

**Liability in tort of the skiing plant managers  
in the Chinese Popular Republic**

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1. Preamble.

Notwithstanding its rapid development in the last years, the skiing sport is not yet governed by a special law but by the various administrative and civil laws. Firstly, the skiing plant managers must respect all the administrative regulations on the skiing sport, which may be national or local, for example, the tourist activities regulations, on the control and maintenance of the skiing plants, etc. In case of non-fulfilment of the administrative obligations, the skiing managers are subject to the administrative liability.

In my report, I will limit myself in describing a general picture on the liability in tort of the skiing plant managers in the Chinese civil law.

On the legislative level, the civil liability of the skiing plant managers is governed mainly by the basic law on the subject of the civil law in China, namely: The general principles of civil law of 12 April 1986. It is not a civil code, but with its 156 articles, it has established in a general and abstract manner general principles of the civil law and the more important institutes of the civil law, including naturally liability for unlawful actions.

Attention must be drawn right away that against of what happens in other countries, the Chinese Supreme Court has the power of interpreting in an abstract manner a single regulation, besides giving an opinion on a single case. Therefore, given its binding effects on the judges, the judicial interpretation of the Chinese Supreme Court constitutes also a civil regulation. In this sense, the civil liability of the skiing managers is governed also by two important judicial interpretations: one is the interpretation on the *General principles of civil law* (in force since 2 April 1988), and the other is “*The interpretation of the Supreme Court in relation to the application of the regulations in the process of compensation for physical damage*” (in force since 1 May 2004).

Judges, in addition to the law and the judicial interpretation, use also jurisprudence and doctrine on which to base their sentences. Therefore, in the analysis of the civil liability of the skiing managers, I will report also some more important cases and the prevailing doctrines concerning each single

problem.

## 2. The general rules on determining the liability in tort of the skiing plant managers.

### A. Liability for fault

In accordance with articles 106 and 107 of the PGDC and in accordance with the doctrine mutually agreed, by way of principle, the Chinese law has provided four requirements for assuming liability in tort:

- a) the existence of damage;
- b) the incorrect behaviour of the perpetrator;
- c) the existence of fault by the perpetrator;
- d) the existence of causality between the incorrect behaviour and the caused damage.

In fact, the general principles of the civil law provide literally that “the citizen or the legal status person who damages by fault the property belonging to the State, the collective property, namely third party property, is subject to civil liability (art. 106, paragraph 2) and “whoever, due by force majeure is unable to execute a contract, namely subjects another person into damage, is not liable under civil law, where not otherwise provided by law (art. 107)”. Therefore, Chinese law expressly acknowledges the principle of fault for liability of unlawful actions. Except for what is otherwise provided by the laws, the skiing plant manager is liable for civil liability only for fault.

It must be underlined that always on the basis of the principle of liability for fault, the Chinese law provides reduction of liability should the damaged party be also guilty for the damage (art. 131 of the PGDC) .

### B. Liability for objective and presumed fault

However, except for fault liability, the general Principles on civil law have provided categorically some unlawful actions, for which the perpetrator is liable without fault or with a presumed fault.

Regarding the skiing plant managers, according to Chinese law, the civil liability of the skiing plant managers is subject to the objective liability for the four following cases:

- a) in the case in which the damage is caused by the operating skiing plants or by the high dangerousness of the operation on the plants (art. 123 of the PGDC).
- b) in the case in which an environmental damage is caused by the installation or the use of the skiing plants and other behaviours of the manager (art. 124 of the PGDC)

- c) in the case in which the damage is caused by the deposit or the transport of the plants and other components in the skiing field. Here, it concerns the extension of the components' liability (art. 127 of the PGDC)
- d) the damage caused by transporting of persons by the skiing plants. The law on contracts of 1999 has provided a concurrence between the contractual liability and that extra-contractual in this case<sup>1</sup>.

In all of these four cases, the skiing plant manager must assume liability automatically for the existence of causality between the damage and the behaviour of the manager, without the necessity to investigate whether he has fault. Attention must be drawn to the fact that the manager may be exempted from liability if he succeeds in proving that the damage is caused by force majeure or by malice or serious fault of the damaged person.

