Discrimination in Sports as a Risk of Human Rights Violations in Ukraine

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Abstract: The urgency of the issue in question lies in the need to improve anti-discrimination legislation in Ukraine. The article aims to summarize the current state of combating discrimination in sports. Research methods include analysis, generalization, and the formal-logical method. The article summarizes international acts that promote the prohibition of discrimination and the need to combat it. One of the main problems in world sport is racial discrimination, and there are three types of racism in sports. The main disadvantage of laws that lead to imperfect prosecution mechanism is entirely criminal liability for discrimination, even though the law on preventing and combating discrimination also implies administrative and civil liability. The article analyses some positive foreign experience in combating and counteracting discrimination in sports. It shows that the priority areas for combating and countering discrimination in sports in Ukraine should be: (a) improving the legislation in terms of prosecution; (b) establishing a special body responsible for combating and counteracting discrimination in sports; (c) introducing educational tools in schools and among members of sports organizations that promote human rights, regardless of race, colour or other characteristics. Emphasis is placed on the fact that an effective mechanism of legal regulation together with preventive measures should guarantee protection of the rights of both athletes and fans. The obtained results can serve as the basis of legislative proposals to improve the fight against discrimination in sports, which will ensure protection of human rights.

Keywords: Restrictive regulations, the ombudsman institution, the principles of inclusiveness, the principle of non-discrimination, racial discrimination, types of racism in sports.

Introduction

In a postmodern globalized society, we witness a devaluation of all values, so the sport has turned from honest, intellectual and team struggle into a tool of business, image, rating (of countries, media, sports associations), etc. Changing the role necessarily violates traditional legal norms, requires their revision and bringing in line with the multimodal open postcolonial world. (Kokoulina Simina, Tatarova, 2019). Also, sport is an important means of promoting and strengthening universal respect for human rights. It can and should be used to combat all forms of discrimination and social isolation in general, as well as violence, inequality, racism and xenophobia (Final Report of the Human Rights, 2015).

Despite its strong positive potential, sport as a social phenomenon reflects the complexity and contradictions of social relations. It can provoke negative phenomena such as discrimination (Martynenko, 2017). In 2018, 52 instances of racial discrimination in sports were recorded only in the USA, while internationally 137 racist acts were noted (Different types of discrimination in sports, 2019). As for Ukraine, there are no official statistics on human rights violations based on gender, race, skin colour in the field of sports. However, the analysis of open sources indicates the existence of numerous facts of discrimination in sports in Ukraine. One of the last known cases occurred last year in November during a football match between Dynamo and Shakhtar in Kharkiv, where racist shouts from Dynamo fans were heard against Brazilian Tyson from the Shakhtar team. On the other hand, this year in Ukraine for the first time the Football Federation of Ukraine obliged professional clubs of the Premier League to organize women’s teams. Such contrasts indicate organizational changes, but also stereotypical violations of the rights of athletes by society with a still low legal culture (Komogorova et al., 2021).

Recent Ukrainian publications and research show that the issue of discrimination in sports is scientifically developed (Palamarchuk et al., 2020; Sitovskyi et al., 2019).

Thus, Alekseev, Sattarov, & Bredikhin consider the following types of discrimination in sports: (a) gender discrimination; (b) racial discrimination; (c) skin colour discrimination; (d) religious discrimination; (e) discrimination on political and other beliefs; (f) discrimination based on descent and national or ethnic origin; (g) national minorities discrimination; (h) discrimination on birth; (i) other forms of discrimination. At the same time, scholars emphasize that it is necessary to distinguish discrimination from differentiation in sports (Alekseev, Sattarov & Bredikhin, 2018).
At the same time Timofeychik notes that discrimination in sports is a fairly old phenomenon, and the most common forms of discrimination in sports are gender and racial discrimination (Timofeychik, 2014).

Considering current problems in sports, Kokoulina, Simina & Tatarova state that the manifestation of racism is quite relevant today, both inside and outside sports arenas, and mention the phenomena of unconscious racism (Kokoulina, Simina, & Tatarova, 2019).

Instead, Oliver & Lusted highlight the problem of reluctance and ignorance of filing a complaint in case of any form of discrimination. This reluctance is associated with a general lack of understanding of filing the complaint and the procedure for its processing (Oliver & Lusted, 2015).

