

## FINANCIAL CONTROL OF THE CENTRAL AUTHORITY OVER THE REVENUES OF LOCAL ADMINISTRATIONS IN IRAQ

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### Abstract

*In this research, we dealt with a basic issue, which is the independence of the local administration, as the recognition of its legal personality is not enough for its independence, but it must be recognized for financial independence, and through that independence it has the authority to obtain the necessary financial resources to carry out the burdens and tasks entrusted to it, but granting these bodies administrative and financial independence does not naturally mean their complete independence from the central authority, as one of the pillars of the success of decentralization is the submission of these bodies to government control. Centralization to preserve the unity of the State, provided that such control is not a restriction on the freedom of local authorities to carry out their work as long as such activities are exercised in accordance with the law, for the purpose of achieving a balance between the central authority and the governorates and preventing encroachment on the powers of either of them.*

### INTRODUCTION

Financial control in Iraq was not born of the present, but its historical roots go back to the time of the establishment of the Iraqi state, where it was in force since 1920 through the Department of (General Audit) of the Ministry of Finance.

The central authority exercises its control over the governorates, and it is necessary to address that control because of its importance, as a result of the large number of problems and disputes that have occurred and are still occurring between those bodies and the central authority, and we believe that the cause of these problems is (ambiguity and contradiction) between some constitutional texts and legislation on the work of those departments, which began to appear when those departments perform their function in practice, and the exercise of the central authority control over them, and this led to some disputes between the central authorities and the governorates, and in this research we will shed light on the control of the central authority, and was it identical to the constitutional and legislative texts that regulate the work of those departments?

With the issuance of the Law of Governorates Not Organized in a Region No. (21) of 2008, as amended, it stipulated the introduction of the administrative decentralization system for (for governorates not organized in a region), and the legislator took in the aforementioned two legislations a different path from what was followed by the countries that adopted this administrative system, which raised and still raises many disputes between those departments and central authorities, when it stipulated that these bodies are subject to the control of the House of Representatives and not to the control of the central government.

In addition, the Iraqi legislator has subjected provincial councils to the control of independent bodies under the two legislations, the 2005 Constitution and the Law of Governorates that are not organized in the region in force.

The problem arises in the field of controlling the financial allocations of local administrations and how to use them for the benefit of the governorate and the responsibility that may arise in the field of financial violations.

In light of the above, we will deal with the control of the central authorities over these decentralized bodies in three demands, we deal with the first demand administrative control, in

the second demand judicial oversight and in the third demand the control of the legislative authority.

### **First Requirement**

#### **Administrative Control**

Audit is defined as "control in its broadest sense and ensuring the extent to which the administrative activity achieves the established objectives, i.e. the investigation of what is accomplished in conformity with what was decided in the objective plan" (<sup>1</sup>), while financial control is defined as "a set of measures carried out by certain agencies in order to preserve public funds and ensure their proper collection and spending accurately and economically effectively in accordance with what was approved by the legislative authority in the budget and other financial laws, and in accordance with the plans set for the audited bodies" (<sup>2</sup>).

Through the above definition, we conclude that financial control aims to ensure the integrity of financial transactions, in addition to their compliance with the rules and laws in force.

Administrative control is represented by the control of the Council of Ministers, and the control of the Ministries of Finance and Planning.

First: The control of the Council of Ministers.

The Council of Ministers exercises its supervisory authority widely, and the ministries and entities not associated with the ministry are subject to it, as the Council of Ministers exercises its control over local administrations while preparing the general budget of the state, based on the text of Article (80/I) of the Iraqi Constitution in force, which states: "The Council of Ministers shall be responsible: First, planning and implementing the general policy of the state and general plans and supervising the work of ministries and entities not associated with a ministry."

We believe in accordance with the above constitutional text that the provincial councils, in the exercise of their function, should implement the general policy of the State and follow the plans of the central government.

The control of the Council of Ministers over these bodies appears when preparing the general budget of the State, in which the financial resources of the governorates are determined so that they can carry out their tasks, because one of the most important resources on which decentralized bodies depend is the financial allocations granted to them by the central government in the general budget of the State, as referred to in article 44/I of the Governorates Law in force.

