

MODERN LAW ENFORCEMENT AGENCIES OF UKRAINE: REFORM PROBLEMS AND DEVELOPMENT PROSPECTS

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Abstract: The legal system of Ukraine is in a state of reform due to the establishment of a democratic, social, rule of law society. The above mentioned necessitated a rethinking and proper reformation of all public authorities, including law enforcement agencies. The subject of the research is the analysis of problems of modern law enforcement agencies in the genesis of their formation and development. The purpose of the article was specified in the tasks in the following areas: analysis of the current state of the law enforcement system, highlighting the problems of their reform, scientific forecasting of prospects for improvement. The theoretical and legal features of law enforcement activities were adopted as a

methodological basis of the research as a type of law enforcement activity, which constitutes the relevant state institutions – law enforcement agencies. Their activities were investigated in the main legislatively recognized areas. As a result, it made it possible to distinguish a list of their characteristic features: state-power specificity; legality; the enforceable nature of the decisions made; the use of coercion.

Keywords: the concept of law enforcement, criminal justice, public organizations, the system of law enforcement.

Introduction

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Since independence, the legal system of Ukraine has been in a state of reform, conditioned by the construction in the society of a democratic, social, rule of law, which would exist for the protection of human rights, its universally recognized rights and freedoms, the establishment of a European type of public order and legality. It is understandable that the goal of such a reform of the national legal system is achieved by a coherent system of legal measures and is a lengthy process. The above mentioned necessitated a rethinking and proper reformation of all public authorities, including those traditionally related to law enforcement. Our research does not claim to be a comprehensive consideration of all the processes that occur when reforming established legal realities, which depend on many factors and are based on the social and economic basis of modern Ukraine.

A pilot research showed that the problem of organizing and exercising state power in Ukraine and its place in law enforcement and relevant law enforcement agencies is poorly understood. The whole scientific direction: the place, forms, means and subjects of application of the norms of

law in the system of public relations in a rule of law during the exercise of its law enforcement institutions by its authorities have not been investigated at all. Of particular importance is the need to develop modern problems of law enforcement activities and bodies that carry it out, at the present stage of state formation. When the implementation of constitutional rules relating to the consolidation, organization and protection of legal rights, interests and freedoms of citizens, public organizations and state institutions, becomes a decisive factor improvement of activity of the whole state apparatus.

Hence, the importance and urgency of solving the problem of law enforcement activities is complex as a constitutional-legal institute, which makes it possible to analyze the constitutional principles of the organization and implementation of law enforcement activities in Ukraine in close connection with other social phenomena and in comparison with international experience. It seems necessary to determine the role of law enforcement and its actors in the consolidation and exercise of state power.



The subject of the research is the analysis of problems of modern law enforcement agencies of Ukraine, their genesis, formation, development. The tasks of the article were formalized in the following areas: analysis of the current state of the law enforcement system of Ukraine, identification of problems of their reformation, scientific forecasting of the prospects for improvement, familiarization with the possibility of implementing the experience of foreign countries in the development of domestic law enforcement agencies.

On the above methodological basis, we trace the stages of formation in Ukraine of a system of law enforcement agencies, their purpose, principles, competences, functions, forms and methods of activity. Let us analyze the legitimacy and expediency of using this term in relation to the recently created numerous state and public institutions.

Based on the definition of the category of law enforcement activities as a purely constitutional and legal institution, as an appropriate type enforcement activities activities, analyzing the basic principles of organization and implementation of law enforcement activities in Ukraine, comparing them with international

24

experience by applying of comparative legal method and functional-targeted approach to research, identify the main functions and subjects of implementation, define the concept of “law enforcement agency”. We follow the stages of formation of the law enforcement system in Ukraine, their purpose, principles, competencies, functions, forms and methods of activity. Let's analyze the legitimacy and expediency of using this term in relation to the recently created numerous state and public institutions.

1. Reasons and Methods for Reforming the Legislative Definition of the Concept of Law Enforcement Agencies

The constitutional process, initiated on a constitutional basis, required a clear definition in it of the place and role of law enforcement agencies, as a central link in the system of state institutions and public organizations performing separate law enforcement functions. The first approaches to solving this problem highlighted some difficulties and problems. Summarizing them we can draw some preliminary conclusions.



