

PROTECTION OF HUMAN RIGHTS IN THE EUROPEAN UNION: GENERAL PRINCIPLES

Hryb A.M.,

*associated professor of International and European Law Department
National University «Odesa Law Academy»,*

Ph.D in Law

ORCID: 0000-0002-8464-9821

Hryb A.M. Protection of human rights in the European Union: general principles.

Respect and protection of human rights is one of the main areas of activity of the European Union in accordance with the objectives and principles of this organization, enshrined in the founding treaties. Any European country that adheres to the principles of liberty, democracy, respect for human rights and fundamental freedoms, as well as the rule of law, may apply to the EU with an application for membership, as provided for in the Treaty on European Union. The criteria that candidate countries must meet for accession to the European Union (the Copenhagen criteria) were approved at the meeting of the European Council in Copenhagen in June 1993. According to them, membership in the EU from the point of view of political standards requires the candidate country to have stable institutions that guarantee democracy, the rule of law, respect for human rights and the protection of minorities. Countries wishing to become members of the EU must not only enshrine the principles of democracy and the rule of law in their constitutions, but also implement them in everyday life. The constitutions of the applicant countries must guarantee democratic freedoms, including political pluralism, freedom of speech and freedom of conscience. They must establish democratic institutions and independent judicial bodies, bodies of constitutional jurisdiction, which create conditions for the normal functioning of state institutions, the holding of free and fair elections, periodic changes of the ruling parliamentary majority, as well as recognition of the important role of the opposition in political life. There is no integrated mechanism for the protection of human rights in the European Union. The national system of human rights protection operating in the Member States is complemented by a system of protection at the European Union level. In addition, the protection of human rights and freedoms is carried out within the framework of the Council of Europe, of which all Member States of the European Union are members. The formation of a system of legal norms at the European Union level that ensure the protection of human rights and freedoms has occurred gradually, and this system has significant potential for its development. Over the past 60 years, the European Union has come a long way in establishing its own system of human rights protection: from a complete rejection of the idea that the protection of human rights can take precedence over the provisions of EU law, to the development of its own catalogue of human rights, which became the Charter of Fundamental Rights. In addition, the entry into force of the Lisbon Treaty introduced legal grounds for the EU to join the European Convention on Human Rights. All this raises the question for Ukraine of the need to improve its own system of human rights protection, since, according to the criteria for accession to the EU, only a state with an appropriate level of respect for human rights and fundamental freedoms can become a full member of the European Union.

Key words: human rights, protection of human rights, European Union, supranational EU institutions, Court of Justice.

Гриб А.М. Захист прав людини у Європейському Союзі: загальні засади.

Повага та захист прав людини є одним із основних напрямів діяльності Європейського Союзу відповідно до цілей та принципів цієї організації, закріплених в установчих договорах. Будь-яка європейська країна, яка дотримується принципів свободи, демократії, поваги прав людини та основних свобод, а також верховенства права, може звернутися до ЄС із заявою про членство, як це передбачено Договором про ЄС. Критерії, яким мають відповідати країни-кандидати на вступ до Європейського Союзу (Копенгагенські критерії), були схвалені на засіданні Європейської Ради у Копенгагені у червні 1993 р. Згідно з ними членство в ЄС під кутом зору політичних стандартів вимагає від країни-кандидата стабільності інститутів, що гарантують демократію, верховенство права, повагу права людини і захист меншин. Країни, які бажають стати членами ЄС, повинні не лише закріпити принципи демократії та верховенства права у своїх конституціях, а й втілювати їх у повсякденне життя. Конституції країн-заявників мають гарантувати демократичні свободи, включаючи політичний плюралізм, свободу слова і свободу совісті. Вони встановлюють демократичні

