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Military Service Law and Reserve Service Law Amendments (extension of mandatory and reserve service period): Legal Opinion

Yohanan Plesner, Dr. Eran Shamir-Borer and Prof. Amichai Cohen

1. On January 18, 2024, the following legislative memoranda were published for public comments:
 - a. Military Service Law (Amendment no. ...), 2024-5784, proposing to extend the period of mandatory service for men to a default length of 36 months (henceforth: the Mandatory Service Law Memorandum);
 - b. Reserve Service Law (Amendment no. ...), 2024-5784, proposing to extend the periods of time for which reservists can be called up for duty and to raise the age of exemption from reserve service (henceforth: the Reserve Service Law Memorandum);

According to the explanatory notes to these memoranda, the government wishes to enact the amendments due to the new security circumstances created following the outbreak of the war between Israel and the terrorist organizations in the Gaza Strip, which “require a significant operational response for defense and for the continued war effort in all sectors.” This includes an increase in the number of military personnel available to the IDF.

2. The State of Israel is currently experiencing one of the most difficult periods in its history, following the horrific attacks of October 7th by the Hamas terror organization. These attacks, and the events that followed them, naturally require additional military personnel. While recognizing it is essential to provide an immediate response to the IDF’s personnel needs, **we oppose these legislative memoranda, for the following reasons:**
 - a. **The substantive arrangements they propose create a heavier burden of military service in the long term, which will be placed on the population that already perform mandatory and reserve service**, while unconstitutionally increasing the inequality between this population and those that do not serve. They further give decisive weight to security considerations over other relevant and essential considerations—particularly the economic, social, and organizational implications of the proposed arrangements, including their consequences for the “people’s army” model. They do so without sufficiently examining the possibilities for realizing

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the military service potential among other population groups, with an emphasis on Haredi men, as well other alternatives.

- b. **The Ministry of Defense's attempt to enact these amendments is based on an internal decision-making process within the defense establishment**, which does not allow for the examination of the various considerations and data on which the proposed arrangements are based, and does not include the involvement of external experts in the relevant fields, nor any meaningful public debate.
3. In our view, deciding the scale of the burden of military service for the long term, both mandatory and reserve, **requires the formation of a professional committee**, external to the defense establishment, with expertise in the relevant issues. Such a committee can weigh all the pertinent considerations and consequences, including the relevant normative, economic, social and organizational aspects. Such a committee should also discuss the required benefits for the population serving in the reserve forces.
4. **The attempt to separate the issue of increasing the burden of service on those who already serve and the question of the conscription of Haredi men should be rejected. The two issues are intertwined. In fact, the proposed amendments expand the inequalities between the population that already serve and those that do not. If the current conscription arrangement of Haredi men has been established as creating an unconstitutional breach of the equality principle, then it is clear that the proposed amendments create an unconstitutional arrangement.**
5. **In the very short term**, the IDF's immediate personnel needs must be met.
- a. This can be based **temporarily** on extending the period of mandatory service for relevant service personnel and increasing the burden on reservists. However, **the harm to service personnel should be kept to the minimum required**, both in terms of the **scale of the additional burden** placed on these groups, and in terms of the **period of time** for which the arrangements made will be valid.
 - b. Similarly, **other possible alternatives must be examined and exhausted**, such as allowing mandatory service personnel to volunteer for an additional service period as career soldiers, and promoting the additional use of section 8 draft orders. It is improper to increase the burden of military service based merely on practical considerations related to ease of implementation.
 - c. A **differential period of mandatory service** should be set and **parameters drawn up for shortening the service** of some service personnel, subject to **parliamentary approval**.



- d. Arrangements for the immediate term should be determined by a **professional committee external to the defense establishment as well**, as proposed above.

