

UN Human Rights Committee 104th Session (March 2012)

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SUMMARIES OF DECISIONS on admissibility and merits taken by the UN Human Rights Committee during its 104th session in March 2012. Produced by lawyers at the Open Society Justice Initiative in order to bring the decisions of global human rights tribunals to the widest possible audience.

All decisions are UN Doc. CCPR/C/104/D/[communication number]

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Admissibility Decisions

V.P. v. Russian Federation

26 March 2012, UNHCR, 1627/2007

Inadmissible under Article 2 OP; non-substantiation of claims

The applicant claimed that he was ill-treated by a group of police officers during his arrest, and that the police officers later tried to force him to confess that he had taken a bribe from a patient. The applicant also claimed a violation of his right to a fair trial because the judge violated the principle of impartiality, and because the applicant was not adequately informed of the charges, did not have adequate counsel, and was tried with undue delay. The Committee ruled that all the claims of the applicant were insufficiently substantiated, and were thus inadmissible under Article 2 of the Optional Protocol.

Link to [full decision](#) (PDF)

Korneenko v. Belarus

26 March 2012, UNHCR, 1634/2007

Inadmissible under Article 1 and 2 OP; standing; non-substantiation of claims

In a previous case brought by the applicant, the Committee found that Belarus violated the applicant's right to freedom of association. In this new case, the applicant claimed that the Supreme Court of Belarus refused to implement the Committee's views because the Supreme Court claimed that the Committee's views are only recommendatory. The applicant claimed that Belarus violated his right under Article 14(1) of the Covenant by refusing to implement the Committee's views and by refusing him a remedy for the aforementioned violation. The Committee found that the applicant has not identified any new developments in the case that would go beyond what the Committee had already decided in the applicant's earlier communication, that this issue should be resolved in the follow-up procedure, and that the claim was inadmissible.

Link to [full decision](#) (PDF)

J.S. v. New Zealand

26 March 2012, UNHCR, 1752/2008

Inadmissible under Article 2 OP; non-substantiation of claims

The applicant asserted that his rights were violated by New Zealand because he was arbitrarily detained in a psychiatric hospital, without access to prompt and effective judicial remedies. The Committee decided that the claims of the applicant were too general and, therefore, not sufficiently substantiated, and ruled that the claim was inadmissible.

Link to [full decision](#) (PDF)

G. E. v. Germany

26 March 2012, UNHCR, 1789/2008

Inadmissible under Article 5(2)(b) OP; exhaustion of domestic remedies

The applicant is a doctor whose license was revoked after reaching the age of 68. He claimed that the law constitutes arbitrary or unlawful interference with his privacy, and therefore violated his rights under Article 17 of the Covenant. Although the applicant challenged the revocation of his license before the Karlsruhe Social Court, he did not file an appeal against the initial judgment of that court. The Committee held that the claim was inadmissible because the applicant did not exhaust all domestic remedies before coming to the Committee.

Link to [full decision](#) (PDF)

K.A.L. and A.A.M.L. v. Canada

26 March 2012, UNHCR, 1816/2008

Inadmissible under Article 2 OP; non-substantiation of claims

The applicants are Pakistani nationals who came to Canada in 2001 on an entrepreneurial visa. After two years, the Canadian government decided that they did not fulfill the requirements of the visa and decided to issue departure orders. The applicants asserted that if they were forced to return to Pakistan, they would be at risk of torture, ill-treatment and persecution as members of a religious minority, and that their return would therefore violate Articles 6(1), 7, 9(1), 18, 24(1) and 27 of the Covenant. The Committee concluded that the applicants failed to provide sufficient evidence in support of their claims that they would be exposed to a real risk if they were removed to Pakistan and their claims are not sufficiently substantiated for the purpose of admissibility.

Link to [full decision](#) (PDF)

Y.M. v. Russian Federation

26 March 2012, UNHCR, 1858/2009

Inadmissible under Article 2 and 5(2) OP; non-substantiation of claims; exhaustion of domestic remedies

The applicant, of Chechen origin, was arrested by Russian customs officials, approximately 50 meters from the border. The applicant and his companion were forced to unload bags of merchandise from their truck at gunpoint and to reload it again. As a result of the effort, the applicant claimed that his blood pressure increased and he had heart pain, but his requests for medical treatment were ignored. He was arrested and detained for 6 days, and claimed that he was subjected to torture throughout this period, and pressured to confess to having committed a number of terrorist attacks. He was released without confessing, but was later convicted of a violation of the Customs Code and sentenced to pay a fine. The applicant claimed that his detention was unlawful, that he was tortured, and a violation of his right to a fair trial. The

Committee concluded that the applicant failed to substantiate his claims because he had not submitted any proof to support them and declared the communication inadmissible.

