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My understanding of climate law and its role in lawyer's education

SUMMARY The text is devoted to climate law and the need to expand the curricula of academic studies, especially law, to include it. Its aim is to provide a critical analysis of existing doctrine in this area, including the absence or insufficiency of such doctrine. At the same time, the text aims to propose specific conceptual, methodological and pedagogical solutions in view of the proposed inclusion of climate law in the education of lawyers. To this end, a combination of the dogmatic-legal and legal-historical methods was used. Climate law is broadly understood as the rules governing various activities aimed at protecting the climate, taking the climate into account as a value in economic activity or in the everyday actions of individuals. It can be described as 'law concerning the impact on the climate'. It is interdisciplinary in nature and requires that, in addition to legal aspects, it also takes into account technical, social and economic issues. In addition to administrative law, climate issues are also beginning to play a significant role in financial, criminal and commercial law. Climate law is increasingly becoming a platform for integrating public law. Climate change also poses challenges in areas previously unassociated with it, such as legal education. Climate law should be a subject taught at universities, not only in law faculties, following the example of intellectual property protection, where climate action appears to be a more pressing issue.

KEYWORDS climate law, legal education, public law

Moje rozumienie prawa klimatycznego i jego roli w kształceniu prawników

STRESZCZENIE Tekst poświęcony jest prawu klimatycznemu oraz konieczności rozszerzenia o nie programów studiów akademickich, szczególnie prawniczych.

Jego celem jest krytyczna analiza dotychczasowej doktryny w omawianym zakresie, także jej braku. Jednocześnie celem tekstu jest zaproponowanie określonych rozwiązań pojęciowych, metodologicznych i dydaktycznych wobec postulowanego włączenia prawa klimatycznego do kształcenia prawników. W tym celu skorzystano z metody dogmatyczno-prawnej oraz prawno-historycznej. Prawo klimatyczne jest szeroko rozumiane jako zasady regulujące różne działania mające na celu dobro klimatu, uwzględniające klimat jako wartość w działalności gospodarczej lub codziennych czynnościach jednostek. Można je opisać jako „prawo dotyczące wpływu na klimat”. Ma ono interdyscyplinarny charakter i wymaga, aby oprócz aspektów prawnych uwzględniało również kwestie techniczne, społeczne i gospodarcze. Oprócz prawa administracyjnego kwestie klimatyczne zaczynają odgrywać znaczącą rolę również w prawie finansowym, karnym i handlowym. Prawo klimatyczne w coraz większym stopniu staje się platformą integrującą prawo publiczne. Zmiany klimatyczne stwarzają również wyzwania w obszarach, których wcześniej z nimi nie kojarzyliśmy, takich jak edukacja prawnicza. Prawo klimatyczne powinno być przedmiotem nauczaniem na uniwersytetach, nie tylko na wydziałach prawa, na wzór ochrony własności intelektualnej, gdzie działania na rzecz klimatu wydają się być ważniejszą kwestią.

SŁOWA KLUCZOWE prawo klimatyczne, edukacja prawnicza, prawo publiczne

Introduction

The climate changes taking place on our planet do not leave legislators at any level indifferent. The development of regulations concerning climate, its protection, counteracting its changes and adapting to them is dynamic. It is time to go beyond the still modest definition and characterisation of climate law in Poland. The challenge facing society today is widespread awareness of climate issues. Law schools, and academic education in general, cannot ignore this. The global doctrine does not debate whether to teach climate law, but how. It is worth taking up these challenges in the hope that even a modest contribution to such a debate will serve the quality and safety of life for future generations. This study serves this purpose.

Its aim is to provide a critical analysis of existing doctrine in this area, including the absence or insufficiency of such doctrine. At the same time, the text aims to propose specific conceptual, methodological and pedagogical solutions in view of the proposed inclusion of climate law in the education of lawyers. This relates to questions concerning the understanding of climate law and its links with other fields of public law, as well as private law. Fundamental to this paper is the question of the purpose and significance of educating lawyers in climate

law, and the possible methods for doing so, should the hypothesis posed above be confirmed. To this end, a combination of the dogmatic-legal and legal-historical methods was used.

