

Coming from above or behind -check

Who has the right of way on the piste?

The FIS rule 3 from the point of view of jurisdiction and legislation in Austria

**Treatise by Dr. Herbert Gschöpf, Barrister and Expert in skiing matters, Velden, Austria
for the Bormio Forum 2006**

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per il Forum di Bormio 2006**

1. According to information provided by the Austrian Institute, “Sicher Leben“, in 2004 approximately 68,700 skiers and snowboarders (I do not have more up-to-date figures) sustained such serious injuries that they required hospitalization. Approximately 8% of the skiers and 2% of the snowboarders sustained injuries as a consequence of a collision with other users of the piste.

Based on the clearly high number of incidents caused by a collision, approximately 4,500 each year, and on the claims for damages involved, it is easily possible to image how the issue with regard to who has right of way on the piste can assume an absolutely relevant significance.

In order to solve this problem, our Courts refer to the ten rules laid down by the FIS and also to the bill for regulating the ski slopes, which essentially conforms, in terms of content, to what has already been established by the FIS. It was written by the “Österreichisches Kuratorium für alpine Sicherheit” (The Austrian Council for Alpine Safety) and includes the principles of the criterion of accuracy to be complied with while skiing or snowboarding in order to limit the acceptable risk.

These rules do not represent legal regulations because they have not been promulgated by a competent State Legislative Body, and overall they cannot be considered as being on a par with valid common law either, although the FIS rule 3 (determined by the firm conviction and experience of the interested parties and by the application of the law, which has remained the same for centuries in Austria and abroad), they can already be defined as being on a par with common law in terms of mandatory power.

2. The main rule with regard to the right of way is represented by the FIS rule 3 which states the following:

3. The choice of direction

The skier or snowboarder who is above, as in higher up the piste, has the possibility, due to the position s/he occupies, of choosing his/her route. It is his/her duty therefore, to maintain a trajectory which avoids the danger of a collision with a skier or snowboarder below.

This FIS 3 rule sounds very simple; however after an incident on the piste it can be difficult to define which user of the piste was approaching from higher up the slope and which user was lower down.

It is different to road traffic, where movement normally occurs in regular and mainly rectilinear lanes; on the ski slopes, sweeping, arc-like movements with changes of speed and radius are commonplace. The typical incident involving a collision on the ski slope consequently rarely occurs like a “pile-up” or an incident which occurs in road traffic (such as a head-on collision), it usually occurs laterally following changes of course carried out in the same direction.

In a situation such as this, the explanation of the issue regarding who, pursuant to the FIS rule 3, is coming from higher up the slope and is therefore behind, often creates significant difficulties. It would be wrong to look for the solution of this enigma by starting from the position of the people who were involved in the incident at the moment of collision. This is because, as will be explained in detail further on, the user of the piste who was originally coming from higher up could in that moment have overtaken the person who was lower down the piste.

2.1. During the reconstruction phase of an incident caused by a collision on the piste, it is therefore not so important to “seize the moment”, as to determine the trajectory and the speed of the persons involved in the incident in the last 20-30 metres of descent before the collision.

The concepts of “from behind” and “in front” defined by the FIS rule 3 should not therefore refer to the temporal moment of the collision, however, in my opinion, it should not even refer exclusively to the area of the incident either, as stated in article 10 of the Italian regulations governing movement on the pistes, according to which the user of the piste who is in front, lower down the piste, has the right of way over the user behind him/her, who is higher up the piste.

The criterion which refers to the skier “higher up the piste” and the skier “lower down the piste”, as defined in article 10 regulating the right of way, therefore seems correct, because

the skier (although not the snowboarder) who is coming down the piste will naturally only be looking down the slope due to his/her position going towards the bottom of the slope, which is due to the proper skiing position (“the skier’s back faces up the piste”) in such a way that usually the skier coming from higher up the piste is able to see the skier lower down first, and not the other way around. However, this does not occur in the case of “overtaking by cutting in”, with the result that when the skier who is lower down the piste at the time of the collision, is moving more quickly than the skier higher up the slope, the latter enters his/her field of vision so late that s/he has no time to react.

Besides this, it is noted that the skier’s average field of vision reaches on average approximately 90° (or 45° towards the left and 45° towards the right), to which a further aggravation is added, in that this field of vision is even narrower in beginners, but also in the case of expert skiers who descend at high speeds (“the blinker effect”).

Due to the fact that the field of vision is limited in this way, it is therefore certainly possible that the skier higher up the piste is simply unable to see the skier lower down unless the latter is descending at decidedly lower speed than the other user.

I believe we are all in agreement on the fact that, in this case, it would be unjust to attribute responsibility to the skier who was higher up the piste.