First, there is a lack of constitutional consolidation of the concept and system of law enforcement agencies. Generally in all previous Constitutions (Okipniuk, 2007; Kulchytsky, 2008; Mironenko and Usenko, 2009) the term “law enforcement” was not even used. In the current Constitution of Ukraine, this term is used only once in Article 17, Part 3, where the special task of ensuring state security and protection of the state border is entrusted to the relevant military formations and law enforcement agencies of the state, the organization and procedure of which are determined by law. In the commentary to this article prepared by the Institute of Legislation of the Verkhovna Rada of Ukraine (Opryshko, 1996), the authors referred to law enforcement agencies: the Security Service of Ukraine, the National Guard of Ukraine, internal troops of the Ministry of Internal Affairs, the police and some other state structures, whose status was determined by by-laws.

The last prescription gives us a reason to further analyze from the perspective of functionally-targeted orientation the by-laws that regulate the activities of the state authorities created at that time, which are intended to

25

maintain the legal order in Ukraine (Article 131-1 of the current wording of the Constitution of Ukraine, referring to the prosecutor's office draft on it in item 2 of part 1 supervision over the public and other investigative and search actions of law enforcement agencies). Unfortunately, in other sections of the Constitution in force at the time, where in our view it would be appropriate to use the term “law enforcement agencies”, it was not used. For example, Article 107 used the formula: “... the activities of executive authorities in the field of national security and defense.” Although the posts of the National Security and Defense Council of Ukraine consisted of heads of bodies traditionally related to law enforcement – the Head of the Security Service, the Minister of Internal Affairs.

Article 119 of the Constitution defined one of the priority areas of activity of local state administrations – ensuring law and order, respect for the rights and freedoms of citizens. Considering that the function of general supervision, traditionally performed by the prosecutor's office, should be gradually transferred to local state administrations, by their own legal means (the right to cancel acts, suspend



their actions, bring a lawsuit, etc.), contrary to the opinion of some scholars (Smola, 1996), to us it is considered unrealistic. Effective implementation of these functions at the local level requires appropriate law enforcement.

The list of agencies (divisions and persons) that carry out search operations and inquiries, which are provided in the Law of Ukraine “About operative-search activity” (About the operational..., 1992) and Art. 101, 102 of the Code of Criminal Procedure of Ukraine (1960) can at that time to some extent be conditionally classified into the category of law enforcement agencies. The list given by them, at that time thought by procedural scientists, is exhaustive (Mikheyenko, 1995), but so historically (traditionally), in our view, the practice of law-making, when this list was unlawfully expanded, was not quite correct. In particular, the Presidential Decree No 1013/96 of October 30, 1996 established a tax police with investigative units within it (Presidential Decree..., 1996), which created a certain legal conflict, since the latter were not united by the law in force at that time the procedural notion of “preliminary investigation authorities”. And only on February 5, 1998, the Verkhovna Rada

26

of Ukraine adopted the Law of Ukraine “On Amendments to the Criminal Procedure Code of Ukraine and Some Other Legislative Acts of Ukraine in connection with the Establishment of the Tax Police” (The Law of Ukraine... 1998), according to which relevant amendments to Art. 32, 101, 102, 112 of the Criminal Procedure Code of Ukraine (The Code of Criminal..., 1960). And also the corresponding changes to Art. 5, 9 of the Law of Ukraine “About operative-search activity” (About the operational..., 1992).

Secondly, the constitutional consolidation of the principle of separation of powers divides the state institutions that traditionally refer to the judiciary and law enforcement agencies, to different branches of government, which requires rethinking old approaches to defining their functions and areas of interaction with other power structures. Third, it is practically absent and requires the development of a regional-level law enforcement system that would operate within local government. Created in due time in some regions, subdivisions, or municipal police officers were only kept at local expense, and obeyed on a vertical basis and were guided by orders and



instructions of the Ministry of Internal Affairs of Ukraine.

