



**SEMINAR ORGANISED BY THE SUPREME COURT OF SPAIN IN COOPERATION WITH ACA-  
EUROPE**

**Madrid, 21 November 2022**

***Questionnaire***

***Application of general principles and clauses in the case law of contentious-administrative courts***

In order to deepen the open dialogue between the high administrative jurisdictions of Europe, this seminar will analyse the application, within the administrative legal system, of different general principles or clauses of law.

Given the variety and large number of existing general principles, an effort has first been made to delimit and select, on the basis of their topicality or potential expansion, a series of general principles which, although underlying most legal systems, nevertheless present differences in the various legal systems in terms of their nature, their recognition in legal norms and, in short, with regard to their functionality, with divergences evidenced in particular by their judicial application.

The seminar offers an eminently practical vision. For this reason, the questionnaire primarily takes judicial experience into consideration, suggesting the following perspectives as lines of analysis:

- (i) General principles of law in the system of sources;
- (ii) Common incorporation of general principles of law: European Union and horizontal dialogue;
- (iii) General principles and fundamental rights;
- (iv) General principles in certain sector-specific areas of public law, selecting, in this regard, some of these principles to determine their application and projection in fields such as *administrative organisation and procedure / administrative sanctions / public subsidies or grants / contracting by public bodies / town planning and environment / taxation*.

In short, the aim of the seminar is to find out whether there are convergences in the guidelines of the high jurisdictions of the Member States, by determining the degree of influence of European Union law (e.g. through Directive 2006/123/EC on services in the internal market, or through incorporation of the principle of good administration, recognised in Article 41 of the Charter of Fundamental Rights) in its application,



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without losing sight of the effects of the horizontal dialogue between the high national jurisdictions, which we hope the seminar can continue to stimulate.

## I. – GENERAL PRINCIPLES OF LAW IN THE SYSTEM OF SOURCES

**1<sup>o</sup>) What place and function do general principles of law have in the system of sources of your country's legal system?**

- They are applied where there are gaps in the law
- They may be applied directly, even to the extent of displacing the initially applicable written law and prevailing over it.

**Explain your answer briefly:**

According to Administrative Procedure Law a legal provision is comprised of a legal act and general principles of law. An institution and a court shall apply in the administrative proceedings the external legal acts, provisions of international law and European Union law, and also general principles of law.

Typically general principles of law shall be applied if the relevant issue is not governed by an external legal act, and also in order to interpret legal acts.

However, it should be noted that general principles of law arise from natural law and are a criterion of legitimacy for written rules of law, i.e. the actions of the legislator. Thus, written rules must be in conformity with general principles of law. It follows that general principles of law prevail over written law.

**2<sup>o</sup>) Can it be said that the most relevant general principles of law in your culture and legal tradition have been positivised, i.e. enshrined with legal status in your country's judicial system?**

- Yes
- Yes, the most relevant ones (please indicate briefly the most notable of these)
- No

**3<sup>o</sup>) In the judicial practice of Public Law, are general principles of law frequently invoked and applied as a basis for decisions?**

- They are frequently invoked and applied, and are also relevant and decisive in the settlement of disputes.
- They are frequently invoked and applied, although generally in a complementary manner, to reinforce challenging arguments based primarily on the interpretation and application of written rules.



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- They are not frequently invoked and applied as a basis for decisions.

**Explain your answer briefly:**

According to Administrative Procedure Law an institution and a court shall apply in the administrative proceedings the external legal acts, provisions of international law and European Union law, and also general principles of law. In Latvian judicial practice general principles of law are frequently invoked and applied as a basis for decisions.

**4<sup>o</sup>) If you have answered yes to the previous question, can it be said that the invocation and application of general principles of law is done in a general and transverse way, in all areas or matters of Public Law?**

- Yes
- Especially or particularly in certain matters, or in certain sector-specific areas (in this case, explain your answer briefly)

**5<sup>o</sup>) In your country's legal system, are there general principles specific to Administrative Law, independent of other general principles of law?**

- There are no general principles specific to Administrative Law
- There are principles specific to Administrative Law that may be applied in conjunction with other general principles
- There are principles specific to Administrative Law that exclude and displace the application of the other general principles

**Explain your answer briefly:**

Administrative law provides for specific principles that are specific to administrative procedure or to certain areas of public law. For example, the Law on Administrative Procedure defines a number of principles applicable to administrative proceedings: principle of observance of the rights of a private person, principle of objective investigation, principle of protection of legitimate expectations and others.

