

Adoption from care in Norway

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Introduction

In Norway – a social-democratic welfare state in the north of Europe with 5.4 million citizens, of whom 1,118,608 are children (aged 0–17) – adoption as a child protection measure is hardly used. Norway is consistently ranked high on indexes of child well-being (UNICEF, 2019), due process for children (CRIN, 2020) and respecting children’s rights (Falch-Eriksen and Skivenes, 2019; KidsRights Foundation, 2019; Clark et al, 2020); however, it remains of concern that a majority of the around 8,800 children that, on any given day, are under a formal care order of the state will spend much of their childhood in public care (Helland and Skivenes, 2019). Children that cannot be reunified with birth parents may be considered for adoption, but adoptions against parents’ wishes are decisions that are difficult, complex and crucially important for all parties. Adoption results in a child’s legal bonds with their parents, which are established at birth, being transferred to new parents. This type of intervention, as all execution of state force against individual citizens, requires statutory basis and sound justifications. In Section 4-20 (‘Deprivation of parental responsibility. Adoption’) of the Norwegian Child Welfare Act 1992 (CWA), the terms for removal of parental responsibility and adoption as a child protection measure are regulated. It is the county social welfare boards that are given the authority to make decisions about adoption from care and all other intrusive, non-voluntary child protection interventions (see Skivenes and Søvig, 2017). Although Norway is a country that is considered to have child-centric systems (Skivenes, 2011; Hestbæk et al, 2020), only around 50–60 children are adopted from care per year, despite it being widely held and documented that adopted children grow up having better prospects for their adult life than children in continuous foster care (see NOU, 2009:21, 2012:5; for research overviews, see also Skivenes, 2010; Vinnjerlung and Hjern, 2011; Christoffersen, 2012; Skivenes and Tefre, 2012; Palacios et al, 2019). In this chapter,

we first summarise the legal provisions, policy framework and child protection system, and present results from the largest study in Norway on adoption as a child protection measure. We then consider why adoption is so rarely used in Norway and explore the position and voice of the child in policy and decision-making processes in the Norwegian context.

Guiding principles in the Norwegian child welfare system

Norway has a child protection system that is family service-oriented and child-centric (Gilbert et al, 2011; Skivenes, 2011, 2015; Falch-Eriksen and Skivenes, 2019). A basic principle is that the child protection system should be part of a broader child welfare system that provides services and therapeutic assistance to prevent more serious harm and, as a result, avoid out-of-home placements.

The Norwegian system is based on three main governing principles: (1) the best interest of the child; (2) the principle of least intrusive form of intervention; and (3) the biological principle (Skivenes, 2011; Skivenes and Thoburn, 2016). In addition to serving as a general guiding principle for the implementation of the CWA, the child's best interest is defined as a condition for consenting to an adoption by Section 4-20 of the CWA. This requires that the principle must have a decisive impact on the assessments on whether a decision to permit adoption is or is not given. The principle of 'least intrusive form of intervention' provides the procedural (and ethical) norm that any decision to intervene should seek to limit the level of intrusion in the family. This principle can be seen as a protection of parental rights against excessive state intervention. Thus, a decision to deprive birth parents of their parental responsibility, which is a prerequisite for an adoption to be considered, can only be taken if it is considered necessary in the child's current situation. As the strongest measure available in the CWA, adoption clearly evokes some controversy and confronts the fundamentals of the least intrusive principle as it contradicts the assumption that placement in care is temporary (NOU, 2016:16; Tefre, 2020). Adoption is, however, not necessarily in conflict with the idea of the least intrusive intervention because the child is already in public care and living in a foster family, and an adoption can only be undertaken if it is considered to be in the best interest of the child. The biological principle is a strong tenet in Norwegian child law, to the degree that 'serious neglect' has to be determined before changes can be made to this 'natural' constellation (Stortinget, 1991/92; see also Skivenes, 2002, 2010). The biological

