



**SEMINAR ORGANISED BY THE SUPREME COURT OF SPAIN IN COOPERATION WITH ACA-
EUROPE**

Madrid, 21 November 2022

***Questionnaire
Application of general principles and clauses in the case law of contentious-
administrative courts***

In order to deepen the open dialogue between the high administrative jurisdictions of Europe, this seminar will analyse the application, within the administrative legal system, of different general principles or clauses of law.

Given the variety and large number of existing general principles, an effort has first been made to delimit and select, on the basis of their topicality or potential expansion, a series of general principles which, although underlying most legal systems, nevertheless present differences in the various legal systems in terms of their nature, their recognition in legal norms and, in short, with regard to their functionality, with divergences evidenced in particular by their judicial application.

The seminar offers an eminently practical vision. For this reason, the questionnaire primarily takes judicial experience into consideration, suggesting the following perspectives as lines of analysis:

- (i) General principles of law in the system of sources;
- (ii) Common incorporation of general principles of law: European Union and horizontal dialogue;
- (iii) General principles and fundamental rights;
- (iv) General principles in certain sector-specific areas of public law, selecting, in this regard, some of these principles to determine their application and projection in fields such as *administrative organisation and procedure / administrative sanctions / public subsidies or grants / contracting by public bodies / town planning and environment / taxation*.

In short, the aim of the seminar is to find out whether there are convergences in the guidelines of the high jurisdictions of the Member States, by determining the degree of influence of European Union law (e.g. through Directive 2006/123/EC on services in the internal market, or through incorporation of the principle of good administration, recognised in Article 41 of the Charter of Fundamental Rights) in its application, without losing sight of the effects of the horizontal dialogue between the high national jurisdictions, which we hope the seminar can continue to stimulate.



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Due to the recent establishment of the Supreme Administrative Court of the Slovak Republic, we refer to the case-law of the Supreme Court of the Slovak Republic (our predecessor) in the questionnaire.

I. – GENERAL PRINCIPLES OF LAW IN THE SYSTEM OF SOURCES

1^o) What place and function do general principles of law have in the system of sources of your country's legal system?

- They are applied where there are gaps in the law
- They may be applied directly, even to the extent of displacing the initially applicable written law and prevailing over it.

Explain your answer briefly:

The general principles of law are:

1. a value starting point in drafting legislation;
2. an interpretative instrument for resolving disputable issues;
3. a source of law in cases where they are used to bridge gaps in the law.

2^o) Can it be said that the most relevant general principles of law in your culture and legal tradition have been positivised, i.e. enshrined with legal status in your country's judicial system?

- Yes
- Yes, the most relevant ones (please indicate briefly the most notable of these)
- No

Most important general legal principles are positivised, i.e. enshrined into the Constitution of the Slovak Republic or various general and/or sectoral legal regulations.

3^o) In the judicial practice of Public Law, are general principles of law frequently invoked and applied as a basis for decisions?

- They are frequently invoked and applied, and are also relevant and decisive in the settlement of disputes.
- They are frequently invoked and applied, although generally in a complementary manner, to reinforce challenging arguments based primarily on the interpretation and application of written rules.
- They are not frequently invoked and applied as a basis for decisions.





Explain your answer briefly:

In the application in practice, public administration bodies decide according to the text of laws (written law), but in disputable cases, general principles in law are taken directly as the basis of the decision (e.g. public procurement principles).

4^o) If you have answered yes to the previous question, can it be said that the invocation and application of general principles of law is done in a general and transverse way, in all areas or matters of Public Law?

- Yes
- Especially or particularly in certain matters, or in certain sector-specific areas (in this case, explain your answer briefly)

We are referring, for example, to those defined in the general regulation on administrative procedure - the principle of legality, speed and economic efficiency of proceedings or the principle of free assessment of evidence.

5^o) In your country's legal system, are there general principles specific to Administrative Law, independent of other general principles of law?

