



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO
GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT

Prishtina, on 23 September 2019
Ref. no.:RK 1428/19

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RESOLUTION ON INADMISSIBILITY

in

Cases No. KI113/18, KI114/18 and KI115/18

Applicant

Halim Thaqi, Ramadan Grajqevci and Enver Hajrizi

**Constitutional review of Decisions [CN. No. 20/14 of 17 January 2018;
CN. No. 19/14 of 17 January 2018; and CN. No. 407/14 of 28 March 2018]
of the Basic Court in Prishtina**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Bajram Ljatifi, Deputy President
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge
Gresa Caka-Nimani, Judge
Safet Hoxha, Judge
Radomir Laban, Judge
Remzije Istrefi-Peci, Judge, and
Nexhmi Rexhepi, Judge

Applicants

1. Referral KI113/18 was submitted by Halim Thaqi, residing in the village of Millosheva, municipality of Obiliq (hereinafter: the first Applicant); Referral KI114/18 was submitted by Ramadan Grajqevci, residing in the village of

Milosheva, municipality of Obiliq (hereinafter: the second Applicant); and Referral KI115/18 was submitted by Enver Hajrizi, residing in the village of Kremenate, municipality of Kamenica (hereinafter: the third Applicant).

2. All of the abovementioned (hereinafter referred to jointly as: the Applicants) are represented by Xhevdet Krasniqi, a lawyer from Prishtina.

Challenged decision

3. The Applicants challenge 3 decisions of the Basic Court in Prishtina-General Department-Civil Division (hereinafter: the Basic Court), which rejected, each of them individually, the Applicants' proposal for return to previous situation due to their failure to pay the court fee in the amount of 20 euro within the time limit set by the Basic Court.
4. The first Applicant challenges Decision [CN. No. 20/14] of 17 January 2018 of the Basic Court, which was served on him on 1 February 2018.
5. The second Applicant challenges Decision [CN. No. 19/14] of 17 January 2018 of the Basic Court, which was served on him on 1 February 2018.
6. The third Applicant challenges Decision [CN. No. 407/14] of the Basic Court of 28 March 2018, which was served on him on 10 May 2018.

Subject matter

7. The subject matter of the Referrals is the constitutional review of the challenged decisions, which allegedly violated the Applicants' rights guaranteed by Articles 3 [Equality Before the Law], 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial], 46 [Protection of Property], and 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) and the Applicants' rights guaranteed by Article 6 (Right to a fair trial) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: the ECHR) and Articles 7 and 10 of the Universal Declaration of Human Rights hereinafter: the UDHR).

Legal basis

8. The Referrals are based on paragraph 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 22 [Processing Referrals] and 47 [Individual Requests] of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 32 [Filing of Referrals and Replies] of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

