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The fatwa institution and Public Legal Persons under Algerian law. (Part One): The fatwa within the central administration.

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Abstract:

This study in two parts aims to explore a contemporary issue: the growing enthusiasm among citizens for fatwas, whether issued by institutions or individuals, through social media. It highlights the need for legal regulation to safeguard public order.

By observing and analyzing the legal texts promulgated since independence, it becomes evident that Algeria is moving toward the institutionalization of fatwas. This process is no longer confined to the High Islamic Council and other institutions but now extends to a Public Legal Person, specifically, public establishment. This expansion calls for a careful examination of each fatwa-issuing body and its legal framework.

Keywords: Fatwa; High Islamic Council; Public Legal Persons; central authority; the mosque foundation.

INTRODUCTION

The fatwa remains a cornerstone of Muslim societies, guiding religious and social life, yet its power can also threaten public order. To counter extremist interpretations, the modern state has asserted

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itself as the primary regulator of its issuance. This centralized control marks a decisive break from the past, where imams operated with notable independence, funded by private endowments. Now integrated into the civil service, religious figures are under stringent administrative authority. This transition represents a fundamental shift from traditional autonomy to state-controlled religious discourse.

In the case of Algeria, the state's orientation toward the institutionalization of religion in general, and of fatwas in particular, became evident in the early years of independence. This drive for structuring and controlling the religious sphere was concretized by the establishment of the Ministry of Religious Endowments (Houbous) in 1963(1) (now the Ministry of Religious Affairs and Waqfs)(2), barely a year after gaining independence. Simultaneously, the creation of the High Islamic Council in 1966(3) marked a decisive step in this process, explicitly entrusting it with the authority to issue fatwas.

The shift in political, economic, and social conditions within the state following the restoration of national sovereignty has significantly influenced the approach to organizing and regulating fatwas. The socialist era, framed by the Constitutions of 1963 and 1976, stands in stark contrast to the period marked by political pluralism, introduced by the 1989 Constitution.

Indeed, the legal texts about fatwas are scattered across a multitude of legal norms. The Constitution, as the supreme norm, lays the foundation, while laws, though less frequent, specify certain aspects. However, it is in regulatory texts, which are more numerous and detailed, that the bulk of provisions governing fatwas are found. This fragmentation reflects both the complexity of the subject and the state's desire to adapt its legal framework to the evolving realities of society.

(1) Decree No. 63-80 of March 4, 1963, Official Journal (OJ) no. 12.
(2) Decree No. 21-361 of September 21, 2021, OJ no. 73.
(3) Decree No. 66-45 of February 18, 1966, OJ no. 15.

Regarding the state's fundamental law, it designates the High Islamic Council as a consultative body directly under the Presidency of the Republic. At the legislative level, the texts in force primarily focus on Islamic finance, while regulations, particularly in the form of Executive Decrees, address various domains such as the establishment of mosques, as well as the status and functions of imams. These regulatory provisions have been primarily developed by the Ministry of Religious Affairs and Waqfs.

It is also important to highlight recent developments concerning the institution responsible for issuing fatwas, although some ambiguities persist regarding its precise mandates. Among these developments are three major texts:

1- A text issued by the Central Bank of Algeria in 2020, regulating Islamic finance.

2- A text of the Office of Waqfs and Zakat, enacted in 2021.

3- A text concerning the organization of the Mosque of Algiers, enacted in 2022.

These reforms illustrate a significant transition: the regulation of fatwas, once the prerogative of public authorities, is now entrusted to specialized public legal entities.

Etymologically, the term *fatwa* refers to an opinion issued by a religious scholar in response to a religious question. More specifically, it constitutes a clarification or interpretation addressing ambiguous or uncertain aspects of Islamic norms(1). Within the framework of Islamic sciences, a fatwa is often defined as the act of formulating a religious judgment devoid of binding authority(2). This definition underscores its primarily informative and non-binding role, distinguishing it from

(1) Ezoubeidi, Taj el Arousse (*The Crown of the Bride*)**,** Volume 39, Dar el Hidaya, Kuwait, p. 112.
(2) Ibrahim El Kani, Manar Oussoul el Fatwa (*The Guiding Light on the Foundations of Fatwa*), Ministry of Waqfs, Morocco, 2002, p. 232.

laws and regulations. It is worth noting that an analysis of Article 206 of the 2020 constitutional revision(1) provides a legal definition of the fatwa. This article stipulates that one of the Council's responsibilities is to "issue its opinion in light of religious prescriptions on matters submitted to it."

