

CRIMINAL RECORD REPORT AND HUMAN RESOURCES

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Review Article

Abstract

Employment is among the most consequential steps an individual undertakes to secure multidimensional life stability, and one of the obstacles to achieving this objective is a criminal history dossier—i.e., a criminal record. The criminal record report occupies an important place in human resource development and in delineating the scope of professional employment. Tracing the dividing line between these two constructs in the scholarly literature and professional practice, the present study examines the correlation between criminal record reports and human resources. The aim of the study is, through the application of scientific methods—content analysis of existing research findings (scientific contributions and professional practice), historical analysis, quantitative and qualitative analysis, comparison, correlation, description, and synthesis—to present the scope of the effects of the document—the criminal record report—on a human resource with a criminal history (criminal record) when submitting an application to a job competition for the purpose of employment. As the findings indicate, submitting a criminal record report as part of a job application produces a collateral consequence: in the majority of cases, the individual is prevented, at the very outset—upon filing the application—from continuing further through the stages of the recruitment procedure. The results further show that, while efforts are being made to provide convicted persons with a second chance, the number of requests for criminal record reports in the context of employment is simultaneously increasing.

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Introduction

In general linguistic terms, the concepts of human resources and the criminal record report are polysemous and may be identified across numerous scientific disciplines (Roberts, 2022); as demonstrated in this paper, they are examined within the fields of legal scholarship and human resource science. This study addresses, within the context of the possibility of establishing an employment relationship, the extent to which research findings indicate that an institution such as the existence of a criminal history places human resources in a position where individuals are not treated equally after submitting an application to a job competition (Westrope, 2018). It requires little effort to find in the literature that many organizations assert that human resources constitute their most valuable asset, while, at the same time, those very human resources may also be a generator of problems within a company (Mayo, 2016). Reducing potential problems that human resources may cause in a company is, in part, pursued through the choice—i.e., the selection—of human resources in the course of a job competition (Schuler, Jackson, 1987). It is precisely at this point, that—among other documents—the criminal record report appears within the documentation submitted with an application to a job competition, and it is considered capable of contributing to a higher-quality selection of future employees, while reducing the likelihood that a human resource will become a generator of problems within the company (Budhwar et al., 2023).

The criminal record report plays a significant role in an employer's decision as to whether—and for which individual—to enable the establishment of an employment relationship (Lam, Harcourt, 2003). Available research suggests that the majority of employers ask candidates, already at the stage of submitting an application to a job competition, about their criminal record—i.e., a criminal background check (Denver et al., 2018). Researchers have further observed that, prior to the enactment of legal instruments prohibiting employers from inquiring into an applicant's criminal history at the application stage—for example, in the United States, on an annual basis, more than 31 (thirty-one) million adults who applied for employment were asked about their criminal (criminal-record) history immediately upon submitting the application (Selbin et al., 2018).

The literature indicates that employment has a significance that goes beyond the obvious benefits for the individual (Scire, Raimondi, 1999). It has been shown that work—or the loss of employment—affects mortality (Sullivan, Von

Wachter, 2009), happiness (Blanchflower, Oswald, 2004), criminal activity (MacKenzie, 2006), and even subsequent earnings and social assistance received by workers' children (Oreopoulos et al., 2008). In addition, it may be concluded—consistent with the focus of this paper—that individuals with a criminal record are penalized in the labour market (Petersen, 2016). It is believed that persons with a criminal record may systematically differ from their peers with the same level of education; that is, for some employers, having a record is associated—not in every case, but on average—with various negative characteristics that reduce individuals' readiness for work (Solga, 2002). All of the foregoing indicates that employers have a strong incentive to hire only those candidates whom they believe will constitute a highly productive match with the firm, given that employing workers who later prove unsuitable for the job is costly (Bishop, Abraham, 1993).

Researchers' entry into the study of the relationship between the criminal record report and human resources—often referred to as collateral consequences—has made it possible to reveal the depth of stigma-cycle formation, as individuals with a criminal record, when submitting an application to a job competition, encounter a “wall”: the first stage which, in a large number of cases, is impossible to pass (St Helene-Uko, 2017).

