

The difference between abduction and hostage-taking in Iran's substantive law¹

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ABSTRACT

*Hostage-taking may happen for motivations of money taking, releasing the associated member of a liberal movement, or exiting the occupational force from the nation, or releasing prisoners at the international level with aim of achieving the police force security to escape a disaster. Abduction equals the terms of abduction in Latin, enlevement in French, and Ekhtelaf in Arabic languages that are used in some cases absolutely for abduction a person and in some other cases for the abduction of a girl for illegal acts. The following definitions are stated for these terms: transferring one or several individuals from one place to another despite their wills which may be done by deception or violence (Maurice Nakhla, *Alghamus Al-Ghanuniyah Alsalasah*, p: 96). Undoubtedly, body freedom, depending on human creation as one of the divine gifts, has been mentioned since many years ago by the divine rules and the human subject laws including the constitution and ordinary laws. Obviously, this freedom is under the aegis by considering others' freedom and the social benefits and expediency. Today, legislative criminal policy to protect this freedom predicted and implemented special provisions as a guarantee for the implementation of deprivation of liberty of movement of persons in the criminal laws of countries. Many cases specified human freedom particularly freedom of body including the Universal Declaration of Human Rights and Citizenship of France (1789) and the Universal Declaration of Human Rights (1948) and the International Covenant on Civil and Political Rights (1966), and the Islamic Declaration of Human Rights (1990).*

Introduction

A definition of hostage-taking or terrorism is proposed and accepted at the international level including "any violent activities against people or properties to threaten or pressure a government or urban communities (civilians) to advance political and social goals." Hostage-taking has been proposed as an ordinary weapon for use in political disputes in the second half of the recent century. Hostage-taking is not cited today for compensation or guaranteeing of a commitment, but it is used as a tool to get scores that are not accessible by legal or diplomatic acts (for example scores of exchanging the captives, releasing the prisoners, or who are spending their sentences, withdrawal of foreign forces from a country, etc. Federal abduction law, so-called Lindbergh Law, prescribed that anyone who unlawfully detains, restricts, seduces, kidnaps, abducts, and takes far for extortion, extortion, or any other purpose against a person should be punished through sexual acts except in the case of a minor. The law says that if someone is abducted and has not returned up to 24 h, it is assumed the accuser sends him/her out of the province boundaries and this law effectively lets the government make the federal representatives search about the abduction. The recent federal laws about abduction are with wise reception, seizure, or transfer of money or property handed over as extortion from an abduction victim, or a bank robber forcing someone to partner with him to avoid being abducted. The consent can be

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used as a defense against illegal detention or abduction. Of course, the consent must not have been by threats, coercion, or fraud and this consent must have been given by a qualified administrative person. A person that cites satisfaction instead of defense is responsible to validate this consent. As we mentioned, finally this Article challenges the efficient transfer to accomplish the occurrence of abduction or not. Hiding children by one parent: In recent years, marital disputes brought many problems with the detention of children by divorced or separated parents. As it is estimated, more than 300000 children are abducted by their family members. The phrase "hiding or detaining children by one of the parents is now done when one of the parents detain or hide the child intentionally. In 1980, Congress passed the Parental Abduction Act. The federal law was proposed to prevent the court's conflicts on children and the judicial record for each state law which includes the unified competence of children with the main goal of reducing the motivation to hide or retain children by parents. In common law, abducting or carrying a person from his/her country to another country by force is taking him/her illegally from a state or country without his/her satisfaction. In American law, the act of sending the victim to foreign countries is not the essential element of the crime, and the forced entering of a person despite his/her will is the main element of abduction. In common law, abduction is considered a crime but is not considered a crime in new laws. When a person is accused of the abduction that transfer another person illegally to another place from the workplace or residence or any other place he/she exists, or isolate a person for a significant period for the aims of a) taking ransom or reward or use as a cover or abduction; b) facilitating the commission of a crime or subsequent escape; c) imposing physical hurt or intimidating a victim or someone else; d) interrupting the governmental or political acts. The illegal imprisonment or abduction developed the recognition of the need to protect the freedom of movement of common law and misdemeanor victims. Illegal imprisonment includes limiting a person without his/her will while abduction includes aggressive abduction and taking a person to another country.

