

# HOUSING DISCRIMINATION WHILE FORMING CIVIC SPACE AND FUNDAMENTAL FREEDOMS IN TERMS OF CRISIS OF THE STATEHOOD DEVELOPMENT OF UKRAINE

**Vladyslav Teremetskyi, West Ukrainian National University,  
Olga Avramova, Kharkiv National University of Internal Affairs  
Tetiana Kyrychenko, Kharkiv National University of Internal Affairs  
Arina Savchenko, Kharkiv National University of Internal Affairs  
Zoryana Knysh, Lesya Ukrainka Volyn National University  
Oleh Predmestnikov, West Ukrainian National University  
Olesia Batryn, Pechersky District Court of Kyiv**

## ABSTRACT

*The article is focused on the problem of housing discrimination in Ukraine in the formation of civic space and fundamental freedoms in terms of crisis of the statehood development of Ukraine. The relevance of the topic is due to the lack of modern research on housing discrimination in Ukraine while it is actually present. The main categories of the research are the right to housing, discrimination, housing discrimination. It is stated that housing discrimination is a restriction of the right to housing resulting that a person is not able to purchase housing and stably live there. A vulnerable group of persons, in particular internally displaced persons, families with children, homosexual couples, etc. most often faces housing discrimination. Ukrainian legislation does not single out housing discrimination as an independent legal category. It has been concluded that housing discrimination is a situation, when a person and/or group of persons on the grounds of race, color, political, religious and other beliefs, sex, age, disability, ethnic and social origin, citizenship, marital and property status may experience restrictions on the recognition, realization or use of the right to housing, in particular obtaining housing, living there, conducting self-isolation there, exercising private life. The fact of housing discrimination can be established if a person is unable to realize his right to housing on one of the following grounds: sex, nationality, citizenship, sexual orientation, living with a family without registration of marriage; the presence of children and animals; internal movement, age, etc. Discrimination can be manifested in the refusal to enter into a lease/rental agreement, to extend this agreement, to unreasonably raise the rent.*

**Keywords:** Right to Housing, Discrimination, Vulnerable Persons, Residence, Housing, Fundamental Human Rights, Restrictions

## INTRODUCTION

Housing discrimination in Ukraine is not currently considered as an independent legal concept, it is not distinguished in the field of social security. Unfortunately, due attention is not paid to cases of discrimination against the housing rights of vulnerable persons at the state and society levels, in particular the disabled, persons of non-traditional sexual orientation, war veterans, victims of domestic violence, large families and internally displaced persons. At the same time, this category of persons is represented by a significant segment of Ukrainian society. Thus, 2,700,000 people in Ukraine have disabilities as of January 1, 2020, including 222.3 thousand people with group I disability, 900.8 thousand people with group II disability, 1416.0 thousand people from group III disability and 163.9 thousand children with disabilities (The

Ministry of Social Policy of Ukraine, 2020). 460,079 veterans of hostilities in the Eastern Ukraine were registered in Ukraine in 2020 (News agency “ArmyInform”, 2020). According to some social surveys, these groups face discrimination, in particular in the field of housing rights. Despite this fact, housing discrimination as a legal category is not regulated in the legislation of Ukraine and there is no its uniform solution in judicial practice. For example, violations of the rights of internally displaced persons to stable residence in housing have not been highlighted in the summary of caselaw for 2017 on cases of protecting property and non-property rights violated in connection with the conflict on Donbass (Law of Ukraine, 2017). Also, the report on the rights of the LGBT community in Ukraine for 2020 does not highlight discrimination in the housing sector (Community online, 2020). This only emphasizes that Ukrainian society and the state are still unable to identify the facts of housing discrimination against vulnerable people.

The lack of recognition and special research on housing discrimination in Ukraine does not indicate its absence. This is one of the tendencies to ignore scientific research on housing rights, in particular such as the right to adequate, affordable housing, fair residence in housing in Ukraine. It should be noted that the scientific foundation for the development of a new democratic system of housing rights exists. We should point out the work of V.P. Maslov, who substantiated in 1973 the existence of independent housing rights arising in the field of meeting housing needs (Maslov, 1973). Modern Ukrainian researchers attribute housing rights to the rights of the homeowner (Haliantykh, 2014). This approach is one of the negative factors in the development of modern housing rights aimed at overcoming discrimination in the housing sector.

