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Legal Aspects of UNSC Resolutions on International Terrorism (Sanctions Committee against ISIS (DAESH) and Al-Qaeda and Council Decisions of the European Union)

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Abstract. The article is devoted to broad issues of countering terrorism, beginning from the definition of the persons sponsoring terrorism. Also, challenges of the Suction Committee, Listing-deListing procedures, expansion of the powers of police and intelligence services. Some of the authorities continued to persecute people peacefully practicing their religious beliefs through unregistered religious groups. Some countries are to initiate legislative changes with regard to non-governmental organizations to restrict their activities that contravene the conditions of freedom of association

There is a broad and comprehensive analysis of the United Nations' main resolutions and other documents and reports on activities of the Analytical Support and Sanctions Monitoring Team established according to resolution 1526 (2004) addressed to the Chairman of the SC Committee established under UNSC resolution 1267 (1999).

Keywords: countering terrorism, sanctions, legal procedures, financing terrorist organisations, United Nations, European Union.

Introduction

To date, countering extremism and terrorism remains relevant, as these acts are a threat not only to the national security of individual states but also pose a danger to the world on a global scale. In this paper we consider the problems of legislation in the implementation of anti-terrorist measures to prevent sponsorship and any support for acts of terrorism and such organizations and groups; the relationship between the constitutional rights of man and citizen with the need for their reasonable restriction in the issues and interests of national security of the state; the proposed ways to improve the work of competent authorities in this direction.

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In order to substantially deal with the problematics of the issue, we need to identify the subject of the study, which is the legislation in the field of countering terrorism and extremism. Since this subject is very broad and may include a large number of national and supranational normative legal acts, regulations, agreements, and other sources, in this article, we have considered the acts of the UN, the European Union, the United States, Uzbekistan, and Kazakhstan. Having defined the subject of our study, it is necessary to outline what we understand by the terms "terrorism", "act of terrorism", "terrorist group", "terrorist organization", and "terrorist".

Literature review

Definition of the term “Terrorism”. Due to the lack of a single universal definition of the term, we consider the appropriate formulation given by U.S. District Judge for the District of Michigan Thomas Thornton, who 60 years ago, defined terrorism as "a symbolic act designed to influence political behavior by unconventional methods involving the use or threat of violence" [1]. Accordingly, this formulation reveals our next term, "act of terrorism", which seeks to influence by unconventional means, meaning unlawful and destructive acts of a violent nature, a state or international organizations in their decision-making. The exact definition of a terrorist group may vary in different legal contexts and countries. However, first of all, we see that in its composition and according to the general principles of criminal law, two or more persons, where a group of people pursue a criminal intent. So, we have chosen a more general definition, which is contained in paragraph 3 of the Common Position of the Council of the European Union of December 27, 2001. "On the application of specific measures against terrorism" (2001/931/CFSP), where "terrorist group" means a structured group of more than two persons, which has developed over some time and commits concerted action to carry out terrorist acts [2]. The UN Convention on the Prevention of the Financing of Terrorism, adopted in 1999 (UN General Assembly Resolution No. 54/109), does not explicitly define "terrorist group", but it does define terrorist financing that may be linked to terrorist groups or organizations [3]. Based on the provisions of the above-mentioned UN Convention and taking into account the Common Position of the Council of the EU (2001/931/CFSP), we can conclude that a "terrorist organization" is a group of persons or an organization that systematically and in an organized manner engages in the commission of acts of terrorism, including the planning, financing, preparation and execution of terrorist acts. These actions may include violent acts, attacks on civilians, state or international organizations, and may be directed towards political, religious, ideological, or other goals.

Research methods

At the moment, there are several legal problems, among them legislative problems in the implementation of anti-terrorist measures. Based on the principles of legality, it can be assumed that "all acts (under criminal law), including those enacted concerning 'terrorist acts' should be as precise and free from any ambiguity as possible concerning prescribed conduct" [4]. Therefore, States should ensure that such acts do not provide spontaneous and discriminatory

coercion to violate legally protected rights such as the right against arbitrary detention, freedom of movement, freedom of association, freedom of expression, etc. [5]. There is no clear and agreed-upon legal definition of "terrorism" and "terrorist/group of terrorists", so the risk of arbitrary, sometimes politically motivated abuse of such anti-terrorism laws is not excluded [6].

