

Article history (leave this part):

Submission date: 28-12-2024

Acceptance date: 23-5-2025

Available online: 30 -06- 2025

Keywords:

Constitutional Democracy,
Constitutional State,
Constitutional Security,
Democratic Security, The
People, Judicial Review of the
Constitutionality of Laws.

Funding:

This research received no
specific grant from any
funding agency in the public,
commercial, or not-for-profit
sectors.

Competing interest:

The author(s) have declared
that no **competing interests**
exist.

Cite as (leave this part):

Hanan Abufares Elkhimry; .
(2024). Title. Journal of
Science and Knowledge
Horizons: 4(1), 283-293.
<https://doi.org/10.34118/jskp.v2i02.2727>



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Journal of Science and Knowledge Horizons

ISSN 2800-1273-EISSN 2830-8379

Constitutional Democracy: Principles and Dimensions

Dr. Douaisia Karima is a Lecturer (Class A) specializing in
Constitutional Law at the University of Algiers 1.

Head of the Research Team on the Constitutional State, University of
Algiers 1. Member of the Human Rights Laboratory in International
Systems, University of Algiers 3.

k.douaissia@univ-alger.dz



<https://orcid.org/0009-0000-6494-130X>

Abstract:

The evolution of constitutional thought has led to new theories that reflect the broader progression of human understanding across various fields. Constitutional provisions are among the most important elements that are subject to the logic of intellectual and jurisprudential development, based on the establishment of new foundations that take significant steps towards achieving what is known as the constitutional state. Constitutional democracy is considered a fundamental pillar of the establishment of the constitutional state, if it encompasses all aspects of citizens' lives on one hand and the state on the other, achieving the principle of balance between protecting the common good and safeguarding individual interests. Therefore, there is no doubt about the social nature of the constitutional rule, as it represents the legal organization of the relationship between the individual and the state.

Constitutional democracy encompasses multiple dimensions, including procedural political practices and the establishment of a robust institutional framework for the state. This structure must be based on stable and binding constitutional principles and foundations. This is where the criteria of the constitutional state can be achieved.

Douaisia Karima

Introduction:

Algeria is moving with a clear and defined strategy characterized by stable and serious steps towards achieving the standards of a constitutional state. This is done through a set of values and components that are in line with the evolution of modern constitutional thought, which emphasizes the functional role of the people at all levels, especially regarding the establishment of the supreme document of the state, based on the principle of the people's right to bring the constitutional document into public discourse and encourage civil society participation at all stages, starting from its preparation, through the interpretation of its rules, and reaching the implementation and enforcement of its provisions. Constitutional scholars have agreed that constitutional democracy can be defined as a comprehensive democracy aimed at achieving a set of dimensions and values. Through this definition, it can be stated that we have surpassed the classical concept of democracy and developed a forward-thinking constitutional theory that identifies dimensions of constitutional democracy, including the procedural and substantive aspects, the latter being essential components of a constitutional state. Therefore, there should be a clear demonstration of the intention and purpose of the Algerian constitutional founder in seeking to achieve independence within the comprehensive legal structure of state existence.

By adopting the principle of constitutional democracy, which is one of the most important criteria for establishing a constitutional state, and in light of the aforementioned, we raise the following issue: Is it possible to embody constitutional democracy as a legal theory if its principles are established and its dimensions are realized within the Algerian constitutional system? To what extent does the legal work in building constitutions affect its realization? To answer this issue, we propose to divide this research paper into two main axes. In the first axis, we discuss the principles upon which constitutional democracy is based, and in the second axis, we address the dimensions that underpin constitutional democracy, relying on a descriptive methodology that aligns with this new intellectual approach.

THE FIRST TOPIC : PRINCIPLES UNDERPINNING CONSTITUTIONAL DEMOCRACY.

The principles of constitutional democracy encompass a set of elements and foundational components. For instance, the principle of constitutional security incorporates fundamental underlying principles, such as the supremacy of the constitution, its democratic origin, its independence, and its function as a

guarantor and regulator of authority. Additionally, it involves other principles with various branches and applications. Each principle will be discussed in detail in this section.

