

# SPECIFICS OF USING AND PROTECTING LAND RESOURCES IN UKRAINE AND FOREIGN COUNTRIES

**Vladyslav Teremetskyi, West Ukrainian National University Vitalii Vitalii Komarnitskyi, Luhansk State University of internal affairs named after E.O Didorenko**

**Hanna Shust, Anton Makarenko Kyiv Professional and Pedagogical College Oleh Ilkiv, Academician Stepan Demianchuk International University of Economics and Humanities**

**Lubov Krupnova, Academician Stepan Demianchuk International University of Economics and Humanities**

## ABSTRACT

*The authors of the article have revealed the specifics of using and protecting land resources in different countries through the prism of realizing the ownership right of to land and implementing the management in the field of land relations. The authors have provided restrictions and admonitions in regard to the realization of the ownership right to land that operate in foreign countries and have studied the current state of the system of government in the field of using and protecting land resources. The purpose and limits of the powers of those agencies that ensure the functioning of the state land cadastre and perform the functions of disposal of state agricultural lands in Ukraine and foreign countries have been analyzed. The authors have revealed the disputes in the activities and powers of the central executive agency of Ukraine, which implements the state policy in the field of topographic, geodetic and cartographic activities, land management, State Land Cadastre and state supervision (control) in the agro-industrial complex. Recommendations for improving the management system in the field of use and protection of land resources of Ukraine have been provided, namely the authors have indicated the need to transfer control and supervisory powers to a specially created agency that would protect land resources as an integral part of the environment.*

**Keywords:** Ownership Right to Land, Geo-Information Data, Land Cadastre, Cadastral Administration, Disposal of Agricultural Lands, Management in the Field of Using And Protecting Land Resources, Control and Supervisory Functions

## INTRODUCTION

Land is one of the most valuable resources in the world, since it is the basis for the functioning of all sectors of the economy, and for some of them is the main mean of production. Therefore, the land that each state owns is an important resource that determines its wealth and opportunity for economic development. The countries developing their own land policy, determine the forms of land ownership, conditions and procedures for land use and pay considerable attention to the mechanism of land relations' regulation (its legal and economic components) and the system of state management of land resources (Sviridova, 2016).

Ukraine after gaining independence has started land reform, whose task among other things was

- 1) To diversify forms of land ownership, giving all forms of ownership equality and thus.
- 2) To create conditions for the effective functioning of the land market, including agricultural lands.

- 3) To ensure the rational use of land resources, which, in turn, required.
- 4) The creation of an effective management system in the field of using and protecting land resources.

As Ukraine is still searching for the best option of the system of agencies for managing and protecting land resources, the indicated agencies have undergone the greatest changes and transformations compared to other managing agencies during the independence time. Nowadays, when Ukraine is on the threshold of a new stage of land reform – the launch of the land market – is the issue of full realization of ownership right to land, which, incidentally, is guaranteed by the Constitution of Ukraine to every citizen (Law of Ukraine, 1996), ensuring rational use of land resources and their protection is especially acute.

## LITERATURE REVIEW

Some issues of the ownership right to land and the institution of management in the field of using and protecting land resources of Ukraine have been the object of research of many scholars. In particular, Sydor (2020) notes that the current state of public relations in the field of land use and protection requires an adequate and constructive response and it is impossible without rethinking the concept of land rights that exists today in Ukraine. The researcher also notes that the property is not the land resources themselves, but the degree of access to them, power and control over them, because the person appropriates only the useful properties of land resources. Given this legal category of “ownership right to land” we should consider as an indication that part of the land resources (a specific land plot) belongs to a certain person, *i.e.*, it simply determines their legal title.

At the same time, Bondar (2020) points out that one of the main problems hindering the completion of land reform in Ukraine is the lack of a clear vision of an effective system of central executive agencies, and thus the strategy for the development of such a system. This, in turn, has a negative impact on ensuring the rational use and protection of land resources, since the quality of management in the field of land relations depends on the system of public land management agencies. Therefore, the main elements that influence the rational use and protection of land resources are the mechanism of realization of powers by the land owner and the quality of public administration in the field of land relations.