Discussion

Legal actions against terrorist organizations and persons sponsoring terrorism. About 15% of Member States reported to the Monitoring Group on legal actions or proceedings against a national authority. Several individuals on the list of terrorist organizations and persons sponsoring terrorism (hereinafter referred to as the EU List) filed lawsuits in the European Court of Justice against the EU Commission [7]. In the U.S., several lawsuits have been filed in district courts with claims to be tried under domestic law.

The European Union currently has the above-mentioned EU List, which was updated on 20.07.2023 to include 13 persons and 21 organizations as persons, groups, and entities to which Articles 2, 3, and 4 of Common Position 2001/931/CFSP apply [8]. It is noteworthy that this EU List includes a person who has been deemed deceased for more than 3 years but is still on the List. This supports our next point that the names on the EU List-like the EU List and the Sanctions Committee against ISIS (DAISH) and al-Qaeda (hereinafter referred to as the Sanctions Committee)-identified by intelligence agencies have limited reliability, i.e., lack of proper identification and attention to data, supporting information, cultural interpretations of names and positions. According to the UN, there are now 256 individuals and 89 organizations on the Sanctions Committee's list (data as of 21.07.2023) [9]. As many member states have reported, *"some names are simply not enough to allow for any legal action, or are missing specific details that many innocent people would be affected. Terrorist groups have no legal identity at all, and therefore, it cannot be assumed that they have bank accounts, hold positions, have financial assets, or own property according to the names on the list. While the listing of such organizations makes sense, in facilitating the subsequent listing of their leaders, the Sanctions Committee continues to issue asset freezing orders that have no real purpose legally".*

It may be argued that the List is not part of the criminal process and that the standards of testimony in criminal law or the criminal law process are not required to place persons or objects on the List. However, some states have expressed concern that the basic defence, in both criminal and civil cases, as established by the process, is not available to those on the List. Most cases require EU sanctions (Court of First Instance, European Court of Justice, and European Convention on Human Rights). Several lawsuits have been filed by entities and individuals in the US. Two of them are charities: Benevolence International Foundation and Global Relief Foundation. [10] (Aaran Money Wire Service и Global Service International [11]) Benevolence International Foundation has admitted that it has *"funds earmarked for humanitarian work by groups for Bosnian and Chechen fighters".*

Challenges of the listing/ delisting process:

Taking the above into account, we can identify the following main challenges concerning the listing/ delisting process:

First, there is no prior notice of the application or lifting of measures by the Sanctions Committee before or after listing. This can be demonstrated in part by the inconsistency between effective enforcement of the asset freeze (which does not require prior notice) and the requirement to act while keeping this information confidential, at least for the first time. The lack of clarity of procedure makes it very difficult to challenge a decision taken by a natural or legal person. As a result, it is possible to prevent undeserved listing at an early stage (before their names are publicly announced and the individual or company suffers damage to moral/ business reputation).

Second, even if it is possible to find any errors in the evidence, there is very little time (usually only 48-72 hours) for any State to verify information about suspects. There is no specific time limit, and the names of these individuals can be kept secret forever until the Security Council or the Committee decides otherwise, either on its own or on appeal through the relevant ombudsperson of a member state of the organization.

Third, while the Committee's implementing guidelines include a de-listing procedure, they do not set out the justifying circumstances that could support and do not authorize individuals to petition for de-listing (only through the government of residence and/or citizenship). The only indirectly stated justification is the death of a listed individual, which is indicated by the wording "in respect of a deceased person", but it is not clear by whom the relevant application/ petition for de-listing should be filed. Resolution 2610 (2021) is silent on the procedure for de-listing, as well as the possibility of requiring the petitioning State to seek any information justifying de-listing. The State relies on diplomatic protection for compatriots, but the State of nationality/residence may not be interested in intervening, which is often the case. If a name appears on the List, each member can prevent removal from the List, and the petitioning State cannot force a review of the case. Moreover, if the Government is not favourable to the suspect, the petition may not make it to the Committee despite its efforts.

