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## **SAFETY IN PROTECTED SKI AREAS IN THE REPUBLIC OF SLOVENIA.**

Report on Skiing at the Bormio Forum of 2<sup>nd</sup>-4th December 2005.

## **1. INTRODUCTION**

The Law and related regulations on safety in protected public ski areas came into effect in the former Socialist Republic of Slovenia (part of the Republic of Yugoslavia) in 1977.

The *ratio legis* was concerned exclusively with protecting users of protected ski areas which are open to the public. The Law is based on the ten FIS rules.

Today, of almost 2 million Slovenians, a quarter practice skiing as a sport or recreational activity on some of the country's 900 kilometres of piste. With the increase in number of skiers and the emergence of new disciplines (in other words variations on skiing such as telemark, carving and snowboarding), the former Law and regulations no longer covered the full range of risk situations, skiing accidents and solutions for accident compensation and dealing with offences.

Criminal Law required more precise rules in order to create a judicial system specific to civil rights relating to non-competitive winter sports, in keeping with the principles of civil responsibility.

From a penal viewpoint, too, it was necessary to impose precise legislative definitions regarding penalties for offenders, piste users and personnel responsible for protected areas and ski lifts.

Skiers' responsibility for their own conduct was not sufficiently emphasised in the safety regulations for protected ski areas.

In addition, skiing accidents have increased to approximately one thousand plus one fatal accident per year.

## **2. NEW LAW AND MINISTERIAL REGULATIONS ON SAFETY IN PROTECTED SKI AREAS**

All this brought about the need for a law appropriate to the altered circumstances of protected ski areas. At the end of 2002, the Slovenian Parliament responded to suggestions and proposals from the Slovenian National Ski Federation and enacted the new law on safety in protected ski areas (described hereafter as »the Law«), or: »*Zakon o varnosti na*

*smu\_i\_\_ih*«, published in the Official Gazette of the Republic of Slovenia no. 110/2002 on the 18th December 2002 (*Uradni list \_t. 110/2002 z dne 18. 12. 2002*). The Law comprises eight chapters and 39 articles.

The Law was followed in 2003 by the relative Ministerial Regulations (described hereafter as »the Regulations«), provided for by the Law, relating to the:

- opening and functioning of the areas,
- methods of protecting and marking the pistes and areas
- regulating of the rescue services,
- monitoring and control of the ski areas
- content of skiing accident records (forms).

Another important law connected to the Law on protected ski areas is the law governing funicular installations for transporting people up the mountain, or: »*Zakon o \_i\_ni\_kih napravah za prevoz oseb*«, published in the Official Gazette of the Republic of Slovenia, no. 126/ 2003 on the 18th December 2003 (*Uradni list \_t. 126/ 2003 z dne 18.12.2003*).

The Slovenian National Ski Federation – *Smu\_arska zveza Slovenije* - still has a significant influence on legislative initiatives and professional recommendations.

The above comprises the set of laws relating to winter sports in protected ski areas and to access to the mountain, including administrative procedures on the opening of new ski resorts.

The law governing the building of ski lifts states that their construction, and that of ski slopes, is of public interest due to the effect on the economic development of demographic risk areas and on protecting the environment. For this reason, the law requires expropriation of property or servitude *sui generis* for skiing (easement of passage) during the winter period only.

A parallel could be made between public interest in the Republic of Slovenia and article 1 of Italian Law no. 363 of the 24<sup>th</sup> December 2003, regarding the safety of practising of downhill and cross-country winter sports.

The said article determines the social interest of a place in terms of the safety of the ski areas, and supports economic development in mountain regions, with growing emphasis on environmental protection.

As far as the rules on protection and safety are concerned, there is no difference between the two laws except that Law no. 363 delegates competencies to regions and districts to adopt additional regulations to guarantee safety and correct use of pistes and ski lifts. Furthermore, there is enormous interest by the Italian authorities in circulating information on accident prevention, as well as financing information campaigns.

