

IN THE NAME OF THE RUSSIAN FEDERATION

CONSTITUTIONAL COURT
OF THE RUSSIAN FEDERATION

Judgment
of 23 April 2004 No. 8-II

in the case concerning the review of the constitutionality of the Land Code of the Russian Federation upon a request of the Murmansk Regional Duma.

Moscow, 23 April 2004

The Constitutional Court of the Russian Federation composed of Presiding Judge S. M. Kazantsev and Judges M. V. Baglay, Yu. M. Danilov, L. M. Zharkova, G. A. Zhilin, V. D. Zorkin, M. I. Kleandrov, V. O. Luchin, N. V. Seleznev, O. S. Khokhryakova,

in the attendance of P. A. Sazhinov, the Speaker of the Murmansk Regional Duma, and the attorney D. V. Kazakov for the Murmansk Regional Duma; V. S. Pleskachevsky, Head of the State Duma Committee on Property, for the State Duma; Plenipotentiary Representative of the Council of the Federation to the Constitutional Court of the Russian Federation Yu. A. Sharandin and Ye. V. Vinogradova, PhD in Law, for the Council of the Federation; and Plenipotentiary Representative of the President of the Russian Federation to the Constitutional Court of the Russian Federation M. A. Mityukov,

pursuant to Article 125 (Subsection “a”, Section 2,) of the Constitution of the Russian Federation, Article 3 (Subsection 1”a”, Section 1, Sections 3 and 4), Article 22 (Subsection 1”a”, Section 2), Articles 36, 74, 84, 85, and 86 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”,

in an open hearing, examined the constitutionality of provisions of the Land Code of the Russian Federation.

The reason for the consideration of the case is a request of the Murmansk Regional Duma challenging the constitutionality of the Land Code of the Russian Federation.

The ground for the consideration of the case is the discovered uncertainty of whether the provisions challenged by the applicant are in conformity with the Constitution of the Russian Federation and whether the Land Code in general is in conformity with the Constitution of the Russian Federation as regards its adoption procedure.

Having heard the report of Judge-Rapporteur Yu. M. Danilov, statements by the parties’ representatives, interventions by M. Yu. Barshchevsky, Plenipotentiary Representative of the Government of the Russian Federation to the Constitutional Court of the Russian Federation; and

having considered written submissions and other materials, the Constitutional Court of the Russian Federation

e s t a b l i s h e d :

1. The request of the Murmansk Regional Duma challenges the constitutionality of the following provisions of the Land Code of the Russian Federation which regulate the granting of a property title to land plots to foreign citizens, stateless individuals, and foreign legal persons:

Section 3, Article 15, providing that foreign citizens, stateless individuals and foreign legal persons shall not have property titles to plots of land located in state border territories as set out in the list determined by the President of the Russian Federation in compliance with the federal legislation on the state border of the Russian Federation, and other territories of the Russian Federation specifically indicated in federal laws – as this Section provides in principle for the right of the above-mentioned persons to acquire land plots outside these territories as their private property (general provision of Section 2, Article 5, granting such right to these persons is not mentioned in the request);

Section 12, Article 30, reading that foreign citizens, stateless individuals and foreign legal persons may obtain land plots for construction purposes in the manner established by the present Code – as this Section provides for the right of the above-mentioned persons to obtain land plots for construction purposes;

Section 5, Article 35, providing that foreign citizens, stateless individuals and foreign legal persons as owners of buildings or structures located on other person's land plot shall enjoy a priority right for the purchase or lease of the land plot in the manner established by the present Code;

Section 9, Article 36, providing that the above-mentioned persons as owners of buildings or structures shall be entitled to acquire a property title to land plots which are state or municipal property in the manner established by the present Code;

Article 38, “Acquisition of a land plot out of state or municipal land or of the right to enter into a contract of lease of such land plot at sale (tender, auction)”, and Article 52, “Conditions and a procedure for disposal of a land plot”, as without directly mentioning foreign citizens, stateless individuals and foreign legal persons, these norms create an advantageous setting for the acquisition of a property title to land plots at an auction for these persons, considering their greater financial opportunities as compared to those of Russian citizens.

