



# EXAMINING THE DIFFERENCES BETWEEN IRAN'S CRIMINAL LAWS AND INTERNATIONAL DOCUMENTS ON TEMPORARY DETENTION ORDERS

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## Abstract

*Temporary detention, which is also interpreted as preventive detention in criminal law, means depriving the defendant of his freedom and imprisoning him during all or part of the preliminary investigation by the judicial authority by issuing a temporary detention order, although this order is considered by some lawyers and Human rights defenders have been widely criticized, but on the other hand, some lawyers emphasize it because it is one of the guarantees of criminal policy in suppressing the criminal phenomenon. Arresting the accused, which is also interpreted as preventive detention in Iranian criminal law, means depriving the accused of his freedom and imprisoning him during all or part of the preliminary investigation, which may continue until the issuance of a final verdict or its execution, and the purpose of It is ensuring access to the accused, his timely presence in the judicial authority, preventing his escape or concealment, or erasing the traces of the crime and collusion with possible accomplices and deputies of the crime. Therefore, due to the growing importance of human rights at the national and international level, and on the other hand due to the inherent conflict between arresting a person and the principle of acquittal, which respects the rights and freedoms of the accused is one of the obvious effects of this principle, an effort has been made in this article, considering that Many provisions of the international and regional declarations of human rights have standards related to the principles of criminal procedure, including the protection of the rights of the accused and the limitation of temporary detention. It is hoped that in order to optimize the rules of the criminal procedure, it will be compared and matched with the above principles.*

**Keywords:** criminal, laws, temporary detention orders.

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## Introduction:

The high status of man and respect for freedom and human rights have long been considered, and human beings always seek to fulfill their rights Man himself has tried.

It is necessary to reach the highest goals of humanity in order to ensure the security of human society, which itself has pillars It has been different, without a doubt, judicial security is one of its important elements. The creation of judicial security in an advanced society requires laws whose content, with measured criteria, has merit and the ability to protect the order of the society. On the other hand, the importance of such criminal proceedings is not hidden from experts and especially from criminal



lawyers, as far as they have said that if it is an unknown country Take a step and be eager to know about individual rights and freedoms and the value and prestige that society places on them. It is enough to refer to the criminal procedure law of that country: the criminal procedure is a set of rules and regulations that are used to discover the crime, prosecute the accused and investigate them. It has been established and compiled for criminal lawsuits and the execution of judgments on the one hand and the rights of the accused on the other hand. The law of procedure of public and revolutionary courts in criminal matters approved in 1378 provides the same definition in Article 1 with a brief change.

### **Research Methodology**

In this research, which was compiled and organized as a library, using legal sources and laws Iran's criminal procedure regulations and comparison with some of the most important international documents regarding the rights and freedoms of the accused It has been attempted. Provisions of temporary detention should be considered for its amendment. Discussion and conclusion of the types and cases of temporary detention as the initial temporary detention due to conflict with the principle of innocence, freedom and human dignity is not considered a general rule and should be used as an example as a last resort, for this reason, today's global policy is to reduce the cases of detention. Temporary and reducing it to a minimum and removing cases of mandatory temporary detention have taken steps. In our country, the law on the principles of criminal trials, despite being very old, was more compatible with the standards of human rights and foreign policy, but looking at the legal enactments after the Islamic Revolution, especially the Law of Procedure of General Courts and the Revolution in Criminal Matters, approved in 1378, witnessed a sharp increase in directions and cases. Issuing a temporary arrest warrant.

Temporary detention order replaces other criminal security orders The first sentence of the arrest order due to the inability to introduce a guarantor, the bail order is more severe than the first two types of orders specified in Article 132 of the Criminal Code (K) and is one of the most common orders used in judicial courts due to its many advantages. . Kafalat in the word means intercession and guardianship derived from "Kafal" which means to undertake. However, so-called surety is a contract according to which the third party, who is called the guarantor, undertakes the required presence of the person (accused) before the judicial authorities until the end of the proceedings and the issuance of the judgment and the execution of the judgment in exchange for a certain amount (surety amount).

Bail is an amount determined by the judge and the guarantor undertakes to appear the accused in court when necessary, and the determination of the amount is subject to the criteria that will be .

**Came discussed in the following discussions:**

#### **The first paragraph is the nature of the surety agreement**

The guarantor order in the criminal procedure law is completed in two parts, the nature of both separate parts of the guarantor acceptance order and the guarantor acceptance order can be reviewed a.

The judicial authority first issues the appointment of a guarantor according to the law. This act is essentially a judicial act and at this stage, the judge, taking into account the proportionality criteria of the settlement, in an imperative and one-sided manner, initiates a judicial decision regarding the choice of the type of settlement and the amount of the security deposit. B. The contract of acceptance of surety. The agreement of acceptance of surety is the second part of the surety agreement, which is governed by the terms and conditions of the surety contract of the Civil Law, and it is a contractual matter and is the result of the agreement of the parties, and according to this agreement, the surety accepts the summons of the accused. introduce and in case of escape or disappearance of the accused and lack of access to him or the absence of the accused in the cases of summons before the judicial authorities, pay the security deposit. This commitment is a real contract between the judicial authority and the guarantor.



The second sentence of the order of arrest due to the inability to deposit bail is another type of provision mentioned in Article 132 of the Criminal Code, which is the order to obtain bail, either in cash or bank guarantee or movable and immovable property. This appointment is more reliable than the other mentioned appointments and at the same time it can provide the cause of the release of the accused. Because the wealth and possessions of people should not be effective in the judicial situation of criminals, rich people can secure their freedom under the shelter of it and the accused are deprived of it, and for this reason, in the criminal authorities of some advanced countries of the world, the issuance of bail is not very prosperous. Except in very exceptional cases, bail will not be issued.

