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*Amendments to the juvenile criminal law in the framework of
the justice system reform in Albania*

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1. Introduction

Protection of the rights of minors by offering judicial system services has comprised the base regulations of the latest legal provisions aiming to standardize justice system in Albania, in the framework of the justice reform, undertaken in 2016. Concretely, in terms of the Criminal Justice System, children make up a vulnerable category so providing immediate, effective and qualitative legal procedures has been the most important intention of the measures to reform criminal justice system – an intention which has been concretized by the approval of the Code of Criminal

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Justice for Children as well as with the Law on the Rights and Protection of Child as well as many other material and procedural measures.

Legal provisions regarding rights of the child have been focusing on the further improvement of legal measures' form and content, regarding the ways minors will be treated by judicial system alongside specialized treatment offered to minors by respective communities including support for both the juvenile delinquent, which in this case is subject of the criminal offence as well as for the victims and juvenile witnesses. Among others, the range of legal protection has been further extended by including even youngsters up to 21 years old to the ambit of these measures.

Moreover, in the framework of the justice reform, Law No. 37/2017, on 30 March.2017, entitled "Code of Juvenile Criminal Justice" as well as Law. No. 18/2017 "On the Protection and the Rights of Children" were approved, aiming to define functioning rules for the institutions dealing with treatment and the protection of children's rights.

The Code of Juvenile Criminal Justice, which entered into force on 1 January 2018, contains special legal norms regarding minors' legal responsibility, procedural rules regarding investigation, criminal prosecution, trial procedures, execution of the criminal punishment verdicts, rehabilitation as well as many other legal measures involving children in conflict with the law, a minor -victim and/or witness of the criminal offence alongside measures involving 18-21 years old youngsters.

This law makes up a novelty and further develops standards of the Albanian legislation regarding protection of the rights of children in general and the rights of children in conflict with the law in particular. The Code is a special kind of Law thanks to its content, which contains all provisions referring to minors in the Criminal Code, the Code of Criminal Procedure as well as in the Law “On the Rights of the Prisoners and Detainees” as well as other referent laws of the criminal justice system for minors. The Code ensures approximation of Albanian legislation with the EU Directive 2011/93/EU date 13.12.2011, alongside approximation to international and regional standards. In order to make the Code provisions fully applicable, other measures have been anticipated in its Action Plan as well as in the Strategy of Juvenile Justice. Therefore, in the justice sector, child protection has been considered in terms of the following three directions:

- Improvement of the access to justice,
- Legal information and education, and
- Prevention, reintegration and rehabilitation.

2. Aim and mission of the Code of Juvenile Criminal Justice

The Code of Juvenile Criminal Justice was approved alongside the package of justice reform laws and it is an integral part of the legislation of the Republic of Albania. Its aim and mission are closely linked with the aim

and objectives of the Criminal Law, with special intentions toward punishments as well as with other legal measures focusing mainly on the protection of the economic and social order from criminal offences, fight and prevention of criminality, education and rehabilitation of subjects convicted by law or the ones in conflict with the penal law.

The main feature of the Code as compared to the Criminal Code consists in the fact that its power stretches only upon a certain category of subjects, i.e. its powers cover only the group-age of minors in conflict with the law, even in terms of procedure, as well as minors as victims or witnesses of criminal offences, by predicting special legal measures regarding liabilities and procedures of criminal prosecution of minors until their full rehabilitation.

The aim of the Code of Juvenile Criminal Justice has been predicted in Article 2 aiming at achieving two main intentions, the protection of minors and the effective protection of the minors' best interests on one side, as well increasing accountability and professionalism of the competent entities administering criminal justice for minors on the other side.

In these terms, by passing this Code, firstly, a new legal framework of criminal justice for minors has been created and guaranteed, in full compliance with the Constitution, the Convent of the United Nations for the Rights of the Child as well as the other international standards and legal measures aiming to protect minors as well as effective protection of their best interests.

Secondly, it creates conditions and real possibilities for punishments as well as other legal measures to be more effective and fulfil their intentions which, in conditions of the approximation of positive legislations and the internationalization of many measures of criminal punishment aims at meeting four objectives; punishment, general prevention, special prevention and rehabilitation¹.

