



Prawne aspekty bezpieczeństwa w górach

– turystyka, rekreacja, sport

OGÓLNOPOLSKA KONFERENCJA NAUKOWA PT.

**PRAWNE ASPEKTY BEZPIECZEŃSTWA W GÓRACH
– TURYSTYKA, REKREACJA, SPORT**

**LEGAL ASPECTS OF SAFETY IN MOUNTAINS
– TOURISM, RECREATION, SPORT**

ABSTRAKTY

Kraków 2013

Leszek F. Korzeniowski

Science of security – introduction to the issues

This article illustrates the basic issues that are the core of the Security science, which – it seems – are covered by the subject treated by the legal science specialised in the safety of tourism in mountain conditions. The scientific research about safety issues in human and social organisation has existed for a long time. In 1989 in the East European countries they took on a new meaning.

Ireneusz C. Kamiński

State's obligations relating to accidents occurring in the course of mountain tourism and mountaineering activities – remarks on the decision of the European Court of Human Rights in the case of Furdík v. Slovakia

In many judgments the European Court of Human Rights (the Court) has consistently referred to the doctrine of positive obligations. It rightly assumed that the European Convention on Human Rights (the Convention) not only prevents the State Parties from interfering (beyond the extent permitted) in the rights and freedoms protected under the Convention but it also requires to take necessary steps to effectively protect these rights and freedoms. A significant number of standards has been established in relation to the right to life. One of such standards consists in establishing an appropriate regulatory framework for rescuing persons in distress.

The commented decision of Furdík v. Slovakia concerned a fatal accident in the High Tatras. Although the Court found no violation of the Convention, this decision help make precise the requirements of the Convention in case of accidents that may occur during mountaineering. The Court held that the general duty to safeguard human life may go beyond the provision of essential emergency services such as ambulances and fire-brigades and may include the provision of air-mountain and air-sea rescue facilities.

The applicant attempted to challenge the adequacy of the domestic legal framework as it did not specify (despite the relevant legislative delegation) the time-limit within which any emergency intervention should be started. It alleged that his daughter's death resulted from shortcomings in the rescue operation. The Court did not consider that the Convention requires the incorporation into the national legislation of a time-limit within which an aerial ambulance must reach a person needing urgent medical assistance. It suffices that an emergency is started without delay.

There was also no violation of right to life as the applicant could domestically claim redress under private law legislation.

Paweł Czubik

Consular protection of tourists in case of mountain accidents outside of the RP

Tourists leaving for mountaineering expeditions are the potential customers of Polish consular services abroad. Three years ago, the Ministry of Foreign Affairs created a web-based system “register your trip,” which is intended to help in determining the victims of disappearances and accidents in the mountains. Unfortunately, the practical efficiency of the system is meagre as it is used basically as a substitute for ordinary consular registration, and is useful especially in case of organizing mass evacuation in specific situations (natural disasters, war, etc.). But one must not forget about the usual consular activity, which can be helpful if Polish tourists abroad encounter trouble. Consul can be helpful in arranging transportation of patients, in contacting the persons deprived of their liberty (for example, in cases of infringements of the prohibition of entry to the strictly protected areas), and, in situations, especially sad, when he can organize transport of the body to the country. He can be helpful, also in special situations, in transferring funds from the country, lending consular loans, collecting documentation for insurance purposes and contacting national insurance companies. This text is devoted to the consular practice of assistance to Polish tourists abroad.

Krzysztof Felchner

Use of the maps: how to navigate yourself on the „map” of law provisions (copyright act, law on geodesy and cartography, law on the access to the public sector information, law on infrastructure for spatial information)?

The analysis of the question of the maps in intellectual property law requires taking into account not only the provisions of copyright act, but also provisions of such legal acts as law on geodesy and cartography (u.p.g.k), law on the access to the public sector information (u.d.i.p.), law on infrastructure for spatial information (u.i.i.p.).

As far as the copyright protection of maps is concerned, so called generalization (choice of presented cartographic objects) and choice of the symbols of those objects are those elements, that can decide on qualifying map as the work. Moreover, maps disseminated in

the internet could in fact embody database protected by *sui generis* right of its producer or copyright protected computer program.