As may be discerned from the introductory remarks, among several domains pertaining to human resources—such as: staffing (e.g., decisions relevant to recruitment and selection); employee rewards (e.g., decisions on salaries and promotions); employee development (e.g., decisions aimed at enhancing the skill and competency levels of individuals and teams); and employee relations, encompassing perceptions, processes, and institutions within the employee–employer relationship—the present study, within the limits of the paper's permitted technical scope, addresses only the first domain and only one of its components, namely the criminal record report of the human resource, as a document that employers frequently require to be submitted as part of the documentation accompanying an application to a job competition.

Analysis and discussion of the results of theoretical and empirical research

A substantial body of research indicates that, once an individual is assigned a criminal file, they incur harms that, for them, almost never cease (Pager, 2003). Criminal records follow persons convicted of crimes throughout their lives, creating collateral consequences that make it difficult for them to return to the community after serving a custodial sentence and to reintegrate into society (Pinard, Thompson, 2005).

Employment is one of the most important steps an individual undertakes in order to secure life stability; however, one of the most substantial (often insurmountable) obstacles to achieving this objective is precisely the criminal record file (Gallie, 2002; Kapur, 2024). Why is this the case? Because employers are often cautious when hiring individuals with criminal records due to concerns about liability and the social stigma that is frequently attached to persons with such records (Uggen et al., 2014). Although legal instruments prescribe procedures and obligations regarding the so-called expungement of the status of a convicted person (i.e., a person with a criminal record), this does not mean that discrimination in employment thereby ceases (Cundiff, 2016). For example, in the United States alone, more than seven hundred thousand individuals are released from prison each year, which suggests that approximately one in three people has a criminal history and a criminal record (Durose et al., 2015). Research findings further indicate that, when submitting documentation for a job competition, more than 60% of employers refuse to hire a human resource with a criminal history where the criminal record report shows that the person has a criminal record (Ouwerkerk et al., 2015). Employers continue to rely on information contained in criminal records when screening job candidates and, in the vast majority of cases, hire workers who do not have a criminal record (Kajeepeta, 2025).

Researchers such as Blumstein and Nakamura, in their article “*Redemption in the presence of widespread criminal background checks*”, find that 93% of surveyed employers conduct criminal background checks for at least some positions, and that more than one half of them, at the very first step, are not prepared to employ a person who has a criminal record. These findings are based on a random sample of approximately 3,000 human-resources professionals. Within the sample, 65% worked in organizations with 500 or more employees, 28% in organizations with 100–499 employees, and 7% in organizations with 1–99 employees (Blumstein, Nakamura, 2009). In assessing the risk of employing persons with a criminal history, the research findings indicate: “*first*, that employers’ use of criminal records in employment decision-making may unfairly disadvantage persons who have served custodial sentences (Petersen, 2016); *second*, that the results of employer surveys provide insight into how employers make hiring decisions regarding former offenders, which substantially assists policymakers in this field; *third*, that the results of this study are consistent with a survey conducted by the Society for Human Resource Management concerning employers’ concerns about hiring former offenders (Young, Powell, 2015); and, finally, *fourth*, that, drawing on broader behavioural science and legal scholarship, the research provided high-quality material for developing guidelines—both for employers and for courts—

regarding the fair and effective use of criminal records in human-resource hiring decisions” (Rowley, Jackson, 2010).

Although to date relatively little research has focused on the consequences of criminal sanctions for the employment of a human resource and its development, a growing body of evidence suggests that contact with the criminal justice system may lead to a substantial reduction in a human resource’s opportunities for employment (Smith, Simon, 2020). Using longitudinal research data, researchers examined the employment probabilities of human resources after release from institutions for the execution of criminal sanctions, and in doing so *found* a strong and consistent negative effect of a criminal history (criminal file)—i.e., the criminal record report—on the possibility/impossibility of establishing an employment relationship (Pager, 2003; Westrope, 2018). In line with these results, the so-called direct-causality model has been developed: the criminal history (past) recorded in the criminal file, the criminal record report issued on that basis, and its impact on the employment outcome, with a direct causal link between the two (Gubernick, 2017).