Two collaterals" in the word means what is trusted and is derived from "wanq" which means confidence. There is no definition of bail in our legal books and only in paragraph 4 of Article 132 of the Supreme Court It can be mentioned as a deposit. In the definition of bail, Dr. Langroudi says that bail means all or part of the property of the obligor that is bound by the law to guarantee the performance of obligations through a contract with court decisions. It is also a financial bond that is ordered by a judicial authority to ensure the presence of a person for trial and execution of the sentence. It is collected from the defendant or a third party, and in case of violation, it will be confiscated in favor of the government and returned to him, but if we want to provide a complete and simple definition of bail, we can say that bail is one of the types of criminal security in which the judicial authority has access to to the accused and finally the execution of the sentence, it is decided that the accused, in exchange for his freedom, must provide a certain amount of cash or a bank guarantee or movable and immovable property, and the collateral may belong to the accused or a third party. Guarantee of execution of appointment The guarantee of bail execution can be checked in two parts. A- Guarantee of execution of the defendant's inability to deposit bail, which according to Article 130 of the Criminal Code, in case of the defendant's inability to deposit, the accused will be arrested. Of course, the accused may immediately present the money for bail, but the confiscation of the money will take a long time. For example, when the presented property is outside the jurisdiction of the issuing court, in this case, the seizure of the property is done by sending a judicial representative. During this period, the accused will be detained until the bail acceptance order is issued.

B. Guarantee of implementation of the surety's reluctance to present the accused in case of failure of the accused to appear in court when necessary and failure to prove a justified excuse, the pledgee is warned to present the accused within twenty days, and in case of expiration of the period and refusal of the surety and the pledge is deposited It will be recorded by the order of the head of the judiciary. Of course, the way of delivering the notice to the surety must be in the form of real service, but if it is proven that the surety has not declared his real address or has left the place for the purpose of not being able to make real service, the legal service of the notice will be sufficient to confiscate the security. Article 141 and 140 K.A.D.K) it is necessary to remember that it is forbidden to obtain security by the judicial officers, but if the judicial officers have confiscated money from the accused, in case of violation, it is not possible to confiscate the confiscated property in the police station. Because Article 140 of the Criminal Code deals with the cases where the bailed property has been confiscated by the judicial authority and by observing the special formalities of the order to accept the bail, etc. Legal conditions for issuing a temporary detention order The first topic of the rules for obtaining criminal security, considering that the principle is on the freedom and freedom of people, and criminal security orders, however, create restrictions for people, so their use is standard, and in issuing these orders, one should be satisfied with certainty. For this reason, in order to protect the rights and freedoms of individuals, Moqtan has limited the powers of the judicial authority in choosing the type of punishment, of which the order of temporary detention is one of them, and has bound him to comply with the rules and criteria. is called "proportionate supply agreement". Article 134 of the Civil Code).



We have divided the criteria that the judicial authority must follow in choosing the appropriate provision, which includes the order of temporary detention, into two categories, special criteria and general criteria.

The first statement: The special cases of this category of cases are related to crimes for which the judge foresees a specific provision and if other conditions are met, the judge is obliged to implement the same provision and has the right to issue another provision or even

It does not make a change in the relevant supply.

In this regard, the judges first identify the subject of the appointment and confirm their identity

There is another type of provision that the legislator has specified in a particular case, which the judge cannot .

Other than that, issue another supply order.

A. The index of the provision of criminal security is obtained only from the accused person by verifying his identity through an identification card or other identity documents. Regarding the provision of surety and bail, it is also the accused who introduces another person as a surety or surety, or may be in In the case of the accused whose identity is not verified, the fugitive charge will be taken and ultimately lead to his arrest, after the execution of the sentence, his real identity will not be confirmed in the criminal records. (1) The judicial authority takes steps to issue a warrant if it finds the occurrence of the crime and its attribution to the accused and his criminal liability to be certain, otherwise he must refuse to issue a warrant, for example, because the family has no criminal liability, obtaining warrant from him is not justified and It does not have a legal document. It is necessary to mention that this is important in The general rules for issuing a criminal security order are also taken into consideration.

B. Special provision order In some cases, the legislator has considered special criteria for obtaining the provision and has determined a certain type or amount of provision, in this case those special criteria must also be taken into account, for example, the amount of the security deposit or the security deposit in each It should not be less than the damages demanded by the private claimant, so when the private claimant demands a certain amount of damages, the investigation judge cannot determine the amount of the security deposit or bail amount less than that. Sometimes the legislator specifies the type and amount of supply precisely.

Simple: 134, the trustee must be proportionate to the importance of the crime, the severity of the punishment, the reasons and motivations, the possibility of the accused fleeing and the effects of the crime, the history of the accused, the state of his temper, and his dignity.

It should be noted that in such cases, the judicial authority should not need to provide reasons that make the arrest of the accused necessary, and the mere reference to legal documents indicates the legality of the issued order. issue temporary arrest, such as in the crimes of bribery and embezzlement, for which the accused are detained for one month, as well as the temporary arrest of the accused of intentional homicide for 6 days for trial: also, for the sake of understanding, it can be issued from Article 18 of the Law on Issuing Approved Checks 1372 was also mentioned, which of course has been modified and does not contain Arabs. Article 18 stipulated that if the amount of the check is not secured in the bank, the investigating authority is obliged to provide a cash guarantee with a bank guarantee equivalent to the date amount.

Cases that may be in conflict with the appropriateness of the orders are cases in which a mandatory detention order should be issued

To collect the check or part of it that is the subject of the complaint from the accused.

The second sentence is the general rules of this category of rules related to all crimes and should be considered for all defendants by following the rules.



In this regard, Article 134 of the Duck Law says that "provision" should be proportionate to the seriousness of the crime, the severity of the punishment, the reasons for the accusation, the possibility of the accused fleeing, the destruction of the effects of the crime, or the criminal record, his temperament, age, and dignity. It should be noted that the greater the importance of the crime, the more intense and heavy the punishment should be. The importance of the crime should not be equated with the amount of the punishment, because the legislator has separated the two and the severity of the punishment has been separated from the importance of the crime. It is necessary to remember that the recognition of these criteria is left to the judges of the court and these factors are not taken into account individually, but all factors must be taken into account.

