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PROTECTION OF CONSUMERS RIGHTS IN LIFE INSURANCE CONTRACTS

ABSTRACT: Life insurance is a special type of activity exerting a strong influence on a country's social and economic structure. Its main field of interest is human life. Life insurance contracts are founded on the basis concept of the legal position of an insured person as the weaker contracting party either due to his/her knowledge of the insurance service and the circumstances surrounding it or due to his/her negotiating position and the financial means put at his/her disposal. The insurer is a trader and professional, which cannot be said for the insured person, who, accordingly, should be ensured protection within the current legal framework. In that sense, it is essential the security and protection of the insurance beneficiary to be provided against all the risks and irregular actions which can be anticipated and prevented. In accordance with the importance of its topic, the paper touches upon the term and characteristics of life insurance contracts. It also includes the definition of life insurance and legal aspects of life insurance contracts, all of which to be followed by a detailed elaboration on the selected topic of the paper, which is reflected in its subtitle – the analysis of consumers (insurance beneficiaries) protection in insurance contracts generally speaking and in life insurance contracts in particular.

Keywords: *life insurance, the insurance contract, the consumer protection law, the law of contracts and torts, Republic of Serbia.*

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1. Introduction

In the business activities of insurance companies, the protection of insurance beneficiary has been set as a priority, Art. 13 of the Insurance Law (2014) stipulating that “insurance activity is supervised for the purpose of the protection of rights and interests of insurance beneficiaries”. According to the Insurance Law (2014), insurance beneficiaries are “insured persons, insurance contractors, insurance beneficiaries and third injured persons” (Art. 15).

The term of an insurance beneficiary itself spans a category of persons beyond consumers as, according to Art. 5 of the Consumer Protection Law (2021), a consumer is defined as “a natural person acquiring goods or services in the market for the purposes not intended for the person’s own business or another commercial activity”, or, as stated by Petrović Tomić (2014), “in various EU directives, a consumer is defined as a natural person getting or using some goods or services for non-professional purposes” (p. 45). Thus, “the management of an insurance company shall act in the company’s best interest by seeking to provide protection for an insurance beneficiary” (Korica & Zarubica, 2021, p. 76).

We may say that “modern insurance, as a form of growth and development risk management, appeared with the development of private ownership” (Petrović, Njegomir & Počuča, 2013, p. 731) and that “throughout insurance development, the basic function of insurance has not changed, which function is the protection of property and persons” (Počuča & Krstinić, 2013, p. 33).

It was as late as in the 1970s that the “contractual insurance law assumed a certain dynamics in its development. The new codifications and amendments to laws in numerous European countries point to a shift of the legislator’s focus from the provision of protection for the insurance against a fraudulent behaviour of the insurance contract to the protection of the rights of the consumer as the weaker contracting party” (Fontaine, 2011, p. 35). According to modern authors, “the need for special regulation of the position of persons facing the insurer is founded on the method of conclusion of an insurance contract, but also on the fact that, on one side, there is a person professionally dealing with risk management, whereas, on the other side, there is a person – the insurance contractor – without sufficient legal or professional knowledge” (Tereszkiewicz, 2013, p. 235). Also, “the average users of the insurance service observe an insurance contract as a contract binding the insurer to pay them a certain amount of money when an insured case occurs and not as a relation characterized by an entire group of unclear rules and bases for the exclusion of the insurer’s obligation” (Glintić, 2020, p. 59).

Life insurance is a special type of activity exerting strong influence on a country's social and economic structure. Its main field of interest is human life and it enables insured persons to create a system-based financial security of their own families and business. Also, it serves for the economy as a significant channel through which capital is put at the disposal of other economies (Vojinović & Dukić Mijatović, 2017, p. 390). Research into life insurance is a subject of legal sciences, but also entails a synthesis of knowledge of various other fields, such as mathematics, legislature, accounting, economy, finances, management, statistics, history, etc." (Uzelac, 2011, p. 97).

At the very beginning, the paper will focus on the term and characteristics of life insurance contracts and on the provisions of the Law on Contracts and Torts (1978) regarding life insurance contracts. Then it will concentrate on the definition of life insurance and on the legal aspects of life insurance contracts. o osiguranju života. Finally, detailed elaboration on the selected topic of the paper will ensue, reflected in the subtitle – the analysis of consumer (insurance beneficiary) protection in insurance contracts in general and in life insurance contracts in particular.

