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**THE POSITION OF THE COUNCIL'S LEGAL AND ADMINISTRATIVE SYSTEM IN THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF IRAN**

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**Abstract**

Councils have come into existence for decentralization of the power of the central government and to ensure the continuity of democracy into being. Due to the fact that one hundred to one hundred and sixth of the constitution is originally dedicated to this topic; in this paper, efforts have been made to investigate the council's legal status and its importance in the constitution. The author tries to answer the question that what is the council's legal status in the constitution of the Islamic Republic of Iran and its administrative system? In response to the question, this paper claims that based on the Imam Khomeini's emphasis and assigning seven principle of the constitution to this fact, councils have had a significant effect on the democracy of Iran. In this paper library studies and documents have been used and the research method is descriptive-analytic.

**Keywords:** Councils, Constitute of Islamic Republic of Iran, Administrative System of Iran.

**Introduction and problem statement**

Councils are considered as the first and the oldest institutions in the local management of the towns and villages, and are the most important phenomenon of the era of modernity, namely, democracy. In Quran, the importance of the councils is mentioned several times. According to Quran "And ordered them to mutual consultation" and "Consult with people" it can be seen that the councils has significant place in Islam. The principle seventh of the constitution has been paid to this important issue, it has been said that according to Quran "And order them to mutual consultation", "Consult with people" the Islamic Parliament, province, cities, towns, villages and local councils are among the main pillars of management and governance of the country. Initialization and the responsibility of the councils are specified by the law. In the developed

countries and legal systems models, the position and function of local councils in the power structure is based on planning, regulatory, monitoring and specifying the territory covered by executive management. Given the importance of councils in Iran, and the spread of democracy, councils have always been the attention of lawyers and politicians. Thus the promotion of the local councils to local institutions in the legal and political structure of the Islamic Republic must be reviewed. By reviewing the general and specific laws and regulations relating to local councils in the country's legal structure, and referring to the proceedings of constitutional experts and putting together the above mentioned, in line with the overall context of the constitution, we found that decentralization has a base bone in the constitutional and political structure of Iran after the constitutional onset and Islamic Revolution.

The basic research subject of this study is that the successfully functioning local governments in recent decades has led to special position of this institution in the constitutions of most countries, including France, Great Britain, the United States of America, Sweden and Switzerland. Acceptance and implementation of the public right for participation and the institutionalization of the Council is the mechanism that requires awareness of the importance of institutions. Constitution of the Islamic Republic of Iran at the fifty-seventh constitution law has stated that all the branches of government are under the "Guardianship".

According to this principle the branches of the government in the Islamic Republic are the legislature, the executive and the judiciary, which are under the absolute leadership".

These three branches are independent and separated from one another by nature and perform the relative responsibility in the form of one of the three powers, legislative, executive and judicial. Thus in addition to above mentioned powers, the structure and competence of several organization is in such a way that they cannot be considered as the leadership organization or any of the three main powers, but at the same time play an important role in the exercise of their sovereignty.

These institutions can be considered special institutions (Hashemi, 2003). This problem can be investigated from two dimensions, firstly the place of the councils in the Constitution of the Islamic Republic of Iran, and secondly the place of the councils among the official organizations and the existing laws and regulations governing in the Islamic Republic of Iran. To investigate the council's legal status and its importance in the constitution, the author tries to answer the question that what is the council's legal status in the constitution of the Islamic Republic of Iran and its administrative system? In

response to the question, this paper claims that based on the Imam Khomeini emphasis and assigning seven principle of the constitution to this fact the council have had a significant effect on the democracy of Iran. In this paper library studies and documents have been used and the research method is descriptive-analytic.

