

‘People behind Stories’ – Portrayal of Whistleblowers by Hungarian Online Media and Its Impact on the Anti-corruption Policy Process

Extract

2. LITERATURE REVIEW: WHISTLEBLOWING

2.1. Definition of Whistleblowing

Whistleblowing has always been present in organizational life, though in different forms and level of recognition. However, it took several decades until the term has become accepted and filled with content - as it is true for all concepts, the evolution of different definitions and discourses shows the paths of their development. The Oxford English Dictionary mentioned ‘whistleblowing’ for the first time in 1986 as “to ring an activity to a sharp conclusion, as if by the blast of a whistle; now usually by informing on a person or exposing an irregularity or crime” (as cited by Vandekerckhove, 2006, p. 7). That brief description was evidently lacking of any attributes of the whistleblowers themselves or their decision to step up. More is manifested in *Bower’s* definition extending the number of possible actors by stating that whistleblowing is “the act of an individual worker or a group of workers raising concern so as to prevent possible malpractice or dangers to the public” (Bowers et al., 1999, p. 1).

Miceli and Near provide more details about the nature of the misconduct: “the disclosure by organization members (former and current) of illegal, immoral, or illegitimate practices under the control of their employers, to persons or organizations that may be able to effect action” (Miceli and Near, 1992, p. 15). An act that is legal might still be seen as illegitimate “meaning that the act is perceived by the observer to be beyond the realm of the organization’s authority” (Miceli and Near, 1992, p. 18). They exclude the following reactions out of the definition: taking notice of the wrongdoing, asking the person who commits the malpractice to desist, talking to colleagues about the matter without taking any actual step, or leaving the organization without dissent (Miceli and Near, 1992). They also observe whistleblowing not

merely as a single individual step but rather in its complexity, as a “process involving a number of subprocesses” (Miceli and Near, 1992, p. 16).

Glazer and Glazer’s definition paints a clearer picture about the whistleblower who shall

- (1) act to prevent harms to others, not him or herself;
- (2) try first to rectify the situation within the framework provided by the organization;
- (3) while possessing evidence that would convince a reasonable person (Glazer and Glazer, 1989, p. 4).

This definition is more than an objective description. It provides practical guidelines for whistleblowers about the standards of reporting as in practice and in the eyes of the public they are often not distinguished from self-interested disloyal opportunists with private agenda. *De Maria* paints a rather living portrait about whistleblowers and the overall mistrust and doubts of the society:

...here is the contradiction, they are as indispensable as traffic signs on an icy road. We do not want to hear what they say but we know that we must: for our own sake, our own safety, and our own national welfare (De Maria, 1999, p. 13).

A whistleblower is expected to act upon ‘appropriate moral motives’ when disclosing information about wrongdoings that might threaten or cause unnecessary harms to others (Vinten, 1994). The responsible way to blow the whistle is to use inside channels as managers or boards within an organization first, while turning to media and generating scandals might only be the ‘worst case scenario’ (Calland and Dehn, 2004). Outside disclosures raise several issues, including the breach professional or ethical norms and legal regulations concerning privacy, confidentiality and – often state – secrecy.

2.2. The Whistleblowers

Who becomes a whistleblower? The decision is very difficult and depends on several attributes. It requires not only moral commitment but the willingness to act upon it (Jos et al., 1989). Any generalization about personal characteristics might be easily misleading, therefore most definitions, as it could be seen above, try to avoid stereotyping (Alford, 2002).

Researches, mostly case studies or surveys targeting especially whistleblowers or random group of employees, have offered very different results. Whistleblowers' personalities were either seen organizationally naïve, or, by contrast, described to possess locus of control within the organizations upon dispositional variables as their values and beliefs (Miceli and Near, 1992; Brower and Yang, 2004). They were also supposed to be selfless and altruistic or, on the contrary, greedy and self-interested. They tend to be ethically rigid high performers, with low tolerance for ambiguity and 'live and let live' attitude but high level of professional moral (Miceli and Near, 1992; Brower and Yang, 2004). The latter characteristic, nevertheless, might also be seen as being "intensely committed and uncompromising" (Jos et al., 1989, p. 557). One would assume that whistleblowers are in most cases revolutionists or rebels but surveys showed the opposite – they are "patriotic and very traditional" (Jos et al., 1989, p. 557). *Jos* and his co-authors highlighted the demographic attributes of whistleblowers. The majority was white married males with children and higher education degrees who worked for their organizations for more than three years, hence usually reached powerful positions at their workplaces. Hence their organizational power enabled them to speak out as whistleblowers. *Jos* also underlined that the underrepresentation of female and minority employees could be connected to their underrepresentation at the workplaces in general (Jos et al., 1989).

