

Adrian Redzynia

SHORT DURATION OF CONJUGAL LIVING  
SYMPTOMATIC OF MANIFEST NULLITY OF MARRIAGE.  
A COMMENTARY ON THE SENTENCE  
OF C. SKWORC OF 19 MARCH 2016  
(TOTAL SIMULATION ON BOTH SIDES)

INTRODUCTION

The subject of this commentary is the unpublished sentence of 19 March 2016 concerning the *Katovicensis* case,<sup>1</sup> in which the diocesan bishop declared the nullity of marriage by means of a briefer matrimonial process on the grounds of total simulation on both sides (can. 1101 § 2 of the 1983 Code of Canon Law<sup>2</sup>). The commentary focuses on the conditions for initiating this procedural mode, particularly the short duration of conjugal living – a circumstance that clearly indicated the nullity of marriage.

1. BACKGROUND OF THE CASE

On 16 April 2005, after knowing each other for eight months, 20-year-old Ewa and 21-year-old Adam entered into marriage. The parties' marital union lasted one month. One child was born of this marriage.

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<sup>1</sup> Sent. c. W. Skworc of 19 March 2016, ref. I/2016/16/S (unpublished).

<sup>2</sup> *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus* (25.01.1983), AAS 75 (1983), pars II, pp. 1-317 [hereinafter: CIC/83].

On 20 January 2016, Ewa filed a petition with the Metropolitan Court in Katowice for the nullification of the marriage on the grounds of mental incapacity to undertake the essential marital obligations on both sides (can. 1095, 3° CIC/83) and total simulation on both sides (can. 1101 § 2 CIC/83). It was apparent from the wording of the filed petition that both nupturients did not want to enter into marriage, which broke down shortly after the marriage conclusion. The defender of the bond did not comment on the statement of petition and stated that he did not see any contraindication for the case to be conducted in a briefer matrimonial process. On 11 February 2016, the vicar of the court accepted the case solely on the grounds of total simulation on both sides (can. 1101 § 2 CIC/83). The official submitted a request to the diocesan bishop (subsequently granted) for a preliminary review to qualify the case for a briefer matrimonial process. An evidentiary examination was held on 10 March 2016 at which the parties and two witnesses, Ewa's cousin and Adam's brother, were heard. On 12 March 2016, the defender of the bond redacted his remarks and on 19 March 2016, the instructor (the official at the time) presented his votum to the judge together with the case file.

## 2. MOTIVES IN LAW

At the beginning of the *in iure* part of the sentence, it was stated that a judge can only pronounce the nullity of marriage if he has reached moral certainty about it in accordance with the canonical rules of proof (can. 1608 CIC/83).

The legal presumption expressed in can. 1101 § 1 CIC/83, the judgment goes on to read, speaks in favour of the conformity of the words used in celebrating the marriage. The rationale behind this presumption is both to protect the marriage and the right of the nupturient to be considered truthful and reliable.

Turning to the title of the nullity of marriage (total simulation), the ponens stated that the realities of life made it necessary to establish the norm contained in can. 1101 § 2 CIC/83, which is the legal basis of the analysed case. The essence of this norm boils down to the contradiction between the marriage oath and the actual will of the nupturient. When questioned by an assisting priest, the nupturient declares that he or she

has the will to enter into marriage, while in fact he or she does not recognise that step to enter into marriage (or excludes its essential qualities or elements). There are appearances of concluding a marriage, but there is a lack of its causal cause, i.e. an act of will, referred to in can. 1057 § 2 CIC/83, which cannot be replaced or supplemented by anything. If it is missing, the marriage cannot exist and its conclusion is feigned, i.e. simulated.