Current issue regarding using internet maps is the question of maps created by authorities, too. Legal status of those map is in Polish law complicated due to overlapping of the new provisions of u.p.g.k., u.d.i.i. and new act on law u.i.i.p. (all being implementation of EU directives: so called Re-use Directive 2003/98 and INSPIRE directive 2007/2/WE). They regulate question of so called re-use of public sector, but are no coherent. Despite the fact, that in case law developed by Polish administrative courts, maps could state so called public information, to which everybody could require access, it is still not clear, whether those maps could be re-used and even if, whether re-use is free or requires paying special fee. NGOs dealing with developing free GISs (geographic information systems) contest interpretation of those provisions presented by geodesy and cartography authorities.

Therefore amendments of provisions seem to be necessary, preparatory works have already began.

Jerzy Gospodarek

The idea, types and functions of tourist trails with special regard to mountain trails

The author critically analyses the idea of tourist trail in light of the achievements of geographic and economic sciences. The term „tourist trail” is applied by some normative acts, although it has not been defined by the Polish law. It has been pointed out in this paper that practically tested provisions of the 2007 PTTK instruction on tourist trail marking should make a good starting point for legal regulation of these issues. However, both versions of the 2010 predesign of the draft for the act on tourist trails were not based on the definition of tourist trail included in this instruction. The author was in favour of adopting, in the future act, the narrowly understood term of tourist trail with reference to its mapping out, as well as its tourist and recreational functions. In his opinion the future act should not apply to all types of tourist trails specified in literature on the subject. Analysing the types and functions of tourist trails, the author arrived at the conclusion that mountain trails make an exceptionally important type of tourist trails and they require special attention of the legislator. It is due to the vagueness regarding the scope of the statutorily regulated term of the mountains in the 2011 Act on safety and rescue in the mountains and organized ski areas. The need for special legislation regarding mountain trails arises from its very important function of guaranteeing safety to the tourists in the situation of increased risk of hiking or travelling in the mountains.

Dominik Wolski

Obligation guiding on the area of national park in the mountains

On 16th of October 2012 the Council of Ministers regulation as of 6th May, 1997 on safety conditions peoples in the mountains, swimming, bathers and doing water sports (Journal of Laws 1997, No 57, pos. 358) has lost its binding force. Following this mandatory guiding of mountain guides within certain mountain areas arising from par. 3 clause 1 Appendix 3 of the regulation ceased to exist. Any other legal act or regulation does not provide directly such obligation in the mountains, which is so closely associated with the issue of safety of tourists. Taking into consideration existing national park's duties indicated in art. 3 of safety and rescue service in the mountains and organized ski slopes act as of 18th August, 2011 (Journal of Laws 2011, No 208, pos. 1241) as regards to safety of tourists in the mountains, we are facing very interesting problem concerning the possibility of introduction mandatory guiding of mountain guides within the mountain areas located in national parks. Has the management of the national park capacity of imposing obligatory presence of mountain guide in some, specified circumstances or not? Consequently, could such instrument be considered as one of means based on art. 3 of above mentioned act leading to ensuring safety of tourists? Among others such questions have been posed in this article. Author discussed the issue of obligatory presence of mountain guide against really wide background. This means considering legal basis of the obligation, duties of national park towards safety in the mountains, preservation of nature, children and youth tourism as well as constitutional freedom. The analysis of all these premises and legal aspects brings author to the conclusion, that under certain circumstances imposing of mandatory presence of mountain guide within the area of national park located in the mountains is legally possible.

Paweł Adamski, Anna Kolasińska, Zbigniew Witkowski

What are the results of the research on illegal dispersion in national parks?

In some protected areas in Poland it is only permitted to walk on marked trails. Leaving the trails is defined as illegal dispersion. This phenomenon is not marginal. On average, in the summer 30% of visitors leave the trails (from research observations in the Pieninski National Park). Surveys show that in the winter season 93% of alpine skitourers admit to leaving the trails in the Tatra National Park. The reasons for this dispersion from the trails can be distinguished between technical and deliberate ones. Technical reasons include circumvention of the difficult parts of trails, congestion on the route, and lack of toilets.

