

3rd European juridical forum on snow (Bormio, 23-25 November 2007)

Protection of the ski slope edge

1. - The ski slope edge represents undoubtedly the area with the highest criticality in the entire skiing area, for the possible presence of obstacles of various types (natural or artificial) that will surround it and for the extreme changeability of the environmental situation in which the skiing activity takes place. In fact, it is in this area that usually occur accidents of the greatest seriousness and it is that which records the most consistent and awkward claims between users of the ski slope and the managers in relation to the content and the extension of the general obligation of rendering safe the ski slopes for which the manager is liable by law. It is necessary to clarify, as much as it is possible, on such aspects.

And this is the object of the present research, which must tend to a just and reasonable adaptation of the interests in conflict and which develops within certain exact coordinates.

At the regulative level, it is necessary to consider the requirements of the provision of art. 3, 1st paragraph of outline law No. 363/2003 which, after having enunciated the principle of general order according to which the manager must guarantee the practice of skiing in safety conditions, imposes specifically **“the obligation to protect the users from obstacles present along the ski slopes by means of using appropriate protections of the latter and to signal any hazard situation”**. Attention is drawn to the fact that the law leaves it to the Regions (or to the autonomous Provinces of Bolzano and Trento) establishing concretely the safety prescriptions, thereby what will be said hereunder is apart from possible different and more specific measures imposed to the manager.

The regulation does not specify if such obligation concerns indiscriminately all obstacles, and possibly which, it does not mark in an unambiguous manner the spatial limit of the

obligation, namely if the latter is circumscribed to the ski slope up to its edge or it extends also to the surrounding strip and externally to the latter, and finally it appears somewhat ambiguous in imposing (apparently) as necessarily cumulative the safety obligation and that of signalling.

Firstly, I would take it for granted, and this opinion is absolutely prevailing, that the manager is not bound to fence and protect the ski slope on both sides for the whole of its path. Consideration must be given to the ruining of the landscaping that would ensue and to the extremely heavy financial expense that the manager should assume, whereby ultimately the users themselves would be penalised. On this matter, I recall that the late Dr. Josef Pichler, one of the highest Austrian experts on skiing law (he was the chairman at the 1st Bormio Forum in 2005), in one of his studies on this point in far away 1989, by using a very effective image, expressed in a very motivated manner his radical opposition to the so-called “**Polsterpisten**” (**mattress ski slopes or padded ski slopes**), with reference to the absurd pretence suggested by someone to protect laterally the entire path of the ski slope descent.

Secondly, I would not have any doubt at all on the fact that the duty to protect and/or signal obstacles or more generally the hazard situations does not end at the edge of the ski slope, but must extend in some cases (I will try later on a not so easy classification) to a reasonable **lateral strip, external and next to it**. And it is this, to my opinion, the most problematic aspect of the whole matter, since the requirement of protecting the ski slope edge cannot be always predetermined in its content, since it can be varied, even widely, by the change of the environmental situation sideways.

A third criterion to be taken into consideration, being the expression of the basic principle of self-responsibility of the skier, is that the skiing practice involves a degree of risk that cannot be eliminated and that the user must accept, even in as much as in relation to only the “typical” hazards, but at the same time that the skier must also manage within certain

limits also the so-called “atypical risk”. These have been expressed by the many sentences that have shared between the manager and the user the liability for the damaging events, grading diversely the causal contribution of one and the other in relation to the results of the real case in question.

By so tracing, even in a synthetic manner, the guidelines of the present research a classification of the more obvious situations can be tried in which is excluded, or it becomes absolutely necessary, the protection of the ski slope edge or the simple signalling of the situations of foreseeable hazard. This is an extremely delicate task, given to the manager and which assumes a full knowledge not only of the features of the ski slope but also of possible changes.

2. - Whoever is skiing in the proximity of the ski slope edge (which requires a special command of the equipment), if from one side enjoys the better conditions of the snow layer (usually less worn out), is in the meantime clearly more exposed to the contact hazard with any possible obstacles located at the edge or at the external part of the ski slope, with respect to the skier who is using it at the central strips. It must, therefore, always be taken into consideration the possibility, even by the most expert skier, of leaving unintentionally the ski slope due to an accidental fall, by effect of a collision with another skier or in any case by pure chance. And the obligation of protection is precisely taken for preventing such situations, rather than to protect the skier who due by the assumed speed or in any case due to an incautious and inconsiderate behaviour ends up by going beyond the ski slope edge.

For establishing which obstacles must or must not be protected and/or signalled, it is useful recalling the basic distinction, coined by doctrine and jurisprudence and now assimilated also by several regulatory texts (for example, art. 7, 2nd paragraph of law 363/2003) between **“typical” obstacles and “atypical” obstacles**: the first are perfectly

visible, foreseeable and avoidable by a skier of average care; but not so the second, which in relation to the point in which they are located may constitute a real **danger**.

As a rule, **natural obstacles** are included among typical dangers, which as such involve a risk innate to the practice of skiing and to the environment in which it is practiced, and for this very same reason the user cannot refuse to accept, first among all the wood, which very often runs along the ski slope on one or in both sides, being used as signalling of the path. It has already been said and it is hereby repeated once more that for no reason it is signalled, even less so, protect it. It does not alter the fact that even a natural element of the ski slope can constitute an atypical danger, such as for example a felled plant or a stump left at the edge, unseen if entirely covered by snow.

