

THE DIFFICULT TRANSITION TO UKRAINIAN DEMOCRACY FROM INDEPENDENCE UNTIL THE ADOPTION OF ITS CONSTITUTION

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Abstract: *In 1991, with the disintegration of the Union of Soviet Socialist Republics, the emerging states had to face a major change in all areas, not only political but also economic, social, administrative, etc. Among the main challenges that these countries had to assume was the entry into the democratic field, unknown to them. This had to be done through the implementation of a system that validated the new situation of these countries. One of the key aspects of this transition was the elaboration of a democratic constitution, since, although in the communist regimes there were constitutions, it is necessary to remember that these were simple fictions under the Communist Party. It can be found one of these cases in Ukraine, which, since its declaration of independence on 24 August 1991, had to gradually begin this unprecedented path within its borders. From this moment, a long road began for the resolution of the post-Soviet conflicts inherited from the previous era, until the achievement of a new Constitution for Ukraine on June 28, 1996. It is therefore necessary to analyse in depth how the Ukrainian democratisation process went up to the consolidation of its constitution. An exhaustive interdisciplinary analysis will be carried out of all the problems faced by Ukraine in order to complete this process, which was accomplished out in all the ex-Soviet republics with greater or lesser success.*

Key words: *Ukraine; democracy; Kravchuk; Kuchma; post-Soviet conflicts.*

Introduction

The disintegration of the Union of Soviet Socialist Republics –USSR– in 1991 marked the beginning of a new stage in Central and Eastern Europe, centred on the path towards democratic transitions. This change, which was new for these countries, was to be directed in the search for a solid and resilient democracy that would give them international recognition after decades under communist power. One of the most important steps towards this was the achievement of a constitution that would endorse these transitions. As can be seen in the following table –table 1–, since the end of 1990 a progressive proliferation of constitutions began to develop in all these countries.

Tab. 1. Central and Eastern European countries and the year in which their Constitution was adopted during the 90s.

COUNTRY	YEAR ADOPTION OF THE CONSTITUTION
Serbia	28 September 1990
Croatia	21 December 1990
Bulgaria	12 July 1991
Latvia	21 August 1991 –1922 Constitution restored–
Macedonia	21 November 1991
Romania	8 December 1991
Slovenia	23 December 1991
Yugoslavia	27 April 1992
Estonia	28 June 1992
Slovakia	1 September 1992
Montenegro	12 October 1992
Lithuania	25 October 1992
Czech Republic	16 December 1992
Russia	12 December 1993
Belarus	1 March 1994
Moldova	29 July 1994
Bosnia- Herzegovina	14 December 1994
Ukraine	28 June 1996
Poland	2 April 1997 (provisional 1992)
Albania	28 November 1998 (provisional 1991)
Hungary	1949 Constitution modified several times –in 1989 it changed its name from People’s Republic to Republic–

Source: author’s own elaboration.

Likewise, the table shows that not all countries had the same speed in developing their new constitutional regime. Regarding the country we are dealing with in these pages, Ukraine, as the author Flores Juberías (2002, p. 157) affirms "the questions of national identity and the symbolism of the new State, its economic system, and its institutional structure delayed for years the approval of the new constitution".

As the table also shows, Ukraine was one of the last countries to approve its constitution. If we leave behind the exceptional case of Hungary that continued for years to keep the 1949 Constitution¹, Ukraine could be considered the last of the countries in the area to adopt a new constitution. This is because Poland and Albania, which adopted their constitutions in 1997 and 1998 respectively, had provisional constitutions since the early 90s. So, considering this delay as a starting point, it is necessary to carry out a thorough analysis of the events and the situation both internal and external that was taking place in Ukraine during the first years of its democratic transition so that the adoption of its new constitution will be delayed until 1996.

¹ At the end, a new Constitution was approved by the Hungarian Parliament on 23 October 2011.

But an initial point must be made, since apart from the natural problem that existed from the change from a Soviet model to a capitalist one, it was united that Ukraine had not existed previously as an independent country. Except for the attempt between the years 1917-1921, which finally led to the Ukrainian Soviet Socialist Republic became one of the founders of the Soviet Union by signing the USSR's Treaty of Establishment on 22 December 1922 (García Andrés, 2018: 88). However, in the same way, an advantage can be also noticed –or not– for its democratic transition that many of the other ex-Soviet republics did not have, since it is the point of union between the West –Europe– and the East –Russia–.

