
THE CONSTITUTIONAL GUARANTEES OF PARLIAMENT DISSOLUTION: A COMPARATIVE STUDY BETWEEN THE JORDANIAN CONSTITUTION AND KUWAITI CONSTITUTION

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Abstract

Countries and nations aim to continuous development, and one of the most important ways to achieve development and democracy is by strengthening the legislative institution that the Parliament represents. It has the authority to enact laws and supervise the executive authority's activities. In some cases, the Representative Council may perform some illegal actions, which requires the dissolution of this Council. Therefore, this study aims to find out the justifications used for a dissolving to the Parliament on the one hand, and to identify the constitutional guarantees for this dissolving to prevent the executive authority from overreaching on the other hand. This is normative legal research that has applied the statutory approach, conceptual approach, and factual approach. also To achieve this goal, the study relied on the comparative analytical descriptive method by applying it to Jordan and Kuwait. The findings of the research show that The dissolved house of deputies performs its legislative authority until conducting a new general election to avoid executive dominance over legislative authority. The power of parliament dissolution is one most powerful tool that executive authority exercise to control legislative authority in Jordan and Kuwait. The king can decree parliament dissolution for any reason he believes is convenient without any constraints .also the study found that Jordanian and Kuwaiti constitutions constrain dissolution rights with specific guarantees, including not dissolving two successive parliament for the same ground, the predefined period for a new general election, and if it was not conducted in the predefined time, the dissolved parliament has a constitutional power to restore his constitutional powers and rights after the expiration of election time. So it is not permissible to resort to dissolving the Parliament except in cases of necessity and there is a legal justification for that.

Keywords: Parliament, parliamentary dissolution, Jordanian constitution, Kuwaiti constitution.

Introduction

The constitution basically governs the relationship between the authorities of government and between individuals, i.e. the people, and each independent sovereign state has its own constitution, which it drafts according to what is appropriate to its system. The constitution consists of several articles, each article concerned with talking about a specific aspect and clarifying it. The importance of The constitution follows(Harry& Imam, 2022; Lienhard etal.,2022):

From the political point of view: the constitution defines the identity, nature and form of the state, meaning is it a simple or treaty-based state? In addition to defining the type of government (the system of government within the state), such as being monarchical, republican, or parliamentary, the constitution also works to define the general authorities in the state, which are the three authorities, legislative, executive, and judicial. It undertakes directing these authorities and the mechanism for their appointment, in addition to organizing the political processes within the state and crystallizing the administrative authority in the state and the philosophy of government that it follows.

From a legal point of view: The constitution is considered the pyramid of all legislation and has supremacy over the rest of the laws within the state, which results in the necessity of all legislation being subject to the constitution and considering the constitution as a basic reference for it.

The constitution is concerned with clarifying the basic rights of individuals: or what is known as public freedoms, as it stipulates a set of rights that guarantee the individual a decent life, and guarantees and affirms

them, such as freedom of opinion and expression, freedom of residence and ownership, freedom of election and political action, and the establishment of the principle of equal opportunity and equality.

The constitution is considered a basic guarantee for the foundations of the nation and society: it works to protect individuals and consolidate their language, culture and nationality.

The reason behind the parliamentary system development is referred to as the bicameral national assembly establishment as per British parliament development. The British parliament's evolution goes back to the clergy and honored citizens striving to constitute their legislative assembly. Thus, there were two chambers formally and legislatively. Likewise, more national countries adopted this parliamentary system associated with their political, economic, and historical states (Mashaqbah, 2012). Jordan is one of these countries, the Jordanian constitution act of 1952, and its amendments clearly state parliament elections in article no (1/68) (Abduwahhab, 2004).

The parliament institute is a vital contributor to fulfilling political development demands. Some Jordanian research found that both parliament chambers, the House of Deputies (Majlis al-Nuwwab) and the House of Senate (Majlis ala'yan), integrate numerous functions of government or civil society organizations. The house of Deputies performs its legislative role that benefits political development. It is worth mentioning that legislation is a negotiation that considers the principle of segregation between authorities, its independence, and integrations in the legislation process (Alodwan, 2014). The house of Deputies has the right to control and monitor government activities. As well as the government has the right to dissolve the council of Deputies to prevent parliament from initiating ministerial responsibility. However, there are numerous consequences for the parliament due to exercising this right, the most significant is obstructing legislative mainstream and legislative right resort to government¹. Despite that, the dissolution is not a spontaneous process that executive authorities resort to when a conflict has emerged with parliament. Political wisdom recommends the dissolution of parliament is a last resort considering legislative and constitutional guarantees and the support of the majority of the election panel against parliament (Atabtaba'ai, 2009). Thus, the Jordanian and Kuwaiti legislatures constitute legislative and constitutional guarantees to dissolve parliament.

