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Legal regulation of illegal influence on the results of official sports competitions: criminal aspect and international experience

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Abstract

The purpose of the research is devoted to the criminological description and explanation of the state of illegal influence on the results of official sports competitions in Ukraine. A reading of the high level of latency of crimes according to article 369-3 of the Criminal Code of Ukraine, evidence that it is at least 99% of its real level. The structure of match manipulation was revealed and analyzed according to the type of sport, the method of illegal influence on the results of official sports competitions, as well as the subjects of bribery. The characteristic of the corresponding structural units is given. Methodologically, the basis of the research is the dialectical method that serves to interpret social and legal phenomena through documentary sources. It is concluded that the most intense criminal match-fixing is practiced in sports such as football, futsal, basketball, and volleyball. Among the ways to encourage athletes to commit illegal acts, bribery predominates (75%). At about the same level in terms of prevalence with small fluctuations in specific weight are structurally found ways to influence athletes such as incitement (10%) and conspiracy (8%).

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Keywords: sports; official sporting events; influence on results; corruption; bribery.

Regulación legal de la influencia ilegal en los resultados de las competiciones deportivas oficiales: aspecto penal y experiencia internacional

Resumen

El propósito de la investigación está dedicado a la descripción criminológica y la explicación del estado de influencia ilegal en los resultados de las competiciones deportivas oficiales en Ucrania. Una lectura del alto nivel de latencia de los delitos según el artículo 369-3 del Código Penal de Ucrania, evidencia que es al menos el 99% de su nivel real. La estructura de la manipulación de partidos fue revelada y analizada según el tipo de deporte, el método de influencia ilegal en los resultados de las competiciones deportivas oficiales, así como los sujetos de soborno. Se da la característica de las correspondientes unidades estructurales. Metodológicamente la base de la investigación es el método dialéctico que sirve para interpretar fenómenos sociales y jurídicos mediante fuentes documentales. Se concluye que el amaño de partidos delictivo más intenso se practica en deportes como el fútbol, el fútbol sala, el baloncesto y el voleibol. Entre las formas de incentivar a los deportistas a cometer actos ilícitos, predomina el soborno (75%). Aproximadamente al mismo nivel en términos de prevalencia con pequeñas fluctuaciones en el peso específico se encuentran estructuralmente formas de influir en los atletas como la incitación (10%) y la conspiración (8%).

Palabras clave: deportes; eventos deportivos oficiales; influencia en los resultados; corrupción; soborno.

Introduction

The only special legal norm that provides for criminal liability for illegal, in fact corrupt influence (although according to the note to Article 45 of the Criminal Code of Ukraine this is not the case, but in the criminological sense and meaning is fully embedded in the understanding of the essence and manifestations of corruption, and especially in the light of the provisions of the Law of Ukraine “On Prevention of the Influence of Corruption Offenses on the Results of Official Sports Competitions”) on the results of official sports competitions is Art. 369-3 of the Criminal Code of Ukraine, which

provides for liability for the so-called match-fixing - the organization of sports competitions with a predetermined result. The criminal law was supplemented by it on 03/11/2015, and it definitely is grounded; all the necessary grounds were and are available and the basic principles of criminalization of relevant socially dangerous acts. Therefore, it is worth talking about the four-year period of socially demanded effect of this norm, but at the same time the results of its application are very modest. Domestic sport has not been properly cleansed of the destructive and harmful effects of match-fixing. This phenomenon remains largely latent, but at the same time large-scale. Identification, description, and explanation of the main indicators of the prevalence of crimes under Art. 369-3 of the Criminal Code of Ukraine is, therefore, an important condition for improving the effectiveness of law enforcement and criminal prevention practice.

1. Literature review

Modern sport needs private legal mechanisms of regulation, because they provide the best way to protect the rights of individuals and legal entities – participants in relations in the field of sports (Tkalych *et al.*, 2020). Law, as a unique social phenomenon, arises with the emergence of the state, because an indispensable attribute of any legal norm is the possibility of using state coercion in case of noncompliance with its instructions (Tkalych *et al.*, 2020). As social relations in the field of sports became more complicated, there was an increasing need for their proper legal regulation (Kharytonov *et al.*, 2021).