The constant political and socio-economic changes taking place in society, as well as the incompleteness of land reform in Ukraine require a timely response to all challenges that arise in the process of the formation and development of our state. That is the reason why the issue of management in the field of use and protection of land resources does not lose its relevance. Irrational land use, imperfect regulation of relations in the field of using and protecting land resources, including in terms of market economy, negatively affect the development of the state, since they hinder the balance of socio-economic and environmental components of such a development. Given this, the world experience in the field of use and protection of land resources is becoming important.

## RESEARCH METHODOLOGY

The methodological basis of the research of the specific features of land use and protection in Ukraine and foreign countries is a set of general scientific and special legal methods of scientific cognition, including dialectical, analysis, historical and legal, comparative and legal, formal and legal, theoretical and legal forecasting. Thus, the essence of the ownership right to land resources and their rational use, as well as the purpose of creating a land management system have been revealed with the help of the dialectical method. The method of analysis allowed to study the works of scholars on the research topic and to identify contradictions and gaps in the legislation regulating

the procedure of using and protecting land resources of Ukraine. The comparative and legal method was used in comparing the provisions of national and foreign legislation, the powers of government agencies in the field of using land resources of Ukraine and foreign countries. While studying the “evolutionary development” of the management agencies system in the field of use and protection of land resources of Ukraine the authors have used the historical and legal method, and while studying the powers of the indicated agencies the authors have used the formal and legal method. The method of theoretical and legal forecasting has been used in the formation of recommendations for solving problems in the field of use and protection of land resources of Ukraine.

## RESULTS AND DISCUSSION

Most developed countries have long realized that the rational use of land resources, *i.e.*, such their use when both the natural properties of land are preserved and their quality is improved, is possible only with the interest of direct land users and quality state control over the land use process.

The most interested in the rational use of land and maintaining its quality are those persons who use land resources according to the ownership right (landowners) or in accordance with the right of permanent or long-term (on the right of lease) use (land users) (Teremetskyi & Shust, 2020).

The classical understanding of the ownership right to land resources implies the powers of a person (owner) to own, use and disposal of them. However, the content of the indicated powers may slightly vary depending on the legal doctrine of any country. For example, the land law of England defines the ownership right to land as the actual stay on the land plot with the status of its personal space (possession) (Dixon, 2005) and carrying out economic activities on it (use and disposal). American land law has a slightly different approach to determining the ownership right to land, which combines five components: the right of access (the ability to stay on the land plot and use it for own needs), the right to benefit (the ability to collect profit, receive income), the right to manage (regulate the use of a land plot), the right to restrict (the ability to determine the number of persons who will have the right to access the land plot), the right of alienation (the ability to sell or transfer to another person under a lease contract) (Sydor, 2020). However, those components fully correspond to the content of the ownership right in the classical sense.

According to the Articles 13 and 14 of the Constitution of Ukraine, land and its subsoil located within the territory of Ukraine are objects of the ownership right of the Ukrainian people (Law of Ukraine, 1996). Besides, the land is recognized as the main national wealth, which is under special protection of the state. These provisions are reproduced in the Art. 324 of the Civil Code of Ukraine (Law of Ukraine No. 435-IV, 2003), the Art. 78 of the Land Code of Ukraine (Law of Ukraine, 2001) and the Art. 148 of the Commercial Code of Ukraine (Law of Ukraine No. 436-IV, 2003). The subjects of the ownership right to land can be individuals and legal entities, the state and territorial communities (Law of Ukraine No. 435-IV, 2003). In this case, all the subjects of the ownership right are equal under the law, and the ownership right to land is guaranteed by the state (Law of Ukraine, 1996).

The concept of the ownership right to land in Ukraine is enshrined in the Art. 78 of the Land Code of Ukraine and is defined as the right to own, use and dispose of a land plot (Law of Ukraine, 2001). However, the division of powers regarding the possession, use and disposal of land resources (lands of different categories) by citizens, legal entities and the state as the subjects of land legal relations is vaguely defined by the Constitution of Ukraine. The norms on the regulation of legal relations in the field of land use are scattered in the current legislation of Ukraine, in particular in the Civil Code of Ukraine and the Land Code of Ukraine, among other forms of ownership and, in our opinion, need additional systematization.

