
Original Egyptian Nationality between Theory and Legislation

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Abstract

The research is based on a study of the case of Egyptian legislation, and the position of the Egyptian legislator on granting Egyptian nationality, as the Egyptian law has remained for nearly 30 years from the issuance of the 1975 legislation on the regulation of Egyptian nationality prevents Egyptian women from transmitting their nationality to their children until it came in 2004 to amend the law to achieve equality between the Egyptian mother and the Egyptian father in granting their children Egyptian nationality. Egyptian law recognizes the right of the region by granting children of unknown parents born on Egyptian territory the right to enjoy Egyptian nationality so that they do not become stateless in accordance with the conditions set by law. On this basis, my research is divided into three parts, the first is the general bases and criteria for granting the original nationality, and then the statement of the cases of acquiring the original Egyptian nationality, and in the end, I discuss the position of the original Egyptians when the law was passed in 1975.

Keyword words: Nationality, Citizenship, right of birth, right of blood, Egypt, women.

Introduction

Nationality is a relationship between an individual and a state. I have shown how international conventions have been keen to stipulate that an individual must have a nationality at the moment of birth. The bases of the nationality of a natural person in law vary from one State to another according to the higher interests of the State, as nationality may be constituent nationality and may be original nationality or may be acquired nationality, while constituent nationality is imposed on the individual or chosen upon the establishment of the State and the change of sovereignty in the territory, and the bases for its imposition and selection vary from one State to another.

Original nationality is the nationality that is established to an individual immediately after birth, either because of his family origin or because of his connection to the territory on which he was born, and it is also called the nationality imposed because it is imposed on him without taking his consent, and it is also called the nationality granted because it is granted to the person by the state and it is also called the nationality of birth because it is acquired because of birth and is achieved at the moment of birth and the basis on which this nationality is granted is either based on the right of blood or on the right of birth. Nationality is imposed on the basis of the right of blood due to family origin in the law of most countries to ensure cohesion between the children of the same origin or the children of the same people, and countries in which the national spirit is strong take this basis.

As for acquired nationality, it is the nationality that the individual obtains after his birth and is called acquired because it is acquired and not imposed and is also called the chosen nationality because the will of the individual plays a role in its choice, and it may be called emergency or subsequent nationality where it is not imposed by law at the time of the birth of the individual, but is requested by the individual wishing to naturalize and granted with the consent of the authority, and the reasons for acquiring nationality vary according to the laws of the countries, one of the reasons for granting it is to change sovereignty in the state, the annexation of the territory, naturalization, mixed marriage, adoption or naturalization, extraordinary or by special law. Therefore, jurisprudence has been made to distinguish between two types of nationality: the first is the original nationality, which is the nationality attached to the person from birth, and it is imposed and not required. The basis for this assumption is either blood ties, i.e. the son's attribution to the nationality of his father or mother in accordance with the law to which the father or mother belongs, or the right of birth, i.e., birth on the territory of a State.. and second, emergency nationality, which is attached to the individual after birth, which is requested and not imposed, and the State has the right to refuse or accept this request. But what I am interested in here is talking about the original nationality. The correct understanding of the law requires us to present the general rules and foundations for the acquisition of original nationality in accordance with what has been done in the international community and then show the position of Egyptian law on these foundations and general principles as it is the case of application of these principles in our study. Hence, I divide this research into three points, the first is the general rules and foundations for acquiring the original nationality, the second is the cases of granting the original Egyptian nationality and the third is original Egyptians when the law was passed in 1975.

1. General Rules and Principles for Acquiring Original Nationality

Original nationality or birth nationality is the one whose elements and bases are available from the moment of birth. These bases on which the acquisition of original nationality is built are divided into acquisition based on the right of blood or acquisition based on the right of birth.

