

Investigating the offences specific to oil industry personnel in Iranian legal system

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Abstract

Nowadays many third world countries have an oil-based economy. These countries gain their incomes from selling oil and raw and natural materials. Iran is also one of those countries which oil has a special importance in its economy. Due to the high importance of oil industry in Iranian economy, in 1959 an act called the act of punishment for disruptors in the oil industry was passed by the Iranian parliament of the time. And by this act a criminal protection has been done for oil industry based on the requirements of that time. In this act various offences has been mentioned and for each offence a punishment is determined. This act mentions intentional and unintentional offences related to the oil industry. It should be noted that among the intentional and unintentional offences in this act some offences, which are specific to oil industry personnel and anybody can not commit, have been also mentioned.

Keywords: oil industry, oil industry personnel, collusion, fuel smuggling.

Introduction

In a country like Iran for optimal use of oil there should exist big and complex organizations so that the extraction, transportation and sale of oil be done in the best way. As much as the importance of oil to other industries, some state organizations, companies etc. have been extensively formed in relation to oil that do the works related to different stages to the stage of oil sale. Therefore, the oil min-

istry that dose its activities and operations in the form of four main companies (National Iranian Oil Company, National Iranian Oil Refining and Distribution Company, National Iranian Gas Company and Petrochemical company, and each one of these are divided into several subsidiary companies) can be divided into main and subsidiary companies. Due to high income, oil ministry has a very important role in administrative and political structure of the country and oil industry is as much important among Iranian industries. Thus, the laws and regulations related to this industry should be very efficient and accurate so that they could protect this important industry adequately. One of the aspects that should be paid attention to is predicting regulations that could protect petroleum industry even criminally as a small harm in this industry can result in enormous damages. It should be noted that Iranian legislators know the importance of the matter and they have passed criminal acts in this area. The most important act which has been passed is the act of punishment for disruptors in the oil industry which was passed in 1959 by the Iranian parliament of the time. In addition, some other scattered legislations exist that can be related to this area. In the mentioned act various offences has been paid attention to. One category of these legislations that the legislators have paid attention to are committed offences by the petroleum industry personnel. Determining specific punishments for petroleum industry personnel indicates the importance of accuracy, safety and skill among these personnel and it also gives the warning to the personnel that in the case of committing an offence they will be specifically and severely punished. This paper aims

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at finding the answer to the question that “in the act of punishment for disruptors in the oil industry what offences have been predicted that are specific to oil industry personnel, and what punishments have been determined for the personnel who have committed the mentioned offences in this act?” in order to answer these questions the offences specific to oil industry personnel are investigated separately and its constituent elements are assessed.

Collusion

Article 14 of the act of punishment for disruptors in the oil industry provides: “whenever the mentioned offences in this act are done through collusion and the offence result in any of the events mentioned in this act, the chiefs and orderers will be punished with the maximum punishments determined in this act.” Collusion lexically means secret plotting (Amid, 2008) and preparing for doing an act (Moein, 2007) and consultation³. Basically this word is used for any plotting but it is mostly used for plotting against others which is done secretly. In legal definition it is “agreement between two or more people for doing an offence from a specific way. Collusion is done for invading the security of government whether the acts done are complete or incomplete offences or they are the start of an offence with forgiving the person who is a participant in collusion but informs the government before acting⁴. In Black’s law dictionary collusion means a deceitful agreement or compact between two or more persons for committing an illegal act and gathering with the intention of doing an objective agreement or gathering for an illegal purpose and if the offence is not committed it means decay and collusion. Collusion especially in this article is in the stage of preliminary operations that the legislator has mentioned it as an element for increasing the punishment of the chiefs and orders. Plotting is also in the stage of preliminary operation which may result in creation of a crowd or dividing the act between the offenders or it may be manifested in the form of the order and the agent or the chief and subordinate. If plotting or collusion results in the formation of a crowd more than three persons, even if the offence is not committed, the one who forms the crowd and its member (the preliminary acts of offence are seen independently) and the one who provokes (accessory) are punishable (Paad, Khalili, 2002).

