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Rights of Sexual Minorities as the Subject of Referenda in the Republic of Slovenia

Abstract: Slovenia is a country that in terms of the number of referendum votes held belongs to the forefront in Central and Eastern Europe. In the years 1996-2016, 16 legislative referenda were held, and 22 issues were put to the vote. This testifies to the opening of the political elite to the processes of democratization and the introduction of direct democracy institutions not only to constitutional regulations, but also to political practice.

The article presents referenda on the rights of homosexual people in Slovenia. Even with ballots being frequently held in the country, this still fails to raise the voters' turnouts or their political participation. The referenda described in the article were on the broadening of rights of homosexual people, including their rights to adopt children. Even with openness of the political elites to the new trends and phenomena the Slovenian society proved very conservative and opposed the proposals. The referenda significantly inhibited the process of liberalization of social policy in Slovenia.

Keywords: Slovenia, countries of former Yugoslavia, direct democracy, referendum

1. Introduction

Slovenia is the sole one, of the five countries on the Balkan Peninsula, which declared independence in the early 1990s after the disintegration of the Socialist Federal Republic of Yugoslavia. On December 23, 1990, an independence referendum was held, the result of which became the basis for the proclamation of the independence of the state by the Slovenian parliament. The conducted referendum proved that referring to instruments of direct democracy, such as a referendum,

is not only possible in a newly created state, but can also form an effective tool for exercising power that successfully complements indirect democracy¹.

Slovenia is one of the leaders in terms of the number of votes conducted so far in post-Yugoslav and Central and Eastern European countries². Although the turnout in general votes does not exceed 40% on average, the most important decisions in the country are made with the participation of citizens. Undoubtedly the referendum of 1990 and of March 2003 on joining the European Union should be considered some of the most important events in the history of Slovenia³.

Relying on referenda in an emerging political democracy of the countries of Central and Eastern Europe was a gesture of ruling elites reaching to the nation, which led to agreement and the mitigation of social conflicts. In the process of political transformation, the referendum took on a different meaning. For the first time, this form of expressing the will of the people was in favor of gaining independence. In the process of national and state rebirth, the independence referendum took place in countries belonging to two different Soviet and Yugoslav federations⁴.

Referenda on independence issues were announced by the remaining republics, while Slovenia and Croatia accelerated their decisions to separate (still not leave) from SFRY, reaching them in parliamentary votes on June 25, 1991, recognizing each other as full-fledged subjects of international law and calling for broad international recognition of their statehood⁵.

In the case of Slovenia, the vote on independence was a plebiscite and in the process of creating the foundations of the state system was a one-off event, as the option of holding a referendum was not exercised when adopting the new constitution⁶.

The purpose of this article is to present the votes on sexual minorities and their rights in the state. Slovenia has recognized civil partnerships from 24 February 2017 onwards⁷. They provide same sex partners with all rights of a marriage, except for the possibility of child adoption and in vitro fertilization. However, despite the adoption of two bills permitting the adoption of children by homosexual couples, they did not

1 A. Rytel-Warzocho, *Referendum ogólnokrajowe w państwach Europy Środkowo-Wschodniej*, Warszawa 2011, p. 190.

2 E. Kuźelewska, *Direct Democracy in Slovenia*, (in:) M. Marczevska-Rytko (ed.), *Handbook of Direct Democracy in Central and Eastern Europe after 1989*, Opladen-Berlin-Toronto 2018, p. 290.

3 M. Musiał-Karg, *Referenda państwach europejskich*, Toruń 2008, p. 269.

4 M. Podolak, *Instytucja referendum w wybranych państwach Europy Środkowej i Wschodniej (1989-2012)*, Lublin 2014, p. 221.

5 J. Stańczyk, *Przeobrażenia międzynarodowego układu sił w Europie na przełomie lat osiemdziesiątych i dziewięćdziesiątych*, Warszawa 1999, p. 137.

6 E. Kuźelewska, *Demokracja bezpośrednia w Słowenii*, "Studia Wyborcze" 2018, vol. 25, p. 95.

7 *Zakon o registraciji istospolne partnerske skupnosti* (ZRIPShttp://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4335 (access 12.01.2018)).

receive social approval, and further referenda were initiated, in which the proposal to amend the Family Code was rejected.