These elements, among others, prompt us to examine the legal framework of fatwas and its relationship with Public Legal Persons and their transformations since their emergence following independence?. To address this problematic, and given the numerous elements and the complexity of this article's subject matter, which cannot be summarized in simple points, we will divide it into two parts. We will first explore the establishment of the fatwa institution within the central administration (Part One), followed by an analysis of the organization of fatwa within establishment public (Part Two).

And regarding this first part of this article, namely the establishment of the fatwa institution within the central administration, we will first look at the High Islamic Council (HIC), a constitutional consultative institution (First section). We will then examine another body, the Ministerial Committee of the fatwa, attached to the Ministry of Religious Affairs (Second section).

First section: HIC: The constitutional advisory body for the fatwa

We will approach this section by structuring our analysis around two main axes: on the one hand, elements relating to the organization and functioning of the Council (First sub-section), and on the other, aspects linked to its relationship with fatwa (Second sub-section). This approach will make it possible to systematically examine the institutional and legal dimensions that frame the Board's fatwa activities.

(1) Presidential Decree No. 20-442 of December 30, 2020, Official Journal (OJ) no. 82.

First sub-section: Transfer of the fatwa from the ministry to the presidency

Article 206 of the 2020 constitutional amendment states that the High Islamic Council is a constitutional consultative(1) religious body, due to the nature of its main activity, namely the issuance of fatwas by the rules of Islamic Sharia law. According to the Constitution, this body is also distinguished by its attachment to the Presidency of the Republic. Although it has no legal personality, the said Council has financial autonomy and independence in its management, as stipulated in Article 3 of Presidential Decree No. 17-141 promulgated in 2017(2). This text describes the Council as a "national reference institution".(3)

It is important to emphasize that the Council's constitutionalization originated in the 1989 Constitution, when there was only one consultative body, the High Security Council**.** However, with the adoption of the 2020 constitutional revision, the institutional landscape was significantly broadened, bringing the number of consultative bodies to eight(4). This development reflects a desire to strengthen consultation mechanisms and diversify the bodies involved in the decision-making process, while consolidating their constitutional anchoring.

As far as the mission of the High Islamic Council is concerned, it should be noted that, according to the regulatory texts before the 1989 Constitution, it had several attributions, including that of issuing religious fatwas to official and unofficial institutions(5). However, the question of its internal organization and institutional structure was only explicitly clarified following the revision of the 1966 Decree by Decree No. 80-120 promulgated in 1980. This text defined more

(1) Title 5 of the Constitution.
(2) Presidential Decree No. 17-141 of April 18, 2017, on the organization of the High Islamic Council, OJ no. 25.
(3) Art.4.
(4) For example, the National Council for Human Rights.
(5) Art. 1er of Decree No. 66-45.

precisely the Council's operating procedures, composition, and missions, marking an important step in the institutionalization of its role in fatwa and religious guidance. According to the decree, the Council is made up of four commissions:(1)

1. Fatwa, preaching, and orientation commission.
2. Commission for Islamic teachings and learning the Koran.
3. Islamic Heritage Commission.
4. External Relations Commission.

It should be noted that the last decree of 2017 did not provide the necessary clarity regarding the Council's structure, missions, and precise remit, particularly concerning the fatwa commission. This lack of precision has left areas of ambiguity regarding the Council's internal organization and the distribution of roles between its various bodies.

The constitutionalization process also involved the number of members of the High Islamic Council and their areas of specialization. The number of members rose from 11 in the 1989 Constitution to 15 in the 1996 one. As for specialization, it has become much broader than it was in the 1989 Constitution, where the article stipulated that members were to be appointed from among national experts in various sciences. Appointment is no longer restricted to Sharia scholars.