**II. – COMMON INCORPORATION OF GENERAL PRINCIPLES OF LAW: EUROPEAN UNION AND HORIZONTAL DIALOGUE**

**6<sup>o</sup>) Has your country's administrative legal system patently incorporated the general principles of European Union law?**

- Yes, in general



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- No special or specific incorporation has been necessary, because in general these principles were already recognised and enshrined in the country's legislation and practice.

**Explain your answer briefly (this question mainly concerns the work of the legislator, i.e. the “legislative system”).**

Generally, principles of European Union law were not specifically incorporated into national laws. The principles have already been enshrined in the legislation and practice. Principles of European Union law are also taken into account and applied when drafting and adopting national laws to ensure that national rules are fully compatible with European Union law.

**7º) Is it common in your country’s judicial practice for the specific general principles of European Union law to be invoked and taken into account in areas where there is no regulatory harmonisation?**

- Yes, for certain matters
- No, not generally

**Explain your answer briefly (this question mainly concerns the work of the judiciary, i.e. “judicial practice”).**

Even in areas where the regulation is not harmonised and fall within the competence of each Member State, the general principles of European Union law are taken into account, as well as the interpretation and application of the principles established in case law, both in drafting and adopting the relevant national rules and in judicial practice.

**8º) When applying the general principles set out in European Union law, and when it is found that the general European principle applicable to the dispute in question conflicts in some way with national law, has the dispute been resolved through a solution involving the displacement and non-application of the national rule in order to give way to the general European principle?**

- Yes
- This solution has been chosen in some cases, while in others different solutions or answers have been used (in this case, explain your answer briefly)

**9º) Is it common in judicial practice for the principle of legitimate expectation to be invoked and taken into account?**

- Yes, as a transversal principle



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- Yes, but only in certain sector-specific matters and areas harmonised by Union law (please indicate what these are)
- No

**Explain your answer briefly.**

The principle of legitimate expectation is widely invoked and taken into account in Latvian judicial practice in all areas of administrative law. It is also enshrined and defined in the Administrative Procedure Law, stating that a private person may have confidence that the action of an institution will be legal and consistent. An institution's error for the occurring of which a private person cannot be held at fault may not cause unfavourable consequences for the private person.

**10<sup>o</sup>) Can taking the principle of legitimate expectation into account even result in the annulment of administrative decisions that are contrary to or violate those principles?**

- Yes
- No, these principles are applied only in order to provide for compensation or reparation when they are violated in some way by the decisions of the Administration.

**Explain your answer briefly.**

According to judicial practice legitimate expectation can be established: 1) if a person has had something to rely on (a clear and unconditional promise by the authority); 2) if the person has relied on that promise; 3) if the person's expectations are worthy of protection. In assessing whether the reliance is worthy of protection, the legitimacy of the reliance is assessed, and considerations of proportionality (reasonableness) are also made. Moreover, for a person's expectations to be legitimate and protectable, the person's own action must be lawful and in good faith.

The principle of legitimate expectations often conflicts with the principle of the rule of law. Such a conflict of principles can be resolved by means of a method of weighing and balancing, resulting in the best possible compromise. The principle of the rule of law is not always the dominant one.

**11<sup>o</sup>) Has the “principle of good administration” referred to in Article 41 of the Charter of Fundamental Rights of the European Union been adopted and applied in your country’s judicial practice?**

- Yes, as a transversal principle
- Yes, but only in certain sector-specific matters and areas harmonised by Union law (please indicate what these are)
- Not commonly applied



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**Explain your answer briefly.**

The principle of good administration is frequently invoked and applied in Latvian judicial practice. It is also enshrined in State Administration Structure Law, stating that state administration shall comply with the principles of good administration in its activities. Such principles shall include openness with respect to private individuals and the public, the protection of data, the fair implementation of procedures within a reasonable time period and other regulations the aim of which is to ensure that State administration complies with the rights and lawful interests of private individuals.