### **3. REGULATIONS - BASIS FOR SAFETY IN PROTECTED SKI AREAS IN SLOVENIA**

#### ***3.1. Protected Ski Area***

In order to better understand Slovenian legislation on skiing, it is necessary to bear in mind that 56% of the 20.273 square kilometres which make up Slovenia's surface is covered with mountains and forests. There are 50 ski resorts in operation, comprising a surface area of 1500 hectares. The resorts are relatively distant from one another and impossible to connect up using ski runs.

The Slovenian expression »*smu\_i\_\_a*« is best translated as »protected ski area«. Every ski resort in Slovenia comprehends a protected ski area (described hereafter as "area") whose surface area is defined and limited by natural or artificial confines.

Slovenian Law defines an area as "a space where organised skiing takes place, unlike other ski runs where skiing is not in any way organised and is entirely at users' own risk.

The regulations which make up Slovenian Law on skiing are only applicable to the protected areas. The owner or manager of the ski lifts cannot be held responsible in civil or criminal terms for any accidents resulting in personal injury or damage to property which occur outside the confines of these areas.

The area includes all ski runs entering and exiting it, as well connecting passages between the pistes (articles 4, 5, 6, etc.).

Tracks for sledging, cross-country skiing and other winter sports activities must be separated from the downhill ski runs. All pistes must be at least 40 m wide (except where natural obstacles occur or where it

is necessary to protect the environment) and must have a safety margin of 2-4 metres on either side. The piste edges must be marked and visible. All manmade and natural obstacles in the safety margins must be protected. A 2-4 metre area of un-pisted snow must be left clear in front of such obstacles, depending on the situation of the terrain and the risk involved.

Pistes are classified according to the steepness of the slope. The classification and relative markings are in line with those used across the Alps. Pistes must be covered with snow, maintained in skiable condition and checked daily on opening and after closing.

The area can be opened to the public only after permission is granted, i.e. when a licence is released by the Ministry of Transport, on condition that the legal requirements regarding numbers of piste patrollers and rescue personnel are met. One patroller is required for every 500 skiers, two for up to 3000, and another for every further 1500 skiers. In addition, it must be certified that the number of skiers on the pistes is appropriate to the capacity of the ski lifts.

### ***3.2. Flow of Skiers down the Pistes***

The capacity of the ski lifts is determined by the Ministerial Regulations on the technical conditions of the area's usability. The lifts must be appropriate to the flow of skiers down the pistes, in other words the number of people present on the piste at any given time (article 10). The capacity of the piste is calculated as the number of skiers likely to converge on the area. This numerical figure must be present on the area's licence to operate.

The reason for limiting the number of skiers on the piste is to prevent overcrowding, which is a major cause of skiing accidents. The ideal limit on this number can be argued from many points of view, especially that of the lift owners. In extreme cases, owners may be forbidden to sell daily, hourly or half-daily passes when the number of piste users has exceeded the limit stated on the licence. This rule leads to numerous administrative and financial problems, and is therefore not yet being implemented. Clearly, this limit cannot be applied to the biggest ski areas, such as Dolomiti Ski, Livigno – Valtellina, Ski Amade' etc.

This provision is necessary because overcrowding of the pistes not only irritates users but also leads to dangerous situations and even, as

already discussed, accidents. Furthermore, overcrowding impedes the essential monitoring of users' conduct, for example speed and observation of signs and markings, rights of way, etiquette for overtaking, and so on.

Overcrowding can cause the piste and lift owners to be held responsible for accidents on the piste.

The flow of skiers down the piste and up the lifts can be calculated mathematically. The calculation is based on the time necessary for the average skier to go up the lift and ski down the piste, bearing in mind the length and speed of the lift as well as the length of the piste and speed of the skier.

Based on this calculation, the average time taken to ascend and descend a particular piste user can be obtained. Using this figure, it is possible to calculate the frequency with which the individual skier, and therefore other piste users, ascend and descend in an hour.

However, the flow of skiers down the piste is also affected by the width of the piste at its narrowest point. Therefore a key part of the calculation is the number of skiers who, skiing normally, can pass through this section of piste at any given time, e.g. an hour.

The Faculty of Civil Engineering at the University of Maribor has carried out some calculations relating to the flow of piste users through protected ski areas using a method developed by Prof. Salzman. This method is based on empirical research conducted in 2001 in several areas and pistes in Austria.

