

## The Rights of Victims under eu Legislation

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### Abstract

Today the science and practice of contemporary crime, the perpetrator and the victim are treated as part of the same problem connected among themselves and not as separate issues. This is no doubt in order to combat crime and efficient protection of society in general.

The purpose of this paper is to analyze the development of the role of the victim in criminal law in general, as well as to highlight the importance and the need to protect the position of victims of crime in terms of arrangements with legal norms. Issues related to the victim should be regulated by legal norms and their rights should be an integral part of human rights in general. By conducting a criminal all the attention of authorities prosecuting directed to the offender, to take all necessary measures for the detection, apprehension and punishment, forgetting that this offense is damaged another subject, the who is the victim. Victim not remain nothing but to be a witness of a process that takes place on it. Victims are usually treated without respect or without any consideration of the status they have, a point such that they prefer do not denounce the crime to the competent authorities. Through this work i want to treat what rights have victims of a criminal offense? Of their need for fair treatment and with dignity of competent bodies, their need for compensation as well as their need for rehabilitation and reintegration into society. Stressing the obligation of our state to take all necessary legislative measures in accordance with international laws to guarantee legal protection for victims of crime.

**Keywords:** The victim of the offense; the right to compensation; the right to legal assistance; the right to rehabilitation; emergency protection order; protection order.

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## 1. Introduction

Institute of victims' rights in criminal law is actually a new institute and one of the trends of international criminal law today. In fact, before the attention, to the rights of victims in criminal law and related legal and historical reality that has existed in the nineteenth century. According to different authors, "the victim had the right and responsibility to follow the person who has caused harm"

In the nineteenth century presented a new doctrine according to which criminal offenses can not be treated as a private matter between the victim and the author because it deeply affects and damages the public interest of the state.

This doctrine was evident in countries with continental legal system since the beginning of the inquisitorial system. But in the nineteenth century this doctrine won support in countries with Anglo-Saxon legal system, thus placing the victim in a secondary position. The victim's secondary position was strengthened as a result of the submission of Anthropological-positivist school of Lombrosos, the offender was one of the subjects raised in the primary and most important to study in criminal law and criminology, while redirected thus the state's efforts towards two main goals:

- in the preservation of public interest, and in the treatment of copyright for the purpose of rehabilitation and correction thereof. This doctrine forgotten fact: In every crime committed at least two victims: Society suffers as a result of violation of rules, the victim suffers actual damage to property or his personality.
- For more than a century as the victim is "a passive party, whose role is limited only to the suffering of harm." Being almost totally excluded from criminal proceedings, victims usually become the subject of secondary victimization resulting non-reporting of crime. Although it is clear that the state response to the author of an offense inspired originally by the injustice caused to the victim, but again, the main purpose of criminal justice remains retaliation and crime prevention.

As regards international criminal law and the role of the victim in the first thing that should be clarified is that it is a new discipline and developing, combining principles of Anglo-Saxon and Continental. Recognition of victims of international criminal law obviously was inspired by events that took place in different countries, where a significant role sound jurisprudence and legislation US, but particularly in this direction have influenced various wars civil developed anywhere in the world or numerous terrorist attacks that left behind many victims. As a result of a continuing need for and once the criminal law to turn his attention to victims.

## 2. The role of the victim in the biggest two legal systems.

### *2.2 The role of the victim in the Anglo-Saxon system. Ways of their active involvement in criminal proceedings*

Anglo-Saxon system actively involves all stakeholders in this process based on the specific form of judicial process, where kontradiktioritetit principle of equality of arms and reach their peak. However, although the role

of the victim in this system at a first glance seems more democratic and transparent, it is not malleable considering the following aspects:

**Firstly:** The role of the victim in farzën the prosecution of the perpetrator is very limited and thus the impression based on which party is portrayed as passive victims who appear only to testify as a witness. Many authors agree that the prosecution of the offender remains higher than private interests and because of the seriousness of the considerable process should be run by the state, but it is not right that the role of the victim to see more inferior than the role the offender.

**Secondly,** the victim usually is excluded from the trial, the process called "plea bargaining", which is often regarded as entirely non toward to because it represents another way of protecting state interests at the expense of the victim. This process is similar to the process of mediation in the right continental with distinction in law Anglo-Saxon is a normal, sensible and desirable by the parties to negotiate the acceptance tēfajit by the perpetrator in order not to go in the judicial process.

