Romania

Romanian Institute for Human Rights

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

The Romanian Institute for Human Rights (RIHR) is a non-accredited associate member of ENNHRI. It had been previously accredited with C status, which is no longer a valid accreditation status. The Romanian Institute has a strong promotional mandate and has been addressing a wide range of human rights in Romania.

In 2020, the Romanian Ombudsman (which is not an ENNHRI member and is not accredited) and the Romanian Institute both applied for accreditation. The request for accreditation of both bodies is being processed by the SCA, in accordance with its Rules of Procedures.

Developments relevant for the independent and effective fulfilment of the NHRI's mandate

Law no. 9 of January 5, 2018, for the amendment and completion of Law no. 35/1997 on the organisation and functioning of the **Ombudsman institution**, published in the Official Journal no. 17 of January 8, 2018, and entered into force on January 11, 2018, has modified the framework of existing human rights institutions at the national level as the Ombudsman **extended its mandate** by introducing, in the text of Article 1, the following paragraph: "(1^1) The Ombudsman is a national institution for the promotion and protection of human rights, within the meaning of United Nations (UN) General Assembly Resolution 48/134 of 20 December 1993, through which the Principles of Paris were adopted."

Moreover, a new article 12^1 was introduced, providing that "The department for the defence, protection and promotion of the rights of the child is coordinated by a deputy of the Ombudsman, hereinafter referred to as the Ombudsman for Children".

Changes in the national regulatory framework applicable to the NHRI change since the last review by the SCA

Currently, a new bill amending Law no. 9/1991 on the establishment of the **Romanian Institute** for Human Rights (1) has **entered the legislative procedure** on February 24 in the Chamber of Deputies, as the first chamber notified. On April 23 it has received a favourable opinion from the Committee for Human Rights, Cults and Minority Issues, **and it was adopted by the Chamber of Deputies on April 30(2). Currently the bill is going through the legislative procedure in the Romanian Senate (3).** The law is part of the category of organic laws, and, in this situation, the Romanian Senate is the decision-making chamber.

The bill considers the **clarification of the mandate and attributions of RIHR in relation to the recommendations received from SCA in 2011** and also in relation to the recommendations to the Romanian State from the UN mechanisms (4) to ensure that its national human rights institutions fully comply with the Paris Principles and from the Council of Europe Commissioner for Human Rights (5) including clarifications on the competencies of each of its institutions.

Among others, the bill provides at art. 2 (1) that "RIHR aims to promote and protect human rights, in accordance with the Paris Principles adopted by United Nations General Assembly Resolution A/Res/48 of December 20, 1993". Article 3 of the new bill also provides competences in coordinating training programmes in the field of human rights, providing opinions at the request of parliamentary committees on bills or other issues regarding human rights which are examined in the Parliament, conducting research on various aspects in the promotion and respect of human rights in Romania and at international level, according to art. 3. In the elaboration of this bill, the consultations carried out in 2018 between RIHR and the ENNHRI secretariat were also taken into account.

In the light of the mandate provided by Law no. 9/1991, RIHR can provide documentation, at the request of Parliament's committees, on human rights issues in bills and other issues examined in Parliament. During 2019 the Institute has not been notified by parliamentary committees on issues regarding bills or practices that could erode the separation of powers, participation of rights holders, and the accountability of State authorities. However, the Institute carried out its activity of following the legislative process and analysed regulations with an impact on human rights. This activity is the subject of a report on the progress of legislation in 2019, a report that will be published in May 2020. We present below regulations that drew our attention and have been analysed by the Institute.

References

(1) http://www.cdep.ro/pls/proiecte/upl_pck.proiect?cam=2&idp=18371
(2) http://www.cdep.ro/pls/proiecte/docs/2020/cd.70_2020_(v.2).pdf
(3) https://senat.ro/legis/lista.aspx?nr_cls=L266&an_cls=2020
(4) http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsgirNvmVtIWih6EAP3cRxa2fvnByGzSLQiYaENfauBq7AHQ3e7Quu1cEM8SvLkTQrT1X%2bhjuSrAluCpVoy77fM%2baaWs0vvRddgzjRWx024e
(5) https://rm.coe.int/16806db83b

Human rights defenders and civil society space

The way Romania transposed EU **rules on combating money laundering and terrorist financing** could have an impact on civil society organisations.

Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC ((Text with EEA relevance) has been implemented at the national level by a set of regulations, the most recent being Law no. 129 of 11 July 2019 on the prevention and combat of money laundering and terrorist financing, as well as to amend and supplement some legal acts. (1)

Directive 2015/889 lays down in Art. 4(2) and 5(3) the possibility for Member States to extend the scope of the directive to prevent money laundering and/or terrorist financing.

By transposing this Directive, by Law no. 129/2019, the state adopted regulations which could lead to a misapplication of European rules. As an example, article 1, paragraph 1 of Law no. 129/2019 is limited to an illustrative, not an exact, list of entities that are subject to the legal provisions. (4)

At the same time, the provisions referring to real beneficiaries, within the meaning of Law no. 129/2019 (article 4) may lead to the possibility of a discretionary identification. The wording of article 4, paragraph 2, of the aforementioned law, which provides that "The concept of a real beneficiary includes at least", may lead to the possibility to infinitely

extend the range of real beneficiaries, as well as to the risk of being an impossible task for reporting entities.

The **inclusion of NGOs as reporting entities** although possible under the provisions of art. 5, paragraph 1, letter "i"(5), calls for the adoption of regulations that are necessary to ensure the link with the provisions of Government Ordinance no. 26/2000 on associations and foundations. The clarifications provided by Chapter XI - Provisions regarding the modification and completion of some normative acts, at article 53, are insufficient to fully correlate the two legal acts. If this is not the case, the provisions of Law no. **129/2019** would not be applicable to NGOs, in the absence of a coherent legal framework, as some organisations have already indicated (6).

References

(1) Published in Romanian Official Journal no. 589 of 18 July 2019.
(2) 1. Member States shall, in accordance with the risk-based approach, ensure that the scope of this Directive is extended in whole or in part to professions and to categories of undertakings, other than the obliged entities referred to in Article 2(1), which engage in activities which are particularly likely to be used for the purposes of money laundering or terrorist financing. 2. Where a Member State extends the scope of this Directive to professions or to categories of undertaking other than those referred to in Article 2(1), it shall inform the Commission thereof.
(3) Member States may adopt or retain in force stricter provisions in the field covered by this Directive to prevent money laundering and terrorist financing, within the limits of Union law.
(4) This law sets out the national framework for preventing and combating money laundering and terrorism financing, which includes, but is not limited to, the following categories of authorities and institutions (...)
(5) "other entities and natural persons who market, as professionals, goods or provide services, insofar as they carry out cash transactions whose minimum limit represents the equivalent in lei of 10,000 euros, whether the transaction is executed through a single operation or through several operations that have a connection between them(...)"
(6) https://www.apador.org/ong-urile-intre-dizolvare-si-dosar-penal-din-cauza-unei-legi-ambigue/

Checks and balances

According to the provisions of Article 61 (1) of the Romanian Constitution, the Romanian Parliament is the supreme representative body of the Romanian people and the sole legislative authority of the country. Through legislative delegation, provided by article 115, paragraphs 1-3, legislative power can be passed to the Government under certain limits

and on certain fields, established by Parliament. The Parliament may adopt a special law to enable the Government to issue ordinances in fields outside the scope of organic laws. The enabling law shall compulsorily establish the field and the date up to which ordinances may be issued. If the enabling law so requests, ordinances shall be submitted to Parliament for approval, according to the legislative procedure, until the expiry of the enabling time limit. Non-compliance with the term entails discontinuation of the effects of the ordinance.