9. On 8 August 2018, the Applicants' lawyer submitted the Applicants' Referrals KI113/18, KI114/18 and KI115/18, separately and in separate forms, to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
10. On 9 August 2018, the President of the Republic of Kosovo appointed new judges: Bajram Ljatifi, Safet Hoxha, Radomir Laban, Remzije Istrefi-Peci and Nexhmi Rexhepi.
11. On 17 August 2018, the President of the Court, in Referral KI113/18, appointed Judge Nexhmi Rexhepi as Judge Rapporteur and the Review Panel composed of Judges: Arta Rama-Hajrizi (Presiding), Gresa Caka-Nimani and Safet Hoxha.
12. On the same date, in accordance with paragraph 1 of Rule 40 [Joinder and Severance of Referrals] of the Rules of Procedure, the President of the Court ordered the joinder of Referral KI114/18 with Referral KI113/18.
13. On 12 September 2018, in accordance with the abovementioned Rule of the Rules of Procedure, the President of the Court also ordered the joinder of Referral KI115/18 with joint Referrals KI11/18 and KI114/18. The President of the Court also ordered that the decision on the appointment of the Judge Rapporteur and the Review Panel for Referral KI113/18 be applied in Referrals KI114/18 and KI115/18. It was therefore decided that all three referrals should be treated as joint referrals.
14. On 26 September 2018, the Court notified the Applicants' joint lawyer about the registration of the Referrals and of their joinder. On that occasion, the Court requested him that, within 15 (fifteen) days of receipt of the Court's letter, to submit to the latter a power of attorney proving that he represents the Applicants in the proceedings before this Court.
15. On the same date, the Court notified the Basic Court about the registration of the Referrals and of their joinder. The Court requested the Basic Court in Prishtina that, within 15 (fifteen) days from the receipt of the Court's letter, submit copies of the acknowledgments of receipt showing the date on which the challenged decisions were served on Applicants KI113/18, KI114/18 and KI115/18.
16. On 16 October 2018, the Applicants' lawyer submitted the requested power of attorney to the Court.
17. On 1 November 2018, the Basic Court submitted the requested acknowledgments of receipt to the Court stating that the first and second Applicants [KI113/18 and KI114/18] were served with the challenged decisions on 1 February 2018 and that the third Applicant [KI115/18] was served with the challenged decision on 10 May 2018.
18. On 4 September 2019, the Review Panel considered the preliminary report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

Referrals KI113/18 and KI114/18

19. On 29 July 2013, the Government of the Republic of Kosovo (hereinafter: the Government), for the purpose of expropriation, compiled relevant reports on the evaluation of certain immovable properties [cadastral parcels no. 573-1; no. 562-3; no. 572-1; no. 562-1; no. 572-2]. At a later date, the Government determined the respective monetary value for each of these cadastral parcels.
20. On 10 January 2014, the first and second Applicants filed their complaints with the Basic Court in Prishtina, challenging the Government's evaluation reports.
21. On 24 December 2014, the Government issued the Final Decision [No. 01/04] by which it expropriated the abovementioned properties.
22. On 30 October 2017, the Basic Court sent to the representative of the first and second Applicants (lawyer M.D.) relevant admonitions on the payment of the court fee in the amount of € 20. The Basic Court's admonition stated that if within 15 (fifteen) days of receiving the judicial admonition no payment of court fee is made, other actions provided for in Articles 6.5 and 6.6 of Administrative Instruction no. 2008/02 on the Unification of Court Fees will be taken, in which case the complaint will be considered withdrawn. In these proceedings before the Basic Court in Prishtina, the first and second Applicants were represented by another lawyer, namely, lawyer M. D.
23. On 15 December 2017, the Basic Court in Prishtina rendered Decision [of] [CN. no. 20/2014 (in relation to the first Applicant) and CN. no. 19/2014 (in relation to the second Applicant)] by which he considered the first and second Applicant's complaints to be withdrawn - as no court fee was paid within the prescribed period.
24. On 11 January 2018 and 12 January 2018, the first and second Applicants, paid a court fee of € 20 and submitted their requests for return to previous situation to the Basic Court. Their requests for return to previous situation were justified by the fact that the former lawyer of the first and second Applicants, M.D., had duly received the judicial admonition, but did not fulfill his obligation according to this admonition. In the submission for return to previous situation, the first and second Applicants stated that they were not notified by the lawyer and therefore missed the payment deadline. Consequently, they requested the Basic Court to approve their requests return to previous situation.
25. On 17 January 2018, the Basic Court in Prishtina [CN. No. 20/2014 (in relation to the first Applicant) and CN. No. 19/2014 (in relation to the second Applicant)] rejected their respective proposals for return to previous situation.
26. The Basic Court in Prishtina reasoned that the submission of the judicial admonition was duly served on the first and the second Applicant's first authorized representative [lawyer M. D.] and that, in the case file despite the

allegations, no revocation of the power of attorney was presented, and as a result it is considered that M. D. is the authorized lawyer to whom the judicial admonition should be sent. The Basic Court further stated that the power of attorney of Xhevdet Krasniqi - the current lawyer of the Applicants - was granted only when filing a request for return to previous situation. At the end of this decision it is stated that: *"Against this decision no appeal is allowed"*.

