

## III<sup>rd</sup> EUROPEAN JURIDICAL FORUM ON SNOW

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#### **“Circulation of snowmobiles and other mechanical means on snow: legislative void and prospects for reform”**

#### **Introduction**

Among the problems relative to safety on snow, one of the system's points of *dolens* is certainly represented by the presence of mechanical means on ski slopes, not only run-tracers, but an increasing number of snowmobiles are used by the managers of ski slopes as first-aid means but also used by owners of hotels, shelters, and restaurants or – even – by ski schools.

These means do not require registration or a driver's license, periodical checks on suitability or DPIs (individual protection devices) and nor specific and verified psycho-physical requirements for their users.

No specific itineraries and paths are envisaged – and this is one of the main problems – so that these means, almost three meters long and a weight a some hundred kilograms, built for one or a maximum of two passengers, are actually used to transport many people and their luggage by hooking means mostly in a craftsman's manner for the purpose of connecting several towing means to the snowmobile, without any discipline and in complete absence of any safety conditions.

#### **The legislative discipline**

How was the issue dealt with by the legislator and competent administrative bodies?

Since 1965, with ministerial circulars No. 321\2343 of 30.06.1965 and No.7988\2343 of 08.02.1966, the Ministry of Transport, further to repeated requests by peripheral offices concerned about the diffusion of motorised vehicles equipped with sliding skates and tracks circulating on snowy grounds, examined the complex issue, and assigned it an organic order with the exhaustive circular No.180 published on 24.12.1970.

In this circular, entitled “*Special transport with motorised vehicles suitable for off-road circulation*”, a first organic order was given to the matter, in compliance with the previous Road Code, distinguishing among:

- snowmobiles, assimilated to motor vehicles;

- tracked vehicles, assimilated to motor vehicles;
- trailed, assimilated to operating machines.

It was specified that these means could circulate only off-road, granting the possibility if needed, to cross roads or public areas.

Conduct regulations of general character were also dictated regarding off-road driving, according to which users:

- had to behave so as not to constitute a hazard or obstacle for other vehicles, skiers, pedestrians and cable systems;
- overloading and skiers' haulage was not allowed;
- speed had to be adjusted based on transversal and longitudinal inclinations, characteristics of vehicles and land, snow conditions, visibility, presence of pedestrians and skiers;
- crossing of ski slopes was not allowed, and the possibility to apply the regulations set forth by the road code previously in force – PD 393/59 - regarding the rules relative to crossing, right of way, change of direction, limitation of noises and use of acoustical devices.

By the community Directives issued in the 90s, and by the introduction in our order of the new Road Code (Legislative Decree No. 285 dated 30 April 1992), which has been mentioned repeatedly, references appeared to have been substantially changed and innovated: community Directive No. 92\61\EEC entitled “*Two or three-wheel motorised vehicles*” was foreseeing not to grant homologations and registrations to said means (even if, to say the truth, up to date only one single homologation for this category of vehicles has been issued) and the General-Directorate of the Ministry of Transport, on 23.11.2005 published – subject to previous approval by the Ministry of the Interior – circular No. 1184\1185\Segr., which deeply changed the provisions set forth by circular No. 180 dated December 1970.

### *What has changed?*

In circular No. 1184\1185\Segr. of 2005, *in primis*, it is stated that snowmobiles cannot be included among motor vehicles or auto vehicles or operating machines, since they can only circulate off-road due to their intrinsic characteristics.

Therefore, they do not fall in the notion of vehicle ex art. 47 – Paragraph 1 of Road Code, according to which “*for vehicles it is meant all vehicles of any kind that circulate on roads driven by men*”.

As a consequence, the subject that concerns their circulation goes beyond the legislation set forth by L. D. 285\92 in terms of technical, authorisation and behavioural profile since the Road Code aims at regulating circulation of “vehicles”, among others, based on the above stated meaning.

Neither snowmobiles fall under the so called atypical vehicles, at least according to the current text of art. 59 of the Road Code, defining which are the atypical vehicles, light electric city vehicles, hybrid or multi-modal vehicles, electric micro-vehicles or ultra-light electric-vehicles and all those vehicles different from motorbikes, motor vehicles, auto vehicles, cable-vehicles, trailers, agricultural and operating machines.

