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Regional Separatisms and Independence Referendums in Europe³

Abstract

This paper explores the issue of regional separatisms and referendums on self-determination in Europe. These disintegration processes run counter to the ongoing universal trends of globalisation and global market creation. Although international legal documents define the self-determination as a right vested only in sovereign nations, aspirations of this kind are in practice increasingly exhibited by minority groups and nations. Furthermore, in some situations we are witnesses of double standards on self-determination, particularly remarkable in the case of Kosovo and Metohija. However, these disintegration processes are not confined to the states of the former Eastern Block, but are also present in the well-established and developed democracies boasting a broad spectrum of minority protection rights. These trends are particularly present in southern member-states of the EU, eroding its very foundations built on the idea of a united Europe as a multiethnic, multilingual and multicultural creation.

Keywords: regional separatism, referendums, globalization, selfdetermination, dezintegration, international law, double standards.

The world of today is marked by the dynamic and vigorous integration processes, dominated by a Western-style model of globalisation and the ever growing interdependence of contemporary societies. Yet,

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despite or mainly because of this, the 21st century globalised world is confronted with the rising disintegration challenges generated by regional separatisms, threatening to radically reshape the existing political map and relations of geopolitical power.⁴ Consequently, integration and disintegration are both global political trends running concurrently.⁵

Antonio Cassese's was correct in saying that: „In every corner of the globe peoples are claiming the right to self-determination“ (Cassese 2011). But in this pursuit, the majority of them faces unsurmountable hurdles related to the specific question addressed in this paper : „To what extent do international law-makers embrace the political postulate of self-determination in the sphere of legal norms“ (Institute of National Strategic Studies 1999). Actually, in the background of all separatist processes and disintegration tendencies, or associated issues, stands the collision of some international legal norms. To be more specific, stemming from the existing body of international legal formulations is the basic contradiction and mutual exclusion of the principle of peoples' self-determination and the principle of respect for territorial integrity and political unity of internationally recognised states, as major principles in international law. Namely, there is an evident lack of legal, but above all, political will to arrive at better solutions with more precise formulations in international law and to secure their full universally binding observance.

Peoples' right to self-determination is an obscurely defined and ambivalent international legal standard, subject to possible dual interpretation as it concerns minority groups, whether they be racial, religious or other. While, on the one hand, word-for-word interpretation precludes any right to secession, on the other hand the so-called logical interpretation allows for its approval and justification under certain conditions. Cassese refers to such dual and ambiguous structuring of the formulations of self-determination, featuring both excessive literary style and dry legal jargon: „...we will continually confront such formulations which characterize self-determination with the flowery and

4 More on the parallel unfolding of the integration and disintegration processes in the modern world, or the globally driven dialectic of contradictory processes of integration, disintegration and reintegration, see: Mirović (2014).

5 It is interesting to note that the same conclusion was stated in the Washington-based Institute of National Strategic Studies Strategic Forecast for 1999, i.e. already at the turn of the 21st century. However, it emphasizes that such global dynamic is not only a threat to stability and progress, but also to the interests of the US and its allies (See: Institute of National Strategic Studies Strategic 1999: 1–18).

loose rhetoric of freedom and liberation; and yet couch its operative terms in the dry and tight language of legal disclaimers, substantially excluding any secession from existing States (Cassese 2011).“

Namely, the principle of self-determination (or self-defining) (Cassese 2011: 5) had long featured in international relations only as a political principle assuming the status of international law standard only in the 1960's and, according to some interpretations, the 1970 UN Declaration on Friendly Relations accords the right to secession to racial and religious groups - but only implicitly, on the strength of the aforementioned logical interpretation of its so-called saving clause.⁶ That said, in Cassese's reading, it is applicable only in specific circumstances and must be exercised with rigour: „It can be said the the Declaration on Friendly Relations links external self-determination with internal self-determination only in exceptional circumstances. A racial and religious group may attempt secession, a form of external self-determination when it is evident that internal self-determination is not feasible in any way“ (ibid, 144). The author of this paper believes that a triple pre-requisite is to be fulfilled for the secession, the most radical form of external self-determination, to be legitimate and thus, recognized. This triple pre-requisite implies: first, that the central authority of some sovereign state persistently contests the rights of a religious or racial group to representation, i.e. that it refuses to grant participatory rights to religious or racial groups; but this by itself does not provide sufficient basis for the legitimacy of secession, but there should be, second, a gross, flagrant and systematic violation of their fundamental human rights, and the third pre-requisite, absence of any prospect whatsoever of reaching a peaceful settlement within a given state structure. (ibid.) In their statements, Western campaigners for the Kosovo independence,

