



European  
Social  
Charter

Charte  
sociale  
européenne



30/10/2017

RAP/RCha/FIN/13(2018)

## **EUROPEAN SOCIAL CHARTER**

13<sup>th</sup> National Report on the implementation of the  
European Social Charter

submitted by

### **THE GOVERNMENT OF FINLAND**

- Follow-up to Collective Complaints Nos. 70/2011, 71/2011, 88/2012, 106/2014 and 108/2014

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Report registered by the Secretariat on  
30 October 2017

**CYCLE 2017**



**THIRTEENTH PERIODIC REPORT  
ON THE IMPLEMENTATION OF  
THE REVISED EUROPEAN SOCIAL CHARTER**

**SUBMITTED BY THE GOVERNMENT OF FINLAND**

**OCTOBER 2017**

## **THIRTEENTH PERIODIC REPORT ON THE IMPLEMENTATION OF THE REVISED EUROPEAN SOCIAL CHARTER**

In accordance with the Secretariat for the European Social Charter's request by a letter of 3 April 2017 to report, under the new reporting procedure adopted by the decision of the Committee of Ministers on 2 April 2014, on the follow-up on five collective complaints Nos. 70/2011, 71/2011, 88/2012, 106/2014 and 108/2014 which concern Finland and were handled in accordance with the collective complaint procedure.

In accordance with Article C of the Revised European Social Charter (Finnish Treaty Series 78-80/2002), the instrument of acceptance which was deposited on 21 June 2002, and Article 23 of the European Social Charter, copies of this official report in the English language have been communicated to the Central Organisation of Finnish Trade Unions (SAK); the Finnish Confederation of Salaried Employees (STTK); the Confederation of Unions for Academic Professionals in Finland (AKAVA); the Confederation of Finnish Industries (EK); and the Federation of Finnish Enterprises (FFE).

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**INFORMATION ON THE FOLLOW-UP GIVEN TO THE DECISIONS OF THE  
EUROPEAN COMMITTEE OF SOCIAL RIGHTS RELATING TO THE FOLLOWING  
COLLECTIVE COMPLAINTS**

**Association of Care Giving Relatives and Friends v. Finland (No. 70/2011)**

1. The Government refers to information given in connection with its tenth periodic report and submits the following new information below.

*Informal care*

2. The Government notes that one of the Government key projects in Prime Minister Sipilä's Government Programme focuses on informal care. Between 2016 and 2018 home care for older people will be developed and informal care enhanced in all age groups. A total of EUR 27 million has been allocated for the key project. The aim is to create a cost-effective and well-coordinated system of services for older persons that is responsive to client needs. In the new system, home services and services accessible from home take priority. The project also aims to improve the wellbeing of informal caregivers, family carers and the persons they are caring for.

3. The aforementioned project will be implemented in all 18 counties. There are eight large county-wide pilot projects to reform the services. A number of different players, including municipalities and non-governmental organisations, will participate in each pilot project. While informal care is the cross-cutting theme in all the pilot projects, one theme for which EUR 3 million has been allocated focuses on informal care specifically. This theme will aim to harness existing best practices developed for the benefit of informal and family care and to create a uniform efficient network of informal caregivers and patients and operators in the public, private and third sectors.

4. The main aim of the informal care pilots is to mainstream well-functioning models and make them established practices. The selected client groups include children, persons with memory disorders, and persons with mental disorders or substance abuse problems. Results should be available in 2019.

5. The themes for the pilot projects are:

- Informal care of children with disabilities (no existing model; a model needs to be created);
- Support for relatives and informal caregivers of mental health and substance abuse rehabilitees;

- Cooperation model for the informal care of older persons with memory disorders; and
- Founding a centre for informal and family care in areas where 1–3 experiments are carried out.

6. Amendments to the Informal Care Act (937/2005) entered into force in 2016. The amendments are part of the implementation of Prime Minister Juha Sipilä's Government Programme and the National Programme to develop informal care. The purpose is to improve the system of time-off and substitutes for informal caregivers. The aim is to improve the opportunities of informal caregivers to take time off and, thereby, support their wellbeing as caregivers. The amendments to the provisions on time-off concern both caregivers with an informal caregiver's contract (content of contracts may vary) and persons who are taking care of their relative or other close person without an informal caregiver's contract. The wellbeing of informal caregivers who have an informal caregiver's contract is also promoted by providing training and education and by increasing the number of wellbeing and health examinations available to them. The right to statutory time off in the Informal Care Act has been extended to cover all informal caregivers who have an informal caregiver's contract. Another amendment to the Informal Care Act concerns the municipalities' obligation to arrange, where necessary, informal caregivers' access to health and wellbeing examinations and healthcare and social services promoting their wellbeing.