інститути та незалежні органи правосуддя, органи конституційної юрисдикції, що створює умови для нормального функціонування державних установ, проведення вільних і справедливих виборів, періодичної зміни правлячої парламентської більшості, а також визнання важливої ролі опозиції у політичному житті. В Європейському Союзі не існує цілісного механізму захисту прав людини. Національну систему захисту прав людини, яка функціонує в державах-членах, доповнює система захисту на рівні Євросоюзу. Окрім цього, захист прав і свобод людини здійснюється в межах Ради Європи, учасниками якої є всі держави-члени Євросоюзу. Формування системи правових норм на рівні Євросоюзу, що забезпечують захист прав і свобод людини, відбулося поступово, а ця система має значний потенціал для свого розвитку. За останні 60 років Європейський Союз пройшов тривалий шлях становлення своєї власної системи захисту прав людини: від повного відхилення ідеї, що захист прав людини може користуватися перевагою перед положеннями права ЄС, до розробки власного каталогу прав людини, яким стала Хартія основних прав. Крім того, набуття чинності Лісабонським договором запровадило правові підстави для приєднання ЄС до Європейської конвенції з прав людини. Все це ставить перед Україною питання про необхідність удосконалення власної системи захисту прав людини, оскільки відповідно до критеріїв вступу до ЄС лише держава із відповідним рівнем дотримання прав та основних свобод людини може стати повноправним членом Євросоюзу.

Ключові слова: права людини, захист прав людини, Європейський Союз, наднаціональні інституції ЄС, Суд ЄС.

Formulation of the Problem. The Universal Declaration of Human Rights and the Charter of the United Nations were among the first international documents to formalize historical concepts of rights that are inherent in many legal systems. The Universal Declaration of Human Rights was also a precursor to international human rights treaties, such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Human rights treaties exist at the global and regional levels. If a state has ratified both an international and a regional treaty, such as the American Convention on Human Rights, it is obligated to simultaneously fulfill both sets of obligations. In addition to those rights provided for by customary international law, the specific legal obligations of an individual state with respect to human rights depend on the relevant treaties that it has ratified. International human rights conventions or treaties apply only when the convention or treaty is «in force» (usually after reaching a certain number of States Parties) and only to those countries that have ratified or acceded to the particular convention or treaty.

The degree of scientific and theoretical development of the problem. Modern international relations in the field of human rights protection have been studied by both domestic and foreign scientists. In particular, the mechanism of ensuring human rights by international bodies, EU bodies, individual elements of such a mechanism are highlighted in the works of M. Antonovych, M. Baymuratov, M. Buromensky, V. Butkevych, L. Hrytsayenko, I. Hryshchenko, K. Zabigayl, A. Zubareva, O. Zadorozhny, S. Isakovich, V. Kavun, I. Lytvynenko, V. Muravyov, P. Nedbayl, I. Nikolayk, P. Rabinovych, L. Tymchenko, M. Cherkes, etc. At the same time, the above studies either partially reveal the features of European standards in the field of human rights protection, or do not take into account the provisions of the updated legislation in this area. However, today there is still a need to study and detail the mechanisms for protecting human rights in the EU for the effective protection of rights and interests.

The aim of the article is to analyze and characterize the main European and international legal acts on the protection of human rights, as well as the mechanism for the protection of human rights in the EU.

Presentation of the main material. Any European state that adheres to the general principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law has the opportunity to apply to the EU for membership, as set out in Articles 6 and 49 of the Treaty on European Union [1]. The criteria that states must meet in order to join the European Union – the Copenhagen criteria for membership – were approved at the meeting of the European Council in Copenhagen in June 1993 [2]. According to them, membership in the EU requires from the candidate state the stability of state institutions that guarantee democracy, the rule of law, respect for human rights and the protection of minority rights, etc. States wishing to become members of the EU must not only enshrine the fundamental principles of democracy and the rule of law directly in their national constitutions, but also implement them in the everyday life of society.

The constitutions of these applicant states must guarantee democratic freedoms, including political pluralism, freedom of speech and freedom of conscience and religion; establish democratic institutions and independent judicial bodies and other bodies of state power, which contributes to the normal functioning of state institutions, the holding of free and fair elections, etc. It is worth noting that at

the first stages of its formation, the European Union did not pay sufficient attention to the issues of protecting human rights within the union itself. According to supranational bodies, these issues were outside the scope of economic integration, therefore, there is no list of human rights in the founding treaties of the EU itself. The provisions of European Union law were interpreted as having priority over the provisions of the national constitutions of the Member States regarding human rights and freedoms. Therefore, the supranational institutions of the EU were not afraid that the Member States would demand compliance of the provisions of EU law with their domestic legislation regarding the protection of human rights. On the other hand, the powers of the EU institutions in the field of protecting human rights were not so extensive. That is, the treaties establishing the European Communities do not actually address the protection of human rights. Some earlier, more ambitious plans for European integration, the European Defence Community and the draft Statute of the European Political Community, to some extent, addressed this issue. However, these plans failed, and the founding fathers of the EU wanted to limit the agreement only to the needs of the economic community [3, p. 231].