2. Material and methods

The methodological basis of the study are philosophical, general, and special scientific methods. Thus, the system-structural method made it possible to formulate the main elements of legal regulation to combat corruption in sports in their combination and interaction.

Further, the application of the comparative-legal method was useful in analyzing the differences between national and international law in the fight against corruption, in particular in sports. The formal-legal method has proved its effectiveness in studying the content of legal norms in the aspect of combating sports corruption.

Moreover, the method of analysis is reflected in the study of manifestations of sports corruption and legal regulation, which is responsible for combating such manifestations. The method of synthesis was used to find the best ways to develop anti-corruption legislation, to formulate conclusions on the subject of research.

What is more, the method of deduction has proved itself in the study of the specifics of anti-corruption norms as a reflection of the general principles of the legal systems of foreign countries.

Finally, the method of induction provided a generalization of the research topic based on scientific developments, in particular, empirical data on the prevalence of corruption in sports and law enforcement of anti-corruption legislation.

Concerning the elaboration of the problem in scientific sources and other literature, it should be noted at once that most of the research in this area of knowledge is primarily articles in the media based on the results of journalistic investigations. Therefore, it has become common practice to use them when quoting in scientific papers.

3. Results and discussion

During 2015-2019 and 6 months of 2020, only 6 cases of criminal influence on the results of official sports competitions were registered. Of these, 2 - in 2016, 3 - in 2019 and 1 - in January - June 2020. In two of these six proceedings, the pre-trial investigation was suspended in accordance with Art. 280 of the Criminal Procedure Code of Ukraine: one at a time - in connection with the illness of the suspect and in connection with the failure to establish the location of the suspect. It should also be emphasized that no verdict has been passed in these proceedings. Therefore, investigative and judicial statistics on this category of crimes are not representative, but indicative, in understanding the symptomatic miscalculations in the reformist progress of law enforcement.

Even a cursory content analysis of media reports reveals a wide prevalence of crimes under Art. 369-3 of the Criminal Code of Ukraine. Here are just a few examples.

According to the statement of the chairman of the committee on ethics and fair play of the Football Federation of Ukraine (now - the Football Association of Ukraine) F. Baranka, the football club "Sumy" systematically engaged in two types of match-fixing - bribery of referees or opponents. After that, they bet on their victory. In fact, it was an investment. When "Sumy" won, and the rate brought income. But when they didn't pay the referees and gave in, they played against themselves "in the office". That is, "Sumy" earned both on their victories and on their defeats (Baranka, 2019). In the situation with Sumy, bets were made both in Ukraine and abroad. But in most cases, this happened in Asian bookmakers markets. If we talk about the scale of earnings on these transactions, then according to the most modest estimates, it is about 10 million euros (Baranka, 2019). In one and a half years, the club has played 30 contract matches (Baranka, 2019).

This, as in many other cases, is about the use of match-fixing not as an end in itself, ie in the context of achieving the desired tournament result, gaining appropriate points, but as a tool of so-called betting - further enrichment by means of sports betting. Large-scale corruption schemes with the organization of contractual football matches were revealed by law enforcement agencies in June 2019. Hence, according to official reports the National Police recorded 50 cases of contract football matches.

A large-scale special operation aimed at identifying persons involved in the organization of “ordered” football matches lasted more than a year. The illegal activities of five criminal groups and 35 football clubs have been documented. Police conducted 40 searches in 10 regions of Ukraine: Kyiv, Dnipropetrovsk, Donetsk, Zaporizhia, Odesa, Sumy, Lviv, Kharkiv, Mykolaiv and Chernihiv (Sokurenko, 2019).

The investigation has identified individuals involved in corrupt schemes of “custom” football matches, ranging from the top division of the Premier League to junior teams. This is the first case in Ukraine when not only players of football clubs, but also organizers will be brought to justice. Investigative actions are carried out by the organizers of contract matches, former and current football players, as well as other persons involved in criminal schemes. The pre-trial investigation is conducted under Part 4 of Art. 368-3 (bribery of a person providing public services) and Part 1 of Art. 369-3 (illegal influence on the results of official sports competitions) of the Criminal Code of Ukraine (Sokurenko, 2019).

