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PROVISIONAL SEIZURE OF PROPERTY AND PROPERTY ATTACHMENT

Abstract. ***Purpose.*** The purpose of the article is to identify the issues which arise in the course of provisional seizure and subsequent attachment of this property and to suggest ways to solve them. ***Results.*** The article reveals that in the system of state coercive measures, a special place is given to criminal procedural coercive measures, which, among other things, include provisional seizure of property and property attachment. In practice, the only legal remedy for the prosecution (in cases without suspects) to deprive of the ability to use property (possibly acquired from crime or for other purposes) is its provisional seizure and subsequent attachment. The author identifies a number of problems arising in the application of these measures during the pre-trial investigation of criminal proceedings, including those related to legislative vagueness of the grounds and procedure for provisional seizure of property and property attachment. Due to the probable factors of destruction or damage to property owned by a bona fide purchaser, the legislator has provided for the right of the investigator or prosecutor to decide on attachment (with a corresponding petition before the investigating judge), therefore, in such situations, the investigator or prosecutor shall assess the type of property, the likelihood of its damage and destruction, as well as its acquisition by crime. ***Conclusions.*** It is concluded that in the context of the legislative statement regarding property considered to be provisionally seized, it is important to understand the following: seizure of property can be without a relevant ruling of the investigating judge; items which are seized from circulation by law, as well as included in the list for which the court has expressly granted permission to search for them, does not include provisionally seized property. Allowing for the issues of practical activities, the following mechanisms are proposed: provisional seizure of property in case the owner refuses to voluntarily hand it over; recording of the return of provisionally seized property; extension of the time limit for filing a petition for attachment of provisionally seized property in case of need for expert examination or identification of the property.

Key words: criminal procedure, ensuring criminal proceedings, coercive measures, provisional seizure of property, property attachment.

1. Introduction

In the system of state coercive measures, a special place is given to criminal procedural coercive measures, which are defined as actions and decisions of competent authorities (officials) provided for by criminal procedure law that restrict the rights of other participants in the process against their will (Smirnov, Kalinovskyi, 2012, p. 288), and, on the one hand, is an important element of the mechanism for supporting the tasks of criminal proceedings, and, on the other hand, a factor of the most tangible intrusion into individual rights and freedoms (Myroshnychenko, 2013, p. 310). In this regard, the procedure for applying provisional seizure and property attachment plays is of importance. The provisional seizure of property and property attachment as measures to ensure criminal proceedings during pre-trial investigation today requires considerable attention from both practitioners and academics. This is due to a number of problems arising in the application of these measures during the pre-trial investigation of criminal pro-

ceedings, including those related to legislative vagueness of the grounds and procedure for provisional seizure of property and property attachment.

A number of scholars have considered the problematic issues arising in the course of provisional seizure and property attachment. A.V. Kholostenko, relying on the analysis of the provisions of the CPC on the application of provisional seizure of property and property attachment, underlines the following aspects: the legislator entitles the investigator and prosecutor to deprive the suspect of the opportunity to own, use and dispose of certain property, i.e., the right to ownership of property in general, during the provisional seizure of property. In addition, the investigating judge may, by his/her ruling, deprive the suspect or accused only of the possibility to alienate certain property or to dispose of and use such property in any way (Kholostenko, 2013, p. 120). O. Shylo, substantiating his position on the provisional seizure of property during a search, argues that if the investigating judge's decision to conduct a search specifies the items to be seized, the fact of their seizure shall be reflected in the search records, but if during the search other items are also seized that were not specified in the investigating judge's decision, they acquire the status of provisionally seized property and are described in detail in the search records or separately in the inspection records (Shylo, 2013, p. 23).

The purpose of the article is to identify the issues which arise in the course of provisional seizure and subsequent attachment of this property and to suggest ways to solve them.

