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**Legal report for the Eagle Ski Club**  
**Law and liability in the event of a Mountain accident.**

**PART 1**

**LEGAL PROCEEDINGS AND MOUNTAIN ACCIDENTS IN FRANCE**

**AND IN SOME ALPINE COUNTRIES (ITALY, SWITZERLAND, AUSTRIA, NORWAY)**

9 April 2026

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For the purposes of this report, it is worth recalling the main features of the law and judicial procedure applicable in the event of an accident in France (I).

We shall then examine the regulations applicable in other European countries concerned with mountain sports, notably Italy, Switzerland, Austria and Norway (II).

## I. LAW AND LEGAL PROCEEDINGS IN THE EVENT OF A MOUNTAIN ACCIDENT IN FRANCE

It is necessary to outline the principles of civil and criminal liability in France (A), as well as the stages of legal proceedings in the event of an accident (B), and then to discuss the criminal liability of legal persons (C).

### A. Some principles of civil and criminal liability in France

Firstly, a distinction must be made between civil liability and criminal liability.

In the following presentation, the focus is mainly on aspects of criminal procedure.

It should be noted that mountain accidents in France are not subject to a specific regime; they are subject to the general law of liability.

- The purpose of **civil liability** is to compensate the victim(s) for the harm suffered. This procedure is brought against the person responsible for an act deemed to be wrongful, where that wrongdoing has a causal link to the harm suffered by the victim.

Civil proceedings are brought by individuals or legal entities (such as associations) against other individuals or legal entities.

The harm suffered may be physical (injury to bodily integrity) or non-physical (moral, pecuniary and financial harm).

When a group of mountaineers is led by a mountain professional (mountain guide, mountain leader, ski instructor, etc.), who provides a guiding service, the latter acts within the framework of what is known as 'contractual' civil liability (Article 1231-1 of the Civil Code).

Conversely, during a mountain outing organised by a club and supervised by a non-professional volunteer, without any direct or indirect remuneration, the liability of the members of the outing will be termed 'non-contractual' (Articles 1240 to 1242 of the Civil Code).

It is easier to hold a professional liable under contractual liability than to hold a non-professional liable under non-contractual liability.

- **Criminal liability**, on the other hand, is intended to punish the commission of a criminal offence provided for by law. Criminal proceedings are conducted on behalf of the French State by the 'public prosecutor's office', represented in particular by the 'prosecutor', the 'attorney general' or the 'advocate general', depending on the level of jurisdiction.

Its purpose is to defend the public interest and society against a potentially dangerous individual.

Criminal offences that may be charged in relation to mountain accidents are most often **unintentional offences**. These may involve injury or, in the worst-case scenario, manslaughter.

The relevant sections of the law, which are worth quoting verbatim, are as follows.

**Article 121-3 of the Criminal Code** provides that:

*'There is no crime or offence without the intention to commit it.'*

*However, where the law so provides, an offence is committed where there is deliberate endangerment of another person's life."*

*An offence is also committed, where the law so provides, in the event of imprudence, negligence or a breach of a duty of care or safety laid down by law or regulation, if it is established that the perpetrator failed to exercise the normal degree of care, taking into account, where applicable, the nature of their duties or functions, their skills, and the authority and resources at their disposal.*

*In the case provided for in the preceding paragraph, natural persons who did not directly cause the damage, but who created or contributed to creating the situation that allowed the damage to occur, or who failed to take measures to prevent it, shall be criminally liable if it is established that they have, either manifestly and deliberately breached a specific duty of care or safety prescribed by law or regulation, or committed a grossly negligent act which exposed others to a risk of particular gravity of which they could not have been unaware.*

*There shall be no offence in cases of force majeure."*

This article highlights the issue of **the causal link between the act and the damage**, combined with **the gravity of the fault**, in determining criminal liability.

The causal link may be:

- direct, in which case simple negligence is sufficient to establish liability;
- indirect, in which case gross negligence is strictly required.

- With regard to the offence of **manslaughter**, **Article 221-6 of the Criminal Code** supplements the aforementioned article and describes how to characterise the fault:

*'Causing, under the conditions and in accordance with the distinctions set out in [Article 121-3](#), through **clumsiness, imprudence, inattention, negligence or a breach of a duty of care or safety imposed by law or regulation**, the death of another person constitutes manslaughter punishable by three years' imprisonment and a fine of €45,000.*

*In the event of a manifestly deliberate breach of a specific duty of care or safety imposed by law or regulation, the penalties incurred are increased to five years' imprisonment and a fine of €75,000."*

The offence of manslaughter is punishable under the aforementioned Article 221-6(1) (imprisonment and a fine), as well as under Articles 221-8 (in particular, the prohibition on holding public office or engaging in a professional or social activity related to the commission of the offence), and 221-10 (publication or dissemination of the decision).

In the event of a fatal accident, the maximum sentence for gross and inexcusable negligence is therefore five years, and only three years in the case of simple negligence.

- With regard to **unintentional non-fatal bodily harm**, several criminal provisions may apply.

In the event of **serious injury** (i.e. temporary incapacity to work lasting more than three months), Article 222-19 of the Criminal Code applies, referring to the conditions and distinctions set out in Article 121-3 of the aforementioned Criminal Code.

The prescribed prison sentence is two years and a fine of €30,000. This is increased to three years and a fine of €45,000 in the event of a manifestly deliberate breach of a specific duty of care or safety prescribed by law or regulation.

In the case of **less serious injuries** (temporary total incapacity of three months or less), Article 220-20 of the Criminal Code applies.

It provides that if the injuries result from a manifestly deliberate breach of a specific duty of care or safety laid down by law or regulation (i.e. gross negligence), the penalty may be up to one year's imprisonment and a fine of €15,000.

However, Article R. 625-2 of the Criminal Code specifies that if the total temporary incapacity (ITT) lasting three months or less was caused by clumsiness, carelessness, inattention, negligence or a breach of a duty of safety or care imposed by law or regulation (i.e. simple negligence), then, subject to the conditions and distinctions set out in Article 121-3, the penalty is a simple fine of €1,500 applicable to 5th-class offences.

In the event of **minor injuries without temporary incapacity to work**, Article R. 625 of the Criminal Code provides for the same penalty of a €1,500 fine applicable to 5th-class offences, if the injuries result from a manifestly deliberate breach of a specific duty of safety or care laid down by law or regulation (gross negligence).

It should be noted that in the absence of such gross, serious or inexcusable negligence (the manifestly deliberate breach of a specific duty of safety or care laid down by law or regulation), no criminal proceedings are possible in France for this offence. Compensation for any damage caused may then be sought in the civil courts.

- **Direct causation** is established *“where the person in question has either struck or collided with the victim themselves, or initiated or controlled the movement of an object that struck or collided with the victim”*<sup>1</sup>.

For example, a ski instructor was given a one-year suspended prison sentence for triggering an avalanche that subsequently buried a group of skiers located downstream, on the grounds that the avalanche was the direct cause of the damage.<sup>2</sup>

In this case, a simple fault – sufficient to give rise to the instructor's criminal liability in the presence of a direct causal link – was found against the instructor, namely that of failing to check the slope downstream of him before proceeding.

