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## How Russian Electoral Legislation has Changed

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### Abstract

The article is devoted to the history of changes in the Russian electoral legislation from the beginning of alternative elections in 1989 to 2017. In the first period (1989–1995), the legislation was mainly adapted to the conditions of competitive elections. In 1997–2003, work was carried out to fill the gaps and overcome the negative phenomena that have manifested themselves in practice. The prevailing desire was to make election laws meet international democratic standards. In 2005–2007, a counter-reform took place, which was marked by the introduction of a number of restrictions and prohibitions aimed at ensuring the dominance of one political party. In 2009–2011, along with the introduction of new restrictions, a number of concessions were made to the opposition. After not too successful for the “United Russia” elections of 2011 and mass protests, the legislation was somewhat liberalized, but then again there was a tendency to restrictions and prohibitions. Only in 2017 began to manifest a timid trend towards democratization. The conclusion is made about the need for radical comprehensive electoral reform.

### Keywords

elections – political parties – electoral legislation – Russian Federation

### The 1990s and the First Half of the 2000s

Russian electoral legislation of the 1990s grew out of the electoral legislation of the Soviet Union. Elections in the USSR were ritual events without any even the appearance of competition: each mandate claimed strictly one

candidate. Therefore, they did not require strict legislative regulation, and the election laws were brief and formal.

When the Soviet leadership decided in 1988 on the need for alternative elections, the election laws were slightly adjusted, but retained the basic features of Soviet laws. In 1989 and 1990 elections of people's deputies of the USSR, RSFSR and local Councils were held. These elections provided for the nomination of candidates by labor collectives, by the meetings of voters at the place of residence and by public organizations, while in practice the nomination of labor collectives dominated. The laws did not provide for the financing of election campaigns from the candidates' own funds (in practice, it was certainly).

The elections were held under the electoral system of absolute majority. Voters had to cross out candidates on the ballot, leaving one, but could also cross out all candidates. If two candidates ran and none of them gained more than 50% of the votes, due to the fact that part of the voters crossed out all the candidates, the elections ended in vain. If more than two candidates ran and none of them gained more than 50% of the votes, the second round was held, where the winner had to gain a relative majority.

To recognize the elections held in both rounds required the turnout of at least 50% of voters. Because of this, local elections and by-elections of people's deputies of the RSFSR often failed to elect deputies.

In 1991, the first referendums were held, as well as the first elections of heads of regions and cities. For these elections, the legislation has become somewhat subject to change. In particular, in 1991 for the first time practiced collecting signatures of voters in support of the nomination of candidates.

The most radical changes, which actually meant electoral reform, took place in 1993. For the election of deputies of the State Duma and the Federation Council, initiated by the President of Russia, the presidential decree approved the provisions on elections, which were based on the draft law developed by a group led by the people's Deputy of the Russian Federation Viktor Sheinis. The main changes were as follows:

- mixed unrelated (parallel) electoral system in the elections of the lower house of Parliament, the State Duma: half of the seats were replaced by a proportional system with a 5% threshold, half by a majority system;
- electoral associations (and their blocks) and groups of voters have become the subjects of nomination of candidates, and labor groups were excluded from the subjects of the electoral process;

- as a consistent support for the nomination of candidates was set to collect signatures;
- replace the majoritarian system of absolute majority in the majoritarian system of relative majority;
- mandatory alternative (the number of candidates should be greater than the number of mandates);
- formation of electoral commissions on a parity basis by executive and representative authorities;
- the introduction of members of election commissions with deliberative vote;
- ensuring access of all candidates to the state media;
- the introduction of campaign finance of candidates and electoral associations by the electoral funds;
- changing the form of the ballot with a corresponding change in the working procedure of the voter with the ballot: the voter had to mark the sign of the candidate for whom he votes; the line “against all” was also introduced;
- judicial mechanism for resolution of electoral disputes.

It should be noted that the draft law, prepared by the group under the leadership of Sheinis, contained some more novelties that were excluded from the provision on elections, but subsequently took their place in the electoral legislation:

- the duty of officials nominated as candidates to go on leave during the election campaign;
- publication of data contained in the protocols of polling station commissions.

