

Tourist transportation systems, Territory Planning and the Protection of the Environment

by
Hans-Kaspar Stiffler, Erlenbach/Svizzera

When we speak of Snow Law today, our thoughts go mainly to the following topics:

- *Collisions between skiers*, or a collision between skiers and/or snowboarders, and which rules must be applied in order to avoid these incidents being repeated. With regard to this, as a pleasant result of the first forum on winter sports held in Bormio, I can inform you about the statements made by the Deputy Public Prosecutor of the Republic, Dr. Avella, who confirmed during an interview that we must start from what was established by legislation issued by the FIS regarding legal provisions which govern the behaviour of skiers, which in any case is valid throughout the world, and that, if we reached the conclusion that it is necessary to make significant amendments, these should be studied and produced in agreement with the FIS, the International Ski Federation.
- *Companies which build mountain ski-lift systems*, which build, operate and manage the routes for winter sports and are consequently obliged to comply with reasonable precautionary and protective measures, so that skiers do not become victims of incidents caused by mountain or other hazards which are not connected with the descent as such. This naturally includes thoughts regarding the rescue and piste maintenance services, which obviously use dangerous machinery, usually for preparing the piste, etc. All these topics represent the subject of our thoughts with regard to the *Transport Safety obligations*.

These two topics which we may tranquilly define as the main themes of our remarks, will therefore be integrated with notes on the obligations regarding work and protection of

- *Ski Instructors, Ski Schools and Alpine Guides*.

At this point I have been asked to focus my talk on three subjects which up until now have not been dealt with due attention during the forum, and these are the transportation of tourists, territory planning and the protection of the environment.

Tourist transportation systems

With regard to this, as far as Switzerland is concerned (and I shall proceed to present this subject starting logically from the provisions established by Swiss Law) I shall tell

you something that is really topical. After years of preparation, we have finally managed to draw up a federal law regarding cable cars, chair lifts and other such mechanical units for the transportation of persons, the so-called *Law on ski lifts* which, we have estimated, will enter into force next year.

The law is applicable to all *lift facilities for the transportation of persons*, and therefore also to cable cars, chair lifts, ski-lifts and any other such mechanical units using tracks or cables.

The law governs the *concession* and *operating* of such systems. Therefore it is necessary to know that the right to operate systems for the transportation of persons regularly and in a professional manner rests only with the federal government: the Federation has the monopoly in fact, but it can grant concessions, and this is what actually happens, for the building and operating of such transport systems.

The main aim defined by this law is that the ski lifts for the transportation of persons are built and operated in *a safe manner*, but this is not all: the systems must also *respect the environment* and *be competitive*. That the structures must be safe is absolutely obvious, as it is obvious that we must respect the environment nowadays. However, the way in which the criterion of competitiveness will be judged shall be indicated in future.

Logically, there are a series of *technical rules and regulations* regarding the building and operating of the systems, and I shall not present these in detail here. The important thing is (and this should be the point of greatest interest for our forum) that International Law should be taken into consideration for these technical regulations. The competent federal department for transport, in accordance with the Secretary of State for the Economy, has indicated, as far as is possible, a corpus of *common regulations on an International level*, from which one can deduce that Switzerland, although it is not a member of the European Union, must still undertake to consider, in daily practice, the developments which may be observed within the UE. Moreover technical regulations can be written also by independent Swiss organisations, in the wake of a solution which other countries have already adopted.

Companies who build ski lift systems for the regular, professional transportation of persons in the context of regional and local transport, *have the right of expropriation*: in other words a single individual or a small group of persons may no longer stop the construction or operation of a ski lift system which is deemed to be useful to the local political economy.

Just a few more words with regard to the *concessions agreements*: the concession grants the right to transport persons in a professional manner. By way of the concession, all the authorisations required for the construction of the system are provided, and this holds also in the event in which the area is used for several installations. Up until now, it was necessary to arrange continually to agree new concessions and authorisations through a complicated procedure which, nowadays, with the new law on the ski lift installations, is fundamentally regulated in a more simple and practical manner. A concession is agreed in the first instance for 25 years and can be extended.

Naturally the owner of the concession is obliged to carry out the *care and maintenance of the installation*: in fact s/he is obliged to maintain the state of his/her installation in order to guarantee safety at all times, reviewing it regularly through the execution of official checks.

Provisions regarding the *dismantling of an installation* are completely new. In the event in which an installation is no longer made to operate, the concession is forfeit and the owner of the concession is obliged to dismantle the installation at his/her own expense and to return the area to its original condition. Just guess what the practical difficulty is in this situation: a ski-lift installation is not kept in operation when it is not economically viable, consequently, when the activity ceases (very often due to bankruptcy proceedings) the coffers are empty. In this sense the law on the ski-lift installations has provided an absolutely original solution: the firm which builds the installation and which in any case is obliged to insure the whole structure, is also obliged to underwrite an insurance which, in the event of insolvency, pays the costs of dismantling. You can therefore imagine why the ski-lift installation managers are not particularly happy about this measure. In the meantime however, several meetings with representatives of the insurance sector have highlighted the complete feasibility of the insurance now required by law.