- The **indirect causation** provided for in Article 121-3 of the Criminal Code applies to a person who did not directly cause the damage, but who *‘created or contributed to creating the situation that allowed the damage to occur, or who failed to take measures to prevent it’*.

The provision penalises culpable inaction, breach of duty and failure to act.

In cases of indirect causation, only ‘gross’ negligence can give rise to the perpetrator's criminal liability.

Such gross negligence may be **“deliberate”** where there is a *“manifestly deliberate breach of a specific duty of care or safety laid down by law or regulation”*.

<sup>1</sup> Circular: Presentation of the provisions of Law No. 2000-647 of 10 July 2000 clarifying the definition of unintentional offences, CRIM 2000-09 F1/11-10-2000

<sup>2</sup> Albertville Criminal Court, 30 April 2012, No. 440/12

This includes, for example, taking a route closed by an order, such as a ski run closed by a municipal order, or a climbing site closed by a prefectural order.

Gross negligence may also be '**characterised**' where the individuals concerned have acted in a manner *'that exposed others to a risk of particular gravity which they could not have been unaware of'*.

For example, taking a route exposed to rockfalls, ascending a steep snow slope exposed to the sun late in the afternoon, skiing down a steep slope of more than 30° where there is a high risk of avalanches... or, for instance, allowing one's group to proceed through a dangerous section without having secured it sufficiently.

- It should be noted that **the accumulation of several minor errors may constitute a gross negligence**, amounting to serious negligence, and may therefore give rise to criminal liability even where there is only an indirect causal link between the act and the damage.

The accumulation of several minor faults may result, for example, from a series of minor blunders, slight imprudence, inattention, negligence or breaches of a duty of care or safety imposed by law or regulation, which, taken individually, would not have had serious consequences, but which, when combined, led to the occurrence of the accident.

The Toulouse Court of Appeal was thus able to rule, for example, regarding the liability of a mayor following an accident at a ski resort, that *'The accumulation of the mayor's acts of negligence (...) constitutes gross negligence which exposed others to a particularly serious risk of which he could not have been unaware.'*<sup>3</sup>

- In light of the above provisions, **fault** may therefore result from:
  - Clumsiness: a technical error or inappropriate action;
  - Carelessness: conscious or unconscious lack of foresight, misjudgement of a situation or technical level;
  - Inattention: lack of vigilance, presence of mind or concentration;
  - Negligence: poor organisation or preparation of the outing, insufficient or non-existent equipment;
  - Or a breach of a duty of care or safety imposed by law or regulation, i.e. the violation of a specific regulation, such as a prohibition order.
- The concept of whether the perpetrator's **behaviour** was '**normal**' or not is central to assessing **the seriousness of the fault**.

Normal behaviour may consist of following the most common practice, by observing how other mountaineers act.

Alternatively, normal behaviour may consist of adopting the most cautious approach, even if this means being the only one to make a particular choice whilst everyone else adopts a different one.

This is an overall attitude, which the judge assesses on a case-by-case basis<sup>4</sup>.

Was the situation properly assessed?

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<sup>3</sup> Toulouse Court of Appeal, 13 November 2003, No. 02/00329

<sup>4</sup> Jacques Dallest, Erik Decamp and Alexis Mallon, *The Guide and the Prosecutor*, Editions du Mont Blanc, March 2020, 250 pages

What was the level of the participants, and how did they behave during the outing?

Is the decision taken in line with best practice and the customs and traditions of those involved?

Is it prudent and does it take the risk into account?

To answer these various questions, the judge will often require the opinion of an expert, such as a high-mountain guide authorised by the courts.

Three criteria may be taken into account when assessing whether an action was reasonable:

- **Who?** The members of the expedition, their skills, their training, their personalities, and their respective backgrounds.

The judge assesses the nature of the supervisor's duties or responsibilities, their skills, and the authority and resources at their disposal.

The more skills are validated by qualifications, and the greater the authority (legitimacy, technical competence, experience, authority, etc.), the greater the standard of care required in terms of liability.

- **How?** The location, the time of the incident, the circumstances of the accident
- **Why?** In the case of an unintentional act, there is no motive or deliberate intention to commit the offence. However, there is behaviour and actions on the part of the person responsible for the accident and the victim, which are guided by a desire, an expectation or motivations that must be taken into account.

- When it comes to **liability towards another group**, that is, when two groups are involved, it is sometimes very difficult to determine which is responsible.

Is it the group that triggers the avalanche, the rockfall or the icfall? Or is it the group that, by moving beneath another group, recklessly exposes itself to a danger it could not have been unaware of?

Under French law, both situations may arise.

- For a **group led by a volunteer**, without remuneration or a contract, the application of the principles of criminal liability is the same as for an individual participant or a professional.

It is the judge's standard of scrutiny that will vary, depending on the leader's status, their skills, the composition of the group, and the context of the outing.

Criminal liability will be the same, but the judge may adjust the sentence imposed.

However, if a body of evidence shows that the volunteer in question is acting in return for remuneration, even indirectly, or that they are acting under the same conditions as an employee, then the judge may reclassify them as a professional (see *below*).

Consequently, offences relating to the unlawful practice of a profession may then be brought against them: practising a regulated profession without the requisite qualifications (Article L. 212-1 of the Sports Code), or practising that profession without professional indemnity insurance (Articles L. 321-7 and L. 321-8 of the Sports Code).

## **B. The main stages of legal proceedings following a mountain accident in France**

We will now briefly outline the stages of the legal proceedings in France following a mountain accident.

A hypothetical case is examined: a group A of six people, members of a mountaineering club, is led by a volunteer member of the club. The accident occurs whilst descending a slope classified as risk level 3, which is exposed to the risk of avalanches. An avalanche is triggered as the volunteer leader passes. Two members of Group A are buried and seriously injured; the volunteer leader remains on the surface. Another group, Group B, further down the slope and in the process of crossing it, is also affected, and one person is buried but only sustained injuries.

- Once the alarm is raised, the **rescue services** intervene. In France, in most cases, the rescue services are provided either by the High Mountain Gendarmerie Unit (PGHM), the CRS Alpes, or the civil protection service (the fire brigade). It may also be the ski patrol service operating near a ski resort.

These rescue workers are tasked with managing the rescue operation, administering first aid, and bringing people to safety.

However, they must also **carry out investigative work**, which is useful in the event of criminal proceedings or a civil lawsuit, in the event of a serious accident resulting in bodily injury or death. This is handled by a judicial police officer (OPJ).

From their very first intervention, the rescue workers will therefore gather evidence, interview those involved as well as witnesses, and examine the scene. They will note the positions of members of both groups and observe the behaviour of the leader and participants.

- In the event of a fatal accident, the public prosecutor will systematically open an **investigation**.

Those involved may be summoned to a subsequent **interview**, usually at the premises of the gendarmerie or the relevant police force.

This may take the form of either a voluntary interview or police custody, in which case the individual is entitled to legal representation.

