IMPLEMENTATION OF CRIMINAL CONTROL OVER FOREIGN FIGHTERS

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INTRODUCTION

For the first time, the term "foreign fighter" was officially applied to fighters who came from other countries to fight for al-Qaeda in Afghanistan. Later, this term was also applied to people who came to Iraq and participated in the 2003 insurgency. However, foreign fighters first appeared much earlier. By the end of the 18th century, approximately 100,000 foreign fighters had taken part in approximately 100 wars (Malet, 2015). Since 1980, between 10,000 and 30,000 such "fighters" have been involved in conflicts ranging from Bosnia in the west to the Philippines in the east (Hegghammer, 2010).

In the absence of a legal definition, members of the scientific and professional communities have defined this term in a variety of ways. The Geneva Academy of International Humanitarian Law and Human Rights provided one of the most frequently cited definitions: "A foreign fighter is an individual who leaves his or her country of origin or habitual residence to join a non-state armed group in an armed conflict abroad and who is primarily motivated by ideology, religion, and/or kinship." (Geneva Academy of International Humanitarian Law and Human Rights, 2014).

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It is important to distinguish between the terms “foreign fighter” and “foreign terrorist fighter”. Foreign terrorist fighters are individuals who travel to a country other than their country of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training, including in connection with armed conflict (UN Security Council, Resolution 2178/2014 and Resolution 2396/2017).

By analyzing the aforementioned definition, it can be concluded that the United Nations Security Council resolutions only include foreign fighters whose goal is to carry out terrorist-related activities. However, not all foreign fighters who travel to another country and engage in some form of armed conflict intend to commit terrorist acts or prepare for a terrorist attack. At the same time, this does not preclude terrorist cells from recruiting these fighters to go to the battlefield in another country, but it does not make them terrorists.

The Criminal Code of the Republic of Serbia was amended in 2014 to include participation in a war or armed conflict in a foreign country as a new criminal offence under Article 386a. This criminal offence can be committed by any Serbian citizen who participates in war or armed conflict in a foreign state, as a member of the military or paramilitary forces parties to the conflict, and is not a citizen of the foreign state, nor a member of the official mission of an international organization of which Serbia is a member (Criminal Code, Official Gazette RS, 108/2014).

The Criminal Code of Bosnia and Herzegovina contains a similar criminal offense. Specifically, the criminal offense of unlawful establishing and joining foreign paramilitary or parapolice formations (Criminal Code of Bosnia and Herzegovina, Article 162b) is committed by anyone who, in violation of the Law on Defense of Bosnia and Herzegovina or the Law on Service in the Armed Forces of Bosnia and Herzegovina, organizes, directs, trains, equips or mobilizes individuals or groups for the purpose of their joining in any way foreign military, foreign paramilitary or foreign parapolice formations that are acting outside the territory of Bosnia and Herzegovina.

Foreign fighters and foreign terrorist fighters’ participation in Iraq and Syria is most frequently written about and analyzed in the scientific and professional communities. Our analysis will focus on the importance of establishing criminal control over Bosnian and Herzegovinan citizens who participated in these wars. However, foreign fighters and foreign terrorist fighters from other countries also took part in the war on Bosnia and Herzegovina’s territory. The war on the territory of Bosnia and Herzegovina allowed terrorist organizations to spread their influence in this region. Terrorist organizations took advantage of the war’s events by sending volunteers to Bosnia and Herzegovina under the guise of assisting their brothers in the war (Šetka & Ratković, 2011:657). It is a well-known fact that Mujahideen have been coming to Bosnia and Herzegovina since 1992, participating in war conflicts and committing the most serious crimes. Following that, a number of Mujahideen stayed there to live and were granted Bosnian and Herzegovina citizenship. They established the first Wahhabi/Salafi communities in order to spread radical ideology and recruit new members. Locals joined them, basing their lives on strict religious rules based on their interpretations, thus becoming hotbeds of radicalism and extremism. Later, events that can be linked to terrorism and specific terrorist acts were linked to the actions of these communities (Šikman, 2018: 209; Erjavec, 2009:7).

