

Gocha

JEIRANASHVILI

A judge of Tbilisi Court of Appeals for indefinite tenure

CANDIDATE'S PROFESSIONAL /
ACADEMIC PERFORMANCE AND
IDENTIFIED TRAITS / BEHAVIOR

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In 2002–2007 candidate Gocha Jeiranashvili worked a Senior Inspector, Investigator and Senior Investigator at the Samtskhe-Javakheti Regional Division of the Ministry of Internal Affairs, in 2007–2009, he was

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a Senior Investigator of an investigative body of the Samtskhe-Javakheti District Prosecutor's Office. In 2009, Gocha Jeiranashvili was appointed as a judge of the Tsalka District Court, although he was

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seconded to the Akhaltsikhe District Court on the same day and was appointed as a judge of the Akhaltsikhe District Court in 2 months, where he served until 2018. Since January 18, 2018, the candidate has

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been appointed as a judge of the Chamber of Criminal Cases of the Tbilisi Court of Appeals for indefinite tenure.

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CANDIDATE'S PROFESSIONAL / ACADEMIC PERFORMANCE AND IDENTIFIED TRAITS / BEHAVIOR

1. DECISIONS, DISSENTING OPINIONS, COURT SUBMISSIONS

Legal issue: Torture, degrading treatment of prisoners by staff at penitentiary establishments

Facts: On March 22, 2019, Tbilisi Court of Appeals, chaired by the Judge Gocha Jeiranashvili, reviewed a case of torture and inhuman treatment of prisoners in a prison, concerning the facts committed in one of the penitentiary establishments prior to 2012.

Significance of the case: According to numerous sources, there was a systematic crime of torture and inhuman treatment in Georgian penitentiary establishments prior to 2012.¹ State and law enforcement agencies did not respond adequately to these crimes, there was a sense of impunity.²

Decision:

- Explanation of the Court – legal evaluation of the act, standard of proof, relevance and connection to the case, legal analysis of the act is substantiated by reference to the relevant legal norms of national law, as well as the practice of the European Court of Human Rights. **However, in the judgment we find little discussion of the motive behind the crime.**

Note: In accordance with criminal legislation, the reasoning part of a judgment shall include a description of the criminal act that has been recognized as established by the court. In addition, the judgment shall indicate the place of the commission of the crime, the time and manner, as well as the form of the charge, **motive, purpose and consequences** of the crime. Motivation and purpose are also important in sentencing.

The motivation and purpose in the cases of torture and inhuman treatment are of particular importance, since this is where the boundary between torture and other forms of ill-treatment is drawn. Torture, unlike other forms of ill-treatment, has a specific purpose: Punishment of a person and/or obtaining evidence (e.g. confession).

- When speaking about the standard of proof, the judge says the following: **“...It can be said that the standard of proof does not have to be absolutely reliable, although it must meet a high standard of possibility and leave only the slightest possibility of the opposite.”**

Note: In accordance with the Constitution of Georgia, no one shall be obliged to prove his/her innocence. The prosecutor shall bear the burden of proof. In accordance with the Constitution of Georgia, **any suspicion that cannot be proved as provided for by law shall be resolved in favor of the accused.**

¹ See Research on the practice of torture and inhuman treatment in the Georgian penitentiary system, Tbilisi, 2014; https://osgf.ge/files/2014/publications/OSGF_Report_GEO_PRINT.pdf

² See Report of the Public Defender, 2010; <https://bit.ly/31N60jR>. See Report of the Public Defender, 2011; <https://bit.ly/2ZasCJz>

Legal issue: Proportionality of the sentence

Facts: On May 13, 2019, Tbilisi Court of Appeals, chaired by the Judge Gocha Jeiranashvili, without an oral hearing, reviewed an appeal of the Prosecutor's Office which appealed the judgment of the court of first instance with respect to the sentence. The Prosecutor's Office requested to aggravate the sentence of the convict, as the court of first instance imposed a conditional sentence for a crime, which involved illegal restriction of freedom of action of one family member by another family member, that is compelling a person by using physical or psychological force to carry out an act, carrying out of which is the right of that person.