The deliberate reasons include, among others, stopping to rest outside the designated areas, photographing, and observing wildlife off the trail. The effects of illegal dispersion can be divided into environmental and social. Environmental effects include the destruction of vegetation, increased erosion, eutrophication of trails, the formation of „wild paths”, the frightening of animals and littering. Social impacts include tourist indifference to other tourists leaving the tracks and the lack of appropriate reaction by the Park Rangers to those breaking the law. An important element which negatively influences the management of tourist traffic in the national park is that a significant amount of private property is located within its the boundaries of the national parks. This makes it difficult to maintain and repair the trails throughout the park and to protect areas outside the tourist trail from the entrance of visitors. Any such action taken by the park must be first approved by the other owners of the land, including the trail area and its surroundings. The widespread resentment of local communities towards the national parks administration significantly complicates the management of tourist traffic routes in areas which are privately owned and areas jointly owned by the park and private owners.

Mikołaj Bielański, Piotr Cybula, Szymon Ziobrowski

Skitouring area in the Tatra National Park and its legal aspects

Skitouring in the Tatra National Park is limited to designated areas by the Park's internal regulations. The basis of these regulations stem not only from nature conservation but also the safety of the visitors. Nevertheless, skitouring outside the marked areas (illegal dispersion) has been observed relatively often. In this paper we present this problem discussing existing legal regulations as a base of the rules for legal skitouring traffic in the Tatra National Park.

Marek Porzycki, Olena Sharvan

The law on misdemeanors and criminal law as an instrument to combat illegal off-roading – whether there is a need for further penalization?

The article deals with the issue of illegal off-roading and its prosecution under Polish criminal law. The authors propose several amendments to current legal regulation, which, in their opinion, is inefficient. The draft of the new legal provisions is enclosed. It foresees further penalization and more severe punishment for illegal off-roading, especially on protected area. The main purpose of those changes is to discourage and pre-

vent crime commission in future. The particular reasons and arguments are provided in support of the proposed amendments.

Jerzy Raciborski

The safety of people using the services of ski stations

The safety of people using the services of ski stations depends equally on good design, equipment and management of ski stations, as on responsible behaviour of users. A new Polish legal Act on safety in the mountains and organized ski areas details the responsibilities of ski station operators, although the ability to control and issue binding recommendations to the said operators is probably insufficient. The Act also specifies, but very briefly, the obligations of skiers themselves. It is commonly considered that their obligations are sufficiently regulated by a so-called FIS Decalogue that contains recommendations made by the International Ski Federation, which were long introduced in Poland by ski organizations. However, the principles contained in the FIS Decalogue cannot be attributed a universally binding nature, neither due to their release nor even a settled habit, because they are subject to constant evolution. The Polish law novelty is establishment of new services: ski rescue, separated from mountain rescue services and dedicated to the needs of ski stations. Owing to their limited tasks, ski rescuers may be based on separately trained people who are not mountain rescuers.

Michał Biliński

The issue of the privatization of the Polskie Koleje Linowe S.A. – customer's security perspective

The aim of this article is to answer the question whether the lately considered privatization of the Polskie Koleje Linowe S.A. (PKL S.A.) may have impact on security of the customers who use the company's infrastructure.

In this context, the matter of security can be understood in numerous ways. In the most simple, as well as most common meaning „security” is interpreted as means of protecting a customer while he/she uses the infrastructure in question. By this we mean limiting possible hazardous occurrences that may constitute a threat to people's life or health.

In the Polish legal system, the above context is treated by the *ustawa o bezpieczeństwie i ratownictwie w górach i na zorganizowanych terenach narciarskich* (act of August 18,

2011 on security and rescue in mountainous regions). The article provides an analysis of particular provisions of this Act, especially those related to the question whether a private corporation would be able to take over the management over the PKL S.A.'s infrastructure and continue fulfilling its up to date functions. The article also brings attention to the inaccuracies that appear in the text of the mentioned bill, which may become a reason for possible security risks to the customers.