The difference between abduction and hostage-taking

Abduction means taking the freedom of a person without his/her will and with illegal intention by moving from one place to another. Abduction of a person is one of the cases of detention in the general sense, which may lead to detention in a specific sense and occurs as soon as deprivation of liberty, and this deprivation of liberty is the nature of the abduction crime. Therefore, it has in common with the imprisonment and illegal abduction crimes of substantive law 583 of Islamic punishment law. Deprivation of liberty is subject to substantive law 583 of Islamic punishment law of illegal detention or imprisonment and ordinary concealment in the absence of the necessary conditions for the abduction crime. Abduction means the transfer of a person from one place to another without his or her consent by force, threat, or deception which is deprivation of liberty. Freedom of body is defined as "when a person can travel from any point in the state to another place or exit the country, turn back without detention and stay safe. The result of this freedom is the abolition of slavery and quasi-slavery, the abolition of unemployment, the prohibition of detention and imprisonment without the authorization of persons." (Mohammad Jafari Langerudi, terminology of law, freedom of body). The expression of hostage-taking is a slang term that has different meanings. Sometimes it refers to a case in which the perpetrator takes possession of a person or persons and demands concessions for their release. In these cases, the term of detention and claim cannot be considered abduction unless the pillars of abduction crime occurred. However, hostage-taking is sometimes used equivalent to the term abduction. For example, if a person enters a house with a weapon and takes its habitants' hostage and conditions their freedom depends on the fulfillment of their demands and threatens to kill the hostages and they do not obey, the act may lead to illegal detention or threat of murder. Hostage-taking is a crime that is strongly influenced by public opinion because its public fear is significant than other crimes.

The intensifying cases to punish abduction

Now we compare this subject to the legal article of the punishment law for abductors" Article 1: "An abductor shall be sentenced to two to ten years of second-degree criminal imprisonment who kidnaps or hides a person to solicit money or property, or for revenge, or any other purpose, violence, threat, trickery, or in any other way. The punishment for the perpetrator will be first-degree criminal imprisonment of three to fifteen if the victim is younger than 15." The provisions of this article are stated in Article 621 of the Islamic Penal Code and as a result, there are no differences in the content of these two articles because it is obsolete and the differences in terms (such as the meaning of abuse) are not mentioned in Article 621.

Article 2: "the punishment is hanging if the victim is younger than 15 and dies or disappears for abduction or concealment or injury, or if he/she suffers physical or mental damage leading permanent illness or dementia or loss of one of the senses or disability of one organ of the body." As article 621 says "he/she will be sentenced to that crime if it is committed", there are ambiguities in the abolishment of this article by Islamic penal code of article 621. This term is applicable and includes the crime of murder and physical or mental injury or permanent illness or dementia or loss

of one of the senses or disability of one of the main organs of the body. As if it is intentional, it will face punishment and if it is not intentional or the intention is rejected, blood money should be paid and the punishment mentioned in Articles 621 and 614 of the Islamic Penal Code may be applied. However, this claim is wrong because first, the hanging penalty and retribution are two different punishments, one of which has a limit and the other has a discretionary aspect, and one of which is forgivable and the other is unforgivable. In addition, in this case, if a person abducts another person and intentionally kills him, his punishment is retribution, but if the intentionality of the murder is not known, but there is a causal link between the abduction and the murder, he is sentenced to death. Second, punishment for imposing injuries, mentioned in Article 2, is never hanging or retribution according to the provisions of the Islamic Penal Code, therefore Article 2 has specifically stated it and there is no reason to abrogate it. Third, Article 621 does not refer to the disappearance of a criminal and there are no other special provisions in this regard. Therefore, there is no conflict between these two Articles. Of course, Article 338 of the Islamic Penal Code states a similar case which is not in our topic. It says "If a person has been taken out of his house at night and disappears, the inviter is the guarantor of his blood money, unless he proves that someone else killed him, and also if it is proved that nothing is the responsibility of the inviter to normal death or coercive causes in the past." The legal documents of this Article are based on the narrations of Imams and anecdote of jurists by which they issued fatwas, but some also consider the inviter responsible if he/she has a relationship of hostility and enmity with the victim against him/her. Fourth, the application of Article 2 also includes unintentional murder, i.e. unintentional murder is also subject to the death penalty, but the punishment of retribution is applied only for intentional murder. It may be said that this punishment was applicable when there was no retribution, but this claim is rejected because even at that time the General Penal Code had established the hanging penalty only for premeditated murder and premeditated murder, and the mere realization of the causal relationship was not enough. Fifth, Article 2 states that the mere establishment of a causal relationship between abduction and the death of a victim is sufficient to impose the hanging penalty, but the punishment of retribution has certain conditions, which must be also provided. For example, the killer should not be the father of the victim, while there are no such conditions here. For example, if the abducted person has heart disease and tells this to the abductor and notices the danger of his stroke, but the abductor does not pay attention to it and the victim suffers a stroke and dies for the fear, then this death is known caused by abduction. However, if an abducted person commits suicide to escape the threat of murder, or to escape from the abductors and die from a fall from a height, abduction cannot be considered the cause of this death and murder. If an abducted person jumps out of a car to escape the abductors and dies, his or her murder is not attributable to the abduction.

