

## **No State for Love: Violations of the Right to Family of Migrant Workers in Israel**

By Hanny Ben Israel and Oded Feller\*

### **"We asked for workers, but we got people"<sup>1</sup>**

G., a migrant worker from the Philippines employed in Israel as a care giver, became pregnant with her partner, a migrant worker from Thailand. G. was informed by the Interior Ministry that after giving birth, her child would not be able to remain in Israel. She would need to choose between leaving Israel with her baby and sending the infant to her family in the Philippines. For G., the only realistic option was to entrust her baby to another female migrant worker, who she paid to accompany the newborn to the Philippines. Afterward, when G. applied to the Interior Ministry to renew her work permit, she was told that a new procedure was in effect: since she had given birth in Israel, her work permit would not be renewed, and she was now required to leave the country. A short time later, even before she had time to consider her predicament, G. was arrested. The Interior Ministry had decided to deport G. because she was the mother of a child born in Israel and because she was in a relationship with another migrant worker. Only after the Hotline for Migrant Workers petitioned the Tel Aviv District Court in this matter did the Interior Ministry release G. on bail and allow her to continue working in Israel – contingent on a signed affidavit that she did not have a steady partner.

For most of us, the right to family life seems natural; something that we take for granted. We tend not to reflect on what our lives would be like if we were denied this right. How would we feel and behave if the authorities were to forbid us from loving, sharing our lives with our partners, having sexual relations, creating a family unit, or bringing children into the world? A scenario in which a loving couple is forced to hide their relationship and avoid the watchful eyes of the authorities – all the time at risk that someone will "expose" their relationship – seems to most of us to be a distant nightmare.

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<sup>1</sup> The words of the Swiss poet and playwright Max Frisch.

Yet, this is the daily reality for migrant workers in Israel – a reality in which love is forbidden and punished. A reality in which having a family is not legitimate. A reality in which the gap between the promise of constitutional and international recognition of human rights and the actual lives of those who are supposed to be enjoying those rights, has never seemed greater.

In the eyes of the Israeli authorities, the men and women who come to the country as migrant workers are in Israel temporarily and have one single purpose: to work. This approach is artificial because the State decided to base entire fields of employment – particularly construction, agriculture, and home care giving – on migrant labor. It is therefore clear that the entry of migrant workers into Israel is not in order to fill a temporary labor shortage, but rather, to base these fields entirely on the labor of migrant workers. However, remaining true to its view of migrant workers as temporary residents who are only in Israel in order to work, and who must be kept from "taking root" in Israel, the State prohibits them from engaging in a broad spectrum of human activities: migrant workers who meet each other in Israel and become a couple are likely to lose their residency permits and become candidates for deportation if the Interior Ministry learns of their relationship; a female migrant worker who becomes pregnant in Israel is also likely to lose her residency permit, and she will be forced to leave the country with her infant. The State also prohibits the entry of migrant workers who are immediate family members (parents, children, or partners) of migrant workers who are already in Israel. In other words, migrant workers coming to Israel must leave their families behind, sometimes for many years. If it is discovered that two members of the same family are residing in Israel, the Interior Ministry will revoke the permit of one of them and order that he or she be deported. These severe actions are not sanctioned by law or by regulations; they are internal directives issued by the Interior Ministry's Population Registry. And, like many of the Registry's directives, parts of them have never been published.

To understand why it is so devastating in certain cases for migrant workers in Israel to have their residency permits revoked and to be deported from the country, it is important to recognize that the economic situation in the migrant

workers' countries of origin is dire. The migrant workers remain thousands of miles from home, for months and often years, in order to provide financial assistance to their families and help build a better future. To make arrangements for their arrival in Israel and ensure that they receive residency permits, the workers pay enormous fees to brokers or employment agencies. They take out high-interest loans, mortgage their property, and commit themselves to other obligations so as to raise the necessary funds – which they are supposed to pay back through the salaries they earn in Israel. Therefore, deporting these workers before they even have the chance to cover the expenses of their arrival puts them in a state of total financial ruin.

