Challenges for local government in Poland

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Abstract: local government is the key principle of the organisation of public administration

in Poland. Local government units, i.e., gminas, powiats and voivodeships local governments,

are entities endowed with rights and obligations and entities performing public tasks. They

can be defined as independent, legally constituted, corporations of local society, with their

own internal organisation, equipped with the attribute of legal personality, subject to

supervision by the state to the extent prescribed by law.

Keywords: local government, political struggle, public finance, revenue.

Introduction

It seems controversial to state that the level of local government development in

Poland is high. This could be evidenced by the following data:

1) the share of local government debt in the national public debt (table),

2) the small number of local government units (LGUs) that exceeded statutory debt

thresholds. For example, between 2009 and 2015, the number of gminas in Poland that

exceeded the statutory debt-to-income limit (60%) was on average 18 gminas. Starting from 2009 there were 15, in 2010 - 20, 2011 - 21, 2012 - 19, 2013 - 17, 2014 - 16, and in 2005 - 16.

Table 1. Consolidated debt of the public finance sector in 2009-2015 (in %)

Description	2009	2010	2011	2012	2013	2014	2015
Debt of the public	100,0	100,0	100,0	100,0	100,0	100,0	100,0
finance							
sector							
Government debt	97,7	9607	96,4	95,7	95,9	95,7	94,2
Debt of the local government sector	2,3	3,3	3,6	4,3	4,1	4,3	4,3

Source: Ministry of Finance data for 2009-2015.

The arguments presented, however, seem to be superficial. The reform of the system of supplying finances to local government units, which began in 2004, has been completed at the first stage. The announced second stage of the reform is not taking place. Successive governments have been announcing reforms of public finances, so the continuous process of changes in the system of public finances should affect the relations between the state (government) and local government. Is this happening? Among the assumptions to introduce changes in public finance, it is impossible to find any reference to the reform of finance of the central and local governments.

It should also be stressed that the state of local government units is influenced by processes occurring not only within the country but also outside it. They include the process of integration, regionalisation and globalisation, including internal ones: the political (electoral) cycle).

Thus, the aim of the article is to present selected problems faced by local authorities in Poland, while proposing a conventional division of these problems into:

- 1) legal,
- 2) political,
- 3) other.

1. Legal aspects of local government activity

From the point of view of the subject matter of this article, the formation of the system of power supply to local government units seems to be important. The foundations of gminas' finances were laid at the beginning of the nineties in the conditions of transition from the socialist system to the market parliamentary democracy, of recovery from the economic crisis, of political struggle and of the clash of various concepts of building the new system. Under these circumstances, solutions to local government finances had to be characterised by caution and prudence and were usually accompanied by temporariness and fragmentation. Among the most important phenomena and trends that emerged in the formation of budgets and financial law of local government units, the following should be mentioned: the Act of 22 November 2018 on amending the Act - Education Law, the Act on the education system and some other acts (Journal of Laws, item 2245 as amended), the Act of 19 July 2019 on amending some acts in order to reduce payment blockages (Journal of Laws, item 1649), the Act of 23 January 2020 on amending the Act on departments of government administration and some other acts (Journal of Laws, item 284), the Act of 2 March 2020 on special solutions related to preventing, counteracting and combating COVID-19, other infectious diseases and crisis situations caused by them (Journal of Laws, item 374 as amended), the Act of 31 March 2020 on amending the Act on special solutions related to preventing, counteracting and combating COVID-19, other infectious diseases and crisis situations caused by them and some other acts (Journal of Laws, item 568 as amended), the Act of 16 April 2020 on special support instruments in connection with the spread of the SARS-CoV-2 virus (Journal of Laws, item 695 as amended), the Act of 28 May 2020 on amending the Act on public finance (Journal of Laws, item 1175), the Act of 31 July 2019 on supplementary benefit for persons incapable of independent existence (Journal of Laws, item 1622 as amended) and the Act of 11 September 2019. - Regulations introducing the Act - Public Procurement Law (Journal of Laws, item 2020 as amended).

