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SOCIO-AFFECTIVITY BEYOND THE STRAIGHT LINE

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Abstract: This article used a bibliographical review to collect data and theoretical foundations, making use of a hypothetical-deductive tendency and taking **analytical-synthetic** logic as a procedure. It falls within NUPEJU's research line two, which is the social function of the institute of socio-affectivity in the construction of the family nucleus. The aim of this analysis was to analyze the institute of fraternal socio-affectivity and its effects on the post-modern family, as well as the implications for national legislation. This debate is necessary due to its new application in Brazilian law, which arose from a new precedent of the Superior Court of Justice (STJ), the majority of which was in favor of its recognition, although there was a minority opposed to its application. That said, its discussion is essential given its still embryonic stage. Finally, after analyzing the positions and theses established by the ruling that is the main subject of the case, together with contributions from scholars on the subject, it can be inferred that affection is extremely important and indispensable within the family, especially in cases where there are no blood ties, more specifically between siblings. **Keywords:** sociability, affection, siblings, family nucleus, recognition.

INTRODUCTION

This article used a bibliographical review to collect data and theoretical foundations, making use of a hypothetical-deductive tendency and using **analytical-synthetic** logic as a procedure. It falls within NUPEJU's research line two, which is the social function of law and its application in Brazilian families, in the sub-area of family law. The aim of this analysis was to analyze the institute of fraternal socio-affectivity and its effects on the post-modern family, as well as the implications for national legislation, especially in relation to family law.

The topic of socio-affectivity is increasingly present in the daily lives of Brazilian families. However, unlike what we are used to, this article will not deal with socio-affectivity in a vertical line, between parents and children, but will discuss the recognition of this institute between "siblings", the establishment of a fraternal relationship between people who do not have consanguineous ties or through adoption or recognition of paternity.

The application of this institute is already indisputable when it comes to relationships in a straight line, but recently questions have arisen as to its applicability between people who were raised as siblings. Would this relationship be valid for such recognition and its equivalence to the already consolidated institute?

This being the case, it is necessary to analyze the effects, contributions and changes that this new interpretation can bring about both for those involved (all families) and for setting a precedent for new interpretations and future applications. The opposite position must not be overlooked, as it is of the utmost importance for understanding the whole context and the sedimentation of the new institute.

CONCEPT OF SOCIABILITY

There is no way of dealing with this new institute without covering and taking up concepts that have already been concretized in the legal sphere, namely paternal socio-affectivity, and then developing the line of reasoning so that fraternal socio-affectivity is easier to understand.

In general terms, *sociedade afetiva*, as its name implies, is linked to affection, to feelings in a relationship, which are responsible for determining and providing recognition for these bonds.

PATERNAL OR STRAIGHT-LINE SOCIO-AFFECTIVITY

The first concept is one that has already been established among jurists, but it is the gateway to its other ramifications, paternal socio-affectivity.

Paternal socio-affectivity is the most widely recognized in the legal world, and there is no longer any discussion about its application. It legally recognizes maternity or paternity based solely on affection, without any blood ties, and therefore allows a man or woman to raise a child or young person as their own without being their biological father/mother.

Recognition, in turn, has been applied more and more quickly. In its early days, this recognition was normally established after the death of the parents, with the aim of protecting this individual and ensuring that he had rights as if he were really a child, because in the eyes of society he was treated as such.

Over the course of its development, this thesis became more and more established and began to be claimed during life, in order to guarantee the safety not only of the children, but also of the parents. Because they were already seen as such by the society around them, just concretizing and protecting what was already happening, its consolidation through a process, guarantees legal security for both in possible future events.

Although very close to adoption, socio-affective filiation has differences, mainly linked to its requirements and the process of decreeing and recognizing it:

ADOPTION	SOCIO-AFFECTIVE FILIATION
It can only be decreed by judgment	Allows judicial and extrajudicial proceedings
The ECA (Statute of the Child and Adolescent) only requires a cohabitation period of 180 days	It requires an established bond and the behavior of a father and son
Extinguishes any other biological link	Does not interfere with biological ties, allows multiparenthood

That said, the differences are clear and preventing them from being confused, although few, are essential points for their differentiation.