### **Legal history of the councils in Iran**

With the constitutional decree in Persian date August 5, 1906 by Mozaffar ad-Din Shah in the first period of national parliament, the bill of associations' initialization was approved and the principles 90, 91, 92 and 93 amendments were assigned to the provincial association and constitution. But because of the hostility and cynicism of Mohammad Ali Shah the closedown of the bill of provincial association was ordered by Mohammed Ali Shah. The outbreak of the First World War and the occupation of Iran by allied, the role of local councils were overshadowed by Kuchik Khan movements, Sheikh Khazal uprising in Khuzestan and Sheikh Muhammad Khiabani in Azerbaijan. These internal threats in the form of separatism lead to ignorance of provincial bill. But in the July 25, 1949 the law of municipality and city council formation was passed by the government and the previous rules were repealed. In 1340 the reforming program of the Shah was started, but with two local organizations, the city council and municipalities, Shah had no belief in people's participation in the government (Mohammad Mirzaei, 2002: 50-42). After the Islamic Revolution, the revolutionary council approved the city council law with this word instead of the former associations. Afterwards, the City Council was formed in 116 cities. The operating period of these councils was two years and after the adoption of the constitution they were virtually inactive. In November 1982 the Parliament's approved the law of Islamic councils consisting of 53 articles (Kuchakian, 2001) and repeatedly revised until 1996 without implementation. The spirit of the city council is to move from centralized management to local management (Kuchakian, 2001).

### **The position of the council in constitution**

The position of the city council in constitution is so lofty that The Supreme Council of the governorates can submit Parliament's proposals. The institutionalization of Islamic Councils in the Islamic Republic of Iran is essential. The main objective of the city councils is, promoting rapid urban development programs through cooperation and participation of the public. And they are a key tool in the urban and rural management. The more attention to the activities of the Council of Boards and closer monitoring of their programs and executive agencies of municipalities, have a significant impact on the urban development (EbrahimiFard, 2005).

## **1-Management of local affairs**

The seventh principle of the constitution states that Islamic councils are among the decision-making and administrative organs of the country. And although has their own tasks in the organizational and administrative decisions, but in terms of the constitution lie in the same class of other organs of the state .And even the scope of their government is such that the government officials are obliged to comply with their decisions. Handling all or a large part of local affairs is in the hands of local institutions, to finally meet the local needs. So the first element to consider is that the constitution left the run of local affairs to the public. Based on the principle hundredth and one hundred and first of the constitution of the Islamic Republic of Iran the rapid promotion of social programs, economic development, health, cultural, educational and other welfare affairs is achieved through people's cooperation with the administration of each village, ward, town, city or province under the supervision council which is directly elected by public vote. Qualifications of the candidate, the limits of their duties and powers, selecting and monitoring them and their hierarchy is specified by law, which must comply with the principles of national unity and territorial integrity of the Islamic Republic and citizenship in central government. In order to prevent discrimination and to cooperate in the development and welfare of the provinces and to monitor and coordinated implementation of them, the Supreme Council of the Provinces will be formed consisting of representatives of provincial councils. The formation of such councils and their duties is specified by the law. According to the hundredth principle of the constitution the intention of the legislator is distribution of power in social and economic systems, though they are not directly political, and essentially are separate from political affairs, but they can have political functions. Especially, since these sectors are causing a specific range in the process of political authority, known as power sources. By delegating those tasks and social activities to the council, the concentration of resources and power will be out of the hands of few elite.

## **2-The right to protest**

According to Article 106 of constitution, amendments to article 81 of the administration Law, and Islamic council elections and country law and article 82 of the same law. Any dissolute council as well as the dismissed members, can complain to the competent court, and the court is obliged to turn out and vote to issue (Norouzi, 2010).This can be seen that the ordinary and constitutional legislator has assigned the final decision on the dissolution of the councils or membership withdraw to the court. This legislation is quite understandable because unlike the cancellation of one of the

decisions of the council, its dissolution or withdrawal of membership is linked with the right of peoples and put the political and social personality of the members suspected. Therefore, it is essential that judicial proceedings be conducted in this case and the decision taken by the court, because the court is based solely on the law's neutrality, defense hear the parties, examine the documents, then make their decision, while the addressing of the dispute boards is not judicial and is without these virtues (Hashemi, 2002). Another issue to note in this regard is that the court should handle and vote complaints discussed. Based on the legislator the complaint on the council and its member should be addressed urgently and the court has to investigate it with no turn. In practice there are many cases wherein the court can investigate the jurisdiction with no turn and this is with the court to decide which of the claims can be addressed with priority (Hashemi, 2002). Regarding the fact that the legislator have put the court in charge of problem solving of the councils' dissolution and members dismissal, the question arise that which court is the competent court in this regard?. On the other hand it can be argued that public court deals with all public claims and disputes, except what the law has exceptions. And special courts are for the cases in which the law has assigned them, so there is no specific judicial authority for dissolution of the councils and withdrawal of its members. Thus the public court has the authority to jury the dispute regarding the city council affair. On the other hand, according to paragraph 2 of article 11 of the Administrative Justice Court, it is the administrative justice court of the country which has to deal with protests and complaints of opinions and decisions of administrative courts, inspection bodies and commission such as tax commission, workshop council, employees and employers disputes board, the article 100 commission of municipalities, the issue of commission 56 of the protection and utilization of forests and natural resources. As the above mentioned items are just for example, it can be accepted that the investigating authority, to complain about the decisions of the Central Committee of province is the administrative court, and this dispute are much more closer to the scope of administrative court (Madani, 2008).