As far as its dependence on the central government is concerned, the Council was initially attached to the Ministry of Religious Affairs, as clearly stated in the 1980 decree. The Minister was responsible for appointing its members(2) and retained the honorary presidency of the Council. Unusually, its first composition included an honorary member from outside the Algerian Republic, namely the "Mufti of Dakar"(3) from Senegal.

(1) Art. 5 of Decree No. 80-120 of April 18, 1980, amending and supplementing Decree No. 66-45, OJ no. 16.
(2) Art. 3.
(3) Abdallah BOUCHENE, Cult and State in Independent Algeria, (*French* =

With the incorporation of the Council into the 1989 Constitution, it ceased to be under the authority of the Ministry of Religious Affairs and was attached directly to the President of the Republic. However, this separation did not mean that the Council's competence in certain areas linked to the Muslim faith was withdrawn, which could have led to "overlapping competences with the Ministry, as has happened on several occasions".(1)

Second sub-section: The relationship of the HIC with the fatwa

One of the main characteristics of the HIC, according to the constitutional text, is its field of intervention. Although this element is not explicitly defined in the text, it can be deduced from the first paragraph of Article 206, which uses the term "*ijtihad*". Accordingly, it is assumed that the Council's main function is to issue religious opinions on new or novel issues, known in Islamic science as "*nawazil*", situations or problems that have no prior fatwa, such as the COVID-19 pandemic.

It should also be noted that a review of previous regulatory texts and the current text relating to the HIC reveals that they are not clear on the rules governing the fatwa process. For example, about referral to the constitutional advisory body, the current regulatory text limits this to the President of the Republic (since the 1998 decree)(2), whereas in 1991, this important legal procedure was open not only to the President, but also to the President of the People's National Assembly and the Prime Minister(3). The extension of the notification procedure is crucial to the Council's independence.

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language), Research Paper (3rd Year), Institute of Political Studies, University of Algiers, 1975, p.64.

(1) Lahcene BENAMZAL, Tandim esha'air ediniya fi el kanoun el djazairi (*The Regulation of Religious Practices in Algerian Law*), PhD thesis, Algiers 1 University, 2016, p.137.

(2) Art. 6 of Decree No. 17-141.

(3) Art. 4 of Presidential Decree No. 91-179 of May 28, 1991, on the organization

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It is also criticized that the current decree limits the scope of fatwa to areas of *fiqh*(1), in contrast, Islamic sciences cover a wider range, including, for example, questions of dogma (*akida*). Today, protecting religion from new ideas perceived as dangerous requires the issuance of new religious opinions adapted to contemporary challenges. An illustrative example is the fatwa issued by the High Islamic Council on June 29, 1987, concerning Bahá'í or Ahmadi groups, who claim to be Muslims.(2)

In 2023, the public authorities decided to set up a fatwa commission, known as the "Islamic Finance Fatwa Authority(3), under the terms of the Monetary and Banking Act.(4) On reading this text, it appears that it does not specify the institution to which this commission belongs, despite its crucial role in the financial field, particularly in Islamic finance, bearing in mind that the law itself stipulates that "the marketing of banking products linked to Islamic finance first requires a certificate of compliance with Sharia principles,..."(5). This procedure is of the utmost importance, as the Bank of Algeria can't approve an Islamic bank or an Islamic counter within a bank without the certificate of conformity issued by the commission above.

The analysis revealed that the creation of this commission, described at the time as *national*, was relatively ambiguous in the Bank of Algeria regulations promulgated in 2018(6), which had

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of the High Islamic Council, OJ no. 27.

(1) Art.6 of Decree No. 17-141. It can be defined as " a discipline tending to the deduction of rules from Islamic law ". See : Charles SAINT-PROT, Islam (French language), edit. Rocher, 2008, p.129.

(2) Ahmed HAMANI, Madjmou el fatawa (*Collected Fatwas*), T.1, Palace of book, Algiers, p.44.

(3) Art. 73.

(4) Law N° 23-9 of June 21, 2023, OJ n° 43.

(5) Art. 73.

(6) Art. 4 of Regulation no. 18-02 of November 4, 2018 on the conditions under which banks and financial institutions may carry out banking operations relating to participative finance, OJ no. 43

introduced the concept of *participative finance* rather than Islamic finance. However, with the promulgation of the new regulation in 2020(1), which addresses Islamic finance in greater detail, the fatwa commission was explicitly mentioned in article 14. Nevertheless, it is surprising to note that the institution to which this commission is attached was not also specified, especially as the fatwa body within the HIC had existed for several years.

