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## **SANCTIONS AND CRIMINAL LIABILITY: DISTINCTION OF CONCEPTS AND PROCEDURAL NATURE**

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*The present article provides a comprehensive scholarly study and a comparative legal analysis of the institutions of special economic and other restrictive measures (sanctions) and criminal liability within the legal framework of Ukraine. The paper elucidates the legal nature of sanctions as an instrument of state policy in the field of national security and foreign policy, applied outside the scope of classical criminal proceedings. In contrast, criminal liability is considered as a form of the exercise of state coercion, implemented exclusively as a result of judicial proceedings and based on the principles of the presumption of innocence, adversarial proceedings, and proof of guilt.*

*Particular attention is devoted to the analysis of the procedure for the imposition of sanctions, as well as to the role of the judiciary in ensuring effective oversight of compliance with human rights and the rule of law in the course of their application. The study examines the adequacy of procedural safeguards afforded to persons subject to sanctions, in particular their access to effective remedies.*

*Special emphasis is placed on the transformation of the sanctions mechanism under martial law, in particular the introduction of a procedure for the recovery of assets into state revenue through the High Anti-Corruption Court. The standards of proof in the relevant proceedings are analyzed, as well as their distinction from those inherent in criminal proceedings, which makes it possible to differentiate sanctions from criminal punishment in terms of their procedural nature.*

*The article also considers international experience in the application of sanctions, in particular the practice of the United States of America and the European Union, demonstrating the necessity of a clear distinction between sanctions as an administrative or politico-legal instrument and criminal liability as a form of legal responsibility.*

**Key words:** *sanctions, criminal liability, national security, prevention, asset freezing, presumption of innocence.*

### **Мельниченко Руслан. Санкції та кримінальна відповідальність: розмежування понять і процесуальна природа**

*У поданій статті здійснюється комплексне наукове дослідження та порівняльно-правовий аналіз інститутів спеціальних економічних та інших обмежувальних заходів (санкцій) та кримінальної відповідальності в правовому полі України. У роботі розкрито правову природу санкцій як інструменту державної політики у сфері національної безпеки та зовнішньополітичної діяльності, що застосовується поза межами класичного кримінального процесу. Натомість кримінальна відповідальність розглядається як форма реалізації державного примусу, що здійснюється виключно за результатами судового розгляду та ґрунтується на принципах презумпції невинуватості, змагальності сторін і доведеності вини.*

*Особливу увагу приділено аналізу процедури застосування санкцій, а також місцю судової влади у забезпеченні ефективного контролю за дотриманням прав людини та принципу верховенства права під час застосування санкцій. Досліджено питання достатності процесуальних гарантій осіб, до яких застосовуються санкції, зокрема доступу до ефективних засобів правового захисту.*

*Окремий акцент зроблено на трансформації санкційного механізму в умовах воєнного стану, зокрема на впровадженні процедури стягнення активів у дохід держави через Вищий антикорупційний суд. Проаналізовано стандарти доказування у відповідних провадженнях та їх відмінність від стандартів, притаманних кримінальному процесу, що дозволяє відмежувати санкції від кримінального покарання за їх процесуальною природою.*

*У статті також розглянуто міжнародний досвід застосування санкцій, зокрема практику Сполучених Штатів Америки та Європейського Союзу, що демонструє необхідність чіткого розмежування санкцій як адміністративного або політико-правового інструменту та кримінальної відповідальності як форми юридичної відповідальності.*

**Ключові слова:** санкції, кримінальна відповідальність, національна безпека, превенція, блокування активів, презумпція невинуватості.

**Problem statement.** The current stage of development of Ukrainian statehood is marked by unprecedented challenges that require flexibility and promptness from the legal system. Since 2014, and especially following the onset of the full-scale invasion in 2022, sanctions have become one of the key instruments of state policy in the field of national security. However, the active implementation of sanctions lists has led to the emergence of a significant legal and social problem: the conflation of the concepts of “sanctions” and “criminal liability”.

The problem lies in the fact that, although sanctions and measures related to criminal proceedings differ in their purpose, grounds for application, and level of procedural safeguards, they often result in comparable restrictions of rights as defined by the Convention for the Protection of Human Rights and Fundamental Freedoms and the Constitution of Ukraine.