Similar cases to those of the objective liability of the manager, but not altogether identical, are those in which the manager must assume liability for presumed fault. In these cases, confirmed causality between the damage and the behaviour of the manager gives rise to a civil liability at the manager's charge only if he does not succeed in demonstrating his innocence. Substantially, the manager is liable once again for fault, however, unlike normal cases for liability for fault, there is a reversal of the burden of proof, in the sense that the manager must prove that he is innocent; otherwise he must assume liability for the damage that he caused.

These types of cases are two:

- a) in the case in which the damage is caused by lack of installation of clear signals or lack of adopting safety measures, during excavation or underground work in the locations, passages and roads for public use or for his own client in the skiing field (art. 125 of the GPDC)
- b) in the case in which the damage is caused by collapse or fall of the building or equipment or anything located or hanging from the latter in the skiing field (art. 125 of the GPDC).

### C. Liability for lack of safety protection

In addition of the objective liability and that for presumed fault, with a well-known sentence of 1998, by following the German doctrine "verkehrsspflicht", the Shanghai Court prosecuted by civil

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<sup>1</sup> "The carrier, during transport must, as much as possible, give assistance to passengers who manifest sickness in an acute form, who are giving birth, who are in a situation of emergency" (art. 301).

"The carrier is liable for compensation for damages in case of death or wounding of the passengers during transport, except where these events are due on the health conditions of the passengers themselves or the carrier proves that they are due to their malice or serious fault" (art. 302) .

law the liability of a hotel manager for the fact that a client was robbed and murdered in the hotel and the criminal was unable to compensate for damages claimed by the parents of the victim. This decision was widely agreed by other judges and confirmed at the end in the above-mentioned “*Interpretation of the Supreme Court related to the application of the regulations in the process of compensation for physical damage*” (in force since 1 May 2004). Art. 6 of this interpretation provides that “due to the lack of fulfilment of the obligations for safety protection, foreseen in a reasonable manner at their charge, the individuals, legal status persons or other legal status bodies, responsible for the management of hotels, restaurants and places of entertainment, at the request of whoever has the right, must compensate the damage to which the third party was subjected”.

Contrary to the liability for fault, whether objective or presumed fault, the nature of this liability of the manager of the commercial or social activity as well as the criterion of its determination is a subject for discussion.

a. nature of liability. There are those who observe that this is derived from lack of fulfilment of the accessory contractual obligations. However, the doctrine considers that this is the result from lack of fulfilment of the obligations foreseen definitely by the laws, specifically from violations of the consumer’s law. Art. 7 of the Law of 1 January 1994 on the protection of consumers, provides that “consumers have the right to enjoy the safety protection at the time of purchase and use of the products, and to benefit from the service” (art.7), and that “the business managers must guarantee that the products or the services supplied by themselves meet all the requirements of the personal or property safety protection of consumers” (art. 18).

b. in accordance with the interpretation of the Court of Appeal and the prevailing doctrine, liability for lack of safety protection concerns only the case in which a third party has caused damage to a person covered by the safety protection, due to the manager. In our case, it concerns of damage caused by a person other than the manager to a person, in the skiing field or in any case in the area juridically under control of the manager. In the case in which the damage is caused directly by the manager, the regulations on liability for fault, objective or presumed fault are applicable.

The interpretation of the Court of Appeal (art. 6) and the prevailing doctrine<sup>2</sup> have considered that this type of liability must be prosecuted according to the following regulations:

- a) in the case in which it is not possible to identify the third culprit (that is to say: the perpetrator of the unlawful action) or the latter is unable to compensate at all the damage the manager must assume full liability towards the victim;
- b) in the case in which the third culprit is identified, and he is able to compensate all the damage to the damaged person, the manager is not at all liable; however, should the third culprit be unable