### **3-Realization tool for decentralization**

Based on the principle hundredth of the constitution of the Islamic Republic of Iran the advance of social programs, economic development, health, cultural, educational and other welfare affairs according to local needs through people's cooperation with the administration of each village, ward, town, city or province is achieved by a council that their members are directly chosen by the vote of people. Looking to the legal and political system of Islamic Republic of Iran it can be found that this system is based on decentralization, in the other words councils are the locally chosen institution in

the framework of local decentralization. There is no doubt that the councils are the most effective tools for conveying the wishes of the people to authorities, and its formation is vital to achieve sustainable development. At this time, members of the city council have stabilized as the elected representatives of the people, and manifestation of public demands, but there are more expectation from them. In fact, the councils prepare the ground for desired changes, not only based on the base of optimal government but also on a sense of responsible citizenship. In addition, the council as technical project managers can play an important role in the transformation of the society toward on decentralized society (Kuchakian, 2001).

#### **4- Implementation of democracy**

From the theoretical and in the context of the decentralized local system, a systematic model could set as an example to make the current decentralized administrative system transparent, efficient and consistent with the democratic component. But reaching to such a administrative system need a deep belief in the public role as a main element in the management of the country. Accordingly, the political culture of Iranian society must reform and orient towards a culture based on the principles of participatory democracy and participation of the community members in their own political destiny; secondly, in order to institutionalize people's participation, the required measures must be taken to create civil society organizations in different layers of the society. (Madani,,2008). Regarding decentralization it is recommended to create a council system or a continuous system of local governments with particular position on the legal– political structure as well as specified authority and duties. The existing councils can be a basis for such a system and for determining the position of the council in authority structure and granting powers and duties in accordance with the dignity of elected institutions (kazemian, 2003).

#### **5- Decision making in line with Islamic Principles**

Based on the principle of one hundred and fifth of constitution Council decisions should not violate the Islamic principles and law of the country. When the approvals of the council is contrary to their legal duties and authority the corresponding officials can give their complaint to the council within ten day of notification of approval. The council should organize a meeting within one week from the receipt of complaint and investigate the issue. If the council insists on its previous opinion the issue is sent to the province's dispute boards. The dispute board should handle the issue and announce its opinion within 15 days. If the idea of this board is to annul the decisions of the City Council, in case of approval of the

Central board of disputes it is final and binding. Noting in what is prescribed by the aforementioned provisions, the following leads:

Firstly the annulment of the Council's decisions will be possible in cases which may be inconsistent with the jurisdiction and decisions of the general law. Thus the annulment of the decisions cannot be underpretext of political and administrative requirements (Hashemi, 2002).

Secondly the approvals of the councils are applicable after ten days of the date of notification unless the relevant executive authorities protest against it. Thirdly complaint of the relevant authorities (district governor or province governor as needed) should first be informed to the council that has adopted the contested decision. The Council shall organize a meeting within one week from the date of receipt of the protest and examine the issue and confirm.

If the last opinion is in line with the governor complaint, the decision will not be subject but if the council does not deviate from its previous decision the issue is sent to the board of dispute and complaints of the province (Montazeri, 2005).