*Quality recommendation to guarantee a good quality of life and improved services for older persons*

7. The Ministry of Social Affairs and Health and the Association of Finnish Local and Regional Authorities have issued a new quality recommendation to guarantee a good quality of life and improved services for older persons (6/2017). The new quality recommendation encourages to build an economically and socially sustainable service system and to guarantee, as much as possible, the good health and functional capacity of the older population. The quality recommendation will remain in force until the end of 2019.

8. The quality recommendation has five thematic areas dealing with guaranteeing functional capacity of older persons, arranging advice and service coordination for clients, personnel of the services, structure of age-friendly services, and technology. The quality recommendation is meant to support the implementation of the Act on Care Services for Older Persons. It is primarily intended for decision-makers and managers in counties, municipalities, collaborative catchment areas for healthcare and social welfare as a tool for developing and evaluating their services for older persons. Even others, such as service providers, professionals and third-sector operators, can use the recommendation to plan and evaluate their own activities. The quality recommendation aims to safeguard the entire older population the best possible health and functional capacity as well as effective high-quality services to all older persons who need them.

*Report on the fees and services of informal care support in municipalities in 2012*

9. The National Institute for Health and Welfare (THL) reviewed the fees paid to caregivers and the services available to them in the municipalities in 2012. The final report was published in 2015. The review indicates that informal care often replaces institutional care. Without informal care at home, some 26 to 46 per cent of the persons reviewed would have ended up in institutional care. While the need for care was often great in informal care, only around half of the informal caregivers used their statutory time off. The review also indicated that it would be important for many informal caregivers if there were more services available to them, including health examinations and rehabilitation services.

**Association of Care Giving Relatives and Friends v. Finland (No. 71/2011)**

10. The Government refers to information given in connection with its tenth periodic report and submits the following new information below.

11. A working group on client charges for service housing and services provided at home gave its final report to the Ministry of Social Affairs and Health on 30 January 2015. The assignment of the working group was based on the previous Government Programme, which stated that the development of the client charge system will continue in order to prevent healthcare and social welfare payments from becoming an obstacle to service use. According to that Government Programme, service housing charges should be revised on the basis of the working group's proposals, laying down provisions for nationally harmonised criteria for client charges in the housing services which municipalities are responsible for organising. Charges for service housing with 24-hour assistance should be harmonised, and provisions should be laid down ensuring that clients have funds at their disposal even after paying their service fees. The working group gave also suggestions for further measures. According to the working group, there is a need for an overhaul of legislation governing client charges. It should take into account the ongoing reforms on the organisation and financing of healthcare and social welfare as well as future reforms on other legislation on healthcare and social welfare. The working group's proposal did not, however, lead to any action by the previous Government.

12. In April 2016 Prime Minister Sipilä's Government decided to start a comprehensive review of the legislation governing client charges in healthcare and social welfare in spring 2017. A working group was appointed for this purpose on 15 February 2017 and assigned the task of drafting a proposal for new legislation governing client charges. A Government Bill for new legislation governing client charges would be submitted to Parliament with aim of entering into force on 1 January 2020. The reform and the relevant legislation would not introduce any unreasonable increases in client charges.



13. According to Prime Minister Sipilä's Government Programme for 2015–2019, the Government will prepare legislative amendments concerning charges for service housing organised by municipalities (under the Social Welfare Act) and home services that will also as far as possible harmonise the criteria for determining the charges. These amendments will be carried out as part of the overhaul of legislation governing client charges.

### **Finnish Society of Social Rights v. Finland (No. 88/2012)**

#### *Sickness allowance, maternity allowance and rehabilitation allowance*

14. The Government notes that according to the adjusted general Government fiscal plan for 2017–2019, index adjustments of benefits linked to the National Pension Index and the Consumer Price Index will be frozen in 2017–2019. The index number of the National Pension Index will, therefore, remain unchanged at 1631. However, this does not apply to social assistance.