The importance of housing discrimination problem in Ukraine is enhanced by the fact that Ukrainian statehood is in crisis due to the annexation of part of the territory, hostilities in the East of the country, economic and social crisis exacerbated by the COVID-19 pandemic. This affects the process of the formation of civil society and fundamental human rights.

The indicated fact emphasizes the relevance and timeliness of the research on housing discrimination in the context of the formation of civic space and fundamental freedoms in terms of crisis of the statehood development of Ukraine.

## MATERIALS AND METHODS

The materials of the article are statistical data on the number and position of vulnerable persons in the housing sector in Ukraine, the facts of discrimination in Ukrainian society; scientific publications of Ukrainian and foreign researchers on housing rights and housing discrimination; the report of the Commissioner for Human Rights in Ukraine for 2020; Ukrainian legislation, US federal legislation on fair living conditions, housing provision (Law of USA, 1968); opinion polls on the state of housing discrimination in Ukraine.

The objectives of the research are to define housing discrimination, to identify its facts and grounds. The materials and objectives of the research determined the choice of scientific research methods. The primary method is axiological, which allows us to justify the value of housing for human beings. The method of analysis and synthesis made it possible to identify general approaches to the concept of discrimination, to distinguish its grounds and to formulate a definition of housing discrimination. Comparative and legal method was applied to study American legislation in the field of fair residence in housing. Statistical method was used to identify the actual situation on the status of fundamental rights of vulnerable persons in the housing sector.

## RESULTS

### **Right to Housing and its Relationship with Fundamental Human Rights in terms of the Formation of Civic Space and Fundamental Freedoms in the Crisis Conditions of the Statehood Development of Ukraine**

The basics of housing rights are provided in the Constitution of Ukraine (Law, 1996). The Article 47 of the Constitution of Ukraine proclaims the right of everyone to housing. The content of this right is limited to the ability of everyone to purchase property or to rent or receive social assistance. Forcible deprivation of housing is possible only on the basis of a court decision. The right to housing is supplemented by the Art. 30 of the Constitution of Ukraine, which guarantees the inviolability of housing (Law of Ukraine 1996). These constitutional norms do not provide fair living conditions, they also do not establish a provision on the prohibition of discrimination in the housing sector, the adequacy of housing. The majority of Ukrainian scholars dealing with housing law reveal the constitutional norm (the Art. 47) and the right to housing as the right to a stable, sustainable, permanent use of the occupied dwelling; the possibility of improving living conditions; ensuring a healthy living environment worthy of a civilized person, enshrined in the General Declaration of Human Rights (Kharytonov, 2008). K. Wells characterized that approach as a minimal approach complemented by the right of autonomy of residence in a certain housing space (Wells, 2019). Christoph U. Schmid argues that the right to housing can be extended to the right to decent housing secured by judicial control, adequate housing stock, various housing tenure options and stabilization of social housing policy. He also stresses that scientific research and study on the right to housing can mobilize the society to respond to the housing crisis (Schmid, 2020). Today the housing and public utilities infrastructure is the largest consumer of resources in the world economy (Loiko, 2021).

In general, one can argue that the right to housing can be considered as a social right aimed at ensuring sufficient, minimum living conditions for a person. This right is directly related to the right to health care. Having analyzed General comment no. 4. "The right to adequate housing" of the Committee on Economic, Social and Cultural Rights (clause 1 of the Art 11 of the Covenant) B. Thiele draws attention to this specific feature. In particular, General comment no. 4 includes six principles that indicate the relationship between housing and the fundamental right to health care: protection against infectious diseases; protection from injuries, poisoning and chronic diseases; reduction of psychological and social stress to a minimum; improvement of living conditions; conscious use of housing; and the protection of at-risk groups (UN Committee on Economic, Social and Cultural Rights, 1991; United Nation, 1994). B. Thiele rightly emphasizes that the first two principles are especially important for health. The first stresses that the following conditions are essential for the provision of adequate housing: a safe water supply; sanitary disposal of faeces; disposal of solid waste; drainage of surface waters; personal and home hygiene; safe food protection; and structural safeguards against disease transmission. The second concerns construction supplies and technologies, as well as structural safety, including ventilation and light, and suggests that physical housing should be in a way that residents are not exposed to hazardous conditions or harmful substances (Thiele, 2002). It should be added that housing in the context of the COVID-19 pandemic has become not just a place of residence, but also a place of self-isolation, the place of undergoing treatment at home. Therefore, the availability of housing in the conditions of the socio-economic crisis, where the states find themselves as a result of the pandemic has become of particular importance, which is associated with the preservation of individual and collective health.