There are many such examples. That is, in reality, the level of criminal match-fixing in one form or another is much higher than the statistical 6 crimes over four and a half years. We should talk about the ultra-high level of latency, which according to our research reaches more than 99%. The real level of crimes under Art. 369-3 of the Criminal Code of Ukraine, only in the professional segment of big football annually fluctuates at 150-200. If we add to this figure the cases of illegal influence on the results of official competitions in other sports (especially in futsal, basketball, volleyball, rugby), the level of crime under investigation will be at least 300 crimes per year (Leheza *et al.*, 2021).

It should be noted that over the past 10-15 years there has been a change in the subject and mechanism of the corruption agreement under the scheme of match-fixing in combination with betting, sports betting. This is due to the variety of possible sports results for which bookmaker bets are accepted. For example, popular betting lots now are specific periods of playing time when a goal is scored / conceded in football, as well as receiving a red card by a specific player at a certain time, assigning a penalty, etc. It is worth pointing out the exceptional profitability of betting during the ongoing match, usually during its break. For example, the bet on the number of goals conceded in a football match, the total final score with

a zero score in the first half will have the highest coefficient. In this regard, in the Ukrainian football championship we can observe some atypical matches, when in the unsuccessful first game segment the second becomes rich in goals scored. Both individual players and whole teams, coaches and club owners are interested in this (Leheza *et al.*, 2020).

For example, in 2016, during the match of the First League teams between Mariupol's Illichivets and Girnyk-Sport from Horyshny Plavny, the hosts, losing 0: 1 after the first half, won 3: 1. All would be nothing if during the meeting in different offices for the victory of the Azovs did not bet on the amount of £ 218 thousand. During the internal investigation, the shadow fell on two Girnyk players - defenders Serhii Herashchenkov and Oleksandr Hrabar. Both were tested on a lie detector. Herashchenkov denied the guilt, but the polygraph revealed that he was lying. At the same time, Hrabar confessed to the crime, but did not reveal the customers. The materials of this case were transferred to the National Police (Verbytsky, 2017).

In total, our survey of 360 professional athletes in big football (150 persons), basketball (50 persons), volleyball (50 persons) of Ukrainian clubs, as well as rowing (70 persons), powerlifting (40 persons) gives the opportunity to form a criminological structure of illegal influence on the results of official sports competitions by the criterion of the method of influence directly on athletes.

Thus, as can be seen, bribery predominates among the ways to encourage athletes to commit illegal acts. We think this is a very telling circumstance, which further emphasizes the problem of commercialization of sports. And this is not just a purely Ukrainian problem. As H.Yu. Boryduhova rightly points out, in the global analysis of the problems of bribery in sports, people most often agree to manipulate money - out of greed, or, for example, athletes who are not paid for months, or club officials, if the club has financial problems, etc. The benefits, depending on the country, sport, level of competition and league, range from \$ 200. up to 300-700 thousand dollars. (See SAS 2009 / A / 1920 FC Pobeda, Alexander Zabrchanets, Nikolche Zdravetski v. UEFA, SAS 2011 / A / 2362 Mohammad Asif v. International Cricket Council, etc.)

At the same time, the situation in Ukraine has its own specifics. It is not a secret that professional sports clubs, including in our country, are not only a matter for the soul, but also business projects. It is very good when these motives, patriotism-cheering and making money are organically combined without distorting each other. However, unfortunately, the realities of today's Ukrainian sports are such that a considerable problem for any football or basketball club, other sports organizations is to reach at least "zero", self-sufficiency, minimum liquidity and the profitability. Therefore, the desire to make money in sports is often combined with

the use of illegal mechanisms. To understand their essence, we believe that the analytical scheme of anomie in R. Merton's concept is quite suitable. It is known to the general public of the scientific community, which frees us from the need for a more detailed argumentation of its provisions in the projection on the plane of the subject of this study.

Instead, we also emphasize the fact that approximately at the same level of prevalence with a small fluctuation in the proportion of structurally located such ways of influencing athletes as incitement (10%), conspiracy (8%) and coercion (7%). And if the first two - express directly non-commercial, unselfish, but self-actualizing, consolidating-group motivation of athletes who voluntarily, consciously and on their own choose illegal mechanisms to achieve certain sports results in competitions, the third way, coercion, expresses its violent nature. As a rule, players are threatened with: a) termination of the contract unilaterally on discrediting grounds (70%); b) termination of game practice, transfer to reserve teams, to the reserve (20%); c) disclosure of information about his previous illegal activities in the field of sports (10%).

