

The new Italian ski slope regulation

Introduction

The roman parliament adopted the new Italian ski slope regulation in an out-sized hurry, after its presentation by the responsible, with the support of all parties. It attracted world wide, great attention, especially in the neighbouring Alpine countries. In a preliminary phase the first drafts already caused violent discussions and reactions. The dispute concerned not only the content of some specific regulations, but also the practicability of the whole regulation. Ski sport cannot easily be forced in a regulatory corset.

Moreover this bill is in contradiction with the consolidated traditional jurisdiction, the doctrine and the main principles of law, worked out over many years. The final adoption on Christmas day 2003 of the bill number 363 “Safety regulations for the practice of down hill and Nordic skiing” represents an un-coordinated final ensemble of parliamentary initiatives.

Due to the alarming publications by numerous Medias of accidents on ski slopes and some concurrence between many submitter, 6 different drafts were presented to the parliament.

The publications in the Medias and the parliamentary commission were both based on erroneous statistics, given in function of the number of skiers in a ski resort, instead of the number of effective runs. Additionally the date collection was only based on the numbers of few resorts or of slope responsible instead of global dates of whole ski regions. That was sufficient to declare ski sport as a most dangerous activity, a statement which is totally wrong, as it is well known that this sports are considered as activities of limited dangerousness.

In this mood and pushed by some groups of interest, smelling unforeseen financial profits, the parliament members adopted this immature bill, which we now have to try to apply.

The content of the bill

The aim of the Italian legislator was to limit the number of accidents in the domain of skiing and its correlated social impacts. This aim is positive, but it is doubtful that the chosen way will bring the expected results. The bill is structured in 3 sections containing 23 articles. The first one is dedicated to the management of the ski area, the duties and responsibilities of the operator; the second one normalizes the rules of behaviour of the users, fixes sanctions in case of transgressions and regulates the responsibilities in cases of clashes between skiers; the third one is dedicated to controls, adaptations of regional and provincial legislations to the new bill and questions of financial cover.

The bill contains general directives regarding the use of ski slopes and mechanical ascending devices. The regions and autonomous provinces have 6 months time to take over these directives in their proper regulations, adapting them to their proper needs.

Without a serious coordination between all regions and provinces, Italy will have 17 and even more individual and different regulations, as it is already the case for the regulations for ski instructors and ski schools.

Management and running of a ski area

Article 2 defines a “*prepared ski area*” as a “*naturally or mechanically snow-covered surface, open to anybody and containing ski slopes, mechanical ascending, artificial snow devices; dedicated and limited to the practice of snow sports, as ski sport in all its forms, snowboarding, nordic skiing, sledging and tobogganing, or additional local types of winter sports, to be fixed by regional regulations.*”

The ski area includes not only slopes but also the mechanical ascending and artificial snow devices, toboggans and similar installation, opened to anybody. The regulations differentiate between various slopes, in function of their intended use. Section 2 on one hand specifies that special slopes must be provided for sledging and tobogganing, but does not forbid the use of sledges and toboggans on ski slopes, this in contradiction with the existing provincial and regional rules. If the regional ordinances, implementing the new bill, forget to regulate this matter, sledges and toboggans will be authorised on ski slopes in future.

The separation between ski and snowboard slopes is not fixed by the new regulation, even if this point has been largely discussed in a preliminary phase. The difficulty to marry skiing and snowboarding on a same slope, the differences of equipment, the various arcs of curve are well known and have been largely discussed; but finally common sense has won.

On another hand, for questions of safety, Section 2 allows forbidding snowboards, for a limited or an unlimited time, for defined areas.

The listing of the areas designated for snow sport activities is in charge of the region and the provinces. This listing of an affected area corresponds to a designation as a zone of public interest, allowing imposing servitude on a private property, naturally with a previous compensation. Provinces and regions of Bozen and Trient used slope servitudes before, for all other regions it represents a novelty.

The legislator makes an additional distinction between slopes designated for ski tourists and competitors, or future competitors.

Paragraph 4 declares: “*In a precise ski area, as defined by article 1 with a minimum of three slopes and ascending devices, the affected communities designate the sections on which ski and snowboard trainings are allowed on demand, only on days free of racing competitions. Such slopes must present*

appropriate safety provisions and the competitors have to wear a homologated helmet, only the training staff being excepted.”

