EUROPEAN INTERNATIONAL JOURNAL OF MULTIDISCIPLINARY RESEARCH AND MANAGEMENT STUDIES

VOLUME04 ISSUE03
DOI: https://doi.org/10.55640/eijmrms-04-03-36 Pages: 223-236

APPOINTMENT OF CRIMINAL PUNISHMENT IN THE PRESENCE OF MITIGATING CIRCUMSTANCES: PROBLEMS OF INDIVIDUALIZATION OF PUNISHMENT AND EXPERIENCE OF UZBEKISTAN

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ABOUT ARTICLE

Key words: Term of punishment, imposition of punishment, mitigating circumstances, aggravating situation, judicial practice, recalculation of mitigating circumstances.

Received: 20.03.2024
Accepted: 25.03.2024
Published: 30.03.2024

Abstract: In this article, problems of punishment by the courts in the presence of mitigating circumstances, as well as individualization of punishment according to the criminal legislation of Uzbekistan.

The article scientifically-theoretically analyzes theoretical and legal problems of punishment by the courts in the presence of mitigating circumstances, as well as individualization of punishment according to the Criminal Code of the Republic of Uzbekistan. In this case, the signs of the objective side of this crime, its specifics are covered on the basis of the opinions of national and foreign scientists, as well as legislative analysis.

According to author nowadays, a provision has been introduced into the criminal law that for a crime committed under certain punitive circumstances, if there are no aggravating circumstances established in the law, the punishment must necessarily be relaxed.

Section 571 of the Criminal law of Uzbekistan, entitled “The imposition of punishment when the culprit has practically regretted his act”, is defined as: “the term or amount of punishment shall not exceed two-thirds of the maximum penalty provided for by the relevant article of the special part of this code, in the absence of circumstances aggravating the punishment provided for This provision does not apply to persons who have committed crimes related to intentional homicide (part two of Article 97) and terrorism (part three

of Article 155) in circumstances that aggravate liability".
Proposals for the development of national legislation have been put forward in the analyzed issue.

INTRODUCTION

In recent years, a provision has been introduced into the criminal law that for a crime committed under certain punitive circumstances, if there are no aggravating circumstances established in the law, the punishment must necessarily be relaxed.

Section 571 of the criminal law, entitled "The imposition of punishment when the culprit has practically regretted his act", is defined as: "the term or amount of punishment shall not exceed two-thirds of the maximum penalty provided for by the relevant article of the special part of this code, in the absence of circumstances aggravating the punishment provided for This provision does not apply to persons who have committed crimes related to intentional homicide (part two of Article 97) and terrorism (part three of Article 155) in circumstances that aggravate liability".

The mitigating condition provided for by Section 55 (1) of the Criminal Law, "(A)", is the act of the imposition of a charge, remorse, or active assistance to open a crime, and the mitigating condition provided for by Section "(B)" is the voluntary elimination of the damage caused.

Thus, the Legislature separated from all cases of mitigating punishment only those of mitigating punishment provided for in paragraphs "A" and "B" of the first part of Article 55 of the criminal law, giving them the tone of cases of mitigating punishment of particular importance.

MATERIALS AND METHODS

The doctrinal views on the problems of punishment by the courts in the presence of mitigating circumstances, as well as individualization of punishment according to the criminal legislation of Uzbekistan. For this, methods of scientific cognition were used, such as analysis, historical-comparative method, abstraction and comparison.

RESULTS OF RESEARCH

Section 571 of the criminal law can only be applied in the absence of aggravating circumstances. At the same time, the provision enshrined in the fourth part of Article 56 of the criminal law must be taken

into account: the circumstances aggravating the punishment provided for in the first part of this article are not taken into account when imposing a penalty if the article of the special part of the Code provides for it as a necessary According to the law, the presence of these cases in such cases does not make it mandatory to apply the provisions of Article 571 of the Criminal Law.

Section 571 of the criminal law defines the reduced upper limit of punishment only for the most severe type of punishment in alternative sanctions and it does not make the appointment of lighter types of punishment at any limit enshrined in the appropriate sanction.

