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Problematic issues in access to education for the persons with disabilities

Abstract. The legal guarantees of access to education for the person with intellectual disabilities frequently are of declarative character, which requires improvements in observance of the legally constituted rights. The paper looks into the most important legal guarantees of access to education and enforcement of those for the persons with disabilities based on the analysis of the current situation in Latvia and worldwide.

Key words: access to education, education, legal guarantees, persons with disabilities.

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Проблемные вопросы доступа к образованию для лиц с ограниченными возможностями

Аннотация. Правовые гарантии доступа к образованию для лиц с ограниченными возможностями нередко носят декларативный характер, поэтому требуется совершенствовать соблюдение законодательно предусмотренных прав. В статье рассматриваются наиболее значимые правовые гарантии доступа к образованию и их реализация для лиц с ограниченными возможностями на основе анализа текущей ситуации в Латвии и в международной практике.

Ключевые слова: доступ к образованию, образование, юридические гарантии, лица с ограниченными возможностями.

Introduction

The right to education is generally recognized as a constitutional legal phenomenon that is attributable to the relationship between the state and the individual. This right is an integral part of society and human rights; it progresses alongside the evolution of individuals and nations, at the same time ensuring the development of mankind. The right to education includes the ability to access results of civilization's development, allows enjoying the progress of cultural development, nurtures respect for universal values, forms national cultures and promotes social progress. At the same time, access to education ensures both educational opportunities and spiritual development, education facilitates the development of human talent, social intelligence and personal enrichment, while, in turn, the accumulation of specific skills and competencies determines a person's prospects for involving into the labour market [1]. It is apparent that education and its availability also are closely linked to individual's subsequent career opportunities and overall standard of living.

Access to education for a wide spectrum of the population is considered one of the most important national socio-economic development objectives worldwide. This goal will be unattainable without a carefully designed legal framework that provides legal guarantees for every individual's access to education. Meanwhile, a lack of a detailed analysis of access to education for individuals with intellectual disabilities and legal guarantees that ensure this access is observed.

The goal of this article is to look into the issue of legal guarantees to access to education for persons with intellectual disabilities.

The article is based on the review of both a number of national studies and documents, relating to the Republic of Latvia, and international studies, with the author focusing on the access to education for persons with intellectual developmental disabilities with the purpose of **evaluation of the most essential legal guarantees ensuring access to higher education for people with intellectual disabilities.**

International studies

General access to education has been explored in various international studies and by international organisations such as the *Organisation for Economic Co-operation and Development* (OECD), the *United Nations Educational, Scientific and Cultural Organization* (UNESCO), the *European Centre for the Development of Vocational Training* (CEDEFOP), and several other organisations that provide regular reports and carry out research on education and access to education.

Countries that have ratified at least one of the seven UN treaties concerned with the protection of human rights in education are obliged to submit periodic reports on the measures adopted to ensure compliance. One of such treaties is the *UN Convention on the Rights of Persons with Disabilities*, [2] which focuses on the development of an inclusive education system on all levels of education. This document supports the human rights and deriving from the latter the right to education and is the basis for governments to present reports on the subject. The convention foresees international and national mechanisms for the enforcement of provisions and monitoring. Countries are obliged to ensure data collection and report submission to the *UN Committee on the Rights of Persons with Disabilities* to ensure compliance; this also includes the issues of access to education for persons with disabilities.

Most of the countries involved in the study resulting in the subsequently published *Global Education Monitoring Report 2017/2018 Accountability in Education* [3] (86 in total) stated that their constitution, laws or policies contain provisions on the rights to education for persons with disabilities, however, admitting that few of these texts include the definition for disability. The lack of an adequate international definition creates difficulties in program development and compliance with international law. Some constitutions, laws or policies (in 42 countries) refer to the rights to inclusive education, which implies a tendency to withdraw from special schools in favour of inclusive programs in general schools. Unfortunately, such policies are not always implemented. Governments often develop long-term education sector strategic plans, but fail to meet annual operational plans, which have greater significance in planning and coordination when dealing with such issues [3].