The Act of 13 November 2003 on revenues of local government units launched a reform of local government finance. The aim of this reform was to further decentralise public tasks and funds, to link the financial situation of local government more closely with

economic prosperity, to increase the economic responsibility of units by increasing the share of own revenues in total financial resources and to extend the possibilities of absorption of EU funds by local governments. The act was based on the following assumptions: a change of the general structure of LGU revenues, consisting in strengthening the role of own revenues; a change of the function, rules and criteria of calculating the number of subsidies for particular units; a limitation of the scope of purpose-specific subsidies from the state budget for implementation of own tasks. This reform was carried out in two stages. The first stage, covering the years 2014-2015, is a period in which a transitional model will be in force to prepare local government units for the target system. The second stage, to be initiated in 2016, is the period when the target system of local government finance is to be introduced [Wąsowicz, Kula, 2016].

The aforementioned Act has been in force since 1 January 2004, and the reformed system of revenues of local government units is aimed at strengthening the financial independence of powiats and voivodeships in particular. The subject scope of the Act includes the classification of sources of local government revenues and the rules of determining and transferring general subsidies and grants. However, it does not refer to revenues obtained by entities, e.g., from loans and credits or the issue of securities. These issues are regulated, among others, in the Public Finance Act. The classification of revenues applied in the Act on revenues of local government units is based on, as mentioned above, the division of revenues expressed in the Constitution. Article 3.1 of this Act states that the revenues of local government units include: own revenues, general subvention, and purposespecific subsidies from the state budget. Paragraph 3 mentions three optional sources of revenues, which include funds from foreign sources (non-refundable), funds from the budget of the European Union, other funds specified in separate regulations. As can be seen from the above statements, the special feature of this Act is a clear distinction of regulations relating to the three constitutional sources of revenues. It is also characteristic that the catalogues of obligatory own revenues of each level of local government are defined separately.

Since the establishment of local government in 1990, the system of financing local government units has been subject to constant changes. The year 2006 was to be the first year of implementation of a new law on revenues of local government units, which would create a coherent system of financing local government. Meanwhile, it is apparent that nothing has happened in this area so far, and that there are still ongoing discussions about the changes being prepared to the regulations on the sources of income' of local government units, especially gminas. Amendments to the Public Finance Act are planned. The Ministry of

Finance is preparing changes concerning, first of all, the rules of creating local government budgets. They are to increase their transparency and increase the absorption of foreign funds by LGU. The amendment assumes a change in the manner of presenting revenues and expenditures of local government units in the budget - it presents revenues and expenditures of the budget in a breakdown into revenues/expenditures: current and property, and these categories have been defined differently. It is planned to liberalise the regulations making the use of the EU funds for investments dependent on the fulfilment of requirements concerning the payment of liabilities and the amount of LGU debt. The draft also introduces the obligation to conclude an agreement in the case of a subsidy granted from the local government budget specifying, among other things, the procedure and rules for its settlement, if separate provisions do not specify this [Swianiewicz, Gendźwiłł, Łukomska, Kurniewicz, 2016, p. 61].

There are also a number of changes in the laws regulating the sources of gminas' own revenues. Planned or implemented changes can be conventionally divided into two groups: the first group of changes does not significantly affect the level of revenue, while in the case of the second group a fairly significant reduction in revenue is expected. In the first group, the draft new Stamp Duty Act submitted by the government can be given as an example. The solutions contained therein concern, inter alia: limiting the subject of stamp duty exclusively to activities performed by public administration bodies and ensuring its greater equivalence linking its amount to labour intensity and costs. Applications and annexes to applications have been deleted from the catalogue of items. The fee was also waived for bills of exchange and documents containing a guarantor's declaration of intent. The draft also introduces the authorisation, expected by the local government, for the gmina council to order the collection of stamp duty by way of a collection agency, to appoint the collectors and to establish the amount of remuneration for this activity. The Council of Ministers also adopted a draft law amending the Act on Agricultural Tax and Forestry Tax, submitted by the Minister of Finance. The amendment unifies the terminology used in the Agricultural Tax and Forestry Tax Acts, which is used in the provisions on the informatisation of public administration and the Tax Ordinance, another change within the first group, in line with the expectations of local government, is the voluntary collection of a tax on dog ownership proposed by the Ministry. The gmina council would determine the principles of possible collection, payment dates and amount. Currently, this tax is a compulsory benefit and gminas cannot give up this source of income. In fact, it causes more problems than benefits, as a rule, the costs of its collection exceed the revenues. The maximum level is set from above. On a national scale, last year total