According to Moro², the objectives of punishment can be considered into the expressive and reforming aspect. In the expressive aspect, the aim of the sentencing is to penalize the authors of criminal offences who pleads guilty for committing such offences as well as forbid them and other offenders from committing criminal offences in the future. Whereas in the reforming aspect, its main intentions as well the intention of other penal measures is wider, it aims at bringing positive impacts in terms of re-education and rehabilitation of convicts, compensate victims and communities for their losses or damages caused by certain criminal offences as well as express society's reasoning for the criminal offences, so that contribute into the education of other state subjects with the sense of respect to law.

The Code of Juvenile Criminal Justice completes the reforming aspect of the Albanian penal legislation with new ideas and institutions by also

¹ C. Herrero Herrero, *Delincuencia de menores. Tratamiento criminológico y jurídico*, Second edition, Madrid, 2008, 320 o 320 ss.

² A. Moro, *Manuale di diritto minorile*, Fifth edition, Bologna, 2014, 211 o 211 ss.

providing educative measures, the principle of humanism and the protection of the best interests for minors, be they authors, victims or witnesses of criminal offences. One of the most important tasks the Code meets regarding the justice administration entities, is the accentuation of need for re-integration and guaranteeing socialization for juveniles in conflict with the criminal law by offering the care, assistance and surveillance as well as by protecting and preventing juveniles – victims of criminal offences from re-victimization or from being victim of another criminal offence.

Thirdly, this Code aims at protecting principles of public order in the process of administering criminal justice for juveniles, increase the accountability and professionalism of competent for administering various criminal justice issues as well as to set up surveillance mechanisms for realizing its mission and tasks.

3. Changes brought with the Code of Juvenile Criminal Justice

3.1 Measures related with the age of criminal responsibility for juveniles in conflict with the law

The Code of Juvenile Criminal Justice stipulates the age of criminal responsibility to be 14-years-old for subjects involved in cases of committing a crime and 16 years old for subjects committing other penal violations as predicted by the Criminal Code, whose limits have not been

changed. Juveniles under the age of criminal responsibility are not able to understand the consequences of their actions, therefore, they cannot be officially accused by justice authorities for any criminal offences or be subjected to any criminal procedures or measures³. Minimal age of criminal responsibility entails juveniles who have reached an emotional, mental level as well as intellectual maturity to be responsible for their actions. According to Article 40, (3) of the Convention of the Rights of the Child, states are encouraged to determine a minimal age under which children are supposed not to be able to break criminal law.

The Code of Juvenile Criminal Justice has also anticipated the age-threshold for majors who have committed offences when they have been minors, who shall be judged by the section for minors of the respective competent Court of Justice. The Code of Juvenile Criminal Justice in Article 81 does not maintain such limit. In the first sight, it might be interpreted that every individual in full legal age, in every stage of their age as majors, who have committed criminal offence(s) when they have been minors, they shall be judged by the section for minors. However, The Code of Juvenile Criminal Justice maintains a limited response to this legal issue by defining 23 years old age as threshold. So, in Article 27, bullet 6 of the Code of Juvenile Criminal Justice it is defined that jurisdiction of the sections for minors at the District Courts ends when minors reach 23 years of age.

³ Art. 7 of Code of Juvenile Criminal Justice.

3.2 Avoiding criminal prosecution and punishment

The Criminal Code in force maintained, previously, only one educative measure for minors in conflict with the law, which consisted of sending them to an education institution, whereas actually, with amendments made after March 2017, it does not maintain factual education measures. Those measures have been maintained by the Code of Juvenile Criminal Justice which gives them more importance and priority both in terms of quantity and their content, reflecting its main novelties. Educative measures for juveniles in conflict with the penal law are included in the institute in order to avoid criminal prosecution and punishment, via alternative measures which have been determined in Article 62 of the Code.

The following are alternative potential measures for avoiding criminal prosecution:

- Programmes of restorative justice and intermediation;
- Counselling for juveniles and families;
- Verbal warning;
- Written warning;
- Mandatory measures;
- Awarding custody.

