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METHODOLOGY OF RUSSIAN CRIMINAL LAW SCIENCE AND ITS CHARACTERISTICS

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ABSTRACT

Objective: The article considers the concept and methodology of criminal law science with due regard to the latest scientific achievements in the field of methodological support of criminal law research. **Methods:** Dialectical, descriptive, and analytical methods, as well as the method of explication (explanation), were the main methods used in this article. **Results:** In Russian criminal law science, the dialectical method is the most important, which is largely due to the Soviet legacy (when materialistic dialectics was considered a necessary philosophical basis for all specific areas of scientific knowledge). The main materials and methods used in the process of studying the theory of criminal law are briefly listed. Much attention is drawn to the fact that almost all the materials on this issue were in documents and electronic form. The authors have discussed some definitions of such a concept as the methodology of criminal law science presented in scientific literature, as well as their advantages and disadvantages. They have distinguished between two concepts: the methodology of criminal law science and the method of criminal law science. The authors have highlighted the absence of a specific methodology of the theory of criminal law, which distinguishes it from the methodology of other legal sciences. As a result, they have defined the concept of the method of criminal law science, whose main distinction lies in the field of application, i.e. criminal law science. The system of methods of criminal law science is considered and the main principles of its construction are highlighted. This discloses the main methods of criminal law science that are most often used in the research of criminal law issues. **Conclusion:** The authors have concluded the methodology of criminal law science that should be presented as a result of the research conducted.

Keywords: Method; Science; Philosophic science; Doctrine; Branch of scientific knowledge; Dialectics.

METODOLOGIA DA CIÊNCIA DO DIREITO PENAL RUSSO E SUAS CARACTERÍSTICAS

RESUMO

Objectivo: O artigo considera o conceito e a metodologia da ciência do direito penal, tendo em devida conta as últimas realizações científicas no campo do apoio metodológico da investigação em direito penal. **Métodos**: Os métodos dialécticos, descritivos e analíticos, bem como o método de explicação (explicação), foram os principais métodos utilizados neste artigo. **Resultados**: Na ciência do direito penal russo, o método dialéctico é o mais importante, o que se deve em grande parte ao legado soviético (quando a dialéctica materialista era considerada uma base filosófica necessária para todas as áreas específicas do conhecimento científico). Os principais materiais e métodos utilizados no processo de estudo da teoria do direito penal são brevemente listados. Chama-se muito a atenção para o facto de que quase todos os materiais sobre esta questão se encontravam em documentos e em formato electrónico. Os autores discutiram algumas definições de um conceito como a metodologia da ciência do direito penal apresentada na literatura científica, bem como as suas vantagens e desvantagens. Distinguiram entre dois conceitos: a metodologia da ciência do direito penal e o método da ciência do direito penal. Os autores salientaram a ausência de uma metodologia específica da teoria do direito penal, que a distingue da metodologia de outras ciências jurídicas. Como resultado, definiram o conceito do método da ciência do direito penal, cuja principal distinção reside no campo de aplicação, ou seja, a ciência do direito penal. O sistema de métodos da ciência do direito penal é considerado e os princípios principais da sua construção são destacados. Isto revela os principais métodos da ciência do direito penal que são mais frequentemente utilizados na investigação de questões de direito penal. **Conclusão**: Os autores concluíram a metodologia da ciência do direito penal que deve ser apresentada como resultado da investigação realizada.

Palavras-chave: Método; Ciência; Ciência Filosófica; Doutrina; Ramo do conhecimento científico; Dialéctica.

1 INTRODUCTION

The methodology of criminal law is among those areas of scientific knowledge that have not been sufficiently studied in criminal law research even though methodology is the most important component of any scientific knowledge, including criminal law. Methodology conditions the scientific validity and argumentation of all works on criminal law. It expresses a whole set of means that science can use for cognizing the research object and subject. Considering the universal nature of methodology, it goes back to the most abstract sphere of scientific knowledge, i.e. philosophy. In philosophical science, methodology has two meanings: “1) the doctrine of a scientific method; 2) a set of methods used in any area of human activity” (Alekseev, 2008, p. 217). Thus, methodology studies not only the methods of scientific cognition but also the methods of its conscious-volitional transformation. Formed within philosophical knowledge,