The text is divided into four parts. The first part defines and characterises briefly climate law. The author also attempts to systematise concepts in this field. The second part attempts to prove the hypothesis of the integrative function of climate law in the entire field of public law. Currently, all areas of substantive public law research are increasingly taking into account climate objectives, climate impacts and responses to climate change. What is more, climate law is also beginning to influence procedural law. The third part analyses whether Polish universities educate about climate law and how this interest can be increased. The author attempts to identify analogous mechanisms that have successfully led to the expansion of academic courses to include intellectual property protection. Perhaps this path would work again? The fourth and final part makes the case for the need to include climate law in academic curricula, not only but especially in legal studies. Examples from around the world show that Polish universities are lagging far behind in this respect.

The text finishes with conclusions and a list of sources, including national and international literature. The legal status is current as of 31 May 2025.

Understanding of climate law

Even before the first attempts to define climate law appeared, people began to write about it, about the challenges it poses, about the measures being taken, and also illustrating the effects of its changes in a casuistic manner¹. As emphasised by Bartosz Rakoczy, a certain feature of environmental law, which does not occur on such a scale in other areas of law, plays an important role in the legal analysis of climate. Namely, this law must refer to and respond to the reality surrounding humans in the broadest and most comprehensive way possible. It is the law that must adapt to nature, not the other way around².

¹ A case study on climate change and law in this area is presented by T. Bonyhady in the section entitled 'New climate law in cases'. For more information, see: *Climate Law in Australia*, eds. T. Bonyhady, P. Christoff, Sydney 2007, pp. 11-16.

² B. Rakoczy, *Elastyczność zasady zrównoważonego rozwoju w kontekście adaptacji do zmian klimatu* (The flexibility of the principle of sustainable development in the context of adaptation to climate change), "Gdańskie Studia Prawnicze" 2021, R. 25, No. 3(51), p. 25.

Climate law should be understood as a set of international, EU and national legal norms aimed at counteracting anthropogenic climate change³ and responding to the effects of these changes that are already occurring. As Janina Ciechanowicz-McLean notes, climate law has a specific and interdisciplinary character, as it is created 'from the top down' – from international law, through regional regulations, to national regulations. It covers all norms that serve the objective of preventing anthropogenic climate change and adapting to it. Janina Ciechanowicz-McLean argues, and the author shares this view, that climate law should be classified as economic environmental law, as it combines environmental law with economic law through numerous common issues⁴, using an ever-expanding catalogue of legal and economic instruments.

Monika Adamczak-Retecka equates climate protection law, climate change law and climate law⁵. Similarly, Janina Ciechanowicz-McLean does not prejudge the name of this emerging field of research⁶. Bartosz Rakoczy argues that with the shift towards rational management of environmental resources, the importance of norms regulating not only environmental protection but also the rational management of environmental resources is increasing⁷. This is particularly evident in relation to the climate. Hence, in a more historical sense, we can speak of 'climate protection law'.

Therefore, 'law of climate' should be understood as rules aimed at something, in this case the climate, to which specific rights are assigned. 'Law of climate' should therefore be understood as rules concerning the climate and various activities related to it or carried out in relation to it. When these activities are, and have mainly been, aimed at protecting the climate, we should speak of 'climate protection law'. On the other hand, 'climate law' should be understood as pro-climate regulations that are addressed to various entities whose activities have an impact on the climate and who influence it in various ways. Climate law in this sense is a set of rules governing various activities aimed at the good

³ J. Ciechanowicz-McLean, *Prawo ochrony klimatu* (Climate Protection Law), Warsaw 2016, p. 12.

⁴ J. Ciechanowicz-McLean, M. Nyka, *Environmental Law*, Warsaw 2016, p. 43.

⁵ M. Adamczak-Retecka, *Odpowiedzialność odszkodowawcza za szkody klimatyczne z perspektywy prawa Unii Europejskiej* (Liability for climate damage from the perspective of European Union law), Gdańsk 2017, p. 29.

⁶ J. Ciechanowicz-McLean, *Prawo ochrony klimatu* (Climate Protection Law), Warszawa 2016, p. 84.

⁷ B. Rakoczy, *Prawo ochrony środowiska w styku z innymi obszarami systemu prawa*, [w:] *Zagadnienia systemowe prawa ochrony środowiska*, (Environmental law at the intersection with other areas of the legal system, [in:] *Systemic issues of environmental law*), red. P. Korzeniowski, Łódź 2015, p. 71.

of the climate, taking into account the climate as a value in economic activity or the daily activities of individuals. It could be described as 'climate impact law'. It will include regulations on energy, including mining, as well as transport, construction, industry and trade⁸.

