

Criminal Protection Of Antiquities In Algerian Legislation

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Abstract

Antiquities are considered fundamental elements of human, and the achievement of any civilization is known through the relics that indicate it and express its history and tell its stories. Antiquities serve as the enduring reservoir of accumulated knowledge, skills, and perspectives that equip individuals and societies to confront contemporary challenges and shape the future. These artifacts are pivotal to the broad spectrum of human memory, connecting present generations to their profound ancestral origins. The protection provided for antiquities is more effective when linked to criminal law, which with its substantive provisions of the penal code and its formal procedural provisions of the criminal procedure law, is capable of imposing strict protection on all crimes committed against antiquities of various types and forms, in addition to the contribution of the international community through security and judicial cooperation.

Keywords: Antiquities, Crime, Substantive Protection, Formal Protection

Introduction:

The human life cycle necessitates that each generation builds and develops in accordance with its conditions, capabilities, and requirements. Then that generation passes away, but their constructions and urban developments remain for subsequent generations. A human dies, but their possessions remain present, and antiquities are one of these possessions. These are the remaining physical possessions for future generations.

Antiquities are an effective element in rooting cultural identity; they are the living witness to events that occurred and are the true face that clarifies the mystery of ancient humans. Therefore, every discovery of an archaeological site is considered definitive evidence for learning more about previous generations.

Given the worldwide interest in ancient antiquities, they have become a target for international and local criminal groups aiming to loot antiquities and sell them at very high prices at global auctions. Thus, there has emerged an illegal trade in antiquities, representing a global international danger, ranking second after the drug trade according to the United Nations. Considering the trade in antiquities as illegal, it results in crimes committed against antiquities, which is seen as substantive protection that cannot be an effective criminal policy without procedural protection through national or international procedural means and capabilities.

From all this arises the following question: To what extent is legislative policy effective in addressing the risks facing antiquities, and have comparative criminal policies in general, and the Algerian criminal policy in particular, managed to impose criminal protection for antiquities

in light of modern archaeological legislations and international agreements, thereby achieving fruitful cooperation between domestic criminal law and international criminal law?

This will be addressed in this research paper:

- The subject of criminal protection for antiquities.
- The substantive criminal protection for antiquities.
- The procedural criminal protection for antiquities. We will conclude with a set of results and recommendations.

1- THE SUBJECT OF CRIMINAL PROTECTION OF ANTIQUITIES

1.1- The Linguistic and Terminological Definition of Antiquities

1.1.1. Linguistic Definition:

Arkaios: Meaning ancient or old.

Logos: Meaning science or knowledge.

The Greeks were the first to use this word to refer to the study of ancient remains, then it was used by the Romans to denote ancient history. Denis of Halicarnassus, a renowned author from the Augustan era, highlighted this in his seminal work "Roman Archaeology," which chronicles Rome's history from its inception through to the Punic Wars. The term was also prevalent among Greek speakers in the early centuries AD, referencing performers who brought ancient myths to life on stage.

As scholars and artists began to focus on understanding the ancient classical ages during the modern Renaissance, the term "archaeology" was frequently used to signify its scientific meaning, thus finding its way into all modern European languages.

"archaeologist" came to denote that branch of science concerned with studying the material remains of human beings, meaning as a science, it investigates different ancient civilizations since the origin of humankind through analyzing material remains derived or extracted from excavations. Research in the field of archaeology extends beyond material findings or those discovered outside the context of excavations.

The human achievement of nations and peoples is intertwined with the civilizational identity that blends geography with the chronological sequence of history that interrogates it, speaking through the eye of the beholder and myth about a human contribution that has become a national heritage, not defined by the measures of wealth nor bounded by descriptions of value.

The preservation of antiquities has garnered substantial emphasis, underpinned by both international and domestic legal frameworks. These include various statutes, treaties, and global accords that recognize archaeological sites and cultural heritage as invaluable assets of human civilization.

Notably, the term "antiquities" linguistically derives from the plural form of "trace" or "remnant," as noted by the Academy"(Academy, 2004, p. 05), referring to what was left by predecessors, and a "relic" from ancient things handed down, where "relic" means what successors inherit from their ancestors, and it also means a mark. In jurisprudence, the term antiquities is applied to all tangible materials left by humans from their handiwork in the past. Antiquities can be immovable, such as dwellings, fortresses, temples, and dams, or movable or portable, like pottery, stone, and glass vessels, and the term "artifact" can be applied to any artistic work representing historical value².

