PUBLIC SAFETY THROUGH ENSURING RIGHTS FOR DEFENSE

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Abstract. Reforming of public relations, occurring in Latvian requires the improvement of all laws, including criminal procedure law. Since the 1st of October 2005 in Latvia is in force the criminal procedure law (hereinafter criminal procedure law – CPL) which reformed the previously existing criminal procedure laws and introduced the new ones. The Article 1 of CPL defines the goal of CPL which consists in the establishment of such an order of the criminal procedure which ensures the effective use of rules of criminal law and fair settlement of criminal and legal regulations without the undue interference in private life. Personality should stand in the foreground as the most important value of society and state. Therefore, the main goal of the modern stage of forming up of legal state in Latvia is defense of rights and interests of an individual, his/her life, health, honor, dignity, provision of personal inviolability and complete safety (Sumbarova 2011). The article presents the system of security tools of participants of criminal procedure in Latvia, criminal procedure rules are analyzed, providing the security and safety of rights and legitimate interests of individual in criminal procedure and other laws.

Keywords: criminal procedure law, criminal procedure, participant of criminal procedure, safety

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1. Introduction

Public safety directly impacts processes of secure and sustainable development (Stańczyk 2011; Lankauskienė, Tvaronavičienė 2012; Tvaronavičienė, Grybauskaitė 2012; Šileika, Bekerytė 2013; Račkauskas, Liesionis 2013; Mačiulis, Tvaronavičienė 2013; Vasiljukaitė 2014; Zabers, Stivrienoks 2014; Matyasik 2014; Tunčikienė, Drejeris 2015; Girušas, Mackevičius 2014; Girušienė 2013). This paper is devoted the following public safety facet: ensuring rights for defense and safety of participants of criminal procedure in Latvia.

On the 1st of October 2005 in Latvia was in force the criminal procedure law which reformed many institutions of criminal procedure, including the institute of participants of criminal procedure. For many years the legal status of participants of criminal procedure is the object of study of scientists in the field of criminal procedure not only in Latvia, but also in the other European countries. The observance of rights of participants of criminal procedure
inextricable connected with the observance of human rights guarantees. Careful attention of scientists is drawn to the security problems of participants of criminal procedure, defense of guarantees of their rights and further improvement of all laws, including the criminal procedure law. For example, such scientists as Meikališa (2000, 2008) Kazaka (2007, 2008, 2009), Sumbarova (2011) and many others.

2. General information

The object of the research in this article is the community of legal relations formed between the subjects of the criminal procedure, on the one hand – by individuals, ensuring the safety and protection of participants of criminal procedure and on the other hand – by individuals against whom are taken certain measures to protect them. Such legal relations during the investigation of criminal cases fall under the category of the the criminal procedure law, branch of criminal law.

The goal of this article is the analysis of innovative or existing rules of criminal procedure law, ensuring the protection of rights and legitimate interests of individual in criminal procedure. In writing this article the author used the following methods: comparative and legal, logical and legal, analytical, the method of classification, the study of regulatory and legal framework.

In the Article 1 of criminal procedure law which is in force in Latvia since the 1st of October 2005, the goal of CPL is stated which in the establishment of such an order of the criminal procedure which ensures the effective use of rules of criminal law and fair settlement of criminal and legal regulations without the undue interference in private life.

The issue of safety of an individual in the criminal procedure has drawn the attention of many scientists. The achievement of goal of criminal procedure means the creation of such circumstances that ensure the effective use of rules of criminal procedure and fair settlement of criminal procedure relations without undue interference in life of an individual. Guaranteeing of safety of individuals involved in the criminal procedure is directly related with the achievement of goal of criminal procedure law. Indeed, how fully and qualitatively will be provided the rights and legitimate interests of an individual in the criminal procedure depends the fair resolution of criminal procedure relations (Kazaka 2007).

