Recommendations on improvement of Georgian labor legislation in order to provide better protection of labour rights of women and prevent gender based discrimination at employment

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Introduction

Georgian Trade Union's Confederation, is carrying out the project "Access to Justice to Ensure Labor Rights of Women" financed by Promoting Rule of Law in Georgia (PROLoG) activity, implemented by The East-West Management Institute (EWMI) that is supported by United States Agency for International Development (USAID).

The project aims to increase access to justice for women by addressing the problems of gender based discrimination in the workplace. The project focuses on the issues of unequal treatment of female applicants at the hiring stage, unjustified termination of contracts after maternity leaves, wage discrimination, and incidents of sexual abuse in the workplace. The project aims to provide awareness raising activities on labor rights of women to reduce or prevent the violations of women's rights in employment.

Within the framework of the project 10 trainings have been conducted in Tbilisi and different regions of Georgia. GTUC currently litigates 12 cases before Georgian courts, including Constitutional Court of Georgia. These cases are linked to the different labor rights issues, some of them are pending deliberation at Georgian national courts, including Constitutional Court of Georgia, in some cases friendly settlement have been conducted, some of them have been won before the court of first instance, some of them after exhaustion of all domestic remedies will be submitted to the European Court of Human Rights.

On the bases of the shortcomings and challenges that organization had already been identified during strategic litigation GTUC has developed the package of the recommendations to improve Georgian labor legislation. Therefore, project lawyers identified problematic provisions of Georgian Labor Code, as well as the wrong practices established by national courts' of Georgia on labor related issues, and developed analyze of international labor standards compatibility to Georgian labor legislation. Based on the abovementioned study project lawyers' drafted the recommendations to improve Georgian labor legislation and practice in order to meet international labor standards.

Prohibition of gender discrimination

Current regulation

According to the Article (2.3 Employment Relations) of the Labor Code: 3. Any form of discrimination is prohibited in the employment and pre-contractual relationship based on race, color, language, ethnic or social belonging, nationality, origin, economic condition or status, place of residence, age, gender, sexual orientation, disability, membership of religious, public, political or any union, including professional unions, marital status, political or other views.

Problem Statement at National level

Despite the fact that Organic Law, labor Code of Georgia recognizes non-exhaustive lists of prohibited grounds of discrimination, there is still some lack of classic signs of discrimination such as: health conditions, pregnancy or childcare, whereas the most unequal treatment and gender discrimination is linked to abovementioned grounds of discrimination. 5 cases that GTUC lawyers litigate within the project is linked to the discrimination on the ground of pregnancy or/and childcare. Constitutional lawsuit is also relates to the problem of dismissal women during pregnancy of childcare. GTUC challenged Article 37.3 „G" of the labor code, which allows the employer to dismiss a woman during pregnancy and maternity leave if the term of the labor contracts expires. The article is often used to violate women labor rights and often they are dismissed based on this ground of termination of the labor contract. We consider that's such regulations contradicts to the following articles of the constitution: 14 (discrimination), 30.1. (Freedom to labor) and 42.1 (access to justice). Law suit has already been submitted to the Constitutional Court of Georgia.

Thus, GTUC believes that adding the pregnancy or childcare, and health conditions, as classic grounds of prohibition of discrimination in Labor Code will prevent or mitigate gender based discrimination at labor relations.

International Standards

ILO Convention No. 111 on prohibition of discrimination in labor relations and in employment recognizes prohibition of discrimination on any grounds, including the gender discrimination and the other prohibited grounds that GTUC are addressing in its recommendations.

Recommendation:

Article 2, para 3: GTUC recommends amending abovementioned article, according to which health conditions, physical appearance and pregnancy should be added to the existing prohibited signs of discrimination. GTUC litigation practice shows the frequent violations related to the discrimination of women at workplaces on the bases of above-mentioned discrimination signs.

The right of employed women to protection of maternity

Current regulation

The labor code does not provide enough protection of maternity.