principle in Norwegian child welfare builds on the normative idea that it is a fundamental social value in Norwegian society that children grow up with their parents. The state's responsibility is considered secondary to the parents', and even if children cannot stay with their parents, their shared biological ties mean that the state should facilitate continued contact. The possibility of adoption would typically place the biological principle and the principle of the least intrusive intervention in direct conflict with the child's interests to have stable care. This tension is formulated by the Norwegian Supreme Court (1997: 534) in a 1997 decision on adoption, which stated that 'weighting these interests against one another is the greatest challenge in making judgments about adoption'. Research has also shown that arguments related to maintaining biological ties through contact, and of biological parents' negative reactions to an adoption, are given weight in the Supreme Court's assessments, though less space is given to discussing and reflecting on the arguments assumed to be present within the 'biological presumption' (Skivenes, 2010; NOU, 2012:5; Helland and Skivenes, 2019).

Legislation, policy and processes

Decisions to present a case about adoptions from care to the county social welfare boards lie within the responsibility of the municipal child protection agencies.¹ There are ten boards in Norway, covering one or two counties each. A decision from the boards can be appealed without further reasons or costs before the Norwegian courts of justice.² The regional state agency responsible for state-funded child welfare and family counselling services (Bufetat) issues an adoption permit. For an adoption to be decided by the boards, the child has to be under official state care by a care order (pursuant to ss 4-12 or 4-8 (2)(3) CWA), according to Section 4-20 (2)(3) of the CWA and Section 12 (2) of the Adoption Act.³ A care order can be made simultaneously with the deprivation of parental responsibility and adoption, though this rarely happens in practice (Helland and Skivenes, 2019). Only the child's foster parents are allowed to adopt the child following an assessment of their fitness to continue to care for the child.

In 2010, legislation providing for post-adoption contact was introduced (s 4-20a, of the CWA). The provision gives the boards, and subsequently the courts, the opportunity to authorise adoption and, at the same time, to grant contact rights to the biological parents (and *only* biological parents). Prior to this, on several occasions, the Norwegian Supreme Court (1990, 1997) had encouraged Norwegian

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legislators to make post-adoption contact available in the legislation (see also Skivenes, 2010).

The basic conditions for such post-adoption contact to be granted are that the prospective adopters' consent to contact and, importantly, that limited contact is considered *in the best interest of the child*. Section 4-20a is naturally closely connected to Section 4-20 on deprivation of parental responsibility and adoption, and should be included in the best interest assessments when a decision by Section 4-20 is made, though if, and only if, limited contact is considered to be in the child's best interest. A lack of consent to contact of the prospective adopters cannot be taken into consideration by the judicial decision-makers as an argument against adoption. In short, the *right* to contact is limited in the sense that arranging contact cannot be forced and the child protection system has no ability to sanction the parties for not upholding the visitation rights (Barne- og likestillingsdepartement, 2009/10). While the amendments to the legislation allowing for post-adoption contact have been interpreted as a measure to encourage more adoptions from care, both the Norwegian government and the Supreme Court have emphasised that consent to post-adoption contact does not cause a lowering of the threshold for adoption (NOU, 2009:21; Skivenes, 2009; Barne- og likestillingsdepartement, 2009/10; Tefre, 2020). However, in our survey of decision-makers' attitudes and knowledge about adoption, we found that well over half of the child protection workers (60 per cent) and board decision-makers (55 per cent) responded that they felt that having the option of post-adoption contact makes adoption more accessible as a measure. This implies that experience within the practice field is nonetheless that the threshold has been lowered (Helland and Skivenes, 2019). However, there is no demonstrable causal effect of the implementation of post-adoption contact on adoption rates.

There has been increased political attention to adoption as a measure in the child protection system since 2000 (Tefre, 2020). In an analysis of policy documents and legislation, Tefre (2020: 1) shows that:

First, research and expert discourse gained influence in the framing of adoption policy over time. Second, the ethical response to this knowledge base has been to shift attention from shared family needs to the child's individual and developmental needs. There are signs that legislators view adoption in relation to children as independent legal subjects with rights.