The foundations of the political system of Slovenia were defined by the Constitution of the Republic of Slovenia, adopted on December 23, 1991 by Skupstina, in line with democratic constitutionalism trend that had been shaped since 1989 in post-communist European countries⁸. The basic law of Slovenia refers to the ideas and principles of democratic European constitutions. Similarly to other countries that regained or gained independence, the *Preamble* of the Constitution referred to national aspirations along with the universal question of respecting the rights and freedoms of individuals.

The Constitution in art. 1 defines Slovenia as a “democratic republic”, establishing a republican form of government. The sovereign in the state is the people – art. 3. Pursuant to this article, the sovereign may exercise power directly or through the election of representative organs.

The political system of Slovenia contains important elements of direct democracy. On the basis of constitutional regulations, the sovereign – the people have two main instruments – a legislative referendum and a citizens’ initiative (according to art. 88 – of at least 5,000 people) – for their participation in deciding on important matters of state policy. Pursuant to the provisions of the Constitution, a well-developed referendum structure was included in articles 3, 44, 90, 170. The right to participate in the referendum was granted to citizens with electoral rights. Pursuant to the provisions of Slovenian Constitution, there are three types of nationwide referenda in Slovenia: the constitutional, legislative and consultative referendum⁹.

Pursuant to the amendment of the Constitution of 2013, the exclusive right to initiate a referendum was granted (left) to a group of 40.000 citizens. These rights are no longer held by the deputies and the State Council¹⁰. Such a referendum is optional.

A referendum is considered valid if the majority of voters participating in it votes in favor of the proposal¹¹. A provision was also introduced, according to which the act is rejected in a referendum if at least one fifth of those eligible to vote votes against its adoption. Such referendum is suspending in its character, because a referendum on the adoption of a law delays (suspends) their entry in force until a decision is taken in a vote. The new law also limits the scope of cases in which a referendum can be held: referendums cannot be organized in relation to laws on the implementation of the state budget; provisions on defense and national security or disaster response;

8 P. Winczorek, Wstęp, (in:) *Konstytucja Republiki Słowenii*, tłum idem., Warszawa 1994, pp. 7-8.

9 M. Kambič, Constitutional democracy in Slovenia between the Scylla and Charybdis of the legislative referendum, “*Pro Publico Bono Magyar Közigazgatás*” 2016, no. 2, pp. 104-117.

10 C. Ribičič; I. Kaučič, Constitutional Limits of Legislative Referendum: The Case of Slovenia, “*Lex Localis*” 2014, vol. 12, no. 4, pp. 899-928.

11 E. Zieliński, I. Bokszczanin, J. Zieliński, *Referendum w państwach Europy*, Warszawa 2003, p. 62.

ratification of international treaties, and unconstitutional matters concerning human rights and other areas¹².

There were 24 votes held in Slovenia so far, in which only 8 proposals were approved. Voting concerned the following issues: 1996 – the electoral system; 1999 – construction of the TET 3 power plant; 2001 – artificial insemination of unmarried women; 2003 – refund of excess telephone charges and railway privatization; 2003 – the membership in NATO and the EU; 2003 – limiting retail sales on Sundays to ten Sundays per annum only; 2004 – restoration of rights of ethnic minorities from former Yugoslav autonomous republics; 2005 – laws concerning mass media; 2007 – the Act on the abolition of insurance property; 2010 – agreements on the shape of the Slovenian-Croatian border; 2010 – mass media law; 2011 – amendment of the labour code; 2011 – Act on the legal protection of documents and archives; 2011 – disabled persons' pensions and insurance act; 2011 – acts against illegal employment; 2012 – Family Code; 2014 – Act on the legal protection of documents and archives; 2015 – same-sex marriages; 2017 extension of the railway network¹³.

