

**INTERNATIONAL SCIENTIFIC CONFERENCE**

**THE BALKANS BETWEEN PAST  
AND FUTURE: SECURITY,  
CONFLICT RESOLUTION AND  
EURO-ATLANTIC  
INTEGRATION**

05-08 June 2013, Ohrid

**Volume II**

**SKOPJE, 2013**

# **MACEDONIAN NON-TERRITORIAL MODEL: IN DEVELOPMENT OR REVISION? COMPARATIVE ANALYSIS AND DEBATE ON THE NATIONAL CULTURAL AUTONOMY OF THE MINORITIES**

**Dr.sc. Marina Andeva,**

e-mail: andeva@isig.it

marinandeva@gmail.com

*Institute of International Sociology, Gorizia, Italy*

## ***Abstract***

*The proposed paper focuses on the minority rights protection model in the Republic of Macedonia making a comparative analysis with the case of Trentino-South Tyrol; two inter-ethnic conflict resolution models, rather different in terms of reality and historical development but close in terms of solutions offered. It analyses two consociation models addressing minority rights, focusing on Macedonia as a model in development (representing the relationship between the state and the Albanian minority group). The group-differentiated rights proposed by Kymlicka are designed to protect cultural and political interests and in order to determine which ethno cultural groups merit which rights it is essential to make a distinction between national minorities and ethnic groups (Valadez, 2001) as to be seen historically in the Macedonian case. If an ethnic minority lacks the effective agency needed to exercise its group rights, then it should be avoided the granting and recognition of those rights (Nickles, 1997), or, for non-territorial ethnic minorities to try to create the effective agency, legitimate leaders needed for effective exercise and management of their rights. This is to be addressed by the Ohrid Framework Agreement (OFA) and its developments. Non-territorial autonomy crucial factor is the membership in a minority group; in this sense the perception of the NTA built by the OFA varies among the scholars. There are two dimensions: cultural (language) and territorial, posing the question on whether the model is rather non-territorial or tends to form territorial division of the state. Although it has been more than a decade since the OFA, the Macedonian system is still fragile and subject to further modifications. The linked between NTA and the EU conditionality for minority rights' protection will be addressed as a final important issue, an attempt to answer the question on the Macedonian model integration and harmonization with the EU minority protection framework.*

***Keywords: Republic of Macedonia, Ohrid Framework Agreement, minority rights, non-territorial autonomy, Trentino-South Tyrol***

## Introduction

Democratic governance was not a matter of majority rule, but of “minorities rule” (Dahl, 1956).

Cultural differences and their forms can be accommodated through special legal or constitutional measures; some only if their members have certain ‘group-specific rights’. Young calls this as ‘differentiated citizenship’ (Young, 1995), since the used measures go beyond and above the common rights of citizenship. Levy (1997) developed a typology, identifying eight clusters of rights-claims of ethno-cultural groups, which seem to have a similar normative structure and similar institutional implication.

The reasons of the countries to institutionalize accommodation of minorities vary significantly. Many minority groups have also become more insistent in asking for autonomy to preserve their identity. Ignoring these demands all too easily leads to violence and instability. This ‘phenomenon’ is especially noticeable in the last thirty years, with the rise of the ethno-national conflict, following the collapse of the Soviet Union, leading to concerted efforts, within and between nation states, to renew or reinvent legal and political arrangements for accommodating ethnic and national minorities (Spinner-Halev, 2000).

Kymlicka (1995) coined a term ‘group differentiated’ rights, developing special group-specific measures accommodating national and ethnic differences. In his multicultural citizenship theory, he speaks of three types of rights that could be attributed to the minority groups. He speaks of *self-government rights* when referring to the situation of a demand for a political autonomy or territorial jurisdiction, guaranteeing development of the different cultures and interests in a multinational state and of *poly-ethnic rights* when formal protection ensuring cultural groups maintain their cultural practices is involved. Through these rights ethnic groups can maintain their cultural practices and preserve their cultural norms and beliefs without limiting their successful functioning in the social and economic institutions of the majority society.<sup>1</sup> These group-specific measures are intended to assist ethnic groups and religious minorities express their cultural particularity and pride without it obstructing their success in the economic and political institutions of the dominant society and they are usually intended to promote integration into the larger society, not self-government. Self-government rights are relevant for national minorities, while poly-ethnic rights generally apply to ethnic groups. And he speaks of *special*

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<sup>1</sup> Such rights may include language policies in the schools to help preserve minority cultural traditions, exemptions to school dress-codes to allow the wearing of religious attire, and state funding for minority arts and cultural events.