Empirical evidence regarding the adverse impact arising from the use of information from criminal records shows that, in a large proportion of cases (more than 60%), the criminal record report affects the employer’s decision whether to employ a human resource (Agan, Starr, 2017). Further, for example, research findings indicate that 12.8% of all adult men in the United States have, or have had, a criminal record (Tillman, 1987). A pivotal research finding is that more than 12 million former offenders in the United States are available for work (i.e., are of working age), which represents approximately 8% of the working-age population (Kethineni, Falcone, 2007). The overall effect of the stated incarceration rate (number) in institutions for the execution of criminal sanctions is exceptionally high, given its broad impact on the employment of former offenders (Whittle, 2018). A study using 2000 U.S. Census data found that, among men born between 1965 and 1969, 3.2% had served a prison sentence (Western, 2007).

In recent years, substantial policy attention in many countries has been directed toward expanding employment opportunities for human resources with a criminal record (Newell, 2013). These efforts are motivated by the assumption—supported by observational, survey, and experimental research—that applicants with a record are, when applying to a job competition, placed in a less favourable position by employers than applicants without a criminal record (Pager, 2003). Proponents of policy change with respect to the employment of persons with criminal records—the so-called “second chance”

agenda—believe: *first*, that there is sufficient credible research evidence showing that elimination at the very outset—i.e., in the initial stage immediately after submission of a job-competition application—prevents many candidates with criminal records from having an opportunity to present themselves to the employer; *second*, that a comparison of the period prior to the adoption of legal instruments prohibiting, in certain sectors, the exclusion of job applicants in the initial stage of the hiring process shows that employers were 60% more likely to invite candidates without a criminal record, whereas in the period following the adoption of such legal instruments the disparity was reduced to approximately one third, or about 20% (Mukamal, 1999); moreover, of the latter group, more than 60% of applicants with a record—after being given an opportunity to present themselves in the initial stage—advanced to a subsequent stage of the recruitment process.

In parts of Europe—such as the Scandinavian countries—it is considered that the collection of data and the maintenance of criminal records represent an old, classical form of surveillance, viewed as a necessary component for the development of the modern state and the welfare system (Weller, 2012). Authors note, for example, that “Sweden, when viewed from the outside, has been described as a model surveillance society in the Western world” (Flaherti, 1989). As Lyon observes, “surveillance and record-keeping are, however, not only of value to the state; they also constitute a vital precondition for the creation of trust in contemporary society between the state and citizens, among citizens themselves, and between citizens and private companies” (Lyon, 2001). Data from criminal records are regarded, in Scandinavian countries, as sensitive information (Jorgensen, 2014). In light of this, in the 1960s, courts considered that mere awareness of a record—and the possibility that it might be used in the future—constituted a burden for former offenders and an impediment to their resocialization (Backman, 2011). As a consequence, the existence of a prior criminal conviction—typically characterized by low “visibility” (Goffman, 1990, 65)—made it possible to keep such information hidden from others. Employers, for instance, have consistently maintained the view that criminal-history data may assist them in recruiting employees who are law-abiding and worthy of their trust (Levy McCanna, 2019). At the same time, numerous studies show that returning to employment after serving a sentence is correlated with a low risk of recidivism (Kivsgaard, 1989; Skardhamar, Telle, 2009; Uggen, 2000).

Over the past decade, the regulation of access to criminal records—and both the regulated and unregulated use of criminal-record data in personal records—has undergone significant changes in European countries (Stefanou, Xanthaki,

2008). Entries from an individual's criminal-history file are today available to a greater number of employers than ever before, and the number of requests for the provision of criminal-record information has, over the relevant period, increased tenfold. This trend of expanded access and use can be traced in Sweden as early as 2001, when it first became mandatory for employers to check the criminal records of teachers and childcare workers prior to engagement (Buschmann, 2002). Similar legal acts and regulations—enabling, and even requiring, employers to access information on job applicants' criminal history either directly or through so-called certificates of conduct—have, over the past decade, been adopted in several other countries as well, including Germany (Morgenstern, 2011), the Netherlands (Boone, 2011), the United Kingdom (Thomas, 2007), and the United States (Jacobs, 2006). In general, the new legislation has highlighted employers' concerns regarding employees who work, for example, with children, older persons, persons with disabilities, and other groups regarded as vulnerable (Boone, 2011; Thomas, 2007). By way of illustration, in the United Kingdom, background checks for childcare workers became mandatory as early as 1986, following what researcher Thomas termed the “discovery of child sexual abuse” in connection with the Colin Evans case (Thomas, 2007). By contrast, in Norway, the so-called Bjorn case in the early 1990s led to a new act introducing mandatory national criminal-record checks for childcare staff and teachers (Backman, 2012). Following practical examples (criminal attacks) in Norway, the United States likewise, in 2001, made mandatory criminal-record checks for childcare workers and teachers (Skivenes, 2011). Although this is not entirely new at the international level, the introduction of the 2001 law marked the beginning of a new era for childcare workers and teachers in Scandinavian countries and many others, signalling a break with prior thinking about employers' access to criminal records and the privacy rights of former offenders (Backman, 2011).