*(S. Salzman, Die Grenze der Pistenbelastung, Internationale Seilbahnrundschau I / 2001, Wien, 2001).*

In this way, the maximum burden on the pistes, or rather areas, can be calculated. However, the key factor in this calculation is, as already mentioned, the surface area needed by each skier. According to Salzman, the permissible number skiers is equal to the number who can ski a one metre section of piste in an hour. On the subject of technical solutions, I will limit myself to describing the problem and methods of resolving it.

In any case, the Law stipulates only that the number of people on the piste is appropriate to the capacity of the ski lifts. The method (i.e.

the mathematical formula) for determining the number of skiers on the piste, is not set by the ministerial regulations.

It can be concluded that, in practice, it is a matter for the Ministry of Transport issuing the licence to operate and of the inspectors at the Ministry dealing with offences against the rules relating to the number of skiers on the piste. It is also, in cases of legal disputes, a matter for consideration by expert consultants.

Since the calculation is not defined by Law, the consultants are free in their use of methods and calculations regarding failure to respect limits on the flow of people through the ski area.

In spite of the Law and Regulations already being in effect, the rules are not yet being enforced. Putting them into practice will be somewhat difficult, especially as they are not wholly in the interest of those running the ski areas and lifts.

### **3.3. Skiers – Piste users**

The central subjects of Slovenian legislation on skiing are skiers, i.e. piste users, and ensuring their safety. This is, however, on condition that the piste users respect the current rules of conduct for skiers set out by article 24 of the Law in the form of an ethical code of good conduct on the snow.

The above article expands upon the ten FIS rules, adapted to the context of skiing in Slovenia.

As a result of failure to respect the rules under article 24, skiers are responsible for damage caused to third parties and to themselves. In the case of accidents resulting in personal injury, legal prosecution of skiers is not ruled out. Article 24 states that skiers must (citing the most important obligations):

- Adapt their speed to their own skiing ability, the conditions of the terrain and weather, and the number of other people on the piste,
- choose their path down the piste in such a way as not to endanger other piste users,
- overtake, whether from above or below, from right or left, leaving a safe distance so as not to endanger the person being overtaken,
- respect rights of way of others, in this case always the skier in front,
- use the edge of the piste for stopping or walking up the slope.

- wear a helmet up to the age of 12 ...

Skiers are forbidden to:

- Stop in the middle of main routes down the piste, near bumps or in places where they are not clearly visible,
- ski on closed pistes,
- ski using incorrect or defective equipment,
- ski under the influence of alcohol, illegal or psychotropic drugs or other narcotic substances,
- ski off piste in the protected area,
- take dogs or other animals onto the piste or into the protected area without keeping them on a lead ...

Non-piste users or people practising other mountain activities (not including piste personnel) must obey all the rules applicable to skiers.

A skier under the influence of alcohol is defined as one who gives a reading of more than 0.24 milligrams of alcohol in a litre of exhaled air. This recording is a matter for the police. If the skier refuses to take this test, the police officer must record the refusal and have it signed by the skier in question. In both cases, i.e. when a skier is shown to be under the influence of alcohol or refuses to be breathalysed, the police officer must ban the skier from skiing for the remainder of the day, confiscate his/her lift pass, and advise the area authorities of the ban and confiscation (articles 25, 26 and 28 – Law).

The police are authorised to test suspected skiers for drugs. In each case, the suspect's lift pass is confiscated and he/she is banned from skiing for the rest of the day. The officer is empowered to oblige the suspect to take the relevant medical tests.

### ***3.4. Managing protected ski areas and lifts***

The manager of the area is obliged to provide protection against avalanches, precipices and general dangers, such as non-skiable sections of the area.

In addition, the manager must protect the piste user from dangerous obstacles like electricity pylons, chairlift support pillars, snow cannons and service roads or tracks.

The manager is responsible for maintaining the pistes. If the snow on the pistes and tracks is scarce, he/she must provide artificially produced snow. He/she must also mark the confines of the area and the edges of

the pistes, attaching piste signs to posts which are clearly visible to users.