For example, Section 169 (1) of the criminal law provides for a fine of up to fifty times the minimum monthly wage for theft, i.e. for the clandestine looting of one's property, or correctional work of up to two years or imprisonment of up to six months or imprisonment of up to three years. When a person is convicted under Part 1 of Section 169 of the criminal law, the court can only impose a sentence no more than two-thirds of the length of imprisonment after determining that there are mitigating circumstances provided for by Section 55 of the first part of the Criminal Law, “A” and “B”, and that there are no aggravating circumstances. As for other, more lenient types of punishment provided for by the sanction of Section 169 (1) of the criminal law, according to the content of Section 571 of the criminal law, the “two-thirds” rule does not apply to them-they can be assigned within the limits specified in the sanction.

When resolving the issue of the application of Article 571 of the criminal law to minors, the provisions of the seventh section of the general part of the criminal law, devoted to the features of juvenile liability, should be taken into account.

Under the provisions of Section 571 of the criminal law, the relaxation of punishment in the presence of mitigating circumstances will be a mandatory feature for the court. The legislator prohibits the court from deviating from this upper limit unless it marks the reduced term or amount of the upper limit of the most severe type of punishment provided for by the relevant article of the special part of the criminal law. Therefore, in the case, in the presence of any of the mitigating circumstances provided for by Section 55 (1) of the Criminal Law, “A” and “b”, the court considers that the most severe type of punishment provided for by the article of the special part of the criminal law for this crime is the maximum term or should justify the appointment of a penalty of more than two-thirds of the amount with reference to the aggravating situation of a particular punishment.

In accordance with Article 57 of the criminal law, called the “appointment of a lighter sentence”, the court May, taking into account cases that seriously reduce the level of social danger of the crime

committed, in individual cases, prescribe even less than the minimum of the penalty prescribed for this crime provided for in the article of a special part of this code, or another lighter type It is also possible that the court, taking these grounds into account, will not impose an additional punishment, which is stipulated in the article of a special part of this code as a condition of application. Circumstances that represent the characteristics of an act committed, that is, the person of the culprit, the form and extent of the guilt, the circumstances and causes of the crime, the behavior of the person before and after the commission of the crime, can be found to be cases that seriously reduce the level of social danger of the crime.

Thus, Article 57 of the criminal law provides for two grounds for imposing a lighter sentence:

- the presence of circumstances that seriously reduce the level of social danger of the committed crime;

– circumstances that represent the characteristics of the Committed Act, that is, the person of the culprit, the form and extent of the guilt, the circumstances and reasons for the crime, until the person commits the crime and the fact that there are cases associated with subsequent behavior, the prediction of which is when they are found to be cases that seriously reduce the level of social danger of the crime.

A list of cases that may be valid as a basis for the application of Article 57 of the Criminal Law was left open by the legislator, but indicated that the circumstances in question should seriously reduce the level of social danger of the crime committed by the culprit.

In accordance with the decision of the plenum of the Supreme Court of the Republic of Uzbekistan No. 1 of February 3, 2006 “on the practice of imposing punishment for a crime by the courts in the appointment of a punishment even lighter than the one provided for in the law, not only the motive and purpose, the form and degree of guilt that the person, perhaps the identity of the culprit, the role among the participants in the crime, the behavior at the moment of or after the commission of the crime, the reasons for the commission of the crime and the conditions that led to it should also be taken into account. A list of individual cases that seriously reduce the degree of social danger of a crime, provided that it is not specified in the law, can recognize as such both a certain state of mitigation of punishment and a set of them, substantiating the decision made by the court in the sentence (e.g. full compensation of material damage, severe illness of the defendant or parents, their incapacity for work, absence of another breadwinner of the guilty parent or child, the fact that the defendant is old age, his active participation in the opening of a crime committed by a group of persons, conduct contrary to the right of the victim, which motivated the commission of the crime, reconciliation of the victim with the defendant, etc.).

Under the provision established in Section 57 of the criminal law, any milder basic type of punishment not provided for by the sanction of Article special part of this code, including penalties such as fines, deprivation of a certain right, compulsory public works, correctional work, restriction on service, restriction of freedom, sending to the disciplinary part, can be assigned subject to Article 44-49 of the criminal law.

During the appointment of a sentence even lighter than the one provided for by the law sanction, the decision part of the sentence should indicate only the final penalty prescribed under the relevant article (part, clause) of the Criminal Law, subject to the application of Article 57 of the criminal law, and the reasons for applying a lighter sentence should be indicated in the descriptive part of the sentence.