To the issues related to the ensuring of safety of individuals in the criminal procedure has drawn the attention of many scientists, including the Latvian scientists Kavalieris (1997), Meikališa (2000, 2008) and others. Conflict resolution related to the ensuring of safety of participants of criminal procedure, occurring at the stage of pretrial investigation is seen in the observance of requirements of criminal procedural law by investigator – regulation of procedures of implementation of some investigative actions and formulation of proceeding decisions (Bulatov 2003). Traditionally, the concept “defense” in the criminal procedure related to the right of suspected and accused individual for defense. Such understanding of this term related to the criminal and procedural functions, such as: control of restriction of rights of an individual; prosecution; defense; passing a judgment by the court. In 2007 through the request of Ministry of International Affairs of Latvia at the Academy was carried out the research “the experience of foreign countries in cooperation of policy and educational institutions in ensuring of public order and prevention of wrongs. Within the frameworks of the research is revealed the topical issue of cooperation of the policy and society in ensuring of safety and defense of rights of minors, as well as in the prevention of wrongs committed by minors.

Safety belongs to the one of the most important basic needs of an individual and forms his/her quality of life (Meikališa 2008). The concept “safety” in the general sense means a state of safety and lack of threats. A safety in the criminal and procedural sense has its specific content. To ensure the safety of an individual in the criminal procedure means to establish the important guarantees of achievement of goal of criminal procedure: to identify the guilty of criminal act and if it is required to apply in respect of him/her a just punishment (Kazaka 2009). The human rights at liberty are declared in Article 3 of the Universal Declaration of Human Rights (1948), in the
Article 9 of the International Covenant on Civil and Political Rights (1966), in the Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), in the Article 6 of the EU Charter of Fundamental Rights (2010), in the Article 94 of the Constitution and other regulatory enactments. In the Article 94 of the Constitution (Satversme 1922) is defined: everyone has the right at liberty and personal security with the caveat that to deprive or restrict freedom of an individual is possible only in the legally provided cases.

The Article of CPL indicates that the criminal procedure in conducted in compliance of internationally recognized human rights and without undue lying of criminal and procedural duties or disproportionate invasion of privacy. Thus, the human rights may be restricted only in cases, when it is required by the content of public security and only in the established order of CPL in accordance with nature and danger of criminal act. In the chapter 5 of CPL which is called “Individuals, implementing the defense” are determined, including the provisions, relating to the rights and obligations of such participants of criminal procedure as an individual against whom is initiated the criminal procedure, detainee, suspected, accused, convicted. Since the adoption of CPL, in many ways, and repeatedly have changed the rules, ensuring the defense of their rights and legitimate interests in the criminal procedure. The recent changes are effective as on June 25, 2014.

It is important to emphasize that the basis for the implementation of defense is expressed in the written form in the order established of CPL, the assumption of authorized official to conduct the criminal proceedings, concerning the commitment of a criminal act by an individual (part 1 of the Article 59 of CPL). Depending on obtained evidences of assumption are subdivided in the following way:

- There is a real possibility of commitment by an individual of investigated criminal act (against a person can be initiated a criminal proceeding);
- Certain facts give reason to believe that a criminal act has been committed by this individual (an individual can be detained);
- The body of evidences gives reason for the assumption that most probably the investigated criminal act is committed by this individual (an individual may be suspected);
- The body of evidences reason for prosecutor, directing the process to believe an individual that namely this individual has committed a specific criminal act (an individual can be accused);
- The prosecutor, directing an individual, who does not doubt that the available evidences can convince the court that there are no reasonable doubts that this individual has committed a specific criminal act.

According to the part 3 of the Article 59 of CPL the assumption takes the form of statement, if:

An individual entitled to the defense in accordance with the procedure established by law confirms the correctness of the assumption of the prosecutor and they both claim that an individual has committed a specific criminal act; The court after the evaluation of evidences establishes that an individual has committed a specific criminal act.

The basis for the implementation of defense for legal person is an expressed directing process by an individual in the established order of CPL, the assumption that physical person has committed a criminal act, namely, in the interests of this legal person, in the favor of this individual or in the result of his/her improper supervision or control (part 4 of the Article 59 of CPL).