1. The Government of Leonid Kravchuk: the first years of Ukraine's independence (1991-1994)

1.1. The path to Ukraine's independence.

Since Mikhail Gorbachev came to power in 1985, the political and economic situation in the USSR worsened to a point of no return. Already in the last years of the 80s of the 20th century, the nationalist movements in the Soviet republics were drawn with greater force. Nevertheless, Ukrainian independence came so abruptly and so unexpectedly that had enormous consequences for the future of the country (Motyl, 1993: 50).

By the mid-1980s many of the republics had begun their nationalist uprisings to gain independence from the USSR. Following the same path, Ukraine, on 16 July 1990 a Declaration of Sovereignty was approved in the Supreme Soviet (Socher, 2006: 152), more than a year before the dissolution of the USSR. Already in 1991, specifically between 19 and 21 August, events accelerated with the attempted coup d'état against President Gorbachev. The coup d'état failed, but the effect was that the state itself disappeared (López-Mendel Bascones, 2011: 2). Three days after the failure of the coup, on August 24 of the same year, Ukrainian Parliament celebrated the approval of the country's declaration of independence. That same day, Kravchuk informed Parliament that he had left the Central Committee of the Communist Party of the USSR and the Politburo (El País, 1991a). From that moment on, Kravchuk affirmed his candidacy as an independent candidate in the first free elections for the presidency of the Ukrainian Republic. At that time the need for continuity or not of the USSR was strongly debated. Among Gorbachev's plans was to make a new treaty for the Union, which, however, the Ukrainian Leonid Kravchuk was the first leader of the republics to reject it. As Jacques Sapir (1993, p. 11) asserts "the conditions that presided over the end of the USSR in 1991 no longer foreshadowed a rapid return to political stability".

Following the declaration of independence by Parliament, a referendum was held among the Ukrainian people to endorse the decision of their parliamentarians. This event took place on 1st December 1991, the same day that the first elections of the new independent era were held in Ukraine. As the newspapers of the time

stated, 90% of voters proclaimed their desire to break ties with Moscow, and nearly 60% placed their trust in Kravchuk (El País, 1991b) as Ukraine's first democratic president.

As far as independence is concerned, only except for the Crimean Peninsula, in the rest of the regions more than 80% of the votes were in favour of independence. As for the election of the president, it was not necessary to hold a second round, since in the first round it obtained a large majority—table 2—, in almost all regions of the country. The election of Kravchuk in December 1991 by universal suffrage showed that Russians living in the eastern part of that country seemed to want to assimilate with the remaining population (Sapir, 1993: 129), by the moment.

Tab. 2. Results of the 1991 Presidential Elections.

CANDIDATE	POLITICAL PARTY	% VOTES
Leonid Kravchuk	Independent	61.59%
Vyacheslav Chornovil	People's Movement of Ukraine	23.27%
Volodymir Gryniiov	Ukrainian Republican Party	4.7%
Levko Lukianenko	Party of Democratic Revival of Ukraine	4.5%

Source: author's own elaboration from Commission on Security and Cooperation in Europe

1.2. Problems during the first years of democratic transition in Ukraine

As mentioned above, following the approval of independence in the referendum and the election of Kravchuk as president of the new Republic of Ukraine, Ukrainian refusal to sign the new treaty for the Gorbachev Union was confirmed. Therefore, one of the first uncertainties that arose in the new state was the relations that were going to take place between Ukraine and Russia, that is, between the two most important countries of the former USSR. Russia was counting on being the heir to the Soviet legacy reformulated in the Russian Federation, but Ukraine's transition was more uncertain.

From that moment on, a series of tensions that had to be resolved in order to achieve a full democratic transition were highlighted. These included: the creation of the Commonwealth of Independent States –CIS–; the definition of terms referring to the Crimean Peninsula; the status of Sevastopol and the Black Sea Fleet; and the major economic crisis Ukraine faced after its independence.