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In 2012, the Raundalen Committee composed of prominent child protection experts in Norway, delivered an expert report, mandated by the government (NOU, 2012:5). Chapter 10 of the report discusses adoption as a child protection measure and concludes: ‘Based on developmental psychological perspectives and the research-based knowledge of vulnerable children, as we have explained several places in this report, there is a basis to claim that adoption should be a measure that the child protection system considers in cases involving long-term placements’ (NOU, 2012:5: 130). A sober estimate is that between one third and one fifth of the children in care in Norway are in long-term placement, which amounts to 3,000–4,500 children.

Data on adopted children and children in care in Norway

There is a scarcity of research focusing on all aspects of adoptions in Norway and this is particularly evident when it comes to the recent phenomenon of adoptions from care (NOU, 2009:21: 40). In the Act on Child Welfare 1953, there was no legal basis for adoptions from care without parental consent (NOU, 2000:21: 203), and nor was it an option through the Guardianship Act 1986. Both provided legal provisions to deprive parents of their parental responsibility but this was not as a step in an adoption process (Bendiksen, 2008). However, in a study of all appeal cases pertaining to deprivation of parental responsibility decided by the Ministry of Social Affairs between 1954 and 1965, Benneche (1967) found that in six out of 64 cases, adoption was the result. In other words, case law had allowed for adoptions, a custom that was further supported by a circular from the Department of Social Affairs in 1954. In a decision on the principle from 1982, the Norwegian Supreme Court confirmed that deprivation of parental responsibility with the prospect of adoption against the parents’ will was legal.

Until around 1960, the majority of adoptions in Norway were of Norwegian nationals. In the years following, international adoptions grew while the number of national adoptions declined. This was a result of, on the one hand, a more liberal policy on abortion and a better and more progressive welfare schema nationally, and, on the other hand, an increasingly distressed global scene due to war and crisis (Gärtner and Heggland, 2013). From 1975, the number of international adoptions grew steadily but the years 2000–10 saw a steep decline (see Table 9.1).⁴ As seen in Table 9.1, most Norwegian adoptions are now adoptions of stepchildren, with a much smaller

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number being voluntary and non-voluntary adoptions from care. Only a handful of children are freed for adoption by their biological parents each year. Statistics on adoptions from care are uncertain up until 2011, and there are no official statistics on these adoptions from before 2006 (collated into the category of ‘other adoptions’). After 2006, statistics may include voluntary adoptions from care and persons above the legal age. Relying on data from the boards, the number of adoptions in 1993 and 1994 were 25 per year (NOU, 2000:12: 205). The number of non-voluntary adoptions from care were at the same level in 2011, with 27 granted adoptions by the boards (see [Table 9.1](#)), while in 2015 and 2018, the number of granted adoptions increased to 62 and 50, respectively.

Who are the children being adopted in Norway?

In a study from 2019 (Helland and Skivenes, 2019), all decisions made by the boards in the years 2011 to 2016 on adoption applications from care were studied, constituting a total of 283 cases concerning 302 children. During this period, 285 children (94 per cent of all children in the cases) aged three months to 17 years were adopted from care. Half were aged between two and four years old. The median age of those adopted was four years, and for the 17 who were not adopted, the median age was three years. A total of 72 per cent of the adopted children had been placed with the prospective adopters (their foster parents) before turning one year old. Most of the children (82 per cent) were removed from their birth parents before the age of one and the median age at placement with the foster parents who adopted them was three years. They had lived with the adoption-seeking foster parents for a median of three years. Two thirds had one or more full or half-siblings, and of these, 70 per cent of their siblings were in care or adopted. Among the 283 cases that were decided by the boards, only 19 concerned a sibling pair (all resulting in adoption).

The majority of the children (52 per cent) were born of two Norwegian-born parents and 16 per cent of the children had two parents born outside Norway. A total of 14 per cent had one Norwegian-born parent and one parent born outside of Norway, while 13 per cent had one Norwegian-born parent and one parent whose origin was unknown. Country background was not available in all cases, but from available data, most non-Norwegian parents were from African or Asian countries (at least 65 per cent). A smaller proportion of parents had a European background (at least 32 per

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Table 9.1: Child population, number of children in care at year end, number of adoptions per year and type of adoption (children 0–17 years) (rates per 100,000 children)