While a person is being tried for committing several crimes provided for in various articles (parts of Article 1) of the Criminal Law, Article 57 of the criminal law applies not after the punishment prescribed in the aggregate of crimes, but during the appointment of punishment for individual crimes.

The appointment of a more lenient basic sentence than is provided for by the statute sanction does not preclude the possibility of assigning additional penalties provided for by the statute sanction in which the offender's actions are being qualified [1].

Since the legislator defines the criteria for the appointment of a lighter sentence, it did not shed light on what exactly the circumstances in which the court has the right to apply Article 57 of the Criminal Law. Will circumstances not provided for by law also allow for a more lenient sentence?

The circumstances under which the Legislature provided for a lighter sentence were also not regulated in the old criminal law, in this regard, various points of view were put forward in the literature about it.

Some authors have put forward the idea that individual cases that are not included in the list of mitigating circumstances, but which the court may voluntarily find to be mitigating circumstances, may be considered exceptional circumstances that allow for a lighter sentence.

Other authors have held that both the mitigating circumstances included in the statutory list and those not included in that list, but which are recognized by the court as mitigating circumstances, can also be found to be exceptional circumstances.

In particular, Karpets wrote about this: “the norm on imposing a sentence below the lower limit can be applied in the presence of mitigating circumstances. It is also possible that such cases are intended in the sample list of cases of mitigation of punishment, but deviate from the scope of this list [2]”.

In Brainine's opinion, in the same case, the Legislature provided for some kind of special punishment mitigating circumstances, which are not included in the law, but only those that give the right to soften the punishment within the framework of the sanction . True, the author in question later changed his point of view and admitted that cases of committing a crime under the presumption of circumstances can exceptionally be found to be mitigating circumstances of punishment [3].

Brainin's first point of view was V.S.Orlov is also included. He wrote: "Due to the fact that the imposition of punishment below the lower limit is a deviation from the general rule, such a reduction in punishment cannot be based on the same circumstances as a reduction in punishment within the framework of the article of a special part of the criminal law. In order for the court to be able to impose a sentence below the lower limit, or to go to another, more lenient sentence, it must arise from special exceptional circumstances that indicate that the case deviates within the framework of the specific circumstances in question [4]".

N.A.Belyaev rejected this view, arguing that this approach did not allow to explain why "cases of mitigation of punishment" were specified in the law, while "cases of mitigation of special punishment [5]" were not.

To impose a sentence lighter than the one provided for in the law, it is not necessary to set any particular mitigating circumstances, circumstances not provided for by law, but which are taken into account as mitigating circumstances of punishment when imposing a sentence, are also separate mitigating circumstances, the idea that it can be considered M.D.Shargorodsky, G.A.Krieger joined [6].

Considering that Section 57 of the criminal law does not contain a full list of exceptional circumstances, and that the list enshrined in Section 55 of the criminal law is of an open nature, it can be concluded that the Legislature provides for both exemptive circumstances provided for by law and mitigating circumstances not provided for by law. This is exactly what judicial practice is following.

The issue of the number of mitigating circumstances that would give grounds for a lighter sentence has also been the subject of controversy. Some authors have held that a single case that reduces the level of social risk of a committed crime can also be found to be an exceptional case. Other authors did not agree with this point of view and cited references to the law in which exceptional cases are mentioned in the plural to justify their opinions, or the results of a generalization of judicial practice.

The possibility of imposing a lighter sentence in criminal law does not correlate to the need for no aggravating circumstances to exist, thus, a lighter sentence than the law may also be imposed in the presence of aggravating circumstances.

According to Article 57 of the criminal law, the appointment of punishment can be carried out in the following manifestations:

- To impose a penalty even less than the minimum of the prescribed penalty for this crime, provided for by the relevant article of the special part of the criminal law;
- Appointment of another lighter type of punishment, which is not provided for in the relevant article of the special part of the criminal law;
- non-appointment of additional punishment, which is stipulated in the relevant article of the special part of the criminal law as a condition of application.

