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THE ROLE OF THE PRINCIPLE OF SUBSIDIARITY IN THE THIRD SECTOR IN THE REPUBLIC OF POLAND

ABSTRACT

The principle of subsidiarity not only has formed many of provisions in the act on Public Benefit and Volunteer Work (particularly those related to social consultations and transferring of public tasks), but is also a directive forming the cooperative habits between the public and non-public sectors. This is a matter of great importance taking into account that the subsidiarity in Poland is not effectively implemented as it could be because of limited autonomy of the self-government and frequently occurring interference of the State. Unfortunately it results in limiting of ability to decide on the type and methods of performing tasks. In addition, financial resources usually are not sufficient. It would be desirable to maintain and develop this course because about 61% of the polish society finds the third sector more effective than the public one. More and more often (43%) the contribution of the non-governmental organisations on solution of local problems is perceived, although still near the half of respondents (48%) doubt that they would have an important impact on the solution of important social problems. There are also real concerns about corruption, other law abuses, or giving priority to private interest instead of communal one.

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It cannot be denied that the subsidiarity is one of the most fascinating issues in scientific discussion. Considering the subject in details its particularly complicated nature can be revealed. In fact, it is extremely difficult to find a single aspect of the principle of subsidiarity in relation to which a general consensus would be reached from its definition beginning, through the origins, merits and with the implementation ending. Moreover, subsidiarity, deprived of any uniform theoretical background and flexible in interpretation, is not only multi-dimensional but also interdisciplinary issue.

Nowadays the political aspect of the principle of subsidiarity is considered as definitely prevailing in scientific discussion, mostly because of the European Union by which subsidiarity has been adopted as an organizing rule and one of the most important principle in its legal system. However, it should be noted, that the origins of the problem can be traced much deeper in the past – even in ancient times (Aristotle). Still, of great importance in this analysis, is to emphasize that the principle is strongly linked with the philosophical thought of the Roman Catholic Church, its social teaching from the Middle Ages (Thomas Aquinas) beginning, then clearly explained in the 19th century by Pope Leo XIII (1891) and developed in further papal encyclicals – Pope Pius XI (1931) (Feja-Paszkiewicz, 2008, p. 21), John Paul II (1991) and Benedict XVI (Wuwer, 2011, p. 181–190; Łużyński, 2012, p. 69–82).

Regardless of any findings on the issue of subsidiarity, it seems to be inseparably related to social forms of organizations of humanity. One must agree with Chantal Millon-Delsol's opinion that people intuitively, „unwittingly”, automatically appealed to the principle from the very beginning (Millon-Delsol, 1995, p. 8). It is closely related to the right of freedom, human dignity, autonomy of each individual as a member of the collective community. Generally speaking, according to subsidiarity individuals and their small – sized social organizational forms (e.g. families) are granted the right to decide on all regarding them matters independently, free of any supervision from larger (or somehow superior) communities. Such intervention (or rather providing of assistance, support) is justified only when primarily authorized entities are not able to manage their own affairs by themselves. Entrusting individuals with right to make decisions
results not only from their freedom or dignity but also from logics, because reasonably thinking, it cannot be expected that larger groups are able to meet individual interests of each member completely. The effectiveness of such an organization could be at least in question.

On the other hand, taking into account the quality of society, it would be questionable to replace individuals in performing their tasks. Similarly, refusing to help when it is needed is considered not only moral rules as a basis of organized community but is also a contradiction of the main purpose it have been created for by the individuals, namely: a security and meeting common needs considered to be a sum of requirements of each individual.

Both, the negative and positive aspects of subsidiarity can be found here. The first one limiting the extent of any interference in decisions made by individual entities and the second one imposing to provide an assistance to them if it is necessary, indicate the secondary only, assisting role of bigger or superior organizations.

The above mentioned interpretation of subsidiarity reflects the doctrine of Roman Catholic Church. The horizontal dimension of the principle regarding to relations between the authority or other social organizations of higher order and the society and its non-political organizational forms can be easily noticed.