FRATERNAL SOCIO-AFFECTION OR BEYOND THE STRAIGHT LINE

As an offshoot of socio-affectivity, in October 2022, the Supreme Court of Justice (STJ) recognized the affectivity between siblings, a relationship established for the first time, due to the current strength of affectivity, despite its totally factual configuration.

Following the provisions of art. 1593 of the Civil Code, which conceptualizes family in a broader way, contemplating kinship through socio-affectivity. "Art. 1.593. Kinship is natural or civil, according to whether it results from consanguinity or another origin."

This case, SPECIAL APPEAL No. 1.674.372 - SP (2016/0188995-2), was the first to be decided on this issue, which consists of a request for recognition of the socio-affective relationship in a collateral, fraternal way, being a relationship between two individuals raised together, by the same parents, as siblings, but without their recognition. After the death of their father, they sought to establish and consolidate the existing relationship.

This application was only allowed to the detriment of the entire path that the institute of socio-affective filiation has traveled and fought to strengthen, seeking to protect more and more relationships that lived on the margins of society, without any legal protection and support.

EMENTA SPECIAL APPEAL (art. 105, inc. III, "a", of the CRFB/88) - CIVIL PROCEDURAL LAW (CPC/73) AND FAMILY LAW - DECLARATORY ACTION FOR COLLATERAL RELATIONSHIP IN SECOND DEGREE SOCIOAFETIVO (socio-affective fraternity) POST MORTEM- DENIAL OF THE INITIAL PETITION BY THE ORDINARY INSTANCES, FOR DECLARING

THE LEGAL IMPOSSIBILITY OF THE CLAIM, PREVENTING ANALYSIS OF THE MERITS.CONDITIONS OF THE ACTION - ASSERTION THEORY - REQUEST ABSTRACTLY COMPATIBLE WITH THE PAST ORDINANCE - LEGAL POSSIBILITY VERIFIED IN THESIS - SPECIAL APPEAL GRANTED. Post-mortem declaratory action filed by alleged socio-affective siblings, with the aim of having the existence of a second-degree collateral relationship with the deceased recognized.

1. The legal possibility of the claim must be conceived as the absence of an express prohibition and the compatibility, in theory, of the claim with the legal system in force, to be made in status assertionis (theory of assertion). In other words, the recognition of the legal possibility of the claim implies compatibility with the normative system, i.e. the assessment that the material right alleged is, at least in an initial analysis, covered by the legal system.

(2) The current concept of family implies a broad concept, in which affectivity is recognized as a source of kinship and its configuration, considering its essentially factual nature, is not restricted to kinship in a straight line. It is therefore possible to understand that socio-affectivity is constituted both in the relationship of parenthood/filiation and in the context of relationships maintained between siblings, associated with other criteria for determining kinship (biological or presumptive) or even individually/autonomously.

(3) There is no legal prohibition on the recognition of socio-affective fraternity/brotherhood, even if post-mortem, since the request made in the initial application, a declaration of the existence of a second-degree relationship in the collateral line, is admissible in the Document: 167359728 - EMENTA / ACORDÃO - Certified website - DJe: 24/11/2022 Page 1 of 2 Superior Court of Justice's legal system, deserving the appreciation of the Judiciary.

4. In this case, the alleged offense against the provisions of article 295 of the Code of Civil Procedure and article 1.593 of the Civil Code has been configured, since the compatibility of the request (declaration of collateral kinship, in the second degree, of a socio-affective nature), in the abstract, with the national legal system, has been inferred.

5. SPECIAL APPEAL GRANTED, in order to set aside the judgment and sentence, dismissing the legal impossibility of the claim and, consequently, ordering the return of the case file to the origin, for the regular continuation of the case.

Based on the winning position in the above-mentioned ruling, it can be inferred and concluded that fraternal socio-affectivity between collaterals is an institute that should be recognized, as it meets all the requirements of paternal filiation, namely a pre-paternal bond established over a period of time and their way of acting towards the others, who were like brothers, so in everyone's eyes, they were brothers, they were raised as such and why not allow this recognition.

The Honorable Justice Marco Buzzi, in his winning vote, only extended the thesis applied to socio-affective filiation to other relationships in a precise manner and recognized the first socio-affective bond between siblings, people who were raised in the eyes of society as siblings and exhibited such behavior, once again protecting relationships that had been neglected by the Brazilian legal system.