The most significant responsibility of the executive authority (government) is to monitor and examine parliament action. There is no doubt that parliament dissolution is one of most surveillance tools owned by the government, but this right is restricted with guarantees as per Jordanian and Kuwaiti constitutions. Thus, the government could not dissolve parliament at any time without legislative excuses or causes affecting the representative mainstream.

Article (68/1) of the Constitution stipulates that “the term of the House of Representatives is four solar years, starting from the date of announcing the results of the general elections in the Official Gazette.” From reading this text, we conclude that the constitutional basis for the term of the House of Representatives is four years, meaning that the House of Representatives must remain for a period of four years, starting from the date of announcing the results of the general elections in the Official Gazette. Accordingly, the dissolution of the House of Representatives before the expiration of a period of four solar years following the announcement of the general election results in the Official Gazette is an exception to the principle and contrary to the principle.

Article (34/3) of the Jordanian Constitution stipulates that “the King may dissolve the House of Representatives.” At first glance, it is understood that this text gave the king absolute authority to dissolve the House of Representatives, if the text came to the power to dissolve the House of Representatives not dependent on any condition and not bound by any restriction, which means that it may be understood from this text that the king's authority is absolute from every restriction and condition in dissolving Parliament, but this understanding will dissipate and evaporate immediately when we read this text in the general context of the texts of the Jordanian constitution and in accordance with the spirit of this constitution, this is on the one hand, and on the other hand, it is one of the firm, constant, steady and stable principles in understanding the texts of legislation, and the necessity of reading the texts of one piece of legislation as One unit, and the necessity of reading the various legislations in the state as a single unit as well, and based on that, and to understand this text in a legal understanding that is consistent with the spirit of the Jordanian Constitution and the integrity and unity of its texts, it is necessary to apply our progress on those principles.

¹ Article 51, Jordanian constitution act 1952 and its amendments declare that: “The Prime Minister and Ministers shall be collectively responsible before the House of Deputies in respect of the general policy of the State. In addition, each Minister shall be responsible before the House of Deputies in respect of the actions of his Ministry”. Article 31(iii) states: “The King may dissolve the House of Deputies”.

However, parliament may be dissolved in some extraordinary cases up to particular and predefined guarantees as per the constitution. So, The present study aims to illustrate the parliament dissolution concept and its causes before the expiration of its period as per Jordanian and Kuwaiti constitutions.

Methodology

This paper is a normative legal research (Sudiarawan et al., 2020), which views the conceptualized law as a norm or rule that applies in society and becomes a reference for everyone's behavior (Siems & Mac Síthigh, 2012). Thus, normative legal research focuses on an inventory of positive law, principles, legal doctrine, comparative law, and legal history (Choudhury, 2017). This research attempts to study both the Jordanian constitution and the Kuwaiti constitution to find out the procedures that are followed to dissolve the House of Representatives and to find out the guarantees that necessitate its dissolution without undermining the constitutional stability in the country. This article uses a statutory regulatory approach, namely examining Jordanian constitution and the Kuwaiti constitution, a conceptual approach by providing an analytical point of view on the problem from the aspect of legal concepts behind it and approaching the facts by bringing up real facts about An analysis of the procedures for dissolving the House of Representatives and the constitutional guarantees for dissolution.

Results and Discussion

First, it is necessary to explicit parliament dissolution and its justifications since it is a prerogative right to the government due to explicated plausible justifications and necessities that prevent the predominance of executive authorities using the right of parliament dissolution. This right represents a powerful and perilous tool vested to the government against the executive and legislative authorities in the parliamentary system countries such as Jordan and Kuwait (Shatnawi, 2005). Thus, this chapter comprises two sections: the definition of dissolution in the house of deputies and the justification of parliament dissolution.