The right to housing can be also considered within the limits of private law. This right as a private legal category is primarily aimed at meeting the housing need, that is, the need to live in housing. Residence in housing covers such authorities as the use, administration of housing and the obligation to maintain housing, to keep a balance of interests with neighbors, to use housing for living and enjoy family and private life. At the same time, the right to live in housing cannot be considered as a complete analogy of the authority to use it, which is an element of the content of property, since residence can arise both on the basis of a property right (property, servitude) and an obligation relationship (lease agreement) (Avramova, 2017). The right to housing covers the following rights: the right to affordable housing; the right to safe housing; the right to manage housing; the right to stable use of housing; to protect housing rights. One can distinguish competencies in each of these groups of rights (Avramova, 2015).

It should be noted that in the national legislation as well as in the international the protection and preservation of housing rights are being equated. Such situation arises from the fact that the right to housing is part of a broader category – human social protection (Teremetskyi, 2021).

Thus, the right to housing is directly associated to fundamental human rights. Guarantees and protection of fundamental human rights in the context of the crisis of Ukraine's statehood, caused by external and internal factors, should become paramount in the country.

### **Concept of Housing Discrimination: Problem's setting in Ukraine**

Discrimination as a social and legal phenomenon in Ukraine is gradually being studied. For example, according to official polls among people who quite often faced discrimination (5%) or suffered from this problem from time to time (35%), 78.5% consider discrimination as a serious (very serious or in general) problem and only 13.6 % believe that it is not a problem at all. At the same time, 52% have not personally encountered discrimination among the population, this position is shared by more than a third (35.5%) and another 18% found it difficult to answer this question, while less than half share the position on the seriousness of the problem – 46.5% (Law of Ukraine, 2019). These figures emphasize that a person facing the discrimination finds himself in a position of restricting the realization of fundamental rights, which is a threat to the development of civil society in Ukraine and statehood. Cases of discrimination for the Ukrainian state can pose a threat to national security, since they undermine a person's confidence in the state, which is in a crisis status due to the partial occupation of the territory. Therefore, the definition of the concept and characteristics of various types of discrimination is an urgent issue for legal science.

The concept of discrimination in Ukraine is enshrined in the Law of Ukraine "On the principles of preventing and combating discrimination in Ukraine" (Law of Ukraine, 2012). Thus, discrimination is a situation, when a person and/or a group of persons on the basis of race, skin color, political, religious and other beliefs, gender, age, disability, ethnic and social origin, citizenship, family and property status, place of residence, linguistic or other features that were, are and may be valid or suppose the existence of a restriction in the recognition, realization or use of rights and freedoms in any form, except for cases when such a restriction must legally, objectively have a reasonable purpose, the methods of achieving which are appropriate and necessary. The indicated law provides the direct discrimination (a situation, when a person and/or a group of persons on their certain grounds behave less favorably than with another person and/or a group of persons in a similar situation, unless such behavior is lawful, objectively justified purpose, the methods of achieving which are appropriate and necessary) and the indirect discrimination (a situation, when there are less favorable conditions or position in comparison with other persons and/or groups of persons as a result of the implementation or application of formally neutral legal norms, assessment criteria, rules, requirements or practices for a person and/or a group of persons on their certain grounds, unless their implementation or application has a legitimate, objectively justified purpose, the methods of achieving which are appropriate and necessary) (Law of Ukraine, 1996). Direct discrimination can be carried out on one of the following grounds: gender, nationality, citizenship, sexual orientation, living in a family without marriage registration (Ponomarov, 2014).

The Law of Ukraine "On the principles of preventing and combating discrimination in Ukraine" states that the norms of legislation on the prevention of discrimination are applied to housing relations, but the category of "housing discrimination" is not separately singled out. Such a general approach makes it possible to define housing discrimination as a situation, when a person and/or a group of persons on the basis of their race, skin color, political, religious and other beliefs, gender, age, disability, ethnic and social origin, citizenship, family and property status may experience restrictions in the recognition, realization or use of the right to housing, in particular, obtaining housing, living there, conducting self-isolation there, and exercising private life.