A. The Legislative Memoranda and the Need for a Professional Examination

6. The period of mandatory service for men in the IDF has been reduced in recent years from 36 months to 32 and later to 30 months. Today Israeli men must serve for 32 months. The Mandatory Service Law Memorandum suggests setting that period to 36 months.
7. The Reserve Service Law Memorandum proposes the following extensions of service:

		<u>Existing law</u>	<u>Memorandum</u>
Maximum period of reserve service	Soldier	54 days over three years (average of 18 days per year)	42 days per year
	Non-Commissioned Officer (NCO)	70 days over three years (average of 23.3 days per year)	48 days per year
	Officer	84 days over three years (average of 28 days per year)	55 days per year
Maximum period of reserve service for operational activity		25 days every three years	40 days per year
Maximum period of reserve service in roles and professions set by the defense minister and approved by the Knesset Foreign Affairs and Defense Committee		108 days over three years (average of 36 days per year)	Those not officers or NCOs: 48 days per year
Age of exemption from reserve service		Soldier: 40 Officer: 45 Special order of the defense minister: 49	Soldier: 45 Officer: 49 Special order of the defense minister: 52



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As is evident from the above table, the proposed Reserve Service Law Memorandum significantly increases the maximum amount of reserve service due each year. The increase is particularly large with regard to operational activity— from 25 days every three years to 40 days per year.

8. It is our basic assumption that the IDF is indeed in immediate need of an increase in personnel in order to deal with the current security situation. Accordingly, the government of Israel and the Knesset Foreign Affairs and Defense Committee approved an expanded deployment of reserve soldiers during the war.
9. Extending the period of service of serving combat soldiers, via an extension of reserve service or mandatory service, would seem, on the face of things, to be a reasonable solution to this need. However, the legislative amendments propose increasing the burden of service on mandatory and reserve service personnel for an **unlimited period of time**, and regarding mandatory service propose doing so for **all** soldiers, without differentiating between personnel that the army needs to draft in larger numbers - combat soldiers and non-combat soldiers.
10. In our opinion, an essential condition for putting in place long-term military service arrangements is the creation of a professional basis to determine the **IDF's defense doctrine** following October 7th, and the **personnel needs** stemming from it. This determination of defense needs should be performed in an orderly manner, after the fighting is over, by the country's political leadership and legislative body.
11. After the personnel needs stemming from the revised defense doctrine have been determined, the **sources** for such personnel should be examined. As in the past, **it is essential to establish a professional committee, comprised of relevant experts, external to the defense establishment, that will examine the necessary sources of personnel** (e.g. natural increase of population, drafting non-serving citizens, increasing the number of career soldiers).
12. This committee should consider all relevant considerations and implications, including the **normative** aspect (the principle of equality in the mandatory and reserve service), the **economic** aspect (direct and indirect costs of military service), the **social** aspect (e.g. the motivation to serve in the army) and the **organizational** aspect (e.g. preventing disguised unemployment in the service).
13. **Long-term decisions regarding the burden of service on mandatory and reserve personnel should only be made on the basis of the conclusions and recommendations of such a committee.**

B. The Normative Aspect of Prolonging the Duration of Military and Reserve Service

14. Military service, by its very nature, deprives a person of their freedom and limits their exercise of other basic rights. A striking example is the soldier's duty to endanger his life, body and health. Such a severe violation of basic rights in a democratic society requires a clear and well-founded justification. A fundamental justification is that in order to protect the democratic state and the lives of its citizens and residents against its enemies, there is a need for an effective and disciplined army.
15. The Israeli Basic Law: Human Dignity and Liberty sets the limits to a possible violation of the rights for personal freedom and the protection of life and body established under the law. According to the Basic Law, one is not to violate the rights accorded by the law, save by means of a law that corresponds to the values of the State of Israel, which serves an appropriate purpose, and to an extent that does not exceed what is required.
16. A first condition for justifying a violation of these rights is the necessity of the military service. Military Service which is not necessary cannot harm the rights of the individual. Before drafting citizens for mandatory or reserve service, the state is obligated to lay down a well-founded foundation that justifies the recruitment. In the same vein, the state has an obligation to lay down a foundation that justifies the duration of the conscription or the reserve service. At this stage, it seems there is no such well-founded ground.
17. Another important normative consideration is the principle of equality. This is a foundational principle in Israeli law, derived from the principle of human dignity. The principle of equality requires that the mandatory military service will be imposed, as far as possible, in an equal way on the entire population. It further requires that exemption from service will be granted only for relevant substantive reasons, i.e., in cases where the difference between the conscript and the non-conscript relates to the service in the military, e.g., exemptions on medical or mental grounds.
18. The bulk of the public and legal discussion regarding the equal sharing of the burden of military service focuses on the arrangements for deferment of service and exemption from service for ultra-Orthodox (Haredi) yeshiva students.
19. Though these arrangements were in effect. in different formats and scale, since the establishment of the State of Israel, it seems that more recent developments (including the cancellation of restrictions on the scope of the deferments, the demographic growth in the ultra-orthodox population and the integration of ultra-orthodox parties into the government) increased public scrutiny regarding the lack of equality in the burden of military service.
20. The Israeli Supreme Court has ruled that the various arrangements enacted in this matter, including the most recent one, have violated the principle of