The State, undoubtedly, is considered as an organizational form of the society, therefore the principle of subsidiarity can also be applied in relation to the way it works. The structure of the State is multidimensional, not only social but also political and economical. In order to perform different tasks and to manage this complicated construction effectively, its territorial structure must be divided, as well the competences and the powers. The direction of this administrative activity is vertical. This is a hierarchical structure but the degree of internal differentiation may vary. Within this organizational frame the principle of subsidiarity can be analysed in its vertical dimension as a regulator of relations between central authority and the lower tiers of governing. In short, it can be expressed by saying „so much State as necessary” and „as much society as possible” (Sokół, Żmigrodzki, 1999). According to subsidiarity all decisions should be made at the level where the tasks will be performed the most effectively, at the
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more immediate or (and it is preferable) local level, closest to the citizens as possible. Therefore the role of local communities and local governments is considered as particularly important. The principle of subsidiarity is the idea that a State, central authority should have a secondary (not subordinate), supporting (not supervising) function performing only those tasks which cannot be performed effectively at more immediate or local level and only if there is a real need. It means that the central authority should refrain from interfering into internal affairs of local communities (local governments) without an important reason.

Both of dimension of the principle can be analysed separately. While the Roman Catholic doctrine, based on social solidarity and – even apart from the hierarchy of social groups – assuming common efforts in achieving the common good, the State is a coordinating factor in cooperation between social actors and provides assistance, supports them in difficulties. Political point of view expresses the need of organizational efficiency achieving by dividing tasks and competences in order to meet common needs. The above mentioned objectives definitely are convergent. The principle of subsidiarity is of great value forming an independent society willingly participating in decision making process and going beyond the political structures in its activity (civil society).

There is a reason to mention that, because local communities by no means are not one-dimensional. They are territorial corporations on the one hand and a wide range of socio-economical assets on the other hand. This is an entrepreneurial capital, employers, employees (work forces), holders of the economical capital, intellectual capital, etc. – all those entities entitled (by principle of democracy) to participate in governing, but usually functioning outside the administration. Nowadays, when a vast amount of tasks performing previously by the State have been transferred to non-public entities (health, education, etc.) the latter ones increasingly become competitive against public administration in regard to meet communal needs. It should be noted, that despite the fact that the authority at higher level is obliged to provide an assistance, it might not be able to help or simply show no will to do that. It may also happen that asking for help is not in the interest of local community. The remedy is a kind of social self-help by creating institutions meeting the social needs in sensitive
areas where the State is not supportive sufficiently. There a lot of entities institutionally independent from public administration (the third sector). They are non-profit, operate rather voluntarily, for charity, but based on and within the legal provisions (Gałążka, 2005, p. 11–12). Usually they take a form of foundation or association.

Both of dimensions of the principle of subsidiarity – vertical and horizontal – interpenetrate (crossing) each other’s. In addition, some adequate legal frames must be introduced in order to ensure that they are implement properly and avoid the chaos disorganizing all efforts and making functioning of organization not effective. It seems that the subsidiary successfully implemented in public administration (vertical) is an important factor determining development of subsidiarity in horizontal dimension of this principle.

The principle of subsidiarity links the public and non-governmental (the third sector) spheres closely making them partners. The quality of this specific partnership undoubtedly indicates how the civil society is developed, and so the results of implementation of subsidiarity at the same time.

The purpose of this article is to analyse how the principle, as a political and social organizational rule inserted in the Basic Law (The Basic Law…, 1997) is put in practice of functioning of the third sector in the Republic of Poland.

In Poland, although it is a relatively young democracy, a convenient environment for the principle of subsidiarity can be found, at least theoretically, taking into account provisions included in the Basic Law. The most important rules creating a basis of the organizational frame for implementing subsidiarity are: the rule of decentralization of public power (article 15.1), self-governing (article 16.1), unitary state (article 3) and separation of powers and balance between them (article 10.1).

The principle of subsidiarity has been expressed in the Preamble of the Basic Law stating that it helps „strengthening the powers of citizens and their communities”. Unfortunately no further provisions referring to subsidiarity can be found in this legal act which causes serious problems in its interpretation and implementation as there is no normative content of the rule (Krasnowolski, 2012, p. 9).
The basic territorial division of Poland consists of 16 units called Voivodeship (województwo), districts and district-free cities (powiaty i miasta na prawach powiatu) and communes (gminy). Despite the decentralization the State is unitary and less convenient for implementing subsidiarity than any federal (or at least far more advanced in decentralization process) system. Still, only the analysis of the practice of functioning of the local government in Poland can bring some valuable conclusions in the matter of subsidiarity.

