

SKILEX 2010
ITALIAN NATIONAL REGULATIONS
GOVERNING SAFETY IN SKIING SPORTS

Since the end of the 1980s, skiing techniques have undergone an important development, with the introduction of a speciality that began in competition skiing and has now filtered down to amateur enthusiasts.

During this period, in Italy – and to a certain extent in all the other countries in the area of the Alps – snowboarding gained huge popularity. The growth of this new technique was made possible by the structure of modern skiing facilities, whose characteristics have changed radically in recent years.

Firstly, the preparation of the slopes has improved dramatically, and enthusiasts can now enjoy perfectly-levelled snow without even the slightest unevenness.

In addition to this, the capacity of the ski-lift systems has increased significantly, which means that skiers no longer have to wait in long queues at the bottom of the slopes.

As a result, the number of skiers has increased, and therefore the slopes are more and more crowded.

These factors have led to a considerable increase in the risk of collision on the slopes, and many skiers have found themselves forced to change their trajectories to avoid these risks.

It is true that, in statistical terms, this increased possibility of accidents on the ski slopes has not been demonstrated, and perhaps it cannot be proved. On the other hand, a study published in October, 2002 by Pool Sci Italia, in collaboration with the University of Venice, showed that the number of accidents occurring on the ski slopes has not increased over the last few years, as many would think – neither with the arrival of carving, nor with the increasing popularity of snowboarding. The study demonstrated that skiing is in fact one of the safest sporting disciplines.

However, this does not eliminate the need to improve safety on the slopes, which is today the subject of keen debate.

A number of proposals were put forth towards the end of the 1990s, and were subsequently passed into law in the form of the first national legislation governing skiing as a sport.

Law no. 363/2003 obtained approval on 24 December, 2003 and took effect on 20 January of the following year. This law set forth safety standards for both downhill and cross-country skiing.

This development brought about a significant change in the legal principles governing the settlement of controversies in a field that is complex and extremely difficult to interpret such as skiing.

As regards skiing in Italy, the arrival of this Law was a historic milestone, and one which to this day continues to have repercussions: until now, no national law had addressed the problems of safety on the country's ski slopes.

The regional laws that had been in effect prior to this date focused attention on the regulations concerning the administrative procedures necessary to obtain permits for the planning, construction and operation of ski-lifts and the slopes themselves.

As regards the problems of safety, the regional norms did not require compliance by the operators with any precise obligations, merely referring in vague terms to their duty in assuring the safety of the skiers. Equally vague, and in some cases hardly relevant to the sport of skiing, were the recommendations for correct conduct made to the skiers on the slopes.

Faster skiing speeds, together with the increase in the hours of operation of the ski-lifts and the ever-greater number of skiers crowding the slopes have not, perhaps, resulted in an increase in the number of accidents; however, the people actually using the slopes are increasingly expressing their fear of being involved in a collision.

Article 2 of the new national law is important, as it requires that the area designated for skiing – which includes the slopes, ski-lifts and artificial snow-making systems – must be prepared and maintained in conditions of safety by the operator. The area must be clearly identified and its purpose clearly defined.

Of equal importance is the fact that the national norms require operators to separate training areas from the ordinary slopes using safety barriers or fences.

In this case, too, it will be interesting to see how lawmakers interpret this requirement, and who will be assigned the task of installing the safety barriers and ensuring that they are correctly maintained.

Similarly, areas designated for use as "snow-parks" must be separated from the other slopes, and must be regularly maintained and prepared, with structures that allow users to perform acrobatic manoeuvres.

It is interesting to observe that the norms do not refer to the separation of skiers from snowboarders, nor to the creation of areas set apart for snow-boarding.

The so-called "snow-parks" are, in fact, areas set aside for acrobatic manoeuvres by both skiers and snowboarders. Access is therefore not limited to snowboarders, as might have been assumed from a brief glance of the wording of the law: ordinary skiers can use the same area.

The new "gold level" class, which was introduced with the 2004 Italian ski instructors' guidelines, can therefore be taught and practised in snow-parks using conventional skis (and wearing a helmet, which is obligatory for all users in the snow-park as specified in article 2).

In order to adopt an objective and realistic approach to the practical application of the requirements specified in the law – at least, as far as is possible and taking into account the changes that are still taking place in skiing in general – we must examine the possible introduction of a series of clauses concerning the rules of conduct for persons using skiing facilities.

Obligatory use of a safety helmet

Article 8 of Law no. 363/2003 makes it obligatory for children less than 14 years of age to wear a standards-approved helmet.

The same article postponed the obligation of wearing a helmet until 1 January, 2005.

Until 2006, when the Ministry of Health and the Ministry of Transport jointly defined the minimum technical and structural requisites for certificates of approval, winter sports enthusiasts remained confused about the necessity of wearing a safety helmet.

Since 2006, it has been obligatory for children under 14 to wear a helmet when skiing in Italy.