It should be noted that professional athletes are not the only recipients of illegal influence, in particular, bribery, which can determine the results of official sports competitions. Our research reveals such a criminological structure of match-fixing on the basis of the recipient's illegality.

The main efforts of the subjects of illegal influence on the results of official sports competitions on bribery are directed directly at the athletes. In total, the share of such influence is 78% with a slight predominance of bribery of several athletes (players) of one team (40%) over bribery of an individual player (38%).

In the case of big football (namely in this sport, given its popularity, the illegal influence on the results of official sports competitions prevails), bribing an individual player is mostly aimed at the defender (defender or midfielder) in terms of playing. This is the easiest way to influence the outcome of the competition, because almost any violation of the rules of the game in the penalty area leads to the appointment of a penalty, which most likely ends with a "goal". In this case, as a rule, it is difficult to detect the intent of violations of the rules of the game by the defender due to the dynamic and contact nature of this kind of sport itself.

In second place in the ranking there is bribery of members of the coaching staff (10%). More often than one of the assistant head coaches and less often the head coach himself. In the future, through the coaching staff there is an indirect influence on the players with the use of other, non-monetary levers of influence on the players, the structural construction of the team game, etc.

It is interesting to note that the share of bribery of judges is relatively insignificant (5%). This is due to close control over their activities, the spread of the use of technical means of control over the course and results of the competition, which minimizes the role of judicial discretion and the possibility of significant impact on the results of sports competitions. Moreover, the respondents we interviewed from among both professional athletes, coaches, and experts of the refereeing corps of the football Premier League and the First League show a tendency to the predominance of attempts to bribe additional referees of the refereeing team (in particular, linemen). in big football) over bribery of the main referees.

The share of bribes (and their attempts) of sports club owners (5%) is also relatively small. These are usually small sports clubs that are experiencing acute financial problems and do not claim high tournament seats. Most of these clubs are representatives of the first, second and lower leagues of playing kinds of sports.

The least common (no more than 2% of cases) is bribery of support staff: medical workers, physiotherapists (to extend the healing period, recovery of the injured athlete). Experts also pointed to cases where athletes in the team were poisoned by water, and they performed below their capabilities without knowing it - the main role was played by the team manager (Bordyugova, 2015).

The most criminally affected sport in the context of the level and intensity of the spread of illegal influence on the results of official sports competitions is football (big football), which accounts for approximately 85% of these crimes. Approximately 5% - for basketball and mini-football (futsal), 2% - volleyball, 1% - rugby, the remaining 2% in total other kinds of sports.

The geography of match-fixing has no criminological significance, as the nature of the relevant crimes eliminates their territorial specification. The determination complex of illegal influence on the results of official sports competitions does not have a pronounced connection of either general or group or specific factors to a certain administrative-territorial location (Leheza *et al.*, 2020).

It is necessary to point out separately the prevalence of the practice of material incentives by representatives (owners, managers) of one sports club of athletes from another in competitions with the third team for additional motivation for activity, dedication. The investigative practice follows the way that in the legal assessment of the victorious actions the corpus delicti provided for in Art. 396-3 of the Criminal Code of Ukraine is not found. There is no unanimity in science on this issue. A number of scholars, for example, do not take a position on the falsity of this law enforcement practice and insist on the need to qualify such “incentives”

as illegal influence on the results of official sports competitions through bribery (Semenyuk, 2017).

Others, to whom we join, claim the absence of *corpus delicti* in these actions and the correctness of investigative practices. Thus, K.P. Zadoia notes that under the responsibility according to Art. 369-3 of the Criminal Code of Ukraine does not cover the practice of material incentives for athletes from another sports club for achieving a certain positive result during sports competitions with a third competitor (rival). Such cases cannot be qualified under Part 1 of Art. 369-3 of the Criminal Code of Ukraine, as such material incentives cannot be considered aimed at incorrect change of the course of competitions or their result (Zadoya, 2015).