In our example, it is more likely that the volunteer leader of Group A and some members of his group will be interviewed on this occasion, as well as some members of Group B.

Following the interviews, the public prosecutor will either decide not to prosecute and to 'dismiss the case', or to proceed with prosecution.

In the event of a fatal accident, the prosecutor refers the matter to the investigating judge, who opens a **judicial 'investigation'**.

In our example, it is possible that a judicial investigation will be opened and that the volunteer leader of Group A will be "placed under investigation".

The first questioning before the investigating judge is called the 'initial appearance hearing' (IPC).

The investigating judge examines both the prosecution's and the defence's cases; they seek evidence to identify the causes of the accident and any negligence that may have caused, directly or indirectly, the injuries sustained.

In most cases, if the incident involves an avalanche, an expert will be appointed to analyse the snow conditions.

- **At the conclusion of the investigation**, the investigating judge may decide not to refer the case to the criminal court and to dismiss the case.

He may also issue a 'referral order to the criminal court' (ORTC), which sets out the evidence for and against the defendant justifying the continuation of proceedings.

The Crown Prosecution Service then submits its submissions.

A panel of judges then convenes, a hearing—often a collegiate one (involving several judges)—is held, and the court delivers its judgment.

In practice, the judge structures their reasoning in four stages:

- 1) What is the damage;
- 2) Is there an act that caused the damage;
- 3) Is there a causal link between the damage and the wrongful act;
- 4) Is the act wrongful?

During the investigation, victims may file a complaint with the police. If the perpetrator has not yet been clearly identified, they file a complaint 'against X'.

Victims may also bring a civil action, that is to say, claim damages in the civil part of the proceedings, and thus seek compensation for the harm caused to them.

The civil aspect is often dealt with at a later stage by the criminal court, which will then 'refer the case for civil proceedings' to a later hearing.

It should be noted that, in the absence of criminal proceedings, if no offence is established and the case is closed without further action, or dismissed, or if the defendants are acquitted by the court, then nothing prevents the victims from seeking compensation for their losses through separate civil proceedings, which they will therefore have to initiate themselves against the alleged perpetrators.

In our example, the victims may be the relatives (families, friends, etc.) of the two deceased members of Group A, as well as the members of Group B affected by the accident.

### **C. Criminal liability of legal persons**

- Article 121-2 of the Criminal Code provides that:

*“Legal persons, with the exception of the State, shall be criminally liable, in accordance with the provisions of Articles 121-4 to 121-7, for offences committed on their behalf by their organs or representatives. (...)*

*The criminal liability of legal persons does not exclude that of natural persons who are perpetrators or accomplices of the same acts, subject to the provisions of the fourth paragraph of Article 121-3.”*

These provisions apply regardless of the nationality of the natural or legal persons concerned, provided that the acts of which they are accused were committed on French territory.

This constitutes the application of the principle of territoriality in criminal law.

A legal person as such can only be an indirect perpetrator of the damage, since it acts solely through its organs or representatives.

However, Article 121-3 of the Criminal Code cited *above* requires only simple negligence to establish criminal liability, and not gross negligence as is the case for natural persons.

**It is therefore, in principle, easier to hold an association criminally liable than a natural person.**

Nevertheless, it is still necessary for fault to be attributable to the legal person concerned.

Such convictions involving an association are relatively rare, but the risk remains very real.

- The Criminal Court of Gap recently convicted a sports association (a mountaineering club) in connection with an accident that occurred on 18 April 2024 in Orpierre, France<sup>5</sup>.

During a climbing course organised by the club at a site renowned for its equipped cliffs, a 16-year-old participant died after falling some fifteen metres.

The investigation established that the accident occurred whilst the girl was abseiling, belayed by another participant. The rope, which was too short and had no knot at its end, slipped through the belay device, and the fall resulted in the girl's death.

The rope used was 50 metres long, whereas the climbing route was 30 metres high.

The ropes had been supplied by the sports club, and the 50-metre and 80-metre ropes were very similar in colour, which could have led to confusion.

The court found the sports club guilty, criticising it for 'very serious negligence', ruling that *'the choice of an unsuitable rope resulted from disorderly management of the equipment, its use having been made possible by the lack of supervision of the minors by the instructors, and that the absence of a knot at the end of the rope, that is to say, a safety measure that could have prevented the consequences of the accident, resulted both from the lack of training of the minors and the lack of supervision by the instructors.'*

The court found that these acts of negligence were the direct cause of the accident and constituted the offence of manslaughter by a legal person.

The court imposed a criminal fine of €20,000 on the club, *"proportionate to the seriousness of the offence, to the club's financial situation, and such as to prevent a repeat offence."*

It seems to me that several key lessons can be drawn from this recent decision.

- Particular attention must be paid to the supervision of minors;
- The club must be vigilant regarding the management of equipment that belongs to it and which it makes available to its members; it may indeed be held liable for any mistakes made by its members whilst using such equipment on the pitch;
- The club must ensure the training of its members and supervisors;

<sup>5</sup> Gap Criminal Court, 3 July 2025, No. 392/2025

- The club may be held liable for the 'level of supervision' that supervisors provide to their groups, as well as for the 'training' they deliver; hence the importance of ensuring that supervisors in charge of groups receive high-quality training.

It should be noted that the legal entity may also be held liable in civil proceedings, in particular for compensation for damages suffered, under conditions similar to those applicable to natural persons.

## II. LAW AND LEGAL PROCEEDINGS IN THE EVENT OF A MOUNTAIN ACCIDENT IN SELECTED EUROPEAN COUNTRIES

### A. In Italy

#### 1. Legal principles concerning criminal liability

- Under **Italian criminal law**, the offence of **manslaughter** is set out in Article 589 of the Italian Criminal Code:

*‘Anyone who causes **the death of a person through negligence** shall be punished with imprisonment for a term of between six months and five years.*

*If the act is committed in breach of the rules on the prevention of accidents at work, the penalty shall be imprisonment for a term of between two and seven years.*

*((If the act is committed in the improper exercise of a profession for which a special state qualification or a healthcare profession is required, the penalty shall be imprisonment for a term of three to ten years)).*

*In the event of the death of several persons, or the death of one or more persons and injury to one or more persons, the penalty applicable to the most serious offences committed is increased up to threefold, but the penalty may not exceed fifteen years.” (translated from Italian by Google Translate)*

In the event of manslaughter, a criminal investigation is automatically initiated by the courts.

The offence of **causing bodily harm to another person** is set out in Article 590 of the same code:

*“Anyone who causes **bodily harm to another person through negligence** shall be punished by imprisonment for up to three months or a fine of up to €309.*

*If the injury is serious, the penalty is imprisonment for one to six months or a fine of €123 to €619; if it is very serious, imprisonment for three months to two years or a fine of €309 to €1,239” (translated from Italian by Google Translate)*

For the purposes of this article, the victim must file a complaint within three months of the act causing the harm in order to trigger a criminal investigation.

