

FORCED PASSPORTIZATION AND THE PROBLEM OF ITS CRIMINALIZATION IN THE INTERNATIONAL LAW*

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Abstract. The article analyses the problem of forced passportization of Ukrainian citizens in the temporarily occupied territories of Ukraine by the Russian occupation authorities during Russia's armed aggression against Ukraine. This process began as early as the period of the illegal occupation of Crimea and its scale significantly increased with the beginning of the full-scale invasion on February 24, 2022. It is stressed that the forcing of Ukrainians to obtain Russian citizenship is carried out as part of the Russian authorities' policy. In this context, we analyse the latest legislation of the Russian Federation which relates to the procedure for granting Russian citizenship by the Russian occupation authorities. Examples of forcing Ukrainians living in the occupied territories to obtain citizenship of the Russian Federation through intimidation, threats, and deprivation of basic human rights and freedoms are cited. Forced passportization in the occupied territories of Ukraine, carried out by the Russian authorities, is a violation of the International Humanitarian Law, in particular Article 4 of the IV Geneva Convention of 1949 "On the Protection of the Civilian Persons in the time of war" and Article 4 of the IV Hague Convention of 1907, which prohibits forcing the inhabitants to swear allegiance to the occupying power. It has been established that in contemporary international law, coercion to obtain citizenship of the occupying power does not constitute an independent component of a war crime. It is concluded that such violations of International Humanitarian Law may constitute a war crime and it indicates the need for the criminalization of forced passportization by amending the Rome Statute of the International Criminal Court. It is proposed to constitute a new war crime by adding to Paragraph 2 (b) of Article 8 of the Statute of the International Criminal Court a new war crime: forcing the inhabitants of the occupied territories to obtain citizenship of the occupying state.

Keywords: International Criminal Court; war crimes; Russian aggression; International Humanitarian Law; Rome Statute.

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INTRODUCTION

Having launched a large-scale aggression against our country in 2022, the Russian Federation occupied part of the territories of Kherson, Zaporizhzhia, Kharkiv oblasts and seized some regions of Luhansk and Donetsk oblasts of Ukraine and immediately launched forced passportization of the Ukrainian citizens living in these territories. It is worth noting that the occupiers' actions have gained a significant scope.

According to human rights organizations, as of April 2024, approximately 1.5 million people in the temporarily occupied territories¹ of Ukraine currently hold valid Russian passports.² According to the Ukrainian Parliament Commissioner for Human Rights, in 2023, he received 98 appeals regarding forced passportization from citizens living in the TOT (Crimea and Sevastopol – 1, Donetsk oblast – 7, Zaporizhzhia oblast – 70, Kherson oblast – 17, Luhansk oblast – 3).³

In fact, the issue of forced passportization of Ukrainian citizens living in the TOT emerged as early as 2014. Having occupied the territory of the Autonomous Republic of Crimea⁴, the Russian Federation automatically recognized as its citizens all persons who resided in its territory as of the date of the beginning of the temporary occupation of the respective territory. At the same time, no active actions were required to acquire Russian citizenship.⁵ As we know, at the beginning of the occupation in 2014, the occupation powers of the Migration Service did not start working immediately in the ARC. At that time, residents of the Autonomous Republic of Crimea were forced to obtain passports in the Russian Federation (Krasnodar Krai, Rostov and Moscow oblasts). A significant number of Ukrainian citizens,

¹ Hereinafter: TOT.

² Press conference: "Forced passportization of the Russian Federation in Ukraine in 2000-2024." Organized by the NGO "Eastern Human Rights Group", NGO "Institute for Strategic Studies and Security" <https://www.ukrinform.ua/rubric-presshall/3849861-primusova-pasportizacia-rf-v-ukraini-20002024-roki-prezentacia-analiticnogo-doslidzenna.html> [accessed: 02.08.2024].