The applicant maintains that the said provisions of the Land Code of the Russian Federation contradict Articles 2, 4 (Section 3), 7 (Section 1), 15 (Section 1), 19 (Section 2), 36 (Section 1), and 67 (Section 1) of the Constitution of the Russian Federation. This position is

reasoned by the following arguments. Land is the foundation of life and activities of the peoples living in the respective territory, which applies only to the peoples of the Russian Federation. The law may neither limit nor re-allocate this foundation or property title to it in favour of persons not belonging to the peoples of the Russian Federation. It follows from the Constitution of the Russian Federation that only Russian citizens and entities may enjoy private property to land; the granting of private property to land to foreign citizens, stateless individuals and foreign legal persons derogates (limits) the territorial foundation of the life and activities of the peoples of the Russian Federation, creates a possibility of alienation of land to a foreign state as a result of transactions or territorial claims made against the Russian Federation, may lead to impairment of the sovereignty of the Russian Federation.

Further, the Murmansk Regional Duma seeks to recognize the Land Code of the Russian Federation as non-conforming to the Constitution of the Russian Federation in general as regards its adoption procedure. The applicant considers that the federal order in the Russian Federation is based on the division of competence between bodies of state power of the Russian Federation and bodies of state power of the subjects of the Russian Federation (Section 3, Article 5 of the Constitution of the Russian Federation). Accordingly, when adopting a law on matters of joint competence of the Russian Federation and its subjects, the federal legislator is obliged to consider the will of the subjects of the Russian Federation and has to follow the implementation procedure established for this principle by legal acts.

The applicant refers to Article 13 of the Federal Law “On the Principles and the Procedure for the Division of Areas of Competence and Powers between Bodies of State Power of the Russian Federation and Bodies of State Power of Subjects of the Russian Federation” of 24 June 1999 with amendments on the date of adoption of the Land Code of the Russian Federation. This regulation provided that draft federal laws on subject matters attributed to the joint competence of the Russian Federation and its subjects shall, in accordance with the State Duma Rules of Procedure, be forwarded to bodies of state power of subjects of the Russian Federation for possible proposals and comments within a period of one month. In case where the public authorities in more than one-third of all subjects of the Russian Federation object to the draft in general, the State Duma shall decide to convene the conciliation commission. In the applicant’s opinion, “bodies of state power of subjects of the Russian Federation” shall be understood as legislative bodies, since exactly these bodies are recipients of the forwarded draft federal statutes on subject matters attributed to the joint competence of the Russian Federation and its subjects pursuant to Article 109 of the State Duma Rules of Procedure.

The Murmansk Regional Duma asserts that there is a procedural violation in the adoption of the Land Code of the Russian Federation as more than one-third of all legislative authorities in

subjects of the Russian Federation have objected to the draft (copies of 45 relevant decisions are attached to the request, some of them objected to certain individual provisions or proposed to postpone the adoption of the draft). However, the conciliation commission has not been convened and the draft has been approved by executive authorities of subjects of the Russian Federation. In the applicant's opinion, the constitutional principles of independence of legislative bodies (Article 10 of the Constitution of the Russian Federation) and division of competence between bodies of state power of the Russian Federation and its subjects (Section 3, Article 11 of the Constitution of the Russian Federation) are violated.

Thus, the subject matter of the present proceedings before the Constitutional Court of the Russian Federation is the norms of the Land Code of the Russian Federation, challenged in the request of the Murmansk Regional Duma, granting foreign citizens, stateless individuals and foreign legal persons specific rights to acquire a property title to land plots in the territory of the Russian Federation, and the Land Code of the Russian Federation in general as regards its adoption procedure.

2. Pursuant to the Constitution of the Russian Federation, the bearer of sovereignty in the Russian Federation is its multinational people (Section 1, Article 3); the sovereignty of the Russian Federation shall extend over its whole territory, the Russian Federation shall ensure unity and inviolability of its territory (Sections 1 and 3, Article 4); in the Russian Federation private, state, municipal and other forms of property shall be recognized and equally protected (Section 2, Article 8); land and other natural resources shall be used and protected as the foundation of life and activities of the peoples living in the respective territory; land and the other natural resources may be in private, state, municipal and other forms of property (Article 9); citizens and their associations shall have the right to possess land as private property; the possession, use and disposal of land and other natural resources shall be exercised by the owners freely, if it does not cause harm to the environment and does not violate the rights and lawful interests of other people; the conditions and rules for the use of land shall be prescribed by a federal law (Article 36).