In language, the meaning of antiquities encompasses four meanings: either following something,

leaving a mark by which the thing is known, a blessing, or what remains of something.

1.1.2. Terminological Definition:

Various definitions have been proposed to clarify the concept of antiquities, including: a construction that conveys to future generations the memory of a distinguished personality or some significant events, or a building noteworthy due to its historical or aesthetic importance. Since the French Revolution, the term "historical monument" was born, until modern laws in France replaced it with another term, "heritage" (Taha, 2019, p. 37).

It also refers to everything left by ancient humans, including tools left behind, caves and palaces they lived in, temples they built, ornaments or necklaces they adorned themselves with, offerings they made, writings, weapons they used, or arts and crafts they immortalized (al-Hudhaifi, 2007, p. 94)

whenever it has historical value as a manifestation of civilizations (Halawa, 2003, p. 07).

1.2- The Legislative Definition of Antiquities:

Some international and domestic legislations have shown interest in antiquities by establishing legal provisions that aim to provide the necessary protection for them. These legislations have attempted, at their inception, to define antiquities in order to determine the substantive scope of these provisions.

1.2.1. The International Legislation Definition of Antiquities:

Antiquities are subjects of contemporary international law, thus becoming legally foundational in many international conventions and treaties **Source spécifiée non valide..** Some conventions and treaties concerned with antiquities included definitions for them, among which we mention:
A. Antiquities according to the International Convention for Cultural Protection, The International Convention for the Protection and Natural Heritage establishes a framework for the collective safeguarding of cultural heritage, encompassing items of scientific and therapeutic value. This Convention classifies various items as antiquities, including architectural structures, sculptures, murals, archaeological elements, inscriptions, caves, and monumental collections, all recognized for their exceptional universal value in terms of history, art, or science (Order 73-38, 1973).

B. Antiquities as Outlined in the Convention on Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property This convention aims to enhance international cooperation and awareness regarding heritage respect across nations. It addresses the protection against illicit trade and transfer of cultural items, including archives, photographs, films, antique furniture, and ancient musical (Order No. 73-37, 1973).

C. Antiquities under the Convention for the Protection of Cultural Property in Armed Conflict Established during a conference on May 14, 1954 (Presidential Decree No. 09-267, 2009), this convention recognizes the increasing risks to cultural properties due to advancements in warfare technology. It defines antiquities to include significant architectural and historical buildings, both religious and secular, archaeological sites, collections of buildings that attain historical or artistic value collectively, and items such as artworks, manuscripts, and books. (Article 2, 1970).

D. Antiquities according to the Convention on the Unification of Law regarding Stolen or

Illegally Exported Cultural Properties Algeria implemented this convention through Presidential Decree No. 09-267, dated August 30, 2009, focusing on the unification of laws concerning the recovery of cultural properties that have been stolen or illegally exported (Presidential Decree No. 09-269, 2009). The decree regards antiquities as cultural properties significant to religious, archaeological, prehistorical, literary, artistic, or scientific domains, as delineated in the annex of this convention. (UNESCO, 2001).

E. Antiquities as Per the Convention on the Protection of Underwater Cultural Heritage Ratified by Algeria through Presidential Decree No. 09-269 on August 30, 2009, this convention adopts a broad definition of cultural heritage closely aligned with the concept of antiquities. It encompasses a variety of cultural properties listed in the annex of the Convention on the Unification of Private Law regarding Stolen or Illegally Exported Cultural Properties, emphasizing underwater cultural heritage (Presidential Decree No. 09-269, 2009; UNESCO, 2001).

1.2.2. National Legislations:

National laws vary in their approach to defining antiquities; some provide specific definitions, while others categorize them more broadly within cultural heritage or cultural properties.