At various points throughout his vote, the Justice reiterated the value and importance of affection in this specific case and its indispensability for granting family ties:

[...] Affection, in such cases, conceives the family bond, from which derives the informative duty of solidarity of these relationships, in order to contribute to the realization of their purposes, especially with regard to the development and formation of the personality and individuality of those who are part of it. [...]

[...]This is because, as mentioned above, affectivity, in cases such as the one under discussion, is a recognized source of kinship and its configuration, considering its essentially factual nature, is not restricted to kinship in a straight line. It is therefore possible to understand that socio-affectivity has a place both in paternal-filial relationships and in relationships between siblings, associated with other criteria for determining kinship (presumptive or biological) or even individually/autonomously. [...]

Furthermore, there are several positions in favor of its application and consequent recognition, which served as a basis for establishing this position.

Recognition of filiation. Declaratory action for nullity. No blood relationship between the parties. Irrelevant in view of the socio-affective bond. - Recognition of paternity is valid if it reflects the lasting existence of a socio-affective bond between parents and children. The absence of a biological link is a fact that does not, in itself, reveal the falsity of the declaration of will embodied in the act of recognition by the Law - there is no nullity of the entry in the civil register. - The STJ has given priority to the biological criterion for recognizing parentage in those circumstances where there is family dissent, where the socio-affective relationship has disappeared or never existed. The duties of care, affection and support cannot be imposed on someone who, not being the biological father, does not wish to be a socio-affective father either. Contrariwise, if affection persists in such a way that parents and children build a relationship of mutual help, respect and support, it is right to disregard the purely blood bond in order to recognize the existence of legal filiation. - (Resp 878.941/DF, Rel. Minister Nancy Andrighi, Third Panel, judged on 21.08.2007, DJ 17.09.2007, p. 267)

It is worth highlighting the above judgment, which once again highlights the value of affection, one of the first positions in favor of recognizing family ties based on affection and regardless of consanguinity,

and which in turn opened the door for this interpretation to be applied, something that will inevitably occur with the institute of fraternal socio-affectivity, and its recent incidence in the legal sphere.

The first ruling that allowed this transformation of friendship into a family, brought to reality what was already recognized among many people who grew up and returned as individuals together, who already considered themselves siblings, now having the possibility of this recognition in the legal sphere and consequently in other areas of their social life.

In addition to the ruling in question, Flávio Tartuce deals with the subject in his article "Socio-affective bond between siblings". He argues in favor of the winning side and claims that he has always supported this position. He also briefly discusses the consequences, what they would be in relation to acquired rights and obligations, stating that the recent decision seems to give more strength to his doctrinal position, which could become increasingly widespread.

In his article, Professor Julio Cesar Ballerini Silva discusses the concept of socio-affective fraternity. He reports as follows:

[...] It is obvious from Paulo Lobo's classic lesson that socio-affectivity is punctuated by the presence of *tractus*, *nomem* or *fama* (not cumulatively) - so that people who are raised as if they were sisters, even if they are not blood sisters, should be treated as sisters by the legal system. [...]

He also emphasizes in the body of his article the importance of the existence of this bond between siblings, showing his support for the current and determined jurisprudence

[...] Sometimes the person who eats a kilo of salt together, helping with the illness, giving love and affection, accepting choices, not judging behavior, perhaps has a more fraternal behavior than a blood brother who, due to social, sexual or other prejudice, stops keeping in touch with a relative - that's why affection becomes so important. [...]

It has been shown that the basis of all the doctrinaires and magistrates was affection in the relationship, regardless of any legal determination or previous consanguineous ties, giving due value to the feelings between individuals, which are the necessary links to establish such a family bond, whatever it may be.

The writer William Shakespeare once said: "Friends are the family that life allows us to choose". We've reached the moment when we can make that a reality and friends really do become family, siblings.

REQUIREMENTS FOR RECOGNITION

As far as the requirements for its recognition are concerned, they are the same as those needed for socio-affective filiation, and are linked to situations and facts. Therefore, the presence of certain situations and the carrying out of certain measures that demonstrate this link are indispensable:

SPECIAL APPEAL. FAMILY LAW. SOCIO-AFFECTIVITY. ART. 1.593 OF THE CIVIL CODE. PATERNITY. MULTIPARENTHOOD. POSSIBILITY. PRECEDENT NO. 7/STJ. INDIGNITY. AUTONOMOUS ACTION. ARTICLES. 1.814 AND 1.816 OF THE 2002 CIVIL CODE.