Article 3: "If the insane person is younger than 15 and he has been sodomized or insulted, the punishment for the perpetrator is permanent imprisonment, and if the insane person is younger than 12, the punishment is the death penalty." There are specific provisions for hudud crimes in the Islamic penal code if the meaning of sodomy here is the same as the meaning of the Shari'a term (in the case of the mentioned man in the form of penetration and extortion) and if the meaning of insulting honor is adultery, it means the Shari'a term. But intercrural sex is not execution but a hundred lashes (Article 121 of the Islamic Penal Code) and the meaning of insulting honor if it is an illegitimate relationship or an act contrary to chastity such as admission or incest, the punishment is not death or murder or stoning, but up to 99 lashes (Article 637 of the Islamic Penal Code). Therefore, in such cases, the question arises as to whether he should be sentenced to death or life imprisonment, or whether he should be sentenced to severe or canonical punishments based on Article 3. "Committing other crimes will also be punished for those crimes." It may be claimed that the commission of sodomy and desecration of honor, whenever it is committed through abduction and the age of the victim is less than twelve or fifteen years, is subject to Article 3, and Article 3 allocates the general provisions of sodomy and adultery and has no problem to allocate the initial specific and delated popular. This claim is not acceptable considering that the Islamic legislator has not made a distinction between different forms of sodomy, but the general rules of sodomy and adultery include the case mentioned in Article 3 abrogates it. The abductor may have a specific intent for his/her act, but she/he is arrested before committing the crime. For example, she/he wants to commit sodomy and is arrested when in its beginning.

The appearance of Article 621 and the phrase "committing other crimes" indicate that the rules of multiple offenses apply here as well, and if the initiation operation is punishable in that offense, the punishment will be applied, but the opposite was accepted by the Supreme Court in its insistent decision No. 172 in the date of 2/7/1969 which he has issued in this regard: "The criminal court considered the abduction of a single child and hiding him/her under a duvet as an example of Article 207 and Article 20 of the General Penal Code if the title of committing a crime of sodomy by rape is not valid for acts attributed to the accused in the established quality by the court. In addition, based on Article 209 of the General Penal Code, which recognizes the abduction of a child with the intent to act against chastity as an independent crime, the accused offense is based on the recognition of evidence from the examples of the said article." This verdict must be interpreted following the rules in force at the time. Apparently, "perpetrator" in Article 3 means

the same abductor who commits sodomy or rape, so if a person other than the abductor commits sodomy or desecration of honor, she will have special sentences for these two crimes.

Article 4: "The punishment for the perpetrator is permanent imprisonment if the victim is over 15 or older and dies or disappears due to abduction or concealment or injuries, the punishment is the death penalty, and if he is physically or mentally injured that leads to permanent illness or dementia or loss of one of them. The senses are either the failure of one of the main organs of his body or he has been sodomized or insulted with honor." The main difference between Article 4 and Article 621 is that Article 621 does not refer to the disappearance of an insane person. Therefore, Article 4 remains valid in this regard, and Article 338 of the Islamic Penal Code does not seem to govern this. This is because inviting into the home is not necessarily lead to abduction. The same things as stated in Articles 2 and 3 can also be stated here in the case of sodomy or adultery with an abducted person or death resulting from abduction or concealment or physical and psychological injuries. These include the punishment for these crimes is not applied to the perpetrator and the abductor has no responsibility in this regard and the simple abduction punishment is applied to him when a person other than the abductor imposes physical or mental harm on the victim or causes his death.

