

DOI <https://doi.org/10.51647/kelm.2021.8.2.22>

STATUS PRAWNY PODMIOTÓW KONSTITUCYJNEGO PRAWA WŁASNOŚCI GRUNTÓW

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Adnotacja. W artykule omówiono problemy statusu prawnego podmiotów konstytucyjnego prawa własności gruntów na obecnym etapie. Przeprowadzono analizę myśli naukowej dotyczącej statusu prawnego podmiotów konstytucyjnego prawa własności gruntów. Podkreślono znaczenie jasnej regulacji prawnej wspomnianego prawa własności oraz potrzebę ścisłego przestrzegania norm konstytucyjnych w warunkach reformy administracyjnej i rolnej. Przeprowadzono analizę zgodności z normami konstytucyjnymi aktów prawnych, które określają podmioty prawa własności gruntów, ustalają ich prawa i obowiązki.

Należy zauważyć, że podmiotami konstytucyjnego prawa własności gruntu są naród ukraiński, obywatele, osoby prawne, państwo, społeczności terytorialne. Zbadano istotę statusu prawnego wspomnianego kręgu podmiotów.

Słowa kluczowe: Konstytucja Ukrainy, prawo własności gruntu, podmiot prawa konstytucyjnego, normy konstytucyjne.

LEGAL STATUS OF SUBJECTS OF THE CONSTITUTIONAL RIGHT OF LAND OWNERSHIP

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Abstract. The article considers the problems of the legal status of subjects of the constitutional right of land ownership at the present stage. Analysis of the scientific views concerning the legal status of subjects of the constitutional right of land ownership is carried out. The significance of precise legal regulation of this property right and the need for strict compliance with constitutional norms in terms of administrative and land reform is emphasized. Compliance with constitutional norms of legislative acts that define the subjects of land ownership and establish their rights and responsibilities is analyzed.

It is noted that the subjects of the constitutional right of land ownership are the Ukrainian people, citizens, legal entities, the state, and territorial communities. The essence of the legal status of the specified range of subjects is considered.

Key words: Constitution of Ukraine, land ownership, subject of the constitutional right, constitutional norms.

ПРАВОВИЙ СТАТУС СУБ'ЄКТІВ КОНСТИТУЦІЙНОГО ПРАВА ВЛАСНОСТІ НА ЗЕМЛЮ

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Анотація. У статті розглянуто проблеми правового статусу суб'єктів конституційного права власності на землю на сучасному етапі. Здійснено аналіз наукової думки щодо правового статусу суб'єктів конституційного права власності на землю. Наголошено на важливості чіткого правового регулювання зазначеного права власності та необхідності неухильного дотримання конституційних норм в умовах адміністративної та земельної реформи. Здійснено аналіз відповідності конституційним нормам законодавчих актів, які визначають суб'єктів права власності на землю, встановлюють їхні права та обов'язки.

Зазначено, що суб'єктами конституційного права власності на землю є український народ, громадяни, юридичні особи, держава, територіальні громади. Розглянуто сутність правового статусу зазначеного кола суб'єктів.

Ключові слова: Конституція України, право власності на землю, суб'єкт конституційного права, конституційні норми.

1. Introduction

The problem of land ownership is currently one of the most urgent issues in the constitutional and legal doctrine. The main elements of the constitutional right to own land are subjects and objects. Land as a national wealth is a special object of legal relations, which affects the scope of subjects' powers. At the same time, realization

of the relevant right (in this case, land ownership) depends on the will of the subjects. Land ownership in Ukraine is based on the norms and principles of the subject's right to own, use and dispose of land, which, according to the Constitution of Ukraine, can be public, state, communal and private. Realization of the constitutional right of land ownership in Ukraine depends on the status of the subject having this right. However, the problem of land ownership requires clear legal regulation, as ownership is an important factor in its existence and functioning, and land in Ukraine is a special object of ownership.

Considering these facts and the need for strict compliance with constitutional norms during land and administrative reforms, land market opening, transfer of land from the state ownership to the ownership of territorial communities as well as the tendency towards the expansion of the range of participants of land relations, a subject composition of the constitutional right of land ownership is an urgent task of the science of constitutional law.