FIRST REQUIREMENT: PRINCIPLE OF CONSTITUTIONAL SECURITY

Constitutional security is a relatively modern concept that has emerged as a result of the increasing threats targeting constitutional systems.¹ It is considered the highest meaning of legal security, as the constitution is the supreme legal document in the state. Constitutional security is based on fundamental elements, the most important of which are:

the stability, clarity, and comprehensiveness of constitutional legal rules, ensuring that they reach the citizens, and the stability of the legal statuses of individuals. This principle is a defining element of the constitutional state, as we rely on a formal criterion in its definition because it represents the understandable legal rule to be attained, and it acts as a guarantee for the proper implementation of legal obligations and serves as an objective standard.

Constitutional security indicates the necessity for authorities and institutions to commit to issuing clear legal frameworks characterized by effectiveness. Some have adopted both criteria, which contemporary constitutional thought aims for and which is based on a constitutional engineering that reinforces the features of the constitutional state. An understanding of constitutional security can be gleaned from its various aspects.

1. Democratic Process of Constitution-Making:

The democratic approach in the establishment of constitutions is represented by subjecting it to the method of a constituent assembly elected by the people. (Maghraoui Asma, 2021).

This assembly is composed of national frameworks and competencies from various spectrums to mandate them with the task of drafting the constitutional document in accordance with the popular will, elevating it to reflect and legally embody its aspirations.

It is considered a reflection of national consensus, as drafting constitutional rules requires the adoption of a constrained general election method, which mandates certain qualifications and expertise that the elected member and a member of the

constituent committee must possess. Consequently, the democratic method for constitution establishment is characterized by the following traits:

- * Popular election of the members of the constituent assembly.
- * Independence in drafting the constitution.
- * Constitutional legitimacy.
- * Typically recognized during periods of political transformation.
- * Aiming towards state-building and its institutions.

Algeria's constitutional system has witnessed the application of the constituent assembly approach, as seen in the drafting of the 1963 Constitution.

2.Components of a Democratic Constitution:

A democratic constitution refers to the respect constitutional rules as the supreme document of the state. All lower-ranking legal documents are subject to the higher-ranking constitutional rules according to the principle of the hierarchical structure of laws. This is only achieved by subjecting all legal rules, including international treaties and agreements, are subjected to constitutional review to uphold the principle of constitutional supremacy.

The most recent constitutional amendment in 2020 explicitly affirmed the supremacy of the constitution, and this was achieved through the implicit recognition of the features of a constitutional state, as reflected in the preamble of the reference texts governing the operation of the constitutional court in 2023.

3.The Security and Clarity of Constitutional Rules:

One of the most important subsidiary principles underlying the principle of constitutional security in establishing constitutional democracy is the principle of the security of constitutional rules and the clarity and quality of their drafting, such that they become provisions that are understandable, actionable, and tangible, as they include the practical and technical mechanisms for the enforcement of constitutional provisions.

4.Independence of the Constitution:

The constitution holds a special status as it must be protected from any breach that may affect the fundamental principles of the democratic system or the internationally recognized human rights, especially the rights of citizens enshrined in the constitutional document.

5. Protection of fundamental rights and freedoms:

The constitution guarantees individuals' fundamental rights and freedoms, enshrines and protects them, and any violation of these rights is considered a threat to constitutional security.

6. Stability of constitutional institutions:

Constitutional rules establish sovereign constitutional institutions in the state that must be stable and operate within the constitutional framework without illegal interventions.

7. Establishing constitutional limits on powers:

The constitutional court is empowered to decide on disputes and conflicts that may arise between constitutional authorities to protect the principle of constitutional security, preventing authorities from exceeding their limits or using their powers in ways that conflict with the constitution, in accordance with the provisions of Article 192 of the constitution, thereby upholding the principle of separation of powers.

8. Constitutional Oversight:

All legal rules are subject to constitutional oversight by an independent sovereign body represented by the Constitutional Court, which ensures the application of constitutional provisions and monitors new laws and policies to ensure their compliance with the constitution.

9. Combating Coups and Illegitimate Changes:

Constitutional security protects the system from any attempts that threaten the foundations of the democratic state and the political regime from any illegitimate coups. The principle of constitutional security is fundamental to ensuring the stability of the constitutional system, enhances the construction of a bridge of trust between the system and the people, and grants legitimacy to the state, while also supporting justice and social and political stability.