Accountability

With regards to global tasks in securing inclusive, fair and high-quality education for everyone at any given time of their lives, an **effective mechanism of accountability is required.** A significant international level research on the subject is the *Global Education Monitoring Report 2017/2018 Accountability in Education* [3] The study includes an assessment of the importance of reporting on global education system, and giving the UN the target of assuring stable, comprehensive and equitable quality educational opportunities for all throughout people's lives.

The report shows that Accountability report mechanisms in numerous

countries is often non-existent with education law violations seen as common practice, while in other countries reports became an end in itself without acting as a tool in educational improvement. The issue of reporting on education starts at governmental level, since it is they who are primarily responsible for the protection and implementation of education. The laws are effective only when they are complied with; consequently, the governments are expected to create a stable law **enforcement system**. All countries have signed at least one international treaty that safeguards the right to education. Currently, 82% of national constitutions include the right to education. However, only in 55% of the countries can these rights be protected in the court, that is, there are laws in place that grant citizens legal rights as a tool for overcoming issues that education is facing. International research identifies the insufficient implementation of legal guarantees on an international level and urges governments to take responsibility for guaranteeing an inclusive and fair educational system.

With regards to the disability issue, there is the double task of assessing the prevalence of disability among the population as well as problems in the field of education faced by the group in question. When determining the percentages of people with disabilities considerable discrepancies were found between demographic surveys and surveys on health; in addition, surveys show different assessment on disability's influence on attending school. Students with disabilities are constantly facing obstacles, such as lack of equipment ensuring better mobility, unadjusted building design, inadequate training programs and lack of textbooks; just as prominent is the shortage of financial resources [3]

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The report emphasises that the objectives and progress can be attained only by joining forces. For example, if there are no specific government designed education plans, the role of different parties involved may turn out to be ambiguous, promises may remain just promises, and the designed policies might consequently lose financial support. Greater focus on direct results created foundations for the establishment of indicators and standardized instruments that evaluate the work of all parties involved, including governments, teachers, and various organizations.

The study found that compliance with the rights to education is the duty of both society and international organisations, this includes the obligation to ensure that national legislation assures accountability for violations of rights to education in the face of law. The mass media can have an important role in informing individuals of the results contained in the reports. Parliamentary committees, the Ombudsman and courts are efficient instruments in ensuring horizontal reporting, defending society's interests and limiting the government's arbitrariness [3].

Latvia's experience

The analysis of legal guarantees must start with the law of the highest legal force in any country, namely, in the case of the author of this article, the *Constitution of the Republic of Latvia*. Article 112 of the *Constitution of the Republic of Latvia* (Latvijas Republikas Satversme 1922; 1998) ensures any individual's right to education. *The Ombudsman of the Republic of Latvia* [3] interprets this law as a right, which includes the positive obligation of the State to create an education system, as well as the negative obligation – not to interfere with these rights. The education system's obligation is tied to several other tasks to ensure access to education, its availability, acceptability and suitability. Access to education requires both sufficient number of educational institutions and programmes as well as their functional capacity, which includes the provision of premises, teaching materials, training of personnel, etc.

Hierarchically, the next document by legal force in Latvia is the *Education Act*, where the first paragraph of Article 2 contains the following objective - to ensure each citizen of Latvia, as members of a democratic Latvian State and its society, the ability to develop their mental and physical potential for formation and develop of an independent personality [4] For an individual to develop his or her personality and become a member of the society, the *Education Act* steps in to determine legal guarantees that are to ensure this access. Article 7 of the *Education Act* mentions the main educational focus groups, where next to children, young people and adults, as well as persons with special needs In addition, the first paragraph of the *Education Act* 3.1 prohibits discrimination on the grounds of state of health [5]. Article 42 of the *Education Act* explains that persons with special needs may obtain special education in any educational institution as long as that institution is able to secure education suited to their health and developmental disabilities. Special education programs are therefore designed based on the student's state of health [5]. One can conclude that the *Education Act's* provisions contain legal safeguards to guarantee education to persons with special needs, including persons with mental disabilities, since discrimination based on health reasons is prohibited. The State intends that persons with special needs may receive education in institutions that provide such opportunity and develop special appropriated programs. The legal framework does not demand, only informs educational institutions that they can choose whether to equip their environment and programmes for students with intellectual disabilities or not. It is the belief of the author that this formulation creates difficulties since the possibility of accessing education for an individual with special needs is based solely on the decision of the educational institution. Only if the educational institution chooses to provide the needed environment, can a person with intellectual disabilities receive education in the school. But if the educational institution decides not to provide such opportunities, then the person with special needs will be unable to receive education appropriated to their needs. The fact that such decision is left solely to the educational institutions can be judged as discriminatory towards persons with special needs and clearly shows that laws must be improved.