The issue of whether land is property and whether land relations in regard to land can be considered property remains debatable. There is a substitution of concepts during political and scientific discussions, and different opinions are quite often expressed about the use of the same term of “land” in different meanings, namely: if land is a natural resource, it is not property; when it comes to land plots, they are property with the appropriate civil status. Recently, there has been the dominant position that all land relations should be regulated only by land legislation, since land as part of the globe does not fall under the definition of a thing and cannot be the object of civil relations. Other researchers, preferring civil law, offer to distinguish civil regulation from land one. However, land relations, in any case, require state regulation. Recognition of land as a national treasure establishes the need for the state to control and supervise their use. Control and supervisory functions are components of public administration in the field of land resources use, and therefore land relations are also regulated by administrative and legal norms.

Regarding the forms of land ownership, there are different forms of ownership in most countries, in particular private, municipal and state, where each of them may have its own characteristics depending on the country. Although the state provides some freedom to landowners and land users, it always reserves the right to manage and control in the field of using and protecting land resources.

Each country establishes its own restrictions/reservations on the use of land resources, which affect the implementation of both the ownership right to land and land use right and form their specific features. The main reservations may include the following:

- 1) Concerning the subject of ownership, its belonging to the state, requirements for education and/or work experience in a certain field of activity. For example, political parties and public organizations cannot own land in Bulgaria; and the law in Estonia sets out work experience requirements for those wishing to purchase a land plot of the forestry fund. Some countries prohibit foreigners from owning land in general, or such restrictions are applied only to certain categories of land that are recognized as particularly valuable under the state law or have the special status. Thus, foreigners are prohibited from acquiring the ownership right to land in Bulgaria (Law of the Republic of Bulgaria, 1991). The same ban exists in Slovenia (Law of the Republic of Slovenia, 1991). Foreigners are prohibited from owning only agricultural land in Ukraine and some US states (Iowa, Minnesota, Missouri & others) (Erin Mc Kinstry, 2017).
- 2) Concerning the location of the land plot and categories of lands. The acquisition of land plots in areas of the interstate border is limited in Spain. In some countries, there is still only state ownership of certain categories of land plots. In particular, in Belarus – for agricultural land (Law of the Republic of Belarus, 1994), in Kyrgyzstan – for pasture land (Law of the Kyrgyz Republic, 2010).
- 3) Concerning the size of a land plot. However, such requirements may relate to the maximum or minimum size of the area of land resources belonging to one owner. Countries whose legislation contains such restrictions include Denmark, Moldova, Germany, Poland, France and others. In particular, the maximum area of agricultural land that can be owned by one person is defined in Lithuania within the following limits – 300 hectares for individuals and 2000 hectares for legal entities (Law of the Republic of Lithuania, 2004); in Poland it is 300 hectares for farmers (Law of the Republic of Poland, 2003). Instead, there is the minimum land size in Germany (Bavaria) – 2 hectares (Experience of Germany, 2017) and in Scotland – 0.3 hectares (Experience of Great Britain, 2017);
- 4) Concerning the prohibition of speculative actions with land plots. The reservations may relate to the sale price of a land plot (USA), the terms of alienation of a land plot acquired (France) or a land plot received from the state (Poland, Germany), as well as changes in the regime of its use (Shust, 2019);
- 5) Restrictions of the owner of land resources in the freedom to use them at own discretion, if the actions or decisions of the owner cause or may cause harm. Some countries reserve the right to seize a land plot from the owner, if he does not use it or uses it for other purposes (Kazakhstan, USA, and France). Thus, non-use of a land plot by the landowner or its misuse or in a way that reduces land fertility or harms the environment is the ground in Kazakhstan for deprivation of the ownership right (Mukhamediyarova, Moroz & Akimbekova, 2021).

Thus, the state, by setting certain restrictions for land users and landowners, ensures the rational use of land resources and adherence to the principle of priority of public interests over private ones in the field of natural resources protection.

The strategy of land use planning and development is important for the rational use of land resources (United Nations Economic Commission for Europe, 2005). In this case, the mechanism for regulating the process of land use and ownership is land management, which involves the implementation of geodetic, topographic, cartographic, urban and other works and surveys. The results of the measures that are part of the land management system form an information system (cadastre) and are the basis for the development of project documentation, programs and schemes for the use and protection of land resources of the country (Shust, 2019).

Effective management in the field of use and protection of land resources is possible only with complete and clear information about the land owned by the state, namely the category where each of the land plots belongs, their owners and other information describing the quantitative and qualitative characteristics of land resources. The set of such geo information data about land resources is called the system of the state land cadastre.

