

PREPARATION OF DRAFT CIVIL CODE OF THE USSR IN THE 1930s – EARLY 1950s**

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The subject of the study is the draft civil codes of the USSR, which were drawn up in the 1930s – early 1950s.

The purpose of the article is to analyze the legislative activity aimed at creating a new law – the all-Union civil code.

The research methodology includes the method of historicism, interpretation, comparative legal and formal legal methods.

Results. The draft civil codes of the USSR are considered. The following reasons for the transition to all-Union codification in the 1930s are established: the increase in the array of legislation of the USSR, which required its systematization; the effectiveness of the code as a type of normative legal act confirmed by practice; the expansion of the legislative powers of all-Union bodies in accordance with the Constitution of the USSR of 1936. The main drafts of the Civil Code of the USSR are identified and analyzed. In the pre-war period, the first projects were prepared by the People's Commissariat of Justice of the USSR. Since 1938, codification activities were concentrated in the All-Union Institute of Legal Sciences. In the post-war period, special commissions were created to prepare projects of all-Union codes. The Civil Code was initially drafted by a commission headed by I.T. Golyakov, and then by K.P. Gorshenin. Both were senior officials of the justice authorities. The role of the government – the Council of Ministers of the USSR – increased in organizing and regulating legislative work. An explanation is offered for the reasons for the frequent change of project developers.

Continuity and novelty in the structure and consolidation of the main civil legal institutions in the draft codes are noted. A comparison of the projects with the current Civil Code of the RSFSR of 1922 is made. The most important provisions of the projects were the norms regulating relations within the socialist economic system between government agencies and enterprises.

The expediency of the Civil Code of the USSR was not disputed. In the union republics, the Civil Code of the RSFSR of 1922 was initially applied, on the basis of which their own codes were compiled, and in some republics it continued to operate. The position was supported that the union republics would no longer have civil codes. The rejection of all-Union codification in the mid-1950s was caused by the redistribution of legislative powers in favor of the union republics.

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1. Introduction

Civil law in historical retrospect and in modern conditions refers to the key branches of the national legal system, since its institutions and norms, establishing prohibitions and permissions, set the parameters of economic and social development. Civil law is considered private law, thus opposing it to public law. However, during the Soviet period, most of which the existence of private property was legally denied, civil law was characterized by significant specifics that distinguished it from the civil law of the Russian Empire and the Russian Federation. The history of Soviet civil law, as well as its main sources, has been poorly studied within the framework of industry science. The most significant works remain the History of Soviet Civil Law [1], published in 1949, a similar edition of 1957 [2], the works of A. L. Makovsky [3,4], directly devoted to the history of the codification of Soviet civil legislation, articles by O. Yu. Shilokhvost, showing the role of prominent domestic civilists A. G. Goykhbarg and N. I. Bernstein with the compilation of civil codes [5,6]. The works of direct participants in codification activities are of source study and historiographic significance [7,8].

From a historical and legal perspective, the Civil Code of the RSFSR of 1922 [9] is a well-studied source, while other systematized acts, especially those of all-Union rather than republican origin, have not been studied in detail. A significant gap is represented by the draft all-Union codes (civil, criminal, criminal procedure and civil procedure) developed in the second half of the 1930s - early 1950s. They were briefly considered in the general context of the activity on systematization of Soviet legislation [10]. Continuing their study is important not only from the standpoint of filling gaps in the development of individual branches of law, but is also necessary when studying the Soviet federal state, built on a combination of the principles of centralization and decentralization.

The stated topic is also connected with the history of domestic lawmaking, the identification and assessment of promising and dead-end projects. The purpose of the article is to analyze the draft Civil Code of the USSR in the context of legislative activity in the second half of the 1930s - early 1950s, organized with the aim of implementing the norm of the 1936 Constitution of the USSR on the creation of codes of the USSR.

2. The research methodology is represented by a set of methods widely used in historical and legal works. Among them, the most important is the historicism method, which allows for the evaluation of legal facts taking into account the specific political, socio-economic, and ideological conditions of their emergence; the comparative legal method, which is necessary for comparing legislative acts and draft civil law projects; the formal legal method and the method of interpretation, used to analyze and clarify the meaning of legal norms.