receipts to the gmina coffers from dog ownership tax amounted to PLN 14.6 million. On average, therefore, dog owners paid PLN 5865 to one gmina, which means that the significance of this source for local budgets is negligible and often counted in per mille, hence the proposed changes seem justified. As part of the amendments prepared by the Ministry of Finance to the Local Taxes and Fees Act (in addition to the changes to the dog ownership tax), which have been in force since 2007, it is also planned to amend the provisions on the tax on means of transport in connection with the unification of the definition of a car in the acts on direct taxes, the tax on goods and services and the projected tax on cars. In practice, this means the loss of the tax on means of transport with a total weight of up to 3.5 tonnes by gminas. It should also be noted that so far, no compensation for this loss in revenue has been indicated. The implementation of this provision may result in a decrease in the revenue of gminas by approximately PLN 129 million annuities. However, as they often reduce the tax rate on means of transport and introduce additional exemptions, the actual decrease in their revenues will be lower and should not exceed PLN 100 million. The maximum rate of the tax on means of transport for vehicles with total mass above 3.5 l up to 5.5 tonnes will amount to PLN 661,64 [2], however, this change will already be included in the second group, i.e., changes affecting the level of revenue quite significantly. The Act amending the Act on Inheritance and Donation Tax and the Act on Tax on Civil Law Transactions should also be mentioned here. The changes introduced as of 1 January 2007 consist, inter alia, in complete exemption from tax on gratuitous acquisition of property by the closest persons. The exemption is conditional on notification to the tax authority. This undoubtedly contributes to reducing gminas' budget revenues. However, this is done gradually, as gminas will continue to have revenues from inheritance and gift tax on the basis of legal relations established before the date of their entry into force.

Changes are also introduced to other legal acts constituting the basis for the operation of the local government, as exemplified by the Act on amending the Act on Electoral Ordinance to Gmina Councils, Powiat Councils and Voivodeship Assemblies, which has been in force since 13 September 2006. The most important and controversial change in this respect concerns the possibility for election committees to create the so-called blocks of lists. They may be formed by two or more committees, but each of them may participate in only one block in elections to a given local government unit. In gmina council elections, blocks of lists may only be formed in gminas with more than 20,000 inhabitants. In gminas with populations exceeding 20,000, and in elections to powiat councils and voivodeship assemblies, the distribution of seats between lists of candidates and groups of lists shall be

proportional to the total number of valid votes cast for the candidates of a given list or group of lists, respectively. The seats are distributed using the d'Hondt method². The legislator has also decided to introduce election thresholds. In order to take part in the distribution of seats it is necessary to obtain 5% of support by lists of candidates and 10% by blocks of lists (in the case of provincial assemblies the election threshold for blocks was raised to 15% of valid votes cast). If a given block has not exceeded the electoral threshold, the distribution of seats between its constituent lists is carried out according to the general principles. A 5% threshold was also introduced for the lists forming a block, which means that only those committees with at least 5% support will take part in the distribution of seats within the blocks. However, votes cast for a list within a block that has not passed the threshold are not lost, as they are counted against the pool of votes for the group and thus increase the number of seats to be distributed among the other committees. The distribution of seats among the lists forming the block is carried out using the Saint-Lague method³. As experts emphasise, the provisions of the law do not at all prejudge which of the coalition partners will have additional seats. The law also introduces far-reaching protection of election committees' names (newly added paragraph 5 of Article 64g of the Law). It is also worth noting that the final text of the Law did not include provisions prohibiting the combination of a councillor mandate with a mandate of a deputy or senator (this change was supposed to eliminate situations in which popular political leaders sitting in the parliament are entered on electoral lists). Amendments to Article 7 of the Electoral Code, which were intended to finally eliminate persons with criminal convictions from standing as candidates in this year's elections, were also abandoned.

All the aforementioned changes in the law do not affect the quality of the choices made, but they do make the choices more political. In other words, they do not contribute to the spatial differentiation of political groupings, a trend that can be observed in the "old fifteen' countries". Both experts and NGOs were very negative about the changes to the law, and all the fuss about this law will not improve the usually low turnout in local elections. The first polling results did not confirm earlier fears. The turnout in the municipal elections was over 45%, an increase of less than 1% compared to the elections of 7 2002. According to L. Kolarska-Bobińska, "the turnout was higher than expected, but this was due to the fact that

² Thanks to the d'Hondt method, it is possible to decide which committees will receive "fractional" mandates of Members - because if the number of votes cast in the election was divided into parties that exceeded the election threshold into the number of seats (mandates) to be divided, and then the party's results were divided by the result of the former activities - the results would not have to be integers.

