

**THE PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT,
PETITIONER, VS. HON. JOSE V. NEPOMUCENO AS PRESIDING JUDGE,
REGIONAL TRIAL COURT, 5TH JUDICIAL REGION, BRANCH 23, NAGA
CITY AND P...**

G.R. NO. 78750. April 20, 1990

Ponente: PARAS, J.

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PARAS, J.:

Assailed in this special civil action for certiorari, prohibition and/or mandamus with preliminary injunction and/or restraining order is the assumption of jurisdiction and interference with the orders and functions of the Presidential Commission on Good Government, petitioner herein, by public respondent Judge Jose U. Nepomuceno of the Regional Trial Court, 5th Judicial Region, Branch 23 of Naga City in Civil Case No. RTC-86-1081 entitled "Philippine Radio Corporation v. Presidential Commission on Good Government." The basic issue presented for Our resolution is whether the regional trial courts have jurisdiction over the Presidential Commission on Good Government (hereinafter referred to as PCGG) and properties sequestered and placed in its custody in the exercise of its powers under Executive Orders Nos. 1, 2 and 14, as amended, and whether said courts may interfere with and restrain or set aside the orders and actions of the PCGG.

The antecedent facts of the case, as narrated by private respondent PRC and which was made the basis of the assailed order of the trial court, are as follows:

"That petitioner (plaintiff) is a private corporation engaged in the business of commercial radio broadcasting; that as such it owns and, until the commission of the acts complained of in the petition, maintained and operated Radio Station DWRN at Naga City and that petitioner is duly licensed for the purpose by the proper government agency;

"That on April 18, 1986, respondent (defendant) Ramon Diaz, acting alone but purportedly for the respondent Presidential Commission on Good Government (PCGG), in violation of said PCGG's own rules and regulations which require an act of the Commissioners, issued a sequestration order placing DWRN, and all its assets under the control and possession of the respondent PCGG;

"That on May 13, 1986, respondent Diaz, acting alone but purportedly for defendant PCGG issued Mission Order No. 0512-36 directing respondents Mariano Sibulo and Manuel Rosales to act as Fiscal Agents for Radio Station DWRN;

"That despite its constitutional and legal infirmities, the above-said sequestration order was implemented by respondents Sibulo and Rosales;

"That with the implementation of said sequestration order defendants Rosales and Sibulo are in possession and control of said Radio Station DWRN;

"That Mission Order No. 05-12-86 was later superseded by Mission Order No. DI-11, naming respondents

Sibulo, Rosales and Betito as Fiscal Agents for a fixed term commencing on August 6, 1986 and expiring on October 5, 1986;

"That on October 17, 1986, respondents Sibulo and Betito accompanied by a policeman in civilian attire, took over control and occupied the premises of Radio Station DWRN purportedly on the strength of a letter dated October 14, 1986 from respondent Diaz to respondent Sibulo authorizing the latter to take over the management of said radio station from its Station Manager Celso Baguio;

"That thereafter, respondent PCGG agents caused the ouster of the Station Manager of DWRN from his office, designated dismissed employees of DWRN to take charge of vital aspects of operations, held untimely staff meetings, broadcast irresponsible statements denouncing DWRN as 'ill-gotten wealth' despite the fact that neither the PCGG nor the proper court made a ruling thereon, cancelled all scheduled radio programs including all contracted commercials and replaced all scheduled radio programs with unauthorized announcements and broadcasts;

"That respondent PCGG agents have orchestrated a broadcast campaign using the facilities of DWRN to condemn, vilify and subject Radio Station DWRN and its management to public contempt and ridicule;

"That the issuance and implementation of the sequestration order, Mission Order No. DI-11 and the takeover letter of October 14, 1986, and the arbitrary and unlawful acts taken thereunder are illegal, null and void;

"That in its letters to the respondent PCGG dated May 26, 1986 and October 24, 1986, petitioner, through counsel, citing the absence of legal and factual basis for the issuance of above-named orders and conduct of the foregoing proceedings, requested and demanded the recall of the sequestration order and the discontinuance of the actions undertaken by respondents;

"That despite the legitimate protests of the petitioner, respondent PCGG refused, without offering any valid justification, to lift the sequestration order, to revoke the take-over letter and to recall respondent PCGG agents;