Another novelty of the Code consists in the fact that alternative measures are imposed, relevant to each case, by prosecution or by the Court, based

on reports of individual evaluation of juveniles, the compilation of which is mandatory and such reports are compiled conform detailed rules determining individual features of minor(s), their behaviour and needs, potential hazards that they may be involved in committing other criminal offences and many other elements. Depending on each case, the individual evaluation reports recommend alternative measure(s) of avoiding from criminal prosecution or punishment, considering both the best interest of children and the interests of the wider public, by deciding if continuation of the criminal prosecution will begin or not, when prosecution has commenced as well as a series of other statutory criteria.

In any case that alternative measures have been imposed to the juveniles in conflict with the law, the public prosecutor decides not to commence penal prosecution for the juvenile offender and, if the case has already begun, it ceases it. The prosecutors exercise this right with his own initiative or by the request of the minor or his respective representative, always before the case has been sent to the Court. At the same time, some alternative measures of avoiding criminal prosecution may be imposed to the minor – offenders but they should be reasonable and conform the juvenile offenders' needs while considering even the interest of the victims. On the other side, none of the aforementioned measures can be imposed to minors alongside the process of their determination. They can be imposed once they have been consented in writing by the offenders and, when appropriate, even having the consent of their legal representatives.

Alternative measures to avoid criminal prosecution or punishment are applied when there is enough evidence supporting a reasonable doubt that the juvenile offender has committed a criminal offence for which punishment by imposing retributions or until five – years imprisonment has been anticipated by the law. Measures shall be imposed for all cases predicting imprisonment sentence to that maximum. Before amendments had taken place in the Criminal Code, March 2017, educative measures were imposed once the criminal offence had been proved by juveniles and after that they were excluded from being sentenced. Now, they are connected with “the reasonable punishment” since juvenile offenders are not subjected to the trial. On the contrary, they avoid criminal prosecution and, as cited above, measures are imposed on their consent or on the consent of their respective legal representative. Measures have voluntary reference.

In this case, juvenile offenders shall be under continuous surveillance by a certain person or by specialized service officials and they are obliged to stay in the facilities of education institution, have previously programmed appointments with parents or other individuals according to the regulation of the institution, etc.

In case the juvenile offender has completed the measure of avoidance from criminal responsibility, the public prosecutor decides immediately to cease the legal case and no indictments will be charged against him/her for this particular criminal offence. He is considered as not condemned

for this criminal offence and is never treated as a person with criminal past. On the contrary, when obligations are not met, the measure is reconsidered.

Lack of the will to meet alternative measures to avoid criminal prosecution does not comprise criminal offence and does not, necessarily bring limitation or total deprivation of freedom; moreover, it does not bring revocation of the previous verdict⁴. Prosecuting attorney reconsiders the measure and, relevant to the case and specific recommendation of the Service of Probation, may decide:

- Revocation or leave the verdict for the avoidance of criminal offence in force;
- Changing the kind of the avoidance measure;
- Further extension of the agreement time.

The Code of Juvenile Criminal Justice in its Article 64, for the first time in the Albanian criminal legislation, predicts intermediation as an extra-court procedure taking place conform provisions of this code and the intermediation law in force. It always acts basing upon the free consent of the minors - authors of criminal offences and the harmed side as well as with the personal participation of the juvenile -author of criminal offence and the harmed side, conform rules determined in this code.

⁴ Art. 71 & 72 of Code of Juvenile Criminal Justice.

Intermediation for resolving disputes may be applied as a measure to avoid penal prosecution or as a possibility leading to improvements of relations between the minor and the victim of the criminal offence.

However, regarding juveniles who have not reached their age of legal responsibility an inconsistency or a contradiction has been created in the Criminal Code and the Code of Juvenile Criminal Justice, regarding the kinds of educative measures as well as the competent organs that must decide them. To this regard, the Criminal Code anticipates that educative measures cannot be imposed on juveniles who, because of their age, have no criminal responsibility, without determining their kind beforehand. At meantime, imposing and revocation of educative measures for the juveniles in conflict with the law, in general, occurs alongside medical measures. Criminal Code refers to the Code of Juveniles Criminal Justice. The latter expresses it Article 4/3 which stipulates that these rules do not include juveniles under the age of legal responsibility against whom criminal prosecution cannot begin or, if it has begun, it ceases immediately and the structures for protection of children are set to move to support them. The quest “who puts these structures to move, the prosecutor attorney or the court and the ways it is incited”, all these remains to be exacted or complemented by the law.

