



# **MOUNTAIN PROFESSIONALS**

**AND**

# **THE LAW**

***COMPARING CRIMINAL AND CIVIL LIABILITIES AFTER AN ACCIDENT***

**LAW CONFERENCE**  
**Friday 7th December 2018**

**Ecole Nationale de Ski et d'Alpinisme**  
ENSA, Amphithéâtre  
35 route du Bouchet  
BP 24 74401 Chamonix Cedex

ÉCOLE  
NATIONALE  
DES SPORTS DE MONTAGNE



SYNDICAT NATIONAL des  
**GUIDES DE MONTAGNE**



**ENM**  
ÉCOLE NATIONALE  
de la MAGISTRATURE

**Contents**

**Introduction .....2**

**Judicial procedure in France .....4**

**Judicial procedure in Switzerland .....7**

**Judicial procedure in Italy ..... 10**

**Annexes ..... 12**

## Summary

On the 7<sup>th</sup> December 2018, a conference was organised at ENSA to compare the judicial procedures in France, Italy and Switzerland following an accident. In cases involving the death of a participant, how do the legal systems in each country deal with the event. Are the judicial processes identical in each case, are they conducted with a similar ethos, or are there substantial differences in the procedures and conclusions?

In order to facilitate this comparison, the organisers decided to analyse a real-life accident involving a professional mountain guide which occurred on the 1<sup>st</sup> February 2003. The details are as follows:

- A Swiss guide had organised a day of off-piste skiing in La Clusaz (Haute-Savoie, France) with 12 teenagers and a state-qualified assistant volunteer instructor. The accident happened on the right-hand side of the Balme bowl.
- The weather was good. The avalanche risk had been estimated at 3/5.
- Avalanche control work using explosive charges had been carried out the previous day in the sector by helicopter. No avalanches had been triggered. No avalanche control work had been carried out on the day of the accident.
- A single-strand fence marks the start of the off-piste area.
- As the group was traversing on skis towards a col at the extreme right-hand side of the bowl (spot-height 2475m), an avalanche was triggered from above (see diagram in annexe).

Three days after the incident, two amateur snowboarders presented themselves at the local gendarmerie and made a statement to the effect that they had triggered the avalanche while climbing the ridge above the col on foot. They had not been caught in the avalanche and had participated in the ensuing search.

On 9<sup>th</sup> October 2003, the public prosecutor closed the case without prosecuting any of the parties. The reason given was “infraction insuffisamment caractérisée”, meaning that the circumstances of the incident were undetermined, or that there was a lack of evidence.

On 25<sup>th</sup> November 2004, a judicial investigation was opened against person or persons unknown by the injured party (the family of the deceased).

After two years of deliberation, on 13 November 2006, a judgement was made involving:

- the public prosecutor
- the parents and sister of the victim (plaintiffs)
- the defendants: the mountain guide and both snowboarders

The conference had two parts:

In the morning, participants from each country (Italy, Switzerland or France) met in separate rooms to discuss the case in question and decide how their judicial system would treat it in 2018. These participants included:

- members of the legal profession (judges/public prosecutors/lawyers/investigation officers) and experts recognised by the courts
- professional mountain guides, ski instructors and mountain leaders
- insurance experts
- civil servants

The afternoon session took place in the ENSA lecture theatre. A representative from each country presented the different stages of the judicial procedure to an audience composed of legal and mountain professionals.

The reports from the Italian, Swiss and French contingents are detailed below while the annexe contains the following documents:

1. Two diagrams of the accident
2. A document put together by Ms V. RODUIT-ROSSIER describing how the Swiss judicial system treats mountain activities in general.

## The Judicial Procedure in France

In France the judicial procedure in 2018 would be conducted as follows:

### **1. How would the preliminary investigation proceed in a case like that of La Clusaz?**

An Investigation Officer would be rapidly sent to the scene of the incident, either during or after the rescue. PGHM personnel (gendarmes) have both a rescue and investigative role. Some are recognised Investigation Officers and can lead an investigation in cases of manslaughter and carry out initial observations: photographs, measurements, identification of people involved etc.

If there has been a death, the public prosecutor's department also designates an expert (who has been recognised by the Court of Appeal) so they can start work before the snow conditions change. This expert can take into consideration the initial observations made by the Investigation Officer. Sometimes the relevant mountain guide/ski instructor syndicate will send its own expert so they can gather any information which could be used for defending their member in court. However, because this expert will be working outside the judicial framework, they will not have access to the official investigation documents.