"That the afore-stated take-over of DWRN by the respondent PCGG is unwarranted and illegal, being expressly prohibited by the PCGG's own rules and regulations; and that a petitioner has no other plain and speedy remedy in the ordinary course of law from the arbitrary, illegal, unconstitutional and void acts of respondents x x x." (Rollo, pp. 184-186; Motion for Reconsideration, pp. 4-6)

On the other hand, petitioner PCGG alleges that the PCGG, on April 18, 1986, through its then Commissioner Ramon A. Diaz and on the basis of "reasonable grounds" or prima facie evidence, issued a Sequestration Order over Station DWRN, Naga City, allegedly owned by Ambassador Eduardo Cojuangco, (together with Station DWRN also of Naga City, allegedly owned by Ambassador Roberto Benedicto) operated by Philippine Radio Corporation (PRC, for brevity). Same was implemented on May 2, 1986. A request by the PCGG operating team for an inventory of real and personal properties of the PRC was unjustifiably rejected and ignored by Station Manager Celso Baguio who even refused to submit his monthly report of disbursement of funds attendant to the radio station's operations and allow a PCGG member to inspect the books of PRC. This prompted PCGG team member Antonio Betito to make a discreet investigation which resulted in the discovery of serious anomalies committed by said station manager consisting, among others, of concealment of properties of the sequestered station. By reason thereof, the PCGG authorized the take-over of the station on October 14, 1986. Immediately after receiving the take-over order, Mr. Celso Baguio requested that he be given an opportunity to talk with his employees, which request was granted, but which opportunity was used by said manager to induce the entire personnel to stage a permanent boycott. As a result of the boycott, DWRN had to go off the air due to lack of personnel and technicians to man the operations of the station. It was found out later that a certain Domingo Eclarinal was responsible for the "tampering and destruction of the fuse and transmitter main switch." Thus,

broadcast operations were on and off the air, prompting Officer-in-Charge Antonio Betito to temporarily hire personnel to man the daily broadcast operations of DWRN. Volunteer announcers and reporters were likewise accepted. (Petitions, pp. 4-9)

A month after the take-over by the PCGG or on November 17, 1986, private respondent filed an action for Prohibition and Injunction with prayer for a temporary restraining order and for the issuance of the writs of preliminary injunction with the Regional Trial Court, 5th Judicial Region, Branch 23 of Naga City.

Instead of filing an answer, the PCGG filed a "Motion to Dismiss and Opposition" (to the petition for preliminary injunction and/or restraining order), raising therein purely legal issues without denying any of the facts pleaded in the complaint. These issues were: (a) the trial court has no jurisdiction over the PCGG; (b) the petition raises political questions; (c) PRC failed to exhaust administrative remedies; (d) DWRN is not entitled to any restraining order or preliminary injunction; and (e) petitioner PCGG or any of its commissioners are immune from civil suits.

Private respondents filed its "Opposition/Reply to Motion to Dismiss and Opposition" traversing all the legal issues raised by the PCGG. On April 3, 1987, the parties filed a Joint Manifestation and Motion informing the court that they have agreed to file their respective memoranda in lieu of a hearing or oral arguments on the prayer for the issuance of the aforesaid writs.

After petitioner had filed its Memorandum reiterating the same grounds already stated in its Motion to Dismiss and wherein it denied the acts complained of in the complaint and after private respondent had also filed its memorandum, the respondent Judge Nepomuceno, without ruling on the petitioner's Motion to Dismiss, issued the now-assailed Order of June 4, 1987, granting the prayer for the issuance of the writ of Preliminary Injunction. The dispositive portion of the Order reads as follows:

"WHEREFORE, let a Writ of Preliminary Injunction issue, commanding the respondent Fiscal Agents/Operating Team Leader and members: Mariano Sibulo, Antonio Betito, Mario Ochoa, Efren Cantor, Domingo Deveras and any other person acting in their behalf or under their authority:

"a. To desist from preventing Celso Baguio, the Station Manager of DWRN from performing his functions, powers, duties and prerogatives, as such, in accordance with the policies, instructions and guidelines of Philippine Radio Corporation;

"b. To desist from canceling radio programs, including contracted commercials of the station and/or Philippine Radio Corporation;

"c. To desist from replacing scheduled radio programs of DWRN of Philippine Radio Corporation;