3.3 Changes made regarding minors' investigation and adjudication

The Code of Juveniles Criminal Justice maintains that once the minor has been arrested the prosecution informs him/her about the right to inform parents or, in case there are no parents, another adult individual accepted by him/her⁵. Juveniles in conflict with the law can be arrested or detained conform provisions of the Code of Criminal Procedure and the Code of Juvenile Criminal Justice. During the process of deliberation about the minors' arrest or detention from the beginning of the criminal prosecution to the execution of the Court's verdict, procedural actions should be fast, without any unjustified delays, all for securing the best interest of the minors and by respecting their rights. Relying on this principle, the Judge hears the juvenile defendant carefully and rules an immediate verdict. The Code of Criminal Procedure maintains that the Court should determine the date of the hearing as quickly as it can.

The Code of Juveniles Criminal Justice has brought new phenomenon even in terms of detention measures, by anticipating, in addition to measures stipulated into the Code of Criminal Procedure, special measures for juveniles in conflict with the law, such as taking them under surveillance and providing specialized services. This is in the minors' best interest, intending to fulfil his specific needs, alongside the request not to cease educative measures imposed, aiming to ensure their upbringing and

⁵ Art. 73 of Code of Juvenile Criminal Justice.

normal physical development which is made possible by special surveillance by individuals and institutions specialized in law⁶.

Crucial changes have also taken place regarding criteria for the executions of the arrests and detention measures which can be imposed only as the very last measure and only for crimes for which sanctions are imprisonment and obtain the minimum sentence over seven years, alongside other statutory criteria⁷. Moreover, minors in conflict with the law cannot be held in detainment more than half the time of being taken in custody, according to the Code of Juveniles Criminal Justice.

At the same time, while they are on detention facilities, they enjoy the same rights as sentenced inmate juveniles enjoy. Minors are kept in special rooms, apart from adults and divided from each other in terms of gender and, in regard to their needs and age, gender and personality, they are offered social, educative psychological, medical and physical assistance⁸.

Another improvement making up a novelty is the prevision of special rules for investigating minors in conflict with law of 14 – 18 years of age. In addition to previsions of Article 361/a of the Code of Criminal Procedure, for minors over 14, testimony is given while the defender is in absentia. During all the investigation and trial process the juridical and psychological assistance is provided for free. The Code of Juvenile Criminal Justice maintains that judges, prosecutors, judicial police officers

⁶ Art. 82 & 83 of Code of Juvenile Criminal Justice.

⁷ Art. 86 of Code of Juvenile Criminal Justice.

⁸ Art. 84-86 of Code of Juvenile Criminal Justice.

alongside any other professionals working with minors, shall be specialized and trained in the criminal justice for minors. Yet according to the Code of Juveniles Criminal Justice the case of a minor in conflict with the law shall be sent to the Court no later than three months from the day of registration in the criminal prosecution register by the prosecutor, excepting cases when during the same period s/he has been indicted for another criminal offence or in cases of criminal offences judged by the Anti- Corruption and Organized Crime Courts. The Code of Juvenile Criminal Justice anticipates specific time schedules for proceeding and hearing cases of minors in conflict with the law.

The Court of First Instance shall conclude trial at the most immediate schedule but no later than six months from the date of filing acts in the Court, the Court of Appeal no later than two months from the date of filing acts in the Court of Appeal. The Supreme Court reviews the eligibility of the recourse and adjudicates in the fastest way possible.

At the trial stage the obligation that hearing of the minors in conflict with law case shall take place behind courtroom closed doors and, in their presence, is mandatory. Therefore, minors in conflict with the law shall not be tried or sentences in absentia. In addition, imprisonment sentence is the last possible measure to be imposed and it is considered only if the measurements of avoidance, anticipated by Chapter VII of this Code, are appropriate. The Penal Order, anticipated in Article 406/a up to Article 406f of the Code of Criminal procedure, shall not be applied for them and the trial by agreement anticipated by Article 406d up to 406f of the Code

of Criminal Procedure shall be applied only in cases the avoidance measure has been applied for juveniles in conflict with the law.

