



Prisoners as Political Commodities in the Occupied Areas of the Donbas

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Executive Summary

Frozen or simmering post-Soviet territorial conflicts – such as the Russian-Ukrainian one in the Donets Basin (Donbas), but also those in South Ossetia, Abkhazia or Transnistria – are destructive for several reasons. They typically involve multiple abrogations from international law or Europe’s security order based on the Helsinki Final Act, the Paris Charter and other OSCE commitments. Often, they entail “grey zones” where neither international law nor the national legislation of a UN member state is enforced. The resulting lawlessness has serious negative humanitarian implications, which often include grave human rights violations. This report highlights the fate of military and civilian detainees in the occupied Donbas and makes recommendations to address their widespread abuse. These prisoners and their exchanges have been significant issues in the Russian-Ukrainian conflict since 2014. They are also a recurring theme of the negotiations in Minsk. Thousands of combatants and civilians have been held captive. Their need for medical care, decent custody conditions and a speedy release continues to be a major topic of concern. In the past seven years, prisoner exchanges have been transformed from an initially humanitarian into an increasingly political issue. More and more Donbas detainees have been held by the Russia-led separatists, amid dubious accusations and frequent torture. They have become de facto hostages arrested in order to be exchanged for political concessions, or for pro-Russia agents, irregulars and soldiers held by the Ukrainian state.

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Introduction

Since April 2014, the Russian-Ukrainian armed conflict in Ukraine's Donets Basin (Donbas) has claimed approximately 14,000 lives. In addition, tens of thousands of Ukrainians have been maimed or traumatized, while several hundred thousand have been displaced.¹ Less international attention has been paid to the fate of the thousands of prisoners held and swapped by both sides in the conflict, or to the method of their exchange.²

In November 2015, it was reported that there were 79 places for the illegal detention of persons in the de facto Russia-occupied parts of the Donbas (certain districts of the Donets'k and Luhans'k regions officially known as *Okremi rayony Donets'koy ta Luhans'koy oblastey*, ORDLO).³ According to the Security Service of Ukraine (the SBU), as of April 2019 the Ukrainian government had freed 3,233 Ukrainians from illegal detention.⁴ Reliable data on the number and character of those currently detained in the ORDLO are difficult to obtain as the self-proclaimed authorities are reluctant to disclose statistics.

¹ The armed conflict in the Donbas is a "delegated interstate war" by Russia against Ukraine. See Jakob Hauter, "Delegated Interstate War: Introducing an Addition to Armed Conflict Typologies." *Journal of Strategic Security*, vol. 12, no. 4 (2019): 90–103, <https://doi.org/10.5038/1944-0472.12.4.1756>, <https://scholarcommons.usf.edu/jss/vol12/iss4/5/>. For more on the nature of the war see Jakob Hauter, ed., *Civil War? Interstate War? Hybrid War? Dimensions and Interpretations of the Donbas Conflict in 2014–2020* (Stuttgart: *ibidem*-Verlag, 2021).

² Katrychenko, T., *Military and Civilian Detainees in Donbas: Searching for the Efficient Mechanism of Release* (Berlin: Deutsch-Russischer Austausch, 2019).

The dynamics of prisoner exchanges in 2014–2016

During the war's early and hottest period of 2014–2015, it had been relatively easy for Kyiv to retrieve its citizens from detention in the ORDLO. In the first year of the conflict, between April 2014 and April 2015, most of these prisoners of war (POWs) were combatants. Negotiations for their release often took place directly between field commanders on the spot, and not yet exclusively within the Minsk format of the permanent Trilateral Contact Group (TCG) of Ukraine, Russia and the OSCE, and its various working subgroups. At the end of July 2014, according to official data from Ukraine's National Security and Defense Council (NRBO), 396 people, including three journalists, were being held by the Russia-led separatists.⁵

One of the largest POW exchanges of the entire conflict occurred shortly after the major Battle of Ilovays'k in the summer of 2014, which ended in the defeat of Ukrainian forces by Russian regular and irregular forces and the signing of a ceasefire protocol in Minsk on 5 September 2014. According to Ukraine's then President, Petro Poroshenko,

³ Interfax Ukraine, *На неконтролируемой Украиной территории Донбасса есть 79 неофициальных мест незаконного содержания людей*, November 2015.