- There are no general principles specific to Administrative Law
- There are principles specific to Administrative Law that may be applied in conjunction with other general principles
- There are principles specific to Administrative Law that exclude and displace the application of the other general principles

Explain your answer briefly:

An example is the principle of substantial truth (the principle of ascertaining the true state of affairs), which courts and public administration bodies must apply at the same time as the principle of economy of proceedings (Resolution of the Supreme Court of the Slovak Republic of 24 January 2018, Case 10 Sžk 11/2016 and Judgement of the Supreme Court of the Slovak Republic of 29 October 2019, Case 7Sžsk 91/2018).

There are other principles of administrative law: the principle of good administration, the principle of cooperation, the principle of awareness, the principle of amicable settlement, the principle of the case law, and the principle of two instances of proceedings.

The principles of administrative law are combined with the general principles of law and the principles of European Union law.





II. – COMMON INCORPORATION OF GENERAL PRINCIPLES OF LAW: EUROPEAN UNION AND HORIZONTAL DIALOGUE

6^o) Has your country's administrative legal system patently incorporated the general principles of European Union law?

- Yes, in general
- No special or specific incorporation has been necessary, because in general these principles were already recognised and enshrined in the country's legislation and practice.

Explain your answer briefly (this question mainly concerns the work of the legislator, i.e. the “legislative system”).

Pursuant to Article 7 of the Constitution of the Slovak Republic: *“Legally binding acts of the European Communities and the European Union take precedence over the laws of the Slovak Republic.”*

By concluding the Accession Treaty, Slovakia has committed itself to transposing all EU law in force at the time of accession. The Slovak Republic already had some general legal principles of EU law enshrined in the Constitution of the Slovak Republic upon accession to the EU. These were subsequently amended in other laws, in which they were specified in more detail (e.g. the Administrative Court Procedure, the Civil Court Procedure, the Administrative Procedure Code, etc.).

7^o) Is it common in your country’s judicial practice for the specific general principles of European Union law to be invoked and taken into account in areas where there is no regulatory harmonisation?

- Yes, for certain matters
- No, not generally

Explain your answer briefly (this question mainly concerns the work of the judiciary, i.e. “judicial practice”).

In its decision-making practice, the Supreme Court of the Slovak Republic has repeatedly emphasized the obligation of competent authorities to strive for a Euro-conform interpretation of national law.

If there is a gap in the national legislation, it is necessary to use an interpretation that is in accordance with European Union law (Judgment of the Supreme Court of the Slovak Republic of 31 January 2019, Case 8 Sžf 71/2016).



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8^o) When applying the general principles set out in European Union law, and when it is found that the general European principle applicable to the dispute in question conflicts in some way with national law, has the dispute been resolved through a solution involving the displacement and non-application of the national rule in order to give way to the general European principle?

- Yes
- This solution has been chosen in some cases, while in others different solutions or answers have been used (in this case, explain your answer briefly)

The provisions of the legal systems of the Member States which fall within the scope of EU law must comply with the general principles of the EU (ERT, Case C-260/89 [1991] ECR I-2925, paragraphs 43 to 45). The consequence of this obligation is the rule that authorities acting on behalf of a Member State may not apply any national provision which would be contrary to EU guidelines and must give priority to EU guidelines (in accordance with Case C-347/96 Solred [1998] ECR I-937, paragraph 30).

9^o) Is it common in judicial practice for the principle of legitimate expectation to be invoked and taken into account?

- Yes, as a transversal principle
- Yes, but only in certain sector-specific matters and areas harmonised by Union law (please indicate what these are)
- No

Explain your answer briefly.

The principle of legal certainty, which also includes the principle of protection of legitimate expectations, is based on the principle of the rule of law proclaimed in Article 1 paragraph 1 of the Constitution of the Slovak Republic.

Pursuant to Art. 3 paragraph 5 of the Administrative Procedure Code *“The decision of the administrative authorities must be based on a reliably ascertained state of affairs. The administrative authorities shall ensure that unjustified differences do not arise in deciding on factually same or similar cases. ”*

The party to the proceedings is entitled to receive a similar/same decision in the similar/same cases, but there is not a clear legal definition of how the binding of earlier should be implemented.

A derogation from the principle of the protection of legitimate expectations is permissible provided that the statement of reasons for the decision is thorough.





