

A LEGAL BASIS FOR OPERATION OF SECURITY SERVICES IN REPUBLIC OF SERBIA

ABSTRACT: During the past twenty years there was executed a thorough reorganization of the whole security in Republic of Serbia. Many strategic documents and regulations have been adopted, which have, in a transparent way, organized the national security system. Security services, as parts of the system, play a very important role in preserving the vital values of the state and society as a whole. Their role in protection of national interests has been defined through the adoption of certain legal acts. This paper, apart from the historic perspective, analyses the legal acts of a special importance for the reform of the security-intelligence system in Republic of Serbia.

Keywords: *national security, security services, intelligence activities, Republic of Serbia, reforms, legal control.*

1. Introduction

History of mankind has still not established the exact time of appearance of security services and intelligence activities, so that today, when trying to determine it approximately, we use numerous scientific and other assumptions. It is assumed that intelligence activities, i.e., security services, have appeared

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parallelly with human communities, while on the other hand, it is much easier to determine the time of the first institutional organization of these activities. It is believed that the first written evidence of intelligence activities derives from 2000B. C., and that it is a clay plate archeologists found in eastern Syria (Delić, 1996, p. 63; Stajić, 2021, p. 232; Savić, 2006, pp. 61–69; Keković, 2011).

The Bible states that Israelis massively used “intelligence officers” who, apart from information on opponents, produced significant material benefits. According to the Bible, Moses was assigned to send his people to investigate the Hanan country (Dragišić, 2011, p. 225).

Sun Cu, famous Chinese military leader and theoretician, several centuries B.C., in his book “The Art of War” talked about the significance of intelligence activities, and made a distinction among various types of spies and their use in military operations (p. 97).

During their historical development security-intelligence services went a long road from unorganized and occasional activities to organized and professional ones, i.e., from skill and shrewdnessto activities based on scientific knowledge and experience. In Italian cities/states Venice, Genova, Florence from the XV and XVI centuries intelligence services grew into separate state bodies. These are cities in which capitalistic socio-political and economic relations first began to develop. Apart from economic, political interests appeared, which forced these mini states to gain as best knowledge as they could of the situation in other states (Stajić & Lazić, 2015, pp. 351–353). Already in the VII and VIII centuries there were developed security services, which later, especially in the XX century, became a powerful weapon for collecting of information and knowledge, and for preventing of activities against interest of the state they work for.

2. Development of security services in Serbia

First written sources in the history of Serbs relating to intelligence and security activities derive from the time of the rule of Tzar Dusan. Thus, “Dusan’s Law” is considered the first legal act of historical value where we can find interpretation of intelligence activities. Tzar Dusan, relying mainly on Byzantine experiences, defined more than 70 professions in the administrative structure of his rule, of which some were linked with performing of intelligence-security activities (Savić & Bajagić, 2005, p. 397; Lazić & Tomić, 2019, pp. 15–16).

Development of modern security and intelligence activities in the territory of Serbia started at the beginning of the XIX century, i.e., immediately

before and during the First Serbian Uprising. At the very beginning of the First Serbian Uprising in 1804, intelligence activities were primarily focused on the military-political segment. First examples of the so-called “double games”, i.e., re-recruiting of Turkish agents, began then, as well as production of disinformation, all for the purpose of deceiving the Turkish population (Stojančević, 1964, pp. 9–10; Lazić & Tomić, 2019, pp. 20–23). At that time great importance was given to internal security of the uprising, where treason was punished most severely, as well as defeatism and espionage, which were treated as grave criminal offences (Perišić, 2002, p. 134; Lazić & Tomić, p. 21).

Prince Milos Obrenovic at the time of his first rule (1815–1839) paid great attention to organization of intelligence-security activities. Principal task of bodies in charge of realization of these activities was to preserve the rule of Prince Milos. At the time of his rule, intelligence-security bodies controlled all fields of social life, performed and dealt with all political and administrative activities, as well as the economic life of the country, and were also involved in foreign policy of Serbia. Collection and processing of confidential information were one of the most powerful weapons of Milos Obrenovic. These information were very important in negotiations which this Serbian Prince held with the Port of Constantinople (Lazić, 2014, p. 45; Lazić & Tomić, 2019, pp. 24–26).