This regulation is problematical, as the responsibility to allow training runs on specific sections is given by the administration of the community and not by the persons responsible for the daily management of the slopes. The administration can force a private company to prepare specific slopes and limit their use for training races, withholding paying skiers from the use of these slopes. Additionally the company has the duty to delimit these training slopes in function of safety standards, still not defined. So the delimitation must be done in conformity with the FIS regulations for racing slopes. It is not fixed who has to bring in the request, to make a section available for training races. As the legislation does not refer to ski or sporting clubs, it seems that anybody's request has to be considered.

If the company responsible for the delimitation of a running slope fails to do a proper job, it will be made responsible for any clash between a tourist and a training racer.

In ski arenas and snow parks with more than 20 slopes and more than 10 ascending facilities, it is again the administration of the community which fixes the areas for freestyle skiing, acrobatic skiing and snowboard presentations. The snow parks must present the necessary structures for jumps and pipes, well delimited from the normal ski slopes by appropriated safety installations. The company in charge of the slopes has to guarantee the proper maintenance of the snow park. The users have to wear a helmet.

This article 2 is very important, as the legislator gives a definition of “snow areas” and possible differentiations between various equipment and types of snow sports. Its practicability is rather poor.

Duties and responsibilities of the management of a ski area

Articles 3 to 7 define in detail the duties of the management.

In the past the jurisdiction and the doctrine of law applied two well accepted ways of reflection, making a clear distinction between a contractual and a non contractual responsibility. The question to be answered was, if by buying a ski pass a person was only allowed to use an ascending facility or, additionally, to use a ski slope for his down hill run, with the appropriate equipment.

In its practical application the decision for one or the other alternative have quite different outcomes, especially when considering the change of the burden of proof.

With this new bill and its various responsibilities imposed to the management, the traditional approach of the problems is thrown over.

Looking through the new legislation it becomes quite difficult for the management to assume all responsibilities, due to the fact that the skier is more

and more considered as a “consumer” buying a “product” and therefore to be protected for any causalities, when using a ski pass.

Article 3, paragraph precise: *“The management of ski areas, as defined in Article 2, guarantees for all users safe conditions for the practice of the designated types of sport and leisure activities, by delimitating the slopes in accordance with the local prescriptions. The management has to protect the users from obstacles along the slope by safety devices and signalisations of places of danger and risk.”*

Through this norm the management responsibility regarding the safety of users is explicitly fixed.

In addition the operator has to guarantee the rescue service on all slopes, the transport of the victim, including the transport to the next hospital.

Article 4 precise: *“The management of designated ski areas, nordic skiing facilities excepted, is responsible by civil law for the correct maintenance and safety provisions of the slope. The operator is not allowed to open the slopes for public, as long as he has not contracted an insurance police against damages, which users and third persons could suffer in case of events for which the management is responsible.”*

This article 4 may seem quite unnecessary, but is of great significance in its effective application.

The legislator introduces a new type of “presumed liability”, some commentators of the bill even speak of objective liability, from which the management can only be liberated by bringing in the counterproof.

The management has to contract an insurance police.

The management has the duty to guarantee the safety on the slope, to provide correct delimitations, signalisations, the rescue service and to contract and liability insurance police for all risks connected to the duties it has to assume.

Considering the increase of duties on a pure economical way, an increase of the cost of ski passes seems unavoidable in for a near future.

It is also worthwhile to consider the duty for correct signalisation. Article 6 defines who is in charge of the harmonisation of the signalisation. The Italian winter sport association FISI has been designed as main responsible for this harmonisation. No evidence speaks for this FISI responsibility, and none can be derived from its technical competence.

A sufficient and correct signalisation could reduce the liability of the management in case of its disrespect by users, the normal legal duty being excepted.

Article 7 is interesting, as it introduces again a new responsibility: additionally to the duty to ensure a correct and exceptional maintenance, the management has also the duty to take immediate actions when the slope isn't no more in conformity with the safety conditions. It could therefore even happen

that a slope has to be closed for a limited or unlimited time to fulfil urgent maintenance work.

This could even leave to forbid the access to the slope in cases of rushes of people. Should the number of skiers represent a danger for the safe use of the slope, the management could be made responsible, if it does not refuse temporarily the access for additional skiers.

