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Monitoring of the post-electoral situation in Ukraine (28.10.2012 – 16.11.2012)

Abbreviations:

CEC – Central Election Commission – government body that has the authority to organise the preparation and conduct of elections in Ukraine.

DEC – District Election Commission – collegial body, subordinate to CEC, which has an official stamp and is a higher commission for all precinct election commissions within a particular electoral district.

'Berkut' - special police units of the Ministry of Internal Affairs of Ukraine, whose main objective is the detention of dangerous criminals, maintaining of public order and the suppression of mass riots.

Summary of election results

On the 10th and 11th of November, 2012, the CEC proclaimed official results of the parliamentary election, but in five disctricts the results have not been determined.

On the 10th of November, 2012, the CEC proclaimed official results of the election from party lists. Party of Regions won 30% of votes, 'Batkivshchina' - 25.54%, 'UDAR' - 13.96%, the Communist Party of Ukraine - 13.18%, 'Svoboda' - 10.44%. On the 11th of November, 2012, official figures were announced from 220 single -seat districts (out of 225). As stated by the CEC, the districts: No. 94, No. 132, No. 194, No. 197 and No. 223 "could not determine the result".

On the 13th of November, 2012, The Supreme Administrative Court of Ukraine forbade the CEC to announce the results of the election in the districts No. 11 and No. 14, and to publish the CEC's official reports on the results of the voting in these districts. But the official results had already been published on the morning of the same day.

Sources:
http://www.cvk.gov.ua/vnd2012/wp300pt001f01=900.html
http://www.pravda.com.ua/rus/news/2012/11/13/6977402/

Flagrant violations of the electoral law, which questioned the legitimacy of the result of the vote, have been noted in several districts. Below we present a brief report on the districts, in which the CEC could not determine the results.

District No. 94 (Kiyev Province, the town of Obukhov)

In district No. 94, Tatiana Zasukha (Party of Regions) and Viktor Romaniuk ('Batkivshchina') were competing. On the 31st of November, 2012, Tatyana Zasukha's observers submitted 17 claims to the city court, argu-

ing that they were not allowed in the meeting of district committees, and they demanded that the results in these districts be declared invalid. But representatives of the district commissions claim that all observers were present in the room and no decision was made to prevent any of them from patricipation in the meetings. Viktor Romaniuk made allegations of bias directed at the court as they ruled in favour of Tatiana Zasukha despite the fact that the observers who 'did not take part' in the meetings, signed the minutes to confirm their presence.

First, the DEC made a decision to recount the votes, but they later refused to do so, as they intended to act in accordance with the court decisions, i.e. to cancel the election results in several districts, as quickly as possible:. On the 4th of November, 2012, the DEC recognised Tatyana Zasukha as the winner.

Sources:
http://www.pravda.com.ua/rus/news/2012/11/1/6976433/
http://www.pravda.com.ua/news/2012/11/4/6976638/

District No. 132 (Pervomaysk, Nikolayev Province)

In one of the most problematic districts, the opposing candidates were Vitaliy Travyanko (Party of Regions) and Arkadiy Kornatskiy ('Batkivshchina').

According to local journalists, on the 30th of October, 2012, armed police officers and 'Berkut' burst into the DEC room. After that, the head of the DEC left the uninterrupted meeting, returned after 40 minutes and started to make changes in the system in favour of the pro-government candidate. After that, the residents of the city came to the door of the DEC with a demand that the fraud be stopped. On the 1st of November, 2012, the data on the CEC website has changed in favour of the government candidate Vitaliy Travyanko, and after that, the DEC pronounced him the winner. Before producing the final protocol, the DEC members demanded that journalists leave the meeting room. On that day, a verdict of the Nikolayev District Administrative Court was brought to the meeting room of the district commission No. 132, on the seizure of all of the protocols of the district election commissions in order to recount the votes.

On the night of the 2nd of November, 2012, people who identified themselves as members of the executive service, along with the 'Berkut' units, occupied the DEC room and seized the original protocols which came from precinct election commissions. No official statement of transfer and acceptance of the election documents has been drawn up. According to eyewitnesses, during the capturing of the DEC room, tear gas was used.

