

# Adam Witalec

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## On basic rules of the legislative process in the Third Republic of Poland

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**Adam Witalec**

## **ON BASIC RULES OF THE LEGISLATIVE PROCESS IN THE THIRD REPUBLIC OF POLAND**

### **Legislative procedures in the Sejm**

According to the Constitution of the Republic of Poland of 2<sup>nd</sup> April 1997, the legislative initiative is vested with the deputies, the Senate, the President of the Republic, the Council of Ministers and a group of at least 100,000 citizens having the right to vote in elections to the Sejm<sup>1</sup>. *Regulamin Sejmu* [The rules of procedure of the Sejm] specifies that the deputies' bills may be submitted by a Sejm committee or a group of at least 15 deputies (Article 32, chapt. 1, section II of *Regulamin Sejmu...* 2004).

It should be emphasised that the Constitution stipulates exceptions from this rule in Chapter X Article 221 – as regards the statute on the State Budget, an interim Budget, amendments to the Budget, the statute on the contracting of public debt and the statute on financial guarantees granted by the State. In the above mentioned cases the legislative initiative remains solely with the Council of Ministers.

The Constitution contains a requirement in accordance with which a bill submitted to the Sejm by a mover should be accompanied by an explanatory statement which indicates the estimate of financial effects of its execution. Regardless of the above constitutional formula, Article 34 of *Regulamin Sejmu* states that if bills are presented by the Council

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<sup>1</sup> Based on Article 4 paragraph 3 of the *Ustawa o wykonywaniu inicjatywy ustawodawczej przez obywateli z dnia 24 czerwca 1999 roku* [Law on the Civic Legislative Initiative of 24<sup>th</sup> June 1999] (DzU 1999 nr 62, poz. 688) a bill submitted by citizens is the only one which does not expire when the Parliament's term in office comes to an end.

of Ministers, their explanatory statements have to be accompanied by drafts of basic secondary legislation. Should the bills be submitted by other eligible subjects, they are obliged, under the resolution of *Regulamin Sejmu*, to enclose, together with their explanatory statements, assumptions of basic secondary legislation drafts.

The Council of Ministers may classify a bill adopted by itself as urgent (Article 123, chapt. IV of *The Constitution...1997*: 45). It does not, however, refer to tax bills, bills regulating elections of the President of the Republic of Poland, elections to the Sejm, to the Senate and to organs of local self-government, bills regulating the structure and jurisdiction of public authorities, or, law codices. *Regulamin Sejmu* as well as *Regulamin Senatu* define separate rules of the legislative procedure when a bill has been classified as urgent.

The requisition to consider a bill in the course of three readings is a primary constitutional principle, pertaining the Sejm legislative procedures. *Regulamin Sejmu* specifies that the first reading takes place during a sitting of the Sejm or at a sitting of a relevant committee with regard to the subject matter of a regulation planned. Nonetheless, the first reading of bills amending the Constitution, Budget bills, tax bills, bills regulating elections of the President of the Republic of Poland, elections to the Sejm, to the Senate and to organs of local self-government, bills regulating the structure and jurisdiction of public authorities, and law codices always takes place at a sitting of the Sejm. The Speaker of the Sejm may, for vital reasons, also consider for the first reading at a Sejm sitting other bills as well as bills of the Sejm.

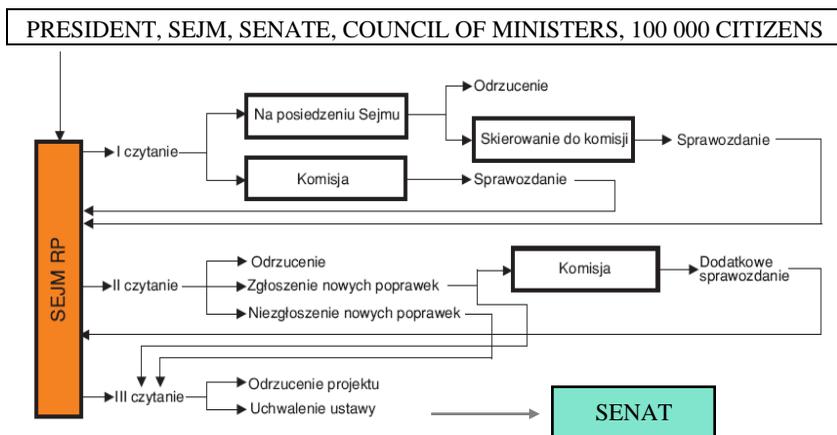
The second reading consists of the presentation of a committee report on the bill in the Sejm, a subsequent discussion and the introduction of amendments and motions. According to *Regulamin Sejmu*, there are two fundamental exceptions from the rule:

1) if a committee report is referred back by the Presidium of the Sejm to the committee which previously examined the bill, an amended report is also a subject of the second reading;

2) if a motion of bill rejection is included in the committee report thereof, this report is introduced at a sitting of the Sejm, which is followed by a debate without the right to introduce amendments and motions. Should the Sejm repudiate the committee bill rejection motion, the bill is submitted to the committees by which it was examined so that it may be again considered.

If any new amendments and motions are voiced during the second reading, the bill is referred back to the committees which examined it, unless the Sejm determines otherwise. A consideration of amendments and motions as well as submission of an additional committee report is a prerequisite of the bill's third reading. The third reading encompasses the presentation of an additional report of the committee or – if the bill had not been referred back to the committee – the presentation by a deputy-reporter of the amendments and motions put forward during the second reading as well as subsequent voting. After the bill has been passed, the Speaker of the Sejm submits it to the Senate (Article 36–53 of *Regulamin Sejmu...* 2004: 35–48).

The diagram below illustrates the legislative procedures in the Sejm.



## Legislative procedures in the Senate

In accordance with Article 121 of the *Konstytucja*, the Senate within 30 days (14 days if the bills are classified as urgent) following the submission of a bill, may adopt it without amendments, introduce amendments or resolve upon its complete rejection. Yet, if, within 30 days following the submission of the bill, the Senate fails to adopt an appropriate resolution, the bill shall be considered adopted according to the wording submitted by the Sejm. In case of the statutes whose bills have been classified by the Council of Ministers as urgent such as

a Budget statute and a statute about the Constitution Amendment, the deadlines of their consideration are as follows: 14, 20 and 60 days following the date of the bill submission. Detailed rules concerning the Senate legislative procedures with relation to the statutes passed by the Sejm are included in *Regulamin Senatu*, including procedural differences pertaining the above mentioned statutes.

The Speaker of the Senate submits a bill adopted by the Sejm, which he received from the Speaker thereof, to relevant Senate committees, regarding the subject matter of the bill. After the committees have considered the statute, they prepare, depending on the scope of their general competence, a draft of a Senate's resolution in this matter in a period of time that does not exceed 18 days. They propose that the statute should be accepted without amendments, with amendments into the text of the statute or rejected altogether (Article 68 of *Regulamin Senatu...* 2004: 39).

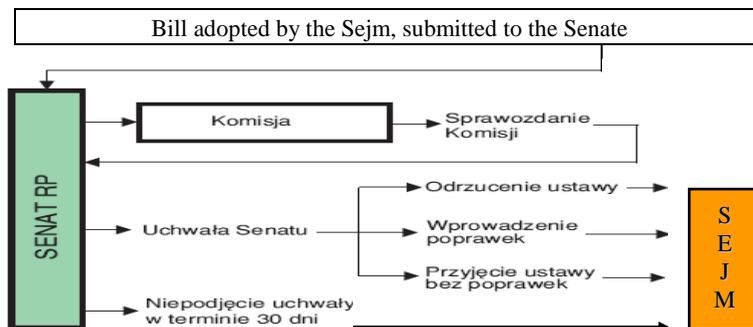
In the light of regulations included in the *Konstytucja*, confirmed by a decree of the Constitutional Tribunal, the Senate may only introduce those amendments to the bill, adopted by the Sejm, which do not go beyond its subject matter (the range of subjects it refers to) or beyond its object matter (the relations it regulates). Thus *Regulamin Senatu* makes a rule which states that should the committee perceive any need to introduce legislative changes which go beyond its sphere of competences, it can submit the bill together with a motion to initiate the legislative process which is backed up by a bill of an appropriate statute. An advantage of the regulation mentioned is that in the case that the opinion of the Senate committee members is shared by a majority in the Senate, an ultimate outcome of the proceedings discussed entails both the Senate's adoption of a resolution related to the statute passed by the Sejm and submitting a bill to the Sejm with proposals of regulations which pertain the matter exceeding the scope of regulation of the bill adopted by the Sejm.