Military law which was adopted on November 12, 1839, was the first legal act which comprehensively defined the issues of security and counter-intelligence activities of the Army of the Principality of Serbia.¹ Based on the Decree on General Staff Profession from March 5, 1884, Foreign (intelligence) sector was formed within the Operative Department of the General Staff.²

After adoption of the Law on Forming of the Sector for Confidential Police Activities, on October 17, 1899, this body was for the first time formed within the Ministry of Internal Affairs.³ This made the basis for the new civil security service. Thus, activities of “confidential nature” were fully separated from other activities, and were placed within the competence of the Head of the Confidential Department, which was directly responsible to the Minister of Internal Affairs and the King.⁴

¹ From 2008, November 12 is celebrated as the Day of the Military-Security Agency (VBA).

² This date is celebrated as the Day of Military-Intelligence Agency (VOA).

³ This date is celebrated as the Day of the Security-Information Agency (BIA).

⁴ Jovan Milovanović was appointed Head of the Department for Confidential Police Activities. He was an experienced lawyer and creator of Serbian stenography.

Upon the end of the WW1 one of the first task of the bodies of the Kingdom of Serbs, Croats and Slovenians was establishing of an efficient intelligence-security system which could fight all internal and foreign threats. With the decree of the regent Alexander Karadjordjević from December 20, 1918, Ministerial Council (Government) was formed. Within the competence of the Ministry of Internal Affairs and the Ministry of Army and Navy were activities of national and military security. From 1920 activities of national security were passed over to the competence of the newly formed Department for National Protection, which was within the Ministry of Internal Affairs. This organization, with small changes, functioned until 1941.

During the WW2 development of intelligence-security structures of the Kingdom of Yugoslavia ran in very complex political-security circumstances. After capitulation of the Kingdom of Yugoslavia in April 1941, territory of the country was divided into German, Italian, Hungarian and Bulgarian occupation zones. Occupation forces established special police and intelligence-security services. Thus, we may talk about activities of German, Italian, Hungarian and Bulgarian military, police and intelligence-security services at the occupied territory.

Forming of new partisan authorities in liberated territories, in the form of people-liberation boards, began after the anti-fascist uprising. Within these administrative bodies, bodies were formed which were in charge of order and security in the liberated territories (Đorđević, 1979; Bajagić, 2010).

At the beginning of September 1943, Department for Protection of People was formed, whose principal job was to protect the liberated territory through counter-intelligence. From this Department on May 13, 1944, in Drvar, the Department for Protection of People (OZNA) was formed.⁵ Thus, security-intelligence service was formed, established on military principles, with a uniform organizational structure and unique operation methods.

Upon the end of WW2, with adoption of the Constitution of the new Federative National Republic of Yugoslavia, conditions were created for organization of the whole state administration. From parts of OZNA, Radio Center and the Code Group, which were separated from the Ministry of National Defense, Directorate of State Security (UDBA) was formed in February 1946, as a centralized intelligence-security institution. Besides, *Counterintelligence service (KOS) was formed* from the III and IV parts of OZNA. *With the order from 1955, KOS was reorganized and grew into the Security Service (SB) OF YNA (Yugoslav National Army).*

⁵ This date was celebrated as the Security Day until 2001.

With the Decision on forming of the Department for Protection of People, from May 13, 1944, security functions were definitely and officially separated from intelligence functions. General Staff of the Yugoslav Army had an Intelligence Department, which after the end of the war in 1947 grew into the Second Directorate, i.e., Intelligence Directorate of the YNA General Staff.

As a result of political changes that happened after the Brioni plenum in 1966, comprehensive reorganization was made and decentralization of UDBA into the National Security Service (SDB). After the Brioni plenum, after adoption of the Principal Law on Internal Affairs, at the beginning of 1967, a completely new service was created - State Security Service (Kovač, Dimitrijević & Popović Grigorov, 2015; Lazić, 2020a; pp. 78–8; Lazić, 2020b). After that, in the territory of the former Socialist Federative Republic of Yugoslavia there was a very complex security-intelligence system, comprised of various military and civil security services. Within the Federal Secretariat for Internal Affairs there was the National Security Service (SDB). Two military security services - Security Directorate and the Second (intelligence) Directorate of the YNA General Staff - were parts of the then Federal Secretariat for National Defense, while within the Federal Secretariat for Foreign Affairs there was the Service for Research and Documentation (SID), and from 1984 also the Service for Security Affairs (SPB). All six republics and two autonomous provinces, which were parts of the then state, had their republican and provincial state security services (Lazić, 2020a, pp. 78–79).