As the 'Berkut' workers were leaving the room, they began to use force against citizens who had gathered near the DEC in order to prevent the removal of ballots. Several civilians were injured. As a result, the way for the 'Berkut' bus was blocked by 5 Kamaz trucks, belonging to one of agricultural companies. On the 2nd of November, 2012 at 11:03 a.m. member of parliament; Gennadiy Moskal and local opposition leader Vadim Merikov managed to force their way into the 'Berkut' bus. The deputies left the bus with a bag of ballots, which was carried into the DEC room. Four hours later, 'Berkut' stormed the DEC room again and violently seized protocols with ink stamps which they subsequently transferred to the Nikolayev District Court. According to an eyewitness - member of parliament Gennadiy Moskal, actions of the 'Berkut' where controlled by the Party of Regions' deputy Sergey Mayboroda. During the storming, the 'Berkut' again forced back people gathered near the DEC. The Ministry of Internal Affairs announced that 'Berkut' acted lawfully, fulfilling the decision to seize protocols, issued by the Nikolayev District Administrative Court.

The DEC members appealed to the CEC in connection with this incident. On the 3rd of November, 2012, during the trial it was revealed that the protocols which had been brought to the court do not correspond to the certified copies, kept by representatives of the opposition candidate. Fraudulent (according to the opposition) protocols were taken to the DEC for recounting. On the 3rd of November, 2012, Chairman of the DEC, Vasiliy Mikityuk took the precinct protocols to the CEC, but there it was determined that the figures in the final report did not correspond to the data contained in protocols, obtained from

the precincts. Protocols were sent back for verification of authenticity. The CEC was unable to determine the results of elections in this district.

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http://tvi.ua/protokoli_z_pervomayska_vivezli_zakonno_%E2%80%93_mvs
http://news.pn/ru/politics/68045

District No. 194 (Cherkassy)

In this district, an opposition candidate Nikolay Bulatetskiy ('Batkivshchina') won, leaving behind self-nominee Valentina Zhukovskaya by a margin of 12 thousand votes. As of 31st of October, 2012, Valentina Zhukovskaya and other candidates filed approximately 200 lawsuits with a demand that the election be recognised invalid. On the 2nd of November, 2012, the DEC proclaimed Nikolay Bulatetskiy the winner. On that same day, the Cherkassy District Administrative Court issued a decision on recounting of votes in 8 polling stations. On the 3rd of November, 2012, opposition representatives reported that the DEC members were subjected to pressure from local authorities. On the 11th of November, 2012, the CEC announced that "it was impossible to determine the election result" in this district.

Source:

http://www.pravda.com.ua/news/2012/10/31/6976351/

District No. 197 (the Cherkassy Province, the town of Kanyev)

The two election rivals in the district were self-nominee Bogdan Gubskiy (MP) and Leonid Datsenko ('Batkivshchina'). On the 30th of October, 2012, theChairman of the DEC refused to enter into the electronic system data from the protocols with ink stamps, according to which the oppositionist Leonid Datsenko was the winner. It was revealed that the data in some protocols did not correspond to the data obtained from the precinct commissions.

On the 31st of October, 2012, some members of the DEC received threats frm unknown people with demands not to attend the meeting of the commission. As of the 1st of November, 2012, twelve members of the DEC of eighteen were not present at work, and the data had not been entered into the electronic system. On the 1st of November, 2012, civil society organisations carried out an alternative count of votes according to the protocols with ink stamps, according to which Leonid Datsenko won by a margin of five thousand votes.

On the 3rd of November, 2012, opposition representatives announced that the DEC is sending protocols back for 'clarification' to the polling stations, after which the number of votes in favour of Bogdan Gubskiy increased. On the 5th of November, 2012, while the DEC was still receiving reports from individual polling stations, the information pertaining to the victory of Bogdan Gubskiy, based on 100% processed protocols, was placed on the CEC website.

On the 7th of November, 2012, the DEC had not yet decided on finalisation of the count, as representatives of Bogdan Gubskiy, accompanied by 'Berkut' units, burst into the DEC building, after which head of the DEC opened the safetydeposit box with the documentation and went along with Bogdan Gubskiy to submit the documents to the CEC. There was no decision taken by the DEC on the completion of vote counting.