➤ *Creation of the Commonwealth of Independent States.*

In view of Kravchuk's refusal to sign a new treaty, an agreement establishing the CIS between Belarus, Russia and Ukraine was initialled in Minsk on 8 December 1991. Considered the heiress of the USSR, but with a clear difference that it wanted to impose: all the republics that integrated it were independent and sovereign. This agreement was endorsed on December 21 of the same year also by 8 other former

Soviet republics² in the Kazakh city of Alma Ata. It was agreed that this community would be destined to maintain a certain coordination in economic, political and military matters (Marcu, 2005: 94), for the mutual aid of the new republics that had arisen. The final consequence of these agreements was the dissolution of the USSR with the resignation of Gorbachev on 25 December 1991.

The main problem within the CIS was Ukraine's concern about Russia's intentions to maintain its power, as if it were merely a continuation of the USSR, with a simple change of name. These discrepancies became more visible within the CIS Summits, especially on 22 January 1993 when the Charter of the CIS was signed. In this case, neither Ukraine, Moldova, Turkmenistan adopted this Charter, and Azerbaijan was present through mere observers. Ukraine was very favourable to this vision of transience, fearing that the Russian Federation would use the CIS as an instrument to impose its hegemony, it did not accept any role for the CIS other than as an instrument of civilised divorce between the former Soviet republics (Blanc Altemir, 2004b: 61).

Thus, it can be said that Ukraine has never wanted the community to achieve a greater degree of integration between the former Soviet republics, because of doubts about Russia's intentions towards them. While for Russia, in contrast, one of the biggest problems was that if Ukraine heels towards the West and decides to leave the CIS, it could cease to have a *raison d'être* (Soto, 2002: 130).

➤ ***Situation on the Crimean Peninsula.***

One of the first problems arises even before the independence of Ukraine is the issue of the Crimean Peninsula³. In view of the worrisome situation the USSR was going through, the inhabitants of Crimea held a referendum, which took place on 20 January 1991. In which the overwhelming majority of voters –93.26%– pronounced themselves in favour of the reconstruction of the Crimean Autonomous Soviet Socialist Republic as a subject of the USSR and member of the Treaty of the Union (Sánchez Ramírez, 2016: 475). A year later, on 12 February 1991, the Ukrainian parliament recognized Crimea as an Autonomous Republic within the State law of Ukraine. However, with Ukrainian independence and the dissolution of the USSR, the matter took a radical turn.

Moreover, it should not be forgotten that, from the first moments of Ukraine's independence, Russia has wanted to focus attention on claiming historical

² In addition to the three founding countries of the CIS added Armenia, Azerbaijan, Kazakhstan, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan and Uzbekistan, followed in 1993 by Georgia. However, the history of this organization will have its ups and downs with exits and entrances from its members.

³ It should be remembered that the Crimean Peninsula was given to the Ukrainian Soviet Socialist Republic in 1954 by Soviet leader Nikita Khrushchev in commemoration of the historic Treaty of Pereyaslav of 1654, by which the Soviets considered much of present-day Ukraine to have joined the Russian Empire.

rights over Crimea in order to proceed with its annexation (Requena, 2014: 10). However, on 19 November 1990, the presidents of the supreme Soviets of Russia and Ukraine, Yeltsin and Kravchuk had signed a treaty of friendship⁴ by which they recognized them as sovereign States and committed themselves to respect their territorial integrity (Blanc Altemir, 2004a: 50). So, the only possibility Russia had was to cover the independence struggle on the peninsula and encourage its leaders against the central government of Ukraine.

When Ukrainian independence was proclaimed on 24 August 1991, concern over the peninsula began in the Russian parliament. It even came to raise the debate on the legality of the 1954 cession of Crimea to Ukraine⁵. The argument that had more defenders was that Crimea would be part of Ukraine, provided that this country was within the borders of the USSR. Although Ukraine did not make any statement on the matter, the first steps towards a secessionist movement on the Peninsula were beginning to be heard in Crimea.

Finally, its membership in Ukraine was negotiated in exchange for a large degree of autonomy, making it the only region with the status of Autonomous Republic (Cardone, 2014: 141) in Ukraine, with legislative, executive and judicial powers on 29 April 1992. In spite of this, only a few days later, on 5 May, the Crimean Peninsula was declared independent and a secessionist Constitution was put into effect. Both events were rejected by the Ukrainian parliament, which after complicated negotiations managed to return it to its integration into Ukraine as an Autonomous Republic. In such a way that the incipient secessionist movement, driven by sectors of the Russian population, to proclaim the independence of the peninsula, was controlled by the Ukrainian government in May 1992 (Czech Godoy, 2008: 159). However, the situation became complicated again from 1994 onwards, as will be analysed later on.

