

## **Andorra:**

### **The Road User in Winter Conditions within German Municipalities - Legal Aspects**

L'usager en conditions hivernales dans les villes en Allemagne – aspects juridiques

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#### **Abstract**

In Germany in winter time freezing periods frequently alternate with melting periods which leads to manifold traffic problems because of icy roads. By road law, the municipalities are obliged to provide road winter maintenance on their streets. They have to clear away the snow or spread de-icing and gritting materials "to the best of their ability" to enable economic and social life. Municipalities with less than 80-20, 000 inhabitants (dependent on the respective Federal Land) have to care only for the local roads but not for other roads in their area (Federal, Land, Kreis streets).

Road users have a legal claim to road winter maintenance only in case they are unable to avoid that their life, their health and their property are seriously jeopardized in spite of their own extraordinary efforts in relation to the nature of the circumstances. In case of a traffic accident with personal injuries and property damage, the municipalities are liable for the breach of the legal duty to maintain safety on roads if they did not provide adequate road winter maintenance at street spots which are a) important for the traffic and b) dangerous for the traffic.

According to the civil courts, the person or institution who/which makes traffic on the road possible is liable for the danger deriving from this possibility. The municipality is liable for its employees in charge if they were negligent. If private haulage contractors work for the municipality and cause damage, they are usually liable under transportation law. The municipalities can limit their liability by

setting up traffic signs. Due to municipal statutes, frontagers are obliged to clear away the snow or spread de-icing and gritting materials on the pavement in front of their premises. If they do not fulfill their legal duty to maintain safety on the pavement and there is personal or property damage, they can be held liable. Even if the house owner has charged a tenant in the house with performing these duties, he is still responsible to a certain extent. He at least has to randomly check if the tenant carries out his road winter maintenance duties correctly. The house owners usually have property and general liability insurance. Tenants charged with performing road winter maintenance will have similar insurances.

### **Part A. Topography, Climate in Germany**

On the surfaces of roads and of pedestrian ways in many regions of Germany freezes water during the nights in the time between end of October and mid-March with the consequence of icy roads. This is caused by the climatic circumstances and by the topography in Middle Europe which favor the frequent changes between frosty and melting periods. In addition especially in higher sites snow falls are relatively often during this period. The climatic circumstances are influenced in many regions of the west and the north of Germany by the Atlantic Ocean and by the North Sea – the water masses of the ocean store heat and deliver humidity.

The wintertime brings therefore much less snow and less cold and therefore less ice on the roads than in the east and in the south. In the east of Germany where the Arctic cold and the winter cold of the Eurasian landscape with its Continental climate of the East have their effect and in the hilly and mountainous South the changes of the weather are less frequent. On the average in winter time the road users are obstructed or have at least the feeling of limited safety on the roads and on the sidewalks on grounds of the climatic conditions which is provoking delays for the traffic flow.

These climatic conditions of course are also influenced by the topography of Germany. **(s. picture 2)** The northern part of Germany is relatively flat and the elevation is not higher than 200 m (656 ft). The middle part and the southern part however are mostly covered by highlands; in the middle are the highlands of the Harz (max. 1141 m = 3740 ft), in the East the Erzgebirge (max. 1215 m = 4000 ft), west of the River Rhine are the Eifel hills (max. 747 m = 2450 ft). South east is the Bayerische Wald (max. 1456 = 4780 ft), south west along the River Rhine is the Black Forest (max. 1493 = 4900 ft). The Alps in the South are mountains with the Zugspitze (2962 m = 9350 ft) as the highest mountain of Germany.

### **Part B. Law problems with Ice and Snow on the streets in town**

#### **1. Legal issues**

Assuming that there are icy roads and streets the lawyer has the following questions:

- From which legal regulation derives the duty to take actions against snow and ice on the roads and walkways?
- Who is bound to this duty?
- Who can legally claim that the responsible institution does its duty?
- Is it possible that the responsible institution delegates this duty to a third person?
- Who is liable for the damages (physical harm or losses) which are caused by the road winter maintenance or in case of damages caused because of no or no sufficient road winter maintenance?