The State's primary argument regarding the human rights of migrant workers contradicts the notion that migrant workers are legitimate holders of rights that deserve recognition and protection. According to this argument, migrant workers do not have an inherent right to enter and work in Israel, and the State is therefore entitled to set any conditions it chooses for allowing the workers to enter Israel, including conditions that violate their human rights. The workers, for their part, can then consider these conditions and decide accordingly whether or not they want to work in Israel.<sup>2</sup> This argument is flawed in several ways. Firstly, it is premised on the assumption that people can grant a valid agreement to the revocation of their human rights. Secondly, the State's discretion when deciding which conditions it will set for allowing migrant workers to enter Israel is not absolute, and not every condition will be acceptable within its framework. As the High Court of Justice has noted, "an entry permit for work granted to a migrant worker by the State does not bestow unconditional permission for the violation of his or her rights. The migrant worker does not enter the country's gates and shed his humanity and basic rights. Indeed, the State is not obliged to absorb foreign workers, but this does not mean that when it decides to do so, it is free to set any conditions it pleases."<sup>3</sup>

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<sup>2</sup> For elaboration on this argument, see Guy Mundlak, "Neither Insiders nor Outsiders: The Contractual Construction of Migrant Workers' Rights and the Democratic Deficit," *Iyunim Mishpat* - The Tel Aviv University Law Review, 27 (2), 2002, pp. 423-487 (Hebrew).

<sup>3</sup> HCJ 4542/02 *Kav LaOved v. Government of Israel*, March 30, 2006, Section 56, opinion of the Hon. E. Levy.

There is no dispute that the Interior Ministry is entitled to take larger immigration issues into consideration. There is also no dispute that migrant workers come to Israel to take on paid positions and that this is the sole reason for granting them entry. But these migrants are not only "workers;" they are human beings; like all other human beings, they have desires, aspirations, feelings, and needs. The fact that migrant workers come to Israel seeking employment does not mean that it is permissible to forbid them from leading full lives. The conception that it is indeed permissible to do so is completely unacceptable from a moral perspective, and sharply contradicts the basic concept of labor law, which holds that a worker's work force cannot be considered in isolation of the worker himself. Unfortunately, the Israeli authorities do not share this basic insight and mistakenly believes Israel can "import" a "work force," but not working people.

This position paper presents Israel's draconian policies toward migrant workers and the ways in which these policies violate their right to family. It also recounts the experiences of those migrant workers who have dared to realize their right to family, and documents the trampling of their basic rights.

### **Forbidden Love**

V. is a migrant worker from Moldova who received a permit to work in Israel in home care giving. About a year after her arrival, she met M., a migrant worker from Romania who had a permit to work in construction. The two became a couple. The son of V.'s employer, who had sexually harassed her and sought revenge after a confrontation with M., contacted the Interior Ministry to inform them that V. had a partner in Israel. Both V. and M. were ordered immediately, without any enquiries being made, to leave Israel within seven days. Only after M. left the country did the Interior Ministry agree, following Kav LaOved's intervention, to renew V.'s residency permit, enabling her to find a new employer in Israel.

The experience of V. and M. is not unusual. Every year, Israel deports migrant workers who hold valid permits and reside here legally, for the sole reason that they dared to develop intimate relationships with other migrant workers. The Population Registry's policy, anchored in its own internal guidelines, is to

refuse requests for residency permit extensions made by migrant workers who have entered these partnerships and to demand that one of the two workers involved leave the country (as a precondition for extending the residency permit of the other worker). If the Population Registry learns, one way or another, that two migrant workers have become a couple, it will revoke the residency permits of both workers and demand that they both leave the country immediately. This policy has encouraged the deplorable practice of employers and employment agencies "informing" on migrant workers who they have been employing under illegal conditions, and who are attempting to claim their rights, in order to ensure that they are deported before they are able to do so. More than once, when Kav LaOved has contacted employers of migrant workers whose rights have been violated, the employers have threatened that if the organization's demand for financial compensation is not dropped, they will "tell the authorities" that the worker in question is involved in a relationship with another migrant worker in Israel.

