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SOCIAL SECURITY SYSTEM FOR UKRAINIAN LABOUR MIGRANTS: PROBLEMS AND DIRECTIONS OF IMPROVEMENT

After Ukraine gained independence, with the freedom of movement and economic problems of transition period, migration of Ukrainian population greatly intensified. To ensure the social protection of citizens abroad Ukraine signed several international treaties on social security. However, bilateral social security agreements have still not been signed with some of the major destination countries, including Italy and Greece. A large number of migrant workers lack proper employment contracts and legal status in the destination countries and cannot enjoy the right to social security. The existing social security agreements are ineffective due to deficiencies in the agreements and the weak implementation capacities of States. Under these conditions, Ukraine bears the main burden of rendering social benefits to migrant workers and their family members. There is an urgent need for the state to resolve the issue of social protection of migrants. Besides further negotiations on social security agreements with the major countries of destination of Ukrainian migrant workers, it is necessary to encourage participation of migrants in the voluntary pension insurance schemes in Ukraine.

Key words: labour migration, social security agreements, voluntary social insurance.

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СОЦІАЛЬНИЙ ЗАХИСТ УКРАЇНСЬКИХ ПРАЦІВНИКІВ-МІГРАНТІВ: ПРОБЛЕМИ ТА ШЛЯХИ УДОСКОНАЛЕННЯ

Після набуття незалежності завдяки запровадженню свободи пересування та під впливом економічних труднощів перехідного періоду міграція населення України значно активізувалася. Для забезпечення соціального захисту громадян за кордоном Україна підписала низку міждержавних угод у сфері соціального та пенсійного забезпечення. Разом з тим відсутні угоди з країнами, де працює значна кількість працівників-мігрантів з України, зокрема з Італією, Грецією. Частина працівників-мігрантів навіть у тих країнах, з якими укладено угоди, працюють без належного оформлення трудових відносин і не можуть скористатися правом на соціальне забезпечення. Проблеми виникають із імплементацією угод, що пов'язано як з їхнім змістом, так і вадами механізмів реалізації. За таких умов основний тягар соціальних виплат щодо трудових мігрантів та членів їхніх сімей несе Україна. Урегулювання питання соціального захисту мігрантів вимагає посиленої уваги держави. Крім подальших переговорів

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щодо укладання угод про соціальне забезпечення з основними країнами призначення українських працівників-мігрантів, необхідно заохочувати мігрантів до участі у системі добровільного соціального страхування в Україні.

Ключові слова: *трудова міграція, угоди про соціальне забезпечення, добровільне соціальне страхування.*

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СОЦИАЛЬНАЯ ЗАЩИНА УКРАИНСКИХ ТРУДЯЩИХСЯ-МИГРАНТОВ: ПРОБЛЕМЫ И ПУТИ УСОВЕРШЕНСТВОВАНИЯ

После провозглашения независимости благодаря обеспечению свободы передвижения, а также под воздействием экономических трудностей переходного периода миграция населения Украины значительно активизировалась. Для обеспечения социальной защиты граждан за границей Украина подписала ряд межгосударственных договоров в сфере социального и пенсионного обеспечения. Тем не менее, отсутствуют соглашения с рядом стран, где трудоустроено значительное число трудящихся-мигрантов из Украины, в частности с Италией, Грецией. Часть трудящихся-мигрантов даже в тех странах, с которыми заключены соглашения, работают без надлежащего оформления трудовых соглашений и не могут реализовать свое право на социальное обеспечение. Проблемы возникают с имплементацией соглашений, что связано как с их содержанием, так и недостатками механизмов реализации. Вследствие этого основное бремя социальных выплат трудовым мигрантам и членам их семей несет Украина. Урегулирование вопроса социальной защиты мигрантов требует усиленного внимания государства. В частности, кроме дальнейших переговоров о подписании соглашений о социальном страховании с основными странами назначения украинских трудящихся-мигрантов, необходимо стимулировать участие мигрантов в системе добровольного социального страхования в Украине.