The article also addresses the issues of possible threats to the environmental policy and the public interests of Poland. In this context the author discusses particular bills relating, among others, to the Nature Conservation Act of April 16, 2004 and *ustawa o zachowaniu narodowego charakteru strategicznych zasobów naturalnych kraju* (preservation of the national character of the strategic natural assets). Author points out that overlapping interests of the private and public sectors may ultimately cross one another and have negative consequences both to the customers and the state.

The issue of security in the context of PKL S.A. privatization may be finally related to the notion of the so called legal security (one that may involve potential business partners, and future business agreements).

In his analysis, the author does not pick a side in the ongoing public debate as to the privatization of the PKL S.A. However, he advises caution to the discussion participants and points towards possible negative consequences of the mentioned transaction.

Piotr Łebek

The limitations of civil liability of the ski slopes operators

One of the most absorbing questions arising from the issues of civil liability of the ski slopes operators is the limit of the liability. Having in mind the natural inclination of the sport for the risk, the emphasized problem ipso factum concerns the limit of risk both of the sportsman and ski slope operator. The answer seems to be concealed in the rule of *volenti non fit iniuria* – „One who takes part in such a sport accepts the dangers that inhere in it so far as they are obvious and necessary, just as a fencer accepts the risk of a thrust by his antagonist or a spectator at a ball game the chance of contact with the ball” [Murphy v. Steeplechase Amusement].

The purpose of the article is to present the doctrinal and practical applications of the *volenti non fit iniuria* rule on ground of the Polish, American and Austrian civil law. The main accent is put on the assumption-of-risk rule and article 435 of the Polish Civil Code. The article concerns also the analysis of the legal notion of the organized ski area and presents its influence on the ski slopes operators liability.

Łukasz Cora

The issue of so-called prohibition of skiing or snowboarding (some aspects of the material and process protection of order and safety in organized ski areas)

The object of this study is the analysis of the prohibition referred to in art. 30, and violations of article 45 Act of 18 August 2011 on the safety and rescue in the mountains and organized ski areas. Another goal is to demonstrate the need for new legislation in the form of criminal prohibition of skiing or snowboarding as a legitimate instrument of strengthening the security of skiers and snowboarders. Such prohibition includes a ban on skiing or snowboarding in organized ski areas for persons who are in a state of intoxication or drug ingestion. Subjects covered focus on around the legal nature of both measures, conditions and the purpose of their use (rule). The study also raised fundamental issues of procedure in misdemeanor cases.

Wojciech Robaczyński

Civil liability of skier

Skiing and snowboarding are becoming more and more popular nowadays. The amount of skiers on the slopes makes this sport not only very entertaining, but also dangerous. One of the dangers is a collision with other skier, that can lead to serious injuries. Sometimes an accident on the slope is nobody's fault – in that case no one has to claim responsibility for it. There are examples, however, of accidents which are results of a lack of carefulness, especially when a skier wants to „show off” in front of his companions. The Polish law hasn't established strict rules of the behaviour on the slopes. The Law from 2011 contains, on the other hand, some of the basic rules which obliges skiers to take under consideration the safety of other skiers, adjust the speed to the conditions on the slope and one's abilities and prohibits skiing after consumption of alcohol, etc. What is more, the basic rules of the compensational liability are in force, what can be found in the Civil Law. If one doesn't obey this rules, it can lead to conclusion that the skier has comported against principles of security, which are established by the law. In that case it is possible to accuse them of, though frequently involuntary, causing damage. The victim has a right to claim compensation as it is provided for in the Civil Law. The violation of the safety rules can happen to anyone, even a calm and cautious person. That is why, the skier's insurance can be very useful. Apart from the individual skier's insurance, it is worth consideration a special type of insurance containing the civil liability, that could be included in the price of the skipass.