1.1 The Right of Blood

The right of blood means the right of an individual to acquire the nationality of the State to which one of his parents belongs upon birth, and regardless of the place of birth, the basis of nationality according to this principle is the family origin from which the newborn descends. Therefore, the nationality attached to the person on this basis was called "the nationality of descent." The right of blood criterion is one of the oldest historically used. The Greek and Roman cities were a group of families and not individuals, and the individual's belonging to the city is determined as a member of one of these founding families, not in his individual capacity. Therefore, the right of blood was initially based on the idea of the unity of origin and the inheritance of sex, based on the fact that the blood bond that binds the individual to his father is the strongest guarantee of an individual's sense of loyalty towards the state to which his parents belong. However, the recent trend is that the right basis for the right of blood is not to belong to one sex since nationality is not based on the idea of the unity of sex. A single State, all of which have citizenship, often belongs to different races. Therefore, this aspect of jurisprudence believes that the right of blood is based on the idea of family education. Children receive spiritual ties from their parents, including, of course, a sense of loyalty and belonging to the country to which they belong by their nationality, and this is what States consider when they grant the son the nationality of his father. Descent on the father's side has been the basis for building the original nationality based on the right of blood for a long period of time, and the mother had no role in transmitting nationality to the newborn except when the father was unable to transmit nationality to the newborn as if the father were unknown or stateless. However, the last years of the last century witnessed the emergence of women's movements whose influence increased and their voices were loud in demanding equality between women and men in various fields. These lawsuits have led to the principle of equality between men and women becoming one of the established principles in international conventions and conventions. The second paragraph of Article IX of the Convention on the Elimination of All Forms of Discrimination against Women in 1979 stated that "..... 2. States Parties shall accord to women an equal right with men with respect to the nationality of their children." (An inevitable consequence of the stability of the principle of equality was that the role of the mother in transmitting nationality to her children must be reviewed. That is why many comparative legislations have modified their attitude towards the mother's granting of nationality to her children. Some countries have gone on to base the nationality of children on the descent to the mother if the descent of the father is not as useful as if the father is unknown or stateless, as is the case in the Moroccan Nationality Law of 1958, where Chapter VI of Dahir No. 250 58 1 stipulates that "a child descended from a Moroccan father is considered Moroccan: First: A child descended from a Moroccan father and a child born to a Moroccan mother and an unknown father". As well as the Algerian law issued in 1970. On other hand, other States have allowed the transmission of the nationality of the mother to the son, provided that the birth takes place in the territory of the mother State, even if the father is a foreigner and has a nationality transmitted to his children. As in the Tunisian Nationality Law issued in 1963 before its amendment in 1993, where Chapter VI stipulates that "he shall be Tunisian: 1) whoever is born to a Tunisian father, 2) who is born in Tunisia to a Tunisian mother and a foreign father." However, the establishment of the principle of full equality between men and women in many international constitutions has led a large number of countries to elevate the mother to the same rank as the father in transmitting nationality to children. By expressly stipulating that nationality belongs to anyone born to a national mother unconditionally, as is the case with the father. These include the Australian Nationality Act of 1986 and the Belgian Nationality Act of 1984. Moreover, there is legislation based on the nationality of the grandmother, as the Dutch legislator went in the law issued in 1985 to consider the nationality of the grandmother if both parents were foreigners and the grandmother was residing in the Netherlands at the time the parents were born

1.2 The Right of Birth

This right requires that the bond of nationality be based on the link that binds the individual to the territory in which he was born, regardless of the nationality of his parents. The lesson is the land on which he was born, for example, if he was born on American soil, he is an American. Modern jurisprudence refers to the right of birth to a social basis, based on the physical and spatial bond that binds the individual to the territory of the State in which he is born. It is usually the country in which the family of the newborn is endemic. Of course, this newborn is influenced by the society in which he was born and raised, and this would nurture in him a sense of loyalty towards this country and attachment to it, which justifies his enjoyment of its nationality. However, it is noticeable that it is rare to find a State granting nationality simply because of birth on its territory, so some States require supporting the birth of an individual on its territory with another consideration, such as the birth of the father and son together on its territory, or his stay for a certain period on the territory of the State in whose territory he was born. And here I am not facing an original nationality, but an emergency nationality that he acquires at a date later than birth.

One of the applications of the right of birth is what the Australian legislator went to in the Nationality Act, where it stipulated in Section X that whoever was born in Australia before August 20, 1986, becomes Australian by force of law, unless one of the parents is a diplomatic representative of a foreign country and the other is not a citizen of Australia at the time of birth. Children born after 20 August 1986 are Australian when one or both parents were Australian or had permanent residence in Australia at the time of birth. However, A child residing in Australia from the moment of birth for ten years can acquire Australian citizenship and revert to his date of birth As for the Italian legislature, in order for a child born in Italian territory to be born in Italian territory to foreign parents, the law on the nationality of one or both of the parents stipulates that the child cannot acquire the nationality of either of his parents if he or she is established to have another nationality. In contrast, the New Zealand Act of 1977 only grants birth to New Zealand territory and grants citizenship to the newborn by force of law.