The legal issues which come up in connection to the road winter maintenance in a community being a part of an administrative district in the most populated Land of Germany – the Land Nordrhein-Westfalen (NRW) - can be an example for the conditions in all small communities in Germany. So in this presentation I will concentrate on a small town near Bonn in NRW which is situated in the Rhenish Slate Mountains on the left bank of the river Rhine. It stretches from 60 m (197 ft.) to 270 m (886 ft.) above sea level.

## **2. Legal Regulations with the Imposition to take Actions against Snow and Ice on Roads and Waking Ways**

### **2.1 Winter service is a part of governmental services of general interest**

According to the roads law of the Land NRW the authorities responsible for road construction and maintenance “ought to clear up and grit the roads to the best of their ability when it is icy or snow slippery.” This statutory provision takes into account that the economic, social and private life must be restricted in quite an important manner, when public roads cannot be used because of icy roads. Our whole daily life in Central Europe depends on the fact that roads and streets in the towns can be used by cars and by cycles during the whole year. Some 70 years earlier it was completely natural that in every private household there were stocks with food and with heating supplies for the whole winter period. The economic life then had to be reduced compared with that of the other seasons not least because of the important reductions in the matter of traffic due to the weather. The actually achieved road winter maintenance has also helped in an important manner that the difference compared with the other seasons has become much less concerning the supply with food and other economic goods and the employees with their ability to reach their working places and the pupils to get to their schools; the hereby increased economic welfare has brought an important development of the living standard for far most inhabitants.

As a resumé we can conclude: The road winter maintenance is a part of governmental activities which help to make the live of the citizens easier or at least help to ensure the average living standard.

### **2.2 Road Winter Maintenance in the Legal Sense is part of Road Cleaning Duty**

The safeguarding of the road winter maintenance is according to German legal tradition a part of the duty to clean up the public roads. That is the reason why in the statutory provision on road cleaning in the public roads law of the Federation and of the Länder there are also paragraphs concerning road winter maintenance. The road cleaning and the road winter maintenance often are regulated in full particulars. But some of the Länder have a law on road cleaning in addition which regulates also the road winter maintenance; the Land NRW has such a law too. The regulations in this law address to the authorities who are in charge of the road winter maintenance; but they address also to the citizens.

### **2.3 The Scope of the Duty for Road Winter Maintenance**

With the legal regulation, that the responsible authorities have to maintain the roads „according to their ability“ and that they ought to clean and to grit when the roads are icy and with snow at the best of their ability there is written down by law the fact of experience: The citizens of a town cannot expect that the authority is fully equipped with the necessary operational winter maintenance vehicles, machinery technology and the necessary personal in case of sudden snow fall when there had been no snow since years. Furthermore it can't be expected that every street of the town will be cleared and scattered; even less that this will be done all at the same time.

In this sense, „according their ability“, the regulation of the Road Cleaning Act of the Land NRW has to be interpreted, as Article 1 of this act speaks without limitation: „The public roads within the built-up areas have to be cleared and scattered by the municipality ...” . It is not required by the Road Cleaning Act neither the obligation to clear and scatter the street-net at once nor to do that completely.

## 2.4 Legal Interpretation

The above said concern the legal part of the road winter maintenance; it is self evident you have to differ from this

- The considerations of technical expediency -  
for example it may be technically expedient to act as immediately as possible when snow is falling to avoid that the snow on the surface changes into ice by the many car tires rolling over the snow, or
- The economic facts  
- for example the cleaning and gritting of the road as quick as possible will less obstruct the flowing of the economic life, and
- The requirements of local politicians or local press  
authorities very often give in to the demands of these spokespersons of citizens and act after their wish even when there is no obvious duty to do that.-