The autonomy of the units of local government in Poland, despite it possesses (according to article 165.1 of the Basic Law) „legal personality” and participates in the exercise of public power by performing „the substantial part of public duties” in its „own name and under its own responsibility” (article 16.2) is quite small in its extent. Polish legislator instead to allocate the duties and competences closest to the citizens, authoritatively decides on the kind, extent of tasks and competences and indicate the tier of the local government which has been vested in by them.

It should be noted that the organizational autonomy of self-government in Poland is also rather limited – the central authority decides in matter of division, merge or dissolving of its units, their statutes require consent of the Prime Minister and possibility to decide how to perform, transfer tasks or cooperate in order to implement them is significantly restricted. Moreover, the duties, not clearly divided between the tiers of self-government, are not properly linked to competences related to them. Undoubtedly it raises conflicts. In addition the legislation is often incoherent causing interpreting problems and resulting with difficulties in the implementation of subsidiarity. Also the financial support from the State is usually not satisfactory. The public funds take forms of general subsidies and specific grants (article 167.2). There are also available assistance programmes for the members states of the European Union addressed to the self-government specifically. Their role is of particular importance not only enabling but rather naturally imposing cooperation with partners from non-governmental sphere. It should be noted that this common activity still is not sufficiently developed. It seems that polish self-governments not so willingly participate in searching for non-public sources of financial capital because of (among others) the complicated procedures, lack of the
appropriate partners in the non-governmental sector, lack of experience (in relation to the both sides), deficiency of political will or mutual trust which still is at least questionable.

In the above mentioned conditions the effective functioning of the civil sector is considered to be in question. There are some difficulties in defining entities operating in the third sector, because not only a single one but a whole set of attributes can describe its organizations. There are five basic features characterising them: 1) having an organizational structure, formally registered, 2) structural independence from public authority (public administration), 3) non-profit in nature, 4) sovereignty and self-governing (autonomy), 5) voluntary affiliation (to the sector) (Gałązka, 2005, p. 13).

Taking into account those characteristics quite large group of entities can be defined as non-governmental organizations (NGOs). The third sector, in a broad sense, consists of foundations, associations and their unions, federations, associations and foundations operating in concert, political parties, organizations established and operating on the basis of specific, separated regulations (e.g. Polish Red Cross, State Defence League), parent–teachers associations, parent boards, social committees (of construction of road, water supply distribution networks, etc.), trade unions, employers’ organizations, self-governing organizations of various professional groups, agricultural societies, religious organizations, self-help groups, support groups, etc. However, it should be noted that this range of entities is usually rather narrowed so that only foundations and associations (excluding the Voluntary Fire Brigade) are considered to be NGOs. Anyway, the main characteristics of non-public organizations is providing public services to the benefit of the community and, as is believed, they are able to perform most of those duties much more efficient than the public entities.

The Act of law of April 24th 2003 on Public Benefit and Volunteer Work (PBVW) (2014) in article 3 defines the non-governmental organizations as “corporate or non-corporate entities which do not form part of the public finance sector as defined in the Act on Public Finance”, “do not operate for profit” and “according to separate legal provisions have capacity to perform acts in law”. The above mentioned Act directly expresses also that
mainly foundations and associations are considered to be organizations forming the third sector. Within this broad definition many entities can be described as organizations of the third sector.

According to PBVW Act, public benefit work can also be performed by:

1. corporate entities and entities acting pursuant to provisions on relations between the State and the Catholic Church in the Republic of Poland, on relations between the State and other churches and religious unions, and on the guaranteed freedom of conscience and religion, should their statutory objectives encompass public benefit work;

2. unions of local self-government units;

3. social co-operatives;

4. joint stock companies, limited liability companies, and sport clubs operating as companies under the provisions of the Act of 18 January 1996 on Physical Culture (2007), which: do not operate for profit and allocate all of their profit to perform their statutory objectives, and they do not divide their profit between their members, shareholders, stockholders or employees;

The provisions of the above mentioned act cannot be applied to: political parties; trade unions and organisations of employers; professional self-governing authorities and foundations formed by political parties (art. 3.4).