Motives of whistleblowers certainly differ as well. Basically three categories are set when it comes to inner driving forces of whistleblowers: (1) conscience cleaning, (2) welfarist motives, and (3) the desire to punish. The first theory emphasizes that the employees concerned rather disclose the wrongdoings than living with a corrupted self. Their decision, as noted above, is made upon their ethics and beliefs, as well as the nature of the discovered planned activity. The welfarist concept includes a 'cost-benefit element' meaning that it is to be assumed that the report will do more good than harm. Finally, the desire to punish is the intention to penalize the superior or colleague for acting illegally or antisocially (Heyes, 2005). In reality these motives are not separable, though one might play a dominant role in the whistleblower's decision compared to the others. It is important to note that the researches and surveys so far have not managed to establish casual links between the variables expected to trigger whistleblowing and the actual decision to blow the whistle (Miceli and Near, 1992).

2.3. *The Organizations*

The relationship between managers and officials, independent of the type of the organization or whether it belongs to the business or the public sector, has always been burdened with conflicts and contradictions. The reason for that is – at least at first glance – simple: different job *priorities*. Managers aim to achieve results and targets consistent with policy and agency objectives, whereas officials establish shortcuts and simplify procedures to cope with the workload and individual responsibility in each case they have to deal with (Lipsky, 1980). As a result there is always a certain degree of non-compliance. *Ackroyd* and *Thompson* also argue that officials *seeking autonomy* is ‘endemic’, inherent in each organization and “beyond the perception – not to mention the control – of management” (*Ackroyd* and *Thompson*, 1999, p. 74). Besides priorities and autonomy, different *motives* might also be influencing the manager-official relationship. Both are motivated by self-interest and pursuing their own advantages. If their interests diverge, ‘a reasonable degree of compliance of wishes’ has to be ensured (*Pollitt*, 2003). The relationship between managers and officials also heavily depend on the internal *power relations*, i.e., according to *Dahl’s* definition, the ability to make someone do something that the person concerned otherwise would not do (*Dahl*, 1957). Hence if organizations can be characterized by uncertainty and conflict, anyone who owns skills and information that might minimize uncertainty can derive power from that knowledge (*Pfeffer*, 1981; *Clegg et al.*, 2005).

The above general organizational characteristics influence the occurrence of whistleblowing significantly. The assumption that ‘knowledge is power’ is reflected in studies aiming to prove that position in the hierarchy and tenure in the organization play a significant role in the whistleblowing process (*Jos et al.*, 1989). However, there is no empirical evidence to show whether that role is positive or negative. Neither it is decided whether the Weberian notion of bureaucracy describing the organizations as a strict hierarchical structure with set legal competences assuming political neutrality and “a firmly ordered system of supervision of the lower offices by the higher ones” prevents or nourishes whistleblowing (*Weber*, ‘Bureucracy’, 1968, p. 67). On one hand, if we examine workplace relations in terms of the allocation of power, managers need first of all coercive power by upholding the constant threat of negative consequences of failures among public officials, along with normative power, using positions as symbols and knowledge-based power, the monopoly over information necessary to decide (*Broussine*, 2003). Thus the success of operation depends on well-described competencies and

established channels that all enclose an inherent tendency to refuse changes since any unusual event, as blowing the whistle, might block the 'machine'. On the other hand, some argue that hierarchical organizations promote whistleblowing as employees are more protected by the fluid internal processes and regulated chains of command (Near and Miceli, 1995). Consequently, it is rather the ethical climate and the perception of the predictable consequences within the organization that might influence the whistleblowers' decision.

