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**JUDICIAL CONTROL IN IMPLEMENTATION
ADMINISTRATIVE COURSE MEASURES**

In the article, the authors analyzed the issues related to the activities of judicial control in the implementation of measures of administrative coercion. The importance of observing the rights and interests of citizens in the application of administrative responsibility increases due to the scale of this type of legal responsibility.

In article the authors analyze the questions connected by activity of judicial control at realization of measures of administrative compulsion. The importance of observance of the rights and interests of citizens at application of administrative responsibility increases in connection with scale of the given kind of legal responsibility.

Key words: administrative process, administrative penalties, administrative jurisdiction, administrative offenses, administrative responsibility.

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Administrative punishments and other coercive measures applied in the administrative-jurisdictional process affect essential rights and interests (personal freedom, property and professional interests, etc.). The importance of observing these rights and interests in the application of administrative responsibility increases due to the scale of this type of legal responsibility (tens of millions of people are involved in it every year) [1]. In the scientific literature, bodies of administrative jurisdiction include bodies considering cases of administrative offenses [2]. As a rule, these are executive authorities and municipalities. In other words, only bodies and officials whose competence is in charge of this can apply administrative punishment and procedural measures in cases of administrative offenses [3]. However, courts of general jurisdiction also have the right to consider cases of administrative offenses within the framework of judicial control over the validity of decision-making in cases of administrative offenses and the measures of administrative responsibility applied to citizens. With regard to legal entities and citizens - entrepreneurs without the formation of a legal entity, such control is carried out by the courts of arbitration jurisdiction. Like courts of general jurisdiction, arbitration courts carry out proceedings on cases of administrative offenses in the order of administrative proceedings, which indicates an important step towards the further development of administrative proceedings [5]. With regard to legal entities and citizens - entrepreneurs without the formation of a legal entity, such control is carried out by the courts of arbitration jurisdiction. Like courts of general jurisdiction, arbitration courts carry out proceedings on cases of administrative offenses in the order of administrative proceedings, which indicates an important step towards the further development of administrative proceedings [5]. With regard to legal entities and citizens - entrepreneurs without the formation of a legal entity, such control is carried out by the courts of arbitration jurisdiction. Like courts of general jurisdiction, arbitration courts carry out proceedings on cases of administrative offenses in the order of administrative proceedings, which indicates an important step towards the further development of administrative proceedings [5].

The Decree of the Constitutional Court of the Russian Federation of May 28, 1999 No. 9-P clearly states: "The current legislation on administrative offenses ... provides that the courts (judges) in the framework of administrative proceedings are endowed with the powers to consider cases of administrative offenses and bring to administrative responsibility and the powers to control the legality and validity of decisions on the imposition of administrative penalties made by other authorized bodies (officials).

This requirement not only streamlines law enforcement, but also creates an opportunity for citizens and legal entities to competently defend their rights. In this regard, it should be noted that in the science of administrative law, the questions of what is the status of courts considering cases of administrative offenses have been discussed for a long time - are they bodies of administrative jurisdiction or bodies of justice? They are of great practical importance, since the answer to the question depends on their decision: do the courts administer justice in cases of administrative offenses or are their activities carried out in such cases? In other words, what are the rights of the persons participating in the process, who are these persons, what are the consequences of their improper performance of duties or abuse of rights,