Besides, some studies are devoted to the causes of discrimination. For one, Zaitsev & Alekseev focus on the causes of discrimination against Russian athletes, among which their political beliefs are the central point of discrimination (Zaitsev & Alekseev, 2017). Continuing the cause of discrimination in sport, we turn to the views of Symons, O’Sullivan & Polman, who note that sexism involving discrimination against women is often systemic in sport because this prejudice and poor treatment relative to men underpin the organization, power structures and dominant cultural ideologies of sport (Symons, O’Sullivan & Polman, 2016).

At the same time, Roberts & Sojo, considering the factors that encourage discrimination, conclude that an immediate solution is required to ensure athletes have statutory protection against discrimination and non-accidental violence (Roberts & Sojo, 2019).

Based on the foregoing, one can conclude that the problem of discrimination in sports is not new, and recent scientific studies generally focus on existing types of discrimination in sport, its causes and problems, which indicates a violation of human rights, and, in turn, requires taking preventive and punitive measures for discrimination in sports.

Therefore, in Ukraine and throughout the world, there is a problem of discrimination in sports, although the rule of non-discrimination on any grounds is fundamental in international law in general and in national law in particular. At the same time, both athletes and fans suffer from discrimination. These circumstances indicate the need to find new ways to solve this particular issue since the existence of discrimination threatens the stability of social relations and is a gross violation of human rights.

Therefore, the purpose of the study is to review the foreign experience in identification, description of the root causes of discrimination, generalization of current trends in combating and counteracting discrimination in sports.
Both general and special methods of cognition were used in the research, specifically: analysis, generalization, and the formal-logical method as well. Thus, the method of analysis allowed one to identify the main shortcomings of anti-discrimination legislation and positive foreign experience to combat discrimination in sports. Using the method of generalization, international acts promoting prohibition of discrimination and the need to combat it were considered. One of the main methods that made it possible to formulate proposals for priority areas to combat discrimination in the sport for Ukraine is the formal-logical method.

**Discrimination in postmodern world sport: well-known and hidden aspects**

In this section we will consider development of scientific sports and legal discourse in the world in recent decades. We will do this by analysing the most relevant sources from leading scientometric databases. For Ukraine, which does not have a long experience in development of sports and anti-discrimination law and developed legal culture, it is important to follow the trends of such experience in the world’s leading countries over the past 50 years. Already in the late 1980s and early 1990s, works appeared that summarized the experience of anti-discrimination combat, identified positive and negative trends, “weak legal zones” in various sports and in different countries (Maksymchuk at al., 2018). Thus, Kahn in 1991 conducted a thorough review of researches on racial, ethnic and gender discrimination in professional sports. This review is interesting because it identifies the relationships between the type of discrimination and the sport, the financial and economic basis of gender discrimination, and the assessments of professionals who view professional sport as a business and use of labor (nowadays called human capital). The author reviewed the sources of the 1970s and 1980s and, in the context of that time, identified gender, ethnocultural, and economic dissonances of sports equality (Kahn, 1991). For the first time, the articles of that time focused not on the actual legal documents and the reasons for discrimination, but on the regional specifics of the selective attitude, its economic basis in professional sports. The most lucrative sports are striking examples of such selectivity: baseball in the United States, hockey in Canada, football in Europe, etc. Interestingly, discrimination in pay for sports work at the time depended largely on fan interests, which was related to the attendance and ranking of team sports. For example, there is distrust of black hockey players in Canada, and of white baseball players in the United States, etc. (Bezliudnyi, et al., 2019). This shows that it is difficult for legal mechanisms to combat financial interests.
and consumer trends.

A review of historical and legal sources shows that racial inequality began to settle in the late 1940s. In the 1990s, we experienced the rise of feminism and achievement of maximum equality between men and women, as well as replacement of the notion “sex” by “gender”, but this did not solve the problems. Even after adoption of the Equal Remuneration Act in 1963, discrimination against athletes with development of the most popular sports (rugby, football, tennis, baseball) was only increasing. Nevertheless M. Palmer outlines optimistic prospects: sport can become a platform and a research laboratory for studying and solving various aspects of the labour market and equalizing payment. The scientist explains that in sports “we know the name, face and life history of each employee and each industry leader, and the statistics are much more detailed and accurate than typical microdata samples, such as a census or current population survey” (Palmer & King, 2006) This makes it possible to trace all the causes of discrimination, not so much legal as psychological.