Witness statements may be taken at the site of the accident but are generally taken at the PGHM office or in a 'gendarmerie'. The protagonists may or may not be remanded in custody. In the La Clusaz case, the snowboarders were free to leave after questioning but the guide was remanded as he was a Swiss national who lived outside France and so might have tried to leave the country. Anyone held in custody can request to see a lawyer from the start of the custodial period and demand assistance from a legal advisor who has access to all official documents.

The preliminary investigation can last from several days to several months depending on its complexity.

### **2. In this case study, what decision would the public prosecutor make today?**

The public prosecutor looks to see if anyone has committed an offence which led to injuries or death.

If the investigation cannot establish negligent behaviour, the prosecutor will tend to close the case and will justify their decision. The victim or their beneficiaries might then either contest this decision in the court of appeal or bring civil proceedings before the criminal court. This will result in a judicial inquiry to establish whether a criminal offense has been committed.

If the public prosecutor decides that the investigation has found evidence of an offence, they can either send the defendants to a criminal court, or, if further investigation is required, ask the examining judge to initiate a formal judicial investigation. Neither of these proceedings needs to be authorised by the Prosecutor of the Republic (state prosecutor), but the final indictment (accusation) must be reviewed by them. Then the judge can either deliver a reasoned order sending the case to court or dismiss the proceedings.

Currently, criminal proceedings against mountain professionals are relatively rare compared to the number of accidents treated by the public prosecutor's office.

If this case were to be presented to the public prosecutor today, they would proceed as they did at the time ie. establish a preliminary indictment in order to initiate a judicial investigation.

**3. In this case study, what decision would the judge make today?**

The investigating judge makes the case for and against the defendants, coordinates the investigation and verifies the information that becomes available. Depending on the evidence, they can bring charges against, or give witness status to, any individual or legal entity. In the case study in question, the responsibility of the ski resort would be examined to assess whether they had been negligent in opening the area in which the avalanche was triggered.

The lawyers of all parties have access to the investigation documents and can request that the judge carry out specific measures if they think it can help establish the facts.

During the trial, the responsibility for providing evidence falls upon the public prosecutor rather than the defendant.

**4. The role of the expert assessment**

The expert is designated by the public prosecutor's office during the preliminary investigation or by the judge if a judicial inquiry has been initiated. Whenever possible they are chosen from a list of experts registered with the appeal court. These experts are independent and can be recused if their impartiality is brought into question by any of the parties involved.

The expert's opinion is considered extremely important by the prosecutor and the court, and their conclusions are often accepted.

In 2018, it is not certain that an expert would designate the two snowboarders as being responsible for triggering the avalanche.

**5. Would judicial proceedings be initiated against the mountain guide and, if so, what would the sentence be?**

The 'Direction Départementale de la Cohésion Sociale', under the authority of the regional governor (Préfet), can initiate a government inquiry when a professional is implicated in an accident. This may happen as soon as the department becomes aware of the incident (via investigators, media, social networks etc.).

This is different to the judicial inquiry and is conducted in parallel. The penalty can be a temporary or permanent ban from working in their professional capacity.

According to a representative of the DDCS, the department may not initiate proceedings in the case in question.

As the judicial and government inquiries can be conducted at the same time, the mountain professional may find themselves in a difficult situation due to the judicial findings being

confidential. This means that judicial and administrative proceedings may be incompatible, with the professional unable to defend themselves adequately in either case.

In addition, while the principle of being innocent until proven guilty is the basis of criminal responsibility law, this can be undermined by the government inquiry.

All mountain professionals who are established in France can be the subject of a government inquiry after an accident and be suspended from working.

If the mountain professional is a foreigner working in France temporarily, the regional government can ban them from working on French territory.

**6. In this case study, would the mountain professional's liability insurance policy cover all legal costs without exclusion?**

The insurance covers court, lawyer and expert fees. However, the insurance policy does not cover financial penalties, and these would have to be paid by the professional.

The court can decide that the victim and their dependants receive a settlement from the insurer.

The insurer can initiate legal proceedings against the mountain professional if they have not respected the conditions of their contract eg. if they were under the influence of drugs or alcohol.

