EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

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JUSTICE

Ensuring justice for hate crime victims: professional perspectives

Summary

Article 1 of the Charter of Fundamental Rights of the European Union guarantees the right to human dignity; Article 10 protects individuals' right to freedom of thought, conscience and religion; and Article 21 provides for the right to non-discrimination. Moreover, Article 47 specifies that individuals have the right to an effective remedy and a fair trial.

Hate crime is the most severe expression of discrimination and a core fundamental rights abuse. The European Union (EU) has demonstrated its resolve to tackle hate crime with legislation such as the 2008 Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law. Nonetheless, the majority of hate crimes perpetrated in the EU remain unreported and therefore invisible, leaving victims without redress.

It is essential to prevent such crimes, but it is equally important to ensure that victims have access to justice. This means enabling them to report their experiences to competent institutions, and then providing them with the support they need. At the same time, hate crime must be promptly and effectively investigated, and the perpetrators punished.

"What comes first the figures or the confidence? If you don't have the confidence to report, your figures will never go up, and if your figures don't go up then you will never put in the resources and money. You just go round and round in circles." (Police officer, United Kingdom)

This summary presents the main findings from the European Union Agency for Fundamental Rights (FRA) report on *Ensuring justice for hate crime victims: professional perspectives*. The report outlines important insights from a variety of experts, including representatives of criminal courts, public prosecutors' offices, the police and non-governmental organisations involved in supporting hate crime victims. In so doing, it sheds light on the complexities that victims face in reporting as well as the organisational and procedural factors that impede their access to justice and the proper recording and prosecution of hate crime.

"This message has to reach the masses. It is simply not allowed to beat anyone because of their skin colour, sexual orientation or disability. It is prohibited to insult anyone because of his/her religion which is different." (Victim support service, Poland)

Methodology

The report's findings are based on desk research and interviews with professionals in all 28 EU Member States. FRA collected data through its multidisciplinary research network, Franet. The desk research examined Member States' legal and organisational frameworks for tackling hate crime. This included looking into legislation and procedures in place to address hate crime and enhance victims' access to justice, as well as at relevant case law and information on available support services for victims. Information about promising practices or initiatives relating to support for hate crime victims was also collected.

The field research was conducted between August 2013 and February 2014. It included 263 semi-structured interviews with experts in all 28 EU Member States. These fell into three categories: police officers; public prosecutors and judges from criminal courts; and experts working for victim support services or civil society actors with a human rights remit. The interviews were conducted face to face or, in rare cases, by telephone, and were based on a set of detailed – closed and open – questions prepared by FRA.

Key findings and evidence-based advice

Key factors that impede victims' access to justice and measures for improving access

The interviewed professionals were asked what factors prevent victims from reporting and what measures, in their view, have the potential to significantly improve victims' access to justice.

The factors they identified involve four main themes:

- **Awareness of rights and of available support services:** Almost nine out of 10 interviewed professionals believe that measures are needed to improve hate crime victims' awareness of their rights and of available support services. In addition, around six out of 10 believe that the lack of support services impedes victims' access to justice. Hence, the fragmented and patchy nature of available support services emerges as a factor significantly impeding victims' access to justice (see Figure 1).