6 UN Declaration on Friendly Relations from 1970 deals mainly with external self-determination, while internal self-determination remains of secondary importance; the latter and its link with the former aspect of self-determination are dealt with only indirectly by the so-called saving clause, whose interpretation leads to the conclusion that „since the possibility of the fragmentation of territorial integrity is not completely dismissed, it is logically recognized“ (Cassese 2011: 143). Hence, although largely overlooked, this clause is of great importance. It reads: „Nothing in the foregoing shall be construed as authorising or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour“ (Ibid.: 137).

when attempting to legitimize secession they facilitated for the local Albanians and simultaneously de-legitimize the same right to Crimea, we can discern an intention to rely on this „implicit logic“ in interpreting the earlier-mentioned saving clause from the 1970 UN Declaration. However, whether Cassese's rigid triple pre-requisite and his requirement for exercising rigour in giving consent to secession have been met or not, it cannot – although as we are witnessing it is common practice nowadays – be subject to arbitrary arguments motivated by daily politics. In any case, the issue of the degree of discrimination against some people needed for legitimate secession remains open.

The above, less than precise formulations of self-determination were the product of a compromise between, on the one hand, the Western standpoint and the position of other states, on the other. Western countries at the time claimed their commitment to the universal recognition of self-determination not only due to their liberal ideologies, but also because they saw in it an instrument of leverage against socialist regimes. But, as we can see today, for example in the case of Crimea, Western states have demonstrated that they are prepared to digress from their positions and their ideologies when these stand at odds with their geostrategies and geopolitics. It is important to note that, despite some affirmation in international law of the right to self-determination, including the right to secession, and despite the western states' proclaimed commitment to its universal applicability, in state practices of a vast majority of states, and of the western states themselves, a negative attitude to secession prevailed until the end of the 20th century, together with the practical denouncement of any rights to its exercise, since the principle of territorial integrity and sovereign rights were regarded as supreme values.

In the recent years and decades, with the exception of the case of Yugoslavia, attention has been in particular on those desintegration and separatist processes and tendencies in the countries of the so-called First World or Western European countries, but also in the western hemisphere in general, and then such processes and attempts in Eurasian countries. However, it is important to say the same or similar tendencies occur outside these areas, or elsewhere in the world.

When in the early 1990's, we saw the collapse of all East European, socialist multinational federations, in two of the three of these states (with the only exception being Czechoslovakia, where there was a civi-

lized i.e. peaceful and agreed separation of Czech Republic and Slovakia), namely in the case of Soviet Union and Yugoslavia, not only did the central, federal structures disintegrate, but the process also spread to some new post-Soviet and post-Yugoslav states. When it comes to the post-Soviet space, one should only recall the proclamation of unrecognized Armenian Republic of Nagorno-Karabakh on the territory of Azerbaijan; then, also the creation of internationally unrecognized so-called Predniestrian-Moldovan Republic; the case of Gagauzia, which was a *de facto* independent state in 1991-1994 and was subsequently integrated in Moldova's system as an autonomous region; then the case of Georgia and its breakaway territories of Abkhazia and South Ossetia that were recognized by Moscow who entered into a war with Georgia in 2008; establishment of a *de facto* independence of the Chechen so-called Republic of Ichkeria in the First Chechen War etc.; until the latest case of the secession of Crimea from Ukraine and its reintegration in the Russian Federation, and then, the ongoing creation by pro-Russian separatist forces of two new self-proclaimed and unrecognized states on the territory of East and South-East Ukraine – the so-called Donetsk People's Republic of Lugansk People's Republic and their unification in the newly-formed joint state called New Russia (or Novorossiia). In other words, the majority of post-Soviet states are characterised by different types of inter-ethnic conflicts. Beyond that, as some studies done in early 1980's showed, virtually all former Soviet republics had, and some still have, some kind of border dispute with their neighbours. (Payin, 1996)