The constitutional characteristics of land as the foundation of life and activities of the peoples living in the respective territory, i.e. of all multinational people of the Russian Federation, serves as a ground for the constitutional requirement of its rational and effective use and for protection of land as the most important element of nature, natural human habitat, natural resource used as a means of production in agriculture and forestry, the foundation for business and other activities. This requirement is addressed to the state, its bodies, citizens, and all participants in social relations. It is a basis for legislative regulation in this area and it

predetermines the right of the federal legislator to establish special rules, procedure, and conditions for the use of land.

2.1. Pursuant to Article 2 of the Constitution of the Russian Federation, recognition, observance and protection of the rights and freedoms of man and citizen shall be a duty of the state, hence *inter alia* the right of citizens and their associations to possess land as private property.

As the Constitutional Court of the Russian Federation pointed out in its Judgment of 17 December 1996 in the case concerning the review of the constitutionality of Subsections 2 and 3, Section 1, Article 11 of the Law of the Russian Federation “On Federal Fiscal Police Authorities”, the right of private property does not belong to the list of rights which, pursuant to Article 56 (Section 3) of the Constitution of the Russian Federation, may not be limited under any circumstances. However, the very possibility to introduce limitations on this right by a federal statute and the character of such limitations is determined by the legislator not arbitrarily, but in accordance with the Constitution of the Russian Federation providing in its Article 55 (Section 3) that the rights and freedoms of man and citizen may be restricted by federal law only to the extent necessary for the protection of the fundamentals of the constitutional order, morals, health, the rights and lawful interests of others, and for ensuring defense of the country and security of the state.

Besides, as follows from the legal opinion of the Constitutional Court of the Russian Federation, within the meaning of Article 55 (Section 3) taken together with Articles 8, 17, 34, and 35 of the Constitution of the Russian Federation, possible limitations by a federal law of the right to possess, use and dispose of property, given the general principles of law, should comply with the requirements of fairness, adequacy, proportionality and shall be necessary for the protection of constitutional values, *inter alia* private and public rights and lawful interests of others (Judgment of 1 April 2003 in the case on the constitutionality of Section 2, Article 7 of the Federal Law “On Auditing”).

2.2. Following the provisions of Articles 9 and 36 of the Constitution of the Russian Federation, the federal legislation on land stipulates that land and other natural resources which are not private property of citizens, legal persons or municipal entities, are property of the state, and that land and other natural resources may be taken or transferred from one party to another through other means to the extent transactions with land and natural resources are permitted by the relevant statutes.

At the same time, within the meaning of Articles 260 and 261 of the Civil Code of the Russian Federation and Article 15 of the Land Code of the Russian Federation, which provide detailed regulation of the mentioned constitutional provisions, the object of property to land is a

land plot which is part of the surface of the Earth within the territory of the Russian Federation. During the transfer of land into private property, the purchaser acquires not a part of the territory of the state, but rather a land plot as an object of civil rights, so that the state sovereignty of the Russian Federation and its territorial integrity are not affected.

As regards the use of natural resources within the borders of the land plot, pursuant to Article 40 of the Land Code of the Russian Federation, the owner obtains certain rights to them, which are also specified in Article 40 of the Water Code of the Russian Federation and Article 20 of the Forest Code of the Russian Federation. The subsoil area within the borders of the land plot is the property of the state and thus may not be subject to sale, purchase, gift, inheritance, deposit, mortgage, or any other taking of property (Article 1² of the Law of the Russian Federation “On Subsoil” of 21 February 1992 as amended on 3 March 1995).

2.3. Pursuant to Article 62 (Section 3) of the Constitution of the Russian Federation, foreign citizens, stateless individuals and foreign legal persons enjoy rights in the Russian Federation and bear obligations equally with citizens of the Russian Federation, except for cases provided by federal law or international treaties of the Russian Federation. Thus, the Constitution of the Russian Federation establishes a “national treatment regime” for foreign citizens, stateless individuals and foreign legal persons as a general principle of Russian legislation, i.e. equals them with Russian citizens as regards the rights and obligations. The effect of this principle is emphasized in the Judgment of the Constitutional Court of the Russian Federation of 17 February 1998 in the case concerning the review of the constitutionality of Section 2, Article 31 of the Law of the USSR “On the Legal Status of Foreign Citizens in the USSR”.