While the Legislature enumerates the applicable manifestations of mitigation of punishment, it is entirely up to the court to decide the issue of the need to apply them in the presence of exceptional circumstances in the case. This is stated in the Act (Section 57 of the criminal law) as “the court... can assign” confirms the existence of the words. For this reason, some authors (M.T.Garaev, I.Ya.Kozachenko [7]) after the court found that there are exceptional cases, the arguments that it is necessary to relieve the punishment according to the rules for imposing a lighter sentence are, in our view, unreasonable.

The appointment of a penalty even less than the minimum of the sentence means that the court chooses one of the penalties prescribed for this crime provided for by the relevant article of the special part of the criminal law, and that the term or amount of this penalty is established by the sanction of the corresponding article of the special part of the criminal law provides for relief in a way that is even less than the minimum of the sentence. The punishment assigned in the present case cannot be less than the minimum amounts or achievements of the penalty imposed on each type of punishment in the relevant articles of the general part of the criminal law. For example, Section 1 of Section 97 of the criminal law provides for a sentence of ten to fifteen years imprisonment. If the court has found that ten years of probation is plural for the culprit, in the presence of exceptional circumstances, it is entitled, based on Article 57 of the criminal law, to impose a sentence even less than the minimum of the prescribed sentence for the crime in question, that is, less than ten years, but the sentence in question cannot be less than one month of imprisonment, since it is the minimum sentence for this type of punishment.

According to the Supreme Court Plenum of the Republic of Uzbekistan Resolution No. 1 of February 3, 2006 “on the practice of judicial punishment for a crime”, the appointment of a more lenient basic punishment than provided for by the law sanction does not exclude the possibility of appointing additional penalties provided for by the law sanction, in which the actions of the culprit are being qualified [8].

The essence of the appointment of another lighter type of punishment, which is not provided for in the relevant article of the special part of the criminal law, is that the court chooses another, but lighter, punishment, which is not specified in the sanction, instead of the punishment specified in the sanction. In resolving the issue of which penalties are considered lenient, they are derived from the preponderance listed in Section 43 of the criminal law. In this case, the punishment indicated earlier in this list is intended to be considered light than the punishment indicated later.

According to the decision of the Plenum of the Supreme Court of the Republic of Uzbekistan on February 3, 2006 "On the practice of judicial punishment for crimes”, under the provision set out in Section 57 of the criminal law, any milder basic type of punishment not provided for by the sanction of the special part of this code, including penalties such as fines, deprivation of a certain right, compulsory public works, correctional work, restriction on service, restriction of freedom, sending to the disciplinary part, can be assigned subject to articles 44-49 of the criminal law [9].

Depending on the types of punishment specified in the sanction of the relevant article of the criminal law and taking into account the provisions of Article 43 of the criminal law, the court prescribes a type of punishment that is lighter than the types of punishment listed in this article. For example, if the article provides for a restriction of freedom for a certain period of time as a punishment, the types of lighter penalties for it will be the types of penalties placed in the list of Article 43 of the criminal law up to the restriction of freedom, in particular, service restriction, correctional work, compulsory public works, deprivation of a certain right, a fine.

In criminal law (Part 2 of Article 57), for the first time in the history of Criminal Law of our country, the court was given the right not to prescribe an additional punishment, which, in individual cases, is mandatory to apply in the article of a special part of this code, taking into account the circumstances that seriously reduce the level of social This rule can only be applied when imposing a penalty under an article in which there is also an additional type of punishment, which is specified in the sanction of the criminal law as a condition to be applied beyond the main type of punishment.

Some authors (a.V.Kladkov, M.N.Stanovsky, S.N.SHatilovich, V.M.Garmanov), the court may impose a sentence below the lower limit, or apply a sentence lighter than the one provided for in the sanction, and thus not apply an additional type of punishment specified as a condition to be applied in the sanction at the same time [10].

In our opinion, it is difficult to agree with this opinion, since when enumerating methods of easing punishment in the law, the legislator used the “or” binder", which implies that the court can choose only one, and not several of these methods.

The literature also discusses the issue of the possibility of easing additional penalties under the provisions of the criminal law on the appointment of a more lenient sentence. For example, Duyunov and Svetinovich write: “due to the fact that one of the functions of additional punishments consists in strengthening the punishment at the expense of additional legal restrictions, the court can also reduce the force of punishment at the expense of additional punitive relief, in the presence of several exceptional circumstances that alleviate the punishment [11]”.