Jolanta Zatorska

Civil liability of persons who participate in high mountain sports in France

France is an example of the state, where all aspects of behaviour in the mountains are the subject to very detailed regulations. The article focuses on specific provisions of the French law regarding civil liability of persons, who participate in high mountain sports, which fall under tort liability regime. In terms of damage caused to other people, who also were practicing sports two situations should be distinguished: responsibility for own actions based on the principle of guilt and responsibility for things and animals. Also, the article discusses the issues of compensation for damages to third parties, not taking an active part in sports activities. The publication presents the effective regulations of sports law and the principles derived from the French courts' practice, as well as proposals for new solutions that are currently being addressed by the French legislator.

Mariusz Załucki

The problem of the long-term and risky mountain expeditions and the family and inheritance law

Mountain expeditions, often lengthy and risky, not always can be done without prejudice to the rights and responsibilities of the spouses or parents. Moreover, in individual cases, mountain expeditions may lead to weakening of the marriage bond or risk the child's welfare. Due to the risk that is associated with participation in such trips, some succession questions also arise. All those issues are the subject of author's expression, where he's trying to present some possible consequences of the existing standards of family and inheritance law in that area.

Sabina Owsianowska

**Security and legal aspects in informational messages
of the organizers of children and youth tourism
(on the example of mountain tourism)**

The aim of tourist information is to increase the sense of security by facilitating the tourist's orientation, independence and resourcefulness in the new environment. Special concern for the safety of minors encourages to ask questions about, such as what characterizes information for children and teenagers, and, especially, for people who are responsible for them. Their commitment to providing attractive and trouble-free travel and stay in the mountains evokes several topics that usually appear (or should appear) in informational messages. They focus on three main areas, firstly, on the competence of the tour operator, secondly on the rules of practicing the chosen form of qualified tourism, and, finally, on participants and their parents/caregivers, both in terms of organization and emotional needs.

Michał Kućka

**Specific regulation of higher necessity in the act in safety
and rescue in the mountains and organised ski areas**

The paper attempts to identify issues arising from Article 11 (2) of the Law on safety and rescue in the mountains and organised ski areas. Pursuant to this provision when rescue operations rely on first aid, qualified first aid or medical care, performed by a mountain rescuer or a ski rescuer, personal interests of another person, other than life or health, as well as property interests may be sacrificed, to the extent where this is necessary to save the life or health of a person in a state of sudden health hazard. By means of the Article 11 (2) Polish legislator tended to eliminate any doubts as to the range of liability of ski or mountain rescuers within their rescue activities. That means that some activities of the rescuers are justified, their liability is excluded, even though their actions violate personal or property interests of others (special concept of higher necessity). In the paper it is discussed whether such a provision is necessary at all within the Polish legal system. It is argued that Article 11 (2) is necessary to regulate the civil law liability of the rescuers because Polish civil code recognises only the narrow concept of higher necessity (Article 142 and Article 424 of the Polish Civil Code which cover infringement of property interests). At the same time Article 11 (2) is redundant with respect to the Article 26 (1) of the Polish Criminal Code because of its broader concept of higher necessity. In the paper, Article 11 (2) is compared with Article 5 (2) of the Law on the State Medical Emergency, which is a general provision applicable also to

mountain and ski rescuers. It is concluded that Article 11 (2) should be revoked because it only copies the content of the Article 5 (2). It is also noted that in order to correctly apply Article 11 (2) the provisions of the Law on the State Medical Emergency are essential (e.g. to understand what “qualified first aid” means). That is why it is said that the Article 5 (2) sufficiently limits the liability of the rescuers, especially in respect of the Polish civil law.

Małgorzata Serwach

Insurance in mountain tourism

The risk of various kinds of accidents is inherent in any mountain tourism or sport activity. This may result in considering the need for concluding an insurance agreement. Insurance related to mountain tourism, as a part of travel insurance, can take a form of personal or property insurance, either compulsory or voluntary.

The subjects of following considerations are chosen types of travel insurance: accident insurance, coverage of medical expenses, search and rescue missions, civil liability insurance and luggage and sports equipment insurance. The author also pointed out the practical and legal questions related to travel insurances and directions of their development.