2. Term and Characteristics of Life Insurance Contracts

An insurance contract "represents an agreement between the insurer and a natural or legal person with a view to insurance against a risk the content of which has been defined by the law and an agreement between the contracting parties" (Pak, 2016, p. 33). According to Art. 897 of the Law on Contracts and Torts (1978), "By a contract of insurance a negotiator of insurance shall assume the obligation to pay a specific amount to an insurance organisation (insurer), while the organisation shall assume the obligation, should an event take place which represents the case covered by insurance, to pay the insured person, or a third party, the compensation or the stipulated amount or to do something else."

The characteristics of an insurance contract are given in the following table:

Table 1. Characteristics of an insurance contract

| | Basic characteristics of an insurance contract | Specific characteristic explained |
|---|---|--|
| 1 | Insurance contract is an entitled contract. | An insurance contract is an entitled contract as, due to its specific elements, it has been regulated by the law and has been given a specific title. |
| 2 | Insurance contract is an adhesion contract. | In insurance contracts, one contracting party has the prerequisites (prepared in advance) under which the contract is to be concluded, whereas the other contracting party has the possibility to accept or reject those prerequisites. |
| 3 | Insurance contract is a bilaterally binding contract. | The insurance contractor shall pay the insurance price, i.e. premium (contribution), whereas the insurer bears the risk covered by the insurance, which creates an obligation for them to pay certain amounts of money should the insured risk occur (damages, insured sum, compensation of costs). |
| 4 | Insurance contract is an aleatory contract. | In insurance contracts, the obligation of one of the contracting parties, i.e. the insurer, is a conditional one. The aforesaid obligation towards the insurance contractor depends on the realization of the insured risk in future, both when insurance of property and insurance of persons is concerned. |

Source: Pak, A. (2016). *Zaključenje i prestanak ugovora o osiguranju: doktorska disertacija* [Conclusion and termination of the insurance contract: doctoral dissertation]. Novi Sad: Univerzitet Edukons, Fakultet za evropske pravno-političke studije, pp. 34-39.

Art. 942 to 965 of the Law on Contracts and Torts (1978) regulates the subject matter of a person's insurance contract. Here we will present the most important provisions in this field.

According to the provisions of Art. 942, "in contracts of insurance of persons (life insurance and accident insurance), the amount of insurance to be paid by the insurer on the occurrence of the insured event shall be determined in the insurance policy by agreement between the contracting parties." In addition to the elements constituting every insurance policy, "a life insurance policy shall include indications of the first name and last name of the person whose life is insured, their date of birth and the event or time limit being a prerequisite for requesting payment of the amount insured" (Art. 943).

According to Art. 946, “life insurance may relate to the life of the negotiator of insurance or it may relate to the life of a third party.”

The Law stipulates and excludes risks. Thus, Art. 949 stipulates the exclusion of risk – insured person’s suicide: “A contract of insurance covering a case of death shall not include the risk of suicide of the insured person if it happened in the first year of the insurance period. If the suicide happens within a three year period from the day of entering into contract, the insurer shall not be obliged to pay the beneficiary the insured amount, but only the mathematical reserve of the contract.” Art. 950 stipulates the exclusion of risk – premeditated murder of the insured person: “an insurer shall be released from obligation to pay to the beneficiary the insured amount if they wilfully caused the death of the insured person, but if until then at least three annual insurance premiums have been paid, they shall be obliged to pay the mathematical reserve to the negotiator of insurance, and should they be the insured person, the payment shall be made to their successors.” Art. 951 stipulates the exclusion of risk – deliberately causing an accident: “an insurer shall be released from obligation in the insurance contract covering an accident if the insured person wilfully caused the accident.” Art. 952 stipulates the exclusion of risk – war operations: “If the death of the insured person has been caused by war operations, the insurer – unless otherwise provided by the contract – shall not be bound to pay the beneficiary the insured amount, but shall be obliged to pay them the mathematical reserve from the contract. Unless otherwise provided by the contract, the insurer shall be released from the obligation from the accident insurance contract if the accident has been caused by war operations.” Also, according to Art. 953, the Law on Contracts and Torts (1978) regulates the subject matter of the contractual exclusion of risk: “Other risks as well may be excluded by the contract covering cases of death or accident”.