Significance of the case: The case is important because it demonstrates the candidate's approach to the crime of domestic violence. Domestic violence is a widespread crime in Georgia.³ Adminstrating effective and gender-sensitive justice to this type of crimes is a serious challenge for the prosecution and judicial bodies, which creates additional barriers for women victims in fight for their rights.⁴

Decision:

- The judge, in the judgment, does not refer to the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) There is no reference to the provision of the Convention, according to which, the contracting states are obligated to “take the necessary legislative or other measures to ensure that the offences established in accordance with this Convention are punishable by effective, proportionate and dissuasive sanctions, taking into account their seriousness. These sanctions shall include, where appropriate, sentences involving the deprivation of liberty.”
- Instead, the judge applied the explanation of the constitutional court on the fairness of sentences, namely: “Grossly disproportionate sentences that do not correspond to the nature and gravity of the crime not only apply to the constitutional prohibition of cruel, inhuman and degrading treatment and punishment, but also violate this constitutional provision”.⁵ The judge stated that according to the Constitutional Court of Georgia, the use of excessively harsh and disproportionate punishment against a person is assessable under Article 17(2) of the Constitution of Georgia.
- When assessing the fairness of the sentence, the judge noted: “Determined conditional punishment is in full compliance with the requirements of Articles 63-64 of the Criminal Code of Georgia, the character of the convict, circumstances mitigating his liability and taking into account the true will of the victim, it fully ensures the fulfillment of the purpose of the sentence...”

Note: Given the specificity of the crime of domestic violence, the victim's position should be considered with caution. It is recognized that the victim of this type of crime is particularly vulnerable to the offender and his conciliatory position, withdrawal of the complaint, etc. Maybe due to fear, public/cultural pressure, etc.⁶

In addition, the legislation emphasizes that when imposing a sentence, a judge takes into account the readiness of the accused (and not of the victim's, as the judge has pointed out) to indemnify the damage caused and reconcile with the victim.

1.1. LEGALLY INTERESTING OR PRECEDENTIAL DECISIONS

³ See Violence against Women and Domestic Violence in Georgia (2015)

⁴ See Cases of domestic violence, domestic crime and violence against women (2017)

⁵ <https://matsne.gov.ge/ka/document/view/3045482?publication=0>

⁶ See For example, a judgment of the European Court of Human Rights in the case of *Opuz v. Turkey* (N 33401/02) 2009.

1.2. HIGH-PROFILE CASES

THE CASE OF HIGH RANKING OFFICIALS ACCUSED OF RAPE

Candidate Gocha Jeiranashvili reviewed a criminal case, in which the prosecution alleges that on January 1, 2009, police officers verbally and physically assaulted the victim at the Borjomi District Police Department of the Ministry of Internal Affairs. During the beating, two police officers, by order of the head of the police department Mamuka Khvedeliani, carried out an inhuman act towards the victim: Rape.

On July 3, 2013, Akhaltsikhe District Court, chaired by the Judge Gocha Jeiranashvili, found the accused innocent in the charges brought and released them from the courtroom.⁷

The court pointed out that the prosecution did not submit any more evidence on the beating and inhuman treatment of the victim at the police department, other than the testimony of the victim. Moreover, the victim's testimony was excluded by the expert presented by the prosecution, who did not find the injuries on the victim. The same was repeated by alternative expert examination.⁸

Decision made by the judge was followed by public protests. The protesters demanded the arrest of the released persons, accusing the court of being impartial, throwing eggs and brooms at the court building.⁹

Later, the Chief Prosecutor's Office of Georgia issued a statement, according to which, **“Several days before the delivery of a judgment, Judge Gocha Jeiranashvili, on his own initiative, met Samtskhe-Javakheti Prosecutor Givi Papuashvili in an informal circumstances and advised him to enter into a plea bargain with the accused persons requesting their release. According to the judge, “That would be a good solution for everyone.” The prosecutor rejected his offer”**, – said Khatuna Paichadze, Head of Press Service of the Office of the Chief Prosecutor's Office of Georgia.¹⁰

In response to the said statement, the Supreme Court of Georgia issued a statement stating that the Chief Prosecutor's Office was circulating a lie.¹¹

The judgment of acquittal made by Gocha Jeiranashvili, a judge of the Akhaltsikhe District Court, was appealed by the Prosecutor's Office, but the Court of Appeals also upheld the acquittal,¹² and the Supreme Court found the cassation appeal inadmissible and the judgment of acquittal remained into force.¹³

1.3 APPLICATION OF THE PRACTICE OF THE SUPREME / CONSTITUTIONAL AND INTERNATIONAL / REGIONAL COURTS

The candidate rarely uses the practice of the Supreme/Constitutional Courts of Georgia and International/Regional Courts. In one of the cases, the candidate cites a judgment of the Constitutional Court, albeit in the wrong context.