Janina Ciechanowicz-McLean proposes the following principles of climate law: climate uncertainty, economic diversity of countries, sustainable development, intergenerational responsibility, prudence, good neighbourliness, cooperation, and reduction of greenhouse gas emissions⁹. Similarly, Monika Adamczak-Retecka points to the principles of sustainable development, precaution, and the general principles of environmental law¹⁰.

Integration of public law around climate issues

There is no doubt that in the future we will continue to refine global climate agreements. Limits and requirements will only become stricter. While it is impossible to be certain that future international agreements will be easier to negotiate and more effective than those to date, we can place our trust in the economic pressure exerted by rich markets, which are already establishing barriers to the entry of products and services from countries that do not meet environmental standards through their own regional and national regulations. This is one of the purposes of the taxonomy of economic activities in the European Union¹¹. This process affects a number of branches of law and many areas of activity, mainly economic. Already today, climate issues dominate global and regional environmental regulations, and other policies are being integrated around climate and climate change mitigation.

In the case of the European Union's climate law, which is world-leading, what is important for its effectiveness is the introduction of specific, binding targets and accountability for them. Unlike international law, non-compliance

⁸ For more information, see: T. Bojar-Fijałkowski, *Reflections on crossing the boundaries between public and private law in implementing the 'European Green Deal'*, "Administrative and Environmental Law Review" 2021, Vol. 2, Iss. 2, pp. 99-101.

⁹ J. Ciechanowicz-McLean, dz. cyt., p. 109.

¹⁰ M. Adamczak-Retecka, dz. cyt., pp. 44-55.

¹¹ For more information, see: T. Bojar-Fijałkowski, *The EU taxonomy as a business assessment tool: opportunities and threats, chances to use new technologies*, "GIS Odyssey Journal" 2024 Vol. 4 No. 1, pp. 55-65; T. Bojar-Fijałkowski, *Unijna taksonomia jako potencjalny warunek pomocy państwa dla przedsiębiorców - uwagi na gruncie gospodarczego prawa środowiska* (EU taxonomy as a potential condition for state aid to entrepreneurs – comments on the basis of economic environmental law), "Studia Prawnoustrojowe" 2024, No. 63, pp. 35-47.

with standards and failure to meet limits is punishable by proceedings in front of the Court of Justice of the European Union and financial penalties. The European Green Deal, which takes into account the principles of the circular economy and energy transition, even despite, or perhaps precisely because of, the elimination of Russia as a supplier of energy resources, has the potential to bring about a lasting change in the EU economy and to positively influence climate change through legislation. All this focuses all branches and areas of public law research on climate issues¹².

Margaret A. Young proves that lawyers of most specialisations are now de facto climate lawyers¹³. This undoubtedly corresponds to the concept of integration around climate law not only of all aspects of economic environmental law, but also of other areas of public law, including procedural law. The overlap between the subject matter and the area of regulation that we encounter in many areas of environmental law is particularly evident in climate law. As climate law exists at the international, regional (including EU), national and local levels, its integrating role in the public law system is all the greater.

I think that nowadays we are not so much lawyers as climate activists. It should be emphasised that the climate, as an element of the environment, does not yet have legal personality or legal capacity. It therefore requires certain groups or individuals with interdisciplinary skills to be able to represent its interests effectively¹⁴.

¹² For example: T. Bojar-Fijałkowski, *Climate challenges for health and the environment – on the need for changes to Polish spa law*, “GIS Odyssey Journal” 2023, Vol. 3 No. 1, pp. 19-29.

¹³ The author lists specialists in human rights, commercial law, environmental law, civil and criminal procedural law, public economic law, constitutional and administrative law, local government law, and maritime law. For more information, see: M.A. Young, *Climate Change and Law: a Global Challenge for Legal Education*, “The University of Queensland Law Journal” 2021, Vol. 40, No. 3, pp. 361-362.