10^o) Can taking the principle of legitimate expectation into account even result in the annulment of administrative decisions that are contrary to or violate those principles?

- Yes
- No, these principles are applied only in order to provide for compensation or reparation when they are violated in some way by the decisions of the Administration.

Explain your answer briefly.

An example is the judgment of 11 December 2012, Case 1 Sžo 7/2012, in which the Supreme Court of the Slovak Republic reviewed the legality of the decision of the administrative body. He annulled the decision of the administrative body and returned the case to it for further proceedings. The reference to the principle of the protection of legitimate expectations was included in the statement of reasons for the decision.

"... Through the formulated principles, the Council of Europe has set a certain standard for the quality of the decision-making of the public administration, especially in terms of its content, with the legal nature of soft law. There is no doubt that compliance with these principles is verifiable, and the decisions, actions and procedures of administrative bodies are reviewable, inter alia, in terms of compliance with these principles, in particular the principle of legality, the principle of protection (minimization of interference into) of rights, the principle of predictability, the principle of protection of legitimate expectations, the principle of legal certainty, the principle of speed and more.
"

11^o) Has the “principle of good administration” referred to in Article 41 of the Charter of Fundamental Rights of the European Union been adopted and applied in your country’s judicial practice?

- Yes, as a transversal principle
- Yes, but only in certain sector-specific matters and areas harmonised by Union law (please indicate what these are)
- Not commonly applied

Explain your answer briefly.

In the Slovak Republic, the concept of good administration is not explicitly established in the legislation, it is not defined in any way and the legal system of the Slovak Republic does not enshrine the right to good administration. Nevertheless, the principles of good administration are reflected in the provisions of several laws.

The case-law of the Slovak courts regularly refers to Article 41 of the Charter of Fundamental Rights of the European Union, especially in cases of ambiguous or missing legislation.



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In the Judgment of 19 March 2013, Case 1 Sžr 54/2013 on the issue of compliance with good public administration the Supreme Court of the Slovak Republic stated:

"Recently, the effect of good morals has become increasingly important in the cultivated performance of public administration through the authorities, in the form of an order not only for the performance in a lawful manner but for the performance of good public administration. At the international level, in particular, elements of good public administration have been gradually introduced into the various national legal systems of the Member States. For example, the United Nations Convention against Corruption (Communication of the Ministry of Foreign Affairs of the Slovak Republic No. 434/2006 Coll.) made a clear requirement for good governance and proper management of public property, including the establishment of ethical rules for the conduct of public officials as an effective tool in the fight against corruption. (Preamble and Article 8 of the UN Convention). According to the Supreme Court, it is also possible to include in this area the Recommendation of the Committee of Ministers of the Council of Europe No. (2007) 7 on good administration as well as Article 41 in conjunction with Article 51 paragraph 1 of the Charter of Fundamental Rights of the European Union. "

12^o) Can taking the principle of good administration into account even result in the annulment of administrative decisions that are contrary to or violate that principle?

- Yes, in some specific cases.
- This would never be possible because, among other reasons, this principle applies solely as a guideline for conduct within the Administration and cannot be invoked by the citizen.
- No

Explain your answer briefly.

In matters of university self-government, in which the general regulations on administrative proceedings do not apply, the Supreme Court of the Slovak Republic has repeatedly annulled decisions of public administration bodies with reference to the European regulation of the principles of good public administration.

An example is the decision of the Supreme Court of the Slovak Republic of 17 December 2009, Case 8Sžo 12/2009, in which the court reviewed the legality of the decision of the Rector of the University.

13^o) Is it common in judicial practice for the principle of necessity and proportionality of administrative measures that limit or restrict access to or the exercise of an economic activity to be invoked and taken into account?



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- Yes, this is a positivised principle whose non-observance results in the nullity of the measure or provision of a general nature.
- Yes, in certain matters and to different extents
- No

Explain your answer briefly.

If we understand this question correctly, and therefore whether the principle of necessity and proportionality is applied in case of limitation of economic activity, we refer to the example of the Ruling of the Constitutional Court of the Slovak Republic of 29 June 2010 (Case III. ÚS 24/2010).

