

# CRIMINAL LIABILITY ON THE SUBJECT OF AVALANCHES

DR. LUCIA GIZZI

(JUDGE OF THE COURT OF AVEZZANO)

**SUMMARY:** 1. PREAMBLE. 2. THE MOUNTAIN GUIDE AND THE SKI INSTRUCTOR. 2.1. THE OBLIGATION OF CONTROL OF THE MOUNTAIN GUIDE AND OF THE SKI INSTRUCTOR. 3. ACCOMPANYING PERSONS AND THE “DE FACTO” GUIDES. 3.1. THE CONFIGURATION OF AN OBLIGATION TO CONTROL BY WHOEVER ASSUMES THE ROLE OF A “DE FACTO” GUIDE. 4. THE MANAGER OF THE SKI SLOPES.

## **1. PREAMBLE.**

The subject of criminal liability, in the hypothesis of falling avalanches presents several problems, mainly regarding the identification of subjects who may be liable for its occurrence.

It may be suitable to state beforehand that, in the hypothesis of falling of an avalanche, the criminal liability of the subject who, with his action or omission contributed to cause it may take place regardless from the occurrence of the damage, that is to say death or lesions to one or more persons. The subject may be liable in accordance with articles 426 and 449 of the p.c., therefore for causing an event of mere danger, which in this case is an avalanche, to the life and well-being of a considerable number of individuals, which cannot be determined *a priori*.

In particular, art. 449 of the p.c. sanctions “whoever causes a fire or disaster due to fault, which could have been foreseen by the first chapter of this article”. The incriminating regulation refers to any disaster set forth by articles 423 of the p.c. and subsequent, and therefore also regarding flooding, landslide and avalanche by which art. 426 of the p.c. sanctions the intentional offence. Art. 449 of the p.c. therefore, sanctions the actual cause of disaster, which in this case consists of an avalanche caused by the fault of the acting subject and not by malicious intent.

It is an offence for safeguarding the legal asset consisting of the public safety that, as already known, concerns the lives and integrity of persons,

considered not as individuals, but as a community<sup>1</sup>. Public safety consists in the well-being of the public, community and persons in general<sup>2</sup>.

Therefore, crimes against public safety include criminal hypotheses characterized by the fact to expose the life and integrity of an undetermined number of persons<sup>3</sup> into risk, the negative effects of which are extended or may be extended to a substantial number of individuals<sup>4</sup> that cannot be determined *a priori*.

Therefore, the characteristics of crimes against the public safety are the extension and potential extension of the damage or danger caused by criminal conduct and the vagueness of victims, which can be intended as *ex ante* non determinability of the threatened subjects (i.e. qualitative criterion), therefore as relevant numeric extension of the person involved in the action range (i.e. quantitative criterion)<sup>5</sup>.

Criminal law in art. 449 of the p.c. establishes a crime of abstract or foreseen danger, since the hazard to safety of persons which is not expressly stated in the criminal case, is deemed inborn in the conducts described by the legislator. Regarding committing a crime, the occurrence of the hypothesized disastrous event is therefore sufficient, without having to ascertain the actual exposure to danger of the life and well-being of an undetermined number of persons<sup>6</sup>. In fact, the seriousness, entity, proportions, power and extent of damage which, according to common

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<sup>1</sup> ARDIZZONE S., *Crollo di costruzioni e altri disastri dolosi*, in *Penal Discipline Digest*, vol. III, Turin, 1989, p. 278.

<sup>2</sup> ARDIZZONE S., *Incolunità pubblica (delitti e contravvenzioni contro)*, in *Penal Discipline Digest*, vol. VI, Turin, 1992, p. 364.

<sup>3</sup> ANTOLISEI F., *Manuale di diritto penale*, pt. sp., Milan, 2003, p. 3.

<sup>4</sup> FIANDACA G.-MUSCO E., *Penal Law*, pt. sp., vol. I, Bologna, 1999, p. 492; MANZINI V., *Trattato di diritto penale italiano*, vol. VI, by Pisapia, Turin, 1983, p. 244; PARODI GIUSINO M., *I reati di pericolo tra dogmatica e politica criminale*, Milan, 1990, p. 256; PISAPIA G. D., *Istituzioni di diritto penale*, pt. gen. e pt. sp., Padova, 1975, p. 272; SAMMARCO G., *Incolunità pubblica (reati contro)*, in *Law Encyclopaedia*, vol. XXI, Milan, 1971, p. 29.

<sup>5</sup> For the various interpretations of vagueness, regarding offences against the public safety: ARDIZZONE S., *Incolunità pubblica (delitti e contravvenzioni contro)*, cit., p. 365; CORBETTA S., *Delitti contro l'incolumità pubblica*, in *Trattato di diritto penale*, by Marinucci-Dolcini, Vol. II, Tomo I, Padova, 2003, p. 16; FIANDACA G.-MUSCO E., *Diritto penale*, pt. sp., cit., p. 492; RIONDATO S., *Dei delitti contro l'incolumità pubblica, nota introduttiva*, in *Commentario breve al codice penale*, by Stella-Crespi-Zuccalà, Padova, 2003, p. 1245.

<sup>6</sup> For all: MANZINI V., *Trattato di diritto penale italiano*, cit., p. 373. pen. Cass., section V, 12 December, 1989, Massa, in Cass. CED No. 185109; pen. Cass., section I, 16 March, 1984, Lanfri, in Cass. CED No. 165303.

experience, characterize the penally sanctioned action are such to render it hypothetically dangerous to the public safety<sup>7</sup>.

Even if it is not necessary to ascertain the actual danger for public safety, since this danger is assumed by law, the offence for negligent disaster is ensured by attributing to the verbal expressions used in formulating the case, a meaning which underscores the vast proportion, extent, and extent potential of the harmful outcomes of the event<sup>8</sup>.

In fact, as highlighted by law, the avalanche as an event relevant to the effects of the penal law, in the intentional case foreseen by art. 426 of the p.c. and that negligent foreseen by art. 449 of the p.c., consists in a phenomenon of relevant proportions in terms of entity and difficulty to contain it<sup>9</sup>. It must be therefore an event that exposes an indeterminate number of persons<sup>10</sup> to risk jointly with serious, complex and extended effects.

In particular, the avalanche is generally defined as a great mass of snow which is formed by the detachment of a snow or ice slab of a fairly large size from a high point on the mountain which when descending towards the valley, it grows progressively in size and power<sup>11</sup>.

