

Leciak M., *Criminal law for ski slopes in Poland*, „*Ekonomia i Prawo. Economics and Law.*”, Pólszakiewicz B., Boehlke J. (ed.), Vol. 13, No. 4/2014, pp. 483-497. DOI: <http://dx.doi.org/10.12775/EiP.2014.034>.

MICHAŁ LECIAK\*

## CRIMINAL LAW FOR SKI SLOPES IN POLAND

### SUMMARY

A study is focused on the analysis of regulations intended to prevent certain dangerous behavior on the ski slopes. It concerns to the Act of 18 August 2011 on the safety and rescue in the mountains and at the organized ski areas, as well as general criminal law provisions contained in the Penal Code and the Code of Petty Offenses. For examining the legitimacy of the criminal law response for such behavior the necessary is also an analyze of the domestic and foreign literature and the practical sphere of the problem.

**Keywords:** skiing, ski slope, ski accident, criminal responsibility

**JEL Classification:** K14, K32

### INTRODUCTION

In recent times, the national legislator demonstrates an interest in some problems of “sports criminal law”. However, apart from the problems which are the main part of this subject, primarily normatively embedded in the Law on the sport of 25 June 2010<sup>1</sup>, we can now find many legal solutions in the national legislation which – although sometimes presumably does not contact

---

\* Michał Leciak, Nicolaus Copernicus University, Faculty of Law and Administration, Department of Criminal Law and Criminal Policy, ul. Bojarskiego 3, 87-100 Toruń, phone: +48 56 611 40 92, e-mail: [michal.leciak@wp.pl](mailto:michal.leciak@wp.pl).

<sup>1</sup> *Law on the sport of 25 June 2010*, Journal of Laws No. 127, item 857 as amended.

directly with subjects of “sports criminal law”, it indeed refers to it. These include the rules defining the legal framework, to a certain extent also penal, of human activities in the mountains. It refers to the provisions of the Act of 18 August 2011 on the safety and rescue in the mountains and at the organized ski areas<sup>2</sup>. Its provisions relate to two areas of sport and recreation man activities. Firstly, its skiing and snowboarding. Secondly, its about the sports related to tourism and mountain climbing. This article is focused on the first issue. The main idea is an attempt to determine what is the range of the criminal law instruments established to protect skiers and snowboarders and the evaluation of such regulations. It should be emphasized that such an analysis must focus on both the legal structures of the law of clearly criminal law nature as well as those that underpin the formulation of the responsibilities of such entities which are responsible for ensuring the safety of persons residing in the mountains and organized ski areas, which obviously has an impact on issues of criminal responsibility.

Recently growing the number of skiing accidents, as a natural consequence of the popularization of the sport, and also a number of media reports about both of these cases, as well as those associated with the practicing of winter sport under the influence of alcohol, led to legislative initiative related to the enactment of that law, including criminal provisions. Act of 2011 thus provides a fairly broad principles of skiing and snowboarding at organized ski areas, as well as the two types of petty offenses.

## 1. SKIING UNDER THE INFLUENCE OF INTOXICANT

The first of these offenses is indicated in article 45 paragraph 1 of the Act, which define skiing or snowboarding at the ski area by people who are intoxicated or under the influence of an intoxicant. There is no doubt that the main task of such a regulation is primarily to protect the safety of skiers of snowboarders in such areas, therefore their life and health and also to ensure security of people who do not practice such sports but they stay in the area, like a person supervising a ski slope or involved in its maintenance.

The analysis of the elements of the legal structure of article 45 paragraph 1 leads to the conclusion that the perpetrator of the offense can be skiers or snowboarders who are intoxicated and no one else. In turn, the phrase “practice”, as denoting the common meaning with “dealing with something, in-

---

<sup>2</sup> *Act of 18 August 2011 on the safety and rescue in the mountains and at the organized ski areas*, Journal of Laws No. 208, item 1241 as amended.

dulge in something, devote to something”<sup>3</sup>, it seems *prima vista* proper for determining this form of activity like skiing or snowboarding.

However, if we notice that for committing the offense its necessary to just “practice” of that discipline, so, the use of appropriate equipment in accordance with its intended purpose, it turns out that just being intoxicated by not equipped skiers at the slope or the use of ski equipment for other purposes, does not exhaust the constituents of this criminal behavior. Besides, the terms “skiing”<sup>4</sup> and “snowboarding”<sup>5</sup> should not raise major concerns when it comes to determining what their forms means. Pointing only these two leads to the obvious conclusion that is no option of other form of human activity carried out at the ski area. So, the ban does not apply to person under the influence of alcohol or drugs which use at the organized ski area for example skibob, sled or even bicycles. Such a determination, in light of the declaration of the legislator, raises doubts as to whether the scope of protection of users of ski areas is not too narrow.