Only ten years later (at the end of 2011), employers were required to check the criminal records of prospective personal assistants for children and of staff working in homes providing care and accommodation for children and youth (Galantowicz et al., 2010). Schools were likewise required to do so for pupils whose programmes included a practical-training component in schools or preschool institutions; the requirement was even extended to owners of companies conducting motor-vehicle inspections together with insurance intermediaries (Howard, 1974), as well as to all persons applying for a licence to practise one of the regulated health professions (Carlin, Frick, 2013). Moreover, toward the end of the second decade of the third millennium, the extent to which a subject gains access—i.e., exercises a right introduced by the Criminal Records Act—has been continuously expanding at the expense of the

rights of prospective employees (Lam, Harcourt, 2003). At the same time, these legislative changes have also opened the door to a practice known as “compelled subject access”, whereby employers who lack a legal right to request disclosure of criminal-record information from prospective employees nevertheless compel them to submit a criminal record report (Lyngstad, Skardhamar, 2011). Research results confirm this trend: in Scandinavian countries, the number of employer requests for access to criminal-record information—and the submission of criminal record reports by prospective employees applying to job competitions—increased from approximately 10,000 in a single year at the end of the twentieth century to more than 160,000 annually in the second decade of the third millennium, with a steady upward trajectory (Backman, 2012; Rikspolisstyrelsen, 2004).

In Serbia, the criminal record report is regulated by Article 102 of the Criminal Code (“Official Gazette of the Republic of Serbia”, Nos. 85/2005, 88/2005—corr., 107/2005—corr., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016, 35/2019, and 94/2024). As Lazarević argues, “the justification for the existence of data on an individual’s convictions is not disputed. This is, the same author believes, on the one hand in the public interest, but also in the interest of the individual, if they find themselves in a situation where, in exercising a right, they must prove that they have not been convicted” (Lazarević, 2006). It is important to note that the legal provision governing the disclosure of data from the criminal records provides that “no one has the right to demand that a citizen submit proof of their conviction or non-conviction” (Criminal Code of the Republic of Serbia, Article 102, para. 4). In paragraph 3 of the same Article, the legislator provides that data from the criminal records may, upon a reasoned request, be provided to a state authority, an enterprise, another organisation, or an entrepreneur, provided that the legal consequences of the conviction or the security measure are still in effect and that there is a justified interest based on law. From the foregoing, it may be concluded that an employer may not require an individual to submit their own criminal record report when filing an application to a job competition for employment; however, the same provision simultaneously enables the employer to request, from the competent criminal-records authority, a criminal record report for the applicant to the job competition.

It should be noted that the legislator introduces here two important elements: first, that data on an individual’s conviction may be disclosed only while the legal consequences of the conviction or the security measure remain in force; and second, that there must be a justified interest grounded in law, which the requester must substantiate when submitting the request. Notwithstanding the

