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The voice of 60 million workers in Europe

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Request for Investigation into violations of Core Labour Standards in Georgia under the provisions of the GSP Regulation, No. 732/2008 of 22 July 2008

Dear Commissioner De Gucht,

We hereby draw your attention to the incompatibility of Georgian labour laws with core ILO Conventions, in particular Conventions 87 and 98, the ratification and effective implementation of which are a prerequisite for enjoying the benefits of the GSP+, as well as to further violations of trade union rights in the country. We therefore request the European Commission to open an investigation into these violations under the procedures stipulated in Article 15(1)(a), Article 16 and Article 17 of Council Regulation (EC) No. 732/2008 of 22 July 2008 applying a scheme of generalised system of preferences under a special incentives arrangement for the period from 1 January 2009 to 31 December 2011.

In particular, the government has taken no action to address excessive requirements to forming a union and denial of the right to collective bargaining, including failure to establish mechanisms of conciliation, unilateral submissions for compulsory arbitration, allowing the dismissal of workers without the need to provide a reason, lack of protection against acts of anti-union discrimination, interference of government and employers with trade union activities, and restrictions on the right to strike.

These problems, indeed, led the European Commission to state recently that, "*In the field of labour rights and core labour standards, the ILO expressed concerns with the lack of compliance, by Georgia, with core labour conventions. If unaddressed, these concerns put at risk Georgia's continuing inclusion in the EU's General System of Preferences (GSP+) which allows Georgia to benefit from trade preferences from the EU.*"[1]

[1] European Commission, *Joint Staff Working Paper, Implementation of the European Neighbourhood Policy in 2010, Georgia*, Brussels, May 2011

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1. Excessive requirements for forming a union

The ILO Committee of Experts on Application of Conventions and Recommendations (hereafter CEACR or Committee) has, for a significant time, been requesting certain amendments in the labour law which requires there to be 100 employees in a workplace in order to recognise the establishment of a new union[2]. The CEACR considers the requirement to be excessive and has repeatedly asked the government to reduce it. Although the government explained that this is the minimum requirement for establishing a trade union confederation, the Committee has noted that *"according to section 2(3) of the Law, trade unions can be established at any enterprise, institution, organization and other places of work, and that, according to section 2(6), "a trade union should be formed on a sectoral, territorial and other basis of the occupational nature". According to section 2(7), "trade unions are entitled to form primary trade unions at the enterprises, institutions and other places of work", and "nation-wide trade union organizations and associations (federations) ... regional, district, town trade union organizations and associations, as well as trade union organizations and associations and the enterprises and institutions". The Committee understands that section 2(9) refers to trade unions and not primary trade unions, which are regulated under section 3(9) and indeed require 15 members for their establishment. The Committee further notes that section 2(9) refers expressly to "trade unions", that is trade unions established on a sectoral, industrial, occupational and other levels pursuant to section 2(6) and not to "confederations of trade unions"*. Therefore, the excuse provided by the government is misleading. *"The Committee considers that the minimum requirement of 100 workers to establish unions by branch of activity, occupation or for various occupations is too high and should be reduced. The Committee therefore once again requests the Government to provide information with its next report on the measures taken or envisaged to amend section 2(9) of the Law on trade unions so as to lower the minimum trade union membership requirement and, in the meantime, to indicate the impact of this provision on the establishment of trade unions at the branch or sectoral levels, including information on the number of such trade unions and their respective membership."*[3]

The March 2010 report of the ILO Committee on Freedom of Association repeated the ILO's concern on the implementation of Conventions No. 87 and No. 98, reiterating that the Labour Code and the Law on Trade Unions need to be amended in order to comply with core labour standards, notably regarding the criteria for establishing trade unions, protection against anti-union discrimination, the right to strike. In addition, the Committee restated ILO continued concerns as regards the implementation of the Conventions on Equal Remuneration, on Discrimination, and on Holidays with Pay.[4]