The manager must provide a board displaying a map of the area, including the position and classification of the pistes, sledge and cross-country skiing tracks, lifts, car parks and first aid stations. Instructions regarding skiers' conduct, according to article 24 of the Law, must be provided and visible. Users must be informed, through information boards, of the area's opening hours, temperatures, snow and weather conditions and any necessary warnings.

The manager of the area must oversee rescue services and monitoring of the pistes by patrollers. He/she must see that the area or individual pistes are closed in cases of avalanche risk, fog, strong winds, heavy rain or blizzards, or if insufficient rescue or piste patrol personnel are available.

If these duties are neglected, the manager is guilty of a criminal offence and may be prosecuted.

The manager of the area is not necessarily also the manager of the ski lifts, but must collaborate with any other managers in the supervision of opening hours, number of skiers on the pistes and lifts, and the running of rescue services and piste patrols. He/she must, in addition, manage the financial side of any collaboration that takes place.

### **3.5. Monitoring and patrolling of protected ski areas**

The body controlling ski lift operation is the Transport Inspectorate – *Prometni in\_pektorat Republike Slovenije*, while the ski areas are governed by the Inspectorate for the Safety of Protected Ski Areas – *In\_pektorat za varnost na smu\_i\_\_ih*, both of which are divisions of the Ministry of Transport.

The area and piste inspectors are, in an operational sense, subordinate to the Inspectorate for the safety of the areas (not yet functioning) and have the competencies of state bodies.

Inspectors must be in possession of a licence card issued by the Home Office, authorising them to carry out police and state body procedures. The mandate is valid for four years with the possibility of renewal. Candidates must, among other things, speak Slovenian and

have a passive knowledge of a foreign language, a high school diploma and a ski instructor's qualification. They must wear the licence clearly displayed on the appropriate jacket.

The inspector's licence may be revoked by ministerial decree in case of disciplinary action or inability to perform the function.

The inspector is empowered to fine offenders on the spot for failure to respect the regulations under article 24 of the Law. He/she may not, however, test suspects for alcohol or drugs. If a skier is suspected of being under the influence of alcohol or drugs, the inspector must ask for identification and inform the police.

The inspector may, in addition, ban the skier from skiing for the rest of that day and confiscate his/her lift pass for violating the rules under article 24 of the Law except, as already discussed, in cases of suspected alcohol or drug abuse, which are a matter for the police.

Skiing bans and lift pass confiscations cannot, as stated in article 28 of the Law, be considered penal sanctions but rather precautionary measures in the interest of public safety on the pistes. Such measures can, therefore, be applied to minors as well as adults.

The principle duty of inspectors is to prevent problems from occurring, for example by advising skiers that they are failing to comply with the rules of good conduct on the snow. Furthermore, inspectors are there to give advice on piste use, help to solve any problems skiers may have with equipment, and so on.

If a skiing accident occurs, inspectors must record it in writing on the form stipulated by the Ministry, and may ask for the identity of those involved and of witnesses. It is very important that the inspector determines how the accident occurred, makes a sketch and records the facts and the temperature, weather and snow conditions, etc. It is also advisable to photograph the scene of the accident. If the accident results in serious personal injury and a party is suspected of committing a criminal offence, the inspector must inform the police and the rescue services. He/she must cordon off the scene of the accident so that the evidence is not interfered with, and must also aid those involved in the accident until the police and rescue services arrive (articles 20, 21, 22, 23, 27 and 28 – Law).

Overseeing the rescue services is, as already discussed, the duty of the manager of the area. One member of rescue personnel is required for an area with a capacity of 500 skiers, two for up to 3000 skiers, and another for every further 1500 skiers (article 17 – Law).

### ***3.6. Sporting Events and Competitions***

Winter sports events may, as already mentioned, take place in the areas. These events vary in terms of discipline and type of piste or track used, and the various sports must be adequately protected and separated from the pistes where downhill skiing is going on.

The event organisers must advise the manager of the area in advance and obtain permission.

The piste or track where the event is being held must be furnished with protective equipment and signage, in accordance with the law and with specific safety requirements appropriate to the type of event in question.

For competitions or training, it is necessary to close the piste or to fence off the section being used for racing or training, including the safety margin, using coloured tape.

At the end of the session, the area manager must remove all protective equipment and signage put on the piste for the purposes of racing or training.