2.2 The visual possibilities of the **snowboarder** however, are different, as depending on the way s/he descends the slope (regular or goofy), s/he moves obliquely from right to left with the board. However, in our jurisdiction and legislation, the fact that such a situation cannot lead to another evaluation of the snowboarder’s obligation to look where s/he is going is not a controversial question. It is my opinion that if the snowboarder by law must comply with the FIS rule 3 just like a skier, and therefore pay attention to the people in front of him/her, it is not possible to also impose upon him/her a further obligation to observe people coming from higher up the slope as well.

It is in this sense that the “Backside” rule issued by the Austrian Snowboard Association must be understood, when it states as follows: “The start of each descent must occur frontside so that the snowboarder can always see the skiers coming from higher up the piste. During the backside curve, a blind spot is created at the snowboarder’s back. Always watch the skiers behind you and in the backside position”.

2.3. Perhaps article 8 of the bill for regulating the ski slopes written by the “Österreichisches Kuratorium für alpine Sicherheit”, which can be traced back to the late Dr. Josef “Pepo” Pichler, a dear friend of mine and mentor for Austrian ski law, offers a support for resolving the problem of who has the right of way. The section states as follows:

§ 8 The right of way of slower skiers who are lower down the piste
The faster skier coming from higher up the piste is obliged to adjust his/her mode of descent to the slower skier lower down the piste, who has the right of way over the skier coming from behind. The skier is not obliged during his/her descent, to observe other skiers behind him/her, however the skier who is descending transversally across

the piste must pay attention to skiers coming from behind, and take them into consideration.

As you can see, this regulation refers not only to the skier coming from higher up the piste and the skier who is lower down, it also refers to the speed at which the skier is travelling, so the question of liability in the event of overtaking by cutting across another person's path can be resolved easily.

However, despite the different derogations of the 10 FIS rules passed in May, 1967, with the exception of the relevant integrations, which in fact concern snowboarders, the FIS rule 3, considered here remains unchanged.

2.4. An exception regarding the right of way as defined in FIS rule 3 consists of the amendment of the FIS rule 5 made in 2002, according to which it is necessary to observe not only the skier who is descending and the skier who comes onto the piste, but also the carvers who move in the opposite direction (for example in the context of a U-turn or a movement going in the opposite direction to the main direction of the piste).

2.5. A further exception regarding the right of way of the user of the piste who is in front (or further down the piste) is represented by the skier who is moving transversally across the piste, where the term "across" does not mean an inclined trajectory (even if it is on the level) during an arc-like descent. According to Austrian jurisdiction and legislation, it is said that a skier is moving transversally across the piste if s/he is proceeding with a wrongly inclined trajectory and a minimum loss of gradient at an angle of up to approximately 15° compared with the horizon of the piste itself along all or part of same.

The original version of the FIS rule 5 stated that those who crossed the piste transversally were obliged to check who was coming from above, but this was removed from the FIS rules issued in 1990. However, this did not occur to exonerate those who cross transversally from the obligation of observing the criteria of accuracy, it was only to clarify that this remains provided for by the basic regulations of the FIS rule 3, therefore a person who crosses transversally must pay attention as though s/he was in front and therefore in the position with the right of way. However, although during this movement the skier can also glance further up the piste without putting his/her physical safety at risk, the legal process of our Courts, which is also based on the abovementioned article 8 of the bill regulating the pistes, is bound to attribute co-responsibility, which usually equals a third of the total, to the skier who is crossing the piste transversally in a careless manner, and this proves to be absolutely correct.

3. To summarise, I have reached the conclusion that conforming exclusively to the concept of the user of the piste who is in front or behind, as set forth in FIS rule 3, and also that of the user of the piste who is higher up the slope or lower down, as set forth in the Italian regulations on the pistes, proves to be not very effective in solving the issue of who has the right of way. As I have described in detail, this depends on the trajectory and the speed of the skier or snowboarder nearest the place where the incident occurred, so the concepts of "higher

up the slope or lower down” ought not to be assessed with reference to the line of maximum gradient or to the main direction of the piste, they ought to be assessed in relation to the trajectory of the skiers involved in the incident near the point of collision. Only the user of the piste who, based on his/her own trajectory and speed, is able, or should be able, to see the other skier in good time before the collision, thanks to paying attention and moving with care, can avoid a collision by swerving or possibly slowing down.

In this sense the FIS rule 3 should be amended to comply with the above, so that it reads as follows: “The skier or snowboarder coming from higher up the piste at a **greater speed** is obliged to choose his/her trajectory in such a way as to not threaten the safety of the skiers and snowboarders who are moving in front of him/her at a **lower speed.**”

Moreover, in the context of our forum, it would be necessary to aspire to the 10 FIS rules (the 3rd amended as explained above) making the basis of a snow law which is valid in all European States.

Velden, 15.11.2006

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