*representation rights* intended to rectify minority group political under-representation in governing bodies, applying to either ethnic groups or national minorities. When applied to the latter, these rights are generally understood as a corollary to self-government rights.

In reference to group-differentiated rights, the discourse of autonomy rises. Autonomy would be the collective right that could be held by a minority group *qua* group; other rights such as the right to recognition and the right to continuation of pre-existing rights, can be held by persons belonging to the minority group, but autonomy would have to be a right of the minority group itself (Geoff, 2005, p. 150). In the case of autonomy, the state has a duty to balance the rights of the individual and the group in the same way that it balances conflicting rights held by different individuals. In assuming autonomous control over internal affairs, the minority group must conform to international human rights law standards. From a traditional perspective, the balancing by the State is between the interests of some members of the minority group as against that of other members with respect to the preservation of group identity, while the new approach granting collective rights to the minority group only grants those rights so that the group can protect the interests of the members of the group. Autonomy can be granted under different legal forms<sup>2</sup>. Seen as well as a strategy of preventing and settling ethnic conflict, the autonomy while recognising group-specific and individual concerns, endows an ethnic group with legislative, executive, and judicial powers to address effectively these concerns - a state construction element addressing the needs of diverse communities (Wolff & Weller, 2005). The concept and notion of autonomy as a mean of giving a certain group the right to decide and administer certain affairs essential to their well-being is very old. After being revived (from an irredentist claim to a potential solution to self-determination claims) it was considered as a possible instrument for accommodating separatist movements without in any way violating states' territorial integrity.<sup>3</sup>

Autonomy can be non-territorial and territorial. A non-territorial autonomy is correlated with Kymlicka poly-ethnic rights, and is distinguished by autonomy right of a particular ethnic group regardless of

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<sup>2</sup> One form is the federalism - where all regions enjoy equal powers and have an identical relationship to the central government. Two old federations, Switzerland and Canada, were adopted in part to accommodate ethnic diversity. Classical federalism, where all regions have equal powers, may not be sufficiently sensitive to the peculiar cultural and other needs of a particular community, which require a greater measure of self-government.

<sup>3</sup> Autonomy was embraced by some states as a way of maintaining their territorial integrity. In addition to the more established case of Belgium, Spain and the United Kingdom have also made startling progress in this direction. France has attempted to move towards autonomy as a means of addressing the Corsica conflict.

their territorial concentration area in the host state. For some, another term for this type of autonomy is personal autonomy<sup>4</sup>, linked to the members of the minority group (Brunner & Küpper, 2002). Constitutional theorists such as Lijphart (2008) have perceived the non-territorial autonomy as instrument when dealing ethnic conflicts from a cultural dimension (education, language, and religion). As national cultural autonomy, non-territorial autonomy was first explained in Karl Renner's article *State and Nation*, first published in 1899. The model of national cultural autonomy acknowledges that national communities require recognition of their specificity and differences in the public domain, and this is achieved through the existence of legally guaranteed autonomous and sovereign corporations (Nimni, 2005). Unlike more conventional forms of autonomy and self-determination, it rejects the idea of ethnically or nationally exclusive control over territory.

As a result of these theoretical reflections, this paper challenges the terms of territorial and non-territorial autonomy in the case of the Republic of Macedonia in comparison to the model of minority rights' protection in Trentino-South Tyrol. An analysis will be made in terms of the existing framework of instruments for minority rights protection attempting to answer the question on whether the Macedonian model can be developed, as in Renner's model, or it tends to shift its focus on territorial division and segregation.