Ski schools and individual ski instructors, too, need authorisation and permission from the area manager to teach people to ski in the area.

The law states that ski instructors are obliged to inform their pupils of the basic regulations regarding safety and piste use. By law, only qualified instructors are permitted to teach (articles 15 and 16 – Law).

### ***3.7. Methods of Protection and Signage***

The law and ministerial regulations stipulate methods of protection, based on international technical standards, similar to those already in effect in countries across the Alps. Methods include nets,

padded mats, ropes and fences (article 4 – Law and articles 12 and 13 - Ministerial Regulations).

As far as piste markings and signage are concerned, the Ministerial Regulations distinguish four categories of signs: warning signs, prohibition signs, information signs and obligation signs. The latter are accompanied by coloured tapes, for example to mark the edges of the piste, the confines of the area, training zones, etc. This is in line with the international standards mentioned above.

The poles to which these signs are attached must be made from 40 mm-thick wood or 50 mm-thick plastic. They must be placed in locations where they are visible even in bad weather conditions (articles 4, 5 and 10 - Law and articles 1 – 20 - Ministerial Regulations).

### **3.8. Criminal Responsibility - Offences**

The law prescribes fines for offending or for failing to comply with legal regulations.

Inspectors or police officers may fine offenders be on the spot if they have witnessed the offence first hand. In this case, the offender must be advised of the injunction for payment by bank transfer and also of their right to appeal to the relevant court within eight days and of the 50% discount if the fine is paid within eight days.

In the case of an appeal, the legal procedure for offenders is followed, namely *Zakon o prekr\_kih*, published in the Official Gazzette of the Republic of Slovenia no. 07/ 2003 of the 23<sup>rd</sup> January 2003 (*Uradni list \_t. 07/ 2003 z dne 23.01. 2003*) by the District Tribunal of the locality (Pretura).

In other cases, when the law is broken, the procedure followed is based on a proposal by the relevant inspectors or police officers to initiate criminal proceedings appropriate to the offence committed.

After viewing the documents and, in some cases, questioning witnesses, the state body dealing with the offence decides on a fine, against which the offender may appeal to the local District Tribunal. If the offender wishes to appeal against the verdict of the District Tribunal, he/she may go to the Court of Appeal. In some cases specified by the Law, the body may decide to pass the case to the District Tribunal (Pretura), accusing

the offender (of an infringement of the regulations rather than of a criminal act).

The accusation of offending may be passed on to the relevant state body by a police officer, inspector, area manager, event organiser, ski instructor, or anybody else (in most cases by the victim of the offence).

Fines can be imposed on piste users, event organisers, ski instructors, and area personnel including managers and inspectors. Below are some examples of fines:

- A skier breaking the rules of article 24 can be fined from 10.000,00 (41.50 euros) to 75.000,00 tolar (312.50 euros).
- An area manager not complying with the safety regulations can be fined from 200.000,00 (833,30 euros) to 3.000.000,00 tolar (1.250.00 euros) or, for minor infractions, from 100.000,00 (416.50 euros) to 1.000.000,00 tolar (4.166.50 euros).
- A member of piste personnel is penalised for an offence with a fine of from 10.000,00 (41.50 euros) to 50.000,00 tolar (208.25 euros).
- An event organiser or judge is fined from 100.000,00 (416.50 euros) to 1.000.000,00 tolar (4.166.50 EU ), while a participant is fined from 10.000,00 (41.50 euros) to 100.000,00 tolar (416.50 euros).
- A ski instructor or unqualified person teaching skiing is fined from 50.000,00 (208.25 euros) to 150.000,00 tolar (624 .75 euros).
- An inspector failing to perform his/her function or breaking the safety regulations is fined from 10.000,00 (41.50 euros) to 75.000,00 tolar (312.50 euros).

People responsible for children under 14 years of age can be fined for offences committed by their children. Such offences include violation of articles 24 or 32 -35 of the Law, and are punished with fines applicable to skiers, i.e. from 10.000,00 (41.50 euros) to 75.000,00 tolar (312.50 euros).