Checked these criteria in five paragraphs. A- The importance of the crime and the severity of the punishment, there is no special criterion and criterion for distinguishing between serious and important. In the former General Penal Code, crimes were classified into misdemeanors and misdemeanors, and crimes and misdemeanors can be considered important crimes, although this rule does not apply to misdemeanor crimes. From the punishments under title-1, about 3-2, retribution - diat - punishments - deterrent punishments, but this classification cannot be an accurate criterion to determine the importance of the crime in the order mentioned in the law.

be "In addition, the degree of importance of the crime depends on its impact on the society, its dangerousness, the severity of the punishment for which it is determined, the extent of its impact in the place and time of the murder of an ordinary citizen and the murder of a popular scientist, writer, or actress, in terms of the amount of punishment, both are the same. It is murder and the punishment for both is the same, that is, the severity of the punishment, but the importance of these two crimes is not the same from the social point of view, and the severity of their punishment is different, the judge must take these differences into account and proportionally

In a religious society, whose governance is based on belief, insulting religious holy things, such as insulting the Prophet, is a very important crime, while in Lanik society, it is assumed that it is not considered a crime, robbery, kidnapping, armed robbery, forgery, espionage, rape. Rape, murder, each of them is considered important compared to other crimes due to reasons, and this importance should be taken into consideration in order to obtain provision. These cases, where time and place are involved in the importance of leather, have been considered by the legislator and have increased the punishment, or committing honor crimes on days such as Ashura Tasua, Eid al-Fitr, etc. It gives weight because the public sentiments in the provision of crime with Seyyed Jalaluddin Madani, previous, p. 242.

times Article 299 of the Islamic Penal Code, the deposit for murder, if both the injury and the fart are in one of the four forbidden months) (Rajaba in the rule of Ninjah Muharram) or in the Great Pyramid of Mecca, in addition to one of the six cases mentioned in Article 297, as aggravation of the punishment, it should be one third of each He has chosen to be added, and other opportunities, even though they are blessed, do not have this ruling In any case, the law of the crime of compulsory imprisonment should not be less than the damages requested by the private plaintiff, which is taken from Article 132 of the Civil Procedure Law. According to a theory of the Legal Department of the Judiciary, if the punishment is a dowry and the guarantee is to obtain a guarantor or bail, the amount of the surety or guarantor's guarantee should not be set higher than the price of the dowry, because such provision will be more severe than the punishment and disproportionate also for unintentional murder. It is not possible to issue bail to more than a complete person. Another rule that is considered in issuing a proportional supply order. The severity of the punishment. Some punishments are inherently such that it is easy to know their severity and weakness, for example, the death penalty is more severe than and imprisonment for 20 years is more severe than the punishment of 15 years, also a fine of one hundred thousand tomans is more severe than a fine of fifty thousand tomans. After all, a hundred lashes are more severe than thirty lashes. But in some cases, it is not easy to know the severity and weakness of the punishments, for example, 6 months imprisonment is a more severe punishment with a fine of fifty thousand tomans, it is not easy to recognize and it depends on the person.





The top is damaged. Article 136 of the Law of Procedure of General and Revolutionary Courts in Criminal Matters Especially considering the damages caused by the perpetrator of the poems: the bail amount or the guarantee amount or the amount The accused may be sentenced to 6 months imprisonment for one accused and to the same shrine with the same sentence for the other accused

The quality of the punishment is fifty thousand tomans fine, as we know in the General Penal Law approved on January 23, 1304, in Article 7, the crimes were divided into four types according to the severity and weakness of the crimes: a major misdemeanor, a minor misdemeanor, and contrary to this division until the law is approved. The general punishment approved on June 7, 1352 continued. Later, in Article 7, crimes were divided into three types in terms of the severity and weakness of the punishment, misdemeanor crimes and violations. This division continued until the approval of the Islamic Punishment Law approved in 1362. Article 7 of this law divided the punishment into four categories, retribution and punishment, and finally, the Islamic Penal Code approved in 1370 divided punishment into five categories, punishment, retribution, and deterrent punishment. There is a division of crimes in terms of the severity and weakness of the punishments in the current law. It does not exist and the phrase "severity of the punishment contained in Article 134 of the Criminal Procedure Law) is only found in the amount of the punishment and does not provide a specific criterion in distinguishing between severe and weak punishment in terms of its type. From severe to mild, he had enumerated the crime of misdemeanor and mentioned its examples, but in the current law, it cannot be said that one of the punishments of Hudud and Qisas of Diy, ta'zir or deterrence is more severe or true than the other. It seems that it is milder than the first three types, the death penalty and life imprisonment are foreseen, and regarding the punishment that seems to be severe, there are also 75 lashes, also it cannot be said that the punishment of whipping is lighter than the fine and the fine is lighter. Is it because of feelings or vice versa, because for some people the punishment of flogging may be mild, for other people it may be a fine or imprisonment, if in response to the question whether the punishment of imprisonment is more severe than the punishment of flogging or not? Supreme Judicial Council in history Hadith's punishments were: 1- execution - 2- additional punishment with hard labor - 3- temporary imprisonment with hard labor - unmarried imprisonment - 5- exile - 6- deprivation of social rights The most important punishments were: 1. Punishment for more than one month - 2. Staying at a certain point or points or banning from staying at a point with certain points - Deprivation of some social rights 4. Compensation if it is the main punishment. The punishment that was intended for Jadmeh Koch was as follows - 1 punishment of one day to one month 2 compensation from 201 rials to 500 riyals The punishment for the violation was as follows: 1. Imprisonment from two days to 10 days. 2. Compensation of 11 rials. The main punishments for the crime were as follows. 2nd degree felony From you year 10 years The main punishments for misdemeanors were as follows - 1. Presumption of war from 61 days to 3 years - 2. Fine from 5001 rials and above The penalty for violation was a fine from 200 questions to 5000 Rials 6/29/1963 gave this answer. In the Islamic Penal Laws, there is no mention of leniency with the severe punishment of imprisonment from whipping and vice versa. It depends on the social, moral, and family status of the criminal. Whoever he considers to be more suitable for his condition and milder, he may be considered another type of leniency. It seems that it is necessary to separately count the crimes in terms of severity and weakness as a criterion and criterion for issuing security measures in accordance with the severity of crimes and punishments, because according to the current laws, the severity of punishment has no legal effect in practice and cannot be used as a criterion for issuing a security order. . b Reasons and causes of accusation.

