

CHAPTER 385

OMBUDSMAN ACT

To provide for the appointment of an Ombudsman with power to investigate the administrative actions taken by or on behalf of Government and other authorities, and for other purposes connected therewith.

(25th July, 1995
15th November, 1995)*

Enacted by ACT XXI of 1995, as amended by Act XVI of 1997.

PRELIMINARY

1. This Act may be cited as the Ombudsman Act.

Short title.

2. In this Act, unless the context otherwise requires -

Interpretation.

"Ombudsman" includes, to the extent of any delegation under section 27 of this Act, a person so delegated;

"action" means any action relating to a matter of administration and includes failure to act;

"public officer" has the same meaning as is assigned to it by section 124 of the Constitution;

"statutory body" means any corporation or other body corporate established by law;

"local council" means a local council established under the Local Councils Act. Cap. 363.

APPOINTMENT

3. There shall be appointed as an Officer of Parliament a Commissioner for Administrative Investigations to be called the Ombudsman, who shall be appointed by the President acting in accordance with a resolution of the House of Representatives supported by the votes of not less than two-thirds of all the members of the House:

Appointment of Ombudsman.

Provided that when a person who is not a member of the House of Representatives is elected to be the Speaker of the House of Representatives he shall not be treated as a member of the House for the purpose of establishing the majority required by this section.

4. (1) A person shall not be qualified to be appointed to the office of Ombudsman if he is a member of the House of Representatives, a member of a local council, or if he is a public officer.

Disqualification and incompatibilities.

(2) The office of Ombudsman shall be incompatible with the

*See subsection (2) of section 1 of the Act as originally enacted, which subsection has been omitted under the Statute Law Revision Act, 1980, and Legal Notices 102 and 160 of 1995.

exercise of any professional, banking, commercial or trade union activity, or other activity for profit or reward.

(3) The Ombudsman shall not hold any position which is incompatible with the correct performance of his official duties or with his impartiality and independence or with public confidence therein. The Ombudsman shall declare to, and seek the approval of, the Speaker of the House of Representatives to any positions, trusts or memberships which the Ombudsman considers do not affect impartiality, or independence and public confidence, and which it is desired to retain during the term of office.

Term of office.

5. (1) Except as otherwise provided in this Act, an Ombudsman shall hold office for a term of five years, and shall be eligible for reappointment for one consecutive term of five years.

(2) Unless his office sooner becomes vacant, a person appointed as an Ombudsman shall hold office until his successor is appointed.

(3) An Ombudsman may at any time resign his office by writing addressed to the President.

Removal or
suspension from
office.

6. (1) An Ombudsman may at any time be removed or suspended from his office by the President, upon an address from the House of Representatives supported by the votes of not less than two-thirds of all members of the House, praying for such removal on the ground of proved inability to perform the functions of his office (whether arising from infirmity of body or mind or any other cause) or proved misbehaviour, and the provisions of the proviso to section 3 of this Act shall also apply for the purpose of establishing the majority required under this subsection.

(2) At any time when Parliament is not in session, an Ombudsman may be suspended from his office by the President acting in accordance with his own discretion for inability to perform the functions of his office or misbehaviour proved to the satisfaction of the President; but any such suspension shall not continue in force beyond two months after the beginning of the next ensuing session of Parliament.

Filling of vacancy.

7. (1) If an Ombudsman dies, or resigns from office, or vacates his office or is removed from office, the vacancy thereby created shall be filled in accordance with this section.

(2) If the vacancy in the office of an Ombudsman occurs at any time while Parliament is in session, it shall be filled by the appointment of the Ombudsman by the President on the recommendation of the House of Representatives in accordance with section 3 of this Act:

Provided that if the vacancy occurs less than two months before the close of that session and no such recommendation is made in that session, the provisions of subsection (3) of this section shall apply as if the vacancy had occurred while Parliament was not in session.

(3) If any such vacancy occurs at any time while Parliament is

not in session, the President shall appoint an Ombudsman to fill the vacancy, and the person so appointed shall, unless his office sooner becomes vacant, hold office until an Ombudsman is appointed in accordance with section 3 of this Act.