**12<sup>o</sup>) Can taking the principle of good administration into account even result in the annulment of administrative decisions that are contrary to or violate that principle?**

- Yes, in some specific cases.
- This would never be possible because, among other reasons, this principle applies solely as a guideline for conduct within the Administration and cannot be invoked by the citizen.
- No

**Explain your answer briefly.**

If an administrative decision has been taken contrary to the principle of good administration and it is established that the breach of the principle of good administration has had a significant influence on the decision and has resulted in a significant infringement of rights or legal interests of a person, that decision must be annulled.

If the principle of good administration is not complied with, the private individual whose rights and lawful interests are affected is entitled to require the compliance therewith in accordance with the procedures of administrative procedure.

**13<sup>o</sup>) Is it common in judicial practice for the principle of necessity and proportionality of administrative measures that limit or restrict access to or the exercise of an economic activity to be invoked and taken into account?**

- Yes, this is a positivised principle whose non-observance results in the nullity of the measure or provision of a general nature.
- Yes, in certain matters and to different extents
- No





**Explain your answer briefly.**

The Constitutional Court of the Republic of Latvia has concluded that the concept of a democratic republic enshrined in Article 1 of the Constitution of the Republic of Latvia implies the obligation of all State institutions to respect the principle of proportionality in their activities.

The principle of necessity and proportionality is enshrined in Administrative Procedure Law, stating that the benefits which society derives from the restrictions imposed on an addressee must be greater than the restrictions on the rights or legal interests of the addressee. Significant restrictions on the rights or legal interests of a private person are only justified by a significant benefit to society.

According to judicial practice the principle of proportionality must be applied in all legal relations between an administration and a private person. When issuing any type of administrative act or performing an actual action of an institution, it is necessary to assess whether it disproportionately restricts a person's fundamental rights. If a party to the proceedings argues that an administrative act is disproportionate, this must be assessed, even in the case of a mandatory administrative act.

**14<sup>o</sup>) With regard to any of the above principles (legitimate expectation, necessity, proportionality or good administration) or other principles, has your country's Supreme Court taken into consideration the interpretation and manner of application of these principles by other European national high jurisdictions?**

- Yes, on some occasions (in this case, explain your answer briefly)
- Never

The Supreme Administrative Court follows and often refers to the interpretation and manner of application of principles of European Union law by Court of Justice and the European Court of Human Rights.

### **III. – GENERAL PRINCIPLES AND FUNDAMENTAL RIGHTS**

**15<sup>o</sup>)** According to Article 6, paragraph 3 of the Treaty on European Union, fundamental rights that result from the constitutional traditions common to the Member States shall constitute general principles of the Union's law. Has your country's Supreme Court identified any of these common constitutional traditions?

- Yes, especially on the basis of the case law of the Court of Justice or the European Court of Human Rights
- Yes, especially on the basis of the case law of the Supreme Courts of other Member States.
- No such identification has taken place.



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**16<sup>o</sup>) What status and importance does the principle of non-discrimination and gender equality have in your country's judicial practice?**

- It is a principle commonly and generally taken into consideration, across all areas
- It is a principle that is taken into consideration and applied in certain legal relations and sector-specific areas

**Explain your answer briefly.**

The principle of equality and non-discrimination is a fundamental principle enshrined in Article 91 of the Constitution of the Republic of Latvia that states: all human beings in Latvia shall be equal before the law and the courts. Human rights shall be realised without discrimination of any kind.

These closely related principles are relevant and applicable across all areas, Latvian Supreme Court and Constitutional Court also has ample judicial practice on the content and application of these principles.