3. Prerequisites and reasons for the preparation of the CC USSR

Considering the prerequisites of the preparation of the State Committee of the USSR, three main circumstances should be highlighted. First, the formation of the USSR - a new state led to the creation of a common legislation, which gradually increased in volume. The distinction of legislative powers between the SSR Union and its constituent republics was already provided for in the 1922 Treaty on the Formation of the USSR, and then enshrined in the 1924 Constitution of the USSR. Acts were defined as sectoral acts that became called Foundations of law. The preparation of these acts was entrusted to a specially established Constitutional Commission for drafting the legislative framework of the SSR Union. The Framework

was compiled by separate subcommissions. Such a sub-commission developed the Principles of Civil Law and Civil Procedure, the head of the sub-commission V.I. Yakontov considered that an act is necessary, which will lie on the basis of the legislation «and individual republics» [11.173-174]. Thus, the need for a basic fundamental common law was recognized and not disputed.

Secondly, as legal practice has shown, the most convenient form of such a law was precisely a code. Intentions and legislative activity to create the foundations of legislation achieved a local result. The planned all-Union Foundations in most areas, including civil law, could not be compiled in the second half of the 1920s, while the Civil Code of the RSFSR of 1922 was successfully applied, in addition, its effect was extended to the territory of all Union republics, and this was not an imperative decision of the all-Union government, but an expression of the will of the republics themselves.

Thirdly, with the development of the Soviet Federation and the change in the political regime, centralist principles in the organization of state power and the state apparatus were strengthened, the legislative powers of the USSR were expanded, which was logically enshrined in the Constitution of the USSR of 1936, where paragraph "x" of Article 14 established the creation of four codes of the USSR: civil, criminal, civil procedural and criminal procedural.

The immediate reasons that led to the preparation of the Civil Code of the USSR arose from the state of civil legislation. The Civil Code of the RSFSR of 1922, adopted during the period of the new economic policy and distinguished by its contradictory content, remained the current law, but it was ill-suited for regulating civil relations that denied private property, which was enshrined in the Constitution of the USSR of 1936. With the establishment of the socialist form of ownership, the norms of the code sought to be adapted and adjusted to the changed socio-economic realities,

which further violated its semantic integrity. According to A. L. Makovsky, as a result, about 400 amendments were made to the Civil Code, 78 articles were reintroduced and 76 articles were excluded. Moreover, "more than 80 percent of these changes occurred in 1924–1930" [3, p. 20]. It should be noted that in a systematized form, taking into account changes and supplemented, the Civil Code of the RSFSR of 1922, like other Soviet codes, was practically not published in the 1930s, which complicated law enforcement practice.

4. Development of drafts of the Civil Code of the RSFSR in the pre-war period

Ideas on the structure and content of the new civil code, designed to replace the outdated Civil Code of the RSFSR of 1922, were actively promoted by the legal community even before the official approval of the USSR Constitution of 1936 and were based on the published draft Constitution. Thus, on June 21, 1936, a joint meeting of the specialized sections of the Institute of Soviet Law and the Institute of Criminal Policy (the future All-Union Institute of Legal Sciences) was held. The main speaker was G.N. Amfiteatrov, who described the future code in general terms¹. The development of the first draft was carried out by the People's Commissariat of Justice of the USSR with the involvement of employees of legal research institutions. The preparation of the drafts of the Civil Code and the Civil Procedure Code was to be carried out by a subcommission headed by E.B. Pashukanis. Its first meeting was held on November 17, 1936, at about the same time E. B. Pashukanis took up the post of Deputy People's Commissar of Justice of the USSR [12, p. 89], which contributed to raising the status of

¹ ARAS (Archive of the Russian Academy of Sciences). F.1934. Op.1. D.26. L.11.

the subcommittee. The general scheme of the future Civil Code was proposed by G. N. Amfiteatrov, and he was also instructed to present it in a detailed form within three days. At the meeting, working groups were determined, to which individual large thematic blocks of the project were assigned, such as the general part, property law, contract law, inheritance and family law, and exclusively law². Later, the scheme was supplemented; a part concerning the introductory law and a thematic block on persons appeared in it³. It is difficult to imagine how the work would have been structured further, but in January 1937 E. B. Pashukanis was arrested and soon shot.