In the light of the PBVW Act, organizations as ordinary associations or committees mentioned in the Act of 14 March 2014 on the principles of public fundraising activity (2014, art. 4), although they are non-profit in nature and they meet the criterion not to form a part of the public finance sector, cannot be considered as non-governmental organizations because of lack of legal capacity.

There are also organizations of the public benefit work area, required – within their statutory activity – to act for the benefit of the community as a whole in the strictly determined areas (the so-called area of public tasks). The area of public tasks is considered to be a key matter in the PBVW Act. The list of tasks performing in certain areas, presented in the article 4, is aimed, inter alia, to clarify the concept of the public benefit work and determine – in substantive sense – the area of cooperation between the
public administration and non-governmental sector. This is broad but rather close, enumerative catalogue of tasks related to socially sensitive areas, where purposes can be much easier achieved by organization not associate with public authority. The area of public tasks, in accordance with the mentioned above article 4, comprises following fields:

1. social assistance, including aid offered to disadvantaged families and individuals, and ensuring equal opportunities to such families and individuals;
   1a. supporting of family and foster care system (*Act of 9 June 2011…*, 2011; valid from 1 January 2012) Professional and social integration and reintegration of persons threatened with social exclusion;
2. charity work;
3. preserving national traditions; sustaining Polish identity and developing national, civic, and cultural awareness;
4. work to support national and ethnic minorities and regional languages;
5. protection and promotion of health;
6. work to support the disabled;
7. promoting employment and professional activation of the unemployed and individuals threatened with job loss;
8. promoting equal rights of women and men;
9. work to support the elderly;
10. promotion of economic growth and entrepreneurship;
11. promotion of development of new technologies, inventions and innovation, transfer and implementation of new technologies for companies;
12. work to support the development of local communities;
13. science, education, coaching, and upbringing;
14. recreation of children and youth;
15. culture, art, protection of culture and national heritage;
16. promoting physical culture and sports;
17. ecology, animal protection, protection of natural heritage;
18. tourism and knowledge touring;
19. public order and security;
20. national defence and the activity of Armed Forced of the Republic of Poland;
21. promoting and protection of human and civil rights and freedoms, work to support the development of democracy;
22. rescue systems and protection of residents;
23. aid to victims of calamities, natural disasters, armed conflicts and warfare – in Poland and abroad;
24. promoting and protecting consumer rights;
25. work to support European integration, and the development of contacts and co-operation between societies;
26. promoting and organising volunteeredship;
27. aid extended to Poles and Polish community abroad;
28. work to support the veterans and persons who have undergone State repression;
29. promotion of the Republic of Poland abroad;
30. work to support families, promote motherhood and parenthood; promote and protect the rights of children;
31. prevention of addictions and social pathology;
32. work to support non-governmental organisations and entities listed in article 3, par. 3 active in the areas listed in subpar. 1–32.

As the result of activity of non-governmental organisations in area of public benefit work new jobs’ creating, future employees’ training (volunteering provides an experience), providing social or public services as health or education can be considered. Organisations of the third sector are able to diagnose local problems and needs accurately. As the profit is not their aim – they are strongly motivated and the services providing by them are of better quality, usually much cheaper, and a whole activity is financially more effective. NGOs are also considered to be more flexible, meeting perfectly specific local requirements and the individuals performing tasks usually are involved disinterestedly, their work is not paid. These features determine the ability to adapt much easier to changes and cope with crisis. It should be noted that the activity of the organisations of the third sector provide a vast range of services not provided by commercial market because of their economical unattractiveness (they are not profitable, as e.g. religious needs, services for homeless or people in poverty, etc.).
Undoubtedly NGOs are able to take care about the common good and the use of public goods in a sustainable way, stimulating further development as they are considered to be incubators of innovations. Moreover, non-governmental organisations’ activity in areas requiring significant financial expenses not only act in favour of the State but also build and support the respect and faith in institutions, legal system, link closely communities by creating and multiplying already existing social relations.

The third sector can also be seen as a sphere where political claims are articulated, the social skills of expressing of needs, opinions, interests are formed, a space creating an environment convenient for individual development of members of society. The non-administrative organisations strengthen respect for diversity and stimulate participation in public activity. They work in favour of democracy and pluralism by integrating society and protecting social minorities. There is no doubt that it boosts a quality of society as a whole.