27. On 20 March 2018, the first and second Applicants filed their respective requests for protection of legality with the State Prosecutor.
28. On 10 April 2018, State Prosecutor [KMLC. C. No. 47/2018 (in relation to the first Applicant) and KMLC. C. No. 44/2018 (in relation to the second Applicant)] found that there is no legal basis for submitting the respective requests for protection of legality.

Referral KI115/18

29. On 29 July 2013, the Government, for the purpose of expropriation, compiled a report on the evaluation of cadastral parcel no. 65-3. At a later date, the Government determined the relevant monetary value for this cadastral parcel.
30. On 20 August 2014, the third Applicant filed a complaint with the Basic Court challenging the Government's evaluation report.
31. On 16 May 2016, the Basic Court returned the appeal of the third Applicant to the supplementation. Within the prescribed time limit, the third Applicant made the supplementation of the complaint.
32. On 12 October 2017, the Basic Court sent a note to the Applicant's representative on the payment of the court fee stating that if within 15 (fifteen) days of receiving the judicial admonition no payment of the court fee is made, further action would be taken, provided by Article 6.5 and 6.6 of the Administrative Instruction no. 2008/02 on the Unification of Court Fees whereby the proposal/complaint of the third Applicant will be considered withdrawn. In these proceedings before the Basic Court, the third Applicant had the same lawyer, who represents him before this Court, namely the lawyer Xhevdet Krasniqi.
33. On 23 November 2017, the Basic Court in Prishtina rendered Decision [CN. No. 407/14], by which he considered as withdrawn the complaint of the third Applicant - as no court fee was paid within the prescribed deadline.
34. On 7 January 2018, the third Applicant paid a court fee of 20 euro and filed a request for return to previous situation with the Basic Court in Prishtina. His request was reasoned by the third Applicant's lawyer, stating that the admonition of the payment of the court fee may have been sent but it had never happened to him not to pay the court fee and thus lose a right of his client. In conclusion, he asked the judge of the case to approve his request for return to previous situation and to schedule a preliminary hearing.

35. On 28 March 2018, the Basic Court [CN. No. 407/14] rejected the third Applicant's proposal for return to previous situation.
36. The Basic Court in Prishtina reasoned that the third Applicant's lawyer submitted this proposal on the ground that he had not received the judicial admonition sent by the Basic Court. However, according to the latter, the Applicant's lawyer duly received the judicial admonition by personal delivery on 24 October 2017 but had not taken any action and had paid the fee only after the deadline had expired. At the end of this decision it is stated that: *"Against this decision no appeal is allowed"*.

Applicant's allegations

37. The Applicants allege that the Basic Court violated their rights guaranteed by Articles 3, 24, 31, 46 and 54 of the Constitution and their rights guaranteed by Article 6 of the ECHR and Articles 7 and 10 of the UDHR.
38. The Applicants, with an almost identical reasoning for their referrals submitted by their joint lawyer, emphasize that their right to fair and impartial trial and the right to protection of property have been violated, as the Basic Court in Prishtina did not adjudicate at all the case. In their view, it is *"unlawful and unfair"* to conclude a court proceeding with procedural actions without assessing the merits of the dispute.
39. Finally, the Applicants, in identical manner for the three Referrals submitted to the Court, request the latter to find that *"final judgments of the Basic Court in Prishtina"* violated the Constitution, applicable laws in the Republic of Kosovo for fair and impartial trial, judicial protection of rights, protection of property and are contrary to the case law of the European Court on Human Rights. In this regard, they request that the *"Decisions of the Basic Court in Prishtina be annulled and the case be re-adjudicated in such a way that the complainant [the Applicants] exercise [their] rights guaranteed by the Constitution and by applicable laws in Kosovo"*.