Juan Carlos Benito Sánchez describes three discriminatory legal concepts: direct discrimination, indirect discrimination and harassment discrimination. Direct discrimination takes place against women in cases of domestic violence, when a woman is made dependent on the right to live in her husband's house. Indirect discrimination arises when a norm, a policy or a practice which is apparently neutral creates a particular disadvantage for a group defined by a prohibited ground, without this measure being justified by a legitimate aim and being implemented through appropriate and necessary means. Harassment discrimination occurs with the raise of rent or illegal evictions (Sanchez, 2020). J. Ondrich, A. Stricker, J. Yinger prove the existence of housing discrimination based on race and skin color feature (Ondrich, 1999). These types of housing discrimination are also supported by Vincent J. Roscigno, Diana L. Karafin, Griff Tester, supplementing them with discrimination based on gender and presence of a family (Roscigno, 2009). Modern researchers point to the existence of housing discrimination based on sexual orientation; in particular, additional legal protection is required for housing rights of Transgender and Cisgender LGBTQ Individuals (Kattari, 2016).

The indicated types of discrimination were highlighted in the analysis of the US housing sector. It should be noted that housing discrimination in Ukraine is in a latent form. It is unacceptable to discuss this issue in society; it is believed that everyone has the right to housing. There is no official social survey of landlords' preferences and the problems faced by vulnerable individuals. However, sociological studies of housing discrimination were carried out at the level of individuals and analytical organizations. For example, E. Hassai conducted a sociological survey in 2020 on the topic "Discrimination against students while seeking and renting housing". According to its results, it can be argued that students in Ukraine face with housing discrimination based on age feature (up to 25 years), gender (women spend more housing and utility services), marital status (students who are traditionally married are more preferable as tenants), availability of children and animals, nationality, internal movement, appearance (non-standard dyed hair discourage tenants from concluding a lease) (Hassai, 2020).

The CEDOS Analytical Center, when establishing the status of the State Housing Policy of Ukraine, revealed in 2019 the presence of biases regarding the acquisition and use of housing. Thus, 18% of respondents who are tenants of housing faced with prejudice while looking for housing and while renting it. Half of them faced biases about having children (48%); one third – because of the presence of pets (35%); almost a third (27%) faced bias related to territorial origin or registration. Age was also a common reason of bias, as reported by 15% of respondents (CEDOS, 2019). At the same time, bias is a systematic and stable subjective assessment of a group or its members, mainly in an unfavorable perspective. Its presence can influence decision-making, especially when someone has goods and he/she decides how to dispose of them (Hassai, 2020). Thus, the indicated figures on prejudice in the housing sector make it possible to assert that housing discrimination in Ukraine is most often manifested on the basis of age, gender, the presence of children and animals, nationality and internal displacement.

To verify these facts, the authors of this article conducted a survey during May-June 2021 in Kharkiv: 10 landlords (7 women, 3 men) and tenants (10 tenants were interviewed: 2 internally displaced persons, 2 families with children, 6 international students). The survey was conducted in the form of an interview in person. It was found out that landlords give preference to families without children and without animals. According to landlords, unwanted tenants are internally displaced persons and students from India or Arab origin. This situation is due to the fact that internally displaced persons and international students require official registration at the place of residence. Besides, there is a potential conflict of interest in case of eviction of internally displaced persons, as well as families with children. Foreign citizens quite often violate the rules of living in a dwelling, which leads to a conflict with neighbors. Tenant's sexual orientation is not a common ground for housing discrimination. Tenants indicated that they faced discrimination of housing rights in the use of housing, when rent was raised in the process of residence and, as a result, they were required to immediately evict.