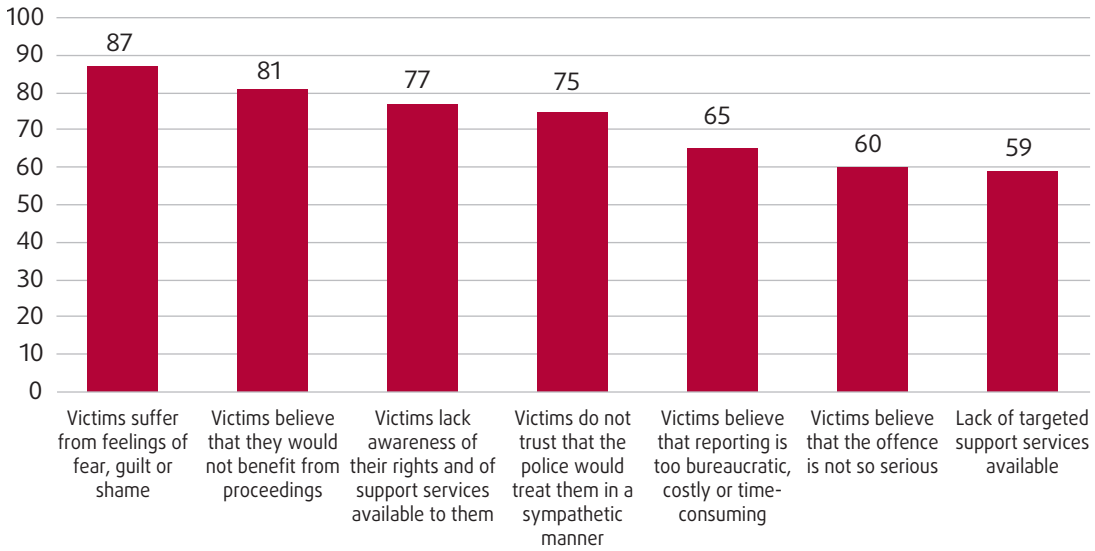
- **Reaching out to victims and enhancing their trust in the authorities:** Three quarters of interviewees believe that victims are discouraged from reporting because they do not believe the police would treat them in a sympathetic and non-discriminatory manner (Figure 1). Accordingly, four out of five interviewed professionals believe it is necessary to enhance victims' trust in the police; and three fourths of interviewees view as necessary measures that tackle discriminatory attitudes within the police (Figure 2).

- **Practical measures to encourage reporting of hate crime offences:** Professionals identified several practical measures as promising means of facilitating reporting, including setting up specialised police units or liaison officers and allowing online reporting (Figure 2).

- **Raising awareness and understanding of hate crime offences among professionals:** About two thirds of all interviewees believe the police and judiciary need to take hate crime more seriously (Figure 2). Interviewees indicated that two factors underlie this assessment:

  - a lack of profound understanding of the legal concepts and categories that define the phenomenon of hate crime;
  - a lack of commitment to identify, prosecute and impose sentences for hate crime.

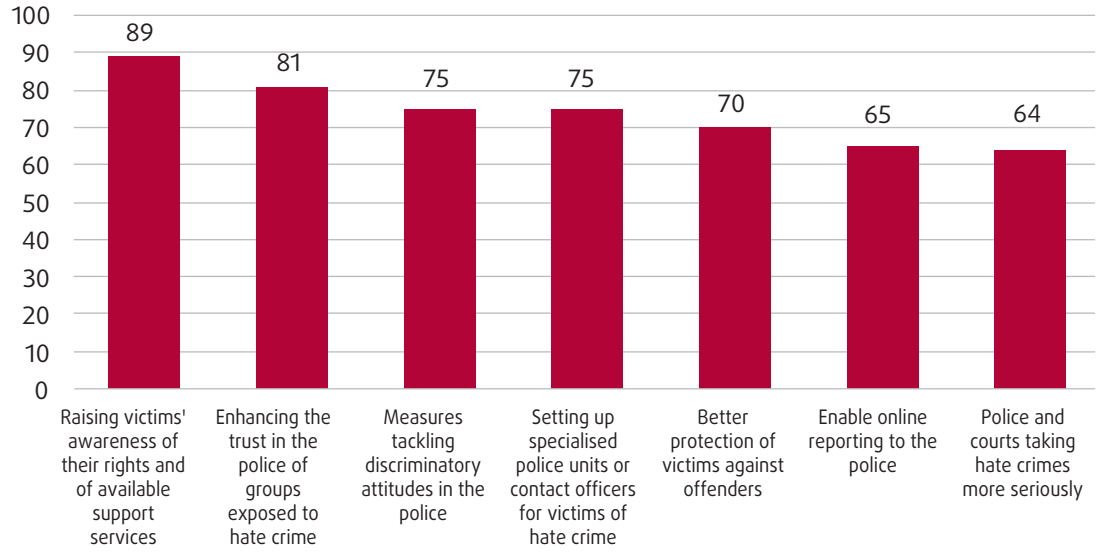
Figure 1: Views of all interviewed experts on the factors accounting for victims' underreporting of hate crime (N=263, % of all responses)



Question: *Do the following factors account for victims not reporting to the police: (Items as listed in the figure)? Multiple responses possible.*

Source: *FRA, 2016*

Figure 2: Views of the interviewed experts from all professional groups on the factors that would presumably increase the number of victims reporting to the police (N=263, % of all responses)



Question: *Please indicate which of the following measures would make it easier for victims of bias-motivated crimes to report to the police and therefore lead to an increase in the number of victims of bias-motivated crimes who report to the police.*
Multiple responses possible.