**17<sup>o</sup>) In the judicial practice of your country, is the principle of protection of particularly vulnerable groups (e.g. minors, women, people with disabilities) invoked and applied?**

- Yes, in a general, open and transversal manner
- Yes, for certain groups that are predetermined and identified in the different sector-specific rules (give a significant example)
- No

**Explain your answer briefly.**

The principle of protection of particularly vulnerable groups is related to the principle of equality and non-discrimination and is widely taken into account and applied in the legislative process as well as in all public administration activities.

For example, socially vulnerable groups are provided for by Cabinet regulations by analysis of the socio-economic situation in the State and the influence thereof upon individual person groups. These regulations include, for example, the following groups of socially vulnerable people: single-parent families; homeless persons; victims of human trafficking; children; victims of violence; people with disabilities; persons released from places of imprisonment; politically repressed persons; families with three or more children; senior citizens etc.

**18<sup>o</sup>) Do the judicial bodies demand enhanced reasoning in cases where the contested administrative measure or decision (e.g. eviction from housing, granting of nationality) affects these vulnerable groups (e.g. minors, women, people with**





disabilities) or has an impact on other constitutional values such as protection of the family?

- No special grounds are required in these cases
- Yes, and their absence results in the nullity of the decision

**Explain your answer briefly.**

Specific circumstances and belonging to a particular vulnerable group should be taken into account in public administration activities, in particular when making decisions, where this has an impact on the outcome of the case. If an administrative act or an actual action of an institution unreasonably restricts the rights or legitimate interests of a person, without taking into account the particular circumstances of the person which make it necessary to protect him or her, the decision should be annulled.

**19<sup>o</sup>) In your judicial practice, have disputes been raised regarding the issue of the principles of transparency, equality and non-discrimination in relation to decisions based on artificial intelligence or predictive data management systems?**

- Yes
- These principles are not frequently invoked, but some examples exist
- No

**Explain your answer briefly.**

Latvian administrative court practice has not dealt with cases related to artificial intelligence or predictive data management systems.

#### **IV. – GENERAL PRINCIPLES IN CERTAIN SECTOR-SPECIFIC AREAS OF PUBLIC LAW**

##### ***IV.1. – ORGANISATION AND ADMINISTRATIVE PROCEDURE***

**20<sup>o</sup>) In the administrative organisation, do the principles of decentralisation and subsidiarity apply?**

- Yes
- No
- Not generally, but in certain areas or sectors (in this case, explain your answer briefly)



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**21<sup>o</sup>) Are the general principles set out below applicable to the procedure for formulating administrative acts and provisions?**

Principle of publicity and transparency

- Yes
- No

**Principle of proportionality**

- Yes
- No

**Principle of impartiality**

- Yes
- No

**Principle of anti-formalism**

- Yes
- No

**Principle of gratuitousness**

- Yes
- No

**Principle of self-correction (executory decision, without the need for judicial assistance).**

- Yes
- No

**(If you consider it appropriate, please indicate any other general principles of administrative procedure different from the above)**

According to Administrative Procedure Law also following general principles of law shall be applied in administrative proceedings:

- the principle of observance of the rights of a private person – an institution and a court shall, within the scope of the applicable legal provisions, facilitate the protection of the rights and legal interests of private persons;
- the principle of the rule of law – the actions of an institution and a court shall comply with the legal provisions. An institution and a court shall act within the



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scope of their powers as prescribed by laws and regulations and may only exercise their powers in conformity with the meaning and purpose of authorisation;

- the principle of reasonable application of legal provisions – in applying the legal provisions, an institution and a court shall use the basic methods of the interpretation of the legal provisions (grammatical, systematic, historical, and teleological methods) in order to achieve the most equitable and useful result;
- the principle of the prohibition of arbitrariness – an administrative act and a court ruling may be based on the facts which are necessary for taking the decision and on the objective and rational legal considerations arising from such facts;
- the principle of priority of laws – an administrative act favourable to a private person, which regulates legal relations in an issue vital to a democratic society and the structure of the State (freedom of expression and information, freedom of thought, conscience and religion, freedom of assembly and association, and also the political system), may be issued by an institution on the basis of the Constitution or law;
- the principle of procedural equity – upon taking decisions, an institution and a court shall respect objectivity and provide participants to the proceedings with a reasonable opportunity to express their opinion and submit evidence. An official in respect of whose objectivity there may exist reasonable doubt shall not participate in the taking of the decision.