Problem issues of realization of the constitutional right of land ownership are studied in numerous scientific works of Ukrainian scientists, in particular, V. Andreitsev, H. Baliuk, O. Bondar, O. Vivcharenko, A. Hetman, T. Kovalenko, I. Kovaliv, T. Kovalchuk, I. Kostyashkin, P. Kulynych, V. Lebid, I. Ozimok, A. Miroschnychenko, V. Muntian, V. Nosik, O. Pashchenko, V. Semchyk, N. Titova, Y. Shevchenko, M. Shulha, V. Fedorovych and many others. However, the relevance of this problem causes the need for its further research.

The purpose of the research is to study a subject composition of the constitutional right of land ownership at the present stage of land and administrative reform in Ukraine.

When examining a subject composition of the constitutional right of land ownership, there have been used the worldview principles (democracy, rule of law, sovereignty; national, state, communal and private property, etc.); philosophical approaches: methodologically complex, systemic anthropological, axiological (value) and others; methodological principles: scientific, objectivity of dialectics, comparison and generalization.

2. General characteristics of constitutional and legal relations regarding realization of right of land ownership

The Constitution of Ukraine establishes the constitutional and legal regime of land, mineral wealth, water resources, atmospheric air, flora and fauna, nature reserves and other natural resources within the territory of Ukraine, as well as natural resources of its continental shelf and exclusive (marine) economic zone, determines a social function of property in relation to their use and guarantees of protection by the state of all subjects of property rights and economic activities that are equal before the law (Article 13). The Constitution of Ukraine defines the basic principles of land use, which are based on the fact that land is the main national wealth in Ukraine and is under special protection of the state. The right of ownership is guaranteed by the state, it is an absolute right and is under special protection of the state. Land ownership is acquired and exercised by the citizens, legal entities and the state exclusively in accordance with the law (Article 14) (Конституція України).

The Basic Law declares the right of land ownership in two forms:

- land and its natural resources as natural objects of property of the Ukrainian people, the main national wealth, which is under special protection of the state and is the main natural resource of the Ukrainian people (all citizens);
- land plots as objects of civil rights, which are owned by citizens, legal entities or the state and are the subject of civil transactions (purchase, sale, lease, pledge, etc.).

The Constitution of Ukraine stipulates that land may be of state, communal and private ownership. The constitutional norm defines the range of subjects who have the right to own property.

Analysis of the constitutional provisions suggests that the scope of rights and obligations that constitute the content of a particular type of land ownership is determined depending on the entity that has the right of land ownership. In addition, the subjects of land ownership are individuals who may be participants of civil and land relations, since land relations have a complex content (land is the object of alienation, acquisition, object of trade and market relations). Land legislation does not provide for general requirements that must be possessed by the subjects of land relations, but these requirements are provided in civil law. Thus, the content of land relations is determined by legal personality (legal capacity, legal and tort ability). Thus, the right of land ownership is possessed by the individuals and legal entities that have legal capacity, legal and tort ability in accordance with applicable law (Озімок, 2020: 141).

It should be noted that the subjects of constitutional and legal relations are participants of public relations, "endowed with the constitutional legal personality (legal capacity and legal ability), who generate, change, terminate and renew constitutional-legal relations by their behavior or activities, or being off their will in a certain legal status, regime or state on the basis of the norms of constitutional law". According to V. Fedorenko, the term "legal status of the subject of constitutional legal relations" is used to denote legal characteristics of the subject of constitutional and legal relations. The legal status of the subject of constitutional legal relations has such structural elements as legal personality; system of rights, responsibilities and legitimate interests; system of guarantees of rights and obligations of legal entities; their legal responsibility. These elements are generally inherent in the legal status of the subjects of constitutional legal relations (Федоренко, 2014: 83).

The subject of the right of land ownership is a person (individual or legal entity) that owns, uses and disposes of land on the basis of law. The rights of all subjects of the right of land ownership are equal and protected in the manner prescribed by law. The subjects of legal relations related to the emergence of the right of land ownership also include individuals who enter into relations regarding the acquisition of this right (Шеремет, 2009: 78).

Based on the constitutional norms, the subjects of the constitutional right of land ownership are the Ukrainian people, citizens, legal entities, the state and territorial communities. The essence of the legal status of subjects of the constitutional right of land ownership can be clarified by analyzing the above-mentioned elements.