Source: *FRA, 2016*

FRA opinions

The following FRA opinions build on previous opinions issued by the agency. While not repeated here, some of these previous opinions are cited throughout the main report on *Ensuring justice for hate crime victims: professional perspectives*.

Ensuring a more comprehensive and coordinated approach to establishing support services for hate crime victims

Many services supporting hate crime victims are highly specialised, so support provision is complex, patchy, fragmented and piecemeal in many EU Member States. An appropriate service may be available for some victims in one particular region, but not for other forms of hate crime and in other regions. The Victims' Rights Directive (2012/29/EU) obliges EU Member States to ensure that appropriate support services are available to all hate crime victims. It tasks governments with establishing a mechanism to coordinate, encourage, and financially support initiatives aimed at providing support services to victims who do not yet have such services available to them.

"[T]he main focus in Lithuania is on the rights of accused people. There is no focus on the rights of victims [...] we should give more attention to victims [...] I think that too little information is coming from lawyers, from all this side, police [...] too little information on the victims. Sometimes they are coming and do not know what to do, when, what, the process itself. When civil claim can be submitted. Do they need a lawyer or not, and where they can get that lawyer. Victims of violent crimes, do they know that they can get compensation from the state? Very rarely... To provide all this information should be one of the main tasks." (Judge, Lithuania)

Non-governmental organisations (NGOs) that work in the anti-discrimination field are not necessarily fully aware of the complex situation of victims in criminal proceedings. It is important for victims to be supported by NGOs that can inform them about their potential role in initiating and participating in criminal proceedings.

FRA Opinion

For victims of hate crime, EU Member States should strive to overcome, where it exists, the fragmentation of victim support services and ensure that appropriate support services are available to all victims of hate crime. Such support services should combine an understanding of discrimination and of anti-discrimination policies with expertise in criminal justice matters and the situation and rights of victims in criminal proceedings.

Reaching out to victims and encouraging them to report

The interviewed professionals agree that hate crime is underreported and also agree on why hate crime victims are reluctant to, or do not, report to the police. Professionals believe that this is particularly difficult for hate crime victims – partly due to fear, guilt and shame and partly because they lack information about their rights and available support services.

"If we don't get to hear about it, it's difficult to do something about it. We do a lot of work with all criminal justice partners to encourage reporting. Whether it be third party reporting, online, through our links into equality groups, explaining what a hate crime is and how you go about reporting it, and trying to build trust and confidence that this is the sort of thing we can do if it is reported." (Police officer, United Kingdom)

Given victims' strong reluctance to report their victimisation, it is crucial for police services to take action to lower the reporting threshold. Various Member States have adopted measures to address this. These include, for instance, IT applications that allow victims to report their victimisation to the police online and the establishment of specialised police units that proactively reach out to victims and ensure that those who do report are treated in a sympathetic and non-discriminatory manner. While reliable evaluations of such measures are scarce, Member States should be encouraged to adopt whatever mechanism they consider most promising and ensure that their impact on reporting rates is reliably assessed.

FRA Opinion

EU Member States should consider stepping up their efforts to reach out proactively to victims of hate crime and to encourage their reporting, including by introducing online reporting tools and establishing specialised police units.

Introducing specific hate crime offences to criminal law

Many interviewed professionals believe that failing to specifically define hate crime offences increases the risk that police officers overlook bias motives. Criminal law provisions should reflect the fundamental difference between an offence that, in addition to infringing other rights of the victim, also violates an individual's right not to be discriminated against, and an offence that does not involve a discriminatory aspect. Such a differentiation treats, at legislative level, as different what is essentially different and affects victims' actual chances of being recognised and granted access to justice.