2. The legal status of homosexual people in Slovenia

During the communist period, the situation of homosexuals in Slovenia, and in the entire former Yugoslavia, was unfavourable for them. In 1959, the penal code prohibited sexual contacts between men. At the same time, similar regulations were not adopted for women. This right ceased to apply in 1977 after the adoption of an amendment to the penal code, which depenalized homosexual relations. Other regulations only appeared in the 1990s. The Act on registration of partnerships in matters of persons of the same sex was ready as early, as in 1998, but it was adopted by the National Assembly only in 2005¹⁴. Protection was introduced in favour of sexual minorities in the workplace, which is required by the EU as part of the accession process, which Slovenia initiated the same year. The couples were then granted just the right to inherit, to access medical information in case of hospital treatment, and also the system of premiums and social insurance cover was extended to them. In July 2006, same-sex civil partnerships were legalized in Slovenia¹⁵. The regulations do not include solutions regarding the right to adopt and in vitro fertilization. For this reason, the law introduced was strongly criticized by the LGBTQ community

12 R. Podolnjak, Constitutional Reforms of Citizen-Initiated Referendum – Causes of Different Outcomes in Slovenia and Croatia, "Revus" 2015, no. 26, pp. 120-149.

13 E. Kuźelewska, *op. cit.*, p. 100.

14 Zakon o registraciji istospolne partnerske skupnosti (ZRIPh^{tt}://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4335 (access 22.11.2018).

15 Slovenian lawmakers approve same-sex marriage, adoption amid protests from conservative groups (Eng.) US News. <https://www.usnews.com/news/world/articles/2015/03/03/slovenian-lawmakers-approve-same-sex-marriage-adoption> (access 10.10.2018).

in Slovenia. However, not only sexual minorities protested the introduction of civil partnerships. The opposition to the conservative government also recognized that this solution was not complete and left the assembly when the bill was passed, in sign of their protest against it¹⁶.

Same-sex marriages are now legal in the Netherlands, Belgium, Spain, Canada and South Africa, and at least 18 countries offer some form of legal recognition for same-sex relationships¹⁷.

In 2006, a Eurobarometer survey was conducted, in which two questions were asked, regarding homosexual marriages and their right to adopt children:

Do you agree with homosexual marriages being allowed throughout Europe?

Do you agree with authorizing the adoption of children for homosexual couples throughout Europe? In the case of Slovenia, 31% of respondents answered yes to the first question, but only 17% agreed to the adoption of children by homosexual couples¹⁸.

The MAGNUS gay organization, a branch of ŠKUC (Student Cultural Center in Ljubljana) was active in Slovenia since 1984, being established as a “cultural organization for the socialization of homosexuality”, as well as a proletarian feminist group Lilit (LL from 1987 onwards). In 1990, MAGNUS and LL founded a national gay and lesbian organization called Roza Klub.

3. The 2012 Referendum

When the center-left government led by Borut Pahor took over in 2008, the legislative process for the homosexual minority became more dynamic. Already in 2009 it presented the draft of the new Family Code, which assumed full equality of all citizens on family matters, including adoption¹⁹.

According to activists of gay organizations, the definition of marriage should be changed from a “male-female relationship” to a “two-person relationship”. However, this was not possible due to the resistance of the conservative opposition, which blocked the adoption of a new family law for months.

Representatives of the Democratic Party argued that the equality of homosexual couples would lead to the devaluation of the traditional family. The government had no choice but to partially equate gays and lesbians: already in June 2009, the Supreme

16 Referendum w sprawie małżeństw homoseksualnych w Słowenii <https://www.euractiv.pl/section/demokracja/news/referendum-w-sprawie-malzenstw-homoseksualnych-w-slowenii/> (access 10.10.2018).

17 A. Koppelman, *The gay rights questions in contemporary American law*, London 2002, pp. 127-140; E. Gerstmann, *Same-sex marriage and the Constitution*, Cambridge 2004, pp. 50-61.

18 Eight EU Countries Back Same-Sex Marriage <http://web.archive.org/web/20080905233521/http://www.angus-reid.com/polls/index.cfm/fuseaction/viewItem/itemID/14203> (access 10.09.2018).

19 Natural Order Of Things (Everyone Needs A Family, <http://www.pengovsky.com/2009/10/15/natural-order-of-things-everyone-needs-a-family/>) (access 10.09.2018).

State Constitutional Court assessed the unequal treatment of registered partners and heterosexual spouses as discrimination prohibited by the Slovenian Constitution²⁰.