Forming a crowd

Article 14 of the act of punishment for disruptors in the oil industry provides: “whenever a crowd of more than three persons is formed for committing an offences mentioned in articles 1 and 2 but no offence is committed instigators and crowd formers are sentenced to 6 month to 2 years of jail for this act and the crowd members are sentenced to 3 month to 1 year of jail and if one or more of them have gun for committing the plot, the punishment of the crowd former and instigator will be 2 to 4 years jail and the punishment of the crowd members will be from 1 to 3 years of jail- any member of such groups who informs the authorities of the plotting before the offence is committed, he will be exempt from punishment” As it was mentioned above, in forming a crowd and becoming its member in the level of preliminary operation the legislator has sometimes regarded it as increasing element and sometimes as independent offence. For example according to articles 14 and 15 forming a crowd and becoming its member is an independent offence if it is done with the aim of committing offences listed in articles 1 and two, and it is increasing the punishments to maximum level if it is done with the aim of doing other offences, for the chiefs and orders of the crowd.

Leaving duty

Article 11 of the act of punishment for disruptors in the oil industry provides: “each one of the oil industry personnel who is responsible for protecting buildings and facilities or for guarding sensitive equipment and machineries, if he leaves his duty, he will be sentence to 3 to 6 month correctional jail and if his leaving duty result in one of the events mentioned in articles 1 and 2 and he knew the existence of this danger he will be sentence to 2 to 10 years of jail.”

The actus reus of this offence has several components.

First, having a position, this means that the committer must be one of the oil industry personnel. The position of the committer is one the main and basic elements for realization of the offence. Oil industry personnel are those who are employed by the government and employee includes official employee (contractors are employees) or contracted daily workers and the like and he may be a citizen

of Iran or other foreign countries which are working in different sections of oil industry and receive wage from government and public budgets. In addition to the above relation, the committer must be responsible for protecting buildings and facilities or for guarding sensitive equipment and machineries. Therefore in the first point two characteristics (1. Being one of the oil industry personnel; 2. Being responsible for protecting buildings or an institution) is necessary in order to be under this article and in the second point three characteristics (1. Being one of the oil industry personnel; 2. Guarding sensitive equipment and machineries has been under his responsibility. 3. the equipment and machineries themselves should have the characteristic of being sensitive) therefore if one of these characteristics does not exist in the committer or in the equipment and machineries the act of committer is not under this article. Second, external material act-which is done by the committer in the form of omission and can be imagined in the form of four types:

1. The omission by itself from the person mentioned above is an offence and punishable

2. The act of omission results one of the consequences listed in article 1 and 2 (burning or destruction of one of the main units and machinery etc, and generally burning, destruction of small machinery etc.) and the committer is aware of causing one of the predicted consequences as the result of his omission, in which case the committer is subject to the verdict in the article in which a more severe punishment is determined. The point that should be considered is how the awareness of committing is justifiable? In my opinion with the verdict of the article and with putting a guard or a responsible for the buildings and facilities and sensitive machinery and mentioning their duties at the time of employing and training classes for the possibility of omission is supposed by the legislator and it is on the committer to prove he has not been aware of leaving his duty.

3. Due to leaving duty some events are resulted which are compatible with the results predicted in articles 1 and 2, but the committer claims he has not been aware of the consequences and proves it. Still the punishment of the article is applied on him. The act of leaving duty results in consequences other than what has been predicted in articles 1 and 2 and here still the verdict of the article is applicable.

The act of leaving duty is an intentional offence in both parts of the article and the committer leaves duty by knowing and awareness of its illegality.

Therefore unintentional duty leaving or with order from an authority for example by legal order with the three conditions (qualifying the order is issued legally. The issued order is eligible for appearance conditions- the agent is legally required to perform the order or due to the authority that the order has the agent have to perform the order even if the order is illegal) is not included. In the second part of the article in addition to the intention of the committer in the act there should exist a possibility of a danger that come as a result of leaving the duty and it may result in the consequences mentioned in articles 1 and 2. In addition guarding equipment and machineries must be knowledge and awareness of the sensitivity of equipment and machineries in order for the leaving duty act be under this article. Therefore the lack of each one of the constituent parts destroys the mensrea of being offence from the act of committer. the condition of increasing punishment from misdemeanors imprisonment to second grade criminal imprisonment is that one of the consequences in the articles 1 and two is occurred therefore if other events occur the committer cannot be punished based on this article.