For the purpose of improvement of measures of procedural defense, aimed at the more effective safety assurance of individuals, testifying in criminal cases, regarding serious crimes and their legal representatives, the threat to whom could affect the individual, testifying in criminal case on June 12, 1997, the Saeima of Latvian Republic were adopted three laws: “The Changes in the Criminal Code of Latvia”, “The Changes in the Criminal Procedure Code of Latvia” and “The Changes in the Law, regarding the operational activity”(Sheshukov 1997). In the Criminal Procedure Code of Latvia was included a new chapter 9A 9 (Articles 1067 - 10610 on measures of criminal and procedural defense). Since the 1st of October 2005 in Latvia is in force the Criminal Procedural Law in which are widely represented the measures of criminal and procedural defense. Article 24 of CPL defines the protection of an individual and property in the case of threat. Thus, an individual subjected to the threat in connection with
the performance of criminal and procedural duties by an individual, has the right to require of implementation of legally provided measures for defense of this individual and his/her property by an individual, who directing this process. An individual, who directs the process after receiving the above mentioned information depending on the particular circumstances, makes decision on the need to implement one or more of the following measures: to begin another criminal procedure to investigate the threat; to select the appropriate measure of restraint for an individual in whose interests is implemented the threat; to suggest the establishment of special procedural defense for an individual, subjected to the threat; to direct the law enforcement institutions to implement the defense of an individual and his/her property. If the mentioned measures are not able to prevent the real threat of life, an individual, directing the process refuses to use those evidences that cause the threat.

Under the threat of use of dangerous illegal acts against the subject of criminal procedure should be understood the deliberate acts that is committed by the accused or other individual, requiring to satisfy certain requirements or interfering to establish the truth in the criminal case in order to evade the guilty individuals of just punishment or committed out of revenge (Meikališa 2000). The right of the accused for defense also includes his/her right to the legal assistance provided by the lawyer. The legal assistance in the criminal proceeding renders the defender, who helps to maximize the activation of defense carried out personally by the accused and the consistent implementation of criminal and procedural function of defense as a whole. The participation of defender in the criminal proceeding is one of the most important guarantees of the rights of accused for defense.

The legal nature of activity of the defender is defined in the Article 79 of CPL. The defender is a practicing lawyer in Latvia, who is in the criminal procedure, at his/her certain stage or in the implementation of a separate procedural action is implemented the defense of an individual, who has the right for defense. One of the new institutions in the CPL is the institution of special procedural protection. The provisions are regulated in the fourth section of the CPL. The special procedural defense is defined in the chapter 17 of CPL (Articles 299-311 of CPL). These rules specify: content of special procedural defense; procedure for reviewing an application for the establishment of the special procedural defense; the suggestion of an individual, who directs the process to establish a special procedural defense; the recognition of an individual subjected to the special procedural defense; resolution to establish a special procedural defense or the refusal to establish it; enforcement of establishment on the special procedural defense; rights and obligations of defender and other individuals; rights and obligations of defended individual; production duties of procedural actions in the pretrial procedure; the peculiarities of trial; the termination of the special procedural defense; the disuse of evidences of defended individual. In the Article 299 of CPL is stated that the special procedural defense is the protection of life, health and other legitimate interests of victims, witnesses and other individuals, who are in the criminal procedure gives or gave evidences, concerning serious or particular serious crimes, giving the evidences on crimes provided for articles 161, 162 and 174 of the Criminal Law (hereinafter – CL) and individuals, the threat to whom may affect the said individuals. It is the task of the special procedural defense.

Guaranteeing of safety to an individual, giving evidences as a witness in the criminal procedure was relevant from the earliest times. It is possible to make a statement that the institution of the testimony in the criminal procedure is as old as the law itself. As states the Professor, Doctor of Law S. Kazaka (2008) the issue of defense of an individual, giving the evidences as a witness is related to the institution of testimony. In the Latvian sources of literature to the term “the special procedural defense” many authors provide many variations of interpretations. The Latvian scientist Meikališa (2000) suggests the following definition: “A special procedural defense it is a provided for CPL and the Law “On the operational activity” the pretrial investigation actions and investigation actions of the court as well as a set of the other measures aimed at the defense that are implemented, taking into the consideration the principle of voluntary, basing on the decision of the Prosecutor General in an appropriate order provided of CPL. In its turn, the Latvian scientist A. Kavalieris (1997) suggested the other definition of this term. He considers the special procedural defense as: “the system of measures regulated of CPL implemented of directing process by an individual, policeman or the other individual of the operational activity, whose goal is to prevent the infringement of life, health, property and other legitimate interests of an individual with the intent of
coercion to change or refuse of testimony, the destruction of obtained evidence, the termination of criminal prosecution or not start it at all”.