This problem has acquired particular relevance at the present time. This is due to the adoption of two new procedural codes - the Civil Procedure Code (CPC) and the Arbitration Procedure Code (APC). When writing them, scientists proceeded from two opposite concepts. The authors of the Code of Civil Procedure considered the court, when considering cases of administrative offenses, an administrative jurisdiction body, the authors of the AIC, on the contrary, decided that the court, when considering any cases, has the status of a body administering justice, which is confirmed by paragraph 18 of the Resolution of the Plenum of the Supreme Arbitration Court of the Russian Federation dated 9 December 2002 № 11 "On some issues related to the implementation of the Arbitration Procedure Code of the Russian Federation." In accordance with Part 1 of Art. 202 of the Arbitration Procedure Code of the Russian Federation, cases on bringing legal entities and individual entrepreneurs to administrative responsibility in connection with their entrepreneurial and other economic activities, referred by federal law to the jurisdiction of arbitration courts, are considered according to the general rules of claim proceedings with the features established by Ch. 25 of the Arbitration Procedure Code of the Russian Federation and federal legislation on administrative offenses. In cases where in Ch. 25 of the Arbitration Procedure Code of the Russian Federation contains specific rules, then it is they that are subject to application when arbitration courts consider cases on bringing to administrative responsibility. are considered according to the general rules of the action procedure with the peculiarities established by Ch. 25 of the Arbitration Procedure Code of the Russian Federation and federal legislation on administrative offenses. In cases where in Ch. 25 of the Arbitration Procedure Code of the Russian Federation contains specific rules, then it is they that are subject to application when arbitration courts consider cases on bringing to administrative responsibility. are considered according to the general rules of the action procedure with the peculiarities established by Ch. 25 of the Arbitration Procedure Code of the Russian Federation and federal legislation on administrative offenses. In cases where in Ch. 25 of the Arbitration Procedure Code of the Russian Federation contains specific rules, then it is they that are subject to application when arbitration courts consider cases on bringing to administrative responsibility.

Unlike the Arbitration Procedure Code of the Russian Federation, the Code of Civil Procedure of the Russian Federation does not contain special rules governing the proceedings on cases of administrative offenses in courts of general jurisdiction and at justices of the peace. The Plenum of the Supreme Court of the Russian Federation in its Resolution of 20 January 2003 No. 2 [10] clarified that the Code of Civil Procedure of the Russian Federation does not determine the procedure for proceedings in cases of administrative offenses, including the procedure for considering complaints against decisions made in cases of administrative offenses. This order, since July 1, 2002, establishes the Code of the Russian Federation on Administrative Offenses (clause 7) i.e. when considering these cases, courts of general jurisdiction and justices of the peace should be guided only by the Code of Administrative Offenses of the Russian Federation.

This entailed, as a number of authors rightly point out, two fundamentally different approaches to resolving the issue of which procedural legislation has priority in the consideration of these cases. In this regard, a number of authors note, it is necessary to unify the legislation that determines the procedure for considering cases of administrative offenses, in accordance with the idea laid down in the creation of the Code of the Russian Federation on

Administrative Offenses. All (without exception) subjects, endowed by the Code of Administrative Offenses of the Russian Federation with the right to consider cases of offenses, must consider these cases, guided by its rules [1].

In the new Code of Administrative Offenses of the Russian Federation, the tendency for the growth of administrative proceedings in administrative jurisdictional proceedings in cases of administrative offenses limiting the legal status of citizens is very clearly expressed. So, out of 391 members of the Special Unit, over 200 trains are subordinate to the courts. In accordance with paragraph 1 of Art. 23 of the Code of Administrative Offenses of the Russian Federation, judges consider cases of administrative offenses provided for in Article 135 of the special part. Cases of administrative offenses under Part 2 of Art. 23. 1 of the Code of Administrative Offenses of the Russian Federation (Article 57 of the Special Part of the Code of Administrative Offenses of the Russian Federation), are subordinate both to the bodies (officials) exercising state control in a certain area of the life of society, and to judges. They are considered by the judges only in cases where the body or official,

The Code of the Russian Federation on Administrative Offenses provides for operational terms for considering cases of administrative offenses. Article 29.6 of the Code of Administrative Offenses of the Russian Federation establishes the period for considering cases of administrative offenses - 15 days from the date the judge receives the protocol and other case materials, prolongation of this period is possible, but not more than for a month. At the same time, this article provides that a case of an administrative offense, the commission of which entails an administrative arrest or administrative expulsion, is considered on the day the protocol on the administrative offense is received and within 48 hours if the person in respect of whom the proceedings are being conducted is subject to administrative detention.

