

AUTHORITARIAN TENDENCIES: THE DUAL ROLE* OF AML/CFT POLICIES¹

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Introduction

The study focuses on the legal environment in which civil society organisations (CSOs) have operated over the last two decades, a period when states around the world have abused laws that combat money laundering and the financing of terrorism (AML/CFT), the effects of which increasingly go beyond the fight against terrorism and money laundering. In principle, it is legitimate for states to establish legal control mechanisms that could also apply to CSOs committing offenses classified as money laundering or terrorist financing, however, these laws must comply with democratic standards. The paper begins with a conceptual definition of CSOs that perform a social control function. The reason for the narrow focus of the study is that I hypothesise that states design a dual role for their AML/CFT laws with the specific intention of limiting the control function.

Restrictions on CSOs performing a social control function should not go beyond what is necessary in a democratic society to achieve the objectives set out in the relevant legislation, even on the grounds of preventing money laundering and terrorism financing. Restrictions must also be proportionate and in line with the fundamental principles of human rights, including non-discrimination.

In authoritarian countries and countries with authoritarian tendencies, the opposite of this requirement is often the case. To this day, these countries use Recommendation 8 of the Financial Action Task Force (FATF) as a reference point when adopting their laws to restrict the operation and activities of CSOs, therefore, AML/CFT laws go beyond legitimate purposes. For this reason, I need to briefly outline the history of Recommendation 8 and its current content.



The laws in force are then examined. I did not attempt to cover all legislation in all relevant countries. Instead, my aim was to present the most striking examples of restrictive mechanisms against CSOs. This helps to highlight the ways in which the laws examined can become a weapon in the hands of authoritarian or authoritarian-leaning governments.

The definition of CSOs that perform a social control function

This paper discusses CSOs that perform a social control function. These organisations provide a platform for the expression of social opinion against the self-serving agendas of political authorities, economic forces and individual groups (Nagy–Nizák–Vercseg 2014: 29). They play a vital role in promoting human rights across multiple levels of governance and championing democratic ideals regardless of their country’s political system.

CSOs with a social control function include watchdog groups, advocacy organisations, and groups focused on promoting and defending human rights. By exerting control and influence over the authorities, ensuring that remedial action is taken when necessary, their presence can be seen as a guarantee of democracy (Gaventa 2011) because their activities have an effect on public policies (Kimberlin 2010), they protect human rights (Haddad 2012), advocate for marginalised and minority groups (Forbat–Atkinson 2005), seek to create economic, social and political capital and redistribute it to marginalised groups (Feldman–Strier–Schmid 2016). Consequently, these CSOs seek not only to shape the attitudes of society by bringing to the forefront of public discourse policy issues that have a significant direct or indirect impact on the daily lives of citizens, but also to influence public authorities to take action that aligns with the organisation’s objectives (Dojcsák 2021).

Watchdogs are similar to the press in that they monitor the actions of state and public institutions, as well as larger and more complex social processes. Watchdog CSOs play a role in curbing corruption, fostering transparency and accountability in public decision-making and processes that involve public funds, and enhancing the accessibility of public information. These CSOs aid in raising public awareness about government actions and their impact on citizens. The main benefit is that it expands the amount of information accessible to citizens, enabling them to make informed decisions on a variety of issues.

Advocacy (exerting pressure) involves direct or indirect efforts to persuade the state to respond – whether at the political or administrative level – to the needs expressed or conveyed by CSOs (Toepler–Fröhlich 2020: 1475). The needs identified by CSOs depend on the state’s ability or willingness to serve all needs and groups of the population equally well. As long as dominant interests and social structures disadvantage certain groups while unfairly favouring others, CSOs can act as public critics and advocates, giving voice to grievances, reducing conflict and possibly bringing about policy change (Anheier–Lang–Toepler 2019: 10).



Thus, CSO advocacy can be defined as the organisation of the strategic use of information for the democratisation of unequal power relations, with the aim of influencing policy or everyday life (Steinberg 2001).