3. The problem of the Ukrainian people's legal status

The legal status of such a special subject of constitutional relations as the Ukrainian people has become a subject of numerous discussions in the science of constitutional, land, civil and other branches of law.

Thus, Ukrainian researcher I. Percheklii determined that during some period of time two scientific positions on the recognition or non-recognition of the Ukrainian people as a subject of relations started to be distinguished in the legal literature and the concept of complex structural model of property rights, which "pushed" the concept of simplified model of property rights, became more popular (Перчеклій, 2015: 97–98).

V. Bordeniuk characterizes the Ukrainian people as an active participant of the process of public administration and significantly supplements the arguments concerning the recognition of their property rights. According to the researcher, the Ukrainian people act simultaneously in three forms: as the entity that has the right to directly exercise the powers of the owner of resources belonging to him; as the entity that delegates the above-mentioned powers to public authorities and authorizes these bodies to act on its behalf; as the entity whose interests are subject to realization and protection by the entire mechanism of the state (Борденюк, 2007: 256).

Ukrainian scientist V. Nosik notes that the Constitution of Ukraine, declaring the supremacy of the people on the territory of our state within certain state borders, enshrines the right of the Ukrainian people to land territory of the state as a natural object, not as land plots demarcated on the state's land territory for special use. The Constitution defines spatial boundaries of the sovereignty of the Ukrainian people, enshrines the right of the people to rule the land as an expression of political domination over a certain part of the globe (Носік, 2006: 276).

V. Holovchenko emphasizes that the land, its mineral wealth, atmospheric air, water and other natural resources located within the territory of Ukraine, natural resources of its continental shelf are the objects of property of the Ukrainian people in accordance with the Constitution of Ukraine. This means that only the people of Ukraine are the sole owner of all the lands of Ukraine without exception and only the people of Ukraine have the constitutional right to fully decide the fate of natural (i.e. not man-made) resources – to own, use and dispose of them (Головченко, 2019).

In this regard, the Ukrainian theory of law justifiably proves the fact that the people as a social community are a subject of law, the legal status of which is enshrined in the international law, the Constitution of Ukraine and is divided into general and specific ones. In this general theoretical aspect the legal status of the Ukrainian people should be defined as a subject of land ownership, which is the main national wealth (Носік, 2006: 197).

It is necessary to pay special attention to the fact that realization of the right of the land owner on behalf of the Ukrainian people has a public-law nature and it is not regulated by the norms of civil law. Therefore, the legal status of the Ukrainian people as a subject of land ownership must be considered in terms of the general status of the people as a subject of law.

Domestic scientist I. Kostiashkin argues that the right of land ownership of the Ukrainian people and all other subjects should be differentiated. In his opinion, the right of the people to own land is absolute in determining the forms of use of such property or disposal of land until the change of the state border. Instead, a particular landowner (in the process of initial distribution of land by public authorities and local governments authorized to represent the Ukrainian people) receives a limited right without absolute freedom to use and dispose of land, since the limits of such freedom are predetermined by land legislation or leveled by certain restrictions, in particular a moratorium on land expropriation. In addition, it is indisputable that the private owner's ownership of land can be alienated in the public interest against the will of such owner, while the ownership of land within the state border can be changed only by the decision of the owner, i.e. the Ukrainian people. Thus, the property right of the people is primary, while the right of other subjects is derivative (Костяшкін, 2017).

Based on the provisions of Part 1 of Article 13 of the Constitution of Ukraine, the primary subject of the constitutional right to own land is the Ukrainian people, on whose behalf the rights of the owner are exercised by authorized entities. The people as the founder of a sovereign and independent state, the creator of the Constitution and the autocratic bearer of state power in Ukraine are the owners of all natural resources within its territory. Ukraine's sovereignty extends to its entire territory within its state borders. The legal form of belonging of natural resources to the Ukrainian people as a bearer of sovereignty and the only source of power in Ukraine, enshrined in the Basic Law of the state, provides for a clear distinction between the concepts of "subjects of property rights" and "subjects of exercising property rights". The people cannot exercise the powers of the owner on a daily basis, i.e. actually own, use and dispose of the natural resources of the country or its separate region. Therefore, the constitutional provision, which refers the Ukrainian people to the subjects of ownership of natural objects, is more socio-economic than political and legal in its nature (Озімок, 2020).