"The objective of tax control cannot be achieved at the expense of the rights of taxable entity. The requirement of proportionality of the tax administrator's interventions against taxable entities also applies in tax proceedings (Article 2 Paragraph 3 of the Tax and Fees Administration Act). In some cases, the legislature formulated this requirement quite precisely by setting limits on a specific type of intervention. "

14^o) With regard to any of the above principles (legitimate expectation, necessity, proportionality or good administration) or other principles, has your country's Supreme Court taken into consideration the interpretation and manner of application of these principles by other European national high jurisdictions?

- Yes, on some occasions (in this case, explain your answer briefly)
- Never

With regard to the cultural and legal proximity of the Slovak Republic and the Czech Republic, the Slovak courts regularly refer to the decisions of the Supreme Administrative Court of the Czech Republic, especially in matters regulated by European Union law.

Decisions of courts of other member states are referred to by the Slovak courts only in exceptional cases.

III. – GENERAL PRINCIPLES AND FUNDAMENTAL RIGHTS

15^o) According to Article 6, paragraph 3 of the Treaty on European Union, fundamental rights that result from the constitutional traditions common to the Member States shall constitute general principles of the Union's law. Has your country's Supreme Court identified any of these common constitutional traditions?



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- Yes, especially on the basis of the case law of the Court of Justice or the European Court of Human Rights
- Yes, especially on the basis of the case law of the Supreme Courts of other Member States.
- No such identification has taken place.

16^o) What status and importance does the principle of non-discrimination and gender equality have in your country's judicial practice?

- It is a principle commonly and generally taken into consideration, across all areas
- It is a principle that is taken into consideration and applied in certain legal relations and sector-specific areas

Explain your answer briefly.

The Anti-Discrimination Act (No. 365/2004 Coll., in force from 1 July 2004) is a legal regulation that enshrines the general prohibition of discrimination and establishes a legal basis for compliance with the principle of equal treatment in the entire legal system of the Slovak Republic transpose EU anti-discrimination directives. The Anti-Discrimination Act has transposed the EU anti-discrimination directives into our legal system.

17^o) In the judicial practice of your country, is the principle of protection of particularly vulnerable groups (e.g. minors, women, people with disabilities) invoked and applied?

- Yes, in a general, open and transversal manner
- Yes, for certain groups that are predetermined and identified in the different sector-specific rules (give a significant example)
- No

18^o) Do the judicial bodies demand enhanced reasoning in cases where the contested administrative measure or decision (e.g. eviction from housing, granting of nationality) affects these vulnerable groups (e.g. minors, women, people with disabilities) or has an impact on other constitutional values such as protection of the family?

- No special grounds are required in these cases
- Yes, and their absence results in the nullity of the decision

Explain your answer briefly.





The Supreme Court of the Slovak Republic has stated in its case-law the lack of reasoning in the decisions of the administrative body concerning vulnerable persons.

In the Judgment of 13 December 2017, Case 10Sžak 18/2017 the Supreme Court of the Slovak Republic ruled that the decision of the administrative body not to grant asylum to the complainant and her minor children, one of whom suffered from a serious heart disorder, had failed to state reasons. In relation to them, the Supreme Court of the Slovak Republic emphasized the need to test the existence of the signs of the vulnerable person.

The Slovak Asylum Act and the Aliens Residence Act require special treatment of such persons.

19^a) In your judicial practice, have disputes been raised regarding the issue of the principles of transparency, equality and non-discrimination in relation to decisions based on artificial intelligence or predictive data management systems?

- Yes
- These principles are not frequently invoked, but some examples exist
- No

Explain your answer briefly.

IV. – GENERAL PRINCIPLES IN CERTAIN SECTOR-SPECIFIC AREAS OF PUBLIC LAW

IV.1. – ORGANISATION AND ADMINISTRATIVE PROCEDURE

20^a) In the administrative organisation, do the principles of decentralisation and subsidiarity apply?

- Yes
- No
- Not generally, but in certain areas or sectors (in this case, explain your answer briefly)

21^a) Are the general principles set out below applicable to the procedure for formulating administrative acts and provisions?