1.3 The Right of Blood and the Right of Birth in the Balance

I explained in the previous pages that the right of blood is prevalent in ancient societies, if the bond of descent is what links the individual to the tribe, then soon the feudal era carried with it the right of birth. With the advent of the state in its modern form, the right of blood regained its status, and if it is difficult to say that it exists alone, it is always accompanied by the right of birth. Nevertheless, there is still a part of jurisprudence that sees sufficiency with a single basis for the construction of original nationality. This basis is limited to the right of blood, and on the other hand, I see a part of the jurisprudence that advocates the right of birth as a basis for acquiring the original nationality. That is why I present the arguments of each of them in more detail.

1.3.1 Arguments of the Proponents of the Right of Blood

Proponents of this right rely on several arguments of a racist and political nature, the most important of which are summarized as follows:

- 1- The nationality of an individual is determined by the group from which he or she originates, with which he or she has a common strength in sex, language, religion and history, regardless of the group on whose territory he or she may be born. The lesson is the bond of descent or blood.
- 2- Taking the right of blood to build the original nationality achieves the unity of nationality within the same family, and thus achieves homogeneity among the inhabitants of the same state.
- 3- The introduction of the right of birth would impose the nationality of the state on foreigners, who may be a transient coincidence of birth on its territory. In addition, their naturalization may be nominal and does not express real loyalty.
- 4- Building nationality based on the right of blood ensures that the state preserves its nationals, even if they are abroad, so that their nationality is preserved, which achieves the state's increased influence abroad. This is consistent with the countries of origin of the population.
- 5- The right of blood is considered the best basis for acquiring nationality in the countries that source the population, that is, those that suffer from an increase in population, and their children leave in pursuit of a livelihood. These States only grant their nationality to those born to national fathers, but not to those born on their territory, as they do not need to increase the proportion of their population.

1.3.2 Arguments of Proponents of the Right of Birth

Proponents of this right are based on arguments that:

- 1- The individual's relationship with the group stems from his place of birth to which he belongs and through which he relates to the group to which he belongs with his family origin. It is influenced by and influenced by the social environment in which it lives.

Part of the jurisprudence adds to this another argument that the extension of the father's nationality to his son is consistent with the supposed will of the young, as his interest is always consistent with the interest of his father, and if the young could express his will, he would choose the nationality of his father

2. The establishment of nationality based on the right of birth is consistent with the principle of State sovereignty. The sovereignty of the State extends not only to the territory of the State but also to all the persons, wealth, and other things that exist in this territory.
- 3- Taking the right of blood would weaken the existence of the state and not eliminate the difference between its subjects. The retention of nationality by foreigners would destroy the homogeneity of the population. As well as threatening the state politically. It is in the interest of the state to attach them to its people to preserve its demographic structure.
- 4- The right of birth, unlike the right of blood, is in the interest of the countries importing the population, which suffer from a lack of population density, and need to increase them. That is why it grants citizenship to everyone born on its territory to increase the population. In addition, their acquisition of nationality works to melt them into the national society.
- 5- Saying that there is a will on the part of the little one is contrary to the truth. The supposed will does not exist under the non-existent will of the small. And why did I assume his will to carry the nationality of his father,