³ Annual report of the Ukrainian Parliament Commissioner for Human Rights on the state of observance and protection of human and civil rights and freedoms in Ukraine in 2023, https://ombudsman.gov.ua/storage/app/media/uploaded-files/%D0%A9%D0%BE%D1%80%D1%96%D1%87%D0%BD%D0%B0_%D0%B4%D0%BE%D0%BF%D0%BE%D0%B2%D1%96%D0%B4%D1%8C_%D0%A3%D0%BF%D0%BE%D0%B2%D0%BD%D0%BE%D0%B2%D0%B0%D0%B6%D0%B5%D0%BD%D0%BE%D0%B3%D0%BE_%D0%B7%D0%B0_2023_%D1%80%D1%96%D0%BA.pdf [accessed: 02.08.2024], p62-63.

⁴ Hereinafter: ARC.

⁵ Law of the Russian Federation No. 6-FKZ "On the Accession of the Republic of Crimea to the Russian Federation and the Formation of New Subjects of the Republic of Crimea and the City of Federal Significance Sevastopol within the Russian Federation", <http://static.kremlin.ru/media/events/files/ru/0bTO6S1g5c0RASXodOjRuI8wGLndsOzA.pdf> [accessed: 02.08.2024].

including children, were deported from the TOT to the Russian Federation and automatically “awarded” the citizenship of the aggressor state.

Later, in 2019, a presidential decree stipulated that persons permanently residing in certain districts of Donetsk and Luhansk oblasts of Ukraine have the right to apply for Russian citizenship under a simplified procedure. This provision was later extended to all Ukrainian citizens and stateless persons permanently residing in Ukraine.

Office of High Commissioner of Human Rights⁶ stated in its recent report on the situation in Ukraine, that the Russian Federation has violated several of its obligations as an occupying Power, including by compelling residents to obtain Russian citizenship.⁷ On 27 March 2024, the UN Human Rights Committee found that the automatic naturalization of Ukrainian citizens who permanently resided in Crimea at the beginning of the occupation of the peninsula by the Russian Federation in March 2014 also constituted discrimination on the grounds of national origin. The Committee held that “a person’s nationality constitutes an important component of one’s identity, and that the protection against arbitrary or unlawful interference with one’s privacy includes protection against forceful imposition of a foreign nationality.”⁸ While Russian authorities have not automatically imposed Russian citizenship on residents of the regions of Ukraine occupied after 24 February 2022 in the same manner as they did in Crimea in 2014, the systems imposed in newly occupied territory have, as a practical matter, effectively compelled people to obtain Russian citizenship in order to access necessary services. Dozens of people interviewed by OHCHR who had recently left the occupied territory described what appears to be increased pressure to obtain Russian passports as one of the main reasons for their departure.

It is obvious that the forced passportization of Ukrainian citizens by the Russian Federation was initially one of the elements of the hybrid war of the aggressor state and an integral part of the preparatory actions before the full-scale military invasion of Ukraine by Russia. Since February 24, 2022, such actions of the occupying power have become widespread and systemic, which is indisputable evidence of the existence of a separate state policy implemented in relation to Ukrainians living in the occupied territories. Thus, such actions of the occupying power should be properly assessed for their qualification according to the International Law.

⁶ Hereinafter: OHCHR.

⁷ Report on the Human Rights Situation in Ukraine, 1 March – 31 May 2024, United Nations Human Rights, Office of the High Commissioner, <https://www.ohchr.org/sites/default/files/documents/countries/ukraine/2024/24-07-02-OHCHR-39th-periodic-report-Ukraine.pdf> [accessed: 02.08.2024].

⁸ *Ibid.*

1. SPECIAL CHANGES IN THE LEGISLATION OF THE RUSSIAN FEDERATION

On May 25, 2022, President Putin signed a decree⁹ that simplified the procedure for obtaining Russian citizenship for Ukrainian citizens who continued to live in the temporarily occupied Kherson and Zaporizhzhia oblasts. It supplemented the previous act of 2019, under which a similar procedure had already been applied to residents of the previously occupied Donetsk and Luhansk oblasts. The document gave residents of the Kherson and Zaporizhzhia oblasts the opportunity to obtain the citizenship of the occupying state without meeting the general requirements, such as five years of residence in Russia, proof of income and knowledge of the Russian language.