More than 30,000 fighters from more than 100 United Nations member states are fighting on the side of the Islamic State in the war Syria. (Popović, 2020:56; Šikman, 2010:210). According to CIA data (Central Intelligence Agency), that number is between 20,000 and 31,500 (Marković, 2018:210). The motivations for joining terrorist organizations ranged from religious and political to personal (UNODC, 2019:11). Their roles in the Islamic State ranged from potential suicide bombers to fighters and other auxiliary roles (RAN Centre of Excellence, 2017:20).

The return of foreign fighters to their home countries is a serious issue. They return in waves, and the statistics are very unreliable. The shrinking territories in Syria, as well as the collapse of the Islamic State in Iraq in October 2017, contributed to the latest wave of returns. At the start of 2018, there was a sharp decrease in the number of those travelling to Iraq and Syria. In addition, there is a growing concern regarding the impact of fighters returning to their home countries or moving on to other, sometimes unknown, locations. In this regard, there is also a fear that the Islamic State has directed its activities to other places using returning foreign fighters (OSCE/ODIHR, 2020:12).

In order to monitor and identify the risks of terrorism and other criminal acts of violence in a quality, timely, and objective manner, in addition to the implementation of adequate de-radicalization programs and prevention of terrorist radicalization, the implementation of criminal control is critical. Police agencies use criminal control to act proactively, directing their activities to prevent criminal acts from being committed. The method by which Bosnia and Herzegovina's institutions implement criminal control over foreign fighters will be the focus of our analysis.

THE RETURN OF FOREIGN FIGHTERS FROM THE BATTLEFIELD – A RISK FACTOR FOR COMMITTING CRIMINAL OFFENSES

Despite the fact that travels to foreign battlefields are criminalized as separate offenses, this did not deter individuals from going and participating in a war in another country. The return of foreign fighters has increased the possibility that these individuals will perpetrate a terrorist act or other violent crime in their home country. Thus, the attacks in Paris, Brussels, Istanbul, and London between 2015 and 2017 are an example of the security challenge posed by foreign fighters, particularly foreign terrorist fighters (OSCE/ODIHR, 2020:12; Byman & Shapiro, 2014:1). They act according to their own beliefs. After traveling to another country, some foreign fighters return home and commit crimes. Aside from the immediate threat, foreign fighters concentrate their efforts on recruiting others to become terrorists. It is argued that (contrary to popular belief) most foreign fighters do not die on battlefields or travel from conflict to conflict. Instead, experience shows that those individuals return home (Cragin, 2017:293). Some authors believe that when they return to their home country, they avoid committing violent crimes in order to avoid drawing the attention of the police. However, this is not to say that they are not a security risk. In the case of Saudi Arabia, Afghan returnees did not immediately turn to violence, but their families served as the main recruiting centers for al-Qaeda in the Arabian Peninsula for more than a decade (Cragin, 2017:294).

As already pointed out, foreign fighters have different profiles as well as reasons for returning. In this connection, two groups of returnees can be distinguished. The first group consists predominantly of men, motivated to leave for humanitarian reasons and/or to fight the Assad regime, who are less violent and relatively free to leave the terrorist regime. The second generation of returnees is more battle-hardened and ideologically committed, had to evade pervasive surveillance by the Islamic State to escape and may have come back with motives to cause harm, including violence against citizens of the European Union and the Western Balkans. There are also child returnees who require special attention, because some have received military and ideological training since the age of nine. Returning children have experienced war trauma, witnessed executions and punishments, and in some cases, been forced to execute people. As the Islamic State has put up many barriers to leaving (strong surveillance and monitoring of communication, threats of execution), authorities need to question the intentions of returnees, investigate whether they have committed violent crimes (including abroad), and whether they have ulterior motives for returning[2], such as planning attacks within Europe (RAN Centre of Excellence 2017:20). The analysis of motives should be the subject of criminal control, which can be best realized through community policing, specifically by cooperating with their friends, reli-

2 For example, in the North African context, Tunisian authorities see foreign terrorist fighters as a potential security threat with unprecedented lethality and the ability to cause mass destruction. In addition, two former Shin Bet (Israel's domestic security agency) officials expressed similar concerns, believing that the agency's main problem is the return of foreign terrorist fighters who could operate within sleeper cells that could one day be activated by an external factor, allowing them to carry out terrorist acts on Israeli soil (Hofman & Furlan, 2020:6).

gious institutions, or through their own actions when they return (Barret, Maher, Pantucci & Ward, 2014:6).