## 4. LEGAL CASES

### 4.1. Civil Responsibility

At this point, we will examine some of the most recent sentences pronounced by the Slovenian High Courts, such as the Court of Appeal and the Civil College of the Supreme Court of the Republic of Slovenia in Ljubljana (described hereafter as Supreme Court), regarding skiing accident cases in the last decade.

Before mentioning these judgements, in order to better understand Slovenian criminal court cases, let us look at *sentence of 1998, no. II Ips 489/87- Supreme Court*, which states that: »*Downhill skiing is dangerous both as a sport and as a recreational activity. The key to this sport is knowing how to deal with the terrain and adapt to the rapid changes in the environment during the descent. The normal risk involved in this sport is, therefore, the responsibility of the skiers themselves*«.

These cases were judged based on the regulations under the former Law on Obligation, or *Zakon o obligacijskih razmejih*, and the Law on Safety of Protected Ski Areas, or *Zakon o javnih smu\_i\_\_ih*.

In these legal cases from the last decade, the regulations under the former laws (on which the court's decision were based) are similar to those under the current and new laws, i.e. the Code of obligations – *Obligacijski zakonik* and the Law on safety of protected ski areas – *Zakon o varnosti na smu\_i\_\_ih*. Therefore, even on the basis of the new and current laws, the Courts would have reached the same verdict.

It can also be concluded that the judges are well-informed and realistic in their decisions, considering the fundamental truth and logic of the proverb: »*danger increases with speed*«.

*Sentence of 6<sup>th</sup> January 1993, no. II Ips 419/92, Supreme Court:*

Because of an accident caused by the ski lift, a female skier using the lift suffered serious injuries and filed a suit for compensation from the manager of the lift installation. The manager, when taken to court, argued in his defence that he was not the owner of the dangerous installation and that he was merely managing it for the owner. The Court decided that the transfer of objective responsibility for the accident made no difference in legal terms.

*Sentence of 17<sup>th</sup> February 1993, no. II Ips 525/92 – Supreme Court:*

The skier (claimant) fell and suffered injuries while on a track between two pistes. Since the manager of the area refused to compensate him, the skier filed a lawsuit, requesting that the manager be held objectively responsible.

The claimant stated that the protected ski area was dangerous and that the place on the track where he fell was an icy bend near a small, insufficiently protected precipice. This, he claimed, was the cause of his accident. The court took the insufficient protection of the track into consideration, but also that the skier had been going too fast for the icy conditions, and ruled contributory negligence, the manager being subjectively responsible.

Responsibility can only be objective when the ski area is open in exceptional circumstances of increased risk, as stated in article 173 of the Law on Obligation, e.g. avalanches or extreme iciness on steep slopes. The court attributed 20% of the blame to the skier due to his inappropriate speed.

*Sentence of 9<sup>th</sup> December 1994, no. II Ips 663/93 – Supreme Court:*

Each of the parties involved in the lawsuit stated their own version of the collision. The Court eventually ruled contributory negligence, 50% each, considering that the party who was collided with had met a friend and was not paying due attention to what was going on on the piste, whereas he could have avoided the skier who bumped into him.

*Sentence of 30<sup>th</sup> January 1997, no. I Cp 973/96 – Ljubljana Supreme Court:*

The claimant skier was knocked down by the defendant skier, incurring serious injuries. The defendant was sentenced by the penal court for committing an offence by skiing too fast down a steep section of slope with poor visibility, where the claimant had stopped at the moment of impact.

The criminal sentence became absolute and therefore, as far as civil responsibility is concerned, the court is obliged by law to make a criminal ruling, although contributory negligence is not ruled out in such cases. In this case, the civil court attributed 50% of the blame to the claimant.

Both parties appealed against the percentage of the contributory negligence ruling. Since the facts were not entirely clear and the evidence was inconclusive as to which of the two skiers caused the accident, the court of appeal annulled the sentence and passed the case to the court of first instance to examine afresh.

*Sentence of 10<sup>th</sup> December 1997, no. II Ips 181/96 – Supreme Court:*

Due to lack of snow, the claimant fell on a patch of grassy ground on the piste. The court of first instance and the court of appeal decided that the manager of the area was responsible for the claimant's accident. The Supreme Court dismissed the defendant's appeal, based on article 9 of the ex-law on ski areas, which established that it was the manager's duty to repair dangerous bare patches of piste, or else close the piste (article 11 of the former law on ski areas). In the case in question, the manager was held responsible because he did not mark the grassy patches with visible signage, and in spite of this he left the piste open.