"d. To desist from taking over management or control of the operations of DWRN, except insofar as activities, projects, disbursements and the like which on the basis of evidence, will lead to dissipation of its assets, properties and funds;

"e. Generally, to desist from committing acts of dominion or ownership, save acts which are preservative of DWRN as are generally defined by existing laws, rules and jurisprudence, upon the filing of a bond in the amount of P50,000.00 to answer for any and all damages which the respondents may suffer, should this court finally decide that the plaintiff is not entitled thereto, conformably with Rule 65 and Rule 58 of the Rules of Court." (Underscoring ours) (pp. 187-188, Rollo)

On June 9, 1987, the aforesaid writ was issued accordingly.

It is the contention of the petitioner that on the strength of the trial court's order, station manager Celso Baguio illegally took over the station, ordered the immediate shutdown of the studio transmitter, stopped normal broadcasting operations and ordered the inventory of the properties therein. PCGG member Antonio Betito failed

to eject anymore said station manager and his companions who forcibly took over DWRN and was left with no other choice but to receive a copy of the writ of preliminary injunction. Mr. Celso Baguio has since then and up to the present been in physical possession of the radio station. (Petition, pp. 14-15)

The above-stated circumstances gave rise to the instant petition dated June 16, 1987.

Most significant in the determination of the jurisdictional question presented and the ancillary issues necessarily connected therewith are the landmark decisions of the Supreme Court in *BASECO v. PCGG*, 150 SCRA 181, and *PCGG v. Pena, et al.*, 159 SCRA 556.

It appears to Us that the PCGG did not have the least intention to take-over the operations of Station DWRN, as the PCGG was only constrained to act in such manner due to the arrogance and uncooperativeness displayed by its Station Manager. Celso Baguio's deliberate refusal to cooperate and comply with the persistent requests to give an inventory of the properties of the radio station and submit a monthly report of disbursement of funds attendant to its operations prompted PCGG team member Antonio Betito to make a discreet investigation which resulted in the discovery of gross anomalies being committed by Celso Baguio, that is, "concealment of properties of the sequestered station." Said discovery impelled the issuance of the take-over order in order to give life to the purpose of sequestration which is to prevent the destruction, concealment, or dissipation of illegally-acquired wealth. In the case at bar, the acts of the PCGG team members or fiscal agents in taking over the radio station were intended to preserve the funds, assets, or properties of DWRN.

Private respondent maintains that the PCGG fiscal agents committed acts which are beyond their lawful authority, that is, acts of ownership and dominion, contrary to the doctrine laid down in the case of *BASECO*, supra, wherein the majority opinion states:

"One thing is certain, and should be stated at the outset: the PCGG cannot exercise acts of dominion over property sequestered, frozen or provisionally taken over. x x the act of sequestration, freezing, or provisional take-over of property does not import or bring about a divestment of title over said property; does not make the PCGG the owner thereof. In relation to the property sequestered, frozen, or provisionally taken over, the PCGG is a conservator, not an owner. Therefore, it cannot perform acts of strict ownership; and this is specially true in the situations contemplated by the sequestration rules where, unlike cases of receivership, for example, no court exercises effective supervision or can upon due application and hearing, grant authority for the performance of acts of dominion.

"Equally evident is that the resort to the provisional remedies in question should entail the least possible interference with business operations or activities so that, in the event that the accusation of the business enterprise being 'ill-gotten' be not proven, it may be returned to its rightful owner as far as possible in the same condition as it was at the time of sequestration."

The activities performed by the PCGG agents do not constitute acts of ownership though certainly they may have exercised some measure of control in the operation and management of the radio station itself. This intrusion into the management and operation was, however, brought about by the exigencies of the situation. As already mentioned earlier, the ouster of Mr. Celso Baguio was prompted by the discovery of his ill activities of concealing DWRN properties; the acceptance of volunteers and designation of employees to man the operations of DWRN was due to lack of personnel who intentionally boycotted their work in the Station; the replacement of the scheduled radio programs was due to expiration and cancellation of the station's contracts (which contracts were not renewed by the parties). The actuations of the PCGG agents were only necessary to accomplish the legislative purpose of preventing the disposal, dissipation, or concealment of the radio station's properties. Thus, said activities are not repugnant to the *BASECO* standard.