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<sup>2</sup> Yan Lixin, *The unlawful actions on violation of the obligations of the safety protection*, in the Review of the civil and

to compensate all the damage and the manager is guilty for lack of safety protection, the manager assumes the additional (or substitutive) liability in the sense that he must compensate the difference between the whole damage and that already compensated by the third culprit, but always within the limit of the damage that would not been caused if the manager could have avoided or prevented the harmful behaviour of the third culprit. Having compensated the damage, the manager has the right of recourse towards the third culprit.

c) in the case in which the manager succeeds generally in proving his innocence, the perpetrator of the unlawful action must compensate all the damage. However, in this case, by applying art. 132, where it is provided that the liability may be shared in the case in which neither party has caused the damage as such, the judge has the discretional power to order the manager to assume the whole or partial liability, should the bad economic condition of the perpetrator imply impossibility for the latter of compensating the damage in a just manner. Here, it concerns of applying the criterion of the determination of liability on the basis of the impartiality principle, considered as basic principle of the civil law.

In other words, in the case in question, by order of the judge, the manager is liable even without fault of civil liability.

D. The active legitimisation for the prosecution of liability, the quantification of the physical damage, the method of assuming liability and the term for statute barring the prosecution of liability.

In Chinese jurisprudence and doctrine, whoever can promote action for obtaining compensation for physical damage has always been subject for discussion. Art. 1 of the Interpretation of the Supreme Court of 2004 has definitively provided the suitability of the active legitimisation for the liability action, providing that “whoever was subjected to damage, his nearest of kin or whoever lives by alimony of the person that became disabled or dead due to the unlawful action, can be the active legitimisation for obtaining compensation for damages”. Therefore, these subjects can take legal proceedings for prosecuting the liability in tort of the skiing manager.

Both property and biological (that is to say: non-property) damage, can be compensated. The biological damage is calculated as a lump sum, generally not over 10,000.00 Euro (that is: 100,000.00 RMB). In the case of physical damage, the property damage is quantified in different ways according to whether the person is alive, disabled or dead. In the case in which the damaged person is still alive, the medical and alimentary expenses, those for the transfer for medical treatment, loss of emolument by the damaged party and his escorts are considered as the caused property damage. In the case of

disablement of the damaged party, to the above-mentioned expenses are added also the alimony that the damaged party should give if he should not have become disabled and the loss of income due to the disablement, calculated on 10 years of the average annual salary of a normal citizen in the residence area of the damaged party. In the case of death of the damaged party, in addition of the damage that must be compensated in the case in which he should have been alive, are added also the funeral expenses and the amount for compensation for the mortal damage, calculated on 20 of the average annual salary of a normal citizen in the residence area of the damaged party. (in the case in which the dead person is over 60 years, each year over 60 is reduced by one year of the average annual salary, and for a dead person over 75 years the amount for compensation for death is 5 years of the average annual salary.

In addition, it is reminded that besides the compensation for damages, in China the main methods for the assumption of the liability in tort (in accordance with art. 134 of the PGDC) are: a) interruption of the action causing the damage; b) removal of the obstacles; c) elimination of the hazard; d) return of the property; e) restoration of the original condition; f) repairs, reworking and the return of the property; g) elimination of the negative consequences and the restoration of the reputation; h) public apology. These methods can be applied both separately and accumulatively.

It must be noted that for each type of liability the skiing plant manager, the force majeure and the fault of the damaged party are always the justifying cause for exemption of liability. However, a case of necessity does not always constitute the justifying cause since in some cases the judge can decide to attribute liability to whoever has no fault, simply on the basis of impartiality and after an evaluation of the incurred damage and the economic conditions of the parties.

Finally, it may be appropriate to note that the normal term for statute barring for a prosecution of civil liability is 2 years. However, that for prosecuting liability for physical damage is foreseen only for one year. In any case, except by authorisation of the judge, after 20 years from the event that gives rise to a civil liability, prosecution for a civil action is not admissible any longer.

### 3. Conclusion

In China, liability by the skiing plant managers can be that by fault whether objective, for presumed fault and for lack of safety protection. In addition to liability for fault, which is by principle, all other types of liabilities are typified by law and jurisprudence and potentially, in these typified cases, the manager must assume, even without fault, liability or in the case in which he cannot demonstrate his innocence or the existence of a justifying cause.