The central Government also exercises its control over local administrations by managing oil and gas extracted from existing fields with the governments of the producing regions and governorates, as referred to in article 112 (I) of the current Constitution.<sup>4</sup>

The Council of Ministers exercises its administrative control through the Prime Minister in his capacity as the supreme chief executive in the State, and accordingly the Prime Minister has oversight over the Governor as the supreme CEO of the province (<sup>5</sup>), and the Prime Minister <sup>5</sup> may

<sup>1</sup> Dr. Salah Ahmed El-Sayed Gouda, *The Principles of Control in Contemporary Systems and Islamic Sharia - A Comparative Study*, 1st Edition, Dar Al-Nahda Al-Arabiya, Cairo, 2012, p. 12.

<sup>2</sup> Dr. Muhammad Rasoul Al-Mamouri, *Supreme Financial Control - A Comparative Study*, 1st Edition, Al-Halabi Human Rights Publications, Lebanon, 2005, p. 25.

<sup>3</sup> Article (44/I) of the Governorates Law in force stipulates the following: "The financial resources of the governorate shall consist of the following: First: The financial budget granted to the governorate by the federal government in accordance with the constitutional criteria prepared by the Ministry of Finance and approved by the House of Representatives."

<sup>4</sup> Article 112/I of the 2005 Constitution stipulates that "the federal government shall manage the oil and gas extracted from the existing fields with the governments of the producing regions and governorates..."

<sup>5</sup> Article (24) of the Law of Governorates Not Organized in a Region No. (21) of 2008, as amended.



submit a proposal to dismiss the Governor to the House of Representatives, if he causes waste of public money or deliberate negligence and negligence in the performance of responsibility (),<sup>1</sup> and that this is the only procedure that the Prime Minister is entitled 2 to () The reason is that the governor is chosen by the provincial council after the council is elected by the local population, and the decision to dismiss him is issued by the provincial council, and the decision issued by the provincial council is not subject to the control of the central executive authority but to the House of Representatives 3 .

#### Second: Oversight of the Ministry of Finance and the Ministry of Planning

Each of the federal ministries of finance and planning has an important role through their financial control over the governorates, and we will stand on the role of each of them as follows:

##### 1- Supervision of the Ministry of Finance

The control exercised by the Ministry of Finance over local governments is based on the Financial Management and Public Debt Law (4), and the Ministry of Finance has a major role in setting the foundations and directions of the state's financial planning, in addition to managing and organizing its funds and monitoring their disposal, as well as determining the powers of disbursement in order to achieve the optimal use of public funds within the framework of the state's general policy and development plans<sup>5</sup>.

The Ministry of Finance exercises its control by issuing instructions and publications on how to work with the General Budget Law, in addition to approving every act that leads to spending of public money, and this control is carried out through two bodies in the Ministry of Finance, the first is the General Budget Department, and the second is the Accounting Department.

##### A General Budget Department

It is one of the formations of the Ministry of Finance, and it is practiced in accordance with the central directives and the objectives of the general plan of the state the process of preparing the current budget, and under the internal system of the Ministry of Finance, its competence is determined to organize the unified tables of current and investment expenditures within the framework of the unified budget of the state, in addition to following up the implementation of the general budget during the fiscal year in accordance with the instructions for the implementation of the budget issued by the department, based on the laws, central directives and directions of the state's general policy. As well as the preparation of consolidated final accounts for all units of the government sector ().<sup>6</sup>

<sup>1</sup> Article (VII/VIII) of the Law of Governorates Not Organized in a Region No. (21) of 2008, as amended.

<sup>2</sup> While we find, for example, in the Egyptian legislation, the Council of Ministers has broad powers in controlling local units, such as approvals to impose local fees or amend these fees or shorten their validity period, as well as setting general rules for the disposal of land intended for construction, and in organizing and managing accounts for financing land reclamation projects at the governorate level and accounts for financing housing projects and the rules of exchange from them, and the Prime Minister is the supreme administrative head of the governor, The latter is responsible either to the Prime Minister for the exercise of his competencies, including financial through periodic reports on the results of his work and any topics that need to be coordinated with the relevant ministries to decide on them.

See: Articles (12, 28, 36, 29) of the Egyptian Local Administration Law No. 43 of 1979, as amended.

<sup>3</sup> Article (II/III) of the Law of Governorates Not Organized in the Region No. (21) of 2008, as amended .