The excessive requirement to establish a union has further been criticised by the Governmental Committee of the European Social Charter: *"According to the report only two founding members are required to form an association, including trade unions. However, the Committee notes that, pursuant to Section 2§9 of the Trade Union Act, trade unions cannot be formed with a membership of less than 100 persons. The Committee reiterates that requirements as to minimum numbers of members comply with Article 5 only if the number*

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2 Section 2(9) of the 1997 Law on Trade Unions

3 CEACR: Individual Observation concerning Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) Georgia (ratification: 1999) Published: 2010

4 European Commission, *Joint Staff Working Paper, Implementation of the European Neighbourhood Policy in 2010, Georgia*, Brussels, May 2011

is reasonable and presents no obstacle to the founding of organisations. The requirement foreseen by the Trade Union Act cannot be considered reasonable and therefore is contrary to the Charter."[5] The Governmental Committee found more grounds of non-conformity of the Georgian labour laws with the European Social Charter in "*Section 2§2 of the Trade Union Act [which] states that everyone is entitled to join trade unions. However, according to Article 46§§1 and 2 of the Labour Code, an employee's rights - including the right to organise - may be restricted by the employer in the employment contract. The Committee considers that this unduly restricts the enjoyment of trade union rights by workers as they may be forced to accept restrictions on their right to establish, to join or not to join a trade union in order to obtain employment."*

2. Impeding collective bargaining

As a result of abolishing the Law on collective contracts and agreements in 2006, the current Labour Code fails to adequately regulate freedom of association and the right to bargain collectively. Article 4 of Convention 98[6] prescribes that collective bargaining and agreements should be promoted for the regulation of terms and conditions of employment. However, for several years, the government has been promoting measures in the opposite direction, resulting in excessive deregulation of the labour market and grave abuses of ILO Convention 98. *"[In the 2006 Labour Code,] the procedure for collective bargaining is described so briefly and inadequately that their conclusion was impossible in practice. Finally, the L[abour] C[ode] leaves practically no room for strikes."*[7]

a. Lack of Mechanisms of conciliation, mediation or voluntary arbitration

Section 49(5) of the Code stipulates that, after a warning strike, the parties shall participate in the amicable settlement procedures pursuant to the Labour Code. *"The Committee had noted, however, that the Labour Code did not provide for such a procedure and requested the Government to give consideration to appropriate mechanisms of conciliation, mediation or voluntary arbitration instead. The Committee notes that, according to the Government, amicable settlement procedures are provided for in section 48 of the Code. The Committee notes that, under this section, such procedures involve: (1) a written notice of commencement of the amicable procedure reflecting the grounds of dispute and claims by one party; (2) a review of the notice by the other party and its reply; and (3) written decision by the representatives of the parties, which would become a part of the existing contract of employment. If no agreement has been reached within 14 days, the "other party is entitled to apply to court or arbitration" (section 48(5)). The Committee considers that the legislation could establish specific mechanisms to facilitate dispute settlement between the parties. Such procedures could involve a neutral and independent third party, in whom the parties have*

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5 Governmental Committee of the European Social Charter, *Working document prepared by the Secretariat European Social Charter, Conclusions XIX-3 (2010)*, Strasbourg, March 18, 2011

6 „Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements»

7 ITUC/PERC Regional Conference, "Building democracy and trade union rights in the NIS", November 2010, available at: http://www.ituc-csi.org/ituc-perc-regional-conference.html

confidence, and who could facilitate breaking a stalemate which the parties are unable to resolve themselves. Noting that in its report the Government recognizes the need to develop mechanisms of conciliation and mediation to help reduce the incidence of disputes, the Committee requests the Government to indicate the concrete measures taken to that end."