All of these provisions were then enshrined in Federal laws adopted in 1994–1995 (“On basic guarantees of the electoral rights of citizens of the Russian Federation”, “On the election of the President of the Russian Federation” and “On the election of deputies to the State Duma of the Federal Assembly of the Russian Federation”) and remained largely unchanged until 2005.

Over the periods 1997–1999 and 2001–2003, two cycles of changes in the electoral legislation were carried out. Instead of the brief Federal law “On basic guarantees of electoral rights of citizens of the Russian Federation”, a

much more extensive Federal law “On basic guarantees of electoral rights and the right to participate in the referendum of citizens of the Russian Federation” was created in 1997, which was significantly improved in 1999, and in 2002 a new version was adopted. Twice (in 1999 and 2002–2003) new versions of laws on elections of deputies of the State Duma and the President of Russia were adopted.

The changes at this stage were mainly due to the desire to overcome the negative phenomena that have manifested themselves in practice, namely the abuse of administrative resources and “dirty” electoral technologies, as well as the need to close the gaps in the laws. However, the fight against “dirty” technologies, as well as the desire to block the way to the power of crime has led to a number of negative phenomena. In particular, the legislators in 1997–1999 made a wide and open list of grounds for refusal of registration of candidates and cancellation of their registration, and this led to the fact that the authorities with the help of administrative resources was able to prevent participation in the election for strong contenders. In 2002–2003, a number of measures were taken to make such actions more difficult, but it was too late: the technology of “knocking out” of candidates continued to flourish.

There have also been other changes in the rules of registration of candidates and party lists. In 1999, the possibility of paying a deposit (instead of signatures of voters) introduced for some elections. In 2002, this opportunity was extended to all elections except the presidential elections. Since 2004, candidates and lists nominated by the parliamentary parties, was released from the signatures of voters and the electoral deposit. In addition, in 2002, the nomination of candidates by groups of voters was cancelled, and only self-nomination was left for independent candidates.

Another direction was the reduction in the number of organizations entitled to nominate candidates. If in the period 1994–1997, any public association could be the electoral association, after the 1997–1998 those could be the only entity having a special status of political. And in 2001 the Federal law “On political parties” was adopted, and after the transition period ended in 2003, political parties became the only collective entity that had the right to nominate candidates for federal and regional elections (in municipal elections, this right was reserved for non-party public associations). Also since 2003, it was established that at the elections of regional parliaments at least half of the deputies must be elected by proportional system.

In 2002, significant changes were made in the procedure for the formation of election commissions. Most of the commissions (district, territorial, polling station) began to be formed by higher commissions. The chairpersons

of these commissions have been appointed, not elected. These measures were explained by the need to bring the election commissions out of dependence on local authorities, but in practice they have become even more dependent on the regional executive power.<sup>1</sup>

### **The Counter-reforms of 2004–2007**

In 2004–2007 there was a large-scale counter-reform. The changes made to the electoral legislation in these years were more radical than in the past ten years. The counter-reform included:

- changing the rules of the all-Russian referendum initiation, which actually meant a ban on its holding;
- increasing requirements for the number of members of the political party by five times (from 10 to 50 thousand), which resulted in over 2005–2009 to reduce the number of political parties from 46 to 7;
- the abolition of direct elections of heads of regions;
- transfer of elections to the State Duma to a fully proportional system (after that, the elections of representative bodies in 11 regions and a considerable number of municipalities passed to the same system);
- raising the threshold for elections to the state Duma from 5% to 7% (following this, the barrier was raised to 7% in most regions);
- stricter requirements for the division of the party list into territorial groups in the elections to the State Duma: the minimum number of groups increased from 7 to 80, the maximum number of candidates in the central part of the list decreased from 18 to 3;
- the abolition of the right of political parties to unite into electoral blocs, accompanied by the prohibition for political parties to nominate as candidates of members of other parties;

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<sup>1</sup> A.V. Kynev and A.E. Lyubarev, *Partii i vybory v sovremebnoi Rossii: Evolyutsiya i devolyutsiya* (Moscow: Fond Liberal'naya Missiya, 2011): 223–266, 310–390, 512–537.