³ A method used to distribute seats in electoral systems based on proportional representation with party lists. A popular modification is replacing the first divisor of 1 by 1.4, which favors larger groupings - this system is known as the modified method Sainte-Laguë.

some voters voted under the influence of the revival of political emotions and polarisation of the political scene. Most often - for or against the ruling system, [...] This logic was followed above all by municipal electorates, which often do not know their candidates for councillors. [...] A different logic operates at the local level. The central party campaign was less visible there. In small towns and especially in the countryside it was easier for candidates to break through to the voters' consciousness with their ideas" [2]. What is more, there are more and more opinions that the current actions and postulates are aimed at limiting the role of the local government. The process of transferring to local governments some of the competences remaining in the remit of voivodes was reversed, and then ideas were put forward to limit the number of terms of office of a mayor to two and to deprive local communities of the right to directly elect a mayor, a town mayor, and just before elections, the law was changed.

There is also a conviction that the development of local government is visibly hampered by the emerging process of state recentralisation. The democratically elected authorities of the local community, which are the basic subject of public management, are becoming more and more the executive apparatus of government policy, and to a lesser extent the stimulator of local activity, as provided for in the Constitution of the Republic of Poland.

Important from the point of view of conducting long-term, a coherent policy of local government units ensuring efficient functioning of local government units and high level of satisfaction of the local community is the issue of the tenure of authorities. Public matters of local importance are decided by the local government's decision-making bodies and the local government's employees. The incompetence and ineptitude of those in power should be prevented by the electoral system, which contains the principles for electing and dismissing local community representatives. Elections to the constitutive bodies of local government are universal, equal, direct and held by secret ballot, which raises the issue of the degree of representativeness of the representative bodies. The voters' preferences, or in other words their will, are expressed by voting for individuals or political parties to represent them. A consequence of the tenure of local government authorities may be e.g., a complete change of the directions of local development of local government units preferred in previous periods. Such a phenomenon does not have to cause negative effects in every case. Ensuring the continuity of economic decisions should be first of all in line with the will of local communities [Sekuła, Julkowski, 2017].

It is also important to note the links between frequent changes in the system of power supply to local government units and the links between the way local authorities are elected and the issue of indebtedness of local government units in Poland.

The conditions for the security of local government finance have been included in the Public Finance Act, which is a source of controversy. The first ceiling (debt repayment ceiling) is the ceiling for which the total amount of credit and loan instalments due in a given budgetary year, potential repayments of amounts resulting from sureties and guarantees granted by LGU and repurchases of securities issued by LGU, together with due interest and discount on securities, may not exceed 15% of the planned revenue of LGU for a given budgetary year.

The second ceiling (the acceptable debt ceiling) stipulates that the total amount of LGU debt at the end of the financial year may not exceed 60% of the total revenue of the given LGU in a given financial year. In the course of the budgetary year, the total amount of the LGU debt at the end of the quarter may not exceed 60% of the planned revenues in a given budgetary year.

It should be recalled that the law, which has been in force for over a year, has not removed the provisions introducing the restrictions of the ceilings of 15% and 60% in a situation where the securities issued, loans and credits are intended to obtain the required financial contributions in order to receive funds as a result of an agreement with an entity disposing of the structural funds or the Cohesion Fund of the European Union. The purpose of these provisions, although criticised, was to make it easier for LGU to obtain EU funds. The legislator limited the time of exclusion, which was reflected in Article 170(4): after the completion and final settlement of a programme, project or task co-financed with EU funds, the debt will be included in the 60% ceiling.