Ключевые слова: *трудова міграція, угоди про соціальне забезпечення, добровільне соціальне страхування.*

Introduction. After having gained independence, Ukraine proclaimed in its Constitution the creation of the welfare state, as well as declared that an individual, his life and health, honour and dignity, inviolability and security shall be recognised as the highest social value (Article 3). The fundamental rights of a citizen include: the right for social security, particularly the right for social protection in connection with disability, loss of a breadwinner in a family, unemployment, old age, etc. These guarantees, surely, apply to the citizens of Ukraine who are migrant workers.

Besides, the state has assumed a constitutional obligation to provide care and protection to Ukrainian citizens staying abroad (Article 25) [1]. However, there are significant barriers to getting adequate access to social protection for citizens employed abroad. They are related to the peculiarities of the present-day migration process and characteristics of migrants, shortcomings and limited capacity of social protection system in Ukraine, insufficient international coordination on these issues. The relationship and interplay of these three factors complicate the realization of the rights of migrants and their families, thus contributing to the worsening of the social situation in Ukraine, which is quite tense.

Study of recent publications. Social and economic impacts of labour migration in Ukraine, the providing of the labour and social rights of migrant workers were studied by E. Libanova, O. Piatkovska, O. Pozniak, M. Romaniuk, U. Sadova. The issues of Ukrainian migrant's social security were particularly analyzed by L. Tkachenko. These studies were primarily based on evidences gained via wide-scale surveys carried out among inhabitants of Ukraine with the focus on the labour migration issues. They were conducted in 2008 and

2012 by the State Statistics Service of Ukraine. However, the conclusions regarding the existing mechanisms of social protection of migrants and assessment of their effectiveness remain relevant.

The problem addressed in this article. The article provides an overview of international treaties on social and pension protection signed by Ukraine, the opportunities for the migrant workers to participate in the national social security system, the challenges faced in this area and substantial recommendations.

Research basic results. After Ukraine gained independence, with the freedom of movement and economic problems of transition period, migration of Ukrainian population intensified to a great extent. The most numerous and socially significant migration flow was constituted by people who leave the country, looking for decent conditions of life and job. In this regard, the rights and interests of citizens living abroad, the issues of their social security have been among the priorities of the Ukrainian migration policy, which was embodied in international agreements signed with the host countries.

After the disintegration of the USSR it was urgently necessary to ensure that the social security rights for citizens who spend a part of their lives in other former Soviet republics would be recognized. In the early 1990s Ukraine signed several multilateral social security agreements within the framework of the Commonwealth of Independent States (CIS) concerning pension benefits, social assistance to families with children, and employment injury benefits. Social security benefits of migrants should be provided according to the legislation of their country of permanent residence. To examine the qualifying conditions for benefits, the insurance periods of other signatory countries are taken into account. However, the costs of social security benefits are borne entirely by the country that provides them. Mutual financial settlements are not included.

Social aspects of labour migration were represented in the Agreement on Cooperation in the Field of Labour Migration and Social Protection of Migrant Workers concluded by the CIS Member States on 15 April 1994. According to this agreement, the signatory parties are to recognize documents on education and qualification of migrant workers without legalization, avoid double income taxation, and allow for the possible transfer of assets. The agreement reaffirmed that the social security of migrant workers is provided according to the legislation of their country of employment, particularly the compensation for work accidents and occupational diseases (employment injury benefits).

The Convention on Legal Status of Migrant Workers and Members of Their Families of the CIS Member States (signed on 14 November 2008 and ratified by Ukrainian Parliament on 21 December 2011) seeks to strengthen cooperation in the field of protection of migrant workers at the CIS level. It affirms that migrant workers, including seasonal and border workers, have equal rights with respect to working conditions as the citizens of the host country. The scope of the Convention covers all migrant workers and their family members who stay legally in the country of destination.

In addition to these multilateral agreements, Ukraine signed several bilateral social security agreements with the CIS States in the 1990s (with Azerbaijan, Belarus, Georgia, Kazakhstan and Moldova). They are based on the principle of the responsibility of the country of residence.

In the first half of the 1990s Ukraine also concluded bilateral labour migration agreements with CIS Member States such as Armenia, Azerbaijan, Belarus, Moldova and the Russian Federation. These agreements provide for the recognition of documents on education and qualification without requiring that these documents be legalized, and the recognition of labour experience in one's employment record. Most of the labour migration agreements

additionally provide for compensation for work accidents and occupational diseases according to the legislation of the country where the employment occurs.