By virtue of the Civil Code of the Russian Federation where the constitutional principle of a national treatment regime receives detailed regulation, the rules of civil legislation are applied to relations involving foreign citizens, stateless individuals and foreign legal persons except if otherwise provided by the federal law (Subsection 4, Section 1, Article 2). Pursuant to Article 36 (Section 3) of the Constitution of the Russian Federation providing that conditions and rules for the use of land are to be prescribed by federal law, the Land Code of the Russian Federation stipulates the right of foreign citizens, stateless individuals and foreign legal persons to acquire a property title to land plots in the territory of the Russian Federation.

The possibility of granting the right to acquire a property title to land plots on specific conditions and, to a certain extent, possess, use and dispose of land plots to foreign citizens, stateless individuals and foreign legal persons per se does not contradict the constitutional status of land as public heritage of the multinational people of the Russian Federation, so far as the relevant lands are not withdrawn from, or restricted in the circulation by law (Section 1, Article 260 of the Civil Code of the Russian Federation). This follows from provisions of

Articles 9 (Section 2) and 35 (Sections 1 and 2) of the Constitution of the Russian Federation taken in conjunction with Article 62 (Section 3).

At the same time, pursuant to Article 55 (Section 3) of the Constitution of the Russian Federation, the federal legislator enacting regulation in the respective area is obliged to secure protection of the constitutional values and to observe a balance of the guaranteed constitutional rights. These guaranteed rights are stipulated, for one part, in the specified Articles of the Constitution of the Russian Federation, and for another, in its Article 9 (Section 1) which provides that land and other natural resources shall be used and protected as the foundation of life and activities of the peoples living in the respective territory, Article 36 (Section 1) providing that the right to possess land as private property is granted to citizens and their associations. However, in securing rational and effective use of land and its protection, protection of the economical sovereignty of the Russian Federation, the integrity and inviolability of its territory (Sections 1 and 3, Article 4 of the Constitution of the Russian Federation), the legislator should rely on the priority of Russian citizens' right to possess land as private property (stemming from Articles 9 and 36 of the Constitution of the Russian Federation).

Exercising its constitutional obligation, the federal legislator has introduced certain limitations for foreign citizens, stateless individuals and foreign legal persons regarding their enjoyment of the right to use land, providing for certain exemptions from the national treatment regime in regulation of private property to land. Thus, Article 15 of the Land Code of the Russian Federation provides for prohibition for the mentioned persons to possess as private property land plots if such plots are located in border and other regions of the Russian Federation specified by federal law. Moreover, pursuant to Section 5 of its Article 28, they may obtain a property title to land plots only against payment, i.e. not on gratuitous basis, unlike Russian partnerships of housing owners and citizens who are granted such right in certain cases.

Apart from that, the legislation in force provides for certain limitations regarding the property rights to land plots of certain categories for foreign citizens, stateless individuals and foreign legal persons. Thus, pursuant to Article 8 of the Federal Law "On the Entry into Force of the Land Code of the Russian Federation" of 25 December 2001, foreign citizens, stateless individuals and foreign legal persons may possess and use agricultural land plots only on the basis of lease rights. A similar norm can be found in Article 3 of the Federal Law "On Circulation of Agricultural Lands" of 24 July 2002, which also applies to legal persons with more than 50 percent of charter (share) capital owned by foreign citizens, foreign legal persons, or stateless persons.

Norms providing specific regulation for foreign individuals are also found in the Federal Law “On the Continental Shelf of the Russian Federation” of 30 November 1995 and the Law of the Russian Federation “On Subsoil”, which determine the rules on the manner of use of continental shelf plots and subsoil. Besides, the Federal Law “On the Legal Status of Foreign Citizens in the Russian Federation” determines territories, organizations and objects with limited access for foreigners.

The specified legal regulation is aimed at ensuring sovereign rights of the Russian Federation to all of its natural riches and resources, protecting the interests of Russian economy in the transitional period, guaranteeing Russian citizens and legal persons relatively equal conditions in the competition with foreign capital, and thus implementing the constitutional right to freely use abilities and property for entrepreneurial and other economic activities not prohibited by law.

