

“Planning, environmental protection and landscape regulations regarding ski areas, and the compulsory easement system.”

1. - Foreword.

When skiing had a limited following there weren't many places where one could actually go skiing. Both downhill and cross-country skiing were practised on whatever slopes and plains were available, and of course suitable, and few modifications were implemented. Tracks ran through woody areas, often following old existing paths, and across grassy slopes and skiing was tolerated by the landowners, in a similar vein to hunting. But sometimes landowners asserted their right to close off their lands as skiers started to cross their land increasingly more frequently, so much so that they wore out visible tracks. Towards the end of the 1960s, the owner of land which was frequently crossed by skiers fenced the edge of a wood in the ultimate part of *Tre del Ciampinoi*, in Selva in Val Gardena. This fence caused quite a stir. At that time skiing was organised and managed according to certain business criteria by the owners of the ski lifts and cable car facilities, and the point that the landowner was trying to make, and challenge, was that in the absence of agreements and compensation people could ski on other people's property.

2. - Subjugating areas to build permanent structures.

The skiing business eventually grew large enough to warrant proper facilities, which were much more complex than the old ski lifts or sledge lifts (those of my age will remember the one in the Presolana Pass, and Ciampinoi in Selva). Ski slopes were built to accommodate increasingly more skiers, who were often much less proficient. This posed a problem; how to reconcile the skiers' needs with those of the owners of the facilities whilst protecting the rights of the landowners involved. This is when discussions began about the slopes' appurtenance to the facilities, which made owners and managers responsible for the ensuing responsibilities.

Even before national legislation concerned itself with regulating the industry, with Law No. 363 of 2003, a few regions had already made various attempts: Lombardy with Law No. 36 of 23rd April 1985, and Tuscany with Law No. 93 of 13th December 1993. These regional laws sanctioned the said concept of appurtenance, and attested to the social significance of skiing, with the attribution of the declaration of public utility to construction projects for ski slopes and facilities, both for expropriative purposes for the permanent facilities and for the establishment of compulsory easement so that cableways and skiers could cross the property. However the problem of how to settle upon compensation still remained; this was governed in Alto Adige by an umbrella agreement between the association for the facility owners and the farmers' union with the identification of objective criteria (the nature of the farm, the location and the damages - *cf. annex 1*).

3. – Cross-country ski tracks.-

The regional laws in question also apply to cross-country ski tracks. Owing to the sport's popularity, these required new materials for establishing new tracks, preparing existing tracks and adapting old tracks and this necessitated the obligation of either conventional or compulsory easement.

4. – Town planning and environmental protection.-

Building skiable areas involves aspects that concern both town planning and the environment in terms of the way in which the land is governed, as specified by reformed article 117 of the Constitution, with repercussions derived from the division of responsibility between the state and the regions.

4.1. – Town planning.-

For all aspects relating to town planning, the location of skiable areas is in a class of its own amongst the homogeneous territorial areas, and can be found in subparagraph F of the ministerial decree of 2nd April 1968 (parts of the territory destined for public facilities and installations). One of the memorable town planning tools that provided for this specific zoning for building ski slopes and facilities is the 1974 town-planning scheme of the Town of Santa Cristina in Gardena (approved by the Provincial Council of Bolzano with a resolution dated 14th October 1974, No. 4392).

In relation to non-conforming locations, once again regional legislation provided for the subsequent variant effectiveness for the town-planning instrument with the attribution of the declaration of public utility to the projects' approval.

4.2. - The environment.-

For the aspects associated with environmental protection, not for subject matter provided for by Legislative Decree No. 152 of 3rd April 2006, but in its current meaning in a landscaping context, building skiable areas must take into consideration the specific protective regulations, which are of varying degrees of severity depending on the imposed restrictions, as well as the general regulations that apply to protected areas and other specifics when the same areas are part of natural parks, areas which cover most of the Alpine and Apennine areas.