Obviously, in case the avalanche causes death or lesions to one or more persons, the crime of negligent disaster will concur with that of homicide or negligent personal lesions. Since with one single conduct the subject causes two different punishable offences – that of damage to persons carried away by the avalanche and that of danger to the public safety –, the latter will be

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<sup>7</sup> GARGANI A., *Il danno qualificato dal pericolo, profili sistematici e politico-criminali dei delitti contro l'incolumità pubblica*, Turin, 2005, p. 274.

<sup>8</sup> ARDIZZONE S., *Inondazione, frana, valanga*, in *Dig. disc. pen.*, vol. VII, Turin, 1989, p. 58.

<sup>9</sup> Thus: Court of Aosta, 13 March, 1995, Gilberti, in *Riv. dir. lav.*, 1995, p. 717. With reference to landslide: pen. Cass., section I, 13 November, 2003, Baronchelli, in CED Cass. No. 227851; pen. Cass., section I, 1 October, 1993, Togni, in CED Cass. No. 196320.

<sup>10</sup> See: pen. Cass., section IV, 24 October, 1990, Galbusera, in CED Cass. No. 186983; pen. Cass., section IV, 17 March, 1981, Schweitzer, in CED Cass. No. 149906; pen. Cass., section IV, 4 October, 1983, Castelnuovo, in CED Cass. No. 162779; pen. Cass., section V, 12 December, 1989, Massa, in CED Cass. No. 185108; pen. Cass., section I, 16 March 1984, Lanfri, in CED Cass. No. 165304.

<sup>11</sup> ARDIZZONE S., *Inondazione, frana, valanga*, cit., p. 58; CORBETTA S., *Delitti contro l'incolumità pubblica*, cit., p. 295; LUINI A., *La pratica dello sci fuori pista*, in *Riv. pen.*, 1999, p. 321; MANZINI V., *Trattato di diritto penale italiano*, cit., p. 288. Therefore also: Court of Sondrio, Gup, 10 March, 2005, Fanoni, unpublished.

liable for both crimes in formal concurrence. Death and lesions in fact do not constitute either an element of crime or of aggravating circumstance of the offence of negligent disaster, but an independent figure of crime, which cannot be certainly deemed as absorbed in the crime set forth by art. 449 of the p.c.<sup>12</sup>

Articles 426 and 449 of the p.c. both assume an offence of event, since they standardize a natural event which can be logically and chronologically discerned from the action to which the causal link pertains: the detachment of an avalanche. It is a case caused naturally or intentionally, in which conduct is standardized based on its causal suitability in relation to a typical event. That is to say, the rule does not determine the methods with which the action must take place, but assigns relevance to any action which is relevant in causing the event.

The circumstance that the incriminating regulation relates to an intentional case makes possible the punishment of the active cause and the omitted prevention of the disaster by whoever shall have done so according to a legal obligation<sup>13</sup>. Therefore, the punishable conduct may also consist in omitting, in accordance with art. 40 (see relative paragraph) of the p.c.<sup>14</sup>

Criminal liability for the offence set forth by art. 449 of the p.c. assumes that the action or omission of the agent relates to the cause that provoked the detachment of an avalanche, thus consisting in the unique or concurring cause of the event. For example, think about a skier who cuts a ski slope transversally and onto which fresh snow had fallen, thus causing the detachment of an avalanche.

It is therefore essential to ascertain the causality relation between the agent's conduct, in terms of action or omission, and event, which consists in the avalanche. Nevertheless, in committing the crime through omission,

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<sup>12</sup> Pen. Cass, section IV, 8 January, 1982, Vicoli, in CED Cass. No. 153177; Pen. Cass., section IV, 18 October, 1984, Castellani, in CED Cass. No. 167351; Pen. Cass., section IV, 20 December, 1989, De Stefani, in CED Cass. No. 183243; Court of Aosta, 13 March, 1995, Gilberti, cit., p. 722.

<sup>13</sup> Court of Aosta, 13 March, 1995, Gilberti, cit., p. 717.

<sup>14</sup> ARDIZZONE S., *Inondazione, frana, valanga*, cit., p. 58; CORBETTA S., *Delitti contro l'incolumità pubblica*, cit., p. 292; GARGANI A., *Il danno qualificato dal pericolo, profili sistematici e politico-criminali dei delitti contro l'incolumità pubblica*, cit., p. 274.

there is the additional and preliminary problem to establish whether the subject had a warranty position and therefore had the legal obligation to prevent the occurrence of the harmful event: detachment of an avalanche.

It is on this aspect that we wish to focus our attention, distinguishing various hypotheses, in which the issue is to establish whether a subject has the legal obligation to prevent the detachment of an avalanche and therefore be liable of culpable disaster - eventually in formal concurrence with those of homicide or negligent personal lesions – by himself or jointly with the subject that, through the latter's active conduct, contributed to cause the detachment of the avalanche.

We intend to take into consideration two different hypotheses: that relative to criminal liability by whoever has the task to guide and accompany other skiers or excursionists, within which we deem appropriate to further distinguish between the figure of a mountain guide or a ski instructor and the figure of whoever assumes exclusively, in fact, the role of guide of other persons; and that relative to the criminal liability of the manager of the ski slope.

## **2. THE MOUNTAIN GUIDE AND THE SKI INSTRUCTOR<sup>15</sup>.**

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<sup>15</sup> The order of the mountain guide profession is disciplined by law 1989 No. 6, which establishes the main principles for the regional legislation on the above mentioned subject. Art. 2 foresees that “it is considered a mountain guide whoever professionally performs, also non exclusively and not on an on-going basis, the following activities: a) accompanying of persons in ascents on rock or ice or mountaineering excursions; b) accompanying of persons in ski-mountaineering ascents or skiing excursions; c) instructor of mountaineering or ski-mountaineering techniques with the exclusion of skiing techniques on ski slopes and cross country”. And also “the professional performance of the activities indicated in the first paragraph, on any ground and with no limits of difficulty, and regarding skiing excursions, beyond equipped skiing stations or ski slopes and cross country, and in any case where it may be necessary the use of techniques and mountaineering equipment, is reserved to mountain guides who are qualified for professional performance and are registered in the professional registry of mountain guides instituted by article 4, except for what is foreseen by articles 3 and 21”. Art. 3 also establishes that “the profession is articulated in two levels: A) apprentice guide; B) mountain guide or instructor. The apprentice guide can perform the activities indicated in article 2 with the exclusion of more difficult excursions, in accordance with regional laws regarding the characteristics of mountain areas; the above mentioned prohibition is not present if the apprentice guide belongs to groups guided by a mountain guide or instructor. The apprentice guide can systematically teach mountaineering and ski-mountaineering techniques only within a mountaineering or ski-mountaineering school. The apprentice guide must attain the level of a mountain guide or an instructor within the tenth year after having attained the technical qualification to perform the activity as apprentice guide. If this does not occur, the latter's right to be registered in the professional registry indicated in article 4 expires”. Art. 11 foresees that “mountain guides and instructors and apprentice guides registered in professional registries must perform their job with dignity and correctness, in compliance with the professional conduct regulations. All mountain guides and instructors and apprentice guides