## 3. Who is in Charge with the Road Winter Maintenance?

Before this question can be answered we have to face the organization of the Federal Republic of Germany. Germany has 16 Länder and as well the Federation as the Länder have their own public roads law. It is true that the Länder are very different as well in area – Bayern (70 550 km<sup>2</sup>) has an area which is 168 times bigger than that of Bremen (419 km<sup>2</sup>), - as in the figure of the inhabitants – Nordrhein-Westfalen (17,8 Mio. inhabitants) has 27times more inhabitants than Bremen (0,66 Mio inhabitants). On the other hand there exists a lot in common between these Länder concerning the law system and the organization of the public administration. One of the basic ideas of the German Constitution of 1949 is that the public administration is not operated by the Federal public administration but by the public administration of the particular Land or by the local governments of this Land. Regardless whether the Federation or the Land has made the law and who has to bear the investment costs: This principle exists also in the field of the road administration.

The different administrations with the duty to construct and maintain roads and which therefore bear the investment costs are

- for Federal Autobahnen (Federal expressways) and Bundesstraßen (Federal trunk roads) the Federation,
- for Landesstraßen (roads of the Land) the single Land,
- for Kreisstraßen (county roads) the special county and
- for Gemeindestraßen (municipality roads) the municipality.

The Federal Autobahnen and the Federal trunk roads are paid by the Federation but they are constructed and maintained by the road administration of the respective Land. And many of the nearly 300 Landkreise (counties) and nearly 110 autonomous cities have transferred the maintenance of the Bundes-, Landes- and Kreisstraßen to the Land road administration as far as they are in charge for these roads by law. And also many of the nearly 10.100 county-affiliated municipalities in Germany have transferred by contract the construction of their roads or even the maintenance to the public road administration of the county or of the Land. Thus the road law of the Land NRW says that “the municipalities, the towns, the counties and the road administration of the Land can transfer by contract the administration and the maintenance including the remodeling and extension of the roads with refunding the expenses.” On principle municipalities are responsible for all roads within the passages through the built-up areas; in municipalities with less than 80.000 inhabitants (in Nordrhein-Westfalen; in other Länder the figure can be less; see Picture 6) the municipalities have only to care for their local roads.

Highway class		Length [km]	Property and financial obligation for construction and maintenance		Administration	
			Open routes	Cross town links	Open routes	Cross town links
Federal Trunk roads	Federal motorways	12.845	Federal Government	---	Länder on behalf of the federal government (Art. 90 Grundgesetz)	---
	Federal Highways (B)	39.700		< 80.000 inhabitants: Bund > 80.000 inhabitants: Gemeinden		< 80.000 inhabitants: Länder > 80.000 inhabitants: Gemeinden
State roads (L)		86.500	Länder	< 20.000 inhabitants *: Länder >20.000 inhabitants *: Gemeinden	Länder	< 20.000 inhabitants *: Länder > 20.000 inhabitants *: Gemeinden
District roads (K)		92.000	Districts	< 30.000 inhabitants *: > 20.000 inhabitants *:	Districts**	< 20.000 inhabitants *: Kreise** > 20.000 inhabitants *: Gemeinden
Local roads (G)***		>420.000	Local authorities		Local authorities	

#### Financial and Administrative Competence for German road categories

(Source: BMVBS / Konrad Bauer)

\*The change of the obligation for maintenance depends on the number of inhabitants; the legal number varies between the 16 Länder (states): 20.000: Schleswig-Holstein; 25.000 Bayern; 30.000: Baden-Württemberg, Hessen, Saarland, Thüringen; 50.000: Sachsen, Mecklenburg-Vorpommern, Niedersachsen; 80.000: Nordrhein-Westfalen, Rheinland-Pfalz, Sachsen. The federal city Länder Berlin, Hamburg und Bremen have no respective classification.

\*\* The Landkreis (district authority) may transfer these administrative tasks to the Land (State); the Gemeinde/Stadt (local authority) may transfer them to the Landkreis (district authority) or to the Land (state).