**Purpose of the study:** to analyze the main features distinguishing criminal liability from sanctions; to differentiate between the institutions of criminal liability and sanctions; and to demonstrate that sanctions constitute an instrument of politico-legal response to threats, whereas criminal liability remains a form of justice entailing subsequent personal responsibility for committed crimes. The study also aims to identify risks that may arise from deficiencies in the procedural component that allows the state to act outside the framework of criminal proceedings without violating international human rights standards.

**State of research on the issue.** Issues of sanctions policy have been studied by

such scholars and legal practitioners as Oksana Korotyuk [1], Denys Shkarovskyi [2], Nataliia Sichevliuk [3], Pavlo Demchuk [4], and others. In their works, they examine the legal nature of sanctions, their correlation with legal responsibility, the problems of ensuring human rights in the course of their application, and the effectiveness of these institutions in the process of asset seizure and subsequent recovery into the state budget. In particular, Oksana Korotyuk focuses on sanctions as an instrument of national security, while Denys Shkarovskyi addresses the substitution of other legal mechanisms, in particular criminal liability, by sanctions.

**Main body of the study.** Pursuant to Article 1 of the Law of Ukraine “On Sanctions” (hereinafter – the Law), sanctions are defined as special economic and other restrictive measures applied for the purpose of protecting national interests [5]. It is important to emphasize that, by their nature, sanctions constitute administrative acts at the highest level of state authority. As follows from the preamble to the Law, sanctions represent a form of urgent and effective response to existing and potential threats to the national interests and national security of Ukraine. Sanctions are predominantly preventive in nature, as they are aimed at averting potential harm rather than punishing already committed offenses. For instance, asset freezing imposed on a foreign individual serves as a means of depriving such person of financial resources that may be used to destabilize the situation in the country or to finance armed aggression. This allows such economic restrictions to

be regarded as an instrument of the state's prompt response to both external and internal threats.

Article 4 of the Law provides for a wide range of possible restrictive measures, including asset freezing, restrictions on trade operations, prohibition on the use of property, revocation of licenses, and other measures of an economic and organizational nature. The application of such types of sanctions may significantly affect the legal status of natural and legal persons and give rise to a number of issues related to the violation of human rights, even though formally they do not constitute criminal punishment. Consequently, this very premise necessitates adherence to a clear procedural framework governing sanctions in order to avoid unlawful and disproportionate restrictions on the rights of persons subject to them.

In this regard, it is appropriate to proceed to an analysis of the challenges faced by sanctioned persons at various stages: prior to the imposition of sanctions, during their application, and at the stage of their appeal; these issues will be examined in parallel with the corresponding procedures inherent in criminal proceedings.

A distinctive feature of the legal mechanism of sanctions is the specific institutional procedure for their application. A key role in this process is played by the National Security and Defense Council of Ukraine (hereinafter – the NSDC), to which, pursuant to Article 5 of the Law, proposals on the imposition of sanctions may be submitted by the Verkhovna Rada of Ukraine, the President of Ukraine, the Cabinet of Ministers of Ukraine, the National Bank of Ukraine, and the Security Service of Ukraine. The substantiation of such proposals is based on a body of materials collected by these authorities, indicating a threat to national security, sovereignty, or territorial integrity of the state.

However, already at this stage, the sanctioned person faces significant challenges, in particular limited access to the information that served as the basis for the imposition of sanctions and the absence of clear stand-

ards of proof. Where sanctions are imposed on a natural or legal person, such a person is deprived of the opportunity to obtain full access to information regarding the reasons for such decision, the list of evidence against them, information about the sources of such evidence, and a detailed explanation of the allegations. Notifications of sanctions are often general and formal in nature (for example, "involvement in a threat to national security"), without specifying the grounds, which creates a risk of arbitrary and disproportionate interference with the rights and interests of the sanctioned person.

At the same time, despite the fact that sanctions presuppose speed and a certain degree of "suddenness" in response, it is necessary to ensure a balance between such restrictions and the rights of individuals in order to avoid excessive interference and potential international disputes.

Over the past four years, Ukraine has applied a record number of sanctions against foreign and domestic companies and individuals. As of March 2026, more than 20,000 sanctions actions have been recorded during this period, covering over 10,800 natural persons and 8,500 legal entities subject to sanctions [6].

