



# YURISPRUDENSIYA

HUQUQIY ILMIY-AMALIY JURNALI

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## SOME ISSUES OF THE LEGAL STATUS OF CIVIL SERVANTS IN UZBEKISTAN

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**Abstract.** The article aims to analyze the legal status of civil servants in the Republic of Uzbekistan. The article examines the theories and views of domestic and foreign scholars on the legal status of civil servants and their comparative analysis. The need to regulate the legal status of civil servants in the Republic of Uzbekistan by law is based on the views of scientists, government programs and the views of heads of state. The rights, obligations and restrictions in the civil servants are analyzed due to the legislation of our country. It analyzes the functional division of the civil service in Uzbekistan into the special services of the state and the state civil service, together with the legal status of the civil servants working in them. The article notes that the special service consists of military service in the Armed Forces of the Republic of Uzbekistan and service in law enforcement agencies, and they are sufficiently legally regulated. The biggest problem in ensuring the legal status of civil servants is related to the state civil service and the main legal issues in this regard have been studied. The experiences of the Republic of Korea, the United Kingdom, France and Germany have been studied. The study developed a number of practical proposals and recommendations based on the theories of local and foreign scientists, the analysis and interaction of the legislation of the Republic, together with the experience of well-developed countries.

**Keywords:** civil servant, legal status, civil service, state civil service, special service, classification of civil service, manager, official, specialist.

### ЎЗБЕКИСТОНДА ДАВЛАТ ХИЗМАТЧИЛАРИ ҲУҚУҚИЙ МАҚОМИНИНГ АЙРИМ МАСАЛАЛАРИ

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**Аннотация.** Мақолада Ўзбекистон Республикасида давлат хизматчилари ҳуқуқий мақомининг жорий ҳолати таҳлил қилинган. Жумладан, давлат хизматчиларининг ҳуқуқий мақоми бўйича Республикада хорижлик олимларнинг назария ва қарашлари ҳамда уларнинг ўзаро қиёсий таҳлили ўрганилган. Ўзбекистон Республикасида давлат хизматчиларининг ҳуқуқий мақоми қонун билан тартибга солишнинг зарурияти олимларнинг қарашлари, давлат дастурлари ва давлат раҳбарларининг фикрлари доирасида асослантилган. Давлат хизматчиларининг ҳуқуқлари, мажбуриятлари ва давлат хизматидаги чекловлар мамлакатимиз қонунчилиги асосида таҳлил қилинган. Ўзбекистонда давлат хизмати функционал жиҳатдан давлатнинг махсус хизмати ва давлат фуқаролик хизмати бўлинганлиги ҳамда уларда фаолият юритаётган давлат хизматчиларининг ҳуқуқий мақоми юридик жиҳатдан қай даражада тартибга солинганлиги таҳлил қилинган. Мақолада давлатнинг махсус хизмати Ўзбекистон Республикаси Қуролли Кучларининг ҳарбий хизмати ва ҳуқуқни муҳофаза қилувчи органлардаги хизматдан иборат эканлиги ҳамда улар юридик жиҳатдан етарлича тартибга солинганлиги таъкидланган. Давлат хизматчиларининг ҳуқуқий мақоми таъминлашдаги энг катта муаммо давлат фуқаролик хизмати билан боғлиқлиги ва бу борадаги асосий ҳуқуқий муаммолар ўрганилган. Мавзу юзасидан Корея Республикаси, Буюк Британия, Франция ва Германия каби мамлакатлар тажрибаси ўрганилган. Тадқиқотда маҳаллий ва хорижий олимларнинг назариялари, Республикада қонунчилиги таҳлили ва ўзаро нисбати ҳамда ривожланган хорижий мамлакатлар тажрибасидан келиб чиқиб, бир қанча амалий таклиф ва тавсиялар ишлаб чиқилган.

**Калит сўзлар:** давлат хизматчиси, ҳуқуқий мақом, давлат хизмати, давлат фуқаролик хизмати, махсус хизмат, давлат хизмати таснифи, раҳбар, мансабдор шахс, мутахассис.