Taking into the consideration the need to protect individuals involved due to the certain circumstances in the field of criminal procedure, special procedural defense is considered as an independent criminal and procedural function, formulated by a set of protective measures implemented in compliance with the principle of voluntary on the basis of the order of Prosecutor General or the court (Kazaka 2008). The decision on special procedural defense is entitled to make only Prosecutor General of the Latvian Republic on the suggestion of an individual, who directs the process in the procedure of which is the criminal procedure based on the materials of the criminal procedure as well as if it is necessary after the hearing of threatened individual, his/her representative or defender. According to the part 2 of the Article 303 of the CPL, if an individual makes an application on the necessity to establish for him/her a special procedural defense to the court, the decision on the establishment of such defense makes the court. Such decision the court can make on its own initiative, if during the trial occurred a need in a special procedural defense of an individual and this individual agrees with it. One should agree with the opinion of Professor S. Kazaka (2008) who indicates that there can be such situation, when about the issue of special procedural defense is necessary to think before until an individual is admitted subject to the special procedural defense i.e. before an individual is recognized as victim, witness, suspect, accused, and etc., who will testify on the corresponding of criminal act in the criminal procedure. It is necessary to take into the consideration such a situation:

The state’s duty is to defend the individual, who promote the interests of the criminal procedure, it can’t be limited; it means that this obligation appears before the criminal and procedural actions and is not terminated due to their termination;

Operational and procedural actions are carried out in connection with a common need (the fight against crime). They have many common objectives – the disclosure of a criminal act and etc., which are aimed at a single final goal – the implementation of the criminal procedure;

The performance of obligations of an individual – the message to the law enforcement institution about the planned or committed criminal act;

The message about a criminal act can occur during the operational activities which often occur before the criminal proceedings.

In most cases the actions of this individual provides an opportunity for criminal proceedings. The above mentioned means, that an individual should be considered as contributor to the initial stage. From what has been said follows that measures on defense the use of which is possible during the operational activities before the start of criminal procedure, must be considered as integral part of system of guaranteeing the safety of an individual. One of the main reasons why individuals don’t apply for help in law enforcement institutions – it is a confidence of these individuals that the state can’t protect them from the revenge of criminal individuals, who very often has all the data about these individuals. Therefore, the availability of the necessity of use of these measures may appear, namely, before the beginning of the criminal procedure (Kazaka 2008). The modeling of optional versions of threats against an individual, giving evidences in the criminal procedure, the choice of specific measures for defense always depends on the individual case and the danger level. On the danger level of threats can influence the following factors:

The reality of threats;

The nature of the supposed damage;

The nature of put forward demands by the criminal;

The way with the help of which is suggested to implement the threats.

It is generally admitted that the issues of defense of rights and legitimate interests of an individual involved in the criminal proceedings are among the main. This is proved by, for example, the fact that for the purposes of defense of rights and freedoms of an individual at the international level are established and successfully operates the special body – European Court on Human Rights (ECHR). In accordance with the part 3 of the Article 303 of CPL, if necessary to suppress the identity of an individual the Prosecutor General in ruling indicates that the data
of identifying individual are subjected to be replaced by the pseudonym. In all fairness, we note that indicated common approach is “met with hostility” by a number of scientists, who believe that safety provision, even by such trivial methods as keeping under wraps the data about the identity, should be implemented only after the appearance of real threats, already reported to the participants of the criminal procedure.

The use in the criminal procedure of measures of safety, regarding the witnesses and victims by the means of classification of their data engenders a problem of so-called anonymous witnesses (victims) the data about whom are not available for defense team and individuals, presenting in the courtroom. This circumstance creates obstacles for the defense team in test and evaluation of evidences of such witnesses (victims). In the literature repeatedly have been made the suggestions to confer the right to an individual in the proceeding of whom is the case, right, if available the reasons to omit of the case papers the background information of “prosecution witnesses” (Tomin 1991). Lacking of data about the identity of the anonymous witness, the defense team can’t present in the rebutment of evidences the arguments of the possible interest of the witness in the outcome of the case, his inability objectively perceive the events of surrounding reality. In other words, the information about the identity of the witness has a fundamental importance for the assessment of his/her testimony. If these data are not available, it increases the probability of faulty assessment of reliability of evidences of the witness that can lead to the judicial error.