<https://interfax.com.ua/news/general/307388.html>.

⁴ Udovenko, A., *Chronology Of Prisoner Exchanges: 2014–2020*, n.d.,

https://jfp.org.ua/blog/blog/blog_articles/58?locale=en

⁵ LB.ua, *У полоні терористів перебувають 396 осіб*, July 2014.

https://lb.ua/news/2014/07/20/273481_plenu_terrorist_ov_nahodyatsya_396.html



approximately 1,200 service personnel were released from detention in the first four days after the agreement, and another 20 a few days later. However, 863 people remained captive.⁶ By October 2014, Markiyan Lubkivsky, then an adviser to the head of the SBU, stated that close to 500 people remained prisoners in the self-proclaimed “Lugansk” and “Donetsk people’s republics” (LNR/DNR). Altogether, around 1,500 people had been freed since the start of the war.⁷ On 26 December 2014, a large-scale exchange resulted in Ukraine’s government handing over 222 members of illegal armed groups, and receiving 150 soldiers of the Ukrainian armed forces in return.⁸

At the beginning of 2015, 110 Ukrainian soldiers were taken prisoner following the Battle of Debal’tseve. On 1 February 2015, a POW exchange led to Ukraine receiving 139 personnel while handing over 52 to the DNR/LNR.⁹ In the first 18 months of the war, 2,957 Ukrainian citizens were freed.¹⁰ Since the end of 2015, however, the number of people released through exchanges has declined sharply.

Four Ukrainian servicemen were released on 20 February 2016, and in early March 2016 the local journalist, Maria Varfolomeyeva,

who had been accused of spying for the Ukrainian nationalist party, Right Sector, and held captive for 419 days, was released by the LNR. In May 2016, the famous Ukrainian fighter and later politician Nadiia Savchenko was exchanged for two GRU officers following direct negotiations between Kyiv and Moscow.¹¹ Ukraine managed to free only 16 Ukrainian military and civilian prisoners in 2016.¹²

In 2016, the DNR/LNR began to actively use – mostly baseless – accusations of espionage and “extremism” to detain local civilians from the occupied territories (rather than from the other side of the “contact line”) in prisons and basements. More and more instances of torture were reported to force detainees to confess to being agents of the Ukrainian secret services. Civilian prisoners have gradually replaced the previously captured and exchanged Ukrainian POWs. After 2015, POWs were no longer available in large numbers for prisoner exchanges due to the reduced intensity of the armed hostilities, at least until April 2021.

⁶ Interfax Ukraine, *За последних 4 дня удалось освободить 1,2 тыс. пленных и заложников – Порошенко*, September 2014.

<https://interfax.com.ua/news/political/222349.html>

⁷ Polyanska, Y, *У полоні в бойовиків залишаються близько 500 осіб – СБУ*, October 2014.

<https://www.radiosvoboda.org/a/26635149.html#player-start-time=4.681382>

⁸ Radio Svoboda, *СБУ оприлюднила список 146 звільнених полонених (повний список)*, December 2014.

<https://www.radiosvoboda.org/a/26764464.html>

⁹ Українська правда, *Генштаб: У полоні бойовиків - 110 військових дебальцівського гарнізону*, February

2015.

<https://www.pravda.com.ua/news/2015/02/20/7059227/>.

¹⁰ Udovenko, A., *Chronology Of Prisoner Exchanges: 2014-2020*, n.d,

https://ifp.org.ua/blog/blog/blog_articles/58?locale=en

¹¹ Ibid.

¹² Radio Svoboda, *СБУ: у 2016 році з полону сепаратистів звільнили 16 українських заручників*, December 2016.

<https://www.radiosvoboda.org/a/news/28197607.html>.



