

October 07-12

ISSW

2018

INNSBRUCK

Tagungsband S. 163 f

ABOUT METHODS AND MOTIFS

Stefan Beulke

GREFFENIUS ZEHLE BEULKE BARBER, Munich, Germany

1. Within the context of snow sports activities, the legal question comes up: Is an avalanche accident caused by negligence? Someone is truly liable for it? And if so, the special issues reside with the aspect of finding an adequate scale of encumbrance.

In forensics it leads to the following question: How should and could parties involved in the accident behave in order to avoid the avalanche accident?

2. Consequently, the question of recognizing avalanche danger is of central importance. Said legal problem gets us directly in the alpine discipline of assessment methodology/ies for avalanche danger.
3. In contrast to uniform, cross-nationally recognized doctrines, snow enthusiasts are confronted with a wide range of “methods” and “strategies”. And these reveal, at least at part, substantial differences in terms of contents. Considerable risks, problems and insecurities may emerge in the case of an avalanche accident for both, alpine users as well as alpine experts and lawyers due to this variety of methods and opinions.
4. For the German alpine region only, a first glance at “schools of thought” and “methods” for the assessment of avalanche danger (dating 2017) resulted in a portfolio of at least (!) 30 more or less differentiating up to similar “offers” for the “correct” assessment of avalanche hazards. Whereas, the range of topics trying to pin down danger assessment went from pure snow mechanics up to group dynamics, meaning depth psychology.

5. From a materialistic, legal point of view, the lawyer should automatically ask for the usability of such methodological variety. This approach is required for the determination of the duty of care in the context of legal avalanche accident assessment from the ex-post perspective.

Are we dealing with methods in the context of plausible and comprehensible rules of conduct for individual case-related danger assessment? Or is it only about (abstract) information relating to (possibly) danger-influencing parameters?

And which method is the correct one if various methods lead to different results?

6. In the light of a study of sociology of law, the following not-less-interesting question arises: How did this unique variety of methods evolve?

Is the alpine community truly searching for simple, applicable, and verifiably efficient accident prevention measures? Or is the variety of methods possibly an indicator for a potentially sensitive mix of pseudo-scientific method marketing, borderland fascination and readiness for self-deception within the alpine community?

To phrase it differently: What are - possibly - the true motifs for method diversity?

7. Within the vital interests of the alpine community: A reinforced standardization of methodologies for the assessment of avalanche danger is urgently required in order to enable improved assessment of legal risks in the context of avalanche accidents caused by snow sports. Not to be forgotten is the due consideration of evident, continuing uncertainties regarding the local and individual slope-related assessment of avalanche danger.