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ORIGINAL ARTICLE

Reconsidering the role of public participation in the Finnish forest planning system

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Abstract

The article examines the role of public participation rights in the Finnish forest planning system and considers the need for improvement, with a particular focus on private forests. Public participation is approached here as one of the tools for achieving social and ecological sustainability in forestry. The paper shows that public participation rights are very limited in the forest planning and management schemes in Finland. Among other things, access to environmental information is restricted, which is exceptional in modern environmental and natural resource law. The article concludes that there is a need to strengthen the participatory elements in forest planning if the aim is to improve environmental and social sustainability in forestry.

Keywords: *Forest law, public participation, forestry, forest planning, forest management, regulatory studies.*

Introduction

The forest management paradigm in Finland has changed since the days of uncompromising profit-seeking in the 1960s and 1970s. Recent decades have clearly seen changes towards ecological sustainability. The harshest management methods have been abandoned, and a number of measures have been introduced to preserve biodiversity and protect water systems. Yet, researchers, citizens, forestry professionals and other stakeholders do not agree whether the legislative and other measures taken have been sufficient and what should be done to ensure economical, ecological and social sustainability in forestry (e.g. Donner-Amnell & Rytteri, 2010; Hanski, 2006; Kauhanen et al., 2008; Kuuluvainen et al., 2004). The legitimacy of the current forest management paradigm has been contested in critical public discussions as well as in scientific research (e.g. Pappila, 2010; Valkeapää et al., 2009).

Public participation is one of the means for achieving sustainability in forestry (e.g. Diemer & Alvarez, 1995; Leskinen, 2004; Richardson & Razzaque, 2006). Safeguarding the public's opportunities for participation is one element of the commitments made by the Ministerial Conference

on the Protection of Forests in Europe and is included in the Finnish criteria and indicators for sustainable forest management (Parviainen & Västilä, 2011). The 1998 Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters also highlights the importance of participatory rights in environmental regulation and decision-making. In addition, as an element of democracy, participation can be considered an end itself (Buchy & Hoverman, 2000). Furthermore, it has been acknowledged that adequacy of participatory rights is a relevant issue from a constitutional and human rights point of view (Applestrand, 2002; Verschuuren, 2005).

Despite the integral role of public participation in modern environmental and natural resource law, public participation in forest planning and management in Finland has been a rare topic in earlier legal studies. Other disciplines have conducted more research on the issue (e.g. Leskinen, 2004; Raitio, 2008; Tikkanen & Kurttila, 2007). Against this background, the article focuses on the present and potential role of public participation rights in the Finnish forest planning and management system.

Aim, methods and scope

This article examines the extent to which legislation offers the public opportunities to participate in forest planning and management in Finland, and discusses whether wider public participation rights could be useful in the field of forestry. An additional aim is to consider the regulatory options for incorporating participation in forest planning and management. The need for legislative amendments is considered mainly in light of the objectives of social and ecological sustainability.

The article's interest in legal requirements, rights and regulatory design situates it within the scope of legal and regulatory research. Regulatory research typically has a broader focus on regulation than purely legal research does. It may ask empirical questions about the effects of law compared with political aims, or normative questions on the optimal ways to regulate a certain social issue (Parker et al., 2004), or why and how a statute has been enacted in the first place (Tala, 2004). Legal research typically has an internal view on law, using mainly legal sources for argumentation. It systematises, that is, "organizes", law from a certain viewpoint and interprets the law in force (legal dogmatic approach). This article combines both the legal dogmatic and regulatory approaches. It analyses the functions of participatory rights, systematises and scrutinises the Finnish forest planning system from the point of view of participatory rights and considers potential regulatory models for improvement.

We understand public participation to consist of (1) access to information, (2) participation in decision-making and (3) access to justice in keeping with the terms of the Aarhus Convention, the most important international agreement on public participation. These elements of the Convention offer a sound framework and criteria for scrutinising forest legislation, which has a significant impact on the quality of the environment in Finland.

Participatory rights are analysed here mainly from the point of view of those who own or live on land adjacent to logging sites and of other local stakeholders, for this facet of the topic has received little attention in previous research. Forests are an essential element of the living environment for many Finns, and it thus seems relevant to examine the rights of local residents to participate in forestry projects conducted near where they live. The scope of the paper is confined to private forests, which account for most of the forested land in Finland and most of the commercially used wood (Rantala, 2008). We do not analyse legislation or practices pertaining to state-owned forests or the special rights of the Sámi people.