The most important objections to the legal regulations contained in the Public Finance Act include:

1) lack of differentiation between local government units which incur debt to develop infrastructure and those which incur debt to finance current expenditures, which makes it difficult to assess the established debt ceilings of local government units. The distinction between current and asset budgets is supported by the different nature of current and investment expenditure. It should be added that current expenditures are incurred during the financial year and relate only to this period, while capital expenditures extend beyond one fiscal year. Their sources of financing are also different. This distinction is used in many countries for more efficient budget planning

- and better cash management,
- 2) calculation of a limit indicator 15% of the planned annual revenue should be replaced by calculation of an individual indicator for each local government unit separately. The individualisation of indicators is connected with the issue of selecting the criterion of their granting/calculation. One of the concepts makes the ratio size dependent on the creditworthiness assessment carried out by rating companies. For unrated entities, the indicator could be constructed on the basis of e.g., a multiple of the average operating surplus, e.g., over the last three years,
- 3) an opinion of the Regional Chamber of Accounts (polish: RIO) concerning the indebtedness of the LGU (Art. 83(2) and (3), Art. 172). An entity which applies for a loan or a borrowing and intends to initiate the issue of securities shall obtain an opinion of the Regional Chamber of Accounts (polish: RIO) on the possibility to repay a loan or redeem securities. The change in this provision consists in the fact that such opinions are obligatory. The restrictiveness of the provision comes down to the fact that such an opinion is necessary when applying for a loan, credit or issuing short-term securities. Until now such opinions were required from lenders when taking out long-term liabilities. The second change concerns the situation when the opinion of the RIO on the LGU debt forecast is negative. Until now, a relevant resolution of the local government unit's legislative body was required, in which the body was to respond to such opinion. Nowadays, LGU must amend the budget resolution in such a way that the debt ceilings provided for in Articles 169 and 170 will be maintained. This provision provides RIO with an additional instrument with which it may influence the LGU debt level, and more specifically the forecast.

Legal solutions resulting in restrictions for local government units in incurring debt result, inter alia, from the fact that central authorities bear the consequences of excessive indebtedness of local government units through the obligation to grant preferential loans. The assessment of such a behaviour of the state (control of indebtedness of local government units by central authorities) is varied. The literature contains a view that such behaviour of central authorities is justified in countries where a local government has just been reactivated. Thus, the aim of central authorities is to protect citizens from excessive loan expansion of local government units, which would risk neglecting the basic needs of residents as a result of high debt servicing expenses.

In the context of debt, it should also be emphasised that:

- 1) firstly, in line with the concept that debt growth depends on the political cycle, it will be possible to observe whether the newly elected local government authorities actually contributed to the increase in the local government's debt,
- 2) secondly, there is a proposal to separate local government debt from the Treasury debt (government sector debt) by setting separate debt ceilings. i.e., the first for the local government sector, e.g., from 5 to 10% of annual GDP, and the second for the government sector the remainder up to the constitutional 3/5 of GDP. However, this proposal seems controversial and impossible to implement, as it would not comply with the terms of the Maastricht Treaty, i.e., the Brussels method for calculating *General Government* debt.

In conclusion, the above considerations confirm the conventional division of selected problems of local government units. It is impossible not to notice that the financial dilemmas faced by local authorities overlap with political ones; this is evidenced by:

- instability of provisions concerning local government units, which may lead to the
 conclusion that there is no uniform concept in Poland of the way local government
 units operate and are financed. Numerous laws and changes in the legal regulations
 sometimes cause the lack of clarity and transparency in the operation of the local
 government,
- the impact of local government elections on the financial aspects of the implementation of public tasks by local government units.

2. Local government activity - opportunities and threats

Polish society often underestimates the role and benefits of local government, which can be explained in different ways.

Firstly, the lack of civil society traditions - habits of the previous system meant that the political changes after 1989 introduced representative democracy, which contributed to putting the responsibility for basic decisions related to local government elections in the hands of a vast, uninformed and uninvolved majority. This phenomenon is accompanied by a lack of knowledge about the competences and organisation of local government, which creates a feeling of lack of real influence of the local community on decision-making related to the selection of tasks and the manner of their implementation.

Secondly, the lack of involvement of the younger generation in the sphere of public life, which results from the attitude of escaping into private life. According to surveys carried out by the Centre for Social Opinion Research in September 2006 concerning interest in local government elections, young people (aged up to 34) are less likely than average to participate in them) [Sekuła, Julkowski, 2017, p. 45].