According to the 2011 report of the Governmental Committee of the European Social Charter, *"Article 48 of the Labour Code provides that labour disputes shall be settled through conciliatory procedures. It further provides that for certain disputes where agreement cannot be reached through conciliation a party has the right to appeal to a court or arbitration. However it is unclear to the Committee what type of labour disputes Article 48 refers to. The report simply states that it is intended to develop a conciliation / mediation service, but at yet this does not exist. Therefore the Committee concludes that at present there is no effective conciliation, mediation or arbitration service."*

b. Unilateral submission of a dispute for compulsory arbitration

With regard to the abovementioned section 48(5) of the Code, *"the Committee had recalled that a provision which permitted either party unilaterally to submit the dispute for compulsory arbitration effectively undermined the right of workers to call a strike."* The Committee requested the government to amend this provision with a view to ensuring that the right to strike is enjoyed by employees other than those providing essential services in the strict sense of the term, public servants exercising authority in the name of the State and in the event of an acute national emergency. *"The Committee understands that, under section 48(5), the results of the arbitration (or court) procedure are compulsory and would therefore render meaningless the right to strike."*

c. Same treatment of collective and individual agreements

Sections 41- 43 of the Labour Code put collective agreements concluded with trade union organizations and agreements between an employer and non-unionised workers in the same position. The Committee on Freedom of Association considers that direct negotiations between an enterprise and its staff which take no account of existing representative organizations may run counter to the principle that collective bargaining between employers and workers' organizations must be encouraged and promoted.[8] In addition, *"[t]he Committee finds it difficult to reconcile the equal status given in the law to these two types of agreement with the ILO principles on collective bargaining, according to which the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations should be encouraged and promoted, with a view to the regulation of terms and conditions of employment by means of collective agreements. If, in the course of collective bargaining with the trade union, the enterprise offers better working conditions to non-unionized workers under individual agreements, there is a serious risk that this might undermine the negotiating capacity of the trade union and give rise to discriminatory situations in favour of the non-unionized staff; furthermore, it might encourage unionized workers to withdraw from the union."*[9] The Committee then refers to the Collective Agreements Recommendation, No. 91, to emphasize the role of workers' organizations in collective bargaining. *"Considering that direct negotiation*

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8 Freedom of association: Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, op. cit., para. 945.

9 CEACR: Individual Observation concerning Right to Organise and Collective Bargaining Convention, 1949 (No. 98) Georgia (ratification: 1993) Published: 2010

between the undertaking and its employees, bypassing representative organizations where these exist, runs counter to the principle that negotiation between employers and organizations of workers should be encouraged and promoted, the Committee requests the Government to take the necessary measures in order to amend its legislation so as to ensure that the position of trade unions is not undermined by the existence of other employees' representatives or discriminatory situations in favour of the non-unionized staff."

3. Lack of protection against acts of discrimination in the Labour Code

Section 11(6) of the 1997 Law on Trade Unions and Section 2(3) of the Labour Code prohibit, in general terms, anti-union discrimination. However, any protection offered by the 1997 Law on Trade Unions is not automatically guaranteed because the Supreme Court holds that they have the right to give preference to the Labour Code over the Law on Trade Unions on the grounds of it being a newer piece of legislation. On the other hand, the government routinely refers to the Trade Union Law and its rights provisions. The 2007 Commission Report on the implementation of the European Neighbourhood Policy states: *"As regards labour law and rights at work, no progress can be reported as regards unrestricted strike rights. The 2006 labour code, which was prepared without prior consultation with trade unions, is not in line with the International Labour Organisation (ILO) standards. In particular, it falls short in addressing the obligations of the ILO Conventions on freedom of association, and on the right to organise and collective bargaining. Furthermore, the labour code contradicts both EU standards and the European Social Charter that the country ratified in July 2005, on a number of fundamental issues such as the duration of overtime work and termination of employment. The Code is to be revised accordingly if Georgia wants to benefit from the GSP+ scheme in 2009."*[10] The Code was not revised and the government refused to comply with the Commission's and other bodies' continuous recommendations over the following years.

a. The National Social Dialogue Commission for the amendment of the Labour Code

In its response to the Complaint against the Government of Georgia (Case No. 2678) presented by the Georgian Trade Union Confederation (GTUC) supported by Education International (EI), the Committee on Freedom of Association (CFA) requested *"the Government to take the necessary measures, without delay, in full consultation with the social partners concerned, to amend the Labour Code so as to ensure specific protection against anti-union discrimination, including anti-union dismissals, and to provide for sufficiently dissuasive sanctions against such acts."* It also requested *"the Government to keep it informed of the measures taken in this respect, as well as in relation to any progress made in the discussions to be placed on the agenda in the National Social Dialogue Commission."* The complainant alleges interference in activities of the Educators & Scientists Free Trade Union of Georgia (ESFTUG), as well as dismissals of trade unionists.

