COMPENSATION FOR NON-CONTRACTUAL DAMAGES IN THE ISLAMIC LAW OF IRAN

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Abstract. The methods of compensation in civil liability, which are the methods of fulfilling the obligations of the subject, are determined on the basis of civil liability objectives. The objectives are to compensate for damage, to obtain the satisfaction of the injured person and to restore his previous position. Since the authenticity of these goals is different in legal systems, their methods of supplying are not the same. These are in general objective compensation or restitution of the previous situation which, in various forms, the material compensation (rejection of property, the expropriation of property, the issue of seizure, restoration, elimination of the source of harm, and the inclusion of apologies and rejections in public journals or collection of books, movies, CDs, etc. The present paper dealt with compensation for Iranian law and jurisprudence. the author tried to find answers the question of how do damages for non-observance of the contract apply to Islamic law and Islamic jurisprudence?

Keywords: Compensation, Contract, Law, Islamic jurisprudence.

Introduction. In Iranian law, there are two laws in the area of compensation for property, one civil law in the chapter on usurpation, loss, recruitment, and the other, Article 3 of the Civil Liability Act. The rules of civil law have created traditional rules that may in practice provide problems for prosecutors. However, Article 3 of the Civil Liability Law has given more authority to judges and the final choice of the way compensation has been paid to the court has considered the judicial procedure for paying the money. In Islamic jurisprudence, including the Imamiyah and the public, the rules of compensation for damages in the property sector have been investigated mainly in the field of usurpation and loss and conspiracy. In jurisprudential sources, there are no distinctions between waste and seizure in terms of compensation. Except that it is not discussed in the discussion of waste and deception. Except rare cases, which have not been completely eroded, but have been defective and defective.

1. Iranian law

In Iranian law, there are two laws in the area of compensation for property, one civil law in the chapter on usurpation, loss, recruitment, and the other, Article 3 of the Civil Liability Act. The rules of civil law have created traditional rules that may in practice provide problems for prosecutors. However, Article 3 of the Civil Liability Law has given more authority to judges and the final choice of the way compensation has been paid to the court has considered the judicial procedure for paying the money. Article 3 of the Civil Liability Law states that "the court shall determine the amount and manner of compensation for it, according to the circumstances of the case, it shall not determine the compensation in the form of a pension, unless it owes the necessary security for payment of the payment, "The law of civil liability was approved after the civil code, and this article, apparently, has given the judge the right to choose the method of compensation, regardless of the provisions of civil law. It is apparent from the appearance of the material that the judge has absolute discretion in choosing the method of compensation. So what if the judge has such a right, what is the law of civil law? Can the judge abandon the provisions of the civil law to take into account these rules and to waive the rules if justice and fairness require it?

Dr. Nasser Katouzian believes that the judge can only ignore the civil law and the rules therein if there are legitimate reasons and do not find his or her magistrate in this way. Although the judge, although pursuant to Article 3 of the Civil Liability Law, has the power to compensate for the determination of quality, it must, in accordance with other laws and rules of civil law, apply in a lawful manner, since civil law is a specific regulation of civil liability law. In cases where civil liability is specified in the way of compensation, the student cannot depart from it. For example, in a usurpation, when there is the same wealth, the judge cannot order the payment of the price, but if there is a valid reason, justice and fairness requires that the judge gave his discretion to the judge to waive the provisions of civil law, for example, if the rejection would be responsible for paying compensation or installing a payment.

2. The Calculation Method of Damage and Its Amount in Usurpation

In the context of the usurpation of civil law, two methods of objective and alternative compensation are foreseen and explicitly give priority to objective compensation. Article 311 of the Civil Code provides: "The usurper must reject the property altogether to its owner, and if it is lost, it should give it as its price or price, and if it is not possible to deny it for any other reason, it should be turned over."

Given the above, it is clear that in the issue of usurpation of civil law, objective compensation has been raised as the principle and the equivalent of an exception is only used if it is impossible to reject it objectively. In other words, these two methods are not in the same direction and the usurpers are not the choice of one of those two powers, but if possible, the rejection of the same is required to reject it. Conversely, as long as it is the same, the landlord can also become a demand. Of course, this is possible in this regard, because the above rule is where there is no complication. Because under Article 313 of the Civil Code it is explicitly accepted compromise.