<sup>4</sup> See Article (30) of the Federal Financial Management Law No. (6) of 2019.

<sup>5</sup> See Article (33) of the Federal Financial Management Law No. (6) of 2019.

<sup>6</sup> Article (8/I) of the Internal Regulations of the Ministry of Finance No. 1 of 1990.



The department consists of several sections, namely, the budget preparation section, the revenue section, the expenses section, the staffing department, the research and statistics department, the coordination department, and finally the budget movement follow-up section<sup>1</sup>.

The Revenue Section, in addition to the Budget Movement Follow-up Section, has a major role in monitoring the implementation of the budget, based on the instructions for the implementation of the general budget, which obliges the government sector units to provide the Revenue Section with special tables on the revenues collected, and the Expenditures Section follows up the disbursement of expenditures, as it considers the disbursement requests submitted by state departments and follows up their compliance with the laws, regulations and instructions in force. The Follow-up Section of the movement of operational and investment expenditures sets its control over the implementation of the budget, by making transfers between the articles and chapters of the budget, after studying the requests regarding the transfer according to their types, whether between chapters or articles, so the follow-up section presents the movement of the budget in the budget department for study and audit<sup>2</sup>.

#### B - Accounting Department

This department has a number of tasks, it exercises audit and control of exchange operations as well as financial operations in the various ministries and departments, it also practices issuing accounting instructions and financial statements through which it supervises the organization of state accounts, as well as answering all inquiries received from various relevant authorities, and it has supervision of the organization of the accounts of Iraqi institutions, attachés and representations outside the country, such as embassies and consulates. Control is also exercised to monitor violations, abuses and violations of laws, regulations and instructions, identify the perpetrators, conduct an investigation into financial violations in cooperation with other bodies in the ministry, follow up the collection of the public treasury's share from a number of sources of public revenue, and issue the necessary accounting instructions to the departments with regard to the implementation of the state's general budget<sup>3</sup>.

Through the foregoing, we see that the Ministry of Finance has an important role in monitoring the financial allocation and matching it periodically to verify the use of funds for the purpose allocated to them, and also following up the implementation of investment budget projects through the trial scales that are sent by local governments and government departments monthly to the Ministry of Finance.

#### 2- Control of the Ministry of Planning

The Ministry of Planning shall control<sup>4</sup> the investment aspect of the governorate's budget, through the Department of Government Investment Programs, which in turn carries out its oversight mission by following up the implementation of investment budget projects, in addition to the projects of the Regional Development Program through the preparation of a unified annual report to follow up the implementation of the projects of the Regional Development Program, in addition to indicating the problems and obstacles that faced the implementation of those projects, and field work teams are formed by the Ministry and members of its departments in the governorates. These teams visit some of the projects implemented by the local government, prepare technical reports on the results of their visit, diagnose deficiencies and defects in the implementation of those projects, and submit these reports to the local government in the governorate<sup>5</sup>.

<sup>1</sup> Article (8/III) of the Internal Regulations of the Ministry of Finance No. 1 of 1990.

<sup>2</sup> General Budget Department at the <http://www.mof.gov.iq/pages/ar/AbtBudget.aspx> link

<sup>3</sup> See Article 9 of the Rules of Procedure of the Ministry of Finance No. 1 of 1990.

<sup>4</sup> For more information, view the Department's tasks on the link <https://mop.gov.iq/>

<sup>5</sup> Asaad Khalil Lazem, External Control of Investment Budget Projects for Local Governments, Applied Research in Dhi Qar Local Government - Submitted to the Council of the Higher Institute for Accounting and Financial Studies, University of Baghdad to obtain the certificate of chartered accountant, 2014, p. 160.

## Second Requirement

### Judicial Oversight

Judicial oversight is the oversight of the constitutionality of laws to ensure the supremacy of the Constitution over other laws in the country, as affirmed in the Constitution of the Republic of Iraq of 2005 <sup>1</sup>.

When provincial councils violate the Constitution and federal laws through their local legislation, as well as the regulations and instructions issued by them, without penalty, we have not reached the purpose to which we aspire to be a sound system of decentralized administration <sup>2</sup>.

