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TRANSFORMING JUSTICE SYSTEMS FOR CHILDREN IN MIGRATION POLICY PAPER



CFJ-EN

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TABLE OF CONTENTS

I.

Acronyms

II.

Recommendations

III.

Context

IV.

**Urgency to
act**

V.

**Choosing
child-centred
systems**

VI.

**Time to act - 14
actionable
recommandations**

VII.

**Who we
are**

VIII.

**Useful
Links**



CFJ-EN

I. ACRONYMS

CFJ	Child Friendly Justice
CFJ-EN	Child Friendly Justice European Network
CoE	Council of Europe
CRC	Convention on the Rights of the Child
EU	European Union
FRA	European Union Agency for Fundamental Rights

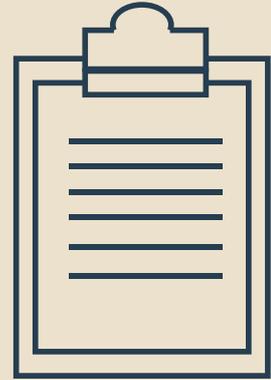


II. RECOMMENDATIONS



Eliminate all barriers to increase child participation: linguistic, information, education

Ensure child friendly individual assessments

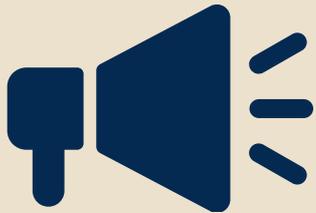


Guarantee the presumption of minority and the effective access to justice through guardians or presence of parents

Provide free of charge and quality legal assistance



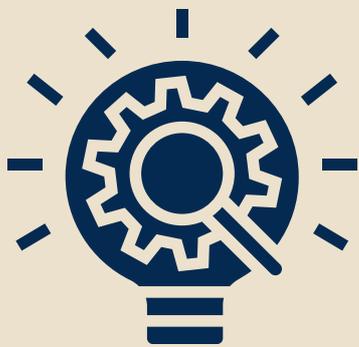
Prevent trafficking and exploitation of children in migration



Prohibit migration-related detention of children



Train all professionals working with children in migration



Put in place Integrated child protection systems

Allocate resources for access to justice for children in migration





"With legal guidance and proper support, these youth can overcome obstacles and aspire to a future filled with success"

Rahmat Amiri, Afghan Refugee

III. CONTEXT

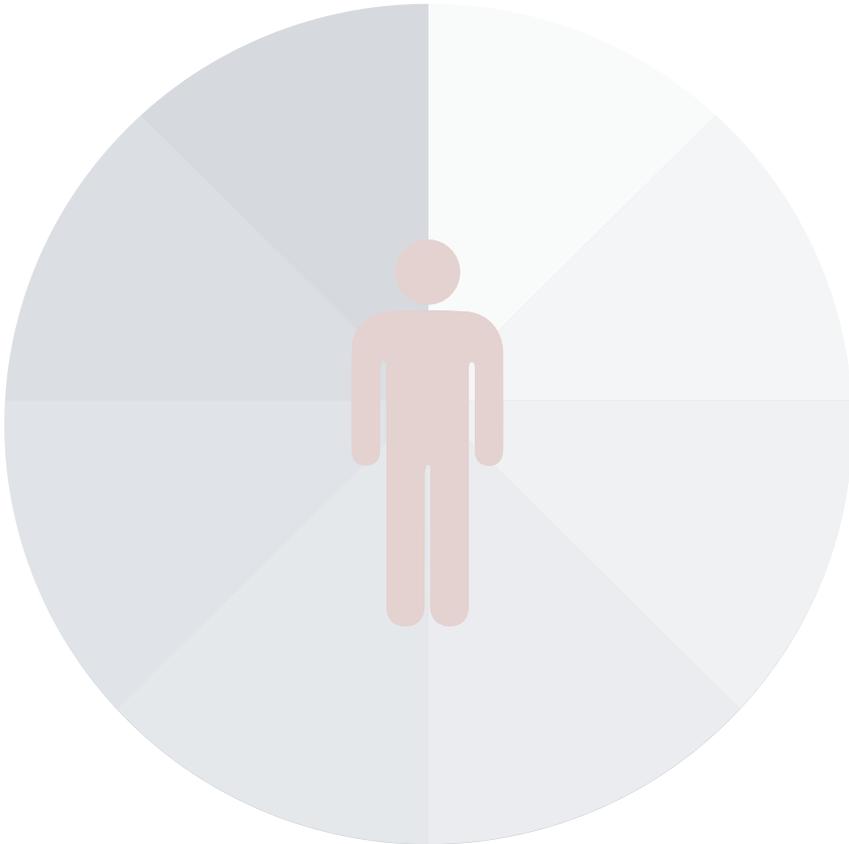
This policy brief is an outcome of the **Annual Seminar** on 27 October, organised in Genoa, Italy by the CFJ-EN, in close partnership with Defence for Children International Italy. The aim was to shed light on the **diversity of situations and challenges** children in migration are facing while attempting to **access justice and legal remedies** and to push towards **transforming justice systems to fit the needs of children in migration**.