¹⁴ T. Bojar-Fijałkowski, *O sprawną administrację publiczną dla ochrony praw i interesów środowiska oraz w środowisku*, [w:] *Prawa i interesy w ochronie środowiska. Perspektywa międzynarodowa, unijna i krajowa* (On efficient public administration for the protection of environmental rights and interests and in the environment, [in:] Rights and interests in environmental protection. Perspective of international, EU and national law), red. M. Baran, B. Iwańska, I. Przybojewska, Warszawa 2024, pp. 304-305.

Climate law and legal education in Poland

Teaching climate law requires both a broad perspective to capture its vast horizontal scale and multiple interconnections, as well as a highly specialised one to reflect its vertical layers and complex technical aspects, which were already discussed decades ago in the context of environmental law education¹⁵.

Climate law is present in Polish doctrine. However, there is a clear need for teaching and promoting climate law. Around the world, climate law lectures are becoming standard. In Poland, where unfortunately even environmental law is sometimes eliminated from study programmes, this is not the case. As the stakes of climate change continue to rise, law schools cannot ignore this topic in their course offerings. Similarly, many established areas of law can no longer be taught without reference to climate change¹⁶. Climate law is technically and normatively complex, evolving at a rapid pace and freely crossing established boundaries between academic disciplines, branches of law and levels of jurisdiction. Academics will therefore face difficult choices when designing climate law curricula. As climate law matures, its teaching tends to specialise and consolidate.

The breadth, scale and volatility of climate law argue against an exhaustive presentation of legal doctrine and technical details in climate law teaching. Familiarising students with concepts and forms of debate seem more appropriate to support students in developing the ability to continuously understand evolving climate law and its interactions with other areas of law, at least from the Anglo-American perspective, which is quite distant from the Polish reality. Similarly, experiential learning methods are more effective in preparing students for the demands of climate law practice. Priorities in climate law education will change over time as political and social changes progress. However, the ability to integrate dynamic sets of facts and principles, the ability to think critically and systemically about law, and sound judgement will remain crucial skills for future climate lawyers¹⁷.

¹⁵ Z.B. Plater, *Environmental Law and Three Economies: Navigating a Sprawling Field of Study, Practice and Societal Governance in Which Everything Is Connected to Everything Else*, "Harvard Environmental Law Review" 1999, No. 23, p. 359; J.L. Sax, *Environmental Law in the Law Schools: What We Teach and How We Feel About It*, "Environmental Law Reports" 1989, No. 19, p. 10251.

¹⁶ M. Mehling, H. van Asselt, K. Kulovesi, E. Morgera, *Teaching Climate Law: Trends, Methods and Outlook*, "Journal of Environmental Law" 2020, Vol. 32, Iss. 3, p. 419.

¹⁷ Tamže, p. 440.

Article 77 of the Environmental Protection Act¹⁸ does indeed provide for an obligation to include environmental protection and sustainable development in the core curricula for all types of schools and vocational courses. Similarly, Article 79 of this Act¹⁹ establishes an obligation for public administration bodies and institutions coordinating education and research, including universities, to incorporate environmental issues into their activities. However, in practice, these provisions are rather theoretical and certainly ineffective from the described perspective. Firstly, they are not strict or detailed and do not provide for sanctions. Secondly, they speak in general terms about the environment and its protection, which is a considerable intellectual distance from climate law. Thirdly, practice shows that Polish universities are rather reluctant to fulfil such obligations, and no education supervisory bodies in practice focus on verifying this obligation. Since this has not been achieved during the two decades this standard has been in force, it is impossible to believe that it could happen in any way with regard to climate law.

Polish universities do not have their own extensive experience in teaching climate law. However, certain mechanisms can be observed from similar processes that have taken place in the past. Ministerial standards introduced in 2002 quickly resulted in the introduction of a subject dealing with intellectual property protection into the curricula of many, if not all, fields of study. At the time, it was pointed out that curricula should include classes on intellectual property protection. Copyright and related rights, industrial property, trademark protection and patents for inventions were included in academic programmes. Initial shortages of textbooks and a certain weakness in doctrine were quickly overcome. The introduction of this subject matter into university courses definitely stimulated scientific and practical interest in intellectual property. In a relatively short time, teaching²⁰ and scientific materials were developed.

¹⁸ Act of 27 April 2001 – Environmental Protection Law (Journal of Laws 2025, item 647, as amended).