In another complaint against the Government of Georgia (Case No. 2663), presented by the Georgian Trade Unions Confederation (GTUC) and supported by the International Trade Union Confederation (ITUC) the Committee on Freedom of Association (CFA) stated:

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10 Commission Staff Working Document, *'Implementation of the European Neighbourhood Policy in 2007' Progress Report Georgia*, 3 April 2008, Brussels

"Noting the establishment of the National Social Dialogue Commission and of a tripartite working group, the Committee requests the Government, in full consultation with the social partners concerned, to take the necessary measures to amend the Labour Code so as to ensure specific protection against anti-union discrimination, including anti-union dismissals and provide for sufficiently dissuasive sanctions against such acts. Along the same lines, observing the difficulty of contesting an alleged anti-union dismissal if there is no obligation to provide a motivation for that dismissal, the Committee requests the Government to take the necessary measures to ensure that workers may obtain an explanation as to the grounds for their dismissal. It urges the Government to keep it informed in this respect." The complaint concerned the failure of the Labour Code to provide adequate and sufficient protection against anti-union dismissals and failure of the Government to provide redress in the case of dismissal of nine trade union activists from Poti Sea Port and nine trade union activists from BTM Textile.

CEACR has also referred to the National Social Dialogue Commission, *"[A] memorandum was signed between the Ministry of Health, Labour and Social Affairs (MoHLSA), the GTUC and the GEA with a view to institutionalizing social dialogue in the country. Since then, the social partners have been regularly holding sessions to discuss issues concerning the labour legislation with an emphasis on the issues of compliance with the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and Convention No. 98."* In addition, *"the ILO has been providing technical support to the tripartite constituents to advance the process of dialogue and the review of the labour legislation. [...] the Decree No. 335 of 12 November 2009 issued by the Prime Minister of Georgia, which formalized and institutionalized the National Social Dialogue Commission, as well as the creation of a tripartite working group to review and analyse the conformity of the national legislation with the findings and recommendations of the Committee and to propose the necessary amendments."*

In practice, the National Social Dialogue Commission has not been functioning on a quarterly basis as foreseen in the Commission's charter. The European Commission stated in May 2011 that, "In the area of social dialogue, the tripartite constituents reached an agreement, in May 2010, on the minimum changes to be introduced to the labour code, particularly with regard to antiunion discrimination. However, these changes have not yet been introduced. Moreover, the Georgian Trade Union Conference has made allegations of anti-union discrimination and government interference in the check-off system, which suggests persisting interference by the government in social dialogue."[11]

Moreover, the GTUC is worried by the outcomes of the consultations, because they are not binding and, in practice, they have delivered no results so far. *"GTUC is concerned because of delays in the work of the National Social Dialogue Commission of Georgia. According to the charter of the National Social Dialogue Commission the sittings should be convened at least once in each quarter. A deadline for calling first meeting in 2011 has already expired in March. GTUC provided the commission with all necessary materials foreseen by the agenda. It is also worth mentioning that meetings of working group of the commission do not take place on regular basis. It is important to emphasize that even last year calling commission's meetings in fixed terms was problematic. Besides, the commission is not equipped with real decision-making power and the decisions are not effective and result-oriented. GTUC believed, as the government of Georgia claimed before the international*

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[11] European Commission, *Joint Staff Working Paper, Implementation of the European Neighbourhood Policy in 2010, Georgia*, Brussels, May 2011

organizations that Tripartite Commission could play an important role in the promotion of the culture of social dialogue in the country and assist the social partners in the resolution of collective disputes, as well as encourage collective bargaining processes in Georgia. However, inaptitude and inaction of the National Social Dialogue Commission in fulfilling the objectives set forth in its charter, makes us to think that the commission is far from being well-functioning and realistic body." [12]

b. Lack of protection against acts of anti-union and other forms of discrimination