**7. What is the role of the professional syndicate in France?**

- Defends the interests of the profession
- Assists the guide at the start of the judicial procedure
- The SNGM's lawyer represents the accused guide (although the guide is free to choose a different lawyer)

**8. What would be the court's decision today?**

The judicial reasoning would be the same, but the expert assessment carried out would be more detailed. There would very probably be an inquiry into the liability of the ski resort with regards to their decision to open the area.

The public prosecutor would press criminal charges against the guide because he was leading a group of under-18s as well as against the resort. For the snowboarders and the volunteer instructor the procedure would be the same as at the time of the accident.

Regarding the verdict, members of the legal profession present at the conference were of the opinion that:

- The snowboarders would have been handed a suspended sentence of between 4 and 6 months.
- The guide and the volunteer instructor would have had all charges against them dropped due to an absence of negligence and of any chain of causation.
- The head of the ski area would have been handed an eight-month suspended sentence.

## The Judicial Procedure in Switzerland

In Switzerland the judicial procedure in 2018 would be conducted as follows:

### 1. **How would the preliminary investigation proceed in a case like that of La Clusaz?**

The rescue services and police, composed of mountain professionals, would be called to the site of the incident. The circumstances of the accident would be investigated by cantonal police officers specialised in the mountain environment and/or rescue. They put together a report (photos etc.) and take witness statements from everyone involved. They work in concertation with the public prosecutor in order to establish the chronology of events as quickly as possible.

If there has been a death, the cantonal police will systematically call the public prosecutor. The prosecutor is responsible for leading the investigation and defending the administration (there is no public prosecution department in Switzerland). The prosecutor instructs the different police departments which intervene in the incident. The prosecutor and the police collaborate closely, the police playing an operational role and the prosecutor representing the justice department. The prosecutor decides whether to initiate a criminal investigation and identifies which people will be charged and which will be designated as witnesses.

The defendants are authorised to consult a lawyer from the outset of the investigation. The prosecutor will receive a police report with diagrams and/or photographs of the incident and statements from all parties involved.

### 2. **In this case study, what decision would the public prosecutor make today?**

As there was a death, the prosecutor would intervene and decide whether an offence has been committed based on the evidence available. If this is the case, they press charges and transfer the case to the Court of First Instance.

It is increasingly unlikely that the prosecutor will dismiss the case because they are under pressure from the plaintiff and do not want to expose themselves to the possibility of their decision being overturned.

The Swiss justice system has a reputation for being slow.

### 3. **In this case study, what decision would the judge make today?**

In Switzerland there is no investigating judge. The prosecutor leads the investigation and delegates the following tasks to the police:

- a. Interviewing people who can provide information
- b. Interviewing witnesses
- c. Interviewing the defendants and, if necessary, calling a lawyer from the outset of the first interview. Lawyers ensure that the procedure is carried out correctly and that the defendants are heard and allowed to explain themselves. They summarise the position of their clients and defend it in court (for the plaintiff and the defendant).
- d. Interviewing the plaintiffs.
- e. Collecting evidence. If necessary, the public authorities contest any errors in the indictment.

- i. Weather and snow conditions: this analysis is carried out by an expert as quickly as possible under the direction of the prosecutor. Once the analysis has been completed, the plaintiff or the defendant can question the expert.
- ii. Local assessment
- iii. Other

At the end of the investigation, the prosecutor establishes a court order stating how the case will proceed.

- a. The case is dismissed because no offence was committed.
- b. Charges are pressed and the case proceeds to court for trial. The court will make a decision based on the documents put together by the prosecutor and will cross-examine both parties and their lawyers. In this case the prosecutor changes role and represents the authorities against the accused in court.

The court's decision can be contested in the cantonal and then federal courts.

Swiss law has defined the degree of responsibility that a mountain guide (as a sport's instructor) has towards their clients. As a guarantor of the safety of their clients, guides must respect all measures of safety which are required of their profession. The federal law pertaining to mountain guides details these responsibilities in article 2 (see annexe).

#### **4. The role of the expert assessment**

In this case study, an expert analysis would be carried out because the accident is serious. If the evidence suggest that an offence has been committed, a second analysis would be requested. The analysis is carried out by experts who have been recognised by the courts. They must be impartial.