After a bill adopted by the Sejm has been considered by the relevant Senate committees, it is discussed at a Senate sitting. Should the senators introduce motions of legislative nature during the debate or should the committees which considered the statute submit contradictory motions, the Speaker of the Senate orders an interlude so that the relevant committees have time to take a stand towards suggested motions. The committees debate jointly, providing a juxtaposition of their motions, minority motions and motions submitted by senators

in the course of debate (Article 69–72 of *Regulamin Senatu...* 2004: 39–41).

The Speaker of the Senate hands over a resolution, concerning the considered statute passed by the Senate, to the Speaker of the Sejm.

This is a graphic illustration of the legislative procedures in the Senate.

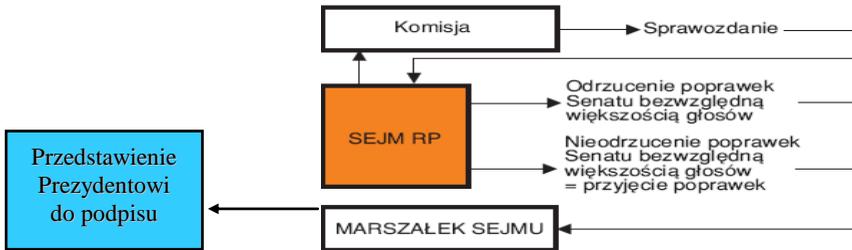


### The process of reviewing the Senate's resolutions by the Sejm

The Senate's resolution with relation to a statute becomes a subject of the Sejm committee proceedings and features in the voting agenda. The Constitution contains a rule under which a resolution of the Senate rejecting a bill or an amendment proposed in the Senate's resolution, shall be considered accepted unless the Sejm rejects it by an absolute majority vote in the presence of at least half of the statutory number of deputies. What should be stressed is the fact that the Sejm is not bound by any time limit in which it should form an opinion as to the Senate's Resolution – the Constitution of the Republic of Poland does not contain any resolve in this respect (Article 54–64 of *Regulamin Sejmu...* 2004: 50–52).

For instance, the Sejm of the Third Term did not consider the Senate's resolution of 20<sup>th</sup> July 2000 introducing amendments to a bill on Polish citizenship which had been adopted by the Sejm on 29<sup>th</sup> June 2000. This means that the legislative procedures were ended in a manner which had not been provided for by the Constitution.

The process of reviewing of the Senate's resolutions by the Sejm is illustrated in the diagram below:



## The role of the President and the Constitutional Tribunal

After the legislative procedure described above has been completed, the Speaker of the Sejm submits an adopted bill (statute) to the President of the Republic for signature. The President shall sign the bill within 21 days (7 days in case of the urgent procedure) following its submission and order its promulgation in the „Dziennik Ustaw” [„Journal of Laws of the Republic of Poland”]. The President of the Republic may, before signing a bill, refer it to the Constitutional Tribunal for adjudication upon its conformity to the *Konstytucja*. The President of the Republic shall not refuse to sign a bill which has been judged by the Constitutional Tribunal as conforming to the *Konstytucja*. The *Konstytucja* introduces a rule with regard to the situation in which the President of the Republic refuses to sign a bill which the Constitutional Tribunal has judged not to be in conformity to the *Konstytucja*. If, however, the non-conformity to the Constitution relates only to particular provisions of the bill, and the Tribunal has not judged that they are inseparably connected with the whole bill, then, the President of the Republic, after consulting the Speaker of the Sejm, shall sign the bill with the omission of those provisions which had been considered as being in non-conformity to the Constitution or shall return the bill to the Sejm for the purpose of removing the non-conformity (Article 122, chapt. IV of the *Konstytucja*... 1997: 44).