## НЕКОТОРЫЕ ВОПРОСЫ ПРАВОВОГО СТАТУСА ГОСУДАРСТВЕННЫХ СЛУЖАЩИХ В УЗБЕКИСТАНЕ

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**Аннотация.** Статья направлена на анализ современного состояния правового статуса государственных служащих в Республике Узбекистан. В статье исследуются теории и взгляды отечественных и зарубежных ученых на правовой статус государственных служащих и проводится их сравнительный анализ. Необходимость законодательного регулирования правового статуса государственных служащих в Республике Узбекистан основывается на взглядах ученых, государственных программах и взглядах глав государств. Права, обязанности и ограничения на государственной службе государственных служащих анализируются на основе законодательства нашей страны. Анализируется функциональное разделение государственной службы в Узбекистане на специальные службы государства и государственной гражданской службы, а также правовой статус работающих в них государственных служащих. В статье отмечается, что государственная спецслужба состоит из военной службы в Вооруженных Силах Республики Узбекистан и службы в правоохранительных органах, и они достаточно законодательно урегулированы. Самая большая проблема в обеспечении правового статуса государственных служащих связана с государственной гражданской службой, и в этой связи были изучены основные правовые вопросы. По теме был изучен опыт Республики Корея, Великобритании, Франции и Германии. В ходе исследования разработан ряд практических предложений и рекомендаций, основанных на теориях отечественных и зарубежных ученых, анализе и взаимодействии законодательства республики, а также опыте развитых стран.

**Ключевые слова:** государственный служащий, правовой статус, государственная служба, государственная гражданская служба, специальная служба, классификация государственной службы, менеджер, чиновник, специалист.

One of the important branches of the Institute of Administrative Law is the civil service. The civil service is also the most important element of public administration. Determining the legal status of civil servants is one of the most pressing issues in the civil service today. This urgency is in part due to the lack of a fundamental law regulating the civil service. The need for legislation in this area has been emphasized since the early years of independence. In particular, the first President of the Republic of Uzbekistan Islam Karimov stressed the urgency of adopting a law on civil service in Uzbekistan at the first session of the Oliy Majlis of the first convocation: "The success of economic reforms, especially political ones, depends, first of all, on the level of training of management personnel, their willingness and ability to make changes today. For the same reason, there is a need to adopt a law on the status of civil servants. This law and the normative acts adopted on its basis would define the system of selection of civil servants, their rights and duties, responsibilities, growth, social protection, benefits.

Legislative regulation of these relations eliminates such shortcomings as arbitrariness in the selection and placement of personnel, personal loyalty, and kinship. The law should create a strong incentive mechanism"[1, p. 177].

Improving the efficiency of the civil service is one of the priorities of the New Uzbekistan. The President of the Republic of Uzbekistan Shavkat Mirziyoyev has already addressed this issue in his election program as a candidate for the presidency. In his speech at the VIII Congress of the Movement of Entrepreneurs and Businessmen – Liberal Democratic Party of Uzbekistan on October 19, 2016, he stated the following points: "It is no secret that despite the fact that many civil servants have a great responsibility, their working day and work week are not clearly defined. World experience shows that before setting high standards for civil servants, their rights must be guaranteed and strengthened by a system of protection. Given the urgency of the issue, it is time to pass a law on civil service"[2].

As a result, the Decree of the President of the Republic of Uzbekistan dated February 7, 2017 No.4947 "On the strategy of further development of the Republic of Uzbekistan" identified the reform of the civil service as one of the priorities in improving the system of state and society building. The Action Strategy emphasizes the need to develop a draft law "On Civil Service" and regulate the basic principles of organization and functioning of the civil service system, the formation of civil service personnel, transition to the civil service, transfer and resignation, guarantees in this regard [3].

Also, the 6th priority of the "Concept of Administrative Reforms in the Republic of Uzbekistan", approved by the Decree of the President of the Republic of Uzbekistan dated September 8, 2017 No. 5185, was identified as the formation of an effectual system of professional civil service. It regulates the organization of the public service in order to create a professional corps of civil servants, including the legal status, classification of civil servants, transparent mechanisms for recruitment (on a competitive basis), the formation of human resources, as well as the establishment of a specialized body under the President of the Republic of Uzbekistan responsible for the implementation of a single state personnel policy [4].