Also, with the breakup and disintegration of SFR Yugoslavia, in the form of its complete fragmentation along administrative boundaries, the principle formulated by the famous Badinter Commission (in its Opinion no.3, the implying that the boundaries between former federal units were to be considered as state borders and that they could not be changed by force),⁷ disintegration processes did not cease but continued to unfold in one way or another within the majority of the newly-created ex-Yugoslav. Moreover, strengthening of some separatist hotspots raises justified fears exist that they are still ongoing. But, apart from a few desintegration processes faced by Croatia and FYR Mace-

7 Arbitration Commission chaired by Robert Badinter, President of the French Constitutional Court, operating in the framework of the Peace Conference on Yugoslavia and established by the EEC Council of Ministers in 1991, in order to settle legal disputes arising from the dissolution of SFR Yugoslavia.

donia and the fact that a certain disintegration paradigm was incorporated into the constitutional foundation or organisational structure of BiH – given the unsustainability of the formula of two entities and three constitutive ethnicities, the Republic of Serbia is actually the only one that underwent several cycles of desintegration – from the fragmentation of SFRY, collapse of SRY and the State Union of Serbia and Montenegro, to its own internal desintegration manifested in the illegal secession of Kosovo and Metohija. On top of that, some disintegration forces continue to be active on the territory of Serbia, so even today, it remains exposed to constant separatist threats and challenges of its further territorial dispersion (potential hotspots of disintegration such as Vojvodina, Raška, South Serbia, etc.). Hence, it can be reasonably stated that the long-lasting process of the destruction of Serbian space, in which Serbia itself is being decomposed, has already reached the point of the „destruction of the nation’s territorial and mental nucleus“⁸.

The case of Kosovo and Metohija’s secession, carried out illegally by the local Albanians in 2008, without a referendum and in the form of the unilaterally declared independence of the so-called Republic of Kosovo, is in fact a striking example of the enforced and illegal desintegration of a sovereign and internationally recognized state – the Republic of Serbia, which besides is also one of the founding countries of the United Nations as a state successor of the former SFRY. It is particularly important to underscore that in the case of Kosmet, for all the denials coming from its chief constructors, an international precedent was created since it was the first time in practice that the right to self-determination including the right to secession was granted to a national minority – Kosovo Albanians – that was previously applicable only to constitutive nations, and even then not in the form of self-proclaimed independence. Despite arduous efforts by Western officials, intended to show tby arbitrary interpretations of international legal norms, that the so-called Kosovo would be an isolated case with no bearing on other, similar cases, what emanated immediately for some and later for others was that the Kosmet case had set a most critical

8 Commenting on the process of destruction of the Serbian space back in 2001, Miloš Knežević gave a warning projection which subsequent developments proved right. He said: „If the dismemberment of the second Yugoslavia signified the destruction of the Serbian space within the re-composed Yugoslav space, then the partition of Serbia and Montenegro would mean the destruction of the least conceivable union of Serbian lands, and the potential decomposition of Serbia would mean the destruction of the territorial and mental nucleus of the nation“ (Knežević 2002: 133).

precedent with far-reaching consequences and the inevitable boomerang effect. Hence, today's narratives of the same origins to the effect that the so-called Kosovo and Crimea cannot be compared, remain – especially in the light of the latest events, nothing but empty rhetoric. Clear as it is that these cases cannot be compared, this is not because of the calculated and strained interpretation that in the case of Kosovo the right to secession is justified by large-scale violence and the alleged systematic discrimination against the Albanian minority, while, in the other, Crimean case it does not apply, supposedly because of a „more democratic treatment“ of the Russian and pro-Russian population of the peninsula.⁹ Actually, their comparison is not possible due to the fact that these two territorial units had a different formal and legal status (with different degrees of autonomy) within the frameworks of the state systems of Serbia and Ukraine. Unlike the Autonomous Province of Kosovo and Metohija, Crimea – as an Autonomous Republic – no doubt had a certain legal and status basis for exercising the right to external self-determination. Beyond that, a democratic referendum procedure was conducted in Crimea, considered to be one of the principal indicators of the legitimacy and legality of secession acts in some other cases i.e. some of the former Yugoslav republics (Mirovic 2014).