Sources:

http://www.pravda.com.ua/rus/news/2012/11/1/6976384/
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District No. 223, Kiev

A battle unfolded between the self-nominated Viktor Pilipishin (deputy of the Kiev City Council) and Yuri Levchenko (the 'Svoboda' party).

On the 29th of October, 2012, the CEC recorded that the data from 4 districts, entered into the electronic system, did not correspond with the data in the protocols with ink stamps. On the 31st of October, 2012, a fight began in the room between the supporters of Yuriy Levchenko and of Victor Pilipishin, in which law enforcement forces intervened; tear gas was sprayed.

On the 1st of November, 2012, after Deputy Chairman of the Commission, Anastasiya Primak made a decision to recount votes in one of the districts, representatives of Yuriy Levchenko blocked the DEC members in the rooms, and, as a result, a scuffle entailed with the police who were trying to prevent these actions. As a consequence, the DEC deputy chairman was injured. In the courtyard of the DEC building, a brawl between unidentified persons and Yuriy Levchenko's supporters began. The police cordoned off the people in order to separate them. During the recounting it was discovered that some of the ballots with votes for Yuriy Levchenko had been destroyed.

On the 3rd of November, 2012, Viktor Pilipishin representatives filed a lawsuit in the District Administrative Court of Kyiv, demanding that a recounting of votes be carried out in 11 districts. The court granted the motion. During the recount, the 'Berkut' units were not allowing journalists into the DEC room. On the 9th of November, 2012, the DEC proclaimed the victory of Viktor Pilipishin by a margin of 442 votes, but by that time, the decision of the Central Election Commission on the impossibility to determine the result in the district had already been issued.

Sources:
http://news.liga.net/news/politics/757670-tsik_grozit_sisadminam_ugolovnymi_delami_za_iskazhenie_rezultatov.htm
http://www.youtube.com/watch?feature=player_embedded&v=Nd__os-UdyA#!

Gross violations have also been recorded in other districts: No. 11 (Vinnitsya), No. 108 (Lugansk Province), No. 176 (Kharkiv Province), No. 21 (Volyn Province), No. 99 (Kirovohrad Province), No. 211 (Kiev). On the 1st of November, the civil movement 'Spilna Sprava' ('Common cause') stated: on the basis of the results of the parallel vote count it can be argued that the election was rigged in 35 districts.

Source:
http://www.spilnasprava.com/wp/?p=12316

Statement of former Prime Minister Yulia Tymoshenko

On the 29th of October, 2012, the sentenced former Prime Minister Yulia Tymoshenko went on hunger strike as a sign of protest against election fraud. In her statement, Yulia Tymoshenko called this election the most 'dishonest' in the history of independent Ukraine, and said that she cannot considered as legitimate the parliament which was elected with such evident fraud on the part of the authorities. In connection with the declared hunger strike and the necessity of the convicted to remain under the supervision of doctors, on the 30th of October, 2012, the prison service cancelled the previously scheduled meeting of Yulia Tymoshenko with the head of the observer mission of the OSCE, Ms. Walburga Habsburg. The head of the mission announced that such a refusal is a violation of human rights. On the 10th of November, 2012, Ukrainian doctors examined Yulia Tymoshenko and suggested that she give up the hunger strike. On the 15th of November, 2012, after a meeting with German doctors, Yulia Tymoshenko agreed to put an end to her hunger strike.

Sources:
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The reaction of the international community to the post-election situation in Ukraine

International observers and officials have expressed their concern over the flagrant violations of electoral law and stated that there is a visible threat to democracy in Ukraine.

In particular, this election was called 'a step back in the democratic development of Ukraine' by theForeign Minister of Sweden, Carl Bildt, the OSCE Mission, the U.S. State Department and the U.S. Secretary of State Hillary Clinton. Also, the Ukrainian election caused disillusionment and concern of the NATO Secretary General Anders Fogh Rasmussen, Minister for Europe of the British Foreign Ministry David Lidington and U.S. Vice President Joe Biden.