It is obvious that the mountain guide and ski instructor hold a warranty position towards the subjects that they accompany in skiing or ski-mountaineering excursions, that is to say towards their students, to whom they teach mountaineering, ski-mountaineering and skiing techniques. As already known, the obligation of warranty is of juridical type, thus burdening specific and established categories of subjects having the necessary powers to prevent the occurrence of harmful events to those entrusted to them, due to the total or partial incapacity of the regular holders of the position to safeguard them properly<sup>16</sup>.

The mountain guide and ski instructor in particular, hold a protection position which consists of that warranty position having as object the protection of specific juridical assets - in this particular case, the lives of the student – against all sources of hazards deriving from the particular link that exists between the warrantor and asset to be protected, by virtue of which the former is given the task of protecting the juridical assets in relation to the total or partial incapacity of the latter to protect them properly<sup>17</sup>.

The warranty obligation is validated in this particular case by the agreement that the mountain guide and the ski instructor stipulate with their

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registered in the registry shall, in case of injuries on the mountains or in any case in case of hazard for mountaineers, excursionists, skiers, to assist them individually or within rescue operations, in relation to the duty to maintain conditions of maximum safety for their own clients. The performance of the mountain guide's or the instructor's profession and apprentice guide is compatible with public or private roles, and with the performance of other independent work activities”.

The order of the ski instructor profession instead, is disciplined by outline law 1991 No. 81, which establishes the main principles of the regional legislation on the subject. In accordance with art. 2 “it is intended as a ski instructor whoever professionally teaches skiing techniques, even not exclusively and not on an ongoing basis, to single persons and groups of persons, performed with any type of equipment on ski slopes, ski itineraries, paths beyond ski slopes, and skiing excursions which do not involve difficulties requiring the use of mountain techniques and materials, such as rope, pickaxe, crampon”. Regarding the figure of the ski instructor and the latter's liability, see: VIOLA M., *La responsabilità civile nell'incidente sciistico*, Trento, 2002, p. 81.

<sup>16</sup> Thus: GRASSO G., *Il reato omissivo improprio*, Milan, 1983, p. 242; LEONCINI I., *Obbligo di attivarsi, obbligo di garanzia e obbligo di sorveglianza*, Turin, 1999, p. 16; MANTOVANI F., *Diritto penale*, pt. gen., Padova, 2001, p. 169; MARINUCCI G.-DOLCINI E., *Manuale di diritto penale*, pt. gen., Milan, 2006, p. 177; PALAZZO F., *Corso di diritto penale*, pt. gen., Turin, 2006, p. 263; PULITANÒ D., *Diritto penale*, pt. gen., Turin, 2005, p. 263; ROMANO M., *Commentario sistematico del codice penale*, Milan, 2004, p. 352.

<sup>17</sup> FIANCADA G.-MUSCO E., *Diritto penale*, pt. gen., Bologna, 2002, p. 551; GRASSO G., *Il reato omissivo improprio*, cit., p. 293; LEONCINI I., *Obbligo di attivarsi, obbligo di garanzia e obbligo di sorveglianza*, cit., p. 81; MANTOVANI F., *Diritto penale*, pt. gen., cit., p. 181; MARINUCCI G.-DOLCINI E., *Manuale di diritto penale*, cit., p. 179; PULITANÒ D., *Diritto penale*, pt. gen., cit., p. 266.

students, in virtue of which the latter, as holders of the juridical assets exposed to risk, choose to resort to the intervention of third parties for the protection of such assets, thus entrusting them the asset to be protected<sup>18</sup>.

In order for the warranty obligation bound to the guide or the instructor to be valid, the agreement must be stipulated with the holder of the asset to be protected thus to generate an objective entrustment, following the actual protection of the asset by the same warrantor. The latter must actually assume the role of safeguarding to which he is committed to carry out: this can be checked only if the asset to be protected is actually entrusted to the warrantor<sup>19</sup>.

In short, the mountain guide or ski instructor who is committed to a contractual obligation, giving instructions or simply guiding the carrying out of dangerous activities by others, such as a ski-mountaineering excursion, assumes a warranty position towards the assets entrusted, as for example the lives and physical well-being of skiers who entrusted themselves to the guide or instructor. In this case, we are not dealing with the protection of fully incapable persons, but with situations of relative incapacity: capable subjects accept to perform certain activities and run certain risks not independently, but by entrusting themselves to the skills and experience of the guide or the ski instructor<sup>20</sup>. Therefore the incapacity of the holder of the

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<sup>18</sup> In law doctrine, also the prevention obligations of the event of contractual origin may be penally relevant (see: FIANCADA G.-MUSCO E., *Diritto penale*, pt. gen., cit., p. 551; GRASSO G., *Il reato omissivo improprio*, cit., p. 262; MANTOVANI F., *Diritto penale*, pt. gen., cit., p. 175; PALAZZO F., *Corso di diritto penale*, pt. gen., cit., p. 266; PULITANÒ D., *Diritto penale*, pt. gen., cit., p. 266; ROMANO M., *Commentario sistematico del codice penale*, cit., p. 384). In particular, the binding power of the agreement lies in art. 1372 of the c.c., according to which the private agreement is valid according to the law between the parties. The warranty obligation *ex contractu*, therefore, is based in any case on law, in virtue of a safeguarding need established by a private agreement and also validated by legal order. In fact, even in the hypothesis that warranty positions are generated by the agreement, the *ratio* is to assign a stronger protection to specific assets, entrusting them to a warrantor due to total or partial incapability of the holder of the position to protect them properly. Nevertheless, while in the case of *ex lege* obligations, the evaluation of holder's incapability and need for stronger protection of the asset is operated by the same legislator; in the case of obligations created *ex novo* by the agreement, the private entity can perform the evaluation relative to the need of stronger protection of the assets. Therefore, the law grants the protection right to private entities of their own juridical assets, through the agreement, which constitutes "elements that deserve protection" in compliance with what is set forth by art. 1322 of the c.c. Thus: LEONCINI I., *Obbligo di attivarsi, obbligo di garanzia e obbligo di sorveglianza*, cit., p. 233.