Irrespective of the legal obligation for children under 14 to wear a helmet, this is still recognized as a normal and prudent safety measure.

Speed

Article 9 of Law no. 363/03 requires skiers to observe a conduct which, in relation to the type of slope and the environmental conditions, does not place other persons in danger.

In particular, skiing speed must be moderated in sections of the slopes where visibility is limited, near obstacles or buildings, crossings, forks, or in case of fog, mist, poor visibility or in crowded conditions, narrow sections or in the vicinity of beginners.

However, it is difficult to understand why the new national norms do not take into consideration the fundamental relationship between the recommended skiing speed on the slopes and the technical ability of the skier as laid down in Regulation no. 2 of the FIS Guidelines. Fortunately, most regional regulations have addressed this question.

Giving way in all cases to skiers below

Article 10, too, though laying down a key principle for giving way to other skiers, fails to address a problem which arises relatively frequently: that of skiers crossing the slopes transversally.

While the skier in the upper section of the slope, who is in a position to see all the skiers below, is required to maintain a trajectory that avoids collisions with skiers on the lower parts of the slope, it is also possible that a skier might cross the slope transversally, or unexpectedly follow a trajectory that is perpendicular to the direction of the other skiers.

These situations are expressly referred to in Regulation 5 of the skiing Guidelines, which require the skier on the downhill side to perform a visual check in both directions - both uphill and downhill - so that he can traverse the slope without endangering himself or other skiers. However, article 10 of the Italian national regulations merely states - without any specific indications - that only the skier on the upper part of the slope is required to maintain a trajectory that avoids the risk of collisions with skiers on the lower slopes.

Overtaking

Article 11 of the new Law merely reiterates the content of Regulation 4 of the Guidelines, stating that the overtaking skier must leave a sufficient gap between himself and the other skier and that he must have a clear view.

The skier may overtake either above or below, and on the right or on the left of the other skier, but must in all cases maintain a distance sufficient to avoid the possibility of a collision.

At crossings, skiers must give way to those coming from the right or as shown in the signs (if any)

Italian law specifies that skiers coming from the right must give way unless otherwise indicated by the signs.

Right-of-way to skiers coming from the right a new development: the previous legislation required – that irrespective of the direction from – skiers on secondary slopes wishing to move onto the main slope were always required to give way to skiers on the main slope. The legislative precept also differs from Regulation 5 of the FIS Guidelines, which do not envisage any right-of-way to skiers coming from the right.

Stationary skiers

Skiers remaining stationary on the slopes must ensure that they do not represent a hazard that might endanger themselves or other skiers. Skiers must not remain stationary at crossings, near humps or in areas of poor visibility. In case of a fall, the skier must promptly liberate the piste by moving to the side. In the event of injury, the accident must be marked by the appropriate warning signs.

These requirements, too, are contained in the skiing Guidelines under Regulation 6, where the conduct of the stationary skier is clearly specified.

Failure to provide assistance

Above and beyond article 593 of the Italian Civil Code, which requires that anyone finding a person who is incapacitated must immediately advise the authorities, article 14 of Law 363/03 specifies a fine of between €250 and €1,000 applicable to anybody who fails to provide assistance to a person in difficulty or to immediately advise the operator responsible for the skiing facility of the occurrence.

It is important to ensure that SOS call points are positioned at strategic locations around the facility and that these are readily identifiable by the installation of clearly-visible and immediately-recognizable signs.

It would also be appropriate to use a cell phone to call the facility operator at a number marked clearly on a board at the starting-point of each ski-lift. In the event of serious injury, bringing the injured person down from the slope or waiting for a safety patrol to pass might waste precious time.

Ascending the slope on foot

Contrary to the instructions contained in the skiers' Guidelines, which require skiers who intend to ascend the slope on foot to wait at the edge and move away from the edge in case of poor visibility (Regulation 7), Italian law expressly prohibits any person (except in case of emergencies) from ascending the slope wearing skis. This prohibition applies to cross-country skiers in particular.

Ascending the slope requires the authorization of the operator of the facility, and persons ascending must remain at the edges of the slopes to prevent any risk of endangering skiers on the slopes.

In practical terms, it is unlikely that the operator of a skiing facility would be willing to authorize any ascent of the slopes and to assume liability in the event of accidents involving the users of the slopes.

This effectively precludes any ascent of the slopes by cross-country skiers and excursionists, who have recently – and especially in certain winter resorts - grown considerable in numbers.

An objective examination of this prohibition, which might at first sight seem to infringe the liberty of skiers and, above all, cross-country skiers, shows that it is logical and may thus be considered as being a positive measure from a number of viewpoints.

Ascent of the slopes by persons wearing skis had become hazardous because cross-country skiers, often in groups of five, six or more, would criss-cross the slopes repeatedly in order to reduce the steepness of their ascent; this clearly places both themselves and the skiers using the slopes in danger.

In the vicinity of changes in inclination, humps, narrow sections and curves with limited visibility, the possibility of accidents inevitably increases.