They probably also thought that since the scope of Community law was essentially limited to economic and technical issues, there would be no human rights problems. Case law proves the opposite. The Court of Justice of the European Union did not have so-called criminal jurisdiction, so its possibilities regarding the protection of human rights and freedoms were limited. When considering cases, it only occasionally had to deal with individual political and social rights, so the Court of Justice of the European Union did not consider the issue of human rights protection on a permanent basis, but it was it that at one time began the process of expanding the EU's competence to the sphere of human rights protection. To a certain extent, it was the national constitutional courts that exerted pressure on it, and did not recognize the priority of European Union law if it did not guarantee the protection of human rights [4, p. 15]. Over time, two independent systems of human rights protection began to form in Europe in parallel, both within the Council of Europe and in the EU, while this system of protection was incomplete and, to some extent, partial, because at the first stages of its formation it covered mainly economic rights.

Gradually, with the strengthening of European integration in the political sphere and the sphere of justice and home affairs, one can observe the emergence of decisions of the courts of the EU Member States, where they refused to partially recognize the principle of the primacy of EU law over domestic legislation on human rights and freedoms. Because of this, the Member States and Community bodies paid more attention to the issue of human rights protection. At the same time, regulatory documents gradually appeared, in which attempts were observed to define fundamental human rights and freedoms within the framework of the European Communities. The main ones are the European Social Charter of 1961, the Declaration of Fundamental Rights and Freedoms of 1989, the Charter of Fundamental Social Rights of Workers of 1989 and others. Finally, for the recognition of human rights as a component of the law of the European Communities, an important decision was the adoption of the Single European Act [5] in 1986.

It referred to the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms as the main normative document for guaranteeing democratic values in Europe. The European Union recognizes the 1950 European Convention [6], but is not a signatory to it, so it is not an integral part of European Union law. It is worth noting that there is a certain competition between the Council of Europe and the EU on this issue, although the EU does not claim to play a decisive role in the protection of human rights in Europe. The Court of Justice of the EU once opposed accession to the European Convention without amendments to the constituent documents of European integration associations. An important fact in support of this position was that such accession would involve the implementation of norms without taking into account the specifics of the European Union itself and its law. This was also influenced by the absence in the 1950 European Convention of a comprehensive list of social, economic and cultural rights, which were reflected in another normative act of the Council of Europe, namely the 1961 European Social Charter [7], which was revised in 1996. At that time, the Court did not intend to subordinate its jurisdiction to the European Court of Human Rights, since EU citizens have the opportunity to apply to the judicial bodies of the EU and the 1950 European Convention for the protection of their rights, but unfortunately, in such a case a conflict arises, because then the question arises whose decision will have priority in resolving the case.

Over time, this issue was resolved by the signing of the Lisbon Agreements and the Charter of Fundamental Rights of the European Union in the 2007 version. However, even before the Lisbon Treaty was signed, certain steps had been taken to separate the jurisdiction of the European Court of Human Rights and the Court of Justice of the EU, by recognising that the European Court of Human Rights had the right to an adequate remedy if persons on EU territory were able to challenge before the Court acts of EU institutions that infringe human rights guaranteed by the 1950 European Convention. The

Maastricht Treaty on European Union [8] contained several provisions on the protection of human rights. Article 2 states that the EU is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These are common to all Member States in a society where pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men are priorities. Article 3 of the Treaty on European Union: objectives of the EU. In its "relations with the wider world", the EU shall contribute to "the eradication of poverty and the protection of human rights, in particular the rights of the child, and to the strict observance and development of international law, including respect for the principles of the Charter of the United Nations".