The editor of the sentence stated that, in view of the legal presumption expressed in can. 1101 § 1 CIC/83, the claim of simulation of marital consent requires proof. It must be shown that, at the time of the marriage conclusion, the nupturient's will was set to "no", i.e. that there was an act of will contrary to the spoken words. Since the nupturient uttered the words of the marriage vow, the act of will to the contrary must – in order to exist – have had specific reasons. Among these, the ponens listed, for instance, love for another person in a situation of far advanced preparations for marriage, pressure from the environment to enter into a marriage (already) not wanted, or lack of courage to present the matter clearly. In proving simulation, the editor of the sentence explained, circumstantial though it may be, the context of the marriage conclusion is of no small importance – among others, the behaviour of the nupturient, both before the marriage conclusion and immediately after that. The circumstances alone cannot prove simulation, but they can make it plausible. Of crucial importance, however, is the confession of the simulating person, after all, he or she knows best what his or her mental state and will were at the time of the marriage conclusion. The simulating person's statements made in court need to be weighed against his or her other statements and interpreted in the light of the reasons and circumstances of the case, above all taking into account the concept of marriage as a permanent union of life between a man and a woman.

At the end of this part of the sentence, the editor recalled the norms on the briefer matrimonial process. The legislator states that there are circumstances which allow the case for the nullity of marriage to be heard using a briefer matrimonial process and these include, for example: "the defect of faith which can generate simulation of consent or error that determines the will; a brief conjugal cohabitation; [...] a cause of marriage completely extraneous to married life, or consisting of the unexpected pregnancy of the woman, physical violence inflicted to extort consent, the

defect of the use of reason which is proved by medical documents, etc.”<sup>3</sup> The editor added that the adjudication of cases of nullity of marriage in the briefer process belongs only to the diocesan bishop (can. 1683 CIC/83).

### 3. MOTIVES IN FACT

At the beginning of the *in fact* part of the sentence, the editor quoted a statement that Ewa had made to the court. Its contents showed that the decision to marry was made four months after the parties had met, at the point when Ewa found out she was pregnant. Her mother and Adam’s parents urged the parties to marry. Ewa had doubts about the marriage, which she shared with both her mother, with Adam and with her cousin (who was a witness in the process). During her examination, Ewa stated that at the time she was firmly convinced to call off the wedding and thus she contacted Adam’s mother by phone, informing her that she was “calling off the wedding”. Adam’s mother argued that it was too late to make such a decision. Ewa stated that when she stood at the altar, she felt insecure and insincerely spoke her vows; however, she did not think at the time that she was committing perjury. During her testimony, she cited a situation during the wedding when Adam got very drunk very quickly and got lost, and was later found in the toilet. At this point, it occurred to Ewa’s mother that this wedding should not have taken place; she stated that it was supposed to be the happiest day of Ewa’s life, but turned out to be the worst. After the wedding, the parties moved in with Adam’s parents and lived there for about a month. During that time, there was intercourse between them only a few times due to the frequent arguments that occurred between the parties. Ewa’s mother, observing the relationship between the parties, was already convinced that the decision to marry was wrong. More than a month after the wedding ceremony, Ewa found herself in hospital, where she spent two weeks. During that time, Adam had no interest in her, only sending a text message to her stating

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<sup>3</sup> *The procedural rules in cases regarding the declaration of the nullity of a marriage annexed to Mitis Iudex Dominus Iesus* [hereinafter: Procedural Rules], [https://www.vatican.va/content/francesco/en/motu\\_proprio/documents/papa-francesco-motu-proprio\\_20150815\\_mitis-iudex-dominus-iesus.html](https://www.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio_20150815_mitis-iudex-dominus-iesus.html) [accessed: 17.07.2024], Article 14.

that “he only has a wife on paper”. After leaving hospital, Ewa moved in with her mother and the parties never moved in together again.

The sentence editor then recalled the contents of Adam’s statement before the court, which showed that when Ewa had told him that she was pregnant he felt uncertainty due to his young age, his short acquaintance with Ewa and feeling “as if everything would collapse”. During his testimony, Adam stated that if it had not been for the hired reception hall and the costs incurred, the wedding would not have taken place because he did not want this marriage from the beginning. This reluctance grew over time, stemming from constant arguments between the parties and the primary issue was whether or not the wedding would take place. Adam stated that in front of the altar he felt that he was lying to himself; he testified that at the time he took his marriage vows he was convinced that he had such an act of will within him that he did not want to enter into this marriage. During making his statement, Adam confirmed that the situation described by Ewa – where he had gotten drunk quickly during the wedding, despite the fact that neither he nor his family abused alcohol – had occurred. Adam stated that even then, there was no love between the parties. After the wedding ceremony, the parties moved into one room at Adam’s parents’ house. During that time Adam worked, while Ewa spent time at home or with her mother. The parties spoke little to each other, while the predominant topic was the issue of finding a flat, as Adam wanted to complete applications made before the marriage (the sentence editor did not clarify which applications were involved). Adam admitted that this time was “scary and very nerve-wracking” for him.