Two points should be mentioned here

1. or the guard¹ or responsible² of protecting and guarding are considered guards and it is not just because of leaving duty that the unpleasant event or accident is occurred but it is possible that the events in the article 1 and 2 or other events may have happened due to their negligence or sleeping in which case we have no specific decree in law and if we do not regard sleeping on duty and negligence Imprudence (the subject of article 8 of this act) also the committer remains without punishment. in code of procedure and punishment of army also sleeping and leaving duty is recognized as crime and based on the case it has punishments from misdemeanors imprisonment to capital punishment³. It was better if while creating and formulating this act and other specific acts in which armed guard has been predicted for guarding and protecting buildings or equipment and machineries etc. like banks, machinery industries, electricity and power generators, heavy industries of iron and steel melting, tubing etc., the legislator would had consider this important point.

¹ Guard means 'surveillance', scout, Amid dictionary

² Responsible is someone who is in charge of a work or a job, Amid dictionary

³ Articles 323 and 324 of Army's procedure and criminal law

2. whenever the person responsible for protecting buildings or facilities or guarding sensitive equipment or machineries are armed based on a definition which has come in the provision under article 323 of procedure and criminal codes of army; though gaining the quality of being armed is subject to article 11 of the act of punishment for disruptors of the oil industry not article 223 of army's procedure and criminal codes, even though based on article 17 of the act of punishment for disruptors of the oil industry addressing these offences is in the jurisdiction of permanent martial courts. It means that though the investigating authority is one, as the guards of industry do not have the military quality he is not subject to article 323 of army's procedure and criminal codes.

Not mentioning the specifications of material and technical materials, incomplete or incorrect mentioning of material and technical materials based on article 12 "each one of the engineers or employees of oil industry who are subject to order and determine technical equipment and materials, if they intentionally do not mention the specifications of materials and equipment in orders or if they mention them in an incomplete or incorrect form or do a transaction with the seller or supplier which result in inappropriate or incomplete or faulty material he will be sentenced to misdemeanors imprisonment from 3 months to 6 months. if as the result of faulty or incomplete material one of the consequences in articles 1 and 2 is occurred

The actus reus of this offence has several components:

First, having a position, this means that the committer must be one of the oil industry personnel (which was mentioned in the previous article) or he must be one of the engineers. Here the word engineer is separated with personnel with the word "or" so it is known that the engineers must not be one of employees but they may be supervisor engineers in buying and selling or building or machineries etc. which works with contract and has not employment relationship with oil industry. In addition, he must have the responsibility of determining and ordering equipment and technical materials. Therefore with combining these two compound characteristics the committer will be subject to Article 12. If the committer is not of the oil industry personnel or he is of oil industry the engineers and personnel but he has not the responsibility of determining and ordering equipment and technical material he is not subject to this article. Second, the external act which is

committed in the form of act and omission and is manifested in two ways:

1. Not mentioning specifications of equipment and technical material in orders (omission). the engineer or employee responsible for determining and ordering equipment and technical material and to mention the complete and actual specifications of needed equipment and materials based on catalog and standards so that based on these the equipment will be purchased and they will be delivered to storage and then they will be set up and used, if the specifications are mentioned it is possible that the delivered material or equipment are not appropriate or are incomplete or faulty. Just not mentioning the necessary specifications is not enough for the realization of offence but there must be delivery of inappropriate, incomplete or faulty equipment or materials in order for the offence to be realized. The difference between this case and a case in which the specifications are not mentioned at all is that the possibility of delivering equipment and technical materials based on catalog or standards is little or maybe impossible and seller avoid delivering equipment. But in the second case this possibility does not exist even though the legislator has not mentioned the bad intention which is damaging the oil company and as a result damaging the state. Thus the Islamic penal code and the articles of employees criminal court regarding embezzlement and illegal possession are considered that the expert or the engineer or employee of oil company does not commit the offence mentioned in article 12 of this code without aim and intention or having a benefit for himself. Article 15 of Islamic penal code regards the benefit resulting from buying and sale or from determining the amount or the quality whether it gets to the individual or another person regards as subreption and based on article 157 of Islamic penal code each official or employee of the state, which with cooperation or by means of something gets a benefit for himself in transactions he has done subreption and based on the position; oil industry employees which are in the circle of state employees whether officially or unofficially and etc (section 9 of single article 1308 and ... individuals who are responsible for buying and selling or.. mentioned in article 253 which includes engineers and the article of 1 of penal code for those who embezzle state property passed in 1925 which increases the articles of 152, 153 and 157 of Islamic penal code and it is the maximum punishment determined in article 12. Therefore with observing ar-