#### **5. Would judicial proceedings be initiated against the mountain guide and, if so, what would the sentence be?**

Judicial proceedings could be initiated against the guide if they have committed an offence eg. Illegal professional activity, one of the legal requirements for working as a guide has not been fulfilled, information provided to the authorities is incorrect etc. In these cases, the guide may be banned from working.

#### **6. In this case study, would the mountain professional's liability insurance policy cover all legal costs without exclusion?**

After a mountain accident which was referred to the judicial system, insurers generally negotiate payments in a transactional manner.

If someone dies during a high-risk activity and the guide was not legally allowed to work in that discipline, the insurance cover would be void.

However, if the person was guiding legally, had fulfilled all their professional obligations concerning risk management and had not been negligent in any way, then the insurance policy will cover them in full.

The only factor that may limit insurance cover would be a court ruling of gross negligence.

**7. What is the role of the professional syndicate in Switzerland?**

In Switzerland the role of the guides' association is to represent guides and explain the profession to third parties. It also lobbies for the recognition of training programs for mountain professionals.

**8. What would be the court's decision today?**

Article 10 of the penal code classifies crimes by the severity of the sentence. The crime of manslaughter is punishable by a maximum prison sentence of three years or a fine.

Articles 42 and 43 of the penal code dictate by how long the sentence can be suspended. Judges generally suspend the application of a fine or a prison sentence by a maximum of two years if an immediate sentence is not considered necessary to prevent the guilty party from committing another crime.

In 2008, the penal code was modified to include financial penalties. In general, judges try to avoid prison sentences, and these are only used in cases where the judge decides that a fine is insufficient to punish the guilty party. This will rarely be the case in mountain accidents as the consequences are never intentional.

Article 67 of the penal code enables a judge to ban anyone found guilty from working in their professional capacity. This punishment is only applied if there is reason to believe that the guilty person may commit another misdemeanour in their professional role.

## The Judicial Procedure in Italy

In Italy the judicial procedure in 2018 would be conducted as follows:

### 1. **How would the preliminary investigation proceed in a case like that of La Clusaz?**

In cases of death or serious injury, the public prosecutor systematically initiates an investigation. This is conducted with the assistance of the police or avalanche experts from the Guardia di Finanza who will make initial observations and start taking statements. They identify the persons involved (notably witnesses and those people who may be charged) and check equipment.

If somebody has been killed or seriously injured, an expert will systematically carry out an assessment. This is done as quickly as possible after the accident, either on the day itself or soon after. In the case of an avalanche, an on-site study of the snow conditions will be conducted as soon as possible, and records are taken of the documents which would have been available to the people involved (weather and avalanche bulletins, maps, guide-books, diagrams etc.).

The defendant can ask for legal assistance from a lawyer, and indeed any statements made by the defendant without the presence of a lawyer cannot be used in a court of law. It is in the defendant's interest to choose a lawyer themselves otherwise they will be allocated one. The entire judicial procedure with regards to the defendant will be conducted through their lawyer; all communication from the justice department will be addressed to the lawyer.

### 2. **In this case study, what decision would the public prosecutor make today?**

The public prosecutor would immediately open a judicial procedure against 'person or persons unknown'. The person involved can therefore participate in the investigation. The prosecutor will interview them over the following days in the presence of a lawyer. This lawyer will be designated to the defendant if they don't have one. The defendant(s) is (are) presumed to be innocent, and it is up to the prosecutor to provide proof that they have been negligent.

In this case study, the following people would be charged:

- The guide and the voluntary instructor with manslaughter.
- The head of the ski area for reckless endangerment.
- The two snowboarders for both the above crimes.

The investigation would last between 6 months and 1 year.

The referral of the case before a judge must be briefly justified and cannot be contested. On the other hand, dismissal proceedings must be justified at length and can be contested.

### 3. **In this case study, what decision would the judge make today?**

In Italy the investigating judge is referred to as the 'preliminary inquiry judge'. They can also be responsible for sentencing if the defendant chooses to make a plea bargain (patteggiamento) or shortened proceedings (rito abbreviato). In the most serious cases, sentencing is done by a monocratic judge or via the circuit (crown) court.

If the parties are in agreement, the trial can be terminated after the preliminary inquiry (patteggiamento). This is a deal in which the defendant pleads guilty and the parties agree on the sentence. In this type of deal the sentence demanded by the justice department can be automatically reduced by one third. Only the judge, the prosecutor and the defendants (represented by their lawyers) are present.