The Tel Aviv Administrative Court found nothing wrong with this policy. In a case heard by the Court, the petitioner, who was categorized as having a 100% disability, asked permission for his care workers – migrant workers who met and married in Israel – to continue residing in the country. The Court ruled that "the Interior Minister is not obligated to grant residency permits in Israel to foreign citizens who request to enter the country for purposes of employment." The Court added that, "in a case in which there exists a concern that the temporary residency in Israel may become permanent, the Interior Minister's policy of not granting [a permit] in order to discourage the establishment of a family unit in Israel is reasonable and legitimate..."<sup>4</sup>.

#### **"With Pain You Will Give Birth to Children"<sup>5</sup>**

MK Ran Cohen, Chairman of the Knesset Committee on Migrant Workers: "What would we say if somewhere in the world...a Jewish mother was told that six weeks after giving birth she must send her baby to another country, or

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<sup>4</sup> Administrative Petition (Tel Aviv) 2485/04 Ophir v. Minister of the Interior, Judgment of the Hon. E. Kobo, August 2, 2005, Section 20.

<sup>5</sup> From the third chapter of the Book of Genesis.

be deported herself to another place, away from the place where she came to earn a living? Wouldn't we say this was anti-Semitic?"

Sassi Katzir, Director of the Population Registry: "...The foreign worker who comes here knows that this is the condition; he knows, and he signs his name to it."<sup>6</sup>

We are used to thinking of the right to parenthood – the right to bring children into the world and to raise them – as a natural and fundamental right. Israel is a party to international treaties that ban discrimination against women because of pregnancy, childbirth or parenthood, such as the Convention on the Elimination of all Forms of Discrimination against Women, which prohibits dismissal on the grounds of pregnancy or maternity leave. Israel also flaunts its legislation that protects women from being dismissed or discriminated against in such instances.

Nevertheless, according to the procedures of the Interior Ministry, female migrant workers do not have the right to become pregnant and to bring children into the world; when a female migrant worker gives birth in Israel, her residency permit is immediately revoked. The Population Registry's "Procedure for the Handling of Pregnant Migrant Workers" stipulates that a female migrant worker who becomes pregnant loses her Israeli work permit. She can obtain a residency permit, which does not entitle her to work, for up until three months following the expected date of childbirth. At the end of that period she must leave the country immediately. It is hard to exaggerate the draconian nature of this demand, especially considering the fact that Israel has openly decided to base the home care giving sector – the largest employment sector in Israel for migrant workers – almost entirely on the workforce of young foreign women of childbearing age. Can the State reasonably expect these women to relinquish their opportunity in life to become pregnant and give birth?

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<sup>6</sup> Session of the Knesset Committee of Migrant Workers, November 3, 2004. All quotations in this section are taken from the minutes of this committee session.

It appears that, indeed, it can. Chief Superintendent Ziva Agami-Cohen, a senior officer in the Israeli Immigration Police, explained to the Knesset Committee on Migrant Workers that the choice belongs to the female migrant worker: "I think it's all done at the level of choice, and these women make a choice...They are not helpless, they are not minors...and the choice is to leave their families and come to work here. Now, if you decide to get pregnant, that is a type of choice, and then you have a choice to get up and leave."

It was not always this way. Female migrant workers who became pregnant in Israel once had another "option." The procedure determined that "by the end of the twelfth week, the worker must decide whether to leave Israel with her baby or send the baby abroad and continue residing in Israel alone." The Population Registry attempted to justify this policy of imposing such a devastating dilemma on migrant workers by claiming that in fact it was not a cruel demand, since the female migrant workers have a "different mentality." That is, what may seem to us to be a heart-wrenching choice is a "natural" one for migrant women. As Mazal Cohen, Acting Director of the Population Registry's Department of Visas and Foreigners, explained to the Knesset Committee on Migrant Workers, "the majority of female migrant workers who come to Israel to work in home care giving for the elderly leave behind children...The majority [of these women] come from the Philippines, Romania, and former Soviet countries...They have the mentality of leaving the children in the care of the grandma and grandpa...". The Committee Chairman, MK Ran Cohen, wondered whether the same logic would apply "if the child were the woman's first child." Mazal Cohen replied, "perhaps we shouldn't be bringing in female migrant workers who are single; we'll bring in those who already have children there."