Article 6 enshrines the principle of respect for fundamental rights and freedoms. It states that fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they are enshrined in the constitutional traditions common to the Member States, constitute general principles of Union law [9]. Article 21 of the Treaty on European Union: the principles which inspire the Union's external action. These principles are democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, equality and solidarity, and respect for the principles of the 1945 Charter of the United Nations and international law. In Article 21, the EU upholds the principle of the "indivisibility of human rights and fundamental freedoms", committing itself to considering economic and social rights as important as civil and political rights; Article 205 of the Treaty on the Functioning of the European Union: general provisions on the Union's external action. This article stipulates that the EU's international action must be guided by the principles set out in Article 21 of the Treaty on European Union.

The Regulation of the European Parliament and of the Council establishing a Neighbourhood, Development and International Cooperation Instrument [10] was adopted in the context of the Multiannual Financial Framework for the years 2021–2027, as set out in the Communication 'Modern budgets for a Union that protects, empowers and defends'. It defines the main priorities and the overall budgetary basis for the EU's external action programmes under the heading 'Neighbourhood and the World', including the establishment of a Neighbourhood, Development and International Cooperation Instrument. The purpose of the Regulation is to develop and international cooperation, to support and promote the values and interests of the Union worldwide in order to achieve the objectives and principles of its external action, as set out in Articles 3, 8 and 21 of the Treaty on European Union.

The Treaty on the Functioning of the EU [11], in addition to the norms regarding EU citizenship, enshrines such rights and freedoms of EU citizens as the right to free movement and permanent residence in the territory of the Member States, the right to vote and be elected in municipal elections of the Member State and elections to the European Parliament, as well as the right to diplomatic and consular protection, and the right to appeal to the institutions or bodies of the EU. This regulatory act enshrines the freedom of movement of workers and the principle of equal pay for men and women. Attention is also paid to guarantees for the protection of human rights and freedoms, such as compensation for damage caused to an individual by the activities of the EU and its officials. The decisions of the Court of Justice of the EU define the basic principles of the protection of individual rights and freedoms in the EU. In order to ensure rights and freedoms in the EU, the Community Charter of the Fundamental Social Rights of Workers has a special status in EU law [12].

The Charter defines a list of fundamental rights and freedoms that are recognized for every person residing in the territory of the EU, and defines civil, political, economic, social and cultural rights. Thanks to this regulatory act, they all acquired the same legal regime. The Charter provides for a new, so to speak, view of man and his place in the world, this is confirmed by the fact that the preamble declares that man and his fundamental interests are at the center of the EU's activities. This is a slightly different approach, because most international legal documents take the subject of subjective law as the basis for the classification of fundamental rights, and the classification of rights and freedoms in the Charter is based on the protection of fundamental values, such as human dignity, personal freedom, equality and solidarity. Separate sections are devoted to citizenship and justice. Fundamental rights and freedoms of a person are divided into several categories: personal rights and freedoms; political rights and freedoms; economic, social and cultural rights; fundamental duties, and they are supplemented by guarantees of personal rights and freedoms.

The Charter also provides for provisions on abuse of rights, and provides for the prevention of excessive restrictions on the rights and freedoms of others by public authorities or private individuals. Rights and freedoms in the European Union are guaranteed by institutional, procedural and material measures. Institutional guarantees include judicial protection and extrajudicial protection mechanisms such as the European Ombudsman, the Commission, the European Data Protection Supervisor, the General Supervisory Body within Europol, diplomatic and consular representations of Member States in

third countries. Procedural guarantees include: the right of a person to a fair and public hearing within a reasonable time by an independent and impartial tribunal; the right to legal aid; the presumption of innocence; the principle of non-criminal prosecution for an offence for which a person has already been convicted or acquitted in the Member States (Article 50); the prohibition of deprivation of liberty for debt, and others. Material guarantees consist in compensation for damage caused to individuals by other persons. Physical and legal persons, EU bodies and Member States bear material liability. The material liability of physical and legal persons is regulated mainly by the internal law of the Member States. Of course, since its foundation, the European Union has taken many steps towards the formation of its own system of human rights protection. From the complete non-recognition of the idea that the protection of human rights can have primacy over the provisions of EU law, to the development of its own list of human rights contained in the Charter of Fundamental Rights. In addition, since the signing of the Lisbon Treaty [13], the legal basis for the EU's accession to the European Convention on Human Rights has been introduced. We are convinced that the EU experience poses important and relevant questions for Ukraine to gradually improve its own system of human rights protection, since according to the criteria for accession to the EU, only a state with an appropriate level of respect for human rights and fundamental freedoms has the opportunity to become a full member of the European Union.