We assume that club owners are aware of the existence of, for example, gender stereotypes in society and allow themselves to pay even star female athletes lower than men. At the heart of this problem is greater humility of women, greater aggression and a sense of justice in men.

In today’s world, gender equality is practically enshrined in the framework documents, but it is difficult to defend it directly, to gather evidence, to draw parallels between socio-legal and biological equality (Deshpande, 2016; Maksymchuk et al., 2020a). Researchers note that there is an unspoken rule: “In many sports contexts, it is appropriate to distinguish between women and men: men must compete exclusively with men, and women - only with women. Even radical feminists rarely protest against this kind of gender discrimination” (Tännsjö, 2002). However, the questions remain open: why sport differs sharply in this respect from other forms of activity; why competitions take place separately, where men and women can be absolutely equal (chess, shooting, etc.).

In recent years, scientists have outlined more than one issue - discrimination against fans and enthusiasts of sports. This is especially true in countries where certain sports are not traditional (for example, football in Asia). This problem is currently being studied from the point of view of ethnocultural studies, economics, and social psychology. For example, Wang, Zhang et al. conducted a study of fan oppression based on data from the Chinese Professional Baseball League (CPBL). It turned out that the attendance of spectators in 2005-2017, the attitude of foreign athletes, the discrepancy between the cost of such athletes and access to them shows: the
problem lies in the phenomena: statistics - tastes - prestige - bias - confidence (Wang, Jane, Cheng & Fang, 2021). Organizers, athletes, spectators and other participants in sports life create this problem together, so it is currently well interpreted by the theory of reference groups.

Becker (2010) first described the model of discrimination against activity (work) on the basis of choice and taste in the 1950s. It was based on: a) discrimination of clients by employees; b) discrimination of employees by employers; c) discrimination of employees against each other. Guryan and Charles point out that these models of discrimination are generally correct, but they are still based on the moment of acceptance and tolerance in terms of gender, religion, character, etc. (Guryan & Charles, 2013). In the 1970s, it became clear that if such discrimination was difficult to overcome, it was better to introduce an alternative (statistical) model of discrimination. If employers have a minimum of personal information, they will not take it into account. Then they will focus on employees’ efficiency and the average productivity of the team.

A relatively new area of research has become the study of age discrimination against athletes. There is an epistemological problem here: is age discrimination a methodological bias, an objective expediency, or a real discrimination? (Delorme, Boiché & Raspaud, 2010). Sports researchers talk about the “relative age effect”, because in football, age significantly affects quality of the game, and in chess, billiards or poker - does not affect. However, promoters, club owners, etc. show systemic discrimination in selection of professional players. At the legal level, these issues are almost not regulated.

The liberality of gender (transgender, asexuality, etc.), feminist and gender values, tendencies and identities has given rise to the idea of gender neutrality. This to some extent replaces gender equality, which cannot be the case in sports (Coleman, Joyner & Lopiano, 2020). Sports statutes aimed at gender equality are currently being developed. Coleman argues that the first half century of the struggle for gender equality in sports is over, there are new problems that require new concepts. For example, the new society “suggests” that transgender “women” do not include persons of both genders if they identify themselves as women (Coleman, Joyner & Lopiano, 2020). Concerning sports, there is a contradiction: we perceive gender as a social thing, and in sports we deal with human biological and physical abilities. Therefore, soft guidelines for transgender athletes are currently being developed. Such people must understand that if they are biologically men from birth, then they have matured as men and have higher physical conditions. It should be understood that awareness of this fact has nothing
to do with transphobia, but is a manifestation of integrity and honesty in sports.

Although the Paralympic Games have been around for a long time and inclusion has become the norm, researchers have noticed that children with disabilities are still discriminated against. On the positive side, there are sports for the full participation of people with disabilities, there are certain rules that take into account different abilities. However, researchers argue that the Disabled Discrimination Act 1992 is virtually non-existent in sports, and the capabilities of children with disabilities still depend on the attitudes of full-bodied participants and the individual abilities of children with disabilities (Davies, 2017; Pearce, 2017). The time has come to supplement or modify existing laws to ensure fair competition, equal access and quality training and participation (Bakhmat, et al., 2019).