SECOND REQUIREMENT : PRINCIPLE OF DEMOCRATIC SECURITY:

Democratic security is a concept employed within a secure democratic system characterized by transparency in the formulation of security policies that rely on enhancing internal security in a manner consistent with democratic principles.

This principle is based on the ideas of balancing the protection of state security with the guarantee of citizens' civil rights and freedoms. It is based on the following elements:

1. Political Security:

This is achieved when the political elite develops a heightened awareness of the need to adopt dialogue and prioritize the country's supreme political interests over other concerns. (<https://mawdoo3.com>, s.d.)

2. Electoral Security:

Authorities and citizens must work in unity to achieve electoral security, maintaining the independence and freedom of the people's will, particularly in democratic systems. This is what characterizes the democratic process.

3. Protection of Democratic Rights:

This encompasses the right to parliamentary representation and the conduct of free, transparent elections. It necessitates mechanisms to monitor elections and ensure effective outcomes, alongside promoting political participation for all societal groups and citizens.

4. Transparency and Accountability:

Transparency in the exercise of power and subjecting those in authority to public accountability and subjecting them to legal responsibility is crucial.

5. Fair Application of the Law:

Ensuring that laws are applied based on the principles of justice and equity.

6. Preservation of Social Security and Stability:

This allows for the establishment and enjoyment of freedoms and rights within a secure framework, free from repression or undue restriction of political freedoms. (Rashad Saleh Rashad Zaid Al-Kilani, 3/4-7-2012)

By adhering to the principle of democratic security, a secure democratic environment can be established. This enhances the legitimacy of constitutional institutions, builds trust between the state and society, and fosters a safe and stable environment grounded in laws and democratic values.

THERD REQUIREMENT: PRINCIPLE OF LEGAL SECURITY

Legal security is a fundamental constitutional principle aimed at ensuring the stability and clarity of laws, allowing individuals to understand and comply with legal rules. It instills a sense of safety and trust in the legal system by guaranteeing transparency and protecting public rights and freedoms. (Iftesan Ouida, 2022)

Key components of legal security include:

1. Clarity of Laws:

Laws and regulations must be clear, simple, and understandable to both the general public and legal professionals, enabling compliance and adherence. (Belkheir Mohamed Ait Aoudia, 2018)

2. Stability of Laws:

This principle refers to the logical and reasonable relative stability of legal rules, protecting acquired legal positions and ensuring their consistency. (Iftesan Ouida, 2022)

3. Non-Retroactivity of Laws:

Laws should not be applied retroactively to acts committed before their enactment, with the exception in cases where the new law is more favorable to the accused. (Civil, 1975)

4. Respect for the Hierarchy of Laws:

Lower-ranking legal rules must comply with higher-ranking legal provisions to ensure coherence and avoid contradictions within the legal framework, thereby safeguarding acquired rights and the general legal system. (Hamama:)

5. Right to Appeal:

The right to appeal is guaranteed, whether through objections to administrative decisions or judicial challenges against rulings that negatively affect individuals, ensuring all actions align with the law.

By upholding the principle of legal security, a stable and secure legal framework is established for the social, economic, and political environment, fostering societal harmony and trust between the state and its citizens.

THE SECOND TOPIC: : DIMENSIONS AND MECHANISMS UNDERPINNING CONSTITUTIONAL DEMOCRACY

This section first addresses the procedural dimension of constitutional democracy, which involves the participation of the people in the establishment of constitutional rules, as well as the substantive dimension of constitutional democracy related to the constitutional rules themselves. The people are considered a fundamental pillar in the establishment of such democracy, and thus they should be involved in all stages of the creation, interpretation, and implementation of constitutional rules.

FIRST REQUIREMENT: LEGAL MECHANISMS FOR DEFENDING THE CONSTITUTION

1- The Stage of Involving the People in Establishing Constitutional Rules:

Through the stage of involving the people in drafting the constitutional rules, we seek to implement the components and standards of constitutional democracy. The first stage in which the people are involved in shaping the constitutional document is through their election of a committee or assembly composed of national frameworks and competencies proposed jointly by the parliamentary institution and the President of the Republic.

The people will then be consulted through a referendum on this list for approval or rejection, or through another method which is direct election of the proposed list made up of national figures to draft the constitutional document, especially if it pertains to a situation involving political transformation after a popular revolution or movement.