Bargaining means "doing the shopping" which seems unusual for a lawyer to continental system of which the principle of material truth is all. Further negotiation process of the blame on the Anglo-Saxon law is a process very closed and isolated where a bad solved with small country with a great evil. Qajes terms of the victim, this process represents another thing perfects a total neglect in terms of interest and its security and everything else that the victim considers justice.

**Thirdly,** note that Anglo-Saxon judicial process also includes the so-called questions crossed against all witnesses including the victim. Question direct crossed encountered difficulty pai victims in particular, but also the witness may feel threatened or manipulated with this form of interrogation especially considering that questions contradictory to the opposing party usually aim to disqualify the testimony of the victim or witness, not uncovering the truth.

This is a problem particularly when victims of crimes such as delicate children should testify concerning their experience of sexual crimes, domestic violence or even trafficking.

**Fourthly,** the interests of the victim are usually worth consulting and secondary in the process of judicial decision-making. State interests are those deemed most important.

**Fifthly:** the demand of victims for compensation of damage, which represents indent this inclination contemporary restorative justice can not be attached to process criminal trial, but should be developed as a separate civil case, which requires more time and resources financial.

## ***2.2 The role of the victim in the continental system***

Countries with continental legal system mainly implement judicial process that has evolved from inkuzitor system. Although this system creates the impression of a process more transparent for the parties involved are conceived power in the hands of the judge, in fact as regards the rights of the victim, this system offers three

main ways to guarantee a fair trial for the victims

**Firstly**, the question crossed regarded as problematic system Anglo-Saxon system continental controlled by the judge in order to be given to the type of questions asked during the question all this in order to protect the witness or victims of questions unfair. At least theoretically it gives the victim a very good position compared with its position in the Anglo-Saxon system.

**Secondly**: guilt negotiation process is not applicable in this system. There are provisions under which exemptions to prosecute the person or punishment of a person who cooperates with justice through the discovery of information about a crime, but it is mostly carried out in cases of serious organized crime, then such exemption does not present practice natural and everyday as it happens in the Anglo-Saxon system.

Although these guarantees create a very positive impression of the victim's position in continental system, its role and subsidiary liability in the process of prosecution of the perpetrator remains evident. Even here, the victim still has only the position of the witness but not an independent entity in the criminal process. Continental system probably provides the foundation stronger theoretical realization of the rights of the victim, however, much remains to be done in the practical implementation of these rights in order to secure a position guaranteed to persons who have suffered so much damage. This particularly concerns the countries in transition are in fact countries with continental legal systems, and as such, in their legislation foresee any provision characteristic continental associated with defending the interests of the victim (even if it lacks any provision such same without hesitation passed by the legislature in order to accelerate the process of EU integration); in reality these countries realize very few of these guaranteed rights.

### **3. International Criminal Court -Toward a new international criminal process.**

The International Criminal Court is an institution that in his jurisdiction has promoted revolutionary rights to crime victims. This Court has used the experience of the previous two ad hoc tribunals for the former Yugoslavia and Rwanda to identify the needs of victims and to find better ways to help them win compensation for damage it was caused in order to rebuild their lives and that is more important, to ensure active participation in the judicial process. The balance between the rights of the accused and those of the victim has been significantly improved through this institution. This can be observed through three categories of assisting victims.

#### **3.1 The participation**

Unlike the experience of national legislation and those mentioned ad hoc tribunals, the ICC promotes clear rights for the participation of victims at all stages of the criminal process ensures this historic fact the victim the right to present opinions and observations yet before the Court, in most of the case through a legal representative "in a way that has no prejudice to the accused and not contrary to". This presents the possibility that the victim's voice to be heard by enabling the creation of a sense of their participation in the process of seeking the truth and realization of justice. Although a presentation such opinions and observations of the victim does not represent a legal obligation for the judicial council in the process of decision making regarding the particular case, however,

this represents an important way of factoring and publication of opinion and their access to the case.

### **3.2 The compensation**

This is also the innovation most revolutionary of the ICC regarding the rights of the victim, bearing in mind the fact that for the first time in the history of mankind an International Criminal Court has the power to order a person to pay compensation of another individual. A separate body it is created for the same purpose (Trust Fund for Victims) in order to achieve balance compensation-restitution.