Presidential Decree No. 5843 "On measures to assuredly improve the personnel policy and the system of public service in the Republic of Uzbekistan" [5] adopted on October 3, 2019 and Presidential Resolution No. 4472 "On measures to organize the activities of the Agency for Public Service Development under the President of the Republic of Uzbekistan" [6], a specialized body responsible for the implementation of a unified state personnel policy was established. The decree also provided for the adoption of the law "On Civil Service".

So far, the draft law "On Civil Service" has been developed six times. But none of them were accepted. Presidential Decree No. 5843 divided the civil service functionally into the state special service and the state civil service. Taking into account that each of the special services of the state (service in the Armed Forces, internal affairs, prosecutor's office, state security service, etc.) is regulated by certain laws, the Agency for Public

Service Development developed a draft law "On Civil Service" in 2020 [7]. The bill has sparked several discussions. Today, the law, which is being passed by scholars and the active public, is debating whether to cover only the state civil service or the civil service. In our opinion, it is advisable to adopt one of the two projects as soon as possible. The reason is that both involve the activities of civil servants whose rights are not regulated by law. In the context of improving the efficiency of public administration, the adoption of this law is urgent. The adoption of the law will serve to increase its attractiveness by attracting highly competent personnel to the civil service. The effectiveness of the civil service cannot be maximized unless the legal status of civil servants is ensured, their positions, career and qualification categories, and the scope of their rights and obligations are clearly defined. In this case, it may become more difficult to attract not only qualified personnel to the civil service, but also to retain existing civil servants or make full use of their potential.

Today, the legal status of civil servants is defined in the Constitution of the Republic of Uzbekistan, sectoral laws and regulations. For example, the labor relations of civil servants are defined in the Labor Code of the Republic of Uzbekistan [8], the Code of Administrative Responsibility of the Republic of Uzbekistan [9] and the principles of organization of public service in the relevant field.

The legal status of civil servants can be understood as the content (essence) of civil service relations. The legal status of civil servants is determined by establishing their rights, duties and responsibilities. With the change of civil service relations, the legal status of civil servants also changes, for example, through dismissal, loss of citizenship, retirement.

Article 10 of the draft law "On Civil Service" in 2020 express that "the legal status of a civil servant consists of a system of rights, obligations and responsibilities arising from the appointment of a citizen to public office, as well as restrictions on their civil service." [7]

Thus, the legal status of civil servants is a set of rights, freedoms, obligations, restrictions, responsibilities established by law and guaranteed by the state. The administrative legal status of a civil servant is a set of complex rights, duties and

responsibilities that arise from the moment a citizen enters the position in the civil service.

According to the scientist S.V. Pchelinsev, in any state, when the civil service and the status of a civil servant are based on the law, the government of that state sets first, special requirements. The level of civil servants (color or rank), the procedure for their appointment, the powers and responsibilities of the position are systematized. It is characterized because of general and individual obligations and levels set by the state for the moral and professional competencies of a civil servant [10].

The rights of a civil servant are one of the key elements of their legal status. It differs from the duties, responsibilities, legal forms of activity of other civil servants. Concurrently, the rights of a civil servant characterize not only the institutional nature of the civil service, but also the degree of its compliance with the principles of democracy. "The rights of a civil servant are understood as a system of universal norms that are protected by coercion and guarantee the stability of the public and legal status of a civil servant as well as the legal regulation of their activities" [11, p. 52.]

Article 11 of the draft law "On Civil Service" lists a number of rights of civil servants, but these rights are not legally binding because they are not reflected in the law. Nevertheless, most of them apply today to civil servants. Most of them are regulated by the Labor Code because they are related to labor relations. These include employment, incentives and bonuses, safe working conditions, business trips, layoffs, and pensions in accordance with the law [8].

The next element of the legal status of a civil servant is his obligations. Obligations of a civil servant are obligatory actions provided by the Constitution of Uzbekistan and other normative legal acts, consisting of the essence of professional activity of the civil servant. Employees are under the influence of a special legal order that differs from the norms of general law when they are in the civil service. At one time, they are not exempt from national obligations as citizens (paying taxes, serving in the army, etc.). The state imposes high obligations on civil servants related to the characteristics of the civil service. According to some local scholars, the responsibilities of civil servants characterize the nature of their service

activities, as the state (public body) hires a citizen in order to impose certain career responsibilities on them. The content and types of obligations are determined by the goals, tasks and functions set by the state body [11, p. 55].