Problem Statement

Women in private sector get only 1000 GEL benefit from state budget during maternity leave and employer does not have an obligation to reimburse her compensation, the gap between her salary for 183 days and state benefit 1000 GEL. In practice, this regulation obliges an employee to return to job as soon as possible to get salary and therefore her right to maternity is violated.

Also, Georgian labor code does not provide any guarantees of maintaining jobs for women after expiration of maternity leave. It should be mentioned that female public servants get full amount of salary during maternity and additionally they are protected from dismissal during 3 years after childbirth. This attitude can be considered as discrimination depending on place/sector of employment. Because of the above mentioned situations, women in Georgia often are in front of the dilemma to make an option between job and child birth. Constitutional lawsuit on this matter has already been prepared for submission to the Constitutional Court of Georgia by the project lawyers.

In addition, pregnant women cannot get free time for medical examination. In case she is absent even for this reason it can be considered as the violation of labor contract or even ground of dismissal.

International Standards

ILO Convention 183 on Maternity Protection", European Social Charter, article 8,Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC)define that the state should take measures for protection of women during pregnancy, maternity leave and child care and take the appropriate measures.

Article 6 of the convention 183 states that cash benefits for maternity leave shall be at a level which ensures that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living and that medical benefits shall be provided for the woman and her child in accordance with national laws and regulations

Recommendation

Article 26^2 shall be added to the Georgian labor Code with the following paragraphs:

1. Absence shall be considered valid and payable due to employee's medical examination if he/she presents to employer appropriate statement on medical treatment. The same provisions apply to pregnant women;

2. On the bases of medical examination employee has rights to ask for temporary lightening the job, or removing to the place suitable of his/her health condition. Employee will be given salary according to his/her new position if it is more than he/she gets in previous positions. If salary for previous position was more than the new one, he /she is entitled for maintaining previous amount of salary.
3. If it is not possible to transfer pregnant women to the lighter position, according to the time-limit considered on medical conclusion, pregnant employee shall be free from her work duties, at the same time she maintains not less than three month salary, which itself shall not be considered as a temporary disability according to para "I" of Article 36 of Georgian labor Code.
4. In case of request, women should be granted to annual paid leave by enterprise, institution, organization during the pregnancy or right after giving the birth regardless of her work experience.

Para 2 shall be added to Article 29 of Georgian labor Code:

1. In line with cash allowances that employees get from state budget on maternity or child care leaves, she also gets compensation in the full amount of the salary as she was entitled to have during maternity leave or child care absence.
2. Compensation for pregnancy, maternity or child care leave shall be paid by state budget or by employer.
3. Employee who has already used maternity and newborn adoption leaves is guaranteed to have the same job or equivalent of her job, with the same amount of salary. In case salary has been risen for her position during her absence she is entitled to get already risen salary.
4. Employer shall take any measures (trainings, awareness raising activities) to enhance knowledge of newly returned employee from maternity or child care leave, in order to have an opportunity to be fully engaged in her work and to be competitive on labor market after a temporary absence, which was caused by performance of family responsibilities[1].

Equal pay for Equal work

Current regulation

There is no existing regulation providing equal pay for equal work in Georgian labor legislation

Problem Statement at National level

GTUC experience as well as official data of Geo stat shows that women are less paid in all sectors of economy than man, difference in salaries is an average 40% that includes sectors where

[1] ILO convention 156 Workers with family responsibilities convention, ILO Convention 183 on Maternity Protection and ILO recommendation 191

majority of employees are women. Moreover, the official statistical data provided by Geostat[2]) indicates that the women's salaries significantly fall behind the men's salaries (c.a. 412 Gel) in all economic sectors, including the sectors where the female employees significantly prevail the male employees. The situation is even more dramatic by the official statistics demonstrating that in the educational sector, where the female employment exceeds 90% the wages are the smallest, particularly 3-4 times less than those in the financial sector, public sector and transportation sector. According to the assessments by the independent experts the wages paid to female employees generally constitute only 2/3 of wages paid to male employees in the country (GenderPayGap-GPG).