Returnees are viewed as a security risk for two reasons. First, because of their acquired skills, the ability to carry out a terrorist attack or other acts of violence as a result of battlefield experience and training in terrorist network organization. Second, because of their alleged motivation to do so, as many are thought to have been desensitized to violence and brainwashed by joining the Islamic State. They represent war veterans who have become more radicalized while remaining connected to a network of people in the region and around the world who share their worldview (Šikman, 2018:127).

Given that participation in war conflicts in another country is a criminal offense, such individuals are arrested and prosecuted immediately upon their return to their home country. In Bosnia and Herzegovina, the penal policy toward these individuals is very lenient. Employees of the judiciary believe that proving the aforementioned criminal offense is extremely difficult, and suspects frequently claim that they went to a foreign battlefield to do humanitarian work. As a result, a large number of such people receive very light sentences. An additional security issue is the fact that convicted individuals can substitute a prison sentence for a fine[3]. As a result, if a person is sentenced to one year in prison, they can pay the state 30,000 KM and be released on the condition that the prison sentence be replaced with a fine. Also, at the outset, there is a problem in that the state does not consider where such people get so much money with which to pay such sanctions. We believe that such individuals should not be able to substitute a prison sentence for a fine (Popović, 2020:351).

Persons sentenced to prison are subjected to a de-radicalization process after serving their sentences in order to successfully integrate into society. De-radicalization is accomplished through the implementation of various programs (e.g., education programs for children, adolescents, and their parents in order to prevent radicalization; multi-agency programs that enable the development of cooperation between individual institutions and that identify and provide support to people who are at risk of radicalization, etc.).

Prevention is a core element of the EU Counter-Terrorism Strategy and the EU Counter-Terrorism Action Plan, and preventing radicalization and recruitment of new members is a key activity and the most difficult challenge. In 2008, the European Commission established the European Network of Experts on Radi-

3 A prison sentence is replaced by a fine by equating each day of the imposed prison sentence with one daily amount of the fine or with 100 KM if the fine is fixed. See: Criminal Code of Bosnia and Herzegovina (Official Gazette Nos. 3/2003, 32/2003 – rev., 37/2003, 54/2004, 61/2004, 30/2005, 53/2006, 55/2006, 8/2010, 47/2014, 22/2015, 40/2015, and 35/2018), Article 42a, paragraph 2.

calisation – ENER to study radicalization and develop proposals for political and legal de-radicalization measures (Đurđević &Vuković, 2016: 226).

Since large financial resources are required to implement various de-radicalization programs, not all states have the same opportunities to combat terrorism.

For example, the quality of the de-radicalization process in Bosnia and Herzegovina is very low, and it was implemented late and is still in its early stages. Aside from a lack of financial resources, it is important to note the presence of a specific problem related to the fact that a portion of Bosnia and Herzegovina views radicalized individuals as heroes, which thus complicates the process of de-radicalization (Popović, 2020:393).

Based on the above, it can be concluded that the return of foreign fighters, including foreign terrorist fighters, to their home countries poses a significant challenge to the police and other institutions (judicial bodies, social service centers, etc.) in that country. If we analyze the reason for their departure, the events in which they participated, the problems they encountered after their return, the motives for their return, and the degree of radicalization they have attained, we conclude that these individuals pose a high security risk and that there is a likelihood that they will commit one of the crimes, particularly those involving violence. To be more specific, criminal control is necessary to prevent the commission of these criminal acts, including terrorism, as well as the activities of these individuals to radicalize others. In this manner, the prevention of terrorism-related crimes and other violent crimes is accomplished.