With the dissolution of SFRY, new states which appeared in that area formed their own security services. That was also the case with the Republic of Serbia. With forming of the joint state with Montenegro, under the name Federal Republic of Yugoslavia, in 1992, and the State Union of Serbia and Montenegro in 2002, both republics had their own security services (State Security Department in Serbia, and State Security Service in Montenegro). Within the Ministry of Defense and Army two military security services continued to function (security and intelligence). The same case was with the Ministry of Foreign Affairs, within which there were the Service for Research and Documentation and the Security Service (Lazić, 2020b, p. 19).

3. Regulation of security services in Serbia

After gaining of independence in 2006, Serbia started a comprehensive and total shaping of the security sector, and thus of security services, in accordance with its needs, i.e., challenges, risks and threats for security of the Republic of Serbia. This required passing of a new constitution (Constitution

of the Republic of Serbia, 2006), as well as other strategic and legal acts, which would in a comprehensive way complete the national security system.

Reform of the security-intelligence system of Serbia was dynamic, at least with regard to the legal framework. Thus, on July 2, 2002, the Security service Law of FRY was adopted, and then the Law on Security-Information Agency (BIA), and then National Assembly, on December 11, 2007, adopted the Law on the Bases for Regulation of Security Services of the Republic of Serbia. After total reorganization at the end of 2009, a set of strategic documents and laws was adopted, which regulate strategy, defense and security of the Republic of Serbia. Thus, the following were adopted: National Security Strategy, Defense Strategy, The Law on Military-Security Agency (VBA) and Military-Intelligence Agency (VOA), Data Secrecy Law and the Law on Civil Servants. Serbia has thus regulated and improved its national security system.

Scientific and professional public believe that security services, because of their traditional restricted nature, are opposed to changes and very often hinder reforms and reorganizations. We should know that it is in the interest of the country and the whole society, as well as the sector of security services, for the security-intelligence system to be legally regulated. This implies adoption of new legal regulations and amendments of the existing ones. If within the framework of all adopted legal acts competencies and responsibilities of each service are defined, if it is clearly defined who controls their work, who are they responsible to, possibilities for abuse are significantly reduced.

During the last two decades great efforts have been made in the Republic of Serbia for adoption of legal acts which clearly and precisely regulate the work of the whole security system, including, as a special segment, the work of security services.

3.1. Security-Information Agency (BIA) – new security service of Serbia

National Assembly of the Republic of Serbia adopted on July 19, 2002, the Law on Security-Information Agency. This law separates the Department of National Security from the Ministry of Internal Affairs, and transforms it into a security organization responsible to the Government of Serbia. This new service is in the system of state administration regulated as a “special organization”, of “mixed type”, which simultaneously performs intelligence and counter-intelligence activities. Special organization is formed for professional and executive activities linked with them, whose nature requires larger independence from the one that a dependent body has (Kulić, 2017, p. 58). However, adoption of this law met with certain public criticism.

The Law has 28 articles, which do not regulate this matter in a precise and complete manner. For this reason, it was necessary to adopt a large number of by-laws, to define this matter in the appropriate way. The said law regulated only generally which special procedures and measures this security service could apply against individuals, groups of individuals, or organizations. This law used the expression “that against certain physical and legal entities certain measures are to be undertaken, which do not respect the principle of inviolability of secrecy of letters and other communication means”. However, the law does not define which measures, in which manner, and through which means could be undertaken. For this reason, “provisions of Article 13 of the Law Security-Information Agency (BIA), as well as Articles 14 and 15, which are in direct connection with the former, were declared unconstitutional by the Constitutional Court of Serbia on December 26, 2013. The Court set the deadline of six months for them to be regulated in accordance with the Constitution of the Republic of Serbia” (Lazić, 2014, pp. 185–186).