Although Section 1 of Section 57 of the criminal law does not explicitly state which-basic or additional-penalties can be relaxed, it can be concluded that, based on the content of the norm, the legislature only provided for basic penalties.

The law does not limit the imposition of a lighter sentence to any category of crimes, thus, the provisions of Section 57 of the criminal law may also apply to persons who, according to the content of the law, have committed serious and extreme crimes. At the same time, in our view, the stronger the degree of severity of the committed crime, the greater the degree of exclusivity of cases that can serve as the basis for the application of Article 57 of the Criminal Law.

The question of which rules should be followed in the legal literature in the presence of both mitigating and aggravating circumstances in the case at the same time is also the subject of heated debate.

N.S.Tagantsev wrote about this: “the average amount of punishment provided for by law can be applied in cases where the Act has both circumstances that make the guilt appear normal for this type of crime or compensate for each other; the predominance of circumstances aggravating the guilt brings the responsibility closer to the upper limit of the punishment provided for; and the predominance of circumstances that alleviate guilt brings responsibility closer to the lower limit of the punishment provided for for the act in question [12]”.

A similar point of view was taken by G.A.Levitsky, M.M.Babaev, Yu.V.Bishevsky, A.I.Martsev, A.V.Savenkov also put forward [13].

In turn, G.I.CHechel takes this point of view under the umbrella of criticism for a superficial approach based on the arithmetic addition of punishment-relieving and aggravating circumstances. In his opinion, the courts should assess liability mitigating and aggravating circumstances, their significance, their impact on the type and amount of punishment, not according to the arithmetic plural rule, but individually and taking into account their characteristics. The choice of the type and amount of punishment in the presence of mitigating and aggravating circumstances is determined by the nature of these circumstances in full [14].

Indeed, when the court prescribes a punishment according to the rule of arithmetic multiplicity of cases of mitigating and aggravating punishment, it does not take into account the specific impact of each case on the degree of social danger of the crime committed, giving equal importance to all cases of this type. Therefore, this approach to imposing punishment in the presence of both aggravating and mitigating circumstances, in our opinion, will not be appropriate.

While it is based on law to impose a punishment lighter than that provided for for the corresponding crime, but in practice is a specific deviation from the general rule. Any deviation from the general rule is allowed only as an exception, in the presence of relevant special circumstances, which means that Article 57 of the criminal law cannot be widely applied by its legal nature. Therefore, the courts should approach the application of this norm with extreme responsibility.

Punishment mitigating circumstances can have a serious impact on the outcome of the case, so it is impossible to differentiate and individualize punishment and liability for a crime without taking them into account. The list of mitigating circumstances of punishment enshrined in Article 55 of the criminal law indicates that these circumstances concretize the assessment given to the degree of danger of the crime committed and the person of the accused.

Basic and additional type of punishment, amount or term in relation to the person special importance is attached to the selection of cases of mitigating punishment.

A study of judicial practice shows that primary or secondary accounting of punishment mitigation cases is one of the particularly common grounds for mitigating punishment for a crime.

At the same time, the fact that cases of mitigating punishment in a case have been identified can become the basis not only for the relief of punishment, but also for the release from criminal liability. Here are cases of acquittal in connection with the fact that the culprit has practically regretted his act, and in connection with reconciliation (Articles 66, 661 of the Criminal Law).

Taking measures to compensate for the damage caused by the commission of a crime affects the punishment not only at the time of its appointment, but also at the stage of execution of the sentence. Here it is about parole earlier than serving a sentence, replacing the part of the sentence that has not been served with a lighter sentence.

As noted above, voluntary elimination of the harm caused by the crime is provided for as a mitigating condition of punishment in the list of Section 55 (1) of the criminal law (Paragraph“B”). In this case, it is not specified in what volume the damage should be: partially or completely covered. The extent to which the damage is covered is significant, as it would be deemed a mitigating condition of punishment and the application of Section 661 of the criminal law would be related.

In the theory of criminal law, the following point of view is advanced: if the norm states that a person is liable for damages, but does not specify its size, it also means that the damages may be partially compensated [15].

In our opinion, only material or moral damage caused by a crime is covered in full size can be the basis for the application of special provisions for the relief of punishment.

In addition to compensating for the harm caused by the crime, the imposition of a charge on the neck also has a significant impact on the appointment of punishment.