The duties of civil servants are usually expressed in civil service laws. Article 12 of the draft law "On Civil Service" lists a number of obligations of a civil servant, but these rights are not legally binding because they are not expressed in law. However, some normative legal acts of the Republic of Uzbekistan define the obligations of civil servants [7].

In particular, on March 2, 2016, the Cabinet of Ministers of the Republic of Uzbekistan adopted the "Standard Code of Conduct for employees of public administration and local executive authorities." It sets out the basic rules of conduct for civil servants, in particular paragraph 6, which obliges civil servants [12].

Also, Article 18 of the Law of September 11, 2017 "On appeals of individuals and legal entities" stipulates that engage must be received and considered by government agencies, organizations and their officials [13].

Article 26 of the Law on Combating Corruption, adopted on January 3, 2017, stipulates the obligation of public officials to report corruption-related offenses. According to it, "public officials shall notify their superiors or law enforcement agencies of all cases in which a person has approached them in order to persuade them to carry out corruption offenses, as well as of any facts of similar offenses done by other public officials, must notify law enforcement" [14].

Another important component of the legal status of civil servants is career restrictions. Career restrictions consist of a set of political, economic and organizational management factors in the form of prohibitions that determine the scope of actions permitted in the official activities and daily behavior of a civil servant.

According to Uzbek researchers, restrictions related to the civil service are defined as conditions and rules established by the Constitution and other normative legal acts within the framework of a clearly defined right prohibiting a civil servant from leaving. They are related to the specific legal procedures of a civil servant and are aimed at ensuring his effective professional activity,

preventing the possibility of abuse of power, respect for the rights and freedoms of citizens by employees, creating conditions for independent service [11, p. 59].

According to the legislation of the Republic of Uzbekistan, the researcher F.Yuldasheva divides the restrictions related to the civil service into several groups [15, pp. 74-77]:

The first group may include restrictions related to the political sphere. This may include issues such as the prohibition of a civil servant from acquiring foreign citizenship, and the fact that they may not be a deputy of a legislative (representative) body.

The second group may include, first, restrictions to save the employee's time for service purposes, as well as to prevent the employee from being distracted from other work or using his official authority to illegally strengthen his material well-being. In particular, a civil servant may not engage in any other paid activity other than pedagogical, scientific or other creative activity.

The third group consists of behavioral restrictions that a civil servant may use for the purpose of non-property benefit. For example, a civil servant may not receive honorary and special titles from foreign countries, international organizations without the permission of the head of state.

The fourth group consists of prohibitions on the use of material and technical means of information, other state property and information on services for non-service purposes.

Many legal restrictions are absolute in nature, sometimes they do not take into account the position of the civil servant, the level and level of power in which he is employed, and do not provide for specific penalties for violating the legal restrictions established by law. For example, the Resolution of the President of the Republic of Uzbekistan dated March 5, 2014 No. 2142 "On measures to improve the procedure for travel of officials abroad" sets restrictions on travel abroad. According to it, a strict list of officials whose business trips to foreign countries require a special agreement with the relevant services of the President of the Republic of Uzbekistan, the Office of the President of the Republic of Uzbekistan [16].

According to the Resolution of the Cabinet of Ministers of the Republic of Uzbekistan No. 103 of March 6, 1992 "On the list of officials prohibited

from engaging in entrepreneurial activity", the following officials are prohibited from engaging in entrepreneurial activity:

- employees of public authorities and administration, law enforcement agencies;

- heads of state banks and their deputies, officials directly involved in the service of banknotes and monetary (banking) documents;

- heads of state enterprises, institutions and organizations and their deputies authorized to sign banking documents;

- executives of state supply and trade enterprises and organizations;

- executives and specialists of government agencies who are responsible for resolving issues related to the implementation of business activities or control of such activities [17].

It should be noted that civil servants also enjoy all the rights set up by the Constitution of the Republic of Uzbekistan. Also, a certain area of public service will have the rights and obligations regulated by sectorial law. In particular, the Law of the Republic of Uzbekistan "On Internal Affairs" adopted on September 16, 2016 defines the rights of police officers in Articles 17, 31, obligations in Articles 16, 28, social guarantees in Articles 34-43 and liability in Articles 46, 47 [18].