IMPLEMENTATION OF CRIMINAL CONTROL OVER FOREIGN FIGHTERS

Foreign fighters pose a significant challenge to all countries (Cragin, 2017:293). Implementing a process of de-radicalization and criminal control over such individuals is a necessity. It is about the organized activity of the police, where they monitor and analyze their behavior as well as assess and predict potential criminal activity. The control is carried out with the goal of gaining a complete understanding of such persons' activities and behavior, more specifically, to gather facts in a timely manner that indicate that the monitored person is preparing or intending to commit a criminal offense, in order to prevent its execution (Žarković, 2009:73). Therefore, a series of operational preventive measures and actions are undertaken to collect information in order to prevent the commission of terrorist or other criminal acts, which may be committed by foreign terrorist fighters upon their return. Events and activities that may indicate the preparation and planning of criminal acts are monitored (Đurđević & Radović, 2020:60). The existence of a general suspicion that certain events, places, and people may be at risk of committing a criminal offense is a required condition for criminal control to be implemented (Simonović & Pena, 2010:118). The goal is for the police to become familiar with and stay up-to-date on a variety of socially harmful phenomena, criminogenic factors, and interesting environments, as well as gain insight into the movement of specific categories of individuals (convicted persons, persons on parole, etc.) (Vuković, 2017:228). The return of foreign fighters and attempts to integrate them into society carry a high risk of committing a criminal offense, not only terrorism, but also other offences, most notably property crimes and criminal offenses with elements of violence. There is a legitimate fear of this if the financing of those individuals by terrorist organizations is prevented and the state is unable to provide financial assistance or employ them. When all of this is considered, it is clear that quality criminal control enforcement is to a large extent necessary. Within the framework of criminal control, the following operational-tactical measures and actions are implemented: patrolling, identification, inspection of vehicles and luggage, ambushes, raids, use of informants, secret surveillance, and monitoring of potential criminal perpetrators (Simonović, 2004:106). The most effective way for the police to implement criminal control is to perform police and patrol activities directed at criminogenic hot spots (Šetka, 2018:474). What should be emphasized in particular is that great care should be taken to ensure that foreign fighters' rights and freedoms are not violated during the implementation of these measures (Duffy, 2018:123). States must act in accordance with the law, which requires, inter alia, adhering to international human rights law, international humanitarian law, and international refugee law (OSCE/ODIHR, 2020:28–29). Accordingly, it should be noted that a country's police structure organization must be at a level that allows for the required degree of functionality in order to prevent terrorism. When this is the case, it is also possible to implement criminal control over the activities of foreign terrorist fighters (Popović & Šetka, 2018:200). Based on the aforementioned, it is clear that criminal control is a critical tool for police preventive actions and that, with its quality implementation, the commission of criminal acts by foreign fighters can be greatly prevented. Our research focuses on how institutions in Bosnia and Herzegovina control foreign fighters as well as individuals who fought in Bosnia and Herzegovina during the civil war and subsequently stayed and became citizens of the country.

EMPIRICAL RESEARCH

The research was conducted from March 22, 2019 to May 29, 2019, and a structured interview was used as a data collection tool. The research included a sample of 22 respondents who were political representatives, prosecutors, heads of police and security agencies, scientific and educational workers, counter-terrorism experts who deal with institutional cooperation, strategic issues, and strategic planning related to terrorism, and police officers dealing with terrorism control (criminal control). For the purposes of this paper, two questions will be analyzed from the broader research mentioned above:

Table 1. *How do the institutions in Bosnia and Herzegovina control foreign fighters who fought in the country, stayed in it, and were granted its citizenship?* (Popović, 2021:245–246)

	Frequency	Percent (%)	Cumulative percent (%)
Control over such persons is not being performed	11	50,0	50,0
In accordance with the institutions' competencies, and if necessary, such persons are monitored if they are of security interest	3	13,6	63,6
Continuous monitoring of such persons is carried out in accordance with the institutions' competencies	5	22,7	86,4
The citizenships of such persons are reviewed	1	4,5	90,9
I am not familiar with it	2	9,1	100,0
Total	22	100,0	