A **special enabling law** was adopted in 2019 (Law no. 4/2019) by which the executive was invested with the power to issue ordinances in fields not regulated by organic laws such as public finances and economy, public administration and rural development, transport, European funds and health. According to the explanatory note of Law no. 4/2019, enabling the Government to issue ordinances in fields that do not fall in the scope of organic laws allow the Parliament to ensure the continuation of the legislative process in case of Parliamentary recess. Through legislative delegation, the Government is allowed to legislate for a limited time period and in fields expressly provided by the enabling law. The law was applied until 31 January 2019. In its annual report on the national legislative progress for the year 2019, RIHR draws attention to the fact that, to strengthen the attributions of the legislative power, **delegation should be applied with care in order to ensure the principle of the separation of powers**, which does not imply strict segregation of the powers of the state but balance and cooperation. Under these conditions, legislative delegation should be applied as an exception and for limited periods of time.

Functioning of justice systems

Access to justice as regards data collection and surveillance for national security purposes

One area where issues related to access to justice can be raised is **data collection and surveillance** for the purpose of protecting national security. According to art. 1(5) of the Constitution "In Romania, the observance of the Constitution, its supremacy and the laws shall be mandatory." At the national level, in 2019, the provisions of article 22, par. d), of the Law no. 51/1991 on national security, republished in 2014 (1), were criticised. According to the provisions, "anyone who considers that their fundamental rights or freedoms were violated as a result of the activities specific to the collection of information carried out by intelligence bodies or by those with attributions in the field of national security may address, according to the law, the parliamentary committees or judicial bodies, as follows: [...] d) judicial bodies, by filing complaints and lodge appeals according to the Code of Criminal Procedure.

This provision contravenes the principle of accessibility considering that complaints and appeals provided by the Code of Criminal Procedure refer to certain situations, expressly provided by the Code and they do not refer to aspects on the activities specific to the collection of information carried out by the intelligence bodies or by those with attributions in the field of national security.

Procedural rights of suspects and accused

Moreover, there are certain delays in transposing the following EU directives on **procedural rights of suspects and accused**, with an impact on access to justice:

- Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (transposition deadline: April 1st, 2018);
- Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings (transposition deadline: 11 June 2019);
- Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings (transposition deadline: 25 May 2019).

Access to justice issues in the complaints received by RIHR

Although the mandate of the Institute does not include receiving petitions and carrying out investigations, the aim of the Institute is to ensure a better knowledge of human rights. In that sense, RIHR provides assistance and guidance to petitioners, taking the necessary steps in relation to public authorities/institutions in order to resolve correctly and efficiently any submitted petition. Moreover, RIHR offers guidance in accessing and filling in the application form to the European Court of Human Rights, as well as the way to refer the matter to the competent courts at national level.

4.5% of the written submissions received by the Institute in 2019 referred to aspects on the **access to justice**. The petitions regarding judgments of courts had as object the dissatisfaction of the petitioners regarding: adopted decisions, the way of fulfilling the duties by members of the judiciary and judicial staff, the correctness, independence and impartiality of the magistrates. In the case of petitions notifying acts regarding the poor activity of magistrates, they were forwarded to the competent authority. (2)

Persons deprived of liberty complained of inhumane conditions of detention, abusive behaviour of staff employed in detention centres, arbitrary decisions ordering the transfer from the detention unit where they were assigned to another detention unit, much further away from the place of residence and family, the inappropriate treatment of detainees in hospitals in detention centres. Also, the persons serving a custodial sentence requested the Institute, pursuant to Law no. 544/2001 on free access to information of public interest, explanations on the requirements to be met in drafting applications to the European Court of Human Rights, as well as on the conditions of admissibility of the application to the European Court of Human Rights.

Both the convicted persons and free citizens submitted petitions to the Romanian Institute for Human Rights whose object consisted in requesting legal assistance and representation before the courts in pending cases. In the assessment of these petitions, in accordance with the mandate assigned by Law no. 9/1991, the Romanian Institute for Human Rights provided consultancy, informing the petitioners on the provisions of Law no. 51/1995 for the organisation and practice of the lawyer's profession.

With regards to the abuses committed by the public authorities in relation to the citizens, the cases of **defective investigation of some crimes or offences** by the local police units, as well as allegations made by litigants regarding **illegal acts committed by the authorities during the trials**, the Institute collaborated with the General Inspectorate of the Romanian Police and with the County Police Inspectorates, redirecting to them the petitions in which these issues were notified.