Behaviour prescriptions for users of ski slopes

The obligation to wear a helmet:

According to article 8, it is mandatory to wear a helmet for all skiers and snowboarders under 14. The helmet must be homologated. They have to fulfil precise features, fixed by a ministerial commission. The production, import and distribution of non- homologated helmets will be punishable, imposing penalties up to 100'000 Euros.

If parents, trainers and instructors omit to impose wearing of the helmet for their ward, they will have to pay a penalty varying from 30 to 50 Euros.

Irrespective from the fact that nearly 95% of all children wear a helmet and ski schools and other institutions recommends doing so, the obligation by law to wear a helmet, seems unnecessary. Taking into consideration that the percentage of head injuries of less than 14 year old children is extremely low, educational actions would have been more appropriate.

It makes no sense to wear a helmet, if the helmet is too large or if, due to precautions of timorous mother, a cap may be worn below it. The same goes for the use of the helmet of an older brother.

Who understands that ski gnomes have to wear a helmet in the Kindergarten, even though the children domain is protected from other skiers?

What happens in April when children have to wear a helmet for 3 hours in blazing sunshine? Who is responsible for an inflammation of the middle ear, when children take off their helmet after a lesson in a chilly wind, with an overheated head, stained with perspiration?

What happens if a child is involved in an accident just when retiring his helmet? Will the insurance pay?

All these questions would not need an answer, without the rage of regulation of our members of parliament.

Speed

Articles 9 to 15 partly take over the FIS regulations, in some cases even in a lacunary way and convert them in a legal norm. The nonobservance of these regulations will be filed and charged with a penalty.

Apart the introduction of penalties, this bill with its precise norms of behaviour for skiers brings no practical innovations, considering that, in case of an accident, the civil and penal law follows the FIS regulation with its general way to measure the responsibilities.

Article 9 includes a speed regulation, prescribing that "*Skiers have to adapt their speed and to behave in a way, not to endanger other skiers, taking into*

consideration the characteristics of the slope, environment, climate and snow. The speed must mainly be adapted on blind spots, in the vicinity of buildings, on intersections, bifurcations, when mist and dust comes up, or when visibility is poor, in overcrowded situations, on narrow spots or in presence of beginners.

It's striking to observe that this listing forgets a decisive aspect, which is the technical and physical ability of the skier.

Another reference to speed is made in article 21, paragraph 2. It declares that ski instructors have to notify to the control organization, skiers who don't adapt their speed to the given situations. This regulation degrades Instructors to some sort of assistant of the legal police, an incompatible activity to their duty to instruct and supervise their students and pupils. The instructor is unable to identify the responsible skier, without chasing him. Even in this case he will not be able to get the personal data of the dangerous skier.

Priority

Article 10 takes over the rules for priority of article 3 of the FIS regulation. This rule, due to the out coming of new sports like snowboarding or of new material like carving skis, is probably the most outdated one, as in 1967 nobody could foresee the possibility to run a curve of 360°, or to anticipate the possibility for a skier, skiing below another, to drive a curve ending in an ascending drive, to collide with a down-hill skier.

Overtake – Priority from right on intersections

Article 11 regulates overtaking and article 12 regulates, in accordance with the priority rules of road traffic, the right of way for the skier coming from the right. In conjunction with article 11, allowing overtaking from the left and the right, article 12 seems inconsequent and illogical.

Stopping

Article 13 regulates the ways to stop on a piste, but forgets to take over the FIS regulation, asking the starting skier to give the way to all running skiers.

Readiness to help

Skiers meeting persons in difficulties on the piste must assist them or inform the rescue team. This obligation is also quite difficult in its application. Skiers not trained in assistance or with missing knowledge may harm more than they help. Another question is how to realise, if a person is really endangered.

Ascending and descending without skis

Article 15 forbids ascending and descending without skis on a piste, except in case of urgency.

Ascending with skis

Ascending on a piste with skis, for instance with skins is allowed if agreed by the piste organisation.

The responsibilities in case of a clash between an ascending skier and a down-hill skier are not defined, despite the fact that the piste organisation guarantees in principle a safe run for the down-hill skier.

Motor vehicles

Mechanical transport and maintenance vehicles like piste engines and ski-doods are regulated by article 16, forbidding their use on an opened piste. Exceptions are only allowed in case of urgency and peril. It is not précised, who has to decide if a case of urgency or peril is given.