The defendant can also request that the judgement be carried out in a closed court (rito abbreviato). In this case the sentence is automatically reduced by one third and the decision is based on the complete set of documents provided by the public prosecutor, the defendant and the plaintiff.

#### **4. The role of the expert assessment**

The public prosecutor systematically requests an expert assessment. The judge can then request a second one if the initial one is disputed or if they think it is incomplete. Experts are professionals who are recognised by the court. The judge can request up to three expert assessments and the plaintiff and defendant can each request the same number again.

#### **5. Would judicial proceedings be initiated against the mountain guide and, if so, what would the sentence be?**

If the guide is found guilty, they can be suspended from working as a guide, face disciplinary proceedings or be struck off the professional registrar.

#### **6. In this case study, would the mountain professional's liability insurance policy cover all legal costs without exclusion?**

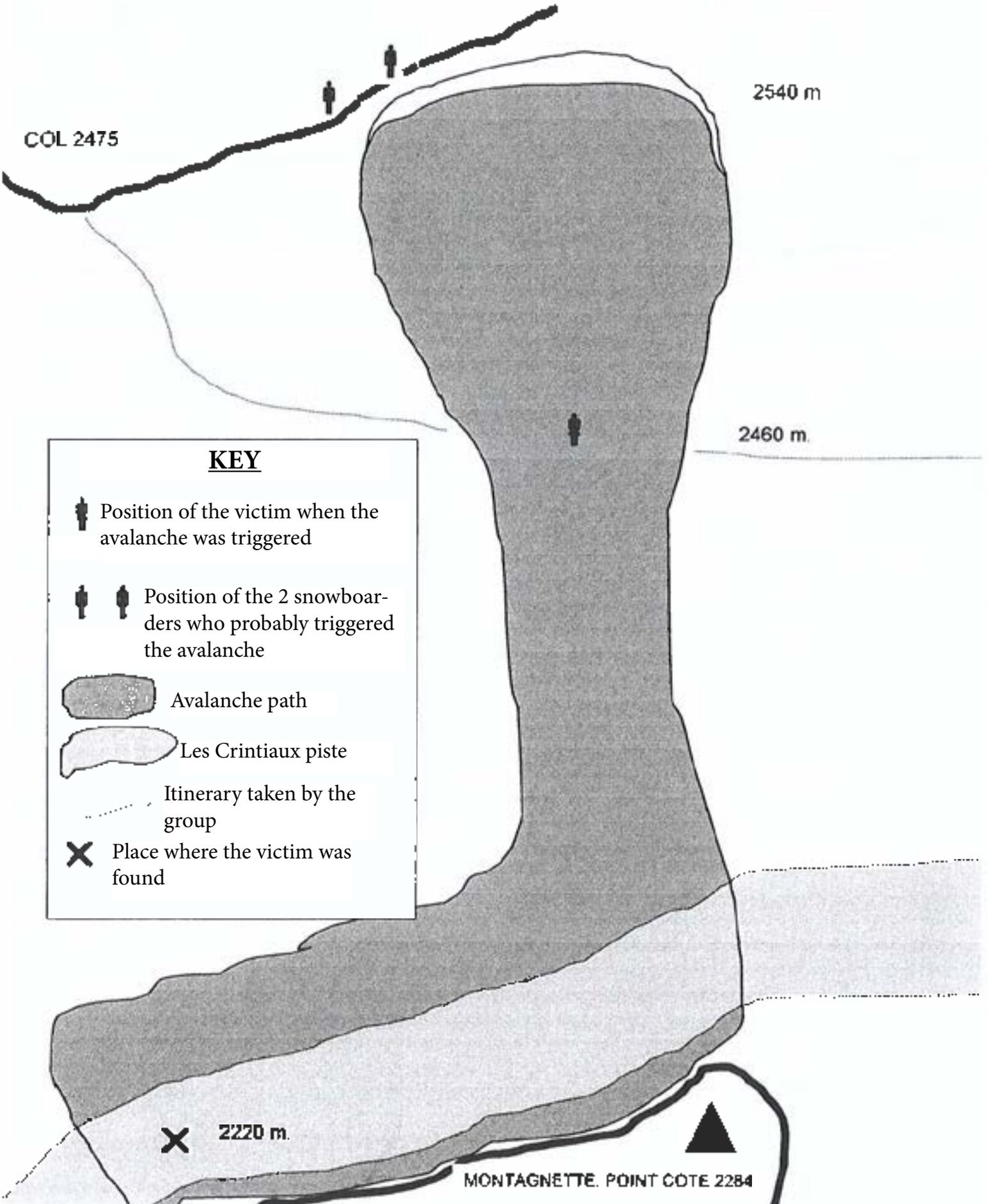
The insurer can refuse cover if intentional negligence can be proved or if the mountain professional does not have the legal paperwork required to work in Italy (unqualified, not registered with the authorities etc.)