We must emphasize that the essence of that offense should not be an instance of the effect, so it has a formal character. Completion of its legal elements is in fact linked to the development of abstract danger to the members of the ski areas<sup>6</sup>, as punishable remains only practicing of winter sports on the slopes, regardless of the possible consequences, such as harm to the health of another person.

The legislature developed the so-called legal definition “organized ski area”<sup>7</sup>, hence no more doubt as to the place of commission of offenses of this type. The Act also contains a definition of intoxication and the state under the

<sup>3</sup> Słownik Języka Polskiego PWN, <http://www.sjp.pwn.pl> (08.01.2014).

<sup>4</sup> It means first of all: Alpine skiing (downhill, slalom, giant slalom and Super-G parallel, Alpine skiing combined), Nordic skiing (cross-country skiing, biathlon winter, the combination of classic and ski jumping) and freestyle skiing (ballet skiing, the mogul, acrobatic jumps, combination) B. Petrozolin-Skowrońska (ed.), *Nowy Leksykon PWN*, Warszawa 1998, p. 1140.

<sup>5</sup> It means: Freestyle (slopestyle, half-pipe, big air, Jibbing), Alpine style (slalom, giant slalom, parrarel slalom, giant parrarel slalom, extremecarving), Snowcross (boardercross, snowboard cross), Freeride – vide Wikipedia, <http://www.pl.wikipedia.org/wiki/Snowboarding> (08.01.2014).

<sup>6</sup> It should be only briefly mentioned that in the draft law the legislator used the phrase “use of organized ski areas” (article 38 paragraph 1 draft law), which could-in the event of the entry into force of such a proposal-lead to punish a number of different behaviors, including being under the influence of alcohol of drugs at the ski area (Draft law, July 22, 2010, Edition No. 3447).

<sup>7</sup> In accordance with the provision of article 2 point 13 of the Act the area is “generally available and properly snowed or properly prepared artificial substrate, marked and protected areas designed for skiing or snowboarding, next to the devices cableways or belt for the transport of persons, as well as cross country skiing and ski parks and instructional shelf”.

influence of an intoxicant. Inebriation is defined in the article 115 paragraph 16 of the Penal Code<sup>8</sup> and article 46 point 2 of the Act of 26 October 1982 on upbringing in sobriety and counteracting alcoholism<sup>9</sup>.

It occurs when:

1. blood alcohol content exceeds 0.5 per mille, or leads to the concentration exceeds this value, or
2. the amount of alcohol in 1 dm<sup>3</sup> of breath exceeds 0.25 mg, or leads to the concentration exceeds this value<sup>10</sup>.

The legislature does not provide any legal definition of the concept of the state under the influence of an intoxicant, although this term is used repeatedly (for example article 42, 178, 178a and 179 of the Penal Code)<sup>11</sup>. In view of the indication for this type of condition in the alternative to the state of intoxication it can be assumed that it is the state which, in terms of its effect on the central nervous system, produces similar effects as alcohol consumption resulting in a state of intoxication<sup>12</sup>.

In accordance with article 5 of the Code of Petty Offences<sup>13</sup> – there is a possibility of the responsibility for the behavior of both intentional as unintentional. Preparation, attempt, aiding and abetting are unpunished (article 11 and 14 of the Code of Petty Offences).

<sup>8</sup> *The Penal Code of 6 June 1997*, Journal of Laws No. 8, items 553 as amended.

<sup>9</sup> *Act of 26 October 1982 on upbringing in sobriety and counteracting alcoholism*, Journal of Laws No. 35, item 230 as amended.

<sup>10</sup> In view of this an intoxication can be assessed by two independent and non-discriminatory criteria. It is important, however, that the values given in the study were exceeded, even for example, about 0.01 parts per thousand.

<sup>11</sup> R.A. Stefański, *Objaśnienia do art. 173-180*, [in:] A. Wąsek, R. Zawłocki (eds), *Kodeks karny. Część szczególna. Komentarz*, t. I, C.H. Beck, Warszawa 2010, p. 678.