### **3.3 The protection**

Finally, unlike the ad hoc tribunals, the ICC offers serious protection for victims and witnesses by promoting cooperation with Member States on the establishment of programs for protection of witnesses and victims. Also referred to new forms and ways of protecting these categories but does not apply to protection measures as radical total anonymity of the victim or witness against the defendant or his council. This simultaneously also concluded efforts of this institution to create an impression of the new Victims of Crime somewhat like entities direct criminal proceedings international attempts which deserve respect and support bearing in mind the need to balance retributive-restitutive between the rights of the victim and the accused.

## **4. Protecting the rights of victims of criminal offenses in the framework of the European Union**

The attention shown to the fate of victims of the offenses strengthened day by day since 1950. In normal circumstances they should be compensated by its perpetrator, but as it often happens that the latter is not detected, it is able to pay or is missing, some states are supposed to create some compensation regimes damaged by public funds in cases where it can be compensated in other circumstances. In this context, the European Committee on Crime Problems decided in 1970 to deal with this issue. In September 1977 the Committee of the Council of Ministers of Europe adopted Resolution (77) 27 relating to the compensation of victims of criminal offenses and 13 March 1981 the European Parliament adopted a resolution on this issue.

All these efforts led the drafting of the European Convention on Compensation of Victims of Violent Offences, which was opened for signature on 24 November 1983, a number of countries accepted this convention, but very few have ratified it. It is noteworthy for a number of important principles on the basis of which the obligation of a state to pay compensation to the injured party is not based on the idea of responsibility, in the event of negligence on his part, but on the idea of social solidarity and equity.

Concerning for the deeds for which states are obliged to undertake compensation, the convention gives a narrow definition of criminal offenses. Under this convention, the state contributes to the compensation of those who have suffered severe injuries on the body and health directly from violent acts caused intentionally. Are talking as injuries serious physical and for severe mental impairments.

In relation to victims, Article 2 of the Convention specifies that there are two types of victims, first direct victims or persons who have suffered from crime and secondly those who were in charge of the deceased due to

work, ie the victims indirectly, such as spouse, partner, children. The victim may be the citizen of the state as well as a foreign citizen, Article 3 provides that the state in which the crime occurred takes compensation not only its citizens, but also citizens of all other Member States, who have residence permanently in the territory of the state where the offense was committed.

As touching penalties, under section 4 of the Convention compensation should cover at least the following elements of the sentence, loss of of income, medical expenses and hospital, funeral expenses, and in terms of dependents, loss of the person carrying family.

The Convention confirms two main rules:

*Firstly, the state competent to grant an indemnity victim of the offense is the state in whose territory the criminal offense has occurred (principle of territoriality). It can accept that the state retains jurisdiction even if its territory is one part of the offense performed.*

*Secondly, the state compensation debtor can set limits on the compensation regime. Under Article 5 states domestic law can assign appropriate elements in whole or determine a maximum limits that can not be crossed and a minimal limits on the extent of damages to be awarded. The Convention corroborates the principle of reparation average, this principle will depend on several factors which include: the financial situation of the applicant, [ 1] the conduct of the victim or applicant before and after the offense, victim or researcher involved in organized crime, or member of an organization violent deeds etc*

#### **4.1 The Convention of The Council of Europe "On Action against Trafficking in Human Beings**

The Convention has entered in force on 1 February 2008. The most essential value of this convention is its focus on human rights and protection of victims' rights. The Convention defines trafficking as a serious violation of human rights, violation of human dignity and integrity. Also by convention, states are responsible if you do not take appropriate measures to prevent and protect victims of trafficking.

The purposes of this Convention are [2]:

- a. to prevent and combat trafficking in human beings, while guaranteeing gender equality
- b. to protect the human rights of the victims of trafficking, design a comprehensive framework for the protection and assistance of victims and witnesses, while guaranteeing gender equality, as well as to ensure effective investigation and prosecution;
- c. to promote international cooperation on action against trafficking in human beings.