Determining the value of the evidence and means of proving the crime is the responsibility of the judicial authority according to the relevant laws and regulations, and the more and stronger the evidence and evidence against the accused, the stronger the evidence should be. Because on the one hand, the probability of proving the crime increases, and as a result, there will be a possibility of destroying the evidence of the crime by the accused or others. Because in the case of a crime for which there are strong reasons and reasons for the accusation, and he has confessed to a case where the reasons are very weak and he does not accept the accusation, it is not possible to have the same opinion and get the same type of support. It is obvious that if there are enough reasons and evidence



against him, the possibility of his conviction will increase and the obtaining of security will be intensified. The reasons can be divided into two categories:

1- The legal reasons which include the reasons mentioned in different articles of the criminal laws and they are: the confession of the testimony of witnesses, the knowledge of the judge. He votes against it, and in other words, the confession is relevant, but in qualitative matters, it is not enough to confess the reason for issuing a verdict, but the judge accepts it with more research and along with other evidences and evidences, and when they are, he makes a ruling that is compatible with the reality. In other words, confession in criminal matters has a procedure in cases where a confession is made, but a decision cannot be issued in the case of *Madhiya*, it must be obtained in relation to the confession of the accused. The testimony of witnesses has also been mentioned as evidence in various crimes, what should be considered in this regard is that the testimony is less than the quorum, and the judge must issue a warrant in the same proportion. In the case of murder, the legislator has made it mandatory to issue a temporary arrest warrant. According to Article 105 of the Islamic Penal Code, the judge's knowledge is based on evidence and the judge who issues a verdict based on his own knowledge also issues a warrant according to his opinion and judgment. It is special

2 Spatial reasons that include Emirates and evidence, local investigations and examinations, and experts' opinions, such as forensic medical opinions about sexual assaults or traffic technical experts' opinions in traffic accidents, etc., as well as the tools used in physical inspection or inspection The house or any other place belonging to the accused is discovered as a reason and the reason can be one of the cases that the judge must issue a security order according to them. Although the complaint of the plaintiff seems to be effective in starting the prosecution and the amount of the punishment or the closure of the criminal case. It is in the issuing of an order, and it is not possible to act against the rules of the order on the credit of the plaintiff or private claimant, and it seems that Article 36 of the Criminal Procedure Law approved in 1378, which contains verses on the rights of the people, the permission to arrest the accused is subject to the request of the plaintiff, against the general principles of rights and authority. It is appropriate for the judge to choose the appropriate solution and to issue the security. If the court judge issues a temporary arrest order to the accused without sufficient reasons and evidence, it is considered a violation for him.

Answers and questions from the appeals commission and legal advisers of the Supreme Space Council, quoted by the elderly Najaf Jari in his master's thesis under the title of the review of criminal security orders, 147. In this regard, the decision of the Supreme Disciplinary Court of Judges is referred to (quoted from the book *Police supervision in the judicial system*, written by Mr. Ahmad Karimzadeh) No. 89 and 88 dated 24/5/75 according to articles 130, 60, 63 and 162 of this criminal proceedings of the prosecutor's office The supply order must be proportional to the possibility of the defendant's escape. Obviously, although the possibility of the defendant's escape is higher. The security issued must be more severe, here the legislator used the word "probability" and due to its generality, the possibility of escape can be assumed for any accused. Temperament and age of the accused, personal character and social status and previous records of the accused regarding the observance of this rule, the judge, while paying attention to the aforementioned criteria and the possibility of escape, must determine which accused are exposed and which accused or affiliations with their family or religion with their group. They never allow themselves to think about the possibility of escape or the lack of it, or for example, in the case of important crimes such as intentional murder, which is punishable by revenge, or adultery and violent adultery, which are punishable by stoning or murder. As well as other crimes that are punishable by death or life imprisonment, if we issue bail even with large sums of money, there is a possibility of escape and the most appropriate provision in this regard.

### **C. The possibility of the accused fleeing**

The detention is temporary. D. Destruction of crime traces The importance of evidence and evidence of crime in a fair trial and establishing the truth is not hidden from anyone, and of course it is clear that this factor of erasure of evidence (crime) is brought up when there are evidence and evidence of the crime and when the accused He left no traces or there are no traces of the crime at all,



considering this factor is ruled out. In addition, the only order that prevents the accused from erasing the traces of the crime is temporary arrest. Because this goal can be achieved by imprisoning the accused. found, therefore, issuing a security order other than temporary arrest does not seem correct in order to preserve the effects of the crime. It should be mentioned that in French law, the investigator can use judicial control orders and limit and prohibit the movement of the accused to the places where the crime took place. help preserve them.

E- History of the person, state of mind, age and reputation of the accused, the past records of the accused should be checked if the accused is a professional criminal and has repeatedly committed crimes. The supply agreement should have more power. It seems that there are problems with involving the history of the accused in obtaining criminal protection: firstly, it seems that even though a person has committed crimes in the past and has a criminal history, but because according to the law, every accused is presumed innocent until his crime is proven in a competent court. It is not fair to detain him in terms of his history, but in any case, the investigation and judgment should be issued completely impartially and away from any previous prejudice, and this impartiality should also be observed in the issuance of the warrant. Second, it is difficult to discover the records of the accused in a short period of time after the accusation and the involvement of the records in the type and amount of obtaining work, and even in some cases it can be said that it is not possible unless a networked computer system for identity recognition is implemented and it can be done with pressure. Pressing a few buttons will reveal the identity and records of the accused and the people who are sentenced to punishments have a judicial record according to Article 1 of the Judicial Register Regulations approved on May 19, 1321. 17

A public official who issued an arrest warrant before conducting sufficient investigations and gathering evidence, which was not proportionate to the charge against him and did not deal with his counter-complaint, has committed a violation, and the action of the deputy prosecutor in issuing an arrest warrant before gathering evidence is considered a violation of the regulations. . Decree No. 30/6/1372107 of the Supreme Disciplinary Court of the Judges of the Prosecutor of the Islamic Revolution Prosecutor's Office, which contains the wording in the party offices, considered the complaint of one of the employees of the Revolution Prosecutor's Office as a criminal case, and prosecuted the accused without sufficient reason and without a clear understanding of the charge and the reason for it.

Arrested and acted outside of his authority, the accused has been violated. Article 1: In the center of each city, a space registry office is established under the supervision of the prosecutor. In this office, the extract of Malkor's affairs in Article 4 regarding those whose birth certificates were issued in that city should be collected. And it should be kept according to the material in the spatial register, the following matters should be extracted It is necessary to emphasize that with the ruling system and through an inquiry, it is sufficient and more, answering the inquiry takes at least two or three days, and since the judge is obliged to issue a warrant after the charge is explained, the judicial record of the accused should be taken into account in the time interval after the charge is explained. Apparently it is not possible and it is practically not possible. The state of physical and mental health is also directly related to the issuance of a security order. Objectively, the more perfect the accused is in physical health, the more difficult it will be to access him, and the same is the case with age status For example, access to children and the elderly is much easier than access to delinquent youth The dignity of the accused and his personal and social position are very important. Naturally, a person who has achieved a high position in society after years of effort in cultural, scientific, and political fields will not have the same status as a person who is at a lower level of society when committing a similar crime. In French law, the code and temperament of the accused have a greater impact on the quality of issuing a judicial control order. For example, according to Article 138, Clause 10-2, in the interest of the accused, the investigator can impose on the accused a medical test of preventive treatments, especially to get rid of drug addiction. Also, regarding the age status, the French legislator has given special privileges to them in obtaining support from children, which is an example in the rights Iran is also observed.