3. Term of Life Insurance and Legal Aspects of a Life Insurance Contract

According to Uzelac, “the insurance of a person differs from property insurance in its basic characteristics and there are also some special rules on which the legal relations in this group of insurance are based. The subject of insurance is life and health, i.e. the insured person’s physical integrity. The risk covered by the insurance of a person is realized through the insured person’s personality and cannot be expressed through material value” (Uzelac, 2011, p. 98).

It should be also emphasized that “life insurance serves as a supplement and expansion of social insurance, especially the pension and disability one” (Uzelac, 2011, p. 98).

A life insurance contract – policy – contains obligatory elements such as: “the contracting parties, full name of the insured person, date of birth, insurance term, coverage period, insurance sum, premium, date of issue, the parties’ signatures and the specification of the terms under which the payment of the insured sum may be requested. In addition to the obligatory provisions, a contract or policy contains provisions that are not generally obligatory and result from the battle of insurance companies for the market” (Stevanović, 2012, p. 44).

When concluding a contract, “the insurance company and the insured person, i.e. contractor, are not in the same position as, in that transaction relation, the insurance company has more data and information than the insured person. On the other hand, the insured person sometimes may have more information than the insurance company and may also have an affinity for changing their behaviour after contracting insurance. Such a situation is resolved with the introduction of clauses protecting both the insurance company and the insured person, i.e. contractor” (Stevanović, 2012, p. 44).

Table 2 shows the clauses protecting both contracting parties in life insurance.

Table 2. Clauses protecting both contracting parties in life insurance

| | Clause | Clause explained |
|---|------------------------|---|
| 1 | Indisputability clause | This clause “points to the fact that one cannot pose the question of legal validity of a contract after a certain time span has expired – most often two years following conclusion. This period is important because it is upon insurance companies to establish the validity of a life insurance contract and, if no circumstances affecting contract validity occur during that period, the contract shall remain in effect even after the time span has expired. Thus, the insurer will have to pay the insured sum unless they themselves have taken certain measures for contract annulment and the due premiums have been duly paid and there have been no other infringements of the contract”. |

| | Clause | Clause explained |
|---|----------------------------|--|
| 2 | Grace period clause | A life insurance contract is “bilaterally binding, which means that the insurer has to pay an insurance premium and only then shall the contract take effect, the insurer’s liability starting running from the moment of premium payment. The premium is usually paid immediately upon contract conclusion and if it is not paid, the contract shall not take effect. The premiums are paid according to an agreement between the contracting parties and the premiums falling due are to be paid by the due date. However, in practice, one often delays paying the premium, so a grace period is allowed in that case, within which period the contract continues being valid”. |
| 3 | Repurchase value clause | A life insurance (mixed insurance) contractor may “request of the insurer the payment of the repurchase policy value if at least three annual premiums have been paid. The life insurance contract – policy – must specify the conditions under which the payment of the repurchase value may be requested and also the method of calculation of that value in accordance with the insurance terms. The repurchase value is most often shown on the back of the policy, in the so-called repurchase value table”. |
| 4 | Contract renewal clause | This clause entitles the policy holder “to renew a life insurance contract that has expired. The renewal entails the fulfillment of certain terms. The first one relates to data on the insured person, namely their health condition, financial situation and occupation. The second one entails that all the outstanding insurance premiums have been paid”. |
| 5 | Misstatement of age clause | When concluding a life insurance contract, “the insurance contractor, i.e. the insured person shall provide, in the insurance offer, accurate date of their age, health condition and occupation. In this case, the entry age of the insurance contractor, i.e. the insured person is vital for the establishment of the insurance premium as age is a fact essential for risk assessment and entry into insurance. In the aforesaid case, the insured person may state that they are much younger than they really one and thereby increase the insurance company’s business risk”. |