The involvement of the people in the state grants them an active functional role in participating in the formulation of public policies through various constitutional mechanisms, especially as Algeria moves towards achieving the standards of a constitutional state, with constitutional democracy being one of the most important foundations and components of such a state.

The phase of involving the people in drafting the constitutional document begins with the idea of building a modern state that evolves with current technological advancements, which undoubtedly may assist in practicing direct or semi-direct democracy through the use of information technology. The people are thus engaged in establishing constitutional rules through the method of a constituent assembly, especially in cases of near-radical political transformation of the constitutional system, as is the case in Algeria after the blessed popular movement, which subsequently adopted the method of a technical committee

composed of experts and national competencies to draft the constitutional document. However, the method of selecting this committee, which we can call a constituent committee if we consider that the content of the constitutional amendment of 2020 constitutes a new constitution that establishes a new constitutional system, has, from a formal perspective, retained the character of a constitutional amendment.

The committee was appointed in a manner that designates it as a committee rather than a constituent assembly, in order to align with the tasks it performs, specifically the constitutional amendment in accordance with the powers granted to the President of the Republic to present a draft constitutional amendment. This draft has been subjected to a popular referendum for approval or rejection.

2- Involving the public in interpreting constitutional rules:

Most constitutional systems include the right of constitutional authorities to request interpretations of constitutional rules. Referring to the Algerian constitutional system, we find that the constitutional founder granted the relevant parties the right to notify the Constitutional Court regarding the interpretation of one or several constitutional provisions so that the Constitutional Court can provide its opinion on the matter.²

Just as the right to notification has been granted for requesting the interpretation of one or several constitutional rulings, citizens and civil society can be given the right to request clarification of a constitutional rule, particularly if it underpins a right within the framework of constitutional rights and freedoms. This can be achieved by supporting the mechanism for raising unconstitutionality, which is a means provided to citizens in Algeria's move towards a tripartite judicial system. This enables them to use the interpretation request mechanism, assisting citizens in establishing their claims before competent judicial authorities or, rather, representing the proper approach for the development of the Algerian constitutional system, which is oriented toward the tripartite judiciary:

- * Ordinary judiciary that adjudicates civil disputes.
- * Administrative judiciary that resolves disputes of an administrative nature.
- * And constitutional judiciary that addresses disputes of a constitutional nature, such as conflicts that may arise between constitutional authorities,

as well as disputes that may arise between the state and citizens concerning the exercise of constitutional rights and freedoms.

An example of this is the freedom to establish political parties, where the jurisdiction falls to the administrative judge to rule on disputes that may arise between parties and the administrative authorities of the state, while the jurisdiction returns to the constitutional judge in order to achieve the standards of a constitutional state.

3- Involving the people in activating and embodying constitutional rules:

Involving the people in the stage of activating and embodying constitutional rules is a fundamental pillar for strengthening constitutional democracy and achieving actual popular representation in the management of state affairs. This can be achieved if a set of conditions are met, including, for instance:

- The spread of constitutional culture and constitutional awareness to understand rights, duties, and mechanisms for participation in decision-making.
- Relying on consultations and public opinion polls, especially by activating digitization across all sectors.
- Involving the public in key decisions through the method of public referendums.
- Strengthening and supporting civil society.
- Providing periodic reports by authorities on the implementation and application of constitutional rules and their impact on citizens and civil society.

Constitutional rules undergo essential stages, starting from their establishment to their interpretation and ultimately their activation and embodiment. This is achieved through their implementation and begins with their provisions, which impose on judicial authorities, within all their jurisdictions, to base their rulings mandatorily on constitutional rules. On the other hand, it empowers citizens to challenge decisions issued by constitutional authorities if they violate the provisions of the constitution, thereby enabling the public to exercise direct oversight over the actions of authorities that contravene constitutional rules at all stages.

SECOND REQUIREMENT: THE SUBSTANTIVE DIMENSION OF CONSTITUTIONAL DEMOCRACY.

Constitutional democracy encompasses three fundamental dimensions, making it broader and more comprehensive than democracy itself. It aims to achieve several dimensions that touch upon all social aspects, including political, economic, and social dimensions. These dimensions are explored as follows:

1- Social Democracy:

Social democracy is considered one of the oldest types of democracies known to societies, and to this day, it occupies a significant space in the political system of democratic countries. Historically, it emerged as a trend within the labor and trade union movement in Europe and evolved into a self-sustaining model, enjoying wide acceptance in many European countries. Social democratic parties are strong in countries such as Sweden, Germany, and Norway, advocating for policies aimed at improving the standard of living while preserving individual rights and promoting social justice.