¹⁹ „Administrative bodies, institutions coordinating and managing scientific and research activities, as well as higher education institutions, scientific and research establishments, whose scope of activity covers fields of science or scientific disciplines related to environmental protection, are obliged to include research on environmental protection issues in their established programmes and in their activities, and to develop such research”.

²⁰ For example: *Prawo własności intelektualnej* (Intellectual Property Law), red. J. Sieńczyło-Chłabcz, Warszawa 2009; K. Czub, *Prawo własności intelektualnej* (Intellectual Property Law), Warszawa 2021.

In 2015, Marek Salomonowicz successfully defended, in my opinion, the thesis on the need to educate lawyers in the field of intellectual property protection²¹.

The above example suggests that the development of education in the field of climate law would be no different. Moreover, due to the general nature and importance of climate change, such a subject is more necessary in the education process than, for example, intellectual property protection. Industrial property matters mainly concern entrepreneurs. Copyright may be the subject of a wider group of authors, but it is regulated by the market and few non-professional creators will ever find themselves in a situation where they sell their economic copyright, grant a licence or need to draw up another civil law contract for the disposal of their copyright. Compared to intellectual property regulations, climate issues are definitely more important, more widespread, and affect all of us.

The issue of climate law, particularly in terms of the right to a safe climate, can be regarded as part of human rights. This perspective, supported, amongst other things, by rulings of the European Court of Human Rights²², offers an opportunity to educate about climate law, if not as a separate subject, then perhaps within the framework of human rights courses. The human rights approach to the legal protection of the climate has the potential to support the development of this law to a degree comparable to that represented by human rights in the field of environmental protection.

The role and future of climate law education

Of course, entrepreneurs running businesses have the greatest impact on the climate. However, there are millions of conscious individuals and billions of less conscious ones. The consumer's consumption decisions directly affect demand and, consequently, the behaviour of producers of goods and services. It is therefore important that awareness of climate challenges and methods of combating climate change is widespread. This is an argument in favour of promoting climate

²¹ M. Salamonowicz, *Prawo własności intelektualnej jako przedmiot na studiach prawniczych: zakres, metody i efekty akademickiego kształcenia* (Intellectual Property Law as a Subject in Legal Studies: Scope, Methods and Effects of Academic Education), „Studia Prawnoustrojowe” 2015, No. 28, pp. 123-142.

²² Cases as: Verein KlimaSeniorinnen Schweiz and Others v. Switzerland; Carême v. France and Duarte Agostinho and Others v. Portugal.

law by including it in university curricula. The postulate of teaching climate law is not an isolated one. It already features prominently in global legal doctrine²³.

Today, the need to adapt to climate change and combat it is generating unprecedented technical and technological development. Onshore wind farms, offshore wind turbines, the development of photovoltaics, the construction of nuclear power plants, and policies to reduce greenhouse gas emissions, which translate, among other things, into a reduction in coal exploitation, are just a few national examples. Each of these processes has significant economic and social consequences. Knowledge about them, as well as about the accompanying legal aspects, is necessary. After all, interesting investments in offshore wind farms would not be possible without the prior development and adoption of maritime spatial plans²⁴.

The right to a good quality environment is equated with human rights. More and more lawsuits and trials are appearing in this area. Undoubtedly, they will soon also concern the climate as an element of the environment. These will be lawsuits brought by individuals against states, but also lawsuits brought on behalf of the climate or the entire environment, at least where the movement for its empowerment is developing. For example, in Canada, the Muteshekau Shipu - Magpie River has been granted legal personality. As a result of numerous efforts to protect it, the Innu Ekuanitshit Council and the Minganie County authorities adopted a resolution recognising nine rights of the river, including the rights to natural evolution and protection, freedom from pollution and the right to sue. The care of the river has been formally entrusted to members of the Innu Ekuanitshit Council, who will act as its guardians, representing its rights. In 2014, also the Whanganui River in New Zealand was granted legal personality, which was subsequently confirmed by law in 2017. The river can appear in court proceedings and is represented by two guardians, one appointed by the government and

²³ Like: *Teaching and Learning Climate and Environmental Justice in Law Schools. Global Perspectives on Transforming the Curriculum*, eds. R. Grimes, S. Levett, R. Samaras, R. Williams, London 2026.