methodology went beyond its limits and entered the sphere of other sciences. Legal sciences, including the theory of criminal law, are no exception. In modern Ph.D. theses on criminal law and other legal sciences, one of the prerequisites is an indication of the methodological basis which is the totality of the scientific methods used in a particular study. However, only some scientific articles study the scientific methods used in the process of criminal law research. The methodology of criminal law science has not been comprehensively examined, at least in the Russian scientific literature on criminal law. The current uncertainty regarding the methodology of criminal law science has an extremely negative impact on the ongoing research in this area. Scholars not only designate different names to certain methods of criminal law but also give different meanings to the same scientific method. Some educational works do not distinguish between the methods of criminal law as a branch of law and the methods of criminal law theory (Kuznetsova & Tyazhkova, 2005, p. 8). This does not mean that such prominent scholars as N.F. Kuznetsov and I.M. Tyazhkov cannot see the difference between the methods of criminal law branches and the methods of criminal law science, but they did not dwell on these issues in the textbook on criminal law they edited. In some cases, the philosophical (general) method of cognition (Tanimov, 2018) is singled out as a separate method even though philosophy is a very broad ideological science using a large number of various methods. In philosophical science, two universal (general) but opposed methods of scientific knowledge have developed, therefore they cannot be combined into a single philosophical method. These are dialectical and metaphysical methods that are metascientific since they include worldviews that reflect a general representation of the universe as an integral system. Both the dialectical and metaphysical methods went through a long process of development and acquired their own principles, laws, and categories that reveal the content and meaning of these methods. Currently, the dialectical method of cognition has gained a dominant position in Russian criminal law science, which is explained by the continuity of the Soviet and Russian criminal law schools. The dialectical method creates a more complete and comprehensive picture of criminal law phenomena since it considers them in development, as well as in their inseparable connection with the political, economic, cultural, and ideological phenomena surrounding them, revealing the connections and patterns that exist in criminal law phenomena. The metaphysical method is also present in the doctrine of criminal law, especially when the rule of law is regarded as an exclusively legal phenomenon without its connection with other phenomena. It emphasizes a legal dogma as an unconditioned and self-sufficient unit of a legal matter.

However, the dialectical method of cognition forms the methodological basis of Russian criminal law science.

2 MATERIALS AND METHODS

In the humanities and social sciences (including the theory of criminal law), the material base consists mainly of documents. The materials used in this article include scientific articles published in periodicals (journals) and conference proceedings, educational literature (textbooks and manuals), structural elements of monographs (chapters and sections) addressing the methodology of criminal law science, as well as Internet sources and electronic legal reference systems on the methodological support of criminal law theory. A proper understanding of the methodology of criminal law science is formed using candidate and doctoral dissertations and extended abstracts on various issues of criminal law. They indicate the methodological basis of the study on criminal law.

The methodological basis of this article is quite complex, which is partly due to the fact that scientific methods act both as a means of research and as its subject. This explanation is necessary to understand in what capacity the method of criminal law science was used in processing scientific information on the issue under consideration. Like in other scientific works on criminal law, methodology is based on the universal dialectical method. This method effectively complements and specifies analytical and descriptive methods. The analytical method reveals internal components of the methodology of criminal law science. The descriptive method is used in studying the content and significance of the main methods for considering criminal law issues. The method of explication (explanation) justifies the need to use some scientific methods in criminal law science.

It is also worth mentioning the opinions of specialists on the content, scope, and significance of specific methods of criminal law. An important role is played by scientific views regarding general characteristics of the methodology of criminal law science, including the definition of its concept.

3 RESULTS AND DISCUSSION

Due to a large number of scientific works on criminal law, it is impossible to assess the existing definitions of the methodology of criminal law science. This is contrary to the relatively low development of methodological tools used in the theory of criminal