It was not until 2011 that the draft was adopted by the Slovenian Parliament. The proposed law contained two controversial provisions that caused enormous disputes in the society: one stating that marriage is a lifelong community of two people of the same or opposite sex; and the second was that two partners of the same sex can adopt a child²¹. The draft granted registered partners of the same sex the same rights as that of a married couple and allowed them to adopt the biological children of their partners. However, the adoption of a child unrelated to any of the partners was excluded.

After the adoption of the draft a conservative civic group was formed consisting of representatives of Civic Initiative for Family and Children's Rights and Catholic representatives and collected the required 40.000 signatures to question the adopted law in a referendum.

The ballot took place on 25 March 2012²² and the citizens were to answer the question whether they agree with the proposed amendment to the family code. Turnout during the voting amounted to over 30 percent and just short of 55 percent of participating citizens were in favor of rejecting the new family code²³.

The rights of same-sex couples are a constant problem throughout Europe. The European Court of Human Rights ruled that the right of a married person to adopt a child of his partner is not protected under the European Convention on Human Rights. The case concerned a French woman who was refused to adopt the child of her civil partner, which was conceived by in vitro fertilization (IVF). She argued that rejection of adoption infringes Articles 8 and 14 of the Convention on Human Rights, which protect against violations of family privacy and discrimination. In its decision, the court found that the refusal does not discriminate against same-sex couples, because opposite sex couples are also deprived of the right to adopt in civil partnerships²⁴.

20 Slowenien schreckt vor Ehe-Öffnung zurück, https://www.queer.de/detail.php?article_id=14458; Constitutional Court of Slovenia Upholds Equal Rights for Same Sex Partners, <http://www.equalrightstrust.org/news/constitutional-court-slovenia-upholds-equal-rights-same-sex-partners> (access 10.09.2018).

21 Novi družinski zakonik – revolucionarni korak naprej ali nepremišljeni zdrs nazaj? <http://mladi.net/content/view/1757/88/> (access 10.09.2018).

22 Državni zbor sprejel družinski zakonik <http://www.rtv slo.si/slovenija/drzavni-zbor-sprejel-druzinski-zakonik/259944> (access 10.09.2018).

23 Zakonodajni referendum o družinskem zakoniku – 25. marec 2012 <http://www.dvk-rs.si/index.php/si/arhiv-referendumi/zakonodajni-referendum-o-druzinskem-zakoniku> (access 10.09.2018).

24 A. Bottonoff, Slovenia referendum rejects law granting same-sex rights, <https://www.jurist.org/news/2012/03/slovenia-referendum-rejects-law-granting-same-sex-rights/> (access 15.10.2018).

4. The 2015 Referendum

In December 2014, the United Left presented a draft amendment to the 1976 Law on Marriage and Family Relationships that would introduce same-sex marriages²⁵. The draft received support from the centrist party of Prime Minister Miro Cerar.

On 3 March 2015, the Slovenian parliament passed a law establishing same-sex marriages. 51 deputies were in favour of the bill, while 28 were against²⁶. The Social Democratic Party – ZLSD United List of Social Democrats (*Združena lista socialnih demokratov*, ZLSD), liberals -Liberal Democracy of Slovenia (*Liberalna demokracija Slovenije*) all voted in favour of the new legislation, while the right-wing representatives of Slovenian Democratic Party (*Slovenska demokratska stranka*, SDS) and the New Slovenia – *Nova Slovenija*, NSi were against²⁷.

Despite only a minor amendment introduced in the Marriage and Family Relations Act, it caused great dissatisfaction among the representatives of more conservative parties and people in Slovenia due to its redefinition of marriage²⁸. According to the amendments, marriage was no longer defined as a relationship between a man and a woman, but as a relationship between two adults. What's more, this small change has also ensured that same-sex couples would have the right to have children²⁹. During the debate on the revolutionary law some 2.000 people gathered in front of the parliament building to demonstrate in defense of marriage³⁰.

The day after the adoption of the amendments, its opponents began collecting voters' signatures to demand a referendum. At the end of March 2015, the majority of the National Assembly rejected the referendum application initiated by the conservative group supported by the Church, citing amendments to the Constitution of 2013 prohibiting referendums on matters regarding unconstitutional

25 Pričela se je javna obravnava Zakona o partnerski skupnosti http://www.mdds.gov.si/nc/si/medijsko_sredisce/novica/7404/ (access 23.09.2018).