15. Changes to the index will lead to changes within the benefit system. These changes concern, for example, the relationship between the amount of benefits tied to the index and the amount of index-free benefits. Different levels of adjustments to the benefit amounts also influence the allocation of benefits. For example, the difference between the minimum daily allowances and the basic amount of social assistance will change because the daily allowances are not adjusted, while the social assistance is adjusted according to normal index increase. This has already created situations where persons receiving the minimum daily allowance may become eligible for social assistance, depending on their tax percentage. In other words, the index changes revise the relationship between the primary (basic security) and the last-resort form of financial assistance (social assistance).

16. The Government agreed in its budget session on 31 August 2017 to introduce several forms of support to families with children and measures to prevent social exclusion. These will be included in the Government's budget proposal for next year which was submitted to Parliament in September 2017. The minimum daily allowances under the Health Insurance Act would be increased so that the net daily allowance would always be high enough and the recipients would have sufficient income without resorting to basic social assistance. The aim is that people would receive sufficient income from the appropriate benefit system. In this way, basic security would take priority over social assistance, and benefits would be allocated appropriately. The benefit increase applies to parenthood allowance, rehabilitation allowance and sickness allowance. The aim is that the level of these daily allowances would always be higher than the level of social assistance, so that persons receiving them would not need to change over to the system of social assistance.

17. The minimum amount of sickness allowance would be raised by EUR 0.91 per day (less than EUR 23 per month) in 2018 and by EUR 1.23 per day (less than EUR 31 per month) in 2019 to ensure that the allowance would be higher than the basic social assistance when the recipient's tax ratio is 20 per cent. The same would apply to the minimum amount of parenthood allowance, rehabilitation allowance and special care allowance. The aim is that the said amendment would enter into force on 1 January 2018.

*Unemployment allowance and labour market support*

18. The projects to develop unemployment security have focused on measures that increase employment and shorten the periods of unemployment instead of one-off measures addressing the level of benefits. The aim is to reduce the number of people whose unemployment lasts so long that they use up their eligibility for earnings-related unemployment allowance and start receiving labour market support. One of the measures to support employment is allowing unemployed jobseekers to earn EUR 300 per month on top of the full unemployment benefit (in force since 1 January 2014). Unemployed jobseekers can also improve their income level by working part-time, during which time they are, on certain conditions, entitled to adjusted unemployment benefit. As a rule, each euro earned in excess of the above amount of EUR 300 per month will reduce the unemployment benefit by 50 cents.

19. In this connection, the Government refers to its observations given in connection with collective complaint No. 108/2012 and notes that there is no upper limit for how long a person can receive labour market support. Furthermore, unemployed jobseekers can improve their income level by participating in coaching or training to further their prospects of finding employment, in which case they receive an increase of EUR 4.74 per weekday in the unemployment benefit (labour market support or basic unemployment allowance) up to 200 days. During their training they are also entitled to an expenditure increase (EUR 9 per weekday). Persons who have custody of one child can receive an increase of EUR 5.23 per weekday, while two children entitle to an increase of EUR 7.68 per weekday and three to an increase of EUR 9.9 per weekday. The level of labour market support was raised as of the beginning of 2012 by around EUR 100 per month. Means testing based on a spouse's income was abandoned as of the start of 2013. Means testing was also abandoned in case of persons aged 55 years or more who have met the time-at-work condition prior to their unemployment or during coaching or training to further their prospects of finding employment. Moreover, unemployed jobseekers become eligible for earnings-related unemployment allowance earlier than before: the time-at-work condition was reduced from 34 weeks to 26 weeks as of the beginning of 2014.

### *Social assistance*

20. The Government notes that the Finnish system of social assistance consists of basic social assistance, supplementary social assistance, and preventive social assistance. The granting of basic social assistance was transferred from municipalities to the Social Insurance Institution of Finland (Kela) as of the beginning of 2017. The aim is to promote equal access to basic social assistance, enhance interaction with the authorities easier and simpler, and to increase the efficiency of the authorities' operations.