Provisions for special needs education in Latvia

According to first paragraph of Article 53 of the *General Education Act* titled *The Integration of Students with Special Needs into Mainstream Education* the institutions of general basic and general secondary education, which have the appropriate environmental support, may integrate students with special needs. Requirements that have to be met by the basic and general secondary educational institutions, if they are willing to integrate students with special needs, are determined

by the *Cabinet of Ministers* [6]. This means that general basic and secondary education institutions may include students with special needs in their schools by developing an individual study plan for each integrated student with special needs. In addition, in 2012 the *Cabinet of Ministers* developed the *Rule 70 Provision on General Primary Education and General Secondary Education Coverage to Suit Special Needs Students* which entered into force on 19 October 2012. The provision states that there are two ways to integrate students during the training process, i.e. a learner with special needs is integrated in general basic education and general secondary education classroom or a separate class is open only for learners with special needs – special education class. For learners with mental health problems the following guarantees are demanded:

- relaxation space, if necessary, providing constant presents of a teacher, educational or clinical psychologist, or a social educator;
- rehabilitation sessions; if necessary, additional individual or group training sessions and (or) counselling;
- a more tentative method of teaching and upbringing process;
- individual behaviour adjustment plan has to be developed for students with behavioural disorders [7].

The desired security list also includes educational or clinical psychologist, child psychiatrist, teacher's assistant, social pedagogue and therapeutic gym classes. Material security includes the base materials for practical work skills under the special education program.

As seen in the specified guarantees the emphasis is on the availability of qualified personnel, that would help the student integrate into the educational environment, learning the program without stress and burnout, but, if it occurs, a relaxation room can be used, or the student can undergo rehabilitation lessons. Training materials must also be adapted to make them accessible and understandable to students with intellectual development disorders, this would help in gradually developing practical skills to achieve education goals and become full members of the society.

To achieve the above mentioned and to ensure access to education for persons with mental disabilities, there is a need for not only high quality and effective legal framework, from which the legal guarantees stem, but also the appropriate development and implementation of policies on a national level. Latvia's sustainable development strategy for the year 2030 or *Latvija2030* concludes that the educational policy of Latvia is still not sufficiently inclusive in relation to people with functional disabilities [8]. Positive examples of such integration in society with the help of the education system is rather an exception than systematic implementation of national policy. Children with functional disabilities are mostly educated in boarding school environment isolated from the rest of the world, and their ability to obtain the necessary skills for a successful independent life is limited. The aim of the 21st century system is for people with functional disabilities to develop the ability to continuously learn and absorb innovation. Legal safeguards provided by the law, are not yet sufficiently met due to insufficient financial support and lack of human resources.

The lack of such resources was also pointed out in the 2016-2017 *Ombudsman-Office study Higher Education for Persons with Disabilities* [9]. The study was carried out with the aim to assess the enforcement of Article 24 of *UN Convention on the Rights of Persons with Disabilities*, namely, the implementation of the right to education, particularly to higher education, in addition stressing the importance of education in any individual's rights to work and improvement of their own well-being. The study was based on respondent

answers. Most of the respondents were between the ages of 18-34. Of the 446 respondents 53 were with mental disabilities, the rest with other disabilities [9]. making individuals with special needs the main focus. Under the concept of *accessibility*, the research analysed the terms *accessibility to information environment* and *accessibility to physical environment*. *Accessibility to information environment* describes the possibilities for persons with disabilities to obtain the necessary information online on any educational institution of interest to the individual, its physical accessibility and study programs, as well as the opportunity for persons with disabilities to study using alternative learning materials and methods [9]. The term *accessibility to physical environment* includes possibilities for persons with disabilities to enter and move around the educational institution buildings, libraries and other facilities [7]. In view of the above mentioned, the study by the *accessibility* concept is the actions taken by educational institutions to ensure equality to learners with disabilities in terms of access to educational services by identifying and eliminating the obstacles and barriers, thus providing access to the physical and information environments. The before mentioned study identified the need to initiate a discussion on the concept of *environmental accessibility in educational institutions* and measures related to the creation of an environment that ensure access to education for persons with mental disabilities. Without such unified concept the changes in the content and definition of the concept of environmental accessibility will allow different interpretations of legal guarantees in access to education.