According to the Constitution of Ukraine (Part 2 of Article 13), the Verkhovna Rada of Ukraine is the subject of exercising all its rights as the owner of land and other natural resources on behalf of the Ukrainian people. It is a representative body of state power with the right to control the decisions made by the executive authorities on the exercise of the rights of the owner of natural objects on behalf of the Ukrainian people. Local self-government bodies within their territory are independent subjects of exercising the rights of the owner of land and other natural resources on behalf of the Ukrainian people that are obliged to ensure realization of these rights within the limits set by the Constitution of Ukraine.

It is fairly noted by I. Kostiashkin that the Ukrainian people are the subject of ownership of all lands that make up the territory of the country to which the sovereignty of Ukraine extends, regardless of the forms of ownership of land on the territory of Ukraine (within the borders). This approach necessitates a clear distinguishing of powers of the relevant bodies, which represent the Ukrainian people having implemented management functions in the field

of land relations, and this requires a completely equal approach to determination and support of the legal regime of land regardless of the form of ownership (Костяшкін, 2017).

The exercise of such powers is entrusted to the Verkhovna Rada of Ukraine, which represents the Ukrainian people and establishes the legal regime for all categories of land, executive bodies and local governments, which perform appropriate management functions in exercising property rights on behalf of the Ukrainian people.

Constitutional norms extend the right of ownership of the Ukrainian people to all lands within the state border, stating the priority of such a right in comparison with the right of ownership of the second level. The disadvantage of modern land legislation is the lack of development of appropriate constitutional and legal regulation in the Land Code of Ukraine. The provisions of Article 324 of the Civil Code of Ukraine to some extent reproduce the provisions of the Constitution of Ukraine on land ownership of the Ukrainian people, but do not fully disclose the mechanism of implementation of constitutional principles in the field of public law regulation.

According to I. Ozimok, the constitutional model for recognizing the people as a land owner is inherent in domestic legal regulation. Based on the constitutional and legal understanding of the subjects of law, the researcher considers the Ukrainian people as an independent subject of the constitutional right of land ownership. "Such a unique constitutional and legal regulation of the status of the Ukrainian people, on the one hand, recognizes its priority over the state and, on the other hand, confirms the need to distinguish the Ukrainian people and the state as independent subjects of constitutional land ownership. In addition, the recognition of the Ukrainian people as an independent subject of the constitutional right of land ownership enables to emphasize its special constitutional and legal status". According to the Preamble of the Constitution of Ukraine, the Ukrainian people are the citizens of Ukraine of all nationalities, so belonging to the citizenship of Ukraine enables to refer a person to the subjects of land ownership in the constitutional and legal sense. Moreover, on behalf of the Ukrainian people, the rights of the owner are exercised by the state authorities and local governments, in particular, the citizens of Ukraine have the right to participate in the management of public affairs, freely elect and be elected to public authorities and local governments, have equal access to the civil service as well as the service in local self-government bodies (Article 38 of the Constitution of Ukraine) (Озімок, 2020: 5).

Therefore, analysis of constitutional norms and scientific views of the constitutional doctrine gives all grounds to claim that the Ukrainian people are an independent subject of land ownership.

4. Citizens and legal entities as subjects of land ownership

According to the Preamble of the Constitution of Ukraine, the Ukrainian people are citizens of all nationalities of our state, and therefore, every citizen of Ukraine is guaranteed the right to own land.

According to Article 1 of the Law of Ukraine "On Citizenship of Ukraine", a citizen of Ukraine is a person who has acquired the citizenship of Ukraine in the manner prescribed by the laws of Ukraine and international treaties of Ukraine.

According to Article 6 of this Law, the grounds for acquiring Ukrainian citizenship are birth; territorial origin; admission to citizenship; renewal of citizenship; adoption; establishment of guardianship or custody of the child, placement of the child in a children's institution or health care institution, in a family-type orphanage or a foster family or transfer for upbringing to a foster family; establishment of guardianship over a person declared incompetent by a court; having citizenship of Ukraine by one or both parents of the child; recognition of paternity or maternity or establishing the fact of paternity or maternity; other grounds provided by the international treaties of Ukraine (Про громадянство України. Закон).