To comply with the international and legal and constitutional provisions the use of the mentioned measure to defend the victim should be marked with the additional guarantees that the procedure of judicial procedure was generally fair. Taking into the consideration the practices of ECHR (for example, judgment in case of Van Mechelen (Van Mechelen) and others against Netherlands on 23.07.97) (European Court 2000), to the additional guarantees of this measure of security refers:

- The existence of sufficient justifications for the use of security measures, i.e., the procedural evidences, concerning the real threat to the life, health or property of the mentioned individuals. Any measures, restricting rights should be determined by the strictly necessity and therefore keeping under wraps from the protection of information about the identity of the witness is permitted only if impossible to use other, less drastic measures;
- The identification of identity of witnesses by the authorities, leading the processes, justification of reliability and credibility of evidences of these witnesses. The Latvian legislation provides the necessity of pronouncement of reasoned decree, directing the process of an individual and obtaining consent of the prosecutor to use safety measures;
- The evidences of “secret” witnesses must be supported by the other evidences and prosecution should not be based only on decisive extent on anonymous statements;
- The provision to the defense the sufficient opportunities to ask questions to “secret” individuals. The accused has the right to interrogate himself the witnesses, who testify against him (section “e” of the 3rd Article of the International Covenant on Civil and Political Rights (section 3 “d” of the Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms) (Sinichkin 2010).

To use the pseudonym, it is necessary to have in the case the evidences of real threat, in one or another way informed to a specific participant of criminal procedure. Among all measures of defense the most significant is not the inclusion in the protocol of investigative activity the personal data of the victim, his representative or witness. In protocols of the investigative actions are not specified not only the original data, but also any information which allow to identify the “secret witness” (Brusnicyn 2005). According to the part 1 of the Article 305 of CL for non-observance of due process of law of the special defense of individuals, as well as for the disclosure of identity data of the defended individual or his location, committed by an individual, who in the connection with fulfillment of the official duties or other circumstances were known the information about the specially defended individual and who was warned about the non-disclosure of this information is punished by the deprivation of freedom for a term up to one year or short-term deprivation of freedom or compulsory labor or penalty.
Intentional divulgence to the organization the methods, tactics, means of measures for the special defense or information involved into the implementation of measures to defend individuals, who committed by the defended individual, if in the result of these actions has come the death of an individual or were caused the other grave consequences are punished by the deprivation of freedom for a term up to one year or short-term deprivation of freedom or compulsory labor or penalty (part 2 of Article 305 of CL). Relating to the grounds of use of safety measures of ECRH, examining the case of Van Mechelen, pointed out that should be evaluated the real threat of revenge” and to consider the issue “whether the applicants will be able to carry out such threats or incite others to do it on their behalf”. As an argument in favor of the absence of grounds to use the pseudonym for one of the cases of ECRH pointed out that the “witness”, who at the early stages of consideration of case identified one of the applicants as an individual, who committed crime and who didn’t use the protection of anonymity and never claimed that he was threatened” (Resolution of the European Court ...2000). Thus, the threats to witnesses may be taken as a justification of defense of the victim or the other witnesses to whose address such threats haven’t yet been received, but based on the situation may come or to be implemented.

In another decision of ECRH pointed out that the “investigator” apparently took into the consideration the nature of the environment of drug dealers, who….. used part of the threat or actual violence against addicts or other individuals, who gave evidences against them. Thus, the witnesses may fear reprisals on the part of drug traffickers and risk to sustain a bodily injury (The resolution of the European Court of Human Rights… 2006). On the basis of the above mentioned ECRH is not limited the reported cases only by those cases in which criminals come to the victim and express him/her the threats. It is referred to the threat not as about the characteristic of the situation in which there is a high probability of influencing on a witness (the threat of revenge, murder, bodily injury and etc.).