Commonly, the aim of human rights advocacy is to redress violations of the human and political freedoms on which CSOs are established (Gerő-Fonyó 2013: 35). The work of rights defenders is essential in areas where the legal system is deficient, whether in law-making, law enforcement or the application of the law (Vigh 2012: 362). Defending rights involves, on the one hand, monitoring legislation, documenting and writing reports on infringements, and lobbying for legislative changes, and, on the other hand, influencing the practice of law through legal representation, participation in court proceedings, and strategic litigation, public interest litigation, and lastly, public education such as awareness raising, campaigns, trainings, information assistance, organising protests, and international networking.

This category of CSOs also includes those that are active in areas where the services are inseparable from the advocacy for target groups, such as the poor, the disadvantaged and the homeless (Young 2000), or the cultural activities are intrinsically linked to the struggle for the recognition of minorities (Mosley 2010). In the latter two cases, CSOs play a role in shaping government policy, even if they are not directly engaged in advocacy (Kövér-Antal-Deák 2021: 101).

The state of the civil sector, which monitors the state, exposes wrongdoings and assists in litigation, is the best indicator of whether a political system can be considered a true democracy (Pelle-Tóth), because one of the most important measures of the quality of democracy is the accountability enforced by advocacy organisations and the public, which allows for the monitoring and control of governance between elections (Bozóki 2000: 52).

In a democratic system, one way in which the state and CSOs relate to each other is through the control function. This allows CSOs to limit the authoritarian tendencies of the state (Kövér 2015: 8), acting as control mechanisms and holding power accountable where necessary (Keane 2022: 199–210). An authority that respects democratic principles endeavours to respond to criticism from society and to correct its own actions. It also seeks to improve its transparency and legitimacy through social control mechanisms (Kövér-Antal-Deák 2021: 102). Within this framework, the state can ensure the greatest possible pluralism.

States have a duty to create a safe and appropriate environment, i.e. a legal, administrative and institutional framework within which CSOs can operate effectively. This is what we call the state's obligation to protect institutions. Laws governing CSOs must be clear, precise and foreseeable, particularly when they grant a degree of discretion to public authorities. Legislation can prescribe procedural requirements for the establishment, operation and activities of CSOs, but cannot dictate the content of their activities. External interference in the operation or management of CSOs should only occur in very exceptional circumstances, for example to remedy a serious breach of the law. CSOs should have the right to appeal to an



independent and impartial court if public authorities apply restrictive legislation against them in a manner that is contrary to democratic principles. Consequently, while states may impose restrictions on the freedom of association of CSOs, they must do so in accordance with the democratic standards, as restrictions can only be allowed if they are in line with these standards. This enables CSOs to achieve their intended objectives and shape democratic public opinion.

Recommendation 8 of the Financial Action Task Force

In the aftermath of the terrorist attacks of 11 September 2001, the international community was compelled to take various legal and political measures to combat terrorism. As part of the international effort to combat terrorism, a comprehensive global financial regulatory regime was established. In 2005, an independent inter-governmental organisation, the FATF, became part of the UN counter-terrorism agenda when the Security Council, acting under its Chapter VII powers, urged all member states to implement the FATF's standards on combating money laundering and the financing of terrorism.³

The mission of FATF is to develop and promote policies to combat money laundering and terrorist financing, and to make recommendations (40 recommendations + 9 specific recommendations) to be implemented by countries. The 8th recommendation is relevant to my study. This recommendation made an unsubstantiated empirical claim that nonprofit organisations (NPOs) are particularly vulnerable to money laundering and terrorist financing, and called on states to prevent abuses on this basis (Romaniuk–Keatinge 2017: 268–272). Thus, the FATF has specifically identified NPOs as a risk category for money laundering and terrorist financing. Taking advantage of the FATF's stance, governments around the world imposed strict restrictions on the nonprofit sector (France 2021: 10). This practice was contrary to the international human rights commitments that states had previously made.

Once civil society was confronted with the consequences of Recommendation 8, it took a relatively long time for tangible international cooperation on the issue to emerge. Finally, in 2014, an international working group of nonprofit organisations (Global NPO Coalition on FATF) was established to develop and disseminate information to the sector, ensuring that those working in the CSO sector are informed about the FATF and the opportunities for civil society engagement. The members of the working group reached out to national governments to draw attention to the shortcomings of Recommendation 8. Their persistent work contributed to the FATF's revision of Recommendation 8 in 2016, removing the statement that NPOs are "particularly vulnerable" to terrorist abuse (Wilson 2016: 341–342), and replacing it with a new text that encourages states to adopt a risk-based approach and to respect their obligations under international human rights law. Under the revised language states are required to use a risk assessment process to



identify at-risk NPOs. They should then take effective and proportionate action or measures appropriate to the risk, which should not impede the legitimate activities of NPOs (FATF 2023: 58–63). This means that if a state implements controls that go beyond the minimum standards set by the FATF, it must ensure that the measures comply with the state’s obligations under international human rights treaties that safeguard freedom of association.