²⁴ More: T. Bojar-Fijałkowski, *Environment and its protection in spatial planning of Polish sea areas - selected issues*, [in:] *26th Geographic Information Systems Conference and Exhibition 'GIS ODYSSEY 2019' Conference proceedings*, eds. I. Basista, P. Cichociński, E. Dębińska, M. Gajos-Grzetic, Split - Cerklje - Kielce 2019, pp. 20-26; T. Bąkowski, *Planowanie i zagospodarowanie polskich obszarów morskich. Tematyka administracyjnoprawna* (Planning and development of Polish maritime areas. Administrative and legal issues), Gdańsk 2018.

one from the Whanganui tribe. Legal personality was granted on similar terms to a national park in New Zealand – Te Urewera²⁵.

Such actions require trained personnel who are competent not only in civil, criminal and administrative procedures, but also in matters relating to climate and climate change. Due to the completely transboundary effects of climate change, not only must actions to combat it be joint and global, but so too will be the issue of responsibility for actions or omissions in relation to climate change in the future. We can expect climate law enforcement procedures to become more detailed, including the establishment of global judicial bodies.

Climate issues are so interdisciplinary that they can and should be of interest to representatives of many fields of science. It is particularly important for lawyers dealing with this subject to be familiar with the natural, technical, economic and social aspects of climate change and methods of combating it. In view of pro-climate consumer attitudes, financial markets will also soon cease to finance activities that are not conducive to combating climate change. Organisations that fail to demonstrate effective climate action, even in the ESG non-financial reporting process, will soon be eliminated from the group of beneficiaries and cut off from sources of funding. An element of meeting these challenges should also be the active involvement of people with knowledge of climate change and climate law in the management of economic organisations. This also argues for the need to educate not only lawyers, but also economists, managers, civil servants and representatives of other professions in the field of climate law.

Today's lawyers, educated in substantive, theoretical and critical matters, should be able to refer to, understand and classify changes in the law. In this way, they can help mitigate the global problem of climate change, but also promote safe and just societies within and across national borders. Climate change is an imperative for the training of arbitrators of global destiny²⁶.

Broadly included in syllabuses and other programme documents for law, administration and related fields, the learning outcomes in the area of social competences cannot ignore climate change today. Objectives such as 'The student is able to cooperate in society', 'The student understands the challenges of the modern world and responds to them in a thoughtful manner', 'The student engages in discussions on current social and economic issues' cannot be

²⁵ More: The Conversation, www.theconversation.com/rights-for-nature-how-granting-a-river-personhood-could-help-protect-it-157117 [dostęp: 30.05.2025].

²⁶ M.A. Young, *Climate Change...*, p. 370.

achieved without knowledge of the climate, awareness of the climate change that is currently taking place and methods of adapting to it.

Conclusion

The above study allows us to draw the following conclusions and make the following proposals *de lege ferenda*:

Climate law is a set of international, EU and national legal norms aimed at preventing climate change and responding to its existing effects. It is interdisciplinary in nature, overlapping with administrative and economic law, drawing on natural and technical sciences, and using both legal and economic instruments.

Climate law should be understood as rules concerning the climate and various activities related to it or carried out in relation to it, including its protection. Climate law, on the other hand, refers more broadly to pro-climate regulations addressed to various entities whose activities have an impact on the climate and who influence it in various ways. Climate law in this sense is broadly understood as rules governing various activities aimed at the good of the climate, taking into account the climate as a value in economic activity or the daily activities of individuals. It can be described as 'climate impact law'.

The interdisciplinary nature of climate issues requires that, in addition to legal aspects, technical, social and economic issues be taken into account. In the field of law itself, climate issues are primarily addressed in environmental law, but also to a large extent in public economic law, including energy law, mining law and competition law. In addition to substantive and constitutional administrative law, climate issues are also beginning to play a significant role in financial, criminal and commercial law, as well as in procedural law. Climate law is increasingly becoming an integrating platform for public law.

Climate change also poses challenges in areas that we have not previously associated with it, such as legal education. There is no doubt that climate law should be a subject taught at university, not only in law faculties, following the example of intellectual property protection, where climate action seems to be a more important issue. Broadly defined in syllabuses and other programme documents for law, administration and related fields, the learning outcomes in the area of social competences cannot ignore climate change and methods of adaptation to it.

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