2.4. The Consequences of Whistleblowing

It is almost evident that if something goes wrong at a workplace, the first people to know are always the staff 'closest to the fire'. Thus they are also in the best position to report the problem. At the same time, they are at the highest risk to lose their credibility, integrity or, eventually, their job and in the most dramatic instances, their lives. Therefore if the organisation does not aim to demonstrate that it is secure and legitimate to report wrongdoings, employees will take it for granted that they will be victimised or their career will suffer damages (Calland and Dehn, 2004). When discovering malpractice, in most cases, there are four options a potential whistleblower can choose from (Calland and Dehn, 2004):

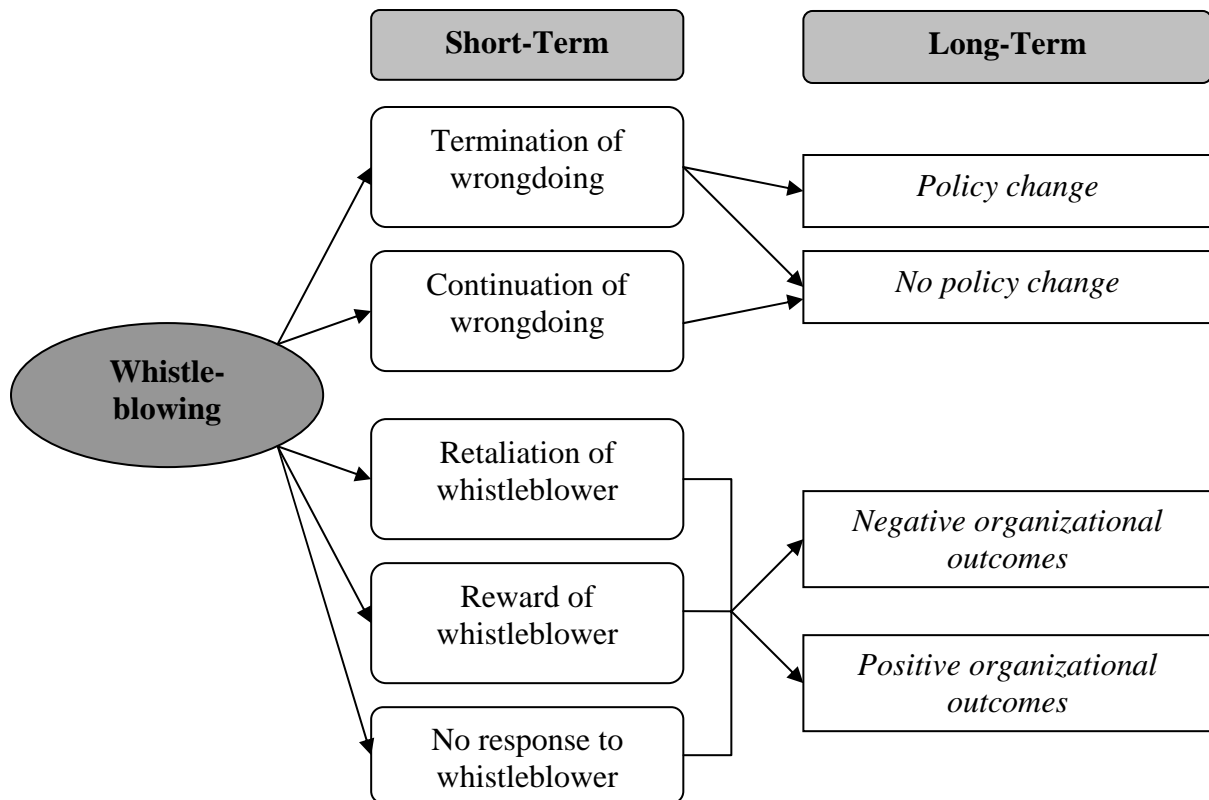
- (1) staying silent;
- (2) blowing the whistle within the organization;
- (3) blowing the whistle outside the organization;
- (4) leaking the information anonymously.