4. Kinds of punishments and their execution

The Code of Criminal Procedure anticipates life sentence, imprisonment and retributions alongside complementing punishments defined at Article 30 of the Code. Life sentence shall not be applied to minors in conflict with the law. The Code of Juvenile Criminal Justice has brought another novelty regarding kinds of sentences for minors by adding its alternatives and by giving priority to non-imprisonment punishments as well as complementing punishments which are different from those imposed to adults. The Code divides sentences by imprisonment and non-imprisonment punishments. The following are included in the non-imprisonment sentences:

- Restriction of freedom;
- Home confinement;
- Retributions;
- Community work;
- Deprivation of the rights to exert a trade;
- Meeting certain obligations⁹.

⁹ Art. 95 of Code of Juvenile Criminal Justice.

Imprisonment, restriction of freedom and retributions make up the main sentences whereas the rest is complementing sentences.

These amendments have been made by not considering the kinds of alternatives of imprisonment punishments anticipated by the Criminal Code, using the same definitions for different concepts or notions of the Penal Law. To this regard, home confinement and carrying out public interest work have been considered by the Criminal Code as alternatives of imprisonment sentencing, and as the way to suffer the sentence consequences, whereas the Code of Juveniles Criminal Justice they are anticipated as separate kinds of sentences – a fault that should be regulated by law. In the previous two Criminal Codes enforced in Albania as well as in the Penal Code in force, the maximum of life imprisonment has been 25 years, this until the amendments of 2013¹⁰.

In Article 32 of the Criminal Code amended, it is specified that the imprisonment punishment shall be imposed from five to thirty-five years, whereas for criminal infringements from five to two years of imprisonment. For minors who have completed the legal responsibility age (14 – 18 years old), conform Article 97 of the Code of Juvenile Criminal Justice, imprisonment sentence cannot be more than half the period of time the punishment law anticipates for criminal offences

¹⁰ Art. 51 of Criminal Code of Republic of Albania and art. 97 of Code of Juvenile Criminal Justice.

committed with a maximum of not more than two years imprisonment. Simultaneously, it is imposed solely for a criminal offence with predetermined maximum of not less than 7 years of imprisonment – a sentence which is necessary because of the high social risk of the criminal offence and the grade of guilt which are evaluated on the frame of all circumstances of the case, linked with the scale of minor's maturity as well as with the time needed for his professional upbringing and formation. In conditions when in the Albanian criminal legislation, the maximum of imprisonment sentence is 35 years, half-conviction is imposed solely for criminal offences which are sentenced to 24 years of imprisonment. Beyond this figure, verdicts not exceeding half-conviction and not surpassing 12 years of imprisonment are imposed simultaneously.

Devoid of negating the importance of the Code of Juvenile Criminal Justice as a guarantee for protecting the best interest of the juveniles in conflict with criminal law, be they victims or witnesses of the criminal offences, there are also faults, especially in the section anticipating imprisonment punishments to be imposed to juveniles in conflict with the law since it makes no difference between the 14 – 18 years old minors, whose mental maturity grows with the years. Regarding this issue, traditional criminal legislations, such as the Italian or French legislation or that of other states having consolidated and contemporary legal systems, maintain scientifically studied provisions and anticipate escalated imprisonment sentences, relevant to the age groups of the juveniles in conflict with the law.

In these terms, the Italian Criminal Code, which also has determined the age of legal responsibility to be 14- 18 years old, just like the Albanian Code, anticipates a relative criminal responsibility for these minors. In Article 98, it stipulates that for all individuals who, in the time they had committed a criminal offence, they were over 14 years old but not 18 years old - an age when they would be more mature to better understand and desire matters, punishment decreases.

In principle, 14 – 18 years old minors are subjected to the same sentences like the adults, but on a softened mode. Life sentence is immediately replaced with 24 years imprisonment. Therefore, the reduction or decrease of the imprisonment sentence, has been anticipated to be imposed in rapport with their scale of maturity; the same is imposed with the length of precautionary detention which shall be reduced in half for minors from sixteen to eighteen years old and in two-thirds for fourteen to sixteen years old minors' age group.