Theoretical context

The justifications for including public participation in planning and decision-making related to the use of environment are manifold and represent diverse levels (Appelstrand, 2002; Ebbesson, 1997; Kumpula, 2004; Primmer & Kyllönen, 2006; Pölonen, 2007; Richardson & Razzaque, 2006; Similä et al., 2008; Stec et al., 2000; Verschuuren, 2005). The benefits and aims of public participation examined by a large number of scholars can be summarised by a typology embracing the *environmental*, *integrative* and *democratic functions* of the participatory models. These functions appear in the following ways: (1) better implementation of the (environmental) legislation and policy, (2) greater reconciliation of the diverse interests and objectives and (3) higher acceptability of decisions and practices. Overlapping environmental, integrative and democratic functions are closely associated with the argument that public participation improves the quality of planning and decision-making and contributes to sustainability objectives by broadening the information base and incorporating multiple values and diverse local knowledge into planning and decision-making. Public participation furthers both the interests of the participants themselves and the concerns of the public at large (Ebbesson, 1997; Verschuuren, 2005).

Democratic function has a connection to a theory of democracy. According to Barton (2002), "in liberal democratic thought, the purpose of democracy is not simply to protect individuals' rights in a passive or negative sense, but also to promote participation in public life, as a moral necessity and as a basis of dynamic developmental polity, in which citizens can expect to participate in a continual improvement of social conditions". Pluralist theory emphasises balanced representation of different interest groups' views in administration and law-making. Pluralists believe that there is no single public interest which the authorities could automatically represent but rather various private and public values and opinions that must be merged during the decision-making process.

The democratic function also has a link to a constitutional and human rights approach to public participation. It can be argued that the environmental, participatory and property rights laid down in the Constitution entail wide participatory rights in legislation on environmental use (see sections 14, 15 and 20 of the Finnish Constitution 731/1999). The legislation should guarantee everyone the possibility to influence decision-making on activities that have significant impacts on their living environment.

Property rights have fairly often been considered a counterargument to participation (e.g. Appelstrand,

2002), but this view can be contested. Participatory requirements in themselves do not restrict land-owners' discretion regarding land use but rather constitute a procedure which has to be followed prior to decision-making. The requirements may include a right of appeal, but this, too, is purely procedural in nature. Furthermore, it should be acknowledged that property rights are not and never have been absolute. Traditionally not even strong property rights entitle the owner to all types of land use and projects on his or her land; different constitutional rights have been balanced (Appelstrand, 2002; Määttä, 1999). Property rights can serve as an argument in favour of participation given that intensive use of the environment and natural resources on a particular property typically has negative implications for the use and value of neighbouring properties.

The essential human rights concepts relevant to participation are expressed in the Aarhus Convention. It refers to the right of everyone to live in an environment adequate to his or her health and well-being, and the duty to protect and improve the environment for the benefit of present and future generations. To be able to assert this right and observe this duty, citizens must have access to information, be entitled to participate in decision-making and have access to justice in environmental matters (Preamble and Article 1 of the Aarhus Convention, see also Appelstrand, 2002; Verschuuren, 2005). On balance, there are strong theoretical grounds for wide participatory rights in all land use in modern democratic societies.

Forest planning and land use planning in the current state

National and regional levels

This section evaluates the different levels of forest planning in the light of different aspects of public participation. There are five levels of forest planning in Finland where private forests are concerned: (1) the national level, reflected in Finland's National Forest Programme (NFP); (2) the regional level, embodied in regional forest programmes (RFP); (3) the landscape/local level, described in regional forest plans; (4) the forest owner level, depicted in private voluntary forest management plans; and (5) the operational level, seen in the forest use declarations submitted before cutting.

On the highest policy level is the *NFP*, prepared by the Ministry of Agriculture and Forestry. The programme outlines the general, legally non-binding, objectives for national forest policy covering both state and private forests. According to the Forest Act (FA, 1093/1996), the aim of the NFP is

to contribute to the well-being of citizens by utilising the forest in multiple ways in harmony with the aims of sustainable development. In preparing the programme, the ministry must cooperate with other ministries, parties representing forestry and other relevant parties (Section 4.1 of the FA). In practice, preparation of the NFP includes stakeholder working groups and wide public discussions, as well as a strategic level environmental impact assessment (see e.g. Primmer & Kyllönen, 2006).