⁷ <http://www.gurianews.ge/article/mtavari/mtavari-tema/11258>

⁸ <http://www.gurianews.com/article/mtavari/mtavari-tema/11572>

⁹ <http://www.tabula.ge/ge/story/72684-axalcixis-sasamartlos-shenobas-qvebi-kvercxebi-da-cocxebi-daushines>

¹⁰ <http://sknews.ge/index.php?newsid=1907>

¹¹ <http://www.supremecourt.ge/news/id/434>

¹² <http://sknews.ge/index.php?newsid=2991>

¹³ <http://sknews.ge/index.php?newsid=4179>

2.

MISCONDUCT REVEALED IN PROFESSIONAL ACTIVITIES (DISCIPLINARY PROCEEDINGS, PROFESSIONAL ETHICS)

1. DISCIPLINARY PROCEEDINGS – EXISTING COMPLAINTS

- The disciplinary panel has not applied any disciplinary measures or penalties against the candidate.

2. ALLEGED VIOLATION OF PROFESSIONAL ETHICS

- There was no case of alleged violation of professional ethics.

3.

PROMOTIONS AND AWARDS / SCHOLARSHIPS GRANTED FOR PROFESSIONAL PERFORMANCE

1. PROFESSIONAL DEVELOPMENT

- In 2002-2004, Candidate Gocha Jeiranashvili was a Senior Inspector of the inspection for juveniles' cases at the criminal police of the Akhaltsikhe District Department of Internal Affairs. From 2004, he served as a Senior Inspector of the Criminal Investigation Division at the Samtskhe-Javakheti Regional Main Division of Internal Affairs. In 2005, Gocha Jeiranashvili was appointed as an Investigator of the Criminal Investigation Unit of the Samtskhe-Javakheti Regional Main Division of Internal Affairs. In 2006-2007, he was a Senior Investigator of the Criminal Police Group at the Akhaltsikhe Regional District Department of the District Division of Samtskhe-Javakheti Regional Main Division. In 2007-2009, the candidate served as a Senior Investigator of the Investigation Unit of the Samtskhe-Javakheti Regional Prosecutor's Office,
- From March 10, 2009, candidate Gocha Jeiranashvili was appointed as a judge of the Tsalka District Court and he was seconded to the Akhaltsikhe District Court on the same day. From April 21, 2009, the candidate was appointed as a judge of the Akhaltsikhe District Court, and from December 28, he was assigned to perform the duties of the chairperson of the court. On October 25, 2012, Judge Gocha Jeiranashvili became a Chairperson of the Akhaltsikhe District Court for 5 years. On December 6, 2017, He was again assigned to perform the duties of the chairperson of the same court.
- Since January 18, 2018, Judge Gocha Jeiranashvili has been appointed as a judge of the Chamber of Criminal Cases of the Tbilisi Court of Appeals for indefinite tenure.

2. AWARDS / SCHOLARSHIPS

- Judge Gocha Jeiranashvili has not received any awards / scholarships.

4.

CONFLICT WITH LAW, CONFLICT OF INTEREST

1. CRIMINAL LIABILITY, ADMINISTRATIVE OFFENCES/PENALTIES, LITIGATIONS

- Candidate Gocha Jeiranashvili has no record of conviction.
- The disciplinary panel has not applied any disciplinary penalties against the Judge Gocha Jeiranashvili.
- Candidate Gocha Jeiranashvili was not a party to the litigation.