8. (1) The President may -

- (a) at any time during the illness or absence of the Ombudsman, or
- (b) for any other temporary purpose where the Ombudsman considers it necessary not to conduct an investigation himself because of such circumstances, that were he a judge of the superior courts, he would abstain,

Temporary
appointment of
Ombudsman.

appoint an Ombudsman to hold office in accordance with this section, and such an Ombudsman shall be paid such salary, not exceeding the amount payable to the Ombudsman, as the President thinks fit.

(2) The power conferred by paragraph (b) of subsection (1) of this section shall be exercised only on a certificate signed by the Ombudsman to the effect that, in his opinion, it is necessary for the due conduct of the business of the Ombudsman under this Act that an additional Ombudsman should be temporarily appointed.

(3) An Ombudsman appointed under this section on account of the illness or absence of the Ombudsman shall hold office until the resumption of office of the Ombudsman, and every other Ombudsman appointed for a temporary purpose shall hold office until he performs the function assigned to him.

- (4) (a) A person shall not be qualified to be approved under this section if he is disqualified to be appointed to the Office of Ombudsman under subsection (1) of section 4 of this Act.
- (b) The provisions of subsections (2) and (3) of section 4 of this Act shall apply to a person appointed under this section:

Provided that a person appointed under this section may exercise any activity for profit or reward which is not in any way incompatible with the provisions of subsection (3) of section 4 of this Act.

9. (1) Before entering upon the exercise of the duties of his office an Ombudsman shall take an oath that he will faithfully and impartially perform the duties of his office, and that he will not, except in accordance with section 21 of this Act, divulge any information acquired by him under this Act.

Oath of Office.

(2) The oath shall be administered by the Speaker of the House of Representatives.

10. (1) Subject to the provisions of the Constitution and of any other enactment applicable thereto, and subject to the provisions of this section the Ombudsman may appoint such

Resources.

officers and employees as may be necessary for the carrying out of the functions, powers and duties under this Act. This power to appoint includes approval to the numbers of persons that may be appointed under this section whether generally or in respect of any specific duties or classes of duties, their salaries and conditions of appointment.

(2) The Ombudsman may in the conduct of an investigation engage, in a consultative capacity, any person whose particular expertise is essential to the effectiveness of the investigation:

Provided that if the consultant required is a public officer the Prime Minister may, at the request of the Ombudsman, designate the public officer to assist.

(3) Subject to the provisions of this section the Ombudsman shall be responsible for approving the level of capital equipment, furnishings, materials, and administrative activities for the carrying out of the functions, powers and duties under this Act.

(4) The finance required for the Ombudsman's salary and allowances, and for the resources described in subsections (1), (2) and (3) of this section shall not exceed a maximum amount indicated in an Ombudsplan approved by the House of Representatives and shall be a charge on the Consolidated Fund without any further appropriation other than this Act:

Provided that the Ombudsman shall present to the House by the 15th day of September of each year, an Ombudsplan which will indicate the ensuing year's activities.

(5) The salary, allowances and expenses payable to the Ombudsman shall be at rates equivalent to those applicable to a judge of the superior courts. The salary is not to be diminished during the continuance of the Ombudsman's appointment.

(6) The officers and employees appointed in accordance with subsection (1) shall before entering into the exercise of their office or employment take an oath that they will faithfully and impartially perform the duties of their office or employment, and that they will not, except in accordance with section 21 of this Act, divulge any information acquired by them under this Act. Such oath shall be administered by the Ombudsman.

Audit.
Amended by:
XVI.1997.8.
Cap. 174.

11. The accounts of the office of the Ombudsman shall be audited by the Auditor General and the Financial Administration and Audit Act shall apply.

FUNCTIONS

Application of this
Act.

12. (1) Subject to the provisions of this section, this Act applies to -

- (a) the Government, including any government department or other authority of the Government, any Minister or Parliamentary Secretary, any public officer and any member or servant of an authority as aforesaid;

- (b) any statutory body, and any partnership or other body in which the Government or any one or more of the said bodies aforesaid or any combination thereof has a controlling interest or over which it has effective control, including any director, member, manager or other officer of such body or partnership or of its controlling body (hereinafter collectively referred to as organisation); and
- (c) local councils and any committee thereof, mayors, councillors and members of staff of all local councils.

(2) This Act applies as aforesaid even when the persons to whom it applies have acted in accordance with recommendations received or after holding consultations according to law or after observing other legal requirements.