International Standards

Georgian legislation does not ensure equal remuneration to women and men for performing equal work. This is the violation of requirements of ILO #100 Fundamental Convention, Social Charter of Europe ratified by Georgia,Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women. These international acts state that women and men should be paid equally for equal work.

Recommendation

Paragraph 7 should be added to the article 2 of the Georgian Labor Code as follow: Men and women workers are entitled to equal pay for equal work, which itself means, the actual salary and any other remuneration that employer pays to employee in direct, or indirect way, by money or in kind contribution.

Georgian government should develop the methodology, based on the objective criteria which will measure any work done by employees.[3]

Paragraph 8 should be added to article 2 as follow: Any kind of verbal, non-verbal or physical behavior of sexual nature aimed to assault person's dignity, which causes intimidation, and/or creates hostile or offensive environment at work shall be defined as sexual harassment prohibited by law as a type of discrimination[4].

[2]http://www.geostat.ge/?action=page&p_id=148&lang=geo

3 ILO convention #100; Report of the Committee of Experts on the Application of Conventions and Recommendations , Georgia Equal Remuneration Convention, 1951 (No. 100) (ratification: 1993); European Social Charter (article 4.3; conclusions on the implementation of the European Social Charter 2015 of the European Committee of Social Rights; Committee on the Elimination of Discrimination against Women (CEDAW) Concluding observations on the combined fourth and fifth periodic reports of Georgia*; European Convention on economic, social and cultural rights, article 7; Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women

4 Council Directive 76/207/EEC of 9 February, 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

Denial in employment

Current Regulation

According to the article 5.8 (Pre-Contractual Relations and Exchange of Information Prior to Conclusion of Employment Contract) of the Labor Code: 8.an employer shall not be liable to substantiate his/her decision not to hire an applicant.

Problem statement: The right granted to the employer by the labor Code - not to justify the reasons for denying the employment during the pre-contract labor relations - remains as an encouraging factor for discrimination. This provision creates a problem of accessibility to the justice, as it does not oblige the employer to develop the document describing the reasons for denial that could be used by the party for appealing. The practices of the GTUC show that this provision mostly affects women, who were denied in employment because of their family responsibilities (married women, child care or women career of persons with disabilities, mothers of large families) and pregnancy.

International Standards

Para 6 of Article 2 of European Social Charter, CEACR: Individual Observation concerning Right to Organize and Collective Bargaining Convention, 1949 (No. 98) states that, current regulation does not provide any protection for job seekers, especially women from discrimination during pre-contractual relations, ILO Convention 111 Discrimination (employment and occupation)Convention. These international acts guarantee workers right not to be discriminates in pre-contractual and contractual relations as well.

Recommendation

Article 5 para 8 Should be amended as follow: If candidate indicates circumstances that creates a reasonable doubt to believe that the employer acted against article 2 paragraph 3 of the labor Code, (prohibition of discrimination), employer shall be obliged to justify the refusal in employment[5].

Labor Contract

Current regulation

According to the article 6, para 1[1] (Conclusion of Employment Contract) of the labor Code: A labor agreement shall be in writing, if labor relations last for **more than three months**.
According to article 6, para 1 [2], except when the term of a labor agreement is one year or longer, a labor agreement shall only be concluded for a fixed term if e) there are other objective circumstances justifying conclusion of a fixed-term agreement.

5Para 6 of Article 2 of European Social Charter, CEACR: Individual Observation concerning Right to Organize and Collective Bargaining Convention, 1949 (No. 98) Georgia (ratification: 1993) Published: 2010

Problem statement

It is very important to have written labor contract to ensure proper protection of labor rights. Project lawyers litigate the case on young woman N. N. who has been dismissed from work the day after she approved to work for LTD 'Aviator.' Although she has had verbal agreement on employment and several e-mail correspondences to prove that she was in labor relations with respondent, applicant and lawyers still face the problem before the court to prove of existence of labor relations at all between the parties.