equality. There is currently no legal basis for the deferment of service for yeshiva students, which is the subject of a petition currently being heard by the Supreme Court.¹ Even before the proposed amendments were drawn up in these legislative memoranda, it was clear that the current conscription arrangement created a significant violation of the principle of equality.

21. **Not only do the memoranda fail to reduce the current inequality; their effect would be to increase it.** Expanding mandatory and reserve service, from which the vast majority of Haredi men are exempt, places an even larger burden on the population groups that currently serve. **If the current arrangement is invalid for reasons of inequality, then the new mandatory and reserve service arrangement is even less valid, for the same reasons (especially when it is not limited in scope and duration to the necessities of the current war).**
22. It can be said that violating basic rights during war and emergency is a "necessary evil," so to speak, and that one cannot condition the protection of the state in the immediate time frame on the future resolution of the issue of ultra-Orthodox yeshiva students' military service. However, deepening the burden of military service, for the long run, on the population that already serve, without making a genuine effort to draft Haredi men, does not meet the requirements of the principle of equality, and thus it is invalid.
23. The issue of inequality is not merely a theoretical one; rather, it is very much a real-world problem. According to the most recent data, 24% of all the candidates for military service in 2024 (that is, Jewish men in the State of Israel) are Haredi. In 2021, 1,754 Haredi men entered military service or national civilian service, constituting around 12% of Haredi candidates for military service (though 70% of the "Haredim" in the military do not define themselves as Haredi, and are classed as such because they studied in Haredi educational institutions). Meanwhile, 10,714 Haredi men had their service deferred on the basis that "Torah is their occupation," representing around 17% of the total population of men subject to military conscription in Israel.² These numbers will only grow in the coming years: In 2050, Haredi men are projected to constitute more than 40% of Jewish men of conscription age in the State of Israel.
24. The consequences of this inequality, then, impact every single soldier. Conscripting a considerable share of the Haredi public could have led to a significant reduction in the need to extend the length of military service.

¹ HCJ 6198/23 Movement for Quality Government in Israel v. Minister of Defense; HCJ 6199/23 Brothers in Arms v. Minister of Defense; HCJ 6488/23 Ayelet Hashachar Seidoff v. Minister of Defense.

² According to the testimony of Brigadier-General Vadmani to the Subcommittee on IDF Personnel, Knesset Foreign Affairs and Defense Committee, 25th Knesset (May 10, 2023).

This is a significant violation of the interests and rights of those who already serve, caused by the fact that a certain group in the Israeli public does not serve in the IDF. Recruitment of Haredi men in accordance with their proportion in the population could lead to a significant shortening of mandatory military service.

25. The issue of inequality is relevant not only to the mandatory military service, but also to the reserve service. Population groups that do not do mandatory service would most likely not serve in the reserve service, and certainly not in combat duty, which carries the main burden of the reserve. Only 4% of Israeli citizens in the age range relevant for reserve duty (22-45) are defined as active reserve soldiers.
26. A forecast analysis conducted by Israel Democracy Institute experts, using conservative assumptions, examined the impact of the Reserve Service Law Memorandum on reserve service personnel in Israel, based on two possible scenarios. The first scenario is that the increased burden of reserve service falls on the same population groups that serve today. The second scenario is that the Haredi population participates in sharing the burden of service, on the basis of its relative size in the overall population in the 0–44 age group, and in line with the proportion of reserve service personnel in the general population.
27. According to this analysis, the integration of the Haredi population into reserve service as in the second scenario could, relative to the first scenario, reduce the number of days served by non-Haredi Jewish reservists by 16% in 2025. **Assuming the continuation of current trends in terms of demography and reliance on reserve forces, the integration of the Haredi population could result in a saving of 27% in the number of days served by non-Haredi Jewish reservists in 2050.** Moreover, analysis of the forecasts reveals that in the first scenario, more than 30,000 additional non-Haredi Jews will perform reserve service in 2025, relative to the second scenario, growing to almost 70,000 additional non-Haredi Jews in reserve service in 2050.³
28. As mentioned above, the violation of the principle of equality is not a theoretical issue. In order to reduce the inequalities in the burden of service, expansion of the number of candidates for service is preferred. It is not appropriate to increase the burden on the individual nor to the violation to their freedom.
29. A professional committee should examine the possibility of expanding the number of candidates for service, and this should be done before