<sup>12</sup> The legislature does not understand this as use of narcotic, but as a condition associated with its effects on psychomotor activity. Do not confuse this term with the term “state after use of an agent acting similarly to alcohol” mentioned in article 87 paragraph 1 and 2 of the Code of Petty Offences. The issue of considerable practical importance, however, is a matter of determining whether it refers to the drugs listed in the *Act of 29 July 2005 on counteracting drug addiction or any other form of substances acting on the central nervous system*, Journal of Laws No. 179, item 1485 as amended. In this regard, accurate and adequate both for the interpretation of the constituent elements of art. 45 paragraph 1 of the Act is the observation of the Supreme Court, which noted that: “The concept of a intoxicant within the meaning of article 178a of the Penal Code includes not only drugs indicated in the Act of 29 July 2005 on counteracting drug addiction, but also other substances of natural or synthetic, acting on the central nervous system, the use of which reduces the efficiency in terms of driving “ (Supreme Court resolution dated February 27, 2007, I KZP 36/06, OSNKW 2007, No. 3 item 21).

<sup>13</sup> *Act of 20 May 1971 Code of Petty Offences*, Journal of Laws No. 12, item 114 as amended.

The offence is only punishable by a fine of 20 to 5000 polish zloty (article 24 paragraph 1 of the Code of Petty Offences). Of course it is possible to confine the use of instructions (article 41 of the Code of Petty Offences).

Particularly interesting is the regulation of a specific “ban ski” with art. 30 paragraph. 2 of the Act, indicating the permission of the manager of the organized ski area or a person authorized by him to refuse admission or an order to leave the ski area by a person whose behavior clearly indicates that is under the influence of alcohol or other intoxicants. The problem, however, lies in the sphere of its practical implementation. In fact that provision indicates powers to refuse admission or to order to leave by the person who can determine the intoxication organoleptically, which of course does not always lead to appropriate ratings. Such entities were not equipped with powers to investigate skiers using breathalyser or other device of this type. Importantly, these parties do not have the right competences to use coercive measures necessary for the attainment of the ban. Thus, in both cases you will need to use the help of the Police, which more often perform the service in the ski areas.

The provision of article 30 paragraph 2 of the Act seems clear as to the duration of the ban. The ban must last as long as the skier betrays signs of intoxication. Although of course it can happen that a person would not be allowed to enter to the ski area after finding that person intoxicated, even though it was not a state of intoxication indicated in article 45 paragraph. 1 of the Act. It therefore does not appear that the application of the ban may have contributed to the effective prevention of skiing or snowboarding under the influence of an intoxicant.

It can therefore raise the question of the legitimacy of introducing a penal measure *sensu stricto* as a ban on skiing or snowboarding at the ski slope. Like driving ban such a measure would primarily implement preventive and repressive functions<sup>14</sup>.

It could be ruled optionally for a limited time, but in the case of re punishment for an act of article 45 paragraph 1 of the Act it would be mandatory. The main problem probably concern the effectiveness of its enforcement, including the need to create a viable national system of processing of personal data of the men who were punished that ban, which would obviously have to encompass all of the ski slopes in the country.

---

<sup>14</sup> Attorney General Opinion on the draft law, Warsaw, August 19, 2010, p. 5.

## 2. SKIING WITHOUT HELMET

As mentioned earlier, the second type of a criminal act is a petty offense set out in article 45 paragraph 2 of the Act. It applies to the person obliged to supervise or care for the people under 16 years old which let to practice downhill skiing or snowboarding without a helmet designed for that<sup>15</sup>.

The legislator decision about imposing such an obligation is fully correct, by entering into a worldwide initiative in this regard, which was firstly taken by Italy in 2003<sup>16</sup>, then Austria in 2009, and other countries, such as Norway, Slovenia, Germany, Canada, some states of North America and, finally, also Polish.

The purpose of this legal regulation is primarily to ensure the safety of persons under 16 years old<sup>17</sup> and also correctness of the implementation of the duty of care and supervision of a young man<sup>18</sup>. The legislature decided that from the point of view of the offender we can talk about the individual crime. This may be the only person who is obliged in this way.

The essence of that petty offense is to allow for skiing or snowboarding by a young man under 16 years old. According to polish language dictionary it means afford someone for something, agree to something, not prevent something, consider something<sup>19</sup>. Generally, there is also no doubt on the ground of the interpretation of the other elements of that petty offense. But it can wonder why the legislator pointed for “downhill skiing or snowboarding”, while before – in article 45 paragraph 2 – it is generally indicated “skiing and snowboarding”. The consequences of such decision are related to, inter

<sup>15</sup> A similar type of petty offense functioned earlier after the amendment of the *Act of 18 January 1996 on physical culture*, Journal of Laws No. 25, item 113 as amended made under the *Act of 5 November 2009 amending the law on physical culture*, Journal of Laws No. 226, item 1809. The main difference consisted on obligation to wear a helmet referring to persons under 15 years of age. Moreover, the place of its commission was not indicated.