CEACR states that *"pursuant to section 5(8) of the Labour Code, an employer was not required to substantiate his/her decision for not recruiting an applicant and considered that the application of this section in practice might result in placing on a worker an insurmountable obstacle when proving that he/she was not recruited because of his/her trade union activities."* Moreover, Section 37 (d) of the Labour Code of 2006 allows an employer to dismiss a worker without providing any reason at all, provided that compensation equivalent to one months' salary is paid. Section 37 (d) has been used to suppress trade unions as well as those who oppose workplace discrimination or simply take a stand for workers' rights. In fact, the Supreme Court has ruled that employers' discretionary right to dismiss a worker should not be deemed discriminatory because the Labour Code of 2006 takes precedence over the 1997 Law on Trade Unions. *"The Committee considered that, in light of the absence of explicit provisions banning dismissals by reason of union membership or participating in union activities, as well as the absence of provisions regulating cases of anti-union dismissals, the Labour Code did not offer sufficient protection against anti- union dismissals. [...] With regard to the termination of employment, the Committee considers that legislation which allows the employer in practice to terminate the employment of a worker on condition that he/she pay the compensation provided for by law in all cases of unjustified dismissal, without any specific protection aimed at preventing anti-union discrimination, is insufficient under the terms of Articles 1 and 3 of the Convention."* The Governmental Committee of the ESC also finds *"insufficient protection against discrimination based on trade union membership in the context of recruitment and dismissal."*

Under these circumstances, the Labour Code continues to provide legal grounds for employers to violate ILO Conventions No. 87 and No. 98 in practice. In addition to this, the Labour Code does not protect against several other forms of discrimination, including against women, disabled persons and minorities. Hence, it provides employers legal protection when they violate ILO Conventions No. 100 on Equal Remuneration and Convention No. 111, on Discrimination (Employment and Occupation).

4. Interference by employers in trade union independence

Article 5 of the 1997 Law on Trade Unions generally provides for the independence of trade unions from the employer. However, the CEACR has noted that there are *"no express provisions for rapid appeal procedures, coupled with effective and dissuasive sanctions*

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[12] GTUC, Information on Tripartite Social Partnership Commission, submission to ITUC, 2011, available at: http://www.gtuc.ge/en/component/content/article/12-front-page-items/495-2011-04-29-11-31-07

against acts of interference." The CEACR requests the government to *"take the necessary measures in order to adopt specific legislative provisions in this respect."*

In addition to the earlier, above-mentioned complaint alleging interference in activities of the Educators & Scientists Free Trade Union of Georgia (ESFTUG), in a similar pattern in July 2010 the administration of the state owned company LTD "Georgian Railway" abruptly terminated several articles of the collective agreement including the transfer of trade union fees through the check-off system, with severe impact on the ability of the organisation to operate normally. When the union took the case to court their efforts to achieve respect for the agreement were rejected on the basis of a law repealed already in 2006.

The decision of the ESFTUG to call an Extraordinary Congress to secure its survival triggered a counter reaction of management aimed at preventing it from convening as well as putting personal pressure on the delegates to refrain from participation. The congress nevertheless did take place, despite the intimidation and manipulation by management.

5. Restrictions on the right to strike

Sections 51(4) and (5) prohibit strikes following the expiration of an employment agreement, or if an employment agreement is considered invalid. The CEACR holds that these provisions do not allow workers to participate in sympathy or protest strikes and therefore they should be amended. This provision also calls into question whether a strike for improved terms in an existing collective bargaining agreement, or simply for renewal, would become illegal upon the expiration of that agreement. Moreover, Section 49(3) of the Labour Code requires workers to conduct a warning strike prior to conducting a strike. Georgia also has excessive civil and penal sanctions for workers and unions involved in non-authorised strike actions. A violation of the rules on strikes can result in two years' prison sentence for those who organised a strike.