2.1. The Rejection of the Same property

According to the first part of Article 311 of the Civil Code: "The usurper must give back the property of the owner equally." This is an absolute duty, and except in very exceptional cases, it must be followed, so the difficulty of rejecting, defeating and defacing it, causing damage to the usurper, and prohibiting the deal, is not rejected. Even some lawyers, including Seyyed Hassan Emami stated that it would not be possible to exclude the loss of the same money. The judicial authority confirms the above. Among the decree No. 1014 of 23/4/1317, the fourth branch of the Supreme Court of the country is as follows: "According to article 311 of the civic law, the usurp must give back a property in its entirety unless it is lost and the usurper's refusal to surrender sufficient for issuance, the warrant is not cost-reflective and is a violation. " Article 313 of the Civil Code, in the completion of the decree provided for in Article 311, states: "Whenever a person builds a building in another state on the ground with his own interests, or if a tree is planted without the permission of the landlord, the owner of the material or tree can be tin or ask for it unless they get paid for it. " It is clear that according to this article, it is difficult and impossible not to deny it, albeit because of its use in the building, and also to the detriment of the usurper, which is not an obstacle.

2.2. False Payment

"In other words, the acquisition of that property in terms of its nature and traits and characteristics." This is a parable in the form of a parable, and at a price, it can be said that the exchange is a parable or price. Article 311 of the Civil Code has raised the issue of fake payment in two ways: first, where the lost property has been lost, and where the lost property is not lost, it is forcibly rejected. It seems that the property is stolen or falls into the sea, which under normal circumstances is not possible to repay. The repayment paid in this case is known as the "alternate". Article 311 stipulates in this regard: " if the same thing is lost, s/he must give the price of it, like it or its price, and if it is not possible to deny it for any other reason, it should be turned over".

2.2. Fake Payments Are Exchanged in the Event of a Loss of Equity and the Calculation of Losses in Terms of Location and Time

If the property is destroyed, the usurper must pay for the property as if it were a gift and pay the price if it is prepayment. The usurper cannot afford the price, and vice versa. The owner cannot claim the price if it is a relative, and vice versa, unless the parties are concerned. The primacy of pricing, from a legal point of view, is that paying it more appropriately compensates for the loss suffered. Because the main purpose of compensating for the loss is that the injured person is in a situation before the occurrence of a harmful act. Obviously, it's better than this. In the case of the parable and the price, it is important to note a few points: first, although the first duty of the usurpers in the forms of payment is like, it is sometimes like a rarity. It's like selling the entire edition of a book, or sometimes as it is, but it comes from taxes.

It seems like a certain amount of money will be discredited. In these cases, the usurper must pay the price and act in accordance with Article 312, which states: "Whenever the property is invoiced and not found like it, the usurper must give the price during the action, and if he is present and has been taxed, he must paythe final price."

In justifying this sentence, they have said that after the loss of a sample, the usurper is engaged in the same way and until it is undone, it is paralyzed, but at the time of doing it, because it is not found, the price of the same time should not be paid, and where It has fallen into disrepair and is costing the usurer at the moment. The payment of the price in action and the latest price, in cases when compared with the day of usurp, is in conflict with the purpose of compensation, which is the same as the return and restoration of the former situation. So some lawyers have been paying the highest prices since the day of usurpation to the day they were offered. Which is, of course, in conflict with Article 312. It seems that this depreciation could be imposed on usurpers.

The second point is that if the lost object is damaged and the price of the day of usurp is different from the day and day,how much should be paid? In response to this question in jurisprudence, there are different views that will be mentioned in the next section, but civil law is silent about this. Some lawyers, according to Article 312, consider the price of payment. Some people count on the price of wasting days with the argument that they are busy at the time of the toll on the usurper. It seems to me, firstly, that the criterion of Article 312 is devoted to parable. Because after the loss, it is given over to the dump and is deployed for a moment, it may also reduce prices. In this case, is the price of the day open?

The second comment also suggests that the price of the day might be lower than the price of the day. So, if we say that the difference between the price of the attacker and the usurper is not correct, it will not be true. The minimum usurper causes this deprivation and should be accountable to cause. On the whole, it should be said that for the following reasons, the price of the day of payment has to be considered: First, the spirit of the civil law provisions on usurpation is that even the loss of all damages would be compensated for and compensated for the rest of the situation.

