

Marta Michalczuk-Wliziło

Maria Curie Skłodowska University in Lublin

michalczukm@poczta.onet.pl

ORCID ID: <https://orcid.org/0000-0002-2107-8814>

Citizens' Legislative Initiative in Socially Controversial Matters Submitted to the Sejm of the 8th Term

Abstract: The institution of a citizens' legislative initiative has been functioning in the Polish legal order for over 20 years now. It is a very important instrument co-creating civil society because it is one of the forms enabling citizens to express themselves in topics that are of relevance for them. The subject of this article is to present parliamentary works in the field of socially controversial projects that were submitted to the Sejm of the 8th term. It is the citizens' bill amending the act on prevention and combating infections and infectious diseases in humans, as submitted by the "STOP NOP" Committee for Citizens' Initiative.

This project had already aroused huge controversy and discussion at the stage of collecting signatures among eligible citizens. Also in the Sejm, during parliamentary work, he shared the political scene and experts who have been appointed by both, supporters and opponents of the anti-vaccine movement. The MPs of the majority party in the parliament advocated the necessity to proceed with the civic project, due to the need to appreciate and respect due to every initiative of the citizens.

Keywords: citizens' legislative initiative, the legislative process, the anti-vaccine law, Sejm of the 8th term

1. Introduction

The institution of a citizens' legislative initiative has been functioning in the Polish legal order for over 20 years now, as it was introduced to the Constitution of the Republic of Poland of 2 April 1997. According to the referral regulations of art. 118 s. 2 sentence 2 of the Basic Law, the detailed procedure for the citizens' legislative initiative was included in the Act on the Implementation of Legislative Initiative by Citizens of 24 June 1999. Some fifty committees of citizens' initiatives were formed from that date, which successfully registered their drafts and submitted then to the

Speaker of Sejm¹ in order to initiate legislative procedure. Millions of Poles signed these drafts, as the awareness of the functioning of this institution and its popularity has been noticeably increasing in recent years.

The Citizens' Legislative Initiative is one of the institutions that co-creates broadly understood mechanisms of civic activity². Entitled subjects (a group of at least one hundred thousand citizens who have active electoral rights to the Sejm)³ undertake efforts and exercise diligence to prepare a bill consistent with formal requirements. It should be remembered that the act on the implementation of the legislative initiative by citizens does not assume any assistance from state authorities, which would facilitate the shaping of the draft normative act, for example to make it consistent with the principles of legislative technique, and intentions of the entity initiating the legislative process.⁴

The provisions of the Act on the implementation of the Citizens' Legislative Initiative do not specify the dates in which the various stages of the legislative procedure in the Sejm should take place. When the practice is considered, this very often results in the fact that the legislative process takes much longer than the applicant would expect, moreover, a lot longer than in the case of drafts submitted by other entities, as listed in art. 118 s. 1 of the Constitution, which have the right of legislative initiative⁵. The Act regulating the procedure for the implementation of a citizens' initiative by the legislator, specified in its art. 4 s. 3 an exception to the principle of discontinuation of the work of the Sejm. According to its regulation, drafts submitted in the course of a citizens' legislative initiative for which the legislative procedure was not completed during the term of office of the Sejm in which they were brought, will be subject to further consideration by the Sejm of the next term of office. Parliamentary practice proves that despite the establishment of

1 Data from the Sejm website: www.sejm.gov.pl -archiwum: (downloaded on 10 January 2019) 5 citizens' drafts were submitted to the Sejm of the 3rd term, 11 citizens' drafts were submitted to the Sejm of the 4th term, 1 citizens' drafts were submitted to the Sejm of the 5th term, 18 citizens' drafts were submitted to the Sejm of the 6th term, 18 citizens' drafts were submitted to the Sejm of the 7th term.

2 See P. Uziebło, *Inicjatywa ustawodawcza obywateli w Polsce na tle rozwiązań ustrojowych państw obcych*, Wydawnictwo Sejmowe, Warszawa 2006, p. 30 and following pages.; S. Grabowska, *Inicjatywa ogólnokrajowej inicjatywy ludowej w wybranych państwach europejskich. Studium prawnoporównawcze*, Wydawnictwo Uniwersytetu Rzeszowskiego, Rzeszów 2005, pp. 18-19.