The same is for retribution sentences; according to the Code of Juvenile Criminal Justice this can be imposed to minors if they have monetary incomes from a legal source and the sum of money to be paid for retribution is equal to the half of the retribution sum an adult would pay in the same conditions¹¹. As it may be understood, this formulation differs from that of half-conviction imprisonment and it doesn't make sense in scientific terms, since it obliges the Court to imagine minors as adults as

¹¹ Art. 99 of Code of Juvenile Criminal Justice.

well as consider them in the same conditions instead, of using scientific formulae used or the imprisonment sentences since the quantity to be paid as retribution is half the quantity of the fine anticipated by the law for the committing a criminal offence.

Formulation of the prevision “its quantity is half the retribution to be charged to an adult in the same conditions” seems incorrect in scientific terms since it leads to the theory of the “average man”, which has not been accepted by criminal law. There are no equal conditions since everything is identical or the same solely with its own self. Conditions might be similar or rough. The right legal formulation would be; “its quantity shall be half the retribution predicted by law for the committed criminal offence”.

The kind and the ways complementary convictions is determined in Article 30 of the Criminal Code which anticipates individuals that have committed crimes or penal infringements, alongside the main conviction, there may be imposed one ore some of the convictions bulleted in this article. Ten kinds of complementary punishments have been anticipated. Complementary punishments shall not be imposed to minors. Complementary punishments imposed to them are anticipated by the Code of Juvenile Criminal Justice. They are the following:

- Deprivation of the right to carry out certain activities;
- Community work of public interest;
- Obligation to fulfil certain obligations;

- Home confinement.

The Code of Juvenile Criminal Justice does not state whether the complementary convictions shall be imposed to minors solely as affiliates of the main sentence or they might be imposed even when there is no main sentence. It suffices solely anticipating that minors can be imposed solely on main conviction and alongside the main sentence can be imposed more than one complementary punishment, which is differently from the anticipation for adults to which can be imposed the main sentence and one or some complementary punishments¹².

Regarding carrying out works of public interest that can be applied as complementary sentence or as replacement of imprisonment sentence. Article 101/6 of the Code of Juvenile Criminal Justice anticipates that carrying out works of public interest as a complementary punishment can be imposed to minors even in cases when the respective article of the Criminal Code does not anticipate it as a kind of sentence. This anticipation is incorrect, in regard to the term “complementary decision” since the law does not use this term in its provisions. Instead, it uses the term ‘complementary decision’ and replacement of imprisonment sentence with the accomplishments of the work of public interest. Second and the most crucial, there is no article of the Criminal Code anticipating it as a kind of punishment since special provisions of the Criminal Code

¹² Art. 96/4, 5 of Code of Juvenile Criminal Justice.

anticipate solely the main sentence. Working for public interests has been anticipated solely as an alternative of imprisonment sentences, as replacement in case of cessation.

The Code of Juvenile Criminal Justice determines a new way of punishment individualization. This includes the individual evaluation anticipated in Articles 26 and 47 bullet 1 of the Code, in which it is stated: “In the evaluation process for minors the Public prosecutor/Court is based on the stage of development, lifestyles, education, conditions of development, schooling, family surroundings as well as other conditions allowing to evaluate the features of minors’ personality, their behavior and needs alongside special needs”. These anticipations exist alongside principles of evaluation and the punishment reflected in Article 47 of the Criminal Code.

The Code has also brought changes and improvements for minors by introducing procedures and rules regarding the execution of penal decisions imposed to them. To this regard, the execution of the punishment verdict without deprivation of freedom is applied by General Directory of Probation, and minors continue to suffer punishment while not being imprisoned, or under condition as minor, even if they turn 18 years old, before or during the execution of the verdict. For the first time the defender of minors has been anticipated during the execution of penal decisions. In order to defend their rights, in the course of the stage of execution, the legal defender shall be determined by the state, conform

provisions of the Code and the rest of legislation in force, with the consent of the minor and when it is on his own interest, the lawyer that has been defending him during previous stages of the procedure¹³. Detailed rules have been anticipated regarding arrangement of educative rehabilitation programmes, such as providing mandatory base education or, according to the case, providing even the high and university education and even offering possibilities for employment and housing, ways to make release on parole easier, providing support by competent organs in order to facilitate their integration, implementation of the integration and surveillance plans by specialized services at least 6 months after the release, etc.

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¹³ Art. 107 & 112 of Code of Juvenile Criminal Justice.

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