As it was indicated above, several variables might be influential when deciding whether to blow the whistle: characteristics of the particular case, the employee's relationships to the organization, and his or her personal characteristics, values and motivations (Jon et al., 1989). As far as the relationships are concerned they all come down to the, in fact, very complex allocation of power and the hierarchical structure within the organizations. More precisely, the decision depends on the perception of the whistleblower about the relationships and the likelihood of reprisal (Jon et al., 1989). More radically, according to Alford "in practice, the whistleblower is defined by the retaliation he or she receives" (Alford, 2002, p. 18). Hence, the choice of least risk is obviously to remain silent. The reason for that is quite simple. 'Lonely heroes' without any support or safety measures often find themselves in a hostile

environment at their workplace and get treated as traitors in their wider community. Organizations with a negative attitude towards whistleblowers are trying to make it difficult for them by requiring proof of the malpractice instead of providing assistance through thorough investigations (Calland and Dehn, 2004). Having to go through all those obstacles and public scorn is clearly not an encouraging aspect even if the truth is at stake. Meanwhile the potential cost of remaining silent is that the non-compliance of employees inherent in all organizations might escalate and paralyze the workplaces. Silence might also be detrimental for the society at large as it jeopardizes transparency, accountability and the trust in private and public institutions (Miceli and Near, 1992).

How problematic the whistleblowing process might be could be examined when looking at 'checklists' – showing significant resemblance to Glazer and Glazer's definition – about essential steps suggested for potential whistleblowers (Winfield, 1994). First of all, a whistleblower is most likely to stay alone along the way, therefore must be absolutely sure that information is right, comprehensive, and of public concern. In addition to that, the human damage and those who will suffer as the consequence of the disclosure shall also be realized. Internal channels are to be exhausted first, providing appropriate supporting documents, and at the same time recording each step of blowing whistle for future evidence. Protecting themselves is essential for whistleblowers. It is advised to try to convince others, even superiors, to join them for the cause. The whistleblowers shall continue exemplary work as their past and present performance will both be evaluated and, at the same time, contact a lawyer and start to look for a new job (Winfield, 1994). If all organizational channels prove to be a dead end, going outside could mean the media but governmental organs or regulatory bodies as well, either anonymously or personally. Despite all careful consideration the results are often dubious. According to a survey done in 1999 from more than 230 whistleblowers in the U.S.A. and the United Kingdom 84% were fired after disclosing fraud at their workplaces. None of them were directly involved; they only reported the wrongdoings (Bowers et al., 1999).

Punishments are obviously the most common and often immediate consequences of whistleblowing. However, they are not the only ones – as it is shown by Miceli and Near's figure summarizing both the possible short-term and long-term outcomes of the whistleblowing process.



(Miceli and Near, 1992, p. 180)

The first two short term reactions do not concern the whistleblower personally. On one hand, if the malpractice is stopped as a consequence of stepping up, investigations of the problem's personal and institutional causes might lead to changes in the current policy or the initiative of a new one. On the other hand, if the power or willingness to change is lacking, the problem will not be 'strong enough' to set a new policy agenda. What happens to the whistleblower might be simplified to two options. He or she might receive a response: a negative (retaliation) or a positive (reward). The reward can be moral or material (promotion, increase in salary, honours, etc.). Nevertheless, the whistleblower might be left without an answer as well. All options might result in either positive or negative organizational outcomes. The measures might include managerial changes, replacement and transfer of employees, amending personnel regulations and practices, departmental reorganization as well as improvements in safety conditions (Jos et al., 1989).

2.5. Whistleblowing and Corruption

It has been presented so far that whistleblowing has an important role in fighting malpractice at workplaces through providing transparency in the operation. That distinctive feature of

whistleblowing has also made it a very effective tool in tackling corruption. Corruption is a very complex phenomenon bearing symptoms of “many ills of a society” (Wei, 1998, p. 2). As there is no single definition due to the different social, economic, legal, historical, and cultural understanding of it, no country or government could claim being completely corruption-free. Corruption is, in the simplest terms, the misuse of power to gain private benefits. Corruption is also a clear sign of failure and irresponsibility in the allocation and redistribution of resources and thus violates the norms of public and civic order (Rogow and Lasswell, 1970). At the same time, disclosing corrupt activities through whistleblowing might balance and help to right the skewed situation.

There are several examples both at international and national level that whistleblowing and anti-corruption policies are closely related. Introducing or improving whistleblowing measures has often been an answer to large scale corruption scandals. In 2007 the World Bank leader Paul Wolfowitz had to resign for his companion received payment far in excess of those permitted under the internal bank rules. The U.S. nongovernmental organization (NGO) Governmental Accountability Project played a significant part in the disclosure and stressed the importance for enhanced whistleblower policy for the future. In 2005 after (and in the middle of) several corruption scandals within its different branches, including the infamous oil-for-food affair, the United Nations decided to adopt a new whistleblowing system in order to combat mismanagement within the organization. International anti-corruption conventions also include whistleblowing measures. Article 13 of the United Nations Convention against Corruption ensures the right to report (even anonymously), while Article 32 and 33 contains the obligation to protect witnesses, experts, victims and reporting persons.