(1) Definition of dissolution in the house of deputies

The linguistic definition of dissolution is assessing to solve a problem or challenge and finding a way to settle it. Also, it means having power and authority.

The conceptual definition is representative termination of parliament if it comprises one chamber or representative termination of one of the parliament chambers if it consists of two chambers before the expiration of its period predefined by the constitution (Tawami, 1979). Parliament dissolution is, also, referred to as the executive authority's right to mandatory simultaneous resigning of parliament or one of its chambers before the legislative session expiration and proclaiming a new election and electing a new parliament council to take a place (Waheed, 1923). Also, the parliament dissolution definition is referred to resigning the parliament before ending the predetermined statutory period, where the right of the dissolution can be presidential; vested to the head of state (king, emir, or president of the republic) (Adaliah, 2022).

The Jordanian constitution act 1952 and its amendments illustrated a control approach between executive and legislative authorities through ministerial responsibilities and the right of parliament dissolution². Thus, the Jordanian constitution mentioned parliament dissolution as an effective parliamentary approach to control parliament in case of constitutional legislation violations, contravention of responsibilities vested to it, or deviation from the voter's panel interests. Likewise, the Kuwaiti constitution act 1992, article no. 102, the executive authority represented by the ministry has the right to dissolve the houses of deputies³.

² Article 51, Jordanian constitution act 1952 and its amendments stipulates that: "The Prime Minister and Ministers shall be collectively responsible before the House of Deputies in respect of the general policy of the State. In addition, each Minister shall be responsible before the House of Deputies in respect of the actions of his Ministry". Article 31(iii) states: "The King may dissolve the House of Deputies".

³ Article 102, Kuwaiti constitution act 1992, stipulates that "The Prime Minister shall not be responsible for any Ministry and the casting of a vote of confidence in the Assembly shall not be applicable to him. However, should the National Assembly, in the manner prescribed in the preceding Article, deem it impossible to cooperate with the Prime Minister, the matter shall be referred to the Head of State; and in that case the Amir shall either relieve

Accordingly, the dissolution of the house of deputies is a constitutional right that the constitutional power can use to dissolve the parliament before the expiration of the legislative period. Therefore, the constitution is the source of authority to dissolve the parliament. It is worth that the Jordanian legislature granted the parliament dissolution right to the king and the right to dissolve the House of Senate⁴.

(2) Justifications of parliament dissolution

Both Jordanian and Kuwaiti constitutions declared the authorization mechanism of parliament dissolution, but it did not illustrate the reasons and causes behind dissolution decisions. On the other hand, the constitutional jurisprudence explicated particular reasons behind the parliament dissolution, namely:

First: Parliament dissolution due to dispute between the executive and legislative authority.

The parliamentary system is a reciprocal collaboration between authorities, particularly, between the executive and legislative authorities. However, these authorities can be not always aligned since sometimes a dispute and conflict arises between the government and parliament, which it must be taken into concern (Alamaidi & Shreef, 2016).

The Jordanian constitution did not explicitly stipulate the dissolution of parliament due to a dispute between the executive and legislative authorities. In 2007, Jordanian King Abdullah the Second dissolved the house of deputies only two years after its election due to an incompatibility between the two authorities. Particularly, the government faced challenges in its relationship with the parliament council; the government was not able to pass regulations that were deemed necessary for economic reform (Gharaibeh, 2010).

In the contrast, the Kuwaiti constitution explicitly stipulates in article no.102 that ministers have the right to ask for the dissolution of the national assembly council from Amir, head of state, as follows: “The Prime Minister shall not be responsible for any Ministry and the casting of a vote of confidence in the Assembly shall not be applicable to him. However, should the National Assembly, in the manner prescribed in the preceding Article, deem it impossible to cooperate with the Prime Minister, the matter shall be referred to the Head of State, and in that case, the Amir shall either relieve the Prime Minister and form a new Cabinet or dissolve the National Assembly. Should, after dissolution, the new Assembly return with the same majority a motion of noncooperation with the Prime Minister, the latter shall be deemed relieved of his post from the date of the Assembly's decision and a new Cabinet shall be formed.”

The researcher found that parliament dissolution due to a dispute between authorities is a constitutional dissolution even if the constitution did not resort to King and ask him for dissolving a parliament that does not collaborate with it.

Second: Parliament dissolution due to expiration of its period .