The governor has the right to object to the decisions issued by the provincial council or the local council in the event that they are contrary to the constitution or the laws in force, and we find here a reference from the legislator about the possibility of appealing (legislation or local decision), in the event that it violates the constitution or federal laws, and that subjecting local decisions and legislation issued by provincial councils that violate the constitution and the laws in force to the control of the Federal Court is a positive point and a very important matter, as the desired goal of control is not achieved Only when the legislative authority deviates, departing from the provisions of the Constitution by issuing legislation contrary to the Constitution, but also strengthened when the jurisdiction of the Federal Court extends to subject the legislation and decisions of provincial councils to appeal, which is stipulated in the Law of Governorates Not Organized in the Territory in force <sup>3</sup>.

What is the impact of appealing local decisions and legislation? We find that the 2005 Constitution was devoid of stipulating the legal effect of the unconstitutionality of a law, local legislation or system issued by provincial councils and contrary to the provisions of the Constitution, but the answer is found in Article (4/Second) of the Federal Supreme Court Law No. (30) of 2005, where it is stated in the above article (4):

"The Federal Supreme Court shall assume the following functions:

Second: Adjudicating disputes related to the legitimacy of laws, decisions, regulations, instructions and orders issued by any party that has the right to issue them and cancel them that conflict with the provisions of the Law of Administration of the Iraqi State for the Transitional Period.

From the text of the above article, we conclude that the ruling of the Federal Supreme Court issued that local legislation or regulation is unconstitutional entails a cancellation ruling, as a result of violating the provisions of the Constitution.

One of the applications of judicial oversight is the decision of the Federal Supreme Court to annul the decision of the Wasit Provincial Council not to approve the export of oil and gas outside the borders of the governorate, as stated in the reasoning of the Federal Supreme Court's decision "... The decision of the Wasit Provincial Council No. (666) on 11/9/2011 not to approve the export of oil outside the borders of the governorate is contrary to the Constitution and the competent law, so it decided to cancel the aforementioned decision. (5)

Although Article (4/II) of the Federal Court Law included the consequences of challenging local legislation, it did not show the validity of the Federal Supreme Court's ruling to repeal local

<sup>1</sup> Article 93 of the 2005 Constitution stipulates that "The Federal Court shall have the following competencies:

First: Monitoring the constitutionality of the laws and regulations in force.

<sup>2</sup> Dr. Saad Abdul-Jabbar Al-Alloush, Perspectives on the subject of judicial oversight of the constitutionality of laws in Iraq and their future in protecting public rights and freedoms, Journal of the College of Law, Al-Nahrain University, Volume VIII, Issue 14, September 2005, p. 3.

<sup>3</sup> See Article (31/Eleventh) of the Governorates Law No. (21) of 2008, as amended.

<sup>4</sup> Article (4/Second) of the Federal Supreme Court Law No. (30) of 2005

<sup>5</sup> Federal Supreme Court Decision No. (8/Federal/2012) on 2/5/2012 published on the Court's website at the link [https://www.iraqfsc.iq/s.2012/page\\_6/](https://www.iraqfsc.iq/s.2012/page_6/)





regulations and legislation contrary to the Constitution, so is this repeal retroactive or with immediate direct effect?

The annulment ruling is a detector and not a creator, so the annulment ruling must apply retroactively to the date of issuance of local legislation, regulations or instructions by provincial councils and ruled unconstitutional, taking into account legal positions and stable rights when the ruling of unconstitutionality is issued <sup>1</sup>.

### Third Requirement

#### Oversight of the legislature

Legislative oversight is defined<sup>2</sup> as **"the monitoring by Parliament of the Government of the implementation of the general budget previously approved and as approved"**, and there are those who define it as "the control exercised by the House of Representatives on the implementation of the general budget of the State and within the limits of parliamentary approval of the budget". <sup>3</sup>

We conclude from the previous definitions that parliamentary oversight is the parliamentary oversight of the executive authority during the performance of the powers vested in it by the Constitution and laws.

The role of the legislature is demonstrated by its supervisory power and its influential role in ensuring local development, by verifying that the central authority does not violate its legal obligations, and by ensuring that the local government uses its authority efficiently <sup>4</sup>.