Explanation of this decision of the Constitutional Court says: “Constitutional Court has assessed that the disputed provision of Article 13 of the Law, which regulates deviation from the principle of inviolability of secrecy of letters and other communication means, was not formulated clearly and precisely. Regardless of the fact that Security-Information Agency performs activities involving a high degree of secrecy, Constitutional Court believes that provisions of the Law which regulate the manner of performing of the Agency’s activities must be predictable to the degree which is reasonable in given circumstances. The provision of the disputed Article 13 of the Law which defines individuals to whom constitutionally guaranteed rights are restricted, and measures through which this is done, is not precise, or defined, or definable. Because of this it is very difficult for citizens and legal entities to find out what is the legal regulation which shall be implemented in given circumstances, and this deprives them of the possibility to protect themselves from the unacceptable restriction of rights, or from arbitrary interference into the right on respect of privacy and correspondence. The Court assessed that the disputed provisions of articles 14 and 15 of the Law are not in accordance with the Constitution, because they are in legal and logical connection with provisions of article 13 of the Law, which were previously assessed as unconstitutional”.

Based on the Decision of the Constitutional Court, National Assembly of the Republic of Serbia adopted on June 28, 2014, Amendments and Supplements to the Law on Security-Information Agency, relating to deviation from “inviolability of secrecy of letters and other means of communication” (Lazić, 2015, p. 170).

Amendments of the said provisions of the Law on Security-Information Agency have certainly increased the role of court instances in control of implementation of certain measures which directly violate the right on “inviolability of letters and other means of communication” of citizens. Deviation is allowed only for a certain period of time, based on decisions of court instances. In order for a measure to be able to be implemented, as said in the Constitution, it has to be defined by the law. This law provides a precise definition of the competence of the Special Department of the Higher Court in Belgrade, which decides on implementation of measures, taking care of guaranteed human rights and freedoms (Lazić, 2015, p. 171).

Last amendments and supplements to the Law on Security-Information Agency were adopted by the National Assembly of the Republic of Serbia on May 9, 2018. They regulate that the act on systematization and regulation of positions is to be defined by the Director of the Security-Information Agency, with previous agreement of the Government. This act defines organizational units, jobs performed by these units, manner of managing, competencies and responsibilities of managers, internal control and internal audit. Also, the amendments regulate that information contained in the act are secret, and are to be handled in accordance with the law which regulates secrecy of information.

Hiring of employees for the Security-Information Agency does not require public advertisements, its director makes decisions on hiring of employees. Besides, the amendments define professional training of employees, as well as taking of professional exams. The explanation states that amendments and supplements are adopted for the purpose of preservation of the existing employment-legal status of employees, and harmonization with adopted new laws on the police and the salary system of the public sector employees.

3.2. Bases of regulation of security services of Serbia

Based on the Law on Bases of Regulation of Security Services of the Republic of Serbia from December 2007, security-intelligence system of Serbia has been defined and completed. This law regulates existence of three security services, one civil and two military: Security-Information Agency (BIA), Military-Security Agency (VBA), and Military-Intelligence Agency (VOA). All three agencies are separate legal entities and have separate budgets. By adoption of this law two previous security services ceased to exist within the Ministry of Foreign Affairs (Service for Research and Documentation – SID), and Security Service (SB). Besides, the Law regulates the position and manner of functioning of the National Security Council, Parliamentary

Security Services Control Committee, and competencies of the Parliamentary Security Services Control Committee in control of the security sector.

National Security Council, as executive authority body which directs and coordinates the work of the complete security sector, has nine members: 1) President of the Republic, 2) Prime Minister, 3) Defense Minister, 4) Minister of Internal Affairs, 5) Minister of Justice, 6) Head of General Staff of Serbian Army, 7) Director of Security-Information Agency, 8) Director of Military-Security Agency, and 9) Director of Military-Intelligence Agency.

Meetings of the National Security Council are presided by the President of the Republic, and if he is absent, he is replaced by the Prime Minister. Agendas of the meetings are before summoning for meetings agreed upon by the President of the Republic and the Prime Minister. All legal acts deriving from the work of this body are signed solely by the President of the Republic. As needed, other high governmental functionaries may be summoned to the meetings of this body.

The Bureau for Coordination of Security Services is a completely new body of the security-intelligence system. Its members are directors of security services and the Council's secretary. This is an operative and professional body whose task is to harmonize the work of the three security services, to form operative-work groups and execute decisions of the Council.