<sup>16</sup> A. Kappes, *Dekalog FIS a odpowiedzialność za szkodę wyrządzoną na stoku narciarskim*, „Folia Turistica”, No. 20/2009, p. 110.

<sup>17</sup> This kind of obligation can arise from family relationships or care (eg parent, guardian), legal regulations or decisions issued on that basis (eg court order to place the minor in a foster family), agreement (eg a contract with a babysitter), and the ratio of actual (eg childcare friends) – M. Zbrojewska, *Komentarz do art. 106 KW*, [in:] T. Grzegorzczak, W. Jankowski, M. Zbrojewska (eds), *Kodeks wykroczeń. Komentarz*, Lex, 2010.

<sup>18</sup> M. Budyn-Kulik, *Komentarz do art. 89 KW*, [in:] M. Mozgawa, M. Budyn-Kulik, P. Kozłowska-Kalisz, M. Kulik (eds), *Kodeks wykroczeń. Komentarz*, Lex 2009.

<sup>19</sup> Słownik Języka Polskiego PWN, <http://www.sjp.pwn.pl> (08.01.2014).

alia, excluding from the scope of this criminal warrant a admission to practice skiing without a helmet on the instructional fields<sup>20</sup> or ski parks<sup>21</sup>.

The protection afforded by article 45 paragraph. 2 of the Act applies to a person under 16 years old. However, that kind of protection is not so wide, because in foreign legal systems the obligation to use the helmet refers to younger people. For example, in Italy, it refers to persons 14 years of age, while in Norway and Slovenia to 13 years of age.

“Helmet structurally designed for downhill skiing or snowboarding” means the helmet, which is used primarily to reduce the risk of damage to the skull in the event of an accident<sup>22</sup>.

It should be emphasized again that the essence of such a petty offense is to allow for skiing or snowboarding without a proper helmet. In the event of such an offense it will generate only an abstract danger. Committing this offense may rely on any act or omission.

Theoretically possible is a responsibility for the conduct of both intentional and unintentional as (article 5 of the Code of Petty Offenses). Such an offense is also punishable by a fine. It is possible, of course, to give only a reprimand.

Legislature is also inconsistent in this case. The person managing an organized ski area should have the right to refuse admission or order his leave also by users under 16 years of age who do not have the required helmets.

### 3. CRIMINAL LAW AGAINST OTHER DANGEROUS BEHAVIORS

The above analysis, however, focuses exclusively on criminal prohibition addressed to the skiers and snowboarders and the entity that supervises or care of such a young person. Firstly, outside the sphere of interests of legislator remain so other dangerous behavior of skiers and snowboarders. Secondly, outside this sphere are also the behaviors of other than a designated entities responsible for safety at the ski slopes.

Therefore, to consider the postulate of ensuring the comprehensive criminal law protection for users of ski slopes it is necessary to evaluate such cases

---

<sup>20</sup> Article 2 point 3 of the Act – „it refers to areas intended specifically to teach skiing or snowboarding”.

<sup>21</sup> Article 2 point 2 of the Act – „it refers to the areas which let to perform the evolution of acrobatic skiing and snowboarding, in particular, such as jumps, gutters, railings”.

<sup>22</sup> K. Russel, J. Christie, B.E. Hagel, *The effect of helmets on the risk of head and neck injuries among skiers and snowboarders: a meta-analysis*, CMAJ, No. 2/2010, p. 1-8.



in the context of existing legislation. Firstly, it is necessary to examine whether on users of the ski slopes lie other than the previously mentioned duties (ie the obligation of sobriety and use of protective helmets) – relevant from the point of view of criminal law response. Such obligations are set out in article 31 of the Act.

According to this provision, such individuals have a duty to exercise due diligence in order to protect the life and health of their own and other people, in particular:

1. familiarize yourself with the rules of using of that place, object, or device and comply with them;
2. comply with the prohibition and mandatory signs placed by the manager of organized ski area;
3. downhill at a rate suited to their skills and level of difficulty and state routes, weather conditions and traffic;
4. use fully operational ski and snowboard equipment appropriate to the type of activity undertaken, in accordance with its intended purpose and principles of the use;
5. inform immediately about the ski accident or missing person, and any other extraordinary events which may affect the safety of persons.