21. The basic amount of social assistance, totalling EUR 487.89 per month in 2017, is adjusted annually by the national pension index. The expenses covered by the basic amount include food, clothing and minor healthcare costs, personal hygiene and cleanliness of home, use of local transport, subscribing to newspapers, use of telephone and communications network, hobby and recreational pursuits, and comparable everyday living expenses of the person and family. Other basic expenses which are taken into account up to a reasonable amount are housing expenses (e.g. rent or maintenance charge, water, heating, electricity and home insurance premium), other healthcare expenses as well as necessary moving expenses.

22. In addition to the basic social assistance granted by the Social Insurance Institution of Finland (Kela), municipalities can grant supplementary social assistance to cover special expenses such as unforeseen housing expenses, expenses arising from special needs or circumstances, such as long-term receipt of social assistance and long-term or serious illness. Municipalities can also grant and decide the criteria for preventive social assistance for the purpose of promoting a person's or family's independent coping and preventing social exclusion. It can be granted for instance to alleviate difficulties caused by over-indebtedness or a sudden deterioration of the financial situation.

### *Guarantee pension*

23. The rate of guarantee pensions was raised on 1 January 2016. The amount of guarantee pension is now EUR 766.85 per month, compared to EUR 746.57 per month in 2015. Following an index adjustment, the amount of guarantee pension decreased, and was EUR 760.26 per month in 2017. At present it is estimated that in 2018 the amount of guarantee pension would increase by EUR 15 per month.

### *Basic income experiment*

24. A basic income experiment is carried out in Finland in between 2017 and 2018. A basic income of EUR 560 per month will be paid out to a random sample of persons receiving labour market support from 1 January 2017 to 31 December 2018. During the experiment, basic income is a tax free benefit, or a net income unaffected by the recipients' other income. The recipients receive the basic income as well as all the other benefits they would normally receive beyond the amount of basic income. These benefits can be, for example, social assistance and housing allowance. Finding employment during the experiment will not affect the amount of basic income.

25. The basic income experiment aims to find out whether it would be possible to reform the social security system in a way that it would better respond to changes in working life, to overhaul social security to encourage participation and employment, to reduce the administrative burden, and to simplify the benefit system.

### **Finnish Society of Social Rights v. Finland (No. 106/2014)**

26. The Government observes in this connection that the European Committee of Social Rights only adopted its decision concerning this collective complaint on 8 September 2016.

27. The Government considers that the Finnish legislation reflects the tri-partite agreement in the Finnish labour market. Furthermore, in the Government's view, practical and legislative details described below should be taken into account when assessing the questions at hand.

### *National legislation*

28. Chapter 12, Section 2 of the Employment Contracts Act regulates the compensation that may be ordered to be paid to an employee for the groundless termination of his or her employment contract. The compensation is determined in accordance with Section 2 in those cases where the employer has terminated or cancelled the employment contract contrary to the grounds laid down in more detail in the Act.

29. According to Chapter 12, Section 2 of the Act the compensation to be paid must be equivalent to the pay of the employee due for a minimum of three months and a maximum of 24 months. The maximum amount of compensation to be paid to shop stewards or elected representatives is equivalent to the pay due for 30 months. This provision of the Act has been effective since 2001. It created a uniform compensation mechanism for different cases of terminating employment (financial and production-related grounds for termination vs. grounds related to the employee's person).

### *Coverage of compensation*

30. As regards the coverage of compensation, in paragraph 53 of its decision the Committee states that there may be situations where the compensation provided for by the Employment Contracts Act is not necessarily commensurate with the loss suffered by the employee because of the groundless termination of the employment contract. The Committee, however, does not specify these situations in more detail.

31. In the Government's view, the sums of compensation under Chapter 12, Section 2 of the Employment Contracts Act are sufficient, and the compensation is also conducive to ensuring compliance with the Act.

32. The Employment Contracts Act sets a lower limit for the compensation. In practice this means that when an employer terminates an employment contract without a valid reason, the Act obligates the employer in all cases to pay the employee compensation equivalent to the pay due for a minimum of three months. The statutory lower limit for the compensation is not proportional to the amount of any possible material damage incurred by the employee or for instance to the length of the employment relationship. On the contrary, the employee is always entitled to compensation equivalent to the pay due for a minimum of three months, even if he or she had not suffered any material damage. Furthermore, even if the groundlessly terminated employment relationship had lasted less than three months before the termination, it entitles the employee to compensation equivalent to the pay due for a minimum of three months.