Thus, it is obvious that not having a written contract, very often, makes impossible to prove even the fact of existence of labor relations, Therefore, GTUC believes that having written contract is important to ensure protection of women's labor rights.

International Standards

Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP; EU Directive 2003/88/EC of 4 November 2003 concerning certain aspects of the organization of working time; European Social Charter Article 2. All the above mentioned international documents provides guarantee of worker to have a written contract with essential labor conditions at lease after two months of employment.

Recommendation

Sub para (e) of article 6, para 1 [2]should be abolished as it is too vague and gives undue discretion to employer to conduct fixed term contract[6].

Article 6, para 1[1] (Conclusion of Employment Contract) should be amended as follow: A labor agreement shall be in writing, if labor relations last for **more than two months.**

Duration of Working Time, Overtime Work

Current Regulation

According to the article 14, Para 1 (Duration of Working Time) of the labor code: the period during which the employee performs work defined by the employer shall not exceed 40 hours per week, while it shall not exceed 48 hours per week in enterprises having specific work regimes where the production/work process requires more than 8 hours of uninterrupted work. The list of specific work regimes is established by the Government. Rest and break time is not considered as working time.

According to the article 17 para 1 (Overtime Work) of the labor code: The employee shall perform overtime work to: a) Prevent and/or mitigate natural disasters – without

6Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP ; EU Directive 2003/88/EC of 4 November 2003 concerning certain aspects of the organization of working time

remuneration; b) Prevent and/or liquidate results of industrial accident – with relevant remuneration.

According to the article 17, para 4 (Overtime Work) of the labor code: Overtime work shall be reimbursed at an increased rate of the normal hourly wage; the amount of overtime compensation is defined by agreement between the parties.

Problem statement

According to Article 147 of the Georgian Labor Code, the workweek of the employee, determined by the employer, shall not exceed 40 hours per week; however, in companies with "specific operating conditions" that require more than eight hours of a continuous mode of manufacture/work, the employee's workweek shall not exceed 48 hours a week. Under Article 14, the Government of Georgia is responsible for compiling a list of the industries with "specific operating conditions." This list has been issued by government and it covers almost all sectors of economy, thus in practice majority of employers established 48 hours working per week, which contradicts to international standards. The main problem is that there is not a list of enterprises of specific regime and therefore only based on sectors it is impossible to define the concert enterprise belongs to a specific regime or not. Georgian legislation does not provide maximum working hours per day, rest days and rate of overtime work, which contradict international standards below.

GTUC lawyers brought this issue to the attention of the court and within the project lawyers represent applicants who demanded to pay overtime for work performed by them after 40 hours per week. The strategy is to exhaust all domestic remedies at national level as wrong practice on this matter as already been established by the Georgian national courts and in case of necessity (if practice will not chance) to submit application to the European Court of Human Rights.

The code does not define the rate of overtime work, which provokes many problems in the process of bargaining on rate between employees and employers and in the most case the rate is a very symbolic one. Also, the code contains situations when it is obligatory to perform an overtime work and sometimes without any remuneration. This article does not provide exceptions for employing people with disabilities, minors, pregnant women, women having recently given birth, nursing mother, and career of persons with disabilities or children under age three years.

International standards

European Social Charter Article 2, para 1 and EU Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organization of working time guarantees that maximum working hours per week, including overtime work

7 Article 14.1 (duration of the working time) of the Georgian Labor Code: ,,The period during which the employee performs work defined by the employer shall not exceed 40 hours per week, while it shall not exceed 48 hours per week in enterprises having specific work regimes where the production/work process requires more than 8 hours of uninterrupted work. The list of specific work regimes is established by the Government. Rest and break time are not considered as working time."

should not be exceeding for 48 hours per week These normative acts also define that overtime work should be paid with increased rate.

European Social Charter, article 27, ILO Convention 156 Workers with family responsibilities. These normative acts define that national legislation should provide the exercise of the right to equality of opportunity and treatment for men and women workers with family responsibilities and between such workers and other workers

Recommendations

Para 1 of Article is recommended to be amended as follow: An employer shall determine the duration of working time not to exceed 40 hours a week and 8 hours per day. Working time, including overtime work shall not be exceeded 48 hours per week[8].