International organizations use whistleblowing as a standard to assess the efficiency of domestic anti-corruption systems. Council of Europe’s Group of States against Corruption (GRECO) and the Organization for Economic Co-operation and Development (OECD) both analyzed the situation of whistleblowers in their member states in their evaluation rounds. Influential anti-corruption NGOs as Transparency International also suggest whistleblowing as best practice against wrongdoings. However, it is important to recognize that whistleblowing is hardly able to combat corruption on its own. In order to be effective it has to be an element of a carefully designed policy strategy complemented by a wide spectrum of

micro-level organizational measures and macro-level regulations providing the integrity and transparency of public life.

2.6. Whistleblowing Policies

2.6.1. International Policy Examples

Until recently in most countries whistleblowing has not been a widely recognized or accepted phenomenon. Due to the sensitive nature of disclosures and the organizational consequences of scandals each whistleblower was rather regarded as at least suspicious and threatened by professional kickbacks or legal penalties. However, there has been a slow but rather significant shift in that attitude. The private sector has recognized first that improvement of *business ethics* might contribute the companies' success. Whistleblowing procedures have been settled in organizational codes of conducts since the 1980s, especially in the U.S.A. and the United Kingdom. The codes were seen as a mutual agreement of employers and employees on their operating standards and at the same time the improvement of the image on business ethics (Benson, 1994). Codes of ethics, besides providing a moral thread in everyday life, also offer a way out from the dilemmas through the practical application of the 'principal and agent' theory. The codes aim to strike balance between the different or even conflicting interests of the management and the employees. They function as contracts that specify the rules each worker has to comply with and "the incentives and penalties which good performance/bad performance will attract" (Pollitt, 2003, p. 143).

The codes provide self-regulatory frameworks for professions to maintain their own values, standard, integrity and self-governance (Vandekerckhove, 2006). The soft law provisions included are significant for they are developed upon the special characteristics and needs of the policy area or the institution concerned (Davis, 2003). On one hand, codes represent the overall trust that society vests in professions, organizations or policy sectors. On the other hand, as most critics point out, they are capable of legitimating their privileges and autonomy (Hunt, 1994). Either way, it is understandable why state bodies, private companies as well as trade unions chose codes as a policy reaction to internal dysfunctions – organizational whistleblowing regulations are essential since discredited institutions cannot help to fight corruption or overcome 'ethical resistance' of their employees (Glazer and Glazer, 1989).

Nevertheless, they also need to be accompanied by comprehensive private and public management as well as legal reforms to prevent maladministration (Guerrero and Rodríguez-Oreggia, 2008). The most typical and followed whistleblowing policies are introduced below.

A well-functioning internal whistleblowing system can be very advantageous for any employer. It can be seen as a tendency of growing recognition of employee rights, while it sets the responsibilities according to which they shall act (Miceli and Near, 1992). Even if whistleblowing is seen as misbehaviour, there are some benefits in its promotion in an institutionalized way. First, whistleblowing enables control and correction. Second, a habitual practice might be redefined and regulated so that a work environment where a higher level of mutual trust dominates is created (Ackroyd and Thompson, 1999). Establishing secure channels and procedures by setting up rules and conditions, according to which the whistleblowers can act, might help to avoid unwanted leaks to media or scandals ruining the reputation of the organization. Anonymity is considered to be an effective way to address the fear from reprisal, though it has to be subject to careful considerations. Disclosing information without giving the name might result in serious over reporting or raising malicious claims against co-employees if the whistleblowing regulations are lacking.

The *U.S.A.* is one of the leading examples in whistleblowing policies. The 1978 Whistleblower Protection Act (along with its 1994 amendment) is among the earliest pieces of legislation emphasizing the right to freedom of speech at federal governmental workplaces. The underlying principle is that whistleblowing is protected if

an employee reasonably believes evidences illegality, gross waste, gross mismanagement, abuses of authority, or a substantial and specific danger to public health or safety (Devine, 2004, p. 74).