without assuming his will to carry the nationality of the birth born to him, and who achieves his interest through him? 6- The implementation of legal thought and logic leads to the rejection of the criterion of the right of blood because of the consequent fall into a vicious circle. The legal establishment of a child's paternity is a condition for the acquisition of his nationality, but this law is subject to the law of a person's nationality. So how is nationality built since proof of parentage when this nationality itself depends on proving the parentage of this person? Part of the jurisprudence adds to these arguments another argument that it is difficult to apply the right of blood as a basis for acquiring nationality. Despite this criticism made by the proponents of the right of birth, supported by their arguments, this does not make it difficult to rely on this criterion alone because of the problems it may cause, as in the countries that export the population. I also cannot neglect the influence of the family environment in the formation of children. It is therefore difficult to favor one criterion over the other absolutely. It is rare to find a State that uses one of the two criteria alone as the basis for granting its nationality of origin. It takes one basis as a basis and uses the other as a complementary. Part of the jurisprudence believes that the division of the world between these two foundations is because countries are located in the zone of attraction between both the principle of territoriality of laws and the validity of laws, according to which laws follow persons to apply to them outside the borders of their country of origin. Of course, the right of birth is consistent with the second principle: One of the applications of the principles of birth and blood together is the Belgian Nationality Act of 1984 and amended in 1993, which stipulates that birth to a Belgian mother and father alone is not sufficient to establish the nationality of the child, but must have been born on Belgian territory. If the child was born abroad, the Belgian father must have been born in Belgian territory or applied for citizenship for his child before he was five years of age. Finally that this child does not hold another nationality before reaching the age of eighteen in order to prevent him from falling into statelessness. The Portuguese Nationality Act of 1981 merged the criteria of the right of blood and the right of birth, stipulating that a Portuguese person who was born in Portuguese territory to a father or mother or both of them of Portuguese nationality, or one or both of them was of foreign nationality, but they took Portugal as the place of their regular residence for a period of six years or more, provided that their presence during this period is not the service of a foreign state, meaning diplomatic envoys. In the case of birth abroad, the nationality of the newborn is established, provided that the parents or one of them is Portuguese and their presence abroad is in the service of Portugal, or they have declared their desire for the newborn to acquire Portuguese nationality. Finally, I point out that if this is the case of contemporary legislation, even in countries that take the criterion of the right of blood as the basis for their nationality, it is necessary to use the right of birth when building the nationality of incorporation or the so-called first nationality of the state. Here, the right of birth has a broad meaning that is not limited to birth in the territory of the State. It also extends to the case of settlement or residence extended for a fixed period in the territory of the State whose nationality is established for the first time.

2. Cases Of Granting The Original Egyptian Nationality

Law 154 of 2004 came with a long-awaited legislative amendment by jurists and dreamers of equality between men and women in the field of transmitting nationality to children based on the right of blood. However, this legislative amendment and the good deed kept a case of acquiring Egyptian nationality not on the basis of the right of blood but on the basis of the right of birth. Thus, the Egyptian legislature combined the two basic principles of the acquisition of nationality, namely the right of blood and the right of birth.

2.1 Original Egyptian Nationality Based On the Right of Blood

The Egyptian legislator has given priority to the right of blood as a basis for acquiring nationality. It has taken it as a stand-alone basis for indigenous nationality without supporting it with another basis. This may be consistent with the fact that Egypt is one of the countries exporting the population, and there is no doubt that taking the right of blood is in its interest, as I have already explained.

The legislator has stipulated the right of blood as a basis for acquiring the nationality of the Arab Republic of Egypt in the first article of Law 154 of 2004 that "he shall be Egyptian: 1- Whoever is born to an Egyptian father or an Egyptian mother....." This text reveals the basic case of acquiring the original Egyptian nationality, which is the case of establishing the parentage of the child to an Egyptian father or mother. An individual enjoys the force of law as soon as he is born to an Egyptian father or mother. Accordingly, a person born to an Egyptian father or mother of Egyptian nationality shall enjoy the following two conditions:

2.1.1 The First Condition Is the Birth of an Egyptian Father or an Egyptian Mother

The father must be Egyptian or the mother must be Egyptian at the time of birth of the child, and the nationality of the mother or father must be original or contingent. In order for a child to be considered to have Egyptian nationality, the father or mother must have enjoyed it at the time of the child's birth, regardless of nationality at the time of conception. A newborn person shall enjoy Egyptian nationality if the father dies before the birth of the child, as the death of the father does not preclude him from enjoying Egyptian nationality. Similarly, if the father is Egyptian or the mother is Egyptian at the time of pregnancy and disappears before birth for any reason, this newborn does not have Egyptian nationality. On the contrary, if the father was a foreigner at the time of pregnancy

and then acquired Egyptian nationality before the birth of the child, the newborn is Egyptian, and the same is the case in the case of the mother as well.