Second, price reductions are unlikely, considering all the current economic conditions in the present day, to be rare, however, if the price falls, it can be said that the usurper in cause is responsible for the price cut. However, if the property is taken to another place and lost in that place, What price should be paid if the price of the place differs from the place of usurpation? Some jurists consider the price of destroyed object to be a standard. Because there is a lot of usurper at the price. This opinion can be criticized where the cost of wasting is less, because it does not properly compensate the owner for compensation. Therefore, some lawyers such as Nasser Katouzian has suggested the price of the place of the usurpation. But

if the price is higher in the destroying place, there is no doubt. Because the real damage refers to the owner of the price of the place of the usurp. But in confirmation of this view, it has been said that the usurper's guarantor is also in the spotlight at the place of the usurpation, and the price of the place of the usurp is the guarantor. Additionally, if the usurper moves the property to another place that has a higher price, the owner's advantage is not hindered. It seems that as the main rule in all cases, both in terms of time and place, it is necessary to estimate the price to better compensate the owner; because, firstly, rational justification and the basis of priority such as the price of content is the same. Secondly, what has been said in Article 3 of the Civil Liability Act, which is based on the Court's ability to determine the amount and method of compensation, can be cited in the present discussion. The objection that civil liability law cannot be invoked is usable because the civil liability law cannot be invoked as a result of usurpation because the civil liability law complies with the provisions of civil law in relation to the punishment. Therefore, in cases where the civil code is disabled, you can refer to the provisions of the Civil Liability Act.

2.4. Payment for Goods in Cases where the Same is Prohibited (Alternative)

The last part of Article 311 stipulates that " if it is not possible to deny it for another reason, it should be changed", is the legal source of the present discussion. According to this article, whenever there is one available, but due to reasons such as being stolen or falling, or at sea, and, it cannot be denied to the owner, the usurper must be turned over. This term is known as "Alternative". The name refers to the fact that the usurpers are kept between the owner and his property and prevent the owner from using his property, therefore compensation must be paid for this.

There are many and varied discussions on the issue of Alternative, most of which are outside the scope of the present article. The only thing to keep in mind is that the purchase of shoelaces is nothing but price or price, since it is stated in the article that in the event of a loss, the price of the product should be given back or, if it is not possible, it should be turned. So the subject of the commitment of the usurper must be something else. But this appearance cannot be discounted because the reality is that it is nothing more than price. But in this particular case, due to its special rules and quality, it belongs to the owner of the title, Alternative.

2.5. Fake Payment in Exchange for Defective Goods and Interests

In civil law, however, it is explicitly approved by the usurper in respect of defects in property (Article 315) and in the interests of property (Article 320). However, there has not been mentioned of the method of playing this responsibility, which in fact is the same as the compensation from the owner. This silence is not problematic, since compensation for both defective interests, in most cases, is the cost of paying for money. Regarding the deficiency of the fraction of the price as the name of atonement, the interest in the lawsuit is generally examined under the title of"Proceedings".

2.6. The Way to Compensate for Losses in Wastefulness and Cause and the Settlement of a Debt

Here are some points to be noticed. firstly, in addition to the civil law provisions, in the case of the civil liability law, Article 9 of the Code of Civil Procedure, the Public Criminal Court, 1999, and Articles 515 to 519 of the Civil Procedure Law of 1379 Worthy of note.

Secondly, it does not seem consistent with the civil liability laws in terms of compensation procedures, since, in accordance with Article 3 of the Civil Criminal Code, the judge is free to determine the amount and manner of compensation, while such a discretion is permitted by the provisions of civil law which is not inferred.

Thirdly, in juristic sources, loss in general also includes dipping. For the jurists, the loss of the property is non-existent: 1. Immediate destruction 2. Destruction by placement.

But in the civil law, the placement debate is separated from the tide. Therefore, with regard to the above considerations, the author first examined the provisions of civil law in the field of compensation in each issue separately, then he will discuss the possibility of adding these provisions to Article 3 of the Civil Liability Act.