All outputs of this paper are a result of discussions on shared practices and solutions by experts and key stakeholders in Europe working in the area of child friendly justice and migration. A high importance was given to the views of young ambassadors from Greece and Italy who shared their experiences but also called for clear solutions and recommendations to be addressed to policy makers. Let's give them a voice.

Recent trends in how children in migration are treated in criminal and administrative justice systems are concerning. The 2019 Global Study on Children Deprived of Liberty, conducted by Independent Expert Manfred Nowak and supported by the UN, reveals a distressing reality where at least 330,000 children are annually detained globally for migration-related reasons. This sobering statistic underscores the urgent necessity for a rights-based approach to safeguard the well-being of vulnerable migrant children worldwide. (Source: UN Global Study on Children Deprived of Liberty).

It is worrisome to notice that the frequent use of the term "return" over "rights" in the Commission Communication on the EU Pact on Migration and Asylum reflects potential imbalances in the prioritization of repatriation over human rights considerations in EU migration policies. This linguistic discrepancy raises questions about the rights-centric approach within the European Union. (Source: PICUM)

In addition, the unprecedented surge in migrant arrivals in Europe during January-June 2023, particularly the threefold increase to 64,930 arrivals in Italy, has thrust the issue of immigration back into the center of national and European public debate. This escalating trend highlights the complexity of immigration challenges and necessitates comprehensive strategies at both levels of governance. Within Italy, the situation in penal institutions for children is particularly significant, with 51% of the 1,051 children and young adults entering in 2022 being foreigners, according to the Ministry of Justice, Office II. This statistic underscores the intersection of immigration policies and juvenile justice, emphasizing the need for nuanced approaches to address the specific challenges faced by young migrants within the broader discourse on immigration. (Source: Ministry of Justice, Office II, Italy)





IV. URGENCY TO ACT

Children in migration must be considered **first and foremost as children** and should be afforded all the rights contained in international, regional and national legislation. In all actions concerning children in migration, the **principle of the best interests of the child** must be a primary consideration. Involved in administrative proceedings, while a lot of them are involved in administrative proceedings, some of them are also overrepresented among children suspected, accused or condemned for a crime. They are more at **risk of becoming victims of trafficking or exploitation, and/or victims of discrimination** as a result of the **ever-growing xenophobic narratives in Europe with new legislative provisions as a result**. Before civil or criminal courts, they may face **additional burdens in accessing justice, reparation and compensation**.

All children in migration should be guaranteed **equal standards of protection, reception and especially in care arrangements**. Additionally, a **gender-responsive migration governance is needed**, which refers to the importance of laws, policies and programs recognizing and addressing the different experiences, needs and vulnerabilities faced by girls, boys and gender non-conforming children in migration. Raising awareness and addressing these issues within society is crucial, as **discrimination** against children in migration unfortunately remains a barrier in their access to justice. Underscoring the urgent need to address justice for children on the move should be the concern of all policy maker and practitioner in contact with children in migration.

Collaboration and a synergic network are deemed essential, focusing on healthcare considerations, cultural-linguistic mediation, and **recognizing the diversity** among children on the move. The **underrepresentation of children in migration cases** in International and European Courts was highlighted, urging their centrality in decision-making. Recent research emphasizes the **need for transparent and child friendly asylum procedures** within the broader context of **trauma and discrimination**. Calls have been expressed for **alternative migration policies**, for questioning budget allocations, and for humanizing experiences through art. All experts present during the seminar advocate clearly for a more humane and effective approach to child protection in the migration context.