The King or head of state resorts to disbanding parliament before the expiration of its period to avoid risks related to activities of parliament during its mandate period since they prioritized their private interest over public interests. King Abdullah the Second decreed parliament dissolution before the expiration of its mandate and new elections were announced in 2016, according to article 68 (III) the new general election must take place four months prior to the expiration of the parliament mandate period (Alghad Newspaper, 2016). Likewise, Al-Ahmad Al-Jaber Al-Sabah, the Amir of Kuwait, issued an Amiri decree (no.276) to dissolve the parliament elected in 2013 before the expiration of its mandate period in 2017 (Altamkin-newsletter, 2016).

Third: Parliament Dissolution due to dissatisfied public demands

In this case, the King or Head of state dissolves parliament and conducts a new general election to advocate public opinion regarding that election since article no.73(I) in the Jordanian constitution stipulates: “If the House of Deputies is dissolved, a general election must take place, and the new House assembled in an extraordinary session, not later than four months from the date of its dissolution. Such session shall be deemed

the Prime Minister and form a new Cabinet or dissolve the National Assembly. Should, after dissolution, the new Assembly return with the same majority a motion of non-cooperation with the Prime Minister, the latter shall be deemed relieved of his post from the date of the Assembly's decision and a new Cabinet shall be formed.”

⁴ Article 34 (IV), Jordanian constitution act 1952 and its amendments declare that: “) The King may dissolve the House of Deputies. (iv) The King may dissolve the Senate or he may suspend the membership of one of its members”. Furthermore, article 66(ii) states “If the House of Deputies is dissolved, the sessions of the Senate shall be suspended.”

to be an ordinary session within the meaning of Article 78 of this Constitution and shall be subject to the conditions prescribed therein for prolongation or adjournment.”. Similar to article no.106 in the Kuwaiti constitution, which stipulates: “The Amir may, by Decree, prorogue the National Assembly's session for a period not exceeding one month. Prorogation shall not be repeated in the same annual session save with the Assembly's consent and for once only. The prorogation period shall not be reckoned in the session's term.”.

To sum up, it is clear that there are no particular justifications or reasons that imply parliament dissolution since other reasons and justifications can be emerged considering not dissolving two succeeding parliaments on the same ground (Alkhateeb, 2022). Despite, the explicit statement of the king's absolute power to dissolve parliament in article no. (34) in the Jordanian constitution, as aforementioned, the king utilized his right more than once to dissolve the parliament. Thus, most dissolved parliament councils did not complete its mandate period predefined by the constitution. Accordingly, the parliament dissolution does not constrain particular reasons. Therefore, justification for parliament dissolution must be illustrated explicitly to avoid duplication of justifications for successive parliament councils.

(2): Parliament dissolution types and the gurantee of excising dissolution right

As previously illustrated the parliament may be dissolved according to constitutional bases due to a dispute between the executive and legislative authorities, parliament exploitation of authorities granted by statutory regulation, or an emerging dispute between parliament and public opinion. Although the dissolution of parliament can be presidential dissolution if a dispute emerges between the head of state (King, Amir) and the parliament, ministerial dissolution in case the king responds to governments' demands to dissolve parliament, or dissolution by public decision where the public can request parliament dissolution since the public is the source of all powers, the dissolution is restricted to certain guarantees. Therefore, the current chapter tackles parliament dissolution types and guarantees of dissolution distinctly, as follows:

Parliament dissolution types

The parliament dissolution types vary due to the way the parliament is dissolved; it involves three cases as following:

(1)Presidential dissolution of parliament

Presidential dissolution is referred to as dissolution that the head of state (King, Amir) decreed as a method to defend his rights and provisions, which the public advocate as per his expectation and beliefs, and it represents the public opinion. In such cases, the parliament is dissolved even if the ministry does not advocate the decision. Therefore, the king resorts to the dissolution post ministries resignation and forms a new Cabinet with the confidence of the minorities or members of parliament that upholds the king's decision who agree with parliament dissolution and be responsible for that (Abdulahmeed, 2022). In Jordan, the King is the head of state and the head of executive authority simultaneously. The ministries and prime minister are responsible before the house of deputies, where the King is immune to any responsibility (Shatnawi, 2005).