| | Clause | Clause explained |
|---|---|--|
| 6 | Advance payment clause | An insurance contractor “may request of the insurance company the payment of part of the insured sum up to the amount of the repurchase value of the policy, which amount they shall return later. This is possible in life insurance policies concluded to last for the insured person’s lifetime. The insurance contractor shall pay an interest on the received advance payment and should they be late in the payment of that interest, they shall be deemed as if they had requested repurchase”. |
| 7 | Clause on the transfer of insurance policy rights | An insurance contractor, who is also the policy holder, “may transfer the policy rights to another person and they may do so in two ways: by means of an absolute transfer – the transfer of all the rights to another person (the life insurance policy is given, most often to family members) or by pledging the policy – the policy serving as a security instrument for taking a loan – in this way, only one part of the rights is transferred and the transfer is temporary as, after the debt settlement, the transferred rights are returned to the insured person; this type of transfer is characteristic of “the life risk insurance only in the case of death of the loan beneficiary”. |
| 8 | Indexation clause | The EU law regulating the life insurance field “is also acquainted with the term of indexation in life insurance contracts. Indexation means the harmonization of insured sums with the retail price index growth, which index is published by Eurostat. Indexation is contracted at the moment of conclusion of a life insurance contract and is executed each time when the retail price index cumulatively grows by at least ten per cent from the previous indexation, on the policy conclusion anniversary. Indexation entails the existence of an offer which is submitted to the insurance contractor. The indexation offer contains new insured sums, new premiums and the certificate submission deadline, which may not be shorter than 15 days from the day of the receipt of the offer. By signing the indexation offer, the insurance contractor confirms that they agree to the same”. |

Source: Stevanović, N. (2012). Ugovor o osiguranju života (polisa) i klauzule koje štite osiguranike [Life insurance contract (policy) and clauses that protect the insured]. *Tokovi osiguranja*, 28 (4), pp. 45-49.

4. Protection of consumers (insurance beneficiaries) in life insurance contracts

Statistics show that “each year, in the EU internal market, another 150 million consumers enter the financial services sector” (Keglević, 2013, p. 209).

According to Glintić (2020), “the essence of the insurance service, all its rules and limitations, have a place of their own in the insurance policy, which is very seldom carefully read by the insurance contractor. It is mostly only at the moment when a loss occurs that the insurance contractor becomes aware of all the limitations of the insurer’s liability. This leads to a discrepancy between the expectations of the insurance contractor and the actual scope of the insurer’s liability, the insurer being prone to self-promotion and presenting oneself as one who guarantees a safe future” (p. 59).

With a view to “protecting consumers from unfair contractual provisions in standard circumstances, the EU enacted Directive 93/13/EEC on Unfair Terms in Consumer Contracts (1993), the provisions of which have been, in Serbian law, applied in the provisions of the Consumer Protection Law (2021). Also, the European Commission passed the Guidelines for the Interpretation and Application of Directive 93/13 (2019), the basic objective of which is to present the European Court’s interpretation of the key terms and provisions of the Directive in the light of the specific cases resolved by the national courts” (Ivančević, 2021, pp. 479-480).

Adhesion contracts, which also include insurance contracts, “ought to produce a certain legal effect that is not contrary to the applicable regulations and is aimed at not only fulfilling the contracting parties’ interests, but also at not breaching the general interest.” (Blagojević, 1934, p. 3).

As for insurance contracts, “there has to be a high level of mutual trust between the contracting parties” (Pavić, 2009, p. 60). A constituent part of an insurance contract is the general and special insurance terms composed by the insurer.

By applying insurance terms, “the insurer should not only protect their own interests, but also the interest of the insured person in order to realize the purpose of the concluded insurance contract. When composing the insurance terms, the insurer is required to act with the high care of a good professional, applying the professional rules, especially the actuarial ones, according to the principle of conscience and honesty, with good business customs and business ethics. The aforesaid implies that the terms must be composed in a clear and intelligible manner and must not contain any unfair provisions for

the party accessing the contract, i.e. must not be detrimental to the insurance contractor” (Ivančević, 2021, p. 486).

It has been shown in practice that “insurance terms contain provisions that are detrimental to insurance beneficiaries and that there is a need for securing protection against the application of such provisions. Protection against unfair contractual terms is aimed at enabling consumers to have their individual interests protected from the contractual provisions applied in insurance terms as an integral part of a specific contract. What is important for consumer protection is the fact that the provisions of the insurance terms on the basis of which no specific contract has been concluded can as well be subject to the assessment of fairness. The European Court has taken the stand that the fact that a provision has not been applied in practice must not be an impediment to the assessment of its fairness.¹ Banning the application of certain clauses in insurance terms, which clauses have been assessed as unfair, secures protection in future as well, whereby the collective interests of consumers are protected as well” (Ivančević, 2021, p. 487).

