

Migrants' right to religious freedom as a reason for cultural changes in European host countries

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Abstract

Subject of research: Migrants (refugees) enjoy extensive religious freedom under international documents. However, one of the problems raised as part of the migration (refugee) issue is the claim that they form some kind of danger to the religion of the host society. An influx of Islamic people into a Christian society is construed as a major threat to the religious integrity of that society.

Aim of research: This paper investigates the hypothesis that massive migration combined with religious freedom lead to cultural changes in host European countries. The issue also concerns national security and public policy, which are threatened by terrorist activities motivated by religion. Nevertheless, this issue evolved from a legal problem to a political and cultural one.

Methodology: The main method used in the paper is formal-dogmatic. The paper focuses on analyses of the provisions of international human rights as well as case law of the European Court of Human Rights and the Court of Justice of the European Union. The historical method used for the analyses of case law allowed for theoretical considerations of the impact of migration on the cultural behavior of societies in host countries.

Keywords: religion, cultural changes, security.

1. Preliminary remarks

The nature of the policy is to protect human life and preventing from all dangers. Security is one of the most important values, which have impact on people's needs and interests. It is the basic need which motivate the activity of individuals and social groups (*Bieleń, 2010, pp. 65, 67*). National security is usually defined as the nation's ability to defend its internal values against external threats (*Kuźmiak, 2013, p. 30*). If security is understood as protection against armed attack, but more often as the absence of threat to major societal values, then security has different meanings among different

societies (*M. Weiner, Security, Stability, and International Migration, Center for International Studies 1990, <http://www.isn.ethz.ch/Digital-Library/Publications/Detail/?lang=en&id=19789> [4 April 2016]*). This values should be include among others: the sovereignty and independence of the state, social and economic system, “national lifestyle” and the cultural system (*J. Kukulka, Bezpieczeństwo a współpraca europejska: współzależności i sprzeczności interesów, “Sprawy Międzynarodowe” 1982, nr 7, p. 30*), the ideological and cultural-civilizational values (*A. D. Rotfeld, Europejski system bezpieczeństwa in statu nascendi, Warszawa 1989 r., p. 18*) including religion values. Dealing with cultural and religious transformations, it is taken for granted that religion is part of the culture, even though it is not the same thing (*da Silva Moreira, 2014, p. 381*).

Religious imperative has become the main characteristic of the current terrorist activity (*Hoffman, 2001, p. 83*). Nowadays, the biggest threat for the security of the European countries are terrorism and organized crime, which is strongly linked with the phenomenon of migration. The state security and the security of the international system as a whole depends on: international cooperation, collective solutions to common problems and the building of public confidence (*Bieleń, p. 67*). The migration problem is treated not only as a danger to human security but also as danger to the security of state and international security (*Potyrała, 2015, p. 36*).

Nowadays we are witnessing intense new worldwide migration and refugee flows. There are now millions transnational immigrants and millions refugees displaced from their homelands (*Suarez-Orozco, 2001, p. 179*). Currently our generation is facing with one of the greatest historical challenges of human migration from Islamic countries such as: Syria, Eritrea, Somalia, Libya, Afghanistan.

This paper investigates the hypothesis that massive migration is combined with religious freedom which lead to cultural changes in host European countries. What is more the issue concerns national security and public policy, which are threatened by terrorist activities motivated by religion. Nevertheless, this issue evolved from a legal problem to a political and cultural one. The main method used in the paper is a formal-dogmatic. This article is focused on analyses of legal acts in area of human rights regulations as well as case-law of European Court on Human Rights and the Court of Justice of the European Union.

2. International regulations

Guarantees of religious liberty are inevitably found in the constitutional orders of liberal democratic societies and in international and regional human rights instruments. To some extent, these reflect the concerns at the time with drafting these instruments.