On the 29th of October, 2012, the OSCE Observation Mission stated that the election was characterised by a lack of a level playing field, primarily by the abuse of administrative resources and the lack of balanced media coverage. On the 2nd of November, 2012, the Ministry of Foreign Affairs of Ukraine has officially declared that it disagrees with critical assessments made by the OSCE Mission and finds them baseless and emotional. At the meeting with observers from the OSCE, which was held on the 2nd of November, 2012, Prime Minister of Ukraine, Mykola Azarov announced that the government and the ruling party were not involved in the violations committed at the election districts and in the 90% of the territory of Ukraine, the election process and vote count were conducted with no violations. Mykola Azarov considers this election the best in the history of independent Ukraine, confirming the progress of democracy.

On the 3rd and 4th of November, 2012, Polish President Bronislaw Komorowski, EU High Representative for Foreign Affairs and Security Policy Catherine Ashton and EU Commissioner for Enlargement and European Neighbourhood Policy, Stefan Füle expressed their concern over significant delays in the process of counting of the votes as well as about violations in some districts.

On the 8th of November, 2012, the head of observers from PACE, Chairman of the Socialist Group; PACE, Andreas Gross, stated that this election has confirmed the tendency of growth of authoritarianism in Ukraine. On the 9th of November, 2012, PACE President Jean-Claude Mignon, based on the negative assessments of the electoral process, expressed his opinion that democracy in Ukraine is not just stagnating, but actually regressing.

Sources:

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The elections in Ukraine - a step backwards in the development of democracy

On the 10th of November, 2012, the CEC announced the official results of the parliamentary elections in Ukraine. Although on the day of the election, on the 28th of October, 2012, no systemic violations were recorded, during the vote count many serious violations were revealed, and, as a result, the CEC was unable to establish the results of the five 'problematic' districts. The court ordered the CEC not to announce the results in two other districts despite the fact that the official results have already been published. The pro-government Party of Regions won the majority in parliament. The opposition did not recognise the election results, but is ready to enter parliament in order to punish counterfeiters and to initiate government removal and impeachment of the President. Given the balance of power in the new parliament, initiatives of the opposition and personal ambitions of its leaders, most likely, the work of the new parliament will be unstable and conflict will occur.

THE METHODS OF ELECTION FRAUD USED

Major violations during the election campaign were: the inequality of participants of the election process, restriction of access to the media for opposition candidates and mass use of administrative resources. On the day of voting, in some polling stations, bribery of voters, the stuffing of several ballots in to the ballot box, obstructing the work of observers and repeated voting of the same voters in several districts were revealed.

During the counting of votes, some district election commissions (DEC) committed the following fraud: Electronic recording of data that did not correspond with the protocols bearing ink stamps; artificial introduction in an electronic programme of incorrect factual data in order to cause a failure of the programme and a delay in the counting of votes. [1] Also, in many DECs there were people of athletic appearance, who called themselves journalists or representatives of candidates, staged fights, put pressure on the members of the DEC and obstructed the work of observers and journalists.

Special units 'Berkut' of the Interior Ministry were involved in the withdrawal of election documents from the DEC. Other methods of falsification of the results were: the filing of numerous lawsuits in courts with the demand to recount the votes or to deem the elections null and void; ballot spoilage by individual members of the DEC during the recount of votes, deliberate intrusion of strangers to the DEC with the aim to spoil ballots; sending protocols to the precint commissions in order to 'clarify' them, in the course of which the data in the protocols have been changed.

Referring to the massive violations of electoral law, the CEC was unable to determine the results of five districts: No. 94, No. 132, No. 194, No.197 and No. 223. But at the same time, the CEC, for example, recognised the election results in district No. 11 in Vinnitsa, where the former head of the Vinnytsia Regional State Administration Oleksandr Dombrovsky and representative of the 'Batkivshchina' ('Fatherland) Natalia Soleyko were competing. During the counting of votes in the district, the DEC was attacked three times by unknown people with smoke bombs, which spoiled election documentation. During the recount of the votes, observers were not allowed to participate, including those from the OSCE. Under all these circumstances, on the 11th of November, 2012, the CEC declared Alexander Dombrowsky the winner. The decision of the Supreme Administrative Court of Ukraine to ban the recognition of the results in this dictrict was issued later – on the 13th of November, 2012.