In Serbian law, the provisions of the Law on Contracts and Torts regulating the rules on the nullity of the provisions of general terms “accordingly apply to insurance contracts. More specifically, these rules specify that the provisions of general terms that are contrary to the goal of a concluded contract or to good business customs are null and void” (Ivančević, 2021, p. 487).

The provisions of the Consumer Protection Law (2021) introduces additional rules on the unfairness of contractual terms in consumer agreements, which rules apply to insurance contracts as well.

According to Art. 40 of the Consumer Protection Law (2021) “contract terms shall be binding on the consumer if they are expressed in plain, intelligible language, and are understandable to a reasonable person as educated and informed as the particular consumer. Contract terms shall be made available to the consumer in a manner that gives a real opportunity to become acquainted with them before the conclusion of the contract, with due regard to the means of communication used. The contract term shall be binding on the consumer if the consumer has agreed to it. A term pre-drafted by the trader in a manner indicating that the consumer has accepted it unless they explicitly opt out of that term, is not binding for the consumer.”

According to Art. 41, “in the case of doubt about the meaning of a contract term, the interpretation most favourable to the consumer shall prevail.”

¹ Judgement of 26 January 2017, *Banco Primus*, C-421/14, EU:C:2017:60. Judgement of 29 October 2015, *BBVA*, C-8/14, EU:C:2015:731.

According to Art. 42 of the same Law, “unfair contract terms are null and void. An unfair contract term means any term that, in contravention of the principle of good faith, results in a significant disproportion in contractual rights and responsibilities of the parties to the detriment of the consumer: The unfairness of a term shall be assessed taking into account: 1) the nature of the goods or services the contract relates to; 2) the circumstances under which the contract has been concluded; 3) other terms of the same contract or of another related contract; 4) the manner in which the contract was drafted and communicated to the consumer by the trader.”

According to Art. 43 of the Consumer Protection Law (2021), “the contract terms that have the following objects or effects shall be unfair regardless of the circumstances of a particular case: 1) excluding or limiting the liability of the trader for death or personal injury caused to the consumer through an act or omission of that trader; 2) limiting the trader’s obligation to respect commitments undertaken on its behalf by its agents or conditioning the obligation of the trader to perform or accept the obligation taken over on their behalf by their agent with a particular condition that is at the trader’s discretion; 3) excluding or hindering the consumer’s right to take legal action or exercise any other legal remedy for the protection of their rights, particularly by requiring the consumer to take disputes exclusively to arbitration contrary to the legal provisions of this law; 4) restricting or limiting the evidence available to the consumer or imposing a burden of proof that, according to the applicable law, should lie with the trader; 5) determining the territorial jurisdiction of the court which is not in the place of residence/domicile of the consumer.”

Finally, according to Art. 44 of the same Law, “a contract term that has the following object or effect shall be presumed to be unfair: 1) excluding or limiting the legal rights of the consumer vis-à-vis the trader or a third party in the event of the total or partial non-performance or inadequate performance by the trader of any of the contractual obligations, including the rights of the consumer to offset a debt owed to the trader against a claim that the consumer may have against him; 2) allowing the trader to retain a payment by the consumer when the latter fails to conclude or perform the contract, or refuses to conclude the contract, where the same right is not granted to the consumer; 3) requiring any consumer who fails to fulfil their contractual obligation to pay damages that significantly exceed the damage suffered by the trader; 4) allowing the trader to rescind the contract at will where the same right is not granted to the consumer; 5) enabling the trader to rescind an open-ended contract without reasonable notice except where the consumer

has failed to perform their contractual obligations; 6) tacit renewal of a fixed-term contract, if the consumer has not made a statement, if the period left for the consumer not to accept the extension of the contract is too short when compared with the period for which the contract has been concluded; 7) allowing the trader to increase the price agreed upon with the consumer when the contract was concluded without giving the consumer the right to rescind the contract; 8) obliging the consumer to fulfil all his/her obligations where the trader has failed to fulfill all its obligations; 9) giving the trader the possibility of transferring its obligations under the contract without the consumer's consent; 10) restricting the consumer's right to re-sell the goods by limiting the transferability of any guarantee provided by the trader; 11) enabling the trader to unilaterally alter the terms of the contract including the characteristics of the product or service; 12) unilaterally amending the contract terms communicated to the consumer in a durable medium through contract terms to which the consumer has not consented through the means of distance communication."