2.7. The Method to Calculate and Compensate for Loss in Waste

The law of civil law in the dissolution debate has foreseen both the objective and the alternative methods of compensation. According to Article 329: "If someone destroys a house or a building, it should be constructed like the first one, and if it is not possible, it must be affordable." This article is a clear indication of objective compensation. Concerning its provisions, it is important to note two points. First, it is true that the verdict contained in the article concerns the destruction of the building, but it is a fair and civil law-based rule. Therefore, it can be said that it is implemented in any case that the person responsible for the flaw or flaw is financial. In other words, according to the criterion of this article, and if possible, the subject can be forced to repair and fix the defects. Another point is that, if the construction of the building is not possible, then, in accordance with the substance of the object, the price must be paid. The question is: which price, the cost of time, or the time of impossibility to make or pay? Civil law is silent on this matter. Some lawyers take precedence over the price of payment, arguing that the legislator has placed them on a parable in relation to the similarity of the property to its analogous property and considers the price of the day to be the standard. Although this argument is not acceptable, what is meant by the word such as that used in the article is the same as the original plan and the building is neither a literal nor not a function of the verb command, Article 329 merely refers to the price of the reference and what is the price to pay is concise. Despite this, the above-mentioned view of paying the price during replacement should be confirmed because it has more proximity to the logic and objectives of compensation. Along with the objective compensation method of civil law, it has also

paid attention to the issue of loss of payload. Article 328 of the Civil Code stipulates that: "Everyone who wastes and disturbs non-life is the guarantor of that and must give it the price or price, ... regardless of whether it is the same or a profit, and if it is incomplete or defective, the guarantor of the defect It's the price". According to this article, in case of financial loss, it should be paid as per the price. In cases where the property is a sign, it is obligatory for the agent to surrender, except in the event of a loss. The owner can also claim the price and get paid.

2.8. The Way to Calculate and Compensate Loss in Personal Cause

It seems to be largely incomplete about the provisions of the Civil Code. This is a flaw in several directions. Firstly, there are no traces of objective compensation for damages. Secondly, although Article 331 refers to price, it is not foreseen that there is a likelihood of falling or depreciating taxes; Thirdly, there is ambiguity about the price, and it is not clear if the price of the time of the loss, the time of filing the claim or the time of payment should be considered? In the context of the Civil Code, Article 331 just states: "Everyone who causes financial loss should give the price, and if he is defective, he must be in a position of defect." In fact, according to this regulation, the only important issue in the way of compensation for accusations is that if the owner is a proprietor, then the lender must surrender it and, if he is the lender, must give it. In case of likelihood, the payment is like a precedent, and the price can not be paid in lieu of the price. The question arises whether the rules of civil law on compensation for extrajudicial employment, which seems to be more complete, can be dealt with in a matter of waste or censure, as the case may be. In response, it should be said that, although the usurper has a special system, it does not have a particular problem to apply the rules for compensating for it in waste. In particular, given the fact that in the history of Islamic jurisprudence, discussions on wasting and conspiracy as warranties for the usurpation issue have been discussed and jurisprudents have been distinguished by methods of compensation or ways of doing it. These three topics have not been highlighted. Lawyers have also generalized the rules of compensation for usurpation to waste and pay.

2.9. The Way to Calculate and Compensate for Losses in the Settlement of a Debt

The settlement of a debt including non-equity or non-custody, has been considered in the civil law of Iran, even though some lawyers have been skeptical about this. Several discussions have arisen, most of which are beyond the scope of this research. What is important here is how to compensate. The Civil Code which passed in articles 336 and 337 on salary payments. Obviously, the remuneration or remuneration should be something that has financial value, so it can be cash as well. In the vast majority of cases, cash is the result of what is in fact and in court practice. Although it may be possible to treat a person or the interests of a customary property, it is possible to pay the money either as a matter of convenience or as a matter of convenience. Finally, it is noted that in accordance with the provisions of the Civil Code, it may sometimes be ruled out for objective and alternative compensation. According to Article 330 of the Civil Code: "If someone owns an animal belonging to another person without the permission of the owner, the difference in living price shall be sacrificed, and if he does not have the price, he must give it all." In accordance with the provisions of this article, in cases where the animal is slaughtered, such as animal with Halal (Legal) meat, the damage agent must reject the same and pay the difference in price as damage. The criterion of this article is also applicable to other property, and the animal does not have this characteristic.