M., a migrant worker from the Philippines, would certainly disagree. She arrived in Israel in 2001 with a work permit and took on a job in nursing care. Some three years later, M. became pregnant. The baby was born prematurely and was diagnosed with a heart defect. After being hospitalized for two months, he underwent heart surgery. While he was still in the hospital, fighting

for his life, the Interior Ministry notified M. that she needed to send the child abroad. She was suddenly confronted with a dilemma. She could send the child to relatives in the Philippines and continue working in Israel, earning enough money to pay for her son's expensive medical treatment and perhaps even ensure his future. Or, she could choose to stay with the child and return to the Philippines with him, at the same time relinquishing the opportunity to earn enough money to pay for the medical treatment. M. made the choice. In late September 2005, she separated from her baby, who was only five months old at the time, and sent him to the Philippines. There, the baby's health problems persisted, and he required further treatment and additional heart surgery.

In a Knesset Committee session on Migrant Workers, Population Registry Director Sassi Katzir was willing to let on that he too believes that "there is no need to separate children from their parents." He also added that he thought it "irresponsible of parents to send their children away." In response to MK Ran Cohen, who reminded him that it was the Population Registry that saddled migrant workers with the dilemma in the first place, Katzir said he was not responsible "for all of their [the migrant workers'] morals." In other words, the responsibility for the impossible dilemma of migrant workers who become pregnant and give birth in Israel does not lie with the policy-makers who authored these draconian regulations, but rather, is attributable to the moral weakness of the women themselves.

As already mentioned, the procedures have since changed. Migrant workers no longer have the option of sending their babies abroad and staying on in Israel to continue working. They must now leave the country with their babies within three months of giving birth. A petition filed by human rights organizations against this policy is currently pending before the High Court of Justice.<sup>7</sup>

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<sup>7</sup> HCJ 11437/05 *Kav LaOved v. Interior Ministry*.

## **No Entry to Families**

H., a young man from the Philippines, arrived in Israel to work in the field of home care giving. Early in 2003, he left the country for a few days, leaving behind his belongings and taking with him only a few personal items and a small amount of cash. For his return, he had already been issued a visa. When he landed at Ben-Gurion Airport, H. was arrested. He was told by Interior Ministry staff that since his mother was also known to be working in Israel, H. would therefore be deported. H. asked to be allowed entry into Israel in order to collect his belongings and the money he had saved. His elderly employer also contacted the Ministry in an effort to gain permission for H.'s entry to the country, at least until another care worker could be found. The Interior Ministry refused, and it purchased a ticket for H.'s return to the Philippines. The Association for Civil Rights in Israel (ACRI) filed an urgent petition with the Tel Aviv District Court, which intervened to prevent H.'s immediate expulsion and allow him time to arrange his affairs before leaving Israel.

Anyone who has ever considered an extended stay in a foreign country has certainly thought about how it would affect his or her immediate family. Students enrolled in foreign universities, diplomats serving in posts abroad, and employees of hi-tech and multinational firms are often accompanied by their families. The obvious fact that the needs of their family members must be taken into account finds expression in the immigration policy and entry procedures of many countries. However, the situation for migrant workers in Israel – who have families just like everyone else – is different. The basic condition for gaining entry to the country is that they come alone. No one from their immediate family is permitted to join them, and even after these workers are settled in the country, no immediate relatives may visit – even for a brief period. Migrant workers must leave their families behind, sometimes for many years, and forego any possibility of seeing them during their stay in Israel.