Secretary of the National Security Council is appointed by the President of the Republic and he is obliged to take care of execution of conclusions and other legal acts adopted by this body. Office of the National Security Council is a professional body of the Council appointed by the Government of Serbia at the end of 2009, and has the obligation to handle the work of that body. By adoption of the Data Secrecy Law it was also given competencies relating to protection and keeping of secret information, as well as certification of individuals who would have access to information of various levels of secrecy.

3.3. Legal foundation of military security services

At the end of October 2009, the Law on Military-Security Agency and Military-Intelligence Agency was adopted. This law shaped the security-information system of the Republic of Serbia.

The said laws defined the organizational structure of military security services. It removed the dilemma and defined that there were still two military agencies: Military-Security Agency (VBA), which is competent for activities of counter-intelligence and security protection of the Ministry of Defense and Serbian Army, and Military-Intelligence Agency (VOA), competent for intelligence activities and activities of significance for the defense system.

Thus, the idea was abandoned on uniting of functions of VBA and VOA, and on forming of one agency, which had been announced in the previous period and in certain documents (Strategic Review of Defense from 2009).

Apart from competencies, the Law defines that directors of military security services (VBA and VOA) and their deputies are appointed and removed by the President of the Republic, upon proposal of the Minister of Defense, if they are in military, while if they are civils this is done by the Government, upon proposal of the Defense Minister. Before their appointment it is necessary to obtain the opinion of the National Security Council.

The Law on VBA and VOA contains a more detailed regulation of work of both agencies, which, after the decision of the Constitutional Court, at the beginning of June 2012, were revised with regard to competences of BA.⁶ The important novelty in this law is introducing of the General Inspector as a type of internal independent control, with defined competencies in this process.

3.4. Democratic and civil control and transparency in work

There has always been an interest to establish efficient mechanisms of control and supervision, in order for security services to act in accordance with the competencies defined by the Constitution, laws and other regulations. If not, we would have abuses of competences, which are certain to lead to violation of human rights and freedoms. In democratic societies, security services should strive to efficiency, political neutrality, commitment to professional ethics, and openness to democratic civil control (Stajić, 2012, pp. 133–134).

Finally, with adoption of the Law on Bases for Regulation of Security Services of the Republic of Serbia at the end of 2007, and forming of the Board for Control of Security Services in 2012, parliamentary control and supervision of security services were regulated, as well as the position and role of the National Security Council. Article 3 of this law regulates that the services, apart from being under democratic civil control of the National Assembly of Serbia, are also controlled by the President of the Republic, the Government, other state bodies and the public.

One of the goals of the reformation process is achieving of a certain degree of transparency of work of security services. Although secrecy is one

⁶ This relates to implementation of electronic surveillance of telecommunication and information systems for the purpose of collecting of information on telecommunication traffic, with no insight of their content. With the amendments of the Law on VBA and VOA, implementation of this measure is to be approved by the Higher court.

of the main principles of the services' work, since they deal with security of the democratic establishment, where transparency of work of state institutions is the main formal principle, security services are expected to be more transparent. However, it is not easy to determine the real measure of transparency and secrecy. Each country determines the relationship between these two principles depending on security risks, challenges, and threats. This issue is regulated in accordance with the Law on Free Access to Information of Public Importance and the Data Secrecy Law. Implementation of these laws met with certain problems, which were overcome later on.

Based on the Law on Free Access to Information of Public Importance, the procedure was defined for access to information in possession of governmental bodies. Practically, this law introduced into the legal order of the Republic of Serbia the Ombudsman for access to information of public importance, as an independent governmental institution. By adoption of the Data Secrecy Law in 2008, competencies of the Ombudsman were extended to this field, too. Based on the Law on Free Access to Information of Public Importance, security services are obliged to inform the public on their work through their web sites updated twice a year. Besides, they have a person responsible for communication with the public and answering of submitted requirements relating to access to required information.

The important step in completing of legal normatives is adoption of the Law on secrecy of information in December 2009. This defined clearly and precisely certain levels of secrecy of documents, the procedure for their classification, issuing of certificates for access to such information, and penalties for their disclosing. Government of the Republic of Serbia has adopted a certain number of by-laws relating to implementation of this law in practice.