<sup>19</sup> For all: GRASSO G., *Il reato omissivo improprio*, cit., p. 263.

<sup>20</sup> PULITANÒ D., *Diritto penale*, pt. gen., cit., p. 267.

juridical asset relates to a specific context and consists of incapacity of technical type, in performing specific activities due to the risks involved.

In this sense, the Supreme Court passed sentence No. 9665 dated 19 February, 1991<sup>21</sup>, which stated liability, in compliance with competent judges, for the offence set forth by art. 589 of the p.c. of an instructor who had the task to carry out a ski course beyond the ski slope, who accompanied some students in an area exposed to avalanche hazards, and ended up being invested and killed by a snow slab that detached from the top of the mountain. In fact, notwithstanding that the bulletins issued by the region and the mountain rescue forecast avalanche hazards in that area, and which had already occurred on the previous day, the instructor brought a group of students to such an area to carry out a ski course outside a ski slope, some of whom were carried away by an avalanche and died.

According to the Cassation Court, instructors are bound to monitor the well-being of their students during the training period under their guidance, even if they are of age and expert skiers<sup>22</sup>. The instructor who is entrusted to teach ski techniques beyond ski slopes, has also the primary and binding obligation to protect the students'<sup>23</sup> well-being.

### **2.1. THE OBLIGATION OF CONTROL OF THE MOUNTAIN GUIDE AND OF THE SKI INSTRUCTOR.**

A different problem consists in establishing whether the mountain guide and the ski instructor – in addition to cover a protection role towards their students, having juridical obligation assumed by contract to prevent harmful events to which they may be subjected – also have a warranty obligation having as object the prevention of offences committed by their students.

The question is whether the mountain guide and ski instructor may be liable for contributory negligence in accordance with art. 40 (see relative

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<sup>21</sup> Pen. Cass., section IV, 19 February, 1991, Souberan, in CED Cass. No. 191201.

<sup>22</sup> The sentence in object, to overcome the defence's objection according to which the ski teaching agreement had been stipulated with the ski school, therefore the single instructor was not liable for the juridical obligation to prevent the event, recognized the foundation of such obligation, in addition to consolidated practice, which must be deemed tacitly recalled each time a teaching agreement is stipulated between school and student, in accordance with art. 2043 of the c.c., which imposes not to provoke unjust damages.

<sup>23</sup> See: CORBETTA S., *Delitti contro l'incolumità pubblica*, cit., p. 268.

paragraph) of the p.c., regarding the offence set forth by articles 426 and 449 of the p.c., for not having prevented the occurrence of the avalanche caused by their students.

The answer is positive since the mountain guide - who accompanies persons in ski-mountaineering or skiing excursions, therefore who teaches them mountaineering and ski-mountaineering techniques - and the ski instructor – who teaches skiing techniques to persons mainly in paths beyond the ski slopes – disposes, in accordance with art. 2048 of the c.c. of surveillance, care and custody powers towards their students (technically, incapable subjects, in relation to the context in which they operate) and therefore have warranty obligations towards the crimes committed by them<sup>24</sup>.

Object of the preventive obligation in this case, are the illicit actions of persons subject to warrantor's surveillance. In these hypotheses in fact, the warrantor disposes of the juridical right-duty to monitor the actions of third parties and prevent committing of crimes, thus assuming the consequence of joint liability in violating this obligation for not having prevented the offence<sup>25</sup>, since all objective and subjective requirements are present. Nevertheless, the warrantor must hold the powers and duties to prevent accidents directly to third parties: the obligation to prevent crimes in fact concerns incapable persons, subject to the warrantor's control.

A group of warranty positions having as object the prevention of crimes committed by third parties in fact is based on the existence of educational, care and custody powers in relation to incapable subjects, therefore according to what is set forth by art. 2048 of the c.c.<sup>26</sup>.

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<sup>24</sup> See the following, with reference to civil liability of the ski instructor: VIOLA M., *La responsabilità civile nell'incidente sciistico*, cit., p. 92, which acknowledges in art. 2048 paragraph II of the c.c. the foundation of extra-contractual liability of the ski instructor for the damages caused by the student to third parties, within the limits in which the harmful event took place during the period in which the student was entrusted to the instructor. This liability is justified in the teaching function and following monitoring function carried out by the instructor when teaching sports activities such as skiing.

<sup>25</sup> LEONCINI I., *Obbligo di attivarsi, obbligo di garanzia e obbligo di sorveglianza*, cit., p. 122.

<sup>26</sup> For all: GRASSO G., *Il reato omissivo improprio*, cit., p. 329.

Also, in relation to mountain guides or ski instructors, art. 2048 of the c.c., and the existence of teaching, monitoring and custody powers towards one's own students, on which their warranty position is based and which aims at preventing offences committed by the person subject to monitoring, within the limits of the role covered. Therefore the warranty obligation of the guide or of the instructor only concerns the offences committed during the period in which their surveillance power is present, and provided that such offence could have been avoided by using one's own powers<sup>27</sup>.

For example, think about some inexperienced students that during a ski-mountaineering excursion, that is to say during a ski lesson beyond the ski slopes, decide to leave the group and descend alone from a face covered by fresh snow, without being forbidden to do so by the guide or instructor. If skiers cause an avalanche with their incautious action, the guide and the instructor may be liable for not having prevented the students to undertake such a descent by themselves. In any case, they will also be liable for contributory negligence regarding the offence set forth by articles 426 and 449 of the p.c., if they are considered to be at fault.

### **3. ACCOMPANYING PERSONS AND THE “DE FACTO” GUIDES.**

At this point, we are asking ourselves whether the subject who assumes as mere fact, the role of a guide of a group of persons, in view of a ski-mountaineering excursion, may also become holder of a warranty position towards the members of such a group.

In this case, the voluntary position of warrantor<sup>28</sup> is assumed.

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<sup>27</sup> It underlines the need to identify the actual limits of these warranty positions, to avoid their spreading: ROMANO M., *Commentario sistematico del codice penale*, cit., p. 387, which indicates that from time to time, it is necessary to verify the student's monitoring by the instructor, not forgetting that the education relation involves trust and therefore closer monitoring is not allowed. See also: MANTOVANI F., *Diritto penale*, pt. gen., cit., p. 182, which indicates that the prevention obligation must be carried out by using exclusively corrective and regulatory instruments relative to education, instruction, care and custody, and trying to reconcile that trust level, which is at the basis of the education relation, with monitoring.