\*\*\* These figures come from a Federal census in the year 1969 concerning the total length of all local roads in Western Germany. The figures of the eastern part of Germany were not taken in consideration then. Furthermore since 1969 there were developed many new areas of municipalities all over Germany; so it can be sure that the figure of the length of local roads has more than doubled.

## 4. Realization of road winter maintenance

### 4.1 The municipality (< 80.000 inhabitants) is responsible for local roads and pedestrian ways

In the territory of the municipality are roads of the Federation, the Land, the Kreis (county) and of the municipality. The municipality I am speaking about is a dependent municipality with less than 80.000 inhabitants. As it has less than 80.000 inhabitants it only is responsible by law for the road winter maintenance of the local roads and of the pedestrian ways along all streets within the passage through a built-up area.

The road winter maintenance for the most pedestrian ways is transferred by local law (Satzung) to the owners of the adjoining premises (see down Section 4.5). The responsibility for the road winter maintenance for all important local roads outside of the built-up areas, especially roads which link the different districts of the municipality, is transferred to the Land company Straßen.NRW and this company even cares for through roads within built-up areas if it is the link to another road which the company has to care for.

#### **4.2 Realization by the council workers and temporary workers of the “Bauhof”**

The road winter maintenance for all other roads of the municipality is made by the “Bauhof” of the municipality. The “Bauhof” is a part of the local administration. Every year the local authority draws up an updated “Stand by and Gritting Plan” which is imported in the second half of October in every year. In the times when freezing or snow is expected, the respective director of operations starting at 3 o’clock a.m. examines the well known danger zones of the municipality. When he finds out that gritting or cleaning is necessary he will inform the council workers; beginning at 4 o’clock a.m. they start to grit the steep spots and the roads of the bus routes. Subsequently the roads and parking lots which were called in the “Stand by and Gritting Plan” as important for the traffic and probably dangerous are cleaned and gritted if necessary by hand and shovel. The aim is to finish with the cleaning and gritting of these roads, pavements and places until 7 a.m. when the business traffic becomes heavy. If it takes more time for these above described tasks in case of extreme weather conditions it may be that snow-cleaning and gritting service lasts till the late morning. The operational winter maintenance vehicles are driven by the council workers. Every time when using these vehicles there has to be an escort worker who usually is a casual worker. The operation of the road winter maintenance ends regularly at 20:30 (8:30 p.m.). From that point on, during the night, there is no snow cleaning and gritting by the “Bauhof”. At the judgment of the local authority snow cleaning and gritting on the other remaining, not dangerous or not traffic important roads is operated by the “Bauhof” as service; the owners have to pay every year particular charges per meter width of the adjoining premises.

For each of the 5 gritting districts are to be documented in the gritting plan:

1. Date
2. Vehicle
3. Name of the driver
4. Name of the escort
5. Weather conditions
6. temperature
7. Start of operation
8. End of operation
9. For each covered road there is to record whether the road was inspected or snow cleaned or gritted; and at which time.

Not all the roads can be cleaned or gritted until the beginning of the general business traffic at 7:00 o’clock. Following the “stand-by and gritting plan” of the municipality the next step after the first priority (dangerous and traffic important roads) the “Bauhof” works between 7:00 – 20:30 (8:30 p.m.) and on Sundays and Bank Holidays from 9:00 – 20:00 to insure the road safety of the streets with minor priority.