For the sake of efficiency, validity and objectivity, the court may, on its own initiative, take other measures, for example, admit that the failure of the properly notified persons to appear is not an obstacle to the consideration of the case (Article 25.1 of the Code of Administrative Offenses of the Russian Federation). When considering a case on an administrative offense entailing an administrative arrest or administrative expulsion from the Russian Federation of a foreign citizen or stateless person, the presence of the person in respect of whom the proceedings are being conducted is mandatory. All of the above testifies to the improvement of the procedure for considering administrative cases (a simplified and accelerated procedure for the consideration of certain issues by a judge; a system of additional guarantees designed to maximally protect the interests of subjects,

Relatively new for the legislation on administrative offenses is that the reasons for initiating proceedings can be materials received from state and municipal bodies, public organizations, if they contain data indicating the existence of an event of an offense. The reasons are messages in the media, messages and statements received from citizens, organizations, containing data indicating the presence of an event of an administrative offense. In relation to this group of reasons for initiating cases of administrative offenses, the legislator has established small restrictions. Messages from the media, individuals and legal entities cannot be grounds for initiating proceedings under the following articles of the Code of Administrative Offenses of the Russian Federation: Part 2 of Art. 5. 27 ("Repeated violation of labor legislation and labor protection"); Art. 14.12 ("Fictitious or Intentional Bankruptcy"); Art. 14.13 ("Unlawful actions in bankruptcy"); Art. 14.21 ("Inappropriate management of a legal entity"); Art. 14.22 ("Execution of transactions and other actions that go beyond the established powers"); Art. 14.23 ("Carrying out of activities by a disqualified person to manage a legal entity"). The features of this group, a number of authors indicate, are that they are aimed at combating improper management of a legal entity, are associated with the use of such punishments as disqualification (except for part 2 of article 5.27 of the Code of Administrative Offenses of the Russian Federation), establish special rules initiation of such cases. 12 ("Fictitious or Intentional Bankruptcy"); Art. 14.13 ("Unlawful actions in bankruptcy"); Art. 14.21 ("Inappropriate management of a legal entity"); Art. 14.22 ("Execution of transactions and other actions that go beyond the established powers"); Art. 14.23 ("Carrying out of activities by a disqualified person to manage a legal entity"). The

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Initiation of an administrative offense case - the initial stage of proceedings. With regard to proceedings on cases of administrative offenses, this stage has a specific procedural design. Its essence consists in drawing up a special procedural document, namely, a protocol on an administrative offense [14]. The case of an administrative offense is considered initiated from the moment of drawing up the first protocol on the application to a person of measures to ensure the proceedings in the case, provided for in Art. 27.1 of the Code of Administrative Offenses of the Russian Federation. A protocol on an administrative offense is not drawn up in two cases: when a prosecutor initiates an administrative offense case (Article 28.4 of the Administrative Offenses Code of the Russian Federation) and when an administrative penalty is imposed without drawing up a protocol (Part 1 of Article 28.6 of the Administrative Offenses Code of the Russian Federation).

According to paragraph 2 of Art. 22 of the Federal Law "On the Prosecutor's Office of the Russian Federation" the prosecutor and his deputy are given the right to initiate proceedings on an administrative offense. In turn, Art. 28.4 and 28.8 of the Code of Administrative Offenses of the Russian Federation determine the powers of the prosecutor to initiate cases of administrative offenses and send materials to the courts authorized to consider the relevant cases. It should be borne in mind that by virtue of the aforementioned norms, prosecutors (deputy prosecutors) of cities and districts, as well as higher-level prosecutors, have such rights and powers. For example, proceedings on cases of administrative offenses provided for in Art. 5.1, 5.5, 5.7, 5.8, 5.22 - 5.24, initiated by the prosecutor.

In this regard, it should be noted that the prosecutor, exercising supervision over the implementation of laws in proceedings on cases of administrative offenses, has the right to participate in the consideration of the case. In such cases, during the consideration of the case, the opinion of the prosecutor is heard. Within 24 hours from the moment of drawing up the protocol (decision of the prosecutor) and other materials in the case of an administrative offense are sent to the judge (part 1 of article 28.8 of the Administrative Code of the Russian Federation). If the committed administrative offense may entail the imposition of an arrest, then the protocol or resolution on the administrative offense must be submitted to a court of general jurisdiction immediately (part 2 of article 28.8 of the Administrative Code of the Russian Federation). The specifics of the legal regulation of the consideration of cases of administrative offenses by courts of general jurisdiction is associated with the establishment