In a globalized society, there is a problem of overt or covert discrimination against athletes in the media. First of all, it concerns gender inequality in the quantity and quality of media representation. For example, in 2020, researchers analysed Twitter sports media. It was found that, firstly, women athletes are covered much less frequently, but the worst is another fact: “Qualitative analysis has confirmed that tweets in sports media cover failures, sanctions and underestimation of female athletes more often than men, and gender stereotypes and sexualization are more characteristic of tweets concerning female athletes” (Lameiras & Rodríguez-Castro, 2020). It is becoming clear that both social networks and the Internet in general need legal regulation and prevention of discrimination in sports.

This review demonstrates the lack of capacity of the legal system due to the significant segmentation, dynamics and concealment of ancient and current forms of sports discrimination, which opens the need and ample opportunities for theoretical, methodological and legal understanding.

Theoretical and legal provisions on discrimination in sports

Given the long history of discrimination in sports, several international acts have addressed the issue of non-discrimination in general and the need to combat discrimination in sports in particular.

Thus, the principle of non-discrimination is enshrined in Art. 7 of the Universal Declaration of Human Rights, which states that all people are equal before the law and have the right to equal protection against any discrimination and any incitement to such discrimination (Universal Declaration of Human Rights, 1948). Other special international treaties are also devoted to the prohibition of discrimination, including the International Convention on the Elimination of All Forms of Racial Discrimination as of

At the same time, special international instruments concerning discrimination are Resolution on Tolerance in Sport as of 1995, the International Convention against Apartheid in Sport as of 1985 and the Recommendation on the Prevention of Racism, Xenophobia and Racial Intolerance in Sport as of 2001 (Llopis-Goig, 2009). It is also worth paying attention to the General Policy Recommendation No.12 on combating racial discrimination in sports in 2009, which recommends one to: (1) adopt and implement anti-discrimination legislation that provides universal access to sport along with punishment for acts of racism; (2) create associations against racism in sport; (3) train the police to detect and combat racism in sport; (4) improve awareness of examples of racism and racial discrimination in sport (ECRI General Policy Recommendation No. 12, 2009).

Summarizing the norms of international law, one can observe that their effectiveness is possible only if the national legal norms of each state are stated in detail to ensure compliance with the principle of non-discrimination in sports and will not have a purely declarative meaning and ineffective implementation mechanism. However, the mechanism of implementation of the principle of non-discrimination should protect both athletes and fans from manifestations of any types of discrimination.

Today, racial discrimination remains one of the main problems in world sports and is most acute in football. Thus, racism in sports manifests itself in various forms, including the demonstration of racist posters and flags, racist insults and attacks by fans, regular chanting of racist slogans, racist remarks by officials and club leaders during sporting events and unequal access to participation in sporting events infringing the rights of ethnic minorities (OHCHR, 2017).

Given the above, it is important to choose punishments that reflect the seriousness of the human rights violation. As rightly noted by Timofeychik, the main purpose of sanctions is to ensure the principle of inevitability of punishment so that every fan and player can realize that for the admitted manifestations of racism there will always be a responsibility (Timofeychik, 2014).

**Ukrainian experience of fighting discrimination in sports**

The issue of improving the legal framework to combat discrimination in sports, in particular concerning liability, remains particularly relevant for Ukraine. Thus, Article 16 of the Law of Ukraine
“On Principles of Prevention and Counteraction of Discrimination in Ukraine” (2013) establishes that persons guilty of violating the legislation on prevention and counteraction of discrimination bear civil, administrative and criminal liability. However, the Ukrainian legislator provides liability for discrimination only in Art. 161 of the Criminal Code of Ukraine in the form of a fine or restriction of liberty for up to 5 years, with deprivation of the right to hold certain positions or engage in certain activities for up to 3 years or without it (Kryminalnyy kodeks Ukrayiny, 2001). This norm is general and applies to liability for discrimination not only in sports. The number of recorded cases under this article is quite small (in 2019, 61 proceedings were opened based on the results of monitoring the state of compliance with the principle of non-discrimination), and even fewer cases reached the court and were resolved. At the same time, there is no official information about the number of open proceedings on discrimination in sports. This situation can indicate only one thing, i.e., the imperfection of the criminal prosecution mechanism and insufficient attention of the authorities to the issue of discrimination in the field of sports.