"[The bias motivation] is seen as less important. When someone is beaten up, this constitutes a violent crime and that is where the focus is and not on what preceded the assault." (Victim support service, Netherlands)

FRA Opinion

EU Member States should assess to which extent specific criminal law definitions covering the most frequent forms of hate crime, including assault, vandalism and insult, can be applied to ensure that discriminatory motives of offenders are not overlooked. They should further raise awareness among professionals of the necessity to acknowledge victims of hate crime as victims of severe discrimination.

Introducing third party reporting as a means of overcoming underreporting

Previous FRA publications outlined several recommendations to assist EU Member States in addressing underreporting, including reaching out to individuals at risk of victimisation, facilitating reporting by establishing low-threshold channels and setting up specialised police units to communicate with local communities.

One aspect that so far has not featured prominently in hate crime discourse is the possibility of unburdening victims of reporting by offering third parties – such as NGOs that advocate on behalf of victims of discrimination – standing in hate crime proceedings. This could also be appropriate in cases of hate speech directed not against concrete individuals but against categories of persons or large population groups.

FRA Opinion

*To disburden victims of the onus of reporting to the police and enable civil society associations to take the initiative in instances when no individual victim can be identified, EU Member States are strongly encouraged to consider allowing public interest actions (*actio popularis*) to enable third parties to institute proceedings against perpetrators of hate crime on behalf, or in support, of victims.*

In cases of hate speech or negationism, when discrimination targets a group or abstract category, and hence not necessarily an individual, Member States should allow NGOs to represent victims of hate crime in criminal proceedings – where an NGO could present evidence on behalf of the group or category of individuals discriminated against.

Evaluating all measures aiming to enhance the reporting and recording of hate crime

The research reveals a lack of robust evaluation of existing measures to improve hate crime reporting and recording. While most EU Member States have taken some form of action – launching information campaigns, setting up specialised units and reporting channels, developing online reporting tools – the impact of these measures is very often not known because reliable and methodologically sound assessments are lacking. Despite these measures, experts still believe that underreporting potentially undermines the criminal justice system's effectiveness. It is not clear whether this reflects the ineffectiveness of measures adopted or a lack of specific measures aiming to encourage reporting.

FRA Opinion

When adopting measures to enable or encourage victims to report hate crime to the police, EU Member States should ensure that the measures' impact on numbers of victims reporting to the police is assessed in a robust, methodologically sound manner.

Ensuring that bias motives are not overlooked when assessing victims' protection needs in accordance with Article 22 of the Victims' Rights Directive

EU Member States are required to ensure that offenders' discriminatory motives are recorded and taken seriously throughout proceedings. At present, strict and binding regulations and protocols obliging police officers to systematically record all indications of bias motives are lacking. This should be seen in the context of the obligation on Member States, when implementing the Victims' Rights Directive, to establish procedures and protocols to ensure that victims' protection needs are individually assessed under Article 22 of the directive. This assessment takes into account the nature and circumstances of the crime. According to paragraph 3 of Article 22, particular attention must be paid to victims who have "suffered a crime committed with a bias or discriminatory motive." Hence, it is crucial that Member States, when setting up procedures to implement Article 22, pay attention to whether there are any indications that offenders were motivated by discriminatory attitudes.

FRA Opinion

When implementing Article 22 of the Victims' Rights Directive concerning the individual assessment of victims' protection needs, it is crucial for EU Member States to pay attention to the question of whether there are any indications that the offence was committed with a discriminatory motive.

Raising awareness of professionals – police officers, prosecutors and judges – through comprehensive training on hate crime

One of the main findings is that there is insufficient training for professionals in the criminal justice system. Both police and individual judges and prosecutors lack a profound understanding of the relevant concepts, such as hate crime, hate speech and negationism. It is indispensable for the entire criminal justice system to avail itself of a common language that enables it to identify hate crimes and render these visible throughout criminal proceedings.

"There are not very many cases that go to the Public Prosecution Service as discrimination, because many cases sort of disappear in the big pile of assault and it is not always visible that something had a discriminatory motive. We do try that, but it definitely slips past us sometimes, I have to admit." (Police officer, Netherlands)

Another central finding is that police officers' lack of understanding of basic notions, concepts and categories used to analyse hate crime often impedes implementing measures to counter hate crime. As long as police services fail to use language that clearly addresses hate crime and that all members of the service understand, it will be difficult for policies to be effective. The introduction and firm organisational anchoring of the fundamental concepts and categories of hate crime – based on a human rights approach and taking into account ECtHR case law and relevant EU legislation – is a vital first step.

