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RELIGIOUS POLICY AND THE CHARITABLE ACTIVITIES OF
CHURCHES IN POLAND, THE CZECH REPUBLIC AND HUNGARY
AFTER 1989

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Abstract: The article discusses the religious policy of Poland, the Czech Republic and Hungary with regard to the charitable activity of Churches. The analyses refer to current regulations concerning the state-church relationship, adopted as a result of political changes in the examined countries after the breakthrough of the 1980s and 1990s. It presents the formal and legal framework of the Churches' charitable activity resulting from the provisions of constitutions, international agreements, and ordinary laws. In all of the countries under study, church charities benefit from legal regulations providing for their involvement in the sphere of social welfare, in cooperation with state and local government administration. The area of activities where this involvement is supported by the state is the provision of broadly understood social services. The size or political standing of a particular Church do not play any major role in establishing the conditions of such cooperation. Similarly, the level of religiousness in a society is irrelevant for the possibility of such cooperation, as is demonstrated by the example of the secularised Czech Republic.

Key words: religious policy; state-church relationship; church charities; Churches in Poland; Churches in the Czech Republic; Churches in Hungary.

1. Introduction

Religious policy is defined as a type of public policy which concerns the state's actions with respect to religious communities (Churches and other religious associations) and, in a broader sense, with respect to various entities related to these institutionalised religious communities. A particular religious policy is expressed in the adopted legal regulations (denominational law), but the actual religious policy often goes beyond this formal and legal order (Michalak, 2019). This text outlines those elements of religious policy which determine the formal and legal framework of the charitable activities of religious entities (Churches and the related organisations and institutions) in Poland, the Czech Republic and Hungary. Charitable work is a special area of the involvement of religious communities, since it is addressed to social groups that are often also the recipients of social assistance organised by public authorities. In this context, therefore, we may speak of a political aspect of the Churches' charitable work (Kamiński 2012, 11). The following analysis is concerned with the current regulations of the state-church relationship developed as a result of political changes in the examined countries after the breakthrough of the 1980s and 1990s.

From the methodological point of view, of key importance for the analyses performed here is the comparative method. In principle, the studied phenomena should be comparable in terms of quality (Chodubski 2008, 125), although attention is also drawn to the possibility of using quantitative comparison strategies focusing on quantifiable variables (Hopkin 2006, 257-263). Comparisons make sense, however, in so far as they concern phenomena that are "neither fully identical nor entirely different" (von Beyme 2007, 134). The research problem addressed here sufficiently meets this criterion. In order to make comparisons in the field of religious policy, it is necessary, however, to apply an institutional and legal approach, i.e. to analyse legal norms (Chodubski 2008, 126), such as constitutions, international agreements and ordinary legislation. In the institutional and legal order, both in the more general aspect of the state-church relationship and as regards the conditions relative to charitable work, it will be possible to identify similarities and differences between the countries.

2. The Charitable Activity of Churches in Polish Religious Policy

In Article 25, the Constitution of the Republic of Poland of 2 April 1997 regulates the most important issues concerning the state-church relationship. According to its provisions, all Churches and other religious

associations in Poland have equal rights, public authorities are required to remain impartial in matters of religious, world-view and philosophical beliefs, and to ensure freedom of their expression in public life. Relations between the state and Churches and other religious associations are based on the principle of respect for their autonomy, mutual independence as regards their respective domains, as well as cooperation for the benefit of man and the common good. For detailed regulations, the Constitution refers to ordinary laws, but in relation to the Catholic Church, it also refers to the international agreement concluded with the Holy See (Concordat).

The Concordat between the Holy See and the Republic of Poland, concluded on 28 July 1993 but not ratified until 1998, did not introduce any particular changes to the Polish legislation then in force or to the model of relations between the state and the Catholic Church endorsed in 1989. Rather, it contributed to the achievement of a higher degree of stability in these relations (Krukowski 2000, 328). Article 1 of the Concordat well reflects the model of mutual relations desired by both parties. It states that “the Republic of Poland and the Holy See reaffirm that the State and the Catholic Church are – each in their respective fields – independent and autonomous and undertake to fully respect this principle in their mutual relations and in cooperating for the development of man and the common good.” As regards charitable work, it states explicitly that “relevant church institutions have the right to carry out, each according to its own nature, missionary, charitable and caregiving activities. To this end, they may establish organisational structures and organise public collections” (Article 21.1), and that “activities serving humanitarian, charitable and caregiving, scientific and educational purposes undertaken by church legal entities shall be equated in legal terms to activities serving similar purposes and carried out by state institutions (Article 22.1). It should also be emphasised that, in view of the constitutional principle of equal rights for all Churches and other religious associations, the guarantees negotiated by the Holy See for the Catholic Church also apply to other Churches and religious associations. Although the Concordat directly concerns the relations between the state and the Catholic Church, it also fulfils “the function of promoting religious freedom with respect to other religious associations” (Krukowski 2000, 286). Relevant regulations, equating church charity and caregiving activities with analogous activities of state institutions, were therefore consistently introduced into the laws regulating the relations of the Republic of Poland with other Churches and religious associations.