ticle 31 of Islamic penal code the decree of article 153 or 157 of general penal code must be applied. In the case that as the result of criminal act of the committer incomplete or faulty equipment or materials are used (even though in the content of the article there is no mention of using them but based on the events mentioned in articles 1 and 2 it is necessary that inappropriate materials be used in the construction or building or machinery etc in order to result in their burning or total or minor destruction) and one of the events in the articles 1 and 2 occur without the intention of this by the committer, the act of the committer is compatible with the last section of the article and is subject to maximum punishment.

These offences are of intentional offences and in the article it has been stressed on their intentionality. Therefore if the act of the committer is based on error or mistake it will not be subjected to this article. In the last part of the article just the occurrence of one of the events in the articles 1 and two without the awareness or intention of the committer is enough for realization of the offence and if the intention of the committer is creating the mentioned events he will be subjected to the decrees mentioned in these two articles based on the case. Here, occurrence of one of the events in the articles 1 and two is the element of increasing punishment.

Oil smuggling

The high amount of difference in Iranian fuel prices with neighborhood countries due to national subsidies of oil products in Iran and fuel crisis in neighborhood countries resulted to a situation in which the smuggling of fuel products became the number one smuggling products to neighboring countries. Based on unofficial statistics more than 5 million liter fuel is illegally smuggled and a high portion of the fuel needs of Iraq, Afghanistan, and Pakistan are met through the borders of West Azerbaijan, Kurdistan, Khorasan, Sistan and Baluchistan and...Provinces. Continuous increase of fuel products smuggling which is the result of high difference in prices between Iran and neighboring countries is creating a false crises and dangers in addition to the severe damages that causes to the economy of the country and neighboring area.

Legal element

Laws and regulations regarding supply and buying outside the network of fuel materials

With increase in the political and military crises in middle east the price of oil increased significantly and as a result the price of oil products in the neighborhood countries increased and due to the cheap prices of these products in Iran, illegal smuggling of fuel products from Iran to other countries by opportunist individuals increased and based on the studies done the beginning of smuggling of these products can be known to be violation in supply and buying outside the network of fuel materials. With identifying this legal gap and in order to address the mentioned violations the law of governmental chastening passed in 1992 by Expediency Council in article five the accusation of supply outside the network and in article 17 the accusation of buying outside the network whether the oil products or other products has been predicted and after that the central headquarters for combating the smuggling of foreign currencies and goods for enacting the article 127 of Islamic republic of Iran's constitution and article 30 of the amendment to the executive law regarding smuggling foreign currencies and goods considered the decisions of the special representative of the president in the cabinet in the letter no s/49/2696 and it was sent to this organization and the mentioned headquarters prepared the guidelines for combating fuel smuggling and sent it to all related bodies for executing and it was sent by the circular number 920/160 in 2006 by the headquarters of combating foreign currencies and goods smuggling to all governmental chastening offices throughout the country.

With several cases which resulted in conviction as the result of violations related to fuel in administrative justice court and objection of convicted and acting for nullification of the related circulars, made the board of administrative justice court to consider the sale price of oil products with observing legal subsidies based on F.O.B rate based on article 4 of article of association of national Iranian oil company passed in 1978 nulled the subsidies rate of fuel based on the paid amount of the state in distributing plants which are illegally transported abroad. This was issued and pronounced in the verdicts No 315, 316, 317 of the board of administrative justice court in 2006 based on which the circulars No 55-6/21939 in 1999 and 14/3-1158/pp in 2003 of national Iranian oil company and national Iranian oil refining and distribution company about calculating the price of oil products based on international rates have been recognized to be in the jurisdiction of the branch of governmental chastening organization.