of a procedure, enshrined in the Code of Administrative Offenses of the Russian Federation. The procedural basis for considering a case is a protocol on an administrative offense drawn up in an appropriate manner by a competent official in terms of compliance with its requirements established by law, and a decision to initiate a case or refuse to initiate. The jurisdiction of cases on bringing to administrative responsibility a court of general jurisdiction is subject to verification, based on the nature of the subject composition and the specifics of legal relations. The first criterion that administrative offense cases must meet is a certain subject composition (bodies and officials who are authorized to draw up protocols). The second criterion concerns the jurisdiction of the cases to the courts of general jurisdiction. The judge finds out whether the consideration of this case falls within its competence. When deciding on the competence of a judge to consider a case on an administrative offense, the rules for determining the jurisdiction of cases on administrative offenses provided for by Art. 23.1 of the Administrative Code of the Russian Federation. It should be borne in mind that the cases referred to in Part 1 and Part 2 of Art. 23.1 and committed by military personnel and citizens called up for military training, are considered by judges of garrison military courts. Judges of arbitration courts consider cases of administrative offenses provided for in Articles 6.14, 7.24, 14.1, 14.10-14.14, 14.21-14.23, 15.10, parts 1 and 2 of Art. 19.19 of the Administrative Code of the Russian Federation. When deciding on the competence of a judge to consider a case on an administrative offense, the rules for determining the jurisdiction of cases on administrative offenses provided for by Art. 23.1 of the Administrative Code of the Russian Federation. It should be borne in mind that the cases referred to in Part 1 and Part 2 of Art. 23.1 and committed by military personnel and citizens called up for military training, are considered by judges of garrison military courts. Judges of arbitration courts consider cases of administrative offenses provided for in Articles 6.14, 7.24, 14.1, 14.10-14.14, 14.21-14.23, 15.10, parts 1 and 2 of Art. 19.19 of the Administrative Code of the Russian Federation. When deciding on the competence of a judge to consider a case on an administrative offense, the rules for determining the jurisdiction of cases on administrative offenses provided for by Art. 23.1 of the Administrative Code of the Russian Federation. It should be borne in mind that the cases referred to in Part 1 and Part 2 of Art. 23.1 and committed by military personnel and citizens called up for military training, are considered by judges of garrison military courts. Judges of arbitration courts consider cases of administrative offenses provided for in Articles 6.14, 7.24, 14.1, 14.10-14.14, 14.21-14.23, 15.10, parts 1 and 2 of Art. 19.19 of the Administrative Code of the Russian Federation. those called up for military training are considered by judges of garrison military courts. Judges of arbitration courts consider cases of administrative offenses provided for in Articles 6.14, 7.24, 14.1, 14.10-14.14, 14.21-14.23, 15.10, parts 1 and 2 of Art. 19.19 of the Administrative Code of the Russian Federation. those called up for military training are considered by judges of garrison military courts. Judges of arbitration courts consider cases of administrative offenses provided for in Articles 6.14, 7.24, 14.1, 14.10-14.14, 14.21-14.23, 15.10, parts 1 and 2 of Art. 19.19 of the Administrative Code of the Russian Federation.

Taking into account the specifics of cases on bringing to administrative responsibility, the obligation to prove the circumstances that served as the basis for drawing up a protocol on an administrative offense lies with the administrative body that applies to the court with an application for imposing administrative responsibility on this person. At the stage of preparation for the consideration of the case, the judge has the right, by his ruling, to demand for the consideration of the case additional materials necessary for a comprehensive, complete and objective clarification of all the circumstances of the case, as well as to appoint an expert examination. If, in the process of preparing for the consideration of the case, it turns out that the presented materials are insufficient and it is impossible to fill them in during the consideration of the case, the judge, in accordance with Art. 29.4 of the Code of Administrative Offenses of the Russian Federation returns the protocol and other materials to the body or official, who drew them up for revision. Article 28.8 of the Code of Administrative Offenses of the Russian Federation establishes a tight deadline for correcting the shortcomings of the protocol. In the process of considering the case, the judge in

