

INTERIOR DEPARTMENT

No. –299

DECREE 389/1998 of 22 December 1998 regulating the public liability insurance cover required for the organising of public events and recreational activities.

Due to the growing social importance of public events and recreational activities, as well as the responsibilities derived thereof, article 8.2 of Act 4/1995 of 10 November 1995 on public events and recreational activities, stipulated the compulsory requirement for premises and facilities devoted to this type of events, as well as for organisers of public events and recreational activities, to hold an insurance policy covering public liability derived from the organising and holding of public events, and of the state of the premises or the activities of the personnel at their service. The Second Transitional Provision of the aforementioned Act laid down a provisional regime applicable until such time as the specific regulation is issued.

Considering that a reasonable time has passed since the publication and coming into force of the aforementioned Act, and that subsequent experience has been acquired, it is now deemed necessary to issue the present Decree with a view to laying down a definitive framework for insuring citizens attending the aforementioned activities.

In this respect, it is hereby acknowledged that it should be possible to establish minimum exemptions, with limits set to prevent a reduction in the protection which, in any event, as an indefeasible right, corresponds to those who attend the premises and facilities, and the events that take place therein. All of the above is consistent with the provisions of the aforementioned article 8.2. of Act 4/1995, which does not impose any specific requirements or limits on insurance policies, and does not expressly lay down that the insurance policy should provide cover for all public liability. As a result, minimum exemption is defined as a specific condition of each insurance policy, in keeping, also, with the reality of other activities subject to the obligation to arrange public liability insurance, which establish, even expressly, the obligation for the insurance contract to include minimum exemptions which will be the responsibility of the insured. By virtue thereof, at the proposal of the Basque Interior Minister, following a report by the Basque Council on Public Events and Recreational Activities, and following the deliberation and approval by the Government Council in its 22 December 1998 session,

I HEREBY STIPULATE:

Article 1. – Purpose

The purpose of the present Decree is to regulate the minimum sums insured for public liability insurance in relation to public events and recreational activities, within the Autonomous Community of the Basque Country.

Article 2. – Minimum insurance cover for premises and facilities

1. – Premises and facilities used for public events and recreational activities must have an insurance policy that provides cover for the public liability of owners against damages caused to attendees as a result of the objective state of the premises, the facilities and services, or of the

activity of the employed personnel, for the following minimum amounts, according to the capacity of the premises and facilities:

- Capacity of up to 50 people: 5,000,000 PTA
- Capacity of up to 100 people: 10,000,000 PTA
- Capacity of up to 300 people: 15,000,000 PTA
- Capacity of up to 700 people: 25,000,000 PTA
- Capacity of up to 1,500 people: 40,000,000 PTA
- Capacity of up to 5,000 people: 70,000,000 PTA

2. – For premises and facilities with a capacity of more than indicated above, the minimum cover amount required shall be increased at a rate of 10,000,000 PTA for each additional 5,000 persons capacity or part thereof.

3. – For temporary, portable or dismantable structures intended for the holding of public events or recreational activities, with a specified capacity and provided they are not included under the following sections of this article, the amounts established for the insurance policy under the present article shall apply.

4. – For temporary, portable or dismantable structures whose users receive the service on a public thoroughfare and whose capacity cannot be established, such as *txoznas*, *casetas* or similar, the minimum sum insured shall be 5,000,000 PTA for each facility.

Notwithstanding the above, where the said facilities or structures are located jointly within a bounded public space, a joint policy may be arranged, whose minimum sum insured shall be determined by the capacity established for the said space, in accordance with the amounts stipulated under this article.

5. – For temporary, portable or dismantable facilities or structures located within enclosed premises, the minimum sum insured shall be 5,000,000 PTA per facility.

6. – The insurance policies under the present article may have minimum exceptions of up to 1 per thousand of the minimum amount required. Under no circumstances shall the minimum exemption exceed 150,000 PTA.