- deprivation of the passive electoral rights of citizens of Russia having citizenship of other state or residence permit in another state, citizens convicted to deprivation of liberty for committing grave and (or) particularly grave crimes and having on the voting day unsettled and outstanding conviction for such crimes, and certain categories of citizens;
- toughening the rules of registration of candidates from non-parliamentary parties and self-nominees;
- the abolition of the responsibilities of senior officials to go on leave at the time of participation in elections and the lifting of sanctions for the failure of the elected deputies from the mandate (which contributed to the development of technology “locomotives”, that is participation of officials in the party lists without the purpose of electing);
- abolishing the right of public associations to send observers to polling stations;
- establishment of two voting days per year (in March and October) for all elections, except for early, repeated and part of additional ones (in the year of State Duma elections the second voting day was postponed from October to December);
- repeal the line “against all candidates” or “against all lists of candidates” in the ballots;
- the abolition of turnout threshold for all elections (previously, the turnout threshold for the presidential elections in Russia was 50%, in the elections to the State Duma was 25%, in regional elections and mayoral elections was mainly 20 or 25%, in the elections of representative bodies of municipalities it could be absent);
- establishment of the right for political parties to change the order of candidates in the list when filling vacant mandates;
- prohibition of criticism of rivals in campaign materials broadcast on radio and television.

As can be seen, most of the changes were in the nature of restrictions and prohibitions, or facilitated the use of administrative resources, and these changes led to a decrease in competition in the elections.<sup>2</sup> The same trends were manifested in changes in the regional electoral legislation.<sup>3</sup>

### Changes during the Presidency of Dmitry Medvedev

During the presidency of Dmitry Medvedev, intensive amendments to the electoral legislation continued. For four years (from June 2008 to May 2012), the Federal law “On basic guarantees of electoral rights and the right to participate in the referendum of citizens of the Russian Federation” was amended 31 times. Many changes were initiated by the President himself and voiced in his messages to the Federal Assembly.

These changes had a different orientation. Part of the changes continued line 2004–2007 on restrictions and prohibitions. Thus, in 2009, the electoral deposit and the right of non-party public associations to nominate lists of candidates for municipal elections were abolished.<sup>4</sup> In 2012, new restrictions on passive suffrage were added: citizens sentenced to imprisonment for serious and especially serious crimes were deprived of it for life.

At the same time, Medvedev had to correct the situation that arose as a result of the previous counter-reforms and the subsequent tightening of election practices. This has led to a level of United Russia’s dominance, with the other three parliamentary parties losing positions in regional elections, with the LDPR and Fair Russia often not getting into regional parliaments. The three remaining non-parliamentary parties have become less likely to participate in regional elections and even more so to succeed.

Therefore, some changes were aimed at strengthening the opposition parties. The most important of them is to ensure that the parties that received more than 5% of the votes in the elections to the State Duma or regional parliament have at least one mandate. However, instead of simply lowering the threshold to 5%, a complex design was devised, which in some

<sup>2</sup> See Kynev and Lyubarev, 2011, Ibid, 538–573, and Arkadii Lyubarev, *Izbiratel'noe pravo Rossii: problemy i resheniya. Sbornik statei* (Saarbrücken: LAP LAMBERT Academic Publishing, 2012): 27–55.

<sup>3</sup> Arkadii Lyubarev, “Electoral Legislation in Russian Regions”, *Europe-Asia Studies* 63, no. 3 (2011): 415–427.

<sup>4</sup> Lyubarev, *Izbiratel'noe pravo Rossii*: 56–63.

cases produced a result equivalent to lowering the threshold to 5%, but in other cases parties received only one mandate, although they were supposed to have more by proportional distribution. In addition, the obligation to elect at least half of the deputies in the proportional system at the elections of representative bodies of municipal districts and city districts with the number of deputies not less than 20 was introduced.

For the election of deputies of the State Duma, the requirements for the division of the list into territorial groups were softened. The maximum number of candidates in the central part of the list has been increased from 3 to 10, and the minimum number of groups has been reduced from 80 to 70.

Some indulgences were so small that they did not play any role. Thus, the minimum number of party members was gradually reduced from 50 thousand first to 45, and then to 40 thousand, but this did not lead to the creation of new parties. The parties represented in at least one third of the regional parliaments were exempted from collecting signatures, but no party is not really affected, as such representation was only in the parliamentary parties, and they were already exempt from collecting signatures. In October 2011, the threshold for elections to the State Duma was reduced to 5%, but in the elections held in December 2011, this novel has not acted, and for the next election another law was adopted.