Today, many scholars support the view that criminal liability for discrimination alone cannot be considered effective since the protection guaranteed by the above-mentioned article extends exclusively to Ukrainian citizens and in each case supposes the proof of criminal intent (Maksymchuk at al., 2020b). Also, it is difficult to bring an offender to justice under this article if the hate speech is directed not at a specific person but a whole group. Another problem is that most discrimination cases arise in civil and administrative legal relations, and therefore criminal punishment is often unjustifiably severe. In this regard, long-term hearing and costly trials are considered inefficient. Ineffective procedures often affect one’s decision to challenge a discriminatory attitude or practice (Dronova, 2019). In other words, there is a lack of motivation to file a complaint due to uncertainty about the legal mechanisms of protection. Therefore, it is important to ensure the creation of such a mechanism, which would be entitled to combat discrimination in sports, assist victims in filing complaints of discrimination and whose liability would be commensurate with the violation.

In Ukraine, there have already been attempts to resolve the situation with the liability for discrimination. In particular, draft law No. 0931 (Proekt Zakonu pro vnesennya zmín do deyakykh zakonodavchykh aktiv, 2019) proposed to amend Art. 161 of the Criminal Code of Ukraine, partially decriminalizing the crime of this article, replacing it with administrative liability, supplementing the Code of Ukraine on Administrative Offenses with the
article “Violation of legislation in the field of preventing and combating discrimination”. However, it was proposed to leave criminal liability only for inciting national, racial or religious intolerance. It was believed that these changes will simplify the procedure for liability for discrimination, including in sports. However, this bill did not receive support due to the lack of justification for the decriminalization of the article.

**European practices in fighting discrimination in sports**

Importantly, European countries have resolved the issue of liability for discrimination in sport in other ways. Along with criminal liability, for such countries as the UK, Italy, France, Belgium, and Spain, prohibitive regulations have become the main innovations, which are an integral part of national legislation. Prohibitive regulations may be administrative and/or judicial; their idea is to close access to stadiums for guilty persons. This legal instrument is preventive in nature; however, it can also be considered a punishment, as to prevent possible incidents, fans are deprived of the right to attend sports events (Sonntag & Rank, 2017) from three months to five years on average.

On the one hand, such a proposal is quite successful, because, in comparison with traditional measures of punishment, including fines, it forces to show tolerance to others. On the other hand, it has the effect of restricting freedom of movement.

Also, Belgium passed the so-called “Loi Foot” law (Loi relative à la sécurité lors des matchs de football, 1998), which established administrative liability for racism in football against those who were personally or as a part of a group called for physical massacres, violence or incitement to hatred against anyone in the stadium or other place related to a football match. In this case, the administrative responsibility was set to a fine and/or prohibitive regulations.

It is worth noting Spain’s experience in setting up the State Commission on Combating Violence, Racism, Xenophobia and Intolerance in Sport, which is responsible for maintaining a register of fans and associations/groups of fans, as well as the right to propose a measure of responsibility both for fans and sports clubs or federations. At the same time, the Supervisory Board on Violence, Racism, Xenophobia and Intolerance in Sport studies, monitors and prevents racist behaviour in sport (Comprehensive strategy against racism, 2011).

There is also a separate body responsible for dealing with discrimination complaints in the Netherlands. In particular, the country has a two-tier system: a network of anti-discrimination bureaus in each
municipality, which receives complaints and advises citizens, and the police, which collect information on hate on crimes committed by hate and transfer it to a special service of the Public Prosecutor, who decides to initiate a criminal case. A special National Centre for Expertise on Discrimination helps him/her to make a decision (Engel, 2015). Thus, all cases of discrimination are initially divided into administrative offences related to discrimination and crimes committed based on hatred of a particular person or group of persons.

In addition to prosecuting, several European countries use preventive measures to combat discrimination in sport. For example, in France, there are educational tools (Programme Éducatif Fédéral) telling children about the principles of inclusiveness. They are used in all football clubs in the country that want to participate in this project. Such measures mean the social and political importance of the topic of combating discrimination in sports at the highest level (Sonntag & Rank, 2017). Similar tools are common in Australia and England, which are conducted online and in-person courses. Some states or territories (South Australia, Northern Territory and Tasmania) make training mandatory under funding agreements, but mostly the use of training is voluntary (Oliver & Lusted, 2015).