Two witnesses gave statements during the examination. They were Ewa’s cousin and Adam’s brother. The sentence editor referred to the statement of Ewa’s cousin, pointing out that the witness did not know that the petitioner had a “boyfriend” and only became aware of his existence when the parties came to her to talk about the wedding. The witness admitted that this meeting was very artificial as the parties during the meeting did not talk to each other, but only stated that there would be a wedding. According to the witness, no bond or love was evident between the parties, and she told her parents about her concerns she had about the parties’ marriage. The witness also expressed his doubts to Ewa, who admitted that she also had concerns about marrying Adam and these increased as the date of the wedding approached. According to the witness,

it was apparent that the decision to marry was influenced by pressure from the parties' parents and the fact that they were expecting a child. The witness testified that the parties did not want to enter into marriage already on the wedding day because no mutual support was evident between them. During making her statement, the witness stated that she heard about the situation that occurred during the parties' wedding (Adam got lost and was found in the toilet while in an inebriated state). During the time when the parties lived together, the witness did not visit them. The witness became aware of the breakdown of the parties' marriage when her mother visited Ewa's home.

During making his statement as a witness, Adam's brother stated that one day his parents told him that he was going to become an uncle. The witness's mother claimed that since there was a child, there was also to be a wedding; he himself had no opinion on the matter. Adam's brother stated that he had not been an eyewitness to the quarrels between the parties, but had learned about them from hearsay from third parties. The witness knew that the parties could not call off the wedding because everything had already been paid for, then admitted that he did not see the parties happy at the wedding; judging by their facial expressions he stated that they looked "as if someone had died". During his testimony, the witness confirmed a situation that occurred at the wedding where his brother got drunk and was lost. Adam confessed to the witness that he could not look at Ewa on that day. At the end of his testimony, the witness stated that he had never seen his brother in such a state of alcoholic intoxication before the wedding.

The sentence editor went on to state that, after the examination of witnesses was over, Ewa produced photographic documentation (wedding photographs) which purported to show that Adam had shown resentment towards the petitioner, which was supposedly manifested by a tragic expression on his face. Of the dozen or so photographs submitted by Ewa, it was not possible to find a single one that showed Adam at least happy.

In this case, the defender of the bond stated that all the circumstances of the case in which he saw possible grounds against the petitioner's claim that the parties' marriage was invalid had been raised by him during the examination and had been explained accordingly. He concluded his remarks by stating that he found no arguments against the thesis that the

marriage was invalid. Also the instructor in his votum included the opinion that there was no doubt about the nullity of the parties' marriage.

In the final passage of the sentence, the sentence editor stated that it was right to apply the briefer matrimonial process. He then pointed out that the parties had entered into marriage for reasons other than a deep desire for a union of life and love. According to the ponens, the difficult situation in which the parties found themselves was confirmed by the statements made by the witnesses and the documentary evidence attached by Ewa to the petition. They show that the parties did not manifest even a modicum of happiness about the marriage they were entering into; moreover, that they did not, in the period immediately preceding the marriage, manifest the love proper to those wishing to form a true marriage. They both wanted to cancel the ceremony, but did not dare to do so because of the far-reaching preparations made and the opinions of their families. On the day of the wedding, Adam's reluctance to marry Ewa was so great that Adam was unable to deal with it other than by immediately getting drunk during the wedding reception, which in turn caused an immediate reaction from those closest to him who had previously insisted on the marriage. It was already clear during the wedding reception that "this wedding was not to be". The parties' marriage fell apart almost immediately after its conclusion, and Adam articulated his dislike of it on several occasions, emphasising that Ewa was only officially married to him. In the ponens' view, it is difficult in these circumstances to entertain any doubts and find counter-arguments against the spouses' claim that they entered into this marriage invalidly. He concluded that "having God only before my eyes, I pronounce that the nullity of the marriage [of the parties] has been proven on account of marital simulation of both the petitioner and the respondent".