It should be noted that several members of the CEC have publicly stated that there was a lack of democracy in the elections. In particular, the deputy head of the Central Executive Committee Andrey Magera and a CEC member Zhanna Usenko-Chornaya said that ***this election was one of the dirtiest in the history of Ukraine***. On the 5th of November, 2012, a CEC member, Igor Zhidenko stated that bribery, threats, and the use of force were systemic, and hence, the elections cannot be called free. [2] On the 10th of November, 2012, in the final report of the CEC, Julia Shvets penned a separate opinion: the determination of the election results is premature and ***the announced figures do not comply with the factual declaration of the will of the voters.***

THE REACTION OF OPPOSITION TO THE FALSIFICATION OF THE ELECTION RESULTS

On the 5th of November, 2012, the opposition concluded that, taking into consideration the fact that the election was accompanied by flagrant violations, there is an urgent need to answer the question regarding the recognition of the official result of the election; however, ***the opposition forces have been***

unable to agree on a common position, and have repeatedly changed their standpoints. On the 4th of November, 2012, number three in the electoral list of 'Batkivshchina', Anatoliy Gritsenko offered Arseniy Yatsenyuk to make a decision on the nullification of the party list and the list 'majority candidates' - and not to enter parliament as a sign of protest against election fraud. [3]

On the 5th of November, 2012, near the Central Election Commission building, a rally of all opposition forces was held. Opposition forces have declared their intention ***to put forward the demand that the victory of opposition candidates in 11 districts be recognised***, as was confirmed by protocols produced in the polling stations. [4] But, as stated by a member of the parliament, Andriy Kozhemyakin, the final decision to abolish the lists will be made after the announcement of the official results. [5]

On the 5th of November, 2012 after a meeting with the head of the Central Election Commission, Vladimir Shapovalov, Arseniy Yatsenyuk said that the opposition would file an appeal against the CEC decision in court and ***will demand the organisation of re-elections not in five districts, but in seven*** (including districts No. 11 and No. 14). Anatoliy Gritsenko criticised the opposition for backing the decision to nullify the lists, and called this position treacherous. On the 7th of November, Yulia Tymoshenko expressed a similar opinion: *"To agree on the organisation of re-election in such circumstances means to legitimise the fraud, to let down those citizens who endure an uncompromising struggle for each polling station".* Yulia Tymoshenko suggested, that instead of doing this, the opposition should demand the recount of votes against the protocols with ink stamps. [6]

On the 6th of November, 2012, at the rally in front of the CEC, Arseniy Yatsenyuk announced that the opposition would ***demand recognition of the victory of its candidates on the basis of the protocols with ink stamps in as many as 13 districts***. The opposition believes that the CEC has the full authority to count votes in the 'problematic' districts. On the 12th of November, 2012, the parties; 'Batkivshchina', 'UDAR' and 'Svoboda' announced that they ***would not recognise the official result of the election, until the CEC recognises the opposition candidates as winners in the 'problematic' districts***.

Nevertheless, the opposition is ready to enter parliament and has declared its intent to initiate the prosecution of judges, law-enforcement authorities and all others who falsified the elections. The opposition has also promised ***to initiate the process of government removal and impeachment of the President, Viktor Yanukovych.*** In addition, efforts will be made to release former Prime Minister, Yulia Tymoshenko and former Interior Minister, Yuriy Lutsenko. [7] One of the opposition leaders, Anatoliy Gritsenko has not signed this declaration, as he suggested that in view of the massive fraud the opposition should not enter the parliament, and instead, it should trigger early elections throughout Ukraine.

It should be noted that, ***from a legal point of view, the decision of the CEC on "the lack of possibility to determine the results" in some districts is controversial.*** The current electoral law provides for re-election in two cases only: in the case that two candidates achieve the same number of votes in the district, or when only one candidate ran in a particular district and received less than half the votes.

However, the law provides that the CEC can take on the role of the DEC and establish the voting results in districts, but it fails to provide for the exact conditions under which the inaction of the DEC should take place. Therefore, re-election in majority districts cannot be fully legitimate without introducing amendments to the electoral law. Also, the new law should narrow the opportunities for falsification of the voting results.