A. Direct Definition of Antiquities in Some National Legislations Several nations have explicitly defined antiquities in their legislation, including:

Definition of Antiquities in the Unified Arab Antiquities Law: Adopted at the 11th Conference of Arab Antiquities hosted by the Arab Organization for Education, Culture, and Science in Tunisia, June 1987, the Unified Arab Antiquities Law describes antiquities as any artifact left by ancient civilizations or predecessors, discovered or unearthed, whether fixed or movable (Article 3, 2017).

a. Egyptian Legislation:

Egypt's Antiquities Law defines antiquities as all items produced or revealed by the arts, sciences, literature, religions, ethics, and crafts throughout the eras of the Pharaohs, the Greco-Roman monarchs, and during the Coptic period (al-Hudhaifi, 2007, p. 100).

b. Iraqi Legislation:

The Iraqi legislator defined No. 55 of 2002 as: (Antiquities are movable and immovable properties built, made, sculpted, painted, or depicted by humans and are at least (200) two hundred years old, as well as those built or made by humans and also remains of human and animal species) (al-Khafaji, 2014, p. 16).

A. Indirect Definition of Antiquities in Some National Legislations

Some countries have defined antiquities through legislation related to cultural properties or cultural heritage, among them:

a. Algerian Legislation:

Algerian law does not have specific statutes for antiquities but includes them within broader cultural heritage protections. It encompasses all tangible and intangible assets located on or within national territory, also defining archaeological sites (Law No. 98-04, 1998). It encompasses all tangible and intangible assets located on or within national territory, also defining archaeological sites.

b. Lebanese Legislation:

In Lebanon, cultural properties, both tangible and intangible, irrespective of ownership, are defined under the Lebanese Law of Cultural Properties (Saeed, 2018, p. 43).

2- SUBSTANTIVE CRIMINAL PROTECTION OF ANTIQUITIES:

This segment addresses the various infringements against antiquities, which have become a global concern, categorized into offenses against their integrity and possession.

2.1- Crimes Against the Integrity of Antiquities:

These crimes can range from theft to the outright destruction of artifacts. (Al-Zubaidi, 2014, p. 164).

2.1.1. Crimes of Damage to the Integrity of Antiquities:

Every crime is defined by its outcome, which is a tangible change in the external world that is perceptible by the senses.

A. Crimes of Deliberate Destruction and Defacement of Antiquities

These crimes include the willful demolition, forgery, and defacement of antiquities. Specific offenses encompass unauthorized inscriptions, advertisements, negligent damages, and improper preservation efforts, leading to unintentional harm to these cultural assets. The Algerian legislator criminalized any destruction, defacement, demolition, or deliberate vandalism of any monuments, statues, paintings, or other items intended for public benefit or decoration of public places erected or installed by the public authority or with its permission, or any artistic items placed in museums or buildings open to the public (Article 160, 2020).

Furthermore, the deliberate destruction, defacement, or demolition of any movable or immovable cultural property proposed for classification, classified, or registered in the supplementary inventory or any items discovered during archaeological research has been criminalized.

Interpreting Article 160 bis 4 of the Penal Code alongside Article 96 of the Law on the Protection reveals that a crime against cultural property occurs not only through acts that lead to its total or partial destruction, defacement, demolition, vandalism, or other forms of destruction, but also without necessarily causing extensive damage to the archaeological asset. Importantly, these acts must be intentional, indicating criminal intent, which includes awareness of the act's illegality and the will to commit it (Saeed, 2018, p. 234).

B. Crimes Against the Archaeological Environment

Crimes against the archaeological environment are among the most widespread crimes against antiquities in practice. They are considered crimes of damage to the cultural heritage, affecting both movable and immovable heritage materials alike, leading to the impoverishment of cultural heritage, considered non-renewable resources (al-Hudhaifi, *The Criminal Protection of Antiquities: A Comparative Study*, 2007, p. 242).

The Algerian legislator specifically protected the archaeological environment by criminalizing several acts that could affect it, through Articles 98 and 104 of the Law on Cultural Heritage. These crimes, in brief, include:

- _ Illegal occupation or utilization of a classified cultural property (Article 98 of the Law on the Protection).
- _ Undertaking restoration works on cultural properties without the necessary

authorization (Article 99 of the Law on the Protection).

– Engaging in advertising or creating artistic works without a proper license (Article 100 of the Law on the Protection).

2.1.2. Crimes Endangering the Integrity of Antiquities:

Danger crimes are those posing a risk to the interests protected by law, which do not require a specific harm to occur, but are presumed to endanger the protected interest merely by happening (Yawoz & Oji, 1998, p. 263).