Link to full [decision](#) (PDF)

O.D. v. Russian Federation

26 March 2012, UNHCR, 2058/2011

Inadmissible under Article 2 OP; non-substantiation of claims.

The applicant claimed that he entered into a conflict with an officer of the State Inspectorate for Road Traffic Safety, who, in response, accused the applicant of hitting him with his vehicle and leaving the scene of the accident. Charges were brought against the applicant and he was convicted of committing an administrative offence, namely leaving the scene of an accident. The applicant claimed that he did not receive a fair hearing in violation of Article 14, because the court ignored his arguments without grounds. The Committee held that the claim is inadmissible because the applicant did not provide sufficient support for his argument that the trial was arbitrary or constituted a denial of justice.

Link to [full decision](#) (PDF)

Decisions on the Merits

Sudalenko v. Belarus

14 March 2012, UNHCR, 1750/2008

Violation of Article 19(2) (freedom of expression); freedom of information; permissible restrictions

The applicant is a political figure, having been a member of the United Civil Party, the Chairperson of the Gomel City Section of the public association Civil Initiatives and a member of the Belarusian Association of Journalists. The applicant was arrested by the police while he was distributing leaflets entitled “Dear Compatriots!” The police seized the materials and arrested the applicant and his colleague for illegally producing and distributing mass media outputs. The applicant claimed a violation of his rights under Article 19(2) of the Covenant, because of the arbitrary seizure of election-related print materials in violation of his right to freedom of expression. The Committee held that Belarus established obstacles regarding the exercise of the applicant’s right of expression by imposing a “procedure for the production and distribution of mass media outputs”, and that these restrictions constituted a violation of Article 19(2) because they could not be justified by the government of Belarus on the basis of Article 19(3).

Link to [full decision](#) (PDF)

El Hagog v. Libya

19 March 2012, UNHCR, 1755/2008

Violation of Articles 2(3) (effective remedy), 7 (torture), 9 (right to liberty and security) and 14 (fair trial); torture, unfair trial, arbitrary arrest and detention; death penalty

Libyan authorities arrested the applicant in 1999 for premeditated murder and for causing an epidemic by injecting 393 children with HIV in Al-Fatah pediatric hospital. The applicant claimed that during the interrogation, he was forced to confess guilt under torture. The applicant was sentenced to death by the Libyan courts. The applicant claimed that the death sentence was imposed after an unfair and arbitrary trial. The applicant also claimed that he was denied access to his family, that no lawyer was present in the beginning of the proceedings and that he was again denied access to a lawyer prior to the beginning of the trial and was not able to speak to his lawyer freely. The applicant claimed a violation of Article 6 but the Committee noted that there was no longer a factual basis for this claim because his death sentence had been commuted. The Committee concluded that the torture inflicted on the applicant, his incommunicado detention, his prolonged isolation before and after his conviction, and the absence of a prompt, thorough and impartial investigation of the facts violated Article 7, alone and read in conjunction with Article 2(3), of the Covenant. Furthermore, the Committee found a violation of Article 9 and 14.

Link to [full decision](#) (PDF)

Aboufaied v. Libya

20 March 2012, UNHCR, 1880/2009

Violation of Articles 2(3) (effective remedy) and 7 (torture); torture; lack of effective remedy

The applicants worked as members of a Bulgarian medical team at Al-Fatah pediatric hospital in Benghazi between February 1998 and February 1999. The applicants were arrested with 18 other members of the Bulgarian medical team, without being told of the grounds for their arrest. They were charged with murder on suspicion of having infected 393 children with the HIV virus at the hospital. The applicants claimed that the police tortured them during questioning to force them to confess to the charges and that they were detained incommunicado. Furthermore, the applicants claimed that they lacked an effective remedy because of the absence of a prompt, thorough and impartial investigation of the facts. The Committee held that the treatment inflicted on the applicants constituted torture under Article 7 of the Covenant, and that the lack of impartiality and a proper investigation violated Article 2(3).