³ Gabriel Gordon and Shlomit Ravitsky Tur-Paz, *Increasing the burden of military service on the population groups that currently serve: Is there another way? Forecast analysis by scenarios* (Jerusalem: Israel Democracy Institute, 2024).

confirming a significant increase in the reserve days of a small group of reserve soldiers. In this framework, it will also be necessary to examine the remuneration and compensation for the reserve soldiers.

C. The Economic Costs of Extending Mandatory Service and Reserve Service

30. From an economic perspective, the costs of the proposals made in the legislative memoranda require an in-depth economic assessment. A full and up-to-date analysis demands a scale of work that was not possible within the limited timeframe available for submitting comments on these memoranda. Thus, the following estimations are based on assumptions that are largely conservative.

Cost of Mandatory Service

31. **The direct cost to the state budget** of extending mandatory service by four months includes an increase in the total sum of living stipends paid to service personnel, and the cost of keeping them in service. A rough estimate puts this at a total of NIS 10,000 per month per soldier. **If the mandatory service of 25,000 soldiers (around half the men in each conscription cohort) is extended for four months, this will result in an additional cost of around a billion shekels per year.**
32. In addition to the direct costs to the budget of extending mandatory service, there are also **indirect costs in the form of reduced economic output**, which can be seen as even more significant. These can be divided into two main categories of indirect costs:
- a. The alternative cost to the economy of mandatory service resulting from imposing military service on the serving population and preventing the possibility of employment: This cost is estimated by Gilad Gaibel and Michael Sharel at 0.1% of Israel's total GDP for the last year of service. In 2023, Israel's GDP stood at around two trillion shekels. Roughly estimated, extending the period of mandatory service by four months will result in a cost to the economy of around NIS 660 million.
 - b. Cost of delaying entry into the workforce, which is the main cost: This is estimated at around 1% of the total GDP each year. Roughly estimated, the cost of a four-month delay in returning to civilian life is around NIS 6.6 billion per year.
33. In total, then, we can roughly estimate that **the indirect cost to the economy of extending mandatory service by four months will be a loss to GDP of around NIS 7 billion annually.**
34. This number increases significantly if it is compared to the government's plan for shortening military service, published in the summer of 2023. This plan was supposed to result in an average length of service of 28 months. **If**

service for all conscripts is extended to 36 months, then the indirect cost relative to the plan from summer 2023 will be around NIS 14 billion per year.

Cost of Reserve Service

35. The cost of reserve service also needs to be calculated in terms of the **direct cost** to the defense budget, comprising direct payments to reserve soldiers, payments to employers, and various additional disbursements to reservists; and in terms of the **indirect cost** incurred in the form of losses to Israel's GDP:
- a. Direct cost: While in recent years (up to October 6, 2023), there have been an average of over two million reserve service days served per year,⁴ this number is expected to increase significantly. A conservative calculation, based on an increase of around 1.5 million reserve days per year from 2025, will see the total rise to around four million days per year.
 - b. Indirect cost: The indirect cost to the economy of reserve service days—that is, the loss to economic output resulting from the call-up of workers in various industries to reserve duty—should be considered in addition to the direct cost of reserve service. The components of indirect cost mainly include damage to small businesses that cannot be neglected for an extended period of time, and damage to the overall economy resulting from frequent worker absences.
36. This economic calculation ignores the **expected impact on some reservists** due to the **potential likelihood** that they will have to perform reserve service, particularly employers in multinational companies. Reserve soldiers are, of course, protected from dismissal during and immediately after a period of reserve duty. But this protection does not shield reservists from **employers preferring not to employ potential reserve soldiers who can be expected to be called up for reserve duty.**
37. It is important to pay special attention to workers in the high-tech sector, which is characterized by multinational companies that can easily transfer their center of operations to another country. **Such multinational companies will hesitate not only to employ reservists, but also to operate in Israel** if the assumption is that many of their workers can be called up for long periods of reserve duty each year. As stated, in this context it is sufficient for there to be a potential for long periods of reserve duty in

⁴ In 2021 and 2022, the number of reserve service days stood at around 2.4 million per year. Between 2016 and 2020, the annual average was 1.8 million days.

order to deter employers and damage an industry that has served as the growth engine for Israel's economy in recent years.