Just one last word regarding *Civil liability*. The firm which is the owner of the concession for operating a ski-lift installation for the transportation of persons must comply with the provisions established by the federal law of March 28th, 1905 regarding the civil liability of the railway and steamship enterprises as well as the Swiss Postal Service. You heard properly: the law in force for more than 100 years has never been amended in practice. This law establishes a strict causal civil liability:

If a person is killed or injured during the construction or use of a railway line or during accessory work which is subject to dangers connected with the use of the railway, the railway company, the railway company is liable for the ensuing damages, unless it can prove that the accident was caused by an Act of God or by third parties, or by the person who was killed or injured.

This civil liability regarding the railway lines represents the oldest in the context of Swiss Law and is strictly applied even in the legal system. The three reasons for the defence (by Act of God, third person liability and personal liability) only enter with reserve, as personal liability remains in first place.

Territory Planning

Territory planning is more recent. When the first courageous people began to ski and built themselves the first plant for winter sports (the funicular railway which runs from the renowned Parsenn area near Davos, for example, was built at the start of the Thirties in the last century), nobody talked about territory planning, although Swiss Law contained in the Civil Code of 1905 certainly knew the provision which would have been in the legal corpus which governs territory planning and which is continually cited in association with skiing. This provision orders the following:

Access to the woods, the forests... this is permitted to all according to local usage, excepting for any prohibitive provisions which the competent authority may issue, limited to certain land in the interests of cultivation (art. 699 Swiss Civil Code).

With the term “Access to the woods and forests” soon also came to be intended as meaning also access on skis, as long as there was any snow on the ground. However, to be precise, this was talking about woods and forests, but not cultivated areas. Thus, in 1930, 76 years ago now, the Court of Appeal in Berne, at the request of the peasants in Gurten, the mountain close to Berne, prohibited skiing on the surrounding slopes, because skiing caused damage to the crops. However, when one considers the sentence, it is interesting to note that the court expressly established that there could be no doubt on the fact that there was public interest in practicing this sport for the improvement of the health of the population.

Territory planning in Switzerland is regulated by the federal law of June 22nd, 1979, the so-called *Federal Law on Territory Planning*, the scope of which is the frugal use of the soil (a non-renewable resource). The Confederation, the Cantons and the Town Councils are obliged to coordinate their territorial incidence activities and therefore to respect the territory’s natural state, as well as the needs of the population and the economy. Consequently it is necessary to protect the natural basics of life such as the ground, the air, the water, the woods and the countryside and to create and preserve welcoming settlements and the territorial premises for economic activities.

Legislation establishes the *planning principles*:

- The landscape must be respected
- settlements, buildings and installations must be integrated into the countryside (which is not easy for ski-lift installations; how is it possible to integrate pylons into the mountain landscape?)
- the shores of lakes and riverbanks must be kept free
- the natural sites and spaces for recreation must be preserved (this theme is often quoted in discussions against the construction of ski-lift installations).

The Cantons must define in *direction plans*, with which they determine their territorial development guidelines. Moreover, they designate the territories which are of particular beauty or value as being important for recreation or as natural basics for life; added to this, however, is the fact that the territories are significantly threatened by natural hazards or by harmful emissions.

Following this, the *plans for use* must be defined, as these plans discipline the permitted use of the land. The individual areas, such as for example building areas, agricultural areas and protected areas, but also those to be used for ski slopes, must be defined through these plans of use; with regard to this the Cantons may expressly provide for the regulation of these areas and make use of them.

The plans for use are binding for everyone: buildings and plant may only be erected if they turn out to conform to the established aims for the specific area of use. For

companies which build ski-lifts this means that, starting from the definition of the plans for use, such companies must regularly take into consideration that *new areas of use for winter sports* are created so that the necessary plant may be authorised in these areas.

The Protection of the environment

In Switzerland, environmental protection is regulated by the law of October 7th, 1983. This law must (its purpose is delimited as follows):

To protect human beings, fauna and flora, their biocenosis type and their biotypes from harmful and annoying effects

And to preserve in a lasting way the natural bases of life, particularly the biological diversity and the fertility of the soil.

For *effects*, the law intends atmospheric pollution, noise, vibrations, radiations, water pollution or other intervention on water courses, and products related to building and to the operation of plant. The interventions on water courses obviously also include a catchment basin required for producing artificial snow. This also directly involves the companies which build ski-lift systems, whereas the other effects, such as atmospheric pollution and radiation for example, so not play a significant role in this context.