Principle of publicity and transparency



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- Yes
- No



Principle of proportionality

- Yes
- No

Principle of impartiality

- Yes
- No

Principle of anti-formalism

- Yes
- No

Principle of gratuitousness

- Yes
- No

Principle of self-correction (executory decision, without the need for judicial assistance).

- Yes
- No

(If you consider it appropriate, please indicate any other general principles of administrative procedure different from the above)

We consider it important to point out the principle of substantial truth (investigative principle). It leads the administrative authority to establish the facts objectively, even beyond what the party claims.

IV.2. – ADMINISTRATIVE SANCTIONS

22^o) Are the general principles of criminal law applied or projected in the area of administrative sanctions law? (Indicate the answer that you consider best reflects your legislation and practice)

- Yes
- Yes, although with nuances arising from the different natures of criminal offences and administrative offences
- Not in respect of minor, lesser or trivial infractions



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- Only in relation to infractions that can be characterised as “criminal” in accordance with the doctrine of the ECHR

Explain your answer briefly.

In the Slovak legal system, the area of administrative punishment is not codified in one legal regulation.

The imposition of sanctions is regulated by several specific laws.

Possible gaps in legislation are filled by the appropriate application of criminal law principles, while proportionality depends on the individual circumstances of the case, and thus it is not an automatic overturning of these principles.

Criminal law principles are those that are explicitly enshrined in the Criminal Procedure Code (principles of criminal procedure) as well as the principles of imposition of penalties (e.g. the principle of absorption).

23^o) If you have answered yes to the previous question, could you specify whether or not the following general principles are applied for administrative sanctions, or to what extent?

Principle of presumption of innocence and right not to incriminate oneself or plead guilty:

- Yes
- No
- With nuances (in this case, explain your answer briefly)

Principles of legality and definition of the constituent elements of the offence:

- Yes
- No
- With nuances (in this case, explain your answer briefly)

Principle of non-retroactivity of sanctioning provisions:

- Yes
- No
- With nuances (in this case, explain your answer briefly)

Principle of culpability:

- Yes
- No



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- With nuances (in this case, explain your answer briefly)

Principle of proportionality

- Yes
- No
-
- With nuances (in this case, explain your answer briefly)

Principle of defence and legal assistance:

- Yes
- No
- With nuances (in this case, explain your answer briefly)

In general, the right to defence can be exercised by the accused himself or through a defence lawyer.

The law does not require a mandatory representation by a lawyer in sanction proceedings before a public administration body, but the accused is entitled to choose to be represented by a defence lawyer.

In criminal proceedings, the accused must, in certain circumstances, be mandatorily represented by a lawyer (e.g. if he is in custody, he is deprived of legal capacity, it is a case of a particularly serious offence, it is a case against a juvenile, etc.).

In administrative court proceedings, with some exceptions, the law stipulates a mandatory legal representation by a lawyer as a procedural condition.

In both stages, in administrative proceedings and administrative court proceedings, the accused is entitled to apply for legal aid if the preconditions are met.

Principle of hearing:

- Yes
- No
- With nuances (in this case, explain your answer briefly)

Offences are always dealt with before an administrative authority in accordance with the Offences Act.

In other cases, the general regulation on administrative proceedings (Administrative Procedure Act) imposes an obligation on administrative authorities to order an oral





hearing only if the nature of the case so requires, particularly if it contributes to its clarification, or if a special law so provides.

Principle of separation between investigating authority and decision-making authority

- Yes
- No
- With nuances (in this case, explain your answer briefly)

Principle of reasoning of the sanctioning decision

- Yes
- No
- With nuances (in this case, explain your answer briefly)

Principle of time-barring of administrative offences and sanctions

- Yes
- No
- With nuances (in this case, explain your answer briefly)

Principle of judicial protection

- Yes
- No
- With nuances (in this case, explain your answer briefly)

Principle of double instance

- Yes
- No
- With nuances (in this case, explain your answer briefly)

(If you consider it appropriate, please indicate any other general principles of administrative sanctions law different from the above)

IV.3. – SUBSIDIES AND PUBLIC AID

24^o) Is the principle of proportionality applied in order to modulate the consequences of non-compliance by a beneficiary of public subsidies, aid or resources, or in the area of regulated sectors?