Para 1 [1] shall be added to the article 14 and should be defined as follow: rest days per week are Saturday and Sunday in case if there are no exceptions considered by individual contract[9];

Para 1 [2] shall be added to the article 14 and should be defined as follow: employee shall get adjunct salary for work at night by the hour not less than 50 %[10];

Article 17 of the Labor Code shall be amended as follow:

1. An employee shall be obliged to perform overtime work:

a) For preventing and/or eliminating natural disasters and their consequences, with adequate remuneration on the bases of the regulations established by article 17, para 4 and 5 of the present law;

b) For preventing industrial accidents and/or eliminating their consequences with adequate remuneration on the bases of the regulations established by article 17, para 4 and 5 of the present law.

Para 6, of Article 17 shall be defined as follow: Employing people with disabilities, minors, pregnant women, women having recently given birth, nursing mothers, and career of persons with disabilities or children under age three working overtime without their consent shall be prohibited;

Para 4 of Article 17 should be amended accordingly: Overtime work shall be compensated by the hour based on increased pay rate, but not less than 50 %.

[8]European Social Charter, article 2.1.Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organization of working time

[9]European Social Charter, article 2.5. Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organization of working time

[10]European Social Charter , article 2.5.Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organization of working time

Additional rest time

Current Regulation

According to the article 19, para 1 of the Labor Code: The employee who feeds an infant under 12 months shall be given an additional break of at least 60minutes per day if she requests so.

Problem Statement

The regulation does not provide any benefits for pregnant women, nursing mothers and with infants less than 3 years.

International Standards

ILO Convention183 on, Maternity Protection", European Social Charter, article 8; Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC). These international acts define that the state should take measures for protection of women during pregnancy, maternity leave and child care and take the appropriate measures.

Recommendation

Para 2 shall be amended in Article 19 as follow: Employees who are pregnant, or nursing mothers and with infants under 3 years may request an additional break at least one hour a day.

Business Trip

Current regulation

Georgian Labor Code does not provide regulations to protect women's labor rights in business trips, thus it is not a gender sensitive.

Problem Statement

GTUC practices shows that it is very problematic to reconcile family responsibilities with work. It especially refers to women who are dealing with family responsibilities. Accordingly, it is very important to have gender sensitive regulations in labor legislation for better protection of women at employment. This refers to an issue such as business trip. It is often very problematic for women with family responsibilities to have a business trip and leave family for several days, considering the fact that Georgian labor code gives rights to employers to send a worker to a business trip for 45 days per year without his/her consent.

International Standards

European Social Charter, article 27, ILO Convention 156 Workers with family responsibilities. These normative acts define that national legislation should provide different benefits to ensure

reconciliation of family responsibilities and work and the exercise of the right to equality of opportunity and treatment for men and women workers with family responsibilities and between such workers and other workers

Recommendation

Paragraph 6, article 12 shall be added to article 12 of the Labor Code: Law prohibits sending pregnant employees or those who have recently given birth, or those who have children under age three, or are career of persons with disabilities to the business trip without their consent.

Termination of labor contracts

Current regulation

Article 37, para 3, (Grounds for Termination of Employment Relations)of the Labor Code:c) Pregnancy leave for the period specified in Paragraph g) of Article 36 from the moment the employee notifies the employer about her pregnancy, with the exception of cases when the employment contract is terminated on the grounds set in Subparagraphs b), c), d), e), g), h), j) and l) of Paragraph 1 of this Article;

Problem Statement

One of the problematic issues is termination of labor relations during the period of pregnancy. Although the Labor Code protects pregnant women from unlawful dismissal, but not with regard to all possible grounds for termination of labor relations envisaged by the law. For example, the law allows dismissal of a pregnant woman because of expiry of the contract term. Very often the pregnant women are denied from conducting new contracts because of expiry of the previous contract term, while the contracts are easily renewed for new term with other employees.