A. The Crime of Archaeological Excavation

The Algerian law interprets archaeological excavation as archaeological research, described in Article 70 of the Law on the Protection as any scientifically conducted investigation employing modern technologies. This research aims to uncover, identify, and document various archaeological remnants, assessing their types, ages, and locations.

The Algerian legislator subjected excavation and archaeological research to specific procedures that must be respected, detailed in Articles 70-71-72-77-78 of the Algerian Law on the Protection. The ultimate goal is to facilitate their reconstruction, thereby enriching and advancing the comprehension of history in its most expansive context.

Violations of the following provisions are deemed criminal under this legislation:

- Conducting archaeological research without a license issued by the Minister of Culture.
- Failing to report accidental discoveries.
- Not reporting items found during sanctioned research and not surrendering such discoveries to the state as mandated by Article 94 of the Law on the Protection.

B. The Crime of Transferring Antiquities

The crime of transferring antiquities is recognized as a risk-oriented crime due to the inherent dangers associated with the movement of such items. Article 7 of the International Charter for the Conservation and Restoration of Monuments and Sites, known as the Venice Charter of 1964, articulates that a historic structure is indelibly linked to the history it records and its geographical setting. The transfer of any part of a monument is permissible solely under circumstances that necessitate its protection or when such an action aligns with paramount international or national interests.

Article 8 of this charter further specifies that components such as statues, paintings, or decorative elements, which form an integral part of a historic structure, may only be removed to safeguard their preservation. These guidelines are directed at administrative bodies charged with the conservation of antiquities (Samir, 2012, p. 366). Notably, in Algeria, the lack of criminal provisions for these actions poses a significant risk to the security of cultural assets in all their manifestations (Saeed, 2018, p. 255).

C. Failure to Report the Disappearance or Damage

The Algerian Law on the Protection of Cultural Heritage mandates that any individual in good faith possession of a classified movable cultural asset, whether as owner, beneficiary, or trustee, is obligated to ensure its protection, preservation, maintenance, and security. Under Article 101 of the same law, failing to report the disappearance of such a property, or one listed in the supplementary inventory, by its guardian or any trustee is deemed a criminal act.

This article specifically targets the non-disclosure of the property's disappearance within 24

hours but does not extend criminal liabilities to other potentially damaging actions by its guardian or trustee. This delineation suggests that such offenses are classified as misdemeanors, requiring identification of the perpetrator as either the guardian or trustee responsible for the item (Article 101).

2.2- Crimes Against the Possession of Antiquities

This type of crime is among the most dangerous crimes affecting cultural heritage elements, given their irreversible impact on the identity and history of peoples, especially with the obstacles to the repatriation process (Taha N. M., 2019, p. 116).

2.2.1. The Crime of Stealing and Concealing Antiquities:

Theft is act of taking or embezzling someone else's property without their consent. This act can be committed against any movable property, but its severity increases when committed against movables of historical, scientific, or artistic value with the intent of trading and smuggling them. Theft of antiquities can be committed by anyone, whether a citizen or a foreigner, while most thefts are perpetrated by foreign entities interested in antiquities, particularly movable antiquities (Taha, 2019, p. 147).

A. The Crime of Stealing Antiquities:

Legislative approaches to the criminalization and penalties for antiquity theft vary globally. Some countries, including Algeria and France, have incorporated these offenses within their penal codes, whereas others, like Egypt, address them within antiquities-specific legislation (Saeed, 2018, p. 259)

Addressing the theft of antiquities through specific antiquities laws is generally viewed as a more effective strategy. This method distinctly separates the theft of archaeological items from that of non-archaeological items, allowing for the imposition of harsher penalties for antiquities theft (al-Hudhaifi, 2007, p. 362).

Under the Algerian penal code, for the theft of antiquities to be prosecutable, the items must be recognized as protected movable cultural properties, either classified or listed in the supplementary inventory and officially declared by the Minister of Culture in the Official Gazette.

B. The Crime of Concealing Stolen Antiquities

Some legislations consider the concealment of stolen items a form of complicity that has evolved into a distinct misdemeanor from the crime resulting in the concealed items, eventually being criminalized by a specific provision. This includes French and Algerian laws.