#### **7. What would be the court's decision today?**

The public prosecutor would request the following sentences:

- 18 months for the two snowboarders (1 year for manslaughter and 6 months for reckless endangerment).
- 10-month prison sentence for the guide and the volunteer instructor.
- 8 months for the head of the ski area.

# DIAGRAM OF THE AVALANCHE



## KEY

 Position of the victim when the avalanche was triggered

 Position of the 2 snowboarders who probably triggered the avalanche

 Avalanche path

 Les Crintiaux piste

 Itinerary taken by the group

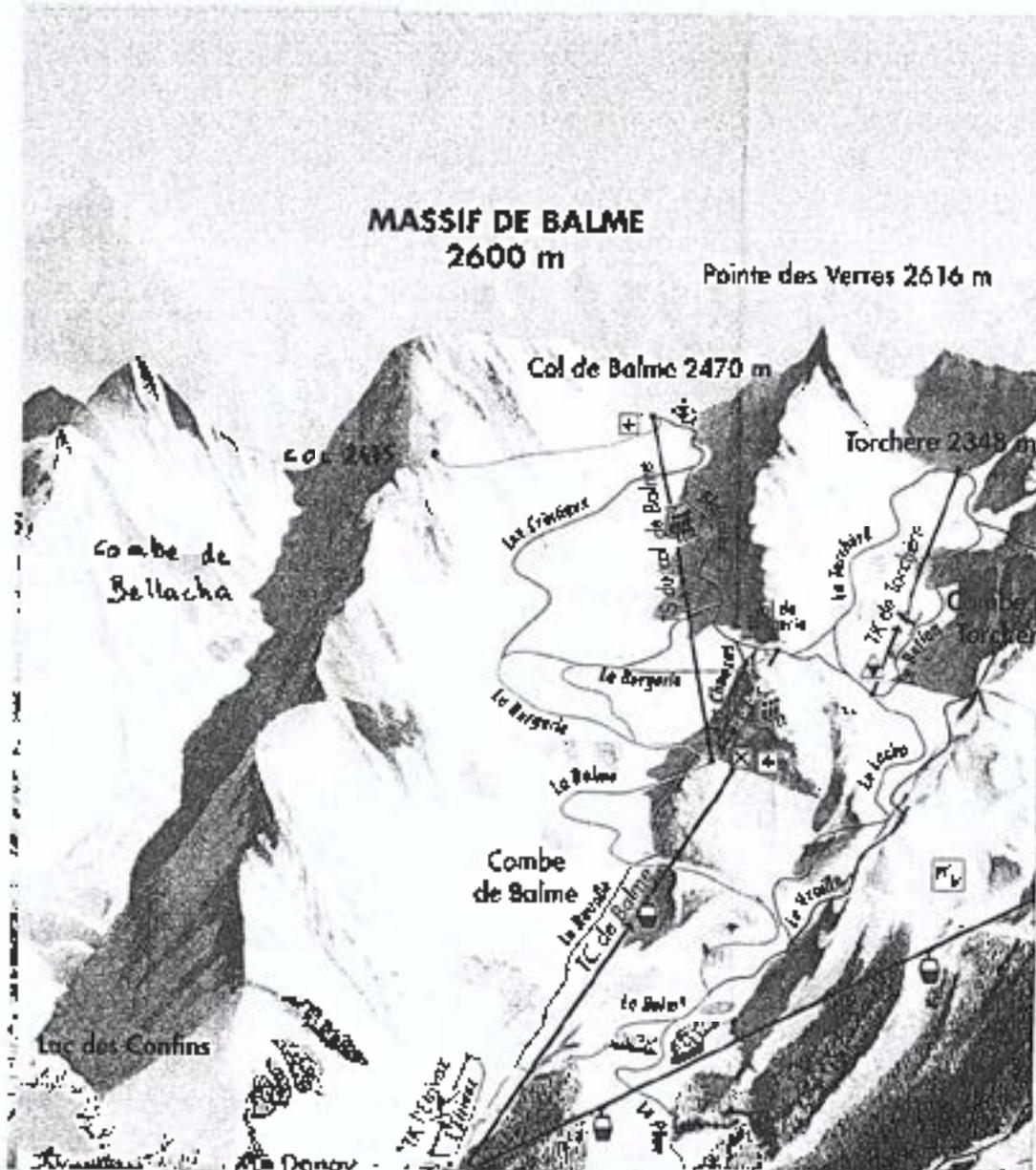
 Place where the victim was found

 2220 m.

MONTAGNETTE. POINT COTE 2284

## DIAGRAM OF THE SKI AREA

*taken from the piste map*



### KEY

-  Area where the avalanche was triggered
-  Avalanche path and debris accumulation zone
-  Itinerary taken by the guided group

# **MOUNTAIN PROFESSIONALS AND COMPARATIVE LAW: THE PENAL AND CIVIL CONSEQUENCES OF AN ACCIDENT. CHAMONIX 07.12.2018**

## **I. Structure and function of the Swiss judicial system**

### **a. Introduction**

In general, all actions are covered by the following laws in Switzerland:

- The Swiss constitution
- The Civil Code and the Code of Obligations
- The Penal Code
- Administrative laws

These rules are applicable to all Swiss residents, whatever their profession.

Mountain professionals are subject to the following laws:

- Federal law for mountain guides and high-risk activities
- Federal ruling for mountain guides and high-risk activities
- Cantonal law for mountain guides and organisers of high-risk activities
- Cantonal ruling for mountain guides and organisers of high-risk activities
- Various directives

### **b. The Swiss judicial system can be divided into three parts:**

#### **1. Civil**

This covers everything related to private law i.e. the Civil Code and, in particular, the Code of Obligations. The latter covers laws and obligations related to contracts, legal entities (companies) and illicit actions which have consequences regarding civil responsibility.