What's more, the legislature also gives the legal definition of so-called "ski accident" as a sudden event or illness, where the consequence of that accident is an impairment bodily injury or health of a person being at organized ski areas (article 2 paragraph 11 of the Act). So, on the ground of a specific criminal case connected with that kind of accident, it may be necessary to determine whether any of these obligations have been violated by the perpetrator, what directly caused such an event. There is no secret that these legal regulations are inspired by the rules developed by the International Ski Federation within the framework of the so-called FIS Decalogue. This document discusses issues of safety on slopes, driving with a controlled and safe speed, choosing the right direction, overtaking on the slope, starting and moving up the slope, stopping, approaching and going down on feet, compliance with ski warning signs, help the ski accident victim and the obligation to disclose the identity of that person in the event of its occurrence<sup>23</sup>. There is a question about legal significance of that kind of rules, particularly during the evaluation of certain prohibited behaviors. We should also ask about the role and functions of the terms of use of the organized ski areas. As for this problem it turns out to be satisfactory an outcome report of the Office of Competition and Consumer Protection in 2006 in relation to the national ski stations,

<sup>23</sup> Grupa Karkonoska GOPR, <http://www.gopr.org/poradnik/na-stoku> (08.01.2014).



which states that “the terms of use of ski resorts, in most cases, are a reflection of rules of behaviors for slope created by the International Ski Federation (FIS)”<sup>24</sup>. Another problem is of course the fact of their poor knowledge and thus violation of the rules by the members of the ski slopes in Poland.

Both the FIS rules and individual terms of use of the ski resorts does not have, of course, the nature of legal norms, because of the lack of competence of the legislative bodies making them, but their practical significance is obvious. They allow, however, to assess the unlawfulness of the conduct of the perpetrator, because it governs the standards of conduct, the violation of which may result in liability for the offense. The importance of the rules of the FIS is the indisputable in the ski legislation, first of all, of the Alpine countries, which must deal with the problems of a similar nature within the so-called ski accidents. A good example and the model also could be the legal rules of ski legislation in Austria (Schirecht), which includes the administrative, civil and criminal law<sup>25</sup>. There is also a high number of accidents resulting in damage to health and varies annually between 50 and 60 thousand<sup>26</sup>.

Analyzing therefore appropriate principles of both the Law on safety and rescue in the mountains and at organized ski areas and those of the Decalogue FIS, and also terms of use of the ski areas, it is appropriate to ask, what kind of abuses of these rules may lead to using a possible penal sanctions. In addition to the previously described criminal acts there is no doubt that the response to these criminal behaviors is possible within the framework of a huge range of already functioning normative structure of the Penal Code and the Code of Petty Offenses. Most often practically it is involuntarily caused grievous bodily harm (article 156 paragraph 2 of the Penal Code), the average bodily injury (article 157 paragraph 1 and 3 of the Penal Code), light bodily injury (article 157 paragraph 2 and 3 of the Penal Code), manslaughter (article 155 of the Penal Code), refusal to give help (article 162 paragraph 1 of the Penal Code) and human exposure to imminent danger of loss of life or grievous bodily health (article 160 paragraph 1-3 of the Penal Code). The petty offense defined in article 45 paragraph 1 of the Act may exist in conjunction with this type of provisions, for example, when intoxicated skier causes an accident resulting in damage to the health of another person. You cannot also exclude the possibility of the criminal response by those provisions of the Penal Code when the offender realizes the nor-

---

<sup>24</sup> Urząd Ochrony Konkurencji i Konsumentów, <http://uokik.gov.pl> (08.01.2014).

<sup>25</sup> S. Krajcer, *Bezpieczeństwo narciarza a wolność narciarza na stoku i poza stokiem w świetle austriackiego prawa narciarskiego*, „Folia Turistica”, No. 20/2009, p. 89-90.

<sup>26</sup> *Ibidem*.

mative elements of article 45 paragraph 2 of the Act, when he allows for the use of the ski area by a person under 16 years old without a helmet. At the same time you have to remember that the abandonment of a minor under the age of 15 or those clumsy due to her mental or physical condition is a crime typified in the article 210 paragraph 1-2 of the Penal Code. In addition, it is needed to indicate the ability to realize also the normative elements of many of the provisions of the Code of Petty Offenses. For example with article 51 paragraph 1-2 (disturbing the peace and public order) and article 54 (petty offense against the acts issued by authorities in order of proper behavior in public places).

Apart from the indicated possibilities of penal reaction there are, however, other criminal behavior, which can – no doubt – involve the safety at the ski slopes. For example, one can point to careless skiing or failing to render help the victim of the ski accident. In this context, we should note that the draft was initially very casuistic.