The drafting of the project continued under the leadership of the People's Commissar of Justice of the USSR N. V. Krylenko. On June 21, 1937, a meeting was held under his chairmanship, at which the scheme of the Civil Code presented by M. O. Reikhel was discussed. The scheme can be assessed as typical and universal for civil law, not having an obvious ideological coloring. It contained nine sections: basic provisions; persons (individuals, legal entities, representation of persons); property; obligations (general part); obligations under contracts; non-contractual obligations; exclusive rights; family law; inheritance law⁴. It should be noted that at the same time, the idea of a fundamental difference between socialist and bourgeois law was promoted, for example, N. V. Krylenko discussed a civil socialist code, and Amfiteatrov - a Code of civil socialist law [13].

At the meeting on June 21, 1937, the structure of the Civil Code, presented by M.O. Reichel (Chairman of the Civil Collegium of the Supreme Court of the USSR), was generally supported. Following the meeting, the group consisting of M.O. Reikhel, G.N. Amfiteatrov and L.Ya. Ginzburg

was given the task of continuing to refine the project outline, taking into account the discussion that had taken place and the amendments made by N.V. Krylenko. The organizational design of legislative activity was expressed in the formation of a subcommittee for the development of the Civil Code of the USSR under the chairmanship of N.V. Krylenko, which met for the first meeting on July 27, 1937. The participants reviewed and generally agreed with the presented scheme of the USSR Civil Code, which was based on the previously discussed proposals of M.O. Reikhel, and also spoke in favor of expanding the composition of developers, attracting specialists from specialized government agencies⁵.

Until the end of 1937, work on the draft Civil Code of the USSR was carried out quite intensively and competently in terms of organization and methodology. In September 1937, N.V. Krylenko addressed the Chairman of the Council of People's Commissars V.M. Molotov with a request to approve the composition of the commission for the development of the draft Civil Code. There is no information about such a decision from the government, most likely, it was not made. However, support was provided to the authors: from the general budget of the Central Executive Committee of the USSR, which remained the acting all-Union body until the election of the Supreme Soviet of the USSR, 15 thousand rubles were allocated for the development of the draft Civil Code⁶. The composition of the commission proposed for approval also seems representative; it indicates N.V. Krylenko (chairman), representatives from the prosecutor's office, arbitration, etc. The list of actual authors of the code was different and included mostly scientists and specialists dealing

² GARF (State Archives of the Russian Federation). F. R-9492. Op.1. D.1477. L.133.

³ GARF. F. R-9492. Op.1. D.1477. L.131.

⁴ GARF. F. R-9492. Op.1. D.1477. L.121.

⁵ GARF. F. R-9492. Op.1. D.1478. L. JI.51.

⁶ GARF. F. R-9492. Op.1. D.1477. L.4.

with issues of civil law and its individual institutions (family, inheritance, etc.). The scale and complexity of the work was objectively assessed, and it was said that "it is necessary to study and review a huge amount of material, and to develop 50 independent topics of civil law from scratch"⁷.

The detailed scheme of the project, the collected material for individual sections and the written fragments distinguish the draft being prepared from the current Civil Code of the RSFSR. First of all, the project is characterized by its integrity and systemic nature, following the logic of constructing a codified act that has developed in the continental legal system: from the general to the particular; the presence of an introductory, general and special part is clearly traced. For the first time in a domestic codified act of civil law, such parts as "Persons", "Property Rights", "Personal Non-Property Rights", "Right of the Author and Inventor", as well as a number of contracts were structurally separated, numbered and titled. We especially note the important theoretical and practical significance of the "Persons" part, which for the first time unambiguously, and most importantly, in one place indicated individuals and legal entities. It should be noted that the Russian legislative tradition associated the origin of legal entities with contractual relations, therefore, articles about them were included in sections concerning the law of obligations, that is, in the special part of the civil law, and individuals were described in the general part and considered through the establishment of their legal capacity and legal capacity. The types of legal entities were determined: state institutions and state enterprises; cooperative associations and collective farms; public organizations. Article 3 of the draft contained very necessary norms

disclosing three forms of state participation in civil circulation. As modern legal historians note, the revolutionary concept of law recognized one form of existence of a sovereign people - the state, which was understood as a "grandiose corporate legal entity in scale" [14, p. 28]. When studying the history of civil law, the significance of theoretical developments "on the participation in civil legal relations of the state as a special, independent subject of civil law, unknown to previous legal orders" is pointed out [15, p. 17]. The state could act directly, that is, as a treasury; Also, state institutions enjoying the rights of a legal entity and state enterprises could participate in civil circulation⁸. Thus, although the project was based on the absence of private property under socialism, it supported the presence of civil circulation, which in practice gave socialist enterprises the opportunity to apply business accounting relations.