Another sphere of jurisdiction of the President connected with the concern for the quality of legislation is – if the President of the Republic has not made reference to the Constitutional Tribunal for adjudication upon bill’s conformity to the *Konstytucja* – the right to refer the bill, with reasons given, to the Sejm for its reconsideration (the so-called presidential veto). However, if the said bill is passed by

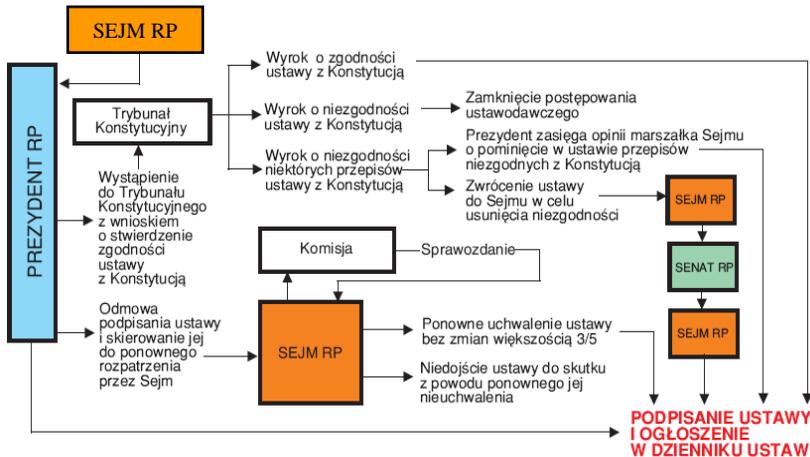
the Sejm by a three-fifths majority vote in the presence of at least half of the statutory number of deputies for the second time, then the President of the Republic signs it within 7 days and orders its promulgation in the „Dziennik Ustaw”. In this case, the President of the Republic has no right to refer it to the Constitutional Tribunal in accordance with the procedure described previously. Any reference by the President of the Republic to the Constitutional Tribunal for adjudication upon the conformity of a statute to the Constitution, or any application for reconsideration of a bill, shall suspend the 21-day period of time allowed for signing of the bill (Article 122, chap. IV of the *Konstytucja...* 1997: 45).

The Constitutional Tribunal is another body which plays a crucial role in the shaping of the legislative system. It has to be emphasised, however, that its function is different from the one fulfilled by the President. The basic role of the Constitutional Tribunal is to adjudicate the conformity of laws to the Constitution as proposed by subjects specified in the *Konstytucja*. As far as the scope of parliamentary legislation control is concerned, the Constitutional Tribunal adjudicates the conformity of statutes to the Constitution and the conformity of statutes to the ratified international agreements whose ratification required prior consent granted by a statute. The Constitutional Tribunal does also adjudicate in the issue of complaints concerning constitutional infringements, as specified in Article 79, paragraph 1 of the *Konstytucja*. Under this regulation, everyone whose constitutional liberties or rights have been violated, has the right, in accordance with the principles prescribed in the statute, to lodge a complaint with the Constitutional Tribunal with respect to the constitutional conformity of a statute or another normative act, on the basis of which a court of justice or an organ of public administration ultimately declared their liberties or rights, or stated their obligations as prescribed in the *Konstytucja*. This entitlement – according to paragraph 2 of this Article – does not encompass merely the rights of foreigners to take advantage of the right of asylum or the status of a refugee in the Republic of Poland which are discussed in Article 56 of the *Konstytucja*. The principles and procedures of lodging a constitutional complaint are regulated by the law on the Constitutional Tribunal of 1<sup>st</sup> August 1997 (DzU nr 102, poz. 643 with amendments).

Decisions of the Constitutional Tribunal enjoy universally binding application and are final (Article 190, paragraph 1 of the Constitution

of the Republic of Poland) (Article 122, chap. IV of the *Konstytucja...* 1997: 72).

Here follows a graphic illustration of the role of the President and the Constitutional Tribunal:



## Basic reasons for the faultiness of the Polish legislative system

A thorough reconstruction of the legal system was undertaken in the Third Republic of Poland, followed by its adjustment to the Constitution and its subsequent adjudication to the EU law. The effort involved was tremendous. Nonetheless, the quality of the legislation has been criticised by both academic circles, lawyers, politicians and citizens obliged to abide it.