- (3) (a) This Act does not apply to the persons or bodies listed in Part A of the First Schedule to this Act.
- (b) This Act shall not apply to the bodies listed in Part B of the First Schedule to this Act, unless proof to the satisfaction of the Ombudsman is produced showing that all available means of redress have been exhausted.
- (4) (a) The Prime Minister may by order in the Gazette amend, vary or substitute the lists in Part A and Part B of the First Schedule to this Act.
- (b) No order made under this subsection shall have effect unless it has received the prior approval of the House of Representatives signified by resolution.

13. (1) Subject to the provisions of this section, it shall be the function of the Ombudsman to investigate any action taken by or on behalf of the Government, or other authority, body or person to whom this Act applies, being action taken in the exercise of their administrative functions. Functions.

(2) The Ombudsman may conduct any such investigation on his initiative or on the written complaint of any person having an interest who claims to have been aggrieved by any action as aforesaid, or where the person aggrieved has died or is for any reason unable to act for himself, of his heir or representative.

(3) Notwithstanding the provision of subsection (1) of this section, the Ombudsman may, if he considers it desirable so to do, decline to exercise his power under this section in any case where adequate means of redress are or have been available to the complainant under any other law:

Provided that the Ombudsman may conduct an investigation if satisfied that in the particular circumstances it is not reasonable to expect the complainant to resort or have resorted to such means of redress.

(4) Without limiting the foregoing provisions of this section, it is hereby declared that any Committee of the House of Representatives may at any time refer to the Ombudsman, any

petition that is before that Committee for consideration, or any matter to which the petition relates. In any such case the Ombudsman shall, subject to any special directions of the Committee, investigate the matters so referred, so far as they are within his jurisdiction, and make such report to the Committee as he thinks fit. Nothing in section 17, or section 22, or section 23 of this Act shall apply in respect of any investigation or report made under this subsection.

(5) The Ombudsman shall not proceed to investigate any complaint on the subject-matter of which proceedings are pending in a court or other tribunal, and shall suspend the investigation if any interested person shall file a demand before any court or other tribunal on the subject-matter of the investigation; provided that an investigation may be proceeded with in respect of problems of general interest contained in the complaint.

(6) Subject to the provisions of subsection (3) of section 12 and without limiting the foregoing provisions of this section, the Prime Minister may at any time refer to the Ombudsman for investigation and report any matter, other than a matter which is subject to judicial proceeding, which the Prime Minister considers should be investigated by the Ombudsman. Where, pursuant to this subsection, a matter is investigated by the Ombudsman, he shall report thereon to the Prime Minister, and may thereafter make such report to Parliament on the matter as he thinks fit.

(7) The Ombudsman shall not conduct an investigation under this Act in respect of such action or matter as is described in the Second Schedule to this Act.

(8) In exercise of his functions the Ombudsman shall not be subject to the direction or control of any other person or authority.

Time limit for
complaints.

14. (1) Nothing in section 13 of this Act shall permit the Ombudsman to investigate a complaint on an act which occurred earlier than six months prior to the date on which this Act comes into force.

(2) A complaint shall not be entertained under this Act unless it is made not later than six months from the day on which the complainant first had knowledge of the matters complained about; but the Ombudsman may conduct an investigation pursuant to a complaint not made within that period if he considers that there are special circumstances which make it proper to do so.

Rules for
Ombudsman's
guidance.

15. (1) The House of Representatives may by resolution from time to time if it thinks fit, make general rules for the guidance of the Ombudsman, in the exercise of his functions under this Act, and may at any time in like manner revoke or vary any such rules.

(2) All rules made under this section shall be printed and published in the Gazette.

Mode of
complaint.

16. (1) Every complaint to the Ombudsman shall be made in writing or orally. A complaint made orally shall be put in writing as soon as practical.

(2) Notwithstanding any provision in any enactment, where any letter appearing to be written by a person in custody or on a charge or after conviction of any offence, or by any patient of any hospital within the meaning of the Mental Health Act, is addressed to the Ombudsman, it shall be immediately forwarded, unopened, to the Ombudsman by the person for the time being in charge of the place or institution where the writer of the letter is detained or of which he is a patient. Any letter written by the Ombudsman to a person or patient so described shall be immediately forwarded, unopened, to such person or patient by the person for the time being in charge of the place or institution.

Cap. 262.