Moreover, what is essential is that, viewed like attachment or receivership, there be a prima facie factual basis, at least, for the sequestration, freeze, or take-over order, and sufficient and reasonable opportunity to contest it and to be heard. Section 7 of the PCGG's Rules and Regulations provided that "sequestration, freeze, or take-over orders issue upon the authority of at least two commissioners, based on the affirmation or complaint of an interested party, or motu proprio when the Commission has reasonable grounds to believe that the issuance thereof is warranted." Sections 5 and 6 of the same Rules and Regulations enunciate the procedure by which a party may contest a writ of sequestration, freeze or take-over order, which are as follows:

"Section 5. Who may contend. - The person against whom a writ of sequestration or freeze or hold order is directed may request the lifting thereof in writing either personally or through counsel within five (5) days from receipt of the writ or order, or in the case of a hold order, from date of knowledge thereof.

"Section 6. Procedure for review of writ or order. - After due hearing or motu proprio for good cause shown, the Commission may lift the order unconditionally or subject to such condition as it may deem necessary, taking into consideration the evidence and the circumstances of the case. The resolution of the Commission may be appealed by the party concerned to the Office of the President of the Philippines within fifteen (15) days from receipt thereof."

The foregoing rules simply show that a party is given an ample and fair opportunity to contest and seek to set aside the sequestration, freeze or take-over order. The Commission (PCGG) has already laid down the procedure by which a party may endeavor to set aside its orders. Thus, We hold that the sequestration and take-over orders issued by the PCGG in the present case are legal and valid.

On the issue of jurisdiction, private respondent argues that based on Section 21 (1) of B.P. 129, regional trial courts have original and concurrent jurisdiction with the Supreme Court in the issuance of writs of certiorari, prohibition, quo warranto, habeas corpus, and injunction. Private respondent contends that the PCGG, being merely an investigative and prosecutorial body (like a fiscal) and not a quasi-judicial body within the meaning of Section 9 of B.P. 129, it is not co-equal with, and beyond the reach of the regional trial courts; thus regional trial courts have jurisdiction to review the acts of petitioner PCGG. Such contention holds no water. The PCGG is a government agency created by virtue of Executive Order No. 1 (February 28, 1986), charged with the duty of assisting the President of the Philippines in connection with the following matters enumerated in Section 2 of said Executive Order:

"xxx xxx xxx

"(a) The recovery of all ill-gotten wealth accumulated by former President Ferdinand E. Marcos, his immediate family, relatives, subordinates and close associates, whether located in the Philippines or abroad, including the takeover or sequestration of all business enterprises and entities owned or controlled by them, or through nominees, by taking undue advantage of their public office and/or using their powers, authority, influence, connections or relationship.

"xxx xxx xxx"
(p. 33, Rollo)

Section 3 of the same Executive Order grants to the PCGG the following power:

"(a) To conduct investigations as may be necessary in order to accomplish and carry out the purpose of this order.

"(b) To sequester or place or cause to be placed under its control or possession any building or offices wherein any ill-gotten wealth or properties may be found, and any records pertaining thereto, in order to prevent their destruction, concealment or disappearance which would frustrate or hamper the investigation or otherwise

prevent the Commission from accomplishing its task.

"(c) To provisionally take over in the public interest or to prevent its disposal or dissipation, business enterprises and properties taken over by the government of the Marcos Administration or by entities or persons close to former President Marcos, until the transactions leading to such acquisition by the latter can be disposed of by the appropriate authorities.

"(d) To enjoin or restrain any actual or threatened commission of acts by any person or entity that may render moot and academic, or frustrate, or otherwise make ineffectual the efforts of the Commission to carry out its task under this order.

"xxx xxx xxx."