That said, a visit to the website of the Fatwa Commission for Islamic Finance reveals that it is attached to the Higher Islamic Council. According to the information available on the site, it is mentioned that "following a consultation between the President of the Republic, the Prime Minister and the Minister of Finance, it was decided that the headquarters of the National Fatwa Commission for Islamic Finance would be established within the Higher Islamic Council, by the proposal made by the latter in its 2018 statement"(2). Furthermore, certain details indicate that the majority of the members of this new body are drawn from the HIC's Fatwa Commission, their number being set at seven. The official establishment of this National Commission took effect on April 1, 2020.

It's important to point out that the lack of precision in the Presidential Decree governing the HIC in 2017 had repercussions on the content of the new monetary and banking law promulgated in 2023. Indeed, the latter did not explicitly define the scope of the fatwa commission's competencies about Islamic finance issues, nor did it clarify the commission's operating rules. These shortcomings could compromise the legal validity of these opinions. Moreover, it appears that the Bank of Algeria has not taken this into account, despite the

(1) Regulation no. 20-02 of March 15, 2020 defining Islamic banking and Islamic finance and the conditions under which banks and financial institutions may carry them out, OJ no. 16.
(2) https://www.autorite-hci.dz (consulted on: 20-01-2025).

publication of the new regulations in 2023, in force in accordance by paragraph 2 of Article 166 of the said law.

Second section: The fatwa institution within the Ministry of Religious Affairs and Waqfs

The question of the institutionalization of fatwa has a historical link with the Ministry of Religious Affairs, as mentioned above, before the HIC was attached to the Presidency of the Republic. However, this separation has not prevented the Ministry from intervening in the fatwa field, as observed within the mosque foundation (First sub-section), and at the mosque level through imams and mourchidates diniyates (Second sub-section), not forgetting the ministerial fatwa commission, which drew our attention during the COVID-19 pandemic (Third sub-section).

First sub-section: The fatwa within the mosque foundation

It should be noted, firstly, that the mosque foundation does not refer to the mosque as such, which is a public religious service with no legal personality, but to a separate institution created in 1990 by Executive Decree N°91-82 promulgated in 1991(1). This decree defines this institution, generally headquartered at a great mosque in each Wilaya, as an "Islamic institution with legal personality and financial autonomy, working in the public interest."

Before discussing in detail the relationship between this institution and the fatwa, it is essential to point out that the use of the qualifier "Islamic" in the decree is not unusual in Algerian law. Indeed, several previous regulatory texts have used the same terminology. Decree No. 81-101, promulgated in 1981 on specialized Islamic institutes for the training of religious personnel(2) is a case in point. However, this qualifier does not mean that this public administrative establishment is governed by Sharia rules. Rather, it indicates that it is dedicated to the

(1) Executive Decree No. 91-82 of March 23, 1991, OJ no.16.
(2) OJ no. 21.

training of a specific category of Muslim religious officials and, as such, is placed under the supervision of the Ministry of Religious Affairs. It is also well established in administrative law that public administrative establishments, like hospitals and universities, operate mainly in the social and cultural fields.(1)

Although the decree qualifies these institutes as public administrative establishments, the situation is different for the mosque's foundation. Indeed, the legal classification of this institution remains ambiguous after a thorough reading of the text, as the term "fondation", in its French translation, refers to the law on associations(2), which are legal entities under private law, unlike public establishments, which come under public law. Research on this point proves complex, given that the decree does not refer to the law on associations in its visas.

Furthermore, it is difficult to classify the mosque foundation in one of the traditional categories of public establishments, due to its ambiguous nature. In principle, a public establishment generally comprises a deliberative body and an executive body, the latter being chaired by a managing director appointed by the central or local authority, such as the wali or the president of the municipal council in the case of local public establishments. However, this structure does not apply to the mosque foundation, whose organization is based primarily on a board of councillors, chaired by the director of religious affairs at the Wilaya level or his representative. The absence of the wali or his representative also reinforces the ambiguity of the mosque's legal status.