3 Article 118 s. 2 of the Constitution of the Republic of Poland of 2 April 1997 and article. 2 of the Act of 24 June 1999 on the implementation of legislative initiative by citizens.

4 It should be emphasized that each of the other four entities with the right of legislative initiative in Poland has, at its disposal, adequate organizational facilities and auxiliary units that professionally prepare draft normative acts, e.g. offices and legal departments of individual ministries or the Government Legislation Center or the Chancelleries of Sejm, Senate and of the President.

5 Article 118 s. 1 of the Constitution of the Republic of Poland of states that the legislative initiative is vested in MPs, the Senate, the President of the Republic and the Cabinet of Ministers.

a statutory exception to the principle of discontinuation of the Sejm's proceedings, citizens' drafts often fail to be subjected to full legislative procedure after the term of Sejm that they were submitted to, pursuant to the regulation of art. 4 s. 3 of the Act on the implementation of citizens' legislative initiative, and they end up in the trashcan. It may seem that prolonging the legislative process is a deliberate action⁶. Due to a very formal manner of implementing the constitutional right of citizens to submit bills in the form of a citizens' legislative initiative, this form of initiating the legislative process accounts for a negligible percentage of all bills, when compared to the number of projects submitted by other entitled entities. In addition, formalism (e.g. the requirement to collect 100,000 signatures within 3 months, when compared to MP's initiative, which is only required to be supported by 15 other MPs) and the lack of funding (apart from the possibility of organizing public collection) discourage citizens from using this form of participation in democracy. The norms of the Act on the implementation of citizens' legislative initiative determine that real applicants for a citizens' initiative are usually groups of people supported by dynamically operating associations and non-governmental organizations that provide legal and organizational assistance as well as a wide range of the undertaking. Propagating their postulates and attempts to make changes in the legal system are also tempting for these organizations, because they ensure media coverage and in case of a successful submission of their draft to the Sejm it may take advantage, e.g. of the exception to the principle of discontinuation of parliamentary work.

Over 70 percent of projects submitted for consideration over the last two decades concerned the amendment of legal acts already in force and about one in four of the submitted projects contained completely new, comprehensive legal regulations. The projects submitted were very diverse in terms of their subject matter. They mainly concerned matters of administrative law, labour and social security law, but also criminal law, financial law or family and guardianship code⁷. There were also projects in very important, often emotional and controversial, social issues, such as the introduction of a total statutory ban on abortion (9 times), raising the starting age of compulsory education, or the so-called "anti-vaccine" project filed in the current eighth term of the Sejm.

The subject of this article is to present parliamentary works in the field of one of socially controversial project that were submitted to the Sejm of the 8th term. Analysing the subject scope of citizens' legislative initiatives and the discussion they

6 B. Malewski, Czy obywatelska inicjatywa ustawodawcza spełnia swoją rolę? Kilka uwag o funkcjonowaniu inicjatywy ludowej i jej skuteczności, "Kortowski Przegląd Prawniczy" 2016, no. 1, p. 22.

7 Sz. Wójcik, Inicjatywy ustawodawcze obywateli. Analiza socjologiczna, doctoral dissertation, Warszawa 2017, <https://depotuw.ceon.pl/bitstream/handle/item/2597/3402-DR-SC-122796.pdf?sequence=1>, (access 20.01.2019).

caused, it should be recognized that in the current parliamentary term, we have two such drafts, i.e. the bill amending the act on preventing and combating infections and infectious diseases in humans, and the citizens' draft amending the Act of 7 January 1993 on family planning, protection of the human foetus and conditions for the admissibility of termination of pregnancy. In this article it will be analyzed the citizens' draft amending the act on preventing and combating infections and infectious diseases in humans.

On 11 July 2018, the citizens' bill amending the act on prevention and combating infections and infectious diseases in humans, as submitted by the "STOP NOP" Committee for Citizens' Initiative (notice on the creation of the Citizens' Committee of the Legislative Initiative of 28 March 2018, was submitted to the Sejm). On 11 April 2018, the Speaker of Sejm issued a decision in which the notification about the establishment of a citizens' initiative committee was confirmed (decision of the Speaker of the Sejm No. 7 of 11 April 2018) and the committee called Ogólnopolskie Stowarzyszenie Wiedzy o Szczepieniach [National Association of Vaccination Knowledge] "STOP NOP" formed. The draft law has been supported by over 100 000 correctly filed signatures of eligible citizens, which have been verified by the Legal and Employment Bureau of the Chancellery of the Sejm (letter from the Chief of the Sejm Chancellery of 25 July 2018, Ref. BPSP -020-3 (12)/18) and the person authorized to represent the Committee during the legislative procedure of the project was Justyna Anna Socha (letter from the Citizens' Committee of the Legislative Initiative of the "STOP NOP" National Association of Vaccination Knowledge, dated 1 August 2018).