The sections of the draft on contracts contained a number of very necessary norms: a special type of property lease was singled out - the lease of residential premises; contracts of MTS with collective farms were named; there was a large article on credit and settlement operations, listing their types, etc⁹.

The draft was characterized by a broad coverage of the subject of civil law, especially in comparison with the Civil Code of 1922, corresponded to the signs of a codified act, testified to a sufficiently high level of the applied legal technique, adequately reflected the established socio-economic relations subject to regulation by civil law norms, and had good prospects for revision and approval. However, work on the draft was slowed down due to the adopted organizational decision. By order of the People's Commissariat of Justice of December

⁷ GARF. F. R-9492. Op.1. D.1477. L.5.

⁸ GARF. F. R-9492. Op.1. D.1477. L.13.

⁹ GARF. F. R-9492. Op.1. D.1477. L.20-21.

31, 1937, the task of drafting the Civil Code of the USSR was assigned to the All-Union Institute of Legal Sciences, to which all preparatory materials were to be transferred¹⁰. In departmental terms, the development of the project remained under the jurisdiction of the USSR People's Commissariat of Justice, since the VIYUN was part of its structure. The VIYUN concentrated the preparation of the remaining all-Union codes.

The composition of the developers of the Civil Code changed. In January 1938, N.V. Krylenko was arrested, G.N. Amfiteatrov withdrew or was removed from active work. The role of VIYUN in organizing project activities for the codification of all-Union legislation was studied earlier [12, pp. 150-152]. The compilers were given short deadlines for completing the projects. Their presentation was planned at the First Scientific Session of the VIYUN, scheduled for the end of January 1939. However, unlike the draft Criminal Code of the USSR, which by the time the session opened was completed, printed and discussed, after which it was edited, the main provisions of the future Civil Code of the USSR were presented at the Session in the form of separate reports: Ya. F. Mikolenko "Basic principles and system of constructing the draft Civil Code of the USSR", D. M. Genkin "Legal entities of the Civil Code of the USSR", M. M. Agarkov "Obligations from causing harm and the draft Civil Code of the USSR", E. A. Fleishits "On the personal rights of citizens of the USSR" [17]. Summarizing the results of the session, I. T. Golyakov supported the existing broad approach to understanding the subject of civil law, which influenced the structure and content of the Civil Code of the USSR [18, p. 127]. The Great Patriotic War "had an impact on the development of a number of civil law institutions" [19, p. 53], which should have been taken into account when systematizing civil legislation.

5. Development of the draft Civil Code of the RSFSR in the post-war period

After the victory in the Great Patriotic War, legislative activity on the codification of all-Union legislation was resumed. The organizational conditions for its implementation changed. Firstly, the Legislative Proposals Commissions created under both chambers of the Supreme Soviet of the USSR - the Council of the Union and the Council of Nationalities - became an important subject in the legislative procedure. It should be noted that these commissions were first formed in 1938, but were not very active, which is confirmed by the fact that they were involved in the preparation of only two bills before 1946 [20, p. 431]. In March 1946, at the first post-war session of the Supreme Soviet, the Commissions were re-elected, their composition was increased from 10 to 19 people, all bills submitted to the Supreme Soviet of the USSR began to pass through the Commissions, on which the Commissions gave their opinions before submitting the drafts directly to the session of the Supreme Soviet.

Secondly, the influence of the Council of Ministers of the USSR in regulating legislative work increased significantly, which was manifested in two ways: 1) through the publication of a government act, which determined those responsible for the preparation of a specific draft code and established the deadlines for submitting the draft; 2) through the consideration of the draft by the Council of Ministers, which became a mandatory stage of the legislative procedure.