As noted above, it is the NSDC that adopts decisions on the imposition of sanctions based on information collected by the relevant authorities. Article 1 of the Law of Ukraine "On the National Security and Defense Council of Ukraine" defines the NSDC as a coordinating body under the President in the field of national security, whose function is to ensure the coherence of actions of executive authorities in the sphere of security and defense. Its main powers, pursuant to Article 4 of the said Law, include strategic planning, coordination, and control [7]. At the same time, it does not have the authority to independently impose coercive measures, as its decisions, in accordance with Article 107(7) of the Constitution of Ukraine, are brought into effect exclusively by Presidential decrees [8]. This model demonstrates the political nature of sanctions, as they are formed at the intersection of func-

tions of various state authorities and are primarily aimed at responding to threats rather than establishing legal liability. With certain exceptions, they are applied without prior judicial review or court judgment and do not require proof of guilt.

However, the question arises as to the substantiation of Presidential decrees enacting sanctions, since, in most cases, a single decree applies to a significant number of subjects. This raises doubts as to the individualization of the approach to each person, as there is a risk of formal or generalized reasoning without proper analysis of the specific circumstances relating to each subject. It is useful to consider the statistics available in the State Register of Sanctions regarding the number of subjects affected by individual Presidential decrees. For a clearer understanding, one may refer to the years in which a single decree covered the largest number of subjects. Thus, in 2015, Presidential Decree No. 549/2015 imposed sanctions on 493 subjects [9]; in 2017, Presidential Decree No. 133/2017 affected 3,237 subjects [10]; in 2018, Presidential Decree No. 126/2018 covered 2,506 subjects [11], while Presidential Decree No. 176/2018 affected 2,547 subjects [12]; in 2021, Presidential Decree No. 266/2021 imposed restrictive measures on 1,078 subjects [13]; in 2024, Presidential Decree No. 376/2024 applied sanctions to 779 subjects [14]; and in 2026, Presidential Decree No. 131/2026 covers 225 subjects [15]. It can therefore be concluded that this trend has remained consistent over many years.

Thus, the combination of the aforementioned factors (limited access to information, lack of adversarial proceedings, and the large-scale application of sanctions) mutually reinforce one another, thereby creating significant risks of violations of the rights of sanctioned persons.

Pursuant to Article 62 of the Constitution of Ukraine, the principle of the presumption of innocence is enshrined, according to which a person is considered innocent of committing a crime and cannot be subjected to criminal punishment until their guilt

has been proven in accordance with the law and established by a court conviction.

Furthermore, Article 64 of the Constitution of Ukraine provides that constitutional rights and freedoms may be restricted only in cases expressly provided by the Basic Law. This means that even under special legal regimes, the state may not arbitrarily impose sanctions that restrict individual rights without proper legal justification and procedural safeguards.

A corresponding position has been expressed by Viktor Smorodynskyi regarding the imposition of sanctions based on suspicion of terrorist activity. He emphasized that even under martial law, the principle of the presumption of innocence cannot be restricted. According to him, in the context of the provision of the Law stating that sanctions may be applied to entities engaged in terrorist activity, it must be understood that until a crime is proven by a final and binding court decision, there can be no reference to terrorist activity. Sanctions may be imposed only after the crime has been duly established [16].

The conflation of the concepts of sanctions and criminal liability creates significant risks of violations of fundamental human rights. In particular, the application of sanctions without adherence to due process may effectively acquire the characteristics of criminal punishment without the issuance of a court conviction.

Fedir Venislavskyi has drawn attention to the existence of a very fine line between the application of sanctions to persons whose activities threaten national security, sovereignty, and territorial integrity of Ukraine, and ensuring that the adverse consequences of sanctions do not violate the rights of individuals and business entities whose activities do not pose such threats. He also noted that the Law should contain clear and unambiguous provisions specifying the exact list of cases in which sanctions may be applied to citizens of Ukraine. In his view, regulatory acts governing the procedure for the imposition of sanctions should be improved in light of constitutional guarantees and must

ensure compliance with the rule of law [16].