Article 5: "If the victim is imposed to physical or dignity damage and is younger than 15, the punishment for the perpetrator is permanent imprisonment, and if he/she is 15 or older, the punishment for the first-degree criminal imprisonment is from three to fifteen years." Imposing the physical or mental damage to the victim is stated in Article 621, but no difference was indicated about the age. Therefore, it may be said that when a victim is younger than 15, the imposed physical or moral damages is the punishment for the perpetrator under Article 5 is life imprisonment and this case is not covered by Article 621, because socially the damage to the victim or age is not mentioned and it was stated in a way as if one of these two factors happens, this probability is justifiable but is non-probable to have been mentioned by the legislator.

Article 6: "The disappearance of the victim against the death sentence will not be carried out until it is established that the victim has died as a result of the crime committed and the convict remains in custody.

And if, after the issuance of a final verdict, the evidence is found that the victim is alive, a retrial will be held." This sentence does not exist in Article 621 of the Islamic Penal Code. This article will remain valid if we consider the death sentence possible when the victim is missed.

Article 7: "Whoever commits the acts mentioned in Article 1 by another shall be sentenced to the same punishment as the director of the crime, and in this case, the order of mitigation of punishment shall be the same as that prescribed for the director." The provisions of this article are stated in Article 621: (personally or by another) but whenever the punishment or special provisions mentioned in the law of aggravation of punishment of abductors are applied, it will also be applied to the director, and the imposition of an abduction penalty on the perpetrator does not disclaim the steward's responsibility. Therefore, who helped to commit abduction shall be sentenced to the punishment of abduction unless there are grounds for dismissal of criminal liability such as forcing or forcing another to abduct a person, in which case Article 54 of the Penal Code According to Islam, punishment will only be for the reluctant.

Article 8: "The court can reduce the punishment of the perpetrator by up to two degrees if the perpetrator hands over the victim to someone or the judicial officers before arrest or provides the reasons for her surrender. In addition, the court can reduce only one degree of punishment if the perpetrator surrenders the victim before the final verdict is issued, or provides the grounds for surrender, or if the private plaintiff pardons." This article is applicable in cases where the law of aggravation of punishment is applied, but it cannot be applied in the case of retribution or blood money, or canonical punishment; however, the general provisions of the above crimes must be applied. Therefore, if the injury to the victim leads to a permanent illness and the perpetrator is handed over to the judicial officers and the court wants to rule according to Article 2 of the Law on Intensification of Punishment, it can reduce the punishment to the amount provided in this article. Moreover, it is argued that mitigation of the penalty for abduction is subject to the specific provisions of Article 8. Thus, the general provisions of Article 22 of the Islamic Penal Code apply, but this claim does not seem very logical. The private plaintiff in the abduction case is usually the person who was abducted unless he or she is absent, in which case his or her guardian or trustee will be the private plaintiff's representative. If we consider the victim against the heir as a private plaintiff, the consent of one or more persons is sufficient, and this is true of the application of Article 277 of the Code of Criminal Procedure. However, there are several opposite ideas.

Article 9: "If the perpetrator of the crimes mentioned in this law is between 15-18 years old, the court can sentence her/him to up to fifteen years imprisonment by Article 33 of the General Penal Code." This article is outdated under the general provisions on criminal liability. However, it said that the legislature enacted this article when there were specific provisions on the age of the offender for criminal liability. Thus, Article 9 is a special provision that is only used for abduction. . Although this claim is worth considering, since considering that the age of responsibility and its regulations have undergone fundamental changes after the adoption of the Islamic Penal Code, the belief in the obsolescence of this article seems more justified.

Article 10: “The Ministry of Justice is authorized to transfer those sentenced to death or imprisonment to a correctional facility whose are older than 18 at the time of execution of the sentence or during it to serve the full or remaining term of the sentence to public prisons.”

Article 11: “If the punishment for the acts mentioned in Article 1 of this law is prescribed by other laws, the perpetrator will be sentenced to severe punishment.” Both of these articles are not currently used and are among the copied Article.”