Indeed, this is a kind of bonus (albeit advance), which can not affect the manifestation of additional, not due to the existing sports conditions of the athlete qualities, intentional violations of the rules of the game or refraining from performing, improper performance of its game function (or other sports function). It is also not about the interests of the service or the authority of a subject of sports relations, because the athlete, in contrast to similar cases of “stimulation” of the official, does not act in the interests of those who provide material benefits or in the interests of any -which third person, not due to the previously established under the sports contract relations of a particular athlete, i.e. him and his club (Sokurenko, 2019).

4. International experience of illegal influence on the results of official sports competitions

As part of our study, we will try to compare the criminal laws of these countries in order to identify general, common, different, and unique aspects in the criminal law of Ukraine and foreign countries on liability for illegal influence on the results of official sports competitions. It should be noted that our study will be conducted according to criteria such as *corpus delicti* and sanction. We believe that this is how it is possible to obtain certain information about the areas of improvement of Art. 369-3 of the Criminal Code of Ukraine and the expediency or in expediency of such changes.

The first criminal law to which our attention will be paid will be the Criminal Code of the Republic of Azerbaijan. Thus, Chapter 24 “Crimes in the Sphere of Economic Activity” of the Criminal Code of the Republic of Azerbaijan (Criminal Code of the Republic of Azerbaijan, 1999) in Art. 192-2 provides for liability for manipulation of sports competitions.

The obvious difference between the Criminal Code of the Republic of Azerbaijan is the placement of Art. 192-2, which provides for criminal liability for manipulation of sports competitions, in the chapter “Crimes

in the sphere of economic activity” in contrast to Ukraine, where Art. 369-3 is placed in the section “Crimes in the field of official and professional activities related to the provision of public services” of the Criminal Code of Ukraine, which in turn determines the different generic object of the studied criminal law.

The subject of the crime, as in Art. 369-3 of the Criminal Code of Ukraine, can be both material and non-material.

Among the ways to commit a crime in Art. 192-2 of the Criminal Code of the Republic of Azerbaijan, the legislator singles out an offer, promise, transfer, demand, receipt, acceptance of an offer or assurance, use of violence or threat of violence, threat of dissemination of compromising information or threat of destruction of property. We can see that the list of ways to commit a crime is much wider than in Art. 369-3 of the Criminal Code of Ukraine.

The subject of the crime can be both general and special. The crime is committed only intentionally.

Considering the punishment, we consider that imprisonment for a term of three to six years, provided for in Part 1 of Art. 192-2 of the Criminal Code of the Republic of Azerbaijan, is too harsh. We consider the provisions of the Criminal Code of the Republic of Azerbaijan to be positive, except for those similar to Art. 369-3 of the Criminal Code of Ukraine types of punishment, deprivation of the right to hold certain positions or engage in certain activities (Criminal Code of the Republic of Azerbaijan, 1999).

Also, in our opinion, it is a positive decision of the legislator to envisage such qualifying features in the commission of a crime as manipulation of sports competitions by an organized group or a criminal association (criminal organization).

The note of the researched article deserves special attention. First, it should be noted that in Part 1 of the note reveals the definition of “manipulation of sports competitions.” Thus, it means an act (action or omission) aimed at intentionally changing the course or outcome of sports competitions in order to obtain an illegal advantage in favor of the person or other persons. Let us recall that all explanations on the application of Art. 369-3 of the Criminal Code of Ukraine are placed in the Law of Ukraine “On Prevention of Corruption Offenses on the Results of Official Sports Competitions” of 03/11/2015 № 743-VIII (Law Of Ukraine, 2001).

Secondly, the possibility of exemption from criminal liability of a person who voluntarily reported a crime to the relevant state body or committed it through threats is considered positive.

Doing so, the Azerbaijani legislator allows the criminal to come to his senses, rehabilitate himself and take the path of correction. After all, the

regulation of social relations through criminal law is primarily aimed at recognizing human rights and freedoms as the highest social value.

Third, it is interesting to address the issue of bringing an official to justice. Thus, the official who committed the act provided for in Art. 192-2.2 of the Criminal Code of the Republic of Azerbaijan, in connection with the performance of their official duties (powers), is prosecuted under Art. 311 “Receiving a bribe (passive bribery)”.

With this step, the legislator was able to place Art. 192-2 of the Criminal Code of the Republic of Azerbaijan in the chapter “Crimes in the sphere of economic activity” (Criminal Code of the Republic of Azerbaijan, 1999).