In case of refugees rights and freedoms the document of crucial importance is the Convention relating to the Status of Refugees adopted on 28 July 1951 (*United Nations, Treaty Series*, vol. 189, p. 137), as supplemented by the New York Protocol of 31 January 1967 (*United Nations, Treaty Series*, vol. 606, p. 267). The Geneva Convention and the Protocol provide the cornerstone of the rights and obligations of refugees. Geneva Convention in article 4 obliged states to grant refugees the freedom to practice their religion and freedom as regards to religious education of their children. This is the only Article in the Convention where treatment at least as favorable as that accorded to nationals of the Contracting States is provided for.

Rules which concern refugees are complemented by measures stipulated in Council directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, which was replaced by Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) (*OJ L 337*, 20.12.2011, p. 9–26). According to Article 20 directive regulations in area of rights and obligations shall be without prejudice to the rights laid down in the Geneva Convention. The rights of refugees, in area of administrative and judicial proceeding, are determine by in Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) (*OJ L 180*, 29.6.2013, p. 60–95) and Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast) (*OJ L 180*, 29.6.2013, p. 96–116). Commonly reception standards are an element of European policy (*Gilbert*, 2004, p. 974), the Polish law also reflects all international regulations, especially in Act of

13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland (*Journal of Laws of 2005, No 90, item 757, No 94, item 788, as amended*), and in Act on Foreigners of 13 December 2013 (*Journal of Laws of 2013, No 1650, as amended*), and more other acts.

Besides documents protecting refugees rights and freedoms there are many international documents protecting human rights and freedoms in general. The Universal Declaration of Human Rights of 10 December 1948 in article 18 states the freedom of thought, conscience and religion, according to which ‘everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, (...) to manifest his religion or belief in teaching, practice, worship and observance’. A fuller formulation (which includes a reference to education, but excludes explicit recognition of the right to change religious belief) is found in Article 18 of the International Covenant on Civil and Political Rights of 1966. This regulation at the same time presents the basic conditions of limitation of those freedom. According to this principles ‘everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching. Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions’.

Such guarantees are found in other instruments at the regional level. For example, Article 12 of the American Convention on Human Rights of 22 November 1969 provides that freedom of conscience and religion includes the freedom to maintain or to change one’s religion or beliefs, and freedom to profess or disseminate one’s religion or beliefs, either individually or together with others, in public or in private. Article 8 of the African Charter on Human and Peoples’ Rights of 26 June 1981 specifies that freedom of conscience, the profession and free practice of religion shall be guaranteed; no one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.

The most relevant is Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 guarantees those freedoms. The Convention for the Protection of Human Rights and Fundamental Freedoms, better known as the European Convention on Human Rights in Article 9 'Freedom of thought, conscience and religion', says 'Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance'. This freedom includes also 'freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others'. Article 2 of Protocol No. 1 to the European Convention on Human Rights in the context of the right to education also provides that: 'No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions'.

In the end, there is no difference if the foreigner is a refugee or migrant they are seen as religious threat to the hosted society which cause conflict in general. Thus an influx of Islamic people into a Christian society would be construed as a major threat to the religious integrity of that society (*Frost, 2003, p. 111*).

3. Scope of the right to religious freedom

The right to religion freedom grant refugees and migrants the opportunity to practice and manifest their religion. In addition they have freedom to choose which religion they will raise they children in as well as freedom to change one's belief. In fact refugees have the same rights as the nationals of all creeds in the state (*P. Weis, Commentary to The Refugee Convention, 1951, The Travaux Préparatoires Analysed, <http://www.refworld.org/docid/53e1dd114.html>, [4 April 2016], p. 37*). However the followers of a minority religion have to accept restrictions with their religious activities in regard to public concern or even riots (*Commentary on the refugee Convention 1951, Articles 2-11, 13-37, Division of International Protection of the United Nations High*

Commissioner for Refugees 1997, <http://www.unhcr.org/3d4ab5fb9.pdf> [3 April 2016]). What is more state cannot prohibit to practice religion in private (*Commentary on the refugee Convention 1951*). Considering this regulations it should be remembered that when offenders treat violence as Godly duty or sacramental act, applying a different method of justification of those acts than “ordinary” terrorism, and it leads to a much greater bloodshed and destruction (*Hoffman, 2001, p. 84*).