FRA Opinion

In line with Article 25 of the Victims' Rights Directive, which obliges EU Member States to train professionals, EU Member States must ensure that all police officers, public prosecutors and criminal judges fully understand the basic concepts of hate crime, incitement to hatred, and negationism – as applicable under national law – and are trained to deal with hate crime and its victims in a professional manner. To this end, training needs to promote awareness of, and sensitisation to, the phenomena of hate crime and its impact on victims; and the skills required to recognise, record and investigate such incidents.

Acknowledging the institutional aspects of discrimination

When planning and evaluating measures that address hate crime, it is crucial to consider institutional aspects of discrimination. More than two out of five interviewed professionals rated as very or fairly high the risk that police officers to whom hate crime victims report share the offenders' discriminatory attitudes. Three fourth of all interviewees believe that improving reporting requires addressing discriminatory attitudes within the police. Given this low level of trust in the police's ability and commitment to counter discrimination, hate crime victims' reluctance to report to the police is not surprising. It should be noted, though, that the evidence reported here represents only the opinions of those interviewed, and is not necessarily representative of all police and criminal justice actors in all Member States.

"Significant part of cases is not reported to police because of a fear from prejudices from police, in small cities the people know the policemen and how they handled the situation in the past. Based on this they could have more or less legitimate fears that their report would not be taken seriously." (Victim support service, Slovakia)

While any attempt to encourage victims to report has to take this factor into account, police officers' discriminatory attitudes cannot be viewed in isolation. Countering such attitudes should form an integral element of a comprehensive, human rights-based policing strategy. This cannot be achieved through training alone. How a police service positions itself in relation to hate crime and discrimination touches on its very mission and identity and is therefore a matter of organisational development that concerns, first of all, police leaders.

"Nobody is ever found guilty, and we have examples – the case of the young people aggressed in the metro train; it [the way the criminal investigation authorities handled the case] sent a very discouraging message to all LGBT persons. [...] I think that if a few people who report to the police are treated well, in a respectful manner and their complaints are investigated correctly, that would count very much..." (Victim support service, Romania)

Unless the police actively display their commitment to ensuring the human rights of all individuals, hate crime victims will not develop confidence in the attitudes of police officers. As long as victims are not confident that the police will clearly and unequivocally respect their dignity, a significant improvement in reporting rates is not to be expected. A policing approach based on a strong culture of human rights and on cooperation, transparency and accountability towards local communities and hate crime victims could encourage public confidence in the police and victims to report crime.

FRA Opinion

In line with their obligations – under Article 1 of the Victims' Rights Directive – to ensure that victims are recognised and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner, EU Member States must see to it that victims of hate crime can report to the police without fearing that police officers share the discriminatory attitudes of offenders. They must adopt whatever measures are necessary to prevent and eradicate such attitudes among police officers, including by changing the prevailing police culture.

Taking hate speech seriously

Interviewees highlighted the negative impact of discriminatory speech on the societal climate and emphasised the language politicians use during election campaigns. Political parties should ensure that hateful speech directed against groups of individuals is not accepted.

"It is more problematic if a politician makes a discriminatory statement rather than if a moron says the same thing in a pub". (Police officer, Italy)

FRA Opinion

EU Member States should strengthen the consensus among political actors that discrimination is not an acceptable form of political dispute and competition. They should also guarantee access to courts in all relevant areas of law.

In 12 EU Member States, at least 40% of interviewees considered the denial of the Shoah a fairly or very serious problem. This underlines the importance of Member States comprehensively implementing the relevant provisions of the Framework Decision on Racism and Xenophobia.

FRA Opinion

Publicly condoning, denying or grossly trivialising crimes of genocide – including the Holocaust, crimes against humanity and war crimes – insults victims and their memory and reinforces their discrimination. EU Member States should fully implement Article 1 of the Framework Decision on Racism and Xenophobia and consider strengthening related practices in line with international human rights law.