The organisations operating in the third sector can be described as complementary in relation to the State or competitive but the best results would be achieved by cooperation between the public administration and non-governmental organisations. Both parties can benefit from this partnership. Public administration can provide legal assistance and professional counselling, gaining more reliable in social opinion partner not linked with political authority which ensures proper social control and fairness in performing tasks. Partners would participating in costs and share the risk, but there is a community as a whole which could benefit this cooperation.

The activity of the organisations operating in the third sector in Poland is based on many different regulations starting from the Basic Law giving them the freedom of association (art. 12 and art. 58), relevant laws (Act of 6 April…, 1984; Act of 7 April…, 1989) and decrees, with internal documents of non-governmental organisations ending (statutes, other internal regulations).

The most important act is mentioned above Act of law of April 24th 2003 on Public Benefit and Volunteer Work, which regulates cooperation of public administration authorities with non-governmental organisations. This activity is considered as a statutory (for public benefit), unpaid or paid
(under a certain circumstances) and even business activity but as a side activity but under condition that any income generated in paid public benefit work will be used only to perform public statutory tasks.

Operations of a public benefit organisation is supervised by courts (administrative), other administrative organs (as e.g. the minister responsible for social security) or internal organs of organisations, and controlled by the other institutions as Supreme Audit Office, National Labour Inspectorate or Inland Revenue ans local tax offices.

The act on Public Benefit and Volunteer Work states that public administration authorities perform public tasks in co-operation with non-governmental organisations and other entities listed in Article 3 (art. 5.1.)

According to article 5.3. this co-operation must follow the principles of: subsidiarity, sovereignty of parties, partnership, efficiency, fair competition, and transparency. It usually take on the following forms, in particular:

1. entrusting non-governmental organisations and other entities specified in Art. 3 par. 3 with the performance of public tasks on terms specified;
2. reciprocal feedback concerning all activities planned;
3. consulting non-governmental organisations and other entities specified in Art. 3 par. 3 on draft normative acts in areas relating to their statutory activity;
4. consulting draft normative acts concerning public tasks, referred to in Art. 4, with Councils for Public Benefit Work in areas where such Councils have been established by competent local self-government units;
5. setting up joint advisory and initiative teams composed of representatives of non-governmental organisations and of other entities listed in Art. 3 par. 3, and of representatives of relevant public administration authorities;
6. agreement on carrying out a local initiative under the terms herein;
7. partnership agreements set out in the Act of 6 December 2006 on the Rules for Conducting Development Policy (The Notice of the Speaker..., 2009)

Article 5.8 of PBVW states that local self-government units can be granted by loans, guarantees and sureties to non-governmental organi-
sations and other entitled entities for performance of public tasks. This provision's purpose is to ensure the performance of tasks when non-governmental organisations apply for financial support from other than public sources. The article says also that this financial support take place „in conformity with the rules laid out in separate legal provisions” which are: the Act of 27 August 2009 on public finances (2009) and the Act of 8 May 1997 on surety and guarantee provided by the State Treasury or some legal entities (2003). In the light of the Art. 94 ust. 1 of the Act on public finances, the units of self-government can give surety and guarantee, in conformity with the rules of the Act, where the total value of surety or guarantee facility granted is determined in the budget resolution. These sureties and guarantees are given for definite time and in determined amount. This kind of assistance is of particular importance for implementing of the principle of subsidiarity in its positive aspect, because usually only financial support and legal service or counselling can be offered by public administration.

One of the most important provisions of the PBVW is expressed in article 5a obligation of public administration – local self-government unit – to co-operate with non-governmental organisations and other entities, and to create the annual (or multiannual) programme of such a co-operation (for the state administration it is facultative – art. 5b). They need to comprise in particular:

1. the principal objective and detailed objectives of the programme;
2. the rules of co-operation;
3. the scope of co-operation;
4. the forms of co-operation referred to in Article 5 par. 2;
5. priority public tasks;
6. the period of implementation of the programme;
7. the method of implementation of the programme;
8. the amount of funds earmarked for the implementation of the programme;
9. the method of evaluation of the programme implementation;
10. information on the method of programme drafting and the consultation process;
11. the method of appointing and operation of tender boards to evaluate bids in open bid tenders. (art. 5a.4).