In Western Europe religion is generally viewed as the problem not the solution for immigrant minorities. In European society Muslim is analyzed as a challenge or even as a barrier to integration and a source of conflict with mainstream institutions and practices (*Foner, Alba, 2008, p. 368*). Religions offer fellowship, provide various forms of entertainment, enforce appropriate social behavior, predict or influence the future, and provide information about the afterlife. On the other hand religion is enormously complicated human activity (*Hull, Bold, 1994, p. 447, 448*).

Common complaint about immigrants is that they ‘harm’ our culture. Many of them fail to learn languages, and cling to the backward ways of their homelands (*Caplan, 2012, p. 11*). The new immigration include large numbers of poorly educated, semi-skilled or unskilled migrants and many of them are without proper documentation so they are illegal aliens.

Immigrants today are a heterogeneous population and they are stereotyped (*Suarez-Orozco, 2001, p.180*). Immigration generates changes. Immigration has brought a new religious diversity to the EU. The immigrants themselves undergo a variety of transformations. In case of migration which are not massive immigrants families directly feel the impact when moving from home to a stranger culture that essentially celebrates another religion (*Morgan, 2014, p. 2*). When migration is massive, which we are witnessing at the moment, have the same impact hoverer to the hosts feeling.

First aft all, the case of Colonia in Germany, where about 80 women reported sexual assaults and muggings by men on New Year’s Eve. About 1,000 drunk and aggressive young immigrant men were involved. The men have got the appearance of Arab or North African. The disturbance is that the attacks seems to be organised. A young men arrived in large groups with the specific intention of carrying out attacks on women. Some similar attacks were reported in Stuttgart, Hamburg and Sweden. After this Cologne Mayor Henriette Reker suggested a ‘code of conduct’, for women, to prevent

sexual assaults. They were advised to stay with trusted group of friends but also 'keeping an arm's length' from men they do not know. German society criticized this suggestions, which shows our vulnerability to change our way of behaviour. At the same time this situations reveals the influence of religion and culture that determined how women are treated by Muslims. The immigration process inevitably changes the members of the dominant culture (*Suarez-Orozco, 2001, p. 186*). People learn how to shift from one symbolic system to another according to their needs, while simultaneously being forced to interpret multiple tasks such as choosing, evaluating and setting priorities (*da Silva Moreira, 2014, pp. 382, 383*). It cannot be excluded that part of European men will follow this behaviour, and they change the social attitudes towards women.

All countries must face multicultural and multi-ethnic reality. Multicultural society might lead to conflicts, in addition different religion start to compete with each other. Thus, as a consequence of immigration and ethnocultural revival state religions often lose their hegemonic position as other religious competitors.

Over the last few decades Muslim mosques have appeared in most major cities and in quite a few smaller cities and towns in Europe. In Swiss case, where in 2009 referendum constitutional amendment banning the construction of new minarets was approved by majority of voters. But as of the date of the 2009 vote, there were four minarets in Switzerland, attached to mosques in Zürich, Geneva, Winterthur and Wangen bei Olten. These existing minarets are not affected by the ban. New places of worship have been constructed, and at the same time churches was closed. And this is the most visible manifestation of the impact of new immigrants (*Hirschman, 2004, p. 1226*). This issue is related with case *Karaahmed v. Bulgaria* (*Judgment 24.2.2015 of European Court on Human Rights, application no. 30587/13*) which around 150 leaders and supporters of a right-wing political party came to protest against the noise emanating from loudspeakers at the mosque during the calls to prayer. In those cases the Court found failure to take adequate steps to prevent or investigate disruption of Muslim prayers by offensive and violent demonstrators. Every religion or culture itself, is structured on a dynamic fundaments which involves memory and conservation, novelty and recreation. The transformation processes of culture and religion are complex and multifaceted. The forms of this interaction can assume range

from extreme acceptance and merging, to fundamentalist armed resistance (*da Silva Moreira, 2014, p. 385*).