Inclusion on the List by the Committee does not prevent individual States from taking any action against the individuals or assets involved, according to the laws of the country. States may initiate criminal, civil, or administrative proceedings against a person or entity designated for inclusion on the List or take steps to remove and confiscate assets rather than simply keeping them frozen, as the resolution requires. But this must be done in agreement that the State can follow the fairly obvious standards of the laws of the land. States are also free to enact laws authorizing victims of terrorism to obtain such assets, so long as State standards are met.

Fourth, there is no fact-checking mechanism that can authorize the de-listing of deceased persons as soon as circumstances permit, as many States have advised. It is possible that terrorists could fabricate their deaths to avoid capture or escape or to carry out attacks. Similarly, transactions on behalf of deceased persons may pass through financial systems long after their deaths [12].

Fifth, the difficulty is the inconsistency of basic needs protections when a person and those materially dependent on them are listed, their assets are frozen, which affects their family members. First, resolution 1267 allowed for the release of assets for humanitarian needs on a case-by-case basis [13], but this was later discontinued. Currently, the Committee is *"considering guidance on the management of requests for release, on humanitarian grounds"* [14].

Sixth, with the development of new technologies and the lack of unified international regulation of online transactions using blockchain technologies, it is difficult to trace the paths of funds that can be used to finance and sponsor terrorism which can be used in the financing and sponsorship of terrorism. All this happens due to the accessibility and anonymity of such financial transactions.

There are legislative problems in implementing the freezing of bank accounts and other assets of persons suspected of involvement in acts of terrorism. For example, according to 2003 reports, 149 countries issued asset freezing orders, and more than $125 million of terrorism-related financial assets were frozen.

It should be noted that some financial and banking officials have expressed serious reservations about further expanding the List to include another class of al-Qaida and ordinary members. In fact, such an expansion would make it very difficult to monitor banking transactions and weaken their ability to disrupt terrorist financing by requiring more effort to monitor a large number of legitimate transactions involving individuals with similar names. In addition, this may result in significant humanitarian hardship for more family members of terrorist suspects. In the meantime, the Committee is receiving support from other services and bankers to apply their expertise in identifying such illegal activities. For example, the Wolfsberg Banking Group, a team of 34 government and private sector organizations, has developed a questionnaire on useful patterns of terrorist financing behaviour, information on terrorist suspects, and procedures for identifying and monitoring transactions. There is also the current experience of the cryptocurrency exchange Binance in investigating and sourcing funds with the help of cybersecurity experts and tracking online transactions from anonymous accounts and cryptocurrency wallets.

Challenges of Sunctions Committee. Summarising difficulties related to the work of the Committee that we have raised:

First, it is known that the flow of money does not always take place through official financial institutions. So-called money couriers are one of the main means of transferring money from Western residents abroad, where some of their families reside. Therefore, the Sanctions Committee compels Member States to take measures against the cross-border movement of all types of valuables, including precious metals, cryptocurrency, and NFT, which could be used for terrorist financing. The EU adopted Regulation 2580/2001 to implement two Common Positions, where the concepts of funds and financial assets are defined as "*financing of any kind, tangible or intangible, movable or immovable, legal documents … electronic or digital evidencing such assets"* in addition to bank checks, bonds, etc., so the left "door" is open to the separation of services to implement the.

Second, the other widespread means are alternative remittance systems, which are based on personal trust and relationships through which money is sent from one place to another, without "the actual movement of physical circulation of money or financial documents". Money transfer systems follow a parallel to the banking sector and remain largely unregulated and independent. Since many of them work in secret, it is very difficult to identify them, particularly in states where the practice is prohibited.

In 2001, three Swiss nationals, natives of Somalia (Adena and others) and the Al Barakaat International Foundation, a non-profit organization registered under Swiss law which, inter alia, facilitated financial transactions between Swiss and Somali residents, brought their case before the Court of First Instance. They filed a lawsuit alleging abuse of power by the Council, which issued the relevant orders to implement UN Resolution 1333(2000) and failed to verify the basis for the financial sanctions imposed on the applicants, thus *"disregarding the fundamental principles of the right to a fair and objective hearing"* [11].

The Sanctions Committee has proposed that only registered and licensed alternative remittance systems should be required to operate with known network correspondents that are also licensed and approved through the supervisory channels of interested States.