The Convention applies to all types of trafficking, trafficking whether national or even across borders, apply to all victims of trafficking, as well as to all kinds of exploitation (sexual, forced labor, slavery, organ removal). Victims of trafficking under the Convention must formally identified as such, in order to prevent their treatment as illegal immigrants or criminals. Identification is done by people professionally, police officer, social worker, physician, provider of support services.

In accordance with this Convention, each party shall provide its competent authorities with persons who are trained and qualified in preventing and combating trafficking in human beings, in identifying and helping victims, including children, and shall ensure that the different authorities collaborate with each other as well as with relevant support organisations, so that victims can be identified taking into account the special situation of women and child victims. Victims of trafficking before being formally identified as such they are entitled to recover for a period of 30 days, the right to recover, to escape from the trafficker, and to think about the possibility to cooperate with justice. During this period they can not be removed from a state, even though they might be staying there illegally. Regardless of whether the victims refuse to cooperate in the investigation, or become witnesses, they are entitled to receive [2]:

- a. psychological and material assistance;
- b. access to emergency medical treatment;
- c. translation and interpretation services, when appropriate;
- d. counselling and information, in particular as regards their legal rights and the services available to them, in a language that they can understand;
- e. assistance to enable their rights and interests to be presented and considered at appropriate stages of criminal proceedings against offenders;
- f. access to education for children.

The Convention also provides some of the rights that can benefit victims of trafficking as the right to: legal assistance, the right to residence, the right to protection of privacy and dignity, the right to defense in court proceedings, the right to compensation, and the right to repatriation.

#### ***4.2 Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims***

This Directive was adopted on 29 April 2004. This Directive requires Member States to harmonize their legislation with the Directive, with a view to creating a system of cooperation to increase the access of victims to compensation in cross-border situations. The Directive provides for compensation to be paid by the competent authority of the Member State in the territory of the country where the crime was committed. According to this directive should create a system bashkëpunimimi between EU countries to facilitate the compensation of victims of cross-border crimes, where compensation should be used as a mechanism in all Member States.

Victims of crime in the EU are entitled to compensation in accordance with their disabilities, regardless of the state in which the crime was committed. The Directive is designed in accordance with the European Convention on Compensation of victims. This Directive also provides for the establishment of a system of cooperation between the authorities of the Member States, where the victim may seek compensation for damage in another Member State other than the victim shtetii. The system should have the mechanisms necessary to secure the victim mechanisms necessary to prosecute.

Any person who is a victim of a crime has the right to submit a request to the Member State, the state whose

citizen is the victim or another Member State[3], compensation will be paid by the Member State in whose territory the crime occurred. In service to victims states have an obligation to create the responsible authority, which authorities called auxiliary. They may appoint one or several auxiliary authorities who will respond to requests from applicants [3].

Assistance Authority must provide all information required in connection with the request of the victim and can suggest solutions. After considering submitting applications to the competent bodies. In accepting the application to be determined, the competent body that will review the request, confirmation that the request is taken into consideration, and if possible, the timeframe within which will review the request [3].

The directive also stipulates that cross-border compensation schemes will be drawn up in accordance with national compensation schemes set up by Member States for the compensation of victims of violent crimes. All Member States should ensure the existence of the compensation scheme for crime victims, ensuring their compensation in line with that victims have suffered damage [3].

Defined in the directive is the obligation of Member States to submit information to the Commission regarding the application for compensation, the auxiliary authorities and jurisdiction of those authorities. The information should be compiled in the language required by article 10 of the directive, ie in one of the official languages of the EU. States should take all measures in their domestic law to take all measures in accordance with the directive. These measures will take effect in countries that have ratified them only after their official publication [3].

a. **Recommendations of the European Union:**

i. **In 1985, the Committee of Ministers of the Council of Europe adopted Recommendation (85) 11 "On the Position of the Victim in the Framework of Criminal Law and Procedure".[8]**

Criminal justice is a "key feature", it must meet the needs and protect the interests of the victim. This function is directly related to increased confidence of victims in the criminal justice system and encourage their participation as witnesses in this system. Informing the police about victims receiving assistance opportunities, practical and legal advice, compensation from the offender, state compensation and provision of security for them; informing victims about the final decision concerning prosecution; informing victims about the date and place of the proceedings; possibilities for compensation of victims and informing them of the outcome of the case; informing victims on the order of compensation to the offender as part of a criminal sanction; providing assistance to victims in obtaining compensation; Other issues are of particular importance to which emphasizes this recommendation.

ii. **Recommendation (2006) 8, "On assistance to victims of crime". [9]**

Council Framework Decision of the EU Presentation of victims in criminal proceedings, under Article 9 of its predicted the obligation of states to ensure that victims receive a decision within reasonable time limits on compensation by the defendant as well as take measures necessary to encourage the defendant to provide adequate compensation to victims.



