role welcomed by the professions and also on a European level because of the special attention given to the problem of safety in the mountains.

But even in this case, as for ski instructors and mountain guides, it is right to question whether the training is sufficient for the great responsibility that the trained personnel must assume. Against a professional qualification, we are faced with training programmes undertaken and organised by the individual outside of the brief training periods established by the regulations. In fact, a pisteur or a chief of ski-patrol cannot be fully trained in a sixty-hour course and a ski instructor doesn’t learn to ski in ninety days

Therefore, the time is right to intervene not only in terms of approval, but above all in a preliminary way, towards the creation of truly professional people specialised in the mountains, with schools dedicated to physical and theoretical preparation that guarantee full possession of the culture of the mountain and real true knowledge of the problems connected with the environment together with a proven ability to face them.