2.1.2 The Second Condition, the Parentage of the Newborn to His Father or Mother Is Legally Proven

According to this condition, this son must be legitimate. Proof of parentage shall be in accordance with the provisions of Egyptian law only, and proof of parentage in Egyptian law shall be either by bed, acknowledgment, or evidence. Bed refers to the marital relationship existing at the time of conception, so the establishment of the marital relationship at the time of birth is not required to prove parentage, but it is sufficient to establish it at the time of pregnancy to prove the child's parentage to his father. In addition to the marital relationship, parentage is also established by acknowledgment, i.e. the father's acknowledgment of his paternity of the child, or by the testimony of two just men or a man and two women of this filiation. The date of proof of parentage may be the time of birth, as in the case of proving parentage in the marital bed, i.e. the time of the establishment of the marriage at birth, or even after its expiry by divorce, khula, or death, or until it is established after birth. In this case, it is noted that nationality is an original nationality that has a retroactive effect after birth, but this should not prejudice the right of bona fide third parties who dealt with the child before his legal parentage was established. It follows from this that the illegal lineage or the filiation of adoption is not taken into account, as adultery does not prove the lineage of the child born from the man at all. Egyptian law based on Islamic law in matters of personal status has also abolished the adoption system and has no room for Egyptian nationality. Parentage is established in the absence of adultery in the case of intercourse with a parent, such as a person who concludes his marriage to his sister from breastfeeding without knowing that the reason preventing him arises at the beginning of the marriage. Most Arab legislation is consistent with Egyptian legislation, as most Arab legislation that grants the original nationality based on the right of blood on the father's side does not grant this illegitimate son the nationality of his father, even if he reaches his knowledge. Only Lebanese and Omani legislation, which establishes nationality because of the right of blood with specific conditions for illegal filiation, have been excluded from this rule. The question now is, if this is the case for the father, is it required for the mother to prove her parentage legally, in other words, is it required to have a legitimate marriage relationship? I must first clarify that there is a difference in the legal status of the father from the mother. An illegitimate son has nothing to say that he is attributable to his father in fact or by law, but the situation is otherwise for the mother. An illegitimate child born to an Egyptian mother has effectively been established to be the mother of an Egyptian mother, even if the father is a foreigner or unknown. This means that the lineage of the newborn to the national father is legally fixed, while it is sufficient that the lineage of the newborn to the Egyptian mother is factually fixed. It remains to be clarified here that in the absence of a rule of attribution to resolve conflicts of laws in matters of descent in general. It is more likely that issues of filiation and filiation and its legitimacy are subject to the law of the father's nationality. Thus, when these two conditions are met, the child born enjoys Egyptian nationality, and his birth is not required on Egyptian territory. Egyptian nationality shall be established even if he is born outside Egyptian territory. Thus, when these two conditions are met, the child born enjoys Egyptian nationality, and his birth is not required on Egyptian territory, and his Egyptian nationality is established even if he was born outside Egyptian territory. This means that the nationality of the Egyptian father or mother extends to their children not limited to a certain number of generations, but rather alternates with successive generations even if they are born abroad. Although the repeated birth of patriots outside the region, as some belief, may weaken their connection to the motherland, their dual nationality may play a role in reducing their sense of loyalty towards their country of origin

2.2 Original Egyptian Nationality Based On the Right of Birth

Although the Egyptian legislator took the right of blood as a basic criterion for building the original nationality, it relied secondarily on the right of the region to avoid the problem of statelessness in cases where the right of blood disappears, as in the case of unknown parents. Almost all legislation is unanimous on the need to grant the founding the nationality of the country on whose territory he was born so as not to become stateless, a solution adopted by the Egyptian legislator.

2.2.1 First Condition: Birth in the Egyptian Region

Birth is required in the Egyptian territory, and this territory extends whether it is a land, sea and air territory in accordance with the rules of public international law. Some believe that birth on a ship or aircraft is considered as birth on the territory of the state of which the aircraft or ship is a national. The Egyptian legislator has assumed that the mere finding of a foundling in Egypt is a presumption of his birth there until proven otherwise. If it turns out that the foundling was born abroad and then brought to Egyptian territory, his Egyptian nationality shall be revocably revoked, i.e. from birth, provided that the rights of bona fide third parties are not prejudiced.