## CONCLUSIONS

The analysed sentence of c. Wiktor Skworc declaring the nullity of the marriage on the grounds of total simulation on both sides refers to a case to which the legal norms for a briefer matrimonial process before a bishop have been applied (cf. can. 1683-1687 CIC/83; Articles. 14-20 of the Procedural Rules).

With regard to the mode of process adopted, it is necessary to recall two conditions that must be met for a briefer matrimonial process to be initiated. The first is the consensual request of the spouses (can. 1683, 1° CIC/83) [Góralski 2017, 61-68]. It is clear from the text of the sentence that the petition for declaration of nullity of marriage was brought by Ewa. However, there is no information as to when and how the consent of the other spouse to proceed with the case in this manner was obtained or any mention of the filing of this petition by both spouses, which would be expressed by the joint signing of the petition [Majer 2015, 167]. The sentence editor only mentions that the judicial vicar, after having previously heard the defender of the bond (cf. can. 1676 § 2 CIC/83) and having approached the diocesan bishop in order to qualify the case for a briefer matrimonial process, decided to conduct this case in this manner.

The second of the conditions for initiating a briefer matrimonial process is the existence of circumstances that clearly indicate the nullity of marriage (can. 1683, 2° CIC/83). At the outset, it should be noted that different interpretations of this requirement still appear in the doctrine [Góralski 2017, 68-71]. Leaving aside here the discussions on this topic, it is necessary to recall Article 14 § 1 of the Procedural Rules, which lists exemplary circumstances that may be symptoms of manifest nullity of marriage. Among them is one that is reflected in the analysed sentence, namely the short duration of conjugal living.

With regard to this circumstance, the literature points, *inter alia*, to a glaring lack of precision on the part of the legislator [Nowicka 2015, 47]. One could perversely ask: “Short means how long”? Since the legislator did not indicate the specific extent of the “shortness” of the conjugal living, it is not clear whether it is a few days, weeks, months or perhaps a few years. In the present case, the marital union of the parties lasted about a month. In my opinion, it can therefore be assumed that this circumstance actually occurred in this case.

Seemingly, it would appear that in the presented sentence one more circumstance, listed in Article 14 § 1 of the Procedural Rules, could be pointed out, which would clearly indicate the nullity of marriage – the conclusion of a marriage due to an unexpected pregnancy. It is therefore worth verifying this circumstance on the basis of the analysed sentence, referring to the title of nullity of marriage adopted in the process, *i.e.* total simulation.



According to the author's research involving an analysis of marriage nullity cases pending in Polish ecclesiastical courts in the briefer process mode (2015-2023), in seven out of fifty total cases, the nullity of marriage was declared due to total simulation (the case files of the Church Court of the Diocese of Legnica and the Metropolitan Court of Przemyśl were outside the scope of the research). In four of these cases, a potential circumstance that could constitute a symptom of manifest nullity of marriage was unexpected pregnancy. Considering the problem of proving total simulation, the more than occasional potential occurrence of this circumstance should be pointed out.

In order to prove the nullity of marriage on the grounds of total simulation (can. 1101 § 2 CIC/83), it is necessary to rebut the two legal presumptions set out in can. 1060 CIC/83 (presumption of the validity of a marriage) and can. 1101 § 1 CIC/83 (presumption of correspondence between the words or revealed signs and the real internal will of the nupturient). Simulation consists in the exclusion by one or both parties by a positive act of will of the marriage itself (total simulation) or of some essential element or attribute of the marriage (partial simulations) [Viladrich 2023, 666-67]. The proof of simulation consists of several elements. One is the confession of the simulant, i.e. the confirmation of the simulant that he or she has given a fictitious marital consent. This confession can be judicial (can. 1535 CIC/83) or extrajudicial (can. 1537 CIC/83). In the analysed case, we can find both explicit and implicit judicial and extrajudicial confessions expressed by both parties. As far as Ewa is concerned, the following words, contained in the body of her judicial statement, can be taken as her judicial confession: "I insincerely uttered my [marriage] vows". Adam, on the other hand, in his statement, admitted: "When I took the marriage vows, I had this act of will within me that I did not want to enter into this marriage" (sic!). The extrajudicial confessions of the parties are corroborated by the witnesses' statements. Ewa's cousin stated that: "She [Ewa] claimed that she did not want this marriage". Adam's brother, on the other hand, stated that after the wedding ceremony his brother stated that: "He could not look at her [Ewa] on that [wedding] day".