Of course, in articles 204 and 208 of the draft Ark, the issuance of a judicial supervision order has been found.

It seems that the provisions of the Ike draft to support the principle of innocence and the need to respect the rights of citizens, among others People's freedom has taken a step. In this regard, the note in Article 193 of the said draft is the duty of the judicial authority to issue The order of criminal protection has been canceled in special laws, so the conflict of Article 134 of the Criminal Procedure Law and cases Mandatory detention has been abolished in special laws. In other words, on the other hand, the judge is required to comply The appropriateness criteria for issuing orders included the arrest order, and the other party was obliged to issue an order to ensure the arrest

had caused special and miscellaneous laws. Also, in the note of Article 194 of the draft, the inspectors are required to clearly state the reason for the incompatibility of other orders in case of issuing an arrest warrant, otherwise, according to the guarantee of the implementation of the provision (Note of Article 208 of the draft of A.D.K.), they are subject to criminal prosecution and conviction. 4 and above. The last mentioned article has explicitly added the personality and gender of the accused in issuing a supply order according to the previous criteria in Article 134 of A.D.C.

According to international documents, as previously presented, alternative methods should be used as much as possible Temporary detention should be used especially for accused juveniles, otherwise it should be used as a last resort and in cases of necessity of investigation or protective measures and only in the directions and according to the rules of procedure and according to the law. Using international and regional documents, some of which are mentioned below, criteria must be met for issuing a temporary arrest warrant, including the presence of reasonable grounds for committing a crime, especially serious crimes with specific punishment, and the possibility of the accused fleeing (1) Congress Eighth, it foresees the prevention of crime and the reform of the treatment of the deprived and the type of reasonable reasons for committing a crime by the accused or the risk of arrest, and deciding to use an arrest warrant before The trial depends on the circumstances of the case, especially the nature and severity of the crime, the strength of the evidence, and the possible punishment individual and social behavior. Also, in paragraph (d) 2, to comply with the proportionality of pre-trial detention crime and possible punishment has been emphasized. Clause C of Article 5 of the European Convention on Human Rights stipulates the arrest or detention of a person for Presence ?????? And the competent legal authority should be based on objective reasonable suspicion of committing a crime by him Be Criminal law should be briefly stated: "Definitive and enforceable rulings of conviction for misdemeanor and felony punishments and the date of the beginning of the punishment and its severity, and the rulings that resulted in the retrial of the convictions...

Second (a) In the Law of Procedure of Public Courts and Revolution in Criminal Matters 1378, in this law, the authority to issue a temporary arrest order has been granted to the following authorities. 1- The court judge according to Article 132 of the Criminal Code and its note, the court judge is considered the first authority to issue a temporary arrest order and includes the head of the branch and substitute judges of the court. 2. The investigating judge, whose range of authority is very limited and without referral and delegation of authority to the court, does not have the right to take any judicial action, but in case of delegation of authority, he has the authority to issue a temporary arrest order. (Article 24 of the same law, 3 of the head of the jurisdiction and his deputy, who, according to the requirements of the judicial position, provide for the administrative position (Article 33 of the same law, the judges of the courts of appeals, who, according to Article 256 of the above law, whenever an appeal is requested from the issued judgment, and from Security has not been obtained, or it is not proportionate to the crime and damage and the language of the private plaintiff. According to the existing reasons, the Court of Appeal can obtain proportional security, which is one of the types of security for temporary detention. And the revolution of 1373 approved in 1381 in the clause was listed as follows by Ashouri, Dr. Mohammad, Beilin, p. 75



Article 5 of the draft principles related to non-describing of arbitrary imprisonment and deportation approved by the 27th Human Rights Summit also states that there are sufficient and legitimate reasons for committing a serious crime, provided that it is subject to the legal punishment of deprivation of liberty and there is also a fear of resisting prosecution. It has been considered necessary 15 using rule 19 of the set of rules of the minimum standard of the United Nations for the administration of juvenile justice (the Baching Rules) approved on November 29, 1985. Appealing to any institution for the purpose of deprivation of liberty should be the last resort and in the shortest possible time, subject to the absence of There is no other appropriate response. (5) Rule 17 of the above-mentioned collection also deems compliance with the proportionality of the response to the severity and conditions of the offender and the needs of the juvenile and deems it justified to deprive them of their freedom only if they are accused of committing a serious offense that includes resorting to violence against others. . 2 Speeches of authorities competent to issue a temporary detention order

Article 3 of the same law reads as follows. The head investigator or at the request of the prosecutor can, at all stages, conduct investigations on the materials prescribed in the Law of Procedure of Public Courts and the Revolution in Criminal Matters approved on 28 September 1378 by the Judicial and Legal Commission of the Islamic Council of the Islamic Parliament, ordering the arrest of the accused, as well as the order to obtain security and conversion of security. Also, in paragraph "N" of Article 3 of the said law, it is stated that all the decisions of the prosecutor must be approved by the prosecutor, and in case of disagreement between the prosecutor and the prosecutor, the opinion of the prosecutor will be followed. Accordingly, according to the aforementioned regulations, the competent authorities can issue criminal warrants and temporary arrest warrants.

The investigator, as noted in the paragraph of the single article, the investigator can perform this action by receiving the prosecutor's request. Tanya, the cases of obtaining security and the cases of issuing orders for temporary detention, mandatory and voluntary temporary detention have been referred to the Criminal Procedure Law 1378 and its provisions are valid in this part. Thirdly: It is possible to obtain support by the investigator in all stages of the preliminary investigation. Fourthly: Because according to paragraph "f" of article 3 of this law, the legislator, by mentioning the phrase "the preliminary investigation of all crimes is the responsibility of the investigator...", has placed the principle on the competence of the investigator, for this reason, in paragraph c of this law, the quality of obtaining supplies and different stages It was explained by the investigator.