Respondents who participated *Ombudsman-Office study Higher Education for Persons with Disabilities* [9]. frequently stated that they do not intend to continue studies after high school for health reasons, so it is clear that for a certain percentage of individuals with disabilities further education is limited by their physical and/or mental conditions. Another reason preventing the persons with disabilities to pursue collage education was the view that their present level of education was sufficient and that any further training would not help to improve integration into the labour market. The financial aspect was also mentioned as an important obstacle in access to education, and even though preference was given to full time studies, since it would be a more in-depth mastery of the program, part-time studies also seemed attractive when considering environmental accessibility.

Most obstacles to access to education were related to insufficient accessibility to information environment i.e., no available materials of alternative formats (video, audio, etc.) or methods that would serve the needs of the respondent's disability, in addition, not all higher education establishments could ensure accessibility to the physical environment [9]. However, it must be emphasised that the respondents rarely made any attempts to address the situation with the educational institution, since they thought they could adapt to the situation. Nevertheless, in case the respondent appealed to the educational institution, only in 46% of the cases the institution eliminated the obstacles [9]. Educational authorities frequently refuse to eliminate these obstacles, offering lack of funding as an excuse or stating that the problems cannot be technically solved. From the experience gained by learning abroad, students revealed their positive experience when teachers of the higher educational institution developed an individual program specifically for their needs, as well as the existence of special support centres for people with disabilities, access to special equipment for learning and easy access to training facilities.

Hence, although the legislation in Latvia includes legal guarantees for the development of special programs, qualified personnel, and easier access to

training facilities for persons with special needs, these legal safeguards are not implemented in full. People with mental disabilities who want to study are faced with lack of information on how well the educational institutions are equipped for persons with special needs. There is general lack of information online; nothing is specially noted in school booklets. The study consequently noted that persons with intellectual or mental disabilities are less likely to pursue studies in universities.

The Ombudsman conducting a monitoring of higher educational institutions and concluded that persons with mental/intellectual disabilities make up only 7% of students [8]. One explanation for this could be that certain disabilities cannot be detected by the staff without the assistance of a medical professional or the university might simply have insufficient data on the student. In certain instances, in cooperation with the student self-government, the educational institution did offer information on whether the school's physical environment is equipped for people with disabilities, if the dormitories are accessible for people with disabilities, if the university provides relaxed conditions for admission of persons with disabilities. Students with disabilities were more likely to inform on deficiencies in accessibility of physical environment (13%) rather than on accessibility of information environment (5%) [9].

Schools usually do not implement physical environment adaptation measures on their own initiative, since there are no individuals with disabilities among their students who would need a specially adapted environment. But the Ombudsman drew attention to the fact that due to inaccessible physical environment persons with disability may choose not to attend a certain higher education facility in the first place.

In turn, the main reason for no adjustments in accessibility to information environment (40%) was the assertion that students with disabilities studying in the institution have no need for such adjustments to the study materials [9]. The institutions also mention that the staff and other students are indeed forthcoming and helpful towards students with disabilities, therefore there is no need for extra information environment accessibility measures. Forthcoming attitude to people with disabilities is praiseworthy, but the personnel or other students may not always be available. Thus, it is necessary to provide disabled students training materials in a format that suite their needs, so that they can more efficiently acquaint themselves with any study materials. The lack of such materials or infrastructure may lead to the unfortunate situation where a person with a disability chooses not to attend school due to its lack of environmental accessibility, while the school does not equip the environment because there are no students in their institution who would be in need of such changes.

Some positive examples of assisting the university students with disabilities can be borrowed from France's experience

In 2007 France signed the *University Handicap Charter (Charte Université Handicap)*. The renewed version of the Charter was developed in 2012 and focuses more on assistance given to students with disabilities all through university studies, and afterwards in helping to find employment after graduation [10]. The charter also encourages new and topical research in the field of disabled students, as well as demands greater involvement from universities and other institutions in helping disabled students.