Link to [full decision](#) (PDF)

Nenova et al v. Libya

20 March 2012, UNHCR, 1880/2009

Violation of Articles 2(3) (effective remedy), 6 (right to life), 7 (torture), 9 (right to liberty and security) and 14 (fair trial); torture; fair trial

The applicants worked as members of a Bulgarian medical team at Al-Fatah pediatric hospital in Benghazi between February 1998 and February 1999. The applicants were arrested with 18 other members of the Bulgarian medical team, without being told of the grounds for their arrest. They were charged with murder on suspicion of having infected 393 children with the HIV virus at the hospital. The applicants claimed that the police tortured them during questioning to force them to confess to the charges and that they were detained incommunicado. Furthermore, the applicants claimed that they lacked an effective remedy because of the absence of a prompt, thorough and impartial investigation of the facts. The applicants also claimed that Libya discriminated against them on the basis of race, skin color, language, religion and nationality, in violation of Articles 6, 7, 9, 10, 14 and 26 of the Covenant. The Committee held that the treatment inflicted on the applicants constituted torture under Article 7 of the Covenant, and that the lack of impartiality and a proper investigation constituted a violation of Article 2(3). Furthermore, the Committee decided that the applicants were not brought promptly before a “judicial authority”, in violation of Article 9 of the Covenant. The Committee found Libya responsible for violating the applicant’s right to a fair trial (particularly as regards the right not to testify against oneself), the principle of equality of arms (due to unequal access provided to evidence and expert opinions), and the right to have adequate time and facilities for the preparation of the applicants’ defense (through the lack of access to a lawyer before the beginning of the trial). The Committee concluded that the trial and conviction of the applicants constituted a violation of Article 14 of the Covenant. The Committee decided not to address Articles 10 and 26 of the Covenant.

Link to [full decision](#) (PDF)

Orazova v. Turkmenistan

20 March 2012, UNHCR, 1883/2009

Violation of Article 12(1) (freedom of movement), (2) (right to leave the country); freedom of movement

Turkmen border officials prevented the applicant from boarding a flight from Ashgabat to Tashkent, without giving any explanation. Since then, the applicant has not been able to travel abroad or within the country. Her husband was also prevented from boarding a flight departing from Ashgabat to Moscow, where he was supposed to undergo medical treatment for heart disease. The authorities also prevented their daughter, then a student at the Beijing University, from leaving the country. The Public Prosecutor of Turkmenistan admitted that the applicant's family's ability to leave the country was temporarily restricted. The Committee held that the right of the applicant to leave the country was violated. Other claims by the applicant – violations on the basis of Article 2(3) (a) and (b), Article 14(1) and Article 17(1) – were deemed inadmissible, as the applicant did not sufficiently substantiate them with any proof, information or arguments.

Link to [full decision](#) (PDF)

Musaev v. Uzbekistan

21 March 2012, UNHCR, 1914, 1915, 1916/2009

Violation of Articles 7 (torture), 9(3) (promptly brought before a court), 14(3) (fair trial), (3)(b) (right to counsel), (3)(g) (self-incrimination), and (5) (review by a higher tribunal); degrading treatment; access to courts

The applicant's son was convicted of various crimes in three separate criminal trials. In all three, the applicant claimed that her son was subjected to torture and interviewed without a lawyer to force him to confess guilt. The applicant also claimed that her son was never brought before a judge to verify the legality of his arrests and placement in pre-trial detention, and that only the Public Prosecutor took these decisions. Furthermore, the applicant claimed that her son did not have access to his lawyer during his detention by the National Security Service and was unable to prepare for his defense. The applicant's son was unable to appeal one of his convictions because authorities failed to provide him or his lawyers with the judgment. The Committee held that the applicant's son's torture and forced confessions violated his rights under Article 7 and 14(3)(g). Furthermore, the Committee also held that Uzbekistan's Public Prosecutor was not, under the circumstances, an "officer authorized to exercise judicial power" within the meaning of Article 9(3) and concluded a violation of Article 9(3). The Committee also found that the applicant's son's interrogation without a lawyer, limited contact with his lawyer while in custody, and lack of representation by a lawyer at some stages of the proceedings violated Article 14(3)(b). Finally, the Committee found that the failure to provide the applicant with a copy of the judgment in one of his trials prevented the applicant from appealing the judgment, in violation of Article 14(5) of the Covenant.