The procedure for appealing sanctions is carried out within the framework of administrative proceedings, since the subject of judicial review is a decision of a public authority, as provided for in Article 19 of the Code of Administrative Procedure of Ukraine (hereinafter – the CAP of Ukraine) [17]. This position is supported by the case law of the Supreme Court, in particular the judgment of 16 January 2026 in case No. 420/17341/22, which clearly states that, pursuant to Article 241(2) of the CAP of Ukraine, a court of cassation has no authority to establish or consider as proven facts that were not established in the judgment or decision of the lower courts or were rejected by them, to resolve issues of the credibility of evidence, to determine the probative value of certain evidence over others, to collect or admit new evidence, or to additionally examine evidence [18]. The courts of first and appellate instances are deemed to have fulfilled all procedural requirements, comprehensively examined the circumstances of the case, resolved the case in accordance with substantive law, and adopted a reasoned decision reflecting all relevant circumstances.

When reviewing a Presidential decree subject to appeal, the court examines the clarity of its procedural component rather than the underlying circumstances and reasons for the imposition of sanctions, without assessing the factual circumstances and evidence that served as the basis for their introduction.

Accordingly, although a sanctioned person formally has the right to apply to a court and challenge the relevant Presidential decree, the subject of judicial review is the decree itself as an individual act, rather than a full substantive review of the grounds for the imposition of sanctions. As a result, judicial review is effectively limited to assessing the formal legality of the Presidential decree, while the substantive evaluation of the grounds for imposing sanctions remains within the discretion of public authorities.

In this context, the case law of the European Court of Human Rights is particularly illustrative. In particular, in *Witkowski v. Poland*, the Court stated as follows: “The Court reiterates that rules concerning formal requirements for lodging remedies are intended to ensure the proper administration of justice, in particular respect for the principle of legal certainty. Interested parties should be able to expect that these rules will be applied. The Court has repeatedly held that, in applying procedural rules, domestic courts should avoid excessive formalism which may undermine the fairness of the proceedings” [19].

Under conditions of excessive formalism, the effectiveness of judicial review as a mechanism for restoring violated rights raises legitimate concerns in legal doctrine and produces negative consequences for sanctioned persons.

A special place within the Ukrainian legal system is occupied by the procedure for the recovery of assets of sanctioned persons into state revenue, introduced in 2022. This is a unique mechanism that combines a sanctions-based approach with elements of justice. Its essence lies in the fact that, following the imposition of sanctions in the form of asset freezing, the Ministry of Justice may apply to the High Anti-Corruption Court (hereinafter – the HACC) with a claim for their confiscation [20].

The HACC considers such cases under the rules of administrative proceedings, but with elements of adversarial procedure. In this context, the defendant has the right to defend themselves, present evidence, and challenge the arguments of the state. This mechanism serves as a response to concerns regarding the “extra-judicial” nature of sanctions: the final decision on the deprivation of property is made by an independent court. This makes it possible to distinguish between the “freezing” of assets as a sanction and their “confiscation” as a consequence of judicial proceedings.

It is important to note that even within judicial proceedings concerning the recovery of assets into state revenue, criminal law

standards of proof are not applied. This is confirmed by judicial practice; in particular, in case No. 991/5120/24 of 24 July 2024, the HACC stated as follows: "the procedure for the application of a sanction in the form of recovery of assets into state revenue under martial law does not reach the level of a criminal charge and therefore does not require that the defendant in administrative proceedings be afforded the guarantees inherent in the 'classical' right to defense in criminal proceedings" [21].

In general, the practice of the Supreme Court of Ukraine indicates that the Court recognizes sanctions as a lawful instrument of state policy, while at the same time exercising strict control over compliance with procedural requirements, the substantiation of adopted decisions, and the protection of constitutional rights and freedoms of individuals and citizens in such cases. Such an approach contributes to the harmonization of national judicial practice with international standards of justice and human rights [22].

The Law provides for the possibility of confiscation of property following the imposition of sanctions in the form of asset freezing. Accordingly, in respect of persons to whom such sanctions were applied prior to the entry into force of the relevant legislative provisions, it becomes necessary to reapply such sanctions in order to confiscate their assets under this mechanism. With regard to the confiscation mechanism, the legal position expressed by N. Sichevliuk is noteworthy: "Given that confiscation within criminal proceedings is more reliable in terms of the risks of appeal, it would be desirable to observe the results of confiscation of Russian assets under this mechanism. It is more convenient in cases where decisions must be enforced abroad, as it may raise fewer questions than sanctions decisions. However, such a mechanism is complicated by the volume of evidence to be examined by the court, as well as by the requirement to comply with a large body of criminal procedural safeguards" [3].