### **Macedonian Model Balancing Minority Rights**

As a multicultural state, the Republic of Macedonia is characterized by the following elements: 1) a unitary state where the relationships with the ethnic communities (nationalities) are direct (interaction among communities); and 2) a non-territorial principle of accommodating minorities (Frckoski, 2000). In a constitutional model characterized by a multicultural society the main aim is to accommodate diversity of institutional constituent groups and to design an organization structure of the state that can accommodate these diversities through different mechanisms and instruments (Palermo & Woelk, 2011). As a multinational / multicultural

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<sup>4</sup> The crucial factor is not residence in an autonomous territory but membership of the minority. The owner of personal autonomy is traditionally an association, a legal form able to organize a group of individuals. The personal autonomy is not bound to public law: associations may also exercise rights of a private nature for its members, and it is also possible to give public functions to private associations, such as in the case of a private school in the minority language, whose qualifications are recognized by the public schools and for the management of the association that receives public subsidies (Palermo & Woelk, 2011).

model, Macedonia consider national communities as a constitute element of the state.

The aim of the Ohrid Framework Agreement (OFA) in 2001 was to find solutions to the inter-ethnic conflict without touching upon the question of the integrity of the state and develop a political system that recognizes the diversity as such. In finding solutions for settling ethnic conflicts a compromise is to be found for the minorities to have a genuine self-governance and in a state with a framework which preserves its territorial integrity. OFA, however, brought provisions directed to territorial arrangements of the state and the principle of decentralization of the minority rights is one of the general principles of the agreement. In the general European practice, the minority rights and the territorial autonomy are correlated with de-cantonization and federalism. In the case of Macedonia, the territorial principle, through the implementation of the agreement is to be replaced with the ethnic rights and the link with the subject of the rights, not the territory. This however, is not realized in whole, since the solutions given by the agreement are decentralization and local self-government, consequently ethnic rights are connected also with the territory (at least 20 % of the population in the units of local self-government) (Klekovski, 2011). The Republic of Macedonia, while not directly providing territorial autonomy to its minorities, has devolved extensive powers of self-governance to the local level. In combination with a redrawing of local borders, this has considerably enhanced the level of local autonomy for the ethnic Albanian minority.

Decentralization should lead to increased participation of all ethnic groups in one municipality and could help mitigate interethnic conflict (Deskoska). The Law on local self-government prescribes a Commission for relations between communities in those municipalities in which at least 20% of the population of the municipalities (established at the last census of population) are members of an ethnic community.<sup>5</sup> There is no obligation to introduce such commission for municipalities where the number of population belongs to less than 20%, but they can do that, if they decide that it will be useful for the inter-ethnic relations in their territory. With a composition of an equal number of representatives of each community represented in the municipality, it enables the commissions to become a place where all ethnic communities have equal opportunities to participate for issues of their concern no matter whether they are represented in the

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<sup>5</sup> Article 55, Law on local self-government.

municipal council or not. Current practices demonstrate that the work of the municipal commissions have been marked as not that successful.<sup>6</sup>

The model of consociation democracy allows power-sharing between the majority and the communities and ethnic groups when it comes to the positions and interests related to the preservation of the identity development (of those communities and groups). In the case of Macedonia the model stands on the following pillars: 1) language rights and their extension; 2) double-majority voting (Badinter principle); and 3) equitable representation. The first pillar reflects the idea of protecting language and cultural rights (poly-ethnic rights). The second pillar and the third pillar reflect the idea of power-sharing as suitable solution and element of the self-government and special representation rights described by Kymlicka and Ljiphart. If a territorial autonomy model alone cannot give the solution; therefore a combination of territorial and non-territorial model of autonomy could be the key. In this respect, Wolf and Weller propose three essential pre-conditions for a combination framework: 1) ethnic groups should be prepared to grant the respective other(s) the same degree of non-territorial autonomy as they desire for themselves; 2) to accept the framework as a mutually beneficial and conflict-preventing set-up; 3) to have willingness to make compromise in the process of negotiating and administering the institutional arrangement of autonomy. The second and the third pre-condition mirror the situation in the Macedonian case.