Finally, there is the view that charities and similar organizations can be used by terrorists, and although the likelihood is small, the threats are real enough to warrant regulation. However, recent case law shows that this view can have negative consequences. In 2002, the EU Council made a second update to the List, which imposed a ban on financial transactions with individuals and certain groups. The amendment was adopted by a "written procedure", the text of which was simply circulated to governments and fully agreed upon, barring any protests. As a result, the PFLP, the Palestinian Liberation Front (PLF), and the Revolutionary Armed Forces of Colombia (FARC) were initially listed along with 5 other groups based outside the EU. Charities in Sweden have demanded that PFLP be delisted, although they have not challenged their right in the courts based on fears that other foreign support projects.

We should also note an interesting point related to the UK's exit from the European Union in 2016. Here our interest lies in the fact that such terrorist organizations as the Continuing Irish Republican Army (CIRA), the Real IRA and the Ulster Defense Association/Ulster Freedom Fighters (UDA/UFF), once included in the EU List in 2001, were not included in it in the current version from 20.07.2023. From what it seems to us here, the Commission of the European Union had to decide to exclude such organizations from the list as not posing a threat to the EU. However, for Great Britain itself, these organizations are terrorists and pose a direct threat to the United Kingdom as a European state. And with this example, we see that lists of terrorist organizations vary from country to country, but their nature and methods of achieving their goals are not lawful and are terrorist in nature.

Expanding the powers of law enforcement services. In general, legal accountability includes issues such as the criminalization of acts related to the preparation of terrorists, related criminal acts, conspiracy, powers of enforcement, and the exercise of jurisdiction, if necessary, and the application of principles in cooperation with other services, which we will discuss in the next chapter.

The main task of States, in accordance with Resolution 1373, is to collect, exchange, and analyze information on terrorism suspects, so the increasing role of Interpol in this process is very important. Long before the events of September 11, 2001, Interpol recognized the dangers of open borders: "*The activities of international terrorist groups and criminal organizations benefit from the use of this freedom".* Interpol regularly issues colour-coded notices to judicial authorities around the world to notify them of persons wanted for criminal activity or other possible threats. Although the colour of the notice issued in a special case depends on whether

there is an arrest warrant or other order, all individuals have been placed on the List based on affiliation with or association with Osama bin Laden, al-Qaeda. Currently, individuals on the List do not appear in Interpol notifications unless requested by the State. Discussions are taking place to review the current memorandum of understanding between the UN and Interpol and, if necessary, will complement this agreement to ensure effective cooperation in issuing notices when requested by the Security Council or the UN Sanctions Committee.

The fight against Terrorism has also made fundamental changes to the concept of preventive detention and the use of the rights of material witnesses in the US [30], in issuing a partial revocation in case of a critical situation in the United Kingdom (which will be described in the next chapter), in the right to privacy and freedom of movement in various countries.

According to OSCE reports, the Russian Parliament has challenged changes to the Criminal Code concerning terrorism. Even though detention for 10 days without charge was previously accepted, it will now increase to 30 days. Central Asia has new laws on terrorism and states of emergency. As Human Rights Watch has reported, leaders in many States have also exploited the threat of terrorism for their ends, imposing restrictions on freedom of speech and association.

The Council of the Committee of Europe for the Prevention of Torture, Inhuman and Degrading Treatment or Punishment has established that all prisoners should have the right to a lawyer from the beginning of their imprisonment, as well as the right to have a lawyer present during police interrogation, which is not currently allowed. Under the new French law No. 2004-204 of March 9, 2004, the 96-hour detention regime was extended to a more extended list of crimes (terrorism suspects must be held in solitary confinement for the first 48 hours without access to a lawyer). Some questions have been raised in relation to Spain, where such suspects can be held in police custody for 5 days before appearing in court. Moreover, the judge may extend the period of solitary confinement to 13 days[35]. Part 4 of the UK ATCSA was subject to criticism that included the use of evidence obtained by torture only where public officials were involved.

Expansion of the powers of police and intelligence services. The powers of police and intelligence services to deal with persons suspected of involvement in acts of terrorism have significantly expanded. Since the adoption of Resolution 1373, the European Council, as well as many other countries, has adopted several Common Positions, one of which is devoted to the issue of strengthening police and judicial cooperation within the EU region and the empowerment of police authorities.

