

Regulations of Slovene law concerning the activities of skiing instructors and skiing schools and possibility of teaching of skiing for the foreign skiing instructor

1. Skiing instructor - in general

1.1. The skiing instructor

According to Slovene laws concerning the organisation and the activities of sport, namely the Law for safety on protected skiing areas (Official Gazette, SR – only text of 10 January, 2006, No. 3/2006 – hereafter “skiing law”) the skiing instructor and skiing trainer have the *status of* professional operator of sport, as prescribed by Sport law (Official Gazette, SR - of 20 March, 1998, No. 22/1998). This is also the reason whereby according to article 4 of skiing law the skiing instructor and skiing trainer (hereafter “instructor”) are defined:

“...the professional operator of sport is the person who, in accordance with the Sport law, holds the professional qualification and certification with a licence for teaching skiing ...”.

Articles 26 – 33 of sport law define as a professional sport operator whoever carries out the instruction and the education activity or professional organisational activities. However, the person who teaches sport and carries out sport an educational work, with a regular work activity, must have a University degree in sports (for example teachers in public schools). Even if this person carries out these activities as a private, he must have the qualifications of education degree required by the previously mentioned law. The related education degree, that is to say the professional capacity of the professional operator of sport, is established by the Professional Council*, after receiving the opinion of the Slovene Olympic Committee (hereafter “COS”), by the faculty of sport and, for example for the skiing instructor, by the Slovene Association of skiing (Smučarska zveza Slovenije).

By this, the professional qualifications and certification of the skiing instructor is established by the Sport law, by the skiing law, and by the by-laws of the skiing instructors and skiing trainers Association of Slovenia. (Skiing instructors Association of Slovenia), hereafter “instructors association”. From the organisational and the disciplinary point of view as well as the previously mentioned by-laws and regulations, by-laws of local associations and finally of the skiing instructors and skiing trainers professional deontological Code. Therefore, the skiing instructor, as professional sport operator must have the related level of education (a University degree only in the cases foreseen by the Sport law) and that of skiing acquired in courses for skiing instructors. After having obtained successfully for the relative professional level, the diploma of skiing instructor and its degree is issued. This is acquired gradually by passing from first to third degree and, as previously mentioned, after having successfully passed a course for skiing instructors and then the required practice of the professional examination for the said degree. The athletes that in the previous season reached less than 40 FIS points are exempted, having the choice, after having been successful in the examination, to acquire the title of skiing instructors by receiving the third degree diploma.

For fulfilling his activities of skiing instructor, his licence must be valid, that is to say he must renew it for each single winter season. According to the sport law the regulations for issuing the licence are defined by the COS upon proposal of the Skiing Association of Slovenia. To obtain the licence, to be updated on the new techniques and other news in the world of skiing before the beginning of the winter season, the skiing instructor must participate in courses of professional improvements and updating organised by the previously mentioned Skiing instructors and skiing trainers Association of Slovenia. It is also a good practice to participate in other events having as object completing and updating one’s own professional qualifications and ambitions (demonstrations of skiing techniques, competitions for instructors, etc.). The instructor may compete in obtaining the licence of the International Federation of Skiing Instructors (FIIS - IUS - IFSI), or ISIA (International Skiing instructors Association). Without the annual licence the skiing instructor does not have the right to carry out his activities. The Skiing law provides sanctions towards the person who teaches without the personal qualifications and the FIIS or ISIA licence.

The skiing instructor has the duty to carry out teaching of skiing with pedagogic principles based on the programme and methodology foreseen by the Skiing Instructors and Skiing Trainers Association of Slovenia.

* The Professional Council of sport is established by the Government of the Republic of Slovenia. It is competent for all professional decisions in sport. It consists of 16 members appointed by the Government among the professionals of sport. The Council can appoint commissions, groups of experts and other work groups (articles 13 – 16, Sport law).

1.2. Professional organisation of skiing instructors

The Skiing Instructors and Skiing Trainers Association of Slovenia is the organisation and central body of the skiing instructors and skiing trainers in Slovenia in which are united all the local organisations and skiing schools as autonomous associations set out in the Skiing Association of Slovenia. The Instructors Association has 3,200 members operating as individual instructors, in sports associations, in tourist agencies, professional skiing schools, skiing-clubs, as organisers of sport events, etc.