(p. 34, Rollo)

From the foregoing, it is evident that the PCGG exercises quasi-judicial functions. In the exercise of these functions, the PCGG is considered to be a co-equal body with regional trial courts. It is a well-recognized rule that "co-equal bodies have no power and authority to control the other" (*National Electrification Administration v. Mendoza*, 138 SCRA 632). The Solicitor General correctly submits that the lack of jurisdiction of regional trial courts is recognized in Section 9, paragraph (3) of B.P. 129 (Judiciary Reorganization Act of 1980), which vests exclusive appellate jurisdiction in the Court of Appeals over all final judgments, decisions, resolutions, orders, or awards of regional trial courts and quasi-judicial agencies, instrumentalities, boards, or commissions. However, it must be stressed that the Court of Appeals is not vested with appellate or supervisory jurisdiction over the PCGG. This is found in Executive Order No. 14, which defines the jurisdiction over cases involving the ill-gotten wealth of former President Marcos, his wife, members of their immediate family, close relative, subordinates, close and/or business associates, dummies, agents and nominees. In Section 2 thereof, it is provided that "The Presidential Commission on Good Government shall file all such cases, whether civil or criminal, with the Sandiganbayan which shall have exclusive and original jurisdiction thereof."

It must be made clear that the main duty of the PCGG is to make investigation in order to gather evidence to prove cases of "ill-gotten wealth", (on the basis of "reasonable grounds") issue sequestration orders, and such other orders as may be justified by the evidence thus gathered and as may be necessary to conserve the properties, real and personal, of which it takes custody and thereby prevent their loss or dissipation. After it has collected sufficient evidence to establish that an entity or property indeed constitutes "ill-gotten wealth", the PCGG shall then file and prosecute in a court of competent jurisdiction the cases investigated by it. It does not hear and decide with finality cases involving the issue of whether or not the asset or property is "ill-gotten" in order to warrant its forfeiture in favor of the state. This function is properly lodged in the Sandiganbayan. Therefore, those who want to contest and challenge the orders and acts of the PCGG must seek recourse in the Sandiganbayan, whose decisions and final orders are in turn subject to review on certiorari exclusively by the Supreme Court.

The determinations made by the PCGG at the time of issuing sequestration or provisional take-over orders cannot be considered as final determinations; that the properties or entities sequestered or taken-over in fact constitute "ill-gotten wealth" according to Executive Order No. 1 is a question which can be finally determined only by a court - the Sandiganbayan. The PCGG has the burden of proving before the Sandiganbayan that the assets it has sequestered or business entity it has provisionally taken - over constitutes "ill-gotten wealth" within the meaning of Executive Order No. 1 and Article No. XVIII (26) of the 1987 Constitution.

It may be well to quote at this point the opinion of the late Chief Justice Teehankee in *PCGG v. Pena*, supra:

"Having been charged with the herculean task of bailing the country out of the financial bankruptcy and morass of the previous regime and returning to the people what is rightfully theirs, the Commission could

ill-afford to be impeded or restrained in the performance of its functions by writs or injunctions emanating from tribunals co-equal to it and inferior to this Court. Public Policy dictates that the Commission be not embroiled in and swamped by legal suits before inferior courts all over the land, since the loss of time and energy required to defend against such suits would defeat the very purpose of its creation. Hence, section 4 (a) of Executive Order No. 1 has expressly accorded the Commission and its members immunity from suit for damages in that: No civil action shall lie against the Commission or any member thereof for anything done or omitted in the discharge of the task contemplated by this order."

This leads us to the matter on immunity from suits of the PCGG, its commissioners, agents, staff, etc. It is undoubtedly the intent of the sovereign people to ensure that the exclusive authority of the PCGG would not be subject to complaints such as the one subject of this petition and thereby ensure that the PCGG would not be controlled in the sequestration processes necessary to carry out PCGG's assigned tasks. This immunity is found in the following doctrines (quoted by the Solicitor General in its petition):

"A sovereign is exempt from suit without its own permission, not because of any formal conception or absolute theory, but on the logical and practical ground that there can be no legal right as against the authority that makes the law on which the right depends (Justice Holmes, *Kawananakoa v. Polybank*, 205 US 349, citing *Bodin*, *Republique I.C.S. ed.*, 1629, p. 132).

The principle then rests upon reason of public policy, the inconvenience and danger which would follow from any different rule. It is obvious that public service would be hindered, and public safety endangered, if the supreme authority could be subjected to suits at the instance of every citizen, and, consequently, controlled in the use and disposition of the means required for the proper administration of the Government. (*Siren v. US*, 19 L ed. 129)

More importantly, these provisional remedies and the power of the PCGG to issue them are sanctioned by the constitution. The "Freedom" Constitution vests in the President the power and duty to enact "measures to achieve the mandate of the people to x x x recover ill-gotten properties amassed by the leaders and supporters of the previous regime and protect the interest of the people through orders of sequestration or freezing of assets or accounts." In addition, Section 26, Article XVIII of the 1987 Constitution confirms such authority to issue the sequestration, freeze or take-over orders.