#### **4.3 Decision Framework Constitution of 15 March 2001 on the status of victims in the context of criminal proceedings [4]**

This framework decision has as its starting point paragraph 32 of the conclusions of the European Council Temprerës, October 1999, which is designed so "on the basis of the Commission communication should be set minimum standards to protect victims of crime, especially with regard to law in order to beter run victim's justice and law for damages, including travel expenses to justice.

Also we need to create national programs to finance measures as well as non-governmental public assistance and protection in favor of the victims. Following this objective considerations of the decision-frame No. 8 stipulates that "it is necessary to align the rules and practices relating to the status and main rights of victims, taking care mainly to respect the dignity of victims, their right to be informed and to be informed, to understand and be understood, to be protected during the various stages of the proceedings, and considering the problem that creates the fact of staying in another member state and member at the location of the crime."

In consideration of this decision No.9 Framework states that "*the provisions of this framework decision does not oblige Member States to guarantee victims a treatment equal to that of the parties, so states are not obliged to give the victim status of the party in process*". In the majority of European legislation three concepts encountered in connection with the victim:

1. The victim becomes a party to the process and may request the initiation of proceedings.
2. The victim may seek damages.
3. The victim is a simple witness, whom you know and can judge certain conditions, the right to compensation (British system).

In this context the decision-framework gives Member States discretion. In the 19 articles of the Framework Decision deals with a certain number of rules stemming from considerations 8 and 9. The main rules are:

**Firstly**, each country should ensure that victims, particularly victims too weak to have a treatment in accordance with their condition.

**Secondly**, each state provides victims the opportunity to be heard during proceedings and provide proof elements.

**Thirdly**, each country should take the appropriate authorities to question victims only if necessary for the proceedings. Here we are dealing with victims of crime delicate for minors who fall victim of sexual crimes who should be questioned as seldom as possible.

**Fourth**, every state must provide victims, especially in the first contact with the services of the war against këryre phenomena, the right to receive accurate information. After that come from sub-briefings which we can mention the development of the procedure, the person to whom the request etc

**Fifthly**, every state should take all measures to provide compensation expenses of victim participation in the proceedings.

**Sixthly**, each State must take all appropriate measures to ensure victim safety and respect for private life. States should avoid that victims and perpetrators to be in contact at the premises of justice which means that should be provided special reception area. Also when necessary to protect victims, particularly those most vulnerable, from the effects of depositions of them, each Member State provides them with the injunction, the conditions necessary to dhënijes of evidence to reach this goal by any means necessary and compatible with the fundamental principles of his right [4].

**Seventhly**: each state should guarantee victims the right to compensation by the offender and ensure that the judge will make a decision within a reasonable time.

**Eighthly**: each country must take care to promote mediation in criminal acts on issues it considers reasonable for this kind of measure, which is very much less compelling paqart and since States are invited to promote mediation techniques.

**Ninthly**: each country supports intervention services helping victims who are tasked to organize the reception st at the beginning and subsequent support to victims, and ensure appropriate funding to these services.

#### **4.5 Decision Framework Constitution of 19 July 2002 on human trafficking [5]**

This decision is based on Articles 29, 31 / item and item b of the TEU 34/2. The decision - within the component aimed at harmonizing elements of offenses and penalties applicable in the field of human trafficking. The decision contains several provisions concerning jurisdiction and proceedings in this field. These provisions relate to cooperation, which makes it necessary approximation of provisions under Article 43/2 point b of TEU. Article 1 confirms the obligation to punish: the recruitment, transportation, transfer, harboring, and maintenance of a person, including transition or transfer of control exercised on the person being understood:

- a. When there is coercion, force, threats, and kidnapping
- b. When used lies or deception. When abused authority or a situation such mënyqë that person is not left apart rrugzgjdhje acceptable obedience to abuse.
- c. When we offer or acceptance of a sum of money or various advantages to obtain the consent of a person who has authority over another person for the purpose of exploitation of prostitution of another person and other forms of sexual exploitation and pornography.