Modern governments should never violate human rights, but they should also ensure that people's rights are respected and properly fulfilled, in accordance with applicable law. For example, it is one thing to have the right to education enshrined in a constitution, a declaration, but if our governments do not create the right conditions to ensure that schools operate and equal opportunities for education are available to all children, that right will not be realized. Similarly, without a system that allows for safe and free voting, our right to vote in the election of our government becomes meaningless. At the international level, national governments meet in the United Nations to discuss and set various standards of human rights. For example, the UN Universal Declaration of Human Rights lays the foundation for all our human rights – it is the basis for all international human rights laws and treaties that have been made since then. The responsibility to protect human rights extends to: states, as well as national governments, represented by ministers, diplomats, etc.

They have a primary responsibility to promote, protect, respect and fulfil human rights. They owe this responsibility to everyone within their territory or to those who may be subject to their jurisdiction, control or influence. Our governments have enormous influence over the realization and denial of human rights through the laws they make, and judicial systems must provide citizens with avenues for justice and redress for violations of these rights; the UN has a variety of functions that help us uphold agreed global human rights standards, identify violations and seek remedies and encourage their improvement; business and other "non-state" actors. Business has a significant impact on human rights. Strong, enforceable laws and regulations are essential, but businesses have a duty to respect rights and can also actively follow human rights guidance and ensure that robust systems are in place to ensure access to remedies in the event of disputes or violations. Other non-state actors include associations or groups that can influence the protection of human rights; human rights defenders and the human rights movement. We all have the right to protect and promote human rights, and this can take many forms. People who take the time to promote or defend human rights, whether as part of their work or in their own time, are part of the human rights movement – a broad range of people and organisations who want to see a commitment to freedom, respect, equality and dignity protected in our laws and reflected in the very systems and structures on which our societies are based.

The EU supports the principles contained in the instruments on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognised human rights and fundamental freedoms. While the primary responsibility for the promotion and protection of human rights lies with States, the EU recognises that individuals, groups and organs of society play an important role in advancing the cause of human rights. The work of human rights defenders includes: documenting violations; seeking remedies for victims of such violations by providing legal, psychological, medical or other support; combating the culture of impunity that conceals systematic and repeated violations of human rights and fundamental freedoms; mainstreaming a culture of human rights and information about human rights defenders at the national, regional and international levels.

The EU recognises that the special procedures of the UN Human Rights Council (and the individuals and groups that implement them: special rapporteurs, special representatives, independent experts and working groups) are vital to international efforts to protect human rights defenders, due to their independence and impartiality and their ability to act and speak out on violations against human rights defenders worldwide and to carry out country visits. While the Special Rapporteur on Human Rights Defenders has a specific role in this regard, the mandate of other special procedures is also relevant to human rights defenders. EU actions in support of special procedures will include: encouraging States

to accept in principle requests for country visits under UN special procedures; facilitating, through EU missions, the use of UN thematic mechanisms by local human rights communities and defenders, including but not limited to facilitating the establishment of contacts and the exchange of information between thematic mechanisms and defenders; as the mandate of a special procedure cannot be fulfilled in the absence of adequate resources, EU Member States will support the allocation of sufficient funds from the general budget to the Office of the UN High Commissioner for Human Rights.

States nevertheless bear the primary responsibility for ensuring that defenders can carry out their work freely and in a safe and enabling environment. In recent years, a wide range of experts and mechanisms in UN Member States – including special procedures, treaty bodies, the Human Rights Council and the Office of the High Commissioner for Human Rights – together with regional human rights bodies and experts, have called on States to implement laws that clearly guarantee the rights enshrined in the Universal Declaration of Human Rights [14], and to review and amend laws that restrict, stigmatise or criminalise the work of defenders. Despite this, only a few States have comprehensively incorporated the Declaration into national legislation, while many States continue to implement legislation that restricts the exercise of fundamental rights and freedoms, rights that are crucial for defenders to carry out their legitimate work.