#### **4.3 Independent Town Bonn**

The neighboring town to our municipality is the independent town Bonn with about 310.000 inhabitants situated in the Rhine valley at both sides of the river Rhine (60 m = 200 ft. above sea

level). Bonn has founded a town owned company under public law, called “bonnorange AöR” which is in charge of the waste disposal, the road cleaning and the road winter maintenance within the town boundaries. The road winter maintenance is operated especially on the streets within town which are important for the traffic and which are dangerous for the traffic. Parts of these roads are the through roads of the Federation and of the Land; the Federal Autobahnen are not included. In extraordinary weather conditions all fourteen vehicles and all available personnel operate day and night 24/7 in 3 shifts. If the snowfalls continue the streets have to be cleaned several times. The vehicle tours round the city area take between 4 to 5 hours so that it can't be guaranteed even for traffic important streets that they are cleaned. The operation plan is optimized several times during the day regarding the information of the weather forecast and the actual traffic conditions. Above all the high gradient sections of the road net and the access roads to the hospitals are cleaned and graded. According to its prime location in the relatively warm Rhine valley the town did not see until now a special reason to do a further road winter maintenance then to care for the traffic dangerous and traffic important streets. There are no special financial means in the town budget for the road winter maintenance. So bonnorange can only bring the results according to the minimum requirements of the Bonn road cleaning statute. The owners of the adjacent premises have to pay no special fees for the road winter maintenance; this is usually required by towns in climatic less favorable sites.

Because of the massive public criticism of the snow cleaning mid-January 2013 the town company “bonnorange” plans to work out a new concept just in time before the next winter season begins. Main topics will be an improved communication with the town bus company, an extended public information system and more use of traffic telematics. Above all a decision of the local parliament is necessary if and how the guaranteeing of a complete winter mobility of the road users with remarkable higher expenses can be financed. Problematic points for the winter maintenance are further more the use of combined bicycle/pedestrian ways and the waiting zones on pedestrian ways at bus stops without specific problems; for these neuralgic points the owners of the adjacent premises and of the green spaces or rather the bus company are in duty.

#### **4.4 Kreisstraßen (roads of the county)**

The Kreis which surrounds the town area of Bonn in the west, in the south, and in the east and which is with its nearly 600.000 inhabitants one of the biggest of Germany has transferred by contract the competence for constructing and maintaining of their Kreis owned roads to the Land company “Straßen.NRW”. In this way the Kreis had no necessity to install an own agency for its roads. This contract encloses also the competence for the road winter maintenance so that the Kreis has nothing to do with this topic any longer; of course it has to pay the costs of the winter service.

#### **4.5 Land Company Straßen.NRW**

The so called Land company Strassen.NRW was established in 2001 to which staff appropriations and tangible means of the former road authorities in the Land NRW were put together. The main difference to a legally dependent agency is the direct responsibility to the ministry of transport of the Land NRW and that the Land company is considerably less bound to the general administration rules and regulations than the general Land administration. Above all, it is not part of the Land budget applicable to the entire Land administration. It is therefore also not subject to its principle of annual appropriations. It is also managed according to commercial regulations in the same way that a commercial enterprise is and will not incur any losses in the medium term. Outside of the independent towns it is competent for the roads of the Federation, the Land and the Kreis – that means for 2/3 of the important roads. Straßen.NRW also can work for dependent municipalities. It has about 6.200 employees all over the Land NRW.

#### **4.6 Content of the Contract between the Municipality and Straßen.NRW concerning winter maintenance**

To sum up: In our small town the land owned company Straßen.NRW has the competence for the winter maintenance of the roads of the Federation, the Land NRW, the Kreis, and in a certain amount of parts of the roads of the municipality (s. section 4.1). The partners agreed that Straßen.NRW operates the road winter maintenance on those roads being on the list in an attachment. The snow cleaning and gritting will be operated in the same way as the organized winter service for the other roads. That means that these roads of the municipality are treated in the same manner as the other roads with vehicles with highly sophisticated technologies concerning spreading and machinery technology; they dispose of modern board computers with GPS positioning and spreading data collection as well as about thermographics, e.g. permanent road surface temperature measurement obtained by rolling vehicles with automatic temperature related spreading density adjustment. Every month in the winter season the municipality has to pay a partial sum of the estimated costs. The exact sum is to be calculated and paid after the end of the winter period.