In paragraph "f" of article 3 of the mentioned law, preliminary investigation of all crimes is the responsibility of the investigator. In crimes that are not under the jurisdiction of the criminal court of the province. The prosecutor also has all the duties and powers that are prescribed for the investigator. According to paragraph H of the aforementioned law, the investigator has the authority to issue a temporary arrest order, and according to paragraph "f" of the same law, the prosecutor will also have the authority to issue this order. Of course, except for crimes that are under the jurisdiction of the criminal court of the province. It is useful to know that the crimes that are dealt with by the criminal court of the province are the crimes that are punishable by death, stoning, or life imprisonment.

as well as press and political crimes 3) The authority of the assistant prosecutor to issue a temporary arrest order is specified in paragraph "g" of Article 3 of the mentioned law by using the phrase "All the appointments of the assistant prosecutor must be with the consent of the prosecutor... but it is necessary to remember First of all, although the wording of all orders is applicable, the assistant prosecutor does not have the authority to hear and issue orders regarding crimes under the jurisdiction of the provincial criminal court. Secondly: Issuing an order from the assistant district attorney is not enough and must be approved and approved by the prosecutor, and in case of disagreement, the prosecutor will be required to obey.

Thirdly: the scope of jurisdiction of prosecutors, who are representatives of the prosecutor, never exceeds the scope of the prosecutor's jurisdiction will not be.



Collection ??? which exists in the United Nations documents to protect the freedom of persons from nationalities and dangerous situations, they are trying to minimize the situations of deprivation of freedom and make these situations humane, by examining the Criminal Code and other relevant laws. They should issue a temporary arrest warrant for him. There is a lot, for example, in the Supreme Court, the Assistant Prosecutor and various courts have the authority to issue temporary detention orders, and it is considered that this issue is in conflict with the criminal policy of the nations regarding the temporary detention of Qadiri. Because the multiplicity of competent authorities and authorities to temporarily detain people in a way violates the important and basic principle of freedom of people.

It seems that in the draft of A.D.K., the competent authorities to issue a temporary arrest order have been reduced, which indicates the legislator's attempt to align as much as possible with the provisions of the international master in this regard. The third disbeliever is the necessity of justifying the order of temporary detention. Another point that should be considered in the order of temporary detention is the necessity of justifying this order. First of all, according to Article 32 of the Constitution of the Islamic Republic, in case of arrest, the subject of the accusation must be immediately notified and explained to the person in writing with the reasons. Second: Article 37 of Qad. which stipulates that all temporary arrest orders must be justified and legal documents and their reasons and the defendant's right to protest must be mentioned in the text of the order. According to this article, when issuing an arrest warrant, the judicial authority is obliged to justify the order by mentioning things such as the reason for imprisoning the accused, the legal article on the basis of which the accused is arrested, the reasons against the accused, such as the discovery of instruments of crime in the accused's possession, confession and testimony. witnesses and...) can object to the appointment and its deadline. One of the benefits of fully mentioning the reasons and documents in the text of the order is to assist the defendant for the quality of the objection plan.

The appointment and facilitation of handling the objection of the accused in the competent authorities is, of course, surrender in most countries today.

Copies of the order are required to be copied to the accused upon his request, but in the regulations of our country, it is mandatory to keep silent. Held and having the right to protest the order of temporary detention requires that the accused have a copy of the order have the issued. In the draft of Ardak, Article (197) also foresees the necessity of justifying the arrest order by mentioning the legal document and its reasons in the text of the order. Also, in international documents, attention has been paid to this matter, paragraph 2, article 9 of the International Covenant on Civil and Political Rights stipulates that "everyone who is arrested must be informed of the reasons for the arrest at the time of arrest... The fourth sentence is the duration of temporary detention and the quality of its extension." It In the declarations of human rights, temporary detention is not mentioned for a specific period, however, it is recommended to avoid its prolongation. Clause 3, Article 9 of the International Covenant on Civil and Political Rights says: "Anyone arrested or detained on criminal charges; He should be brought before the judge or any other authority who is allowed to exercise spatial powers as soon as possible, and he should be released within a reasonable period of time. The principle of limited temporary detention and its specificity was governed in Scandinavian countries, but in other countries European countries also penetrated and the French have also brought it into the criminal procedure.

This is the limit of time that can be judicially controlled on the arrest of the accused and his temporary detention. It has become one of the important principles of observing human rights in such criminal proceedings. Changing the title of preventive detention to temporary detention of the account of the French law of July 1970 also emphasized Moffat. It is being.

When the period of detention is not stipulated in the law, the accused who is imprisoned with a temporary detention order. In practice, due to the high number of cases or due to the need to complete the investigation, he remains in prison for a long time, and the devastating and irreparable effects of this will be revealed, especially when a restraining order or acquittal is issued. In this



sense, the legislators have limited the duration of precautionary detention according to various methods, and the effort is to shorten this period as much as possible" in the first paragraph of Article 14 of the draft principles related to non-arbitrary detention, imprisonment and deportation in the 27th session of the Human Rights Commission. (31) August (1970) has come. The detention period to be specified in the order shall not exceed four weeks. If it is deemed necessary to continue the detention of the suspect or accused of committing a crime after the expiration of the deadline specified in the arrest order, the judge or another official who is legally competent to perform judicial duties and performs this part of the formalities can, according to the request and if valid reason to extend the seizure for a new period which will be a maximum of four weeks, no further extension will be possible after that, except for important reasons and only according to the written order of the superior judicial authority, no extension is acceptable unless the person who has been detained has the possibility to know about have it In all cases, it should be confiscated as soon as the reasons that led to the seizure no longer exist be fixed The period during which a suspect or accused person can be detained is not less than half the minimum in any case that the law has provided for the accused crime. It should not be violated. The second topic, how to control and object to the order of temporary detention, the first speech of the objection to the order of temporary detention and the authority to deal with it (a) in the Law of Procedure of General Courts and the Revolution in Criminal Matters 1378, the right of the accused to object to the order of temporary detention in the laws, the past is always documented. It doesn't have a law, but it is in the law. 1378 Fortunately, this right is known to the accused. According to articles 33 and 37 of the mentioned law, all orders of temporary detention can be challenged in the provincial court of appeals. The duration of this appeal is 10 days, considering that the legislator calculated the date of issuance of the order, but as a rule, the criterion is the calculation of the date of notification of the order to the party. . In addition, according to Article 147 of the same law, the judge is obliged to explain the possibility of protesting the order of temporary detention in the text of the order and in an appropriate manner. After issuance, the arrest order must be approved by the head of the local jurisdiction or his deputy, with the exception of the orders issued by the head of the jurisdiction with his deputy, with the description, failure to approve the order by the head of the jurisdiction or his deputy does not have any enforcement guarantee. Because the legislator has assumed the form of approval of the order by the above authorities, and there is no prison sentence regarding the non-approval of the order of arrest.