Some changes were designed to reduce the misuse of administrative resources during the vote. Thus, early voting was canceled, additional protection measures were introduced against abuse in voting on absentee ballots and voting outside the polling station.<sup>5</sup>

The latest changes introduced in April–May 2012 were a reaction to the weakening of support for United Russia in the elections in December 2011 and to mass protests against fraud in these elections. The requirement for political party membership was reduced by 80 times (from 40,000 to 500), with all parties and party candidates being exempted from collecting voters' signatures in all elections except the presidential elections. This led to a significant increase in the number of political parties; by mid-2015, it had reached 74.<sup>6</sup> For the presidential election, the required number of signatures was reduced from two million to 300,000 for self-nominees and to 100,000 for

<sup>5</sup> Lyubarev, *Izbitatel'noe pravo Rossii*: 56–86, 93–134.

<sup>6</sup> A. Kynev, A. Lyubarev, and A. Maksimov, *Rossiiskie vybory – 2017: preemstvennost' i izmenenie praktik mezhdru dvumya federal'nymi kampaniyami* (Moscow: Fond Liberal'naya Missiya, 2018): 462–466.



party nominees. For self-nominees in regional and municipal elections, the number of signatures was reduced from 1–2% to 0.5% of the district's voters. Elections of heads of regions were restored, however, the conditions of registration of candidates for them made these elections uncompetitive. We are talking about the absence in the vast majority of regions of the right to self-nomination and the municipal filter. Instead of signatures of voters, candidates are required to collect signatures of municipal deputies, and in such a number that no candidate (except candidates from the Communist party in some regions) can overcome this filter without the help of United Russia, which is interested so that weak candidates participated in the elections.<sup>7</sup>

### **Changes after the Return of Vladimir Putin to the Presidency in 2012**

For the period from October 2012 to the end of 2016, the Federal law “On basic guarantees of electoral rights and the right to participate in the referendum of citizens of the Russian Federation” was amended 32 times. Most of the changes were anti-democratic in nature. Several changes were associated with the implementation of the decisions of the Constitutional Court of the Russian Federation, but even these changes did not contribute to the democratization of election laws.

Thus, in February 2014, life deprivation of passive suffrage for persons with a criminal record for serious and especially serious crimes was abolished. However, instead of life sentences, long terms of deprivation of rights were established, namely, 10 years after the removal or repayment of the criminal record for persons convicted of serious crimes, and 15 years for those convicted of particularly serious crimes. At the same time, according to some lawyers, legislators did not take into account the opinion of judges on the need for a differentiated approach.<sup>8</sup> The fact is that in the Criminal code the severity of the crime is determined by the maximum term of punishment

<sup>7</sup> Arkadii Lyubarev, *Partii i vybory v Rossii posle reformy 2012 goda. Sbornik statei* (Saarbrücken: LAP LAMBERT Academic Publishing, 2017): 8–21, 60–75, 146–149.

<sup>8</sup> Viktor Cherepanov, “K voprosu ob ogranichenii passivnogo izbiratel'nogo prava”, *Gosudarstvo i pravo*, no. 12 (2015): 47–54; Valentina Lapaeva, “Konstitutsionno-pravovye garantii passivnogo izbiratel'nogo prava i ikh yuridiko-dogmaticheskaya konkretizatsiya”, *Grazhdanin. Vybory. Vlast'*, no. 4 (2016): 70–72.

provided by the relevant article. As a result, the citizens sentenced to imprisonment conditionally, were also deprived of passive suffrage. In particular, Alexei Navalny, whose sentence was once rejected by the European court of human rights, was deprived of the right to participate in the elections.

In April 2014, in accordance with the decision of the Constitutional Court, the procedure for citizens to appeal the results of voting was clarified. At the same time, the appeal period was sharply reduced: for the results of the voting up to 10 days, for the results of the elections up to three months (previously in both cases, they were a year).