According to Section 113 of the Criminal-procedural code of Uzbekistan, a plea for guilty is a notice made by the applicant about the crime he committed before he was suspected of committing the same crime and was charged with it. The plea on taking the blame can be oral or written. The Inquirer, investigator, prosecutor or court reflect the oral message in a statement, into which information is entered on the person of the perpetrator, and in which the content of a plea bargain is stated on behalf of the first person. The minutes are signed by the person who make a plea bargain and Inquirer, the investigator, the prosecutor or the judge. A plea bargain on the prosecution is assessed by the Inquirer, the investigator, the prosecutor and the court in accordance with the provisions contained in Article 112 of this code. In particular, the confession of the accused to his own guilt can be taken as a basis for his conviction only if this confession is confirmed by the existing set of evidence.

A plea bargain allows, in addition to other mitigating circumstances provided for by Article 55 of the criminal law, to reduce the maximum term or amount of the most severe type of punishment provided for by the relevant article of the special part of the criminal law, that is, to apply special provisions for the appointment of punishment provided for by the criminal law.

CONCLUSION

The usual approach to understanding the appeal to the neck of guilt, both by the legislator and by the person applying the right, is determined by this, the guilty person is the first to report the circumstances of the crime he committed to law enforcement agencies, its details are the place of the crime, the time and the indication of the motives for its commission, it is obliged to provide information about the remaining participants (if they exist). In the case when information about the inviolability of the person in question of the committed crime is available in law enforcement agencies, the reported information cannot be assessed as an act of an individual consisting in an appeal to take the blame for it.

In the case when information about the inviolability of the person in question of the committed crime is available in law enforcement agencies, the reported information cannot be assessed as an act of an individual consisting in an appeal to take the blame for it.

Another important issue that should be resolved within the framework of this topic is not disclosed in the legislation. That is, in the course of the review of a criminal case by the courts, there are no mitigating circumstances provided for by Section 55 (1) of the Criminal Law, and no aggravating circumstances provided for by Section 56 (1), or there is one or both of them, how these circumstances affect the punishment to be assigned. In such cases, the question arises of what are the limits and conditions for the appointment of punishment for a crime by the courts.

The initial solution to this issue is in the Institute for the appointment of punishment (article 571), when the newly introduced culprit in criminal law practically regrets his act.

That is, the period or amount of punishment provided for by the relevant article of the special part of the criminal law provided for in the absence of punitive circumstances provided for in paragraphs “a” and “b” of the first part of Article 55 of the criminal law the maximum sentence should not exceed two-thirds.

In turn, it is also legislated that this rule does not apply to persons who have committed crimes related to intentional killing (part two of Article 97) and terrorism (part three of Article 155) in cases of

aggravating liability. But in other cases, it remains open to my question that the imposition of punishment, the deffferentiation of responsibility, taking into account the circumstances that alleviate and aggravate the punishment.

For this reason, it is proposed to supplement the Criminal Law with article 561, which is called “the imposition of punishment taking into account the mitigating and aggravating circumstances:

"Article 561. Prescribing punishment taking into account the circumstances of mitigating and aggravating punishment

This Code provides for the first part of Article 55 of the Penal mitigation cases and in the absence of aggravating circumstances provided for by the first part of Article 56 of this code, the penalty period or amount should not be less than two-thirds of the maximum penalty provided for by the relevant article of the special part of this code.

There were no mitigating circumstances provided for by Section 55 (1) of this code, and in the presence of aggravating circumstances provided for by the first part of Article 56 of this code, the penalty period or amount should not be less than three-quarters of the maximum penalty provided for by the relevant article of the special part of this code.

There has been at least one instance of mitigating punishment provided for by Section 55 of this code, and in the absence of aggravating circumstances provided for by Section 56 of this code, the penalty period or the amount should not exceed two thirds of the maximum penalty provided for in the relevant article of the special part of this code. This rule does not apply to persons who have committed serious crimes.

If at the same time in a criminal case there is a state of mitigation of the punishment provided for by the first part of Article 55 of this code, as well as a state of aggravating the punishment provided for by the first part of Article 56 of this code, the term or amount of punishment is provided for in the corresponding article the maximum sentence should not exceed three-quarters. This rule shall not be extended to persons who have committed serious crimes”.

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