The subject project was referred to the first reading on 28 August 2018 by the Speaker of Sejm (Sejm print no. 2796). The project involved several changes to the content of the Act of 5 December 2008 on preventing and combating infections and infectious diseases in humans⁸. Applicants have attached a very extensive justification to the draft, which spanned on over ten pages. The discussed project assumed, as a rule, the elimination of the obligation of preventive vaccinations and the introduction of a voluntary principle in this respect. Mandatory vaccinations would be limited solely to the situations, when an epidemic or an epidemic state is declared (Art. 1 section 8 of the citizens' draft), when the minister competent for health matters or the Voivode could impose this obligation by way of a separate regulation⁹.

In addition, the project postulated a change of the entity entitled to publish the list of recommended (no longer obligatory) vaccinations for the respective calendar

8 Journal of Laws of 2008, No. 234, item 1570.

9 Interestingly, the aforementioned provision also allows imposing the requirement of preventive vaccinations by means of a regulation whose addressee may be a single person ("... they may impose the obligation of protective vaccinations against persons or groups of persons indicated in the Regulation...."). Such a regulation seems to contradict the idea of a normative act whose addressee must be defined in a general way.

year, from the Chief Sanitary Inspector to the minister competent for issues of public health and changing the form of information: from the communication to the regulation, and thus the form of a normative act that would bind all entities in the whole jurisdiction. The proposed change was to contribute to greater transparency in the creation of the Protective Vaccination Program and allow, according to the applicants, the participation of social organizations in the creation of the Program (justification to the citizens' bill amending the act on prevention and combating infections and infectious diseases in humans, p. 1).

A change in reporting and registration of adverse events following immunization was also postulated. Pursuant to art. 1 s. 4 of the citizens' draft, the person suffering from adverse events following immunization or its legal guardian could personally report this fact to the district sanitary inspector who, by way of an administrative decision, would record it in the relevant register. The draft elaborates on the regulations defining the course of the vaccination qualification examination and the extension of the medical history preceding the vaccination to obtain information on the health status of relatives.

The applicants argued that mandatory vaccinations were abolished in many European countries, and the formula in force in Poland is characteristic of former socialist bloc states and functions, for example in Hungary or Bulgaria. Reference was also made to the case law of the European Court of Human Rights, which stated that vaccinations, as compulsory health services, constitute an interference with the right to respect for private life¹⁰ (justification of the project, p. 9).

2. Submitted draft, stage of parliamentary work

The assessment of effects of citizens' draft Act amending the act on preventing and combating infections and infectious diseases in humans, prepared by the Sejm Analysis Office of the Sejm Chancellery, was negative. It was pointed out that the project is controversial, and the proposed change in law radical (opinion of 14 September 2018). The opinions presented by the Supreme Council of Nurses and Midwives (position of 28 August 2018) and the Polish Chamber of Physicians and Dentists (position 6/18/8 of 31 August 2018) were also negative. The Supreme Council of Nurses and Midwives requested the rejection of the draft in its entirety, due to the fact that it "harms the public interest of Polish society"¹¹ and the Polish Chamber of Physicians and Dentists argued that the adoption of the project "will result in an increase in infectious diseases and... may lead to epidemics, and the bill

10 For more details see ECHR 31534/96, 42197/98.

11 <http://orka.sejm.gov.pl/Druki8ka.nsf/0/B2D640C1A66D2CC7C125830100378528/%-24File/2796-002.pdf> (access 15.01.2019).

should be assessed as dangerous for health security”¹² It was also emphasized that the project assumptions are in conflict with art. 68 s. 4 of the Constitution of the Republic of Poland¹³.