With the exception of cases in which areas are subject to further and particularly strict restrictions e.g. in the case of hydrogeological restrictions in areas of high risk, the evaluation of the impact on the environment, whether it passes through simple procedures or via an assessment of environmental effects, must be carried out according to a criterion of compatibility. To this regard, case law, both constitutional (*Constitutional Court, 20th December 2002, No. 536*) and administrative (*the most recent being TAR Sicilia, Palermo, II, 5th June 2006, No. 1308*), affirms the principle by which environmental safeguarding should not be enforced on the strength of merely inhibitory powers, but only as the result of reasonable deliberation, using a rule of proportionality between the value of safeguarding the area and the strength of the restriction compared to the activity under consideration.

As far as we are concerned here, due to their social and economic significance the mountains have several vocations, such as woodlands and pastures and agriculture but

also tourism, subject to the popularity of sports and leisure activities, and they have turned around areas which would otherwise be abandoned.

5. - Easement.-

Creating skiable areas can also entail compromising property rights. The frequently mentioned social importance of skiing has led first regional, and then national, legislature to assign the title of public utility to the required works. Whilst regional legislation is more precise, in that the declaration of public utility, non-deferability and exigency is attributed to the approval of projects, article 2, paragraph 2 of national law 363 of 2003 ascribes the same power to the regions to identify skiable areas without affecting the severity which must be applied to every phase of the compulsory purchase procedure, in order to ensure the landowners' rights. And in fact, when compared with traditional compulsory purchase and compulsory easement rules, the national legislature is still rather vague. This will be compensated for by the regional legislation that national law eventually invokes. The regulations of the consolidated law regarding compulsory purchase also compensate for this loophole (or superficiality?) as they ascribe the abovementioned attestation to the approval of a specific, clear-cut project and also the variant effectiveness to town planning instruments, if they contain dissimilar prospects.

6. - The effects of the widespread popularity of skiing.

The fact which emerges from the above is how much skiing has invaded the field of public law, mobilising its own institutes and concepts for works of public interest and public utility.

Mario Bassani

Annexe 1 – A compensation agreement for the use of private land for ski slopes between *Associazione Esercenti Funiviari dell'Alto Adige* (the Alto Adige Association of Cableway Companies) and *Suedtiroler Bauernbund* (South Tyrolean Farming Union);

Annexe 2 – Regulations from the regional laws that govern the subject matter covered in this document:

R.L. Valle d'Aosta 17-3-1992, No. 9, "*Regulations governing the management and public use of ski slopes*" -articles 1-2-3-4-5-6-7-8-9;

R.L. Valle d'Aosta 15-11-2004, No. 27, "*Safety measures for designated winter sports areas. Amendments to regional law No. 9 of 17th March 1992, (Regulations governing the management and public use of ski slopes), from the latest amendment of regional law No. 34 of 15th December 2000,*" - articles 1-2-3-4;

R.L. Valle d'Aosta 8-8-1989, No. 54, "*Hydrogeological-environmental upgrading works to ski-related constructions*";

R.L. Lombardy 8-10-2002, No. 26, "*Regulations governing the development of sport and sports-related professions in Lombardy*" - article 16;

L.P. Trentino Alto Adige/Trento 21-4-1987, No. 7, "*Rules for public service cableways and ski slopes*" - articles 1-2-3-4-5-34-35-40-40b-41-42-43-44-45-46-48-53;
L.P. Trentino Alto Adige/Bolzano 26th February 1981, No. 6, "*Ski slope regulations*";
R.L. Toscana 13-12-1993, No. 93, "*Regulations governing ski slopes and related cableway installations*" - articles 6-7-8-9-10-11-12-13-19-20-21-22-23;
R.L. Abruzzo, 9-9-1983, No. 61, "*Amendments to R.L. No. 55 of 1982 defining: "Regulations governing cableways, chairlifts, ski slopes and related infrastructures"*" - articles 14-15-16-17-18-23-24-25-26-27-28-29-30-31.