### **The Council's position in the administrative system**

According to the principle hundredth and third all the governors and authorities of the country are obliged to follow the councils. Also according to the principle hundredth and fourth of the constitutional law of Islamic Republic of Iran in order to ensure Islamic equity and cooperation in the preparation of plans and coordination of issues it is required to establish a council consisting of the members of the different units, such as industrial, agricultural, educational and administrative. The law of council is very restricted with respect to internal affairs of other organizations, however any new decision of the council will affect other organizations.

the approval of the council has no sanction for other organization as they are operated with the related ministry unlike the municipality that has to follow the regulation of the council. Thus the responsibility of the Islamic council of the city in relation to governmental institution is subject to their request and the council have not the required authority for this (NikzadLarijani, 2002). The combination of topics and tasks that are set for the city council indicates a reduction in the powers of decision and policy-making of the council especially in the internal relations between the agencies and organizations in the management of the city. Based on the current regulations the city council is not the main institution of the policy and decision making of the city and relevant organization, but only monitors the work of the municipality and

has not the legal authority for decision-making and supervision in other urban management departments and relevant organizations (Imami, 2009, forty-five).

The most important administrative responsibilities of the Council include:

1. The city council can choose the mayor based on the qualifications stipulated in regulations adopted by the law. Minister of the interior and the governor shall issue a warrant for the presented mayor within ten days. If the Minister of the Interior or the governor, do not qualify the mayor they have to reflect the issue with documentations to the City Council and if the City Council insists on his previous comments and sentencing of the mayor, they have to reflect the issue to the relevant disputes board. The board shall make a decision within fifteen days and the decision of the board is in force to the parties (the Ministry of Interior and the City Council). If the dispute board does not reflect their opinion within the prescribed period, the opinion of the city council will be respectable and the mayor can exercise their legal authority and run.
2. Identification of the gaps, needs and shortcomings in social, cultural, educational, health, economic and welfare constituency and preparation of plans and reform of proposals and practical solutions in the required field to plan and present it to the relevant authorities.
3. Supervising the implementation of the decisions of the Council and approval of the plans for municipalities and other service organizations if the monitoring is not disruptive to the normal flow of things.
4. Working with the executives and organizations of the country in various fields of social, cultural, educational, and economic and development at their own request.
5. Planning for public participation in community service, economic, civil, cultural, and educational and other welfare affairs with the approval of the relevant organizations.
6. Encouraging people to develop tourism and recreational sports and cultural centers in coordination with related governmental organizations (Eslahi 08/27/2007).
7. Action on formation of associations and social, assistance and guidance institutions and establishment of cooperatives of production, distribution and consumption, as well as carrying out surveys and local researches and distribution of general provisions with the agreement of the relevant organizations.

8. Supervising the management and preservation of capital and cash assets, movable and immovable property of the municipality as well as monitoring their income and expenditure account in a manner that is not disruptive to the normal flow of municipal affairs.
9. Approving the proposed regulations of municipalities after processing them in accordance with the instructions of the Interior Ministry.
10. Comprehensive verification of the income and expenditure of municipality every six months and release it to the public and send a copy of it to the Interior Ministry.
11. Cooperation with municipalities to approve pilot projects around the city to comply with conductor designs after its preparation by the municipality with the approval of the Ministry of Interior and Ministry of Housing and Urban Development.
12. Approval of budget, reform and amendments to the budget and the settlement of the annual budget of the municipality and municipal institutions and companies comply with financial regulations of the municipalities as well as approving the City Council budget.

Note - All municipal revenues are credited in opening bank accounts with the approval of the City Council and will be used under applicable law.

13. Approving of mayors loans after careful consideration of the amount, duration and amount of fees.
14. Approval and monitoring of the transactions whether buying, selling, factoring, leasing and which are done in the name of the city and municipalBy taking effective and appropriate compliance with financial regulations and municipal transactions.

Note - In order to accelerate the development of municipal affairs, the Council may approve transactions up to a certain amount of discretion in compliance with the Regulations deals handed to the mayor of the municipality.