26 Sprememba zakonske zveze potrjena, istospolni pari se lahko poročijo <http://www.rtvlo.si/slovenija/sprememba-zakonske-zveze-potrjena-istospolni-pari-se-lahko-porocijo/359579> (access 11.10.2018).

27 T. Anžlovar, Redefinicija družine v smer enakosti dobila zeleno luč <http://www.rtvlo.si/slovenija/redefinicija-druzine-v-smer-enakosti-dobila-zeleno-luc/358063> (access 30.08.2018).

28 Decision to reject the calling of a legislative referendum on the act amending the Marriage and Family relations act (ZZZDR-D, EPA 257 – VII), Official Gazette of the Republic of Slovenia, 20/2015.

29 MPs Vote to Ban Gay Marriage Referendum, <http://www.sloveniatimes.com/mps-vote-to-ban-gay-marriage-referendum> (access 30.08.2018).

30 FLC, Słowenia wprowadza homoseksualne „małżeństwa”. Obrońcy rodziny zapowiadają referendum, <http://www.pch24.pl/slowenia-wprowadza-homoseksualne-malzenstwa--obroncy-rodziny-zapowiadaja-referendum,34378,i.html#ixzz5a7alMeZk> (access 15.10.2018).

circumstances³¹. The Slovenian left tried to refuse a referendum, arguing that human rights (and marriage is a human right) should not be subject to national ballot³².

In October 2015, the Constitutional Tribunal disagreed with the decision of the National Assembly and with the majority of 5 judges to four, it ruled that a referendum can be held in this matter. The required 40.000 signatures were collected and on 20 December 2015 the ballot was held. Due to the change in the referendum regulations, at least one-fifth of the 1.7 million entitled to vote had to vote against the law, because the law requires a quorum of 20%. This means that about 340.000 people had to vote against it³³.

Oponents of same-sex marriages stand for further support of a definition of marriage as a relation between a woman and a man, opposing in particular the adoption of children by homosexual couples. Proponents of the amendment, in turn, indicate that it would equate the rights homosexual and heterosexual couples.

39 parties, associations, movements and people joined in the referendum campaign. The government supported the amendments but did not participate in the campaign itself. Two positions were clearly visible: the camp against the amendments worked under the patronage of the Children Are at Stake group. It was organized mainly around appeals to ensure children's rights and the future of families. On the other hand, the "It's time for Yes" group called for "the right of the child to be adopted in the most appropriate environment" and "to extend these rights to all, which will not change our rights at the same time". Due to the huge mobilization of people in both camps, the campaign was even more intense than that of 2012. During the campaign both camps also received international support; the 'Yes' camp received the support of Human Rights Watch NGO, which joined the large movement of Slovenian human rights NGOs, calling for marital equality. "The right to marry is a fundamental human right, as is the right to non-discrimination, and homosexual couples should not be denied the right to marital equality³⁴."

The Roman Catholic church was also involved in the campaign. Both Pope Francis and the representatives of Slovenian church appealed to the society to "guard the

31 Slovenia Times, 2015. Constitutional Court Allows Gay Marriage Referendum, October 22. <http://www.sloveniatimes.com/constitutional-court-allows-gay-marriage-referendum> (access 30.08.2018).

32 B. Surk, S. Chan, Slovenians Deliver Major Setback to Same-Sex Marriage in Referendum. New York Times, December 21, 2015, <http://www.nytimes.com/2015/12/22/world/europe/slovenians-deliver-major-setback-to-same-sex-marriage-in-vote.html> (access 10.10.2018).

33 Sprememba zakonske zveze potrjena, istospolni pari se lahko poročijo, <http://www.rtv slo.si/slovenija/sprememba-zakonske-zveze-potrjena-istospolni-pari-se-lahko-porocijo/359579> (access 30.08.2018).

34 A. Krasovec, The 2015 referendum in Slovenia, "East European Quarterly" 2015, vol. 43, no. 4, p. 307.

family as the basic social unit”³⁵. With regard to the proposed act, they took a decidedly negative position, believing that “we are experiencing an attempt to define a new family as undermining the foundations, on which we stand as a Church and the society”³⁶.