AML/CFT Laws

The FATF, in its Recommendation, defines NPOs as legal entities or organisations primarily engaged in raising or disbursing funds for charitable, religious, cultural, educational, social and philanthropic purposes.⁴ The FATF’s definition of NPOs is narrower in focus than the general approach, which includes all organisations with legal status and meeting the five key criteria for the NPO sector: prohibition of distribution of profits, operational autonomy and independence, having separate legal personality, self-governance, volunteerism and self-motivated activities (Salamon–Anheier 1999: 12).⁵ Compared to the FATF’s definition, some countries, in line with the general approach, interpret the nonprofit sector too broadly. For instance, in Cyprus, the definition includes CSOs active in the areas of human rights, research and development, active citizenship, animal welfare, discrimination, environment and immigration (Expert Council on NGO Law 2022: 26).

Despite the recommendation, the laws often fail to define the specific subset of organisations at risk, and as a result, the provisions apply to the entire sector of CSOs. Therefore, they do not define the content of the risk analysis and do not provide for differentiated application of supervisory measures or sanctions based on a risk classification (e.g. Argentina⁶, Azerbaijan⁷, Mexico⁸). Contrary to the FATF’s requirement that authorities evaluate CSOs on a case-by-case basis, many countries treat all CSOs as if they represent the same level of risk.

At the other end of the spectrum, the language of the law is crafted in such a way as to limit the required inspection mechanism to a particular set of CSOs engaged in a specific activity. For instance, in Greece, CSOs addressing the migration crisis face discriminatory treatment by being subjected to additional and burdensome registration requirements compared to CSOs operating in other sectors. As part of the registration process, these CSOs are required to provide additional evidence. This includes submitting documents that demonstrate the financial and tax status of CSO members.⁹ Additionally, they are required to publish the particulars of individual donors and supporters on their website.¹⁰ This means that a new type of registration has been introduced for CSOs working in the field of international protection, migration, and social inclusion. While these measures have taken some steps to mitigate potential abuses related to terrorist financing, they fail to verify if there is any evidence that these CSOs belong to a particularly vulnerable group of organisations, or if the new register effectively manages the associated risks.



AML/CFT laws can include a range of controls, procedures and information requirements that can restrict the ability of CSOs to operate.

In some countries, the authorities require CSOs to provide comprehensive financial or legal information relating to money laundering and terrorist financing offences. For instance, in Argentina, the obligation to provide information means that CSOs must ask for the personal details of their donors. CSOs must collect information on their donors' name, date and place of birth, nationality, sex, marital status, number and type of identity document, address, telephone number and place of work. For donations surpassing one hundred thousand pesos, the donor must sign a declaration attesting to the legality and origin of the funds. If the donation exceeds two hundred thousand pesos, supporting documentation must also be provided.¹¹ CSOs are also required to report any suspicious activities or transactions to a designated authority within a specified timeframe.¹² In cases where a CSO receives monthly donations exceeding the equivalent of \$4,000, it must draw up a manual outlining control, prevention, and audit rules tailored to the responsibilities of each employee,¹³ implement staff training programs,¹⁴ and appoint a "compliance officer" who has full autonomy and independence in the performance of the duties and responsibilities assigned to him.¹⁵ Each of these requirements imposes a financial burden on CSOs. It also forces CSOs to divert staff from their primary role of fulfilling the social mission of the organisation. The establishment of an independent leadership position, as mandated, can also potentially disrupt the existing chain of power within the CSO, thereby compromising the organisation's freedom of internal association.

In Mexico, the law requires a total of 16 categories and 43 subcategories of data to be reported. CSOs must request this data from their donors and verify its accuracy.¹⁶ Data covered by these checks include the identity and reputation of donors and their organisations, the identity of beneficiaries and/or the final destination of donations.