This prohibition is a further safeguard for downhill skiers, while not in any way limiting the activities of cross-country skiers, who can choose an alternate ascent at a safe distance from the slopes by using the itineraries reserved specifically for cross-country use.

These considerations also apply to excursionists wearing snowshoes, who find the smooth, compact surface of the ski pistes easier to climb than the open countryside.

These regulations should provide greater safety and discipline in the use of the areas set aside for skiing activities, including ski schools, which are often crowded with parents on foot who follow their offspring on the nursery slopes and frequently create an obstruction.

Vehicles

The new legislation also covers access by the service vehicles used for maintenance of the slopes and the ski-lifts.

These vehicles may access the pistes only outside normal operating hours, except in case of emergencies, and must be fitted with the appropriate acoustic and illuminated signalling devices.

In situations of emergency, all skiers must give way to the service vehicles and allow them to circulate freely and rapidly.

A reasoned interpretation of article 16 would lead to the conclusion that the prohibition applicable to the use of vehicles on the ski slopes is extremely strict except in real cases of emergency, such as the need to provide assistance to an injured skier.

Off-piste skiing and cross-country skiing

The operators of the skiing facilities are not liable in any way for accidents or injuries occurring off the beaten slopes, even if these are served by the ski-lifts.

However, examination of the norms does not reveal any reference that might be useful in identifying the delimitation of the piste, which would be an important factor in attributing liability in the case of accidents caused by skiers inadvertently exiting the slope. Nor can any useful indications be found that would help in solving controversies relative to avalanches provoked by skiers on slopes overlooking the skiing facility and which fall onto the ski slopes.

Thus the general rules governing culpability remain applicable in ascertaining and attributing liability.

It is interesting to note that the law requires all those engaging in cross-country skiing to carry an electronic alarm device that calls in the emergency services in the unhappy event that they are caught by an avalanche.

It might perhaps be better to refer more clearly to the use of PIEPs or ARVAs (avalanche beacons or transceivers) – terms that are already widely known – rather than the more general "electronic devices".

Not to require the use of these devices when there is "no clear risk of avalanches" is an approach based on a subjective evaluation, and is not considered prudent.

There is always the possibility of an avalanche – even of modest proportions – falling onto open-off-piste slopes, which is why an ARVA should be required equipment for all cross-country skiers, off-piste skiers and excursionists.

Contributory negligence

The section of the law calling for the presumption of contributory negligence - unless proven otherwise - in the event of a collision between skiers is totally new, and may be seen to create confusion concerning its application.

This principle has its origins in legislation governing road traffic, in which contributory negligence is presumed unless and until evidence to the contrary is forthcoming, but which also lays down that accident insurance is obligatory so that those involved are covered.

In the case of ski-related activities, insurance cover for third-party liability is not obligatory.

Until the new national legislation took effect, the courts always followed the legal principle that obliges the person causing damage or injury to compensate the person sustaining the injury.

With the introduction of the presumption of culpability, the burden of proof is reversed.

The person sustaining the injury is now required to prove that he or she has no responsibility for the accident since, in the absence of this proof, the law presumes that liability is split equally. As a consequence - paradoxically - the injured party may be

obliged to pay 50% in compensation to the person who may well have been the real cause of the accident.

A practical example will serve to underline the serious consequences that this might have: A skier unwittingly involved in a collision with an undisciplined skier arriving at high speed from the upper part of the slope and unable to control his skis would be obliged to pay 50% of the damages sustained by the person who caused the accident unless witnesses can be found to testify to the way in which the accident actually occurred.

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A literal interpretation of the articles contained in the new national law governing safety in winter sports activities gives rise to a number of interesting aspects of the norms and the corresponding modifications that the Regions should have already introduced.

According to article 22, the Regions are in fact required to bring their norms into line with the requirements of the national law and with those that represent the basic principles concerning individual and collective safety in skiing and other snow-related sports.

More than five years after law no. 363/2003 took effect, most (though not all) Regions have introduced limited and partial modifications to their norms.

The uniform alignment with law no. 363/2003 by means of a substantial review of the fragmented regional laws currently in force would and should, more than simply representing compliance with the law, be seen as an excellent opportunity for the various Regions of making the various norms more uniform and appropriate to the effective needs of modern skiing and winter sports in general.

In this way it would be possible to simplify the basic legislation, which as it stands contains numerous aspects which might easily lead to contradictions and are in many cases difficult to interpret.

In this confusing situation - which is highly fragmented at a national level, especially in Italy - those responsible for winter sports should act more forcefully than before in order to interact at a national level, and to collaborate in a proactive and effective way to identify a set of basic principles, such as for example the Guidelines for Skiers issued by the FIS, so that skiers can refer to a set of rules that are uniform, non-invasive, and such as not to compromise those aspects that are peculiar to this sport – freedom, contact with Nature and the respect for the mountains that we should all nurture.

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