Presidential Decree No.5843 functionally divided the civil service in Uzbekistan into a special state service and a civil service. It is established that the special service of the state consists of military service in the Armed Forces of the Republic of Uzbekistan and service in law enforcement agencies [5].

It can be said that the military service of the civil service in the Republic of Uzbekistan is sufficiently regulated by law. In particular, military service in the Armed Forces of the Republic of Uzbekistan, the Law of the Republic of Uzbekistan "On General Military Obligation and Military Service" [19], the Law "On Service in the Reserve of the Armed Forces of the Republic of Uzbekistan" [20], the Presidential Decree "On Approval of the Regulations on Military Service" [21] operates with other normative legal acts.

It should be noted that the legislation does not provide a clear list of agencies that are part of the civil service and special services of law enforcement agencies in the Republic of Uzbekistan. From a scientific point of view, the

system of special services of the state in law enforcement agencies can be cited as an example of service in the judiciary, prosecutor's office, state security service, law enforcement agencies, customs, taxation. According to most normative legal acts, law enforcement agencies include the judiciary, the prosecutor's office, the state security service, law enforcement agencies, customs, tax authorities, as well as the National Guard, emergency services and the judiciary. Special laws governing the activities of each law enforcement agency reinforce Service in law enforcement. For example, the laws "On Internal Affairs" [18], "On the State Security Service of the Republic of Uzbekistan" [22], "On the State Customs Service" [23], "On the State Tax Service" [24], "On Courts" [25], "On the Prosecutor's Office" [26] regulates the relevant special service.

It can be said that the biggest issue in the classification of the civil service is related to the public service of the state.

First, there is no clear list of state bodies and agencies involved in the civil service. On December 9, 2003, the President of the Republic of Uzbekistan issued Decree No. 3358 "On improving the system of public administration", which stipulates that the system of public administration of the Republic consists of ministries, agencies, centers, inspections, committees and state committees [27]. However, we cannot say that this Decree fully reflects the agencies related to the state civil service. The reason is that the Ministry of Defense, the Ministry of Internal Affairs, the State Tax Committee, the State Customs Committee are the special services of the state. The state civil service, in addition to public administration bodies of the Republic, consists of executive bodies of local government, regional, city and district khokimiyats.

Second, it is essential to create a State Register of public service positions. This issue is partially regulated by No. 339 Resolution of the Office of the Republic of Uzbekistan dated July 3, 1997 "On the foundation of a twenty-percent grow in wages of civil servants" [28]. The resolution provides a list of civil servants working in ministries, departments and khokimiyats. However, the list also applies to civil servants in general, including civil service positions in the judiciary and the prosecutor's office.

There is also no classification of civil servants by position. The joint decision of the Ministry of Labor and Social Protection of the Republic of Uzbekistan and the Ministry of Finance was registered by the Ministry of Justice of the Republic of Uzbekistan on December 9, 2003 No. 1288. The resolution "On approval of normative documents on the regulation of the number of employees and the optimization of costs to ensure the management structure" approved the staffing of organizations. According to it, the staff of organizations includes managers (administrative and managerial staff), management staff specialists, production staff, support staff, technical staff, service staff [29]. However, this normative-legal document does not apply only to the civil service. It determines the composition of staff in both public and private sectors. It should be noted that at the initiative of the Ministry of Employment and Labor Relations of the Republic of Uzbekistan, a new draft resolution was developed and posted on the portal of draft regulations on April 1, 2021. The text of the current version of the resolution was developed only in Russian, and the draft was developed in Uzbek [30]. But the content of the draft decision is almost no different from the current version. Both the current version and the draft resolution provide a nomenclature of positions of management, service and technical staff of public and economic administration, the second chapter of which is entitled "List of positions of management" defines the leadership of public administration at the national level. In our opinion, it is expedient to include in their structure the sentences "director general, director, chairman and deputies of the agency, center, committee" and "head of the republican institution under the state bodies of the republic and his deputies." This is due to the Presidential Decree No. 3358 "On improving the system of public administration", which stipulates that ministries, state committees, committees, agencies, as well as public administration structures established under them and under the Cabinet of Ministers of the Republic of Uzbekistan [27].