Summarizing the above, it can be argued that in fact there is housing discrimination in Ukraine. However, unlike the United States, it is not sufficiently discussed in society and is not

studied at the level of scientific works. Housing discrimination can be presented as a situation, when a person and/or a group of persons on the basis of race, skin color, political, religious and other beliefs, gender, age, disability, ethnic and social origin, citizenship, family and property status may experience restrictions in the recognition, realization or use of the right to housing, in particular, obtaining housing, living there, conducting self-isolation there, exercising private life. The basis for housing discrimination is bias, that is, a negative, systematic, stable subjective assessment by the landlord of the future tenant, mainly in an unfavorable perspective based on gender, age, beliefs, internal displacement, nationality, race, the presence of children and animals, and others. The fact of housing discrimination can be established if a person cannot realize the right to housing on one of the following grounds: gender; nationality; citizenship; sexual orientation; family living without marriage registration; the presence of children and animals; internal displacement; age, etc. Discrimination can be manifested in the refusal to conclude a lease/rent agreement, to renew this agreement, groundlessly raising the rent, etc.

### **Housing Discrimination of Internally Displaced Persons**

Ukrainian sociologists while studying the rights of internally displaced persons from Donbass and Crimea indicate that displaced persons most often face discrimination in two cases: when looking for work and housing. In their opinion, limited access to housing on the basis of their income is discriminatory. Thus, the average monthly rent for a one-room apartment in Ukraine amounted in 2019 to UAH 3,700 according to the State Statistics Committee of Ukraine. Monthly income does not exceed UAH 7000 in every second family of displaced persons (Sereda, 2020). Discrimination against the housing rights of internally displaced persons is indicated in the Annual Report of the Commissioner of the Verkhovna Rada of Ukraine for Human Rights on the state of observance and protection of human and civil rights and freedoms in Ukraine for 2020. The Report indicates that the number of registered internally displaced persons for seven years of Russian aggression living on the territories controlled by Ukraine in Donetsk region – is more than 500,000 people and in Luhansk region – about 300,000 people. The regions with a significant number of internally displaced persons were the City of Kyiv, with more than 160,000 internally displaced persons, and Kyiv region – with 63,000 internally displaced persons. Accordingly, Kharkiv region has 134,000, Dnipropetrovsk region has 71,000 and Zaporizhzhia region has 56,000 internally displaced persons (Commissioner of the Verkhovna Rada of Ukraine on Human Rights, 2020). The Commissioner on Human Rights emphasizes that the main conditions for successful integration for internally displaced persons are housing, a steady income and employment. About 60% of internally displaced persons live in rented housing, at least 27% of them indicate the risk of being evicted from their current housing due to the inability to pay rent. Insufficient amounts of monthly targeted assistance to internally displaced persons to cover living expenses induce them to return to territories, where they could potentially be in danger. About 65% of those who returned to live in the temporarily occupied territories are persons aged 60 and over (Commissioner of the Verkhovna Rada of Ukraine on Human Rights, 2020). The Kharkiv Human Rights Group published data in 2016 on the revealed facts of housing discrimination against internally displaced persons. In particular, internally displaced persons indicated that there was discrimination. The survey identified the main areas, where it could be clearly traced: 30% of the respondents noted that they were refused while trying to rent housing on the grounds that they were internally displaced persons; in 22% of cases landlords overestimated the cost of renting housing due to the fact that internally displaced persons addressed them (Kobzar, 2016). Thus, housing discrimination against internally displaced persons is a modern reality of the Ukrainian society and state.

This situation also arises in other states. For example, the problem of housing discrimination in the UK, which faced internally displaced persons and migrants even after the Second World War, continues to be relevant. According to the 2011 census, it was revealed that an imperfect housing policy led to the appearance of migrants, and eventually a part of the population in a disadvantaged housing situation, which was the evidence of housing

discrimination (Lukes, 2018). Housing discrimination against refugees also exists in Germany (El-Kayed, 2018). Researchers ascertain the existing problems with the fundamental rights of internal migrants in India (Gaikwad, 2020). It should be emphasized that housing discrimination exists both in relation to internally displaced persons (internal migrants) and external migrants. This situation is due to subjective and objective factors, since the housing problem can be solved both on the basis of the implementation of property rights and on the basis of the rights to own and use someone else's housing (Savchenko, 2019). Subjective factors are associated with the emergence of a new face in a traditionally established settlement, *i.e.*, difficulties arise both for an internally displaced person and a host. Objective factors are associated with financial difficulties that arise as a result of the abandonment of housing in the occupied territory and the lack of housing stock designed to accept internal and external migrants. In general, it can be assumed that housing discrimination against internally displaced persons is a situation, when internally displaced persons due to actual displacement within the country, lack of permanent income, loss of property, changes in living traditions, may experience restrictions in the recognition, realization or use of the right to housing, in particular, obtaining housing and stable living there.