1. Special appeal filed against a judgment published under the 1973 Code of Civil Procedure (Administrative Statements Nos. 2 and 3/STJ).

2. The preclusive efficacy of *res judicata* requires triple identity, namely: same parties, same cause of action and same claim, which is not the case here.

(3) In this case, the first claim was not brought by the son, but by his mother-in-law, who was seeking to annul the registration of filiation in the declaratory action that did not discuss the socio-affective relationship sought in the present claim.

4. There is no need to speak of the illegitimacy of the parties in this case, since the material spelling error was rectified.

5. in the light of art. 1.593 of the Civil Code, the courts of origin established the possession of the status of child, which consists of the public and continuous enjoyment of this condition, in addition to the fulfillment of the requirements of affection, affection and affection love, essential to the configuration of the socio-affective relationship of paternity throughout life, elements that cannot be challenged in this special instance due to the obstacle of Precedent No. 7/STJ.

6. Socio-affective paternity fulfills the very dignity of the human person by allowing an individual to have their life history and social status recognized, valuing, in addition to formal aspects such as regular adoption, the real truth of the facts.

7. The Federal Supreme Court, when judging Extraordinary Appeal No. 898.060, with recognized general repercussion, admitted the coexistence of biological and socio-affective paternity, ruling out any interpretation capable of giving rise to a hierarchy of ties.

8. Anyone who violates the basic principles of justice and morality, in the cases laid down by law, is prevented from receiving certain assets by inheritance.

9. Indignity must be the subject of an independent action and its effects are restricted to personal aspects and do not affect the descendants of the excluded heir (articles 1.814 and 1.816 of the Civil Code of 2002).

10. Special appeal not granted. (REsp n. 1.704.972/CE, rapporteur Minister Ricardo Villas Bôas Cueva, Third Panel, judged on 10/9/2018, DJe of 10/15/2018.) (g.n.)

First of all, both must act as such, that is, they must act like brothers and treat each other as such, have a brotherly attitude, which extends from the way they refer to each other

to their emotional relationships, thus fulfilling their proper roles as brothers.

Among the various behaviors between siblings, it is worth highlighting fights, games, mutual teaching and learning, arguments, friendship, all these attitudes that both have and that come and go, happen from a young age to when they are older, can change the family environment and even so, siblings will go through these situations together.

We can't forget the protection and guidance that often comes from older siblings to younger ones, especially on how to deal with their parents, school and social life, as they are someone who has already been through their situations and is closer to their generation than their parents.

So for two individuals to pass as brothers in the eyes of society, they must have done or performed any of these activities on a constant basis at some point, as they are common in this type of relationship.

Another determining factor remains in relation to the bond, which in turn must already exist at the time of recognition, although there is no fixed or determined period, it is a sufficient amount of time for this bond to be established, it cannot be something immediate, since these bonds are not established instantly, some take longer and others take less, but they all need time to develop.

And lastly, they have to appear to be siblings in the eyes of society, something that happens as a result of the two previous requirements, because it is something gradual, as the contact and time spent living together increases, the affection and affection has to increase and ends up being evident to the rest of society, to the point that those who see the relationship from the outside really believe that they are siblings.

Although these are mostly subjective conditions, proof of the emotional bond between the parties is still required. In this case, school documents signed by the child's

guardian, the child's enrollment in their health insurance plan, official registration that both the parent and the child live in the same house, conjugal ties such as marriage or stable union with the biological ascendant, photographs of relevant celebrations and witness statements can be used as evidence.

POSSIBILITIES FOR RECOGNITION

The legal system allows the bond created between father and son to be realized at two moments: during his lifetime or after his death. Given that the requirements and effects have been applied extensively to the bond between siblings, their possibilities for recognition are also extended.

RECOGNITION IN LIFE

Even though the judgment in question deals with a request for post-mortem recognition, recognition in life is not something that cannot occur in future relationships. This is due to its extreme connection with paternal socio-affectivity, and this same institute must be taken as the basis for its application, which in turn can also be established while still alive.