Already at the end of 2022, after the pseudo-referendums, the Russian foreign ministry informed residents of the occupied Kherson and Zaporizhzhia oblasts that any travel “abroad” was possible only with a Russian passport. And in March 2023, President Putin publicly instructed the relevant services to speed up passportization in these areas. For this purpose, the Russian Ministry of Internal Affairs set up mobile “passport offices” in the occupied territories, and the control over the process of such: “passportization” was entrusted to the main department for migration of the same ministry.

In March of the same year, the president of the occupying power signed the law¹⁰ “On the Peculiarities of the Legal Status of Russian Citizens Holding Ukrainian Citizenship,” which provides that such persons, after receiving a Russian passport, may apply to the Russian government to renounce their Ukrainian citizenship. According to the same law, all so-called new Russian citizens “shall be deemed not to have Ukrainian citizenship from the date of their application to the federal body of internal affairs or its territorial subdivision.”

In reality, Ukrainians used different ways to avoid forced Russian citizenship. Therefore, in order to ensure the implementation of the plan to convert them to Russian citizenship, on April 27, 2023, Putin issued a new decree¹¹ that provides for the forced deportation from the occupied Ukrainian

⁹ Decree of the President of the Russian Federation of 25.05.2022 No. 304 “On Amending Decree of the President of the Russian Federation of April 24, 2019 No. 183 ‘On Determining, for humanitarian purposes, the categories of persons entitled to apply for admission to citizenship of the Russian Federation in a simplified procedure’,” <http://publication.pravo.gov.ru/Document/View/0001202205250004> [accessed: 02.08.2024].

¹⁰ Federal Law of 18.03.2023 № 62-FZ “On the peculiarities of the legal status of citizens of the Russian Federation who have Ukrainian citizenship,” <http://publication.pravo.gov.ru/Document/View/0001202303180001> [accessed: 02.08.2024].

¹¹ Decree of the President of the Russian Federation of 27.04.2023 No. 307 “On the peculiarities of the legal status of certain categories of foreign citizens and stateless persons in the Russian

territories of Ukrainian citizens who retain Ukrainian citizenship after July 1, 2024. This decree also stipulates that citizens who “declare their desire to retain their existing citizenship or remain stateless” and thus refuse to take the oath of the Russian citizen will be considered foreigners.

Moreover, starting from April 28, 2023, amendments¹² to the Russian law “On Citizenship” came into force, under which all Ukrainians who had received Russian citizenship could lose it for committing certain offenses. In other words, the new version of the law left all Ukrainians holding Russian passports in a permanent “suspended” state, which allowed the occupation authorities to manually deprive anyone who, in their opinion, deserved it of citizenship.

In addition to these innovations, in July 2023, Russian President issued another decree,¹³ No. 495, “On some issues related to the peculiarities of the legal status of citizens of the Russian Federation who have the citizenship of Ukraine.” This document establishes the verification procedure for Ukrainian citizens already holding Russian passports to check whether they have committed any actions aimed at exercising their rights and obligations as citizens of Ukraine.

As we can see, the scope of legal acts aimed exclusively at the passportization of Ukrainian citizens in the occupied territories, as well as their content and the involvement of a large number of authorities in their adoption and implementation, allow us to conclude that the process of granting Russian citizenship in the occupied territories is systematic, purposeful and coordinated at the highest level of occupying Power.

2. ACTIONS OF THE OCCUPYING AUTHORITIES

The above-mentioned provisions of the Russian legislation in relation to Ukrainians in the occupied territories are implemented through pressure, coercion and threats, and are characterized by humiliation of human dignity. The policy of the local occupation authorities consists of denying basic rights and freedoms and applying punitive measures to the residents who have not received Russian citizenship. There are many cases where Ukrainians are deprived of property, social benefits, and their last means of subsistence for refusing to obtain Russian citizenship, threatened with

Federation,” <http://publication.pravo.gov.ru/Document/View/0001202304270013> [accessed: 02.08.2024].

¹² Federal Law N 138-FZ “On Citizenship of the Russian Federation” dated April 28, 2023, <https://rg.ru/documents/2023/05/03/document-o-grazhdanstve.html> [accessed: 02.08.2024].