We could find there, among others, the proposition to penalize (article 38 point. 2 of the draft) of using the organized ski areas in a manner dangerous or rowdy causing danger to other participants<sup>27</sup>. There was also a proposition to penalize a behavior of offenders who “contrary to the ski areas purpose and regulations, particularly, moves on them walking, tobogganing, cycling, taking off/landing on a paraglide or by motor vehicle does not designed for rescue, safety or maintenance object” (article 38 point 4 of the draft), and the behavior of the person who “being the perpetrator or being involved in an ski accident escapes from the scene of the accident and is not helping the victim” (article 38 point 7 of the draft)<sup>28</sup>.

---

<sup>27</sup> The terms „unsafe” or „rowdy manner” are not known to criminal law, hence their interpretation could raise important questions.

<sup>28</sup> Besides that, article 38 paragraph 8 of the draft completely unnecessary from the point of view of the existing penal regulations stated that „If a collision participant suffered a severe injury or suffered death, the perpetrator is criminally responsible” (*Opinion of the Office of Studies and Analysis of the Supreme Court on the Commission’s draft law on safety and rescue in the mountains and at the organized ski areas and amending certain laws*, Warsaw 2010, p. 2). The same can be said about article 38 paragraph 9 of the draft: “Everyone who is involved in an accident in the mountains or is the witness of an accident is required to notify the entities authorized to perform the tasks of mountain or ski rescue and provide his personal data to rescuers. No notification of an accident, refusal to provide or providing false personal data results in criminal liability”. The more that such an injunction is already under article 65 paragraph. 2 of the Code of the Petty Offenses (*Opinion of the Inspector General for Personal Data Protection to the Commission’s draft law on safety and rescue in the mountains and at the organized ski areas and amending certain laws*, Warsaw 2010, p. 1-2).

The legislature also tried to strengthen the protection of minors, because of the proposition of a penalty of fine or reprimand for perpetrator who authorize for using the ski hoist by minors without a helmet (article 38 paragraph 5 of the draft). The decision to opt out of such regulations – in the light of the lack of precision in terms of the constituent elements of such provisions and the possibilities of the interpretation problems – can be considered accurate<sup>29</sup>. Nevertheless, it seems that part of the proposed types of offenses may deserve attention.

In assessing the nature of the threat from some members of the ski slopes it is possible to refer to the safety traffic rules. Of course, there are no grounds for its immediate transposing into ski rules, thereby it excludes liability for traffic offenses, such as traffic accident (article 177 of the Penal Code), jeopardizing traffic safety through failure to due diligence (article 86 of the Code of Petty Offenses) or obstruction of movement (article 90 of the Code of Petty Offenses)<sup>30</sup>. Although some of these rules may be relevant on the ground of provision of so-called “ski law” (eg safe speed rule or limited confidence), there is no doubt that we talk about two completely different areas of traffic, where the road traffic need a rigid regulations, while on a ski slope there is a “legal chaos”<sup>31</sup>. Of course it does not exclude the questions about the legitimacy of the criminalization of violations of certain rules applicable to the ski slope, sometimes similar to the rules of the road. The fact that certain behaviors detrimental to the life and health are already under the reaction of criminal law under the provisions which defines crimes against life and health, does not eliminate the possibility of the creation of such specific regulations concerning the protection referring directly to some dangerous behaviors on the ski slopes. In the case of road offenses the legislator decision about creating such special criminal regulations was probably bolstered by the assertion of the universality and often serious consequences of such behaviors. If it would be the starting point for the creation of additional criminal regulation of so-called “ski law”, then you need to record high and still increasing number of accidents on the ski slopes in the country. A good example is the number of rescue interventions during the 2013 winter in the Tatra mountains. In this district were noticed about 900 interventions, about 700 times in the Beskidy Mountains, about 200 times in the Bieszczady Mountains,

---

<sup>29</sup> *Opinion of the National Road Safety Council to the Commission's draft law on safety and rescue in the mountains and at the organized ski areas and amending certain laws*, Warsaw 2010, p. 2.

<sup>30</sup> J. Raciborski, *Bezpieczeństwo osób korzystających z usług stacji narciarskich*, [in:] P. Cybula (ed.), *Prawne aspekty bezpieczeństwa w górach – turystyka, rekreacja, sport*, Kraków 2013, p. 173.