- Note the offence of **endangering public safety**, provided for in Article 426 of the Italian Criminal Code, which states that:

*“Anyone who causes a flood, a landslide or an avalanche shall be punished with imprisonment for a term of between five and twelve years” (translated from Italian by Google Translate)*

It should be noted that this offence generally implies intentional conduct on the part of the perpetrator.

In addition, Article 449 of the Criminal Code provides that:

*“Anyone who, apart from the cases provided for in the second paragraph of Article 423-bis, **negligently** causes a fire or another disaster provided for in the first chapter of this title ( ) shall be punished with a prison sentence of one to five years.” (translated from Italian by Google Translate)*

For example, Italian case law has convicted two skiers for causing avalanches near a ski resort, on the basis of Articles 426 and 449 of the Criminal Code, for “endangering public safety.”<sup>6</sup>

In applying these provisions, the judge must determine whether the acts were capable of endangering public safety from an *ex ante* perspective, that is to say, in the light of factors known or knowable to the perpetrator at the time the acts were committed (in the case of an offence of mere conduct) or at the time the event occurred (in the case of event-based offences, such as an avalanche).<sup>7</sup>

In other words, even in the case of an abstract danger, the judge must ascertain whether the dangerous situation was capable of being identified by the perpetrator, and whether the endangerment of public safety—in the sense of a danger to the life and physical integrity of persons—was identifiable.

These provisions apply even in the absence of any man-made infrastructure, provided that the possibility of other users, whether skiers or not, using the area cannot be ruled out.

**In civil law, Article 2043** of the Italian Civil Code provides that *‘Any intentional or negligent act that causes unjustified harm to another person obliges the person who committed the act to pay compensation for the damage.’* (translated from Italian by Google Translate)

Pursuant to this article, any victim of an accident resulting from the fault of another person is entitled to compensation for pecuniary and non-pecuniary damage.

In the event of a collision between two skiers, case law refers to **Article 2054** of the Civil Code, which relates to road traffic accidents. This article provides for a presumption of shared liability between the two parties, with each party bearing the burden of proving that they are not responsible for the accident or that they did everything possible to prevent the damage from occurring.

In cases of contractual liability, **Article 1218** of the Italian Civil Code applies, which provides that the party obliged to perform (the professional, for example) who does not perform the service due exactly is liable to pay damages unless they prove that the non-performance or delay was caused by the impossibility of performance resulting from a cause not attributable to them.

## 2. Procedural aspects

In Italy, rescue operations are generally carried out by the police, i.e. the Carabinieri or the police. In the Aosta Valley region, rescue operations are also carried out by ski patrols, who are professionals employed by the operators of the ski facilities.

In the event of serious injury or death, the public prosecutor orders an investigation. This is carried out by sworn officers of the Guardia di Finanza.

They make initial observations regarding the circumstances of the accident and the people involved, and conduct the initial interviews.

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<sup>6</sup> Section 4, No. 14263, 14 November 2019, Criminal Court of Cassation

<sup>7</sup> Section 4, No. 36639, 19 June 2012, Court of Cassation

The defendant must be represented by a lawyer. The lawyer's role is very important; they become the sole point of contact with the courts and the public prosecutor throughout the legal proceedings.

The prosecutor seeks evidence to prove the defendant's guilt. The public prosecutor's office also conducts investigations into the facts and circumstances in favour of the person under investigation (Article 358 of the Code of Criminal Procedure). It may order further expert reports.

If, at the end of the investigation, the prosecutor considers that there is sufficient evidence to support the prosecution at trial, they will bring criminal proceedings (in Italy, it is not the investigating judge who decides to bring criminal proceedings).

The trial will then be scheduled before the judge.

Several scenarios are then possible:

- There may be an agreement between the parties, i.e. a plea bargain. The judge and the parties, together with their lawyers, agree on the sentence. This is known as 'Patteggiamento',
- There may also be a trial in a closed session, based on the investigative evidence already gathered, meaning the judge does not personally hear the various witnesses and parties involved. This is known as '*Il rito abbreviato*';
- The defendant may decide to opt for an adversarial hearing before the judge. This means that the parties—whether the prosecution, the victims, or the defence—will be heard during the trial. This is known as '*Dibattimento*'.

### 3. Criminal liability of legal persons

Criminal liability in Italy is personal (Article 27, paragraph 1<sup>a</sup> of the Italian Constitution).

Legislative Decree No 231 of 8 June 2001 governs the liability of legal persons with legal personality, as well as companies and associations, even those without legal personality, for administrative offences resulting from a criminal offence.

Offences relating to homicide and bodily or non-bodily harm are not included among those covered by this decree.

In Italy, a legal entity, such as an association, cannot therefore be held criminally or administratively liable for matters relating to a mountain accident.

However, **a member of the legal entity, and in particular the president, may be held personally criminally liable** for offences committed in the course of the legal entity's activities, for example for negligence in organising a mountain outing proposed by the Club.

## **B. In Switzerland**

### 1. Legal principles concerning criminal liability

- The main articles of the Swiss Criminal Code applicable to mountain accidents are as follows.

Article 12 of the Swiss Criminal Code, which deals with **unintentional offences**:

*'A person acts negligently if, through **culpable lack of foresight**, they commit a crime or offence without realising the consequences of their act or without taking them into account. Lack of foresight is culpable when the perpetrator has not taken the precautions required by the circumstances and by their personal situation'*

Article 117 of the Criminal Code provides for the offence of **manslaughter through negligence**, punishable by imprisonment for up to three years or a fine.

Finally, Article 125 of the same Code provides for the offence of **causing bodily harm through negligence**, which is prosecuted following a complaint by the victim. This offence is punishable by a custodial sentence of up to three years or a fine.

If the injury is serious, the perpetrator is prosecuted ex officio, whereas if the bodily injury is minor and not serious, the offence will only be prosecuted upon a complaint by the victim.

Article 127 of the same Code deals **with endangering the life or health of another person**, stating that:

*"Any person who, having custody of a person unable to protect themselves or having a duty to watch over them, exposes that person to mortal danger or to serious and imminent danger to their health, or abandons them to such danger, shall be liable to a custodial sentence of up to five years or a fine."*

Section 237 of the same Code provides for the intentional offence of **obstructing public traffic**. This offence is charged against anyone who, through their conduct, triggers an avalanche and thereby endangers other persons.

- In cases of mountain accidents, a suspended sentence is often imposed rather than a custodial sentence, and a fine is generally imposed, as this is more appropriate to the nature of the offence and the lack of intent on the part of the offender than a custodial sentence.

Additional penalties exist, such as a ban on practising a profession (Article 67 of the Criminal Code).

- The outcome of criminal proceedings may affect civil proceedings, as a finding of criminal liability amounts to a finding of civil liability. A criminal conviction will usually give rise to civil compensation.

- It should be noted that, in the case of a professional such as a mountain guide or sports instructor, Swiss law assigns them a **duty of care towards their clients**.

As a guarantor, they must observe all the safety precautions required by their profession, and in particular Article 2 of the Federal Act on Mountain Guides and High-Risk Professions.