2. Particularities of the legislative framework for provisional seizure of property

Provisional seizure of property as a measure to ensure criminal proceedings means that a suspect or persons in possession of property directly related to a criminal offence are actually deprived of the ability to own, use and dispose of certain property until the issue of property attachment or its return is resolved (Hroshevyi, Tatsii, Tumaniants, 2013, p. 434). Provisionally seized property is property that is seized: from an apprehended person; during an inspection or search – until it is returned or the issue of apprehension is resolved. According to part 7 of Article 237 of the CPC of Ukraine, items and documents which are not listed as items in relation to which the ruling has expressly granted permission to search or inspection and are not subject to be seized from circulation by law shall be deemed provisionally seized property (Conclusion on the draft of the Criminal Procedure Code of Ukraine, prepared by the Directorate for Justice and Protection of Human Dignity, General Directorate I "Human Rights and the Rule of Law", 2011). (Conclusion on the draft of the Criminal Procedure Code of Ukraine, prepared by the Directorate for Justice and Protection of Human Dignity, General Directorate I "Human Rights and the Rule of Law", 2011). Moreover, provisionally seized items are: during apprehension – all items, documents, money, etc.; during a search – items and documents that are not included in the list, in relation to which permission to search is expressly granted in the search warrant, and items that are not seized from circulation by law; during inspection – things and documents that are not items seized from circulation by law (Myroshnychenko, 2013, p. 311). With regard to court rulings, N.S. Morhun argues that in practice courts often come to the conclusion that only seized items and documents included in the list for which the court expressly granted permission to search for them, as well as attached property in accordance with the rules of Article 98 of the CPC, can be recognised as material evidence. Furthermore, the current CPC of Ukraine does not provide for the recognition of provisionally seized property as material evidence without attachment by the court in accordance with the rules of Part 5 of Article 171 of the CPC of Ukraine (Morhun, 2014, p. 322). It should be noted that the conditional nature of the list of property specified in the warrant for a search of a person's home or other property – in particular, in practice, investigating judges often limit themselves to an approximate ("open") list of procedurally important items and documents, which are indicated by the investigator or prosecutor in the motion for permission to conduct a search, added with the wording "and other things and documents that are relevant to the pretrial investigation (for criminal proceedings) (Nersesian, 2015, p. 55), which, in our opinion, is erroneous. Provisional seizure of property is also applied when a person is apprehended in accordance with the procedure provided for in Articles 207 and 208 of the CPC of Ukraine. If a person is apprehended by an unauthorised official, the latter shall hand over the provisionally seized property to the investigator, prosecutor or other authorised official simultaneously with the delivery of the detainee to them (Bandurka, Blazhivskyi, Burdol, Farynnyk, 2012, pp. 434–437).

There are a number of problematic issues in the mechanism of provisional seizure of property that need to be addressed (regulated by law):

– In fact, provisionally seized property remains so for 2–3 days, after which it is either attached by means of an appropriate motion

to the investigating judge or returned to the person from whom the property was seized. According to the CPC, a motion to apprehend provisionally seized property shall be filed with the court within 48 hours after the seizure of the property, otherwise the property shall be immediately returned to the person from whom it was seized. Therefore, in the CPC of Ukraine, the legislator deliberately limited the procedure for filing a motion with the investigating judge with a request to apprehend provisionally seized property Thus, given the current level of workload on pre-trial investigation bodies, the term "within 48 hours" complicates the process of investigating criminal offences, impedes the completeness of its investigation, and does not allow for timely preparation of a reasoned motion and its approval by the procedural prosecutor. The proposals of the draft law can be used to solve this problem (Draft Law of Ukraine On amendments to certain legislative acts of Ukraine on improving the procedure for pre-trial investigation, 2014), in particular: part 1 of Article 171 should be amended to read as follows: "An investigator, with the consent of the head of the pre-trial investigation body, as well as a civil plaintiff, for the purpose of securing a civil claim, may file a motion for the property attachment with the investigating judge or court." In addition, it is advisable to amend part 5 of Article 171 of the CPC as follows: "The investigator's motion for the attachment of provisionally seized property shall be filed no later than three days after the seizure of the property, otherwise the property shall be immediately returned to the person from whom it has been seized. In some cases related to expert examination or the need to establish the involvement of property in the commission of a crime, the time limit for filing a motion for apprehension may be extended up to ten days based on a relevant application to the investigating judge and arguments for extending these terms. Such a motion for an extension of time may be filed by the investigator, with the consent of the prosecutor, or the prosecutor no later than three days after the seizure of the property." The above amendments will help to ensure that the truth is established in the case, the rights of the victim are respected and, if necessary, that the damages are compensated;