If disclosing the information is prohibited by a statute or executive order for being classified on national security reasons, the whistleblower is only protected if he or she turns to an agency Inspector General, or the U.S. Office of Special Counsel (Devine, 2004). Statutes cover the rights of state government officials in altogether 42 states and the District of Columbia (Devine, 2004). The evolution of the legal protection of corporate employees is often seen as an example of media impact on policy making. 2002 was a black year for huge companies such as Enron and MCI Worldcom going through serious and fatal corruption scandals triggered by whistleblowers. Later, *Business Week* declared 2002 the “year of the

whistleblowers”, while *Time* magazine chose *Sherron Watkins*, who alarmed in the Enron case, along with fellow whistleblowers “Person of the Year” (Lacayo and Ripley, 2002). The very same year the Sarbanes-Oxley Act was passed as an answer to the scandals that shook the U.S. business sector. The message was clear: disclosing wrongdoings that materially influenced the stock price of publicly-traded companies has become protected (Devine, 2004). Environmental, health and traffic sectoral laws also protect whistleblowers. It has to be noted that in 2006 the U.S. Supreme Court ruled in its judgment *Garcetti v. Ceballos* that federal employees are not protected under the constitutional right to freedom of speech when they make a statement in relation to their official duties (Roberts, 2007).

The road to whistleblower legislation in the *United Kingdom* was paved with dramatic events and disasters. Most authors analyzing the UK whistleblowing policy agree that investigations following tragedies such as the 1987 accident of the P&O ferry at the coast of Zeebrugge killing 193 people, or the 1988 explosion of the Piper Alpha oil platform with 167 victims have played significant role in agenda setting (Myers, 2004; Bowers et al., 1999). Committees, reports and media have found that the disasters might have been avoided if the employees who knew about the safety problems way in advance but were too afraid to report had been encouraged to blow the whistle. Consequently, while the U.S. whistleblower protection has always been a matter of the right to freedom of speech under the First Amendment of the Constitution, the UK aimed to launch a policy towards transparency and accountability. After a decade of corruption cases and scandals that gained wide media attention, the Public Interest Disclosure Act (PIDA) was passed in 1998. It covers all UK employees whether they work in the public, private or voluntary sector (Myers, 2004). The scope of protection is wider at ‘the first level of protection’, if the worker blows the whistle internally – inside the organization concerned or a statutory agency or trade union in charge of setting minimum standards of conduct in the sector (Myers, 2004; Bowers et al, 1999). The conditions of protection are stricter if the whistleblower opts for external disclosure (‘second level of protection’). In addition to the requirements that the information has to be true and unveiled in good faith without any purpose of personal gain, there shall be a reasonable belief of victimisation inside the organization (Bowers et al., 1999). In exceptionally serious cases going straight to the press might be acceptable too.

Certainly whistleblowing, like any policy, largely depends on the society and organizational culture it stems from. While employees in the U.S.A. and, to a large extent, the UK as well

are supposed to be rather individualistic, in *Germany* their actions and choices are more limited due to different attitudes and conventions of the people. Moreover, because of the historic experiences with dictatorship German workers, in general, are supposed to be reluctant to blow the whistle anonymously. While in the U.S.A. and the UK media and popular culture has already embraced whistleblowers, German citizens are only getting to know the term and the phenomenon. Germany is regarded as a 'culture of experts' where professionals are expected to solve all the problems, whereas in the U.S.A. and UK finding solutions is participatory process of all those concerned (Becker, 2007). However, Germany has also recognized the importance of whistleblowing as an effective measure against corruption. In 2004, in the federal public administration a directive was passed on the prevention of corruption. It has introduced an alternative solution to whistleblower protection, other than the U.S. and UK regulations. In each federal public body a contact person has been assigned whose task is to receive information about wrongdoings. The option to report is open for all employees who may turn to the contact persons without having to use the official channels beforehand. The contact person gives the information to the management, since he or she is not allowed to examine the cases or impose disciplinary measures. However, the disclosures received have to be handled confidentially and the contact person is independent of instructions of managers. The German federal whistleblowing policy was aimed to be cost efficient since no new organization has been established as employees have been appointed to fulfil the contact positions. Consequently, it is in line with the German organizational culture and has been adopted by many *Länder* (states). The German private sector applies whistleblowing policies as well, for example the national railway company, the Deutsche Bahn has an appointed ombudsman to investigate reports.

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