At the regional level, forest policy objectives are determined in *regional forest programmes*, prepared by regional forest centres (they will be regional units of the Forest Centre since the beginning of 2012). When preparing RFPs, forest centres must collaborate with other parties representing forestry, regional councils, environmental authorities and other relevant parties (Section 4.2 of the FA and Section 2.2 of the Decree on the Sustainable Forest Use and Management, 1234/2010). Regional forest programmes are general in nature and, have no legally binding effects at the stand level (Hanna et al., 2011; Salila, 2005). Regional forest programmes steer the funding policy of the forestry centres; otherwise they have little practical meaning for private forest owners.

National and regional forest programmes essentially represent the decision-making processes in which the public can express its opinion on the management of private forests, albeit only on a very abstract level. These programmes are so general that they do not affect anyone's rights or interests, and therefore no one has a right to appeal against the recommendations and measures set out in them.

Landscape and local level

A regional forest plan is a local-level planning tool covering an area roughly the size of a village. The plans are drafted by the forestry centres to produce background information for owner-specific forest management plans and thus to enhance wood sales and the quality of forest management. The plans contain not only an inventory of forest resources but also information on sites with biodiversity or landscape values (Kiviniemi, 2004; Salila, 2005). All detailed information on regional forest plans and valuable biotopes have been considered non-public by the forest administration. The discussion below on making public information on certain valuable biotopes clearly illustrates the current state of access to information.

The Ministry of Agriculture and Forestry has considered that the inventory documents of the forest centres which contain detailed information on the habitats of special importance and other targets with nature values are not public. (Section 10

of the Forest Act obligates owners and other forest users to protect the listed key habitats in forestry operations.) The ministry has recommended that only the summaries of the inventory data on valuable sites can be given on request (Ministry of Agriculture and Forestry, 2001). The ministry has taken the view that the Act on the Openness of Government Activities (621/1999) does not apply to the detailed information on the sites with nature values. It claims that forestry centres do not make the inventories in their capacity as an authority, but as part of their duty to “promote forestry”; yet, one of the main tasks of forestry centres is to oversee the implementation of the Forest Act, including key habitat protection. Thus the prevailing view is that under the present legislation the products of these alleged promotion tasks need not to be made available to the public. Restricted access to environmental information held by forest centres has also been justified with reference to the protection of privacy and the notion that publicity would decrease trust between forest owners and forest authorities (Valtioneuvoston oikeuskansleri, 2003). In practice, not even other authorities have had access to the information on habitats of special importance that forest centres possess, a policy that has been questioned by the environmental authorities (Valtioneuvoston oikeuskansleri, 2003).

The aforementioned interpretations of the forest administration can be challenged with the argument that information on the key habitats has a clear connection to the tasks of forest centres as authorities: they have a statutory duty to monitor compliance with habitat protection provisions. Thus, the information should be open to the public under the national, EU and international law on public access to the environmental information held by a public authority. It is also obvious that access to environmental information would not violate anyone’s right to privacy. Forest centres could give information on the sites with environmental values without disclosing the type of information on private individuals that would violate the Personal Data Act (523/1999) and the constitutional protection of privacy. Moreover, the argument that publicity would decrease trust between forest owners and forest authorities does not seem cogent. There are ways to protect both stakeholders’ trust in the system and the openness of environmental information. This has been illustrated by established general land use planning practices, where the public has wide access to environmental information.

Irrespective of the restricted access to information gathered in regional forest planning, the process of developing these plans is usually participatory to some extent. Forest management associations and

the forest industry (the potential harvesters and buyers of wood), municipal authorities and game management associations are often urged to contribute to the planning. Occasionally, a local NGO is contacted as well (Tikkanen, 2006). However, participation is neither required by law nor systematic, which is likely to diminish its importance and effectiveness (on state forests see Raitio, 2008).