- Yes (in this case, explain briefly in what areas and with what consequences or effects)
- No

The principle of proportionality in the context of mitigating the consequences of non-compliance with the recipients of state aid is not explicitly enshrined in the Slovak legislation.

However, we have encountered the application of this principle in cases where the court has subjected to the proportionality test the withdrawal from the contract for providing non-repayable funding, which occurred as a result of a breach of contract by the beneficiary.

In the case 20 Co 83/2019 (decision of the Regional Court in Prešov of 25 August 2020), the plaintiff sought the return of non-repayable funding based on the contract for providing non-repayable funding in the amount of EUR 52,083.58.

According to the plaintiff, the beneficiary's breach of duty consisted in the fact that during the implementation of the project (Fire Department Reconstruction) the beneficiary notified the project change, which had an impact on the budget but did not provide the necessary documents despite several calls. The change in the project represented an increase in the price of the project by only about 300-400 euros, which was also borne by the beneficiary.

The court concluded in the present case that the withdrawal was invalid, inter alia, on grounds of disproportion, when, due to the amount of EUR 300-400, the beneficiary should reimburse the amount of EUR 52,083.58.

In addition, in the opinion expressed by the Supreme Court of the Slovak Republic, cases of breach of obligations by the beneficiaries, which may establish a breach of financial discipline, fall within the area of administrative punishment. In the area of administrative punishment, the principle of proportionality of the sanction in relation to the act committed applies.

(If you consider it appropriate, please indicate any other general principles of subsidies or public aid different from the above)

IV.4. – CONTRACTING BY PUBLIC BODIES

25^o) Is contracting by public bodies governed by different principles from contracting between private individuals and entities?



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- Yes. Although based on a common foundation, administrative contracting is governed by different principles from civil or private contracting.
- There are specific principles applicable to contracting by public bodies as regards the procedure for advertising and selecting contractors and the award of the contract, but the performance and execution of the contract are governed by principles substantially the same as those applicable to private contracting.
- No, public and private contracting are essentially governed by the same rules and principles.

In the Slovak Republic, the effects of contracts in the field of public procurement are bound to their publication in the Central Register of Contracts.

(If you consider it appropriate, please indicate any other general principles of contracting by public bodies different from the above)

IV.5. – TOWN PLANNING AND ENVIRONMENT

26^o) Could you say whether the following principles of environmental law are invoked and applied in your judicial practice?

Precautionary principle

- Yes
- No
- Occasionally, or on a limited basis (in this case, explain your answer briefly)

“Polluter pays” principle

- Yes
- No
- Occasionally, or on a limited basis (in this case, explain your answer briefly)

(If you consider it appropriate, please indicate any other general town planning or environmental principles different from the above)

IV.6. – TAXATION

27^o) In tax matters, are the following principles applied in your legislation and judicial practice?

Principle of legality: Tax liability can be established only by rules with legal status.



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- Yes
- No
- With nuances (in this case, explain your answer briefly)

Principle of economic or contributory capacity

- Yes
- No
- With nuances (in this case, explain your answer briefly)

The answer "with nuances" applies provided that the principle of "contributory capacity" means the principle of ability-to-pay, i.e. the principle under which taxes take into account the ability of a taxable person to pay.

An exception to the principle of taxation according to the ability of a taxable person to pay is, for example, real estate sales taxes.

Principles of equality and generality

- Yes
- No
- With nuances (in this case, explain your answer briefly)

Principle of progressiveness and its limit: non-confiscatory taxation

- Yes
- No
- With nuances (in this case, explain your answer briefly)

The application of the personal income tax rate depends on the amount of taxable income. Up to a certain level of the tax base, a lower income tax rate will be applied (19%) and after exceeding this tax base, a higher tax rate will be applied (25%). This limit is based annually on the amount of the applicable minimum subsistence figure.

The double income tax rate (15% and 21%) also applies to corporate income tax.

The Income Tax Act in Article 11 also defines the institution of the non-taxable part of the tax base, which means that below a certain limit, income is not subject to tax.

(If you consider it appropriate, please indicate any other general principles of tax law different from the above)

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