By analyzing the responses to the question "How do the institutions in Bosnia and Herzegovina control foreign fighters who fought in the country, stayed in it, and were granted its citizenship?" (Table 1), 11 of the total of 22 respondents, or 50%, believe that "control over such persons is not being performed", while three respondents (13.6%) believe that "in accordance with the institutions' competencies, and if necessary, such persons are monitored if they are of security interest", further, five respondents (22.7%) believe that "continuous monitoring of such persons is carried out with the institutions' competencies", one respondent (4.5%) believes that "the citizenships of such persons are reviewed", while two respondents believe they do not know. The findings of the above-described question clearly show that very little, if anything, is being done to address the issue of the control in question, and that there is plenty of room for improvement. Furthermore, we cannot agree with some respondents who believe that "in accordance with the institutions' competencies, and if necessary, such persons are monitored if they are of security interest". This is supported by the fact that some respondents state that there are persons convicted of terrorist acts on Bosnia and Herzegovina's territory who are not being monitored. They offer as an example the major ideologue, member of the El Mujahid detachment and Bosnian son-in-law, Sheikh Imad el-Misri, who was sentenced to ten years in prison for the terrorist attack in the ancient Egyptian city of Luxor. Bosnia and Herzegovina extradited him to Egypt in 2001, where he spent eight years in prison before returning to Bosnia and Herzegovina to teach at faculties. He also wrote a book titled "Notions That Must Be Corrected", which is said to be a "Wahhabi manifesto". Aside from him, there is also a well-known Egyptian in Bosnia and Herzegovina, Bin Laden's explosives specialist Tariq Mahmud Ahmad al Sawah, who was extradited to Bosnia and Herzegovina by the USA authorities after thirteen years in Guantanamo prison. He is known for having led the infamous "Abu Ubaydah Camp" for training Al Qaeda terrorists to carry out terrorist acts on transoceanic flights and in all types of traffic in the air, on land, and at sea, for which he was directly praised by Osama Bin Laden. In this regard, we believe that continuous criminal control and monitoring of such persons is important, because they are always of security interest, especially when one considers the type of people in question and why these persons are in Bosnia and Herzegovina. It is also important to commend the activities regarding the revision of such persons' citizenship, as some of them were stripped of their Bosnian and Herzegovina citizenship and deported.

Table 2. *How do institutions in Bosnia and Herzegovina exercise control over citizens who are or have been involved in wars in other countries (Syria, Iraq, etc.)?* (Popović, 2021:247–248)

	Frequency	Percent (%)	Cumulative percent (%)
They are controlled through police records based on where they lived prior to travelling to a foreign battlefield, through intelligence and security agency channels, through service for foreigners channels, and through international data exchange channels	10	45,5	45,5
Monitoring of such persons is carried out, they are controlled through field informants, investigations are carried out, and such persons are prosecuted	11	50,0	95,5
Control over such persons is not being performed	1	4,5	100,0
Total	22	100,0	

In response to the question "How do institutions in Bosnia and Herzegovina exercise control over citizens who are or have been involved in wars in other countries (Syria, Iraq, etc.)?" (Table 2), 10 of the total of 22 respondents (45.5%) believe that "they are controlled through police records based on where they lived prior to travelling to a foreign battlefield, through intelligence and security agency channels, through service for foreigners channels, and through international data exchange channels", 11 respondents, or 50%, believe that "monitoring of such persons is carried out, they are controlled through field informants, investigations are carried out, and such persons are prosecuted", while one respondent (4.5%) claims that "control over such persons is not being performed". When considering the responses to the above question, it is evident how Bosnia and Herzegovina's institutions carry out the aforementioned control. We cannot agree with one respondent who claims that "control over such persons is not being performed", since it is obvious that something is being done in this regard. It is also important to note the position of some respondents who believe that when controlling persons who were once participants in some illegal formations, their human rights and freedoms should be taken into account, because it does not necessarily mean that if these persons were once members of said formations, they must wear such a label for the rest of their lives if they no longer perform such activities. We believe that such a viewpoint can have a foothold only if the de-radicalization process is carried out in a high-quality manner toward such persons. Time will tell whether

Bosnia and Herzegovina is successful in this endeavor. Until then, police agencies in Bosnia and Herzegovina must perform continuous criminal control over such persons while strictly respecting their rights and freedoms.

CONCLUSION

The phenomenon of foreign fighters has existed for a very long time. In our region, special attention has been drawn to the arrival of the Mujahideen in Bosnia and Herzegovina as well as the mass departure of people from a large number of countries to foreign battlefields and their joining the Islamic State. Although states made traveling to foreign battlefields illegal, individuals still chose to go.