Another visible change in our culture is wearing religious symbols or clothing in public domain, like headscarf. In European Court on Human Rights there are many cases in which Muslims followers would express their creeds: in consulate proceedings during visa application (*see Judgment 4.03.2008 of the European Court of Human Rights, case El Morsli v. France, application no. 15585/06*), at school, at university (*see Judgment 15.02.2001 of the European Court of Human Rights, case Dahlab v. Switzerland, application no. 42393/98, Judgment 24.01.2006 of the European Court of Human Rights, case Kurtulmuş v. Turkey, application no. 65500/01, Judgment 10.11.2005 of the European Court of Human Rights, case Leyla Şahin v. Turkey, application no. 44774/98*) or in Judgment 26.11.2015 of the European Court of Human Rights (*Ebrahimian v. France, application no. 64846/11*) where a hospital social worker refused to stop wearing the Muslim veil. The Court noted that the banning was necessary to protect the hospital patients from any risk of influence in the name of their right to their own freedom of conscience.

The significant pending application in case of *Pekünlü v. Turkey (2015, application no. 25832/14)* concerns the criminal conviction of the applicant, a university lecturer, was seeking to prevent a student from wearing an Islamic headscarf from entering a higher education institution.

In all of those cases Court generally declared that the restriction based on clear principles and adequate to the aims of preventing disorder and protecting the rights and freedoms of others could be justified.

New immigrants are expecting to have their religion and culture respected however at the same time there is a problem with respect granted for European tradition and culture. For example in Swiss schools there is tradition to shake the teacher's hand at the beginning and at the end of lessons. This sign of respect is a longstanding tradition in Switzerland. It is part of Swiss culture. Two Muslim teenagers brothers whose interpretation of the Koran forbid them from touching any member of the opposite sex, deny to do it. The boys, whose father is an imam, said their faith does not allow them to shake hands with any women who were not related to them. At the beginning, school had allowed two Syrian brothers to avoid the tradition due to their religious beliefs. Some Swiss Muslim groups said there was no religious justification for refusing to shake a female teacher's hand and urged the Swiss not to give

in to extremist demands. However another Islamic organization claim that handshake between men and women are strictly prohibited. The school had tried to find a solution by deciding whether the boys should not shake hands with male or female teachers. The authorities decided that the public interest concerning gender equality as well as integration is more important than the freedom of students belief.

Danish case shows the new minorities has 'lack of tolerance and inclusiveness'. In one of the cities in the housing area in Kokkedal will not to have a Christmas tree with lights due to a Muslim majority in the Board which has refused to spend money on the Christmas tree. For decades it has been a tradition to have a Christmas tree with lights in the area between the buildings in December. In present a majority in the Chamber Board refused to spend the money on Christmas tree with lights. The decision has attracted so much attention since it was made three days after a big Islamic Eid party in the town, which also required spending a lot of many. It is a sign of a lack of tolerance and inclusiveness from 'the new majority' and their influence on public expenses.

Another significant case was in Britain. A taxi driver has three English flags displaying the St George's Crosses stuck on the doors and boot of her vehicle. But after one complaint from a competitive cab company (Paki Muslim?), she was accused of breaching 'equality' laws. Authorities of the Town (Davon) admitted the stickers would be offensive to foreigners.

Similar case was in Italy. In Italian school in Rozzano near Milan a headmaster of the school banned Christmas concerts and carols in his school in the name of multiculturalism. In his school the number of pupils was non-Christian faiths, primarily Muslim. Because Muslim children didn't sing and even was taken out from the stage by their parents it was enough to bun the custom.