Conclusions

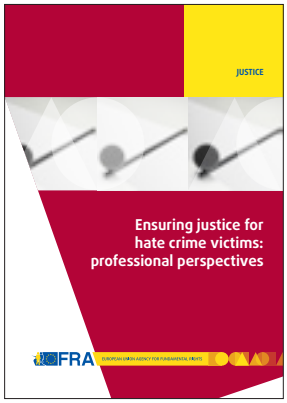
Efforts to counter hate crime can only succeed if victims report the wrongs they endure, and the various responsible actors all do their part to ensure that perpetrators are brought to justice. As the report underscores, a variety of factors prevent this from happening.

These include weaknesses in the applicable legal frameworks, difficulties in grasping and working with the concept of hate crime, uncertainties as to the concept's significance and meaning to the organisation in which a professional works, and risks of institutional discrimination, which can have a devastating impact on the trust of victims and their readiness to report their victimisation.

More specifically, the interviews with professionals reveal the need for:

- legislation that covers equally all categories of discrimination in line with Article 21 of the EU Charter of Fundamental Rights, fully transposes Article 1 of the Framework Decision against Racism and Xenophobia, and provides specific criminal law definitions that cover the most frequent forms of hate crime;
- the development of a reliable network of support services;
- targeted training for police and criminal justice professionals;
- organisational measures to facilitate victims' reporting and ensure that police officers recognise discriminatory motives; and
- strengthening institutional safeguards in police services to ensure that hate crime victims can report crimes without facing repeat victimisation.

While these findings underline that much remains to be done, meeting these challenges is the only way to make hate crime victims' right to access justice a reality.



The current social climate in the EU lends increased urgency to efforts to counter the persistent phenomenon of hate crime. Although various initiatives target such crime, most hate crime across the EU remains unreported and unprosecuted, leaving victims without redress. To change this trend, it is essential for Member States to improve access to justice for victims.

Drawing on interviews with representatives from criminal courts, public prosecutors' offices, the police, and NGOs involved in supporting hate crime victims, this report sheds light on the diverse hurdles that impede victims' access to justice and the proper recording of hate crime. It also presents promising developments across the EU, and identifies the institutional preconditions necessary to develop effective policies against hate crime. By focusing on the perspective of professionals, the report offers important field-based insights that can help strengthen efforts to empower victims of crime.

Further information:

For the full FRA report – *Ensuring justice for hate crime victims: professional perspectives* – see http://fra.europa.eu/en/publication/2016/ensuring-justice-hate-crime-victims-professional-perspectives.

Other relevant publications include:

- FRA (December 2016), *Antisemitism - Overview of data available in the European Union 2005-2015*, Vienna, http://fra.europa.eu/en/publication/2016/antisemitism-overview-data-available-european-union-2005-2015
- FRA (November 2016), *Current migration situation in the EU: hate crime*, Vienna, http://fra.europa.eu/en/publication/2016/current-migration-situation-eu-hate-crime-november-2016
- FRA (November 2016), *Incitement in media content and political discourse in Member States of the European Union*, Luxembourg, Publications Office, http://fra.europa.eu/en/publication/2016/incitement-media-content-and-political-discourse-member-states-european-union
- FRA (November 2016), *Violence, threats and pressures against journalists and other media actors in the European Union*, Luxembourg, Publications Office, http://fra.europa.eu/en/publication/2016/violence-threats-and-pressures-against-journalists-and-other-media-actors-european
- FRA (2013), *Discrimination and hate crime against Jews in EU Member States: experiences and perceptions of antisemitism*, Luxembourg, Publications Office, http://fra.europa.eu/en/publication/2013/discrimination-and-hate-crime-against-jews-eu-member-states-experiences-and
- Working Party on Improving Reporting and Recording of Hate Crime in the EU, *Compendium of practices for combating hate crime*, http://fra.europa.eu/en/theme/hate-crime/compendium-practices

Further information on FRA's work in the field of hate crime is available on the agency's website: http://fra.europa.eu/en/theme/hate-crime.

Publications Office

FRA – EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

Schwarzenbergplatz 11 – 1040 Vienna – Austria
Tel. +43 158030-0 – Fax +43 158030-699
fra.europa.eu – info@fra.europa.eu
facebook.com/fundamentalrights
linkedin.com/company/eu-fundamental-rights-agency
twitter.com/EURightsAgency

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