The municipality and the Straßen.NRW keep each other indemnified against all liability – except for deliberate action and gross negligence. That means: The damaged third person can choose to which of these two contractors he will address with his claim. As well the municipality as the Land Company Straßen.NRW have taken out insurances for cases like this. So in case of a claim against the municipality it will handle this case over to their insurance company who will treat the case; the same will do Straßen.NRW.

This contract will always be valid for one winter period and will be continued if it is not cancelled before the 31 July.

#### **4.7 Operation by Straßen.NRW**

Before the beginning of every winter season the service stations of Straßen.NRW have coordinating talks with the respective municipalities about the road winter maintenance. Straßen.NRW draws up a plan for the routes depending of the urgency (importance for the traffic; special dangerous points; distance to the winter service points to reload if it can be necessary i.a.). Important points in the view of the municipality are taken in consideration as much as possible during the planning of the routes. It is the respective director of the operation of the service station exclusively who decides about the beginning and managing the operation based on weather forecast and new information of the road net for example found by inspection checks. Information of the police and from other sides are considered as much as possible.

Straßen.NRW operates the winter maintenance with own vehicles and private contractors. For the Federal Autobahnen there are operating exclusively company owned vehicles. On the other hand about 40 % of the operating vehicles on Bundesstraßen und Landesstraßen are private owned vehicles with private personal. The snow ploughs, the gritting machines i.a. are provided by the Straßen.NRW. So the contracting private entrepreneurs are used for the winter maintenance wit in the fixed routes on roads of all categories except the Autobahnen.

### **5. Pedestrian Ways: Municipal Statutes for the Winter Maintenance**

It is allowed by law of the Land NRW that the local councils can regulate the winter maintenance for the pedestrian ways in their area by municipal statute. Practically all the municipalities within the Land have set up such a statute. Municipalities affiliated to the county get examples for these statutes from the Federation of German Cities and Communities. This is a communal umbrella organization which represents the interests of these communities in communal self-administration in Germany.

This statute says that the owners of the premises adjoining to the roads and being developed from this road have the duty to clean the walkways and connected with this the duty for winter



maintenance. Within the built-up area the walkways have to be kept clean from snow in an extent necessary for one pedestrian. If there is no walkway along the street the owner has to keep free a at least one meter broad stripe from snow and ice within the built-up area for the pedestrians. In the time from 7:00 to 20:00 the walkways immediately have to be cleaned from snow and ice after the end of the snowfall. Snow fallen during the night or ice have to be removed before 7:00 a.m. and on Sundays and Bank Holidays before 9:00 a.m. on the following day. The neighboring citizen has not the chance to balance and he also cannot defend himself that he has not the respective necessary tools or means. On the contrary the makers of the statute start from the premise that the citizens always take the necessary precautions for the winter maintenance. The same applies to the municipality in case it is owner of land along public roads within the built-up area, for example along schools, sports and playing grounds.

The former regulation that salt must not be gritted on walkways was abrogated some years ago as many of the alternative gritting materials caused tremendous damages in the sewerages which were difficult to repair.

The owner can delegate this task by contract to third people. This contractor has to obey to the law as well as the owner. The owner has to supervise by checks if his contractor does the winter maintenance in the required way. . If they do not fulfill their legal duty to maintain safety on the pavement and there is personal or property damage, they can be held liable. Even if the house owner has charged a tenant in the house with performing these duties, he is still responsible to a certain extent. He at least has to randomly check if the tenant carries out his road winter maintenance duties correctly. The house owners usually have property and general liability insurance. Tenants charged with performing road winter maintenance will have similar insurances.

## **6. The Law Practice of the BGH to the Legal Duty to Ensure Public Safety on Roads**

Supplementary to the legal regulations the highest German civil law court, the Bundesgerichtshof (BGH), has developed the particular legal notion of the "Straßen-Verkehrssicherungspflicht". (Latest decision: BGH 12.06.2012, VI ZR 138/11) It says: The violation of the duty might have occurred if there is no or not enough snow cleaning and gritting at spots which are as well important as dangerous for the traffic. This legal possibility derives from the idea in the civil law that the person or institution who/which makes traffic on the public road possible is liable for the danger deriving from this possibility of traffic on the road. The municipality is liable for its employees in charge if they were negligent.