POTENTIAL INSTABILITY OF THE NEW PARLIAMENT

According to the election results, ***the majority of seats in the new parliament was won by the Party of Regions:*** 185. Most members of the party entered the parliament from single-member districts, where the ruling party dominated. The three opposition parties ('Batkivshchina', 'UDAR', 'Svoboda') altogether received 178 seats in parliament. It should also be noted that among the 43 self-nominees who received mandates, almost half are ready to join the pro-government Party of Regions. [8]

Two new political forces: 'UDAR' and 'Svoboda' joined the parliament. This confirms that ***Ukrainian society wants a reconstruction of the government.*** 'UDAR' and 'Svoboda' was supported mainly by young people and people of a higher education. [9] The success of 'UDAR' is largely due to the personality of its leader, Vitaliy Klitschko. He was supported by liberal voters who are tired of the same old faces in the government and the opposition. The ***high result of the right-wing 'Svoboda' (10.44%) came as a surprise to experts in Ukraine and abroad***. Not one polling company forecasted that the party would achieve such a high result. The main reason for this

may be disillusionment among young people with the old authorities and the hesitant opposition, as well as in the ambiguous language policy of the government.

At the same time, ***the success of 'Svoboda' has raised fears among the international community***. The New-York Times noted that the leader of 'Svoboda', Oleg Tyagnibok is known to support anti-Semitic and racist views. [10] For the same reason, on the 30th of October, 2012, Israeli Ambassador to Ukraine, Reuven Din El expressed concern over the entrance of 'Svoboda' into parliament and its rapproachment with the 'Batkivshchina' party. The Ambassador expressed hope that in the Parliament, the rhetoric presented by 'Svoboda' will change. [11] The Anti-Defamation League (USA) and other Jewish organisations have also criticised 'Batkivshchina' for the signing of a parliamentary alliance with 'Svoboda'. [12]

It can be predicted with certainty that ***the work of the new Parliament will be marred by conflict and instabilty***. The main reason for this is the radicalism of 'Svoboda' and the struggle for personal ambitions of opposition leaders: Arseniy Yatseniuk, Vitaliy Klitschko and Oleg Tyagnyboka.

Right-wing initiatives of 'Svoboda' could undermine the unity of the opposition. 'Svoboda' is going to ban communist ideology and initiate a lawsuit against communism with one of the first bills adopted by the new parliament. Also, 'Svoboda' in its 'Ukrainian Protection Programme' advocates the introduction of quotas for the citizens of "Ukrainian nationality" in the elected bodies. Vitaliy Klitschko said he would not support the radical statements of 'Svoboda'.

However, 'Batkivshchina' 'Svoboda' and 'UDAR' agreed to jointly initiate government removal and impeachment of the president. Of course, any action carried out in this regardwill bring about political destabilisation in the country. Also, as stated by people's deputy from 'Batkivshchina', Sergey Sobolev, the opposition will undoubtedly resort to extreme methods of work in Parliament, especially blocking of the parliamentary rostrum. It is very likely, given the fact that the opposition does not have a majority in parliament.

Also, we should bear in mind that ***each of the three opposition leaders has presidential ambitions.*** Responding to a question on the presidential ambitions of the opposition leaders, Arseniy Yatsenyuk replied that' he will not speak about it with Klitschko, but with Tymoshenko. [13] Therefore it is difficult to predict where the forced necessity to be together will end and personal ambitions of the opposition leaders will come into play.

The committed election fraud in Ukraine confirmed that the government is not fulfilling its obligations to the European Community in matters pertaining to the progress of democracy, rule of law and human rights. This election has been more problematic than the previous ones, which proves the existance of troubling trends in the rise of authoritarianism in Ukraine. As the President of the European Parliament, Martin Schulz, stated, this election was of a crucial importance to relations between Ukraine and the European Union. The head of the observer delegation of the NATO Parliamentary Assembly Assen Agov stated that violations of democratic standards in the election were clear, so after the election, the attitude towards Ukraine will be stricter. [14]

Deterioration of the image of Ukrainian authorities negatively affects the prospects of Ukraine's European integration. For this reason, the EU-Ukraine summit has already been delayed. [15] Freedom House, along the OSCE, is ready to demand personal sanctions (non-issuance of visas) against Ukrainian officials involved in violations. [16]

The unwillingness of the Ukrainian authorities to fulfill international obligations and, at the same time, potential conflicts within the opposition camp pose a threat of political crisis in the country and create a risk of international isolation.

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