In those countries where specific laws or policies to protect human rights defenders have been developed, a lack of resources or political will is an obstacle to their effective implementation. Often one set of human rights needs to be balanced against another. For example, the Universal Declaration of Human Rights explains that everyone has the right to freedom of expression, but it also explains that everyone has the right to be safe and free from discrimination [17]. This means that our right to freedom of expression does not extend to words that incite hatred, violence or harm someone else. Other rights, on the other hand, are “absolute”. For example, torture is never acceptable under any circumstances – there is no justification for it and it is strictly prohibited in any form. In general, a distinction is made between judicial and non-judicial remedies. The judicial protection of human rights against violations by international institutions falls under the jurisdiction of the Court of Justice of the EU. Non-judicial institutions that ensure the protection of individual rights include the European Ombudsman, the EU Agency for Fundamental Rights and EU bodies such as the European Commission and the Council of the EU. It is worth noting that the functions of these bodies in the field of individual rights relate to the protection of individual rights from violations by the bodies of the European Union, and not by the EU Member States. Non-judicial bodies, whose competence includes the protection of individual rights, should be distinguished as follows.

Depending on the purpose of their establishment: specialized institutions for the protection of individual rights: the European Union Agency for Fundamental Rights, the European Union Ombudsman, bodies of general competence: the European Commission or the Council of the EU. By the subject of the appeal to the institution for the protection of rights: the European Union Ombudsman, regarding the appeal of individual individuals, the European Union Agency for Fundamental Rights, which provides for the appeal of individual bodies of the European Union, and the Council of the EU regarding the appeal of only EU Member States [16]. The Council of the European Union is the main body of the EU, in terms of the performance of various functions. It is considered the main law-making body of the EU. It is important to note that the problem of the protection of individual rights is not a priority, but only one of the functions of this EU body.

The main executive body of the EU is the Commission of the European Union, which carries out the function of investigating illegal actions and can apply penalties to violators. The object of illegal actions may be a violation by a member state of the requirements imposed on it by the founding treaties of the EU, including violations in the field of human rights. The basis in this process, within the framework of the investigation carried out, is the right of both individuals and legal entities to apply to the Commission regarding illegal actions committed by a member state. The procedures for the protection of human rights applied by the Commission should be considered quite effective, as they combine both informational and representative functions. Since the entry into force of the Maastricht Treaty, a certain mechanism for the protection of human rights has been created in the EU, namely the European Union Ombudsman. The basis for the functioning of this institution is, first of all, democratic principles that are embedded in the foundations of their functioning, and which provide the opportunity to effectively protect and defend human rights in each of the states [15, p. 185]. The European Ombudsman institution largely complements the legislative authorities. In general, in addition to analyzing complaints, the Ombudsman can independently initiate an examination of a situation that may lead to unlawful actions against the rights and freedoms of an individual. The Ombudsman's powers include such issues as, for example, complaints against central and local state authorities of the Member States; complaints against the actions or inaction of state justice bodies; complaints against the activities of individual

entities. If it is not possible to achieve a non-conflict resolution of the issue, the European Ombudsman can send recommendations on resolving such an issue.

Conclusions. It is clear that the above-mentioned mechanisms for the protection and defense of individual rights have certain shortcomings, and although an individual has a guaranteed right to appeal to the European Ombudsman and the EU Agency for Fundamental Rights, at the same time, these institutions do not have the proper authority to adopt decisions that must be strictly and immediately implemented. These bodies play only an indirect role in non-conflict resolution of problems. Therefore, it is important to say that the decisions made do not have a generally binding legal effect and there is a high probability that they will not be considered. A holistic mechanism for the protection of human rights is still being formed in the European Union, because the national system of human rights protection operating in the Member States is only supplemented by the system of protection at the EU level. In addition, the protection of human rights and freedoms is carried out within the Council of Europe, and all Member States of the European Union are its participants. The formation of a system of legal norms at the EU level that guarantee the protection of human rights and freedoms has taken place step by step over decades, and this system will continue to be improved, in accordance with the development and needs of society itself.

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