accordance with the requirements established by Ch. 26 of the Code of Administrative Offenses of the Russian Federation, examines the evidence on the basis of which it establishes the presence or absence of an administrative offense, the guilt of a person in its commission and other circumstances that are important for the correct resolution of the case. In this case, the judge may not limit himself to examining the evidence received. He has the right, on his own initiative or at the request of the participants in the consideration of the case, to attract and investigate additional evidence (calling and questioning additional witnesses, reclaiming and examining material evidence, etc.). 8 of the Code of Administrative Offenses of the Russian Federation sets a tight deadline for correcting the shortcomings of the protocol. In the process of considering the case, the judge in accordance with the requirements established by Ch. 26 of the Code of Administrative Offenses of the Russian Federation, examines the evidence on the basis of which it establishes the presence or absence of an administrative offense, the guilt of a person in its commission and other circumstances that are important for the correct resolution of the case. In this case, the judge may not limit himself to examining the evidence received. He has the right, on his own initiative or at the request of the participants in the consideration of the case, to attract and investigate additional evidence (calling and questioning additional witnesses, reclaiming and examining material evidence, etc.). 8 of the Code of Administrative Offenses of the Russian Federation sets a tight deadline for correcting the shortcomings of the protocol. In the process of considering the case, the judge in accordance with the requirements established by Ch. 26 of the Code of Administrative Offenses of the Russian Federation, examines the evidence on the basis of which it establishes the presence or absence of an administrative offense, the guilt of a person in its commission and other circumstances that are important for the correct resolution of the case. In this case, the judge may not limit himself to examining the evidence received. He has the right, on his own initiative or at the request of the participants in the consideration of the case, to attract and investigate additional evidence (calling and questioning additional witnesses, reclaiming and examining material evidence, etc.). on the basis of which it establishes the presence or absence of an administrative offense, the guilt of a person in its commission and other circumstances that are important for the correct resolution of the case. In this case, the judge may not limit himself to examining the evidence received. He has the right, on his own initiative or at the request of the participants in the consideration of the case, to attract and investigate additional evidence (calling and questioning additional witnesses, reclaiming and examining material evidence, etc.). on the basis of which it establishes the presence or absence of an administrative offense, the guilt of a person in its commission and other circumstances that are important for the correct resolution of the case. In this case, the judge may not limit himself to examining the evidence received. He has the right, on his own initiative or at the request of the participants in the consideration of the case, to attract and investigate additional evidence (calling and questioning additional witnesses, reclaiming and examining material evidence, etc.).

In accordance with Part 2 of Art. 2.1 of the Code of Administrative Offenses of the Russian Federation, a legal entity is found guilty of committing an administrative offense if it is established that it had the opportunity to comply with the rules and regulations, for violation of which the Code of Administrative Offenses of the Russian Federation or the laws of a constituent entity of the Russian Federation provides for administrative liability, but this person was not all measures have been taken to comply with them. The new Code of Administrative Offenses of the Russian Federation in Chapter 30 "Revision of decisions and decisions in cases of administrative offenses" establishes uniform rules for considering complaints in these cases, which are significantly different from the appeal and cassation proceedings in civil cases. In particular, Taking into account the specifics of administrative-procedural relations, the issues of the timing and procedure for appealing, as well as the consideration of the complaint and the adoption of a decision on it, are resolved in a different way. It should be noted that of fundamental importance for law enforcement practice is the fact that, in the manner prescribed by Chapter 30 of the Code of Administrative Offenses of the Russian Federation, both decisions on the imposition of an administrative penalty and

decisions on the termination of proceedings in a case of an administrative offense are being reviewed, as well as rulings on refusal to initiate proceedings. The right of citizens to appeal against rulings on refusal to initiate proceedings, decisions and decisions in cases of administrative offenses is a state-guaranteed opportunity to restore violated rights and protected interests, a means of identifying and eliminating shortcomings in the activities of bodies authorized to consider cases of administrative offenses. The exercise of the right to appeal is subject to the discretion of the persons who have been granted such a right.