But, for all their intensity, dynamics and depth, Western integration processes have not succeeded in eliminating the separatist, desintegrative tendencies that exist within Western states themselves – like the old and well-known cases of the Basque Country, Northern Ireland and Quebec and some other re-kindled hotspots of desintegration like, for example, the ethno-linguistic divisions in Belgium, the case of Catalonia, Scotland, even France, then the aboriginal populations in Australia, US and Canada, etc; until the most recent examples of disintegration tendencies of Texas, Alasca or the Region of Veneto in Italy.

9 In the run-up and immediate aftermath of the Crimean referendum on the region's attachment to Russia, various representatives of western institutions, but also some well-known, politically active thinkers and analysts as western propaganda advocates, were voicing sharp criticism of the referendum itself and Russia's stance during the Ukraine crisis (like Zbigniew Brzezinski and Bernard Henri Lévy) on a daily basis, aimed at – it seems – challenging the legitimacy of the local population's right to external self-determination. Media content analysis clearly points that way. See for example „OSCE: Referendum in Crimea „illegal“, source: Tanjug, Politika, 13 March 2014, p.2; „F ule: Referendum as a Threat to European Borders“, source: Tanjug, Politika, 13 March 2014, p. 2; Brzezinski (2014); Brzezinski (2014a); Ana Otašević, „Kad političari ratuju metaforama: Tako su i Srbi postali nacisti“, 09.03.2014, <http://www.politika.rs/rubrike/Tema-nedelje/Kad-politicari-ratuju-metaforama/Tako-su-i-Srbi-postajali-nacisti.sr.html> (22/03/2014).

But, as separatist processes and tendencies were gaining momentum and becoming particularly remarkable in Western Europe, this issue has attracted attention not only by the media and analysts, but also of scholars and researchers world-wide. Moreover, when in some Western European cases, there are serious indications that the transnational and supranational European integrations and the current globalisation model served as incentive for the internal desintegration tendencies within national borders.

When it comes to the so-called right to self-determination including the right to secession or external self-determination, we can say that this year has been marked by a certain „referendum fad“. The referendum season launch was announced for autumn 2014 with the Scottish ballot slated for September 18 and Catalonia having attempted for a while, although without much success, to secure Madrid's consent for a similar referendum in November and in the absence of consent from central Spanish authorities, the Kosovo option was not dismissed – a possibility for the Catalan Parliament to declare independence unilaterally, without a referendum (Šuvaković 2014). However, as it turned out, the season had been launched much earlier, with the successful Crimean referendum on this autonomous territory's secession from Ukraine and its integration in the Russian Federation. But, in terms of efforts to legalize an legitimize separatism, „Pandora's box“ had been opened with the considerable international recognition of the secession of Kosovo and Metohija from the Republic of Serbia.

Within a short time following the Crimean referendum, an informal and multiday on line referendum in the Northern Italian Region of Veneto was organised. Although such ballot-casting has no legal effect, it showed great support by the local population to demands for organising a fully-fledged referendum. According to results released by the media, more than 89% of the Veneto region residents voted in favour of its independence from Rome and statements by independist activists clearly indicate the main reasons for such a sentiment of the region's citizens were economic crisis and fiscal pressures by the central authorities in Rome.¹⁰ Following boisterous campaigns by unionists and independence supporters in Great Britain, in the referendum held on 18 September 2014, Scots rejected the independence option by a ma-

10 Source: “89% of Veneto residents vote for independence from Rome”, RT News, Mart 23, 2014, <http://rt.com/news/venice-votes-independence-italy.585/>. (31/03/2014).

jority of 55,3% votes (the electorate had some 4,3 million eligible voters, with a turnout rate of 84,6% or 3.619.915 people).¹¹ However, since London pledged – provided Scots decided to stay within the common state - greater powers to be transferred to the Scottish parliament in the sphere of finance, tax and social policy, it remains to be seen what further steps will be taken to follow up on this pre-referendum promise, particularly in view of the latest outcries for greater powers among the English and the Welsh. It became evident that the issue of Scotland gained enormous importance, particularly since it was an affair concerning not only Britain and Scotland, but also the EU as a whole and given that the future of a major global actor was at stake and thus, global power relations, too. But also because the outcome of the Scottish referendum – as a potential precedent in international relations in case of a „yes“ vote, was impatiently awaited by many other regions harbouring separatist aspirations within Europe and elsewhere in the world.