In order to be able to evaluate the future effects, before deciding on the planning, building or transformation of plant which could have a significant effect on the environment, it is necessary to carry out an assessment of the impact on the environment. The assessment of the impact on the environment is carried out based on a *report* containing information regarding the initial state, the project, including the planned measures for the protection of the environment, the presumed pollution load and the measures which would enable the pollution load to be further reduced. The report must also provide information regarding the costs of the above, so the authorities preclude the highest costs for themselves by issuing particularly wide-spectrum protection and prevention measures.

The details regarding the assessment of the impact on the environment are regulated by a *provision* which even defines which installations must be subjected to this assessment. In the context of our interests today, these installations are as follows:

- Cable cars and ski-lifts
 - for opening, on a tourist level, new areas designated for winter sports and of new departments of zones in already existing areas
 - to connect different areas used for winter sports
- slopes used for winter sports with modifications to the terrain measuring more than 2000 m² (referring to the normal size of a piste this is about 50 m wide and 40 m long)

- snow-making plant, if the surface to be treated exceeds 5 hectares (referring to the normal size of a piste provided with snow artificially this is about 30 m wide and about 1.76 km in length).

The relationship and the results of the assessment of the impact on the environment *may be consulted by anyone*. The business and building confidentiality is protected in any case however.

Limiting environmental pollution must be carried out first of all by limiting atmospheric pollution, noise, vibrations, etc. with measures applied at source. In this case, we are talking about *limiting emissions*. In the event that this is insufficient, it will be necessary to set the so-called *emission limit values* to enable atmospheric pollution to be limited. You all know the emission limit values: this is for example the maximum acoustic values which one can hear in traffic, especially in the road, in railway stations and in airports.

In this context, it is necessary to call attention to the so-called *principle of causality*. In conformity with the law on the protection of the environment, anyone who causes it shall sustain the relevant costs and this may turn out to be very expensive.

Therefore the law regulates different topics in a very detailed way [the law includes over one hundred articles in total], such as for example the protection against noise and vibrations, substances which are hazardous for the environment, the prevention and disposal of waste and many other subject which I cannot and have no intention of going into on this occasion. However, I should like to refer to a further three points of the law under consideration:

- With regard to the protection of the environment the law also envisages *International cooperation*. The Confederation may agree contributions to international organisations or programmes in the context of international environmental protection and carry out international agreements regarding environmental issues. As I have already mentioned, as you can see we are not members of the European Union but we are naturally ready to cooperate.
- The following definition, of fundamental importance, is present in the law on the protection of the environment: the national environmental protection organisations which were set up at least ten years before the presentation of a claim may legitimately appeal against, amongst other things (this is interesting for us) Cantonal or Federal decisions regarding the fixed installations subject to an assessment of the impact on the environment. This right of appeal is often used. In short, it is only possible to advise companies which build ski-lift installations to consult organisation for the protection of the environment as early as in the planning stage: in fact it is often possible to insert adjustments which are much less costly and more quickly carried out compared with the endless appeal procedures in which the company only runs the risk of seeing the requested authorisation denied it.

- The law also regulates *civil liability*, according to which the owner of a company or of an instalment which constitutes a particular hazard for the environment is liable for the damages resulting from the effects caused by such hazards occurring. This definition, in the case of the relationship under consideration regarding the structures of the companies which build ski-lift installations, does not have, however, much importance. The cable-car stations, the pylons and the mountain restaurants do not constitute particular hazards for the environment.

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So I have set out the three initial topics: tourist installations, territory planning and protection of the environment. Considering all these regulations, you will certainly now be asking yourselves whether it is still possible to build a ski-lift installation in Switzerland. Don't worry, it is possible.

However, experience tells us that the ski-lift installations can be modernised still further and that the areas used for winter sports can be made bigger: these works will need to obtain the relevant authorisation. On the other hand, it could be particularly difficult to build new installations to be used for winter sports in an area which up until now has not been violated by technology in any way. The philosophy at the basis of the decisions taken by the competent authorities regarding concessions, in particular the Federal Transport Department, is clear: the existing installations must be maintained to the levels of the most modern standards, even if this involves replacing the more simple installations with more efficient structures, which bring greater numbers of people but in this sense, bring more pollution. In the same way, it is possible to integrate the existing ski-lift installations on the slopes of a mountain with plant built very close by, or to connect the different areas used for winter sports. It is certain therefore that Switzerland will continue to offer absolutely modern areas to be used for winter sports.

On the contrary, in considering the general aims of the law on territory planning and of the law on the environment, as well as the right to appeal of the organisations for environmental protection, it is difficult to manage to create completely new areas to be used for winter sports. This, if one considers the exploitation of our Alpine territory, which is already high nowadays, but not always necessary. A part of the Alps must remain in its natural state for us and for future generations.

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