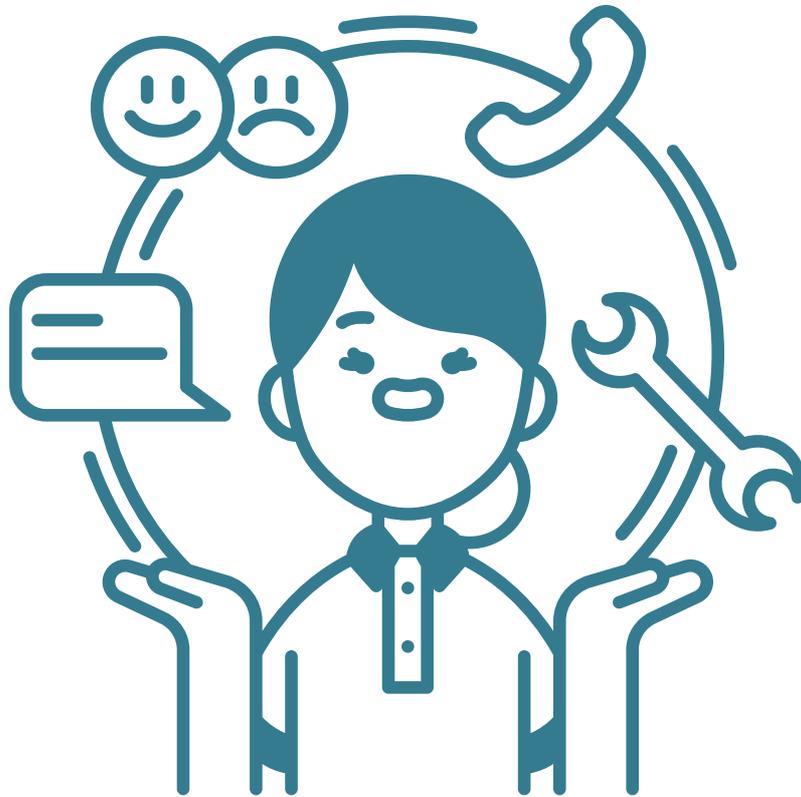
The experts who gathered during the 2nd Annual Seminar of the CFJ-EN on “Transforming Justice Systems for Children in Migration” in Genoa, Italy, on 26-27 October 2023, highlighted that Italy is one of the border Member States which represents an important point of entrance, transit and residence in Europe for thousands of unaccompanied children, but most of all because the latest political developments in the country risk to pose serious threats to fundamental rights of children in migration. Indeed, the new Law Decree on Migration and Security includes some alarming novelties such as shifting the burden of age assessment to the child, applying age assessment procedures in contrast with international standards, placing children in facilities hosting adults and migration-related detention of children. Discussions emphasised comprehensive care for unaccompanied foreign minors in Italy, pushing for the importance of regularizing their stay for integration. This also applies in other points of entrance, transit and residence in Europe such as Greece, France and Spain.

V. CHOOSING CHILD-CENTRED SYSTEMS

This section focusses on clear pathways for policy makers in order to opt for child-centred systems, meaning to give weight to the views of children, to see them as agents for change, to ensure compassionate and trauma informed support, and to innovate in their access to justice.

Young people expressed the need to promote mechanisms that support them rather than promote mechanisms that hinder their well-being.

The message is clear and loud: **Empower those who can make a change.**



Giving due weight to children's views at every stage of the justice system

Ensure that their perspectives are considered in decision-making processes

Several clear recommendations have been put forward by experts:

- **Advocate for professional competence in Children's Rights among legal and justice professionals** - This suggests a need for continuous training and updating to ensure a strong understanding of and adherence to children's rights
- **Support holistic solutions through specialized courts on children, aligning with international principles** - These courts aim to provide holistic solutions and overcome conflicts in decision-making processes related to children in migration
- **Call for mandatory legal assistance** – Ensure that all children in migration have proper representation throughout legal proceedings
- **Recognize the importance of non-verbal language considerations** - This could involve training professionals to understand and interpret non-verbal cues from children
- **Establishing Child-Centered Systems that prioritize the child's right to be heard** - This involves creating frameworks and processes that are centered around the best interests and well-being of the child
- **Allocate resources for justice systems handling cases involving migrant children** Which could include financial investments, training programs, and other measures to enhance the effectiveness and fairness of the justice process
- **Highlight the critical need for child appropriate accommodation, healthcare, social support, and education** - This emphasizes the broader context of wellbeing beyond legal proceeding