In Azerbaijan, CSOs are required to have risk mitigation policies and procedures in place when receiving and disbursing grants and donations. This includes identifying and assessing institutional risks, documenting the results of the assessments and submitting them to the supervisory authority, and taking steps to manage, eliminate or mitigate the risks. They must submit detailed financial reports on grants and donations and their use to the supervisory authority by 1 April each year.¹⁷ However, the Act does not specify the details of the policies and procedures or the additional information to be included in the detailed annual reports.

In Nicaragua, the law exempts employees of CSOs from their confidentiality obligations (e.g. banking secrecy, tax secrecy, professional secrecy), whether based on law or contract, in order to ensure the reporting of suspicious transactions related to money laundering and terrorist financing.¹⁸ Since 2018, more than 200 CSOs have been dissolved in the country for an alleged failure to comply with antiterrorism requirements. These include the country's largest human rights organisations (focusing on women's rights, indigenous peoples' rights, education and development),



as well as CSOs providing humanitarian aid and health services, educational, cultural and artistic institutions, and religious foundations (United Nations 2022).

Contrary to the FATF's current Recommendation that the CSO sector should be considered a low-risk sector for terrorist financing, some countries instruct financial institutions to consider CSOs as high-risk clients and to conduct targeted checks on charitable transactions (e.g. Namibia¹⁹). In Bulgaria, banks charge a fee for conducting money laundering and terrorist financing background checks when opening accounts for CSOs. CSOs are not informed of the results of the investigation, leaving them unable to challenge the banks' decisions (European Civic Forum – Civic Space Watch 2023).

Governments can use these laws to obtain the detailed banking information of CSOs –and their staff – engaged in government monitoring, human rights advocacy and investigative journalism (e.g. Serbia²⁰). In Kenya, by placing CSOs on the list of the alleged sponsors of terrorism and freezing their accounts (Musila 2019), laws are used to hinder CSOs from engaging in human rights work and expressing criticism or opposition to government policies.

In Israel, the Minister of Defence has the power to designate a CSO as a terrorist organisation by decree on the basis of classified information. This measure effectively prevents the CSO or its legal representative from challenging the validity of the evidence or its interpretation.²¹ Subsequently, the decree can be used as evidence in criminal proceedings against individuals accused of having links with the newly designated terrorist organisation. The law prohibits defendants in criminal proceedings from presenting arguments that challenge the legality or validity of the decree.²² This procedure can be used against CSOs that provide legal assistance to detained Palestinians (Margalit–Shany 2022).

In Egypt, the antiterrorism laws define terrorist organisations and terrorist activities so broadly as to include legitimate and peaceful advocacy by civil society organisations.²³ A list of terrorist entities and terrorists has also been drawn up, and inclusion on the list carries significant consequences, including severe restrictions on the private property rights of the individuals or entities concerned. Should a CSO or one of its employees be included in one of these lists, any funds or other assets in its possession will be promptly frozen.²⁴ Furthermore, the law empowers the Attorney General to issue a seizure order for the funds or property of individuals or CSOs not on the terrorist list if there is information indicating a link between those funds and any terrorist activity.²⁵ It can be concluded that the Egyptian regulation, in practice, does not require a substantial link between frozen funds and terrorist activities.

In Russia, individuals suspected of involvement in terrorist activities and whose assets have been frozen cannot serve as founders or members of CSOs. However, the law does not provide clear criteria for the authorities to determine involvement in terrorist activities and to decide whether to freeze funds or other assets.²⁶ This leaves the law open to arbitrary application. In addition, the antiterrorism law requires the reporting of the receipt and use of foreign aid above a certain value.