	2000	2005	2006	2010	2011	2015	2018
Child population	1,060,857	1,092,728	1,096,003	1,114,374	1,118,225	1,127,402	1,122,508
Children in care	5,124 (483)	6,002 (549)	6,116 (558)	6,975 (626)	7,270 (650)	9,008 (799)	8,868 (790)
Adoptions from care							
<i>Voluntary</i>			23 ^a (2)	16 (1)	6 (< 1)	6 (< 1)	5 (< 1)
<i>Non-voluntary</i>					27 (2)	62 (5)	50 (4)
Other adoptions							
<i>International adoptions</i>	657 ^b (62)	704 ^b (64)	438 (40)	343 (31)	297 (27)	132 (12)	77 (7)
<i>Stepchild adoptions</i>	105 ^b (10)	138 ^b (13)	79 (7)	88 (8)	85 (8)	90 (8)	72 (6)
<i>Other national adoptions</i>	30 ^c (3)	48 ^c (4)	8 (< 1)	3 (< 1)	4 (< 1)	8 (< 1)	0 (0)

Note: Statistics on reunifications and average stay in care (years) are not available. ^a Not differentiated between voluntary and non-voluntary adoptions from care. ^b Not differentiated by age, the data could possibly include persons aged over 18 years. ^c Including adoptions from care, both voluntary and non-voluntary. Not differentiated by age, the data could include persons aged over 18 years.

Source: Statistics Norway (2020a, 2020b, 2020c, 2020d), Helland and Skivenes (2019) and Bufdir (2019, 2020)

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cent), weighted towards parents from Eastern European countries. A total of 23 per cent of the cases were with consent from one or both parents (mother = 10 per cent; father = 9 per cent; both of the parents = 4 per cent). Among these were cases in which parents gave consent under the condition of visitation rights (Helland and Skivenes, 2019).

Research in a national and international context

A considerable body of research is available from other countries, especially the US and England, where there is a longer tradition of adoptions from care (see [Chapters 5](#) and [2](#), respectively). In the Norwegian context, there are very few studies on adoptions from care (for an overview of relevant Norwegian research, see Helland and Skivenes, 2019). One of the few studies is that of Skivenes and Tefre (2012). They reported that when presented with a vignette depicting a situation of a child in long-term care, a much higher proportion of the English (97.8 per cent) and American (95.5 per cent) social workers suggest adoption than Norwegian (61.7 per cent) social workers. The authors explain these findings as related to the lack of guidelines and clear instructions for the use of adoption as a child welfare measure in Norway when compared to the US and England, where the social workers appeared to have a clearer conception of their role in working with children in long-term care. The most comprehensive study to date is the previously mentioned research of Helland and Skivenes (2019) on adoption decision-making based on surveys of and interviews with both the front-line workers and the decision-makers in the boards. However, few clear-cut and specific explanations emerged as to why decision-makers did or did not prefer adoption compared to continued foster care. While most decision-makers exhibited positive attitudes towards adoption and adequate levels of knowledge about adoption as a measure, the main explanatory factor appeared to be that adoption was not 'on the agenda' and there was a lack of formal guidance for practice. For the front-line workers, the lack of managerial and local political focus on adoption was seen to point to reluctance to change placement policy towards increasing adoption. The researchers concluded from the cases studied that local agencies appeared to use a high threshold when deciding whether a case should be forwarded to the boards, while the surveys also revealed that the social workers were under the impression that the boards were very strict in cases concerning adoption.

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However, presented with a vignette case about a possible adoption or continued foster care, a large majority of child protection workers ($n = 461$), experts ($n = 158$) and county board leaders ($n = 32$) chose adoption (see Helland and Skivenes, 2019; Helland, 2020). Among child protection professionals, 86 per cent opted for adoption rather than foster care. The main arguments for adoption were: the child's needs and attachment to the foster home; parents lack of change or lack of care capacity; the age of the child; and the duration of the placement. The 14 per cent who chose foster care explained that: it would be a 'closed adoption'; 'biological bonds would be broken'; there would be the need for coercion; and they would be taking into account the views of the biological parents. Among the decision-makers from the boards, the experts and the judges, 87.5 per cent of the judges and 93.7% of the experts chose adoption as the appropriate measure, giving similar arguments to the practitioners. Only a handful of board decision-makers ($n = 14$) chose foster care, giving as reasons: that the adoption was too early because it would break bonds too soon; and that maintaining contact with the biological parents could be valuable and important at later stages in the child's life.