<sup>31</sup> S. Krajcer, *op. cit.*, p. 96.

about 470 in the activities of the Group Podhalanska Rescue and about 570 of the Krynica group<sup>32</sup>. Therefore, in view of the whole country, such accidents could be several or even tens of thousands, because the number of interventions alone in the Tatras and Podhale in the whole of 2013 was approximately 1800.

Importantly, this number only in this region in recent years increased. For example, in 1998–2003 it increased respectively from 263 to 881<sup>33</sup>. Among the causes of the events resulting in damage to health or even death are dominating the lack of proper preparation and too little skills in relation to the ambitions of the skiers, and at the same recklessness and failure to comply with the basic rules of behavior on the ski slopes. Of course, you can also indicate intoxication. However, despite a newly introduced regulation of the criminal law – it is not a major cause of ski accidents.

Perhaps – taking into account the vision of a further increase in such behavior – a need to create certain special regulations aimed at protecting the life and health of the users of ski resorts would require consideration. The same – as it seems – you can say about the proposals of penalize of dangerous skiing or refusal the aid of the injured person as the new types of offenses. In a comment to the FIS Decalogue indeed is a clear indication that the violations of rules pointed in that document should be a ground for civil or criminal liability. What's more, there is a clear indication of need of criminal law's response in national legislations for some of that kind of behaviors. For example, at the "Rules No. 9" underlined: "FIS hopes that conduct consisting of hitting the other road and fled from the scene will involve the same criminal liability as a traffic violation, and that the same penalty will be imposed by all states, which is not yet enacted such legislation". It seems that similar arguments militate in favor of criminalizing of some behaviors like creating an abstract danger by a intoxicated skier as in the case – what is actually impunity – of creation a direct danger to the health of other persons in the event of a particularly careless skiing. Perhaps the best solution would be simply to create a type of an offense involving not applying to the provisions of regulations of ski resorts, the more that they are correlated with the rules of the FIS.

---

<sup>32</sup> Wirtualna Polska, <http://narty.wp.pl/informacje/w-czasie-ferii-ponad-3-tys-interwencji-na-stokach-narciarskich,1028,1,1.html> (08.01.2014).

<sup>33</sup> A. Marasek, *Wypadki narciarskie w sezonie zimowym 2002–2003 na terenie działania TOPR*, [in:] *Bezpieczeństwo i profilaktyka w turystyce górskiej*, Centralny Ośrodek Turystyki Górskiej PTTK, Kraków 2004., p. 30.

These remarks apply only to threats created by the participants of the ski areas. Undoubtedly, the general criminal law regulations pointed before which define some types of offenses and petty offenses can also be applied when it comes to the criminal liability of other persons for the accident on the slopes or other dangerous behavior. You must indicate on the people who are on the slopes, but are not a users, as well as those people who are responsible for managing an organized ski area. Also in this case could be postulated – in the light of the obligations imposed by the Act to such persons<sup>34</sup> – that the violation of such obligations should result a responsibility for the offense.

Of course, these considerations apply only to skiing or snowboarding which are implemented at so-called “organized ski area”. It does not seem that indicated proposals could be applied to the skiing outside the ski slopes, because that kind of skiers do it on their own risk and the rules of safe behaviors cannot be applied to them.

However, recently a growing problem is so-called “illegal dispersion”, which means skiing in the high mountain areas which are not intended for this purpose, what of course can cause considerable damage to wildlife areas<sup>35</sup>. Actually we can only talk about the implementation of the constituent elements of petty offenses included in other special laws, including, above all, article 127 paragraph. 1 and 2 of the Act of 16 April 2004 on the protection of nature<sup>36</sup>.

## CONCLUSION

In summary, it must therefore ascertain that the interest in the legislator in the problems of so-called “ski law” including the criminal law problems, deserves a positive assessment. Actually the same thing can be said about the regulations introduced by the Act. Certainly time will tell whether the scope of criminal law protection currently provided for users of the ski areas will require widening.

---

<sup>34</sup> Such an obligations are indicated in article 19 point 2 of the Law. They relate to, among other things: preparation, marking, securing land, buildings and equipment used for skiing and snowboarding, as well as ongoing monitoring of security status, signs and ski conditions, providing a ski rescue, identifying and disseminating the terms of use of the ski areas etc.

<sup>35</sup> P. Adamski, Z. Witkowski, A. Kolasińska, *Co wynika z badań nielegalnej dyspersji w parkach?*, [in:] P. Cybula (ed.), *Prawne aspekty bezpieczeństwa w górach – turystyka, rekreacja, sport*, Kraków 2013, p. 111.