law (in scientific literature). Before reviewing scientific papers to find definitions of the methodology of a criminal law doctrine, it should be noted that it is an integral part of a broader concept. The following chain of concepts is formed, each of which specifies the previous one: the methodology of science – the methodology of legal science – the methodology of criminal law science. The inextricable and meaningful connection of these concepts is ensured by the fundamental unity of human knowledge which is divided into scientific branches by rather conditional boundaries between different research subjects. This indicates that the accurate definition of the methodology of criminal law science should reflect the features of its generic and specific concept (in which it is naturally included), i.e. the methodology of science and the methodology of legal science. Not all scholars defining the methodology of criminal law science take into account these formal and logical requirements. However, the relevant scientific literature has some decent definitions. For example, Yu.Yu. Kolomiets (2016) understood the methodology of criminal law science as a system of general scientific, group, special and interdisciplinary methods of cognizing the form and content of criminal law institutions as specific social phenomena that adequately reflect the dialectical development of society with due regard to the philosophical and ideological approach. A shortcoming of this definition is that a criminal law institution is regarded as the research subject, which narrows the scope of criminal law. The latter might relate to any criminal law phenomenon or criminal law issue, not just a criminal law institution. Unfortunately, further search for available definitions of the methodology of criminal law science has shown that the definition of Yu.Yu. Kolomiets was a slightly revised version of an earlier one. Therefore, it is not original. The initial definition was formulated in 1990 as a result of the joint scientific work of A.D. Gorbuza, I.Ya. Kozachenko, and E.A. Sukharev. The methodology of criminal law science consists in scientific cognition (research) based on the principles of the materialism of criminal law institutions as specific social phenomena that adequately reflect their dialectical development (Gorbuza et al., 1990, p. 11).

There is also a less accurate definition of the methodology of criminal law science in educational literature, in which it is considered a system of categories of historical and dialectical materialism used to study and apply the learned patterns, essence, and content of legal combat against crime (Kuznetsova & Tyazhkova, 2002, pp. 5-7). Indeed, this definition combines scientific-cognitive and organizational-transformative human activities concerning crime as a social phenomenon. The fight against crime takes place within the criminal policy of any state and is built over its methodological

base with due regard to the knowledge gained by applying various scientific methods, including the theory of criminal law. Therefore, the above-mentioned definition of the methodology of criminal law science is unreasonably broad in terms of these methods and too narrow in terms of their possible set since the latter includes only the categories of historical and dialectical materialism. It seems that, apart from the dialectical method, criminal law science does not have any other scientific methods to study its subject.

While reviewing all the definitions of the methodology of criminal law science, we have revealed that their main feature lies mainly in the application of scientific methods, which refers to certain and general criminal law issues. There are no specific features regarding the possible methods that form the methodology of criminal law doctrine, except for a universal dialectical method for all branches of scientific knowledge. This might point to two things. Firstly, the set of criminal law methods has not been exhausted and can be expanded with new scientific methods that will help specialists solve criminal law issues from a different perspective. Modern legal science is still committed to proven and verified methodological approaches in the study of legal phenomena and processes but seeks ways to obtain new knowledge (Popov, 2012, p. 48). This circumstance enriches the methodology of criminal law science with previously unused methods.

Secondly, the methodology of criminal law science does not have specific features regarding the set of scientific methods used. Consequently, the theory of criminal law uses the same methods as other legal sciences. Specifics can be expressed only in the methodology of criminal law science that focuses on those methods that are used in other branches of legal knowledge less frequently. For example, this refers to the statistical method that determines the level, structure, and dynamics of crime and substantiates the effectiveness of certain criminal prohibitions, which is less common in civil law (civil law science).

It is necessary to distinguish between the methodology of criminal law theory and the methodology of criminal law science. These are interrelated concepts and they can be often mixed, which was noted by experts in criminal law (Golik, 2000). The relationship between methodology and a scientific method was accurately expressed by I.P. Malinova (1996):

> Methodology is a coordinate system, while a method is a search and action vector. The system of coordinates should be based on a single methodology, which does not exclude the desire (as scientific knowledge is accumulated) to unite various intellectual traditions and approaches. It is determined by the actual needs of cognition. (p. 27).

Consequently, a method in criminal law science is an integral part of its methodology. The methodology of criminal law theory is not a set of unrelated scientific methods but a system of them organized in a certain way.