General understanding of the cadastre as the system of information about the land fund owned by the country, indicating the qualitative characteristics, boundaries and location of certain land plots, their purpose, as well as information about their owners or users, building permits or restrictions on the disposal of some land plots, etc., was the basis for determining the State Land Cadastre of Ukraine. Thus, the State Cadastre of Ukraine is the only state geo information system of data about lands located within the state border of Ukraine, their purpose, restrictions on their use, as well as data on quantitative and qualitative characteristics of lands, their assessment, distribution of lands between owners and users (Law of Ukraine, 2011).

Special management authorities are created in many countries in order to form process and store geographic information system of data on land resources of the state. Such authorities are usually represented in the form of an agency, service or bureau (Shust, 2019). Thus, the management authorities responsible for the functioning of the geographic information base in the form of an agency operate, for example, in Bulgaria (Agency for Geodesy, Cartography and Cadastre) (Federal Law, 2009), Germany (Federal Agency for Cartography and Geodesy) (Federal Law, 2012), Moldova (Agency for Land Relations and Cadastre of the Republic of Moldova) (Resolution of the Government of the Republic of Moldova, 2010), Romania (National Agency for Land Cadastre and Registration) (Official Website, 2021); in the form of a service – in Latvia (State Land Service) (Regulations of the Cabinet of Ministers of the Republic of Latvia, 2011); in the form of a bureau – in Poland (Main Bureau of Geodesy and Cartography of Poland) (Law of the Republic of Poland, 1989), Slovakia (Bureau of Geodesy and Mapping of the Slovak Republic) (Government Resolution of the Slovak Republic, 2019), Czech Republic (State Bureau of Geodesy and Cadastre) (Law of the Czech National Council, 1992). Such an agency acts as the Department of Lands and Geographical Information under the Ministry of Agriculture only in Hungary (Land Portal, 2021).

The main purpose of these authorities was to ensure the collection, processing and storage of geographic information on land resources, which would allow for effective public management (administration) and professional supervision in the field of geodesy, cartography and cadastre. Therefore, the tasks assigned to such authorities are primarily aimed at and relate only to the formation of the system of geodetic cadastral and cartographic information.

A special management agency has also been established in Ukraine in order to implement the state policy in the field of land cadastre, topographic, geodetic and cartographic activities and land management. However, it differs from similar authorities operating in other countries. A significant difference is its contradictory powers, which are the result of the historical development and formation of the management system in the field of using and protecting land resources of Ukraine.

The current management agency in the field of land cadastre is the State Service of Ukraine for Geodesy, Cartography and Cadastre (hereinafter – the State Geo cadastre), which was formed in the process of reorganization of the State Agency of Land Resources of Ukraine. In general, the practice of reforming the system of management authorities through reorganization is quite widespread in Ukraine. For example, the State Agency of Land Resources of Ukraine in 2010 was also established by the way of reorganizing the State Committee of Ukraine for Land Resources, which also underwent changes during its existence (Shust, 2019). However, each such transformation entailed the change of the tasks and functions, powers and subordination of the indicated management agency (Teremetskyi & Shust, 2019), which, unfortunately, led to a combination of opposing powers.

At one time, several regulatory acts were adopted in order to optimize the system of central executive agencies, eliminate duplication of powers and increase the efficiency of public administration. Those acts determined that the system of executive agencies in Ukraine consisted of ministries and other central executive agencies that can be formed as agencies, inspections, commissions and services (Law of Ukraine “On Central Executive Agencies”, 2011). Thus, the correlation of groups of functions was created. Those functions were assigned to a specific central executive agency, which allowed avoiding duplication and combination of diametrically opposed powers. Thus, the Art. 17 of that Law indicates that the main functions of the executive authority established in the form of an agency are the functions of management of state property belonging to the scope of its management; the main functions of the inspection are control and supervision over the observance of the requirements of the legislation by state agencies, local self-government agencies, their officials, individuals and legal entities; the main functions of the service are the provision of administrative services to individuals and legal entities.

