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PROBLEMATIC ISSUES OF ATTRACTING CRIMINAL RESPONSIBILITY FOR THE CRIMES AGAINST INDUSTRIAL SAFETY

Purpose. To give recommendations on improving the legal acts to regulate the relevant legal relations in the field of criminalization of encroachments related to violation of labor protection legislation.

Methodology. The study on problematic issues of prosecution for violating the requirements of labor protection legislation was carried out through the study and analysis of: legislative base of Ukraine; works of scientists in relevant fields; analysis of judicial practice (on the example of analysis of judicial practice in cases considered by courts of general jurisdiction of Dnipropetrovsk region and the Supreme Court for the last 15 years) on bringing persons to justice under Parts 1, 2 of Article 271 of the Criminal code of Ukraine “Violation of requirements of the legislation on labor protection”.

Findings. Some problems that arise in the formation of the criminal law practice of prosecuting persons accused of criminal offenses related to violations of labor legislation, which has led to damage to the health of a worker or their death, including inconsistency of criminalization violation of the severity of negative legal consequences for the perpetrators.

Originality. The work analyzes the problematic issues of bringing one to justice for violating the requirements of labor protection legislation if this violation has caused harm to the health of the victim or his death. Proposals aimed at amending and improving the current criminal and criminal procedure legislation of Ukraine are substantiated.

Practical value. The norms of the responsibility for violation of the legislation on labor protection, judicial practice of the recent years on law enforcement of the corresponding norms are investigated in the work. It is concluded that the current criminal legislation needs to be changed in terms of strengthening the responsibility for the actions provided in Part 2 of Article 271 of the Criminal Code, in the form of increasing the sanction in the form of imprisonment and mandatory application of additional punishment in the form of a ban on holding relevant positions. The results of the study have implications for practicing lawyers, legal advisers and attorneys, lawmakers, and affected workers and their families in the event of the death of a worker.

Keywords: *Constitutional rights, court, Criminal Code, labor protection, sanction, law enforcement agencies*

Introduction. According to the Constitution of Ukraine, rights and freedoms are guaranteed and cannot be revoked, privileges or restrictions based on race, political or religious preferences, sexual orientation or social origin, property or place of residence, language or any other grounds cannot be prohibited. Equal opportunities for men and women in various spheres of life are also guaranteed. However, one of the most important rights, in our opinion, is the right to work, which provides the opportunity to obtain funds through honest work, guarantees the protection of citizens' rights by the court [1].

Despite the established opinion about agrarian capacity and a powerful agro-industrial complex, since the Soviet times Ukraine as a state has had an extremely powerful industry, consisting of enterprises of the mining and metallurgical sector. It is worth noting that even given the economic crises of recent decades, the change of owners of many enterprises in Ukraine, outdated production technologies, industrial enterprises, and especially the mining and metallurgical sector remain the largest employers in Ukraine. In addition, it is not paradoxical to mention that it is due to the global Covid-19 pandemic caused by Sars-CoV-2 that the world market conditions for products manufactured by mining and metallurgical enterprises, including factories operating in the city of Kryvyi Rih, have changed, and during the pandemic, production at such enterprises has increased significantly, as well as the volume of products sold.

Moreover, in some industrialized regions and cities, such employers are also the largest taxpayers. In such cities as Kryvyi Rih and Zaporizhzhia, large industrial enterprises pro-

vide employment to generations of families who have appropriate employment relationships with enterprises. In a certain sense, such enterprises have an impact on the filling of the state budget as well as the regional and city budgets.

Certainly, the activities of powerful enterprises have their own specifics, some problems are related to environmental and land law, administrative (tax) law, and many other areas and industries, such as intellectual property law. Thus, the fact is quite logical that depending on the specifics of the enterprise, there is a specificity of violations of labor safety rules, the presence or absence of an effective system of labor safety.

Problematic issues of criminal prosecution for crimes against the safety of production, in general, are a separate topic for research, both in criminal law and related legal fields, as this problem is extremely relevant for powerful industrial regions, and in cases of injury or even the death of an employee at work, the extremely high risk of lack of effective investigation of the real causes of the tragedy, the prosecution of perpetrators and eliminate the risk of recurrence of relevant facts in the future.