<sup>28</sup> With the expression under observation, reference is made to the hypotheses in which a subject performs spontaneously protection tasks or control tasks of a source of danger, since the asset's holder cannot do so alone. The doctrine that allows the voluntary assumption to become source of protection and control positions deems necessary that such interventions must involve the increase of risk to the asset to be protected, in order for the warrantor's intervention to generate prevention obligations which are penally relevant. Thus: GRASSO G., *Il reato omissivo improprio*, cit., p. 272, who nevertheless, recognizing penal relevant with the voluntary and spontaneous assumption of the warrantor role, deems that the warranty obligation derived from it is not founded in a mere factual

Should a subject assume by way of mere fact, the function of a guide or of an accompanying person of a group of persons in view of a mountain excursion, in the sense that the former offers to accompany those persons free of charge according to an itinerary selected by the former, thus providing his skills and experience, an exposure to risk is emphasized, in the sense that the warrantor's intervention induces to face a danger that it would not have been incurred, therefore it prevents to apply alternative protective measures. The presence and offer of assistance of an expert mountaineer or ski-mountaineer induces other subjects to undertake a dangerous excursion.

It is in fact the entrustment of the incapable person to the warrantor and the consequent increase of risk to which the asset is being exposed, that raises the obligation to prevent the punishable offence<sup>29 30</sup>.

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situation, but it is based on law: art. 2028 of the c.c., which regulates the management of others' affairs; GIUNTA F., *La posizione di garanzia nel contesto della fattispecie omissiva impropria*, cit., p. 626, which acknowledges the legal-formal foundation of these prevention obligations in art. 2028 of the c.c.; FIANDACA G.-MUSCO E., *Diritto penale*, pt. gen., cit., p. 553; PULITANÒ D., *Diritto penale*, pt. gen., cit., p. 266, according to which if an incapable person is entrusted, it can be reasonably deemed as arisen the warranty position not only on whoever is contractually committed, but also if a third party assumes voluntarily the protection of an incapable person, such that the latter's assets are entrusted to the former. See contrasting opinion: ROMANO M., *Commentario sistematico del codice penale*, cit., p. 384, which, even if admitting that the voluntary assumption of warrantor role arises warranty obligations which are penally relevant, deems that the *ratio* is not based on the increase of risk to the asset which the warrantor shall protect, but the circumstance that the actual protection of the good increased objectively the *chances* of safety. They exclude the voluntary unilateral assumption of protection tasks from sources of warranty positions which are penally relevant: LEONCINI I., *Obbligo di attivarsi, obbligo di garanzia e obbligo di sorveglianza*, cit., p. 293; MANTOVANI F., *Diritto penale*, pt. gen., cit., p. 179.

<sup>29</sup> The doctrine agrees in deeming that the increase of risk is a further necessary requirement, so that the voluntary assumption of warrantor position can be considered as source of prevention obligations which are penally relevant. See on this point, the Authors mentioned in the previous footnote.

<sup>30</sup> According to the author, the warranty obligation of whoever assumes the role of a guide or of an accompanying person of a group of persons during a mountaineering or ski-mountaineering excursion, is not based on the former's spontaneous unilateral assumption but on the agreement between the parties, and therefore by the contractual stipulation, even if tacit and free or charge. In the hypothesis in which the presence and offer of assistance of an expert mountaineer or ski-mountaineer induces other subjects to undertake a dangerous excursion, we are dealing in this case with a contractual bilateral agreement, even if a typical contractual scheme is not present. This agreement in fact, is based on the previous agreement, even if tacit, through which the asset's holder, being technically incapable, entrusts the safeguard of the asset to the warrantor. It is a consensual assumption of the warranty obligation, the foundation of which must be searched in the legal agreement and not in the spontaneous assumption. This solution relieves from dealing with the problem of configuring penal liability for the violation of prevention obligations, which are based on spontaneous and unilateral assumptions of the warrantor role, since these are based on law. See: LEONCINI I., *Obbligo di attivarsi, obbligo di garanzia e obbligo di sorveglianza*, cit., p. 295; MANTOVANI F., *Diritto penale*, pt. gen., cit., p. 175; ROMANO M., *Commentario sistematico del codice penale*, cit., p. 384.

Whoever is committed according to a contractual obligation, also tacit or voluntary, to assume the role of a guide in carrying out of dangerous activities by others, such as a ski-mountaineering excursion, assumes a warranty position towards the assets entrusted, as for example the lives and physical well-being of skiers that the former accompanies. Also in this case, the incapacity of the holder of the asset to protect, and the consequent need for safeguarding such asset, which constitute one of the assumptions relevant for penal purposes of the prevention obligations of criminal events, is not full but relative: this concerns in fact subjects whose incapacity, relative to a specific context, is of a technical type, and relates to the performance of certain activities in view of the risks that they involve.

Therefore the warrantor holds a protection obligation towards them, with the consequence that in case that one of the excursionists dies or is subject to lesions, the former will be penally liable for not having prevented the harmful event, provided that fault can be proven<sup>31</sup>.

### **3.1. THE CONFIGURATION OF AN OBLIGATION TO CONTROL BY WHOEVER ASSUMES THE ROLE OF A “DE FACTO” GUIDE.**

The problem that arises at this point is to verify who assumes the role of a guide of other persons in carrying out a dangerous activity is also holder of monitoring obligation towards them, which aims at avoiding the performance of harmful or dangerous actions to third parties. In case that the former holds a warranty position having as object the prevention of offences committed by the person being accompanied, this will be liable for the offence of others, as contributory negligence set forth by art. 40 (see relative paragraph) of the p.c.<sup>32</sup> In this case, he may be liable for the offence set

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<sup>31</sup> See: pen. Cass., 27 November, 2002, Pellin, in *Riv. pen.*, 2003, p. 497, according to which the subject that assumes the guide's role of a group of excursionists covers a warranty position, and therefore, the penal liability of the same subject for negligent homicide, regarding the death of an excursionist who, violating the general warning not to leave the group, decided to take a path the particular dangerousness of which was previously pointed out.

<sup>32</sup> According to some, the obligation to prevent others to commit offences falls within control positions of the source of dangers. This warranty position will therefore depend on the circumstance that the person committing the illicit action is incapable, since the latter does not have the requirements to monitor his conduct properly, regarding that specific activity undertaken, and is subject to the warrantor's control and monitoring. (thus: FIANDACA G.-MUSCO E., *diritto penale*, pt. gen., cit., p. 556; GIUNTA F., *La posizione di garanzia nel contesto della fattispecie omissiva impropria*, in *Dir. pen. proc.*, 1999, p. 624; PALAZZO F., *Corso di diritto penale*, pt. gen., cit., p.

forth by articles 426 and 449 of the p.c., for not having prevented the occurrence of the avalanche caused by others.