The Criminal Code of the Republic of Armenia provides for criminal liability in a slightly different way. Thus, in Chapter 22 “Crimes against economic activity”, Art. 201 prescribes criminal liability for bribery of participants and organizers of professional sports competitions and spectacular commercial competitions (Criminal Code of Armenia. Legislationline, 2003).

From the title of the article we can understand that it provides for criminal liability only for bribing participants and organizers of professional sports competitions and spectacular commercial competitions. Other ways of committing a crime have escaped the attention of the legislator (Leheza *et al.*, 2021).

On the negative side of Art. 201 of the Criminal Code of the Republic of Armenia, we note the non-alternative sanction under Part 2 (only imprisonment for a term not exceeding five years).

On the positive side, we note the increased sanction for the qualified corpus delicti under Part 2 of Art. 201 (committed by a group of persons by prior conspiracy or an organized group), as well as a broad alternative to punishment for committing a crime under Part 3 of Art. 201 (Criminal Code of Armenia. Legislationline, 2003).

The legislature of the Republic of Georgia places criminal liability for bribery of participants or organizations in professional sports competitions or commercial entertainment competitions in Chapter 26 entitled “Crimes against business or other economic activity” (Article 203) (Criminal Code of Georgia, 1999).

Under the protection of this criminal law are only professional sports competitions, as in Art. 201 of the Criminal Code of the Republic of Armenia, which limits the scope of Art. 203 of the Criminal Code of the Republic of Georgia in contrast to Art. 192-2 of the Criminal Code of the Republic of Azerbaijan, where all sports competitions are protected by criminal law.

Only active and passive bribery are criminalized. There is a criminal liability for qualified (re-qualified) and especially qualified (committed by an organized group) *corpus delicti*.

A positive asset of the Criminal Code of Georgia is also the possibility of exemption from criminal liability, provided for in the note to Art. 203, as well as in the Criminal Code of the Republic of Azerbaijan. Thus, persons who have voluntarily declared to the authorities the transfer to any of the persons specified in Part 1 of Art. 203, money, securities or other property or the provision of property services (Criminal Code of Georgia, 1999).

Conclusion

As a result of our research, a very high level of latency of crimes under Art. 369-3 of the Criminal Code of Ukraine, which is not less than 99% of their actual volume has been found. It has been established that the latter reaches about 300 crimes each year. The most intense criminal match-fixing is played in such sports as football, futsal, basketball and volleyball. Among the ways to stimulate athletes to illegal actions, bribery prevails (75%). Approximately at the same level in terms of prevalence with small fluctuations in specific weight are structurally located such ways of influencing athletes as incitement (10%), conspiracy (8%) and coercion (7%).

In general, illegal influence on the results of official sports competitions on bribery is directed directly at athletes. In total, the share of such influence is 78% with a slight predominance of a sub-bunch of several athletes (players) of one team (40%) over the bribe of an individual player (38%). In second place in terms of ranking there is bribery of members of the coaching staff (10%). Then there is bribery of judges (5%), owners of sports clubs (5%), support staff of clubs (2%). Thus, the analysis of the legislation of some post-Soviet countries in the field of criminal liability for illegal influence on the results of official sports competitions made it possible to claim that the Criminal Code of Azerbaijan, the Criminal Code of the Republic of Armenia and the Criminal Code of the Republic of Georgia related to the economy. The Penitentiary Code of the Republic of Estonia does not provide for a special rule that would impose criminal liability for unlawful influence on the results of official sports competitions.

In Art. 201 of the Criminal Code of the Republic of Armenia and Art. 203 of the Criminal Code of the Republic of Georgia criminalized illegal influence on professional sports competitions, which, as in Art. 369-3 of the Criminal Code of Ukraine, limits the scope of such rules. The legislator of the Republic of Azerbaijan followed the best path, providing in Art. 192-2 criminal liability for manipulation of sports competitions in general. In

addition to illegal influence on professional sports competitions in Armenia and Georgia, illegal influence on spectacular commercial competitions is criminalized. At present, we believe that the criminalization of illegal influence on spectacular commercial competitions in Ukraine will not meet the principles of social conditionality.

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