In addition, the rise of certain types of crime has led to the creation of a number of new, relatively independent law enforcement agencies and services. Among them are subdivisions, which fight against organized crime, against drug trafficking; environmental police, tax administration, tax police, etc. Complicating the problem and the lack of a legislative definition of the concept of law enforcement and the features on which this or that newly created unit could fall into this category. The unresolved issue has caused some practical complications in its time. For example, item 1 of the Comprehensive Target Program on Combating Crime for 1996-2000, approved by the President of Ukraine, assigned to local state administrations the task: "... to develop a system of strengthening the coordination of law enforcement agencies at the regional level". The implementation of this clause has raised some questions in practice (Comprehensive Target Program..., 1996).

First, what kind of authorities should be covered by this system? Whether traditional (prosecutor's office, MIA, SSU, Court, etc.), or new ones,

27

such as the Coordination Committee for Combating Corruption and Organized Crime, tax administrations that have been in all regions, customs, etc. Second, can the above-mentioned system include numerous non-governmental organizations created at that time, whose activities are aimed at maintaining law and order? They mean unions of lawyers, judges, lawyers, veterans of the Ministry of Internal Affairs and SSU, voluntary public subdivisions of type: "Jaguar", "Radar", "Sword and flame" – and therefore similar formation which, in our opinion, is not always justified and lawfully assume, within the framework of applicable law, law enforcement functions.

There is no simple answer to these questions. The state, at all times, and probably in the future, has the inherent function of suppressing persons who take actions against society or its members, that is, punish people who violate the law. The main social functions of the state in the legal literature, in various interpretations, traditionally include: protection (defense) of the rights and freedoms of man and citizen; ensuring law and order; protection of public safety and maintenance (protection) of public order



(Andrusyak, 1997; Kolodiy et al. 1995; Lysenkov, 1997).

The analysis and synthesis of the history of this issue shows that law enforcement agencies were created with the purpose of implementing the state policy in the following areas: protection of legality and fight against offenses; fulfillment of the constitutional tasks of strengthening the legal basis of state and public life, improving the work of the courts, prosecutor's supervision, justice and the police. From this perspective, we will consider the views, perspective concepts (ideas) and normative documents that exist at that time in the legal literature that are relevant to this problem. Thus, in the legal literature of that time it was stated that law enforcement agencies are a set of state authorities whose main (special) function is the protection of legality, the fight against crime and other offenses. These included: court, prosecutor's office, justice, internal affairs, state security, state arbitration authorities (Sukharev, 1984). In addition, it was noted that a number of state and state-public bodies, in particular, people's control, various commissions – on juvenile affairs, anti-drunkenness, administrative, supervisory, inspections,

28

etc., are adjacent to the law enforcement system because they carry out considerable the volume of law enforcement activity, although in principle their functions are not reduced to it (Bazhan, 1974; Bazhan 1974; Bazhan 1983). They were usually entrusted with the duties of: protection of state property and personal property of citizens, their honor and dignity; the fight against crime; prevention of offenses and elimination of the causes that give rise to them.

2. Prospects for Reforming The Legislative Regulation of Law Enforcement

Traditionally, the competence of law enforcement agencies was differentiated by types of law enforcement activities, in addition, specific law enforcement agencies were also given exclusive competence, or some types of law enforcement activities were within the competence of several law enforcement agencies. For example, prevention of crimes and other offenses, termination of offenses, law enforcement activities – were included in the duties of all law enforcement agencies, taking into account their competence. In the broader interpretation, the term “law



enforcement” encompassed not only governmental but also non-governmental organizations specialized in the fight against offenses: councils for the prevention of labor collectives, societal courts, national squads, councils of public security posts, etc. It is clear that, in the new environment, established views on law enforcement must be transformed accordingly. But, as the analysis of the history of further law-making shows, this has not happened.

In particular, section 1 Ideology of Legal Reform in Ukraine of the Concept of Judicial and Legal Reform in Ukraine, the specific object of reform was defined by law enforcement activities of state authorities, and in Annex 3 of the Concept the basic terms of legal reform refer to the concept: “law enforcement activity of the state” – which is understood as a law enforcement activity of state power aimed at ensuring the rights and freedoms of citizens; and “law enforcement agencies” are bodies that directly carry out the task of ensuring human and citizen's rights (The concept of..., 1992).