Whoever assumes custody, care and surveillance roles of subjects that are incapable, even in a limited way, in carrying out the undertaken activity due to lack of responsible control of their behaviour caused by inexperience, and decided to undertake such activity in view of the presence and offer of assistance of an expert who assumed towards them the role of a guide, holds of a surveillance obligation. Therefore the subject, in virtue of the contractual commitment tacitly assumed towards the members of the group, has guidance, custody and care powers towards them, and therefore the power to direct and interfere with their behaviour, with the consequence that will be configured to his liability the juridical obligation to prevent any possible unlawful, harmful or hazardous actions for third parties created by themselves.

In case the offence is not prevented, the guide will be liable in terms of contributory negligence, provided that fault can be proven. Therefore, it is necessary to identify the specific provisional regulation of conduct with which it had to be complied in this particular case, by the subject having

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267). Therefore, the warrantor has power on the risky situation and shall neutralize it and in this case, this is constituted by the unlawful action of the person subject to his control. According to some others instead, the warranty position having as object the prevention of offences by third parties constitutes an independent warranty position, in relation to that of protection and mainly that of control, to which it relates (thus: Bisori L., *L'omesso impedimento del reato altrui nella dottrina e nella giurisprudenza italiane*, in *Riv. it. dir. proc. pen.*, p. 1364; GRASSO G., *Il reato omissivo improprio*, cit., p. 327; LEONCINI I., *Obbligo di attivarsi, obbligo di garanzia e obbligo di sorveglianza*, cit., p. 124; MANTOVANI F., *Diritto penale*, pt. gen., cit., p. 182; PULITANÒ D., *Diritto penale*, pt. gen., cit., p. 269; ROMANO M., *Commentario sistematico del codice penale*, Milan, 2005, vol. II, p. 178). This is because third parties, who are subject to the warrantor's control, whose illicit actions constitute the object of the prevention obligation, are not always easy to relate to a source of danger, and because the violation of this obligation is relevant as criminal concurrent of the non prevented crime, and not as single omission (LEONCINI I., *Obbligo di attivarsi, obbligo di garanzia e obbligo di sorveglianza*, cit., p. 125). The obligation to prevent offences by a third party is also characterized by the warrantor's juridical power and not only *de facto*, as in the control obligation of the sources of danger. The warrantor therefore must hold an actual juridical power to interfere and prevent the third party's conduct, which constitutes the foundation and external limit of this warranty position (see: GRASSO G., *Il reato omissivo improprio*, cit., p. 329; PULITANÒ D., *Diritto penale*, pt. gen., cit., p. 269; ROMANO M., *Commentario sistematico del codice penale*, cit., p. 178. *Contra*, in the sense that all warranty positions are characterized by the warrantor's preventive juridical powers: LEONCINI I., *Obbligo di attivarsi, obbligo di garanzia e obbligo di sorveglianza*, cit., p. 324; MANTOVANI F., *Diritto penale*, pt. gen., cit., p. 182). Therefore it is not sufficient that the source of danger, constituted by a technically incapable person in this case, therefore in inexperienced skier, fell within the warrantor's framework, since the prevention obligation is characterized not by powers of mere fact, but by juridical powers.

warranty obligation, which could have prevented the accident. Only if the warrantor's negligent conduct is proven to be contrary to the diligence regulation and if the latter's compliance would have prevented the occurrence of the harmful event, then the latter will be liable for negligent event caused by negligent conduct.

This is the solution reached by a recent sentence passed by the Court of Sondrio<sup>33</sup>.

In the case object of the examination of the judging body, a group of ski-mountaineers had undertaken an excursion in an area where an avalanche hazard was present, notified by snow-weather bulletins, due to the presence of a great quantity of fresh snow which had fallen during the previous days and due to the relatively high temperature. During the excursion, one of the skiers left the group and continued towards the mountain's peak wearing his skis on the fresh snow, thus causing the rupture of the snow layer below, provoking in turn an avalanche that carried away at high speed a group of excursionists positioned below in the valley.

The competent judge – after having recognized criminal liability for the offences of disaster and negligent homicide of the ski-mountaineer that, due to the incautious conduct caused the avalanche that provoked the death of other skiers who were buried under the snow mass – dealt with the issue relative to the presence of concurrent liability of another group's member that assumed guidance.

In the case in object, the source of warranty obligation was recognized in the assumption of the guiding role, by one of the members of the ski-mountaineers' group<sup>34</sup>. The latter, being the elder and having good experience in practicing ski-mountaineering, was considered holder of a protection and surveillance obligation towards other excursionists and as a consequence, was liable for not having prevented the offence committed by

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<sup>33</sup> Court of Sondrio, Gup, 10 March, 2005, Fanoni, *inedita*.

<sup>34</sup> The sentence mentions the "assumption of assignment without mandate".

one of the members, which consisted in causing an avalanche and death of some persons<sup>35</sup>.

The judging body, with a joint decision, excluded in any case that a protection and surveillance obligation was burdening the accused towards whoever that, due to the incautious action, caused the avalanche. This in fact, even if it was the son of the accused, was of age and mainly he was an expert and talented skier. Therefore this was a subject completely able to suitably protect his assets that did not constitute source of danger for third parties, with the consequence that no specific protection or control function could have been carried out towards him by another group's component who did not have any prohibitive power towards him and on the dangerous situation created by him.

The sentence underscores that, in order to assume a warranty position, it is not sufficient to be the most expert in a group of excursionists. The subject must assume, even tacitly, the task to lead the group, by providing his knowledge and skills, and the group's components, since they are inexperienced and incapable regarding the undertaken activity, must decide to carry out such activity in the presence of a skilful person to whom they had entrusted themselves, thus conferring him guiding, care, and direction powers.

#### **4. THE MANAGER OF THE SKI SLOPES.**

The manager of the ski slopes is obviously holder of a warranty position, in virtue of which the latter may be liable for negligent offence, for not having prevented the occurrence of the harmful event, for example an avalanche, which had the juridical obligation to prevent, provided that fault can be proven.

The warranty obligation of the manager of the ski slopes has the nature of control obligation of a specific source of danger which is represented by the ski slope, in order to safeguard all juridical assets exposed to it<sup>36</sup>. The

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<sup>35</sup> It regards the proposed reconstruction by Public Prosecution which, in this particular case, was not agreed upon by the judging body.