A petition by a mother and daughter, both migrant workers, to extend their residency permits was rejected by the High Court of Justice: "The authority of the Minister of the Interior to grant residency permits in Israel to someone who

is not an Israeli citizen is a wide authority based on discretion. Using this authority, the respondent refused to grant permission for members of an immediate family [to enter Israel] out of concern that a stay in the country would be an incentive to settle in Israel...The [Minister's] decision does not appear to us to be unreasonable or otherwise unsound..."<sup>8</sup>

It is doubtful that Israel has anything to gain from this policy. A study by the International Labor Organization (ILO) in the early 1970s found that allowing migrant workers to live in host countries with their families contributes to their welfare and to their successful acclimatization to the new culture. The study found that prolonged separation from their families creates difficulties, tension, and emotional distress for both the workers and the families who remain in their home countries. These phenomena, in turn, color the attitudes of the host country's citizens toward the migrant workers. The ILO therefore concluded that allowing the families of migrant workers to join them was highly beneficial for both the migrant workers and the host countries.<sup>9</sup>

The ILO findings are consistent with recent research conducted by a special E.U. evaluation team. The research revealed that the main reason migrant workers request permission for their families to join them in the host countries, is the basic need to live together and maintain the family unit. Contrary to prevailing opinion, this reason takes precedence over any other social or economic factor, such as the desire of both the workers and their families to leave their countries in order to improve their quality of life. This can be explained by the fact that the separation process and the move to a new country are riddled with difficulties. Migration to another country inevitably entails a loss of some of the mechanisms that provide stability, protection, and support; economic hardship; and difficulties concerning absorption, language, and culture. The research also found that both the migrant workers and their host countries benefit when the workers are allowed to live with their families. According to the research, living together with their families boosts the migrant workers' morale and provides a mutual support system; as a result,

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<sup>8</sup> HCJ 5005/01 *Madas v. Interior Ministry* (unpublished).

<sup>9</sup> International Labor Conference, 59<sup>th</sup> Session, 1974, Report VII(1), *Migrant Workers* (Geneva: International Labor Office, 1973).

those workers who live together with their families contribute more to the local economy than the workers who live apart from their families. At the same time, the families' well-being also increases.<sup>10</sup> Other studies have reached similar conclusions.<sup>11</sup>

### **"Society's Natural and Basic Unit"**

The position taken by the Interior Ministry and the courts (which normally refrain from intervening in Interior Ministry policy) is inconsistent with the norms of Israeli and international law concerning the right to family.

The right to family is a basic and fundamental right that includes the right to start a family, the right to become a parent, and the right of children to receive support and enjoy an intensive relationship with both their parents. It stems from the right of every person to autonomy and self-fulfillment, which are integral elements of the right to human dignity, as well as from the importance of the family unit within human society. In the words of the High Court of Justice: "One of the most fundamental components of human dignity is the power of a person to shape his family life with the autonomy of his free will, and to raise children and enjoy a shared life within the family unit. The family unit is a definitive expression of human self-fulfillment...There are few decisions that shape the life of a person as much as the decision with whom to link one's fate and start a family. The same applies to the right of parents to raise their children."<sup>12</sup>

Israeli law, then, perceives the right to family as a primary, fundamental right, and the family as an autonomous unit that is entitled to protection and immunity from government intervention. There is also a wide consensus about this position in international law. Section 16(3) of the Universal Declaration on Human Rights states that "the family is society's natural and basic unit, and it

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<sup>10</sup> *Family Reunification Evaluation Project* (Final Report, the European Commission: Targeted Socio-Economic Research, Brussels, 2004).

<sup>11</sup> See, for example, M. Haour-Knipe, *Moving Families: Expatriation, Stress and Coping*, (London: Routledge, 2001). For comparison, see the position of the U.N. Refugee Agency regarding the protection of family rights: Position on Refugee Family Reunification, UNHCR, July 2000).

<sup>12</sup> HCJ 7052/02 *Adalah—The Legal Center for Arab Minority Rights in Israel v. Minister of the Interior*) May 14, 2006, Section 32 of the opinion by Hon. President A. Barak.

is entitled to protection by the society and the state." This position was adopted in Section 23(1) of the International Convention on Civil and Political Rights, and is also anchored in Section 10(1) of the International Convention on Economic, Social, and Cultural Rights. The right to family also includes the right to protection against arbitrary intervention in a person's family affairs (Section 12 of the Universal Declaration on Human Rights, and Section 17 of the International Convention on Civil and Political Rights). Protection against this type of intervention is also specifically guaranteed for children in Sections 8 and 16 of the International Convention on the Right of Children.