– The absence of legislative provisions on the need for expert examination of provisionally seized property creates a problem, since, for example, it is impossible to establish its value, identity, authenticity of documents, etc. This necessitates that the CPC of Ukraine should set out the grounds and timeframes for the investigator and prosecutor to establish the origin of the seized property;

– The CPC does not provide for the procedure for persons who provisionally seize property in case of refusal to voluntarily hand it over, since in this case the official who provisionally seizes property is deprived of the possibility to seize property without applying appropriate measures. In such cases, the officials carrying out its seizure, in our opinion, should act by analogy with the requirements of the CPC, Article 143, part 3, para. 2, in particular, with regard to the application of these measures. In other words, in case of failure to comply with the lawful demands of authorised persons, they have the right to use physical force to overcome opposition to their demands. In this regard, we propose to amend Article 168 by adding the following part: "In case of refusal of a person to voluntarily hand over things, documents and money that are subject to provisional seizure, physical measures may be applied to him/her, which allow for the appropriate seizure. The use of physical force shall be preceded by a warning of the intention to use it. If it is impossible to avoid the use of physical force, it should not exceed the measure necessary to seize property and shall be reduced to a minimum impact on the person. It is prohibited to use measures that may harm a person's health, as well as to force a person to stay in conditions that impede the free delivery of property. Exceeding the authority to use physical coercive measures entails liability established by law".

The next "step" after the provisional seizure is the property attachment, which is the deprivation, according to a ruling of an investigating judge or court, of the right to alienate, dispose of and/or use property in respect of which there are grounds or reasonable suspicion to believe that it is evidence of a crime, subject to special confiscation from a suspect, accused, convicted person, third parties, confiscation from a legal entity, to secure a civil claim, recovery of unlawful benefit from a legal entity, possible confiscation of property (until cancelled in accordance with the procedure established by the Criminal Procedure Code of Ukraine (2012)). According to the Criminal Procedure Code of Ukraine, the purpose of property attachment is to prevent the possibility of its concealment, damage, deterioration, disappearance, loss, destruction, use, transformation, movement, transfer, alienation (Criminal Procedure Code of Ukraine, 2012). Attached property can be property owned, used or disposed of by a suspect, accused, convicted person, third parties, or a legal entity that may be subject to criminal law measures by a court decision, ruling of court or investigating judge (allowing for the provisions of Article 41 of the Constitution

of Ukraine (1996), the attachment and subsequent confiscation of property is applied exclusively on the basis of a court decision, taking into account the relevant grounds).

3. Powers of procedural persons during property attachment

Due to the probable factors of destruction or damage to property owned by a bona fide purchaser, the legislator has provided for the right of the investigator or prosecutor to decide on attachment (with a corresponding petition before the investigating judge), therefore, in such situations, the investigator or prosecutor shall assess the type of property, the likelihood of its damage and destruction, as well as its acquisition by crime. Property can be attached only on the basis of a ruling by an investigating judge, except in urgent cases, in particular, solely for the purpose of preserving material evidence or ensuring possible confiscation or special confiscation of property in criminal proceedings regarding a grave or especially grave crime, a preliminary attachment of property or funds on the accounts of individuals or legal entities in financial institutions may be imposed by the decision of the NABU Director (or his/her deputy), approved by the prosecutor. Such measures are applied for a period of up to 48 hours, and immediately after making such a decision, but not later than within 24 hours, the prosecutor shall apply to the investigating judge with a motion for property attachment (Criminal Procedure Code of Ukraine, 2012).

Furthermore, the amendments to the CPC include (Law of Ukraine On Amendments to the Criminal and Criminal Procedure Codes of Ukraine regarding the implementation of the recommendations contained in the sixth report of the European Commission on the status of Ukraine's implementation of the Action Plan regarding the liberalization of the visa regime for Ukraine by the European Union, regarding the improvement of the property seizure procedure and the institution of special confiscation, 2016), stipulates that property may not be attached if it is owned by a bona fide purchaser, except for property attachment to ensure the preservation of material evidence. However, the amendments do not specify what documents a person shall provide to confirm the bona fide acquisition of the right to property and who has the right to assess the authenticity of such acquisition, an investigator, prosecutor or investigating judge. It should be noted that during the commission of some crimes, property (things, objects) is resold through several shell companies, which "artificially" creates a bona fide purchaser, whose verification requires a number of procedural steps to establish the truth in the case (Herasymov, 2013, pp. 188–189).