*Sentence of 16<sup>th</sup> February 2000, no. II Cp 1896/98 – Ljubljana Superior Court:*

The claimant, skiing on a piste with insufficient snow, is responsible for his own injuries.

*Sentence of 29<sup>th</sup> March 2000, no. I Cp 349/99 - Ljubljana Superior Court:*

In his lawsuit, the claimant stated that he crashed into a tree off the edge of the piste due to poor visibility from fog, and that the manager was objectively responsible for the accident.

The court of first instance ruled in favour of the skier. The Supreme Court ruled that the manager's responsibility was only objective in exceptional cases.

The protected ski area can only be declared dangerous in certain circumstances, and that fog with a visibility of 5 – 19 metres is not exceptional enough to justify closing the area. Therefore, the Supreme Court passed the case back to the court of first instance to decide whether there were elements of subjective responsibility involved in the case.

*Sentence of 23<sup>rd</sup> May 2002, no. II Ips 36/2002 – Supreme Court:*

The claimant filing the lawsuit stated that she knew, or had seen, that the piste was covered with fresh snow and that the piste-bashing machine was smoothing and flattening it.

The court concluded at this point that the claimant was aware of the poor state of the piste and, in spite of this, decided to ski down it, taking a greater risk than would be normal for a groomed piste.

The claimant, aware that she was not a very able skier, should have adapted her speed to the conditions of the piste. By not taking this into account, she took a greater risk than normal and must accept 50% of the responsibility.

The manager, for his part, should have closed the piste, as stipulated in article 11, as it was not yet flattened, groomed and ready for use. The other 50 % of the responsibility was, therefore, attributed to the manager.

*Sentence of 24<sup>th</sup> April 2003, no.II Ips 214/2002 – Supreme Court:*

The defendant did not adapt his speed to the type of piste, and chose a path which endangered other piste users. He overtook the claimant while executing a jump and hit her knee with his ski. In doing this, the defendant violated article 21 of the former law and was subjectively responsible for the injury.

*Sentence of 22<sup>nd</sup> May 2003, no.II Ips 420/2002 – Supreme Court:*

While the claimant was going up the drag lift, she was hit by the first defendant on a snowboard. The claimant filed a suit against the boarder, the managers and their insurance companies.

The court of first instance ruled that, since the boarder, being inexperienced at snowboarding, as well as the managers of the area and of the drag lift installations and the insurance company were all responsible for the injury to the claimant. The court stated that the closeness of the path of the drag lift to the piste is, according to article 3 of the former law, a danger. The path should have been protected with a safety net at the edge of the piste and the blame, therefore, also lies with the managers of the area and of the drag lift installations.

The defendants appealed to the court of appeal. The court approved the ruling of the court of first instance and dismissed the appeal.

The managers requested a revision from the Supreme Court. The Court ruled that the closeness of the path of the drag lift to the piste could not be deemed an area or object of danger under article 3 of the former law.

Areas and objects of danger which should be protected by nets of fences are precipices, avalanches, waterways and other natural phenomena.

The former technical regulations also required the manager to protect ski lift support pillars, electricity pylons, permanent snow cannons and so on, but not the path of a drag lift.

The court ruled that the managers were not subjectively responsible and accepted the managers' proposal for a revision, cancelling the sentences of first and second instance against the managers and their insurance companies. The responsibility was attributed solely to the snowboarder.

*Sentence of 10<sup>th</sup> July 2003, no. II Ips 440/2002 – Supreme Court:*

At the very bottom of the piste there is a pile of snow accumulated by skiers. This pile was the cause of the claimant's fall and therefore her accident. According to the courts, the subjective responsibility lies with the area manager who, neglecting the maintenance of the piste, allowed the formation of dangerous obstacles. He should, in any case, have erected signage to warn skiers of the presence of the obstacle on the piste.