It is obvious that with the occupation of certain territories of Donetsk and Luhansk regions, Ukraine lost the opportunity to ensure compliance with constitutional rights in a number of industrial enterprises geographically located in these regions, and we do not have objective information about the fate of both production and a significant number of Ukrainian. At the same time, the problem of latency of such crimes as crimes against the safety of production has been and remains extremely important.

Certainly, some scholars working in the field of law are engaged in research on the issue of latency of crimes, but unfor-

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tunately, the number of such studies is small and almost absent in this scientific area.

In addition, if the owners of large industrial enterprises are simply forced to modernize production, improve the quality, professional level of their employees, the issue of training high-quality professionals involved in occupational safety remains unsatisfactory.

It should be noted that due to incomplete law enforcement reform, loss of mentoring institute, not always high-quality training of law graduates, and the level of law enforcement (including investigators), the investigation of the above crimes is not always at the proper, high professional level.

There are also objective problems that make it difficult to investigate safety-related crimes. Such problems include the difficulty of gathering evidence, as large industrial enterprises always have their own access regime, and thus fully control the number and personal structure of persons legally staying in their territory, and the difficulty of conducting relevant investigations into compliance with labor laws and direct requirements for ensuring occupational safety, creates significant corruption components and risks, which can help the real culprits to avoid responsibility. Of course, the fact that such bodies as the State Labor Service of Ukraine are in an imperfect material and technical condition is still not in the process of reform and frequent changes of leaders, as mentioned by the authors in other works.

Literature review. Such scientists as I. D. Kopygora, M. I. Inshin, M. M. Kleparsky, S. V. Fedorets, O. Nipialidi, V. G. Hryban, O. P. Budnik, N. V. Babich, Yu. S. Bezginsky, N. V. Daraganova and others have conducted scientific studies on the mentioned topic in the field of labor, criminal and constitutional law.

A significant number of scientists have been involved in prosecuting crimes against industrial safety, as the current criminal law provides for liability for such crimes as a violation of labor protection legislation, violation of safety rules when performing high-risk work, violation of safety rules in explosive industries, violation of the rules of nuclear or radiation safety, violation of the rules relating to the safe use of industrial products or safe operation of facilities [2].

While preparing the research, we found out that scientists also studied the issues of liability for corruption offenses, independence and legal liability of judges [3], guard and protection of labor rights, labor protection and protection of workers' rights, and labor protection in certain industries.

Therefore, the problems associated with criminal prosecution for crimes against production safety at the enterprises of the mining and metallurgical complex are undoubtedly complex, because their legal nature is related to the constitutionally guaranteed rights to work, legal protection of Ukrainian citizens and workers, who are not citizens of Ukraine, but have labor relations with Ukrainian enterprises, the right to a fair trial, the problem of latency and the presence in society of such a shameful phenomenon as corruption, as well as a significant layer of other legal relations that need comprehensive regulation.

Unsolved aspects of the problem. The purpose of regulating any public relations, including those related to liability for safety violations at work, is to comply with applicable legislation, laws and regulations, and thus, the settlement of relevant legal relations, the cessation of offenses, or bringing perpetrators to justice if such offenses have occurred.

In our opinion, the most important regarding the protecting rights of employees and their families is criminal protection, as criminal liability is the strictest in Ukrainian law and has the task not only to bring perpetrators to justice but also to perform preventive measures.

However, the problem is not minor sanctions and insufficient responsibility for actions in the field of occupational safety acts for which responsibility is provided by Section X of the Criminal Code of Ukraine "Criminal offenses against in-

dustrial safety", but that the analysis of case law shows that the mechanism of protection of the relevant rights of citizens does not work, as we will prove in this study by studying the relevant Unified State Register of Court Decisions.

The mechanism for protecting employees' rights will not only be perfect, but at least operate in the absence of a real opportunity to establish violations of the law, gather evidence and bring the perpetrators to justice. In fact, the trial of criminal proceedings (cases) is in a sense the final stage of justice, which should result in bringing the perpetrator to justice (if their guilt is proven, compensation for damage that may be material or moral under the current law). However, in order for the trial itself to take place, the system of checks and balances, law enforcement agencies, public authorities must work in a coordinated and efficient manner.