Forest Management Plans are private plans which forest owners can order from regional forestry centres, forest management associations or forest planning enterprises. A forest owner is not required to prepare a forest management plan (HE, 266/2009). If a plan is drawn up, it must include information on the structure of forest and, among other details, information on the habitats of special importance referred to in Section 10 of the FA and restrictions on the use of land and forests (Section 3 of the of the Decree on the Sustainable Forest Use and Management). The plans can also include information on other sites with environmental values (Kokko, 2009; Similä & Kokko, 2009).

In conclusion, only the processes of developing NFPs and regional forest programmes include public participation and go on record in public documents; but those programmes are rather general in nature and do not include binding obligations. Therefore there is also no right to appeal against the decisions on accepting these programmes either. Essentially the lack of concrete obligations means that there is no legal guarantee that the environmental and social dimensions highlighted in the programmes and the viewpoints presented by the public will filter down into actual forest operations. The planning documents drawn up at the local level are for the most part not public, and planning does not include rights for the owners of properties near logging sites or local residents to express their views.

Operational level

Regional forest centres receive about 100,000 forest use declarations annually as part of their duty to monitor compliance with the Forest Act. A forest owner must deliver a declaration to a regional forestry centre in 14 days to 2 years before logging and inform authorities about the form and location of forthcoming logging operations and special circumstances, such as habitats of special importance (Section 10 of the FA).

In the typical case, a forest centre makes no decision regarding a declaration. Parties other than those directly involved – the forest owner or the holder of the right of possession or other special right and the centre – do not have a say and are not informed when a declaration is filed. In principle,

anyone – including those occupying land adjacent to a planned logging site – can get the information from forest authorities, but neither authorities nor forest owners have a duty to actively inform neighbours that a declaration has been filed or that logging operations are forthcoming. Moreover, this policy of openness is confined to the facts in the forest declarations, and not to the contents of forest inventories or forest management plans.

On the operational level, none of the decisions made are ones in which a local resident or association can take part. For a neighbour or a local association, the chances of appealing against measures related to forest management are slim unless those measures simultaneously violate another law, such as the Nature Conservation Act (1096/1996). All in all, participatory rights in forest planning at the local and operational levels are minimal. It seems that forest planning processes give citizens very limited possibilities to influence changes in their living environment.

General land use planning

Some forests are covered by a master plan or a detailed plan under the Land Use and Building Act (132/1999). In these cases interested parties and members of the municipality have wide-ranging participation rights. These include access to environmental information, an opportunity to express views in the early phase of planning and a right to challenge the legality of the planning process (including participation) and the planning decision in a court (chapter 8 of the Land Use and Building Act; Syrjänen, 2005). The Land Use and Building Act also contains a specific permit procedure (permit for landscape work) which is applied to tree felling or corresponding actions that alter the landscape; the procedure is mandatory in the area of a detailed plan and discretionary in the area of a master plan. This process, too, includes core elements of participation: informing parties about the permit application, hearing of neighbours and access to justice. The neighbours of a site and members of the municipality, among other parties, have the right of appeal against a landscape work permit. (Sections 128, 130, 133 and 192 of the Land Use and Building Act).

In fairly many cases, master and detailed plans cover the forestlands where the need for public participation is the greatest (forests near densely populated areas and areas with special landscape, natural or recreational values, such as shore zones). However, the municipalities utilise land use planning in very varied ways depending on their land use policies and the economic structure of the region. For example, in the county of North Karelia, most

municipalities have not used land use planning actively; master plans cover a mere one per cent of the total land area (Mattila & Korhonen, 2010). In light of the legal norms in force, the diversity of the planning practices is not surprising. The current legislation stresses the autonomy of municipalities in planning issues and allows great variety in planning practices (Pölönen & Malin, 2011). Consequently, whether or not there exist participatory rights in forested areas depends largely on how the municipalities have used their discretion under the Planning and Building Act.

Potential role of public participation in forestry

Rationales for participation in forestry

In general level it can be argued that wide public participation rights should be included in the field of forestry for the same reasons that this has been done in numerous other areas of environmental use in recent decades. These justifications were discussed in Section Theoretical context. However, there is need to take a closer look at the rationales for participation, particularly from the forestry perspective. In the context of forest planning and management, wider public participation rights would increase information flow and consultation among landowners, authorities, planners, local residents, NGOs and the business community – to name a few actors. This could enhance the utilisation of voluntary policy instruments, such as agreements on logging restrictions to maintain the natural, scenic and recreational values of forests.