38. According to data published by the Ministry of Finance, around 20% of reservists are employed in the high-tech sector, and thus the cost to the economy from extending reserve service and the impact on this sector will be enormous.⁵
39. Another cost of reserve service, and one that is difficult to quantify, is the “**academic**” cost—extended periods of reserve service also have a harmful impact on academic studies, as it will be challenging for reserve soldiers to fully bridge the gap in their academic studies. This phenomenon will have a considerable effect on the quality of the academic training of various professions in the economy.

D. Organizational Aspects

40. An analysis of the demographics of Israel shows that in recent years there has been considerable growth in the number of Jewish men required to be drafted, even among the serving population. The data show that in the years 2020-2030 there will be an increase of about 25% in the population of men who are candidates for military service (from about 40,000 in 2020 to about 53,000 in 2030). Obviously, this increase is taken into account when calculating the security needs of the IDF. But the main effect of the increase is on the non-combat surplus personnel in the IDF.
41. Even today, the IDF has a surplus of non-combat personnel. The 25% increase in the number of candidates for military service arising from natural increase grows the surplus manpower in the IDF. **Extending the mandatory service to 36 months will only further increase the surplus of non-combat personnel.**
42. The Mandatory Service Law Memorandum allows the defense minister to set, in a ministerial order that must be approved by the Knesset Foreign Affairs and Defense Committee, a list of roles and professions that allow for a shorter period of service, as long as it is not shorter than 28 months. However, there is no mention in the Memorandum of the rules according to which the minister should exercise its discretion, and it is not clear how many soldiers can be considered under the list. In addition, **there is no explanation as to why the shorter period of service is set to 28 months**, and not to 24 months, as was set in the government's plan for shortening military service, published in the summer of 2023.
43. Without a clear determination in the Memorandum as to the scope of shortening the mandatory service, it is not at all possible to assess the

⁵ Ministry of Finance Chief Economist's Office, *Characteristics of absentees from work as a result of reserve service during December 2023* (February 5, 2024).

proportionality of the proposed arrangement. For example, there could be completely different implications if the minister of defense decides that Half of the recruits will serve 28 months, in comparison to a decision to shorten the service of only 10% of the soldiers.

E. Social Aspects

44. Increasing the burden of service, both mandatory and reserve, and increasing the inequality between those who serve and those who do not, raise a fundamental question: will the conscript and reserve soldiers nonetheless fulfill their duty of service? This is a critical and complex question. As was stated above, we claim that these issues should be examined by a professional committee, external to the IDF. That said, it is clear that there are several factors that could affect the motivation to serve.
45. The question of motivation to serve is closely related to the issue of trust in the IDF. As the trust in the IDF's goals and conduct increases, so does the chance that candidates would be willing to bear the burden of the service. Trust in the institution consists of two elements - trust in the institution's professionalism, and trust in the fairness of its conduct and its values.
46. As to the institution's professionalism, the Mandatory Service Law Memorandum does not include detail regarding the professional considerations that led to the decision to extend the service or the professional process of determining the personnel requirements. In addition, the Memorandum completely disregards the question of non-serving population groups, specifically Haredi men, and that might create distrust in the fairness of the arrangement.
47. Moreover, the underlying assumption in the Memoranda is that since the serving population has maintained high motivation for service during the war and enlisted at very high rates for reserve service, this will continue after the war as well. This assumption does face the bias of base rate neglect. This bias leads to conclusions about the validity of a hypothesis that are inferred based on specific data, or a concrete case, while ignoring overall statistics.
48. Indeed, increasing the burden of service on parts of the population may have significant broad implications on the trust in the IDF and the perception of the military service as a whole, therefore a professional examination of the scope of the burden of service is required before increasing it.