Except for consociation form and in sharp contrast to most other forms of national autonomy, Renner and Bauer's national cultural autonomy model rests on the 'personality principles', the idea that autonomous communities are organized as sovereign collectives whatever their residential location within a multinational state (Nimni, 2005). Renner argues that members of different national communities could coexist with their own distinct institutions and national organizations provided they did not claim territorial exclusivity, thus the model of non-territorial (cultural) autonomy acknowledges that national communities require recognition of their specificity and difference in the public domain through the existence of legally guaranteed autonomous and sovereign corporations. This model could not be found as such in the case of Macedonia; however the idea of

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<sup>6</sup> Survey results suggest that municipal councils are just as likely to adopt the recommendations a Commission makes than to merely consult with them, however, responses vary significantly between the municipalities. Surveys also show that the municipal councils work on cultural issues (organisation of cultural events, use of cultural symbols) significantly with the commissions. The frequency of the meetings and consultation of the commissions is also a sign that the influence and the overall contribution of these commissions are marginal. According to the survey results the members of the commissions meet regularly (1-3 times a year). See (Aisling, 2011).

having commissions for relations between the communities could be seen as a starting point. Another aspect of non-cultural autonomy is the ‘personality’ principle, meaning that the members of the community have a personal choice to take part in a particular national association. Ethnic interest citizens of different ethnic groups are not subject to the cultural practices of the majority, but they can rely on their own trans-territorial national organization, which has the status of a public corporation with sovereign areas of competence (Kann, 1950, repr. 1970). It can certainly be said that the commissions for relations with the communities have no resemblance with the model of autonomous and sovereign corporations, or as called in other cases, minority councils<sup>7</sup>; however, it could be considered as a basis for developing the idea behind.

## **The Comparison**

This paper also compares the Macedonian model with the one implemented in the Autonomous Region Trentino-South Tyrol. The aim is to briefly show how the two case studies actually relate to one another. The comparative results presented in this paper derive from an in-depth study carried out by the author (Andeva, 2012). At a micro level comparison, the problem-solving approach has been chosen, asking the question: ‘How is a specific social or legal problem, encountered both in the first society and in the second society, resolved?’ Here, the similarity of factual needs met by the two (different) legal systems makes those legal systems comparable. Institutions can only be meaningfully compared if they solve the same factual problem.<sup>8</sup> The unit of analysis on which this paper focuses is the concept of autonomy and power-sharing mechanism in both case studies.

In the Italian asymmetric ‘quasi federal’ political system, the Province of Bolzano (South Tyrol) is in an asymmetric position with the central government in Rome. This is a consequence of a certain kind of autonomy entitled to the province within the Autonomous Region Trentino-South Tyrol. The Autonomy Statute gives this entity a decentralised self-government and by that provides protection for the German and Ladin speaking minorities in its territory. South Tyrol enjoys primarily: legislative competences for education and culture, economy, environment, housing, communication and transport, tourism, welfare and provincial political and electoral structures; secondary competences in teaching, employment, public

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<sup>7</sup> As in the case of Serbia, see The Law on National Councils of National Minorities.

<sup>8</sup> This approach can also be called the universalistic approach to human needs which hails from the belief that social problems are universal, the laws respond to these needs in various ways, but that the end results are comparable.



health, aviation, energy, foreign trade and relations, science and technology; and tertiary competences in some areas of transport policies, public health services and pay structures in the education system.<sup>9</sup> Whereas South Tyrol within the Italian Republic enjoys full territorial autonomy, the Republic of Macedonia is a model of something in between the non-territoriality principle and the decentralised competences at local level (extensive powers of self-governance on local level). While South Tyrol enables full self-government, Macedonia gives partial self-government rights.

An aspect to be considered is the territorial arrangements in one political system and its influence on the power-sharing mechanisms. Federalism and decentralization lead toward vertical power-sharing among multiple layers of government (Norris, 2008). Arguments on these political arrangements have been particularly influential in fragile multinational states where decentralization has been advocated as a potential constitutional solution for reducing conflict, building peace and protecting the interests of marginalized communities, such as in the case of Italy toward South Tyrol and the Republic of Macedonia. What makes these two models similar is the power-sharing system in place. South Tyrol represents a model of political system corresponding to the model of consociation democracy emphasising the core principle of 'power sharing' which includes the diffusion of power from the centre to the periphery and comprises four main elements: 1) Participation of the representatives of all significant groups in the government; 2) High degree of autonomy for the groups; 3) Proportionality is the basic standard of political representation; 4) Minority veto (Woelk, Palermo, & Marko, 2008). The model in Macedonia is based upon this theory saving some particularities and characteristics. According to some international scholars, the Republic of Macedonia made transitional steps, from an informal to a formal power-sharing system (Bieber, 2005). Table 1 below shows the main features of both models.