The breadth of the issue limits us to point out a few issues that directly affect the activities of local government, i.e.:

- the role of public administration the politicisation of local administration leads to a
 personnel policy that is subordinate to the interests of local pressure groups or parties.
 The quality of administration leaves much to be desired sometimes the lack of
 appropriate organisational routines, habits and behaviour of officials is visible
 (although one cannot fail to notice many positive examples of actions taken by local
 government units),
- 2) the phenomena of corruption, patronage the phenomena of corruption have not escaped local government. They are fostered by certain legal regulations and party affiliation. Political blackmail is used making support dependent on obtaining personal benefits. The division of political spoils is becoming a frequent practice to strengthen the stability of the ruling camp. One way to prevent such phenomena is to create programmes to combat corruption. The "Anti-Corruption Strategy" can serve as an example. It was adopted by the Council of Ministers on 17 September 2002,
- 3) officials' dilemmas as to the choice of tasks to be performed and the lack of professionalism in performing them, which is largely related to the politicisation of local government. As a result of each successive election resulting in the replacement of officials, new people appear who are not prepared to perform the tasks they face. The negative effect of these changes is the inability to develop a professional team of administrative officials,
- 4) an ethical gap understood as the lack of regulation on ethical principles of conduct. Its existence may result, among others, from the lack of a uniform code of conduct. However, it should be noted that recently attempts have been made to create a "code of good practice". Moreover, regulations reflecting the implementation of the principle of openness and transparency of public finance are being developed, which was reflected, inter alia, by the Act of 6 September 2001 on access to public information. Public authorities and other entities performing public tasks are obliged to make public information available. By virtue of this act, competent authorities have been

obliged to create the home page of the Public Information Bulletin, whereas local government bodies - to create their own pages and make public information from the scope of activity of the given local government unit available on them. Positive phenomena include the spread of the idea of electronic government (*e-government*) and its use in increasing access to public information for citizens and the media. Public administration services accessible and provided via the Internet ensure greater transparency in the administrative decision-making process and make it possible for citizens to follow the decision-making process in real-time.

It is, therefore, necessary to create a local administration that acts professionally, which means that it should be composed of officials who are professionally trained to perform their duties. A professional civil servant should combine a career with work in the gmina, regardless of the political option winning in the elections. To create such an administration, several barriers need to be overcome, among them:

- shortcomings in legislation that does not guarantee adequate stability for holders of key administrative functions and does not eliminate non-core influences in appointments,
- 2) the resistance of local arrangements to the introduction of professional officials who could harm interest groups,
- 3) the lack of a system of training and certification of professional qualifications for the relevant posts.

Conclusion

Local government units are part of the public finance sector. Their basic task is to satisfy public needs by providing services to the local community. These tasks may be performed by local government units only if they have adequate competence and financial means for their implementation, which implies the necessity of legal regulations defining the operation and development of local government. It also follows from the above that the sphere of politics is not without significance for the functioning of local government. Separating the political aspect of local government activity has proved impossible to present in isolation from financial, legal and other factors. These spheres are closely interdependent.

One of the basic features of a good legal system should be its stability and transparency. In light of the examples cited in the article, the Polish local governmental law does not always meet these requirements. There are no permanent legal solutions in one of the most important issues for the local government - the financing system. The Act on revenues of local government units has had a temporary character for many years. Other legal acts related to the functioning of local government structures are also subject to changes. The basic feature of the system of financing local government units. The basic feature of the local government financing system, apart from its independence, should be the certainty of revenues. The system of financing local government units should be resistant to economic fluctuations, in particular in the scope of implementing basic current tasks. This results from the fact that these tasks (of obligatory nature in particular) have to be performed (regardless of revenues of local government units) and, moreover, the standard of provided services should be comparable in all local government units. It should be remembered, however, that in addition to stability, the created legal regulations should be characterised by a certain quality. It is not a matter of creating legal regulations at any cost, but that they guarantee the local government the possibility of efficient and effective functioning.

The creation of stable and high-quality local government legislation may contribute to a better understanding of the role of local government in Poland. This will enable the local government authorities to reach out to the local community, which in turn will allow it to see the benefits of the existence of local government structures, the inhabitants will understand that they constitute a community able to manage its own local affairs independently. It is important to remember that local authorities are not only responsible for their own activities, but also for those who elected them.

Such a look at the functions and roles of contemporary local government may make it easier to answer the question about the reasons for the low interest of the local community in its affairs.

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