In October 2012, the application of the proportional system in the elections in small settlements was banned, but the authority began to refuse this practice without it. In May 2014, also on the basis of the decision of the Constitutional Court, regional legislators were given a choice for regional and municipal elections: absentee ballots or early voting. In many regions, early voting was restored not only in municipal but also in regional elections, and immediately the level of early voting became very high (in some cities up to 28% of the total number of voters).

On their own initiative, legislators in October 2012 replaced two single voting days in the year by one and moved it to September. The only exceptions are the presidential elections, as well as early elections (except for the gubernatorial ones) and some additional elections. And although practice has shown that September is not convenient for voters (because of what the turnout at the elections has decreased), neither for election commissions, nor for political parties, this provision was not abandoned, moreover, the elections to the State Duma were later postponed to September.

Since April 2013, a number of laws have been adopted that oblige candidates to report information about real estate located outside the territory of the Russian Federation, about property obligations outside the territory of the Russian Federation, and by the time of registration to close accounts (deposits), to stop storage of cash in foreign banks located outside the territory of the Russian Federation, and to alienate securities of foreign issuers. These novelties significantly limited the participation of business representatives in the elections, as well as added the possibility of removing candidates from the elections due to shortcomings in the submitted documents.

In November 2013, a law was introduced that allowed regional parliaments to reduce the share of deputies elected by the proportional system to 25%, and in Moscow, St. Petersburg and in municipal elections to hold elections in

full on the majority system. From the regions this law was used only in Moscow (where the elections of 2014 were held under the majority system), but in municipal elections, the refusal to use the proportional system has become widely practiced.

In February 2014, a new Federal law “On elections of deputies to the State Duma of the Federal Assembly of the Russian Federation” was adopted. A mixed unrelated (parallel) electoral system with a 5 per cent threshold and a division of lists into at least 35 territorial groups was returned. At the same time, there was a refusal of the application registration of candidates and party lists nominated by the parties. Such registration was left for parties that have passed to the State Duma or at least one regional parliament; by 2016, there were 14 such parties. The remaining parties and their candidates must collect signatures of voters, while for candidates in single-member districts their share was increased to 3% of the number of voters in the district.

In May 2014, similar rules were established for regional and municipal elections. However, the list of parties that do not need to collect signatures, was made dependent on the electoral history of the region or municipality, and almost everywhere was shorter than in the elections to the State Duma. In regional elections, the share of signatures for candidates in single-member districts was also raised to 3%, but at municipal elections remained at 0.5%.

In 2014, a law was passed providing for the possibility of recovery in the ballot of the line “against all”. However, this possibility was allowed only in municipal elections and at the request of regional legislators. As a result, this line was restored only in 8 regions, then their number was reduced to 6.

In parallel, other anti-democratic laws were adopted, the application of which was reflected in the elections. Thus, in 2012, the rules of holding rallies, processions and pickets were tightened. At the same time, a law was adopted providing for the granting of the status of “foreign agent” to non-profit organizations that received money from foreign sources (even one-time) and engaged in political activities, which in the law means almost any public activity. Such organizations included, in particular, the Association “Golos”, which has been monitoring elections since 2000, and a number of related organizations. Later (in 2014), a law was adopted that banned “foreign agents” from participating in the election campaign in any form.

In February and March 2016, novelties were adopted that made it difficult to observe the elections. The number of observers sent to the polling stations by candidates and parties was limited, it is forbidden to observe one person at several polling stations, there has been a requirement to submit a list of observers three days before the voting day. Presence at the polling station on the day of voting is allowed only to those media representatives who have

concluded an employment or a civil law contract for a fee at least two months before the start of the election campaign; applications for their accreditation must be submitted no later than three days before the voting day.<sup>9</sup>

In 2017, at the initiative of the new CEC composition, novelties were adopted to replace absentee ballots and early voting for a new procedure of voting at the location on the basis of a previously submitted application at the federal and regional elections. The practice of applying the new order has shown that it gives an opportunity to vote to a significant number of citizens who were previously actually deprived of such an opportunity. At the same time, there were some negative trends that need to be minimized in the future.