We believe thatthe form of the data, concerning the threats of security should not be associated only with requirements, specified to the evidences. However, it should be taken into the consideration that the regulation of specific security measures, relating to the property restrictions of the rights of citizens, provides for increased requirements for the justification of necessity of their use. For example, the bail hearing in the terms of confinement under guard as a means of ensuring safety (part 1 of the Article 274 of the CPL) require the judicial decision, getting of which without the evaluation of evidences is impossible (part 1 of the Article 274 of the CPL). Taking into the consideration the rigorous approach of the legislator to the use of preventive measures, including for the safety assurance of participants of the criminal procedure, is extremely interesting the practice of confinement under guard in the mentioned purposes. The study of the materials of the criminal cases, sent with the petition on the selection of the named measure in court, allowed to revealed in all cases the possibility of influence on the participants of the criminal procedure was confirmed by the indirect data, in most cases – information that to the suspected (accused) are known the data of the victim’s identity (usually in the cases of violence), witness (in cases of crimes, related to the illegal drug trafficking).

We note that in the sentence of the European Court of Human Rights on 26.04.2005 with the regard to case of Chodecki v. Poland was stated that confinement under guard is applied in the case, if the illegal actions of the suspected individual are in conflict with the public interests which must be evaluated higher than the freedom of one individual. Having studied the data of statistics of Latvian the first half of 2014 on the use of measures of procedural compulsion and procedural sanctions at the stage of pre-trial procedure at the level of the first-instance courts, it is possible to conclude that confinement under guard is used most of all the other measures of procedural compulsion. It was applied to 869 individuals and in 119 cases was dismissed in its use. The total number of used measures of procedural compulsion constitutes 912. It is important to point out that confinement under guard is the most restrictive measure of procedural compulsion which is largely restricts the human rights. One of the guarantees of rights of defense is the provision of assistance to defender of an individual in respect of whom has already been sentenced in considering his/her case by the court of second instance. ECRH in ruling of 13th May 2013 with regard to case of Artico (Artico)against the Italy (Ilyin 2005) on the 25th of April 1983 with regard to case of Pakelli (Pakelli) against the Federal Republic of Germany (Ilyin 2005) based on the fact that failure to submit to the sentenced individual of such assistance, if he/she has no sufficient means to pay for services of
defender and if it requires the interests of justices is a violation of rights guaranteed by subparagraph “c” of section 3 of the Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms. Thus, within the meaning of the above mentioned rules in the presence of the corresponding application on the part of convicted the court must ensure the participation of the lawyer at this stage (Sinichkin 2010). The appointment of the lawyer should be implemented in the order of the articles 80, 84 of the CPL.

In addition, inadmissibility of divulgence of data of pre-trial investigation is possible to expend to the concept of inadmissibility of divulgence of the mere fact of investigative proceedings. And with this position we should agree as the regular use of provisions of CPL that will allow warning the participants of investigating actions about the non-disclosure of data of pre-trial proceeding under the subscription with warning about the criminal responsibility, thus will contribute to the safety of witnesses and victims.

International acts in the field of human rights and fight against, providing the possibility to consolidate in the legislation the interrogation under pseudonym, at the same time establish that at that should be taken measures, providing the proportionality, related to the use of such means the restrictions of rights for defense and pursued aim, as well as allowing to protect the interests of accused in order to keep the fair nature of trial and the rights of defense would not have been completely deprived of its content. It is to be agreed with the opinion of Professor Sheshukov (1997) that the Latvian version of safety assurance of individuals, promoting justice, although taking into the consideration to some extent the international practice and contains benefits still suffers, in our opinion, quite significant disadvantages.

Conclusions

First of all, it is impossible to agree with the idea of the special procedural defense as a combination of not only specific procedural means, but as means of other legal defense used outside the criminal and procedural activity (security, change of location, job, identification data and etc.). All the combination of means of remedies introduced by the legislator of Latvia would be possible with some degree of conventions; it is needed to divide them into two groups and defined them as 1 – special procedural defense and 2 – special legal defense, radically different in principles of defense and their legal consequences. Namely the last circumstance is determined the necessity of delamination of subjects authorized to use one or another type of defense (Sheshukov 1997).

The analysis of positions of scientists in the field of providing of defense of rights and safety of participants of criminal proceeding, the conclusions made by the author in the course of this research, as well as the given practical positions and statistics provide the evidence of the further improvement of rule-making process for the research of institute of providing of defense of rights and safety of participants of criminal proceeding in Latvia.

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