Classification of positions of civil servants by powers (political, administrative and technical) and their levels (national, republican, regional and district) It is planned to develop a draft Presidential Decree on the approval of the state register of civil service positions.

Article 21 of the draft law “On Civil Service” done by the Civil Service Development Agency under the President of the Republic of Uzbekistan is entitled “Groups and categories of public positions” and proposes that civil servants consist of management, management and specialists. Paragraph 6 of Article 3 of the draft law states that “this law does not apply to employees of auxiliary (technical and service) positions of state bodies and organizations, as well as employees of commercial organizations that are part of the organizational structure of state bodies and organizations.” That is, according to the project, assistants of government agencies and organizations, in particular, technical staff will not have the status of civil servants. However, the program of the Presidential Decree proposes to classify the positions of civil servants according to powers (political, administrative and technical) [7].

Third, the role of education and health workers in public institutions in the civil service remains open. In most countries, education and health workers are included in the state’s special services, along with judges, prosecutors, Foreign Service officers, police officers, and the military. Such a situation can be seen in the Republic of Korea [31, p. 46]. Also in the UK, judges, military personnel, police and local government officials, teachers and health care workers are also public special services. However, in the UK, special services and civil servants are social (public) sector employees rather than reciprocal civil servants. Because “public service” is used in the same sense as “civil service” [32]. In France, all civil servants are divided into two major groups, the first group consists of civil servants in the public administration, as well as employees of local public organizations and social institutions (including teachers and doctors), the second group consists of military personnel, judges and parliamentarians. consists of. Also, according to the importance and complexity of their powers and functions, civil servants are divided into 4 groups: “A”, “B”, “C”, “D” hierarchical categories (classes), and teachers belong to the highest group “A” [33]. In Germany, in addition to government officials, civil servants include employees and teachers of educational institutions, judges, ministers, members of the Federal Bank, together with police officers, employees of military, railway workmen, employees of post offices.[34] In 2020,

the Ministry of Justice, together with the Ministry of Public Education and the Ministry of Higher and Secondary Special Education, developed a draft law “On the status of a teacher”. The project details the rights, responsibilities and social guarantees of the educator. However, the role of teachers in public education remains open [35]. In conclusion, the legal status of civil servants is reflected in certain regulations. In the Republic of Uzbekistan, some normative legal acts define the legal status of civil servants. However, the legal status of civil servants is sparsely defined in the legislation and consolidated in a single law. It is expedient to consolidate the legal status of civil servants in civil societies into a single law. Based on the above analysis, a number of suggestions and recommendations can be made.

First, it is necessary to develop and adopt a draft law “On the legal status of civil servants.” It should form a register of agencies according to special services of the state and the state civil service. Therefore, the rights, obligations and social guarantees of civil servants should be clearly defined.

Second, the Law “On Civil Service” should be adopted as soon as possible. Thus, the organizational and legal framework of this system, in particular, the issues of staffing the civil service, the transition to public service, the organization of public service should be addressed. In the context of improving the efficiency of public administration, the adoption of this law is urgent. The adoption of the law will serve to increase its attractiveness by attracting highly competent personnel to the civil service. The effectiveness of the civil service cannot be maximized unless the legal status of civil servants is ensured, their positions, career and qualification categories, and the scope of their rights and obligations are clearly defined. In this case, it may become more difficult to attract not only qualified personnel to the civil service, but also to retain existing civil servants or make full use of their potential.

Third, it is necessary to form a register of civil service and special services of the state, as well as to clearly define the legal status of teachers and medical staff in public institutions. Based on the experience of most countries, it is advisable to introduce them to the titles and positions that are to be awarded to civil servants. It should be

noted that the legislation provides for the award of career degrees to professors and teachers of some educational institutions belonging to the special services of the state. For example, the Resolution of the Cabinet of Ministers No. 93 of March 29, 2011 "On approval of the Regulations on career ranks of employees of judicial bodies and institutions of the Republic of Uzbekistan"

provides for the awarding of career ranks to the leadership and professors of Tashkent State Law University and its academic lyceums [36]. However, the role of teachers in the public service in the public, secondary, secondary special and higher education systems is in question, and this issue needs to be clearly defined.

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