<sup>36</sup> On the control obligations, see for all: FIANCADA G.-MUSCO E., *Diritto penale*, pt. gen., cit., p. 551; GRASSO G., *Il reato omissivo improprio*, cit., p. 293; LEONCINI I., *Obbligo di attivarsi, obbligo*

control position of the manager of the ski slopes is based on the presence of organizational and arrangement powers relative to the source of danger, which are in fact competence of the latter<sup>37</sup>.

Since the source of danger falls within the manager of the ski slopes' framework of competences, the latter is in a position to exercise an actual power on such source, in order to neutralize the dangerous situation for third parties. Since the source of danger falls within the warrantor's competences, he is burdened by a control obligation<sup>38</sup>: on one hand, this has a factual power to control an object from which hazards may derive to third parties; on the other hand, third parties may adopt suitable safety and protection measures of their own assets, without falling on somebody else's juridical framework<sup>39</sup>.

The manager of the ski slopes therefore, as holder of a control position, has safety obligation of preventive nature, in the sense that he must render the ski slope safe, with no dangers for third parties who come in contact with it<sup>40</sup>. Within the manager's obligation control, there is that of making arrangements for safety measures aimed at preventing avalanches, or better to avoid exposing the lives of persons and well-being into danger, and also

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*di garanzia e obbligo di sorveglianza*, cit., p. 96; MANTOVANI F., *Diritto penale*, pt. gen., cit., p. 181; MARINUCCI G.-DOLCINI E., *Manuale di diritto penale*, cit., p. 179; PALAZZO F., *Corso di diritto penale*, pt. gen., cit., p. 267; PULITANÒ D., *Diritto penale*, pt. gen., cit., p. 268; ROMANO M., *Commentario sistematico del codice penale*, cit., p. 386.

<sup>37</sup> Thus: LEONCINI I., *Obbligo di attivarsi, obbligo di garanzia e obbligo di sorveglianza*, cit., p. 96; ROMANO M., *Commentario sistematico del codice penale*, cit., p. 386.

<sup>38</sup> The legal foundation on the above mentioned warranty positions are set forth by art. 2051 of the c.c., which sanctions the extra-contractual liability for damages caused by objects in custody: this is based on the possession, custody or detention of specific objects, which may represent hazards for third parties. Thus: MANTOVANI F., *Diritto penale*, pt. gen., cit., p. 181; PALAZZO F., *Corso di diritto penale*, pt. gen., cit., p. 267; PULITANÒ D., *Diritto penale*, pt. gen., cit., p. 268; ROMANO M., *Commentario sistematico del codice penale*, cit., p. 386. Regarding the manager's warranty obligation, see: pen. Cass, section IV, 21 June, 2004, Marchelli, in CED Cass. No. 229073, according to which the warranty obligation is present, certainly as a consequence of the evaluation of the skiing activity as mass sport and correlative subjection to market and competition laws, which strengthened the obligation of the managers of lifting facilities to provide additional services, constituting a service package in addition to the mere transport from valley to mountain's top and concern the entire user's activity, such as providing ski slopes, covered by snow even whether of the artificial type, equipped with necessary safety measures.

<sup>39</sup> Così: GRASSO G., *Il reato omissivo improprio*, cit., p. 320.

<sup>40</sup> GRASSO G., *Il reato omissivo improprio*, cit., p. 320; LEONCINI I., *Obbligo di attivarsi, obbligo di garanzia e obbligo di sorveglianza*, cit., p. 99.

in supervising and monitoring the permanence of the slope's safety conditions in relation to such a danger<sup>41</sup>.

The manager's obligation to guarantee the safety of persons from the hazard of an avalanche falling onto the ski slope, is also found in the regional legislation. Thus, regional law of Abruzzo 2005 No. 24, provincial law of Trento 1987 No. 7, provincial law of Bolzano 1981 No. 61, regional law of Lombardy 1975 No. 81, and regional law of Veneto 1975 No. 11 require that the ski slope is traced in hydrogeological suitable areas, in general not subject to landslides and avalanches during the period in which they are used and in case the ski slope has areas not in compliance with the established requirements, for any reason and even sporadically, the manager must affix on the ski slope and at the stations of the lifting facilities that carry to the ski slope, proper signs that warn about the status of danger of such ski slope. Regional law of Val d'Aosta 1992 No. 9 sets forth the obligation of the manager of the ski slopes to close such ski slope in case of an avalanche hazard. In conclusion, also law 2003 No. 363 art. 7, second paragraph, foresees that "should conditions (of the ski slope) present objective hazards depending on the state of the lower layer or other atypical dangers, these must be removed and the ski slope must be closed. Warnings about the ski slope's state or closure must be located in areas well visible to the public, at the beginning of the ski slope, and also at cableway stations down in the valley. Paragraph 4 of the same article also establishes that "the manager has the obligation to close slopes in case of danger...", among which it can be included that of falling of avalanches.

Therefore, with reference to the manager of the ski slopes criminal liability set forth by articles 426 and 449 of the p.c. it essentially consists of a negligent liability, for not having prevented the avalanche caused by natural exterior forces, or for not having prevented the situation of danger for public safety related to it.

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<sup>41</sup> See on this point: CORBETTA S., *Delitti contro l'incolumità pubblica*, cit., p. 267. Regarding the warranty position of the manager of ski slopes in relation to avalanches, see: Court of Aosta, 13 March, 1995, Gilberti, cit., p. 719.

Think for example about the manager of a ski slope that does not close it, knowing that due to the abundant snow falls of the previous days, following the rise of temperature and the presence of strong winds, there is an avalanche hazard, which in fact takes place, endangering the skiers' lives and safety.

The criminal liability of the manager of the ski slopes will be applied, provided that the causal link between omission and event can be proven, in the sense that the dutiful action that had been omitted is proven and that, if it had taken place, it would have interrupted the causal series that provided the detachment of the snow or ice mass, or would have prevented the avalanche to jeopardize the lives and physical integrity of an undetermined number of persons<sup>42</sup>, even if not explaining a causal efficacy in provoking the natural phenomenon. Therefore, in the mentioned example, if an avalanche hazard is present due to the particular weather conditions, the manager of the ski slopes cannot prevent the detachment of the avalanche from the ski slopes but can instead avoid a hazard for an undetermined number of persons which could take place from its detachment, for example by properly warning about the danger, and closing the ski slope under hazard to the skiers<sup>43</sup>. Therefore, the manager of the ski slopes is not generally liable for having caused an avalanche or not having prevented the detachment of the avalanche, but is liable for not having equipped the ski slope with suitable fixed elements such to prevent falling of snow masses on the ski slope or for not having neutralized the avalanche hazard, for example by inducing its descent through explosives when the ski slope was closed, or for not having properly warned the users about the danger, or for having notwithstanding opened the ski slope to skiers<sup>44</sup>.