When going to foreign battlefields, they performed various tasks as members of the Islamic State, among which they appeared as suicide bombers, executioners, and fighters in war conflicts. These individuals exhibit a high level of radicalization. Their return is a major issue for all of the countries they left. The unwillingness of states to implement de-radicalization processes and integrate these persons into normal social flows raises the risk that these persons will commit a criminal act, including a terrorist act. The biggest issue is the lack of financial resources to carry out such activities. Upon their return, such persons are being prosecuted, and the majority of them are sentenced to very light prison sentences, which they replace with a fine, which is a problem given the type of persons in question. When they pay the fines, they become free, and problems arise that are not adequately addressed. Then, de-radicalization programs are used to try to guide them back to normal social functioning. Many countries lack financial resources and high-quality de-radicalization programs, making it impossible to address this issue in an adequate manner. For this reason, the implementation of criminal control is critical, which must also be applied when foreign terrorist fighters are released after serving a prison sentence, as well as when they undergo a high-quality de-radicalization process. This is understandable, because the mere return of such individuals with a high level of terrorist radicalization raises the likelihood of terrorist and other criminal acts. It is necessary to identify such individuals in a timely manner in order to monitor and analyze their behavior. The primary goal of criminal control is to prevent criminal offenses from being committed through preventive work. The findings of the research clearly show that institutions in Bosnia and Herzegovina do very little, if anything, to control foreign fighters who fought in Bosnia and Herzegovina, stayed there, and were granted citizenship. The reason for such viewpoint lies in the fact that one part of Bosnia and Herzegovina perceives these persons as heroes. We believe that it is urgently required to keep continuous criminal control over these persons, taking into account their origin and motivation for coming to Bosnia and Herzegovina's territory. In addition, it is vital to highlight that the institutions in Bosnia and Herzegovina in a certain way control Bosnians and Herzegovinians who participate or have participated in wars in other countries (Syria, Iraq, etc.). It is also vital to apply continuous criminal control over these persons.

To improve criminal control implementation, it is necessary to organizationally and systematically define the method of monitoring foreign fighters, the coordination of the work of all law enforcement authorities in identifying persons over whom control must be established, and the coordination of the planned criminal control activities. To begin, consistent implementation of the Intelligence-Led Policing model is required to strengthen capacities for data gathering and the generation of objective analytical products to direct activity. This approach was applied in the Ministry of Interior of the Republic of Serbia (Đurđević & Vuković, 2018).

The improvement of data exchange, including the establishment of state-level centers for the integration of such data and the strengthening of analytical potential for identifying threats from terrorist acts, is a prerequisite for the joint activities of various state law enforcement authorities to achieve the expected results. Such centers might operate on the same principles as the European Counter Terrorism Centre. The European Counter Terrorism Center – ECTC – was established within Europol in 2016 with the goal of providing an adequate response to new terrorism challenges. The center serves as an information center, providing law enforcement officials in EU member states and other countries with unique opportunities for exchanging information and intelligence. The ability of ECTC to cross-check newly gathered operational data with data already in the database improves the ability to detect and objectively compile a picture of a terrorist network.

The introduction of the National Criminal Intelligence System in the Republic of Serbia has made a significant contribution to the improvement of data exchange (Đurđević & Milić, 2020)

Apart from exchanging intelligence data among state authorities, similar centers in the Balkan countries might collaborate and exchange intelligence and analytical information with the ECTC. The exchange of data and their quality analysis serve as the foundation for determining which foreign fighters should be monitored. To achieve the goal of criminal control, which is the timely disclosure of information about the planning and execution of a criminal offense and its prevention, it is necessary in any case to consider the possibility of forming joint teams of different state authorities to undertake criminal control. Aside from the aforementioned, it would be beneficial if each country had a counter-terrorism coordinator, as the EU does. The EU counter-terrorism coordinator was appointed for a five-year term in July 2021 and began work on October 1, 2021. The coordinator's work focuses on the implementation of measures to freeze funds and financial assets used to support terrorism, as well as measures related to police and judicial cooperation. The responsibilities of such a coordinator in Western Balkan countries would include the coordination of all services in the fight against terrorism and the implementation of measures, including the confiscation of property used to finance terrorism. The social danger of terrorism compels us all to work systematically on improving the professional and organizational capacities required to combat this negative social phenomenon. Special attention should be paid to strengthening everyone's integrity, beginning with police officers (Simonović, Đurđević & Janković, 2017), so that unethical behavior does not become a way for terrorist threat bearers to avoid criminal responsibility.

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