On 2nd of October the Sejm Chancellery received the government’s position in which the Council of Ministers presented arguments in favor of maintaining the current legal status¹⁴ and pointed to errors in the draft consisting, for example, in the lack of consistency in the proposed changes. The final conclusion of the Council of Ministers’ position was negative¹⁵.

Two days later, at the 69th session of the Sejm, the first reading of the citizens’ bill amending the act on preventing and combating infections and infectious diseases in humans took place. The project involved a stormy, more than two-hour long debate.

Former Minister of Health in the PO-PSL government, Bartosz Arłukowicz, criticized the ruling camp and recalled the letter that was sent in 2016 to the Chief Sanitary Inspector, by the current deputy minister of justice, Patryk Jaki. The letter states that the obligation to vaccinate is a manifestation of discrimination against citizens of the Republic of Poland. Mr Arłukowicz, who claimed that proposed further work on the draft would be a scandal, called his political opponents “medical ignorants”¹⁶. Joining him was Joanna Scheuring-Wielgus, appealing that the submitted citizens’ draft forms a threat, and parliamentarians supporting the initiative, will be responsible for the outbreak of the epidemic in the state (p. 337 of the transcript). MP Stefan Niesiołowski reminded that vaccinations were introduced in the 18th century, and the idea of their voluntariness is “... just an idiotic idea” (p. 335 of the transcript).

The parliamentarians of the Kukiz’15 Movement, who supported the anti-vaccine movement, supported the changes in the current legal situation. The necessity of an in-depth discussion on the alleged harmfulness of vaccinations was declared by the deputies of Law and Justice, despite the government’s negative attitude towards the project. Law and Justice MPs voted in favour of referring the draft to work in committees. They argued their position with a promise of not giving up citizens’

12 (<http://orka.sejm.gov.pl/Druki8ka.nsf/0/B2D640C1A66D2CC7C125830100378528/-24File/2796-002.pdf> (access 15.01.2019).

13 Article 68 s. 4 of the Basic Law “Public authorities shall combat epidemic illnesses and prevent the negative health consequences of degradation of the environment.”

14 At the press conference, Łukasz Szumowski, the Minister of Health, said the following about the civic project: “If the immunized population is reduced below a certain level, we will have epidemics. Our families, our children will die. We cannot allow this to happen” <https://www.mp.pl/szczepienia/aktualnosci/195820,szumowski-rzad-jest-przeciwny-zniesieniu-obowiazku-szczepien> (access 12.01.2019).

15 <http://orka.sejm.gov.pl/Druki8ka.nsf/0/C1DC2A10F70497A5C125831A0046C993/-24File/2796s.pdf> (access on 15 January 2019).

16 Transcript of the 69th session of the Sejm of 3 October 2018, pp. 335-336.

projects at first reading¹⁷ and directing them to further work¹⁸. Deputy Anna Maria Siarkowska emphasized that the Sejm is to listen to people, and those who will vote against referring the draft to the commission "... show exceptional contempt and insolence" (p. 335 of the transcript). In addition, in the continuation of the initiative the opportunity was seen to educate the public on the legitimacy of vaccinations¹⁹.

An ardent and emotional speech by a representative of the Legislative Initiative Committee, Justyna Anna Socha, was interrupted by malicious comments by opposition MPs. The applicant asked parliamentarians if they did not represent the interests of the vaccine manufacturers ("Big Pharma"), negating the citizens' initiative so much. She admitted that the project was prepared in response to the expectations of parents who want to decide about medical procedures performed on their children. She cited examples of adverse events following immunization and pointed to numerous, according to the applicants, failures of the state authorities to supervise the implementation of vaccinations. She thanked parliamentarians who had "a difficult and controversial topic and ... dialogue and debate" (p. 337 of the transcript).

The parliamentary majority opted for the submitted drafts to form the basis for further work in committees. In the vote on the draft, which took place on 4 October 2018, 172 MPs voted for rejection of the draft in the first reading, 230 were against and 5 abstained (vote no. 41). Then, the application to refer the citizens' draft to the Social Policy and Family Commission was put to the vote. 252 deputies supported the motion²⁰, 152 were against and 2 abstained (vote no. 42).