In practice, the only legal remedy for the prosecution (in cases without suspects) to deprive of the ability to use property (possibly acquired from crime or for other purposes) is its provisional seizure and subsequent attachment. However, practice shows that sometimes investigators or prosecutors do not comply with the requirements of the procedure for filing a relevant motion with the court, namely:

– Failure to comply with deadlines ("no later than 48 hours after the seizure of property");

– When applying to the court, the investigator shall provide documents confirming the ownership of the property subject to attachment. On the one hand, such a provision of the CPC of Ukraine makes such appeals impossible, because it is unknown how and where the investigator should establish or identify such title documents (Seizure of property: appeal of actions and inaction of the investigation, 2020). (Seizure of property: appeal of actions and inaction of the investigation, 2020).

Pursuant to the CPC, Article 171, part 2, para. 3, a motion for property attachment shall indicate documents confirming the ownership of the property subject to attachment or specific facts and evidence of the possession, use or disposal of such property by the suspect, accused, convicted person or third party. The documents confirming the ownership of the property, the ownership that is subject to state registration and that has actually been registered, or copies of such documents, shall be specified in the motion and shall be attached to it (for example, an information certificate from the State Register of Real Property Rights, etc.).

In order to eliminate this situation, we propose to amend part 10 of Article 170 of the CPC by adding paragraph three as follows: "The documents confirming the bona fide acquisition of the right to property are: a contract of sale of property certified in accordance with the established procedure, other documents on the financial transaction." These changes also serve to address the problem of "hidden" bona fide acquisition of property rights.

Moreover, when considering the relevant motions, investigating judges should consider that the following documents cannot be specified in the motion and attached to it in relation to property thereof ownership cannot be confirmed by documents (e.g., for property withdrawn from circulation, movable property that is not subject to state registration and for which documents are missing, etc.), as well as for property that is subject to state registration but has

not been registered in violation of the law. In this case, the impossibility of documentary evidence shall be substantiated in the motion and indicated in the court ruling (Letter of the Higher Specialized Court of Ukraine On some issues of judicial control by the investigating judge of the court of first instance over the observance of the rights, freedoms and interests of individuals during the application of measures to ensure criminal proceedings, 2013).

4. Conclusions

Therefore, in the context of the legislative statement regarding property considered to be provisionally seized, it is important to understand the following: seizure of property can be without a relevant ruling of the investigating judge; items which are seized from circulation by law, as well as included in the list for which the court has expressly granted permission to search for them, does not include provisionally seized property. Allowing for the issues of practical activities, the following mechanisms are proposed: provisional seizure of property in case the owner refuses to voluntarily hand it over; recording of the return of provisionally seized property; extension of the time limit for filing a petition for attachment of provisionally seized property in case of need for expert examination or identification of the property.

References:

Aresht maina: oskarzhennia dii i bezdiialnosti slidstva [Seizure of property: appeal of actions and inaction of the investigation]. *Vseukrainska pravova hazeta "Pravosuddia" – All-Ukrainian legal newspaper Pravosudya*. 2020. Retrieved from http://ukrjustice.com.ua/aresht-majna-oskarzhennya-dij-i-bezdiyalnosti-slidstva/ [in Ukrainian].

Bandurka, O.M., Blazhivskyi, Ye.M., Burdol, Ye.P., Farynnyk, V.I. (2012). Kryminalnyi protsesualnyi kodeks Ukrainy: naukovo-praktychnyi komentar [Criminal procedural code of Ukraine: scientific and practical commentary]. Kharkiv: Pravo [in Ukrainian].

Herasymov, R. (2013). Deiaki pytannia zastosuvannia areshtu maina za novym Kryminalnym protsesualnym kodeksom Ukrainy [Some issues of the application of seizure of property under the new Criminal Procedure Code of Ukraine]. *Slovo Natsionalnoi shkoly suddiv Ukrainy – Word of the National School of Judges of Ukraine, 4*, 186–194 [in Ukrainian].

Hroshevyi, Yu.M., Tatsii, V.Ia., Tumaniants, A.R. (2013). Kryminalnyi protses [Criminal process]. Kharkiv: Pravo [in Ukrainian].