3- Islamic Jurisprudence

In Islamic jurisprudence, including the Imamiyah and the common law, the rules of compensation for damages in the property sector have been investigated mainly in the field of usurpation and loss and conspiracy. In jurisprudential sources, there are no distinctions between waste and seizure in terms of compensation. Except that it is not discussed in the discussion of waste and deception. Except rare cases, which have not been completely eroded, but have been defective. Previously, in line with the discussion of the position of objective and alternative compensation in jurisprudential sources, the author outlined a series of rules and regulations for property compensation. Nevertheless, in this section the author briefly studies the following subjects in jurisprudential subjects:

1. the rejection of a material if it survives.
2. How to compensate if it is lost or defective and defective.
3. How to compensate for the misunderstanding or non-fulfillment of interests.

3.1. The Rejection of the Same Captured Material

If it is already available, it is obligatory on the usurper to give it back to the owner. This is the ruling of all religions. The reasons for this are many reasons, including rational and conservative reasons. One of the most well-known reasons is « » , which is a hadith by the Prophet (pbuh). The difficulty of to give back is its mixing with other objects, and defective is not an obstacle. The usurper is also required to reject the alert, even if the rejection would cause the usurper financial loss. In Imamieh jurisprudence, according to a hadith from Imam Ali, they believe that if a stone piece is usurped and used in the building, then the building should be demolished and that stone return; and if the wooden board is usurped and used in the construction of the ship, it must be removed and returned, even if it requires demolition of the ship. Among the jurists of Islam, Abu Hanifa and his apprentice, Shaybani, have been denounced in this regard. That in such cases, they believe that the owner of the price should pay the price instead of denying it. In spite of the above, in some cases, the usurper is not obliged to give material back. Including, even if the rejection of the claim requires a loss of life. For example, if an absent board is used in shipbuilding and a ship is in the sea, separating the board will cause a loss to the passengers. Here the rejection will be delayed until the ship reaches the shore. Also, if the rejection is to cause financial loss to others.

Some Imams believe that in cases where the rejection of the requisites is assoor, the usurpers must be exempted from the rejection of the claim because the defendant is the ruler of the first sentence, which is compensated by the payment of the parable or the price of the owner's loss. It should be added that, in cases where the rejection of money leads to the loss of wealth, the rejection is unnecessary and the usurper must pay the price or the like. In all of the foregoing, and in any other assumption that is not lost but lost, but in the meantime, for example, it has been dropped or stolen, for example, the usurper, like, or price. This is called an alternative.

3.2. The Way to Compensate for Damage in the Event That It Is Lost or Defective

If the same money is lost, the usurper must pay for it if it is a sample, and if it has the same price, he should pay the price. This verdict is also common to different religions. For reasons of precedence, the price was discussed above and not need to be repeated. Here are some tips. First, if the money is misplaced and wiped out, it will be as if it is rare, the jurists believe that the price should be paid. Whether the criterion is the price of the day is decreasing or the day of payment, or the day of usurpation or the day of the loss. There is no consensus among Islamic jurists in this regard.

In Imamieh's jurisprudence, the decisive point is that the price of the day should be set at a standard rate, not the price of the day of desertion, and not the highest, and, In the Hanafi religion, the price of the day is valid, according to Abi-Hanifeh, the price of the day is valid; against Abu-yusof, the price of the day of usurpation and with Mohammad Sheibani, the price of the day is decreasing. In Shafi'i's religion, the highest price is valid from the day of the usurp until the day it is destructed. In Hanbali's religion, the price of the day is decreasing, and Maliki's religion has also been said: "

". That is, if a fruit such as fruit is usurped and extinhed when it is present, then it is necessary to wait and be given to the usurpers, like the same property, because it will be available in the future. It is not clear from this expression when the price is valid, because if the property is never found, the sentence is not clear. Secondly, where the property is damaged and lost, the Islamic jurists agree that the price must be paid. If there is a difference in prices between the day of usurpation, the day of wasting and the day of opening, there is disagreement. In the famous jurisprudence of Imam Ali, the believer calls it as Day of damage. Although there are other views among Shia scholars, it is based on the validity of the price of the time of the usurpation of the time of payment or the highest price from usurpation to the time of wasting or the highest price from the day of usurpation. In common jurisprudence, there are different opinions. Lecia believes that the price of the usurpation is valid. Hanafi has different meanings. Sometimes, the price of usurpation and sometimes wasting, Shafiqi believes in the highest price from the day of usurping to the wasting. Hanbali consider as the Day of damage as a criterion. The third point is that in the case of flawed and defective affiliation, according to the Islamic jurisprudence of the usurper, atonement is obliged to pay, which in most cases is a sum of money.