F. Assessment of Alternative Arrangements

49. A key problem in the legislative Memoranda is that they **do not include an assessment of alternatives to the increase of length of military service**, even if the premise is accepted that there is a need for a much larger number of combat soldiers over the long term. In our opinion, one of the

main roles of a professional committee will be to examine the proper and full utilization of available personnel, as a precondition to any decision to increase the burden of military service.

50. An issue of paramount importance in this context is that of service by **members of Haredi society**. We shall not expand here on the question of whether and how it might be possible to increase the number of Haredim who serve in the military.
51. However, the number of Haredim who serve is merely one variable among many that the professional committee should discuss in order to properly assess options for increasing the number of combat soldiers. Some of these questions are related to the field of **internal military assessment**, such as the priority currently given to technological units when conscripting soldiers with a combat profile.
52. Other questions relate to **more general social issues, on which decisions should be made by a committee outside the military**. For the purposes of illustration, we shall present here just two issues worthy of discussion: making full utilization of female personnel in combat roles, and the relation between military units and civil defense squads (“kitot konnenut”).
 - a. Full utilization of female personnel in combat roles: One of the arguments surrounding the IDF in recent years has concerned the extent of integration of women into combat units. Most recently, these arguments have focused on the service of women in the IDF Armored Corps and in elite combat units. It would appear that the events of the war in Gaza have bolstered support for the inclusion of women in such units.

Any expansion of the integration of women into combat units will have implications for the number of men required for those units. Even if women do not serve as combat soldiers in regular infantry units, their inclusion in the Armored Corps, for example, will free up more men to serve in infantry units instead of armored units, and so on. Thus, decision-makers should be looking at the question of how to increase the number of women who serve in combat units.

This is a complex topic, encompassing issues relating also to joint service by men and women in certain units, to fundamental questions such as whether it can be mandatory for women to serve in combat units if they are found to be suitable, and **the sweeping exemption from any form of military service granted to religious women**. The professional committee should discuss all of these aspects. **Before any decision is made to increase the burden of military service on men, the committee should assess the possibility of increasing the number of women who serve in combat roles in the IDF.**

- b. Shifting responsibilities from IDF forces to civil defense teams: One of the main developments following the events of October 7 has been a sizable increase in the willingness of civilians to participate in efforts to guard the safety of individuals and communities. This trend brings a large number of volunteers into the fold of those charged with maintaining Israel's security. It thus raises the question of the extent to which civilians in communities in border areas and in the West Bank can take on roles and responsibilities that until now have been shouldered by military forces, thus freeing up military personnel. This is another complex issue, in which the professional committee should discuss the full array of relevant considerations.
53. Increasing the number of reserve service personnel: Another question that should be explored relates to whether it is possible to increase the number of reservists in a way that will not require placing the full burden of service on the shoulders of the minority who currently serve.⁶
54. Growing Israel's standing army: The heavy indirect costs of extending mandatory service and increasing the burden of reserve service demand a reassessment of the size of Israel's standing army. According to various parameters, the country's standing army is fairly small.⁷
55. Remuneration model for service personnel in mandatory and reserve service: The large-scale and extended deployment of reserve forces in the current war has also exposed the existing problems in the current model of remuneration for reservists. Self-employed reservists are paying a huge financial price, while reservists who are students are not routinely receiving the appropriate assistance and accommodations. Furthermore, there are justified fears that the potential likelihood of reserve soldiers having to serve 42 days every year (50 days for officers) will cause many employers to prefer not to employ reservists at all.
56. Relevance of the existing model of reserve service in the modern economy: Some of the problems raised here are a function of the fact that the current model of reserve service was created in the early days of the State of Israel, for an economy in which most reservists were salaried workers in stable jobs who enjoyed relatively high job security and stability. This model is now problematic and needs to be revisited in relation to the modern labor market.

⁶ Ariel Heyman, *Israel's reserve forces in the October 7 war: Challenges for the continuation of the fighting* (Institute for National Security Studies, December 26, 2023).

⁷ Sasson Hadad, *Conscript army versus professional army: Effect of the model of conscription on the military power of the State of Israel*, Phd dissertation, Tel Aviv University (2013).



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