Starting from 2017, RIHR has created a working group aimed at **preventing and combating violence against women** and the implementation of the CEDAW Committee recommendations following the assessment of the Country Reports no. 7 and no. 8 (including women`s access to justice, strengthening the capacities of judges, prosecutors, lawyers and police officers on the strict implementation of regulations incriminating violence against women). The Working Groups of 2017-2019 were attended by experts in various fields that intersect with the phenomenon of violence (police officers, judges, social workers, psychologists), representatives of the National Agency on Equal Opportunities for Women and Men, as well as NGO`s working in this field (Women`s Association in Romania - Împreună (Together), Romanian Rural Women's Association, ANAIS, SOLWODI - solidarity with women in distress, etc)

Trainings relevant to access to justice offered by the RIHR

During 2019, RIHR organised training sessions on various topics, bearing in mind the activity of law-enforcement authorities. Thus, at the Institute of Studies for Public Order a module on the "**Prevention of torture and inhuman or degrading treatment or punishment**" was held. The participants consisted of staff of Detention and Preventive Arrest Centres. The course covered four topics: Introduction to Human Rights. Protection instruments, mechanisms and systems, in particular the European Convention on Human Rights. Inhuman or Degrading Treatment or Punishment. European Court of Human Rights case-law. The 8-hour module will be a part of the schedule of classes of the Institute of Studies for Public Order for year 2020, which aims to train 200 participants in 8 months.

Within the series of courses addressed to the staff of the Border Police, initiated as a collaboration with the specialists of the Romanian Institute for Human Rights and three structures of the Ministry of Internal Affairs - General Anticorruption Directorate, General Inspectorate for Immigration and Territorial Inspectorate of Border Police - the RIHR held the training course: **Human rights in the context of illegal immigration**, in three border police inspectorates: Timișoara, Giurgiu and Constanța - Coast Guard. The course included general issues related to the history of human rights, categories of rights, obligations of the authorities, police responsibilities in a democratic system, migrants' rights, analysis of public international law documents, as well as case studies.

The Romanian Institute for Human Rights organised **training courses for lawyers** of the Bucharest Bar Association (February 14 and 21, 2020) on the convergence of the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms and the Charter of Fundamental Rights of the European Union, as well as the convergence between judgements of the ECtHR and CJEU on cases concerning the protection of fundamental rights and freedoms. Also, during these courses, assessments were carried out on equality and non-discrimination in relation to specific cases. The provisions of the CEDAW Convention on equality and non-discrimination were also taken into account in the presentations.

References

(1) Republished in the Romanian Official Journal no. 190 from March, 18, 2014
(2) By virtue of art. 97, 100 and 101 of Law no. 303/2004, republished, regarding the status of judges and prosecutors, in case the magistrates violate the professional obligations in the relations with the litigants or commit disciplinary offenses, the Superior Council of Magistracy is notified.

Media pluralism

The national framework in the field of media could be improved to ensure the independence of journalists considering a **lack of regulations on the legal statute of journalists**. The National Audiovisual Council is the autonomous administrative authority under parliamentary control that guarantees the public interest in the field of audio-visual communication, regulated by Law no. 504/2002 (1). Law no. 504/2002 does not specifically regulate the legal status of journalists, respectively their rights and obligations that may be taken on and exercised in practising the journalism profession. An important step in this direction was the adoption, in October 2009, at the Convention of Media Organisation, of the Single Deontological Code establishing rules and principles for exercising the specific attributions of the profession. Considering the legal nature of the Convention of Media Organisation (an informal coalition consisting of journalists` and professional`s associations in the media), the document is not mandatory from a legal point of view, as it is a programmatic document. The lack of regulations at the national level on the legal-professional status of journalists may affect, under certain circumstances, pluralism and freedom of the media.

References

(1) Published in the Romanian Official Journal no. 534 from July 22nd, 2002

Corruption

In order to prevent and combat corruption, it is necessary to establish and regulate, through appropriate legal instruments, specialised mechanisms to achieve this goal.