Admissibility of the Referrals

40. The Court first examines whether the Applicants have fulfilled the admissibility requirements established in the Constitution, and further specified in the Law and the Rules of Procedure.
41. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution which establish:

"1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.

[...]

7. Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law”.

42. The Court further refers to Article 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which stipulate:

Article 48
[Accuracy of the Referral]

“In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge”.

Article 49
[Deadlines]

“The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision [...]”.

43. As to the fulfillment of these requirements, the Court finds that the Applicants are authorized parties, who challenge acts of a public authority, namely Decision [CN. No. 20/14] of 17 January 2018 of the Basic Court; Decision [CN. No. 19/14] of 17 January 2018 of the Basic Court; and Decision [CN. No. 407/14] of the Basic Court of 28 March 2018, having exhausted all legal remedies provided by law. The Applicants have also clarified the rights and freedoms they claim to have been violated in accordance with the requirements of Article 48 of the Law. As to the fulfillment of the criterion set out in Article 49 of the Law, the Court finds that Referral KI115/18 was filed within the prescribed legal time limit, whereas regarding Referrals KI113/18 and KI114/18, the Court will further explain whether this admissibility requirement was fulfilled or not.

Regarding Referrals KI113/18 and KI114/18

44. With respect to Referrals KI113/18 and KI114/18, the Court must examine whether the criteria established in Article 49 [Deadlines] of the Law (cited above) and item (c) of paragraph (1) of Rule 39 [Admissibility Criteria] of the Rules of Procedure are fulfilled, which stipulate that: *“(1) The Court may consider a referral as admissible if: [...] (c) referral is filed within four months from the date on which the decision on the last effective remedy was served on the Applicant [...]”.*
45. In this respect, the Court recalls that the first Applicant KI113/18 challenges Decision [CN. No. 20/14] of 17 January 2018 of the Basic Court, which he received on 1 February 2018; whereas the second Applicant KI114/18 challenges Decision [CN. No. 19/14] of the Basic Court of 17 January 2018, which he received on 1 February 2018.

46. The Court notes that both the first and second Applicants submitted their respective Referrals to the Court on 8 August 2018, whereas they were served with the challenged decisions of the Basic Court on 1 February 2018. The fact that the Applicants received the challenged decisions on 1 February 2018, the Court confirmed through the acknowledgments of receipt received by the Basic Court itself (see paragraphs 15 and 17 of the Resolution on Inadmissibility), following the Court's request to confirm whether the Referrals were submitted within the prescribed legal time limit. Accordingly, the Court finds that Referrals KI113/18 and KI114/18 were filed after the legal deadline of 4 (four) months foreseen by the Law and Rules of Procedure.
47. The Court recalls that the purpose of the 4 (four) months legal deadline under Article 49 of the Law and Rule 39 (1) (c) of the Rules of Procedures, is to promote legal certainty by ensuring that cases raising constitutional matters are dealt within a reasonable time and that past decisions are not continually open to constitutional review. (See, among other authorities, cases of ECtHR: *O'Loughlin and Others v. United Kingdom*, Application Judgment of 25 August 2005; *Sabri Güneş v. Turkey*, application no. 27396/06, Judgment of 29 June 2012, paragraph 39; see also, among other, cases of the Court KI140/13, Applicant *Ramadan Cakiqi*, Resolution on Inadmissibility of 17 March 2014, paragraph 24 and KI120/17, Applicant *Hafiz Rizahu*, Resolution on Inadmissibility of 7 December 2017, paragraph 39).
48. In conclusion, for the foregoing reasons, the Court finds that Referrals KI113/18 and KI114/18 were not filed within the legal time limit stipulated by Article 49 of the Law and Rule 39 (1) (c) of the Rules of Procedure and consequently, the Court cannot examine the merits of the allegations of these two referrals.
49. Therefore, the Court finds that the Referrals KI113/18 and KI114/18 are inadmissible because they were submitted out of legal deadline.