Just after the disintegration of the Soviet Union social security agreements with the CIS States helped resolve the pension provision issues facing Ukrainian citizens who worked in other former USSR countries or who resided in other former USSR countries as pensioners. However, these agreements could be effective only if the signatory countries implemented pension systems similar to those that were inherited from the Soviet period. In the 2000s, the situation changed considerably, as many countries have implemented considerable changes in their social security systems, particularly in their pension systems. The major changes include increases in the retirement age, increases in the qualifying period for pensions, and the introduction of mandatory-funded pension systems. Therefore, as the national social security systems display increasing diversification, the social security agreements concluded with the CIS – which require the country of residence to be responsible for providing social security to migrants – have gradually lost their relevance and are no longer effective instruments of social protection for migrant workers. The implementation of these agreements now faces various complications [2, c. 72]. Moreover, differences between pension systems may distort the migration process. For example, if Russia applies a lower retirement age and a shorter qualifying period than Ukraine, it could result in an increased migration outflow to Russia. In response to these situations and in line with international practice, there is a need to revise the existing social security agreements with the CIS States or to conclude new agreements based on the reciprocity principle.

As a result of the continuous expansion of labour migration, Ukraine has made an effort to conclude labour migration and social security agreements with countries outside the CIS, notably with the EU Member States. From 1993 to 1996, Ukraine signed labour migration agreements with Poland (supplemented by a protocol on seasonal employment in 2005, in 2012 new agreement with Poland was concluded), the Czech Republic, Slovakia, Lithuania, and Latvia. All of these agreements, which are almost identical in structure, provide only a general framework of bilateral cooperation. The main disadvantage of these agreements is the complexity of their application. For example, the agreement with the Czech Republic initially provided a quota of 25,000 Ukrainian workers (which was subsequently increased to 60,000), but in reality only 16,000 Ukrainians were employed in the Czech Republic in the frame of the agreement [3, p.137]. Low effectiveness of the agreements was the main reason for refusal of the Czech Republic and Slovakia to prolong them.

The labour migration agreements that Ukraine signed with Libya and Portugal in 2003 provide greater specifications. These agreements include provisions on the process of the selection of candidates, the main requirements of applicants, and the terms of employment contracts. The labour migration agreement with Spain, concluded in 2009, covers permanent workers, seasonal workers and interns. However, no one has been employed following the procedures defined by these agreements. This is mainly due to the complex governmental procedure officially required by the two countries, which both employers and migrant workers try to avoid. The migrant workers mainly use private recruitment agencies or contact foreign employers directly, for instance, via specific vacancies through their respective websites.

In the opinion of Ukrainian experts, these labour migration agreements do not effectively regulate labour migration or guarantee the rights of migrant workers. Rather, they represent a declaration of the partners' intention to develop cooperation in the field of employment. As for the right to social security, the agreements refer either to national legislation or to special bilateral social security agreements. Consequently,

social security agreements are now considered a priority instrument to achieve more concrete objectives.

That is why Ukraine always raises the issues of social security agreements in negotiations with the European countries. Ukraine ratified the European Convention on the Legal Status of Migrant Workers (1977) on 16 March 2007. It obliges the signatory States to ensure equal treatment of social security for migrant workers and their family members, and requires that these acquired rights be maintained. The Article 25 of the Agreement on Partnership and Cooperation between Ukraine and the European Communities and their Member States (1994) [4] provides that the parties should enter into social security agreements for Ukrainians who work legally in the EU. Such agreements should allow for the aggregation of the workers' insurance periods when calculating pensions, the provision of medical care, and the export of pensions.