prevailing view in the literature that paragraph 4 of Article 102 erects a barrier against the established practice of requiring citizens, when exercising a right, to submit proof of conviction or non-conviction, this nevertheless does not constitute an obstacle—there has been a reversal of roles—because a potential employer no longer has to demand that an applicant in a job competition submit a criminal record report; rather, by submitting a reasoned request to the competent authority maintaining the criminal records database, the employer may request it directly. It is also significant to note that, with respect to the issuance of a criminal record report for an individual by the competent authority, it is irrelevant whether the conviction has been expunged. As Lazarević observes, “...this means that the subjects recognized by the norm as potential users of the criminal record report may be provided with both types of data—regardless of whether the conviction has been expunged; that is, the requester will obtain both types of information, which indicates that rehabilitation, both statutory and judicial, has no effect on the disclosure of data from the criminal records” (Lazarević, 2006). The conclusion that may be drawn is that the legislator has left it to the employer to decide whether to request the procurement of a criminal record report for a job-applicant. Pursuant to the provisions of the Law on Personal Data Protection in Serbia, it may be observed that, when procuring a criminal record report for an individual who has submitted a job application, a third party is present—a person who, under Article 4(1)(11) (“Official Gazette of the Republic of Serbia”, No. 87/2018), “is a natural or legal person, i.e., a public authority, who is neither the data subject, nor the controller or processor, nor a person authorized to process personal data under the direct supervision of the controller or processor”—namely, a person who, under Article 102 of the Criminal Code, has grounds to submit a request to obtain criminal-record data for the individual who has applied to a job competition. Furthermore, it may be established that Article 9 of the Law on Personal Data Protection in Serbia, “Differentiation among certain categories of data subjects”, Article 9(1)(3) (“Official Gazette of the Republic of Serbia”, No. 87/2018), defines a category of persons whose data are processed—persons convicted of a criminal offence—while Article 19 (“Official Gazette of the Republic of Serbia”, No. 87/2018), “Processing related to criminal convictions and criminal offences”, provides that “processing of personal data relating to criminal convictions, criminal offences, and security measures may be carried out on the basis of Article 12(1) of this Act (“Official Gazette of the Republic of Serbia”, No. 87/2018) only under the supervision of the competent authority or, if processing is permitted by law, subject to the application of appropriate specific measures to safeguard the rights and freedoms of data subjects. A single register of criminal convictions shall be maintained exclusively by, and under

the supervision of, the competent authority” (“Official Gazette of the Republic of Serbia”, No. 87/2018).

From the foregoing, it is established that there exists a lawful basis for establishing records, collecting, storing, and processing personal data, managing such data, and making it available, specifically in the segment relating to data on criminal convictions and criminal offences. It is important to note that there is also a so-called negative determination of the obligation to obtain extracts from the criminal records and from records of initiated and ongoing investigations, as is the case, for example, in the Law on Higher Education (“Official Gazette of the Republic of Serbia”, No. 88/2017, 73/2018, 27/2018, 67/2019, 6/2020, 11/2021 (authentic interpretation), 67/2021, 67/2021, 76/2023, and 19/2025). Thus, the procurement of extracts from the criminal and investigative records is not required; instead, with respect to the criminal record extract for an individual, the legislator has set, as a condition for restricting the performance of an activity, the following rule in the section “Staff of higher education institutions—teaching and non-teaching staff”, Article 72: “A person who has been convicted by a final judgment of a criminal offence against sexual freedom, forgery of a document issued by a higher education institution, or acceptance of a bribe in the performance of duties in a higher education institution may not acquire the title of teacher, i.e., assistant” (“Official Gazette of the Republic of Serbia”, No. 88/2017, 73/2018, 27/2018, 67/2019, 6/2020, 11/2021 (authentic interpretation), 67/2021, 67/2021, 76/2023, and 19/2025). By this approach, the legislator has indirectly introduced the institution of mandatory procurement of the document—an extract from the criminal and investigative records—for an applicant to a competition for election to an academic title and for the establishment of employment at a higher education institution.

The results of the comparative analysis indicate that the legislator in Serbia has adopted a methodology of enumerating the authorities and entities that may submit a reasoned request to obtain an extract from the criminal records for a person who has applied to a job competition, which differs from the approach taken by legislators in other European countries. In those jurisdictions, legislation typically enumerates: (i) the jobs for which the employer (authority, entity, etc.) must, as part of the recruitment process, obtain an extract from the criminal records for the applicant; (ii) the jobs for which, at the moment of submitting an application, the employer (the party that has announced the job competition) may not request a criminal record extract; and (iii) the jobs for which the employer decides, at its discretion, whether to submit a request to

obtain a criminal record extract for the person who has applied to the job competition.