Based on the principle of conformity of the form of the central executive agency with its functions and tasks, the main and numerous tasks of the State Geo cadastre as the state service should be those that ensure the implementation of the function for providing administrative services to the population and legal entities. However, the Regulations on the State Geo cadastre define, first of all, its control and supervisory powers, including prosecution, which are essentially the functions of the inspection, and only then the provision of administrative services. Besides, the powers of the State Geo cadastre include those that are related to the disposal of state property related to its management sphere, namely – agricultural lands, which belong to the functions of the agency (Resolution of the Cabinet of Ministers of Ukraine, 2015). Thus, we can say that the form of the creation of the State Geo cadastre does not correspond to the content of its activities and the priority tasks.

It should be noted that management agencies in none of the above countries, unlike Ukraine, implementing the state policy in the field of geodesy and cartography and are responsible for cadastral administration, do not have the right to dispose of state-owned agricultural land.

Although the state policy in the field of land resources management in each country has its own characteristics, but the analysis of cadastral administration practices in European Union countries demonstrates that its main purpose is to collect, process, store and provide information on land plots for tax payments, land market development (real estate), ensuring and supporting the implementation of international and government programs, issuing building permits, resolving issues of changing the purpose of a land plot, rational use and protection of land resources (Kondratenko et al., 2020). At the same time, such information is usually open and accessible not only to state authorities, but also to citizens.

Instead, the powers to dispose of state-owned agricultural land plots are vested in specially created state agencies. For example, the right to dispose of agricultural land plots in Germany belongs to the Land Privatization Agency, in Poland – to the Agricultural Real Estate Agency, in Romania – to the State Territorial Agency, and in France – to the Agency for Land Management and Regional Development (Yurchenko, 2017).

A more detailed analysis of the historical formation of the State Geocadastre and the stages of formation of its competence allows us to conclude that the control and supervisory functions are in fact supplementary, and the powers to bring perpetrators to justice, which were granted only a year after the service's creation – are random.

Following the experience of other countries, in particular Hungary, Ukraine has created an independent structural unit of the apparatus as part of the State Geo cadastre – the Department of State Land Cadastre (hereinafter – the Department). The main powers of the newly created Department include the performance of the function in accordance with the tasks assigned to the State Geo cadastre in the field of maintenance and administration of the State Land Cadastre, defined by the current legislation of Ukraine (Order of the State Service, 2020). However, such a decision of the State Geo cadastre did not change anything, because it did not affect the content or limits of its powers.

We believe that granting separate control and supervisory powers and authorities to bring guilty party to justice for violating the legislation on the use and protection of land resources is a mistake, since it duplicates the powers of different state agencies and combines diametrically opposed powers within the activities of one agency, which contradict the principles of the activities of central executive agencies.

In due time, the Government of Ukraine attempted to avoid a “conflict of powers” (a situation where one agency is entrusted with the performance of several tasks, as well as the function of monitoring over their implementation) by partially transferring the control and supervisory function to another state agency – the State Ecological Inspectorate of Ukraine (hereinafter – the State Ecoin spectorate), which also has control and supervisory powers in the field of rational use and protection of land resources as an integral part of the environment. The State Ecoin spectorate in accordance with its tasks, as well as the State Geo cadastre, have the right to execute a process-verbal on administrative offenses and consider cases on administrative offenses; impose administrative penalties in case of violations of legislation in the field of land use and protection (Resolution of the Cabinet of Ministers of Ukraine, 2017). Thus, there are currently two executive agencies in Ukraine that can bring the perpetrators to justice for committing offenses in the field of use and protection of land relations.

The State Geo cadastre considers cases on administrative offenses related to distortion or concealment of data of the state land cadastre; violation of land management rules; destruction of boundary markers; non-compliance with lawful orders or instructions of officials of the agencies exercising state control in the field of environmental protection, use of natural resources or protection of natural resources. The State Ecoin spectorate considers cases of violation of the term of approval (refusal of approval) of land management documentation; violation of the legislation on the State Land Cadastre; refusal to provide or untimely provision of environmental information; violation of the rules of use, storage, transportation, processing, liquidation and burial ground disposal of pesticides and agrochemicals, toxic chemicals and other products. However, most offenses in the field of use and protection of land resources are under the jurisdiction of both of those agencies. Such offenses are damage and pollution of agricultural and other lands; violation of land use rules; unauthorized occupation of a land plot; removal and transfer of soil cover of land plots without special permits; illegal acquisition of soil cover (surface layer of lands); violation of the terms of return of temporarily occupied lands or failure to bring them into a condition suitable for their intended use. At the same time, cases of non-compliance with the legal requirements of agricultural inspectors are considered by judges of district, city or inter-district courts (Law of Ukraine, 1984). We should note that although the current legislation of Ukraine on administrative offenses mentions agricultural inspectors in some norms, but they are officials of the state agency – the State Inspectorate for Agriculture of Ukraine, which used to have the powers to execute a process-verbal on administrative offenses and powers to consider the relevant cases in the field of use and protection of land resources, but it was liquidated in 2014. Instead, the powers of state