2. PARTY AFFILIATION, CONFLICTS OF INTEREST WITH A MEMBER OF THE HIGH COUNCIL OF JUSTICE, LINKS WITH POLITICIANS / INFLUENTIAL PERSONS

- Judge Gocha Jeiranashvili was not a member of any political party.
- In July, 2013, Judge Gocha Jeiranashvili delivered a judgment of acquittal in the case of a former Head of Borjomi Police Department and a candidate for MP of the political party ‘National Movement’ in Borjomi Mamuka Kvedeliani¹ and his staff who were accused of torture and rape of a man.² According to the victims, Gocha Jeiranashvili was a devoted staff member of Vano Merabishvili in Samtskhe–Javakheti.³ The Prosecutor’s Office claimed that several days before the verdict was delivered, Judge Gocha Jeiranashvili met with the Samtskhe–Javakheti Prosecutor in an informal setting and advised him to enter into a plea bargain with the accused.⁴ Eva Gotsiridze, a member of the High Council of Justice at that time said that this was the only judgment of acquittal of Jeiranashvili, which spoke volumes about many things.⁵

¹ In 2007–2009, when Gocha Jeiranashvili worked as a Senior Investigator of the Investigation Unit of the Samtskhe–Javakheti Regional Prosecutor’s Office, Mamuka Kvedeliani was the Head of the Borjomi District Police Department of the Samtskhe–Javakheti Regional Main Division, see <http://bit.ly/2m2tD8u>

² Borjomi residents protest Khvedeliani’s release, See <http://bit.ly/2k0mull>

³ ‘Collegial relations’ of the Judge Jeiranashvili and high ranking officials accused of rape, see <http://bit.ly/2m2tD8u>

⁴ Supreme Court: The Chief Prosecutor’s Office releases inaccurate information, see <http://bit.ly/2k8a0eE>

⁵ Why did Jublashvili’s deputy visit Brussels with Ugulava, see <http://bit.ly/2kG2Miv>

5.

CANDIDATE’S PUBLIC ACTIVITIES / POSITION AND BEHAVIOR

1. OPINIONS OF GOCHA JEIRANASHVILI EXPRESSED IN SOCIAL MEDIA

The candidate does not use social media. He does not own a personal account or a job-related page.

2. PUBLIC STATEMENTS MADE BY GOCHA JEIRANASHVILI

Statements made by Gocha Jeiranashvili are not available in public sources.

3. INTERVIEW OF CANDIDATE GOCHA JEIRANASHVILI AT THE HIGH COUNCIL OF JUSTICE



Question posed by a member of the Council of Justice LEVAN GZIRISHVILI to the candidate: “What is your position on the actual decriminalization of marijuana, are you more in favor of liberal policies or do you think that the use of certain categories of drugs should be punished?”

Judge Gocha Jeiranashvili’s answer:

“Consumption of certain categories of drugs is still punishable today. Although the Constitutional Court has said that marijuana is not a criminal offence, but also that it should not be used in places of mass gathering, etc. and etc. That is, if a person consumes marijuana at home, he/she should not be held criminally liable. However, as you know, there are restrictions in law, for example, when it is consumed in a public place or the consumer drives a car, in this case it should be a criminal offence. To some extent the Constitutional Court mitigated it. That decision, of course, did not say that no matter what a person does with marijuana, it is not a crime.”



LEVAN GZIRISHVILI’s question to the candidate: “Is the right to life an absolute right? If not, why?”

Judge Gocha Jeiranashvili’s answer:

“It is considered an absolute right, because, as you know, the death penalty is finally abolished by Protocol No. 13. Prohibition of torture and inhuman treatment is an absolute right as well. In addition, the principle of non-use of retroactive force of law and the principle of prohibition of re-punishing are absolute as well.”¹



Question posed by a member of the Council of Justice NAZI JANEZASHVILI to the candidate: “What is the difference between the adversarial principle and the principle of equality of arms?”

Judge Gocha Jeiranashvili’s answer:

“Equality of arms is ongoing through the whole process, when the process grants the parties their status and the principle of equality applies to this whole process- both in obtaining evidence and in a number of other circumstances. Adversarial principle (from the point of judiciary) basically means that people, parties in a court are given equal rights.”



NAZI JANEZASHVILI additionally asked the candidate: “But is not that equality? What is the difference? That was my question.”