15. Approval of the Statute of municipal institutions and companies with the approval of the Interior Ministry.
16. Approval of the bills or tax cancelation and changing them in the type and amount with regard to public policy that will be announced by the Interior Ministry.
17. Supervising the claims of the municipality.
18. health-monitoring of the city

19. Supervision of theaters, cinemas and other public places governed by the private sector, cooperatives or state by codifying certain provisions for the beauty of the order, cleanliness and hygiene of such institutions in accordance with the mayors and take precautions to avoid the risk of fire and the like.
20. Adoption of regulations for urban non-enclosed areas of In terms of public comfort, health and safety, as well as civil and beauty of the city.
21. Overseeing the building of cemetery, mortuary and prepare the underworld carrying vehicles based on sanitizing and development of the city.
22. Regulation and supervision of the digging channels and routes of urban facilities.
23. Monitoring the implementation of projects related to the development of roads, streets, squares and green spaces and public facilities in accordance with the regulations.
24. (Amended 08/27/2007) approving the naming of streets, squares, streets, alleys and in urban areas as well as renaming them in compliance with relevant regulations.
25. Approving of the proposals to write or affix any kind of written ad and paintings on the walls of the city, in compliance with the regulations and publish it to the public.
26. (Amended 08/27/2007) pass price of services provided by the municipality and its affiliated organizations comply with financial regulations and municipal transactions in compliance with relevant regulations.
27. The adoption of inter-city transportation fares.
28. Regulations related to creating and managing Public Square by the municipality for buying and selling public needs complying with regulations.
29. (Amended 08/27/2007) Municipal regulation about the collaboration with relevant departments and agencies to set up agricultural exhibitions, art, business, etc. with respect to relevant legislation.
30. Supervising the financial affairs of the municipality and all organizations Institutions, companies affiliated to municipalities and preservation of capital, assets, public and private property of municipal, as well as monitoring the income and expenditure account of the municipality by choosing an official auditor and reporting the abuses and violations to the mayor and following up according to legal regulations

31. All municipal payments within the approved budget is done with supporting documents and compliance with financial and transactional provision.
32. Note 2 (interpolation 27/08/2007) City Council is obliged to review a copy of the official result of the auditor's report and any legal action to the Ministry of Interior.
33. (Additional 07/06/2003) The Council should reports its budget and expenditure at the end of each fiscal year to the public and send a copy of it for consideration to the province council.
34. (Additional 07/06/2003) provincial units of all public institutions and non-governmental organizations and government institutions that are responsible for tasks in the provision of municipal services, have to send the report of their annual city services within the framework of its annual program budget and submit its annual budget to the Council.
35. (Additional 06.07.2003) cooperation with the Security Council about the rules and regulations of the city.
36. (Additional 07/06/2003) review and approving the comprehensive project and detailed urban development and urban policy and legal boundaries of the city after its presentation by the mayor and sending them to the relevant authorities for approval.

### **Succession of city councils**

In this situation where the decentralized department do not form and dissolute after formation or in case of refusal or omission of their duties, the central government can act as their place. It is observed that the strongest and most effective way of monitoring is succession and as it restrict the freedom of the decentralized authorities it must be done in exceptional cases and in accordance with law. Based on the Iran law the succession of the city council arises only when the elections are not done or the council is dissolute for some reason provided by law. Based on the article 85 of the law of Islamic councils the governor will operate the council And in accordance with Clause 1 of the Article, "deputy Tehran city council, will be interior minister." However, there is time limit for such a situation as regarding to the article 83 "when the council election is canceled based on the article 84 or when the election is invalid in regard with the article 57 and 58 or when it is dissolute based on the article 81, the election for establishing the council should be performed within two month". Thus the succession of internal minister of the governor do not last more than two month and according to the article 81 the election should be performed (Montazeri, 2005). The remarkable thing in the above legal provisions is

that under Article 83 of the elections, the councils elections that had been suspended under Article 84 must be held within two months, however in article 84 it is stated that where it is not possible to held election due to accident and because of political and security issues the election will be postponed until the problem has been overcame, the internal minister is in charge of identifying such obstacles. But, what if the problems are not solved within two month? As it can be seen there is contradiction between two provisions. According to the article 83 the election should be done within two month but according to the article 84 it can be postponed until the obstacles are overcame which may last more than two month. It seems that according to explicitly of the Article 83 to hold elections within two months, the election has to be held, Even though the elections are postponed according to the article 84 and the barriers are remained. It is clear that if such an interpretation of the law is correct in some cases it may have problems in practice along with and even in the normal mode we usually need more than two months is to determine the new council. (Hashemi, 2002).

Article 86 - The Reform Act of 27/8/2007 on the Article 67, section "Two other election rules" has been moved to the end of the second season, (Hashemi, 2002).