New developments in 2017–2021

In 2017, the issue of prisoner exchanges began increasingly to feature in general negotiations within the Minsk TCG and its various subgroups. The particulars of the exchanges became linked to other issues important to the DNR/LNR, such as their desire to be recognized as states. For instance, for some time, one of the most high-profile cases of political persecution in the ORDLO had been that of the renowned historian and religious scholar, Ihor Kozlovs'kyi. Kozlovs'kyi was kidnapped in his hometown in Donetsk in January 2016 and held captive until December 2017, accused of keeping two grenades at his home. When his case became internationally known and the West began demanding his release, representatives of the Russian-led separatists insisted on calling Kozlovs'kyi a "DNR citizen". On this ground, the DNR quasi-authorities refused for some time to include him in the ongoing prisoner exchanges, before his eventual release.¹³

According to the SBU, as of August 2017, 137 people were being illegally held in the ORDLO. However, only 71 such cases were confirmed by representatives of the two pseudo-republics. Public announcements on the number of officially acknowledged prisoners have become a method for the

local quasi-authorities to exert political pressure on Kyiv. Even though the Ukrainian government presented hard evidence of more detainees than those acknowledged by the DNR/LNR, the latter refused to confirm that these people were in custody. It was only when Ukraine made political concessions in the political subgroup at the Minsk TCG negotiations, and allowed the Ukrainian politician Viktor Medvedchuk, whose daughter's godfather is Vladimir Putin and who is close to the Russian President, to present the next prisoner exchange as his personal success, that additional prisoners were acknowledged.¹⁴ Also in 2017, the DNR/LNR began to demand the release of Kyiv-held prisoners who had a criminal history and little to do with the military conflict in the Donbas.¹⁵

A large prisoner exchange took place at the end of 2017. Ukraine handed over 233 people and the DNR/LNR in return released 73 detainees. Ihor Kozlovs'kyi, who by now had been detained for almost two years, was freed along with 59 Ukrainian military personnel and civilians. The latter had been accused of espionage and extremism, and were used for political purposes during the negotiations in the humanitarian subgroup of the Minsk TCG.¹⁶

Throughout 2018, the number of civilians detained in the DNR/LNR increased still

¹³ LB.ua, "ДНР" відмовляється видати Україні вченого Ігоря Козловського, February 2017. https://lb.ua/society/2017/02/16/358871_dnr_otkaziva_etsya_vidat_ukraine.html.

¹⁴ Gordon, Медведчук: Обмен 27 декабря 2017 года состоялся исключительно благодаря Путину, February 2018. <https://gordonua.com/news/war/medvedchuk-obmen-27-dekabrya-2017-goda-sostoyalsya-isklyuchitelno-blagodarya-putinu-231845.html>.

¹⁵ Dorosh, S., Чому обмін полонених "всіх на всіх" не працює?, August 2017. <https://www.bbc.com/ukrainian/features-40774670>

¹⁶ Tokhmakhchi, A., Pivovarov, S., На підконтрольну Україні територію повернулися 73 заручники, натомість українські перемовники передали самоназваним «ДНР» та «ЛНР» 233 людини, December 2017. <https://hromadske.ua/posts/velykyi-obmin-koho-zvilnyly-z-polonu-boiovykiv-na-donbasi>



further. They were sometimes arbitrarily arrested in the streets of occupied Donbas. Often, those arrested were thrown into basements, put under pressure or tortured, and forced to confess to having been engaged in espionage, terrorism or extremism on behalf of Ukraine, or so-called exchange articles. In this way, the DNR/LNR built up a peculiar “exchange fund” of prisoners to be used as political commodities in negotiations with Kyiv.

On 28 June 2019, Viktor Medvedchuk mediated the freeing of four Ukrainian prisoners who were unilaterally released from the ORDLO. This highly publicized act by the manifestly pro-Kremlin Medvedchuk marked another step in the transformation of the discharge of DNR/LNR prisoners into an instrument of political propaganda. This was the first release Moscow had agreed to for a period of 18 months. Even then, the four were handed over not to officials in Kyiv, but to a Ukrainian political actor well-known for his ties to the Kremlin.¹⁷

A large prisoner exchange took place on 29 December 2019. The Ukrainian government gave up 124 detainees and received 76 from the DNR and the LNR, 64 of whom were civilians and only 12 military personnel. Some of the POWs had already been held for several years. This indicates that the continuously operating detention facilities in the ORDLO had become more and more full

of civilians, often imprisoned for “incorrect behaviour” on social networks.