Some countries have expanded the powers of the intelligence and security services of the armed forces. For example, in 2002, the Belgian penal code was supplemented by a decree [12], which allowed for the interception of telecommunications not only for military purposes but also "for the safety and security of citizens residing abroad».

In Germany, the competencies of the Federal Criminal Police Service (BKA) and the Federal Special Service (BfV) have been expanded[13]. The BKA can access data of state or non-state institutions without police authorization. The BfV is allowed to make requests to banks, financial companies, airports, post offices, and telecommunication offices to obtain personal and financial data of a terrorist suspect.

As we mentioned above, the US Anti-Terrorism Act introduced new legislative and administrative measures that affect the Right to Privacy. In 2002, the US Foreign Intelligence

Surveillance Court of Review found that under this law, government prosecutors must participate in decision-making, in the use of telephone records, and in the cooperation between domestic judicial enforcement agencies and those involved in foreign intelligence collection [13]. The U.S. Antiterrorism Act significantly strengthened the FBI's telephone interception and surveillance powers, which may have undermined the separation between law enforcement and intelligence functions within the Department of Justice.

In some countries, open-door law is used in police investigative techniques that have been borrowed from intelligence: so-called "special search techniques", including surveys, rear-area infiltration, and the use of informants [13]. The "other targeting techniques" we have already mentioned, such as interception of letters, wiretapping, covert visual surveillance, etc., have also been introduced. These techniques involve a very high risk of violating the right to respect for privacy or other rights. Another problem is the increased risk of police provocation. The EU allows the use of intrusion in the rear, which was under the administration of several laws that "could compromise the right to a fair trial if the evidence gathered is used to charge the accused with a crime, as a result of police provocation, assuming that in the absence of intrusion by officers, a criminal offense would not have occurred" [13].

There has been a development in criminal procedure in the area of terrorist prosecution. The Federal Prosecution Act has been criticized for its "very broad, imprecise definition of terrorism," so that it is impossible to define the number of crimes that should be subject to federal prosecution. France amended its security law, which abandoned several Criminal Code procedures to strengthen anti-terrorism activities[14]. The law allows for the investigation and seizure of documentary evidence without the authorization of the person in whose house it is located, upon a court order of release and seizure upon petition of the public prosecutor.

According to Uzbekistan's Law on Combating Terrorism, which was adopted in December 2005, "within the anti-terrorist action zone, those responsible for conducting operations are authorized to: check the identity documents of individuals, in the absence of such a document, arrest them and take them into custody. As a result, such "identity checks" could end with a "confession" to carrying out terrorist activities[4].

Conclusions

In the name of counter-terrorism, the government of Kazakhstan has also begun to take new security measures that have allowed the National Security Committee to increase its monitoring powers [14]. In addition, the authorities continued to persecute people peacefully practicing their religious beliefs through unregistered religious groups. Recently, the same service requested the Parliament to initiate legislative changes about non-governmental organizations to restrict their activities that contravene the conditions of freedom of association [14].

From the above, we can see that the most genuine attempts, without compromising the criminal process, to advance anti-terrorism measures are made by the European Council. Nevertheless, it seems that the scope of applications for new laws is much broader than is required to fight terrorism. There is no definite answer as to whether this can be avoided. We tend to believe that, naturally, some states overreacted at first. Time will tell what is true. But

one thing is clear, as many governments have been persuaded, "we need to be prepared to put some of our freedoms at risk when terrorism is so obvious».

Summing up the above-mentioned in our research, we propose the following Recommendations:

1. Surveillance and searches of private property should require court authorization. All data collected as a result of counter-terrorism operations through surveillance, data collection should be linked to the purpose of counter-terrorism and should be based on international conventions and agreements between countries and international organizations.

2. Member States must provide complete details of the person identified for listing. The criteria used for listing by the UN Sanctions Committee, EU persons and entities identified for the asset freeze should be accessible (public) to the persons and entities and (access to information) on which the decision to freeze assets is based. The person being identified should be given a sufficient amount of time before their name is placed on the List and made public. Any decision involving the freezing of assets of persons or organizations should be subject to a legal decision/opinion.