The Instructors Association has its by-laws with regulations concerning the duties and the rights of the members, statutory and organisational regulations, disciplinary regulations and those relative to competences and

relations with local instructors associations and skiing schools. Also the latter, organised as associations or companies have their own regulations with organisational regulations, rights and duties of the members, disciplinary regulations, etc, in compliance with the by-laws of the central organisation. A member of the local skiing instructor association can be also an instructor without FIIS or ISIA licence, but only the skiing instructor with a valid licence may claim discounts in the purchase of equipment in general, ski equipment and discounts for lift means and others.

1. 3. The Slovene skiing instructor abroad or the foreign skiing instructor in Slovenia

The Slovene skiing instructor is allowed to teach abroad, or he can teach his pupils going abroad from Slovenia according to the Slovene deontological code if he holds the FIIS or ISIA annual licence, if he knows the language of the country – region where he exercises his teaching, in any case notifying, before starting to teach, the local skiing schools and with previous permission of the area manager. He is bound to respect all the technical instructions, laws and regulations of conduct in force of the area, prevent harmful behaviour of his pupils, offences of the various reductions and discounts for membership cards on the lift means.

Taking into consideration the EC principle of the free work for the citizens of the community states, teaching of skiing is allowed to the instructor of the member state, in accordance with the reciprocity right, in any case under the condition, as for the Slovene instructor, by the permit of the manager on the basis of article 16 of the skiing law. We refer to *de facto* reciprocity, since this is not prescribed by law.

Art. 33 of sport law also grants to foreign sport professionals the power, for a limited period, to carry out sporting programmes on condition that the latter have the same power of exercising the same activities as in their own state. From this regulation it can be deduced that the skiing instructor of a foreign country can, for a determined period (skiing season), if in his residence-place of origin he holds the licence for teaching skiing, carry out the activity of teaching skiing in Slovenia, but on condition that he holds the FIIS or ISIA licence for the current year.

According to the sport law there is no obstacle to exercise teaching as a private, but on the basis of article 34 of the previously mentioned law he can carry out this activity on valid conditions for the Slovene instructor, moreover he must know the Slovene language. A skiing instructor from a foreign country can become a member of the local skiing instructor associations on equal conditions as for the Slovene instructor.

The foreign skiing instructor can therefore exercise teaching of skiing for a determined period within a touring or sports organisation, skiing school and privately as well – on his own, on condition that he holds the FIIS or ISIA licence, knows the Slovene language, and finally has the permission of the area manager where to carry out his activity.

2. The instructor – right and liability

2. 1. Regulations of the Instructors and Trainers Professional Code concerning safety on the skiing areas namely on the areas where he carries out his activity of instructor

The base line of deontology of the instructor is to carry out correctly the teaching and behave in the utmost respect of the professional and moral regulations in accordance with the Slovene skiing instructor and skiing trainer professional deontological code in force since 9 January 2000.

Article 8 of the code on general lines binds the instructors, while carrying out teaching, to respect the FIS regulations, the regulations of the areas of the manager and the recommendations of the persons responsible of safety on the ski slopes. In the first place there is always the personal example of the skiing instructor. The instructor is essentially bound to respect the regulations of the agreements among the area managers and the Slovenia Skiing Association namely the Skiing instructors Association.

The instructor has the duty to notify the manager in case of hazards or unfulfilled maintenance of the ski slopes, shortage and non-adequacy of the means of protection, signalling, etc. At the request of the personnel responsible of the plants, checkers (pisteurs) of ski slopes or of the Alpine rescue, he has the duty to be helpful. He also has the duty to draw the attention of the ski slope users into respecting the safety regulations and self-protection.

Article 9 of the code binds the instructor so that, in case of an accident on the ski slope, since the location was not protected, to provide remedies immediately, give assistance to the injured, inform the Alpine rescue, the checker of the ski slopes and the competent persons, as well as obtain information and indications on the facts and on the persons involved. In case the instructor is a witness to the accident he must wait the Alpine rescue on location with the responsible persons for ascertaining of the data concerning the accident. At their request he has the duty to identify himself.

In conformity with articles 14 – 20 the skiing instructor, organiser of courses or as a teaching group for skiing groups, he is responsible for the choice of the teachers. He is also responsible for the choosing the pupils in groups according to their skills. During teaching, he must take into consideration at all times the weather and the ski slope conditions.