To sum up, all examples shows that in resent years Muslims culture and religion has got a strong impact on culture and religion on European civilization.

4. Limitation the right to religious freedom

In case of *Metropolitan Church of Bessarabia and Others v. Moldova* (Judgment 13.12.2001 of the European Court of Human Rights application no. 45701/99) the Court on Human Rights noticed that in a democratic society which several religions or branches of the same religion coexist within, may

be necessary to implement restrictions in order to reconcile the interests of the various groups and ensure that everyone's beliefs are respected enough.

Firstly, the state is under a negative obligation to refrain from interfering with the protected rights. The overarching obligation is to secure rights however not to limit requirements that states refrain from interfering with protected rights. Secondly, it can also place the state under an obligation to take further steps. A positive obligation is to ensure that religious communities may exercise the freedom to worship or otherwise 'manifest' their faiths through teaching. It will always be necessary to examine the facts of each case with particular care (*Murdoch, 2012, p. 33*).

It is obvious that freedom to manifest thoughts, conscience or beliefs must be restrain on behalf of public safety, public order, health and morals, or for the rights and freedoms of others (*see case Metropolitan Church of Bessarabia and others v. Moldova*). In results the freedom of religion is not absolute. A state may interfere with a 'manifestation' of religion in certain circumstances. The interference must have a legitimate aim, must be 'prescribed by law', must be 'necessary in a democratic society'. Additionally, it must correspond with pressing social need and adequate to the legitimate aim pursued, and be justified by relevant and sufficient reasons. However the problem may occur. But important is that this regulations must have a basis in domestic law and be both adequately accessible and foreseeable, and further contain sufficient protection against arbitrary application of the law. The stronger the 'pressing social need' is, the less difficult it will be to justified the interference. National security should be considered as principle such as public safety which appears to be a compelling social need (*Murdoch, pp. 37,39,41*).

In the Koran and Muslim tradition, they are obliged to take up any efforts in the name of spreading and strengthening of their beliefs, which may required a violent or non-violent form, e.g. through armed struggle, the conversion of the infidels, peaceful promotion of Islam, and internal struggles followers (jihad). There is no doubts that the authorities must respond appropriately to protect citizens from religiously-motivated attacks, such as proselytism. The right to religion freedom encompasses the 'teaching' as a recognized form of 'manifestation' of belief. The right to try to persuade others of the validity of one's beliefs is also implicitly supported by the reference in the text to the right 'to change [one's] religion or belief'. The right to proselytize by attempting to persuade others to convert to

another's religion is thus clearly encompassed within the scope of the right to religion freedom. But this right is not absolute, and may be limited where it can be shown that this is based upon considerations of public order or the protection of vulnerable individuals against undue exploitation. The jurisprudence distinguishes between 'proper' and 'improper' proselytism (*J. Murdoch*, pp. 47). According to this point of view, a distinction had to be drawn between 'ordinary muslim believer' and 'improper proselytism' which involved undue influence or even using force. It may entail the use of brainwashing, violence or even terrorist acts. It is not compatible with respect for the freedom of thought, conscience and religion of others. Under judgments 25.05.1993 (*Kokkinakis v. Greece*, application no. 14307/88) and 24.02.1998 (*Larissis and others v. Greece*, application no. 23372/94, 26377/94 and 26378/94) the European Court of Human Rights say that states may take steps to prohibit the right of individuals to try to persuade others of the validity of their beliefs, even though this right is often categorized by adherents as an essential sacred duty. The cases also clearly indicate that any interference with the right to proselytize must be shown to have been necessary in the particular circumstances (*Murdoch*, pp. 49).