2.4. Accordingly, the challenged provisions of the Land Code of the Russian Federation which regulate issues of acquiring, by foreign citizens, stateless individuals and foreign legal persons, property titles to land plots located within certain territories do not contradict the Constitution of the Russian Federation as they are aimed at specifying its provisions on the purpose and constitutional status of the land.

3. By dividing competence between bodies of state power of the Russian Federation and bodies of state power of Russian Federation subjects, the Constitution of the Russian Federation determines the competence of the Russian Federation (Article 71) and joint competence of the Russian Federation and its subjects (Article 72). Thereby its Article 76 (Section 2) provides that on issues within the joint competence of the Russian Federation and subjects of the Russian Federation (*inter alia* issues of possession, use and disposal of land, subsoil, water and other natural resources, delimitation of state property, environmental management, and forest legislation in Subsections “c”, “d”, “e”, “j”, Section 1, Article 72) federal laws shall be adopted, and laws and other normative acts of subjects of the Russian Federation shall be adopted according to them. But the adoption and amendment of federal laws, as follows from Article 71 (Subsection “a”) of the Constitution of the Russian Federation, is within the jurisdiction of the Russian Federation.

Consequently, it is not assumed that in adopting federal laws on issues attributed to joint competence, the forwarding of respective draft statutes to subjects of the Russian Federation is mandatorily required as well as special consideration of their proposals by the Federal Assembly. Subjects of the Russian Federation in their turn are not required to forward draft laws which they adopt within joint competence to the Federal Assembly. At the same time, as the Constitution of the Russian Federation provides that the drafts are to be introduced only in the State Duma

(Section 2, Article 104), and federal statutes are to be adopted by the State Duma (Section 1, Article 105), the State Duma itself was entitled to prescribe in its Rules of Procedure a requirement on forwarding draft laws on issues of joint competence to subjects of the Russian Federation for comments and proposals (Article 109 of the Rules of Procedure of the State Duma).

A similar provision was to be found in Article 13 of the Federal Law “On the Principles and the Procedure for the Division of Areas of Competence and Powers between Bodies of State Power of the Russian Federation and Bodies of State Power of Subjects of the Russian Federation”, which was in force on the date of adoption of the Land Code of the Russian Federation. Further, Section 3 of this Article provided for a rule saying that comments and proposals on draft statutes on issues of joint competence submitted by bodies of state power of the subjects of the Russian Federation are subject to mandatory consideration by the competent committee of the State Duma. They may be accepted or rejected in the order set forth by the State Duma Rules of Procedure. When bodies of state power of more than one-third of all subjects of the Russian Federation object to the draft in general, the conciliation commission consisting of State Duma members and representatives of bodies of state power of the interested subjects of the Russian Federation shall be convened.

In its judgments, the Constitutional Court of the Russian Federation has already considered issues related to the procedure of adopting statutes by the State Duma (Judgment of 20 June 1999 in the case concerning the review of the constitutionality of the Federal Law “On Cultural Values Transferred to the USSR Due to the Second World War and Present within the Territory of the Russian Federation”, and the Judgment of 5 July 2001 in the case concerning the review of the constitutionality of the Decision of the State Duma “On Introduction of Amendments to the Decision of the State Duma of the Federal Assembly of the Russian Federation “On the Announcement of Amnesty in connection with 55th Anniversary of Victory in the Great Patriotic War of 1941–1945”).

Owing to the legal opinion of the Constitutional Court of the Russian Federation, determining the adoption procedure for State Duma decisions taking into account the requirements of the Constitution of the Russian Federation, *inter alia* securing it in the State Duma Rules of Procedure, and observing this procedure constitute an essential procedural element of due constitutional process for adopting acts and it guarantees conformity of their content to the actual will of the representative body. Failure to comply with the procedural rules stemming from the Constitution of the Russian Federation, which have considerable significance and impact on the adoption of decisions, permits to establish contradiction of the adopted decision to the Constitution of the Russian Federation. When any data pertaining to such

violations is absent it is not possible to challenge the constitutionality of the statute on this ground.