2.2.2 The Second Condition Is the Ignorance of the Parents

This means the ignorance of both parents, and it is noted here that the ignorance of the mother is a realistic ignorance, which is her lack of knowledge, if the mother is known and she is Egyptian, the newborn enjoys Egyptian nationality. Here, nationality is acquired on the basis of the right of territory, not blood. As for the ignorance of the father, it is a legal matter, as the father is considered unknown as long as the parentage of the newborn is not legally proven to him, even if the father is known in fact, and if his lineage to his father is legally proven and he is Egyptian, the newborn is proven to have Egyptian nationality from birth on the basis of the right of blood. If it is found that the father is a foreigner, the son shall revoke his Egyptian nationality retroactively from the time of birth. Accordingly, the fixed Egyptian nationality of the unknown foundling parents is a temporary nationality whose fate is determined by proving the parentage of the newborn to his national father or mother, so he proves his Egyptian nationality or proves his lineage to non-patriots, so their nationality is proven to the newborn and the Egyptian nationality is removed from him. The first paragraph of the first article of Law 154 of 2004 gives nationality to the foundling in Egypt as a child born of unknown parents, as the foundling is always of unknown parents. However, there is a difference between a person born in Egypt to unknown parents and a foundling in Egypt. The first is cut off in the order of his birth that it occurred in Egypt, although he does not know his parents, while the second may be born in Egypt and it is correct to be born abroad and then brought him a newborn to Egypt.

3. Original Egyptians When the Law Was Passed In 1975

In the end, it remains to be clarified that at the beginning of the current Egyptian nationality law, issued on May 21, 1975, under No. 26 of 1975, the legislator had to clarify the status of patriots who were already on Egyptian territory at that period. The first article of the aforementioned law has indicated what is meant by the Egyptian in this regard, taking into account that this law does not establish Egyptian nationality for the first time, but has been established by Legislative Decree No. 19 of 1929 and then subsequent laws.

This article stipulates three types of Egyptian national character:

3.1- First Category: Settlers in Egypt before November 5, 1914, who are not nationals of foreign countries, who maintain their residence therein until the date of entry into force of this law. This date, which is referred to in the first article of the current nationality law, has the origin of a date, so the contemplator of this date finds that it is the date of Egypt's legal separation from the Ottoman Empire, and before that, the Egyptians did not have their own nationality in the strict sense, but they were considered Ottoman and the provisions of the Ottoman Nationality Law issued on January 19, 1896, apply to them.

The fact that they settled in Egypt for more than sixty years – as the explanatory memorandum says – without obtaining a foreign nationality, and the continuation of their regular residence in Egypt until the date of the issuance of the current nationality legislation, all of this constitutes a sufficient reason to consider these Egyptians as original Egyptians.

With regard to the residence pillar, which the article stipulates that must be preserved until the date of entry into force of the current law, the first article referred to stipulates that the residence of assets is complementary to the establishment of branches and the residence of the husband is complementary to the residence of the wife.

Perhaps the legislator wanted this facilitation so that one of the branches would not be harmed by things that have nothing to do with his will in their occurrence, such as the death of his origin, for example, and the same is also the case for the husband and wife, but it should be noted here that the domicile must be a non-national of the foreign state. It is not enough for a person not to belong to a foreign state at the time of the entry into force of the law, but this condition must be met throughout the period of domicile specified by the law.

3.2 The Second Category: Includes Those Who On February 22, 1958 Enjoyed Egyptian Nationality:

In accordance with the provisions of Law No. 391 of 1956 on Egyptian nationality. Thus, in the desire of the Egyptian legislator to liquidate the previous situation and to ensure the link and coordination between the nationality legislation prior to its issuance, it decided to consider them as Egyptians who were so at the moment of the union between Egypt and Syria on February 22, 1958.

3.3 The Third Category: includes those who acquire the nationality of the United Arab Republic in accordance with the provisions of Law No. 82 of 1958 issued in this regard.

4. Conclusion

At the end of our study, I tried to present the position of the Egyptian legislator on the cases of granting Egyptian nationality, and I found that he was keen to grant the original Egyptian nationality either based on the right of blood on the part of the father or mother in accordance with the legislative amendment in 2004, which achieved the principle of equality between father and mother in granting their children citizenship and was keen not to occur

a case of statelessness in the event of the birth of a child of unknown parents on Egyptian territory, granting him Egyptian nationality based on the right of birth.

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