### **Housing Discrimination of Persons Living in a Family**

The development of civil society in Ukraine is directly related to the establishment of the institution of the family. The concept of a family in Ukrainian legislation is defined in Part 2 of the Art. 3 of the Family Code of Ukraine: “a family consists of persons who live together, are connected by a common household activity, have mutual rights and obligations. Spouses are considered a family even when the wife and husband do not live together due to education, work, medical treatment, the need to take care of parents, children and for other valid reasons. A child belongs to the family of his parents even when he does not live with them” (Law of Ukraine 2002). Such a broad approach allows distinguishing various forms of family life: marriage, cohabitation of a man and a woman, an LGBT family, a family with children, concubinage, etc. At the same time, homosexual union is regulated in Ukraine by moral norms, but not law (Kyrychenko, 2012). Marriage relations are surely multifaceted, since they include not only aspects of the conclusion or dissolution of marriage, but also the norms of law assigned to regulate them. In particular, they help to enshrine property rights and obligations of spouses, they provide the possibility of concluding a marriage contract, or generally determine the possibility of spouses to live separately (Kyrychenko, 2020). Given the variety of forms of family life, it can be stated that situations of housing discrimination may arise in relation to persons living in a family, which limits some families in realizing their right to housing.

The Ukrainian legislation does not define that housing discrimination can exist against the family; however, families in American legislation, in particular in The Fair Housing Act (Law of USA, 1968), are classified as vulnerable categories. One should agree with this, since not every landlord provides housing for families with children. It is explained by the fact that children can create additional noise, which affects the comfort of neighbors; they can spoil furniture and home improvements. Besides, children create additional risks for living conditions, for example, children falling out of windows. Higher rents may be charged for families with children. This approach puts families with children in a more vulnerable position than families without children while seeking for housing. Housing discrimination can also be faced by homosexual couples due to the homophobic beliefs of a landlord.

Housing discrimination against people living in a family is a situation, when families due to non-traditional forms of family life, the presence of children may experience restrictions in recognizing, realizing or using the right to housing, in particular, obtaining housing and stable living there.

## CONCLUSION

The conducted research on housing discrimination in Ukraine makes it possible to formulate such conclusions. Housing is of paramount importance to the realization of fundamental human rights, in particular the right to life and health care, enjoyment and protection of privacy and creating a family. At the same time, housing in the context of the COVID-19 pandemic has become not just a place of residence, but a place of self-isolation, undergoing treatment at home. Therefore, the availability of housing has acquired particular importance, which is associated with the preservation of individual and collective health. Consequently, the facts of housing discrimination must be identified and characterized in order to enable the legislator to avoid a situation of restricting the realization of the right to housing.

It has been established that housing discrimination, in fact, exists in Ukraine. However, it is not sufficiently discussed in society and is not studied at the level of scientific works. Housing discrimination is a situation, when a person and/or a group of persons on the basis of race, color, political, religious and other beliefs, gender, age, disability, ethnic and social origin, citizenship, marital and property status may experience restrictions in recognition, realization or use of the right to housing, in particular, obtaining housing, living there, conducting self-isolation there, exercising private life. The basis for housing discrimination is prejudice – it is a negative, systematic, stable subjective assessment of a landlord of the future tenant mainly in an unfavorable perspective based on gender, age, beliefs, internal displacement, nationality, race, the presence of children and animals and others. The fact of housing discrimination can be established, if a person cannot realize his/her right to housing on one of the following grounds: gender; nationality; citizenship; sexual orientation; living in a family without marriage registration; the presence of children and animals; internal displacement; age, etc. Discrimination can be manifested in the refusal to conclude a lease/rental agreement, to extend this agreement, or an unjustified raise of rent. In particular, housing discrimination of certain vulnerable persons has been highlighted. Housing discrimination against internally displaced persons is a situation, when internally displaced persons, due to actual displacement within the country, lack of permanent income, loss of property, changes in living traditions, may experience restrictions in recognizing, realizing or using the right to housing, in particular, obtaining housing and stable living there. Housing discrimination against people living in a family is a situation, when families due to non-traditional forms of family life, the presence of children, may experience restrictions in recognizing, realizing or using the right to housing, in particular, obtaining housing and stable living there.

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