This agreement is in effect since 1998 and should be replaced by the Association Agreement signed in 2014 [5]. By negotiating an Association Agreement between Ukraine and the EU, the parties admitted the importance of joint regulation of migration flows and related dialogue, which should be based on the principles of solidarity, mutual trust, shared responsibility and partnership (Article 16). According to Article 18 of the Agreement the existing access to employment opportunities for Ukrainian migrant workers, which is guaranteed by the Member States in line with bilateral agreements, should be further ensured and, where possible, improved. The Member States which do not have such agreements with Ukraine should explore the possibility of signing them. The Association Agreement also states that the citizens of Ukraine who are legally employed on the territory of a Member State shall be free from discrimination of any kind. Unfortunately, there is no clause stipulating the need to conclude the agreements on social insurance, as it was in the Partnership Agreement. Yet, in view of the norms on non-discrimination and the agreements on the mobility of workers, there is every reason to hope for a successful continuation of bilateral negotiations on the social protection of migrants. Moreover, the Communication from the European Commission of 30 March 2012 «The External Dimension of EU Social Security Coordination» [6] implies that the Member States will conclude bilateral agreements on social security with third countries, particularly neighboring countries, being guided by the principles set in the Association Agreement.

Ukraine has concluded nine bilateral social security agreements with EU Member States (Bulgaria, Estonia, Spain, Latvia, Lithuania, Poland, Portugal, Slovakia and the Czech Republic). The negotiations with Germany are almost finished and await final signature. However, attempts initiated by Ukraine to conclude social security agreements with Italy and Greece have not yet materialized.

These social security agreements apply to migrant workers and persons who reside permanently abroad. They cover whole branches of social security, i.e. old-age, disability and survivors' pensions, medical care, sickness and maternity, and employment injury. Some agreements (for example, those concluded with Estonia, Latvia, Lithuania and Portugal) cover unemployment insurance as well. Unlike the agreements with the CIS countries, the bilateral social security agreements with the EU Member States are based on the pro rata basis. This means that each State is responsible for its part of any insurance obligations.

The main basic principles of these agreements are following:

- equality of treatment, which means that a migrant worker should have, as far as possible, the same rights and obligations as the nationals of the destination country;
- the determination of the applicable legislation, ensuring that, by establishing the rules for determining the applicable legislation, the social security of a migrant worker is governed at any one time by the legislation of one country only;

- the maintenance of the acquired rights and provision of benefits abroad, which means that any acquired right, or right in course of acquisition, should be guaranteed to the migrant worker in one territory, even if it has been acquired in another, and that there should be no restriction on the payment, in any of the countries concerned, of benefits for which the migrant has qualified in any of the others; and,
- the maintenance of the rights in the course of acquisition, which means that where a right is conditional upon the completion of a qualifying period, account should be taken of periods served by the migrant worker in each country.

An underlying fundamental principle is reciprocity, which means that each country that is a party to the agreement undertakes to apply the same mechanisms as every other party to make social security benefits more accessible to migrant workers.

The calculation of pensions to be paid by each country is based on the insurance period accrued in its territory.

It should be noted that disability and survivors' pensions due to work-related accidents or diseases are paid by the State where the injured person was insured. Generally no insurance period is required to qualify for these benefits.

Benefits for a temporary loss of working capacity and maternity benefits are also paid by the State where the employee was located at the time of temporary incapacity for work or maternity.

Unemployment benefits are paid by the State where the person resides permanently. However, to determine one's benefit amount, the insurance periods acquired in both countries are taken into account.

It is important to note that these agreements provide for the export of benefits abroad when the beneficiary moves to another State.

These agreements are also important for those who permanently leave Ukraine. The current Ukrainian legislation still contains a provision to terminate pension payments for pensioners who permanently reside abroad unless there is an agreement with the country of residence (except for disability and survivors' pensions due to work accidents or occupational diseases). Although the Constitutional Court of Ukraine recognized this rule as unconstitutional, amendments have not yet been approved by Parliament.

Ukrainian experts have concluded that, overall, these agreements ensure the social security of Ukrainian citizens who work legally in the signatory countries, although specific difficulties still occur at the implementation stage. The social security agreements also encourage legal employment and provide incentives for migrant workers to return to Ukraine, since the citizens of Ukraine who work abroad legally are covered by the social security system of the host countries, pay the insurance premiums and under certain conditions can get social benefits when they return home. However, if bilateral agreement is absent, when they return to the home country they lose these benefits, as well as contributions to social funds abroad. This prompts some of them to continue their stay abroad, with subsequent determination to relocate for permanent residence.

The exchange of insurance records is increasingly important following the reform of the Ukrainian pension system. This reform extended the required insurance period for old-age pensions from five years to 15 years. Moreover, it extended the required insurance period for full old-age pensions from 20 years to 30 years for women and from 25 years to 35 years for men.