There is no restriction against this possibility; on the contrary, as it is following the path opened up by the paternal institute, it tends to be encouraged to be carried out in life, so it is a characteristic that may become more frequent in this institute, which is still in its embryonic stage and already has the support of another more mature institute to spread and grow.

In addition, because it also aims to protect the family and the family environment, it will gradually become more and more established while the individual is still alive and, in the last cases, after their death. Therefore, what is currently the rule will become the exception and the exception will become the rule, there will be a reversal of current patterns.

POST-MORTEM RECOGNITION

It has not only been proven that post-mortem recognition is possible, but that it is the only one that has been considered so far, so there is no doubt as to its applicability, but the facts and characteristics necessary to effectively establish the relationship still have to be proven.

In the ruling that is the subject of this article, the case deals with the recognition of two individuals who have no prior ties and after the death of one of them. It is worth noting that the deceased “brother” did not even have any other relatives or someone who maintained an emotional relationship, leaving only those who sought his recognition, people with whom he grew up and was treated as an equal by the father who was not his.

Therefore, he played the role not only of a son, but also of a brother in the eyes of society and effectively in the family environment in which he lived, and there is no doubt that the people he grew up with were indeed his siblings by upbringing, creating a bond that was sometimes stronger than the blood bond, so what would be the problem of making this bond a reality, to protect those who already defended and cared for each other, guaranteeing legal security for the relationship that, despite seeming real, lived on the margins of society.

Even if it is established after death, it does not prevent you from supporting your siblings who remain alive and with whom you shared most of your life. It is a way of giving back what was done in life and protecting what they have achieved, and it can and should be recognized at any time, as long as the necessary requirements are met together with its proof and with the aim of protecting family power, more specifically in its fraternal sphere.

EFFECTS OF RECOGNITION

To the detriment of the basis taken to establish this current, which is socio-affective filiation, the legal effects for recognizing fraternal socio-affectivity are the same.

Therefore, while paternal socio-affectivity applies to the rights and duties of the relationship between parents and children, fraternal socio-affectivity applies to the rights and duties of the relationship between siblings, who must fulfill and honor them.

It is implicit in the family environment that care for each other should be reciprocal, and this should be maintained in the recognition of the emotional relationship, in this case between siblings.

After recognition, they must care for, watch over and protect each other, and if they need to be legally responsible for the person of their sibling, in some cases they will be responsible for their loved one, as we see in the judgment below, which imposed alimony payments on the siblings, given that all other possibilities had been exhausted.

APPEAL. ALIMENT. Claim against unilateralpaternalsiblings. DEFENDANTS' APPEAL. Preliminary judgment. None. Paternity investigation excluded the claim for maintenance. Compliance with art. 15 of the Maintenance Law. MERITS. Judgment setting maintenance at 7.5% of the minimum wage for each of the four siblings. Defendants' dissatisfaction. Partially accepted. Defendants have a spouse/partner, children and low income. **Subsidiary and complementary obligation of the siblings.** Lack of evidence as to the two sisters' ability to pay the amount claimed, without compromising their own subsistence. Obligation dismissed. Two brothers who work in their own mechanic's workshop, with no information on their income. Maintenance at 7.5% of the minimum wage for the brothers. Appeal partially upheld. ADHESIVE APPEAL. Challenge to the benefits of free justice. Elements brought to the record that authorize the granting of the

benefit. Challenge not upheld. Reciprocal succumbing does not exclude condemnation for succumbing fees. Fixed by equity. Appeal partially granted.

(TJSP; Civil Appeal 1012682-86.2021.8.26.0566; Rapporteur: Hertha Helena de Oliveira; Judging Body: 2nd Chamber of Private Law; São Carlos Court-1st Family and Succession Court; Date of Judgment: 05/26/2023; Date of Registration: 05/26/2023) (g.n)

Although it rarely happens, it is a possibility, and is shown only as an example of the legal duties that recognition can entail.

In turn, having demonstrated the level of responsibility that has been assumed, we will move on to the rights that have been won. The inheritance that may be received is one of them, provided that it complies with the provisions of art. 1.829 of the CC.