Article 3. – Organising entities

1. – An organising entity of public events and/or recreational activities is any natural person or legal entity, public or private, responsible before the administration or the public for the holding of the said events or activities.

2. – The organisers of public events or recreational activities requiring specific administrative authorisation on account of the activity not being envisaged in the corresponding municipal permit, and those organisers who are not the legal owners of the premises or facilities where the activities are to be held, must hold a public liability policy that provides cover for any possible damage to persons or property arising from the holding of the performance or activity.

3. – The policies mentioned in the previous section above shall be for the same amount as those envisaged in article 2 of the present Decree, in accordance with the capacity of the premises where the event or recreational activity is to be held.

4. – Notwithstanding the above, where an intended public event or recreational activity requires administrative authorisation on account of the activity not being envisaged in the corresponding permit for the premises or facility, the minimum sum insured shall be that corresponding to the authorised capacity for the said event or activity, according to the scale established in article 2 of the present decree for premises and facilities.

5. – For public performances or recreational activities to be held on a public thoroughfare or occupying open public spaces, with or without dismantable structures, the organising entity must submit a certificate from the insurance company or insurance broker indicating that a public liability policy has been taken out, in accordance with the following scale based on the population of the municipality where the event is to be held:

Municipalities with a population of up to 25,000: 25,000,000 PTA

Municipalities with a population of between 25,001 and 50,000: 35,000,000 PTA

Municipalities with a population of between 50,001 and 100,000: 50,000,000 PTA

Municipalities with a population of more than 100,000: 75,000,000 PTA

6. – The insurance policies under the present article may have the same minimum exemption as those under section 6 of the preceding article.

Article 4. – Content of certificate.

For the purpose of inspection and processing of the relevant permits and authorisations, proof of holding the public liability insurance policy under the present Decree shall be exclusively be supported by means of a certificate issued by the insurance company or insurance broker, which must contain at least the following information, depending on the object insured:

- Identification details of the Insurance Company or Insurance Broker and of the person acting on its behalf.
- Insurance policy number.
- Express mention of public liability cover.
- Identification details of the event or recreational activity to be held.
- Name of municipality and historical territory where the performance or recreational activity is intended to be held.
- Date and time of the event.
- Identification details of the entity organising the event or recreational activity.
- Where applicable, identification details of the premises where event is to be held.
- Express mention that the event or recreational activity is insured.
- Express mention that the premises are insured where the premises are an insured object.
- Sum insured.
- Reference to the articles of the present Decree, in relation to the scope of cover and minimum exemption of the insurance policy or policies.
- Express mention of the relevant article of this Decree on which the policy is based.
- Date of issue of certificate, signed by the insurer or its legal representative.

ADDITIONAL PROVISIONS

First. - Concerning the regulation of public liability insurance for general bull spectacles, traditional bullfighting events, and those that involve the use of fireworks, their specific regulation shall apply. Notwithstanding the above, the exempt coverage regime for all public events and recreational activities shall be governed by the provisions of the present Decree.

Second. - For the purpose of determining the population of each municipality and to determine the amount of the sum insured, the official population census published every year by the Basque Institute of Statistics (EUSTAT) will be used as a reference index..

TRANSITIONAL PROVISION

Public liability insurance policies of premises and facilities for public events and recreational activities must be adapted to the provisions of the present Decree within three months from the date of effect of this Decree.

REPEALING PROVISION

Any regulations contrary to the provisions of the present Decree are hereby repealed.

FINAL PROVISIONS

First. - The Basque Interior Minister is hereby authorised to issue the necessary provisions to develop the present Decree, and to update the amounts of the sums insured and minimum exemptions.

Second. - The present Decree shall come into force on the date following the date of its publication in the Official Gazette of the Basque Country.

Issued in Vitoria-Gasteiz, on the 22nd of December, 1998.

The *Lehendakari* (Basque President),

JOSÉ ANTONIO ARDANZA GARRO.

The Basque Interior Minister,
JOSÉ MANUEL MARTIARENA LIZARAZU.