Despite the number of social security agreements concluded between Ukraine and the European countries, the social security coverage of Ukrainian migrants remains low. This can be explained by the following:

- Bilateral social security agreements have still not been signed with some of the major destination countries.
- A large number of migrant workers and seasonal migrant workers lack proper employment contracts and legal status in the destination countries.
- The existing social security agreements are ineffective due to deficiencies in the agreements and the weak implementation capacities of States.

According to the 2012 labour migration survey carried out by the State Statistics Service [7, p. 42], only one third migrant workers (38.7 per cent) had residence and work permits whereas one quarter (23.7 per cent) had temporary registration and 12.8 per cent had work permits. At the same time, some 16.7 per cent of migrants stayed abroad without any official status, and another 3.7 per cent had only tourist visas which of course provide no legal ground for employment abroad. In Russia and Poland every fifth migrant stayed on an unlawful legal basis (20.7 per cent and 19.2 per cent respectively). Some 8.0 of workers in Poland had only a tourist visa. Every eighth migrant in Italy (12.5 per cent) had no official status, and almost the same percentage (12.8%) entered the country with just a tourist visa.

Migrant workers working in the Czech Republic revealed the highest level of legal status with more than two-third of them (71.7 per cent) having both residence and work permits. More than half of migrants (59.1 per cent and 54.5 per cent respectively) had such a legal status in Spain and Italy, and about one-fourth of migrants had it in Poland and Russia (28.2 per cent and 23.5 per cent). The survey found no person without formalized legal status in Portugal.

As compared with the results of the labour migration survey carried out by the State Statistics Service in 2008 [8], the situation has improved, but still complicated (Fig. 1). Thereby, it is no wonder that according to the survey results in 2012 only a third (38.0%) of migrants entered into written employment agreement with foreign employers. Migrants working in private households (domestic work) are especially vulnerable. They formalize their employment arrangements only rarely (in 16.5%) with a written document. Migrants working in construction had written contracts only in 26.4% of cases [7, p. 51].

In principle, a migrant worker with an appropriate legal status is subject to national social security legislation even if social security agreement is absent. However, the legislation of some States does not provide for automatic social security coverage for all categories of migrant workers. For example, the Russian Federation provides social security coverage only for migrant workers with contracts for longer than six months. Consequently, a large number of Ukrainian workers who use visa-free entry or three-month legal stay periods in Russia and those who work on a short-term rotating basis are not covered by Russian social security.

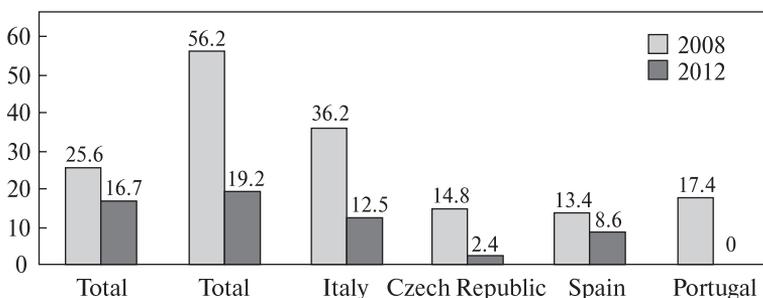


Fig. 1. Share of migrants without any official status according to the 2008 and 2012 labour migration survey carried out by the State Statistics Service of Ukraine

Source: State Statistics Service of Ukraine.

In some cases, the national social security legislation of destination countries does not fully meet the needs of migrant workers. For example, the benefit levels paid by Turkmenistan's social security system are very low in terms of UAH. Since the Unemployment Insurance Fund of Ukraine does not keep individual contribution records, migrant workers are faced with difficulty if they need to prove their insurance record, for instance if they are trying to claim unemployment benefits in their country of stay. In addition, since Ukraine has not introduced a national health insurance system, the coordination of medical benefits is outside the scope of the bilateral social security agreements.

Ukraine also faces major challenges in the implementation of social security agreements. Some agreements are not accompanied with the administrative arrangements necessary for their implementation.