The study of the methodological base of theses has demonstrated that criminal law science does not have such scientific methods that would be typical only of this sphere. An exception to a certain extent is criminal-statistical and formal-legal methods. However, these methods, when studied more carefully, turn out to be borrowed from other sciences. The criminal-statistical method is nothing more than the study of criminal law phenomena from the quantitative perspective, for example, the generalized quantitative measurement of norms, their dispositions and sanctions, the structure of punishment, and criminal record (Lapunina & Kiseleva, 2009, p. 95). Thus, it is not a special method but a specified statistical method, due to the quantitative aspects of criminal law phenomena. The formal-legal method is more specific. It is a combination of philological, logical, and functional elements that reveal the content of a legal norm without going beyond its constructs. Subsequently, the originality of criminal law research in terms of its methodological base is determined by a unique combination of scientific methods that are used in the process of studying and resolving criminal law issues.

Now let us consider the methodology of criminal law science. The latter should be understood as a system of interconnected principles, methods, and techniques that ensures information interaction between the subject and object of criminal law research and presents a holistic view of any criminal law issue by covering it in a given aspect. Like a scientific method of any other branch, the method of criminal law science has certain properties (qualities), including: 1) the content revealing the interaction between the research subject and object, consisting of systematized scientific principles, techniques, methods and means to be used in the process of studying the research object; 2) the scope (area) of scientific cognition in which the application of this method is effective, i.e. it leads to the acquisition of new theoretical and practical knowledge; 3) the scientific value, which lies in the possibility of obtaining new data with the help of it, i.e. the result of the study.

The methodology of criminal law science will be incomplete if we do not consider its main scientific methods at least briefly. The hierarchy of methods of criminal law science presupposes a three-level system, including: 1) universal methods; 2) general scientific methods; 3) specific scientific methods (special legal methods). Each of the

lower levels presupposes not some isolation but rather specification, addition, and adaptation of the higher-level methods of criminal law science. This allows using these scientific methods in different aspects. If the universal dialectical method determines general patterns inherent in criminal law phenomena, specific scientific methods are designed to fill the theory of criminal law with factual and legal content that allows for solving criminal law issues.

The main method of criminal law science is the universal dialectical method, which is used in all branches of scientific knowledge, including criminal law. This method is applied through criminal law phenomena, laws, principles, and categories of dialectic in the process of research. A.I. Martsev (1990) fully examined dialectic as a scientific method of cognition in criminal law.

The dialectical method clearly shows the interconnection and interdependence of social and criminal law phenomena, as well as their ongoing development and complex intrasystemic nature. The laws, principles, and categories of dialectic most fully and objectively reveal general laws governing the existence of criminal law phenomena. It is worth mentioning the principles of dialectic, some of which form the basis of general scientific methods. In modern philosophical science, the principles of dialectic are as follows: development, the universal interconnection of phenomena, the unity of theory and practice, consistency, causality, historicism, reflection, etc. Based on the names of the above-mentioned principles of dialectic, we can assume that the principles of development and historicism underlie the historical method of cognition. The principle of consistency is the basis of the systemic-structural method. The principle of universal interconnection conditions the use of sociological methods in legal science.

The laws of dialectic (the transformation of quantitative changes into qualitative ones, unity and struggle of opposites, negation) reveal the main patterns that determine the development of criminal law phenomena, changes in their legal forms, and the inextricable relationship between quantitative and qualitative aspects of criminal law phenomena. The dialectical method reveals the main source of the development of criminal law, which is a contradiction expressed in the discrepancy between its legal form and its social content. The latter is social relations protected and regulated by criminal law.

Dialectical categories are often used in the study of criminal law phenomena and are inherent to the entire theory of criminal law. For example, such categories as “cause” and “consequence” reveal the cause-and-effect relationship that combines a socially dangerous act and its socially dangerous consequences. These categories help to

study the determination of a crime not only in Russian but also in foreign criminal law science (Radzinowicz & King, 1977). Such categories as “general”, “special”, and “single” are used in the study of vertical hierarchical relationships of the general, generic, specific, and direct object of the crime and are the main criteria for the system-structural organization of the Special Part of criminal law with its division into sections, chapters, articles, and paragraphs. The “essence” and “phenomenon” categories are mainly applied to those criminal law phenomena in which an external legal expression differs from the internal connections that form the basis of such phenomena. For example, guilt is the most important sign of the subjective side of a crime, whose legislative regulation greatly differs from its essential properties. However, such dialectical categories as “form” and “content” have received the greatest prevalence in the theory of criminal law. Some articles of the Criminal Code of the Russian Federation of 1996 consolidate these categories. The “form” category is enshrined in Article 24 of the Criminal Code of the Russian Federation (Forms of Guilt), while the “content” category is consolidated in Article 91 of the Criminal Code of the Russian Federation (The Content of Compulsory Measures of Educational Influence).