#### **IV.2. – ADMINISTRATIVE SANCTIONS**

**22<sup>o</sup>) Are the general principles of criminal law applied or projected in the area of administrative sanctions law? (Indicate the answer that you consider best reflects your legislation and practice)**

- Yes
- Yes, although with nuances arising from the different natures of criminal offences and administrative offences
- Not in respect of minor, lesser or trivial infractions
- Only in relation to infractions that can be characterised as “criminal” in accordance with the doctrine of the ECHR

**Explain your answer briefly.**

According to the Supreme Court's judicial practice, principles of criminal law can be applied to tax fines. Due to their punitive nature and amount, it may be considered a criminal fine within the meaning of Articles 6 and 7 of the European Convention on Human Rights.



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There are no other cases before the Administrative Court where the principles of criminal law could be applied.

**23º) If you have answered yes to the previous question, could you specify whether or not the following general principles are applied for administrative sanctions, or to what extent?**

**Principle of presumption of innocence and right not to incriminate oneself or plead guilty:**

- Yes
- No
- With nuances (in this case, explain your answer briefly)

**Principles of legality and definition of the constituent elements of the offence:**

- Yes
- No
- With nuances (in this case, explain your answer briefly)

**Principle of non-retroactivity of sanctioning provisions:**

- Yes
- No
- With nuances (in this case, explain your answer briefly)

**Principle of culpability:**

- Yes
- No
- With nuances (in this case, explain your answer briefly)

**Principle of proportionality**

- Yes
- No
- With nuances (in this case, explain your answer briefly)

**Principle of defence and legal assistance:**

- Yes
- No
- With nuances (in this case, explain your answer briefly)



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### **Principle of hearing:**

- Yes
- No
- With nuances (in this case, explain your answer briefly)

### **Principle of separation between investigating authority and decision-making authority**

- Yes
- No
- With nuances (in this case, explain your answer briefly)

### **Principle of reasoning of the sanctioning decision**

- Yes
- No
- With nuances (in this case, explain your answer briefly)

### **Principle of time-barring of administrative offences and sanctions**

- Yes
- No
- With nuances (in this case, explain your answer briefly)

### **Principle of judicial protection**

- Yes
- No
- With nuances (in this case, explain your answer briefly)

### **Principle of double instance**

- Yes
- No
- With nuances (in this case, explain your answer briefly)

**(If you consider it appropriate, please indicate any other general principles of administrative sanctions law different from the above)**

According to the judicial practice of the Supreme Administrative Court, the following principles of criminal law are also applicable to fines in tax law:

- Principle of time when the law is in force. It states that a law which recognises an offence as not punishable, reduces the punishment or is otherwise





beneficial to a person, unless otherwise provided for in the applicable law, has retrospective effect, that is, it applies to offences which have been committed prior to the applicable law coming into force.

- Inadmissibility of double jeopardy (*ne bis in idem*). The principle establishes the right not to be repeatedly sanctioned for the same unlawful act.

#### **IV.3. – SUBSIDIES AND PUBLIC AID**

**24<sup>o</sup>) Is the principle of proportionality applied in order to modulate the consequences of non-compliance by a beneficiary of public subsidies, aid or resources, or in the area of regulated sectors?**

- Yes (in this case, explain briefly in what areas and with what consequences or effects)
- No

**(If you consider it appropriate, please indicate any other general principles of subsidies or public aid different from the above)**

The principle of proportionality in the context of State aid is interpreted to mean that the State aid measure (amount and intensity) must be limited to the minimum necessary to induce the companies concerned to undertake additional investment or activity themselves, i.e. if the amount of aid were lower, the same result could not be achieved. As long as the aid exceeds the minimum necessary, the beneficiary of the aid will make over-profits which may unnecessarily distort competition and cannot therefore be declared compatible with the EU common market.

According to judicial practice, the principle of financial precaution must also be taken into account in this area. The principle aims to ensure that public finances are not invested in projects where there are objective grounds for doubting their success, otherwise, the country runs an excessive risk of wasting public money.