It is worth mentioning that the parliament dissolution decree must be signed by the King, prime minister, and interior minister. If one of these signs is missed, the dissolution decree will be considered perverted, and the dissolution will be considered invalid (Limoon, 2015). Moreover, the Supreme Justice Court in Jordan established that “His Majesty the king is authorized to assess the justification for parliament dissolution”. Accordingly, the supreme justice court of Jordan does not have control over parliament dissolution decree whatever their justifications and causes if it was endorsed by the King (Aldebis, 2011).

Succinctly, the presidential dissolution of parliament is one of the King or Amir authorities in the parliamentary system that maintains the balance between executive authority headed by the King and legislative authority headed by parliament since the presidential dissolution occurs once a dispute emerges between the King and the parliament council. Thus, this dissolution represents the King's interests and provisions aligned with the public interests, as stipulated in article (34) in the Jordanian constitution and article (107) in the Kuwaiti constitution, without the ministries' approval.

(2)Ministerial dissolution of parliament

Ministerial dissolution describes the conventional form of parliamentary system pillars in England, which stands on the balance between government and parliament. Also, it is the most common dissolution type in the parliamentary system. Such dissolution is exhibited once the ministry loses the required majority due to

the withdrawal of one of the participating or supportive parties or when the ministry believes the council abuses its right for confidence withdrawal or deliberately obstructs the government's activities. Thus, government requests a parliament dissolution and summons a new general election as an indirect way to involve the public in the conflict. The role of the King in this type of dissolution is formation and declaration of dissolution decree, without any right to accept or deny the dissolution request (Mahdi, 2020).

The Jordanian constitution does not address the ministerial dissolution of parliament in a dispute between the executive and parliament emerges, but article 54 (II) in the constitution stipulates: "A vote of confidence in the Council of Ministers or any individual Minister may be postponed only for one period not exceeding ten days, either upon the request of the Minister concerned or of the Council of Ministers. The House shall not be dissolved during this period.". Similar to article 106 in the Kuwaiti constitution, which stipulates: "The Amir may, by Decree, prorogue the National Assembly's session for a period not exceeding one month. Prorogation shall not be repeated in the same annual session save with the Assembly's consent and for once only. The prorogation period shall not be reckoned in the session's term.". Furthermore, the Jordanian legislature does not condition direct resignation of the government, but the king is free to accept its resignation.

(3)Dissolution the parliament by public decision

This case occurs if the majority of citizens request to dissolve the parliament in accordance with government norms, regulating authorities' functionalities, individuals' rights, and freedoms, which is a dynamic and growing thought and is described by contentment. Thus, it cannot be enforced by higher authorities (ALqaisi, 2005).

Dissolution Guarantees

Both Jordanian and Kuwaiti constitutions tackle the dispute between the executive and legislative authorities. Thus, the legislature constrains the dissolution of parliament with particular guarantees avoiding misuse of dissolution rights and imbalance of the equilibrium between two authorities. Despite the statutory and legislative guarantees declared in the constitution, the Jordanian and Kuwaiti parliament have been dissolved, as aforementioned. Following three guarantees for using parliament right dissolution, as illustrated in the Jordanian constitution:

1) Guarantee not to redissolve parliament for the same ground

This guarantee seems to be plausible and realistic since it accommodates a rational provision. If the government agrees on the parliament dissolution, it must introduce its resignation and perform a new Cabinet responsible for the new parliament election procedures. The dissolution decree must involve the justifications and reasons behind the dissolution decision (Alsaleh, 1989).

The Jordanian constitution explicitly mentioned this guarantee in article no. (73/1/2)⁵ similar to the Kuwaiti constitution in article (107), which stipulates: "The Amir may, by Decree, dissolve the National Assembly, giving the reasons for such dissolution. However, the National Assembly shall not be dissolved again on the same grounds. Where the Assembly has been dissolved, elections for the new Assembly must be held within a period not exceeding two months from the date of the dissolution. Where no elections take place within that period the dissolved Assembly shall recover its full constitutional power and shall convene immediately as if there had been no dissolution. It shall resume its activities until election of the new Assembly".