With respect to outcomes from adoption and alternative placement options for children who cannot return safely to parents, there is as yet no body of specifically Norwegian research to inform the debates currently taking place. There is a widely held view (supported by practitioner opinions and small-scale studies) that children too often move between foster families, whether because of managerial policies or placement breakdown.

From a wide range of studies in other countries, it is generally agreed that adoption is better for children than foster care (see, for example, Christoffersen, 2012; Christoffersen et al, 2008; Skivenes and Tefre, 2012; Hjern et al, 2019; Palacios et al, 2019). Breakdown rates for children placed for adoption from care are low, less than 4 per cent, as displayed in two recent longitudinal studies of large sample in the UK by Wijedasa and Selwyn (2017) and Neil et al (2015). Of specific relevance for Norway is the Vinnerljung and Hjern (2011) administrative data-based study of the outcomes for three groups of Swedish children: 900 adopted previous foster children; 3,062 children in long-term foster care; and 900,000 children from the majority population. They concluded:

Crude outcomes for both groups were substantially weaker than for majority population peers. The foster children fell clearly short of adoptees on all outcomes; school

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performance at 15 years, cognitive competence at 18 years, educational achievement and self-support capability in young adult years, also after adjustments for birth parent related confounders and age at placement in substitute care. (Vinnjerlung and Hjern, 2011: 1902)

Among the small number of Norwegian studies is that of Berg (2010). Based on case files and in-depth interviews with Norwegian adoptive parents of 13 children adopted without parental agreement from the child protection system, as well as six of the adopted children aged 17 plus, the study reports that children had varied challenges during their upbringing, in which two had big problems, four had some problems and seven had no problems. Children and adoptive parents report that despite the difficulties they experience, the young people are generally positive about having been adopted.

Research on citizens' views on adoption from care

Skivenes and Thoburn (2017) used a survey vignette methodology to report on attitudes towards adoption from care in the general population in England, Finland, Norway and California, USA. A total of 68 per cent of Norwegian citizens chose adoption over continued foster care for a two year old well settled in his foster family. Similar positive attitudes to adoption as a child protection measure are found in a recent study, also of a representative sample of the Norwegian population (Helland et al, 2020). There is also overwhelming support from all the main actors (organisations, unions and decision-making bodies) in the field of child protection. In 2009, the Government issued a white paper arguing a need for increased use of adoption as a child protection measure: 'A total of 107 consultation bodies have agreed to the proposal (white paper). 104 of the consultation bodies support the main ministry proposal to facilitate increased use of adoption as a child protection measure' (NOU, 2012:5:123).

Views on adoption from children and parents

To a large degree, available research has left unanswered questions about: if and how Norwegian children are involved; whether children give their consent; whether children have views on foster care versus adoption as a placement alternative; and whether children have a view on their contact with the birth family. A study of *all* judgements on adoptions from care made in Norway in a six-year period (2011–16) involving

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children aged 4–17 years old, a total of 169 judgements (McEwan-Strand and Skivenes, 2020), concluded that, overall, children are absent in the decision-makers' justifications and conclusions about adoption. However, those that were heard wished to be adopted. The children interviewed for the small-scale in-depth study of Berg (2010) (referred to earlier) were also generally positive about having been adopted.

The statements on adoption as a child protection measure made by the national Association for Foster Children, the Organisation for Foster Parents and *BarnevernsProffene* (young persons with experience from foster care) are important. They were generally positive towards adoption as a child protection measure as long as the requirements as stated in relevant laws are met. The statements, however, emphasise that the child's right to express their opinion and to be involved in the decision must be respected. The associations further noted several times that the narrow interpretation of 'family' is problematic and that siblings and other family members besides the biological parents can be important for the child:

Furthermore, one should have in mind the child's attachment to other relatives but the biological parents, such as siblings, grandparents, aunts/uncles and others. Those relations can be utterly important for the future development and safety of the child. The Association for Foster Children thus would like to see a bigger emphasis on those factors in care order and/or adoption proceedings. (Association for Foster Children, 2012)