Starting from this legislative requirement, the provisions of Art. 87, paragraph 2 of Law no. 304/2004 on the organisation of the judiciary were the object of a request of review of constitutionality submitted in 2019 by the Romanian Ombudsman. In essence, the legal provisions of art. 87 (2) of Law. No. 304/2004 refer to **eligibility criteria for candidates for prosecutors of the National Anticorruption Directorate** (to be appointed within the national anti-corruption Directorate, prosecutors should have not been disciplinary sanctioned, should have a good professional training, unpaired moral character, at least 6 years of service as prosecutor or judge and declared to have been admitted following a competition organised by the Commission established for this purpose). The Romanian Ombudsman notes that the conditions that candidates must fulfil for the position of prosecutor do not include, *expresis verbis,* being specialised in the area of corruption acts.(1)

Another step taken at the national level to combat corruption within public administration and business environment was the adoption of Law. 59/2019 amending and supplementing Law. No. 161/2003 on certain measures to ensure transparency in the exercise of public office and standing and in the business environment, the prevention and sanctioning of corruption (2). Law no. 59/2019 introduces art. 77 which regulates, by referring to another provision, **conflicts of interests among presidents and vice-presidents of county councils or local and county councillors**: *"conflicts of interest for the presidents and vice-presidents of the county councils or the local and county councillors are provided in art. 46 of the Law on local public administration no. 215/2001, republished, with subsequent amendments and completions."*. Article 46 of the Law on local public administration no. 215/2001 provides two aspects: (1) a state of incompatibility (the local councillor who, either personally or through a spouse, in-laws or relatives up to and including the fourth degree, has a patrimonial interest in the matter submitted to the local council debates may not take part in the deliberation and adoption of decisions ...) and (2) the sanction corresponding to the incompatibility (the decisions adopted by the local council in violation of the provisions of par. (1) are null and void. The nullity is established by the administrative courts. The action can be lodged by any person concerned). The introduction, through Law. 59/2019, of the state of incompatibility as a category of corruption acts is a positive aspect in the process of preventing and combating corruption, the sanction is too mild; the efficiency of regulations in the field of justice is correlated to a rigorous sanctioning system.

References

(1) http://www.avp.ro/exceptii2019/exceptia12_2019.pdf
(2) Published in the Romanian Official Journal no. 268 of April 9, 2019

In-focus section on COVID-19 measures

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law in the country

In the context of the COVID-19 pandemic, national authorities have adopted a set of legislative and institutional measures to address the challenges affecting the functioning of society. Decree no. 195/2020, introduced the **state of emergency** at the national level, and it established the conditions and limits of restriction of civil rights and freedoms specific to the most important sectors of activity (medical, educational, social, etc.). These measures were maintained by Decree no. 240/2020. The implementation of provisions in presidential decrees is done according to Government Emergency Ordinance no. 1/1999, amended and supplemented as well by Government Emergency Ordinance no. 34/2020.

The impact of the state of emergency at the national level on the rule of law can be observed through the regulations introduced in the field of justice. According to art. 63, para. (1), first thesis of Decree no. 240/2020, during the state of emergency, the court activities continue in cases of utmost urgency. The aim of the measure was to avoid the overburdening of courts; thus, it refers to limiting cases which are not urgent. During the state of emergency all procedural and prescription time limits have also been suspended by operation of law which implies a mitigation on the restriction of rights, if the measures are analysed as a whole. Moreover, from a procedural point of view, the rights to be examined by courts do not become obsolete.

The Emergency Ordinance no. 34/2020 and of Government Emergency Ordinance no. 1/1999 were contested in the Constitutional Court by the Romanian Ombudsman (1) regarding the lack of clarity and predictability of the provision on sanctions adopted to implement measures specific to the state of emergency. According to art. 1 of Emergency Ordinance no. 34/2020, art. 28 of Government Emergency Ordinance no. 1/1999 shall be modified as follows:

(1) Failure to comply with the provisions of art. 9 shall be considered contravention and shall be sanctioned with fine of 2.000 – 20.000 lei for natural persons and a fine of 10.000 – 70.000 lei for legal persons (...).