17. (1) If upon a complaint, or in the course of an investigation of a complaint it appears to the Ombudsman that, having regard to all the circumstances of the case, any investigation, or further investigation is unnecessary, he may refuse to investigate, or investigate further any such complaint.

Refusal to investigate complaints.

(2) Without limiting the generality of the powers conferred on the Ombudsman by this Act, the Ombudsman may in his discretion decide not to investigate, or, as the case may require, not to investigate further a complaint if in his opinion -

- (a) the subject-matter of the complaint is trivial; or
- (b) the complaint is frivolous or vexatious or is not made in good faith; or
- (c) the complainant has not a sufficient personal interest in the subject-matter of the complaint.

(3) In any case where an Ombudsman decides not to investigate or make further investigation of a complaint he shall inform the complainant of that decision, and shall state his reasons therefor.

PROCEEDINGS

18. (1) Before investigating any matter under this Act the Ombudsman shall inform the head of department concerned, or, as the case may require, the chief executive officer of the organisation concerned, or the mayor of the local council concerned, of his intention to make the investigation.

Proceedings.

(2) Every investigation by the Ombudsman under this Act shall be conducted in private.

(3) The Ombudsman may hear or obtain information from such persons as he thinks fit, and may make such enquiries as he thinks fit. It shall not be necessary for the Ombudsman to hold any hearing, and no person shall be entitled as of right to be heard by the Ombudsman:

Provided that if at any time during the course of an investigation it appears to the Ombudsman that there may be sufficient grounds for his making any report or recommendation that may adversely affect any department, organisation, local council or person, he shall give to that department, organisation, local council or person an opportunity to be heard.

(4) In the case of an investigation relating to a department, organisation or local council, the Ombudsman may in his discretion at any time during or after the investigation consult a Minister, head of department, chief executive, mayor or any other person who is concerned in the matter of the investigation, and the Ombudsman shall consult any Minister, head of department, chief executive, mayor or any other person who so requests or to whom a recommendation which is the subject of the investigation has been made, after the Ombudsman had made the investigation and before he has formed a final opinion on any of the matters referred to in subsections (1) and (2) of section 22 of this Act.

(5) If, during or after any investigation, the Ombudsman is of the opinion that there is substantial evidence of any significant breach of duty or misconduct on the part of any officer or employee of any department, organisation or local council, he shall refer the matter to the appropriate authority including the Police:

Provided that the Ombudsman may continue further with his investigation after having referred the matter as aforesaid.

(6) Subject to the provisions of this Act and of any rules made thereunder, the Ombudsman may regulate his procedure in such manner as he thinks fit.

Evidence.

19. (1) Subject to the provisions of this section and of section 20 of this Act, the Ombudsman may from time to time require any person who in his opinion is able to give any information relating to any matter that is being investigated by the Ombudsman to furnish to him any such information, and to produce any documents or papers or things which in the Ombudsman's opinion relate to any such matter as aforesaid and which may be in the possession or under the control of that person. This subsection shall apply whether or not the person is an officer, employee, or member of any department, organisation or local council, and whether or not such documents, papers, or things are in the custody or under the control of any department, organisation or local council.

(2) The Ombudsman shall have power to summon witnesses and to administer an oath to any witness and to any person concerned in the investigation, and require them to give evidence.

(3) Any person summoned as aforesaid who refuses, or without sufficient cause fails, to attend at the time and place mentioned in the summons, or refuses, without sufficient cause to answer or to answer fully and satisfactorily, to the best of his knowledge and belief all questions put to him by the Ombudsman, or refuses or fails, without sufficient cause, to produce any document he was required to produce by the Ombudsman shall be guilty of an offence and shall be liable on conviction to a fine (*multa*) not exceeding five hundred liri or to imprisonment not exceeding three months, or to both such fine and imprisonment:

Provided that, without prejudice to the generality of the provisions of subsection (2) of this section, no person giving evidence before the Ombudsman may be compelled to answer any question which tends to expose him to any criminal prosecution,

and every such person shall, in respect of any evidence given by him before the Ombudsman, be entitled to the same privileges to which a witness giving evidence before a court of law is entitled.

20. (1) Where the Prime Minister certifies that the giving of any information or the answering of any question or the production of any thing, paper or other document - Exemptions from disclosure.