This article defines all the components of the duty of care:

- 1- To protect the life and health of participants by taking the measures dictated by experience, made possible by technology and required by the situation.
- 2- Compliance with the following obligations:

- a. explaining to clients the specific risks that may arise from practising the chosen activity;
- b. ensuring that clients have the necessary skills to undertake the chosen activity;
- c. checking that the equipment is free from defects and that the facilities are in good condition;
- d. ensure that the chosen activity is suitable for the weather conditions, particularly snow conditions;
- e. ensure that staff are sufficiently qualified;
- f. ensure that the number of guides is appropriate to the difficulty level of the activity and its risks;
- g. respect the environment and, in particular, preserve the habitats of flora and fauna.

- With regard to a **volunteer leader** within a mountaineering club, Swiss law does not provide for any specific legal provisions.

The court will assess whether the group leader's conduct was 'reasonable', as well as their experience, any qualifications they may have, and the measures that person could have taken to prevent the accident from occurring.

## 2. Procedural aspects

- Rescue workers are not police officers. In the event of an accident, the cantonal police intervene alongside the rescue services to draw up an accident report and conduct initial interviews, in conjunction with the public prosecutor.
- It is the public prosecutor who conducts the investigation; there is no investigating judge as in France. The public prosecutor delegates the following to the police:
  - Interviewing witnesses
  - Interviewing the accused, who are assisted by a lawyer from the outset. Lawyers safeguard the rights of the accused.
  - Interviewing the complainants and victims.
  - Gathering evidence to prove the defendant's guilt. To this end, meteorological and snow science experts, among others, are consulted
- The investigation leads to an order to close the investigation:
  - Either the case is dismissed, in the absence of guilt;
  - Or an indictment before the court of first instance, followed by a trial. The local court's decision may be appealed to the cantonal court, and ultimately to the Federal Supreme Court.
- If no criminal proceedings are initiated or result in a conviction, then victims may resort to civil proceedings. The stages of civil proceedings are as follows:
  - Conciliation before the Commune Judge (Justice of the Peace);
  - If conciliation fails, before the District Court (first cantonal instance);
  - In the event of an appeal against the District Court's decision, before the Cantonal Court (second cantonal instance);

- In the event of an appeal against the decision of the Cantonal Court, before the Federal Court.

### 3. Criminal liability of legal persons

Article 102 of the Criminal Code provides that:

*“A crime or offence committed within a company in the course of commercial activities consistent with its objectives shall be attributed to the company if it cannot be attributed to any specific natural person due to the company’s lack of organisation. In such a case, the company shall be liable to a fine of up to five million francs.”*

Pursuant to these provisions, a legal entity **cannot, in principle, be prosecuted in Switzerland**, unless no identified natural person can be held responsible for the commission of the offence.

However, **a failure in the organisation of the company may potentially be attributed personally to one of its members.**

## C. In Austria

### 1. Legal principles concerning criminal liability

- In criminal law, the main offences that may arise in connection with mountain activities are as follows.

- **Negligent homicide** is covered by Section 80 of the Austrian Criminal Code, which provides that:

*‘(1) Anyone who through negligence causes the death of another person shall be liable to a term of imprisonment of up to one year or a fine of up to 720 daily fines.*

*(2) If the act has resulted in the death of several persons, the perpetrator shall be punished by imprisonment for a term not exceeding two years.”*

This refers to manslaughter caused by simple, non-aggravated negligence.

The fault in question may be negligence, a lack of due care, or an omission if the person responsible was in a position to prevent the accident from occurring.

In order for negligence to be established, the perpetrator’s conduct is compared with normal and reasonable conduct. The act must objectively contravene the perpetrator’s obligations. The decisive factor is what a reasonable person would have done in the same situation. The death must have been foreseeable and avoidable.<sup>8</sup>

Negligence is defined in Section 6 of the Austrian Criminal Code (StGB) or in Section 1294 of the Austrian Civil Code (ABGB).

- **Manslaughter through gross negligence** is provided for in Section 81 of the Austrian Criminal Code, which states:

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<sup>88</sup> <https://www.bergundsteigen.com/artikel/haftung-bei-vereinstouren/>

*'(1) Anyone who causes the death of another person through gross negligence (§ 6(3)) shall be liable to a custodial sentence of up to three years.*

*(2) Any person who causes the death of another through negligence after having, prior to the offence, placed themselves in a state of intoxication that does not exclude criminal liability, even through negligence, by consuming alcohol or using another intoxicating substance, whilst they foresaw or could have foreseen that they were about to perform an act which, in that state, was likely to cause or increase a danger to the life, health or physical safety of another person.*

*(3) Any person who, through gross negligence (§ 6, para. 3) or in the case referred to in para. 2, causes the death of a large number of people shall be liable to a term of imprisonment of between six months and five years."*

The main criterion applied is that of 'gross negligence'.

The criteria for culpability are the same as those mentioned above, but are aggravated in the event of a clear violation, or of an omission in the face of a particularly serious and obvious danger.

The penalty is increased in the event of the death of a significant number of people.

- **Negligent bodily injury** is covered by Section 88 of the Austrian Criminal Code:

*'(1) Anyone who, through negligence, causes bodily injury to another person or harms their health shall be liable to a custodial sentence of up to three months or a fine of up to 180 daily fines.*

*(2) If the offender did not act with gross negligence (§ 6(3)) and if*

*1. the injured person is a relative or in-law of the offender, in the ascending or descending line, or their spouse, registered partner, brother or sister, or is to be treated as a member of the offender's family in accordance with § 72(2),*

*2. the offence did not result in damage to the health or occupational incapacity of another person for more than fourteen days, or*

*3. the offender is a member of a regulated health profession and the bodily injury was inflicted in the course of their professional practice,*

*then the offender is not liable to punishment under paragraph 1.*

*(3) Anyone who, through gross negligence (§ 6(3)) or in the case referred to in § 81(2), injures another person or causes harm to their health shall be liable to a custodial sentence of up to six months or a fine of up to 360 daily fines.*

*(4) If the offence referred to in paragraph 1 results in serious bodily injury (§ 84, paragraph 1), the offender shall be liable to a custodial sentence of up to six months or a fine of up to 360 daily fines. If the offence referred to in paragraph 3 results in serious bodily injury (§ 84(1)), the offender shall be punished by imprisonment for up to two years; however, if it results in serious bodily harm (§ 84(1)) to a large number of persons, the offender shall be punished by imprisonment for up to three years."*

- **Endangering physical safety** is provided for in Section 89 of the Austrian Criminal Code:

*“Anyone who, intentionally, through gross negligence (§ 6, para. 3) or through negligence in the circumstances described in § 81, para. 2, endangers the life, health or physical safety of another person shall be punished by imprisonment for up to three months or a fine of up to 180 daily fines.”*

• With regard more specifically to ski touring, an Austrian lawyers’ group has identified a **number of key cases where liability may arise**<sup>9</sup>, including in particular:

- Failure to comply with the 10 recommendations drawn up by the FIS for skiers. In Austria, these recommendations are important; they apply to ski touring as well, but only on the piste, within a ski area<sup>10</sup>;
- The influence of drugs or alcohol. This in itself may constitute a danger to others;
- Faulty ski equipment. This includes errors on the part of the skier, or the rental company, the retailer, or the manufacturer.
- Supervision. In the case of a professional, instructor or guide, a contractual relationship exists which includes the obligation to ensure the physical safety of clients. In the case of outings involving non-professional skiers, they are responsible for their own safety, depending on how the group is organised.
- Avalanches. Skiers are liable according to their knowledge, the question being whether the danger was recognisable or not.