*Sentence of 11<sup>th</sup> December 2003, no. II Ips 580/2002 – Supreme Court:*

The second defendant, skiing at the edge of the piste, close and parallel to the drag lift, crossed his skis and fell, sliding towards the claimant and knocking him down. The claimant initiated a civil lawsuit against the piste manager and the skier.

The claimant stated that the path of the drag lift should have been protected from the piste with a safety net. The lack of a net meant that the manager was responsible for the accident.

This case had a similar outcome to the one previously described; no. // IPS 420/2002.

During the proceedings, a court certified expert on the subject of skiing stated that not even a tape indicating the direction of the drag lift was necessary, and that the manager was not guilty of neglect. The skier/defendant fell on the piste and slipped, ending up on the path of the drag lift.

The Supreme Court absolved the manager of any responsibility and sentenced the skier to pay for the damage.

*Sentence of 3<sup>rd</sup> June 2004, no. II Ips 352/2003 – Supreme Court:*

An unidentified skier suddenly cut across the path of the snowboarding claimant, who swerved to the right and fell. Because of the icy condition of the snow, the claimant slid and crashed into a metal bolt attached to a wooden safety fence. The safety margin of un-pisted snow in front of this obstacle measured 150 centimetres.

The court of first instance, pronouncing an interlocutory sentence, ruled contributory negligence of 70% on the part of the manager (or his insurance company) and 30% on the part of the snowboarder. The court of appeal confirmed the decision of the court of first instance.

The Supreme Court, on the other hand, ruled that the uncontrolled speed of the boarder, even considering the unexpected obstacle created by the unidentified skier, was (under article 21 of the former law) due 70% of the responsibility for the accident.

This speed made it impossible for the boarder to safely avoid the unexpected risk situation.

The manager, due to incorrect provision of protection (i.e. use of metal bolts and wooden fences) and an insufficient safety margin of un-pisted snow, was attributed 30% of the responsibility. If the safety margin (required by the regulations to be 5 metres) had been sufficient, the risk of crashing into the metal bolts of the fence would have been reduced. The responsibility of the manager is subjective.

#### **4.2. Criminal Responsibility**

Most of the (not particularly numerous) criminal cases are violations of article 317 of the Penal Code – *Kazenski zakonik*, specifically »putting others at general risk – *povzro\_itev splo\_ne nevarnosti* ». This code states that:

»...anyone who ... through a dangerous act ... puts at risk people or valuable property shall be sentenced to up to three years in prison.

If the crime is culpable, up to one year.

If it causes serious injury to the person or persons, up to three years.

If it results in the death of the person or persons, from one to twelve years in prison...«

For culpable criminal offences, the courts will generally decide on conditional sentences.

As an example, let us examine one of the most recent criminal convictions of 2004/2005. A skier was charged at the criminal court of Nova Gorica, or *Okro\_no sodi\_\_e v Novi Gorici*, for skiing at high speed (in other words out of control) down a piste. Because he was not paying due attention to the skier below him, he crashed into him causing his death.

In the first instance, he was sentenced to one year in prison, suspended for three years.

The court of appeal, in this case the Supreme Court of Capodistria – *Vi\_je sodi\_\_e v Kopru* - dismissed his appeal and confirmed the sentence of the court of first instance.

## **5. CONCLUDING THOUGHTS AND PROPOSALS**

The danger involved in skiing increases not only with speed but also with the increase in the number of people on the piste. We cannot, therefore, rule out the possibility of a limit being imposed in the near future on the number of lift passes that may be sold (just as with cinemas, football stadiums, etc.) so that the number of skiers does not exceed the capacity of the pistes in the areas.

If the areas are connected to neighbouring areas, be it by ski lifts, pistes or tracks, thus forming very large ski areas, the problem of the number of people should not exist; the skiers will naturally spread out.

Would it, perhaps, be wise to limit the burden of people on single areas in order to guarantee safety?

In Slovenia, even though we have these laws, we have no experience on the subject.

I agree wholeheartedly with the Bormio Forum motto: *»from the snow's rights to the right to the snow«*.

We at the Slovenian National Ski Federation offer our support; or rather propose a right to enjoy the snow for all EU countries and their citizens.

Solkan, October 2005

Toma\_Maru\_i\_