Universities must also incorporate the 2005 law on *Equal Rights and Equality of Opportunities (loi n°2005-102 du 11 février 2005 pour l'égalité des*

droits et des chances), that focuses on greater involvement of the disabled in all areas of society.

In accordance with Article 20 of this law, universities must also provide all the necessary assistance to students with disabilities so that they may successfully incorporate themselves in the study environment; this assistance may be pedagogical support, additional informational support, course content and exam procedure adjustments.

As stated in the *University Handicap Charter* (2012) disabled students may have different demands during studies and in exams. Some differences are summarized in the table form the charter (Table 1), showing the percentage of the disabled students who have used different rules due to their disability.

Extra time	67,20%
Adopted classroom	12,70%
Adopted pedagogical materials	9,7%
Assistant	9,4%
Additional breaks	6,9%
Adopted additional documents	6,4%
Modified exam content	5,5%
Communication help (e.g. interpreter)	1,1%
Other help	16,9%

Table 1. *Changes in exam procedure for disabled students*

France has extensive and diverse programmes as well as institutions created to assist students with disabilities before starting and during studies, as well as after graduation to find employment.

Britain's experience

Great Britain has designed the *Special Educational Needs and Disability Code of Practice 0 to 25 years* that includes special educational needs (SEN) definition [11].

Great Britain offers two types of support: SEN (*Special Educational Needs*) support and individual EHC (*Education, Health and Care*) plans. The new system includes joint planning and close cooperation between education, health and social care; EHC plans focus more on support that enables those with SEN to succeed in their education and make a successful transition to adulthood.

The accomplishments of the efforts towards ensuring access to education of persons with disabilities can be seen in providing valid definitions of the concepts of mental learning disabilities allowing to develop an appropriate code of practice thus determining the responsibilities of medical and other professionals towards children and young people with mental and learning disabilities, which leads to developing a joint national framework.

Following the adoption of the *UN Convention on the Rights of Persons with Disabilities*, undertook education system reforms aimed at developing an inclusive education system. To tackle the integration issue, Germany and Great Britain encourages that children with disabilities are involved in all mainstream day care centre activities together with other children. France can be proud of numerous institutions that assist disabled children and young people in their efforts to education. Russia, that grants less financing and often lacks implementation experience in this field, has approached this problem by creating different levels of incorporation, all emphasising the importance of Russian culture, traditions and lifestyle.

Changes in education level

An important document on the subject is *Education at a glance 2017: OECD indicators* a research carried out by OECD, that summarizes selected OECD criteria to assess level of education on an international level [12]. The study found that since 2000 the workforce in OECD countries and partner countries has become more educated. Nowadays most people in the age group 25-34 hold a degree of a higher level than before, while the number of adults who have not graduated high school has decreased. Although more adults finish high school, successful completion of programmes remains problematic, and on occasion students are incapable to finish the programme even after two additional years of training. This is significant, since the unemployment rate among those without a high school degree is 17% compared to 9% unemployment rate for high school graduates.

The study underlines that a higher level of education leads to higher income. Adults with university-level education, derive great benefits from their investment in education. Statistically they are by 10 percentage points more likely to be recruited and earn on average 56% more than those with no university education. Adults with a higher level of education are also less likely to suffer from depression in comparison to their less educated peers. For these reasons young adults are becoming more eager to continue education to enhance your qualifications, and not enter the job market with only compulsory schooling.

In addition, the study indicates that on all levels of education, particularly in colleges, the costs have increased with number of students enrolled slightly decreased between 2010 and 2014. These increasing costs for all levels of education do not correspond with the average GDP growth in OECD countries between 2010 and 2014. What is more, government spending on education in relation to GDP has decreased by 2%. From 2010 to 2014 half of the OECD countries decreased their share of state resources for both basic and higher education.