• Regarding the **liability of a volunteer leader**, case law has established that the latter is bound by the same safety obligations as a professional once they take responsibility for a group.

Tour leaders, even volunteers, must fulfil the duty of ‘due care’ set out in Section 1299 of the Austrian Civil Code.<sup>11</sup>

More specifically, the volunteer supervisor must comply with the standards of the ÖAV (Austrian Alpine Association), which now serve as the benchmark in this area.<sup>12</sup>

It has also been held that the degree of care required is determined by the care that ‘a prudent and reasonable person, with an appropriate regard for the values protected by law, would exercise in the perpetrator’s situation in order to recognise and avert the risk of harm to a legal interest’.<sup>13</sup>

More generally, it is considered that a person may be held criminally liable where it is deemed that they have a better understanding of the risk than the person placing themselves in danger, by virtue of superior expertise<sup>14</sup>.

• It should be noted that, with regard to **participants in an outing**, an important court ruling, which serves as a reference for the operation of Austrian mountaineering clubs, has established that participants in a mountain outing accept a degree of ‘residual alpine risk’.<sup>15</sup>

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<sup>9</sup> <https://harlander-partner.eu/>

<sup>10</sup> <https://alpinesicherheit.at/>

<sup>11</sup> Supreme Court (Vienna), 13 September 2005, OGH 1 Ob 159/05v

<sup>12</sup> Innsbruck Public Prosecutor’s Office (Staatsanwaltschaft Innsbruck), Tyrol, April 2019, case dismissed.

<sup>13</sup> EBRV 1971, 68, cited in the article <https://www.bergundsteigen.com/artikel/haftung-bei-vereinstouren/>

<sup>14</sup> AG Laufen, 6 March 2006, 260 Js 27482/05 published by JURIS, cited by a Public Prosecutor in the article [Advanced Training for Alpine Experts 2025 | Austrian Alpine Safety Administration Council](#)

<sup>15</sup> Innsbruck Public Prosecutor’s Office (Staatsanwaltschaft Innsbruck), Tyrol, April 2019, cited above

## 2. Procedural aspects

In the event of a serious accident involving people, an investigation is conducted by the mountain police (*Alpinpolizei*). The case is referred to the public prosecutor's office, in the person of the Public Prosecutor.

This referral is made pursuant to Sections 159 and 160 of the Austrian Code of Criminal Procedure, either in the event of a death where it is necessary to preserve evidence and conduct a preliminary investigation, or where there is suspicion of a criminal offence arising from a complaint or other means.

In principle, the burden of proof lies with the Public Prosecutor's Office, meaning that it is incumbent upon it to prove that the offences have been committed and to establish their constituent elements. It may commission technical and scientific expert reports.

It also investigates the case in the defence's interest, that is to say, it seeks out any possible grounds for justification, in light of the circumstances of the case.

The case is then either dismissed for lack of sufficient evidence, or referred to a court, which rules on the evidence and the defendant's potential guilt. *Ultimately*, the principle of '*in dubio pro reo*' applies, which provides that the benefit of the doubt lies with the accused.

There are three possible outcomes. Either the defendant is acquitted, or they are convicted, or the case results in a settlement (out-of-court settlement), often in the form of a fine.

## 3. Criminal liability of legal persons

In Austria, the criminal liability of legal persons is provided for by the Act on the Liability of Associations (*Verbandstrafgesetz – VbVG*), which has been in force since 2006.

The criminal offence must have been committed in breach of the obligations incumbent upon the legal person.

In the case of a mountaineering club, '**failure to supervise and organise**' on the part of the management – for example, failing to check the qualifications of the club's instructors, or failing to check the technical ability of participants registered for an outing – may be held against the club and lead to its conviction as a legal person.

A court ruling found a club liable following the fatal fall of a hiker, due to a broken cable securing a path.<sup>16</sup>

In this judgment, the managing club was held liable because, by installing a safety cable, it was considered that the club had created an 'expectation of reliability'. As the cable was corroded from the inside, the club was found guilty of gross negligence.

More generally, it is clear from Austrian case law that, in order to hold a club liable, the courts consider:

- **Failure to comply with best practice** in the field (number of participants on an outing, techniques used, materials and equipment);

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<sup>16</sup> Supreme Court (Oberster Gerichtshof), 27 May 2021, OGH 2 Ob 16/21y

- **The duty of maintenance**, where the club is responsible for marking and maintaining a route, for example;
- **Organisational failings**, for example the absence of a rigorous decision-making process to manage the outings organised, and in particular the adaptation or cancellation of such outings.

The risk of legal liability for legal entities therefore appears to be real in Austria, a country where there is a strong culture of mountain clubs organising outings.

## D. In Norway

### 1. Legal principles concerning criminal liability

In criminal law, offences of manslaughter or causing unintentional injury are provided for in sections 280 and 281 of the Norwegian Penal Code, which require negligence (*uaktsomhet*) to be established.

Norwegian case law defines this negligence as behaviour that breaches the rules of conduct required in a given field and where one can be expected to act with due care given one's personal qualifications, and highlights some examples of negligence:

- Deliberate disregard of the avalanche risk assessment bulletin, for example, exposing oneself to avalanche-prone slopes where there is a high risk;
- Lack of safety equipment, for example setting off without the necessary equipment to trigger an alert (particularly for Svalbard), or without the safety equipment required to provide rescue following an avalanche, rockfall or fall;
- The liability of a 'de facto leader' in a non-professional group, for example, for failing to provide the group with suitable equipment for the chosen route, or for exposing people to a risk they were unable to assess for themselves.

In the case of groups led by a professional, the latter is subject to a duty of care that is somewhat stricter than in many other European countries, and which sometimes amounts to a duty of result.

Conversely, regarding the individual practice of mountain sports and the associated risks, it is the general law of civil and criminal liability that applies, and Norwegian culture regarding mountain accidents is somewhat **more flexible than in other countries**.

It is worth noting the existence of the 'Norwegian Mountain Code' (*Fjellvettreglene*), issued by the Ministry of Tourism, a non-binding document, which reads as follows:

1. *Plan your trip and tell someone your route.*
2. *Choose a route that suits your experience and fitness level.*
3. *Take account of weather conditions and the risk of avalanches.*
4. *Be prepared for bad weather and freezing conditions, even on short distances.*
5. *Carry the equipment required for your safety and that of others.*
6. *Choose safe routes. Watch out for avalanches and ice.*
7. *Use a topographical map and a compass.*
8. *Don't be ashamed to turn back while there is still time.*

### 9. *Save your strength and seek shelter when you need it.*

This code does not constitute a regulation as such, but forms part of the body of rules of good conduct to be observed in Norway when visiting the mountains. The courts may draw upon it when assessing the conduct of those involved and determining whether 'gross negligence' has occurred.