¹³ Decree of the President of the Russian Federation of 06.07.2023 N 495 “On some issues related to the peculiarities of the legal status of citizens of the Russian Federation who have Ukrainian citizenship,” <https://mvd.consultant.ru/documents/1058123> [accessed: 02.08.2024].

imprisonment or the taking away of their children, and restrictions on business and even freedom of movement.

In the Russian-occupied territories of the Kherson oblast, the occupation authorities literally stated, in particular, that failure to obtain a Russian passport would lead to “the inability to receive humanitarian aid or social benefits, as well as to find a job.” In the occupied territories of Zaporizhzhia oblast, mothers without a Russian passport cannot receive childcare allowances, and pensioners cannot receive pensions.

Residents of the illegally annexed territories have problems obtaining medicines and medical care, which are available only if they acquire Russian citizenship. For example, in May 2023, Deputy Prime Minister of Russia Holikova said that all residents in the occupied territories of Ukraine must have a mandatory health insurance policy by the end of 2023.¹⁴ However, it is impossible to become the owner of such a policy, and, therefore, to receive medical care without a Russian passport. Moreover, Ukrainian citizens living in these areas and suffering from diabetes cannot receive insulin without a Russian passport, which literary means – they may die.¹⁵

Car owners also face significant restrictions on their rights in the occupied territories. Vehicle inspections and, accordingly, the use of private cars are possible only for holders of a Russian passport. In addition, the occupation authorities are forcing employers to renegotiate labor contracts with employees in accordance with Russian law. In the absence of a Russian passport, such employees face dismissal [Hlushchenko 2023]. It even went so far as to prohibit taxi drivers in Zaporizhzhia oblast from providing transportation services unless they become citizens of the Russian Federation [Albinovska 2023].

The Ukrainians who refuse to obtain the citizenship of the occupying state will be threatened with deprivation of property rights. For example, residents of the occupied territories of Ukraine were threatened with the confiscation of their land if they refused to obtain Russian citizenship. According to CNN, some of these threats have already been realized. The situation is similar for residential and commercial real estate ownership. Ukrainians are threatened with eviction from their homes and offices if they do not become Russian citizens. Thus, after the full-scale invasion of Russia in February 2022, the occupying Power has been using passportization as a form of pressure and intimidation of the local population on an

¹⁴ See *Zhiteli novykh regionov budut obespecheny meditsynskimi strakhovaniyem do kontsa etogo goda – Golikova*, <https://www.interfax-russia.ru/south-and-north-caucasus/news/zhiteli-novykh-regionov-budut-obespecheny-meditsynskimi-strakhovaniem-do-konca-etogo-goda-golikova> [accessed: 02.08.2024].

¹⁵ See *Zaharbnyky ne vydaiut insulin meshkantsiam TOT bez rosiiskoho pasporta*. Ukrinform. 04.06.2023, <https://www.ukrinform.ua/rubric-regions/3717960-zagarbnyki-ne-vidaut-insulin-meskancam-tot-bez-rosijskogo-pasporta.html> [accessed: 02.08.2024].

unprecedented scale. Civilians often have no choice but to obtain a passport of the aggressor state in order to save their lives and the lives of their loved ones, to have access to basic medical or educational services, to avoid the confiscation of their property, etc.

According to the recent Report of OHCHR, a lot of, particularly older persons, cited difficulties in accessing health care without Russian citizenship.¹⁶ For example, as stated in the Report, an older man in a wheelchair and his wife from a village in Luhansk region told that without Russian passports, it was no longer possible for them to undergo medical examinations and surgeries in the occupied territory. A paramedic who refused to obtain a Russian passport said that she was allowed to provide some medical care to non-Russian passport holders, but for more specialized care and hospitalization, a passport was needed. Parents also cited increased pressure to obtain Russian citizenship for their school-age children. One woman from Donetsk city told OHCHR that the teacher of her six-year-old daughter demanded in April that she obtain a Russian birth certificate for her daughter, the only child in the class without Russian citizenship. Another woman from Kalanchak, Kherson region, told OHCHR that some of her neighbors were threatened that if they did not obtain Russian passports and did not send their children to school, their children could be taken away.

It is quite obvious that all the above actions of the Russians against Ukrainian citizens in the occupied territories are deliberately aimed at their forced and violent integration into Russia.

3. VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW

In connection with the above, the question arises as to the legal qualification of the actions of the occupying Power, in particular, its top military and political leadership, in the context of recognizing forced passportization as a grave breach of IHL. Moreover, it should be borne in mind that one of the obvious consequences of forced passportization is further forced mobilization into the armed forces of the occupying state, which is qualified as a war crime under international law.

There is no doubt that the actions of the Russian authorities violate international humanitarian law.

First of all, the norms of the IV Geneva Convention relative to the Protection of Civilian Persons in Time of War of 1949 are violated.¹⁷ In particular, the methods of passportization used by Russians do not comply with

¹⁶ Report on the Human Rights Situation in Ukraine, 1 March – 31 May 2024.

¹⁷ Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949, <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949> [accessed: 02.08.2024].

Article 3(1)(c), which prohibits abuse of human dignity, including insulting and humiliating treatment.

Deprivation of the right to study for children whose parents have not received Russian passports is a breach of Article 50 of the Convention.

It is not difficult to notice also other violations of the abovementioned Convention: violations of Article 52, which provides for the protection of the right to labor; Article 53 on the protection of property rights; Article 55, which prohibits denying the population food and medicine.

Undoubtedly, the actions of the occupying Power to force residents of the occupied territories to obtain Russian citizenship are a clear breach of the laws and customs of war, namely Article 45 of the Regulations concerning the Laws and Customs of War on Land, which is an annex to the IV Hague Convention of 1907.¹⁸ It is forbidden to compel the inhabitants of occupied territory to swear allegiance to the hostile Power. By forcing Ukrainians living in the occupied territories to obtain a Russian passport, the Russian federation, which is a hostile Power is literally forcing them to swear allegiance to it. After all, Article 21 of the federal law “On Citizenship of the Russian Federation” provides for taking an oath of allegiance to the Russian federation.¹⁹

So, if we see a breach of IHL, namely the breach of Article 45 of IV Hague Convention Is a forced passportization a war crime under international law?

As of today, a specific list of acts recognized as war crimes is defined in the Statute of the International Criminal Court, which is empowered to investigate them and bring perpetrators to international criminal accountability.²⁰

Article 8 of the Statute, in particular, establishes that the court has jurisdiction over war crimes when they are committed as part of a plan or policy or when they are committed on a large scale and are gross violations of the Geneva Conventions of August 12, 1949 or other serious violations of the laws and customs applicable in the armed conflicts.

Accordingly, coercion to obtain the citizenship of the occupying state (forcing inhabitants of the occupied territories to swear allegiance to the enemy state) should constitute a crime under Article 8(2)(b) of the Statute of the International Criminal Court as “other serious violations of the laws and customs applicable in the international armed conflict.” However, 29 war

¹⁸ Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907, <https://ihl-databases.icrc.org/en/ihl-treaties/hague-conv-iv-1907> [accessed: 02.08.2024].

¹⁹ Federal Law “On Citizenship of the Russian Federation” of 28.04.2023 N 138-FZ (latest edition), https://www.consultant.ru/document/cons_doc_LAW_445998/ [accessed: 02.08.2024].

²⁰ Rome Statute of the International Criminal Court, International Criminal Court. 2021, <https://www.icc-cpi.int/sites/default/files/2024-05/Rome-Statute-eng.pdf> [accessed: 02.08.2024].

crimes envisaged by this subparagraph do not include such a crime as “forcing to swear allegiance to the hostile power” (forced passportization).

Thus, as we can see, not all violations of the laws and customs of armed conflict constitute a war crime. The Rome Treaty limits the criminalization of a particular violation of IHL depending on its severity.

For example, Article 147 of IV Geneva Convention defines, in particular, the following acts against persons or property protected by the Convention as grave breaches “willful killing, torture or inhuman treatment, including biological experiments, willfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or willfully depriving a protected person of the rights of fair and regular trial, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity.”²¹

However, the norms of international law do not contain a separate clear separation of violations of the laws and customs applicable in the armed conflict into “serious” and other like “less-serious” violations. In our opinion, a particular violation may be classified as “serious” depending on the scale of its commission, the amount of damage caused and the danger to the international law and public safety. In fact, any breach of the rules of armed conflict established by international law can be interpreted as serious, given these criteria. Also, the criminalization of the relevant violation as a war crime is necessary when it is committed within the framework of a separate plan or policy of the state or in mass scale. After all, the International Criminal Court has jurisdiction over this category of crimes.