There is also a risk of inconsistency between the jurisdiction of HACC judges, as defined in

Articles 69 and 83 of the Law "On the Judiciary and the Status of Judges" and Article 7 of the Law "On the High Anti-Corruption Court," which is primarily focused on corruption-related cases, and the requirements for adjudicating cases concerning the imposition of sanctions [23, 24].

An analysis of international practice confirms that the distinction between sanctions and criminal liability is a global standard. In the United States, sanctions are regarded as an instrument of foreign policy, and the Office of Foreign Assets Control (OFAC) has broad powers to block property without prior judicial authorization. In addition, OFAC operates under the Economic Sanctions Enforcement Guidelines [25], which contain an extensive list of factors taken into account when determining which administrative action to apply and, where applicable, the amount of a monetary penalty. These factors include, inter alia, the willful or negligent nature of the violation, awareness of the unlawfulness of the conduct, harm to the objectives of the sanctions program, individual characteristics, the existence of a compliance program designed to monitor adherence to sanctions restrictions, remedial actions taken, cooperation with OFAC, the timing of the violation, prior enforcement measures, and the impact in terms of prevention of future violations. Depending on the circumstances, each of these factors may serve as either a mitigating or an aggravating factor. The Guidelines also provide for a matrix to determine the maximum penalty based on the combination of two factors: the egregiousness of the violation and the presence of voluntary self-disclosure [26].

At the same time, in the United States there is a clear distinction: a sanction is a civil-administrative measure, whereas a violation of the sanctions regime constitutes a serious criminal offense investigated by the FBI and punishable by lengthy terms of imprisonment.

The application of sanctions entails significant consequences for the reputation and activities of the subject concerned. In addition to financial losses, a person effec-

tively faces a state of "civil death" at the international level, as most banks and counterparties worldwide refuse to engage with sanctioned persons in order to avoid exposure to secondary sanctions imposed by the United States or the European Union. In criminal law, by contrast, the consequences are more predictable: a person is aware of the term of punishment and the conditions of its execution.

The debate as to whether sanctions effectively substitute for justice remains open. Human rights advocates warn that if the state becomes accustomed to resolving issues of asset confiscation through decisions of the NSDC, this may lead to the degradation of the judicial and law enforcement system. Why spend years collecting evidence for court proceedings if sanctions can be imposed more quickly? The answer lies in the fact that sanctions do not possess evidentiary value in criminal proceedings. If the imposition of sanctions is not followed by a criminal investigation (where the elements of a crime are present), this undermines the principle of the inevitability of punishment.

The legal consequences of sanctions consist in the restriction of individual rights (including the right to property, freedom of movement, and the right to conduct business activities) for a specified period or until the elimination of a threat to national security. It is also important to note that sanctions may be imposed on entire sectors of the economy or groups of persons, which is entirely impossible within the framework of criminal law, where the principle of individual liability prevails.

Criminal liability constitutes a strict form of legal responsibility and arises as a result of a socially dangerous and culpable act (action or omission) committed by a subject of a criminal offense, regulated exclusively by the Criminal Code of Ukraine (hereinafter – the CC of Ukraine). It is based on the principle of individual guilt of a specific person. This means that a person may be held liable only for an act personally committed by them, and only provided that their

guilt has been proven in accordance with the procedure established by law. As stipulated in Article 2 of the CC of Ukraine, a person is presumed innocent of committing a criminal offense and may not be subjected to criminal punishment until their guilt has been proven in accordance with the law and established by a court conviction [27].

Criminal liability is characterized by a clearly regulated procedural framework governed by the Criminal Procedure Code of Ukraine (hereinafter – the CPC of Ukraine), ranging from the entry of information into the Unified Register of Pre-Trial Investigations (URPI) to the delivery of a conviction or acquittal by a court. Initially, information regarding a criminal offense is entered into the URPI, which marks the commencement of criminal proceedings. This is followed by a pre-trial investigation, including the collection of evidence (interrogations, expert examinations, searches, and other investigative measures) and the notification of a person of suspicion in relation to criminally unlawful conduct, which corresponds to the principle of transparency and fundamentally differs from the procedure for the imposition of sanctions. Judicial proceedings are conducted in accordance with the principle of adversarial proceedings, which is another key feature distinguishing them from the procedural framework of sanctions. No authority other than a court is entitled to establish criminal liability [28]. This approach significantly differs from the sanctions procedure, where the CPC of Ukraine does not apply; consequently, the presumption of innocence and adversarial proceedings are absent. At the stage of adopting a decision on the imposition of sanctions, the person is not informed of the initiation of any proceedings, and the mere establishment of a threat to national security or state interests is considered sufficient.