These issues come under federal law which is covered by the Civil Procedure Code as follows:

- Conciliation proceedings, through the magistrate
- Non-conciliation proceedings through the district judge (1<sup>st</sup> instance, cantonal)
- Appeal proceedings against a decision by the district court through the cantonal courts (2<sup>nd</sup> instance, cantonal)
- Appeal proceedings against a decision by the cantonal court through the federal court.

**In the case of accidents with mountain professionals, this procedure would be used to award damages to individuals who have suffered physical, economic or moral prejudice. These are cases of civil responsibility.**

**This procedure will ONLY BE USED IF A CRIMINAL COURT JUDGE HAS NOT MADE A RULING ON THE CASE IN QUESTION.**

#### **2. Administrative**

Administrative law is administered by government authorities for or against citizens. The procedure is done at a cantonal level.

**In the case of mountain professionals, this procedure is used to administer the federal and cantonal laws which cover high-risk activities, notably the authorisation to do them in a professional capacity.**

#### **3. Penal/Criminal**

This covers cases of criminal wrong-doing committed by an individual. Crimes are specified in federal law and in the Penal Code.

The guiding principle is that the state considers whether the guilty party should receive a penal sentence.

Anyone having suffered a prejudice through negligent behaviour (eg. the family of someone killed in an avalanche) are considered plaintiffs. They can take part in the judicial proceedings and have access to investigation documents. They can also become the civil party and claim damages.

The proceedings are administered by federal authorities and covered by the Penal Code.

In the case of mountain professionals, criminal proceedings will be conducted if an individual has contravened laws such as:

- federal or cantonal laws regarding, for example, the professional registration process and/or
- Penal Code laws relevant to accidents, such as manslaughter (art. 117 CP) or reckless endangerment (art. 127 CP).