- (a) affects the security or defence of Malta or relations or dealings between the Government of Malta and any other Government or any international organisation of States or Governments; or
- (b) is likely to damage seriously the national economy; or
- (c) involves the disclosure of the deliberations or proceedings of Cabinet or any committee of Cabinet; or
- (d) prejudices the investigation or detection of offences,

the Ombudsman shall not require the information or answer to be given or, as the case may be, the thing, paper or other document to be produced.

(2) Subject to the provisions of subsection (1) of this section, the rule of law which authorises or requires the withholding of any document, thing, or paper, or the refusal to answer any question, on the ground that the disclosure of the document, thing or paper or the answering of the question would be injurious to the public interest shall not apply in respect of any investigation by or proceedings before the Ombudsman.

21. (1) Information obtained by the Ombudsman and every person holding any office, appointment or designation under the Ombudsman, in the course of or for the purpose of an investigation under this Act, shall not be disclosed except for the purposes of the investigation and of any report to be made thereon under this Act, or for the purpose of any proceedings relating to an offence under this Act, and the Ombudsman and members of his staff shall not be called upon to give evidence in any proceedings, other than such as aforesaid, of matters coming to their knowledge in the course of an investigation under this Act. Secrecy of information.

(2) Section 133 of the Criminal Code shall apply to and in relation to the Ombudsman and his staff as they apply to or in relation to a public officer or servant referred to in section 133 of the Criminal Code. Cap. 9.

PROCEDURE AFTER INVESTIGATION

22. (1) The provisions of this section shall apply in every case where, after making any investigation under this Act, the Ombudsman is of opinion that the decision, recommendation, act or omission which was the subject-matter of the investigation - Procedure after investigation.

- (a) appears to have been contrary to law; or
- (b) was unreasonable, unjust, oppressive, or improperly

discriminatory, or was in accordance with a law or a practice that is or may be unreasonable, unjust, oppressive, or improperly discriminatory; or

(c) was based wholly or partly on a mistake of law or fact; or

(d) was wrong.

(2) The provisions of this section shall also apply in any case where the Ombudsman is of opinion that in the making of the decision or recommendation, or in the doing or omission of the act, a discretionary power has been exercised for an improper purpose or on irrelevant grounds or on the taking into account of irrelevant considerations, or that, in the case of a decision made in the exercise of any discretionary power, reasons should have been given for the decision.

(3) If in any case to which this section applies the Ombudsman is of opinion -

(a) that the matter should be referred to the appropriate authority for further consideration; or

(b) that the omission should be rectified; or

(c) that the decision should be cancelled or varied; or

(d) that any practice on which the decision, recommendation, act, or omission was based should be altered; or

(e) that any law on which the decision, recommendation, act, or omission was based should be reconsidered; or

(f) that reasons should have been given for the decision; or

(g) that any other steps should be taken,

the Ombudsman shall report his opinion, and his reasons therefor, to the appropriate department, organisation or local council, and may make such recommendations as he thinks fit. In any such case he may request the department, organisation or local council to notify him, within a specified time, of the steps (if any) that it proposes to take to give effect to his recommendations. The Ombudsman shall also, in the case of an investigation send a copy of his report or recommendations to the Minister concerned and to the mayor in the case relating to a local council.

(4) If within a reasonable time after the report is made no action is taken which seems to the Ombudsman to be adequate and appropriate, the Ombudsman, in his discretion, after considering the comments (if any) made by or on behalf of any department, organisation or local council affected, may send a copy of the report and recommendations to the Prime Minister, and may thereafter make such report to the House of Representatives on the matter as he thinks fit.

(5) The Ombudsman shall attach to every report sent under subsection (4) of this section a copy of any comments made by or on behalf of the department, organisation or local council affected.

(6) Notwithstanding anything in this section, the Ombudsman shall not, in any report made under this Act, make any comment that is adverse to any person unless the person has been given an opportunity to be heard.

23. (1) Where, on any investigation following a complaint, the Ombudsman makes a recommendation under subsection (3) of section 22 of this Act and no action which seems to the Ombudsman to be adequate and appropriate is taken thereon within a reasonable time, the Ombudsman shall inform the complainant of his recommendation, and may make such comments on the matter as he thinks fit.

Information to complainant.

(2) The Ombudsman shall in any case inform the complainant, in such manner and at such time as he thinks proper, of the result of the investigation.