With respect to the views of biological parents, the Organisation for Parents in the Child Protection System has commented negatively on adoption without parental consent as a child protection measure: 'Forced adoption/adoption should not be subject of the child protection services' (see: <https://barnevernsforeldre.no/om-organisasjonen/utviklingsplan/>). It is not explicitly stated, but we interpret the statement as meaning that they wish for other instances to prepare adoption cases, that is, adoption should not be a measure initiated under the CWA. The Organisation for Foster Parents (2012) have expressed that they are positive about adoption.

A study of foster parents ($n = 864$) showed that about 20 per cent have considered adoption, and half of them have seriously considered it (Havik, 2007). The aforementioned small-scale study of adoptive parents (Berg, 2010) showed that they are very satisfied with the adoption.

Conclusion

Adoption is a measure that, like all child protection interventions, should be undertaken with the highest regard to the specific child's best interests, and in accordance with due process and decision-making processes that fulfil criteria for rational reasoning and critical reflection. Adoption as a child protection measure should only be considered for children that cannot be reunified with birth parents or wider family, and thus will grow up in public care. However, from a child's perspective, adoption provides a new chance for permanence in a family for life. An international, interdisciplinary group of recognised researchers in the field published an article about adoptions in child protection in 2019 (Palacios et al, 2019), and they conclude that adoption must be considered as a measure to secure the child's interests because it provides permanence and belonging for the child on a lifetime basis. They argue that adoption is a legitimate model for the alternative care of children given that adoption decisions follow conventions and laws and keep the focus on the children's best interests:

The one thing that is agreed is that the child's safety, needs, welfare and development are the core issues to consider not only in the short term, but also for the rest of their lives. Embedded within this is a fundamental recognition that family life is the basic structure that enables this, and if that cannot be with the family of origin, an alternative permanent family solution must be found. (Palacios et al, 2019: 68)

In 2009, the Norwegian government issued a white paper arguing for increased use of adoption as a child protection measure, with overwhelming support from all relevant consultation bodies. The question that remains unanswered is why, in the light of these official reports going back for some years, supportive opinions from professionals and the public, and an increasing children's rights focus, there are still so few adoptions from care in Norway. To complement the research already available on the decision-making process, more research that has a child perspective in its approach may point to a way forward that builds on the strengths of Norway's existing position as a child-centric society that ensures high performance on the rule of law.

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Notes

- ¹ Decisions made by the boards are pursuant to the CWA, the Act Relating to Municipal Health and Care Services, and the Act Relating to the Control of Communicable Diseases. For details on the functioning of the boards, see Skivenes and Søvig (2017).
- ² Access to judicial review of cases decided in the boards are regulated in Chapter 36 of the Dispute Act 2005 (see also s 7–24 CWA).
- ³ Section 4–20 of the CWA (‘Deprivation of parental responsibility. Adoption’) has the following wording:

If the county social welfare board has made a care order for a child, the county social welfare board may also decide that the parents shall be deprived of all parental responsibility. If, as a result of the parents being deprived of parental responsibility, the child is left without a guardian, the county social welfare board shall as soon as possible take steps to have a new guardian appointed for the child.

When an order has been made depriving the parents of parental responsibility, the county social welfare board may give its consent for a child to be adopted by persons other than the parents.

Consent may be given if

- a) it must be regarded as probable that the parents will be permanently unable to provide the child with proper care or the child has become so attached to persons and the environment where he or she is living that, on the basis of an overall assessment, removing the child may lead to serious problems for him or her and
- b) adoption would be in the child’s best interests and
- c) the adoption applicants have been the child’s foster parents and have shown themselves fit to bring up the child as their own and
- d) the conditions for granting an adoption pursuant to the Adoption Act are fulfilled.

When the county social welfare board consents to adoption, the Ministry shall issue the adoption order. The Social County Board may decide for a child to be adopted when the parents’ consent, as far as the conditions in sub-section three are fulfilled.

- ⁴ For a broader historical perspective on the development, see NOU (2009: 33–7).

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