**The control of the legislative authority is justified on the basis that local administrations need financial funding in addition to imposing taxes in order to cover their expenses, and that this requires the intervention of the legislative authority through the enactment of laws, in addition to the fact that these administrations exercise broad competencies, some of which may affect people's lives and rights, so there must be control to ensure that local administrations carry out their work in accordance with the law <sup>5</sup>.**

The House of Representatives exercises its control over the governorates through the text of Article 61 of the Constitution<sup>6</sup>, and this competence was confirmed by the Federal Supreme Court in a decision stating "... From contemplating the lawsuit, we note that the Constitution of the Republic of Iraq for the year 2005 did not explicitly stipulate the authority of the House of Representatives to dismiss the governor, but the Constitution did not prevent him from doing so, as Article (61/II) of the Constitution has granted the House of Representatives the power to control the executive authority and that the position of the governor is part of the formations of the executive authority, and he is the highest executive head in the province and is at the rank of undersecretary as far as the matter is related to rights and job service under the provisions of Article (24) of the Governorates Law and The House of Representatives has the right to dismiss the governor in

<sup>1</sup> Dr. Maha Bahjat Al-Salhi, The ruling on the unconstitutionality of a legislative text and its role in strengthening the rule of law, first edition, House of Wisdom, Baghdad, 2009, p. 221.

<sup>2</sup> Dr. El-Sayed Abdel Mawla, Public Finance (The Art of Public Finance), Dar Al-Nahda Al-Arabiya, Cairo, 1989, p. 647.

<sup>3</sup> Dr. Abdul Latif Qutaish, The General Budget of the State - A Comparative Study, First Edition, Al-Halabi Human Rights Publications, Beirut, Lebanon, 2005, p 414.

<sup>4</sup> Dr. Mustafa Mohamed Moussa, Administrative Organization between Centralization and Decentralization, Egyptian General Book Organization, Cairo, 1992, p. 412.

<sup>5</sup> Dr. Muhammad Walid al-'Abbadi, op. cit., p. 137.

<sup>6</sup> Article (61/Second) stipulates that "The House of Representatives shall have the following competencies: Second: Oversight of the performance of the executive authority.



accordance with his powers to control the executive authority at the request of the Prime Minister..." (1).

The legislative authority also exercises its control over the work of governorates that are not organized in a region to ensure their legitimacy based on Article II of the Law on Governorates Not Organized in the Region in force, i.e. the House of Representatives has the power to object to local decisions and laws whenever they are contrary to the Constitution and federal laws and not deviate from the general policy of the State (), as 2 long as it enjoys broad administrative and financial powers under the Constitution (),<sup>3</sup> and the Law of Governorates Not Organized in a Region (4) .

Parliamentary oversight includes the legitimacy of administrative work, and the extent of their conformity with the budget items and their suitability, meaning that they go beyond the conformity of government or administrative work to the legal rules governing it, or the existence of appropriations in the budget, but goes beyond it to research its suitability with reality and contemporary conditions (5).

Since the legislature is the competent body to approve the draft federal budget, it has the right to request such amendments as it deems necessary to the budget estimates by increase or decrease<sup>6</sup>.

Through the foregoing, we find that the goal of parliamentary oversight is to ensure that the performance of the local government of its tasks is consistent with the budget items that have won its confidence, in addition to evaluating and reforming the government's performance in implementing the items of the governorate's general budget.

According to Article (27/11) of the House of Representatives Law No. 2018, the Council can interrogate governors if there are reasons that call for it. <sup>7</sup>

Governors may also be asked questions based on Article 50 of the Rules of Procedure of the House of Representatives, where each deputy has the right to ask written questions related to matters that fall within his competence<sup>8</sup>.

It is also possible to establish control exercised by the legislative authority based on the rules of procedure of the House of Representatives, and according to this system is the Council is the supreme supervisory and legislative authority, and in order to accomplish its tasks it has the

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<sup>1</sup> Federal Court Decision No. (29/Federal/2019) published on the website of the Federal Supreme Court.

<sup>2</sup> Article (2/Second) of the Law of Governorates Not Organized in a Region No. (21) of 2008, as amended, stipulates that "Second: The provincial council and local councils shall be subject to the oversight of the House of Representatives."

<sup>3</sup> See Article (122/II) of the Constitution of Iraq for the year 2005 .