Social democracy can be defined as the expansion of the civil society's participation by granting it the authority to make decisions of a social nature. It is a political and social model that integrates the principles of democracy and citizens' rights with the principles of social justice and an economy directed to benefit all members of society. This model aims to achieve a balance between capitalism and social justice by ensuring sustainable economic growth while maintaining the rights and welfare of citizens.

Social democracy focuses on several key foundations, including:

- **Social justice and equity:** Social democracy seeks to achieve the principles of social justice, eliminate destructive classism, and provide equal opportunities for everyone regardless of background or social class.

- **Mixed economy:** Social democracy requires reliance on a mixed economy that combines elements of both economic systems—between initiative freedom and a directed economy—thus granting privileges to the private sector while practicing policies of oversight and direction, and ensuring that the state provides basic social services to offer essentials like education, healthcare, and other services.- Social insurance provision. ...

- **Social Security:** The state provides a social safety net, such as healthcare insurance and retirement pensions, ensuring protection for citizens against poverty, unemployment, and illness.

-Political Pluralism: Social democracy affirms political pluralism and the freedom to exercise political rights within legal frameworks that ensure the security and stability of society, where citizens enjoy freedom of expression and participation in political decision-making.

-Trade Unions and Collective Work: Social democracy relies on union activities and supports workers' rights to organize and engage in collective bargaining to ensure fair working conditions.

- Sustainable Social Development: Social democracy is committed to the principles of sustainable social development, aiming to achieve a balance between economic growth and environmental protection for future generations.

2- Economic Democracy:

Economic democracy is a political-economic model that aims to achieve inclusive and equitable participation in economic decision-making. It seeks to ensure that economic control is not confined to a small group of individuals or major corporations, but that all members of society have a role in shaping economic decisions that affect their lives, such as labor conditions, wealth distribution, and resource management. (Joseph Massad, 2021)

Key principles of economic democracy include:

- **Participation in Economic Decision-Making:**

Workers are seen as essential economic partners, playing a key role in determining labor policies, wages, and strategic decisions in the institutions they work for. (Boukataf., 2021)

- **Fair distribution of wealth:**

Economic democracy works to reduce economic gaps and distribute wealth more equitably through progressive tax policies and social support programs aimed at achieving economic justice.

- **Shared cooperative ownership:**

Workers have the right to shared ownership of productive or service institutions instead of being under the control of individual owners or a small group of proprietors, which creates a class with economic influence and participation in economic decision-making, thereby eliminating economic stratification.

- **Local development:**

Economic democracy can enhance and encourage local development by granting autonomy for the management of local resources and making locally-oriented economic decisions, which reduces reliance on large corporations and supports economic independence.

- **Social oversight:**

Economic democracy subjects markets and large economic institutions to oversight mechanisms to ensure they do not monopolize resources or control the market in a way that leads to the monopolization of economic power.

- **Protection of Workers' Rights:**

Economic democracy supports human resources and emphasizes workers' rights to participate in decision-making, while focusing on providing a fair work environment that respects their rights to job security and adequate wages.

- **Economic Sustainability:**

Economic democracy aims to achieve a balance between economic growth and ensuring the sustainability of resources and the environment, so that economic development remains sustainable for future generations.

This model is regarded as a tool for achieving greater social justice and equitable distribution of opportunities, and it can be applied through reforms in economic policy or through progressive policies that focus on enhancing cooperative ownership and engaging citizens in economic decision-making.

This model is prominently reflected in the economic systems of certain Scandinavian and European countries, where systems are designed to promote equality, justice, and the overall well-being of society. (Nasser Mourad, Economic Reforms in Algeria,, 2010)

3- Political Democracy:

Political democracy refers to a system of governance designed to ensure citizen participation in making political decisions that affect their lives. It provides mechanisms that allow citizens to influence authorities and freely elect their representatives. Political democracy is centered on key principles that guarantee just governance, the protection of human rights, and peaceful power transition. (Seifan, 2024).