Generally the legislator gives a concise and unique definition of the act or omission which he prohibits and which is given the quality of criminal before determining the punishment for it. But in formulating the law regarding the committers of smuggling just punishment has been determined without giving a definition of the act of smuggling. Therefore due to the lack of the definition for "smuggling" we have no choice but to refer to other sources other than law for reaching a reasonable definition of it. Dehkoda in his dictionary regards smuggling (in Persian language) with Turkish origin and has defined it as "whatever its entering the country or its transaction by the state is prohibited". Jafari, Langroudi, PhD in Law Terminology has wrote: "transportation of goods from one place to another place against the regulations of transportation in a way that this act is against a prohibition or a limitation that has been legally determined." (JafariLangroudi, 2009). Therefore with regard to the various definitions provided by scholars, based on the passed regulations of the country smuggling can be defined as; "any use of the property subject to state's income, without paying the determined income and issuing prohibited property and gaining exclusive properties other than state channels, and doing any action that is legally regarded as smuggling". The legislator by allocating the fifth chapter of the act of punishment for committers of smuggling passed in 1933 to customs smuggling, has determined the regulations governing smuggling goods prohibited to import and goods prohibited to export and smuggling goods which their taxes are received bus customs during importation or exportation without giving a definition of customs smuggling. Therefore based on the manifestations mentioned in the above article customs smuggling can be defined as follow: "escaping the property from customs regulations, whether that property is related to state's income or its importation, exportation, production, transportation, buying an selling has been pronounced illegal based on laws and regulations." Therefore whenever individuals, without observing regulations and gaining permission, import or export allowed or prohibited goods they have committed customs smuggling and this kind of crime is regarded done in the case that importing and exporting the goods is exclusively done through importation and exportation routes of the country. Therefore realization of customs smuggling crime is restricted to goods that are done illegally with the fulfillment of importation and exportation, there-

fore other types of smuggling such as transportation, transacting, keeping, producing etc. though have the quality of being criminal, like smuggling firearm and drugs, are not subject to this title.

The actus reus

As there are various regulation for criminalizing smuggling, determining the actus reus of each of them requires one by one investigation of related articles. But generally in criminal law the development stages of the actus reus is as follow: 1. Coming to the mind of the committer the thought of criminal act; 2. Assessment of the benefit and the harm of committing it; 3. Tendency to commit the crime (willingness); 4. Decide to commit the crime (intention); 5. Preparing the preliminary arrangements for committing; 6. Beginning executive operation; realization of the criminal act (Goldouzian, 2006). Now in each of the above crimes investigating each elements is necessary in order to recognize the act as criminal or non-criminal.

As based on article 4 of articles of associations of national Iranian oil company passed in 1977, any operation for supplying oil and oil products and transportation and selling the mentioned products inside the country and outside the country is exclusively in duty of national Iranian oil company, and the legislator for combating the phenomenon of smuggling has subjected any action, cooperation and assistance in committing smuggling of exclusive and forbidden goods to up to two years of imprisonment in addition to confiscating the good and fining based on clause B of article 2 of the act of governmental chastening regarding foreign currencies and goods smuggling considering articles 1 and 2 and 3 of the act of punishment for smugglers passed in 1933 and subsequent amendments, therefore currently oil products are exclusive products and their exportation through unqualified individuals is regarded as smuggling. It should be noted that if the above products are topically out of the regulations of smuggling, as it has specific distribution network therefore it is subject to the offence of supply and buying out of the network and based on articles 5, 17 and 25 of governmental chastening act and clause 7 of article 5 of the act of increasing the punishment of those who sell expensively and those who store to sell expensively the committer or committers will be subjected to punishment.

Conclusions

It is necessary that in investigating these crimes and differentiating the offence of smuggling from

the offence supplying outside the network the intention of the committer from smuggling the goods from the country and the preparations of the actus reus of the act be investigated. With this explanation that if their criminal acts has been to smuggle goods from country they are subject to the regulations of smuggling and if the intention of the smuggling is not verified and they just only sell the products against the regulations of production and supply or they transport from one place to another illegally they are subject to regulations of supply and buying outside the network. With the start of the privatization process and establishing subsidies oil smuggling increased and unfortunately oil smuggling has long been afflicted with legal vacuum till 2006 in which the guidelines for combating smuggling and supplying outside the network was passed and based on article 66 of this guidelines the main members of the central headquarters for combating smuggling foreign currencies and goods provided that: “ if the fuel is seized outside legal ways for distribution but the case of fuel smuggling in judicial branches result in the verdict of acquitting as the crime of distribution outside the network is clear the organization who had discovered the crime has the duty to refer the case to one of the branches of the organization of governmental chastening.”⁴