As organizer of training or competitions (art. 21) he must obtain the permission of the skiing area manager. In this case, he has the duty to protect the ski slope namely the path that must be adequate with the

skills of the skiers. He has the duty to avoid hazardous areas of the ski slope and at the end of the training or of the competition he must remove from the ski slope the equipment and the means of protection. In case that during training a hazard occurs or in case of increasing hazard for the participants in the competition or for the pupils, the instructor is bound to interrupt the competition or the training.

In general (articles 22 – 27) the instructor is bound not only to teach the techniques of skiing, but as well the rules of good behaviour on snow, and specifically for children and beginners. Responsibility towards the child lasts from the time of entrusting the child to the instructor up to return of the child to its parents or to its tutor.

Before starting teaching, the instructor has the duty to instruct his pupils on the rules of good behaviour on skis, requesting that his instructions and warnings are respected. The instructor must adapt his teaching to the skills and the knowledge of skiing of his pupils. Should a pupil be unable to follow his teaching, the former must be transferred to another group or giving him exercises corresponding to his skills. During teaching, he has the duty of respecting the skiing safety regulations, particularly the FIS regulations. He must suspend teaching if weather conditions worsen and decrease the safety of the exercises, or in case of that the pupils are tired, namely if their ability to concentrate decreases. He must also suspend teaching in case of injury of one of his pupils.

The instructor must ensure a correct behaviour of his pupils, draw their attention to the breach of rules committed and prevent non-sporting and foul play behaviour among them.

2. 2. Regulations of the Slovene Law concerning the skiing instructor

The regulations of the skiing law concerning the skiing instructor summarise in general lines certain deontological regulations already prescribed in the skiing instructors and skiing trainers professional Code in the relations instructor – manager – checker of the ski slopes – pupil in the protected skiing area.

According to what has been mentioned previously, the skiing law defines the skiing instructor as a professional operator of the sport and therefore the law does not refer to the skiing instructor but indeed to a sports operator. In this way, for example, article 16 of the skiing law has its title as “The organised teaching of skiing” and establishes that only professional sport operators may carry out teaching of skiing. By law, the instructor, in case he carries out teaching within the protected skiing area, must have the permission of the area manager and has the duty, before beginning the exercises, to notify him about his own and his pupils presence in the area. He has the duty to instruct them on the skiing safety regulations and of the good behaviour on the skiing fields.

Based on the regulations of the skiing law the instructor has the power, for teaching and always with the manager's permission, to place on the ski slope the paths and the equipment. In any case he has the duty, due to other users on the ski slopes, to mark the surface with warning signals and corresponding banners. If the instructor, in view of checking the knowledge and the skills of the pupils, should decide for a competition, he must obtain the permission of the manager, take the safety measures along the path, and in addition position warning signals and banners. At the end of the teaching exercises or of competition, the instructor has the duty to remove from the ski slope all the equipment and the signalling used for the competition or the teaching.

The instructor is liable if, by teaching skiing himself or causing his pupils into breaches of rules, and by so doing violating the regulations of the skiing law. In case of unfulfilled respect of article 16 of the skiing law, without previous permission or notification to the manager for teaching namely without the permission for positioning on the ski slope the equipment for the school or the paths for the competitions, to the latter is applied the fine based on article 35/ii from 200 to 600 €. In force are also for the instructor the same regulations applicable to other ski slope users and in case of breach he is sanctioned in accordance with article 35/I with fines from 40 to 300 €. For whoever teaches skiing in the areas without a licence a fine from 200 to 600 € is foreseen based on art. 35/ii.

Mention must also be made to the provisions of art. 15 of skiing law concerning the events on snow in the areas mainly organised by instructors, namely in the skiing schools. These provide the manager's permission for the availability of the ski slope on condition that the organiser provides protection of the path, the signals and the warnings for the closing of the ski slope and other safety provisions for the participants and other persons involved in the competition (timing, referees, judges, trainers) as well as third parties such as spectators, etc.

At the end of the event, the organiser must remove from the ski slope all the equipment used in the course of the event. In case he does not respect the provisions of art. 15 he commits a breach which is sanctioned on the basis of articles 34/ i – IV of Skiing law from 410 to 4,100 €.

3.2. Judicial procedure concerning the skiing instructor's liability

For improper behaviour and disciplinary breaches, the instructor is liable to the competent Disciplinary Commission of the local skiing instructors association, in second-degree proceedings to the respective Slovene association.