The current law does not secure the employee possessing an infant from dismissal. Very often, after the maternity leave the employees are asked to pass different examinations (attestation, tests, etc.) thus creating the objective problem because, after the long leave the employee needs reasonable time to adapt to the changed environment.

Employee during the pregnancy, on maternity leave, newborn adoption leave or under child care leave, and mother of child up to age three shall not be dismissed from work on the bases of termination of contract. GTUC prepared lawsuit to the Constitution court of Georgia in order to recognize Sub paragraph “G”, para 3 of article 37 unconstitutional.

International standards

UN Convention CEDAW, ILO Conventions # 183 on Maternity Protection and #111 on Discrimination (employment and occupation. These international acts define that the state should take measures for protection of women during pregnancy, maternity leave and child care and take the appropriate measures.

Article 8 of the ILO convention 183 A woman is guaranteed the right to return to the same position or an equivalent position paid at the same rate at the end of her maternity leave.

Recommendation

Provisions of Georgian Labor Code stating that expiration of labor contract might cause dismissal from work, shall be removed from the Code without additional notice, highlighting the fact that this provision does not applies to pregnant women on those on maternity leave.

Labor Inspection

Problem statement

There is no labor law enforcement mechanism existing in Georgia, likewise labor inspection. The only regulation related to the labor inspectorate issue is a state program adopted by Government of Georgia in January 2015.

GTUC have specified a number of serious reasons with the state programs: - Decree of the Government of Georgia has been adopted unilaterally and bypassing tripartite social dialogue platforms and consultations with the unions. The Program encompasses only the issue of monitoring of health and safety and does not refer at all to employment conditions as such. This is despite many discussions we had on the government's international obligations to create effective mechanisms of Labor Law enforcement in accordance with the ILO standards and the analysis of the statistical data which showed that out of 1367 lawsuits on labor issues presented to the Georgian courts in 2013 only 70 had concerned workplace health and safety and the rest was about labor rights violations such as working time, wage arrears, overtime pay, discrimination and unfair dismissals, freedom of association, right to paid holiday leave, etc. While workplace health and safety is a huge concern to the GTUC and its affiliates, it is evident that 95% of another equally important segment of the employment conditions and worker rights will remain outside the scope of this State Monitoring Program; - Moreover, taking into account the paragraph "e" of the article 1 and the paragraph "h" of the article 3 of the Decree, the need for institutional and legislative reforms even in the area of the workplace health and safety protection is put under the question mark. This means that the problems and challenges related to work safety and fundamental labor rights as defined by the ILO standards and the EU-Georgia Association Agreement and the Association Agenda, are not adequately understood by the government of Georgia; - One of the major shortcomings of this State Program is a voluntary participation of the companies in the OSH monitoring process and in addition it provides prior notice (in 2015 is was for five day previous notice) to the employers about the intended/planned monitoring of the voluntarily selected company. Of course such a provision naturally excludes disclosure of a real and objective situation on work health and safety conditions in an enterprise; - In overall, the program runs counter to the EU-Georgia Association Agreement provisions, among others the article 229, points 2,3 clearly stating the GoG's obligation to comply with the International Labor Standards regarding the enforcement of the Labor Code, including the ILO Convention 81 "On Labor Inspection", Agreement on GSP with the USA and number of other international obligations including European Social Charter, International Covenant on Civil and Political Rights, UN Convention to Elimination All Forms of Discrimination against Women etc.

On 21st April 2015 a Department of Labor Conditions' Inspection was created at the Ministry of Labor, Health and Social Affairs. This was done by the Minister of Labor himself by issuing the relevant order. The statute of this Department has not been negotiated with the social partners.

GTUC recommendation is creation of efficient labor inspection in complaisance with international standards to provide enforcement of labor legislation including labor rights of women. Under efficient inspection GTUC considers the following: access to workplaces in both private and public sectors, without any permission or prior notice; power to inspect not only occupational safety and health standards but, also, labor rights; power to provide sanctions in case of violation either labor law, or safety issues at workplace.

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