<sup>36</sup> *Act of 16 April 2004 on the protection of nature*, Journal of Laws No. 92, item 880 as amended.

## BIBLIOGRAPHY

- Act of 16 April 2004 on the protection of nature*, Journal of Laws No. 92, item 880.
- Act of 18 August 2011 on the safety and rescue in the mountains and at the organized ski areas*, Journal of Laws No. 208, item 1241.
- Act of 18 January 1996 on physical culture*, Journal of Laws No. 25, item 113.
- Act of 20 May 1971 Code of Petty Offenses*, Journal of Laws No. 12, item 114.
- Act of 26 October 1982 on upbringing in sobriety and counteracting alcoholism*, Journal of Laws No. 35, item 230.
- Act of 29 July 2005 on counteracting drug addiction or any other form of substances acting on the central nervous system*, Journal of Laws No. 179, item 1485.
- Act of 5 November 2009 amending the law on physical culture*, Journal of Laws No. 226, item 1809.
- Adamski P., Witkowski Z., Kolasieńska A., *Co wynika z badań nielegalnej dyspersji w parkach?*, [in:] P. Cybula (ed.), *Prawne aspekty bezpieczeństwa w górach – turystyka, rekreacja, sport*, Kraków 2013.
- Budyn-Kulik M., *Komentarz do art. 89 KW*, [in:] M. Mozgawa, M. Budyn-Kulik, P. Kozłowska-Kalisz, M. Kulik (eds), *Kodeks wykroczeń. Komentarz*, Lex 2009.
- Grupa Karkonoska GOPR, <http://www.gopr.org/poradnik/na-stoku> (08.01.2014).
- Kappes A., *Dekalog FIS a odpowiedzialność za szkodę wyrządzoną na stoku narciarskim*, „Folia Turistica”, No. 20/2009.
- Krajcer S., *Bezpieczeństwo narciarza a wolność narciarza na stoku i poza stokiem w świetle austriackiego prawa narciarskiego*, „Folia Turistica”, No. 20/2009.
- Law on the sport of 25 June 2010*, Journal of Laws No. 127, item 857.
- Marasek A., *Wypadki narciarskie w sezonie zimowym 2002–2003 na terenie działania TOPR*, [in:] *Bezpieczeństwo i profilaktyka w turystyce górskiej*, Centralny Ośrodek Turystyki Górskiej PTTK, Kraków 2004.
- Opinion of the Inspector General for Personal Data Protection to the Commission's draft law on safety and rescue in the mountains and at the organized ski areas and amending certain laws*, Warsaw 2010.
- Opinion of the National Road Safety Council to the Commission's draft law on safety and rescue in the mountains and at the organized ski areas and amending certain laws*, Warsaw 2010.
- Opinion of the Office of Studies and Analysis of the Supreme Court on the Commission's draft law on safety and rescue in the mountains and at the organized ski areas and amending certain laws*, Warsaw 2010.
- Petrozolin-Skowrońska B. (ed.), *Nowy Leksykon PWN*, Warszawa 1998.
- Raciborski J., *Bezpieczeństwo osób korzystających z usług stacji narciarskich*, [in:] P. Cybula (ed.), *Prawne aspekty bezpieczeństwa w górach – turystyka, rekreacja, sport*, Kraków 2013.
- Russel K., Christie J., Hagel B.E., *The effect of helmets on the risk of head and neck injuries among skiers and snowboarders: a meta-analysis*, CMAJ, No. 2/2010.

- Słownik Języka Polskiego PWN, <http://www.sjp.pwn.pl> (08.01.2014).
- Stefański R.A., *Objaśnienia do art. 173-180*, [in:] A. Wąsek, R. Zawłocki (eds), *Kodeks karny. Część szczególna. Komentarz*, t. I, C.H. Beck, Warszawa 2010.
- The Penal Code of 6 June 1997*, Journal of Laws No. 8, items 553.
- Urząd Ochrony Konkurencji i Konsumentów, <http://uokik.gov.pl> (08.01.2014).
- Wikipedia, <http://www.pl.wikipedia.org/wiki/Snowboarding> (08.01.2014).
- Wirtualna Polska, <http://narty.wp.pl/informacje/w-czasie-ferii-ponad-3-tys-interwencji-na-stokach-narciarskich,1028,1,1.html> (08.01.2014).
- Zbrojewska M., *Komentarz do art. 106 KW*, [in:] T. Grzegorzczak, W. Jankowski, M. Zbrojewska (eds), *Kodeks wykroczeń. Komentarz*, Lex, 2010.