In preparing the publication, the authors identified the period of fifteen years, namely: from 2019 to 2022 as the period for which the relevant case law of district courts in the city of Kryvyi Rih, Dnipropetrovsk region, with analysis of transferred and considered in relevant courts criminal cases with qualification under articles from the section X "Criminal offenses against production safety" of the Criminal code of Ukraine.

Thus, analyzing one of the most important components of the criminal offense under Article 271 of the Criminal Code of Ukraine "Violation of labor protection legislation", we can understand that this article provides for the liability of officials for violations of regulations on labor protection, if such violation caused harm to a victim or resulted in their death. Such violations are most common in Ukraine, especially at large industrial enterprises, including such cities as Kryvyi Rih. However, despite the systematic increase in the number of occupational injuries and even deaths at work in recent years, it is difficult to prove the fact of committing a criminal offense under the above article of the Criminal Code of Ukraine.

Thus, analyzing the disposition of the above mentioned article, we can conclude that its purpose is to protect the rights of employees, especially life and health, which are the highest social value in Ukraine.

During the analysis of all cases considered in courts of general jurisdiction of Dnipropetrovsk region, in the period of 2019–2022 with the help of the information from the Unified State Register of Court Decisions, it was established that the Supreme Court, after its creation has not considered any case under Article 271 of the Criminal Code of Ukraine "Violation of labor protection legislation", which undoubtedly confirms at least the fact that the judicial system is extremely slow. The courts of the first and second (appellate) instance for the above period, considered only 21 cases, but none in such industrialized regions as Dnipropetrovsk and Zaporizhzhia. Given the fact that powerful enterprises of the mining and metallurgical complex periodically have accidents at work, injure and even kill workers, this indicates the actual lack of a mechanism to prosecute for violating the requirements of labor protection legislation.

Purpose. To investigate the criminalization of violations related to violations of labor protection legislation, the results of which will be relevant to practicing lawyers, legal advisers and barristers, lawmakers, as well as affected workers and their families (in case of death), with the provision of recommendations for the improvement of regulations on the settlement of relevant legal relations.

Objectives of the study are:

- to carry out a comprehensive analysis of the effectiveness of the mechanism of criminal prosecution for violating the requirements of labor protection legislation on the basis of existing case law;
- to carry out an analysis of the regulatory framework currently in place in prosecution for violating the requirements of labor protection legislation;
- based on the analysis, to propose clear and effective changes to existing legislation to improve the effectiveness of

prosecution for violations of labor protection legislation, which should improve the existing mechanism for protecting the rights of employees, their lives and health, as well as the rights of their families in the event of the death of an employee at the enterprise.

Methods. The study on problematic issues of prosecution for violating the requirements of labor protection legislation was carried out through the study and analysis of:

- the legislative base of Ukraine;
- works by scientists in relevant fields;
- analysis of judicial practice (on the example of analysis of

judicial practice in cases considered by courts of general jurisdiction of certain regions and the Supreme Court for the period from 2019 to 2022) on bringing persons to justice under parts 1, 2 of Article 271 of the Criminal code of Ukraine “Violation of requirements of the legislation on labor protection”.

Results. Given the fact that in Ukraine, a human, his/her life and health, honor and dignity, inviolability and security are recognized as the highest social value, and the problems of outflow of labor, efficiency of law enforcement and courts are extremely relevant and do not need confirmation, we objectively believe that the need to investigate the problematic issues of criminal prosecution for crimes against occupational safety, and directly for violating the requirements of labor protection legislation is urgent.

Today, given the outdated production technologies that are still used at many enterprises of the mining and metallurgical complex in cities such as Kryvyi Rih and Zaporizhzhia, the lack of working professions (including due to their outflow to some European countries), gaps in safety at work and other objective and subjective reasons, the problem of ensuring the safety of workers, the problem of prosecuting crimes against the safety of production is only becoming more urgent. This conclusion can be made for at least two reasons: the first is that the media periodically reports on injuries and deaths of employees in the workplace, and the second is that the number of criminal proceedings after the above reports is close to zero, and the number of convictions with the use of such punishment as actual imprisonment is zero, all our cases confirm that even if the accused is found guilty, the courts apply either a suspended punishment or, in the worst case, restriction of liberty, and do not apply such punishment as imprisonment. There have been no acquittals in recent years, which is also more than strange for a state governed by the rule of law.