It is important to emphasize that "when assessing the fairness of a provision of general terms that has been recognized as unclear, special rules of interpretation to the advantage of the weaker contracting party, i.e. the consumer, shall apply" (Art. 100 of the Law on Contracts and Torts (1978)).

All the aforesaid rules contribute to the individual protection of consumers against unfair provisions in an insurance contract. Indirectly, these rules contribute to the collective protection of consumers due to the fact that the insurers, according to the decisions of courts, shall correct the insurance terms either of their own initiative or on the order of a competent authority.

5. Conclusion

The life insurance contracts concluded with insured individuals connect the insurance field with the consumer protection law. They are founded on the basic concept of the legal position of an insured person as the weaker contracting party due to their knowledge of the insurance service and the circumstances surrounding it or due to their negotiating position and the financial means put at their disposal. The insurer is a tradesperson and professional and is versed in the characteristic of the insurance service itself, such as risk assessment and the premium calculation method, the insured goods, risk occurrence prediction, assessment and analysis of statistics, etc. This is not the case when the insured individual is concerned – they need to be secured protection within the available legal framework.

Life insurance is a special type of activity exerting strong influence on a country's social and economic structure. Its main field of interest is human life and it enables insured persons to create a system-based financial security of their own families and business. In that sense, what is essential is the security and protection of the insurance beneficiary against all the risks and irregular actions which can be anticipated and prevented.

As stated by Petrović-Tomić (2019), "instruments of protection of the contractual insurance law make sense only if the consumer has provided coverage that is useful for them and in accordance with their needs. In our opinion, consumers need to be protected from the lack of expertise, which most often leads them to contracts that do not meet their needs, i.e. are useless or not in accordance with their needs" (p. 251). Furthermore, the needs, rights and interests of insurance beneficiaries are taken into account when the insurer or the intermediary acts in a professional manner.

In accordance with the importance of its subject, the paper touches upon the term and characteristics of life insurance contracts, in the definition of life insurance and on the legal aspects of life insurance contracts, all of which to be followed by a detailed elaboration on the selected topic of the paper, which is reflected in its subtitle – the analysis of consumer (insurance beneficiary) protection in insurance contracts in general and in life insurance contracts in particular.

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ZAŠTITA PRAVA POTROŠAČA KOD UGOVORA O OSIGURANJU ŽIVOTA

REZIME: Osiguranje života je posebna vrsta delatnosti koja ima veliki uticaj na socijalnu i ekonomsku strukturu jedne zemlje. Njegovo glavno područje interesovanja je ljudski život. Ugovori o osiguranju života se temelje na osnovnom shvatanju pravnog položaja osiguranog lica kao slabije ugovorne strane bilo zbog svog znanja o usluzi osiguranja i

okolnostima koje ga okružuju bilo zbog svoje pregovaračke pozicije i finansijskih sredstava koja mu stoje na raspolaganju. Osiguravač je trgovac i profesionalac, što se ne može reći i za osigurano lice, pa mu je potrebno osigurati zaštitu u mogućim zakonskim okvirima. U tom smislu, veoma je bitna sigurnost i zaštita korisnika osiguranja, od svih rizika i nekorektnih radnji koje je moguće predvideti i prevenirati. Shodno značaju teme rada, u radu je učinjen kraći osvrt na pojam i osobine ugovora o osiguranju, potom na pojmovno određenje osiguranja života, te pravne aspekte ugovora o osiguranju života, i konačno, poentiranje detaljne elaboracije odabrane teme rada ostvarilo se kroz podnaslov koji je analizirao zaštitu potrošača (korisnika usluga osiguranja) kod ugovora o osiguranju uopšte, te u ugovorima o osiguranju života.

Ključne reči: *osiguranje života, ugovor o osiguranju, Zakon o zaštiti potrošača, Zakon o obligacionim odnosima, Republika Srbija.*

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