Despite the universal and general nature of the dialectical method, it cannot be considered absolute and seen as a replacement for other scientific methods in specific sciences. According to P.V. Kopnin, the philosophical method cannot be reduced to special ones, and vice versa. Special methods cannot be regarded as a manifestation of the philosophical method. Each special method is unique and is not some kind of small modification of dialectic (Kopnin, 1973, p. 88). However, this does not exclude the fact that the dialectical method acts as a methodological basis for most scientific methods of cognition.

The second level in the methodology of criminal law consists of general scientific methods, i.e. methods that are used in several or most branches of scientific knowledge. These traditionally include analysis, synthesis, comparison, description, observation, generalization, experiment, etc. Since general scientific methods are not directly applied to the study of criminal law, it makes no sense to focus on them. General scientific methods are specified in special legal methods (comparative-legal, historical-legal, systemic-legal, descriptive-legal, etc.) that are used when considering various criminal law issues. It is puzzling that not all scholars conducting criminal law research are aware of this circumstance as general scientific methods are often mentioned together with special legal methods as methods of direct cognition in the methodological base of candidate and doctoral theses. A methodological error is that

scholars do not understand that when transforming some general scientific methods into special legal ones (for example, the method of comparison in the comparative-legal method) they do not do this with the other general scientific methods (for example, description is not equal to the descriptive-legal method), which violates the logic of constructing the methodological base of the study.

The third (lowest) level in the system of theoretical methods of criminal law is occupied by special legal methods, i.e. such methods of scientific cognition that are directly applied to legal phenomena, including those of criminal law. Let us briefly characterize the main special-legal methods.

The comparative-legal method compares different but outwardly similar phenomena of criminal law to find their similarities and differences. The comparative-legal method is mostly used for comparing the institutions of Russian criminal law with those in foreign countries. This allows us to consider the successful experience of foreign countries in the development and improvement of criminal legislation, which can be adapted to the national characteristics of Russian criminal law.

The historical-legal method traces the evolution of criminal law phenomena in time, as well as determines how history influenced its emergence and transformation. The main tool of the historical-legal method is periodization which highlights the most important stages in the development of criminal law phenomena. The historical-legal method helps to better understand the meaning and content of criminal regulations since it reveals the conditions of that particular historical era in which they were developed and adopted. Its normative basis is the written monuments of criminal law. The difficulty in applying the historical-legal method is outdated concepts and terms, whose content and meaning have to be established in the course of historical reconstruction, which inevitably gives rise to discrepancies in their interpretation. The historical-legal method is often associated with the comparative-legal method since modern criminal law is often compared with criminal law, which has already lost force. To be scientifically effective, the historical-legal method should not be reduced to chronological changes and transformations in the object and subject of criminal law research; it should reveal their essential patterns, leading to the above-mentioned development of the criminal law phenomenon under study.

The systemic-legal method considers criminal law as an integral formal-logical system, consisting of certain structural elements. A.I. Boiko (2007) used this method as a basis in one of his fundamental works on criminal law. The systemic-legal method aims at comprehending criminal law not as an isolated system of criminal norms, but in

its connection with the surrounding legal, social and natural environment. This method helps to understand how criminal law functions in its unity and integrity, how it is transformed, and which criteria underlie the allocation of structural units with different degrees of generality. The systemic-legal method is so effective in the study of criminal law because it reflects the systemic nature of criminal law branches. The systemic method is especially important in finding the relationship between the General and Special parts of criminal law (Nikolaev, 2021, p. 111). The systemic-legal method is also necessary for determining the relationship between the structure and functions of criminal law, which is described in foreign literature on criminal law (Robinson, 1997).

The formal-legal method is based on the linguistic and logical structures of criminal law. It allows one to study criminal law regardless of the social relations protected and regulated by it. The formal-legal method pays more attention to specific criminal law prescriptions. This method is not an exclusive feature of the methodology of criminal law science. It is studied in foreign literature on criminal law, especially concerning legal engineering (Alsafw, 2015). The formal-legal method is among the main methods developing the language of criminal law. In general, the formal-legal method is crucial for improving criminal law and its quality, detecting and eliminating shortcomings, contradictions, gaps, and uncertainties within provisions of criminal law.