On July 27, 1946, the Council of Ministers of the USSR adopted the Resolution "On the Preparation of the Draft Civil and Civil Procedure Codes of the USSR". At the suggestion of the Legislative Proposals Commission, a special Government Commission was created, which

¹⁰ GARF. F. R-9492. Op.1. D.1477. L.66.

was charged with the preparation of the said drafts. The Commission was headed by I. T. Golyakov, Chairman of the Supreme Court of the USSR, Director of the VIYUN.

The first meeting of the commission was held on September 14, 1946. The meeting was chaired by D. M. Genkin, attended by M. M. Agarkov, Yu. P. Orlovsky, V. I. Serebrovsky, and the secretary was M. Ya. Pergament. The commission reviewed the draft scheme of the Civil Code proposed by D. M. Genkin, distributed responsibilities among the members, spoke in favor of expanding the composition and outlined the desired candidates. An analysis of the presented scheme indicates a departure from the structure around which the work was built in the pre-war period and a return to the structure of the Civil Code of the RSFSR of 1922. The following were distinguished: introductory law, general part (main provisions, subjects of civil rights, emergence of civil legal relations); property law; exclusive rights; law of obligations.

For the first time, the question of the relationship between union and republican civil laws was raised. The commission spoke in favor of introducing into the water law a provision that there should be no civil codes of union republics. Acts of union republics "on issues of civil law may take place only in cases of direct reference of the USSR Civil Code to the legislation of union republics"¹¹.

The attitude towards the draft law being prepared as an all-Union code stimulated the study of the state of civil legislation in the Union republics. The analysis showed that initially in most Union republics the Civil Code of the RSFSR of 1922 was directly introduced, which over time was replaced by their own civil codes, which at the same time retained "unity in basic principles and

in general"¹². Such codes were official publications, printed in Russian and national languages. In the Kazakh, Kirghiz and Karelo-Finnish republics, the Civil Code of the RSFSR, introduced by decisions of the Union republics themselves, continued to be applied. In the territories of the Lithuanian, Latvian and Estonian SSRs, the Civil Code of the RSFSR was extended in accordance with the Decree of the Presidium of the Supreme Soviet of the USSR of November 6, 1940, taking into account the requests coming from the Baltic republics. In the Moldavian SSR, the Civil Code of the Ukrainian Soviet Socialist Republic was applied, in accordance with the Decree of the Presidium of the Supreme Soviet of the USSR of December 14, 1940.

All codes had 4 sections: General Part; Property Law; Law of Obligations; Inheritance Law. Noticeable differences were observed only in the structure of the Civil Code of the Azerbaijan SSR, which had a separate section "Copyright".

The coincidence of the subject of legal regulation was noted: the civil codes of the republics did not include issues of labor, family and collective farm law. Many legal relations that were formed or updated after the publication of the Civil Code of the RSFSR (the right to an invention, bank settlements between business bodies, etc.) were regulated by all-Union acts. Institutions were identified in relation to which both all-Union and republican laws were applied. These included, for example, the statute of limitations, property rental, rental of residential premises, etc. In the process of studying the civil codes, obsolete norms canceled by subsequent acts were identified, for example, on subjects of property rights, on the

¹¹ GARF. F. R-9492. Op.1. D.1985. L. 113.

¹² GARF. F. R-9492. Op.1. D.1477. L.121. D.2003. L.3.

right of development¹³. All of the listed facts characterizing the civil codes of the union republics, namely, a single source of origin - the Civil Code of the RSFSR of 1922; coincidence of the structure of the codes and a common understanding of the subject of civil law; the presence of all-Union laws filling in the gaps of the civil codes; unnecessary duplication of the same legal relations by acts of different levels; the preservation of obsolete norms in codes were used to confirm the possibility of the need to codify civil legislation in the format of an all-Union law. In general, the idea of an all-Union codification did not contradict the concept of the Soviet federation, where the rights of the USSR and the union republics were enshrined at the constitutional level; it is noted that “the theory of federal relations knows various ways of building a federation” [21, p.60].

In February 1948, the draft of the Civil Code of the USSR, compiled by the commission, was submitted to the Council of Ministers of the USSR. But work on it was again suspended, which was influenced by the change in the leadership of the Supreme Court of the USSR and the dismissal of I. T. Golyakov from the post of chairman of the commission.