Given that the violation by the Russian Federation, as a party to the armed conflict – a hostile Power, of Article 45 of the Regulations Regarding the Laws and Customs of War on Land, which is an annex to the IV Hague Convention of 1907, is systematic and widespread, carried out by force, consciously and intentionally, as part of state policy in all occupied territories of Ukraine, as another party to the international armed conflict, such actions should be appropriately criminalized in the modern international law to ensure that the perpetrators are brought to international criminal responsibility.

We define a war crime as a serious violation of international humanitarian law, applicable in armed conflicts of an international and/or non-international character that entails individual criminal liability in accordance with international criminal law. In fact, the actions of forced passportization in the occupied territories of Ukraine bear all elements of a war crime, as they are committed during an armed conflict and constitute a serious violation of a conventional rule of IHL, but the mere fact of such actions is not enough

²¹ Convention (IV) relative to the Protection of Civilian Persons in Time of War.

for bringing the perpetrators to individual criminal liability under international law because of the lack of its criminalization.

Therefore, we consider it expedient to amend the list of war crimes prosecuted by the International Criminal Court with a new crime with the conditional title “coercion to obtain the citizenship of the hostile power.”

This can be done through the Assembly of States Parties to the Rome Treaty, which has the authority to amend the Court’s Statute. In this way, Article 8 was amended with new war crimes in 2010 and 2017.²²

As mentioned above, it is important to note that coercion to obtain a Russian passport is carried out through blackmail, intimidation, torture and threats to deprive those who refuse to obtain the citizenship of the aggressor state of humanitarian and medical assistance, deprivation of parental rights, restriction of movement and deportation.²³ In addition, it should be borne in mind that Ukrainian citizens who have been forced to obtain Russian citizenship may be forcibly drafted into the Russian army.²⁴ These actions of the occupiers obviously imply such elements of war crimes under Article 8 of the Rome Statute as torture or inhuman treatment (Article 8(2)(a)(ii)), compelling a prisoner of war or other protected person to serve in the armed forces of the hostile Power (Article 8(2)(a)(v)), Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent’s service before the commencement of the war (Article 8(2)(b)(xv)), committing outrages upon personal dignity, in particular humiliating and degrading treatment (Article 8(2)(b)(xxi)).

CONCLUSIONS AND RECOMMENDATIONS

Analyzing the above, it can be concluded that actions to impose the citizenship of the hostile power (forced passportization) on the population of the occupied territories do not currently constitute a war crime under the Rome Statute. At the same time, such an act, when committed during an armed conflict can be considered a serious violation of International Humanitarian Law, in particular, Article 45 of the Hague Convention relative to the Laws and Customs of War on Land and the IV Geneva Convention relative to the Protection of Civilian Persons in Time of War of 1949. Thus, coercion to obtain citizenship can be interpreted as “another serious violation of the laws

²² Rome Statute and other agreements, <https://asp.icc-cpi.int/RomeStatute> [accessed: 02.08.2024].

²³ See *Vyklyky prymusovoi pasportyzatsii na tymchasovo okupovanykh terytoriiakh Ukrainy: kruhlyi stil v Ofisi Ombudsmana*, https://ombudsman.gov.ua/news_details/viklyki-primusovoyi-pasportizaciyi-na-timchasovo-okupovanih-teritoriyah-ukrayini-kruglij-stil-v-ofisi-ombudsmana [accessed: 02.08.2024].

²⁴ Rome Statute of the International Criminal Court, International Criminal Court.

and customs applicable in international armed conflicts” if committed as part of a plan, policy or on a large scale, as set forth in Article 8(b) of the Rome Statute. In this regard, it is advisable to consider amending the Rome Statute by adding to it a new war crime – “coercion of the inhabitants of the occupied territory to obtain the citizenship of the occupying power”.

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