Among the subjects of the right to appeal against decisions in cases of administrative offenses are the person in respect of whom proceedings are underway in the case of an administrative offense, the victim, legal representatives of an individual, legal representatives of a legal entity, a defender and a representative, a prosecutor, etc. cases are necessary on the basis of an application by a person in civil proceedings in accordance with the provisions of Chapter 25 of the Code of Civil Procedure of the Russian Federation. In this regard, it should be noted that the complaint must be made in writing. The Code of Administrative Offenses of the Russian Federation does not establish requirements for the content of a complaint against a decision in a case of an administrative offense. A complaint against a decision in a case of an administrative offense can be filed within 10 days from the date of delivery or receipt of a copy of the decision [Art. 30.3 of the Administrative Code of the Russian Federation]. As a general rule, such complaints are subject to consideration in accordance with the provisions of Chapter 29 of the Code of Administrative Offenses of the Russian Federation "Consideration of a case of an administrative offense", taking into account the features that are established in Art. 30.5 - 30.8 of the Administrative Code of the Russian Federation. This circumstance is very significant, a number of authors note, since many scientific and practical workers believe that the procedure for revising a decision in an administrative offense case, with the exception of the procedure and terms for filing a complaint, is actually not regulated in the Code of Administrative Offenses of the Russian Federation [20]. As a general rule, such complaints are subject to consideration in accordance with the provisions of Chapter 29 of the Code of Administrative Offenses of the Russian Federation "Consideration of a case of an administrative offense", taking into account the features that are established in Art. 30.5 - 30.8 of the Administrative Code of the Russian Federation. This circumstance is very significant, a number of authors note, since many scientific and practical workers believe that the procedure for revising a decision in an administrative offense case, with the exception of the procedure and terms for filing a complaint, is actually not regulated in the Code of Administrative Offenses of the Russian Federation [20].

In this regard, it should be noted that the Code of Administrative Offenses of the Russian Federation establishes a relatively short period for considering a complaint against decisions in a case of an administrative offense - 10 days from the date of its receipt with all case materials in a court competent to consider the complaint. For complaints against orders of administrative arrest, such a period is one day, if the person brought to administrative responsibility is serving an administrative arrest. The preparatory actions of the judge, which include checking the jurisdiction of the complaint to this court, are important for the observance of the established deadlines and the prompt consideration of the complaint. If the court concludes that the consideration of the complaint received does not fall within its competence, then it is sent for consideration by jurisdiction within 3 days. In this regard, it should be borne in mind that, unlike the appeal proceedings and proceedings in the cassation instance in civil cases, in proceedings on cases of an administrative offense, the judge is not

connected with the arguments of the complaint and verifies the case in full. Therefore, the judge has the right to order an examination, to demand additional materials, to summon the persons whose participation is necessary when considering the complaint. Given the special procedural procedure for considering a case of administrative offenses, the judge is not entitled to make a decision on the grounds and in the form provided for by the Code of Civil Procedure of the Russian Federation. In particular,

And the last thing. A decision made on a complaint against a decision in a case of an administrative offense must be immediately announced. A copy of the decision on a complaint against a decision in a case of an administrative offense within 3 days after its issuance is handed or sent to an individual or a legal representative of a legal entity, in respect of whom a decision was made in the case, as well as to the victim in case of filing a complaint or the prosecutor at his request. The decision of a district judge on a complaint against a ruling on an administrative offense made by a justice of the peace is not final, but can be appealed to a higher court in accordance with the rules and norms of Chapter 30 of the Code of Administrative Offenses of the Russian Federation.

The above allows us to define the concept under study (administrative jurisdiction) on the following grounds: offenses is simplified in comparison with the civil and criminal proceedings. These cases can be resolved and, in addition to the court, other state bodies and officials, which does not correspond to the principle of administering justice only by the court; b) according to legal regulation. For administrative jurisdiction, this is, first of all, the Code of the Russian Federation on Administrative Offenses, as well as a number of norms enshrined in tax, natural resources, customs, antimonopoly legislation, etc. ; c) on the basis of what cases are being considered. Administrative jurisdiction is proceedings on cases of administrative offenses, disciplinary proceedings, proceedings on complaints, enforcement proceedings, proceedings on the application of measures of administrative procedural coercion on the basis of administrative procedural norms [21]. This is not justice. Its purpose and main task is to protect the individual, to consider guarantees of the rights and freedoms of citizens. In these cases, the court resolves the dispute about the law, but about the right not civil, but administrative [22]; d) procedural differences. For administrative jurisdiction, the procedure is established and regulated by special normative acts: the Constitution of the Russian Federation, federal laws, decrees of the President and the Government of the Russian Federation,

In our opinion, based on the substantive nature of legal cases of administrative offenses, procedural and specific features in the order of their consideration, judicial control in the sphere of administrative jurisdiction is carried out in a special procedural order in order to protect the rights and interests of persons.

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