He has not stated anything, but in any case, according to the legal clarity of the order of temporary detention, it should be discussed with the head of the jurisdiction and his deputy, and refusal to do this will be considered a disciplinary violation. It should be noted that the re-arrest order, which may be issued once every month, must be approved by the head of the jurisdiction or his deputy, and it will be open to appeal in the appeal courts of the province within 10 days after notification. This article is on the 33rd of the same law, which says that if the judge deems it necessary to continue the arrest of the accused, he will proceed in the order mentioned. Is. It is that the legislator has not given any right to protest for the accused who are arrested due to the issuance of other security orders, and this causes violation of the rights of the accused who have committed less serious crimes than the crimes under arrest and a milder security order has been issued for them, but this order leads to They have been arrested. Perhaps the reason for the legislator's silence is that in this case, Moqtan assumed the fault and shortcoming of the accused, who was not able to pay and was sent to prison. Anyway, it is appropriate that the legislator has given the right of the accused to protest the order. specify (b) in the single article of the law amending the law on the establishment of public and revolutionary courts (1373) approved in 1381.

Paragraph i of Article 3 of the above-mentioned law states that "whenever in the crimes subject to the jurisdiction of the provincial criminal court, up to 4 months and in other crimes up to 2 months, due to the issuance of a security order, the accused has been in custody and his accusation case leads to a final decision in the prosecutor's office." has not been The authority issuing the order is obliged to cancel or reduce the supply order of the accused unless there are legal reasons or justified reasons for maintaining the issued supply order. within 10 days from the date of notification to him, as the



case may be, to file a complaint with the local revolution court. In this legal article, the legislator mentioned the quality of the accused's objection to the temporary detention order without first giving the accused the right to protest against the first order of temporary detention issued (that is, the order that is issued after explaining the possibility) and its duration is 10 days after notification. And the authority has considered it according to the case of the court or the revolution of the place. It is obvious that when the order to maintain (renewal) the order of temporary detention is open to appeal, the order of temporary arrest issued after the explanation of the charges will also be open to the same quality.

An important point that can be deduced from Article 3 of the above-mentioned law is that in this article, due to its clarity and application, the legislator has considered all types of criminal security orders, including temporary detention and other And therefore, provision agreements other than temporary arrest also lead to the arrest of the accused. According to the provisions of this paragraph, they can object. The second statement of the authority to deal with the objection of the accused's right to protest is usually dealt with in higher judicial authorities, especially in the court, and in an urgent and extraordinary time, and the accused remains in prison until the decision of that authority..... In most countries, a special judicial authority or a special court have the right to deal with the objection; For example, in Switzerland and France, the prosecution board and in Italy the special court of freedom are the desired reference. Article 10 of the Universal Declaration of Human Rights acknowledges that everyone has the right to be heard by an independent and impartial court with complete equality. Clause 4 of the International Covenant on Civil and Political Rights: It says that anyone deprived of liberty as a result of arrest has the right to complain to the court in order for the court to rule without delay on the legality of the arrest and if it is illegal being arrested, issue a warrant for his release.

In paragraph 4 of Article 5 of the European Declaration of Human Rights, the trial of a detained person is possible if The court must immediately determine the legality of his detention and if the detention was illegal. free immediately be made Abitin Man 122

Also, according to paragraph 1 of article 16 of the plan of principles related to non-arbitrary detention and deportation in the 27th session of the Human Rights Commission on August 31, 1970, the detained person appears before the competent authority to issue an arrest warrant or at any stage after that. He must have the possibility of obtaining temporary release from the proceedings at his own request with the request of his advisor or his family or the head of the authorities without conditions or subject to the provision of bail or other conditions; In case of request for temporary release, this decision can be investigated immediately or any other immediate objection. Also, according to Article 17 of this plan, any person detained or imprisoned, as soon as he was arrested; He should be aware of all his rights and duties in such a way that he can use those rights to his advantage

The second discussion of cases of revocation of temporary detention order (a) in the Code of Procedure of Public and Revolutionary Courts in Criminal Matters 1378-1- in case the accused objects to the temporary detention order and cancels it in the appeals court, in which case the trial court while releasing the accused Another suitable supply will be obtained. 2- As stated in articles 33 and 37 of the above-mentioned law, the judge is obliged to review the case after issuing a temporary arrest order after the expiration of one month, and if he deems it necessary to continue the arrest of the accused. renew the order of temporary detention, but if it is determined that the causes and circumstances on the basis of which the order of temporary detention was issued have been resolved, the issued order should be canceled and, if necessary, a lighter provision should be obtained. - In case of issuing an order prohibiting the prosecution, suspending the prosecution of the accused Qar, suspending the execution of the sentence and exempting him from punishment, or closing the case in any quality, the order of temporary detention is canceled and he must be released immediately.





4 In the case of intentional homicide, if the accused has been arrested according to Clause E of Article 32, the accused must be released after 6 days if sufficient evidence is not provided. Prolonging the period of temporary detention and reaching the minimum legal punishment for the committed act

Disagreement of the court with the order of temporary detention issued by the investigating judge - 7- Issuing a sentence of punishment other than imprisonment such as whipping and fine and execution of the sentence. b) In the single article of the law amending the law on the establishment of public and revolutionary courts (1373), approved in 1381, according to clauses c and i of article 3 of the above-mentioned law, the cases of cancellation are clear.