Link to [full decision](#)

G.K. v. The Netherlands

22 March 2012, UNHCR, 1801/2008

Non-violation of Articles 2(3) (effective remedy) and 7 (torture); non-refoulement; effective remedy

The applicant used to work as a police officer in Armenia, but fled to the Netherlands because of intimidation by his superiors after they discovered that the applicant was an overt supporter of the Armenian opposition leader. The applicant's asylum request was rejected by the Netherlands. The applicant claimed that the Netherlands violates his rights under Article 7 because he would be tortured and ill-treated on returning to Armenia. The applicant further argued that the accelerated asylum procedure violated Article 2(3), in conjunction with Article 7. The Committee could not conclude that the applicant would face a real risk of treatment contrary to Article 7 of the Covenant if he were returned to Armenia. Furthermore, even though the Committee expressed concern about the limited timeframe of the asylum procedure, the government's consideration of the applicant's claims did not suffer from procedural irregularities or deny him an effective remedy. The Committee concluded that the applicants' deportation to Armenia would not violate any of the rights under the Covenant.

Link to [full decision](#) (PDF)

Olmedo v. Paraguay

22 March 2012, UNHCR, 1828/2008

Violation of Articles 2(3) (effective remedy) and 6(1) (right to life); obligation to protect life; burden of proof; freedom of assembly; freedom of association; failure to investigate

The applicant's husband, Mr. Domínguez, belonged to the lemon verbena producers' association, which was supported by the Agricultural Producers Coordination Office of San Pedro Norte (CPA-SPN), the largest rural workers' trade organization in the area. On 3 June 2003, the producers' association organized a demonstration in which Mr. Dominiguez participated. The police used force to end the demonstration. Mr. Dominiguez was shot while surrendering, and died two days later. The applicant alleged that that her husband was the victim of an arbitrary execution as a result of the unlawful, unnecessary and disproportionate use of force by police officers during a demonstration. Furthermore, she alleged that the investigation into the incident was insufficient. The Committee noted that the State has a general obligation to protect the life of persons under its jurisdiction, and that in the present case Paraguay had the obligation to protect the life of the demonstrators under Article 6(1). It also has an obligation to investigate killings, especially when there is a suspicion that its security forces may have been involved. The burden of proof cannot lie with the applicant alone in such cases, and given the failure of the State to explain the failures in its investigation, it is responsible for the violation of Mr. Domínguez's right to life under Article 6(1) of the Covenant, as well as the obligation to investigate under Article 2(3), read in conjunction with Article 6.

Link to [full decision](#) (PDF)

Benitez v. Paraguay

22 March 2012, UNHCR, 1829/2008

Violation of Articles 2(3) (effective remedy) and 7 (torture); degrading treatment; freedom of association; freedom of assembly; failure to investigate

The applicant is a member of the Agricultural Producers' Coordination Office of San Pedro Norte (CPA-SPN). On 3 June 2003, around 1,000 demonstrators, including the applicant, assembled for a demonstration. The police tried to end the demonstration by force. After the applicant and about 120 other demonstrators escaped to a nearby campsite, the police cleared the area using firearms and batons. Police then arrested 20-25, including the applicant. A group of policemen surrounded him and one of them shot him with what was probably a rubber bullet, knocking him to the ground. Police then forced him to lie on the ground, where they beat and kicked him. After this, the police took him and the other detainees to the police station, where the physical abuse continued until journalists arrived to cover the demonstration. The applicant was charged with several minor offences but the charges were ultimately dismissed. The applicant filed domestic complaints of torture and ill-treatment but the criminal court dismissed the charges before the investigation was completed. Because of the dismissal of the charges and the lack of justification by Paraguay as to why the investigation into the case was interrupted, the Committee found that the applicant did not have access to an effective remedy. Therefore, the Committee ruled that there had been a violation of Article 2(3) of the Covenant. Furthermore, the Committee considered that the use of force by the police was disproportionate and that the treatment to which the applicant was subjected constitutes a violation of Article 7 of the Covenant.