Judge Gocha Jeiranashvili’s answer:

“Adversarial principle... Equality is more formulated in the law and adversarial depends more on the interest of the party itself, on knowledge, experience, intellect.”

¹ It should be noted that in accordance with human rights standards, including the standards set forth in the European Convention on Human Rights and Fundamental Freedoms, the right to life does not constitute an absolute right, which means that the restriction of the right is admissible. For example, the right to life may be restricted: to protect any person from unlawful violence; for lawful arrest or for preventing the escape of a person lawfully detained; to suppress rebellion or riot in the course of lawful action. (Convention for the Protection of Human Rights and Fundamental Freedoms, Article 2.2).



NAZI JANEZASHVILI's clarifying question to the candidate: "So equality is written in the law and adversarial principle is not? What do you mean?"

Judge Gocha Jeiranashvili's answer:



No, adversarial principle depends more on the ability of a party to realize its potential and equality is a right guaranteed by law, which says that all parties are equal before the law."



NAZI JANEZASHVILI's question to the candidate: "What is your opinion on the constitutional provision regarding marriage?"

Judge Gocha Jeiranashvili's answer:



Such provision was already present in the Civil Code, it was simply transferred to the Constitution. The constitution indicates that a family is voluntary union of a woman and a man. Such provision is also in the European Convention on Human Rights and Fundamental Freedoms. The European Court of Human Rights has delivered judgments in this regard, including on transsexual persons. The European Court was handling this issue carefully. At first the Court considered that the recognition of them, so to say, as women, was inadmissible, and refused to make changes in their birth records, but later the Court determined that it was possible. As I recall, Christine Goodwin was involved in the case and it was said that the right to marry was being violated. In my opinion, the provision in the Constitution is appropriate."



NAZI JANEZASHVILI's question to the candidate: "I am interested in your opinion on the challenges in the judicial system. In the last four years, there have been reports of an influential group... Why do you think is this written in very important reports that are probably read by very many international organizations? What do you think causes this?"

Judge Gocha Jeiranashvili's answer:



I do not know what causes it. I am really surprised, why is the judicial system so criticized, when it is developing in the right direction. There may be challenges, however, not because of an influential group running the judiciary system. I am offended by such an approach."



NAZI JANEZASHVILI's question to the candidate: "Do you think that the regulations and practices that we have (regarding sex recognition) are discriminatory or not? I am interested in your personal opinion on this; what do you, as a person, think about this issue?"

Judge Gocha Jeiranashvili's answer:



The issue of legal recognition of sex does not only exist in Georgia. It's just a very intrinsic aspect of a human being and I wish I wish not to talk about it further."



NAZI JANEZASHVILI's question to the candidate: "I am interested in your opinion on Article 366 of the Criminal Code (contempt of court). How do you, as a judge, as a lawyer, interpret the meaning of an insult, in the context provided by Article 366 of the Criminal Code?"

Judge Gocha Jeiranashvili's answer:



In this regard, I have my position, however, you know, tomorrow I might be given a case being reviewed under this Article; my such preliminary statement may become the ground for recusal in relation to this issue, and I have to refrain from talking about this issue."

6.

FINANCIAL OBLIGATIONS AND INCOME OF THE CANDIDATE



2010
FLAT IN AKHATSIKHE
GEL 51 040
70 SQ.M



2018
A VEHICLE
GEL 21 900

SPOUSE:



2017
FLAT IN TBILISI
GEL 52 000
41,6 SQ.M



2016
FLAT IN ADIGENI
GEL 29 083
28,9 SQ.M



2014
FLAT IN TBILISI
GEL 82 250
71 SQ.M

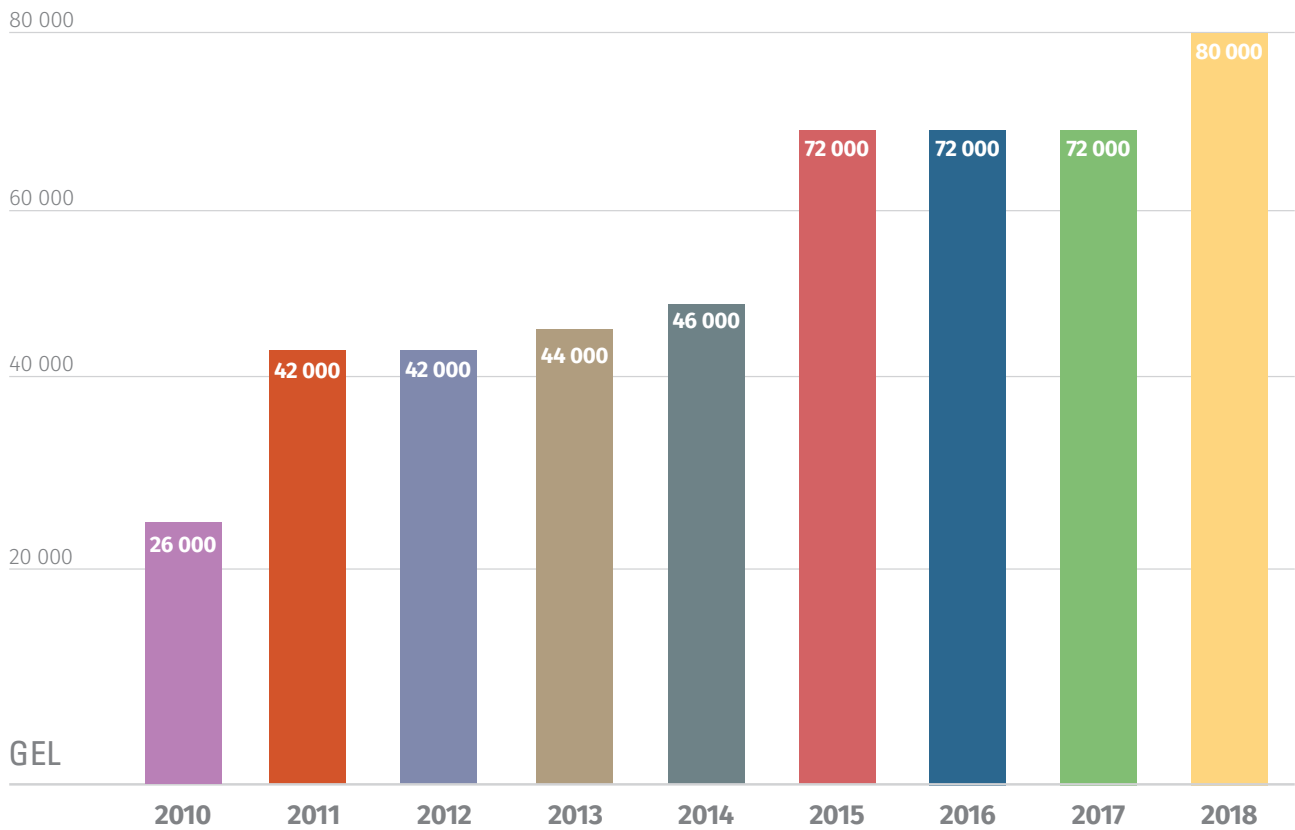


2018
A VEHICLE
GEL 9 100

2. FINANCE

Judge Gocha Jeiranashvili's remuneration received from judicial activities in 2009–2018 amounted to GEL 571,493. At the same time, he has been engaged in academic activities at the Akhaltsikhe State Educational University since 2011, from which he received GEL 4850 as a remuneration. Maia Pachulia, spouse of the Judge has been carrying out teaching activities at the Akhaltsikhe public school has received GEL 15,128 as a remuneration since 2010.

Current loans: Judge Gocha Jeiranashvili has various ongoing loans. Namely, six ongoing loans, totaling GEL 340,700. As of 2018, GEL 76,413 has been covered.



An analysis of Judge Gocha Jeiranashvili’s asset declaration shows that in recent years, the number of loans taken by the Judge, as well as his expenses have increased compared to previous years. The data for 2018 is interesting, as according to the declaration, there is a significant imbalance between Judge Gocha Jeiranashvili’s income and expenditure during this period. In 2018, the Judge’s income received as remuneration amounted to GEL 83,499, in the same year he also received GEL 355,480 as a loan – a total of GEL 438,978, while the expenditure amounted to GEL 543,731. Therefore, the expenditure exceeds the income of Judge Gocha Jeiranashvili by GEL 104,752.



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