6. The abolition of the Labour Inspectorate under the 2006 Labour Code

When the Labour Code entered into force in June 2006, Article 55 of the Labour Code entailed the repeal of the charter of Labour Inspections, by the Order of the Minister of Labour, Health and Social Security No 310/n of November 16, 2004. In practice this meant that labour inspectors were laid off across the country due to the abolition of the State Labour Inspectorate. This makes the supervision of industrial relations and the investigation of labour rights abuses virtually impossible.

In the mining sector, the non-existence of any supervising institution allows the administration of Tkibuli mine to force miners to work in extremely dangerous conditions. In the last nine months of 2010 alone, this led to consecutive explosions of methane gas due to poor and badly maintained equipment resulting in nine deaths and dozens of serious injuries.

The situation is similar in the state sector, e.g. railways, another sector with hazardous and unsafe working conditions where the number of serious occupational accidents, including fatalities, has been on the increase in recent years. Whenever an investigative committee on a particular accident is formed it involves administrative officials only.

7. Child Labour and Child Trafficking

The Committee on the Rights of the Child has expressed significant concerns at the statement of the Georgian government that child labour is not a problem, stating *"The Committee noted the State party's position that child labour is not a problem in Georgia, however it is concerned that the Child Labour Survey conducted by the State Department for Statistics in 2004 indicated that over 21.5 per cent of children in the State party were engaged in economic activities and that 10.56 per cent of children were undertaking work in conditions that violate their rights and harm their development."*[13] The Committee recommends formulating, in a participatory manner, a strategy to prevent child labour and eliminate the worst forms of child labour, with assistance from the ILO International Programme on the Elimination of Child Labour (IPEC). Moreover, the Committee finds that *"[w]hile welcoming the various measures taken to address the problem of trafficking in persons, including the adoption of a new anti-trafficking law in April 2006, the National Action Plan regarding the Fight against Trafficking in Persons in Georgia (2007-2008) and the establishment of an inter-agency Anti-trafficking Council, the Committee remains concerned that insufficient legal guarantees exist to ensure that child victims of trafficking are not penalized, and that insufficient attention has been paid to the particular vulnerabilities of orphans, children working and living in the street and internally displaced children to trafficking and other forms of exploitation."*

In its concluding observations the Committee expresses concern at the absence of strategic measures to address the situation of children who live and work on the street and at the plight of these children in view of the risks to which they are exposed, including trafficking. In addition, an ITUC Report has found that *"difficult economic conditions contributed to the number of street children. During 2008, it was estimated that there were 1,600 street children in four major cities, of whom 800 were in Tbilisi. Working children in Georgia may be found in the streets, begging or selling small items or working in family businesses or intermittently on family farms. A high number of street children are often victims of trafficking networks and other forms of exploitation, and according to the government the majority of those children are of Roma origin."*[14] The CEACR *"had previously noted the comments by the Georgian Trade Unions Confederation, dated 30 August 2006, that there were reports of children as young as nine years working on the streets of Tbilisi, in markets and sometimes at night, carrying or loading wares and children as young as five years of age working as beggars."*

Furthermore, in their 2006 Report, *"[w]hile noting the legislative and other measures taken to combat human trafficking, including the Law on Combating Human Trafficking and the National Action Plan against Human Trafficking, the Committee [on the Elimination of Discrimination against Women] remains concerned about the persistence of trafficking in women and girls in Georgia."*[15]

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13 Committee on the Rights of the Child, Forty-eighth session, *Consideration of Reports Submitted by States parties under article 44 of the Convention*, Concluding observations on Georgia, CRC/C/GEO/CO/3 23 June 2008

14 ITUC, Internationally Recognised Core labour Standards in Georgia for the WTO General Council Review of the Trade Policies of Georgia, Geneva, 7 and 9 December, 2009

15 Committee on the Elimination of Discrimination against Women, *Thirty-sixth session, Concluding comments of the Committee on the Elimination of Discrimination against Women: Georgia*, 25 August 2006

We thank you in advance for taking action to implement our request and look forward to hearing from you.

Yours sincerely,

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