Respondents failed to appreciate the fact that the provisional remedies in the case at bar are founded in the police power of the state, which rests upon public necessity and upon the right of the state and of the public to self-protection (*Churchill v. Rafferty*, 32 Phil. 580). "That the public interest and the general welfare are subserved by sequestering the purported ill-gotten assets and properties and taking over stolen properties of the government channeled to dummy or front companies is stating the obvious." "The recovery of these ill-gotten assets would greatly aid our financially crippled government and hasten our national economic recovery, not to mention the fact that they rightfully belong to the people. While as a measure of self-protection, if, in the interest of general welfare, police power may be exercised to protect citizens and their businesses in financial and economic matters, it may similarly be exercised to protect the government itself against potential financial loss and the possible disruption of governmental functions. Police power as the power of self-protection on the part of the community bears the same relation to the community that the principle of self-defense bears to the individual (citing *AMJUR 2d*, *Constitutional Law*, Secs. 420 and 370). Truly, it may be said that even more than self-defense, the recovery of ill-gotten wealth and of the government's own properties involves the material and moral survival of the nation, marked as the past regime was by the obliteration of any line between private funds and the public treasury and abuse of unlimited power and elimination of any accountability in public office, as is a matter of public record and knowledge." (*PCGG v. Pena*, pp. 574-575, *supra*).

Lastly, on the contention of respondents that the take-over of DWRN amounted to an infringement on the

freedoms of speech, of the press, and of expression, constituting censorship and/or prior restraint of radio programs, We beg to disagree. It is manifest from the pleadings filed by the parties that DWRN's conduct as a radio station is not being regulated or restrained in this case within the meaning of Section 4, Article III (Bill of Rights) of the 1987 Constitution. Respondents' claim that the PCGG's acts expose the radio station to breach of contracts and constitute a violation of the Freedom of Speech and Press deserves scant consideration. The proceedings undertaken by the PCGG fiscal agents cannot be regarded as a regulation, abridgment of speech, a "prior restraint", or censorship taken in the context of the aforesaid constitutional guaranty. It may not be amiss to reiterate that the take-over, together with the other acts committed in connection therewith, were prompted by the uncooperativeness of the Station Manager and the discovery of his illegal activities of concealing properties of DWRN. The resulting events (designation of employees due to lack of personnel, cancellation of contracts due to expiration and failure to renew the same, replacement of radio programs) occurred in order to give the radio station a semblance of normal broadcasting operations and were manifestly intended to preserve the assets, funds and properties of the said station. The acts of the fiscal agents in taking-over the radio station were justified by the urgency and necessities of the situation, never intended to regulate and to censor within the meaning of the guarantees of freedom of speech and the press. The position taken by respondents is therefore out of place.

Viewed in the light of the foregoing, We so hold that private respondents are not entitled to a writ of preliminary injunction. The issuance of the sequestration and related orders and the subsequent take-over order by petitioner PCGG are issued and effected solely in the implementation of Executive Order Nos. 1 and 2, which have previously been held to be valid and constitutional. The propriety of said sequestration and take-over, and any incident arising therefrom, including the acts complained of, is within the exclusive jurisdiction of the Sandiganbayan.

ACCORDINGLY, the writs of certiorari and prohibition shall ISSUE. The questioned order of respondent Judge dated June 4, 1987 are hereby SET ASIDE as null and void and the writ of preliminary injunction already issued and implemented is DISSOLVED. Respondent Judge is ordered to cease and desist from further proceeding in Civil Case No. RTC-86-1081 which is hereby ordered DISMISSED.

SO ORDERED.

Narvasa, Melencio-Herrera, Cruz, Gancayco, Padilla, Bidin, Sarmiento, Cortes, Grino-Aquino, Medialdea, and Regalado, JJ., concur.

Feliciano, J., concurring opinion, I reiterate the statements in "my concurring opinion with qualification" in PCGG v. Pena 159 SCRA 556.

Fernan, C.J., and Gutierrez, Jr., J., on leave.

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