In light of this brief analysis, it becomes clear that it is difficult to establish a legal classification for the mosque foundation, whether it is

(1) Abderrahmane REMILI, Algerian Administrative Institutions (*French language*), SNED, Algiers, 1973, p.161.
(2) Art. 49-55 of law No. 12-06 of January 12, 2012, OJ no. 02.

classified as an association or a public establishment. The question remains open, all the more so as it is difficult to know the judge's opinion on this subject, notably due to the lack of publication of rulings. The other possibility is to classify the mosque as a *sui generis* institution operating in the field of Muslim worship at the Wilaya level.

With regard to the issue of the fatwa within the mosque's foundation, it should be emphasized that this is the responsibility of one of the four councils making up the institution's board, namely the Scientific Council. This is made up of scholars with in-depth expertise in Islamic culture and science(1). The role of this council is particularly marked in the field of fatwa, where it intervenes mainly when a fatwa, giving rise to divergences among scholars, requires clarification.(2)

To provide a clear framework for this mission, the foundation's internal regulations stipulate that "respect for the Malikite school is mandatory". However, it authorizes the board to refer to other Sunni schools in cases where the Malekite school does not provide a clear answer to a specific question. Furthermore, the council is empowered to adopt the positions of the Ibadite or Hanafit schools if the person requesting fatwa belongs to one of these schools(3). In certain circumstances, therefore, the fatwa may go beyond the strict framework of the Malekite school, notably in the presence of doctrinal divergences or contextual necessities. This flexibility reflects both a rigorous and adaptive approach to issuing Sharia opinions.

Finally, it should be recalled that the special statute for civil servants working for the Ministry of Religious Affairs and Waqfs, promulgated by Executive Decree in 2008(4) and amended in 2024,

(1) Art. 9.

(2) Order of the Minister of Religious Affairs n° 91-47 of September 10, 1991, (unpublished), art. 9.

(3) Art. 9.

(4) Executive Decree No. 08-411 of December 24, 2008, amended and supplemented, OJ no. 73.

introduced a new position among the top posts: that of imam mufti. The missions assigned to this position are numerous and of significant importance. These include the clarification of Sharia rules for the general population, as well as participation in studies and research in the field of fatwa, contributing to the activities of the scientific council, which he chairs as necessary.(1)

This decree institutionalized the role of the imam mufti by integrating him into an administrative structure where he reports on his activities to the deconcentrated authorities under the Ministry of Religious Affairs.(2)

A particularly interesting aspect of this role is that the Imam Mufti is allowed to chair the foundation's scientific council. However, his competence is limited exclusively to fatwa solicited by individuals, and not by corporate bodies, which distinguishes him from the other members of the council. In addition, one of the special features of his position is his responsibility for promoting and hosting religious sessions in the media, a mission which forms part of a wider strategy to disseminate religious teachings.

In this respect, it's important to point out that the Algerian media landscape underwent a significant evolution with the creation of the public religious channel (Channel 5) in 2009. This initiative has strengthened the presence of religious content in the public arena, providing an additional platform for religious education and awareness-raising, while consolidating the role of the imam mufti as a key player in the mediatization of religious discourse.

The importance of the Scientific Councils, which were instituted late in 2006, is reflected in their annual meetings, which cover all the country's Wilayas. These assemblies are used to examine and analyze the various fatwas issued over of the year. By way of illustration, at a

(1) Art. 70.
(2) Art. 68.

meeting held in 2014 in Ghardaïa, the council issued a number of opinions, including a ban on the electrocution of poultry before slaughter, and a prohibition on the consumption of poultry meat. These decisions reflect the Council's rigorous approach to both practical and ethical issues, based on the principles of Sharia.