Therefore, the most immediate consequence is the fact that their regulation cannot be devolved – as it happens for vehicles – to the Road Code, but to regulations set forth - should need be - by other Bodies, such as local Administrations and mountain Communities.

Also Law 363/2003 - *Regulations on the subject of safety in the practice of downhill run and cross country winter sports* – does not deal with the problem, but art. 16 mentions in general about the possibility for mechanical means used in the service and in the maintenance of ski slopes, to transit on them outside opening hours and with the use of lighting and acoustic signalling devices.

It is obvious that snowmobiles cannot fall in such category of means when used to transport the users of hotels or ski schools since they can hardly be defined – in the above-mentioned, peculiar functions – as mechanical means used to serve and maintain ski slopes, as instead the classical run-tracers, while the above-mentioned snowmobiles transit on ski slopes during the opening hours of ski facilities, where the flow of tourists requires indeed their presence.

Neither the outline of the bill bearing changes to Law 363/2003 has provided to regulate the subject in a definite manner, but only devolved the discipline to Regions - with paragraph 3 bis of art. 16 – related to the skiing season, use of the mechanical means outside skiing areas, according to criteria and limits that guarantee safety and protection of the mountain environment.

Notwithstanding the legislative decree to the Government for the review of the new Road Code - No. 85 dated 22.3.2001 – expressly recalled the need to regulate the use of snowmobiles and mechanical means in general on ski slopes and in any case on snowy grounds, neither L. .D. dated 15.01.2002 nor the most recent legislation interventions, have introduced innovations to the Road Code to this effect.. The above-mentioned legislative decree indeed was foreseeing that the Government would adopt the legislative decree to integrate, coordinate, and standardise the new Road Code with other legislative regulations and in particular – art. 2 letter c) – established that in this normative would be regulated *“the use of snowmobiles, providing the obligation to bear an identification sign, insurance for civil liability towards third parties as well as a driver’s license for the driver, in order to drive the above stated means”* which, due to their power that these can develop, were assimilated to autovehicles, thus allowing only people of age to drive them.

With the other modifications suggested by the above-mentioned legislative decree, it was also set forth the obligation of wearing an appropriate safety helmet, prohibition to circulate on highways, the speed limit of 45 km\h reduced to 30 km\h for circulating in inhabited centres.

The Department for land transport of the Ministry of Transport, had elaborated, based on this legislative decree, a draft decree that included snowmobiles among vehicles with atypical characteristics as set forth by art. 59 of the Road Code, which included five articles and a technical annex, in which it provided the definition of snowmobile as *"a motorised vehicle for the transport of not more than two persons, including the driver, the contact of which with the snowy ground takes place through front directional sliding skates (or skate) and one or two rear tracks which constitute the propulsion system"*.

Then it was foreseen a homologation and approval procedure, similar to vehicles, with the issue of a national homologation certificate and also an approval certificate issued to the vehicle's manufacturer.

Finally, in point 5 of the article, it was foreseen the driver's license, at least of category A, for the use of snowmobiles with the obligation to wear a protective helmet both for the driver and passenger.

The building characteristics that snowmobiles needed to have were described in the technical annex (maximum length 4 m, maximum width 1.60 m, maximum mass 450 kg, with a possibility to reach a maximum speed of 45 km\h) as well as detailed prescriptions regarding acoustical and lighting devices, trailer, braking system, passengers' restraint devices, defrosting and demisting devices and so on.

### **The novelties**

*The above examined draft only remained a project and the latest proposal, in chronological terms, brought forward by the General Directorate of Motorisation – Ministry of Transport concerns the possibility to institute an inter-ministerial work group (including the representatives of the Ministry of Transport, Ministry of Interior, Ministry for the Economy, Ministry of Regional Affairs and Local Authorities, Ministry of Economic Development, Ministry of the environment and Ministry of Health) that would elaborate the criteria suitable to regulate in a definite manner, this complex subject, also considering the repeated requests brought forward by judicial Offices to the Ministry of Transport, especially in view of accidents on ski slopes and outside these, linked to the circulation of these means, which are almost always deadly.*

*Last May, the first meeting was held during which it was discussed the drawing up of a bill suitable to regulate the subject matter.*

### The "previous state" in Piedmont

Regarding the experience of mountain Communes belonging to the jurisdiction of the Turin Public Prosecutor's office, there are no news in terms of technical meetings among the different Administrations in order to issue a standard regulation relative to the circulation of these means in the various municipal territories that host ski slopes and facilities, while a more organic discipline is being conceived.