The acceptance by the victim does not deprive human trafficker its illegal character, this acceptance has not taken into consideration when used by whichever means marshikuara in paragraph 1. When these actions dealing with a child, these actions considered as trafficking in human beings and as such they are punishable even if it is not used any of the tools parashikuara in Article 1.

In Article 3 is intended as a maximum sentence of up to 8 years when the offense is committed in aggravating

circumstances foreseen in the second paragraph of this Article:

- a) The work has put at risk the life of the victim, whether intentionally if negligence
- b) The offense is committed against a victim extremely subtle. It considered such as the victim has not reached the age of sexual maturity contemplated by the national legislation and the offense was committed with the purpose of exploitation for prostitution and other forms of sexual exploitation, including pornography over.
- c) The work is performed by use of severe violence and causing the victim serious injuries.
- d) The offense is committed in the framework of a criminal organization in terms of interactions 98/733 / JAI.

Article 7 of the decision relates to three aspects of victim protection which are almost identical to those of Article 9 of the Framework Decision concerning the fight against child exploitation.[6]

**Firstly**, Member States should regulate their criminal legislation so that the works carried out wholly or partly in the territory of their statement or accusation never the victim is not a necessary condition for the start of the investigation or proceeding. This provision is aimed only at those times when, according to national legislation should be a statement or accusation by the victim.

**Secondly**, children who are victims of an offense referred to in Article 1 are regarded as extremely delicate victims [7].

**Thirdly**, apart from giving protection to the victim directly Framework Decision on the status of the victim in the framework of criminal proceedings [7], each member state shall, if it is necessary, take all measures possible to ensure appropriate assistance to the victim's family. This obligation is specified by providing that each Member State applies in respect of the family Article 4 of the framework decision, where necessary and possible. This article provides for the right to receive indormacioneve, even in this case the family has acquired a special status.

## 5. Conclusions

Protecting the rights of victims of criminal acts is a necessity for all countries. Each country should take measures to guarantee and protect the rights of victims. All victims who have suffered damage from a crime in the first place need adequate protection.

In the case of protecting the rights of victims is a problem to take measures to avoid re-victimization of its then secondary victimization. Survivors of crimes rivikitimizimin can feel when they decide to face the offender, this may happen as a result of inadequate treatment of employees within the penal system, as well as from social service providers. The offense after the first contact with the police and the victim is the contact continues for a

considerable time during the trial. Interaction between the victim and the essential policisëeshtë about how victims will face victimization and will take themselves. During interrogation the police need to be careful and not take the role of the offender, and must respect all the rights of victims.

After giving first aid housing, the provision of certain services by the police is necessary before the start of court proceedings victims also be provided legal aid. This first time is done to ensure equality of parties in the process and in turn it becomes necessary when we know the specific position of victims of crime and the possibility of violating its interests by the offender during the process

When addressing the victim in court proceedings should be taken into account not only its position as an injured party but also its role as a witness and evidence important source of information, which can provide the injured party in the criminal proceedings have related to the facts that are relevant for criminal proceedings, as well as the circumstances aimed at realization of the rights to his words, on the basis of which it can be said that it is double the procedural figure. Given the dual role of victims of crime in the case of participation in court proceedings can be concluded that its adequate protection during this phase of the criminal process is the development of the importance of double.

Firstly, it enables the realization of the rights of victims, mitigation of consequences experienced by crime and avoid re-victimization its possible, on the other hand, it also enables the victim's cooperation with the disclosure of information from it to prove the actions of the perpetrator and the right to resolve the criminal case. And we consider that in general to ensure an active role of the victim in a criminal court and other proceedings as the main prerequisites are: comprehensive legal infrastructure for this purpose and to inform victims about their legal options.

Secondly, international instruments have enshrined the right to compensation to the victims as a feasible right through payment of damages by the perpetrators, as well as through the state plan. International standards have also developed the principle according to which the benefits derived from the commission of the offense, should be used to compensate the victims, individually or collectively. These standards have highlighted in particular the interests of women and children.

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