The act of governmental chastening was passed in 1989 after the act of increasing the punishment of those who sell expensively and those who store to sell expensively which was passed in 1989. Though some of the articles of this act are implicitly written like the definition of the crime of selling expensively and storing to sell expensively which have mentioned in the articles 2 and 4 of this act, but based on article 56 of the act of governmental chastening which provides “ all the regulations in contrast with this act with observing article 12 is stopped from the date of enactment”, one can conclude that the part of the act of increasing the punishment of those who sell expensively and those who store to sell expensively which guarantees the maximum punishment which is the subject of article 52 is still necessary to be enacted and based on the provisions of the recent article it is necessary for the branch which is dealing with the subject to cite that. Therefore, problematic consideration that the act of increasing the punishment of those who sell expensively and those who store to sell expensively is specific to selling expen-

⁴ Circular no s/47/3696 date of 2006 of the central headquarters for combating the smuggling of foreign currencies and goods. <http://www.tazirat.gov.ir>

sively and storing to sell expensively and based on the definition provided in this act its enactment is solely in the cases that the subjected to crime is one of the five items mentioned in the clause A of the act is not logical and it is not justified. Because as it is seen various criminal titles especially in the article 5 have been mentioned which not only are under the inclusion of selling expensively and storing to sell expensively but also they do not the least similarity with it. Therefore it cannot be said that as the title of the act is selling expensively and storing to sell expensively therefore other titles which in other titles in the subsequent articles which have been regarded as crime and punishment has been determined for them have the ability to be cited. Because in such case one should say that the legislator has done a useless job which definitely is not so. Therefore we believe by passing the act of governmental chastening in 1989, based on the article 56 of this act the act of increasing the punishment of those who sell expensively and those who store to sell expensively, especially in the section of definitions (article 1), is reproduced therefore based on the provisions of article 52 of the mentioned act the punishment subject of article 5 of the act of increasing the punishment of those who sell expensively and those who store to sell expensively is still necessary for enactment and its application in the related manifestations is not only in the jurisdictions of the related branch but also the branch is required to apply it. We also believe the titles mentioned in the article 5 of the latter act are subjects out of the topic and they are not related to the cases mentioned in article 1 as clearly under the article 3 of this act applying punishment of its topic is maximally 5 years, which regardless of the passing the governmental chastening act, the mentioned punishment is abolished after that time. Legal office of the organization also, by circulation No. 210/1447 in 2006, regarded the circulation of the representative of the president deemed applying maximum punishment of the subject to article 5 of the act of increasing the punishment of those who sell expensively and those who store to sell expensively as necessary and has emphasized enacting the desired circulation⁵.

Iran is one of the oil rich countries in the world which has the second rank in the ranking of Organization of Petroleum Exporting Countries. High level of dependency of developed countries to the

⁵ Circulation No. 210/1447 in 2002 the legal office of governmental chastening organization. <http://www.tazirat.gov.ir>

energy of the counties with these energies creates strategic opportunities and threats for the latter countries including Iran. Based on these issues comprehensive support of oil industry in Iran has a significant role in economical growth and increasing employment. One of the aspects of support for oil industry is legal protection of this industry. In line with this type of support, the legislator in 1959 passed an act called the act of punishment for disruptors in the oil industry. One point that deserves special attention is that many of the offences in field of oil industry can be done only by the employees of this industry and those who work in this industry. For example committing the crime of smuggling or distribution outside the network can only be done by employees of these industry or cooperation of the employees. The legislator has not paid attention to such a thing in any of the legislations that has created and also in the act of 1959 no article has been allocated to this subject. Another defect of this act is that criminalization for employees has been done incompletely. This act limits the committable offences by the employees to several offences which are leaving duty and buying poor quality products, collusion and creating a crowd. One should know

that these offences are not the only offences committable by oil industry personnel and so many other offences exist that can only be committed by having a position in this industry, like help to distribute oil products outside the network or smuggling. In these offences the element of having a position should be at least one of the elements of increasing the punishment. Therefore, finally it can be said that various offences have been specified to oil industry personnel by the legislator but this act should be modified by the Islamic Consultative Assembly in order to update these offences.

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