Children as agents for change

Young people have shared their recommendations to transform justice systems for children in migration

- **Highlighted need for language assistance and support for new arrivals**, particularly in the context of challenges faced in Greece's education system
- **Expressed need for care, assistance, love, and a safe place for such children**
- **Importance of guardianship and legal guidance** to help unaccompanied minors navigate the asylum process
- **Essentials for well-being** are education, fun, shelter, and compassion
- **Diminish challenges in living conditions, including transfers and crowded facilities**
- Include **more support in adapting to the system, language, and culture**. They called for more support, opportunities, and extended shelter
- Called for necessity for a **more supportive and inclusive system**, where every child feels welcome and has the opportunity to learn, integrate, and succeed
- Urged policymakers to **remove borders and prioritize human rights**
- Called to **reimagine the asylum interviews** by focusing on truth-finding rather than leading them to adapt to the rigid bureaucratic system. The asylum interview is a pivotal moment in the procedure, **impacting children's participation in decision-making**, and it is often viewed as an "ultimate test," igniting fear and mistrust

"By prioritising human rights, we can create a future where every refugee has the opportunity to integrate and contribute positively to society"

Ammar Abou Assaf, Syrian Refugee



Compassionate & trauma informed support for migrant children in the justice system

There is a pressing need for practitioners skilled in listening, trauma awareness, and identifying triggers to create safe spaces including the right to participate and access information for migrant children

Some clear recommendations have been identified:

- Prioritise **trauma-informed training** for professionals to create a safe environment for children in migration
- Emphasise **cultural sensitivity** in understanding and addressing trauma in diverse backgrounds
- **Build trust** with children by respecting their preferences and **actively listening** to their experiences
- **Avoid re-traumatisation** in official processes, like asylum interviews, by minimizing trauma triggers
- Ensure **access to specialised mental health services** and resources for traumatized children, and promote preventive measures to address root causes of trauma



Game changer innovations in access to justice for children on the move in times of crisis

Emphasising the importance of working with governments through the OECD Framework for child-friendly justice. The framework revolves around four pillars: people-centered services, governance enablers and infrastructure, people empowerment, and planning, M&E, and accountability. The framework's uniqueness has been highlighted and lies in being owned by governments, focusing on culture and practice of people-centered justice.

Core components transforming children's access to justice and remedies and exploring game-changing interventions are identified:

- **Promote Child-Centred Culture** - Encourage a cultural shift within the justice system globally to prioritise a child-centred approach, focusing on the unique needs and experiences of children. This involves fostering a mindset that places the wellbeing and rights of children at the forefront of justice-related decisions
- **Empower Children in the Justice System** - Globally advocate for solution-oriented initiatives that empower children within the justice system. Ensure that children are active participants in decision-making processes that affect them, emphasizing their right to be heard and respected as individuals with agency
- **Data-Driven Policies and Comprehensive Research**- Call for the development and implementation of data-driven policies globally, informed by comprehensive research and evidence-building. This involves overcoming barriers in data collection, including ethnic data, to inform decision-making and improve outcomes for children in justice systems worldwide
- **Societal-Level Attitude Change - Advocate for a broader societal-level** attitude change globally to address discrimination, bias, and stigma associated with children in the justice system. This recommendation emphasizes fostering a more inclusive and supportive environment for children, transcending regional and cultural contexts. Include the role of the broader community and the media in welcoming migrants
- **Consistency Among Multiple Guidelines and Frameworks** - Globally emphasize the importance of consistency among various guidelines and frameworks related to childfriendly justice. Maintain high standards across jurisdictions to ensure that childfriendly justice measures adhere to universal principles, avoiding the lowering of ambitions and shifting towards an "alliance" mindset in governance

In order to reimagine justice systems that adapts to the needs of the children and young people, creative reasoning emerged