2) Guarantee of illegality of dissolution in particular period

Some constitutions prohibit parliament dissolution during a certain period to maintain council stability and avoid successive elections that may threaten the political solidity of the country (Shatnawi, 2005). Article (53) in the Jordanian constitutes stipulates: "A vote of confidence in the Council of Ministers or in any individual Minister may be postponed only for one period not exceeding ten days, either upon the request of the Minister concerned, or of the Council of Ministers. The House shall not be dissolved during this period." As well as article 106 in the Kuwaiti constitutions stipulates: "The Amir may, by Decree, prorogue the National Assembly's session for a period not exceeding one month. Prorogation shall not be repeated in the

⁵ Article (74) in the Jordanian act 1952 and its amendments stipulates: "Article 74 If the House of Deputies was dissolved for any reason, the new House shall not be dissolved for the same reason. A Minister who intends to nominate himself for election must resign fifteen days at least before the beginning of the nomination"

same annual session save with the Assembly's consent and for once only. The prorogation period shall not be reckoned in the session's term."

The researcher interprets this period to eliminate fear and anxiety that may house deputies exposed due to the dissolution. Therefore, they can perform their representative functionalities effectively and equitably.

3) Guarantee of the resignation of ministers who intend to be nominated to new parliament council

Majority constitutions mandate ministers' resignation for those who intend to be nominated to the new parliament council before a certain period preceding nomination initiation to avoid executive authorities' dominance and exploitation of ministerial positions. The Jordanian constitution refers in article 74 (iii) that "If the House of Deputies was dissolved for any reason, the new House shall not be dissolved for the same reason. A Minister who intends to nominate himself for election must resign fifteen days at least before the beginning of the nomination"

This guarantee ensures fair, reliable, and free elections since the ministers will not involve in the election process.

Conclusion

The dissolution of parliament is one of the procedures included in the constitutional document of a country. The dissolution of parliament is only a constitutional procedure that works to shorten the legal period of the parliament's representation or one of its chambers, which is accompanied by a call for new parliamentary elections([1]). The constitutional legislator aims, by including the dissolution of parliament in the constitution, to achieve a set of goals or objectives that it aims to reach, which may lead in total to the proper functioning of the constitutional and political work within the state, and thus the dissolution of parliament is of great importance in the functioning of constitutional institutions and in a way that achieves the supreme interest of the state. Because the constitution in the state aims to establish the organization of the state and its institutions in a way that achieves its permanence. Rather, the dissolution of Parliament is considered in some countries, such as the United Kingdom of Great Britain, a means to identify the trends of public opinion because of the latter's strong political power in changing and modifying the directions of the ruling majority parties, and thus the effect of that is A clear statement on the policies that may be pursued by either the legislative or executive authorities. Thus, the people are truly the sovereign in the state. And if the goals achieved by the solution are multiple, then perhaps this requires us to research the legal nature of the solution as a constitutional organization of importance in the life of the state.

However, parliament may be dissolved in some extraordinary cases up to particular and predefined guarantees as per the constitution So, The present study aims to illustrate the parliament dissolution concept and its causes before the expiration of its period as per Jordanian and Kuwaiti constitutions.

The study found that The dissolved house of deputies performs its legislative authority until conducting a new general election to avoid executive dominance over legislative authority. The power of parliament dissolution is one most powerful tool that executive authority exercise to control legislative authority in Jordan and Kuwait. The king can decree parliament dissolution for any reason he believes is convenient without any constraints by the constitution as stipulated in article 43 in the Jordanian constitution "The King may dissolve the House of Deputies and may dissolve the Senate or he may suspend the membership of one of its members." This statement is not limited or conditioned by a particular constraint. Thus, it is an absolute statement. Due to the strength and power of parliament dissolution right and to avoid executive authority exploitation, Jordanian and Kuwaiti constitutions constrain dissolution rights with specific guarantees, including not dissolving two successive parliament for the same ground, the predefined period for a new general election, and if it was not conducted in the predefined time, the dissolved parliament has a constitutional power to restore his constitutional powers and rights after the expiration of election time, which is four months, and proceed with its activities under the constitution based on an article (73/3) in Jordanian constitution and article (107) in the Kuwaiti constitution.

This research recommends that The Jordanian legislature explicitly declares in the constitutional articles attributing the royal decree of parliament dissolution to detailed justification rather than ostensible justification. It is preferred if they prolong the new election period (4 months) proceeding with parliament dissolution in the Jordanian constitution and the two months in the Kuwaiti constitution.

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