Intensifying factors for abduction punishment

Article 621 of the Islamic Penal Code lists four factors as legal reasons for intensifying factors for abduction punishment and a brief explanation of these causes would not be useless: if victim is younger than 15, the age of puberty according to Article 1210 of the Civil Code is nine full lunar years for a girl and fifteen full lunar years for a boy, but here the year is a solar year and there is no difference between a boy and a girl. Despite the fact that our legislator made changes in the age of puberty after the victory of the revolution, the age of the abducted person is still limited to the same 15-year criterion as provided in the law on Intensifying factors for abduction punishment, and it seems that the age of puberty has no effect here. however, the important thing is victim to be in the proper age with high vulnerability because the legislator knows the young age as one of the intensifying factors for abduction punishment that the young person need more support, and his/her abduction imposes many damages on him/her. Moreover, young people are deceived sooner, so they need more support.

A) Vehicle abduction: A vehicle is more likely to be diverted by a motor vehicle, but it also applies to non-motorized vehicles such as bicycles, and the legislature appears to be referring to vehicles that facilitate the crime of abduction. Although, a vehicle such as a tractor is also included because abduction by a vehicle is the most severe cause of punishment that committing a crime in this way is both easier and causes more terror and the possibility of the victim escapes is less.

B) Physical damage to the victim: physical injury, although manifested in physical injury, apparently includes psychological damage, too. The imposed damage to the victim is sometimes due to the abduction operation, such as the victim's resistance against abduction operation so gets damaged. Moreover, sometimes the abductor, to harass the victim, imposes damage on her/him, which includes the appearance of the Article encompasses all these forms, but it should be noted that there must be a causal relationship between the abduction and the damage. Therefore, if a victim suicide in its hiding place or throw him/herself from the height, this factor will not be intensified. However, if he/she gets harms by the abduction or malnutrition, it will intensify the punishment.

C) Damaging the victim's reputation: the reputation damage means the victim's reputation is damaged and this includes all crimes of raping, kissing, mating, sexuality, and intercrural sex. However, merely insulting statements or inviting to the above crimes cannot be considered damage to dignity, and this reputation damage is assumed in cases that the victim is a beautiful little boy or girl. However, this damage to the victim should be proved in other cases. The mental damage is usually tied to the physical damage.

Starting abduction

Note of Article 621 on the commencement of abduction provides that “the punishment to start abduction is 3-5 years sentence.” The start of abduction is the function of the related general rules to start the other crimes and only several notes are sufficient as follows:

First- according to the note, the start of abduction is not punishable because hiding is a criminal title that is different from abduction and maybe the legislator did not intentionally state the beginning of hiding, because the crime of hiding is an absolute crime that ends immediately after the start and crimes id completely accomplished. However, this possibility can be ruled out because starting to hide without leading to concealment is conceivable as if one person were trying to hide another and was locking the door to be arrested. In addition, if we consider the crime of concealment as a continuous crime, the initial moments of concealment will be considered as the beginning of concealment, because it will take a relatively long time for this crime to be fully accomplished. Furthermore, this probability is weak that the legislator used the phrase “start in abduction” to start to hide. Although, there are several observing notes to this Article that refer to both crimes because the verdict of such heavy punishments needs to be explicit by the legislator.

Second, the crime of abduction may occur suddenly and unintentionally, such as when a driver picks up a passenger and takes him/her to his/her destination for a while and is informed in the middle of the journey that the passenger has a large amount of money with him/her, and then here he decides to abduct him. Although, he/she does not express his intention up to arrive at the empty place and express his intention. Now, which of these steps should be considered the beginning of an abduction? The criterion for detecting the onset of abduction is the beginning of a material operation (objective theory), i.e. the abductor initiates an operation that leads directly to the abduction of

another, and these actions usually indicate his intention, but mere intention cannot be used as a criterion. Therefore, if a person intends to abduct a child to gain his trust, buys him chocolates and starts talking to him, and walks with him for a while, this operation cannot be considered the start of abduction but the operation. It is preliminary, but he/she starts to abduct as soon as he/she takes his/her hand to get in the car and take it. In addition, if the father of the child arrives and takes the child away from him, he will be subject to the note of Article 621. He is going to get in the car with his father and go some way to the child's destination and be arrested at this time.