1- The prosecutor's disapproval of the temporary arrest order issued by the investigator is the investigation of the case and if there are any reasons for the arrest. He should issue the issued order or a lighter supply order. 3. When the accused finds that the reason for his arrest is resolved, he can ask the investigator to remove his arrest. In this case, the investigator is obliged to send his opinion to the prosecutor within 10 days to make a decision. If the investigator agrees with the order and subsequently announces the agreement of the prosecutor, the order will be canceled and the accused will be released from prison. or revolution (in general terms

2- In the event that the accused has been detained for up to 4 months in the crimes subject to the jurisdiction of the provincial criminal court, and up to 2 months in other crimes, and the case has not led to a final decision, the issuing authority is obliged to

4 Accused's objection to the order of temporary detention and its investigation and violation by the court (item)

5- Issuance of an order prohibiting the prosecution of the prosecution of Brandt Menhm. Chapter 3 Warranties of Arrested Accused and Substitute Provisions for Temporary Arrest Lawmakers of different countries, including Iran's criminal legislature, although their criminal provisions have inevitably provided for arrest warrants, legal measures and guarantees have been taken in order to protect the rights of the arrested accused, and on the other hand, Also, due to its negative and criminalizing effects on the accused, it made the legislators to limit arrests as much as possible and to move towards its alternatives. This importance should be raised in international documents under titles such as judicial control. The crime and treatment of criminals of the United Nations and especially the Tokyo rules and other international documents are emphasized.

In this regard, let's examine this category under the title of the two future discussions of guarantees) the rights of the accused under arrest and also the alternative orders of temporary detention.

(1) (2) (3) Professor, we refer to the French Declaration of Human Rights (1789) that every human being is innocent unless proven guilty. Clause 2 of Article 6 of the European Convention on Human Rights: "Everyone who commits a crime If he is accused, his innocence is presumed unless his guilt is proven by legal means. 1-3 Paragraph 2 of Article 11 of the Universal Declaration of Human Rights "Anyone accused of a crime shall be presumed innocent until proven guilty during a public trial held in If all the necessary guarantees for his defense have been provided, his guilt will be established legally. Clause 2 M14 of the International Covenant on Civil and Political Rights.

The second issue of the guarantees of the rights of the arrested accused The first speech - Brant's principle has not been taken for granted by any of the safe legal systems and they consider it as one of the general and certain principles of law. This principle is one of the most important ??? And it is one of the most obvious rights of the accused in all stages of the criminal process, which, in addition to international obligations, are stated in the laws of all countries, especially the constitutions, in various forms, which are mentioned below in international documents and the Iranian constitution. A- Legal sources and legal rights of the principle of innocence 1 international professor, the principle of innocence is considered one of the first and most obvious guarantees of human rights and it has been emphasized that it has been repeatedly emphasized by international documents. We will summarize some of these: "Anyone accused of committing a crime has the right to be presumed



innocent until proven guilty according to the law... This is Brandt's principle and no one is considered guilty by law unless the crime is He proved in the competent court

(2) Domestic law In domestic law, this principle was previously recognized in Article 10 of the Constitution. "Except for committing misdemeanors, crimes, and major offenses, no one can be arrested immediately except by the written order of the head of the court of justice according to the law, and in that case, the guilty party must be declared guilty immediately or within 24 hours" as the basics. Brandt's principle in domestic law can currently be cited in the following cases (1-2) Principle 37 of AH. Edge 1.1 be made (2) M 24 and Added Ak

But they cannot keep the accused in custody and if in obvious crimes the arrest of the accused is necessary to complete the investigation. The subject of the accusation must be immediately communicated to the defendant with the reasons... (3) Article 129 of the same law in terms of emphasizing the explanation of the accusation to the accused by mentioning the reasons... He explains the reasons clearly to me.....

(4) The formality of summoning and summoning Article 124 of the Law "The judge" should not summon anyone by summoning unless there are sufficient reasons for summoning or summoning.

## **B. Effects of the principle of acquittal**

Following the acceptance of the brand's principle, those works will be governed, the observance of which guarantees the acceptance and application of the brand's principle. In our normal laws and in guaranteeing the implementation of Article 38 of the Islamic Civil Code, many rules have been specified and pointed out, the violation of which will lead to criminal liability. From 24 hours without explaining the charge and issuing a legal order, Article 32.. and M. 24 abda ak)

2- Prohibition of summoning or arresting the accused without a reason (Article 124 of the Criminal Code) 3- Necessity of explaining the accusation to the accused by mentioning the reasons (Article 129 of the Criminal Code) 4- Prohibition of torture and forcing the accused to obtain a confession, Article 578 of the Criminal Code (MA and Article 38 of Q.A.J.) 5- Prohibition of omissions and accusations of the accused, as well as prohibition of suggestive questions (Article 129 of Qad Daak). M) 128 and 202 of Qad Daak) -7- Impartiality of the judge in) studying the reasons and...) M 39 of the same law as the effects of the principle of acquittal in French law, in addition to the above guarantees, which are more appropriate and principled

Explanation and it has been recognized in K.A.D.K. under the pressure of the European Court of Human Rights. The following can be mentioned:

It is the responsibility of the prosecutor to present the evidence.

(2) Proving the elements of the crime, both legal, material and spiritual, is with the prosecution. 3. The first speech - legal prosecution by accepting the need to respect the freedom and security of individuals, one should not forget that committing a crime is a bitter truth in any society, so as much as governments are committed to respect the rights and freedoms of individuals, the prosecution of criminals to preserve Order, society is also necessary. However, in combining the sanctity of individuals and the order of the society, it should be noted that freedom is a common and common natural right, and the violation of the order of the society is an exceptional matter, in which case the pursuit and arrest of protestors must be logically justified and based on the rules. be legal

The principle of non-prosecution and its exceptions are emphasized by special rules in international documents and domestic law, which we will examine in order: A- Discovery of a crime and legal prosecution and arrest based on the article and the Universal Declaration of Human Rights, a person should not be arbitrarily detained (or ) to be imprisoned". Also, according to Article 1 of the International Covenant on Civil and Political Rights: "Everyone has the right to freedom and personal security." No one can be arrested or detained arbitrarily. No one can be deprived of his freedom except for the reasons and according to the procedure prescribed by the law, paragraph 1, article 5 of the European Convention on Human Rights, while emphasizing the principle of freedom, he



enumerates the legal exceptions to this principle. In domestic law, the first part of Article 32 of the Constitution states that no one can be arrested except by order and in the order determined by the law. In fact, it ignores the line of nullity on arrest and postpones the arrest of persons to legal order. In this regard, the Islamic Penal Code requires crimes

Detention is arranged according to the statement and law of the public and revolutionary courts in criminal matters

It has determined the arrest of persons in the following order.

1 Arrest by law enforcement officers

2- Temporary detention by the judicial authority

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