Art. 1.829. Legitimate succession is granted in the following order: (See Extraordinary Appeal No. 646.721) (See Extraordinary Appeal No. 878.694)

I - to the descendants, in competition with the surviving spouse, unless the latter was married to the deceased under the universal communion regime, or under the compulsory separation of property regime (art. 1.640, sole paragraph); or if, under the partial communion regime, the author of the inheritance has left no private property;

II - ascendants, in competition with the spouse;

III - the surviving spouse;

IV - collateral.

In this way, by being recognized as a sibling, they will be entitled to inheritance, being in line to receive it if those who have preference are unable to acquire it, either because they are not alive or do not have such ties or kinship.

It will also bring new family ties, in addition to the one already established, the brother's family will become his own, in other words,

he will have grandparents, parents, uncles, cousins, all the relationships will be established as if he were a consanguineous brother.

DIVERGING CURRENT

Although the majority view is favorable, there is a divergent current, which in turn was presented in the same trial discussed above, claiming that this form of recognition is inapplicable, following the ruling that denied the appeal filed with the São Paulo State Court of Justice.

In his unsuccessful vote, Justice Raul Araújo defended and preached the impossibility of applying for fraternal recognition, interpreting the judgments of the Superior Court of Justice in a restrictive way, which mentioned “possession of a child”, dealing only with paternal relationships.

This interpretation is due to the fact that at no previous time in the history of the STJ has such a specific case been discussed, dealing with “siblings”/collaterals, only cases of filiation, the relationship between parents and children, which is now consolidated and impossible to discuss.

In his minority opinion, he built up the thesis that collateral, whether consanguineous or affective, requires a common ancestor, something that did not occur in this case, as the parents had not presented a claim for recognition. It would therefore be

It was essential that the parents had established a previous relationship so that the “siblings” could claim this recognition.

This is seen in the terms of art. 1.592 of the CC/2002: “Persons coming from a single trunk, without descending from each other, are related in a collateral or transversal line, up to the fourth degree.”

In turn, this is also provided for in the scope of art. 1.594 of the same Code:

Art. 1.594. In the straight line, the degrees of kinship are counted by the number of generations, and in the collateral line, also by the number of generations, **ascending from one of the relatives to the common ascendant, and descending until another relative is found.**

Therefore, there is no possibility of determining this recognition without there being a prior common ascendant link, since the link made with the collateral, in this case the sibling, is generated to the detriment of the previous and already existing relationship, which in this case would be the paternal one.

Thus, in the words of the Honorable Minister: "There is therefore no second-degree kinship, in the sibling category, conceived autonomously, without prior common filiation". In this way, it is an indispensable requirement for the request to be accepted and for the fraternal bond to be recognized, without leaving aside the requirement of existing affection.

At other times we can also see his defense of the previous existing bond, whether it be blood or recognized in court:

[...] Thus, the necessary prerequisite for the constitution of a kinship, natural or by affinity, in the second degree collateral line does not exist: the previous filiation, by biological or socio-affective link, to a common ascendant. [...]

[...]As was well pointed out by the aforementioned Court, the affection that results in the recognition of the bond of kinship is that established on the basis of the possession of the state of being a child, and it is not possible, out of the blue or autonomously, to obtain the recognition of the bond of affective brother of another, without first having constituted, by natural or civil means, a bond of common paternity, even if of different origins. [...]

Although he took an opposing view, he did not fail to defend the validity and importance of socio-affective ties in his vote, but only established that in collateral cases it was necessary to have the common trunk already established, or at least proof of the parents' interest in having established this family nucleus during their lifetime.

CONCLUSION

That said, it can be concluded that this collateral family link should be applied regardless of any previous link to a common ascendant, following the majority and winning current of the ruling that led to this article being written.

I am defending a very important institute that has taken years to develop and be applied in today's society, and which is now consolidated and accessible in all the country's courts and case law, namely the socio-affective bond.

Numerous times the Superior Court of Justice has defended affection in the contemporary family nucleus with "claws and teeth" and how it should be present, and there is no way of dealing with family law without covering or at least addressing this very important relationship and privileging it more and more, which Justice Marco Buzzi does impeccably.

And as well as all the positions and theses, there is a contrary theory, also presented, which despite not being favorable still protects the institute of socio-affectivity, showing that it is rooted in the country's legal system and consequently in Brazilian families, and should be used whenever possible to protect and safeguard this group that governs society, the family.

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