It is not easy to provide an answer to the question with regard to the causes thereof. The legislative process itself is multistage and is often *ad hoc*. In Poland, as in other democratic regimes, the right to introduce legislation is enjoyed by many subjects. An attempt to create modern structures of the legislative procedures which would be compatible with these complex circumstances has failed.

The basic drawbacks of the Polish legislation include:

**Lacking coherence and stability of the legal system** which results in an excess of legal regulations as well as their discrepant character coupled with opacity and incongruity of the legal solutions.

An increasingly excessive number of legal regulations manifests itself in the fact that while, for example, the „Dziennik Ustaw” issued in 2001 had more than 13 thousand pages, the page number of the one issued in 2004 amounted to 21 thousand – 2900 legislative acts in total. In 2004 the Sejm passed 250 laws (213 in 2002), 130 out of which were amendments. In the last few years amendment statutes constituted more than 60% of all laws passed (Walencik 2005: C). What is worse, laws of grave social and economic significance (i.e. tax laws) are frequently amended a dozen or so times a year. Furthermore, a perverse phenomenon has recently appeared – laws are amended during the period of their *vacatio legis*. This means that the participants of the legislative process fail to assess the situation correctly with regard to time, conditions and possibilities of the statute implementation.

**An *ad hoc* manner and ease with which laws are created and amended.** An increased number of bills submitted by deputies is one of the manifestations thereof. For instance, during the Sejm of the Third Term, deputies (excluding the Sejm committees) presented more than 50% of bills, whereas the Council of Ministers initiated not even 40% thereof. Merely 14<sup>0</sup> of the deputies’ bills were adopted by the Sejm – contrasted with 50%<sup>2</sup> of the government bills. Even though deputies’ bills are numerous, they tend not to be very effective, with only a few eventually becoming laws. The only way to counteract this phenomenon of legislation being introduced in a rash manner is to compel movers to supply an explanatory statement of the submitted bills with accordance to Article 118 paragraph 3 of the *Konstytucja*. They should also be obliged to point to sources of finance and evaluate possible social consequences of the bill submitted. The Sejm frequently adopts faulty bills. During the present term in office the Senate introduced 5563 amendments to the bills adopted by the Sejm – 4658 (84%) of which were eventually accepted by the Sejm<sup>3</sup>.

What must be of concern is the fact that the role of lawyers in the process of legislation has been diminishing for the last few years. On the contrary, we have witnessed an increasing importance of politicians who

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<sup>2</sup> M. Borowski, *Wystąpienie podczas konferencji „Legislacja w praktyce”* [in:] *Materiały z konferencji zorganizowanej przez Rzecznika Praw Obywatelskich 21 lutego 2002 r.*, Biuro Rzecznika Praw Obywatelskich, Warszawa 2002.

<sup>3</sup> Data valid on 18<sup>th</sup> February 2005, statistics currently compiled by the Biuro Informacji i Dokumentacji Kancelarii Senatu [Information & Documentation Office of the Senate’s Chancellery].

decide about the necessity of legal regulations, their objectives and directions as well as the time of their implementation. The current stage of social and economic development requires legal regulation in a large number of specific domains. Thus, the participation in the process of legislation on the part of not only lawyers but also experts is crucial and even though it is increasing continuously – it is still insufficient.

**A lack of rigorous and integrated system of law-making.** Such a system is indispensable because of a great number of institutions being part thereof – beginning with movers of legislative acts, through those who prepare and edit bills to the ones who pass the normative act on many different stages. A drawback of the Polish system is that the Sejm committees too often thoroughly change and re-edit the bills, including the ones submitted by the Council of Ministers. They create one statute by combining a number of opposing bills. In general, it is impossible to create one decent legislative act on the basis of many faulty bills. The disintegration of the law-making system is aggravated by the fact that bills regulating branch and sector problems are adopted too frequently, more and more often addressing detailed issues.