However, it is by no means a legal rule that can be enforced against a participant.

These rules of good conduct may potentially serve to limit the liability of a guide or a club supervisor, as all participants are expected to be familiar with and comply with them.

## 2. Legal principles concerning civil liability

In Norway, civil liability for damages is based on three conditions:

- There must be a basis for liability (*ansvarsgrunnlag*), generally negligence;
- There must be financial loss;
- There must be a causal link between the basis for liability and the financial loss.

The criteria for negligence are less strict in civil law than in criminal law.

If there is a formal or informal agreement regarding supervision or guidance between the parties, it is the unwritten rules of professional liability (*profesjonsansvaret*) that will determine what constitutes negligence.

It should be noted that if a liability exemption clause has been agreed, this will generally be set aside in cases of gross negligence, bearing in mind that the threshold for gross negligence is low in matters of professional liability.

For groups supervised by a professional, or operating within a context of supervision or guidance, the duty of care can therefore be considered somewhat stricter than in many other European countries.

On the other hand, with regard to the individual practice of mountain sports and the risks inherent therein, it is the general rules of civil and criminal liability that apply, and Norwegian culture regarding mountain accidents is somewhat more flexible than in some other countries.

## 3. Procedural aspects

In the event of a mountain accident, rescue operations are handled by the Norwegian Search and Rescue Service (SAR).

The local police launch an 'initial investigation' (*Etterforskning*). Findings are recorded, with the assistance, where necessary, of first-aiders and experts called to the scene.

Evidence is routinely seized for forensic analysis.

Those involved are interviewed as witnesses and may subsequently become suspects (*mistenkt*) or be charged (*siktet*) if evidence of negligence is found.

The public prosecutor, who in Norway is part of the police structure itself, may decide on coercive measures such as police custody and further expert assessments.

The case is then referred to the Director of Public Prosecutions (*Statsadvokaten*).

The outcome may be dismissal of the case (*Henleggelse*), a fine (*Forelegg*), or an indictment (*Tiltalebeslutning*) leading to a referral to the court, which rules by a panel of judges.

#### 4. Criminal liability of legal persons

The criminal liability of legal persons is provided for in sections 27 and 28 of the Norwegian Penal Code.

Legal persons can easily be held liable in Norway, either due to the fault of a natural person acting (or failing to act) on behalf of the legal person, or due to a 'systemic fault' or 'anonymous fault', arising from an accumulation of minor organisational faults and in the absence of any conviction of a natural person belonging to the said legal person.

Penalties may include fines, confiscation, or a ban on carrying out commercial activities.

In the case of a mountaineering club, the club may potentially be found guilty of 'systemic negligence', for example if a group is led in the field without suitable equipment or without specific skills. The club may be found guilty even in the absence of a conviction against the volunteer concerned.

It should be noted that organising legal entities, such as commercial agencies, but also clubs, are in principle obliged to prepare a document covering 'risk analysis' (*Risikovurdering*) in accordance with Norwegian law, structured as follows:

- Identification of hazards: terrain, weather, human factors.
- Risk assessment, i.e. the probability of the event combined with the consequences: green (acceptable risk), yellow (measures required), red (unacceptable risk)
- Mitigation measures, i.e. corresponding practical actions (for example, for a yellow risk of getting lost, the leader should have a GPS with the route pre-loaded, and a paper map)
- Emergency plan, to alert the emergency services, notify the club, keep a register of participants and their emergency contact numbers, etc.

By producing this document, the club demonstrates the absence of 'systemic negligence' and shifts the blame for the accident onto the leader's human error, which is much more difficult to prove.

In conclusion, in Norway, the principle of individual responsibility and acceptance of risks associated with the natural environment often takes precedence over the liability of mountaineering clubs.

However, this presupposes that participants are actually aware of the risks involved and are able to understand them, and that they have alternatives available to reduce or avoid these risks before being exposed to them.

## **APPENDIX 1 – ANALYSIS OF THE DECISION OF THE GRENOBLE CRIMINAL COURT OF 9 SEPTEMBER 2025**

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The purpose of this appendix is to present in detail the circumstances and judicial handling of a recent accident that occurred in the Belledonne massif in France, involving instructors from a French mountaineering club.

### **Example of the accident that occurred in Chamrousse on 7 January 2023**

On 9 September 2025, the Criminal Division of the Grenoble Judicial Court handed down a conviction against a guide from the Club Alpin Français Grenoble Oisans (CAF GO), in connection with an outing organised by the latter<sup>17</sup>.

#### **Summary of the facts:**

On 7 January 2023, a group of five trainees and two instructors from CAF GO were on a winter mountaineering hike on relatively easy terrain: a snow ridge with small ledges. This was the north ridge of the Grand Colon, in the Belledonne massif.

The outing was led by instructor A, a qualified mountaineering instructor since 2016, having completed two modules: adventure terrain and mountain terrain. Also present was trainee instructor B, a mountaineering instructor still in training, having completed two out of three modules as part of the new instructor training programme introduced in 2022.

During the ascent, on a steep but relatively sheltered snow slope, Instructor A decides to let the trainees proceed unroped.

On a steeper rocky section, instructor A suggests setting up a handrail to secure the passage, and that the trainees pass one by one, unroped, but securing themselves with a lanyard on the handrail.

Trainee instructor B offered to set up the handrail herself. To do so, she used a 50-metre rope and placed four anchor points to secure it, ending with a belay station below. Upon reaching the end of the rope, there are 5 metres left to cross without being secured to reach a safe platform. However, trainee instructor B considers the passage to be relatively easy and believes the trainees are capable of crossing it. Instructor A has remained at the top and cannot see the end of the handrail.

Instructor B is positioned below, on the platform, after the unsecured section. She offers advice to the trainees as they descend. Four trainees cross the section facing the slope with their ice axes planted in the snow. The fifth trainee arrives facing the drop-off and, as she turns to descend in turn, loses her balance and slides 450 metres, losing her life in the process.

#### **Proceedings:**

The president of the Grenoble Oisans French Alpine Club was interviewed on 18 January 2023. He is also a mountaineering instructor (trainer of mountaineering instructors).

The President, in particular, verified the qualifications of the two instructors, A and B. He explained to the investigators the training programme for instructors within the CAF.

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<sup>17</sup> Grenoble Regional Court, Criminal Division, 9 September 2025, No. 1777-BL

Supervisor A, the 'lead climber', was also interviewed. According to him, supervisor B, who was a trainee instructor, was competent to install the handrail, and he did not need to check it himself. In his view, three errors were made: the choice of handrail, which did not allow access to a safe area; the fact that instructor B did not extend the handrail, which was consequently too short; and the fact that the victim attempted to descend with their chest facing the drop rather than facing the slope.

Instructor B is interviewed, along with several members of the group.