#### 11.4 Supervision of the central government on the members of city councils

Article 85. (Amended 27/08/2007) Whenever the election of the council is cancelled or the council is dissolute with any of the reasons listed, the governor will be replaced by the Council.

Note 1: The successor of the Tehran City Council, will be interior minister.

Note 2: The successor to the village council, is the town council (Norouzi, 2001)

In addition, the central government monitors the selection of individuals through the executive committees and supervisory boards until candidates be qualified for membership in the local units envisaged by the law having a healthy election. This monitoring is also continued after the election and it may be related to one (dismiss of the member) or several members of the (dissolution of the council) council.

#### **Dismissal of the members of the city council**

Dismissal of one member or several member of the Islamic council of the city is predictable in the various cases.

- 1- Candidates of the city council must be eligible for membership in city councils stipulated in Articles 26 to 31 of the country's election law and administration tasks. But if some members are elected without these requirement their selection is annulled (Kamyar2007).

2- According to article 26 of the constitution, any member who does not take part in 6 successive session or twelve non-consecutive sessions without giving any reasons (at the discretion of the council in a year) is prone to dismissal.

In the case of each of the above cases, the council itself or the governor or group of people can raise the issue in the province disputes board. But according to the article 82 of the Law disputes board cannot decide in this case and have to represent its offer to the central dispute board which has to decide for the issue.

### **Dissolution of the city council**

Another form of mandate forms of the central power and city council is the dissolution of them which is specified in the article 81 of the Law on the organization functions of country's Islamic council. The dissolution of the council is possible if the City Council:

Actions contrary to the duties to be performed.

Act against the public interest of the country.

Make unauthorized seizure or squandered in situation where it is responsible.

In any above mentioned situation the governor have to refer the issue for dissolution of the council to the dispute board of the province and the central dispute board have to make decision for dissolution (Montazeri, 2005)

In general, in relation to the denial of membership and dissolution of the city council it is necessary to emphasize the following points:

- 1- The position and powers of the disputeboard of the provinces in this regard is not entirely clear. Explaining that based on the latter part of Article 81 of the Law, after due process, City Council is dissolved based on an approval of the Board of dispute and dismissal of the members of the council will be based on the article 82 of the law and according to the proposal of the central dispute board of the province. Now this question arise in case of referring the issue to dispute board from the governor whether the board is responsible to propose the dissolution to the central board or not? If the answer is negative the question remains that whether the dispute board will propose its opinion to the central dispute board or not? Or with the disagreement of dispute board with the opinion of the governor for dissolution of the council the issue is finished and the council will operate? Or it will be sent to the central dispute board just in the situation where the opinion of the dispute board is in accordance with the opinion of the governor? Given the ambiguity of the law in this case, the answer would have to be postponed (Montazeri, 2005)

- 2- In contrast to the opinion of the central dispute board in dissolution of the approval of the council which are final and binding the opinion of the board for dismissal of the members of the council is revisable.

## **Conclusion**

Based on this research and regarding the current law to legal protection of councils it can be found that: firstly the current law of local institution (law of Islamic councils of the cities) has stepped toward the protection of councils in the constitution model, secondly, by analysis of the constitution and ordinary law of local institutions it can be found that there are some legal challenges in achieving a systematic local government based on local decentralizations. To assign the exclusive and dedicated organization of something to a department it is required to give independent legal entities to that department. The legal entities of the councils lead to Administrative autonomy, institutional and financial independence which in turn helps the democracy. Councils as the most comprehensive chain of social institutions are a response to a social need which in past with traditional style and currently with modern style is a framework for participation of the public. Accordingly, in the sixth and seventh principles of the Islamic Republic of Iran's constitution councils are considered as key factor for the management decision-making of the country which is relied on the votes of the people through elections or through referenda and they play an important role in various sectors of decision-making, supervision and management. Councils are advantageous and can have positive social impact such as management gap filling, transmission of administration to the public, implementation of decentralization policy, acceleration of the flow of works and people, discrimination, social monitoring, public awareness, promote partnerships and promotion of talents using the opinion of the scholars and intellectuals. Moreover, it can also be effective in collaboration with other institutions, relying on the rule of law, training in the field of urban management experience, good faith and unity and communion between people in cultural and social projects implementation.

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