In the current state of affairs, the voluntary means function poorly, due to poor communication mechanisms. For example, Tapio (The Development Centre for Forestry) and MTK (The Central Union of Agricultural Producers and Forest Owners) have developed model agreements for leasing forests for their scenic or recreational value. A forest owner and a neighbour of the potential logging site can agree that the owner will not log the site for 10–20 years and that the neighbour will pay the owner an agreed sum of money. However, a neighbour often does not find out about a logging operation until the harvester arrives. At that point, an agreement has already been made between the forest owner and the buyer, and it is too late for the neighbour to suggest drawing up a landscape protection agreement.

In addition, public participation could contribute to the policy monitoring and enforcement of forestry legislation, such as the minimum requirements for nature protection (Buchy & Hoverman, 2000; Christy et al., 2007; Sinclair & Doelle, 2003). This function of participation takes on heightened

importance in that forest and environmental authorities are often understaffed and do not have sufficient resources to monitor compliance with the forestry legislation. Recent studies show that there is an obvious need to improve the implementation of legislation on habitat protection (Kokko, 2009; Pykälä, 2007; Silver et al., 2008). Inventory data on habitats of special importance are still insufficient (Kotiaho & Selonen, 2006) and protected habitats are not always preserved during forestry operations. For example, in almost one case of five, the characteristics of rivulets and other watercourses have not been preserved in privately owned forests; only 2% of rivulets are today in a natural state. Similarly, one of every three springs is destroyed during forestry operations (Saari et al., 2009). A public map of habitats would reveal to local residents and associations which habitats are not yet known, allowing them to report such sites to authorities and forest owners.

While considering the need for public participation, it should be taken into account that forests near houses do not function solely as scenic and recreational sites, but also protect the neighbouring properties from noise, wind and pollutants. Moreover, after a clear-cut, trees on the plots adjacent to the site are more prone to falling. No compensation is paid for fallen trees, because the wind is “the offender”. Climate change and the increasing frequency of storms are likely to worsen the situation. Forest owners suffer economic losses when their trees fall in a storm after a neighbouring site has been clear-cut. Falling trees cause not only economic losses but also safety risks, for example where they fall near or on a neighbour’s house. These facts, the right to a healthy environment and property rights constitute a case for integrating wider participation requirements into forestry (see also Verschuuren, 2005) even though forest management is not commonly considered a harmful land-use form comparable to, for instance, neighbourhood infringement. Then again, there is a specific case where the Finnish Supreme Court (2006), p. 88) has ruled that forest logging operations which violated a land use plan were – mainly because of their impact on scenery – comparable to impairment of the environment (Section 48:1 of the Criminal Code).

Moreover, wider access to environmental information related to forests, transparency in forest planning and the possibility for consultations in forest planning at the local level could support the legitimacy of forest policy and conflict management (Applestrand, 2002; Tanz & Howard, 1991).

Challenges and options in integrating participation in forestry

The aforementioned arguments for wider public participation rights indicate a need for a change if we wish to promote social and environmental sustainability. However, cogent arguments can be found for opposing the integration of public participation in the current forest planning and management practices. The counterarguments can be grounded on the structure of the existing forest planning and management system, the fact that forest ownership is dominated by a large number of non-industrial private holdings, increasing costs, and the characteristics of typical forestry activities in Finland.

Integrating participation at the operational level faces major difficulties. Firstly, given the large number of small forest holdings and operations, it does not seem viable to categorically require public hearings for every single logging operation. Such a procedure would increase costs and administrative work excessively. Secondly, participation could not have a meaningful role at the operational level, because at that point an agreement has already been made between the forest owner and the buyer. It would be too late to negotiate on the alternatives for the operations.

In principle, the landscape level would be a more suitable forum for statutory participation (see also Tikkanen & Kurttila, 2007). However, this would require legislation on local forest planning. The current planning system does not contain systematic frames to which participatory rights could be rationally linked at the landscape level. Participation models cannot be rationally developed without simultaneously considering the need to modify the structure and nature of the current – yet for the most part unregulated – forest planning system.