The right of ownership of land is guaranteed to every citizen by Parts 2 and 4 of Article 13 (the rights of every citizen to use natural objects (including land), the equality of all subjects of property rights before the law); Article 21 (all people are equal and free in their dignity and rights; human rights and freedoms are inalienable and inviolable); Article 22 (constitutional rights and freedoms of man and citizen are guaranteed and cannot be revoked; when adopting new laws or amending them, the content and scope of existing rights and freedoms may not be restricted); Article 24 (citizens have equal constitutional rights and freedoms and are equal before the law); Article 41 of the Constitution of Ukraine (everyone has the right to own, use and dispose of his/her property; use of property may not harm the rights, freedoms and dignity of citizens, public interests, deteriorate the environment and natural qualities of land).

In the public relations of various subjects of the right of ownership of natural objects, there is a following constitutional norm, "Property is binding. Property should not be used to the detriment of man and society". Owners of land plots (land) are equal to each other and before the law and cannot compete with the right of the Ukrainian people to own natural objects (land). This means that landowners (citizens, legal entities, including the state ones) can fully acquire and exercise their civil rights (purchase, sale, gift, pledge, etc.) concerning their property as well as are obliged to use their property in the manner that does not harm man and society.

Citizens of Ukraine may be subjects of land ownership if they have full civil legal capacity. Article 81 of the Land Code of Ukraine determines the grounds for acquiring the right of land ownership. Thus, every citizen has the right to purchase land under a contract (purchase, gift, exchange, other civil law agreements); to receive land free of charge from the fund of state and communal property; to privatize the land plot he uses, to inherit, to receive it as a result of allocation (on the ground) the land share (plot) belonging to them. According to Article 121, citizens of Ukraine have the right to privatize land plots, once free of charge, from the state or communal lands in the prescribed amounts for various purposes for farming, personal farming, horticulture; for the construction and maintenance of a residential building, outbuildings and structures (homestead land); for the country cottage construction

and garage construction. Citizens and legal entities acquire land ownership rights from state or communal lands by decision of executive bodies or local self-government bodies within the limits of their powers. The procedure for acquiring land plots by citizens and legal entities is regulated by the Land Code of Ukraine and other legislative acts (Земельний кодекс України).

Thus, citizens of Ukraine as subjects of the constitutional right of land ownership may acquire, exercise, terminate and protect their right of land ownership in accordance with the Constitution and laws of Ukraine. The Ukrainian people as a subject of the constitutional right of land ownership are an independent entity that includes citizens of Ukraine of all nationalities that exercises this right through state authorities and local governments.

The Constitution of Ukraine as the basic law of the state and society, which regulates the most important social relations, establishes the rights and obligations of legal entities. For example, according to Part 2 of Article 14 of the Constitution of Ukraine, land ownership is acquired and exercised by citizens, legal entities and the state exclusively in accordance with the law. According to Part 3 of Article 152 of the Constitution of Ukraine, material or moral damage to individuals or legal entities caused by the acts and actions declared as unconstitutional shall be reimbursed by the state in accordance with the procedure established by law.

In accordance with Part 1 of Article 80 of the Civil Code of Ukraine, a legal entity is an organization established and registered in the manner prescribed by law, respectively (Цивільний кодекс України).

Legal entities can be divided into two groups: legal entities that exercise public authority through their competence (the state, public authorities and local governments); legal entities that do not have public power but satisfy private or public interests, the needs of the population for goods or services, job creation, etc. The Constitution of Ukraine regulates in detail the powers of legal entities that are authorized to exercise public power (Олькіна, 2012).

According to Article 82 of the Land Code of Ukraine, legal entities (established by the citizens of Ukraine or legal entities of Ukraine) may acquire land plots for business activities. Foreign legal entities may acquire ownership of non-agricultural land plots within the settlements in the case of acquisition of real estate and for the construction of facilities related to business activities in Ukraine, outside the settlements in the case of acquisition of real estate objects. Joint ventures established under participation of foreign legal entities and individuals may acquire ownership of non-agricultural land plots in cases specified by the Land Code of Ukraine.