Key principles of political democracy include:

- **Popular Participation:** Citizens in a democratic system enjoy political rights, such as voting in elections and running for public office, allowing them to actively participate in decision-making.

- **Multipartyism:** Political democracy encourages and supports multiparty systems, where all citizens, without exception, have the opportunity to exercise political rights such as the right to establish political parties, compete in elections, and present alternative programs to voters.

-**Freedom of Expression and the Press:** A democratic system guarantees freedom of expression and opinion, which includes independent media and journalism that play a crucial role in providing information to citizens and monitoring government performance.

-**Peaceful Transfer of Power:** The peaceful transfer of power is considered one of the most important principles of political democracy, where power is transitioned through peaceful and legal means via elections, instead of through coups or illegitimate methods.

-**Rule of Law:** Everyone, including the authorities themselves, must respect the laws, which includes adherence to the constitution, the supreme reference in defining the limits of power and outlining individual rights.

-**Separation of Powers:** Political democracy guarantees the separation of executive, legislative, and judicial powers to prevent the concentration of authority in one branch and ensures mutual checks and balances among these branches. Algeria's constitutional amendment explicitly upholds this principle of separation of powers, as reflected in its Preamble and Title III.

-**Minority Rights Protection:** Political democracy seeks to protect the rights of minorities, ensuring their rights and freedoms are safeguarded, even if they do not constitute the majority. This is exemplified in Algeria's constitutional system, which allows for parliamentary opposition.

-**Accountability Mechanisms:** Political democracy provides oversight mechanisms to hold officials accountable through independent institutions, such as the Constitutional Court, judiciary, and elected councils, as well as the media and civil society.

-Mechanisms of Oversight and Accountability: Political democracy provides oversight mechanisms to hold officials accountable through independent institutions, such as the Constitutional Court in the Algerian constitutional system, the judiciary, and elected councils, in addition to the role of the press and civil society in accountability, as affirmed by the Algerian Constitution of 2020.

From this perspective, political democracy is implemented in several forms, including direct democracy, where citizens participate directly in decision-making, or through semi-direct democracy, such as the use of referendums on vital issues for the people, or representative democracy, where representatives elected express the will of the people in Parliament or local councils.

Thus, political democracy is the foundation upon which modern democratic states are built; it is a political model that seeks to achieve fair and transparent governance that reflects the will of the people and protects their rights and freedoms, as exemplified by Nordic countries. Conversely, in Africa, Somalia represents a non-successful model in its political system.

Conclusion:

In conclusion, it is worth noting that substantial amendments to the constitutional document may be introduced in the near future, as clearly indicated in the first commitment of the President of the Republic (54) concerning constitutional amendment. These constitutional reforms aim to enshrine the standard of constitutional democracy within the provisions of the constitution due to its utmost importance, and to translate it through a range of legal and constitutional mechanisms, thereby embodying it in reality. This is particularly significant given that the new constitutional system seeks to establish a completely independent methodology from traditional approaches, adapting to the conditions and characteristics of Algerian society. As mentioned earlier, constitutional democracy is a true embodiment of a constitutional state, as it represents a fundamental and essential pillar for its establishment, especially when all its principles and procedural and substantive dimensions related to the constitutional rules themselves are met to achieve constitutional democracy.

One of the requirements of a constitutional state is to achieve standards of constitutional democracy through a set of legal mechanisms mentioned in the considerations of this proposal, particularly with regard to ensuring citizen participation in the creation of constitutional rules on one hand, and also their involvement in interpreting constitutional rules through their constitutional institutions, including the judiciary, on the other hand. Constitutional democracy

does not limit itself to these measures alone but extends further to ensure citizen participation in implementing constitutional rules across all institutions, sectors, bodies, and groups.

Regarding the mechanisms for the practical realization of constitutional democracy, it is deemed necessary to grant the people the right to select the committee or constituent body responsible for establishing constitutional rules within a defined electoral framework. Furthermore, citizen participation in the process of interpreting and interpreting constitutional rules can be facilitated through national constitutional expertise by establishing a national academic authority specialized in constitutional matters to formulate the correct, logical, and sound rules for interpretation.

In the phase of activating constitutional rules, citizens can participate in the process of activating these rules based on the dissemination of constitutional culture and its implementation in any document produced either by institutions or by citizens.

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