Furthermore, the Algerian legislation criminalizes the concealment of stolen or illegally obtained items. A conviction requires proving that the accused knew the items were illicitly acquired and intentionally possessed them. Judges must confirm these elements in their decisions to avoid legal errors.

Additionally, the Law on the Protection of Cultural Heritage in Algeria penalizes not only the concealment of stolen items but also extends to the concealment of items discovered through unauthorized excavation, accidental finds, or during sanctioned archaeological research. This includes items from underwater excavations or those that are part of, or derived from, the dissection or division of a registered cultural property. The law specifically targets the concealment of parts of cultural real estate or items derived from the segmentation of such

properties, emphasizing the comprehensive protection of cultural heritage.

2.2.2. Illicit Trafficking and Smuggling of Antiquities:

Trafficking in antiquities is among the most widespread activities worldwide, generating very high financial returns, to the extent that it ranks alongside drug and arms trafficking. According to UNESCO statistics, the volume of their trade exceeds 6 billion dollars (Saeed, 2018, p. 271).

A. Illicit Trafficking in Antiquities

The Algerian Law on the Protection of Cultural Heritage explicitly criminalizes the sale of items obtained from archaeological excavations, whether these are results of planned digs, accidental discoveries, or authorized archaeological research. This law also addresses items retrieved from underwater research, as well as those that are classified or listed in the supplementary inventory. Furthermore, the legislation prohibits the sale of items derived from the modification, dissection, or concealment of cultural properties.

B. The Crime of Smuggling Antiquities

The crime of smuggling antiquities is among the most severe crimes against antiquities, involving the removal of cultural heritage from its homeland and smuggling it to another, impoverishing the cultural heritage of the owning state. Smuggling generally means transferring an artifact across the customs boundaries of the state where it is located to another state without a license, and this crime occurs as soon as the customs boundary is crossed (Saeed, 2018, p. 274).

In Algerian customs legislation, smuggling is defined as:

- Importing or exporting goods outside designated customs zones.
- Breaching the regulations specified in the Algerian Customs Law.
- Deceptively loading and unloading goods (Article 324, 2017).

Smuggling is punishable under the Algerian Customs Law according to Article 324, as well as Article 102

3- Formal Criminal Protection of Antiquities:

Formal or procedural criminal protection forms a critical aspect of criminal policy aimed at curbing archaeological crime. This type of protection bolsters substantive criminal protection—which focuses on criminalization and penalization—by ensuring that offenders are appropriately punished through the correct enforcement of substantive criminal laws.

Procedural protection for antiquities specifically adapts certain legal processes, creating exceptions to the usual application of general procedural norms in specific cases where such adaptations are necessary. This may involve substituting a procedural norm, suspending the application of a procedural norm under certain conditions, or amending a criminal law itself to better address the unique contexts of antiquities (Taha M. A., 1993, p. 08).

In combating crimes against antiquities, Algeria, similar to other nations, is dedicated to developing a robust legislative framework and implementing comprehensive strategies. The procedural criminal protection is manifested through policies adopted at the national and international levels.

3.1- National Formal Criminal Protection:

Human history is rich with events and facts that are embodied through what predecessors have left for their successors as evidence of an era, necessitating attention as a means to solidify memory and write history. Accordingly, many countries have tried to impose a comprehensive

policy at the national level.

3.1.1. Security measures to prevent crimes against antiquities

The security policy in combating crimes against antiquities is based on two main ideas: the first is to find a security apparatus capable of ensuring the protection of antiquities from potential attacks or confronting these attacks when they occur. The second is to find security measures capable of preventing crimes against antiquities and combating them (Saeed, 2018, p. 281).

1. National bodies responsible for the security protection of antiquities

Archaeological crime manifests in various forms, some related to the internal aspect purely and others related to cross-border issues in cases of smuggling. Hence, the national security apparatus includes civil and military dimensions.

Regarding civil security apparatuses in Algeria, it includes the police and customs agencies (Saeed, 2018, p. 284). A specialized unit targeting crimes against national cultural heritage was established in late 1996 under the Directorate General for Judicial Police, enhanced by regional branches from 2008. This unit focuses on investigating diverse crimes, including vandalism, theft, looting, illegal trafficking, and forgery of cultural items (Boudhan, 2013, p. 241).