The new commission was formed by the Resolution of the Council of Ministers of the USSR of November 26, 1948. It was headed by K. P. Gorshenin, who took the post of Minister of Justice of the USSR in January 1948. It included prominent lawyers dealing primarily with civil law issues: K. A. Mokichev, V. N. Sukhodrev, I. T. Golyakov, D. M. Genkin, I. S. Peretersky, E. A. Fleishits, V. I. Serebrovsky, N. I. Bernshtein. The commission was given two relatively complete versions of the draft Civil Code of the USSR: the first draft prepared by VIYUN, the second – left over from the Commission of I. T. Golyakov. The commission was engaged in article-by-article

elaboration of the draft. The general methodology used was the same as that used in the preparation of other all-Union codes: the articles of the draft Civil Code of the USSR were compared with the articles of the Civil Code of the RSFSR of 1922 and the civil legislation of the Union republics that were suitable for the subject of legal regulation. The authors proceeded from the task of covering civil legal relations as fully as possible with the new law, so that there would be no need to fill in the gaps in legislation at the level of the Union republics¹⁴.

The degree of readiness of the draft Civil Code of the USSR was assessed as high, therefore the commission was ordered to complete the work within three months, but in reality it was completed in July 1951, when the draft was presented to the Council of Ministers of the USSR. However, subsequently, as recorded in the report compiled by the Commissions of Legislative Proposals of the Council of the Union and the Council of Nationalities of the Supreme Soviet of the USSR, the draft Civil Code was not considered by the government, the Presidium of the Supreme Soviet of the USSR, or the Central Committee of the CPSU¹⁵.

After the change of the political and legal paradigm aimed at decentralization of state power [22, p. 99], the legislative powers of the USSR and the republics were revised. The session of the Supreme Soviet of the USSR in February 1957 secured the adoption of the civil code, along with the criminal and two procedural codes, within the competence of the union republics¹⁶. Work on the draft of the Civil

¹³ GARF. F. R-9492. Op.1. D. 2003. L.5-7.

¹⁴ GARF. F. R-9492. Op.1. D. 2001. L.1-16.

¹⁵ GARF. F. R-7523. Op.45a. D.14. L.99-100.

¹⁶ Zasedaniia Verkhovnogo Soveta SSSR 4-go sozyva, shestaia sessiia (5-12 fevralia 1957 g.): stenograficheskii otchet. Moscju, Verkhovnyi Sovet SSSR Publ., 1957. P.735.

Code of the USSR ceased, the preparatory materials were used in drafting the Fundamentals of Civil Legislation of the USSR and the Union Republics, as well as the Civil Code of the RSFSR and other union republics.

Assessing the consequences of the refusal to adopt the Civil Code of the USSR in the modern period, Yu.K. Tolstoy wrote that this decision “had delayed negative consequences, affecting not only civil legislation, but also the development of socio-economic relations in general” [23, p.6].

The projects of the Civil Code of the USSR acquired the status of a historical source. A.L. Makovsky, a contemporary and direct participant in the codification work, starting in the 1960s, writes about the existence of at least five versions of the project of the Civil Code of the USSR [4, p. 176]. Now it is difficult to say which documents were meant: either projects of the Civil Code of the USSR, differing in chronology, institutional conditions, leaders and participants in the legislative process, conceptual foundations of the project, or we are talking about the versions of the project prepared at the final stage in 1948-1951, which were repeatedly reworked and edited. These versions of the project, seriously different from each other, were better known, since they were printed, albeit in limited editions, well preserved in archival funds, perhaps in single copies are available in some libraries.

6. Conclusions

The all-Union codification of civil legislation in the period under study was carried out within the framework of general legislative activity, reflecting the process of centralization of state power, expansion of powers of the USSR. The reasons and prerequisites for the transition to all-Union codification were not only of political origin, but were conditioned by the state of Soviet legislation and the composition of its sources. The Civil Code of the RSFSR of 1922 had a

significant influence on the formation of civil legislation of the Union republics, and in some republics it was applied directly. In the conditions of a socialist society, the main civil institutions coincided, the subject of civil law was understood in the same way, which was considered as an argument in favor of the creation of a single Civil Code of the USSR. The duration of preparation, frequent change of responsible developers was caused by political reasons, and also had doctrinal grounds arising from the need for a deeper theoretical understanding of a number of problems of civil law.

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