Another element of proving simulation is the existence of *causae simulandi*, i.e. the cause of simulation, and *causae celebrandi vel contrahendi*, i.e. the motive for the conclusion of a marriage. In order to prove the nullity of a marriage on the grounds of total simulation, it is necessary that

the *causae simulandi* prevail over the *causae celebrandi* [Glinkowski 2004, 55-65]. In the sentence presented here, it should be concluded that the *causae celebrandi* were primarily pressure from the closest relatives – Ewa’s mother and Adam’s parents combined with the parties’ inability to withdraw from their plans to marry. On the other hand, the *causae simulandi* that outweighed the motive to marry was the lack of love between the parties, which understood as the nupturient’s lack of ability to love the other party can become the actual cause of simulation [ibid., 68].

In the author’s opinion, in the analysed case, it cannot be stated unequivocally that the unplanned pregnancy was a symptom of the manifest nullity of marriage. If one were to treat this circumstance as the *causae celebrandi*, one would have to ask whether, had it not been for peer pressure, the parties would have actually decided to marry. Indeed, they both unanimously stated before the court that they had wanted to forgo the wedding ceremony on a number of occasions, and had only been deterred from this decision by solicitations from those closest to them – their parents – and by advanced preparations for the wedding; Adam testified: “If it had not been for the hired reception hall and the costs incurred, this wedding would definitely not have happened”. If, in spite of the above, one were to consider the unexpected pregnancy as the *causae celebrandi*, this would still not be sufficient to prove simulation, since, as stated earlier, the *causae simulandi* must outweigh the *causae celebrandi* in order to speak of consensual simulation.

As for the reason for the simulation, from the content of the parties’ statements, it is not a lack of love or aversion towards the conceived child (rather, it would be appropriate to point to concerns about its conception and subsequent upbringing). It is, however, a lack of willingness to give themselves to each other and to accept each other in all aspects of life, that is, a lack of consent, as stipulated by can. 1057 § 2 CIC/83, which is necessary for a valid expression of consensus. Therefore, it was not the conceived child that constituted the *causae simulandi*, but the absence of an act of will by the parties to create a union of all life.

The circumstances of the marriage are also an important element in proving simulation. Among them, the behaviour of the nupturients both before the marriage conclusion and immediately after that. In the present case – as already indicated above – it should be pointed out that such a telling circumstance that occurred immediately before the marriage con-

clusion was the short time of premarital acquaintance (approximately eight months). Although it is not included in the catalogue of exemplary circumstances which may constitute a symptom of manifest nullity of marriage in a given case, by leaving the catalogue of such circumstances open by the legislator, one should wonder whether it would not also be reasonable to treat it as a potential symptom of manifest nullity of marriage.

As for another circumstance immediately preceding the marriage conclusion by the parties, it is necessary to point out the application of pressure by the parents of the parties with a view to the parties getting married as soon as possible. Undoubtedly, this pressure was caused by the fact of the unexpected conception of a child. However, given the facts of the case and, above all, the statements of the parties, it is difficult to conclude that the unplanned pregnancy in this case constitutes a symptom of the manifest nullity of marriage. On the other hand, the circumstance that occurred immediately after the marriage conclusion was the short duration of conjugal living (approximately one month).

It must therefore be considered that all the elements of proof of simulation of consensus, which are indicated by the doctrine and rotal jurisprudence, have been fulfilled. Analysing the facts of the case, the question arises whether in the present case we are not dealing, first of all, with a force of great fear (cf. can. 1103 CIC/83)? Indeed, the conditions characteristic of this title of nullity of marriage were met, i.e., first of all, the relationship of subordination (parent-child), the well-founded fear of incurring severe and prolonged anger in the event of non-acceptance of the marriage, and coercion carried out by various means that produce in the subordinate a real state of despondency [Leszczyński 2007, 108-11].