Taking into account the above mentioned provisions it should be noted that this socio-administrative cooperation is not a matter of a goodwill or a matter of choice but the legal obligation of modern administrative self-governmental system (Gałązka, 2005, p. 87). Both - the public administration and non-governmental system have a lot in common, they seem to be a natural partners in performing tasks aiming to meet the specific needs. But, according to contemporary research, this cooperation is more successful at the higher – regional and central levels (Gałązka, 2005, p. 92). The local government and the third sector disagree in tasks allocation, related to them competences and financial support. Public administration at the local level is considered at least ambivalent in its attitude towards the public benefit work. Next to the quite convenient circumstances for cooperation, there is also strong competitive mechanisms between non-governmental sector and the units of self-government (Gałązka, 2005, p. 92). Many of the organisations operating in the third sector is even in conflict with the public administration.

As statistics show, many of non-governmental organisations maintain quite intensive contacts with local councils (85%), a half of them describe those contacts as regular (Przewłocka et al., 2013, p. 18). This is a natural partnership, cause partners operate at the same level. Organisations need financial support, which administration can provide to them directly or make easier the availability of sources of the financial capital (banks). In 2011 about 90% of communes transferred to the third sector subventions at amount of over 1,5 mld Polish Zloty in total, which was about 0,6% of their budgets (Przewłocka et al., 2013, p. 19).

Therefore the subsidiarity in relation to the third sector seems to appear as a positive rather than negative. The purpose of the obligation of public administration to cooperate with the non-governmental organisations is to enhance the effectiveness of local community as a whole – not only of administration, self-government as a territorial corporation but all entities operating on this area institutionally independent from the public authorities. Without the social organisations the units of self-government would not be able to perform their tasks entrusted by the law or forced by local
requirements. It might result with asking the other administrative bodies for help and finally with intervention which the principle of subsidiarity tries to limit.

The model of cooperation between public and social spheres leading to social and citizen’s dialogue, partnership, common responsibility in meeting common requirements supports the autonomy of local community and reduces the distance between the authority and society. Subsidiarity helps to understand that the public administration cannot have a total control in all fields of activities and in order to boost effectiveness or quality of communal activity, encourages the administration to transfer some tasks to those organisations which are able to perform them better, cheaper, more effective, faster.

The principle of subsidiarity not only has formed many of provisions in the act on Public Benefit and Volunteer Work (particularly those related to social consultations and transferring of public tasks), but is also a directive forming the cooperative habits between the public and non-public sectors (Żołędowska, 2011, p. 19). This is a matter of great importance taking into account that the subsidiarity in Poland is not effectively implemented as it could be because of limited autonomy of the self-government and frequently occurring interference of the State. Unfortunately it results in limiting of ability to decide on the type and methods of performing tasks. In addition, financial resources usually are not sufficient. It would be desirable to maintain and develop this course because about 61% of the polish society finds the third sector more effective than the public one. More and more often (43%) the contribution of the non-governmental organisations on solution of local problems is perceived, although still near the half of respondents (48%) doubt that they would have an important impact on the solution of important social problems. There are also real concerns about corruption, other law abuses, or giving priority to private interest instead of communal one (Przewłocka et al., 2013, p. 22). Not only society, similar fears express about 39% of organisations. Near 65% of them admitted that they did not participate in any consultations with local councils referring to plans, documents, strategies, etc. Also communication between entities is very weak cause only a half of organisations are aware of fact, that there are special programs of cooperation between the self-government and the
third sector, despite the 9/10 communes declares that such programs exists (Przewłocka et al., 2013, p. 19).

Finally, Polish people do not show much interest in local initiatives, if they are not widely promoted (Przewłocka et al., 2013, p. 21). However, it seems to be a matter of time, because of deep social transformation in terms of quality. The way the society thinks about the relations between the authority and society must change, as the structure of the third sector as well and legal regulations providing wider autonomy to self-government must be introduced. It not necessary requires any deeper decentralisation similar to federal (although it would provide great circumstances for implementation of subsidiarity) which rather never become a part of polish political system protecting the principle of the unitary State. Still, it cannot be excluded that the implementation of the principle in polish environment can be successful.

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