A month later, on 8 November 2018, a joint meeting of the Social Policy and Family Commission and the Health Commission was held²¹. During the meeting of the Commissions opinions were voiced by the representative of the Minister of Health, experts and applicants. The Chief Sanitary Inspector argued that experts speaking on behalf of the government side are authorities in the field of vaccinology, virology and vaccination issues devoted, who their scientific and professional life

17 This argument was questioned by MP Joanna Schmidt, Liberal-Social circle, who said "I will remind you that you threw almost 1 million signatures into the basket - it was also a citizens' initiative - when the referendum on education reform was to be held" (transcript of the Sejm sitting on 4.10.2018, p. 334).

18 See also: Minister of Health: Government is against the voluntary vaccination, <https://www.newsweek.pl/polska/polityka/minister-zdrowia-rzad-jest-przeciw-dobrowolnosci-szczepien/zkz8r45> (access 12.01.2019).

19 Szczepienia będą obowiązkowe. Sejm odrzucił obywatelski projekt, <https://www.newsweek.pl/polska/polityka/szczepienia-beda-obowiazkowe-sejm-odrzucil-obywatelski-projekt/g1cpmj3> (access 12.01.2019).

20 Full list of MPs voting for the citizens' draft: K. Bagiński, Poselska "lista hańby". To oni poparli w Sejmie projekt antyszczepionkowców, <https://innpoland.pl/146881,pis-glosuje-jak-antyszczepionkowcy-chca-252-poslow-poparlo-ich-projekt> (access 18.01.2019).

21 The committee was chaired by Bartosz Arłukowicz.

(bulletin of the Commission meeting no. 3723/VIII), and accused the opponents of having knowledge derived solely from the Internet and their eristic-narrative skills. The President of the Office for Registration of Medicinal Products, Medical Devices and Biocidal Products rejected the arguments of the applicants regarding the harmful composition of vaccines and the deputy of the Chief Sanitary Inspector reported the issue of the negligible frequency of adverse events following immunization.

Experts proposed by the committee of the citizens' legislative initiative talked about the presence of harmful metals in vaccines, which were dangerous for human health (statement by D. Sienkiewicz, MD), an ineffective (in their opinion) procedure of registering adverse events following immunization and irregularities in vaccinations of children, especially premature babies and children with low birth weight (statement by K. Bross-Walderdorff, MD).

It should be noted that the discussants referred to mainly emotional arguments, based on fear. Experts invited by committee members raised the dangers related to the outbreaks of infectious diseases and the applicants cited arguments regarding the harmfulness of vaccinations and the vaccine compositions that were dangerous for health (bulletin of the Commission meeting no. 3723/VIII).

A report was prepared on the meeting of the Health and Social Policy and Family Committees on the citizens' draft amending the act on preventing and combating infections and infectious diseases in humans (Sejm print no. 2993), in which the bill was rejected. The report was presented as part of the second reading at the sitting of the Sejm on 9 November 2018 (meeting No. 71, point 41 of the agenda). Non-affiliated MP Robert Winnicki accused the members of the Commission of failing to deepen the debate and throwing away a citizens' draft into the basket, and Deputy of Kukiz'15, Paweł Skutecki, spoke about the compromise of the idea of parliament as a place for discussion and exchange of opinions²². Supporting the bill, he further argued that the project, although "... contains a lot of uncontroversial solutions that build confidence in the Polish immunization system" was still called an anti-vaccine one. He also accused the Minister of Health²³ of gagging the mouths of "... authorities outside of the salons".

Deputy Alicja Chybicka (Civic Platform), responding to the previous speakers, appealed to the basic values of life and health, and perceived a threat to Polish women and men in the draft submitted to the Sejm. Ryszard Petru (Liberal-Social association) quoted the argument that the deputies who voted in the first reading for further proceedings of this law are responsible for the diseases of children who have not been vaccinated.

22 P. 240 of the transcript of 71 session of the Sejm.

23 It should be noted that the position of the Council of Ministers was consistently negative throughout the entire consideration of the citizens' draft by the Sejm.

During the discussion, deputy Witold Zembaczyński (Nowoczesna), addressing Kukiz'15 and Law and Justice deputies who voted in the first reading in favour of the citizens' draft, charged them with responsibility for propagating anti-vaccine movements²⁴. Repelling the attacks, the reporter, Tomasz Latos (Law and Justice) unequivocally stressed that the Law and Justice club had been against its adoption since the beginning procedure of the citizens' project, and its transfer to work in committees was only aimed at educating the public in the subject matter of the initiative, thus forming a manifestation of respect for this form of direct democracy.