In drafting the sentence, with reference to the legal motives of the sentence as set out, it should be stated that enumerating so many potential exemplary circumstances that could be symptoms of the manifest nullity of marriage is superfluous and might create unnecessary doubt for the recipients of the sentence. It is worth referring possibly to those circumstances that are reflected in a specific case and elaborate on them based on doctrine and case law. Further, in the same part of the sentence, its editor states that the adjudication of cases of nullity of marriage in the briefer matrimonial process belongs only to the diocesan bishop (can. 1683 CIC/83). However, it should be borne in mind that those entitled to judge these cases are also equal in canon law with the diocesan bishop (cf. can.

381 § 2 CIC/83). Furthermore, as far as the motives in fact of the sentence are concerned, first of all, the frequently encountered but incorrect drafting technique of this part of the sentence, which consists in quoting the content of the statements of the parties and the testimonies of the witnesses using the “copy-paste” method, should be criticised. In the conclusive part of the sentence, it would be appropriate to specify that the case concerns total simulation and not simulation in general.

Furthermore, in the section on the course of the case, the ponens mentions that “documents were attached to the petition which clearly support the petitioner’s version of events”. However, it is not clear from the wording of the sentence which documents are referred to and what made these documents reinforce the judicial vicar’s conviction that the parties’ marriage was manifestly invalid. Further, in no part of the judgment, its editor indicated the reasons why the judicial vicar did not accept in this case the title of mental incapacity to undertake the essential obligations of marriage (can. 1095, 3° CIC/83), which was suggested by Ewa in the filed petition. In addition, the sentence lacked information on the place of permanent residence of the parties (cf. can. 1612 § 1 CIC/83). Furthermore, the sentence lacked information about the date on which the parties obtained a civil divorce and about the person who was appointed assessor in the process.

Finally, it should be noted that more than a month elapsed between the acceptance of the petition for nullity of marriage and the delivery of the sentence, which should be assessed positively and, after analysing the course of the case, it should be concluded that all the deadlines required for the briefer matrimonial process were met.

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**Short Duration of Conjugal Living Symptomatic  
of Manifest Nullity of Marriage.  
A Commentary on the Sentence  
of c. Skworc of 19 March 2016 (Total Simulation on Both Sides)**

Abstract

The study is a commentary on the unpublished sentence of c. Skworc of 19 March 2016. It discusses in detail the structure of the sentence: the course of the case as well as legal and factual motives. The sentence is an example of the application of the norms of the briefer matrimonial process before a bishop in Polish jurisprudence. The present study is based on the author's own research – an analysis of the files of Polish ecclesiastical courts – to illustrate the number of sentences declaring the nullity of marriage in a briefer process due to total simulation (can. 1101 § 2 of the Code of Canon Law). The purpose of this commentary, due to the lack of similar studies in Polish, is to assist the representatives of the ecclesiastical judiciary in Poland in the application of the norms of the briefer matrimonial process before the bishop.

**Keywords:** short duration of marital life; manifest nullity of marriage; glossary; summary trial; total simulation.

**Krótki czas pożycia małżeńskiego symptomem  
oczywistej nieważności małżeństwa.  
Głosa do wyroku c. Skworc z 19 marca 2016 roku  
(symulacja całkowita po obu stronach)**

Abstrakt

Opracowanie jest komentarzem do niepublikowanego wyroku c. Skworc z 19 marca 2016 r. Szczegółowo omówiono w nim strukturę wyroku: przebieg sprawy, motywy prawne oraz faktyczne. Wyrok ten jest przykładem aplikacji norm procesu małżeńskiego skróconego przed biskupem w orzecznictwie polskim. W niniejszym opracowaniu autor posłużył się własnymi badaniami – analizą akt polskich sądów kościelnych, aby zobrazować liczbę orzeczeń stwierdzających nieważność małżeństwa w trybie procesu skróconego z tytułu symulacji całkowitej (kan. 1101 § 2 Kodeksu Prawa Kanonicznego z 1983 r.). Celem omówienia niniejszej glosy jest pomoc pracownikom

sądownictwa kościelnego w Polsce w aplikacji norm procesu małżeńskiego skróconego przed biskupem z uwagi na brak podobnych opracowań w języku polskim.

**Słowa kluczowe:** krótki czas pożycia małżeńskiego; oczywista nieważność małżeństwa; glosa; proces skrócony; symulacja całkowita.

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