In another document, Concepts of State Legal Policy in the Field of Human Rights, in Chapter Six, Law

29

Enforcement of the State and Human Rights, the authors refer to a system of law enforcement agencies that directly exercise a wide range of powers in the field of human rights activities, including the prosecutor's office, law enforcement agencies, and the security service. Although the previous chapter of this document “The system of security and protection of human rights in Ukraine” refers to the state authorities that perform the security and protection of human rights court, advocacy, and proposed to create a National Commission on Human Rights under the President of Ukraine, as well as a system of specialized national institutes of human rights protection some of the most vulnerable population groups (children, women, disabled, migrants, refugees, ethnic, linguistic, religious minorities, etc.) (The concept of the state..., 1999).

From this point of view, by analyzing the purpose of creating separate state and public institutions and formations and the main tasks of their activity, we can distinguish certain laws. Yes, they were most prominently displayed in the Law of Ukraine “About the Militia” (“Police” now) (Biryukov et al. 1996) where in the first article the police was defined as a state armed body



of the executive power (in our opinion, this thesis, in the part of the “armed body” is a certain tribute to the history of the militia's origin and does not quite define its present essence), which protects life, health, rights and freedoms of citizens, property, natural environment, interests of society and the state from unlawful encroachments. Accordingly, the main tasks of the police were related to:

- ensuring the personal safety of citizens, protecting their rights and freedoms, legitimate interests;
- prevention and termination of offenses;
- protection and maintenance of public order;
- detection and disclosure of crimes, search of the perpetrators;
- ensuring road safety;
- protection of property against criminal offenses;
- execution of criminal penalties and administrative penalties;
- participation in the provision of social and legal assistance to citizens, assistance within the limits of their competence to state bodies, enterprises, institutions and organizations in the fulfillment of their duties by law.

In the Law of Ukraine “About the Security Service of Ukraine” (Law of Ukraine..., 1996) very rightly, in our view, it was emphasized that it is a state law enforcement agency whose task is to protect state sovereignty, constitutional order, territorial integrity, economic, scientific, technical and defense potential of Ukraine, legitimate interests of the state and citizens' rights (the current wording of Article 1 of the Law of Ukraine “About the Security Service of Ukraine” indicates that the Security Service of Ukraine is a state special purpose body with law enforcement functions that ensures the state security of Ukraine). Unfortunately, it is quite appropriate, in our opinion, that the definition of bodies that fight crime, stand in the guard of the legitimate interests of the state, human rights and freedoms, has not been further developed in the legislative practice. Thus, in particular, in the Law of Ukraine “About the Combating against Corruption” in Article Four, the Ministry of Internal Affairs of Ukraine, the Security Service of Ukraine, the Prosecutor's Office of Ukraine are designated by the general rather conditional term “agencies that combat against corruption” (Law of Ukraine..., 2009). In the current Law of



Ukraine “About the prevention of Corruption”, there is no definition at all (Law of Ukraine..., 2020).

In another document, Presidential Decree N319 / 97 of 10 April 1997 “About the National Anti-Corruption Program”, the term “law enforcement agencies” is found on almost every page, but which state institutions are responsible for it can only be understood from the context of the document. The law enforcement agencies included: the Prosecutor General's Office of Ukraine, the Ministry of Internal Affairs of Ukraine, the Security Service of Ukraine, the State Tax Administration of Ukraine, the Coordination Committee for Combating against Corruption and Organized Crime under the President of Ukraine (Presidential Decree..., 1997). According to the current Law of Ukraine “About the State Bureau of Investigation”, it is already directly defined as a state law enforcement agency, which is charged with the task of preventing, detecting, suspending, disclosing and investigating crimes within its competence (Law of Ukraine..., 2016).

The most successful, at that time, is the joint order of the Ministry of

31

Internal Affairs of Ukraine, the Prosecutor General's Office of Ukraine, the Security Service of Ukraine, the State Committee for the Protection of the State Border of Ukraine, the State Customs Service of Ukraine, and the State Tax Administration of Ukraine of 26 February 1997 N54 / 1859 “About the approval of the Instruction on the procedure for use by law enforcement agencies of the Interpol NCB in Ukraine in the prevention, disclosure and investigation of crimes”. It defines the list of law enforcement agencies Ukraine, namely: Ministry of Internal Affairs, Prosecutor General's Office, Security Service, State Border Guard, State Customs Service, State Tax Administration (Order of the..., 1997). It is clear that the existing law enforcement system in Ukraine at that time needed some reorganization. In our opinion, it should be implemented on the basis of a scientifically grounded State concept or program of judicial and legal reform.