The customs agency is considered a national security apparatus due to the crimes against antiquities being linked to the customs area, which is applied uniformly across the entire customs territory 42.

Additionally, the National Gendarmerie and the National People's Army are integral to the security measures protecting cultural heritage.

2. Security measures for the protection of antiquities

Security strategies to protect antiquities involve various agencies, not all of which are primarily security-focused, aiming to ensure comprehensive safeguarding (Saeed, 2018, p. 297).

3.1.2. Judicial Criminal Protection in Crimes Against Antiquities:

The criminal judiciary intervenes when a crime occurs, and the Algerian Code of Criminal Procedure determines the procedures to be followed (Decree 66-155, 2020).

Crimes against antiquities are governed by the Algerian Code of Criminal Procedure, applying general legal principles universally while specifying unique rules for antiquities-related offenses under Law 98-04, Article 92. The Customs Administration actively prevents antiquities smuggling, with particular legal provisions protecting cooperators and witnesses involved in these cases (Saeed, 2018, p. 390).

3.2- International Cooperation in the Field of Procedural Criminal Protection of Antiquities:

Despite the procedural criminal protection of antiquities being originally the responsibility of each country, it has become an international responsibility borne by both the international community and countries through cooperation to achieve as much protection as possible for these properties (Al-Abdullah, 2015, p. 118).

3.2.1. Security Cooperation in the Criminal Protection of Antiquities:

International security cooperation in the field of combating crimes against antiquities manifests in numerous areas, limited to international institutions and devices, and mutual security assistance between countries. The institutions and international security devices concerned with protecting antiquities vary between global and regional entities.

Regarding global international security devices, they are represented by the United Nations, which consists of many devices concerned with the security aspect related to combating crimes, including crimes against antiquities. The International Criminal Police Organization (Interpol) has played a significant role as a global security device, taking upon itself the responsibility of making a serious and effective contribution to combating crimes through the assistance it provides to countries (Saeed, 2018, p. 411).

The mechanisms available to the International Criminal Police Organization, which directly contribute to the protection of antiquities, include:

- The information and data system related to crime.
- Facilitating communication within the Interpol information system.
- Strengthening police cooperation (Saeed, 2018, p. 416).

As for the regional bodies involved in combating crimes against antiquities, the African Union for Police Cooperation, the African Criminal Police Organization (AFRIPOL), and the Arab League.

3.2.2. International Judicial Cooperation in Crimes Against Antiquities:

International judicial cooperation in the matter of crimes against antiquities takes various forms. It may be related to the investigation and inquiry about crimes against antiquities, as well as the phase thereafter through controlling these properties, recovering them, and arresting the aggressors. Regarding international cooperation in controlling crimes against antiquities, it occurs through judicial delegation and joint investigation to combat crimes against antiquities. Meanwhile, judicial cooperation in the field of suppressing crimes against antiquities is carried out through the extradition system and the process of confiscating and recovering antiquities (Taha M. A., 1993, p. 341).

Conclusion

Antiquities possess a profound and intrinsic connection to civilization, serving as critical markers of historical progress and sources from which contemporary and future societies draw valuable insights.

Criminal law represents the mirror reflecting the history of civilization in general, and its evolution and change are influenced by the same reasons that evolve and change the state of society, not only domestic criminal law but also international criminal law. These artifacts are not only indicators of the material and moral advancements of a civilization but also reflect the changes and developments that have occurred over time, influencing both international and domestic perspectives on the importance of cultural heritage.

As for the most important recommendations:

1. Inviting the Algerian legislator to unify the terms and definitions related to antiquities, while working to establish a strong and strict criminal system regarding crimes against antiquities.
2. The necessity to review the Algerian heritage law, especially regarding its non-criminalization of certain acts such as the transfer and import of antiquities from abroad, and its omission of provisions related to international cooperation in judicial and security matters, especially recovery operations.
3. Enacting special provisions regarding acts of vandalism committed by terrorist groups and giving them a criminal description.
4. Excluding provisions related to the statute of limitations, regarding the public prosecution and punishment in archaeological crimes.

5. Activating the role of international antiquities.
6. The necessity to embody the international agreements ratified by Algeria into domestic legislation because the Algerian cultural heritage law does not contain any criminal provisions for marine and submerged antiquities.

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