33. The Government notes in this connection that compensation under Chapter 12, Section 2 of the Act covers both material and immaterial damage incurred by the employee. If the amount of the compensation were proportional to the amount of the real damage caused to the employee – as the decision of the Committee would require – the sums of compensation could in fact be lower than they are at present. If the compensation were determined in proportion to the amount of the real damage, courts would have a narrower margin of discretion in determining the amount of the compensation. Now, in contrast, the Employment Contracts Act obligates courts to take account of a number of circumstances when determining the amount of compensation.

34. According to the Employment Contracts Act, for example the following factors must be taken into account in determining the amount of compensation: estimated time without employment for the employee, his or her estimated loss of earnings, the remaining period of a fixed-term employment contract, the duration of the employment relationship, the employee's age and chances of finding employment corresponding to his or her vocation or education and training, the employer's procedure in terminating the contract, any motive for termination originating in the employee, the general circumstances of the employee and the employer, and other comparable matters.

35. The Government Bill for the Act (HE 157/2000 vp, p. 119) states expressly that the Act does not list exhaustively the factors to be taken into account. Moreover, in determining the amount of compensation, the damage already incurred by the employee for the groundless termination of employment must be taken into account, but also his or her possible future financial losses must be assessed.

36. The Government is of the view that because a wide range of different factors are already taken into account in determining the amount of compensation, abolishing the upper limit of the compensation would have no relevance to the real coverage of the costs incurred by the employee.

37. As regards the perspective of causality, the Government considers that the interpretation made by the Committee in its decision could in practice lead to a situation where the employer's responsibility might continue even years after the termination of employment.

38. In the Government's view, however, the causal connection between the groundless termination of employment and the damage incurred by the employee cannot continue for an unlimited period.

39. The legislation would be exceptionally strict if the employee, for instance on grounds of his or her unemployment, could claim compensation from the employer even after many years since the termination of a short employment relationship.

40. It is appropriate for the parties to a dispute over the termination of employment to have the matter settled as soon as possible. Under Chapter 13, Section 9, subsection 3 of the Employment Contracts Act, compensation for a groundless termination of employment must be claimed within two years of the date on which the employment ended. The maximum compensation, equivalent to the pay due for 24 months, contributes to encouraging the parties to refer the dispute to a court within a reasonable period.

41. Lastly, the Government wishes to draw attention to the fact that the employee is not deprived of economic security after the termination of the employment relationship. If the employee is unemployed, he or she is covered by the unemployment security scheme.

#### *Reinstatement*

42. As regards the issue of reinstatement, in paragraph 55 of its decision the Committee states that, in addition to compensation, other appropriate remedies should be available to national courts or tribunals to place the dismissed employee back into an employment situation no less favourable than he or she previously enjoyed. The Committee mentions reinstatement as one of such remedies.

43. Taking into consideration the wording of the Article 24 and other international treaties, the Government however questions, whether reinstatement should *de facto* be included in Article 24.

44. As the Committee states in its decision, the Employment Contracts Act makes no provision for reinstatement. However, the parties to an employment relationship are always free to agree about reinstatement.

45. In fact, the previous Employment Contracts Act contained a provision on alternative compensation, according to which courts were obliged to examine on request whether it, in a dispute situation, was possible to continue an employment relationship or to reinstate an already dismissed employee. If the employment was continued or the employee was reinstated, the court had to assess the need for and amount of possible alternative compensation.

46. The provision on alternative compensation was repealed in 2001 as it was problematic to apply in practice. No claims for continued employment or reinstatement were ever made, because in practice it is impossible to continue employment in a dispute situation.

47. In the Government's view, practical matters should be given significance when interpreting Article 24. Finland cannot be expected to enact legislation that, on the basis of earlier experience from many decades, will not work in practice.

48. By contrast, when it comes to employment relationships in the public sector, it is possible and even appropriate to continue employment and reinstate employees. Public service employment relationships differ from private ones in many respects. Matters related to public service offices are based on underlying administrative decisions: all public offices are established, abolished and filled by decision of public authorities. Private employment relationships, on the other hand, are based on contracts. Moreover, public service employment relationships are governed by legislation and obligations different to those regulating private employment relationships, and matters concerning public service employment are usually litigated in administrative courts.