At the same time, some other changes were made, mostly positive, but insufficient. Of the large number of rules allowing to invalidate the real signatures of voters and on this basis to refuse the candidate to register, only one has been corrected. Obstacles to the appointment of observers, established in 2016, have been lifted for the presidential election, but not for all others. The opportunity to install video surveillance cameras at polling stations and in territorial election commissions is fixed; in fact, such cameras were installed since 2012.<sup>10</sup>

Another novel, adopted in December 2017, was the right to appoint observers to the polling stations of the Public chamber of the Russian Federation and the public chambers of the regions. However, experience has shown that observers from the public chambers basically mimic surveillance or engage in monitoring voters, and such a novel does not replace the previously canceled right to appoint observers by public associations.

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<sup>9</sup> A. Kynev, A. Lyubarev, and A. Maksimov, *Regional'nye i mestnye vybory 8 sentyabrya 2013 goda: tendentsii, problemy i tekhnologii* (Moscow: Fond Liberal'naya Missiya, 2014): 8–10; A. Kynev, A. Lyubarev, and A. Maksimov, *Regional'nye i mestnye vybory 2014 goda v Rossii v usloviyakh novykh ogranichenii konkurentsii* (Moscow: Fond Liberal'naya Missiya, 2015): 8–15, 323–326, 335–345; A. Kynev, A. Lyubarev, and A. Maksimov, *Na podstupakh k federal'nyim vyboram – 2016: Regional'nye i mestnye vybory 13 sentyabrya 2015 goda* (Moscow: Fond Liberal'naya Missiya, 2015): 10–26, 452–462; A. Kynev, A. Lyubarev, and A. Maksimov, *Kak vybirala Rossiya – 2016. Rezul'taty monitoringa izbiratel'nogo protsessa* (Moscow: Fond Liberal'naya Missiya, 2017): 13–62, 1109–1111.

<sup>10</sup> A. Kynev, A. Lyubarev, and A. Maksimov, *Rossiiskie vybory – 2017: preemstvennost' i izmenenie praktik mezhdum dvumya federal'nyimi kampaniyami* (Moscow: Fond Liberal'naya Missiya, 2018): 10–13.

## Conclusion

Russian electoral legislation has been continuously changing for three decades. At different times, the vectors of changes were different. Until 2002, there was a strong desire to make election laws consistent with international democratic standards. After 2002, the main content of the changes was the desire to ensure the dominance of one political party, although in some cases, legislators had to make concessions to the opposition.

As a result of the constant revision of the electoral legislation has become haphazard and controversial. It ensures to a very small extent the electoral rights of citizens and does not contribute to the democratic development of the country.

Radical comprehensive electoral reform is long overdue.<sup>11</sup> In our opinion, changes are required both in form (the consolidation of all federal laws into a single Electoral code) and in content (a return to democratic norms). Particularly serious problems are related to the rules of registration of candidates and party lists, which lead to a significant reduction of competition in the elections.<sup>12</sup> Currently, the need for changes is recognized by the leadership of the CEC of Russia.<sup>13</sup> There is some hope that the systematic work on the electoral reform will begin in 2018.

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<sup>11</sup> See, Arkadii Lyubarev, "O kontseptsii Izbiratel'nogo kodeksa Rossiiskoi Federatsii", *Gosudarstvo i pravo*, no. (2010); Arkadii Lyubarev, *Izбирatel'noe pravo Rossii: problemy i resheniya. Sbornik statei* (Saarbrücken: LAP LAMBERT Academic Publishing, 2012): 315–437; Arkadii Lyubarev, "Nedostatki izbiratel'nogo zakonodatel'stva i ego kodifikatsiya", *Grazhdanin. Vybory. Vlast'*, no. 4 (2016).

<sup>12</sup> Arkadii Lyubarev, "Nedostatki izbiratel'nogo zakonodatel'stva i ego kodifikatsiya", *Grazhdanin. Vybory. Vlast'*, no. 4 (2016a): 114–116; Arkadii Lyubarev, "Is there logic in the legislative regulation of the candidate registration based on electoral signatures", *SENTENTIA. European Journal of Humanities and Social Sciences*, no. 2 (2016b): 27–34.

<sup>13</sup> Ella Pamfilova "Glavnaya zadacha organizatorov vyborov – dobit'sya doveriya izbiratelei", *Grazhdanin. Vybory. Vlast'*, no. 4 (2016): 6–13.

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