Criminal liability requires the existence of a clearly defined corpus delicti, including the object, the objective element, the subject, and the subjective element (guilt). While criminal law is centered on the proof of guilt, for the NSDC it is sufficient to estab-

lish the existence of a threat to national interests.

Appeals against judicial decisions in criminal cases are conducted within a clearly defined procedural system established by the CPC of Ukraine, which includes appellate and cassation proceedings. The appellate court has the authority to review both factual circumstances and the correct application of legal norms, whereas the court of cassation primarily focuses on issues of law.

Unlike sanctions, the consequences of criminal liability are always associated with state condemnation and punishment aimed at rehabilitation and general crime prevention. The key features of criminal liability include its implementation exclusively through a court, the mandatory issuance of a conviction, and the emergence of a criminal record. A criminal record constitutes a specific legal status that imposes restrictions on a person even after the completion of the principal punishment. Sanctions, by contrast, do not create the status of a convicted person and do not entail the legal consequences associated with a criminal record, although their economic impact may be equally significant.

The issue of fairness also concerns the right to defense. Article 59 of the Constitution of Ukraine and Article 52 of the CPC of Ukraine provide that, within criminal proceedings, the state is obliged to provide legal counsel if a person is unable to afford one. In sanctions procedures, however, the individual is effectively left alone in confronting the state apparatus. Therefore, the development of mechanisms for appealing sanctions is crucial for Ukraine as a democratic state. Courts should not merely conduct a formal review of the existence of a Presidential decree, but should also examine the substance of the materials on the basis of which such decisions were adopted.

**Conclusions.** Sanctions in Ukrainian law constitute an independent instrument of state policy aimed at ensuring a prompt response to threats to national security and do not belong to measures of criminal liability. However, contemporary practice demonstrates

a tendency toward their functional convergence with punitive mechanisms, which creates a risk of substituting judicial justice with political decisions, given the relative procedural simplicity of sanctions.

The absence of a clear distinction between sanctions and criminal liability gives rise to significant legal risks. First and foremost, this is manifested in the effective erosion of the principle of the presumption of innocence, as restrictive measures are applied without proof of guilt in accordance with due judicial process. At the same time, there is a circumvention of the guarantees inherent in criminal proceedings, including standards of proof, adversarial proceedings, and the right to an effective defense. Under such conditions, sanctions may lead to disproportionate restrictions of fundamental rights, including the right to property and the freedom to conduct business activities, in the absence of sufficient individualized justification.

An additional risk arises from the limited access of sanctioned persons to information regarding the grounds for the imposition of sanctions, which increases the likelihood of arbitrary decision-making. Judicial control in this area also remains insufficiently effective, as in practice it is often confined to a formal review of Presidential decrees without a proper assessment of their substantive justification. This, in turn, undermines the principle of the rule of law and may lead to both domestic and international legal consequences.

From the perspective of the legal community, it is appropriate to emphasize that effective judicial control in this area should not be limited solely to a formal review of compliance with procedural requirements. Courts should go beyond purely procedural analysis of Presidential decrees and conduct a full review of their substantiation, including an assessment of the underlying grounds for the imposition of sanctions, the reliability and sufficiency of evidence, and potential errors made at the initial stage of their application. Only such an approach is capable of ensuring a genuine balance between

the interests of national security and the protection of human rights.

Therefore, ensuring a clear distinction between sanctions and criminal liability, as well as adherence to proper procedural frameworks in their application, is a necessary condition for maintaining a balance between

the interests of the state and the rights of individuals. Strengthening procedural safeguards—particularly through expanding access to evidence, ensuring a genuine right to defense, and enhancing judicial oversight should become a key direction for the further development of national legislation.

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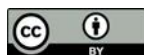
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