Third, a person who has abducted another does not affect her/his criminal responsibility if she/he repents and releases the victim, but if she/he voluntarily leaves the abduction after starting, she will be subject to the second note of Article 41 of the Islamic Penal Code. "When a person starts a crime, intentionally leaves it, and the act is crime, he/she will get discount in punishment."

The legal element of the crime of abduction or hiding the abducted person is the subject of Articles 621 or 631 of the Islamic Penal Code and various laws as follows: abduction in the specific sense of the word: Article 621 Islamic Penal Code. "Anyone abducts or hides a person to solicit money or property, or seek revenge, for any other purpose by force or threat or deceit, or in any other way shall be imprisoned for 5-15 years." If the victim is younger than 15, or abduction is carried out by vehicles, or if the victim is injured physically or reputational, the perpetrator will be sentenced to the maximum punishment, and if other crimes are committed, he will be sentenced to the same crime."

Note of Article 621 prescribes starting to abduction punishment as 3-5 years of imprisonment.

According to Article 631 of the Islamic Penal Code about baby abduction, exchange, or hiding, "who abducts, hides, or gives the newly born child to another woman who is not the child main mother is sentenced to 6 months to 3 years. If it is proved that the mentioned child died, the perpetrator will be fined one hundred thousand to five hundred thousand Rial cash." A newly-born baby is a human being to whom a person's name applies. Therefore, the crime of abduction has taken place here, and if Article 631 had not been specifically stated, it would have been subject to Article 621. It can be stated about the differences between Articles 621 and 631 that Article 631 observes the cases of the newly-born baby who was abducted to raise it, gives it to another person to raise it, or raise it as his/her child such as a person who bore a girl baby and exchange the bracelet in the hospital with the boy baby. Thus if this difference is correct, it should be stated that if the perpetrator abducts a child for extortion or any other purpose, he/she will be subject to Article 621, and this possibility does not appear from Article 631 but is a justifiable possibility (Abbas Zeraat, *Sharh Islamic Penal Code, canonicals*, vol. 2, p. 125).

Abducting the Iranian: the US Government's Intensified Counter-Terrorism Act, passed on 1/11/1989 specifically provides for the abduction of Iranian nationals abroad: "the united Article says the US president is responsible to cope with the American government to have essential acts to arrest and punish the American and their direct and indirect agents who have been convicted in Iranian courts. Abduction of persons under various laws: Articles 195, 20, 203, and 209 of the Penal Code were previously used for the crime of abduction which has been repealed according to Article 729 of the amendment of the Penal Code (official newspaper 15525 on 16/8/1998). Despite this Article, the Law on the intensification of punishment for violating drivers, approved in 1974 and 1956, remains valid in cases that have not been implicitly abrogated with the approval of Articles 621 and 623 of the Penal Code.

The competence of jurisdiction about the abduction and hostage-taking crimes

The competence of jurisdiction to the mentioned crimes handed over to the General Criminal Court according to the principles after investigation and investigation in the prosecutor's office and issuance of a conviction. Of course, if the crimes are politically motivated, they may be tried in the provincial criminal court based on the case type. Of course, all the charges of the mentioned persons will be tried in the provincial criminal court because of the importance of their position, and if these people commit the mentioned crimes, the criminal court of the province will try them according to the principle of personal jurisdiction, according to the note of Article 4 of the Law Amending the Law on the Establishment of Public and Revolutionary Courts, approved in 2002, known as the Law on the Revival of the Prosecutor's Office.

The dealing manner of abduction and hostage-taking crimes

Abduction and hostage-taking crimes are the ones that have both private and public aspects and disrupt the security in society. Therefore, forgiving the private plaintiff about these crimes does not prevent the perpetrator from being prosecuted, but forgiving the plaintiff, will be one of the reasons for the reduced qualities in Article 22 of the Islamic penal Code while issuing a verdict. If the plaintiff dismisses his/her complaint, he/she could require the court for the definite verdict to reconsider the sentence based on the return of the complaint. In this court, the court will consider the request of the convict in an extraordinary time and reduces the punishment if necessary within the limits of the law. This verdict is final (Article 277 of the Code of Civil Procedure and the Revolution in Criminal Affairs). How to deal in court should be in public and non-public dealing is exceptional. The non-public cases are enumerated in law.

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