Kholostenko, A.V. (2013). Pytannia dopustymosti dokaziv, otrymanykh vnaslidok tymchasovoho vyluchennia maina po zlochynakh u sferi oderzhannia nepravomirnoi vyhody [The question of the admissibility of evidence obtained as a result of provisional seizure of property for crimes in the field of receiving illegal benefits]. *Aktualni problemy dokazuvannia u kryminalnomu provadzhenni – Actual problems of proof in criminal proceedings, 4*, 117–122 [in Ukrainian].

Konstytutsiia Ukrainy vid 28 cherv. 1996 r. [Constitution of Ukraine dated June 28, 1996]. (1996). *rada.gov.ua*. Retrieved from https://zakon.rada.gov.ua/laws/show/254к/96-вр#Text [in Ukrainian].

Kryminalnyi protsesualnyi kodeks Ukrainy: vid 13 kvit. 2012 r. № 4651-VI [Criminal Procedure Code of Ukraine: dated April 13, 2012 No. 4651-VI] (2012). *rada.gov.ua*. Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text [in Ukrainian].

Lyst Vyshchoho spetsializovanoho sudu Ukrainy Pro deiaki pytannia zdiisnennia slidchym suddeiu sudu pershoi instantsii sudovoho kontroliu za dotrymanniam prav, svobod ta interesiv osib pid chas zastosuvannia zakhodiv zabezpechennia kryminalnoho provadzhennia: vid 5 kvitnia 2013 roku № 223-559/0/4-13 [Letter of the Higher Specialized Court of Ukraine On some issues of judicial control by the investigating judge of the court of first instance over the observance of the rights, freedoms and interests of individuals during the application of measures to ensure criminal proceedings: dated April 5, 2013 No. 223-559/0/4-13]. (2013). *rada.gov.ua*. Retrieved from http://zakon3.rada.gov.ua/laws/show/v0558740-13 [in Ukrainian].

Morhun, N.S. (2014). Tymchasove vyluchennia maina yak zakhid zabezpechennia kryminalnoho provadzhennia, shcho obmezhuie pravo vlasnosti [Temporary confiscation of property as a measure to ensure criminal proceedings limiting ownership]. *Mytna sprava – Customs Affairs, 3 (2),* 318–332 [in Ukrainian].

Myroshnychenko, Yu.M. (2013). Problemni pytannia tymchasovoho vyluchennia y areshtu maina za novym kryminalno-protsesualnym zakonom [Problematic issues of provisional seizure and seizure of property under the new criminal procedure law]. *Porivnialno-analitychne pravo – Comparative and analytical law, 3–2*, 310–312 [in Ukrainian].

Nersesian, A.S. (2015). Zabezpechennia mainovykh prav hromadian i yurydychnykh osib pry zastosuvanni tymchasovoho vyluchennia maina u kryminalnomu provadzhenni [Ensuring the property rights of citizens and legal entities when applying provisional seizure of property in criminal proceedings]. *Sudova apeliatsiia – Judicial appeal, 2,* 50–56 [in Ukrainian].

Proekt Zakonu Ukrainy Pro vnesennia zmin do deiakykh zakonodavchykh aktiv Ukrainy shchodo vdoskonalennia poriadku zdiisnennia dosudovoho rozsliduvannia: vid 3 hrudnia 2014 roku № 1220 [Draft Law of Ukraine On Amendments to Certain Legislative Acts of Ukraine on Improving the Procedure for Pretrial Investigation: dated December 3, 2014 No. 1220] (2014). *rada.gov.ua*. Retrieved from https://zakon.rada.gov.ua/laws/show/2462-20#Text [in Ukrainian].

Shylo, O.H. (2013). Novatsii Kryminalnoho protsesualnoho kodeksu Ukrainy shchodo protsesu-

alnoho poriadku zbyrannia rechovykh dokaziv [Innovations of the Criminal Procedural Code of Ukraine regarding the procedural order of collecting physical evidence]. *Aktualni problemy dokazuvannia u kryminalnomu provadzhenni – Actual problems of proof in criminal proceedings, 3*, 22–25 [in Ukrainian].

Smirnov, A.V., Kalinovskyi, K.B. (2012). Ugolovnyj process [Criminal process]. M.: Norma: INFRA-M [in Russian].