Accordingly, it is an unconditional obligation of the State Duma to comply with procedural rules which follow directly from provisions of Articles 104–108 of the Constitution of the Russian Federation. The question of whether such character is attributable to procedures applied by the State Duma in adopting any particular federal law and whether such federal statute is adequate to the actual will of the representative body, and, consequently, whether it complies with the Constitution of the Russian Federation as regards its adoption procedure, is subject to resolution by the Constitutional Court of the Russian Federation.

In the Russian Federation as a state with a federal order, providing the subjects of the federation with an opportunity to file with the State Duma their opinion for discussion of a draft law on matters of joint competence contributes to effective legislative activity of the Federal Assembly in this area. Therefore, with the aim to secure adoption of a federal law which reflects the interests of both the Russian Federation and its subjects, a procedure is established prescribing forwarding of draft laws by the State Duma to subjects of the Russian Federation, consideration of submitted comments and proposals in committees of the State Duma, and convening of the conciliation commission consisting of State Duma members and representatives of the interested subjects of the Russian Federation when a considerable amount of subjects of the Russian Federation objects to the draft law in general or to a significant extent. At the same time, such procedures should not impair the Federal Assembly's exercise of the power to adopt independently federal laws, *inter alia* those within the joint competence (Articles 71 (Subsection "a"), 94, and 105 of the Constitution of the Russian Federation).

The conciliation procedure is aimed at achieving a mutually acceptable solution through coordination of all participating parties' interests. However, it does not imply an unconditional obligation of the State Duma to satisfy all claims asserted by subjects of the Russian Federation. This procedure entails ascertainment and discussion of opinions of the subjects of the Russian Federation with the purpose to elaborate a draft statute coordinated and balanced to the maximal extent possible, but does not entail approval of the draft in general or its certain provisions by subjects of the Russian Federation. Conciliation proceedings are not an essential element of a constitutional procedure of adopting federal laws, and deviation from these proceedings may not *per se* serve as a ground for recognition of the federal law to be in contradiction to the Constitution of the Russian Federation as regards its adoption procedure.

As follows from the transcripts of the State Duma and the Council of the Federation sessions, the draft Land Code of the Russian Federation has been forwarded to subjects of the Russian Federation, the subjects' comments and suggestions (including those concerning

provisions contested by the Murmansk Regional Duma) were considered and debated by the State Duma within the course of adoption of the decision on the draft. And the position taken by the subjects of the Russian Federation as regards the draft adopted by the State Duma has been fully expressed at the stage of consideration of the draft by the Council of the Federation, which at that time consisted of heads of legislative (representative) and executive bodies of subjects of the Russian Federation. The draft was adopted by 103 votes to 29. In this connection, there are no grounds to accept the applicant's claim that the State Duma violated the basic principles of the constitutional order of the Russian Federation by failing to convene the conciliation commission consisting of State Duma members and representatives of bodies of state power of the interested subjects of the Russian Federation after it received negative reviews of the draft Land Code of the Russian Federation from more than one-third of only legislative (representative) bodies of subjects of the Russian Federation.

Under these circumstances the Constitutional Court of the Russian Federation has no reason to believe that the procedures followed by the Federal Assembly in connection with the adoption of the Land Code of the Russian Federation have resulted in misrepresentation of the actual will of the representative body, and thus there are no grounds to find it to be in contradiction with the Constitution of the Russian Federation as regards its adoption procedure.

Concluding from the above and pursuant to Sections 1 and 2 Article 71, Articles 72, 74, 75, 79 and 87 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation", the Constitutional Court of the Russian Federation

h e l d :

1. To recognize the provisions of Section 3 Article 15, Section 12 Article 30, Section 5 Article 35, Section 9 Article 36, Articles 38 and 52 of the Land Code of the Russian Federation as conforming to the Constitution of the Russian Federation.

2. To recognize the Land Code of the Russian Federation as conforming to the Constitution of the Russian Federation as regards its adoption procedure.

3. This Judgment shall be final and shall not be subject to any appeal, it shall come into force immediately upon pronouncement, shall be directly applicable, and shall not require confirmation by other authorities and state officials.

4. Pursuant to Article 78 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation", this Judgment shall be published immediately in *Rossiyskaya Gazeta* and in the Collection of Laws of the Russian Federation. The Judgment shall also be published in the Bulletin of the Constitutional Court of the Russian Federation.

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