Similar separatist aspirations are harboured in the Spanish region of Catalonia, where the movement for independence was created in early 20th century. In 1931, a coalition of the Catalan nationalist parties won the largest majority of votes in the local elections, prompting Spanish authorities to accord broad-based autonomy with many independent institutions to the region. Some time later, during Franco's dictatorship regime, these institutions and the autonomy of Catalonia were completely dissolved. After the end of Franco's dictatorship, Catalonia's autonomy was restored in 1977. Ever since, political forces supporting independence have been in power in Catalonia. Such sustained overwhelming position of the nationalist parties in Catalonia has resulted in the rising support to independence among the region's citizens. Mass demonstrations were staged in 2012 and 2013 with over one million people participating. Protesters clearly demanded the separation of Catalonia from Spain by peaceful, democratic means. They called for a referendum to vote for the independence from Spain. Another milestone in the recent history of Catalonia is September 27th, 2012,

11 Although British government initially claimed that the referendum on independence would be outside the purview of the Scottish Parliament, an agreement with the Scottish government was eventually reached (the so-called: Edinburgh Agreement, signed on 15 October 2012) on the referendum and the temporary granting of power to the Scottish Parliament for its slating (done by a Royal decree). After that in March 2013, a draft Law on the Referendum of Independence of Scotland was passed, defining the terms of its implementation and 18 September was set as the date of the referendum. The Scottish Parliament adopted the Law on 14 November 2014, and a month later, the Queen of Britain gave it her consent.

when the Catalan Parliament decided to officially grant citizens the option to have their say on independence in a referendum. Although the decision was passed with a two-thirds majority, central authorities in Spain perceived it as a fundamental derogation of constitutional principles, particularly of Article 8 which guarantees the territorial integrity of Spain and, should such attempts materialise, allows for military deployment to preserve the state unity (Carrera, 2014). The decision that caused much concern to the Spanish authorities was passed in 2005, when as many as 90% of the Catalan MPs voted in favour of amendments to the Region's Statute and the proclamation of the Catalan nation. However, although the Catalan government passed a decision on holding of a consultative referendum on 9 November 2014, the Spanish Constitutional Court ruled that Catalans do not have the right to vote directly on this issue. Still, Spanish Prime Minister Rajoy called this attempt „pseudo-referendum“ that failed to meet any democratic requirements. (Mofett, 2014). On this occasion he reiterated his position that Catalans could not exclusively vote on an issue which concerned all Spanish citizens.

Independence aspirations exist, although to a lesser degree, also in the region of South Tyrol in Northern Italy. As research carried out in this northern region of Italy shows, a large majority of the local citizens does not feel Italian nor has any common identity features with the rest of Italy. (Marchetti, 2014). Also, it appears that the large majority of the South Tyrol residents are German-speaking. One of the co-founders of the separatist party Süd-Tiroler Freiheit, Eva Klotz, last year initiated a survey on the possibility of a referendum on self-determination, in which a vast majority of respondents supported this initiative. (Marchetti, 2014). In the same spirit, a member of the academic community Marco Brunazzo sees the problems in South Tyrol arising from identity issues already at school-age due to a clear division according to mother-tongue, which inevitably renders social integration in the region impossible. It is crucial to emphasize that the distribution of public functions and jobs follows the ethnic quota, meaning that for each Italian-speaking employee a German-speaking one must be employed, too (Marchetti 2014). Yet, among the South Tyrolese, there are those groups that do not support full independence from Italy, but only greater autonomy from Rome. One of them is no doubt the South Tyrolean People's Party which in its Programme of Action emphasizes the need for greater autonomy for the sake of preserving identity. This

party has the highest representation in the South Tyrolean Parliament, and its members sit in Italian and European Parliament. These are the reasons behind comparisons of regional separatism in South Tyrol with Catalonia.