#### **IV.4. – CONTRACTING BY PUBLIC BODIES**

**25<sup>o</sup>) Is contracting by public bodies governed by different principles from contracting between private individuals and entities?**

- Yes. Although based on a common foundation, administrative contracting is governed by different principles from civil or private contracting.
- There are specific principles applicable to contracting by public bodies as regards the procedure for advertising and selecting contractors and the award of the contract, but the performance, execution and effects of the contract are governed by principles substantially the same as those applicable to private contracting.



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- No, public and private contracting are essentially governed by the same rules and principles.

**(If you consider it appropriate, please indicate any other general principles of contracting by public bodies different from the above)**

#### ***IV.5. – TOWN PLANNING AND ENVIRONMENT***

**26<sup>o</sup>) Could you say whether the following principles of environmental law are invoked and applied in your judicial practice?**

##### **Precautionary principle**

- Yes
- No
- Occasionally, or on a limited basis (in this case, explain your answer briefly)

##### **“Polluter pays” principle**

- Yes
- No
- Occasionally, or on a limited basis (in this case, explain your answer briefly)

**(If you consider it appropriate, please indicate any other general town planning or environmental principles different from the above)**

According to Environmental Protection Law the State environmental policy shall be developed and decisions which may affect the environment or human health shall be taken by complying also with the following principles of environmental protection:

- the prevention principle - a person prevents the emerging of the pollution and other adverse effects damaging to the environment or human health as much as possible, but, if it is not possible, prevents the spread and the negative consequences thereof;
- the assessment principle - the effect of any such activity or measure which may substantially affect the environment or human health must be evaluated prior to the permission or commencement of this activity or measure. An activity or measure that can have adverse effects on the environment or human health, even if all requirements of environmental protection are complied with, shall be allowed only in such case if the intended positive result for the public as a whole exceeds the damage caused by the relevant activity or measure to the environment and the public.



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Meanwhile, the following principles shall be conformed in the field of construction:

- the principle of architectonic quality according to which structures are designed by balancing the functional, aesthetic, social, cultural and historical, technological and economic aspects of construction and also the interests of the initiator of the construction and the public, emphasising the individual identity of nature or urban landscape and organically integrating it into the cultural environment, thus enriching it and creating a living space of good quality;
- the principle of engineering technical quality according to which the engineering technical solution of the structure is safe for use, and also economically and technologically efficient;
- the principle of openness according to which the construction process is open, the public is informed about the anticipated construction and the decisions taken in relation thereto;
- the principle of public participation according to which in the cases specified in this Law public discussing of the construction intention is ensured;
- the principle of sustainable construction according to which a living environment of good quality for current and future generations is created during the construction process, increasing efficient use of renewable energy resources and promoting efficient use of other natural resources for such purpose;
- the principle of environmental accessibility according to which such environment is created during the construction process, in which any person may move with comfort and use the structure according to its purpose of use.

#### **IV.6. – TAXATION**

**27º) In tax matters, are the following principles applied in your legislation and judicial practice?**

**Principle of legality: Tax liability can be established only by rules with legal status.**

- Yes
- No
- With nuances (in this case, explain your answer briefly)

**Principle of economic or contributory capacity**

- Yes
- No
- With nuances (in this case, explain your answer briefly)

**Principles of equality and generality**



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- Yes
- No
- With nuances (in this case, explain your answer briefly)

**Principle of progressiveness and its limit: non-confiscatory taxation**

- Yes
- No
- With nuances (in this case, explain your answer briefly)

**(If you consider it appropriate, please indicate any other general principles of tax law different from the above)**

Latvia has adopted a progressivity principle for personal income tax, which means that people who earn less pay less tax and those who earn more pay more.

The Latvian tax administration operates according to the "advise first" principle, which states that the primary objective is not to penalise, but to achieve cooperation between businesses and the supervisory authorities to ensure that businesses know and understand their obligations and comply with them in good faith.

Tax law also applies the principles of proportionality, legality, equality and other principles of administrative law.

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