On 20 December, after a very fierce and often intolerant campaign and debates, 394,482 people or 63.5% of all voters opposed the amendments, with a turnout of 36.4%. The referendum question was: Do you agree that the Act on Changes and Amendments to the Marriage and Family Relations Act, as passed by the National Assembly (ZZZDR-D) on 3 March 2015 should come in force?

Two days after the referendum a draft bill was brought to the Slovenian parliament, extending the list of rights vested in same-sex couples in civil partnerships – bringing them closer to marriages³⁷. However, the Act did not take adoption and artificial insemination into account. The draft is signed by Jani Möderndorfer – politician of the Modern Center Party, of the country’s prime minister, Miro Cerar. The government signaled that it supports the initiative, and Möderndorfer pointed out that it was meant to be a temporary solution, until another attempt at marital equality is made³⁸.

The project received government support in March 2016 and on 21 April 2016, it was passed by the parliament, with 53 to 15 votes³⁹. The Act came in force on 24 May 2016, nevertheless the art. 10 thereof envisaged a 9-month transitional period, which is why it was only applicable from 24 February 2017 onwards⁴⁰. This Act introduces a new institution of a civil partnership (partner zveza), enabling such relationships to be formed a register office in a ceremony that is identical to that of a marriage⁴¹. The civil partnerships registered to date will cease to exist within 6 months – and will be converted into this new legal form, which will grant them rights equal to marriages (zveza convent) with two exceptions, i.e. without the right to adopt and the right of access to assisted reproductive technology (in vitro). The world media erroneously presented the provisions of the Act on civil partnerships as enabling same-sex marriages.

35 Papeż apeluje do Słoweńców o obronę “wartości rodzinnych” <https://queer.pl/news/196711/slowenia-referendum-papiez-franciszek-malzenstwa-jednoplciowe> (access 11.10.2018).

36 A. Krasovec, *op.cit.*, p. 308.

37 After referendum, new bill submitted to protect gay couples <https://english.sta.si/2213642/after-referendum-new-bill-submitted-to-protect-gay-couples> (access 13.10.2018).

38 M.M. RSi, Green light for the debate about the amendment to the law on marriage and family, <http://www.rtvsl.si/news-in-english/green-light-for-the-debate-about-the-amendment-to-the-law-on-marriage-and-family/358087> (access 15.10.2018).

39 Same-sex partnership act passed <https://english.sta.si/2255355/same-sex-partnership-act-passed> (access 30.08.2018).

40 Zakon o partnerski zvezi (ZPZ), stran 4815 (access 10.10.2018). <https://www.uradni-list.si/glasilo-uradni-list-rs/vsebina/2016-01-1426?sop=2016-01-1426> (access 30.08.2018).

41 Zakon o registraciji istospolne partnerske skupnosti (ZRIPS, <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4335> (access 15.10.2018).

2015 opinion polls demonstrated that 42 percent of Slovenians support marital equality, and 54 percent believe that same-sex couples should be able to marry all over Europe. Most were also against holding a referendum on this matter⁴².

Conclusions

The ruling elites in Slovenia see the value of direct democracy institutions and, on the example of the more experienced European states, have introduced them in the group of state institutions. Slovenians are often involved in popular ballots, but our attention should point at their low turnouts. The referenda on the rights of homosexual people were the first such referenda to be held in the countries of Central and Eastern Europe. This demonstrates the progress and opening of political elites, but also the conservatism of citizens. While there is acceptance for homosexual couples, a traditional approach to adopting and raising children is marked.

Slovenia is a progressive state, not only in Central and Eastern Europe, but it also stands out from all other EU countries that joined the EU in 2004. It also introduced legal solutions that reach further than the regulations in some old EU countries, e.g. Austria, where only civil partnerships can be concluded.

The current legislation on the rights of homosexual couples in Slovenia is one of the most progressive ones in the countries of the former Yugoslavia as well as European countries.

If Slovenia were to grant the right to enter same-sex marriages, it would be the first country in Central and Eastern Europe and the first country of the former Yugoslavia to introduce marriages between homosexual couples.

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42 Słowenia: związki prawie jak małżeństwa? <https://queer.pl/news/196965/slowenia-zwiazki-partnerskie-jak-malzenstwa> (access 30.08.2018).

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