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<sup>9</sup> See the "Special Statute for Trentino-Alto Adige: Modified text of the Constitution of the "Trentino - Alto Adige Region and the Provinces of Trento and Bolzano".

Table 1: Main institutional arrangements in the selected case studies

	<b>Integrationist power sharing</b> <i>Interethnic cooperation and moderation induced by electoral system design</i>	<b>Consociational power sharing</b> <i>Interethnic cooperation at elite level induced by institutional structure requiring executive power sharing</i> <b>Trentino-Alto Adige (South Tyrol)</b>	<b>Power dividing</b> <i>Cooperation between different changing coalitions of interest induced by separation of powers</i>
<b>Principle recommendation</b>		<b>Republic of Macedonia</b>	
<b>Government system</b>	Presidential	Parliamentary <b>Trentino-Alto Adige (South Tyrol)</b> <b>Republic of Macedonia</b>	Presidential
<b>Executive system</b>	Plurality preferential	PR (proportional representation) list or PR preferential <b>Trentino-Alto Adige (South Tyrol)</b> <b>Republic of Macedonia</b>	Plurality
<b>Independent judicial branch</b>	Yes	Yes <b>Trentino-Alto Adige (South Tyrol)</b> <b>Republic of Macedonia</b>	Yes
<b>Individual vs. Group rights</b>	Emphasis on individual rights	Emphasis on combination of individual and group rights <b>Trentino-Alto Adige (South Tyrol)</b> <b>Republic of Macedonia</b>	Emphasis on individual rights
<b>Recognition of distinct identities</b>	Yes but primarily as private matter	Yes but as private and public matter <b>Trentino-Alto Adige (South Tyrol)</b> <b>Republic of Macedonia</b>	Yes but primarily as private matter

*Source:* Authors' elaboration according to the table of Wolff (2008, p. 339)

South Tyrol is divided along ethnic lines and this pervades the whole political-administrative system with its intertwined systems (Pallaver, 2008); political parties are organized from an ethnic point of view; they do not compete with each other (German with Italian speaking), and consequently creating two political arenas. The ethnic fragmentation has consequences on the resources' distribution through the ethnic quota system. The proportional representation is a core element in the South Tyrol model. Language groups have to be proportionally present in the provincial governmental institutions, however this principle is partly implemented because of the principle of majority and the absence of an absolute veto power in the decision-making

processes (in the fields of competence of the individual language groups, which rule in the South Tyrolean provincial government). As a consequence, specific voting procedures and other mechanisms have been established for adoption of provincial laws. These mechanisms allow for a 'separate voting' or passing laws with two-thirds of representatives from one ethnic group. For voting on provincial and regional budget, separate majorities are required from within both the German and Italian ethnic groups, if this does not occur, all chapters of the budget are voted on individually; failing to receive the required double majority brings the question to a special commission of the assembly, and if no agreement is reached there either, the administrative court in Bolzano makes a final and binding decision. This feature gives a type of double majority voting rights for the linguistic communities.

The OFA in Macedonia also introduced the special voting rights as a feature of power-sharing - the double majority vote (Badinter principle). It did not introduce strict representative quotas for communities in the government or parliament, or establish substantial territorial self-government, allowing for non-institutionalised, but nonetheless cooperative politics, but established the proportional representation which allows an adequate representation of all ethnic communities in the public administration. It gives elements of power-sharing and elevates the status of Albanians as a community by affording them rights comparable to those of the Macedonian majority.