### **The proposals of solutions aiming at the improvement of legislation quality**

The need to introduce changes in the process of law-making in Poland is nowadays universally acknowledged. The Rządowe Centrum Legislacji [Government Centre of Legislation] was established under the statute on the Council of Ministers to serve as a state organizational unit, attached to the Prime Minister. The Centre's aim was to ensure coordination of the legislative activity by government administration. Its main tasks include, *inter alia*, working out legal – legislative standpoints concerning government drafts of legislative acts; coordination of the course of policy alignment as regards government legislative acts, including reporting on socio-economic consequences of the planned regulations, co-operation with the Komitet Integracji Europejskiej [Committee for European Integration] as regards the process of adjustment of Polish law to the requirements of the *acquis communautaire* as well as co-operation with the Rada Legislacyjna [Legislative Council] in the scope of evaluation of governmental bills of the normative acts

with regard to their conformity to the Constitution and coherence with the legal system. The manner and scope of the Government Centre of Legislation's operation, as discussed above, was to ensure the conformity to the principles of the legislative techniques in the case of bills submitted by the Council of Ministers. Nevertheless, in practice, the operation of this institution does not fulfill expectations formed on its behalf. This is probably resultant from unsatisfactory competences and control limitations which affect the Government Centre of Legislation with regard to particular movers of the bills<sup>4</sup>.

Flawed character of the bills submitted to the Speaker by the government affects the quality of law created by the Parliament. Such opinion was shared by the then Marshal of the Sejm, Marek Borowski when during his address at the conference „Legislation in practice” organised in 2002, he stressed the need to analyse the legislative process in Poland thoroughly. According to him, a large number of bills submitted, did not fulfill requirements set by *Regulamin Sejmu*. A good quality bill is indispensable as „an entry”. However, the initial shape of bills remains outside the sphere of the Sejm organs' influence. A number of decisions were made in the Sejm of the Fourth Term in order to improve the legislative process. It was decided that each bill should be first carefully assessed by a group of Sejm legislators and experts. A principle of an active participation of the Komisja Ustawodawcza [Legislative Committee] in the legislative process was also implemented under amended *Regulamin Sejmu*. According to the new regulation, the Committee representatives were to partake in the proceedings of the other committees, with the right to introduce motions and amendments to the bills which were the subject of these other committees' activity. One of the more important changes is also connected with the already mentioned possibility of bill re-consideration by a relevant committee and a submission of an amended committee report<sup>5</sup>.

According to T. Liszcz, a chairperson of the Senate Legislation and the Rule of Law Committee, new legal regulations in this respect have to be worked on. Hence, it seems to be justified to return to a repeatedly considered concept of passing a resolution on law-making. The resolution should prescribe the principles of legislative techniques in force when

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<sup>4</sup> *Statut Rządowego Centrum Legislacji – art. 14a–14i Ustawy o Radzie Ministrów z dnia 8 sierpnia 1996 r.*

<sup>5</sup> *Ibidem.*

elaborating bills, decrees, acts of domestic law and normative acts of internal nature<sup>6</sup>.

The Rzecznik Praw Obywatelskich [Ombudsman] A. Zoll calls for changes in the legislative process. He believes that a mover should be required to justify why given objectives cannot be reached by means of existing regulations as well as to provide and justify costs incurred by the proposed change implementation. He is also concerned with passing regulations whose implementation has no financial backing in the state budget. Moreover, Zoll emphasizes the significance of the fact that a mover does not take any responsibility for the submission of faulty bills<sup>7</sup>.

According to the analysis, there is an urgent need to legally regulate basic principles of making law which is universally binding in Poland. Before this has taken place, it is indispensable to rigorously abide by legally binding constitutional regulations and resolutions with regard to law-making techniques. This has to be done by both subjects partaking in the working on and assessing of bills as well as by legal services, with an emphasis placed upon parliamentarians who are the ones to enact laws.

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<sup>6</sup> T. Liszcz, *Wystąpienie na konferencji, Stanowienie prawa – kompetencje Senatu w procesie legislacyjnym, Materiały z konferencji zorganizowanej przez Komisję Ustawodawstwa i Praworządności pod patronatem Marszałka Senatu RP Longina Pastusiaka 22 października 2002 r.*, Dział Wydawniczy Kancelarii Senatu, Warszawa 2002.

<sup>7</sup> A. Zoll, *Główne grzechy w funkcjonowaniu państwa*. An address at the conference: *Wystąpienie na konferencji „Czy Polska jest państwem prawa?”* [in:] *Materiały z konferencji zorganizowanej przez Prezydenta RP, 15 stycznia 2004 r.*

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