It is extremely interesting to study the data from the Unified State Register of Court Decisions at least on such a powerful industrial city as Kryvyi Rih, which includes such industrial giants as Central, Pivnichnyi, Pivdennyi, Inhulets Mining and Processing Plants and ArcelorMittal Kryvyi Rih, which confirm lack of relevant criminal proceedings despite a large number of industrial enterprises, as already mentioned.

It should be noted that the creation of safe living and healthy working conditions for employees is the responsibility of the employer, and if the employer neglects this obligation, they may be criminally liable under certain articles of the Criminal Code of Ukraine. However, by increasing the number of contractors, large industrial enterprises minimize the relevant legal risks, as well as create a basis for increasing the number of violations of the rights of employees, creating real risks to their health and lives.

One of such mechanisms of risk minimization is outsourcing, in which, using the established practice of other countries and holdings, large mining and processing companies get rid of particular, non-core assets, effectively eliminating not only the legal risks of occupational safety but also significant social and tax burden.

In such cases, it is extremely difficult to prosecute company officials created as a result of redundancies in industrial enterprises and the use of an outsourcing mechanism.

Certainly, there are professions and working conditions in which the use of the “outsourcing” mechanism does not harm

the interests of the worker or the interests of the state, and the presence of such negative phenomena as minimization or, according to tax (fiscal) authorities, tax evasion is minimal or absent at all. Such cases are possible in the case of using the services of external lawyers or accountants [4, 5], but the abuse of such mechanisms in terms of attracting workers, especially those associated with dangerous working conditions, creates real risks to protecting the interests of ordinary workers and interests of the country, in the context of the need to settle the relevant interests and protect the constitutional rights of citizens.

Although in the case of ensuring the rights of employees in the mining industry, it is extremely important to identify the main problems of labor protection in industry, it is necessary to understand the specifics of labor in certain conditions and mechanisms for occupational safety as a key component of decent work. Certainly, the socio-economic consequences of adverse working conditions, the impact of harmful and dangerous factors of occupational injuries on the fate of the worker and his/her family, in a sense, are unique [6], but their uniqueness is dictated by negative working conditions, namely because of this, the Criminal Code of Ukraine singles out such a crime as “Violation of the requirements of labor protection legislation”.

Presently, persons found guilty of violating the requirements of labor protection legislation may be prosecuted under Article 271 of the Criminal Code of Ukraine “Violation of the requirements of labor protection legislation”. However, the sanction of this article, in the first part, which actually enshrines the criminal liability in case of violation of current legislation on labor protection by an official of the enterprise, if it has caused harm to the victim, as the maximum penalty is only the restriction of liberty for up to two years, and the minimum penalty is a fine. According to the second part of this article, in case of death of an employee, punishment in the form of correctional labor for up to two years (minimum), or imprisonment for up to seven years, with deprivation of the right to hold certain positions or engage in relevant activities for up to two years or without it (as an additional punishment).

That is, in fact, even negative legal consequences in the form of death of the employee, provided the gathering of evi-

Table

Analysis of judicial practice based on the results of criminal cases under Article 271 of the Criminal Code of Ukraine in certain areas for the period of 2019–2022

The number of verdicts under Article 271 of the Criminal Code of Ukraine in some areas for the period of 2019–2022	
Dnipropetrovsk Oblast	0
Donetsk Oblast	3
Zaporizhzhia Oblast	0
Luhansk Oblast	1
Lviv Oblast	1
Ternopil Oblast	2
Kharkiv Oblast	2
Chernihiv Oblast	2
Sumy Oblast	3
Vinnitsia Oblast	1
Kirovohrad Oblast	1
Khmelnytsk Oblast	2
Volyn Oblast	2
Kyiv Oblast	1
Supreme Court (Rulings issued for the period of 2017–2022)	0

dence, proper investigation and fair and impartial trial, even the person whose guilt will be proved, provided not prosecuted in the past, the presence of mitigating circumstances (admission of guilt and remorse, partial compensation for damage, such as funeral expenses, etc.), with a probability close to 100 %, will not receive a penalty of a factual imprisonment.