All in all special attention should be considerably on refugee situation. Every refugees as well as migrants besides their rights, are obliged to the host country where it is required in particular acting in accordance with the applicable law, regulations and measures taken for the maintenance of public order. In area of public orders obligations refugees should act with respect to all countries regulations but in particular they should beware of breaking the law which could constitute a series crime leading to dangerous situations for the community of that country. Under judgment of 24 June 2015, the Court of Justice of the European Union (*H. T. v. Land Baden-Württemberg*, C-373/13, <http://curia.europa.eu/juris/liste.jsf?language=en&jur=C,T,F&num=c-373/13> [5 May 2016]), if the refugees break the law, especially by a threatening 'national security' or 'public order' refolement is possible as well as revoke, end or refuse to renew a residence permit. In judgment of 23 November 2010 the Court of Justice of the European Union (*Land Baden-Württemberg v. Panagiotis Tsakouridis*, C-145/09, <http://curia.europa.eu/juris/liste.jsf?language=pl&num=C-145/09> [5 May 2016]) explain that the concept of public security covers both internal and external security of the country. And that public security may be affected by a threat to the functioning of the

institutions and essential public services and the survival of the population, as well as the risk of a serious disturbance to foreign relations or to peaceful coexistence of nations, or a risk to military interests. The court has also held that ‘imperative grounds of public security’ presupposes not only the existence of a threat to public security, but also that such a threat is of a particularly high degree of seriousness, as it is reflected by the use of the words ‘imperative reasons’. In the judgment of 4 October 2012 the Court of Justice of the European Union (*Hristo Byankov v. Glaven sekretar na Ministerstvo na vatreshnite raboti*, C-249/11, <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-249/11> [5 May 2016]) explains that perturbation of the social order may involve any infringement of the law. In the same judgement Court said that concept of public policy presupposes, in any event, the existence, in addition to the perturbation of the social order, of a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. In their judgments the Court has already declared that terrorists activities could be recognized as ‘serious grounds of public policy or public security’. But even in those situations there is not possible to act automatically and the court or competent authorities must verify, on a case by case basis, whether the specific acts of the refugee can endanger national security or public order or even where those conditions are satisfied, *refoulement* of the refugee is only one option at the discretion of the host country, which can choose less rigorous options.

5. Final comments

Properly balanced policy based upon the needs of refugees and migrants is more difficult to formulate, implement, and legally and politically more difficult to adapt. So far no policy can deal with the vast numbers of people who want to leave their country for another one where opportunities are greater (*Weiner, 1990*). The fate of Muslim in Europe, and its shape depends to a large extent, from the direction which Europe will aim in cultural and social terms. Whether will go in the direction of wider rights for minorities, the absolute tolerance and undisputed freedoms, or will go towards reducing certain rights, freedoms and to uphold old values, ideas and foundations in Europe. The Islamisation of Europe is an inevitable and it should not be assumed easily that the mysterious Muslim culture would be in any way diminished by western adjustments (*Morgan, 2014, p. 6*).

Europe should rethink whether democracy should not tolerate Muslims' lack of acceptance of the separation of church and state or their denial of the right to criticize religion, including Muslim. Whether we accept any practices involved the subordination of women that are associated with Muslim immigrants, 'honor killings' carried out by brothers against women (who have besmirched the family's honor) or 'forced marriages' (Foner, Alba, 2008, p. 369). It is likely that the increasing cultural presence of the Muslim minorities helps Europeans to rediscover and revitalize the religious roots and symbols of their cultural identities (Kilp, 2011, p. 218).

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Judgments

- Pending application no. 25832/14, case *Pekünlü v. Turkey*.
- Judgment of the Court of Justice of the European Union (First Chamber) of 24 June 2015, *H. T. v. Land Baden-Württemberg*, C-373/13, <http://curia.europa.eu/juris/liste.jsf?language=en&jur=C,T,F&num=c-373/13> [5 May 2016].
- Judgment of the Court of Justice of the European Union of 23 November 2010, *Land Baden-Württemberg v. Panagiotis Tsakouridis*, C-145/09, <http://curia.europa.eu/juris/liste.jsf?language=pl&num=C-145/09> [5 May 2016].

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