Of course it is not possible to counteract every abstract risk to prevent damages. A general legal prohibition against jeopardizing the health and the goods of other people would be unrealistic. General traffic safety measures which avoid any damage cannot be reached in practical life. There cannot be taken precautions for all conceivable possibilities of an occurrence of damage.

That is why a danger in traffic can only lead to a liability "when there exists in the eyes of a competent judgment an obvious possibility that legally protected interests (life, limb, property) of other persons will be hurt. Due diligence in traffic is exercised when finally that grade of safety is reached which the general prevailing opinion in this corresponding sector expects."

The facts of the case in which the BGH had to decide were the following:

Due to ice on a road junction with traffic lights in a built-up area the car of a road user skidded of the road and caused damage.

The trial judge had decided that it is true that the accident area is dangerous for the traffic but he also decided that this part of the route is not an important spot for the traffic. As the duty for snow

cleaning and gritting is with the proviso that this task is reasonable and according to this it depends also on the ability of the person or institution who has to care for the winter maintenance, there didn't exist the duty to grit as the spot of the accident was of no importance for the traffic.

According to the general principle of the burden of proof the owe lies with the damaged person who has to proof all facts where the duty of gritting comes from and where the violating of this legal duty comes from. These principles made by the BGH are taken into account not only in the Land NRW but in whole Germany at all.

The BGH said in a further decision (02.10.2012 VI ZR 311/11):

Whoever creates a situation of danger – whichever - has the duty as a general rule

“to do all necessary and reasonable actions to avoid damages of other people as far as possible. The duty to maintain safety as legally required comprehends all those actions, which a prudent and judicious, in reasonable limits careful person deems to be necessary and sufficient to prevent other people from damages.”

The person who lets endure a dangerous situation in his field of responsibility has also the legal duty to maintain safety in this respect.

A decision of the OLG Düsseldorf from 1989 (VersR 1989 S. 626) has important consequences too: If it is possible for road users to recognize a dangerous situation without any problem the road administration has to apply neither warning signs nor special hints on the road. Because of this very clear decision the municipalities have changed their former usual autumn habit: They don't put up any longer big information signs at the entrance of the built-up parts of the towns at the beginning of the winter season. By these signs the road users were informed that no winter maintenance or even reduced winter maintenance is performed. The law court says: If a person knows the special circumstances which may bring for him a situation of acute and definite danger he acts on his own risk and therefore cannot have any claim against the maintenance service.

On the other hand the public authorities have to snow clean and grit as early as possible at road spots which are as well important for the traffic as dangerous to avoid claims in cases there is damage because of the icy road. The municipalities are liable within the frame of the so called “Staatshaftung” – Article 34 of the German Constitution regulates the state liability; according to this the authorities have to pay compensation if a damage is culpably caused by their vicarious agents.

For the authorities who are liable for the legal duty to maintain safety of course it is necessary that they can proof their road safety actions. The operation therefore always is documented in writing or even by taking photographs. Usually in these gritting actions are involved at least 2 persons at the same time; so in legal cases they can be witnesses.

## **7. Duty for Supervision; Duty for Action**

### **7.1 Duty for Supervision**

If the service workers don't fulfill their jobs, their line workers within the respective authority have to keep them working. If the local authority itself does not do its duty the municipal supervisory authority (Kreis) has to remind of the duty to grit the roads; parallel the Land company Straßen.NRW is supervised by the Ministry of Transportation of the Land NRW.

If the owner of the neighboring land does not clean and grit in the measures he will be admonished by the local authority; afterwards there will be a substituted performance by the authority at the expense of the neighboring land owner.