Regarding Referral KI115/18

50. Regarding Referral KI115/18, the Court should also examine whether the Applicant has met the admissibility requirements specified in Rule 39 [Admissibility Criteria] of the Rules of Procedure. Rule 39 (2) of the Rules of Procedure sets out the criteria on the basis of which the Court may consider the Referral, including the criterion that the Referral is not manifestly ill-founded. Specifically, Rule 39 (2) states that:

“(2) The Court may consider a referral as inadmissible if the referral is manifestly ill founded because the Applicant has not sufficiently proved and substantiated the claim”.

51. In this regard, the Court recalls that the third Applicant challenges the Decision [CN. No. 407/14] of 28 March 2018 of the Basic Court, which rejected his request for return to previous situation. He alleges that it is “*unlawful and unfair*” that a court case is concluded without entering the merits of the dispute and that by rejecting his proposal for return to previous situation, the

Basic Court violated his rights guaranteed by the Articles 3, 24, 31, 46 and 54 of the Constitution as well as the rights guaranteed by Article 6 of the ECHR and Articles 7 and 10 of the UDHR. Thus, in essence, the third Applicant alleges that the Basic Court violated his rights, by concluding his case on procedural grounds and failing to render a decision on merits on his basic complaints regarding the expropriation case.

52. In this regard, the Court recalls that after the third Applicant's proposal for return to previous situation, the Basic Court rendered a rejecting decision, reasoning as follows:

"The Court, after a preliminary examination of the proposal, found that the proposer had not paid the court fee in respect of this legal matter. [...]"

The authorized representative of the proposer on 07.12.2017 filed a proposal for return to previous situation with the justification that he had not received, the judicial admonition on the court fee, however, the Court decided as in the enacting clause of this decision, because the authorized representative of the proposer received the judicial admonition on a regular basis, which is evidenced by the personal delivery order dated on 24.10.2017 and that the authorized representative of the proposer did not pay the court fee according to the Court's admonition, he made the payment of the fee on 07.12.2018 after the expiry of the deadline given by the Court.

Therefore, in the light of the provision of Article 113 LCP and in conjunction with Article 3 LCP, the Court held that the authorizing authority of the proposer in the request for restitution had not argued that there were reasonable grounds for not could have been foreseen or avoided, which have affected the non-fulfillment of the obligation within the time allowed by the Court."

53. With regard to the abovementioned allegations, the Court considers that the third Applicant has built his case on the basis of legality, namely on the fact that the rejection of the request for return to previous situation and failure to consider a case on its merits is an unlawful and unfair to action of the Basic Court.
54. The Court recalls that such allegation relate to the field of legality and as such do not fall under the jurisdiction of the Court and, therefore, cannot, in principle, be examined by the Court. (See Case KI56/17, Applicant *Lumturije Murtezaj*, Resolution on Inadmissibility of 18 December 2017, paragraph 35). The only way these allegations could be examined and approved as grounded is the case where an Applicant proves, with convincing arguments, that in his particular case there has been a violation of the Constitution or the ECHR. In the present case, this Court considers that the third Applicant failed to convince the Court that the Basic Court acted in violation of the abovementioned instruments.