The results of the empirical research indicate that, over the past three decades in Serbia, more than three million persons have been reported for having committed a criminal offence, which has automatically resulted in the lawful establishment of a criminal-record file that remains permanently present in an individual's life until their death. For certain occupations, when descendants of a deceased person apply to a job competition, the content of the deceased person's criminal file may extend to the descendants. The foregoing indicates that, on a ten-year basis, more than one million persons are reported for committing a criminal offence, which implies that, over that period, 13% of persons out of the total population may have some form of criminal record (operational/police, criminal, investigative). On the other hand, an even more significant research finding indicates that, over three decades, more than one million persons were convicted by court decision, which means that, over ten years, more than three hundred and thirty thousand persons were convicted by court decision, or approximately thirty thousand persons on an annual basis (stat.gov.rs), thereby establishing a criminal file. The foregoing leads to the conclusion that a portion of working-age human resources in Serbia may, due to the existence of a criminal (criminal-record) file, encounter barriers to employment, if the employer that has announced a job competition for the recruitment of human resources submits a written, reasoned request to the competent authority to obtain a criminal record report for the persons who have submitted an application to the job competition.

Conclusion

So-called criminal justice reforms commonly referred to as the “second chance” agenda are currently gaining increasing momentum. Second-chance reforms in the criminal justice context refer to efforts aimed at alleviating the difficulties faced by former prisoners after serving a custodial sentence and being released.

The movement began in many countries with the adoption of so-called Second Chance laws, which sought to address many of the issues faced by individuals who, after serving a custodial sentence, attempt to reintegrate into society. Although second-chance reforms may include measures such as expungement statutes—expungement being one of the ways in which states worldwide seek to mitigate the collateral consequences affecting individuals with criminal records in the context of employment—research results indicate that, at an employer's request, data may be disclosed regarding both expunged and non-expunged convictions.

In today's internet era, record expungement is imperfect. With the development of the internet and of social networks and media, there is no way to eliminate all traces of the underlying event. Moreover, the internet, as a host of vast democratic forums, limits the effectiveness of orders to expunge criminal records. There is no guarantee that merely removing an individual's name from an official database will render their reputation free from stigma associated with arrest information. Even if a person takes the time to have their record expunged and pays the requisite court fees, this may have no effect whatsoever on an employer's ability to discover their criminal record.

The findings unequivocally indicate that, through their legal instruments, states not only permit access to an individual's criminal file but increasingly expand the sectors of activity in which they require—either expressly or implicitly—the mandatory procurement of a criminal record report for persons applying to a job competition.

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IZVEŠTAJ IZ KAZNE NE EVIDENCIJE I LJUDSKI RESURS

Apstrakt

Zaposlenje je jedna od najvažnijih koraka koje osoba preduzima kako bi obezbedila sebi višeznačnu stabilnost života, a jedna od prepreka ostvarenju tog cilja je dosije kriminalne istorije—dosije krivične evidencije. Izveštaj iz kaznene evidencije u razvoju ljudskih resursa i određenju opsega njihovog profesionalnog zaposlenja ima značajno mesto. Prateći vododelnicu između navednih instituta u literaturi i stručnoj praksi, predmet istraživanja je korelacija između: izveštaja iz kaznene evidencije i ljudskog resursa. Cilj istraživanja je da primenom naučnih metoda: analize sadržaja postojećih rezultata istraživanja—naučnih dostignuća i stručne prakse, istorijske, kvantitativne i kvalitativne analize, komparacije, korelacije, deskripcije i sinteze, prikaže opseg dejstva isprave—izveštaja iz kaznene evidencije na ljudski resurs, koji ima kriminalnu istoriju—krivični dosije kod podnošenja prijave na konkurs sa ciljem zaposlenja. Kako rezultati istraživanja pokazuju, izveštaj iz kaznene evidencije kod prijave ljudskog resursa na konkurs za zaposlenje proizvodi kolateralnu posledicu—osoba u najvećem broju slučajeva odmah na samom početku prilikom dostavljanja prijave na konkurs biva sprečena da nastavi dalje kretanje u postupku sprovođenja konkursnih radnji. Rezultati takođe pokazuju da dok se ulažu napori da se pruži druga šansa osuđenim osobama, istovremeno se povećava broj zahteva za Izveštajima iz kaznene evidencije pri zaposlenju.

Ključne reči: *izveštaj iz kaznene evidencije, ljudski resursi, konkurs, posao.*

JEL: *K14, K31, J71.*

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