➤ ***Status of Sevastopol and the Black Sea Fleet.***

The city of Sevastopol⁶, on the shores of the Black Sea, is the location of the Black Sea Fleet, which in the Soviet years depended on Russia and Ukraine. After the disintegration of the USSR in 1991, there was a new confrontation between the two previous countries to define the dependence of the Fleet. The problem was that Moscow always remembered the special status Sevastopol was given as a Soviet city

⁴ This agreement had to be ratified later, but it was not until 1997 that Ukraine and Russia ratify it.

⁵ In this sense, it should be remembered that, after the dissolution of the USSR, this transfer from Crimea to Ukraine was seen from Moscow institutions as a historical error, whereas for Ukraine it was a historical necessity for the future of the Slavic country.

⁶ This city is located on the Crimean Peninsula and was founded by the Russian Empire in 1783. From that moment it became the most important port of the Black Sea and a symbol for the Russians, since it was a very significant place in the Crimean War –1853-1856– and in the Second World War –1939-1945–.

when Khrushchev transferred Crimea to Ukraine in 1954 (Emerson, 1999: 118). That is to say, it was considered an administrative unit of its own and directly dependent on Moscow, while the rest of the Crimean Peninsula belonged to Ukraine.

One of the first steps towards the resolution of this conflict was taken within the newly created CIS, in which Russia proposed its demands regarding the Black Sea Fleet, something that was always met with Ukrainian reluctance.

In 1992, the conflict resumed due to Ukrainian interest in creating a navy of its own based on the fleet, something that was not well seen by the Russian government of Yeltsin. For this reason, the Dagomys Agreement was signed in June of the same year, in which a moratorium was granted to decide the future of the Black Sea Fleet. This agreement was reinforced in August with the Yalta Agreement, which gave until 1995 the deadline to form the fleets (Bonet, 1993). However, in September 1993, in the city of Massandra, it was agreed that the entire fleet would pass into Russian hands and the part that corresponded to Ukraine would be delivered as payment of what this country owes Russia for the gas and oil it receives (Fernández, 1994). However, it was not until the next legislature when this issue was resolved, as will be seen in the next section.

➤ ***Economic crisis in Ukraine.***

Once independence had been achieved by Ukraine, Kravchuk government proceeded to release most of the services for privatisation. However, privatisation consisted in the high officials of the extinct Communist Party each electing a few *koljos* and *sovjos* and registering them as private property, to continue exploiting them according to the methods of before (Lamsdorff, 2003: 137). In the same way, one of the most serious problems was the maintenance of the political and economic elites in most of the countries of Central and Eastern Europe and that feed on members of the old leading nomenclatures (Taibo, 2002: 149), as it also happens in the case of Ukraine.

This initial problem was compounded in subsequent years by the serious energy situation in Ukraine due to its dependence on Russian gas; and the great economic crisis that had been taking place in Ukraine since 1990. The situation worsened in mid-1993, when a powerful wave of strikes plunged into the industrial *oblasts* of eastern Ukraine (Boycott, 1995: 177). Ukraine's most industrialised area – Donetsk and Luhansk – demanded Kravchuk government for a sound strategy for economic recovery, as well as a closer rapprochement to the policies coming from its Russian neighbour. The end point to the demonstrations of industrial workers from the east of the country came after the call for presidential elections in June 1994.

In the words of author Ian Bremmer (2006, p.145) “Leonid Kravchuk's reluctance to pursue structural reform, scuttled the polity-wide hopes for post-independence prosper. Populations in Russian-speaking eastern Ukraine and Crimea

–having originally voted in favour of independence wide stress of economic collapse. Likewise, Ukrainian ethnonationalists increased their fervour”.