The military ordinances adopted for the purpose of instating immediate measures to prevent and combat the spread of COVID-19 establish disciplinary, civil, administrative or criminal sanctions **without indicating the acts which may lead to the application of such sanctions**. The use of the general wording "Failure to comply with the provisions of art..... shall be subject to disciplinary, civil, administrative or criminal liability" do not comply with the standards of clarity and predictability that must characterise any legal provision. It is necessary to define the acts that may result in specific sanctions.

Considering the lack of predictability of the legal provisions and the infringement of the principle of legal certainty, law-enforcement agents cannot act on the basis of objective criteria; in the activity of ascertaining disciplinary, civil, administrative or criminal offenses, law-enforcement agents have to resort to their own (subjective) criteria for interpretation and implementation of the legislation - a fact that is likely to give rise to the discretionary implementation of legal provisions.

The Government could have provided more transparency regarding the measures adopted during the COVID-19 pandemic. The Government Emergency Ordinance no. 34/2020 amending and supplementing Government Emergency Ordinance no. 1/1999 on the state of siege and the state of emergency introduces art. 33(1) according to which *during the state of siege or state of emergency, the legal provisions regarding decision-making transparency and social dialogue do not apply in the case of bills establishing measures applicable during the state of siege or state of emergency or which are a consequence of the establishment of these states*. The principles of decision-making transparency and social dialogue are essential for monitoring the work of public institutions. Having regard to the issues raised in connection to the establishment of the state of emergency at the national level, as reflected above, the RIHR would consider appropriate the adoption at the European level of statements of principle to guide the state activity, in order to comply with the essential conditions of the rule of law.

The RIHR has issued a note regarding the impact of COVID-19 pandemic on human rights and freedoms. It states that national authorities should manage the crisis not only from a strategic and economic point of view but also with due regard for ensuring and protecting everybody's human rights. All measures taken by national authorities should be **legal, proportionate and temporary**. Moreover, special attention should be given to **vulnerable**

groups, such as the elderly, women, children, people with disabilities and homeless persons. RIHR also underlines the need for **transparency**, official information and **tackling fake news.** (2)

RHIR received a **request from members of the Parliament (Chamber of Deputies) to submit a report** on the protection of human rights in the state of emergency caused by the pandemic.

The Press agency Mediafax also **requested RIHR to provide an opinion** on the restrictions of movement imposed on older persons which are considered a vulnerable category in the face of COVID-19 as well as on public debates on a potential isolation plan for the next 12 weeks of persons aged 65 years and above (isolation in their houses, relocation to a home or in an institution). RIHR highlighted the importance of respecting the **rights of older persons** according to art. 12 of ICESCR and art. 8 of ECHR. (3)

Most important challenges due to COVID-19 for the NHRI's functioning

According to Law no. 9/1991, the Romanian Institute for Human Rights has a mandate in providing information, training, research and education for human rights. The main challenges faced during the COVID-19 pandemic by the Institute were mainly in the fields of training and education, which is usually done, as a direct interaction. In order to ensure continuity in these fields, online apps (zoom, Google classroom) have been used. Providing information was also affected in particular with regard to the relations with the public which, for reasons of safety and prevention of the spread of COVID-19 virus, is carried out in the emergency period by specific means such as written correspondence, electronic correspondence, telephone.

References

(1) http://www.avpoporului.ro/exceptii2020/exceptia7_2020.pdf
(2) Please consult RIHR's opinion at http://www.irdo.ro/semnal.php?ideseu=62
(3) Please consult RIHR's opinion at http://www.irdo.ro/pdv.php?ideseu=13

Other relevant developments or issues having an impact on the national rule of law environment

It is also to be noted that, in the context of the state of emergency declared over the COVID-19 outbreak, Romania has sent a **notification to the Council of Europe regarding the activation of Article 15 of the European Convention on Human Rights**, thus initiating the procedure for derogation from the European Convention on Human Rights. Although invoking Article 15 does not lead to the suspension of the rights and freedoms provided by the Convention, the adopted measure should be analysed taking into account the principle of proportionality. (1)

References

(1) https://rm.coe.int/16809cee30

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