For unfulfilled respect of the skiing law the instructor is liable, as previously mentioned, towards the breach committed. He may be sanctioned by the ski slope safety checker, in more serious cases by the District Court (ex Magistrate's Court). Should the breach cause damage to health, life or property of considerable value and, should there be a connection of causality between the instructor's activity and the damage, the latter may be liable to penal offence.

Besides the case concerning the schoolchildren who perished in the Zelenica avalanche or the pupils lost in the Caprun fog, I am not aware of penal procedures against skiing instructors. In the civil forensic procedure there are civil cases recorded in which instructors were involved for which I therefore hereby refer certain civil sentences of the Slovene courts of second and third degree. It must be underlined that the Slovene justice considers and accepts in its procedure the laws and the regulations for skiing, as well as the various FIS regulations, since these are not implemented in the skiing Law regulations, always in relation with the Obligation Code regulations. For a better orientation in the various FIS regulations (cross-country skiing, snowboard, Alpine skiing, off-track skiing) the Courts use the professional interpretations specialist experts, appointed by the Ministry of Justice in the sport – skiing branch.

Below there are four sentences the first of which is of 1979 and is completely disputable and wrong from the law point of view.

Sentence of 27 September 1979, Sp 74/79 of United Labour Court is against today's Slovene forensic procedure. It has become definitive; however, it shows the lack of knowledge of the judges in evaluating the various situations, which are different from accident to accident. Well then, the ski instructor was teaching on a soft snow ski slope. Due to formation of layers of snow the instructor fell and was subject to injuries. Being an employee of the school, he claimed from the school compensation for damages. The court decided that at the time of the accident, the ski slope was dangerous and therefore the school was objectively responsible. The court did not take into consideration that the instructor himself chose a ski slope in bad snow conditions, and therefore carry out skiing lessons on an unsettled ski slope, consequently placing himself and his pupils into a dangerous situation. Even the manager area, responsible for the maintenance of the ski slopes, was not involved in the law proceedings, since he should have been liable at least for concurrence in fault.

Sentence of the High Court of Ljubljana of 15 March 2000, II Cp 15/99: for the winter sports day, one of the schools hired a skiing instructor. The latter organised teaching on a ski slope for beginners, which for certain youngsters was too easy, and who, not duly supervised, were skiing outside the ski slope. One of the youngsters was injured. His parents claimed compensation for damages from the school. The first-degree Court sentenced that 60% was to be at the charge of the injured, having disobeyed the instructor by skiing outside the ski slope, and 40% at the charge of the school for inefficient control of the pupils

Sentence of the Supreme Court of Slovenia of 14 December 2000, II Ips 300/2000: also in this case the school organised the winter sports day. The pupils were divided according to their skills in various groups. The weather was bad and the snow – bottom of the ski slope iced. One of the pupils changed direction of the ski, crossing the skis of the lady-instructor. The latter received an injury and claimed compensation for damages from the school and from the area manager since the school was responsible for organising the sports day in bad weather conditions with an increased number of pupils on the ski slopes, and the area manager for the bad maintenance of the ski slopes. The first-degree Court noted that on that day the ski slope was subject to a greater hazard, and consequently decided that both the defendants had a right to compensation for damages. The second-degree Court noted the absence of causal connection among the damage, scarce maintenance of the ski slopes and the bad weather conditions, being the pupil the only cause of the injury and responsible, therefore rejected the claim for compensation for damages. In addition, the Supreme Tribunal in the sentence previously mentioned, rejected in the revision proceedings (third degree), lodged by the lady-instructor - plaintiff in the proceedings, and rejected the revision with similar arguments to those of the court of second-degree.

Sentence of the Supreme Court of Slovenia of 17 November 2005, II Ips63/204: the school hired a ski instructor for the winter season. The latter in his group had also pupils not altogether physically fit. So that, one of the pupils while getting onto a ski lift fell-off and was injured. The claim of compensation for damages was submitted both to the school and to the manager of the ski lift plant. The controversy was concluded at the Supreme Court, which decided that the instructor was actually responsible, since he allowed the beginners to effect a climb by using a fast ski lift. He could have avoided the injury by arranging with the ski lift personnel for reducing the ski lift speed. But in this case the school was responsible, being employer of the instructor and also for having effected a wrong choice (*culpa in eligendo*) in assessing the professionalism of the latter who in his turn neglected the safety regulations for his pupils.

Bormio, November, 2007

Tomaž Marušič