2. Government of Leonid Kuchma: change in Ukraine.

2.1. Presidential elections in 1994.

The second presidential elections in Ukraine since independence were called in 1994, due to all the problems faced by President Kravchuk during his term of office. The turning point, as we have seen, was the mining strikes in eastern Ukraine, coupled with the bad economic situation, and increasing differences with Russian policies. In these elections the main candidates to be elected were the incumbent president, Leonid Kravchuk, and his opponent Leonid Kuchma. Kuchma was prime minister in the Kravchuk government since October 1992 (Harasymiw, 1996: 130), although he resigned in September 1993 due to the deep crisis facing Ukraine and the political decisions of President Kravchuk.

During the electoral campaign, Kravchuk defended classic ideas of Ukrainian nationalism against his rival, Leonid Kuchma, who advocated sovereignty, maintaining good relations with Russia at the same time as with Europe, making Ukraine the nexus between the two entities and respecting aspects of Russian culture present in Ukraine (Granados, 2007: 156). Kuchma's position served to increase his level of popularity in Ukraine, especially in eastern regions of the country. The first round of elections took place on 26 June 1994, and the candidates who went on to the second round were the long-awaited Kravchuk and Kuchma, the latter scored 6 points less than the president at that time –table 3–. However, the situation changed in the second round⁷ held on July 10 of that same year, in which Leonid Kuchma won.

Tab. 3. Results of the 1994 presidential elections.

CANDIDATE	POLITICAL PARTY	% VOTES –1 st round: 26 June 1994–	% VOTES –2 nd round: 10 July 1994–
Leonid Kuchma	Independent	31.2%	52.1%
Leonid Kravchuk	Independent	37.6%	45%
Oleksandr Moroz	Socialist Party of Ukraine	13.3%	-----
Volodymyr Lanoviy	Independent	9.6%	-----

Source: author's own elaboration from Electoral History.

⁷ In the presidential elections of June 1994 –unlike in 1991– none of the candidates reached the majority of 50% plus 1 to appoint him as president, so a second round had to be held between the two most voted candidates.

This victory by Kuchma had important consequences overall Ukrainian territory. On the one hand, with this victory he was able to calm any movement in the eastern part of Ukraine, since as Kuchma himself said in the electoral campaign, among his proposals was a rapprochement to Russian policies. However, although the situation improved in the eastern part of Ukraine, there was also a strong division among the Ukrainian population, as the western part of the country was not satisfied with Kuchma's policies towards Moscow.

In fact, this contrast can be seen in the regional results of the second round of the 1994 elections. In them, it is observed how the winner in the eastern regions was Kuchma –with higher results in Donetsk, Luhansk and Crimea–, while in the western areas the winner was Kravchuk. This caused a huge fracture between the two areas of Ukraine, as the eastern area is more likely to strengthen relations with its Russian neighbour, while the western region prefers a rapprochement with the European Union⁸.

2.2. Resolutions of previous conflicts

➤ *Commonwealth of Independent States.*

Thus, with Kuchma's victory, there was a rapprochement of Ukrainian positions within the CIS. Thus, relations between Ukraine and Russia improved from the beginning of Kuchma's mandate, in which Ukraine accepted almost all the proposals coming from Moscow. In fact, the electoral successes obtained at that time by political figures and forces –Kuchma in Ukraine, Lukashenko in Belarus, the Agrarian Party in Moldavia– supporters of a closer relationship with Russia have ratified the latter's central position (Taibo, 1995: 227). As a result, Kuchma's closer policies towards Russia improved relations between the two countries.

➤ *The situation on the Crimean Peninsula.*

With regard to Crimea case, after a two-year period in which the situation was more or less relaxed, the conflicts started again at the beginning of 1994. This year, the first autonomous elections were held in Crimea, in which five of the six candidates called for a return to Russia and promised a referendum on the issue, which was never held (Checa Godoy, 2008: 159). The winner of this election was Yuri Meskhov, who won 73% of the votes in the second round of the 1994 presidential election in Crimea (Katchnoviski, 2015: 82). Meskhov restored the Crimean Constitution of 1992, and even in May 1994 approved again another declaration of independence, with the support of the Crimean Parliament.

But it must be remembered that in the presidential elections of 1994 the winner was Kuchma, who was more prone to understanding with Russia. For this reason, the resolution of this new conflict in Crimea had to wait until he was sworn

⁸ This situation today is a matter of great international concern, particularly because of the conflict that has been developing in the Donetsk and Luhansk regions since 2014.

in as president of Ukraine. With Leonid Kuchma's victory, the previous actions were progressively abandoned, and in November 1995, the Crimean Parliament adopted a new Constitution declaring its integration in Ukraine. This fact is undoubtedly related to the external position of the new president, much closer to Russian policies than his predecessor Kravchuk.