I hereby mention the scarce benefit of the practice used sometimes of leaving a strip of snow at the wood's edge not compacted mechanically, since inevitably and in a short time the trails left by the repeated passing of other skiers will rend it practicable as the compacted ski slope.

Personally, I would include also among the typical obstacles, although artificial, even those that constitute so to say **the necessary equipment of the ski slope**. I refer to the signalling boards and the posts that support them, located unavoidably and for the same function that they perform exactly at the ski slope's edge. This is the case of those that signal the path or of simple warning (pre-signalling of a crossing, generic hazard, prescriptive order to slow down and others) or the artificial objects which at the end of the ski slope are used for the formation into columns of the skiers in the vicinity of the plants. Moreover, an important warning is given with reference to the above: the used materials themselves must not constitute a hazard! Therefore the supports must be wooden, rounded and not of an excessive diameter, consequently non metal and in no case with edged corners. Otherwise, even these obstacles shall be appropriately protected.

It is then of the utmost importance, in ski slopes or stretches of ski slopes boarded by an open land, that the boards that delimit the path be located between them at such a distance to allow the user, at any moment and in any weather condition of locating the exact progress. Lack of such a basic caution may render the manager liable for damages that the skier may possibly have been subjected for having collided with obstacles present on the ground which, for the misleading situation which was derived, may have been mistaken unintentionally for a real ski slope.

3. - Much worse and more complex problems have originated from the so-called atypical obstacles. It concerns obstacles, fixed or mobile, created artificially, present at the ski slope edge or in its vicinity. Such are, for example, the equipment for programmed artificial snowing (snow cannons, hydrants, piping, heaps of produced snow), Alpine huts, constructions, supporting framework of the ascent plants, overpasses and underpass, small bridges and similar.

Said obstacles, if located within the ski slope or at its margin, must be signalled and appropriately protected if it is not possible to be sighted in time (in any weather condition) or positioned in areas particularly hazardous. It is deemed that only signalling the hazardous situation is not always sufficient to transfer the whole risk from the manager to the user (addressee of the warning), since necessarily it must be taken into consideration also the concrete possibility for the latter of controlling appropriately the risk, which is established from time to time.

The remarks for the atypical obstacles located near the ski slope but to its external side then become extremely difficult. Generally speaking, it must be beyond question that the skier expects having at his disposal an ample lateral safety space, free from obstacles, beyond the margin of the ski slope. But, as mentioned above, the adoption of precautions required from the manager must also take into account the possibility of an accidental leaving unintentionally the ski slope by the skier. This is the reason for the manager's

obligation to take measures for at least not to worsen the consequences of collisions with the said obstacles.

It is questionable when and in which limits. It is practically impossible to give a certain and trustworthy criterion. Moreover, I feel that it is my duty to formulate some useful indications. Firstly, it is the manager's duty to evaluate on which ski slopes and in which stretches there is a high, concrete and foreseeable risk of leaving unintentionally the ski slope, and this evaluation should be assessed in relation to its features and to its degree of difficulty. A protection can become necessary on a sharp curve rather than in a straight stretch, in a particularly narrow area against a wide area, in a stretch with a sharp longitudinal and/or transversal slope against a gentle slope. The simultaneous presence of such risk factors may render not only appropriate, but absolutely necessary the protection of the obstacle.

Once fixed in such a way the critical points, it remains to establish to which distance from the ski slope edge must be the obstacle in order to make its protection an obligation. Even for this aspect nothing more than a general suggestion. The distance will be directly proportional to the degree of the ground slope at the side of the ski slope. In addition, the existence of possible natural obstacles capable of breaking the fall of the skier must be taken into consideration.

As an alternative to the direct protection of the obstacle, restrictive nets may be provided to radically prevent the skier from leaving unintentionally the path. With regard to this, it must be repeated once again that the protection measures must be located correctly in a manner that these do not become a hazard themselves. In case that this is not observed, it will be useless sustaining that the precaution at that point was not necessary and neither appropriate.

Everything mentioned above must be valid also for the natural obstacles existing in the area near and external to the ski slope edge, which is dutiful to protect in the same

situations of high hazard and therefore only in the **critical points**. These refer to shoulders with a very sharp slope bordering the ski slope or to crevasses at the side of a ski slope obtained out of a glacier.

As a partial comfort to the managers for the worries induced by some statements, I hereby report that in jurisprudence on the matter of accidents due to collisions with obstacles beyond the ski slope, priority and prominent importance is given to the conduct held by the skier, whose fault, if objectively established, may be valid by itself to relieve the manager from liability. In the hypothesis of joint fault, that ascribed to the user is almost always distinctly greater than that attributed to the manager. I may add, that in some cases for the purpose of excluding liability by the manager, it was also evaluated, to my opinion quite correctly, the specific knowledge that the skier had of the ski slope, of its features and its most deceitful points.

4. - Everything mentioned above concerns the ski slopes intended for the amateurish practice and not the agonistic practice of skiing. Half way between the former and the others I would place the ski slopes for agonistic training, open to all skiers who always more frequently are found in the areas of greater dimensions, in which are prepared paths, mostly for giant slaloms, often with chronometer devices. In this second case and only in this sense, I feel confident in stating that the safety preparations must be **tendentially** in line with those foreseen for the real agonistic ski slopes. And this for two fundamental reasons: the first being that the chronometric comparison inevitably stimulates the skier to maintain maximum speed; the second being that while in free skiing the paths are chosen by the skiers, in that between poles the paths are set by the locations of the gates.

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