Scholars see South Tyrol party system characterized by a centrifugal dynamic, which tends to place emphasis on the antagonistic poles being focused politically on the autonomy. According to Pallaver "if this tendency continues, it would mean that, in the longer run, the tense relationship between the extreme wings of the system, the anti - and semi autonomy-parties, and the autonomy parties, will become tenser and tenser. Sooner or later there will be a breaking test for both the centre-autonomy pole and the parties belonging to the extreme poles. The final consequence could be that the autonomy system will break apart." (Pallaver, 2008). The emphasised combination of the individual and groups rights in South Tyrol is due to the double legal nature of the Autonomy Statute. The emphasis on group rights is noted in the territorial autonomy granted to the Region Trentino - South Tyrol and in the Province of Bolzano (and Trento), incorporating a series of collective / group rights for protection of the minority groups on the territory.<sup>10</sup>

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<sup>10</sup> This can be seen as an overlap of the territorial and the personality principles. The declaration of affiliation with one of the linguistic groups illustrates the collective dimension of the minority rights' protection. The ethnic quota principle is calculated according to the declarations presented (anonymously). For the sake of the protection of the

## Conclusion

Humans have devised a number of different political and institutional arrangements to sustain peaceful coexistence among diverse human beings (Walzer, 1983).<sup>11</sup> These arrangements range from the hands-off approach that neutralist liberal states prescribe to the millet system of the Ottoman Empire; from sovereignty as an instrument for peaceful international society to group-specific rights and consociation democracy. Autonomy is the most commonly expressed and is generally treated as the weightiest argument for toleration; many philosophical treatments of toleration neglect to discuss equality as an element of the justice of toleration<sup>12</sup>, and those who do tend to treat it as subordinate to autonomy in the hierarchy of moral values.<sup>13</sup> Because of the fact that autonomy tackles the sensitive question of sovereignty and stability and integrity of the borders, the non-territorial (cultural) approach proposed by Renner and Bauer seems to offer solutions and instruments for resolving ethnic conflicts and foremost protecting minority rights. It has been demonstrated by both case studies that power-sharing mechanism could be found both in federal and unitary political system. In the case of South Tyrol we have premises of pure territorial arrangement and in the case of Macedonia limited self-government rights identified in the decentralized government system with, what could be said, features of cultural autonomy. Whereas the balanced combination of individual and group rights and integration in South Tyrol is seen as necessary basis for making autonomy functional, and should be achieved (Woelk, Palermo, & Marko, 2008), in Macedonia the collective rights are predominant. The relationship between the individual and society is seen as one of the fundamental tensions in human experience (Cronin, 2004). Most rights critics, and post proponents of rights-based liberalism (Sandel, 1982) (Walzer, 1983), what appear to have missed in their debates is that rights, under law, attach not because a subject is an individual separate and apart from all other, but specifically because the subject is an individual similar in some crucial respects to some number of others (Mitnick, 2006 p. 26). However, as Cronin points out, there is a weak theory of group rights, reducing them essentially to individual rights, regarding group rights as the

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group, in this case, the individual right to choose whether to be treated as a person belonging to a national minority or not is limited.

<sup>11</sup> Moreover Walzer delineates five conceptually distinct “regimes” of toleration: multinational empires, international society, consociations, nation-states and immigrant societies.

<sup>12</sup> Raz (1988, p. 155 - 75) cited in (Spinner-Halev, 2000).

<sup>13</sup> This is mostly implicit in Will Kymlicka’s work; it is explicit in Geoffrey Brahm Levey’s work.

rights of individuals to belong to groups that are significant for their identity (the right to freedom of association), and which provide certain important social needs. This is where the cultural autonomy takes its full form, protecting cultural identity and language, members of minority groups can choose (following the personality principle based on their personal choice) to join an association (minority council or other public association) to protect and defend their cultural rights. The case of Macedonia shows, that this type of instrument - non-territorial (cultural) autonomy - looks as if it is developing. What could be expected potentially is a hybrid form of minority councils with competences between those of the commissions as part of municipal councils and the ones that free associations of members of minority groups could have, as a response to the unsuccessful work of the current commissions on municipal level and politicized minorities representation by the political parties. And if self-government rights are relevant for national minorities, while poly-ethnic rights generally apply to ethnic groups, in the case of Macedonia, it is reasonable to believe that there is a possibility for developing further the notion of non-territorial (cultural) autonomy to all ethnic communities.

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