Link to [full decision](#) (PDF)

Calderon v. Colombia

23 March 2012, UNHCR, 1641/2007

Violation of Article 14 (5) (review by a higher tribunal); competence of court; double jeopardy; fair trial; access to courts

The applicant was charged with illegal enrichment because he supposedly borrowed money from a known drug trafficker that the latter had obtained from illegal activities. The applicant was acquitted by the first and second instance courts. The Prosecutor appealed to the Supreme Court, which upheld the appeal and entered a conviction. The applicant claimed that his conviction by the Supreme Court violated Article 14(5) of the Covenant because he could not appeal against it. The Committee referred to jurisprudence stating that “*Article 14, paragraph 5, is violated not only if the decision by the court of first instance is final, but also where a conviction imposed by an appeal court or a court of final instance, following acquittal by a lower court, according to domestic law, cannot be reviewed by a higher court*”. The Committee thus held that Article 14(5) was violated because the applicant did not have any avenue available to appeal his conviction by the Supreme Court.

Link to [full decision](#) (PDF)

Belyazeka v. Belarus

23 March 2012, UNHCR, 1772/2008

Violation of Articles 19(2) (freedom of expression) and 21 (right of peaceful assembly); permissible restrictions

The applicant was arrested for participating in an unauthorized mass event to commemorate relatives that perished in the Stalinist camps in Soviet Russia. The applicant was convicted of violating the Code of Administrative Offenses for holding a picket without a permit, despite his claims that the event was a peaceful citizens' gathering – which is not covered by the Code. The applicant claimed that this interfered with his freedom of expression, as guaranteed by Article 19(2) of the Covenant. The Committee held that the Code on Administrative Offences of Belarus imposed a “procedure for holding mass events” that restricted the freedom to impart information, guaranteed by Article 19(2). In assessing whether this restriction was justified under Article 19(3), the Committee held that the applicant and the State disagreed as to whether the Code proscribed the applicant's conduct – in other words, whether the restriction imposed was in fact proscribed by law. The Committee further found that the State had not explained why the restrictions were necessary for the legitimate purposes set out in Article 19(3). The Committee therefore concluded that Belarus violated the applicant's rights under Article 19(2). The Committee further held that the applicant's right to freedom of assembly under Article 21 of the Covenant was violated, since he was arbitrarily prevented from holding a peaceful assembly.

Link to [full decision](#) (PDF)

Kamoyo v. Zambia

23 March 2012, UNHCR, 1859/2009

Violation of Articles 6 (right to life), 7 (inhuman treatment) and 14(3)(c) (undue delay) and (5) (review by a higher tribunal); due process; right to judicial review; evidence

The applicant was charged with murder and was sentenced to death in 1995. The applicant lodged an appeal before the Supreme Court filed his communication to the Committee after waiting 13 years without review of his case because the Supreme Court had lost his case file. The Committee concluded that this delay violated the applicant's right to review without delay, and consequently found a violation of Article 14(3)(c) and (5) of the Covenant. The imposition of a death sentence upon conclusion of criminal proceedings in which the provisions of the Covenant have not been respected can violate the right to life. In the present case, the applicant's death sentence has been pending on appeal for nearly 17 years, in violation of the right to a fair trial, which also amounted to a violation of Article 6 of the Covenant. The Committee also found that the applicant's prolonged detention on death row violated Article 7.

Link to [full decision](#) (PDF)

Krasovskaya v. Belarus

26 March 2012, UNHCR, 1820/2008

Violation of Articles 2(3) (effective remedy), 6 (right to life), 7 (torture), 9 (right to liberty and security) and 10 (humane treatment); enforced disappearance; freedom of association; failure to investigate

The applicants submitted the claim on behalf of Anatoly Krasovsky, a businessman in Belarus who provided the political opposition with financial and other support during the 1990s. Mr. Krasovsky disappeared in 1999, after planning to chair an extended session of Parliament to discuss a possible impeachment procedure for President Lukashenko, on the basis of alleged grave crimes. After 10 years, Belarus had not conducted a proper investigation and could not explain to the Committee the stage any proceedings had reached. The Committee found that it did not have enough information to allow it to conclude that Belarus was responsible for Mr. Krasovsky's disappearance. However, the Committee concluded that Belarus had failed to properly investigate and take appropriate remedial action for Mr. Krasovsky's disappearance, in violation of Article 2(3) in conjunction with Articles 6 and 7.