inspectors of the State Geo cadastre, who actually perform the functions of former inspectors of agriculture, are not enshrined in the legislation of Ukraine on administrative offenses (Shust, 2019).

The combination of managerial, control and supervisory powers within the activities of one agency, as well as the full subordination of controlling agencies to management authorities practically makes it impossible for the relevant agency to perform qualitatively its functions of control and supervision over the compliance with the current legislation by individual state authorities. According to previous experience in land relations management, if environmental protection is only a part of the management activity of the executive agency, then the protection and defense of land resources are ineffective, and protection measures do not meet the current needs. Besides, the dependence of regional units of the controlling agency on local executive agencies creates situations, where inspection of their activities is almost not performed (Haraschuk et al., 2020).

Issues of eliminating duplication in the powers of the State Geo cadastre and the State Ecoin spectorate, as well as the transfer of certain powers of the State Geo cadastre to other state agencies are occasionally discussed in profile committees of the Parliament of Ukraine and various scientific and practical conferences, although they are still unresolved.

Instead, the Government of Ukraine makes contradictory decisions that hinder the effective management in the field of using and protecting land resources. Such decisions are the merger of two radically different ministries – the Ministry of Ecology and Natural Resources, whose activities are aimed at protecting the environment and natural resources, including land resources, and the Ministry of Energy and Coal Industry of Ukraine, which is responsible for implementation of the state policy in the field of mineral and mining engineering. As some scholars rightly point out, such a merger of ministries, which should control each other, will have negative consequences for Ukraine, because it will weaken checks and balances system (Haraschuk et al., 2020). Nowadays, the Ministry of Energy and Environmental Protection of Ukraine, which was established in 2019 by merging the above ministries, is no longer operates. As part of the optimization of the system of central executive agencies, it was renamed into the Ministry of Energy of Ukraine, and its powers in the field of environmental protection and environmental safety were transferred to the newly created Ministry of Environment and Natural Resources of Ukraine (Resolution of the Cabinet of Ministers of Ukraine, 2020).

## CONCLUSION & RECOMMENDATION

The short comings in the management system of land resources indicated in the article, namely: granting the powers to the State Service of Ukraine on Geodetic, Cartographic and Cadastre Issues that are not peculiar to its organizational and legal form and duplication of such powers with the powers of the State Environmental Inspectorate of Ukraine, constant transformations in the system of central executive agencies, lack of legislative consolidation of powers for inspectors of the State Service of Ukraine on Geodetic, Cartographic and Cadastre Issues interfere the effective management in the field of using and protecting land resources, lead to non-performance or improper performance of control and supervisory functions in the relevant field, which generally has a negative impact on the environmental situation in Ukraine. This also hinders the successful completion of land reform in Ukraine and the functioning of the land market, harms Ukraine's land resources and creates conditions for the violation of the rights and interests of both individuals and legal entities, as well as the state. Besides, the combination of the control and supervisory function with the powers to dispose of state-owned agricultural land plots is conducive to corruption.

Ensuring the rational use and protection of land resources in the process of transition to market relations can be successful in the presence of a comprehensive solution to all problems of the modern state. One of the reasons for the ineffectiveness of land reform in Ukraine is the



imperfection and incompleteness of the constitutional provisions on determining the legal status of land resources, including the conceptual principles of land re-privatization, and violation of the principle of equality enshrined in the Constitution of Ukraine.

The effectiveness of legislation on land circulation and management in the field of land relations largely depends on the quality of the legislative process. Regulatory acts should ensure the solution of a number of legal, economic, social and environmental problems, eliminate unfair and criminal schemes and machinations from the sphere of land relations, limit the concentration of land in private ownership, protect healthy competition, and promote equal land ownership by all citizens of Ukraine.

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