Consideration of the possible legislative amendments should take into account other planning schemes which can be applied to forested landscapes and support the objectives of socially and ecologically sustainable forestry. Here general land use planning under the Land Use and Building Act is relevant. One possibility could be to apply land use planning in a more coherent way in forested areas. This could be furthered, to an extent, by amending the National Land Use Objectives, which steer regional and other land use planning. Furthermore, coherence could be increased by guidance from the competent ministry (Ministry of Environment). More active and systematic use of land use planning in forested areas could, at least in part, offset the need for strengthening participation rights in the

forest planning system. As highlighted in Section *General land use planning*, general land use planning is a very advanced scheme in terms of public participation rights.

Strengthening the substantive environmental standards is yet another option for improving the environmental and social sustainability of forestry and partially substituting for the needs relating to wider participation rights in forest planning. This alternative, representing traditional regulation, would mean new restrictions on logging operations. These could take the form of compulsory buffer zones around homes and summer houses where clear-cuts would be prohibited. This could increase social sustainability and the legitimacy of forest management. According to a survey, about two-thirds of Finns disapprove of clear-cuts (Valkeapää et al., 2009). Another survey suggests that one-third of new forest owners would be ready to prohibit clear-cuts and about 40% of new owners think that there should be no logging near private homes (Rämö & Toivonen, 2009). To minimise economic losses (see Tahvonen, 2009; Tahvonen et al., 2009), selective logging, that is, uneven-aged forestry, should be allowed in “home protection” zones or other sensitive areas. Today, the Forest Act expressly allows uneven-aged forestry on special sites and in habitats of special importance, but the potential of section 6 of the act is not well known or widely used. Uneven-aged forestry is possible elsewhere as well, but not easy, because Finnish forest law and the official forest management paradigm do not encourage the practice (Pappila, 2010). It is only recently that a consensus to allow uneven-aged forestry has emerged (Ministry of Agriculture and Forestry, 2011).

On the other hand, it is obvious that new restrictions on logging would meet with resistance among landowners, forest organisations and industry. In terms of regulatory strategy, it would mean a step back to earlier decades when environmental governance was based mainly on command-and-control regulation. However, depending on the case, command-and-control regulation can still be a smart regulatory choice that is highly effective and receives sufficient acceptance among the target of the regulation (forest owners) and the public at large.

Conclusions

The research shows that all three aspects of public participation rights are restricted in the Finnish forest planning and management system. Public participation is included in forest planning at the national and regional levels, with forest and environmental authorities and other stakeholders discussing

and sharing their knowledge and views during the planning process. However, the planning on these levels is general in nature and does not include binding obligations. There is no legal guarantee that participation at the national and regional levels influences actual forest operations. On the local and operational levels, participation rights are highly restricted, almost non-existent. Even access to environmental information is limited, which is exceptional in contemporary environmental and natural resource law. On the whole, it seems that forest planning processes give very limited possibilities to citizens to influence changes in their living environment.

The article points out a variety of arguments in favour of wider public participation in forest planning and management. They include better implementation of legislation, enhanced utilisation of voluntary instruments, such as agreements on buffer zones, and greater acceptability of decisions and practices. Wider participation would thus enhance both ecological and social sustainability. Moreover, the environmental, participatory and property rights laid down in the Constitution urge wider participatory rights in forestry. On the other hand, there are also relevant arguments against new public participation requirements. The structure of the Finnish forest planning system poses specific challenges for participatory rights. In the current planning scheme there are no decision-making procedures to which the core elements of public participation could be rationally linked. In addition, the fragmented ownership of forest and the small size of single logging operations entail challenges for the participation models.

Even if it seems very difficult to integrate statutory public participation into the present forest planning system, there are potential regulatory strategies which can address, at least in part, the call for stronger participatory elements and greater legitimacy in forestry. Firstly, the public participation related to the use of forests could be strengthened by more active and systematic use of general land use planning in forested landscape. General land use planning is an established planning scheme in terms of public participation and it also gives legal protection to the landowners. This regulatory alternative would not necessarily require new legislation but could be supported by guidelines from the Ministry of the Environment. Secondly, strengthening the substantive environmental legislation could offset the need for wider participation rights in forest planning. This regulatory choice could appear in the form of buffer zones near homes and summer houses where the most intensive forest management methods would be prohibited.

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