➤ ***Status of Sevastopol and the Black Sea Fleet.***

The other issue that remained to be closed was the Black Sea Fleet. Although it was understood that with the 1993 Massandra Agreement the case had ended, the interpretations of the same agreement were different in Ukraine and Russia. Nevertheless, after the 1994 elections and Kuchma's electoral victory, there was a progressive rapprochement with the Russian position. A Sochi Agreement was concluded on 9 June 1995, which laid the foundations for the final agreement on 29 May 1997, which would have a 20-year duration.

In this agreement Ukraine rented to Russia three roads located in Sevastopol, in addition to port infrastructure, an airport and various facilities, for a period of 20 years. Russia therefore undertook to pay an annual rent of \$100 million for 20 years (Bonet, 1997). With this important advance, the roads were opened even more so that only two days later, on 31 May 1997, the Treaty of Friendship and Cooperation between Ukraine and the Russian Federation was signed in Kiev.

➤ ***Economic crisis in Ukraine.***

This last issue of the Black Sea Fleet with the payment of this rent began to solve in a way the great economic crisis that Ukraine was going through, since the debts that it had with Russia in relation to the gas and oil that it sold to it were eliminated. And even Ukraine in exchange would receive a 30% reduction in the price of Russian gas (Álvarez Rubia, 2004: 7). In this way, the deteriorated Ukrainian economy improved weakly, and it had to wait a few more years to improve.

2.3. Adoption of the Constitution in 1996

Although it is true that the first draft of the new Constitution of Ukraine was announced on July 1, 1992, subsequently submitted to referendum, it was not accepted (Maciaszek-Llaneza, 2013: 119). In addition, the succession of problems detailed above further delayed the matter. With the arrival of Kuchma in the Ukrainian presidency and his position in favour of greater relations with Russia, the internal situation in the country improved and the negotiations for the approval of the new Constitution were restarted.

At the end of 1994, President Kuchma proposed a law titled "On State Power and Local Self-Government in Ukraine". Generally known in its final form as the "Law on Power," this legislation would provide a temporary resolution of the key problems [...] (D'Anieri, 2007: 129). However, in June 1995 an agreement was reached granting

the president extraordinary powers while a new constitution was being discussed (Taibo, 1998: 71). This agreement was maintained until the Constitution of Ukraine was finally adopted on 28 June 1996.

Conclusions

The path towards democratic transition in Ukraine, and more specifically until the adoption of its Constitution in 1996, has shown in these pages that it was very complicated. Because of the importance of the issues that Ukraine had to resolve in the early years of its independence, the constitutional issue was somewhat side-lined. At the time of the adoption of the Constitution, only the Black Sea Fleet issue remained to be settled, but it was already on its way to being resolved, as it was in 1997.

It is necessary to realize that the events that were taking place in Ukraine in these years had behind them the shadow of its past as a Socialist Republic, since most of the problems it had to face came from the Soviet heritage. At the same time, it can be observed that behind each of the problems Ukraine had was always present the Russian Federation. Thus, since the fall of the USSR in 1991 Russia has presented in Ukrainian politics with the Crimean question, the status of Sevastopol and the Black Sea Fleet, with the major economic crisis aggravated by the debts owed to its neighbour country, with policies within the CIS as a mechanism for the former Soviet republics to meet under Moscow's watchful eye.

Moreover, as we have seen, although in the referendum for its independence it was supported by the population of all regions of Ukraine –to a greater or lesser extent– the division of the Ukrainian population is obvious. It has been demonstrated in the presidential elections of 1994 in which the western part supported Kravchuk, while the eastern part supported Kuchma. Differentiating the interests of each part of Ukraine in relation to its Russian eastern neighbour or its European neighbour, much more marked at the present time.

However, despite the good attempts, it has been demonstrated that Ukraine has not been able to apply the democratic rules prevailing at the time, and as shown by the difficult situation in which the Slavic country currently finds itself. The limitations on the development of a democratic state in the early days of an independent Ukraine are therefore evident, which have also been dragging on to the present day.

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