Vysnovok shchodo proektu Kryminalnoho protsesualnoho kodeksu Ukrainy, pidhotovlenyi Dyrektoratom z pytan pravosuddia ta zakhystu liudskoi hidnosti, Heneralnoho dyrektoratu I "Prava liudyny i verkhovenstvo prava", 2 lystopada 2011 r. [Conclusion on the draft of the Criminal Procedure Code of Ukraine, prepared by the Directorate for Justice and Protection of Human Dignity, General Directorate I "Human Rights and the Rule of Law", November 2, 2011]. (2011). *zib.com.ua*. Retrieved from http://zib.com.ua/files/Ukrainian_translation_final_1.doc [in Ukrainian].

Zakon Ukrainy Pro vnesennia zmin do Kryminalnoho ta Kryminalnoho protsesualnoho kodeksiv Ukrainy shchodo vykonannia rekomendatsii, yaki mistiatsia u shostii dopovidi Yevropeiskoi komisii pro stan vykonannia Ukrainoiu Planu dii shchodo liberalizatsii Yevropeiskym Soiuzom vizovoho rezhymu dlia Ukrainy, stosovno udoskonalennia protsedury areshtu maina ta instytutu spetsialnoi konfiskatsii: vid 18 liut. 2016 r. № 1019-VIII [The Law of Ukraine On Amendments to the Criminal and Criminal Procedure Codes of Ukraine regarding the implementation of the recommendations contained in the sixth report of the European Commission on the status of Ukraine's implementation of the Action Plan regarding the liberalization of the visa regime for Ukraine by the European Union, regarding the improvement of the property seizure procedure and the institution of special confiscation: dated February 18, 2016 No. 1019-VIII] (2016). Retrieved from https://zakon.rada.gov.ua/laws/show/1019-19#Text [in Ukrainian].

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ТИМЧАСОВЕ ВИЛУЧЕННЯ МАЙНА ТА НАКЛАДЕННЯ АРЕШТУ НА МАЙНО

Анотація. ***Мета.*** Мета статті – визначити проблеми, які виникають у процесі тимчасового вилучення та подальшого арешту цього майна й запропонувати шляхи їх вирішення. ***Результати.*** У статті зазначено, що в системі заходів державного примусу особливе місце відведено заходам кримінального процесуального примусу, до яких серед інших належить тимчасове вилучення майна та накладення арешту на майно. Практично для сторони обвинувачення (у справах без підозрюваних) єдиним законним засобом провадження щодо позбавлення можливості використовувати майно (яке, можливо, набуте злочинним шляхом або з іншою метою) є його тимчасове вилучення та подальший арешт. Визначено ряд проблем, що виникають у разі застосування вказаних заходів під час досудового розслідування кримінальних проваджень, у тому числі пов'язаних із законодавчою нечіткістю підстав і порядку тимчасового вилучення майна й арешту майна. Законодавець у силу ймовірних факторів знищення або пошкодження майна, яке перебуває у власності добросовісного набувача, передбачив право слідчого чи прокурора приймати рішення про накладення арешту (з відповідним клопотанням перед слідчим суддею), тому в таких ситуаціях слідчий або прокурор повинні оцінювати вид майна, імовірність його пошкодження та знищення, а також набуття злочинним шляхом. ***Висновки.*** Зроблено висновок, що в контексті законодавчого твердження щодо майна, яке вважається тимчасово вилученим, важливу роль відіграє розуміння таких позицій: вилучення майна здійснюється без відповідної ухвали слідчого судді; до предметів, які вилучені законом з обігу, а також які входять до переліку, щодо якого судом прямо надано дозвіл на їх відшукання, тимчасово вилучене майно не належить. З урахуванням проблем практичної діяльності запропоновано передбачити механізми: здійснення тимчасового вилучення майна в разі відмови володільця добровільно видати його; фіксації повернення тимчасово вилученого майна; продовження строку

для подання клопотання про накладення арешту на тимчасово вилучене майно в разі потреби в проведенні експертного дослідження або встановленні належності майна.

Ключові слова: кримінальний процес, забезпечення кримінального провадження, заходи примусу, тимчасове вилучення майна, накладення арешту на майно.

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