- Emphasise the **importance of the Agenda for Action**, focusing on strategic levers to achieve SDG 16.3 for children, including building partnerships, developing financing strategies, using evidence and data for childcentered reforms, and scaling up justice innovations while safeguarding digital tools for children
- **Recognise the crucial role of pro bono lawyers** in assisting unaccompanied child asylum seekers, proposing low-cost services and financial incentives for lawyers
- Stresses the need for training children's associations and NGOs in legal aspects and calls for an increase in the number of guardians and ad hoc administrators to provide follow-up and assistance
- **Advocate for holistic assistance** for unaccompanied children during the waiting period for appeal hearings, addressing social, financial, and housing assistance needs. Adopt practical measures, such as a ban on radiological bone examinations, prioritising the well-being and rights of children throughout the asylum process
- **Prevent human trafficking** - Highlight the need for swift reception and meaningful inclusion for unaccompanied minors to prevent human trafficking. Identify indicators of trafficking risk and recommend efficient reception measures, including placing minors in suitable age-appropriate facilities. Advocate for mandatory legal representation, guardianship, and consultations with judges
- Emphasise the need for **legal solutions that enable children to challenge decisions** effectively and advocate for the establishment of a **child-friendly justice system**

"Despite the challenges, every arriving child has the potential to thrive with adequate linguistic and educational support."

Bakary Fatty, Gambian Refugee

VI. TIME TO ACT - 14 ACTIONABLE RECOMMENDATIONS

Listing **14 key messages** and concrete demands for action-grouped **into 9 main topics**-, this conclusion focusses on adapting justice systems and harmonising them with international and European standards concerning child friendly justice and migration. Many of these findings also apply to young people, since many of the barriers cited do not suddenly disappear upon reaching majority. It offers some actionable recommendations for policy makers working with children who are involved in criminal and administrative proceedings as suspects, accused or convicted of a crime, victims of a crime, witnesses, and third parties.

This policy brief calls for a **creation of child-centred provisions and guidelines for children in migration**, and for professionals to improve their understanding of migrant children needs and barriers to fair and accessible justice systems.

"By investing in education and creating opportunities, we can help these youth build a promising future despite the challenges they face."

Ibourahim Diarra, Malian Refugee

1. Eliminate all barriers to increase child participation: linguistic, information, education

1.1. Linguistic barrier - Professional interpretation and cultural mediation services must be provided to **eliminate language barriers** and to ensure that children in migration can effectively communicate and understand the processes and legal proceedings they are involved.

1.2. Educational barrier – This might be one of the most highlighted demand. In order to empower to children, they must have access to education without any barrier.

1.3. Information barrier - State authorities should provide children in migration **information** about legal remedies, children's rights and the legal procedures they are going through in a **child friendly manner** (adapted to their child's age, maturity, language, gender and culture) and in a language they can understand. All children in migration should be informed about their **right to express their views** in every stage through interviews and consultations, but also throughout the whole procedure (required by article 12 UN CRC).

2. Guarantee the presumption of minority and the effective access to justice through guardian or presence of parents

2.1. States should ensure that **unaccompanied or separated children in migration have a high quality and well-trained guardian appointed** or designated **without undue delay. Harmonisation of guardianship in Europe is needed** to create consistent standards for guardianship of unaccompanied minors across European countries.

2.2. States should put in place **family reunification procedures** that give the right to all children in migration that have been separated from one of both of their parents, to be reunited **without undue delay and without unduly far-reaching conditions.** Decision makers must consult children during these procedures.

2.3. Additionally, states must adapt the **age assessment** procedures in a more holistic and child-sensitive method and by applying the **presumption of minority.**

3. Ensure child friendly individual assessments

3.1. Screening measures and individual assessments at borders must be child friendly, gender-responsive and conducted in a manner that is disability- and culturally sensitive to ensure that all children and young people are treated with due process and dignity.

3.2. Officials conducting screening assessments must be **trained** to recognize and understand the individualised experience of trauma child victims and to respond properly to ensure that the child is supported appropriately.

4. Provide free of charge and quality legal assistance

4.1. States **must ensure the free of charge and quality legal representation and assistance** for all children and young people in migration in order to safeguard their rights. Barriers related to bureaucracy, language and limited resources must be eliminated.