Transparency of budgets of security services is a very delicate issue in all countries, especially concerning concrete structures of funds and their spending for certain purposes. In most cases this segment is rather secret. Many security services, especially those most powerful ones, do not want to have their allocated budgets be available to the public. On the other hand, tax payers have the right to know in which way and for what purposes are budgets for this segment spent as well. Total budget amounts for certain services is available to the public through the Law on Budget which is adopted by the National Assembly at the end of each year. Budget allocated for the civil security service (BIA), is transparent with regard to its total amount, while budgets for the two military security services (VBA and VOA) is not transparent – they are classified as “top secret” and are a part of the budget allocated to the defense sector.

4. Conclusion

All contemporary democratic societies regulate their security systems for the purpose of realizing of the protective function and establishing of the state of security in the manner and volume corresponding to their needs, interest and possibilities. Principal goal of the national security system is protection of vital values of the society, in order to ensure unhindered development and prosperity. Security of the country and the society as a whole means absence of threats to adopted values in an objective sense, while subjectively it implies absence of fear from having these values attacked. Full security is impossible to achieve, because threats occur all the time at all levels, but it is possible to mitigate them, and that is the principal task of the whole system of national security. Special attention is to be paid to subjective security, which implies creation of the sense of security in citizens.

In order to realize this, it is necessary to constantly improve institutions of importance for security of citizens, the country, and the society as a whole. This implies primarily the police, the military, and security services.

Legal bases for regulation and organization of work of the security-intelligence system of the Republic of Serbia are in process of completing. Contemporary threats to security of the country and the society as a whole require the complete security sector to adjust to new situations. In such circumstances the role of security services is especially important, because their activities play an expressed pre-preventive and preventive role, and include observing certain phenomena much earlier and preventing them in time.

For these reasons, legal-normative bases for the work of this extremely important segment of state administration are even more important, if we know how great is the social importance of the security services establishment in all countries. Besides, we should especially take into consideration the geostrategic position of Serbia and the importance of this area in the Balkans, as the hub of significant international roads, territorial surroundings, and especially unsolved relations and security contradictions among countries which appeared in the territory of the former Socialist Federative Republic of Yugoslavia.

Legal regulations, as well as implemented reforms in the work of security services are of extreme importance for functioning of the Republic of Serbia. The reasons for such a state in the country are not at all simple, since the problems we are facing today derive as back as the 90s of the XX century. Crises and wars in the area of the former SFRY in a large degree had a negative

impact on the survival and development of our country. Apart from numerous harmful impacts, they have destroyed the social system and relations within it, and thus the living standard of citizens was affected.

Since we are in the process of European integration and negotiations on membership with the European Union, we are imposed, beside other things, with numerous standards which we must satisfy through comprehensive reforms. In this procedure one of the requirements relates to adoption of legal acts which would define the security-information system of Serbia, as well as establishing of mechanisms of democratic and civil control over them. In order for all this to come to life in practice, it is necessary to adopt certain legal regulations. Up till now a lot has been done, but many fields have still remained which need to be successfully finalized in order for Serbia to come closer to the EU membership, which is the end goal of the Republic of Serbia.

The process of legislative regulation, not only for the security sector, has not been completed, and is to be continued. It has a crucial importance for development of a stable democracy, market economy and political and social structures, which depict the values and needs of the country and the society as a whole.

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PRAVNI OSNOV ZA RAD SLUŽBI BEZBEDNOSTI U REPUBLICI SRBIJI

REZIME: U proteklih dvadesetak godina u Republici Srbiji izvršena je temeljna reorganizacija kompletnog sektora bezbednosti. Usvojeni su mnogi strateški dokumenti i zakoni koji su na transparentan način ustrojili sistem nacionalne bezbednosti. Službe bezbednosti kao deo tog sistema imaju izuzetno važnu ulogu u očuvanju vitalnih vrednosti države i društva u celini. Donošenjem određenih pravnih akata definisana je njihova uloga u zaštiti nacionalnih interesa. U ovom radu, pored istorijske retrospektive,

analiziraće se najvažnija pravna akta koja su bila od naročite važnosti u reformi bezbednosno-obaveštajnog sistema u Republici Srbiji.

Ključne reči: nacionalna bezbednost, službe bezbednosti, obaveštajna delatnost, Republika Srbija, reforme, pravni osnov, kontrola.

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