Second sub-section: The fatwa within the mosque

Contrary to what has been said about the High Islamic Council and other institutions, fatwa at the mosque is practiced individually and not collectively. These are the mosques located within the Commune's geographical perimeter. Historically, the public authorities first decided to organize mosques in 1988 with Decree No. 88-50 of March 13, 1988(1). Over time, and with political, economic, and social changes, this decree has been amended several times. The current text, promulgated in 2013, defines the mosque as "a religious and social institution whose mission is to promote the values of Islam".(2)

When it comes to issuing fatwas at the mosque level, the key players are the senior imams, who occupy the highest rank in the imam corps. In addition to their traditional role of providing religious and spiritual guidance to the faithful, imams have been entrusted with the task of developing and codifying fatwas(3). However, this responsibility is not limited to men; it has also been extended to women, in particular *morchidates diniyates* (woman religious guides), following the adoption of the 2008 Executive Decree. This text conferred on senior morchidates diniyates, who represent the highest rank in this corps, powers similar to those of senior imams, notably as regards the elaboration and codification of fatwas.(4)

(1) OJ no 11.
(2) Art. 2 of Executive Decree No. 13-317 of November 9, 2013, OJ no. 58.
(3) Art. 37.
(4) Art. 49.

This development marks a significant step in the recognition of the role of women in the religious sphere, while reinforcing the inclusiveness and diversity of perspectives in the fatwas production process. It also reflects an institutional adaptation to contemporary social realities, where women play an increasing role in the transmission and interpretation of religious teachings.

Third sub-section: The fatwa within the ministry commission

The issue of the existence of a fatwa commission within the Ministry of Religious Affairs and Waqfs came to the fore during the COVID-19 pandemic in 2020. This commission has issued numerous fatwas relating to worship, such as the temporary closure of mosques and churches and the banning of certain prayers, such as night prayers (*Tarawih*) and the two Eid holidays, to prevent the spread of the virus(1). The question that arises here is whether the Minister of Religious Affairs is empowered to set up a fatwa commission within his ministry, and whether this commission is competent to rule on new issues requiring a new religious opinion (*ijtihad*), as was the case for the pandemic?.

Answering this question from a legal point of view presents a certain complexity, notably due to the absence of an official text clarifying the creation of this commission or defining its precise remit. However, according to statements by the Minister of Religious Affairs and Waqfs, reported in an Arabic-language newspaper in April 2020, the commission was established by Ministerial Decree. The Minister also asserted that this commission has a "legal nature", insofar as it reports directly to the Ministry.(2)

Nevertheless, an analysis of Executive Decree No. 2000-146, concerning the organization of the Ministry of Religious Affairs and

(1) All the fatwas were published on the website of the Ministry of Religious Affairs and Waqfs.
(2) *El khabar* daily of April 9, 2020.

Waqfs(1), as amended and supplemented, makes no explicit mention of a commission dedicated to fatwas. On the other hand, this text assigns the tasks of supervising and monitoring work relating to fatwas to the Directorate of Religious Guidance and Kuranic Education(2). This discrepancy between the Minister's statements and the regulatory provisions raises questions as to the exact legal framework of the commission.

According to our interpretation of the two paragraphs of article 2 of the decree, these are the supervisory and control missions exercised by the central administration over the activities of its civil servants within the bodies and institutions placed under its supervision, notably those related to the fatwas domain, as mentioned above concerning the mosque and the scientific council attached to the mosque's foundation. These missions fall within the scope of the administrative activity common to all ministries and, consequently, do not raise any difficulties from a legal point of view.

In this context, it should be noted that, despite the promulgation of the new Executive Decree for the year 2021concerning the central organization of the Ministry of Religious Affairs and Waqfs and the definition of its missions(3), the situation has remained unchanged concerning the institution of fatwas and related issues. In other words, this decree did not introduce any significant modifications or additions concerning the issue of this institution or the legal framework governing its operation. Finally, it should also be noted that in 2023, the Ministry set up a website dedicated to fatwas for citizens.

(1) OJ no. 38.

(2) Art.2.

(3) Executive Decree No. 21-361 of September 21, 2021 establishing the organization of the central administration of the Ministry of Religious Affairs and Waqfs, OJ no. 73.

Conclusion

This first part of the article outlines the evolution of the fatwa institution within the central administration since independence. The beginnings were marked by the establishment of the High Islamic Council, which went through several phases of development until its constitutionalization in 1996 and its attachment to the Presidency of the Republic.

Furthermore, the analysis has shown that the Ministry of Religious Affairs and Waqfs maintains control over fatwas at the level of the mosque foundation (Wilaya) as well as the mosque itself (Municipality).

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