Within this document (program or concept), it seems to us that an appropriate range of issues related to the restructuring of the law enforcement system in the process of state-building should be identified, namely:



- the concept of law enforcement and its place in the system of state power and local self-government;
- defining the system of law enforcement agencies and the main criteria by which a particular state body (institution) should belong to this category;
- basic principles of law enforcement and its level, range of subjects and objects of influence;
- the principles on which non-governmental bodies, public entities and individuals are involved in this activity;
- principles on which law enforcement agencies interact and coordinate;
- legal, organizational, methodological and material support of the activities of law enforcement agencies, including training and training of their personnel.

Particular attention should be paid to the reorganization of the activities of law enforcement agencies, as the largest elements in the law enforcement system. They are not only organizationally, but also functionally occupy the most important place in the law enforcement system. At that time, the system of internal affairs authorities

32

and the structure of the Ministry of Internal Affairs of Ukraine had long been in need of substantial changes, which resulted from the content of the new Constitution and were conditioned by the adoption of a number of laws of Ukraine, including the Law “About the Local Self-Government”. The organizational construction of law enforcement agencies, in particular internal affairs agencies, should, in our view, depend on the division of functions and powers between the various levels of government. According to world practice, they are divided into centralized, semi-centralized and decentralized management systems. In our opinion, a tiered system of internal affairs agencies would look like this.

At the first level, subdivisions of the municipal police, which would be formed by the respective local councils, would function. It would be advisable to refer district police departments and city police departments to them. These subdivisions would be maintained at the expense of the local budget and would be created in the following way: district police departments in cities and city departments of internal affairs are created by decisions of the relevant city council in agreement with the



department of internal affairs of the region and are directly subordinated to the local authorities. In this case, district police departments should be removed and transferred to the regional police departments of the preliminary investigation unit, criminal investigation department, fight against economic crime and a number of others. At the district level, it would be advisable to leave only those subdivisions whose activities are directly related to ensuring the functioning of local self-government bodies.

District police departments in the countryside would be established by decision of the relevant council upon the submission of the head of the state administration, who agrees with the department of internal affairs of the region. The main efforts of municipal police units should be directed to such basic functions as:

- ensuring law and order in public places;
- exercise of administrative and legal jurisdiction;
- organization and implementation of preventive, law-enforcement and law-enforcement work;
- road safety;

33

- protection of objects of municipal property and housing of citizens;
- certification of municipal property and supervision;
- ensuring the rules of the passport regime;
- control over the observance of the order of purchase and storage of weapons;
- reception of the citizens, registration and accounting work, and a number of others that functionally support the activity of executive bodies of local self-government.

Municipal police should investigate (in the form of intelligence) only those crimes that do not pose a great social danger. On the second level, subdivisions of the bodies of internal affairs would function: departments (head offices) of regions, ARC, cities of Kyiv and Sevastopol, which would belong to state executive agencies and would be financed from the state budget. These subdivisions should operate on the principle of double subordination – the respective state administration of the region and the Ministry of Internal Affairs of Ukraine. It is at this level that the main fight against crimes should be



carried out and a preliminary (pre-trial) investigation should be conducted. In addition, the functioning of the territorial subdivisions of direct subordination would be advisable in the system of the Ministry of Internal Affairs of Ukraine. They should be of an interregional nature and accountable only to central executive bodies. Such agencies should include subdivisions for combating organized crime, combating illegal migration, subdivisions for police, transport, higher education institutions subordinated to the Ministry of Internal Affairs, etc.

Despite the constant rhetoric on judicial reform and the approval of a number of concepts for such reform in 1992, 2008, 2016, in direct demand of the Constitution, Ukraine still has outdated laws and regulations. It should be noted, however, that an important, in our opinion, turning point in the “slowly proceeding” reform of Ukraine's legal system was the adoption of the (now undeservedly forgotten) Concept of reforming criminal justice of Ukraine, approved by the Presidential Decree of April 8, 2008. It acknowledged that the criminal justice system existing at that time did not conform to the new social relations existing in Ukraine, did not

34

ensure the proper state of law and order, effective protection of citizens, society and the state from dangerous encroachments. It is cumbersome, internally contradictory, not always scientifically grounded, and excessively complicated. The activities of its subjects were characterized by duplication of powers, lack of a clear definition and distinction of competence, giving priority to minor tasks, applying unjustifiably complicated formal procedures that have poor functional capacity (On the decision..., 2008). That is, in Ukraine at that time there was an objective need to reform the criminal justice system.