5. Prohibit migration-related detention of children

5.1. States should **prohibit migration-related detention of children**, including de facto detention as return houses, and they should create a legal framework that protects children from being separated from their parents who are detained.

6. Prevent trafficking and exploitation of children in migration

6.1. Children in migration are at heightened risk of becoming **victims of trafficking and exploitation** and many times, children who committed offences may be victims themselves of trafficking and/or exploitation. Intervention strategies such as the psycho-social-legal support by trained professionals and awareness raising campaigns should be put in place to identify and protect them from such risks and to prevent any punishment of children for offences being compelled to commit due to the trafficking situation.

6.2. Through legal assistance and psycho-social support, child victims of trafficking and exploitation must have **access to compensation and rehabilitation**.

7. Put in place Integrated child protection systems

7.1. States should create integrated child protection systems that put **children in migration at the centre, connecting the actors** working on their welfare and **facilitating the coordination** of the various procedures in which children in migration may be involved. **Shared language and understanding** are core components of any such system.

7.2. EU should continue to strengthen rights-based integrated child protection systems, which requires **structured cooperation between various stakeholders** (child protection/social services, health services, guardians, schools, police, etc).

8. Train all professionals working with children in migration

8.1. States **must ensure continuous training and capacity building programs** and professional development of all professionals coming into contact with children in migration (lawyers and judges, cultural mediators, interpreters, professionals in care system, officers undertaking interviews, psycho-social workers, etc).

9. Allocate resources for child friendly justice

9.1. States should safeguard **fair and non-discriminatory allocation of funding or programs and services** for the protection of children in migration.



VII. WHO WE ARE

Composed of 31 Members (NGOs, academic institutions, individual experts) across 20 European countries, the **Child Friendly Justice European Network**'s main objective is to ensure that justice systems are adapted to children's needs, specificities and vulnerabilities. More specifically, it aims to empower children to have their rights respected in legal proceedings, to have their voices heard in a participatory manner and to strengthen their capacity to advocate for their own rights.



VIII. USEFUL LINKS

- [Protecting children at Europe's borders – new guidance for border officials and other authorities \(FRA, 2023\)](#)
- [Access to Early Childhood Education and Care for Undocumented Children and Families \(PICUM, 2023\)](#)
- [Analysis of the most important unresolved issues in the Legislative Reform of the common European Asylum System \(Ceas\) and Recommendations to the Co-Legislators \(ECRE, 2023\)](#)
- [Handbook, Child Friendly Justice in Europe \(CFJ-EN, 2023\)](#)
- Films or documentaries, like "[Paper Borders](#),"
- [Report on Enforcing the Rights of Children in Migration \(Children's Rights Study Group, 2023\)](#)
- [A court for Migrant Children. What does it look like?, 2023, Equal justice for Migrant Children \(First Rights, 2023\)](#)
- [Handbook for frontline professionals on how to convey child-friendly information to children in migration \(Council of Europe, 2018\)](#)
- [Recommendation on effective guardianship for unaccompanied and separated children in the context of migration \(Council of Europe, 2019\)](#)
- [Promoting child-friendly approaches in the area of migration \(Council of Europe, 2019\)](#)
- [Recommendation on human rights principles and guidelines on age assessment in the context of migration \(Council of Europe, December 2022\)](#)
- [Strategy for the Rights of the Child \(Council of Europe, 2022-2027\)](#)
- [ECtHR, Mubilanzila Mayeka and Kaniki Mitunga v. Belgium, 2006](#)
- [ECtHR, Rahimi v. Greece, 2011](#)
- [ECtHR, Popov v. France, 2012](#)
- [ECtHR, Moustahi v. France, 2020](#)
- [ECtHR, Darboe and Camara v. Italy, 2023](#)



For more information or any questions related to the CFJ-EN, please contact:

Mariama Diallo

Coordinator, Child Friendly Justice European Network

mariama.diallo@cfjnetwork.eu

www.cfjnetwork.eu

+32 2 203 79 08

Lotte Buekenhout

Advocacy Officer, Child Friendly Justice European Network

lotte.buekenhout@cfjnetwork.eu

www.cfjnetwork.eu



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c/o Defence for Children International Belgium ASBL
30 Rue du Marché aux Poulets, 1000 Brussels, Belgium
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