Thus, having analyzed the open Unified State Register of Court Decisions, we have established a rather interesting picture. In the period of 2019–2022, there have been only 21 verdicts in the register across the country, according to the analysis of cases heard in the courts of first and appellate instances and created as a result of judicial reform of the Supreme Court.

However, a more meticulous analysis of specific cases confirms the authors' position that proven guilty can easily avoid the most severe punishment provided by the criminal law of Ukraine by applying Article 75 of the Criminal Code of Ukraine "Exemption from serving a probation sentence", which in fact manifests itself in the replacement of such punishment as actual imprisonment with a suspended sentence, as proper and specified, for example, in the verdict of the Sokalsk District Court of Lviv Oblast [7]. No less interesting is the case described in the verdict by the Novozavodsky District Court of Chernihiv, in which for a person found guilty of committing a crime under Part 2 of Article 271 of the Criminal Code of Ukraine, i.e. violation of labor legislation, resulting in death, such punishment as restriction of liberty for a term of five years was applied, namely restriction, not imprisonment for a crime which resulted in the death of two persons [8]!

Given also the fact that in both of the above cases the deadline for appeal has not expired at the time of writing this article, the verdicts can be appealed and changed by courts of higher instances.

Although in the same Unified State Register of Court Decisions there is a verdict of the Dniprovsky District Court of Kyiv city, in which the court in the case of a crime under Part 2 of Article 271 of the Criminal Code of Ukraine, i.e. violation of labor legislation, resulting in death, taking into account mitigating circumstances, determines the punishment for the convicted person in the form of five years of restriction of liberty, and immediately applies Article 75 of the the Criminal Code of Ukraine "Exemption from serving a probation sentence", which leads to punishment of the guilty person in the form of not even a restriction of liberty, but a suspended sentence [9].

In general, it can be concluded that the judicial practice in the criminal proceedings described above is not just imperfect, but rather mild. Moreover, the fact that the criminal proceedings for qualification under Part 2 of Article 271 of the Criminal Code of Ukraine, the courts do not even choose a measure of restraint for the accused person (and this is in cases where there is at least one victim), even at the beginning of the case may indicate failure to apply the most strict punishment in the form of imprisonment to a person suspected in the future [10].

The fact that, despite the specifics of the work of industrial facilities of the mining and metallurgical complex and the above mentioned objective problems, the Unified State Register of Court Decisions for the period from 01.01.2019 does not have criminal cases on the specified qualification in Dnipropetrovsk, Zaporizhzhia Oblasts which obviously contain the largest number of industrial giants with working conditions being far from ideal.

It is important to mention that the Supreme Court established after the relevant reform has not considered any case on the relevant qualification, which, on the one hand, is not surprising (due to the short existence of the newly created court). On the other hand, this confirms the authors' position and risks that, despite the existing problem for the state and society, as well as for particular employees and their families, the issue of a real mechanism to protect employees' rights through the functioning of an effective mechanism of criminal liability for violations of labor law, resulting in injury or death of em-

ployees, the mechanism either works extremely inefficiently or does not work at all.

Conclusions. The paper examines the compliance of norms establishing criminal liability for violation of labor protection legislation, namely violation of laws and regulations on labor protection by an official of the employer (enterprise), which has caused damage to the health of the victim (employee), or has led to their death, the preconditions for the criminalization of such acts, the effectiveness of such rules, the quality of tasks assigned to such rules, analysis of the preventive function of the relevant mechanism of legal (criminal) liability), compliance of such norms with the requirements of today, the problems of their application.

It was concluded that the current mechanism of criminal liability, designed to protect the health and lives of employees in the event of appropriate harm to them as a result of violations of labor protection legislation, is ineffective and does not meet current requirements.

Article 271 of the Criminal Code of Ukraine, which provides for liability of officials of enterprises for violations of labor protection legislation, if it has caused harm to the health of the victim or their death, needs to be improved by amending the relevant sanctions in Parts one and two.

We believe that the sanction under Part 1 should be worded as follows: "shall be punishable by restriction of liberty for up to two years, with deprivation of the right to hold certain positions or engage in certain activities for up to two years". The sanction under Part 2 should be set out in the following wording: "shall be punishable by imprisonment for a term of five to ten years, with deprivation of the right to hold certain positions for a term of five to ten years (depending on the main punishment)".