24. Except on the ground of lack of jurisdiction, no proceeding or recommendation of the Ombudsman may be challenged in any court.

Proceedings not subject to review.

25. (1) No proceedings, civil or criminal, shall lie against the Ombudsman or against any member of his staff for anything he may do or report or say in the course of the exercise or intended exercise of his functions under this Act unless it is shown that he acted in bad faith.

Proceedings privileged.

(2) The Ombudsman and such persons as aforesaid, shall not be called to give evidence in any court, or in any proceedings of a judicial nature, in respect of anything coming to his knowledge in the exercise of his functions under this Act.

(3) Anything said or any information supplied or any document, paper or thing produced by any person in the course of any inquiry by or proceedings before the Ombudsman under this Act shall be privileged in the same manner as if the inquiry or proceedings were proceedings in a court.

MISCELLANEOUS

26. (1) For the purposes of this Act, but subject to the provisions of this section, an Ombudsman may at any time enter any premises occupied by any of the departments or organisations to which this Act applies as specified in section 12, and inspect the premises and, subject to the provisions of sections 19 and 20 of this Act, carry out therein any investigation that is within his jurisdiction.

Power to enter premises.

(2) Before entering any such premises an Ombudsman shall notify the permanent head of the department or, as the case may require, the principal administrative officer of the organisation by which the premises are occupied.

27. (1) The Ombudsman may delegate in writing to any person holding any office under him any of his powers under this Act, except this power of delegation.

Delegation of functions.

(2) A delegation of functions under this Act shall be without prejudice to the exercise of those functions by the Ombudsman, and shall be revocable by the Ombudsman at will.

Use of name
"Ombudsman".

28. (1) No person other than the Ombudsman appointed under this Act, may use the name "Ombudsman" in connection with any business, trade or occupation, or the provision of any service, whether for payment or otherwise, or hold himself out to be an Ombudsman except with the written consent of the Ombudsman appointed under this Act.

(2) A person who contravenes subsection (1) of this section shall be guilty of an offence and shall on conviction be liable to a fine (*multa*) not exceeding one hundred liri.

Reports.

29. (1) The Ombudsman shall annually or as frequently as he may deem expedient report to the House of Representatives on the performance of his functions under this Act to the Speaker who shall instruct the Leader of the House to lay a copy on the Table of the House at the first available opportunity.

(2) The Ombudsman may from time to time in the public interest, or in the interest of any person, or department, or organisation publish reports relating generally to the exercise of his functions under this Act, or reports relating to any particular case or cases investigated. Such reports may be published whether or not the matters dealt with in the report have been the subject of a report to the House of Representatives under this Act.

Amended by:
XVI. 1997.10.

FIRST SCHEDULE

(Section 12)

PART A

The President

The House of Representatives

The Cabinet

The Judiciary

Any Tribunal constituted by or under any law

The Commission for the Administration of Justice

The Electoral Commission

The Malta Broadcasting Authority

The Employment Commission

The Permanent Commission against Corruption

The Commission for Investigation of Injustices

The Attorney General in the exercise of the powers referred to in subsection (3) of section 91 of the Constitution

Any Counsel or Legal Adviser to the Government acting in such a capacity

The Auditor General in respect of the functions under subsections (5) and (8) of section 108 of the Constitution

The Armed Forces of Malta except as provided in Part B hereof

The Security Service.

PART B

The Public Service Commission

The Armed Forces of Malta in respect only of appointments, promotion, pay and pension rights of officers and men of the Force.

SECOND SCHEDULE

(Section 13)

Matters not subject to Investigation

1. Any matter certified by the Prime Minister to affect the internal or external security of Malta.
 2. Action taken in matters certified by the Minister responsible for foreign affairs to affect relations or dealings between the Government of Malta and any other Government or any international organisation of States or Governments.
 3. Action taken by the Minister responsible for justice under the Extradition Act. Cap. 276.
 4. The commencement or conduct of civil or criminal proceedings before any court of law or any tribunal in Malta, or of proceedings in respect of military offences under the Malta Armed Forces Act, or of proceedings before any international court or tribunal. Cap. 220.
 5. The exercise of the power of the Prime Minister under section 515 of the Criminal Code. Cap. 9.
 6. Any criminal investigation by the Police.
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