## **7.2 Claims of the Citizen**

The citizen has a legal claim to road winter maintenance only in case he is unable to avoid that his life, his health and his property is seriously jeopardized in spite of his own extraordinary efforts in relation to the nature of the prevailing circumstances.

## **7.3 Freedom of Petition; Press, Radio, TV**

It remains free to the citizen to address himself within the frame of his constitutional right of petition to the local and regional authorities (mayor; local administration) but also to the members of the local council e.g. by telephone or by letter to complain about the road winter maintenance. During the winter 2012/2013 the local news papers, the radio and the TV stations of the area of the city of Bonn reported for many days about the problems in the area to clean the road from ice and snow.

## **8. Summary:**

### **Road Users in Winter Conditions in German Municipalities - Legal Aspects**

1. The road law and – if applicable - the road cleaning law of the respective Federal Land regulate the duty to ensure public safety in snow and ice by the responsible authorities.
2. The local authorities usually transfer this duty concerning walking ways to the owners of the neighboring land by local statute.
3. As well the authorities (section 1) as the land owners (section 2) may delegate their tasks by contract to third parties. This contractor has to obey to the law as well as the owner. The Authority resp. the owner has to supervise by checks if his contractor does the winter maintenance in the required way.
4. The respective supervising authority can force the road winter maintenance authority to do their duty.
5. The citizen of a municipality can claim only in extreme situations that road winter maintenance is operated in favor of them.
6. The BGH and the further high law courts have developed the following principles concerning the “Straßen-Verkehrssicherungspflicht”. If there is a violation of this legal duty to maintain safety on roads also during snow and ice time the damaged person can have a claim.
  - 6.1 Within built-up areas road spots which are important for the traffic and which are dangerous have to be snow cleaned and gritted. The same applies to traffic important walkways and with cross ways with heavy traffic respectively indispensable pedestrian bridges.
  - 6.2 Outside of built-up areas there are to be snow cleaned and gritted very dangerous spots for the traffic, when the road user cannot necessarily expect ice. There is no duty to grit walk ways out-side the built-up area.
  - 6.3 The effective gritting (sections 1. + 2.) has to be finished at working days at 7 a.m. and on Sundays at 9 a.m. .The end of the road maintenance is 19 – 20 h, in special cases e.g. when there is a big evening event in the municipality even longer. The operation is to record exactly and gapless.
  - 6.4 The winter season maintenance is to prepare thoroughly.
  - 6.5 If a municipality has violated the legal duty to maintain safety on the road the insurance of the municipality has to pay for the damage.

## Glossary

Autobahn/Autobahnen	Federal two lanes express ways/ pl.
BASt	Bundesanstalt für Straßenwesen; Federal Highway Research Center; Bergisch Gladbach
Bauhof	Part of a municipal administration: Division for maintenance of buildings
BGH	Bundesgerichtshof; Highest Law Court for Civil Law Affairs, Karlsruhe
BMVBS	Bundesministerium für Verkehr, Bau und Stadtentwicklung, Berlin/Bonn Federal Ministry for Transportation, Building and Urban Development
Bonnorange	company under public law in charge of the waste disposal, the road cleaning and the road winter maintenance; owned by the city of Bonn;
Bundesautobahn	Federal Autobahn; Federal two lanes expressway
DWD	Deutscher Wetterdienst; German Weather Forecast;
FStrG	Federal Public Road Act
(Land)Kreis	County
Gemeindestraße	road owned by the municipality
Kreisstraße	road owned by the Kreis (= county)
Land	German Federal State
Länder	German Federal States (pl)
Landesstraße	Highway owned by the Land
Nordrhein-Westfalen	Federal Land Northrhine-Westphalia
(appr.:) NRW	
OLG	Oberlandesgericht; appeal law court; in every Federal Land at least one OLG
Straßen.NRW	Land owned company administrating many of the roads in NRW
StrWG NRW	Public road law of the federal Land Northrhine-Westphalia

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