The importance of inclusion in the context of consideration of this issue directly in Ukraine is confirmed by the fact that in 2019 the ombudsman received complaints about repeated discrimination against people with special needs in the network of sports clubs “Sportlife”, in particular, denying persons with visual disorders the opportunity to purchase a membership card (Shchorichna dopovid Upovnovazhenoho z Verkhovnoi Rady Ukrainy, 2019). Accordingly, inclusion should become a central idea of education development, which affects the profound social and value changes of society (Reznik, Volik, & Bezpalova, 2019), especially in the field of sports.

Sports organizations must show that they have taken all reasonable measures to prevent discrimination (for example, to establish codes of conduct, policies and procedures for the protection of members and to provide education and training to their members). It is also essential that governing organizations have effective policies and procedures to combat discrimination and abuse. Those whose rights have been violated must be confident that in case of a complaint a credible process will be carried out that will ensure a prompt and fair decision (Oliver, & Lusted, 2015).

The considered practices of other countries on combating discrimination in sport allow one to say with confidence that it is impossible
to completely get rid of discrimination in sport. Yet, it is possible to significantly reduce its manifestations if appropriate changes are made to legislation and preventive measures are implemented.

Conclusions

Although the principle of non-discrimination in sport has become widespread at the international and national levels, discrimination remains one of the most pressing issues in sport, which constitutes a significant threat to human rights violations. At the same time, racial discrimination is the most acute problem in world sports, especially in football. Whereas an effective mechanism of legal regulation together with preventive measures should guarantee protection of the rights of both athletes and fans.

Based on the positive experience of other countries, the following areas of fighting and combating discrimination in sport must become priority in Ukraine: (a) improving law regarding liability; (b) creating a body responsible for combating discrimination in sport; (c) introducing educational tools schools and among members of sports organizations that promote human rights regardless of race, colour or other characteristics, especially for persons with special needs.

Considering development of the information society, the relevance of the latter area today does not even need to be proven. As for other areas, the first area is especially important, which depends on the efficiency of all other areas. In particular, it needs to review and amend Art. 161 of the Criminal Code of Ukraine, leaving criminal responsibility for incitement of national, racial or religious intolerance. Given that this article guarantees protection only to citizens of Ukraine, it is advisable to protect foreigners and stateless persons residing in Ukraine, as well as groups of persons (e.g., ethnic minorities). It is also advisable to establish administrative liability in the form of fines or injunctions for violations of anti-discrimination legislation, supplementing the Code of Administrative Offenses with the article “Violation of legislation to prevent and combat discrimination”, will allow responding more efficiently and promptly to human rights violations in the field of sports.

As for the second area, under Ukrainian legislation, the Verkhovna Rada Commissioner for Human Rights performs the functions of preventing and combating discrimination. But, in fact, the institution of ombudsman in Ukraine does not work so effectively to ensure human rights, including the rights in the field of sports, due to its congestion. Therefore, the proposal to establish a competent body to assist victims in filing complaints and to combat discrimination in sport is quite logical. As a result,
those whose rights are violated, can take advantage of effective protection by filing a complaint and receive appropriate advice on how to proceed.

Research limitations. There are many discriminatory factors that are less noticeable: incommensurability of athletes’ remuneration and authority, racial bias in assigning sports positions (it is difficult to find a non-white coach in the most popular sports), differences in sports activity and ignoring achievements in unpopular sports. This was observed 40-50 years ago (Eitzen & Yetman, 1977). Over the years, some of this discrimination became the opposite: in the 1990s, in order to completely eradicate racial discrimination, many sports clubs overestimated the salaries of black players because they felt “guilty” that black players were excluded from professional teams in the 1940s. There is evidence that fans have or had racial advantages in basketball, football and baseball, and the income of high-class defenders is generally lower than that of attackers (Kahn, 2000). As we can see from these facts, discrimination in sport is a changing and very segmented phenomenon, so it is difficult to take into account all aspects in the legal dimension. These aspects are hardly taken into account either in the Ukrainian legislation or in the deontological principles of activity of sports subjects, which requires further research and reforms (Halaidiuk, et al., 2018).

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