The receipt of cash, property or other assistance from foreign governments, international and foreign organisations, foreign citizens and stateless persons, as well as the use of such funds or other property, is subject to reporting if the amount in question (or its equivalent in foreign currency) is 100,000 rubles or more.²⁷ The situation for CSOs is further complicated by the requirement to register as a "foreign agent" if they receive foreign funding and/or are considered to be "under foreign influence" while engaging in activities that the Russian authorities consider to be "political."²⁸ A CSO can be labelled as a "foreign agent" even if it has not received any foreign assistance. "Foreign agents" are excluded from key areas of public life, such as entering the civil service, serving in electoral committees, acting as advisers or experts in formal or public environmental impact assessments, expressing opinions on draft legislation, and donating to election campaigns or political parties.²⁹

In Belarus, reporting requirements under AML/CFT laws are used as a tool to dismantle CSOs working on issues deemed sensitive by the state. The authorities often claim that CSOs have not provided comprehensive reports, prompting some of them to relocate to other countries, such as Georgia, Ukraine, Lithuania and Poland, due to security concerns (ECNL: 2021: 29–30).

The Turkish government implemented the Recommendation of FATF with the aim of restricting the entire civil society sector. Pursuant to the Law on the Prevention of Financing the Proliferation of Weapons of Mass Destruction, the activities of CSOs facing charges related to terrorism are suspended.³⁰ The law significantly increases the administrative fines that can be imposed on CSOs for collecting donations on online platforms without prior permission from the authorities,³¹ and grants authorities the power to unduly restrict the activities of CSOs. The Minister of the Interior is authorised to freeze the assets of a CSO on suspicion of terrorist financing,³² and the law increases the number of official controls on CSOs and their partners.³³

Conclusions

The examples presented show that while we see AML/CFT laws being used against CSOs in democratic countries as well, they are predominantly used in authoritarian or authoritarian-leaning regimes. New types of authoritarian regimes operate in a way distinct³⁴ from traditional autocracies. Totalitarianism³⁵ is characterised by censorship and the prohibition of forming independent associations, networks and social circles. In comparison, authoritarianism³⁶ is characterised by limited pluralism, which creates an illusion of civil society independence, as power ultimately excludes independent and uncontrolled elements from participating in governance (Linz, 2000).

Compared to traditional autocracies, a notable feature of these new types of authoritarian regimes is their avoidance of overt prohibitions. Instead, they present themselves as pluralistic, but in reality, modern autocracy is only a façade of



democracy (Tóth 2016: 16). In these circumstances, the freedom of civil society is curtailed, as the arena for public debate where citizens can challenge the actions of the state is severely restricted (Arato–Cohen 2022: 129; Lewis 2013: 331); there is an effort to exclude alternative perspectives and dissenting voices from public discourse (O’Donnell–Schmitter–Whitehead 1986: 48). As a result, the new types of autocratic ambitions are closely linked to the erosion of autonomy, as evidenced by the adoption of discriminatory, inflexible and costly legislation that restricts the creation, operation and activities of CSOs (Tóth 2022: 9–10).

These regulations grant government actors a greater degree of control and surveillance over civil society. Restrictions delegitimise and, in some cases, criminalise the activities of CSOs, marginalising their impact on various aspects of human rights and advocacy. Violations of the law are subject to various sanctions (Deák 2022: 50). The purpose of state repression is to impose costs on CSOs and dissuade them from engaging in specific activities.

As the countries presented show, the mechanism by which governments use AML/CTF measures to curtail the activities of CSOs performing a social control function is very much in line with the functioning of the new types of authoritarian regimes. Consequently, CSOs are increasingly forced to operate in a polarised and politicised environment.

In general, the majority of the laws presented either do not directly address the objective outlined in the FATF Recommendation or explicitly prescribe measures that go beyond the objective.

These laws do not specify the content of the risk analysis, and do not apply a differentiated sanction system. This means that in many cases even a minor offence can lead to a severe sanction, such as the termination of a CSO’s legal status or the freezing of its bank account. In more extreme cases, governments can prosecute the leaders of CSOs. These measures interfere with the freedom of association of CSOs, contrary the FATF’s requirement that the sanctions be proportionate to the gravity of the offences committed.

Even when governments do not sanction CSOs directly, they sometimes force banks to restrict business relationships with CSOs and to impose strict compliance requirements. Since CSOs need to have a bank account to receive funding from foreign donors, restricted access to financial services can directly affect their operations, as CSOs that perform a social control function can easily become unsustainable in an authoritarian framework without international support (Deák 2021: 439).

When governments view CSOs unfavourably in the context of money laundering and terrorist financing, it has a negative impact: donors will favour low-risk partners, such as large international CSOs, over smaller organisations, and prioritise service delivery at the expense of advocacy groups (Hodwitz 2019: 599).