3. Lists of individuals and organizations should be subject to periodic review, and there should be a presumption of innocence when listing. Persons subject to Re-listing should be separated into two sub-lists, the first for those who have been identified in error and the second for those who have renounced aiding and abetting terrorist financing and who prove that they no longer deserve to be on the list.

4. Protocol to the relevant Sanctions Committee, which prefers to continue to receive these types of petitions from Member States rather than directly from other parties. Any person has the right to petition the Committee directly if a Member State has denied a person's petition to the Committee. And in the case of unjustified inclusion on the Sanctions Committee list or other such list, a rehabilitative protocol shall be issued, with the latter being forwarded to the relevant authorities of the Member States.

5. The Arbitral Body and Trust Fund should include the petitioning State and representatives of neutral States, and should be composed of security experts.

Contribution of the authors.

A. Kadyrbekov – work with literature, collection and analysis of material, design of a scientific article.

R. Sadykova – definition of goals and objectives of a scientific article, work using research materials and methods, generalization, and analysis of theoretical material.

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БҰҰ Қауіпсіздік Кеңесінің халықаралық терроризмге қатысты қарарларының құқықтық аспектілері (ДАИШ (ИГИЛ) және Аль-Каидаға қарсы санкциялар жөніндегі комитет және Еуропалық Одақ Кеңесінің шешімдері)

Аңдатпа. Мақала терроризмге қарсы күрестің кең ауқымды мәселелеріне, соның ішінде «терроризм» ұғымын анықтаудан басталады. Маңызды мәселелердің қатарында террористік ұйымдар мен терроризмді қаржыландыратын адамдарға қатысты құқықтық шаралар жатады. Сонымен қатар, Санкциялар жөніндегі комитеттің мәселелері, де-листинг енгізу рәсімдері, полиция мен барлау қызметтерінің өкілеттіктерін кеңейту қарастырылады. Кейбір билік органдары тіркелмеген діни топтар арқылы өздерінің діни сенімдерін бейбіт жолмен ұстанатын адамдарды қудалауды жалғастыруда. Кейбір елдер бірлесу бостандығының шарттарына

қайшы келетін қызметін шектеу мақсатында үкіметтік емес ұйымдарға қатысты заңнамалық өзгерістерге бастамашылық етуді көздеп отыр.

Мақалада БҰҰ-ның негізгі қарарларына, сондай-ақ 1267 (1999) қарар негізінде құрылған БҰҰ ҚК комитеті төрағасының атына бағытталған 1526 (2004) қарарға сәйкес құрылған аналитикалық қолдау және Санкциялар мониторингі тобының қызметі туралы басқа құжаттар мен есептерге кең және жан-жақты талдау берілген.

Түйін сөздер: терроризмге қарсы күрес, санкциялар, құқықтық рәсімдер, террористік ұйымдарды қаржыландыру, Біріккен ұлттар ұйымы, Еуропалық Одақ.

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Правовые аспекты резолюций Совета Безопасности ООН по международному терроризму (Комитет по санкциям против ИГИЛ (ДАИШ) и Аль-Каиды и решения Совета Европейского Союза)

Аннотация. Статья посвящена широким вопросам борьбы с терроризмом, начиная с определения термина «терроризм». Среди важных вопросов – правовые действия в отношении террористических организаций и лиц, спонсирующих терроризм. Также рассматриваются проблемы Комитета по санкциям, процедуры внесения де-листинга, расширение полномочий полиции и разведывательных служб. Некоторые власти продолжают преследовать людей, мирно исповедующих свои религиозные убеждения через незарегистрированные религиозные группы. Некоторые страны намерены инициировать законодательные изменения в отношении неправительственных организаций с целью ограничения их деятельности, противоречащей условиям свободы ассоциаций.

В статье представлен широкий и всесторонний анализ основных резолюций ООН, а также других документов и отчетов о деятельности Группы по аналитической поддержке и мониторингу санкций, созданной в соответствии с резолюцией 1526 (2004), направленной на имя председателя Комитета СБ ООН, созданного на основании резолюции 1267 (1999).

Ключевые слова: противодействие терроризму, санкции, правовые процедуры, финансирование террористических организаций, Организация Объединенных Наций, Европейский союз.

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