In the context of these tendencies of growing regional separatism and the current „referendum tide“ in West European states, even statements that today’s Western Europe is characterised by economic integrations, on the one hand, and by political disintegration on the other, may appear acceptable at their face value (Alesina, Spolaore, Warciarg, 2000). However, we believe such assessments to be rather simplistic. First, despite rising regional separatism, integration processes driven by western countries progress in the economic, political and military domains and furthermore, in the sphere of culture, with a tendency of spreading into the realm of identity. On the other hand, when it comes to political desintegrations, it has to be taken into account that they are inevitably accompanied by not only social but invariably also greater or smaller economic desintegrations and the same would, no doubt, hold true for possible political disintegration of some Western European countries. Among other, recent public debates about the future of Scottish EU membership in case of a „yes“ vote also pointed in this direction: could it then retain its membership or have to reapply for it. Some even contended that it would have to undergo the whole complicated entry procedure as all other countries striving to join the EU. However, this view, probably developed for the purposes of London’s campaign, does not seem very realistic, as this is a territory in which European norms and standards are already in place. Yet, some EU officials in their addresses took a step further in discouraging the Scottish population to vote for independence. Thus, for example, European Commission President José Manuel Durão Barroso alerted that some member-states would surely stand in the EU way of Scotland (Kostić 2014). Yet, there were some far more realistic estimations like the one that „independent Scotland would swiftly become the fully-fledged member of the international community“ and that, regarding its EU membership „political will to find a less complicated way than claimed by some will be shown“¹²

12 This assessment was made in the run-up to the referendum by British foreign policy analyst and international affairs expert for South East Europe James Ker-Lindsay. See: „Zašto škotski referendum brine Balkan“, RTS, 13 September 2014, www.rts.rs/page/stories/sr/story/09/10/2014.

Regionalisation is a product of contemporary processes of globalisation and European integrations, as a parallel and closely associated process. The fostering of regionalisation inside and across national borders, and the formulation of the concept „Europe of regions“, has led to strengthening of the sub-national, regional identities, which was also seen as a way of weakening the national sense of identity in Europeans, and consequently, creation of better conditions for the development and acceptance of the supranational, common European identity (Mirović 2012). Due to these processes, “national cultures are being squeezed between a broader popular culture and briskly reviving regional cultures... Regionalism, whether within or across national borders, is Europe’s current and future dynamic, particularly for those who see themselves belonging more to ‘Europe’ than to a nation state of clouded origins or dubious boundaries“ (Newhouse 1997: 75). This has certainly given impetus to the revival or emergence of disintegrational tendencies within nation-states across the European Union.

The way in which this regional separatism is interlinked with the economic dimension of the Western-type, neoliberal globalization model was precisely explained by Alberto Alesina and a group of authors. Their thesis is that in an environment of free trade and a global market, the creation of small and homogenous political entities could bring economic benefit to the small cultural, linguistic or ethnic groups. Conversely, in the global context marked by trade restrictions regime, political borders assume greater importance as they determine market size and territorially large countries reap economic benefits. One of the arguments they put forward in support of this thesis is the fact that the history of the nation-state creation and secession was dictated by the prevailing trade model. (Alesina, Spalore, Warciarg 2000: 1276) Motivation for the development of regional separatism in the EU, in their opinion, lies in the fact that “linguistic, ethnic, and cultural minorities feel that they are economically ‘viable’ in the context of a truly European common market, thus they can ‘safely’ separate from the home country”). (Ibid.: 1293)

Considering the aforesaid, it can be concluded that regional separatism and separatist movements in Europe have been on the rise over the past decades. These tendencies are present not only in new democracies but also in the more developed ones. This is particularly manifest in southern EU member-states, where advocates of separation believe that their demands will not jeopardize their status in a broader

economic context. These demands have resulted in differences in the interpretation of the right to self-determination, which in all international documents is guaranteed only to constitutive nations, but today we are increasingly seeing involvement of ethnic minorities in the processes of separation from sovereign states. Precedents, principally that of Kosovo and Metohija have largely contributed to this trend by paving the way for more radical demands of minority groups within sovereign states. It also steered ambitions toward referendums in order to decide on potential separation from states populated by different ethnic and minority groups. In conclusion, it can be said that these radicalised separation demands and tendencies put at stake not only the survival of existing nation-states, but also the idea of a united Europe made up of myriad national, linguistic and cultural identities.

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