The study reveals that in most OECD countries, adults most often choose to pursue a higher education degree in business, administration or law. On average 23% of graduates in the OECD countries in the age group 25-64 have a degree in one of the three before mentioned areas of study, in comparison to 5% in science, statistics and mathematics, 4% in information and communication technologies and 17% in engineering, manufacturing and construction. The average division among the study fields is quite constant, with preferences staying relatively the same over time. With the level of education increasing, a growing interest in science, technology, engineering and math can be observed, since these sciences are related to industries with higher employment rates, reflecting a more innovation-driven society demands: information and communication technology graduates can rely on a by 7 percentage points higher employment rate than graduates in the arts and humanities, social sciences, journalism and information related fields. However, the employment rate in science related fields is not steady: science, mathematics and statistics graduates mostly had similar employment levels as graduates in the arts and humanities – both categories are below the level of employment for engineers or information communication and technology professionals [12].

The research also reveals that many countries restore vocational education and training programs since they proved effective in the development of skills of students that otherwise would not be able to enter the labour market. Some countries on the other hand consider vocational education as a less

attractive option compared to academic education. One international research on vocational education is the *European Centre for the development of Vocational Training-CEDEFOP's research From education to working life. The labour market outcomes of vocational education and training* [13]. The study concluded that vocational education graduates find work more quickly than general education graduates. A steadier working relationship is developing, since graduates spend less time unemployed and are not as likely to change their employers frequently.

Graduates of vocational training usually concentrate on technical professions and mainly middle-level professions (crafts and related sectors). Although these professions still create employment opportunities, in the medium term, the demand is expected to decrease. This is a challenge that should draw more attention to lifelong learning, skill upgrading, meeting new qualification demands to stay in the profession and improves adaptability in the ever-changing labour market.

The second part of the study was dedicated to the 27 European Union countries by comparing vocational education accessibility policies. There is a group of countries where a large part of the population concentrates on vocational education. Among the more prominent in this group are the Czech Republic, Slovakia and Austria with 84-85%, which is significantly above the average. Quite another situation can be observed in Ireland (22%), Portugal (25%) and Iceland (25%) where vocational education is less prominent. These differences can be explained both through historical tradition and by factors associated with supply and demand for this training system. Some countries have a long tradition of vocational training (i.e. Austria, Germany and Switzerland), where support by institutions and companies is seen as the key to a more consistent supply and demand. Students in these countries are much more likely to choose vocational education than for example in Italy where much more attention is given to general education.

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Discussion and Conclusions

The analysis of international and governmental laws as well national and international research on the subject reveal that legal guarantees of access to education for individuals with special legal status – persons with intellectual disabilities are not fully regulated and implementation of existing guarantees is flawed.

On the whole, on review of the international studies and practice we can conclude that

a number of problematic issues are determined as evident both internationally and the individual countries experience and practical approaches, such as

- an importance of a valid concept of disability and the definitions of relating conditions such as learning difficulties, appropriate physical environment etc

- the need to involve supporting organizations determining their roles and the responsibilities

to stipulate the information flow and dissemination for the benefit of both the persons with intellectual disabilities and by the parties involved in ensuring the access to education of the

- the enforcement of rules and regulations relating the access to education of the persons with intellectual disabilities

- the harmonisations of the activities ensuring the access to education of the persons with intellectual disabilities both nation-wise and internationally

- Creating the mechanisms of accountability on implementation of legal guarantees on Access to education for persons with intellectual disabilities

The implementation to quality education is closely linked and dependant on the number of educational institutions, training materials and qualified staff available.

There are multiple aspects that all countries must consider to ensure access to education for disabled students. Persons with special needs and intellectual disabilities need a specially equipped physical and information environment – infrastructural changes on the school premises, as well as specially adapted study programmes and materials. According to legal provisions educational institutions in some countries are not obliged to make any such changes if they are not willing. Such circumstance can be regarded as discriminatory towards persons with special needs and indicates the necessity to improve the rule of law and develop effective mechanisms that ensure accountability.

The global challenge of overcoming problems in this field depends on the involvement of different partners; education is a collective social field, so student and parent involvement in overcoming the obstacles is essential. With regards to persons with intellectual and physical disabilities, governments should concentrate on inclusive and integrative education.

The principal obstacles in ensuring this are financial shortages, lack of qualified personnel and environmental inaccessibility in the educational institutions. Alongside increased financing, governments should ensure additional staff training, encourage inclusive education and improve the reputation of the teaching profession. Such measures together with legal guarantees would hopefully bring progress.

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