55. Moreover, according to this Court, the Applicant's allegation that it is "*unlawful and unfair*" does not stand if the regular courts reject the parties' requests and proposals on procedural grounds. On the contrary, the procedural rules are provided by the laws applicable in the Republic of Kosovo and it is precisely the duty of the regular courts to comply with those procedural legal provisions - even in cases where it may result that due to the omissions of the parties to the proceedings, it follows that a case will not be considered on merits. The court proceedings and rules for their progress are a guarantee for both parties and the courts. The former may hold public authorities liable if they do not comply with the rules laid down by applicable laws; and, on the other hand, the latter may hold the parties liable in proceedings before them if they fail to comply with the rules laid down by the laws in force. Thus, the procedural rules protect both the parties and the courts and grant respective rights to each of them. In the present case, the Basic Court applied the provisions of the applicable law as it considered being the most right way and gave sufficient and relevant reasons for its decision. It based its decision on the applicable laws, facts and evidence - according to which it was established that the third Applicant failed to pay the court fee on a timely basis despite the admonition and which was duly served on him, according to the Basic Court.
56. In this regard, the Court emphasizes that it is not its task to deal with errors of fact or law allegedly committed by the regular courts (legality), unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality). It cannot itself assess the law that has led a regular court to adopt one decision rather than another. If it were otherwise, the Court would be acting as a court of "*fourth instance*", which would be to disregard the limits imposed on its jurisdiction. In fact, that it is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law. (See, case *Garcia Ruiz v. Spain*, ECtHR no. 30544/96, of 21 January 1999, par. 28 and see, also case: KI70/11, Applicants *Faik Rima, Magbule Rima and Besart Rima*, Resolution on Inadmissibility, of 16 December 2011).
57. The Constitutional Court can only consider whether the evidence was presented in a correct manner and whether the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant had a fair trial (see: *inter alia*, case *Edwards v. United Kingdom*, no. 13071/87 Report of the European Commission on Human Rights, adopted on 10 July 1991).
58. Based on the case file, the Court notes that the reasoning given in the Decision of the Basic Court is clear and after having considered all the proceedings presented in the submitted file, the Court also found that they were not unfair or arbitrary. (See *Shub v. Lithuania*, No. 17064/06, ECtHR Decision of 30 June 2009).
59. In this regard, the Court further considers that the Applicant did not substantiate that the proceedings before the Basic Court were unfair or arbitrary, or that his fundamental rights and freedoms protected by the Constitution were violated, as a result of erroneous application of the procedural law. The Court reiterates that the interpretation of law is a duty of

the regular courts and is a matter of legality (See, case KI63/16, Applicant *Astrit Pira*, Resolution on Inadmissibility of 8 August 2016, paragraph 44; and also see joined cases KI150/15; KI161/15; KI162/15; KI14/16; KI19/16; KI60/16 and KI64/16, Applicants *Arben Gjukaj, Hysni Hoxha, Driton Pruthi, Milazim Lushtaku, Esat Tahiri, Azem Duraku and Sami Lushtaku*, Resolution on Inadmissibility of 15 November 2016, paragraph 62).

60. In line with its consolidated case law, the Court further emphasizes that the dissatisfaction of the Applicant with the outcome of the proceedings before the regular courts, namely the Basic Court, cannot of itself raise an arguable claim of violation of the right to fair and impartial trial, equality before the law or the right to property. (See, *mutatis mutandis*, case *Mezotur - Tiszazugi Tarsulat v. Hungary*, ECtHR, Judgment of 26 July 2005, paragraph 21; and see also case KI56/17, Applicant *Lumturije Murtezaj*, Resolution on Inadmissibility of 18 December 2017, paragraph 42).
61. Accordingly, the Court considers that the third Applicant did not substantiate allegations that the respective proceedings before the Basic Court were in any way unfair or arbitrary and that the challenged decision violated the rights and freedoms guaranteed by the Constitution and the ECHR.
62. In conclusion, in accordance with Rule 39 (2) of the Rules of Procedure, Referral KI115/18 is to be declared as manifestly ill-founded on constitutional basis and, therefore, inadmissible.

FOR THESE REASONS

The Constitutional Court of the Republic of Kosovo, in accordance with Articles 113.1 and 113.7 of the Constitution, Article 20 of the Law and Rule 59 (b) of the Rules of Procedure, on 4 September 2019, unanimously

DECIDES

- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;
- IV. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Nexhmi Rexhepi

Arta Rama-Hajrizi



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