In a smaller prisoner exchange on 16 April 2020, the Ukrainian government received 20 people and handed over 14 to the DNR/LNR. A number of the detainees transferred from the ORDLO to Ukrainian government-controlled territory in this exchange had criminal records. Paradoxically, some had even been temporary members of illegal pro-Russian “insurgent” armed groups. For example, Oleksandr Sadovskiy, who was exchanged in mid-April 2020, was arrested by the Ukrainian police two weeks later on a charge of large-scale organized fraud.¹⁸ Another man delivered to the Ukrainian government, Volodymyr Karas, was accused of working for the DNR police.¹⁹

The treatment and purpose of detainees in the DNR/LNR

The topic of the illegal detention and torture of prisoners in the ORDLO has been more widely discussed in the Ukrainian and international media since 2018, in particular one of the DNR’s most brutal places of incarceration, the secret so-called Izoliatsiia (Isolation) prison on Svitly Shliakh (Light Path) Street in Donetsk. One of the authors of this report, Stanislav Aseyev, who had clandestinely worked as a reporter in the ORDLO for Radio Liberty, was held there

¹⁷ Katrychenko, T., *Military and Civilian Detainees in Donbas*, p. 18.

¹⁸ Уніан, *Одного зі звільнених в рамках “великоднього” обміну полоненими заарештував ківський суд – ЗМІ*, May 2020. <https://www.unian.ua/society/obmin-polonenimi-na->

[donbasi-oleksandr-sadovskiy-zaareshtovaniy-sudom-kiyeva-pishut-grati-novini-ukrajini-10986920.html](https://www.unian.ua/society/obmin-polonenimi-na-donbasi-oleksandr-sadovskiy-zaareshtovaniy-sudom-kiyeva-pishut-grati-novini-ukrajini-10986920.html).

¹⁹ Pravda, *Неоднозначный обмен: противоречивые истории тех, кого вернула и отдала Украина*, April 2020. <https://www.pravda.com.ua/rus/articles/2020/04/16/7248193/>.



throughout 2018. The DNR did not allow representatives of the OSCE or the International Committee of the Red Cross (ICRC) to meet Aseyev after he had been captured in May 2017.

Among other Izoliatsiia prisoners who became prominent as a result of their detention were a young physician from Jordan who was arrested at a checkpoint in the ORDLO and a neuropathologist detained on the streets of Donetsk by the DNR's so-called Ministry of State Security (MGB), who was given a 13-year prison sentence.²⁰ A video of his kidnapping by the MGB contains a confession to espionage and a call to fellow citizens not to cooperate with the Ukrainian government – a statement probably made under duress.

From Aseyev's first-hand observations during his 28-month term in Izoliatsiia, more than 100 civilians were processed and tortured there in 2018–2019. Most were accused under the above-mentioned exchange articles of extremism, terrorism and espionage, which made them eligible for prisoner exchange with the Ukrainian government. According to their conversations with Aseyev, most suffered physical and psychological torture, which could include mock executions or rape. Some were forced to do hard physical labour.

The maltreatment in Izoliatsiia has been extensively documented by, among others, the United Nations Office of the High

Commissioner for Human Rights (OHCHR) in a 2020 report.²¹ Based on numerous witness testimonies, the official UN survey details various forms of “beatings during interrogations,” and other forms of abuse. “For example, one detainee was tied to the table, handcuffed and hooded. Perpetrators attached one electrode to his genitalia and inserted a metal tube with a second electrode into his anus. [...] Some detainees held in ‘Izoliatsiia’ could not prevent themselves from urinating and defecating during electrocution”. Sexual abuse is also frequent in Izoliatsiia. According to the UN report: “One detainee told OHCHR that while in ‘Izoliatsiia’, he heard guards scream at female detainees on their way to the shower: ‘Go shave your [vaginas]. You are about to go upstairs to work it off’”.

Several detainees reported that a health professional was present during their interrogations: “The man revived those who lost consciousness, and guided the perpetrators about how to torture to inflict maximum pain without causing death. He also examined detainees before the torture and asked about their medical conditions; measured their blood pressure or pulse; and gave injections”.²² These practices are not limited to the Izoliatsiia prison, and have not just been documented by the OHCHR. A variety of governmental and non-governmental Ukrainian and non-Ukrainian organizations have collected similar testimonies related to various locations in occupied Donbas.²³

²⁰ Coynash, H., *Donbas militants sentence doctor to 13 years for pro-Ukraine Twitter posts*, May 2020. <http://khp.org/en/1589828711>.