#### **Finnish Society of Social Rights v. Finland (No. 108/2014)**

49. The Government observes in this connection that the European Committee of Social Rights only adopted its decision concerning this collective complaint on 8 December 2016.

50. In addition to the information submitted below, the Government further refers to information given in connection with the collective complaint No. 88/2012 above.

51. The Government recalls with reference to its observations given in connection with the said collective complaint that in Finland, social security is provided by a comprehensive social security system that consists of variety of complementary monetary benefits, such as labour market subsidy, housing allowance and social assistance. In addition, monetary benefits are supplemented with other targeted benefits, payment ceilings and reliefs and a variety of personal services provided according to the exigencies of an individual situation, which is why looking at the amount of the some monetary benefits in isolation of the system as a whole is not indicative of the final levels of social security granted to an individual applicant.

52. The Government stresses that the Finnish social security system covers the entire population and ensures individual subsistence and a life of dignity including elderly unemployed persons who are outside the labour market.

53. The Government further observes that the sufficiency of the basic social security rate is examined at national level in the form of regularly conducted overall assessments. The most recent evaluation was published by the National Institute for Health and Welfare (THL) on 26 February 2015 and is based on an Examination into the sufficiency of social security and social assistance by an independent expert group.

54. Similarly, the Government draws the attention to the OECD calculations which indicate that the level of minimum income benefits for single person in Finland (2014) is above poverty line which is attached to 50 percent of the equivalent median disposable income (Society at a Glance 2016, p. 107, figure 5.8, OECD 2016). It is further stressed that the relative level of minimum-income benefit in Finland is higher than in most other countries included in these OECD calculations.

55. The Government is of the view that the Committee's decision (paras. 65-68) does not fully reflect the Finnish social security system. The Committee based its decision on labour market subsidy and an average amount of housing allowance. As housing allowance is granted on the basis of actual housing costs, the average amount of housing allowance is not indicative of actual level of benefits in individual case. Equally, the Committee only noted the social assistance without fully taking it into its consideration in its decision.

56. The Government stresses in this connection that viewing labour market subsidy alone or only in combination with housing allowance is too limited. Particularly, as many labour market subsidy receivers also receive both a housing benefit and income support. Housing allowance receiver can also receive social assistance for remaining housing and other living costs if his/her combined income is not sufficient despite receiving social assistance, to secure means necessary for basic needs. The Government maintains that when evaluating Article 13§1 due consideration must be given to the discretionary benefits that are by their very nature intended to secure necessary means for basic needs in individual cases, when other benefits are insufficient.



57. Furthermore, in this case attention should also be drawn to the following facts. Labour market subsidy has no maximum payment time. If the jobseeker participates in active measures, he/she is entitled to receive an additional monetary benefit for 200 days and cost compensation during the duration of the measure. If unemployed person has children he/she is entitled to receive a child addition. Furthermore, the means testing considering spouses income was abolished in 2012 and means testing is not applied if a person is over 55 years or is participating in an active measure. In addition, under the Finnish system a person becomes eligible for earnings-related unemployment benefit relatively quickly by being employed for 26 weeks. All these factors impact and increase the level of social security benefits of unemployed persons.

58. The Government observes that the attempt to evaluate the income level in this manner is not reflective of the actual benefits provided by the social security system for elderly unemployed persons. As Finnish social security system is complex and includes different components which in different combination aim at providing necessary assistance in particular situations, attention to the combination of benefits and the system as a whole remains essential.

#### *General housing allowance*

59. The system of general housing allowance was reformed as of 1 January 2015. The maximum income limits for housing allowance were adjusted by removing the effect of the size, age, equipment level and heating system of the residence. The only factors affecting the maximum income limits at present are location and number of household members. The definition of the earnings deduction was also simplified and the regional grading of the deductible was abandoned. Moreover, the maximum income limit was increased by EUR 50, and the deductible decreased by 8 per cent. To lower the threshold for accepting work, the level of earned income and entrepreneurial income affecting the amount of housing allowance was lowered by EUR 300 as of 1 September 2015. This corresponds with the unemployment security system, where unemployed jobseekers can earn EUR 300 per month on top of the full unemployment benefit.

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