The right to family extends to migrant workers as well. Migrant workers do not relinquish their right to family and to parenthood when they reach their host countries. By leaving their homelands to work in other countries, migrant workers "are not 'signaling' that they abandoned their young children, have no interest in raising them, or chose to cut off relations with their immediate families in order to make a new life for themselves."<sup>13</sup> It is also clear that these workers do not abandon their right to start a family and conduct family life during their period of working abroad.

As early as 1949, the ILO published recommendations for countries hosting foreign workers, one of which was to allow these workers to be accompanied by their families.<sup>14</sup> In 1975, the ILO recommended, additionally, that both the workers' countries of origin and host countries do their utmost to allow the workers and their families to live together.<sup>15</sup>

The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, which came into effect in 2003, explicitly enshrines the right of these workers and their families to family. Section 44 of the Convention stipulates that the State Parties recognize the basic right to family life and the obligation to protect this right, and take the necessary steps to preserve the family unit of the migrant workers. The host

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<sup>13</sup> Administration Petition (Tel Aviv) 1195/06 *Kassaf v. Minister of the Interior* (opinion of Justice A. Mudrick, August 27, 2006).

<sup>14</sup> ILO's R86 Migration for Employment Recommendation (Revise), 1949.

<sup>15</sup> ILO's R151 Migrant Workers Recommendation, 1975; see also Section 13 (C143) of the ILO's Migrant Workers (Supplementary Provisions) Convention, 1975.

countries must permit migrant workers to live with their spouses (or common-law partners) and children, and, for appropriate humanitarian reasons, to consider providing the possibility of family unification for other members of their family as well.<sup>16</sup>

In 2003, a short time after the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families entered into force, the E.U. adopted a directive<sup>17</sup> calling for protecting the right of migrant workers and their families to live together in E.U. countries. According to the directive, migrant workers holding valid residency permits for a period of at least one year are eligible for requesting that their spouses (or common-law partners), children (theirs or their partners'), and, under some circumstances, other family members, be allowed to join them. The host countries may, for a limited period, delay granting these permits, and may demand proof that the family is able to support itself. Nevertheless, migrant workers who meet the conditions of the E.U. directive are eligible, as mentioned, to request residency permits for their families.<sup>18</sup>

## **Conclusion**

Migrant workers are not just "migrants" or "workers"; they are, above all, human beings. The State has no authority to deny the basic rights and human needs of these workers, and to relate to them as a mere means to an end. Such an approach is racist, exploitative, and intolerable. Israel must recognize the right of migrant workers to family and certainly must not impose sanctions on those who attempt to exercise this right.

Israel must not deny a work permit, or refuse to renew an existing permit, when migrant workers change their status (by entering a relationship, getting married, or having a baby, for instance) or as a result of the presence of their family members in Israel. Likewise, the State is not entitled to continue

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<sup>16</sup> The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (A/RES/45/158). Israel was not a signatory to the convention.

<sup>17</sup> E.U. directives to member nations are approved by the organization's governorship.

<sup>18</sup> Council Directive 2003/86/EC of September 22, 2003 on the right to family reunification. O.J. L.251 (2003) 12.

ignoring the right of migrant workers to live with their families, and must adopt a policy of permitting migrant workers residing for extended periods in the country to reunify with members of their families.

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**Kav LaOved** is a human rights organization dedicated to protecting the rights of Israel's most disadvantaged and exploited workers: primarily migrant workers, Israelis working for employment agencies and contractors, and Palestinian workers. It operates through legal and public channels to help workers achieve their rights and expose cases of exploitation in their work relations, with the overall aim of reducing social gaps. To volunteer or make a contribution:

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**The Association for Civil Rights in Israel** (ACRI) is Israel's oldest and largest human rights organization, and is dedicated to protecting the entire spectrum of human rights of all people in Israel, the occupied territories, and all places where human rights are violated by Israeli authorities. ACRI advances human rights through a wide range of legal, public outreach and educational activities. To volunteer or make a contribution:

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