In one case, which then became a penal proceeding, the Mayor of one of the above-mentioned mountain Communes issued an order to inhibit circulation to snowmobiles along a ski slope that was very frequented, especially by children, after a petition brought forward by some citizens, which also appeared on the newspapers.

In the order, the Mayor was authorising circulation with these means exclusively to owners and/or tenants of dwellings located in areas strictly indicated and to owners or managers of services for the supply of food and beverages in the same areas, characterised by no ice or by a stable snow layer, provided that the use of snowmobiles and tracked vehicles would take place during the closing hours of ski-lifts (from 5:30 p.m. to 8:30 a.m. of the following day), with absolute prohibition to circulate from 8:30 a.m. to 5:30 p.m.

In addition, regarding snowmobiles used by the local ski school, the obligation to establish an *ad hoc* path for them was foreseen, inhibited during holidays, which was to prevent mixing between pedestrians and motorised means, with the affixing of suitable signs for crossing and intersections.

The order was not applied, even if repeated many times and brought to the attention of the people for which it was meant.

From the communication of the offence that followed, these subjects were charged according to ex art. 650 p.c., despite the possibility to appeal the offence as set forth by art. 437 p.c., punished with reclusion from six months to five years, for which it is also foreseen the possibility to request and obtain personal provisional orders, in case it was deemed that the non-compliance with oral orders and repetition of the forbidden conduct would lead to integrate intent relative to the removal offence or intentional omission of measures against injuries in the work place, foreseen by art. 437 p.c., instead of the simple hypothesis mentioned in art. 650 p.c.

There are currently pending penal proceedings at the Turin Prosecutor's Office for the negligent homicide offence due to the collision of snowmobiles on ski slopes, occurred outside opening hours, following events organised on the mountain, for which relative technical consultancy services are in progress.

In the current legislative void, the eventual offence imputation indicated by art. 589 p.c. (and also by art. 590 p.c., in case of negligent personal injuries) will only concern profiles of generic fault, since profiles of specific fault cannot be contested regarding the non compliance with laws, regulations or disciplines concerning the circulation of the above-mentioned snowmobiles, since there are no *ad hoc* regulations on the said subject.

### *The law proposal No. 433 of the Piedmont Region*

On 30 March 2007, the proposal for regional law No. 433 was submitted by some Councillors of the Regional Council of Piedmont, entitled "Use of snowmobiles".

In this law, in art. 1, it is foreseen the prohibition to use snowmobiles during the winter outside paths authorised by Communes and in any case in compliance with the standards that these administrations set forth within municipal regulations.

The use of snowmobiles and similar means is always allowed on ski slopes and off-road paths when snowmobiles are used as first-aid, fire prevention or means of supervision, when they are used by first aid staff or staff in charge to supply primary services (water, power, gas and so on), Police and Commune staff for service reasons or when they are used by staff in charge of ascending plants.

The use of snowmobiles is subject (art. 5 of the above-mentioned law proposal) to authorisation issued by the Communes, valid exclusively on the Commune territory, to physical status people that request it and that meet the following requirements:

- subjects of age equipped with driver's license, at least of type B;
- identification of the means through registration number/frame and mark released by the Commune administration;
- R. C. T. and R. C. O. insurance policy with single ceiling equal to 1,000,000 Euros (one million);
- use of protection helmet of homologated integral type for driver and passengers;
- obligation to keep right in *ad hoc* paths indicated by the Communes;
- obligation of lighting device with flashing orange light to be used during each trip;
- prohibition to apply appendices or towing trailers to snowmobiles intended for the transport of persons, thus limiting their use to the transport of objects.

Concluding, the law proposal foresees that the above-mentioned regulations must be enforced by police, voluntary security guards and agents of the Municipal Police (art. 3).

The penalties foreseen for non compliance with the said regulations imply the infliction of an administration sanction included between a minimum of 166.66 Euro to a maximum of 500.00 Euro, in addition to the suspension of the driver's license for a minimum period of 15 days (art. 4).

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