²¹ United Nations, Office of the High Commissioner for Human Rights. *Report on the Human Rights*

Situation in Ukraine, 16 November 2019 to 15 February 2020 (Kyiv: OHCHR, 2020), pp. 38–42.

²² Ibid.

²³ See the various reports and numerous articles published by, among others, the Kharkiv Human



The DNR and LNR's harsh treatment of prisoners is not just an expression of sadism. It has a rational political function for the pseudo-states. The frequent threat and use of torture within the ORDLO, in addition to deterring opposition to the DNR/LNR leaderships, is used to extract preformulated "confessions". Prisoners are then eligible to be swapped with soldiers and allies held by the Ukrainian authorities. The OHCHR concludes that the ill-treatment "usually continued until a detainee agreed to confess (orally, in writing or on video) or to provide information".²⁴ Aseyev, however, also observed frequent sadistically motivated torture during his time in detention.

Oddly, it is not only pro-Ukrainians and accidental civilians, but also numerous former "rebels" (*opolchentsy*) or former DNR/LNR volunteer fighters or mercenaries from both Ukraine and Russia who are held in Izoliatsiia and other detention facilities. Whether Russian citizens or not, many of them are also being prosecuted under articles referring to "high treason" or "illegal possession of weapons". Apparently, most convictions are also based on confessions achieved through torture. During his more than two years at Izoliatsiia, Aseyev personally met and talked to ten such pro-Russian and Russian soldiers and civilians, including a Colonel, a Major General, two Lieutenant Colonels, a Captain, a Senior Lieutenant and a Major who had all previously served in various DNR units, as

well as a Lieutenant in the Russian Navy. There were also other pro-Russian Ukrainian or Russian citizens. These were treated as harshly as supposedly pro-Ukrainian detainees and often also sentenced to long prison terms.

Since the middle of 2020, representatives of the DNR/LNR have refused to submit further lists of those they would like to swap with Kyiv at the talks in Minsk, even though the Ukrainian government has provided lists of desired returnees to the OSCE.²⁵ Among the political conditions for the next exchange announced by DNR/LNR emissaries was that the Ukrainian Parliament reformulate a resolution it adopted in 2020. This Rada declaration touches on future local elections in the ORDLO, and has been categorically condemned by Russia.²⁶ Despite reminders by the OSCE Coordinator of the TCG Humanitarian Working Subgroup, Toni Frisch, that political demands should not obstruct resolution of humanitarian issues, DNR/LNR representatives continued to halt the exchange of prisoners unless the text of the Rada resolution was changed.

The relevance of this issue declined following Ukraine's October 2020 local and regional elections. Instead, at the end of 2020, representatives of the DNR/LNR set new preconditions for further prisoner exchanges. They have since demanded the deletion of the criminal records of nine former Ukrainian detainees, and Kyiv's

Rights Protection Group, the "Justice for Peace in Donbas" Coalition, Human Rights Watch and the European Parliament.

²⁴ *Office of the United Nations High Commissioner for Human Rights Report*, p. 14.

²⁵ Ukrinform, *Українська сторона передала до Тресторонньої контактної групи (ТКГ) список з чотирьох категорій заручників*, October 2020.

<https://www.ukrinform.ua/rubric-ato/3117560-ukraina-peredala-do-tkg-spiski-polonениh-bojoviki-poki-movcat.html>.

²⁶ Ivanukha, M., *Кравчук попросив змінити постанову про місцеві вибори на вимогу ОРДЛО і Росії*, August 2020. <https://suspihne.media/57330-kravcuk-poproshiv-zminiti-postanovu-pro-miscevi-vibori-na-vimogu-ordlo-i-rosii/>.



acceptance of a so-called peace plan for the Donbas proposed by the DNR/LNR.²⁷ As a result of these new positions at the Minsk negotiations, the continuation of earlier prisoner exchange practice has become impossible. Instead, Russia and its marionette regimes in the ORDLO have transformed their detainees into political commodities.