The victim's family members (sister, brother, parents, etc.) filed a complaint against persons unknown (criminal proceedings) and joined the proceedings as civil parties (civil proceedings) to seek compensation for the emotional and professional harm suffered as a result of the loss of their loved one.

The national technical director of the FFCAM is interviewed, as is the head of the mountaineering section within the CAF GO, who himself holds a federal mountaineering qualification.

At the conclusion of the investigation, liability is sought under Articles 221-6 and 121-3 of the Criminal Code, which classify the offence as manslaughter, and supervisors A and B are referred to the criminal court:

*“On 7 January 2023, in Revel, in the Belledonne massif, in any event in the department of Isère, on national territory and in a case not yet time-barred, unintentionally caused the death of XXX through clumsiness, recklessness, inattention, negligence, or a breach of a statutory or regulatory duty of care or safety; specifically, whilst acting, as part of a supervised mountaineering training outing organised by the Club Alpin Français Grenoble Oisans (CAFGO), in his capacity as a qualified mountaineering instructor and experienced practitioner, chosen, for the crossing of a technically challenging section on the route taken by the group (Arête des Mottins), to use a recognised but rarely employed mountaineering technique, namely a handrail combined with protection points, without equipping the climbers with a double lanyard system essential for their constant safety, and by delegating its technical installation to a novice co-instructor without providing any instructions or advice to her and without carrying out any visual inspection or check on the efficiency of the system, thereby effectively validating the incomplete safety measures for the difficult section to be crossed, the handrail being, in this case, non-existent on the steep and exposed 'exit' section, the site of the victim's fall”*

The offences identified by the investigating judge and which justify referral to a court are therefore:

- The decision, for the crossing of a technically challenging section on the route taken by the group (Arête des Mottins), to use a progression technique that is recognised but rarely used in mountaineering, in this case a handrail combined with protection points;
- Failing to equip the climbers with a double lanyard system essential for their constant safety;
- Delegating the technical set-up to a novice co-instructor without providing any instructions or advice to her, and without carrying out any visual checks or verifying the

effectiveness of the system, and thereby effectively approving the incomplete safety measures for the difficult section to be crossed, the handrail being, in this instance, non-existent on the steep and exposed 'exit' section, the location where the victim fell.

### The court's analysis

The court follows the following reasoning:

1) What is the damage?

The death of a participant.

2) Is there an act that caused the damage?

The court examines the conditions under which the outing was organised, and considers:

- The individual equipment of the victim and the participants (helmet, harness, crampons, ice axe, carabiners, belayer, avalanche transceiver, etc.), and the shared equipment (four 50-metre ropes and nuts);
- The technical ability of the participants and its suitability for the chosen outing, as well as the participants' physical and mental capacity;
- The participants' awareness of the danger of the route;
- The weather and snow conditions on the day of the outing;
- The fact that the handrail is rarely used in mountaineering, but that it is nevertheless 'a recognised progression technique';  
In this regard, the court referred to the training booklet on equipment and techniques for high-mountain guides published by the National School of Skiing and Mountaineering (ENSA), as well as the summer mountain guidebook of the French Federation of Alpine Mountain Clubs (FFCAM). The FFCAM's mountain guidebook mentions the possibility of installing a handrail;
- The arrangements for preparing the outing. Prior to the outing, two trainees, together with the supervisor, analysed the BERA and the weather report.

The court is examining whether the behaviour of supervisor A constitutes negligence, and notes that:

- The handrail was installed by trainee instructor B, who was undergoing training as a beginner's mountaineering instructor (2/3), without any instruction, advice or subsequent checks by instructor A, and this was her first time installing a handrail in a mountaineering context.
- Instructor B, the trainee, closed the handrail due to a lack of sufficient rope, thereby leaving the final steep section, approximately five metres high, unsecured. She had indeed judged that this section could be descended by the whole group without difficulty following the various snow-stopping exercises carried out a few hours earlier and given the group's level of experience.
- Supervisor A stated that he had not carried out any visual checks, as this was impossible from his position (he had remained at the front, bringing up the rear of the group), and added that, given Supervisor B's level of training, he was not required to check the handrail.

- However, before the handrail was installed, Supervisor A had carried out visual checks by moving slightly below the group to ensure that a handrail could be installed; he therefore had the opportunity, after supervisor B had installed the handrail, to return to the same spot in order to visually check whether the handrail had been fitted correctly and safely.

### 3) Is there a causal link between the injury and the negligent act?

The court notes that the absence of additional safety equipment other than the handrail (for example, a safety harness, or the installation of a second handrail) did not cause the fall.

There is therefore no direct causal link between the supervisor's actions and the accident.

The court nevertheless held that the absence of additional equipment prevented the fall from being prevented or, at the very least, that the fall would not have been fatal had it been present.

The court therefore finds a link of indirect causality, which implies gross negligence as a basis for a conviction.

### 4) Was the act negligent?

The court noted that the participants had a sufficient level of mountaineering ability and that the choice of climbing technique was appropriate given the terrain.

The court therefore concluded that instructor A *“had not committed any deliberate act of endangerment resulting from a breach of a statutory or regulatory duty.”*

However, the court then held that, by failing to check the handrail installed by instructor B, and by failing to give her any instructions regarding this section which he knew to be steep and dangerous since he was familiar with and had prepared the route, supervisor A *“committed a serious fault which exposed all participants on the outing to a significant risk that led to the victim's death.”*

As regards instructor B, the court found that she *“committed a minor fault by failing to complete the handrail in a safer location for the whole group and by misjudging the danger inherent in the steep section; she did not commit a serious fault that exposed others to a risk of particular gravity which she could not have been aware of.”*

### **Conclusions:**

The court found instructor A guilty of manslaughter as an indirect perpetrator who committed a gross negligence that exposed others to a risk of particular gravity which he should have been aware of, and sentenced him.

The sentences imposed on him are 12 months' imprisonment, suspended, and an additional penalty of a five-year ban on guiding in medium and high mountains.

The court acquitted guide B, finding that she had committed a simple fault rather than a gross negligence.

**Comments:**

This decision shows that a criminal conviction is possible in the context of a club outing in the mountains.

Criminal liability on the part of the guide is not often upheld, as gross negligence is required in cases of manslaughter, but it remains a possibility.

Gross negligence will most often be either a grossly negligent act, as in the case cited above, or a series of simple negligence acts.

The leader responsible for the trip cannot delegate their responsibility to a participant or a trainee leader without closely supervising the latter's actions, as they may be held criminally liable.

The fact that the outing takes place in an unpaid context as part of training towards independence does not exempt the supervisor from their responsibility towards the people they supervise.

As regards the voluntary organisation, i.e. the club, no legal proceedings have been brought against it.

The main reason is that, at the investigation stage, no offence was found against it.

However, it is clear that the president and the head of the mountaineering section of CAF GO were interviewed, as well as a technical official from the national federation (FFCAM). These institutional bodies were required to provide explanations.

The judgement provides no information on this point, but one can imagine that the trip was well managed by the club since, in particular:

- The group's composition was appropriate;
- The outing was supervised by a qualified instructor and a trainee supervisor;
- The group's equipment (provided by the club) was adequate.