Legal entities as subjects of the constitutional right of land ownership are the organizations established and registered in the manner prescribed by law, founded by the citizens of Ukraine and/or legal entities of Ukraine, capable of acquiring and exercising the right of land ownership, unless prohibited by law. In cases specified by law, the right of ownership of certain land types may be acquired by foreign legal entities and joint ventures (Озімок, 2020: 148).

5. The state and territorial communities as subjects of land ownership

The state and communal territorial formations are the subjects of right of state and communal property. Participation of these subjects in land ownership relations should be distinguished from their role in land management. In the first case (through the relevant state bodies), they act as parties to the contractual relationship of sale, lease of land, as determined by civil law. In the second case, the subjects perform the functions established by law concerning the control over the use of land resources, organization of land management, etc. The bodies of state power and administration as well as the bodies of local self-government manage and dispose of lands that are in state and communal ownership. The right of private property serves to satisfy the interests of owners, i.e. citizens and legal entities. State and communal ownership of land ensures the interests of large groups of people, in particular, the people of Ukraine in general; the population living on the territory of communal formations (Шепетер, 2009).

According to the Constitution of Ukraine, the right of communal ownership of land is the right of the territorial community to own a specified natural object. Land, which is communal property and is used for the needs of the local population, is one of the main sources of material and financial basis of local self-government, plays an important role in ensuring the functioning of local self-government and therefore has a special legal regime.

According to Article 83 of the Land Code of Ukraine, the objects of communal property rights of territorial communities are all lands within the settlements, except for private and state lands, as well as land plots beyond them, where communal property objects are located.

According to Part 1 of Article 142 of the Constitution of Ukraine, the material and financial basis of local self-government is movable and immovable property, local budget revenues, other funds, land, natural resources owned by territorial communities of villages, settlements, towns, districts in towns as well as objects of their joint property that are managed by the regional and regional councils.

Therefore, this constitutional norm recognizes as the primary subjects of communal property not administrative-territorial units represented by the regional, district, town, settlement and village councils, but the relevant territorial communities, i.e. the population of villages, settlements, towns, and districts in towns. At the same time, according to the Constitution (Article 140), local self-government is the right of the territorial community – residents of a village or voluntary association of residents of several villages, a settlement and a town – to independently solve local issues within the Constitution and laws of Ukraine. Local self-government is carried out by the territorial community in the manner prescribed by law, both directly and through local governments, namely village, town, settlement, town councils and their executive bodies.

According to the current legislation, local governments within their territory are independent subjects of the owner's rights to land and other natural resources on behalf of the Ukrainian people that are obliged to ensure implementation of these rights within the limits set by the Constitution of Ukraine.

As noted by A. Kulynych, in the subjective sense, the right of communal ownership of land of territorial communities is the ability and capability of the territorial community, which is guaranteed by the laws of Ukraine, to acquire land and land plots, own, use and dispose of them directly or through local governments (Кулинич, 2019: 261).

When exercising the powers granted by law, local governments enter into civil and commercial legal relations with legal entities and individuals. In such legal relations, territorial communities are equal participants of land relations with other legal entities and individuals.

6. Conclusions

The constitutional right of land ownership in Ukraine is the ability of the subject of the constitutional right of land ownership to own, use and dispose of land or land plot. According to the Constitution, land ownership can be public, state, communal and private property.

The Ukrainian people as a subject of the constitutional right to own land is an independent entity that includes citizens of Ukraine of all nationalities and exercises this right through the state authorities and local governments.

Citizens of Ukraine as subjects of the constitutional right to own land are the individuals, who have acquired the citizenship of Ukraine on the grounds specified by law, and may acquire, exercise, terminate and protect their right to own land on the grounds and in the manner, which is prescribed by the Constitution and laws of Ukraine.

Legal entities as subjects of the constitutional right of land ownership are the organizations established in the manner prescribed by law, founded by the citizens of Ukraine and/or legal entities of Ukraine that are capable of acquiring and exercising the right of ownership of land plots.

The state is the subject of the constitutional right of state land ownership. On behalf of the state, the executive bodies determined by the Constitution and laws of Ukraine dispose of the state-owned lands. The subjects of the constitutional right of communal land ownership are territorial communities, which exercise the powers provided by the Constitution and laws of Ukraine in relation to communal land directly or through local self-government bodies.

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