Policy recommendations

There is currently deadlock in the prisoner exchange process while the often horrific situation and frequent torture of detainees in the basements and prisons of the DNR/LNR, such as Izoliatsiia, continue. A number of steps could help to improve the human rights situation more generally, and ease the fate of detainees in the two pseudo-republics in particular:

- 1 *Monitoring and documentation:* Mechanisms should be explored and developed for observing illegal detentions more closely and recording the fate of detainees more systematically in the DNR and LNR. Among other things, the OSCE Special Monitoring Mission could expand its focus to include additional social patrolling in its work programme and more results from investigating non-military affairs, including human rights violations, in its reports. The ICRC, United Nations and other

governmental entities and NGOs already active in the region should cooperate with each other and with local media outlets, administrations and NGOs on joint production of a comprehensive register of incarcerations and captives, and of detailed descriptions of individual cases. Additional organizations such as the International Humanitarian Fact-Finding Commission,²⁸ and other specialist human rights groups and investigative agencies not yet present in the Donbas, should be encouraged to become active in the region and to apply their expertise to, among other things, researching the situation of prisoners. The Commissioner for Human Rights of the Council of Europe should include the human rights situation in DNR/LNR in her reporting on Ukraine, without legitimizing the de facto authorities. The detailed reports of the OHCHR provide a good model.

- 2 *Alleviation and release:* Western governments should insist on full access by the ICRC and other humanitarian organizations to all those imprisoned in the ORDLO. International governmental organizations and legal mechanisms, such as those of the United Nations or the Council of Europe, should be mobilized to ease the fate of prisoners in the DNR/LNR

²⁷ LB.ua, *Росія блокує обмін полоненими і вимагає від України прийняти "мирний план" бойовиків ОРДЛО*, December 2020.

https://lb.ua/society/2020/12/18/473356_rosiya_blokui_e_obmin_polonenimi_i.html.

²⁸ The International Humanitarian Fact-Finding Commission, <https://www.ihffc.org/index.asp>.



torture jails. The transfer of detainees to Ukraine's government-controlled area or their freeing in the ORDLO as well as the prevention of new unlawful detentions of civilians should be high priorities in the West's negotiations with Moscow. The OSCE Chairpersonship and its participating states, especially Germany and France within the Normandy Format, should exert maximum pressure on Moscow to end the DNR's and LNR's widespread use of physical and psychological torture in their various jails. The OSCE and Normandy Format partners should insist on reviving the practice of regular prisoner exchanges in the Donbas. The recently emerged pro-Russian side's idea of making the release of further prisoners of the DNR/LNR conditional on meeting the two pseudo-republics' political demands should be rejected irreversibly. The resolution of basic humanitarian issues (in addition to fundamental security issues) should instead become a precondition for negotiations on the political demands of Russia and its satellite regimes. A public modification of the official position of the European Union (EU) could emphasize that observing basic civil and human rights in the ORDLO is – along with resolving other fundamental issues, such as re-establishing the Ukrainian government's full control over the Russian-Ukrainian border – a

necessary first step towards starting a political process in the currently occupied territories.

- 3 *Accountability and prosecution:* The specialist human rights protection organs and international courts should become more involved in the investigation of human rights abuses in Ukraine's occupied territories. Competent institutions such as the Council of Europe Human Rights Commissioner and OHCHR are already present in the region, and should become even more active in bringing the dire situation of political detainees in the Donbas and Crimea to the attention of governments and the public worldwide.²⁹ Relevant international legal institutions, such as the European Court on Human Rights and International Criminal Court, should be actively used to probe human rights violations and punish criminal behaviour in the occupied parts of Ukraine. A separate designated EU and US sanctions regime could be designed and implemented in connection with the abuses by officials in the Donbas pseudo-republics and Russian occupation regime in Crimea in general, and the horrific practices of detention and torture, in particular.
- 4 *For further consideration:* The gross violations of fundamental rights raised in this report pose more general questions about the applicability of international law as

²⁹ United Nations, Office of the High Commissioner, *Ukraine Homepage*.

<https://www.ohchr.org/en/countries/enacaregion/pages/uaindex.aspx>.



well as the relevance of European human rights commitments, such as those made within the OSCE and the Council of Europe, in these and similar cases. This concerns, in particular, the implementation of international humanitarian law in the conflict zones of the protracted conflicts in Eastern Europe, and the possibility of eventually holding accountable the perpetrators of crimes such as those indicated above. These complicated issues merit greater international analytical and political attention, both within the framework of practical efforts to manage and resolve these conflicts and in relevant academic and legal discussions on these topics.



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