## **II. Analysis of the Swiss criminal procedure following a mountain accident involving the death of a participant.**

After an accident in the mountains, the following measures are initiated by the Swiss judicial system:

1. The rescue team and police team (consisting of mountain professionals) are alerted.
2. An assessment of the situation is made by the cantonal police which communicates directly with the public prosecutor. Photographs are taken along with witness statements to determine as quickly as possible the chronology of events.
3. If a death has occurred the cantonal police systematically calls the public prosecutor who will lead the investigation.
4. The prosecutor instructs the different police departments which intervene in the incident. The prosecutor and the police collaborate closely, the police playing an operational role and the prosecutor representing the justice department.
5. An investigation is opened by the prosecutor and the following tasks are delegated to the police:
  - a. Interviewing people who can provide information
  - b. Interviewing witnesses
  - c. Interviewing the defendants and, if necessary, calling a lawyer from the outset of the first interview.
  - d. Interviewing the plaintiffs.
  - e. Collecting evidence. (If necessary, the public authorities will contest any errors in the indictment.)
    - i. Weather and snow conditions: this analysis is carried out by an expert as quickly as possible under the direction of the prosecutor. Once the analysis has been completed, the plaintiff or the defendant can question the expert.
    - ii. Local assessment
    - iii. Other

**IMPORTANT: no charges are required for this process to be initiated. If a death has occurred the case will be systematically investigated, and the judicial process started automatically.**

6. At the end of the investigation, the prosecutor establishes a court order stating how the case will proceed. Either:

- a. The case is dismissed because no offence was committed.
- b. Charges are pressed and the case is referred to the Court of First Instance.

7. If charges are pressed there will be a trial. The court will make a judgement based primarily on the evidence collected by the prosecutor. All parties and their lawyers will be heard.

In this case the prosecutor changes role to represent the state against the defendant before the court.

8. The court passes judgement which can be contested at the cantonal and then federal courts.

9. In Swiss law, the Penal Code and jurisprudence will determine whether or not the defendant should be found guilty.

Swiss law has comprehensively defined the responsibility that a mountain guide (in their role as sport's instructor) has towards their clients. A mountain guide holds a position of guarantor of their clients' safety and must respect all relevant measures as defined by the profession. Article 2 of the federal law pertaining to mountain guides lists these in detail:

- To explain to clients the specific risks that the activity in question involves.
- To ensure that the clients have the necessary skills and level of fitness to partake in the activity.
- To verify that the equipment is not damaged in any way and is in good condition.
- To ensure that the weather and snow conditions are suitable for the activity.
- To ensure that the personnel are sufficiently qualified.
- To ensure that there are sufficient guides for the clients, taking into account the level of risk that the activity entails.
- To respect the environment and, in particular, to preserve the habitat of the fauna and flora.

After the justice system has decided whether the guide was responsible for the clients, and whether all the necessary safety measures were adhered to, it will be in a position to decide whether or not the guide is guilty.

#### 10. Sentencing in Switzerland

Article 10 of the Penal Code classifies offences by the severity of the sentence. Offences for which the sentence is more than three years are considered 'crimes', while those for which the sentence is less than three years are considered 'misdemeanors' (délits).

Manslaughter by negligence is punishable by a maximum prison sentence of three years or by a fine. It is therefore considered a misdemeanor.

Articles 42 and 43 of the penal code dictate by how long a sentence can be suspended. Judges generally suspend the application of a fine or a prison sentence by a maximum of two years if an immediate sentence is not considered necessary to prevent the guilty party from reoffending.

In 2008, the penal code was modified to include financial penalties. In general, judges try to avoid prison sentences, and these are only used in cases where the judge decides that a fine is insufficient to punish the guilty party. This will rarely be the case in mountain accidents as the consequences are never intentional.

Article 67 of the penal code enables a judge to ban anyone found guilty from working in their professional capacity. This punishment is only applied if there is reason to believe that the guilty person may commit another misdemeanor in their professional role.

11. Insurance policies: reductions and exclusions. Civil justice or transactions?

After a mountain accident which has been referred to the judicial system, insurers generally negotiate payments in a transactional manner.

If someone dies during a high-risk activity and the guide was not legally allowed to work in that discipline, their insurance cover would be void.

However, if the person was guiding legally, had fulfilled all their professional obligations concerning risk management and had not been negligent in any way, then the insurance policy will cover them in full.

The only factor that may limit insurance cover would be a court ruling of gross negligence.

12. What is the role of the professional syndicate in Switzerland?

In Switzerland the role of the guides' association is to represent guides and explain the profession to third parties. It also lobbies for the recognition of training programs for mountain professionals.

For additional information please consult:

Swiss mountain guide website

[Valais canton website](#) for mountain professionals

[Mountain professionals registered to work in Switzerland](#) (similar to French Carte Professionnelle)