Link to [full decision](#) (PDF)

Chebotareva v. Russian Federation

26 March 2012, UNHCR, 1866/2009

Violation of Article 21 (right to peaceful assembly); freedom of assembly, freedom of association; freedom of expression

The applicant organized a picket to mark the anniversary of the murder of a well-known Russian journalist and human rights activist, and to protest against political repression in the country. The applicant sought permission from city administration, but authorities denied the request on the grounds that they planned to hold unrelated events on the same day at the same location. The applicant filed an application to hold the picket at a different location, which authorities denied for "public safety" reasons. The applicant challenged these denials in court but lost. The Committee found that the refusals to allow the applicant to hold the pickets violated Article 21 because the State had not shown that the restrictions on the applicant's freedom of expression were justified under Article 21(3) – they were not necessary to protect the interests of national security or public safety, public order, public health or morals or the rights and freedoms of others. Although the applicant asserted that her case was not examined by a "competent, independent and impartial tribunal" in violation of Article 14, the Committee found that the applicant had not "sufficiently put forward specific elements" substantiating this claim.

Link to [full decision](#) (PDF)

Khirani v. Algeria

26 March 2012, UNHCR, 1905/2009

Violation of Articles 2(3) (effective remedy), 6(1) (right to life), 7 (torture), 9(1) (arbitrary arrest and detention) and (4) (trial without undue delay), 10(1) (humane treatment) and 16 (recognition as a person before the law); enforced disappearance; failure to investigate; access to courts

The applicant's husband, Mr. M. Ouaghlissi, was arrested in 1994. According to his colleagues, three members of the security forces came to his workplace and escorted him to their vehicle, without presenting him with an arrest warrant or any explanation. He has not been seen or heard from since. The applicant claimed that Mr. Ouaghlissi was a victim of an enforced disappearance, and that she lacked an effective remedy as the law prevented her from turning to the courts. Algeria did not respond to the merits of the communication. The Committee found Algeria responsible for numerous violations of the Convention, including: Article 6, for its responsibility in Mr. Ouaghlissi's disappearance and likely death in custody; Article 7, for Mr. Ouaghlissi's detention; Article 7 – alone and in conjunction with Article 2(3) – for the anguish his disappearance caused the applicant and her daughters; Article 9, for arresting Mr. Ouaghlissi without a warrant, without informing him of the reasons for his arrest or the charges against him, and without bringing him before a judge or other judicial authority to challenge the lawfulness of his detention; Article 10(1), because Mr. Ouaghlissi likely suffered during his detention and the State failed to provide information in this regard; Article 16, because Mr. Ouaghlissi's disappearance removed him from the protection of the law; and Article 2(3) in conjunction with articles 6, 7 and 19, because Algeria did not investigate the disappearance of Mr. Ouaghlissi and the law prevented him and his family from turning to the courts for a judicial remedy.

Link to [full decision](#) (PDF)

Atasoy and Sarkut v. Turkey

29 March 2012, UNHCR, 1853/2008 and 1854/2008

Violation of Article 18(1) (right to freedom of thought, conscience and religion); conscientious objection

The applicants repeatedly submitted petitions to the Military Recruitment Office, explaining that they are Jehovah's Witnesses and could not perform Turkey's mandatory military service because of their religious beliefs, and offering to perform civil service instead. In response, authorities informed them that they could not be exempted from military service, and they were eventually prosecuted because they failed to perform it. The applicants claimed that the absence in Turkey of an alternative to compulsory military service, subject to criminal prosecution and imprisonment, breached their rights to freedom of thought, conscience and religion, which are protected under Article 18(1) of the Covenant. The Committee reaffirmed that a right of conscientious objection derives from Article 18, as the obligation to be involved in the use of lethal force may seriously conflict with the freedom of thought, conscience, and religion. The Committee considered that the applicants' refusal to be drafted for compulsory military service derives from their religious beliefs, which have not been contested and which are genuinely held, and that the applicants' subsequent prosecution and sentences amount to an infringement of their freedom of conscience, in breach of Article 18(1) of the Covenant.

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