Michał Kamiński (Polish People's Party-Union of European Democrats) ended the speeches of MPs, jokingly referring to the deputies supporting the project: "I am a patriot, I'm fighting against ignorance."²⁵

The Speaker of the Sejm put the Commission's request for rejection of the citizens' draft to the vote. 354 deputies voted in support, 10 were against and 16 abstained (vote 114). The draft citizens' bill amending the act on preventing and combating infections and infectious diseases in people was rejected by the Sejm, thus terminating the legislative procedure.

In response to the "STOP NOP" draft and in connection with the significant increase in the incidence of measles in Poland, a preview of the citizens' legislative initiative entitled "Szczepimy, bo myślimy" ("We vaccinate because we do think") appeared. The rationale of the project's legislation was to award additional points for children vaccinated according to the vaccination calendar, in terms of recruitment to state-owned educational institutions²⁶.

3. Conclusions

Citizens' initiative is understood as "an institution of civic participation that allows a numerically defined group that is part of a collective sovereign to present, to the legislature or directly to the people themselves, an application proposing the adoption, amendment or rejection of a normative act"²⁷. It grants the citizens the opportunity to shape their rights and obligations directly and enables citizens to become active around matters that are important to them²⁸. Practice indicates that the institution of a citizens' legislative initiative is used in Poland to a limited extent

24 P. 241 of the transcript of 71 session of the Sejm.

25 The voting took place on the eve of Independence Day.

26 K. Kowalska, Nowe propozycje przepisów dotyczących szczepień, Rzeczpospolita of 7 November 2018.

27 M. Dane Waters, The Initiative and Referendum Process in the United States, Initiative and Referendum Institute, Washington 2002, pp. 9-10 (quoted after: P. Uziębło, Inicjatywa ustawodawcza..., *op. cit.*, p. 31).

28 J. Kuciński, Konstytucyjny ustrój państwowy Rzeczypospolitej Polskiej, Warszawa 2003, p. 157; E. Kuźlewska, Referendum w procesie integracji europejskiej, Warszawa 2006, p. 13.

only. It seems that formal restrictions effectively deter and sometimes even make it impossible for citizens to effectively influence the existing legal norms²⁹. To discourage citizens from taking up a citizens' legislative initiative, the percentage of laws that have been passed to the Sejm in accordance with art. 118 of the Constitution³⁰. Citizens' legislative initiative is, however, a very important instrument co-creating civil society because it is one of the forms enabling citizens to express themselves in topics that are of relevance for them. It also reveals to decision-makers what scope of social relations, according to the sovereign, should be regulated differently from the existing legal solutions, and this can be applied, for example, in election campaigns. It also allows citizens to unite around matters that are important to them, consistent with their world-view, values and needs that initiate the decision-making process, which the citizens' legislative initiative undoubtedly forms³¹.

Projects submitted in the mode of art. 118 s. 2 of the Constitution have a strong legitimacy because they come directly from an entity having sovereign power in the state, that is, from the sovereign. Parliament members elected in elections are obliged to listen and represent their electorate because the settlement it reaches at the next elections may cost them dearly. The systemic practice proves that in most cases, citizens' projects are supported during parliamentary work, officially or informally, by specific parties and political groups³². It seems that the fact of the civic genesis of the project apparently obliges the members of the group holding power to continue work on the initiative, which is justified by care and respect for civic activities in the name of supporting civil society.

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30 E. Nowacka, Obywatelskie projekty ustaw w Polsce jako przykład aktywności obywatelskiej, in: Oblicza Społeczeństwa Obywatelskiego, Państwo, Gospodarka, Świat, J. Osiński, J.Z. Popławska (eds.), Warszawa 2014, p. 244

31 E. Kuźelewska, Do the Poles Influence the Decision-Making Process by Applying Direct Democracy Instruments?, "Annales Universitatis Mariae Curie-Skłodowska. SECTIO M" 2016, vol. 1, p. 123.

32 Sz. Wójcik, Analiza dyskursu polityki wokół obywatelskiej inicjatywy ustawodawczej na wybranych przykładach debat parlamentarnych, Polityka i Społeczeństwo, no. 1(13)/2015, p. 10.

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