It should also not be overlooked that authoritarian regimes do not tend to apply these laws in isolation. The restrictive measures imposed on CSOs are systematic, cumulative and complementary.

Consequently, state action (action, practice or inaction by the authorities) has a chilling effect. This has the effect of deterring individuals from exercising their rights or fulfilling their professional obligations under national, European and/or international law, for fear of being subjected to formal state procedures that may result in sanctions, or informal consequences such as threats, attacks or defamation suits (Pech 2021: 4).

Consequently, while states create a dual role for AML/CFT laws, the equality and freedom of CSOs performing a social control function are not guaranteed. In these circumstances, the autonomy of civil society is limited and illusory.

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Notes

¹ I am grateful to my supervisor, Gábor Attila Tóth, for his invaluable comments on earlier drafts of this paper.

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³ United Nations Security Council: *Resolution 1617 (2005)*

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N05/446/60/PDF/N0544660.pdf?OpenElement> (2023. 11. 25.).

⁴ FATF: *Public Consultation on the Revision of the Interpretive Note to Recommendation 8 (Non-profit organisations)*

<https://www.fatf-gafi.org/publications/fatfrecommendations/documents/public-consultation-npo-inr8.html> (2023. 10. 15.).

⁵ There are additional characteristics of nonprofit organisations, such as working for the benefit of the public, charity, civic initiatives, and the exclusion of church and party political. See Juhász 2013: 40–41.

⁶ 2011: Article 2 of Decision No. 30/2011 on the Financial Intelligence Unit.

⁷ 2023: Article 12 of the Law on the Fight Against the Legalization of Property Obtained through Crime and the Financing of Terrorism.

⁸ 2012: Section XIII of Article 17 of the Federal Law for the Prevention and Identification of Operations with Illicit Proceeds.

⁹ 2020: Article 58 of Joint Ministerial Decision No. 3063.

¹⁰ 2020: Article 2 and 5 of Ministerial Decision No. 10616.

¹¹ 2011: Article 12 of Decision No. 30/2011 on the Financial Intelligence Unit.

¹² *Ibid.*, Article 13.

¹³ *Ibid.*, Article 4.

¹⁴ *Ibid.*, Article 9.

¹⁵ *Ibid.*, Article 6.

¹⁶ 2013: Attachment No. 1, 2, 3 and 6 of Agreement No. 02/2013 on the Publication of the General Rules set out in the Federal Law for the Prevention and Identification of Operations with Illicit Proceeds.

¹⁷ 2023: Article 12(3) and 21(7) of the Law on the Fight against the Legalization of Property Obtained through Crime and the Financing of Terrorism.

¹⁸ 2018: Article 8 of Law No. 976 on the Financial Analysis Unit.

¹⁹ 2012: Article 35A of Financial Intelligence Act No. 13.

²⁰ 2017: Article 36 of the Law on the Prevention of Money Laundering and the Financing of Terrorism (amended in 2020).

²¹ 2016: Article 3(a) of the Counter-Terrorism Law.

²² *Ibid.*, Article 19.

²³ 2015: Article 1(1) and 2 of the Anti-Terrorism Law.

²⁴ 2015: Article 7 of the Terrorist Entities Law (amended in 2020).

²⁵ *Ibid.*, Article 3.

²⁶ 2001: Federal Law No. 115-FZ On Counteraction to Legalization (Laundering) of Proceeds from Crime and Financing of Terrorism (amended in 2014).

²⁷ *Ibid.*, Article 6(1.2).

²⁸ 2022: Article 1 of the Law on Control Over the Activities of Persons Being Under Foreign Influence.

²⁹ *Ibid.*, Article 11.

³⁰ 2020: Article 12 of the Law No. 7262 on the Prevention on Financing of Proliferation of Weapons of Mass Destruction.



³¹ Ibid., Article 7.

³² Ibid., Article 15.

³³ Ibid., Article 13.

³⁴ For a description of the concepts used to categorise new types of authoritarian systems, see Takács 2023: 296–301.

³⁵ For more detailed examples of totalitarianism, see Tóth 2019: 47.

³⁶ For more examples of traditional authoritarian systems, see Tóth 2019: 49–50.



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