<sup>4</sup> Consider Article (2/First) of the Law of Governorates Not Organized in Region No. (21) of 2008, as amended.

<sup>5</sup>Dr. Hashim Al-Jaafari, Principles of Public Finance and Financial Legislation, Suleiman Al-Adhami Press, Baghdad, 1961, pp. 425-426.

<sup>6</sup> See Article 62 of the 2005 Constitution

<sup>7</sup> Article (27/eleven) of the House of Representatives Law No. (13) of 2018 published in the Iraqi Gazette No. (4499) on July 16, 2019.

<sup>8</sup> Article (50) of the Rules of Procedure of the House of Representatives for the year 2006, as amended, stipulates that: "Each member may address to the President of the Republic, the Prime Minister, his deputies, ministers, heads of independent bodies, heads of departments not associated with a ministry, or other members of the government, written questions, informing the Speaker and his deputies regarding any of the affairs within their competence, in order to inquire about a matter that the member does not know, to verify the occurrence of an incident that has reached his knowledge, or to determine the occurrence of an incident that has reached his knowledge. what the government intends in a matter."



formation of specialized committees for the purpose of accomplishing those tasks (1), and those committees, the committee concerned with the affairs of governorates that are not organized in a region, through which the Council can monitor the work of local administrations. In addition to monitoring and following up the fair distribution of resources and allocations between regions and governorates, we note that this last task of the Committee, which has been mentioned, contradicts the tasks of the Supreme Authority for Monitoring the Allocation of Federal Imports (2).

The end

Local administration is a method of decentralization through which the territory of the State is divided into units with a local concept, and these units are managed by bodies exercising the powers vested in them by the Constitution and the law within the territorial boundaries of the local unit.

After we have reached the authority at which the local administrations in Iraq stand to collect public revenues, the researcher must include a number of conclusions and recommendations as follows:

### FIRST: CONCLUSIONS

- 1- The financial revenues of the governorates consist of internal revenues, represented by the financial resources generated within the governorate, which contribute to financing the governorate's budget, and external revenues (central revenues and loans), and we noticed that central revenues are one of the most important financial resources for local councils.
- 2- The provincial council is not subject to the supervision of any ministry or entity not associated with a ministry according to the text of Article (122/V) of the 2005 Constitution in force, while the legislator stipulated in the Law of Governorates Not Organized in a Region in its article (2/second) that the Provincial Council is subject to the control of the House of Representatives, and this contradicts the above constitutional text.
- 3- There is financial control by the federal authorities exercised on the provincial councils aimed at ensuring the soundness of the financial actions of the provincial councils, and ensuring their compliance with the laws in force.

### Second: Recommendations

- 1- We recommend to the Iraqi legislator the need to enact a law regulating the mechanisms for collecting and imposing financial resources for governorates that are not organized in a region, in order to rely on it in the work of the financial departments in the governorates.
- 2- We call on the legislator to set special controls and conditions in accepting donations and donations submitted to provincial councils by foreign organizations and countries, especially the amendment of Article (7) of the Law of Governorates Not Organized in the Region in force to include the requirement of approval of the Council of Ministers to accept donations and foreign donations, as it is concerned with planning and implementing the general policy of the state.
- 3- The need to increase the financial allocations for the governorates that are not organized in a region and enable them to manage their own affairs.
- 4- We see the need to reconsider the text of Article (112) of the Constitution to include all natural resources, and make it within the exclusive competences of the central authority with an explicit text, especially if we go to the concept of administration stipulated in the above

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<sup>1</sup> Article (1) of the Rules of Procedure of the Iraqi Council of Representatives for the year 2022 stipulates that "the Council of Representatives is the supreme legislative and supervisory authority, and exercises the competencies stipulated in Article (61) of the Constitution and other relevant articles."

<sup>2</sup> Consider Article (1) of the Rules of Procedure of the Iraqi Council of Representatives for the year 2022 .



article and the disputes it raises between the central government and the governorates regarding who is the final decision-maker to resolve the issue of field management, whether the central government or the governorate.

- 5- We recommend the legislator the need to expedite the enactment of the oil and gas law to reduce the differences that arise between the central government and the region and the governorates that are not organized in a region, especially with the ambiguity surrounding Article (112) of the Constitution in the management of oil and gas.

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