Then, in order to deem the manager of the ski slopes liable for not having prevented the disaster, the event must have been foreseeable, since if provisional regulations had been complied with, this event could have been avoided. Therefore, it must be proven that the manager of the ski slopes

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<sup>42</sup> Thus: CORBETTA S., *Delitti contro l'incolumità pubblica*, cit., p. 293.

<sup>43</sup> Also: CORBETTA S., *Delitti contro l'incolumità pubblica*, cit., p. 263.

<sup>44</sup> See to this effect: Court of Aosta, 13 March, 1995, Gilberti, cit., p. 718.

violated the diligence or prudence regulations, the compliance of which would have prevented the foreseeable and avoidable occurrence of the causal series that provoked the avalanche.

In fact, fault consists in having provoked an event notwithstanding this was foreseeable and avoidable, since the agent should have foreseen the occurrence and should have acted by adopting particular measures. The predictability of the danger, to which specific assets are exposed when performing certain activities, constitutes the basis of the conduct of provisional regulations: if it can be proven that the current conduct may harm the protected asset, one or more regulations will be derived which will set forth the abstention from such conduct, therefore the adoption of specific provisional measures. Judgment on predictability, as already known, is an *ex ante* judgment, carried out on the basis of the causal general information available, having as object not only the event, but also the causal course in its essential elements, and therefore the *hic et nunc* event.

Therefore the judge, in order to ascertain the subject's fault, must verify if the violation to the diligence regulation is based on the predictability of the avalanche and if this could have been avoided, therefore whether the avalanche<sup>45</sup> would have been avoided if such regulation would have been complied with.

It is obvious that the manager's warranty obligation is to ensure the absence of hazards on ski slopes, thus guaranteeing the safety of those who use them. The manager's control position in fact concerns exclusively that specific source of danger that falls in the latter's framework of competence,

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<sup>45</sup> Of considerable importance, on this point: App. Turin, 18 October, 1996, Rigollet, in *Riv. it. dir. proc. pen.*, 1999, p. 711, with note of FORNARI, *Descrizione dell'evento e prevedibilità del decorso causale: passi avanti della giurisprudenza sul terreno dell'imputazione causale*, which, reforming the sentence of first degree, acquitted the accused of the charge of negligent disaster, which they contested since ski slope "Pavillon" was opened despite the avalanche hazard, repeatedly reported by snow-weather bulletins, due to the substantial snow falls during the preceding days, strong winds and other weather conditions. The court of appeal excluded the fault of the manager of the skiing facility, who opened the ski slope to the public, underscoring the link between cause and avalanche and the judgment of predictability in order to determine fault. The avalanche which was caused by the detachment of an ice mass from Gigante Mountain could not have been foreseen *ex ante* according to the point of view of the agent-model. The avalanche hazard foreseen *ex ante* by the manager of the ski slope was not that occurred in the *hic et nunc* event, constituted by the detachment of the Gigante Mountain glacier which actually provoked the avalanche.

which the latter can organize and arrange: the ski slopes. Beyond the ski slopes, the manager does not have any control on the possible sources of dangers to third parties, or any organizational, interventional and monitoring power on them, with the consequence that he does not have any obligation to prevent the occurrence of harmful events towards third parties.

Therefore, the manager will not be liable for avalanches which occurred beyond the ski slope.

No protection obligation falls on skiers that left the ski slope voluntarily, by mistake or unconsciously, for example due to excessive speed or carelessness, and ended up beyond the ski slopes. The snowy ground outside the ski slope is in fact beyond the manager's control, with the consequence that this is not warrantor of the juridical assets exposed to possible hazards that such terrain must present. This also occurs when the skier ends up beyond the ski slopes, starting from a compacted slope or by using lifting facilities that carry to it, provided that the slope and its boundaries are sufficiently delimited, or from the natural formation of places, or by the signs located by the manager<sup>46</sup>.

This is also set forth by art. 17 of law 2003 No. 363, according to which “the licensee and manager of lifting facilities are not liable for accidents that may occur beyond the ski slopes served by the same systems”<sup>47</sup>.

Regarding the path beyond the ski slopes, the manager has not control over it, with the consequence that he does not have any safety obligation, since he is not bound to monitor possible sources of danger, to envisage measure to neutralize them and prevent skiers and excursionists to be harmed from

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<sup>46</sup> See on this point: pen. Cass., section IV, 21 June, 2004, Marchelli, in CED Cass. No. 229073, according to which the danger to prevent, object of the warranty position of the manager of the skiing facility, is that inside the ski slope. The control obligation – which also consists in the warranty position – concerns atypical hazards, therefore those unexpected by the skier, different from inborn ones to the so-called *quid* of dangerousness inherent to the skiing activity. This obligation cannot also be extended to include external dangers. However, the manager must prevent dangers which are physically beyond the ski slope, but that can be faced in case the boundaries of the ski slope are crossed, in case the situation foresees likely falling beyond the ski slopes, due to natural situations, facilitated by compacting the ski slope until the edge.

<sup>47</sup> Similarly, see regional law of Abruzzo 2005 No. 24, that, in accordance with art. 99, foresees that “the manager of the equipped skiing area, or part of it, is not liable for accidents that may occur beyond the ski slopes even if accessed from the facilities of the latter’s competence, provided that suitable signs that prevent access or landslide or avalanche hazards are located”.

coming into contact with them. For example, the manager of the ski slopes will not be liable for the death of a skier that went beyond the ski slopes and was carried away by an avalanche when skiing, provoked not by the conduct of the same skier but by natural forces, provided that the boundaries of the ski slope were properly delimited. This is also valid when in case of a foreseeable avalanche hazard the manager did not affix any sign to warn about such hazard, thus omitting to invite skiers not to leave the ski slope.

In view of the fact that the warranty position of the manager of the ski slopes concerns the control of a specific source of danger, this is not liable for the lack of monitoring and neutralization of other and different sources of danger and of the harmful event derived, since no juridical obligation to avoid such event is foreseen.

Similarly, the manager of the ski slopes is not jointly liable for the possible offence committed by a skier who left the ski slope. Therefore, if a skier abandons the delimited ski slope and due to the latter's incautious conduct provokes an avalanche, the manager of the skiing area will not be jointly liable for the offence of negligent disaster, thus is not bound to any juridical obligation to prevent the event.