3.3. The Way to Calculate and Compensate for Losses in Terms of the Interests or the Non-fulfillment of Interests

Among the jurists of Islam are only Hanafi who does not know the interests of the wealthy. However, other public religions as well as in the Imamate jurisprudence are responsible for the interests of the usurpers. In the famous jurisprudence of the Imam Ali, he does not accept the lack of benefit. This is understood from their view of the lack of guaranty for the interests of the person in question, the lack of continuity of the defect in the price of suicide in the field of usurpation, which was previously studied in this regard. And do not need to repeat it. What is worth mentioning about how to compensate for the damage caused by the interests of the interests is that in Islamic jurisprudence, including the Imamiyah and the public, it refers to the payment of "Proceedings" and refers to the nature of the use of the word and that it is in all cases cash or include other property. It does not appear that there is no obligation whatsoever to be cash and other assets, but it should be acknowledged that if the payback is like cash, it is more appropriate both in terms of ease of commitment and in terms of estimating its amount. As mentioned before, judiciary law is ruled out in almost all cases of cash. Finally, it is pointed out that in the jurisprudential discussions, there are no differences between the issues of indemnification and other issues related to the provision of indemnity insurance, such as loss and dowry and pride, except for the rules that are specific to usurpation.

3.4. The Way to Calculate and Compensate for Physical and Spiritual Losses

According to some lawyers, including Dr. Jafari Langroudi, he considers physical damage in the ranks of damage to property and liabilities and considers it as merely material. But Dr. Mehdi Shahidi considers physical injuries merely spiritual. But it cannot be said that physical harm is merely material or spiritual, and in fact physical harm has both aspects. Physical injuries, in addition to injuries to the human body, such as bone fractures and other material injury, such as treatment costs, include other spiritual disadvantages such as pain, depression and loss of beauty that are the result of physical injury. Thus, the damage to the physical body has both physical and mental aspects, and in some cases, not only the spiritual aspect, but also mentally, cannot claim the total damage, for example, an eye that has been blinded, and that which is discontinued, and the neurology of the work Fallen, how much money can you take for the sight of your eyes and your hands? On the other hand, is it possible to deny the cost of medication, treatment and financial loss, and say this is only a moral loss? The answer to both questions is negative and you should consider both aspects of the damage and try to redress both dimensions.

Conclusion. The methods of compensation in civil liability, which are the methods of fulfilling the obligations of the subject, are determined on the basis of civil liability objectives. The objectives are to compensate for damage, to satisfy the lost person and restore his previous status. Since the authenticity of these goals is different in legal systems, their methods of supplying are not the same. These ways are in general: Objective compensation or restitution of the previous situation which, in various forms, substantive compensation (rejection of property, removal of property from the object of seizure, restoration, elimination of the source of harm, insertion of apology and rejection in public journals or collection of copies of books, films, seyyedi and ... fraudulent or fraudulent conduct and publication of the sentence of condemnation in the moral harm), and the legal compensation of the cancellation of the document, the restoration of the status of work of the suspended worker, and the restitution to a servant who has been illegally suspended or expelled) and Compensation for the equilibrium itself is of two types; non-repayment of non-payment of damages (forgery and similar) and cash compensation (payment of money). The two main methods of compensation (objective and equivalence) are not essentially the same, so that each loser or loser can choose one's own will. But the order of precedence and the link between them is not related to the general order, and the parties can oppose it or the court chooses the appropriate method (Article 3 of the Civil Civic Law of Iran). Although the general principles of the aforementioned methods are similar in different systems, the quality of their use and the preferences given to each one is different. In common law, the principle is based on compensation for damages, and in the written law the choice of the method of compensation is given to judges, while in the legal system of Islam, objective compensation is prior to other methods. In the international judicial process, in spite of instances of objective compensation, the ruling is often compensated for cash compensation. But in Iran's law, in accordance with Article 3 of the Civil Liability Act, the judge has been given the right method to choose.

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