We believe that the sanction of the article should correspond to the severity of the crime committed, while also performing its preventive functions. Moreover, since the commission of a crime under Article 271 of the Criminal Code of Ukraine is possible only by an official of the enterprise, such additional punishment as "deprivation of the right to hold certain positions" must be applied to prevent the person from committing such acts in the future. Without the application of such additional punishment as "deprivation of the right to hold certain positions or engage in certain activities", a person will not be deprived of the right to work, and will be able to work in other, non-managerial positions.

At the same time, we consider it necessary to amend the Criminal Procedure Code of Ukraine to reduce the procedural time to investigate this category of cases, up to six months, instead of eighteen, as provided for in Paragraph 1 of Part 2 of Article 219 of the Criminal Procedure Code of Ukraine. That is, it is proposed to supplement Part 2 of Article 219 of the Criminal Procedure Code of Ukraine with Paragraph 3, stating it as follows: "six months in criminal proceedings initiated under Article 217 of the Criminal Code of Ukraine".

Relevant changes will increase the responsibility in the existing legal structure and make the procedural deadlines stricter for law enforcement officials.

However, based on the research already conducted, we consider it necessary to further study the gaps in existing legislation and consider amending existing legislation that will simplify and speed up the procedure for gathering evidence in relevant criminal proceedings, reduce corruption, minimize or eliminate the possibility of collusion between representatives of the company and law enforcement authorities (in order to conceal evidence of the crime), which will require significant changes in existing legislation and the adoption of new regulatory acts.

With an appropriate integrated approach, the state will be able to improve the system and efficiency of both law enforcement and judicial bodies, improve the regulation of relevant public relations and ensure the implementation of regulations of the Constitution of Ukraine.

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Проблемні питання притягнення до кримінальної відповідальності за злочини проти безпеки виробництва

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Мета. Дати рекомендації по вдосконаленню нормативно-правових актів щодо регулювання відповідних правовідносин у сфері криміналізації діянь, пов'язаних із порушенням законодавства про охорону праці.

Методика. Дослідження проблемних питань притягнення до відповідальності за порушення вимог законо-

давства про охорону праці здійснювалося через вивчення та аналіз: законодавчої бази України; робіт науковців у відповідних галузях; аналізу судової практики (на прикладі аналізу судової практики за справами, розглянутими судами загальної юрисдикції Дніпропетровської області та Верховним Судом за останні 3 роки) з питань притягнення осіб до кримінальної відповідальності за ч.ч. 1, 2 ст. 271 Кримінального кодексу України «Порушення вимог законодавства про охорону праці».

Результати. Виявлені окремі проблеми, що виникають при формуванні кримінально-правової практики притягнення до відповідальності осіб, обвинувачених у скоєнні кримінальних правопорушень, пов'язаних із порушенням законодавства про працю, що призвело до спричинення шкоди здоров'ю працівника або його загибелі, у тому числі невідповідність криміналізації вказаного правопорушення ступеню тяжкості негативних правових наслідків для винних у його скоєнні осіб.

Наукова новизна. У роботі проаналізовані проблемні питання притягнення до відповідальності за порушення вимог законодавства про охорону праці, якщо це порушення спричинило шкоду здоров'ю потерпілого або його загибель. Обґрунтовані пропозиції, метою яких є внесення змін та удосконалення діючого кримінального та кримінально-процесуального законодавства України.

Практична значимість. У роботі досліджені норми, що встановлюють відповідальність за порушення законодавства про охорону праці, судову практику останніх років із правозастосування відповідних норм. Зроблено висновок, що діюче кримінальне законодавство потребує змін у частині посилення відповідальності за діяння, передбачені ч.2 ст. 271 Кримінального кодексу України у вигляді посилення санкції у вигляді позбавлення волі та обов'язкового застосування додаткового покарання у вигляді заборони займати відповідні посади. Результати дослідження мають значення для практикуючих юристів, юрисконсультів та адвокатів, законотворчої діяльності, а також постраждалих працівників та їхніх сімей у разі загибелі працівника.

Ключові слова: Конституційні права, суд, Кримінальний кодекс, охорона праці, санкція, правоохоронні органи

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