Although the agreements specify which institutions are competent to implement the agreements, the institutions lack the necessary organizational structure and human resources to do so. The implementation of the agreements is further impeded by a lack of necessary skills (such as linguistic knowledge) on the part of the staff. There are also misunderstandings with regard to medical conclusions, since different health indicators are used in different countries.

Under such conditions, in addition to the initiation of negotiations on international agreements on social security, it is extremely important to enroll migrants into the national social insurance system. To facilitate this process, in 2004 the state introduced voluntary pension insurance for people living and working abroad. A simplified procedure for registration of contracts is in force since 2008 (it enables to arrange it by phone, by filling out an application on the Internet or send it via regular mail). The citizen determines the value of the contribution individually, however, its amount cannot be less than its minimum rate. Optionally, the citizen can pay not only current payments, but also pay past period's contributions for the time not covered by pension insurance (since 2004, when the corresponding system was introduced). However, there is a weak point in the mechanism of voluntary participation in the pension system: the contract cannot be entered with a person who has already returned to Ukraine and got a job. That is, migrants as they return have no possibility to pay contributions for previous years, or they should do so before they get employed in Ukraine.

Yet, the main problem is that today only few workers have taken advantage of this opportunity. According to the Pension Fund of Ukraine, only 614 citizens working abroad decided to voluntarily take part in the compulsory state pension insurance [9]. The number of people who choose to «buy» insurance period, i.e. to make payments for the previous period, is even less – 194 [10]. The main reason for this is the lack of trust in the national financial institutions, which has intensified in recent years due to problems with the return of bank deposits in Ukraine.

The fact that the migrant workers are not covered by social insurance, in addition to inability of many individuals not covered by the social insurance to benefit from their rights, results in a range of serious financial consequences for the country. First, workers lose their contributions made during the period of abroad employment. Second, the social funds of Ukraine lose a lot of money, as migrant workers either pay them in foreign countries, or do not pay them at all. At the same time, migrants who have returned to the home country and their families living in Ukraine use the health services provided by the state, receive social benefits, such as the allowance for a child birth, get the unemployment allowance, albeit in a minimal amount, and their pensions similarly to other citizens of Ukraine. All this creates an extra burden on social security funds and the state budget of Ukraine. And in the future,

if the issue of social insurance of migrant workers will not be properly regulated, the burden will increase as a result of an increase in the number of people who work abroad for years and due to the fact that more and more workers will return to Ukraine when they reach a retirement age, as they cease their career or face health problems.

Conclusions. Thus, the social protection of migrants is realized in two ways: through the social security system of the country, and through the agreements with the host states where the migrants are employed and reside, i.e. interstate (intergovernmental) agreements. Subsequently, Ukraine bears the main burden of rendering social benefits to migrant workers and their family members. As a result, and due to the economic crisis, budget imbalances within the social funds, aging of population and increasing demographic pressure on working population, there is an urgent need for the state to resolve the issue of social protection of migrants.

The following measures to improve the situation are desirable:

- Negotiate further social security agreements with the major countries of destination of Ukrainian migrant workers.
- Evaluate the effectiveness of the bilateral agreements concluded with the CIS States based on the territorial principle.
- Develop possible options for providing social security for temporary migrant workers, particularly Ukrainians employed in the Russian Federation for periods of less than six months.
- Review the implementation of existing agreements, and take the measures necessary to improve their implementation abroad and in Ukraine (e.g., through improved legislation).
- Strengthen the cooperation on data exchange between the Ukrainian ministries and the liaison bodies in Ukraine and in other countries.
- Provide technical assistance for the implementation of the existing social security agreements; in particular, strengthen the capacity of the social security institutions which are in charge of implementing social security agreements.
- Improve the work of the diplomatic and consular missions of Ukraine on the protection of migrants' rights; for example, assign staff which provides migrant workers with assistance on issues related to employment and social security within the diplomatic and consular missions of Ukraine in the main destination countries.
- For Ukrainian migrant workers in countries that have signed social security agreements with Ukraine: disseminate information on migrant workers' rights arising from labour migration and social security agreements.
- For Ukrainian workers in countries that have not yet signed social security agreements with Ukraine: encourage participation in the voluntary pension insurance schemes and distribute information on its application and benefits.
- Remove the limitations on the retrospective payment of pension contributions for migrants who have returned and found employment in Ukraine.

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