Recently, there have been numerous changes occurring in all legal branches, but they are not systematic in nature, mainly aimed at satisfying the departmental interests rather than ensuring the establishment of an optimal legal system in the state. Nowadays, the list of law enforcement agencies most often referred to is enshrined in the Law of Ukraine “About the State Protection of Court and Law Enforcement Employees”. According to this Law, law enforcement agencies include: prosecutor's office, internal affairs agencies, SSU, military law enforcement



service in the Armed Forces of Ukraine, state border guards, tax authorities, penitentiary institutions, pre-trial detention centers, public financial control agencies, fish protection agencies, state forest protection agencies, other agencies performing law enforcement functions (“About the State...”, 2014).

Such a wide list of law enforcement agencies, without considering the constitutional features of law enforcement, is considered rather controversial. It allows by analogy to create different units under the slogan of law enforcement agencies. For example, the Government (Resolution of the Cabinet of Ministers of Ukraine) No. 846 of September 25, 2019 (Resolution of the cabinet..., 2019), made a decision to separate the service and law enforcement function of the State Tax Service. The tax police will function as part of the “old” State Fiscal Service until a new investigative body is established – the Bureau of Financial Investigation. And the “new” State Tax Service will be in charge of service functions. Which is contrary to the Tax Code of Ukraine (Tax Code of..., 2011), where there is no tax police. Authorities such as: anti-corruption agencies of Ukraine,

35

Prosecutor's Office of Ukraine, judicial system are still undergoing reform. In the process of becoming are: the State Bureau of Investigation and the Police; institute of private performers. Ukraine's security and defense sector governance system is still lacking. Weapons law not adopted (firearms not regulated). The needs of law enforcement practice at the institute of private experts, private detectives, etc. are not satisfied.

Conclusion

Based on the research, considering the views of scientists on the announced issues, we think it is advisable to summarize some:

1. Indicative list of the main features characteristic of law enforcement: state-specificity; legality; the enforceable nature of the decisions made; the use of coercion.

2. The activities of law enforcement agencies traditionally cover the following areas: detection, prevention and investigation of crimes and other offenses; protection of state (national) security, state border and law and order in Ukraine; ensuring the safety of participants in criminal proceedings and the like.



3. Modern law enforcement agencies can be conditionally referred to as:

- bodies of the prosecutor's office;
- National Police;
- Security Service of Ukraine;
- Department of State Protection of Ukraine;
- National Guard;
- Law and order military service in the Armed Forces of Ukraine;
- National Anti-Corruption Bureau of Ukraine;
- State Border Guard Service of Ukraine;
- State Customs Service of Ukraine;
- State Tax Service of Ukraine;
- bodies and institutions of the State Penal Enforcement Service of Ukraine (penitentiary institutions, pre-trial detention centers, paramilitary units, enterprises of penitentiary institutions, other enterprises, institutions and organizations established to ensure the tasks of the DCAF);
- bodies of state financial control;
- employees of the Antimonopoly Committee of Ukraine and authorized persons of the National Securities and Stock Market Commission, etc.

4. The relevant legal document (law) should define the notion of law enforcement activity as a type of state activity carried out for the purpose of protection of law, by specially authorized state bodies by applying legal measures of influence in strict accordance with the law and in strict compliance with the established (public) order.

5. The list of law enforcement agencies – the purpose and the procedure for their creation and functioning – should be separately legislated.

Recommendations

The article is intended to increase the cognitive efficiency of mastering the disciplines “Judicial and Law Enforcement Agencies” and “Law Enforcement Agencies of Ukraine”. It will facilitate the assimilation and application of information on legislation on public law enforcement agencies and others, including public organizations and bodies promoting such activities. As well as information about the main contemporary problems of reforming the named bodies, the exercise of their respective powers, the problems of structure and subordination and the prospects of their development by the



students, students of law schools, practitioners and scientists.

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37

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