The theory of criminal law uses other special legal methods, for example, legal classification, legal experiment, the generalization of legal practice, etc. Some of them are used not only in Russian but also in foreign (in particular the US) theory of criminal law (Douglas et al., 2006). This emphasizes the common problem of the methodology of criminal law as a branch of knowledge.

4 CONCLUSION

While considering the methodology of criminal law science, we drew the following conclusions:

1. To more effectively use scientific methods in the study of criminal law phenomena, it is necessary to unify and standardize concepts and categories, which will allow us to get a clearer idea of scientific methods, their types, content, scope, and theoretical and practical significance. This is crucial for legal sciences since state-legal phenomena do not have material boundaries, therefore they are more dependent on their terminological designation and methods of scientific cognition. Considering that the theory of criminal law is inextricably linked with other branches of legal knowledge, this

creates a reliable and effective methodological base.

2. Since the differentiation of legal sciences does not create insurmountable boundaries between them, all legal sciences, including criminal law, are based on a common methodology. Thus, it can be argued that criminal law science does not have its own system of scientific methods that differs from all legal sciences. In the theory of criminal law, a specific emphasis is placed on the use of certain legal methods of cognition.

3. The system of criminal law methods has a clearly defined three-level structure, including: a) a universal dialectical method; b) general scientific methods; c) special legal methods. This hierarchically interconnected system of scientific methods is presented in most theses for a Candidate Degree or Doctor Degree in criminal law.

4. Several principles underlie the system of methods of criminal law science. In particular, these are as follows: 1) hierarchy implying vertical connections of subordination between more abstract and more specific methods of scientific cognition; 2) the compliance of scientific methods with the needs of criminal law science and the specifics of its research subject; 3) the consistency of methods of criminal law science to obtain reliable and connected information due through their joint use; 4) openness replenishing the system of criminal law science with new methods while maintaining the so-called methodological core of the criminal doctrine, which ensures stability and continuity in the development of criminal and legal knowledge; 5) pluralism expressed in the freedom of scholars to choose those scientific methods that they prefer in studying criminal law; 6) equivalence in recognizing different scientific methods used in the doctrine of criminal law and denying the advantage of any of them.

5. The dialectical method lies at the methodological core of almost all criminal law research, which is determined by the universal nature of its principles, laws, and categories. Being in most cases the concretization of certain elements of the dialectical method, the other scientific methods have specifics giving them an independent status and not reducing them to the dialectic of full-fledged methods.

6. General scientific methods are not applied directly to the study of criminal law, but are concretized into special legal methods that consider the peculiarities of criminal law phenomena. Almost all special legal methods continue general scientific methods in legal science, except for the formal-legal method. Since this method is a complex combination of other scientific methods, it has unique properties that turn it into a completely independent method.

7. The meaning and scope of the systemic method in criminal law are not properly

understood by all scientists. A.G. Bezverkhov (2007) claimed that

> the systemic analysis of criminal law causes the 'loss' of historical, cultural, national-traditional, political, socio-economic, etc. factors that affect the legislative process. The systemic structure of criminal law divides it into legal prescriptions and places the latter in its structural parts. To establish a legal norm, it is necessary to connect its structural components contained in the Criminal Code, which is often accompanied by errors in law enforcement. (p. 54).

In this reasoning, the systemic method is mixed with the method of legal analysis. Using this method, such a holistic legal phenomenon as criminal law is considered by focusing on its content and formal elements. The systemic method considers criminal law as a whole and determines its role and functional purpose both in the system of law and in a more general system of social regulation.

8. For all their functional interconnectedness, the methodology of criminal law science and the methodological basis of criminal law research should be distinguished from each other. The first concept denotes all the theoretical methods of criminal law, whose application is potentially possible in specific criminal law research. The second concept covers the scientific methods used in specific criminal law research. The relationship between the two concepts of the methodology of criminal law science and the methodological basis of criminal law research should be considered in the same context as the relationship between two dialectical categories "possibility" and "reality", which emphasizes the importance of the dialectical method even at the level of basic concepts and methodological theories of criminal law.

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