It is striking to realize that, despite this desire to regulate, an important norm has been forgotten. It is the obligation for all persons involved in an accident, or witnesses of an accident have to decline their personal dates to the controller.

Downhill skiing out of pistes

Article 17 is quite important as it declines, for accidents occurring out of pistes, the responsibility of the organisation in charge of the ski arena, even if the access is possible from the ski lift.

On another hand it is not understandable that the obligation to carry an electronic search devise in case of avalanches is only mandatory in case of evident danger of avalanches.

Presumption of co responsibility in case of clashes

A real novelty is introduced by article 19, which in case of clashes between two or more skiers admits an equal responsibility for all involved skiers, except if the proof of the contrary can be furnished.

This principle of assumed responsibility is encouraged by the Italian civil code, who- also in other cases- favours the victim injured by persons fulfilling a dangerous activity.

Normally for non contractual responsibility, the injured party has to prove the damage, the reason for the occurrence of damage and the causality between the damage and the circumstances of its occurrence, as well as the fault of the person who caused the injury. With the assumed responsibility by law, the harmed person has not to bring in any prove.

It seems that this principle has been introduced by law for ski accidents, as skiing is considered as a dangerous activity, especially when considering the difficulty to reconstruct how an accident happened.

The principle of assumed responsibility counts only in a subsidiary way, when it is impossible to establish the responsibility of the person's involved in the accident. Nevertheless it is a fact that -through this principle - the legislator defines ski sport as a dangerous activity.

It would have been more advantageous to require liability insurance for all skiers.

All regulations given for skiers are also valid for snowboarders.

Control

The efficiency of a norm, introducing a penalty or juridical consequence is function of the efficiency of an appropriate control system.

For this reasons it is quite easy to foresee the failure of such a law.

It is impossible to ensure for all ski arenas (often overcrowded) a proper control. It would require an army of controllers. It is just not sufficient, to transfer the control and the imposition of sanctions to the rescue teams, carabinieri, financial guards and community or forest guards, acting on the site (article 21), when considering all other duties they have to fulfil. Their efficiency will only be very limited when considering the variety of faulty comportments and the limited number of competent control persons. Violations will only be filed occasionally and by coincidence.

Financial contributions

The associations are happy to get financial support for all preventive information campaigns (article 5) and for activities to improve the safety on ski slopes (article 7). Investments for the production of artificial snow are also considered as an “adjustment to the safety regulations”. This allows bypassing the limitation of public financing introduced by the European Commission. The existing public financing up to 70%, will still be possible.

The contribution of 5'000'000 Euros for the organisations responsible for ski arenas and even more, for those in financial difficulties given by varying climate and atmosphere, is only a drop in the bucket. The same goes for the 500'000 Euros dedicated to information campaigns, when considering the number of regions and qualified organisations. Neither the association of ski lift devices nor the Italian ski association realised this fact.

The proposed contributions blinded these associations in respect of the problematic nature of this law.

Final considerations

Up to now, any person starting to learn skiing or practicing skiing was aware that this meant to be exposed to some risks. Today the responsible organisation for a ski area has to guarantee a total safety for all skiers.

The consciousness of risk was quite evident for all competitors and leisure skiers. It was obvious to accept risks of accident as a victim and as a person liable for injuries caused to other skiers.

Today, given this new jurisdiction, this is no more valid, as the legislator does no more consider the personal responsibility as given und sufficient.

Ski sport is in a constant move from one domain, region, state or continent to another. This mobility is not only important for the survival of mountain regions in general, but also for the economical situation of alpine countries.

When considering this mobility between various regions it seems obvious to produce identical regulations, if snow sports really need such regulations. The FIS association did so 40 years ago, editing the well known ten basic rules of comportment.

The necessity of harmonised rules becomes vital as soon as this rules are transformed to legislative norms, imposing general sanctions not only related to aspects of skiing.

Legislative initiatives taken just by one state and only applicable in this specific state are short, ephemeral and could even have negative influences on the development for tourism. The Italian norm is confusing for local and foreign skiers who are confronted to different and overlapping regulations from one region to another.

As a conclusion one may say, that this Italian legislative regulation is a overhasty and wilful bill, presenting more disadvantages than advantages.

I hope that my comments were not too tedious for you and eventually provoked an impulse for some of you. I am ready to answer your questions and thank you all for your attention.

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