A legal act of particular importance for the Churches’ charitable activities is the Act on the Relationship between the State and the Catholic Church in the Republic of Poland, adopted on 17 May 1989. Similar separate statutory regulations are in place for 14 other Churches and religious communities (e.g. Polish Autocephalous Orthodox Church, Evangelical-Reformed Church, Evangelical-Augsburg Church) and the

status of the remaining religious communities is regulated by the Act on the Guarantees of Freedom of Conscience and Religion, also adopted on 17 May 1989. The Act on the Relationship between the State and the Catholic Church may be treated as a model regulation of the issue of charitable activities of all Churches in Poland. Firstly, it defines the legal entities of the Church, listing examples such as Caritas Poland and the diocesan Caritas branches, i.e. the main charitable institutions of the Catholic Church in Poland. Church legal entities have been granted the right to carry out, among other things, charitable and caregiving activities, and the Act specifies what these activities include in particular. Pursuant to Article 39, they are e.g.: operation of facilities for orphans, the elderly, people with physical or mental disabilities and other categories of people in need of care, operation of nurseries and day-care centres, dormitories and shelters. Statutory list of charitable activities “is not a *numerus clausus* and does not exclude other forms of organising and providing assistance” (Zarzycki 2005, 82). Furthermore, enumeration of the sources of funding for charitable and caregiving activities included in the Act does not have the character of a *numerus clausus* either. In accordance with Article 40, funds for these purposes may come in particular from: offerings in cash and in kind; inheritances, legacies and donations, both domestic and foreign; income from public events and collections; subsidies, grants and offerings from national institutions and enterprises, whether public, social, religious or private; payments for services provided by church charities and caregiving institutions; income from business activities conducted by Caritas Poland and diocesan Caritas branches directly or in the form of separate establishments and income of church institutions.

The above-mentioned constitutional principle of religious equality results in that analogous regulations concerning charitable activities, their providers, scope or methods of their financing are also included in legal acts concerning other Churches and religious associations (Kamiński 2012, 212–218).

The Polish model of relations between the state and the Church specified in the above-mentioned regulations generally corresponds to the model of autonomy and cooperation (Sowiński 2008; 2012). As regards charitable activities in Poland today, the most active is the Catholic Caritas, but a significant role is also played by the Orthodox organization Eleos and the Diakonias of the Evangelical-Augsburg and Evangelical-Reformed Church (Kamiński 2012, 239–321).

3. The Charitable Work of Churches in the Religious Policy of the Czech Republic

When analysing the formal and legal dimension of the Czech Republic’s religious policy, it must be borne in mind that it is currently the most secularised, or rather “dereligionised” (Fiala 2016, 32) society in

Europe. This fact is not without significance for the formation of the social and political position of the Churches, especially the Catholic Church after the beginning of the political changes and the division of Czechoslovakia as a result of the so-called Velvet Revolution. Contemporary Czech religious policy is founded on the regulations of constitutional law, international agreements, national legislation and agreements between the state and Churches (Tretera 2007, 72). The agreements between the Czech state and the Churches concern pastoral care in the armed forces, penal institutions and the presence of Churches in the media, which is why they are not discussed in detail in this paper.

The Constitution of the Czech Republic of December 16, 1992, both in the Preamble and in the main body of the text, does not mention religion, Churches or other religious associations at all. Regulations relating to religious matters are included, however, in the Charter of Fundamental Rights and Freedoms which was adopted by Czechoslovakia, but which pursuant to Article 3 of the Constitution forms part of the constitutional order of the Czech Republic and is an integral part of the text of the Constitution according to the Resolution of the Presidium of the Czech National Council of December 16, 1992. Under the Charter, “[t]he State is founded on democratic values and must not be bound either by any exclusive ideology or by a particular religion” (Article 2.1). Citizens have the right to freedom of opinion, conscience and religion. Everyone also has the right to “change his or her religion or faith, or to have no religious beliefs” (Article 15.1). Issues related to the public expression of religious beliefs are provided for in Article 16 of the Charter. It states that: (1) Everybody has the right to profess freely his or her religion or faith either alone or jointly with others, privately or in public, through religious service, instruction, religious acts, or religious ritual. (2) Churches and religious societies administer their own affairs, in particular appoint their organs and their priests, and establish religious orders and other church institutions, independently of organs of the State. (3) The conditions of religious instruction at state schools shall be set by law. (4) Exercise of the aforesaid rights may be limited by law in the case of measures which are essential in a democratic society for the protection of public security and order, health and morality, or the rights and freedoms of others.”

The legal situation as regards the agreement signed on 25 July 2002 to regulate the bilateral relations between the Czech Republic and the Holy See is a peculiar one. The agreement has not yet been officially published, “which is quite an exception. Due to the fact that it has not yet been ratified, it may be called a draft agreement” (Kaczmarek 2016, 205). It was rejected by the Chamber of Deputies of the Parliament on 21 May 2003. Its rejection was supported by 110 MPs, with 39 MPs voting against, 28 abstaining, and 23 who did not participate in the vote (*ibidem*, 209). However, the proposal may “be re-submitted when circumstances are

more favourable” (Tretera 2007, 72). Since it contains references to charitable activities of Churches, it is worth discussing in more detail.

The agreement states that “[t]he Holy See acknowledges that the Czech Republic is, according to its constitutional order, a non-confessional state, and therefore not bound to any religious denomination” (Article 5.1). Nevertheless, the Czech Republic undertakes to ensure that the Catholic Church is free to exercise its proper apostolic mission and manage its own affairs (Article 6). Clearly, charitable activities are an important element of the social presence (mission) of the Church. Therefore, the Catholic Church may establish legal persons to organise and profess the Catholic faith and to carry out its activities, particularly in the fields of education, healthcare, social welfare and charitable ministry (Article 10.1).

Particularly interesting from the point of view of charitable work is Article 13 of the agreement. It stipulates as follows: “(1) The Catholic Church provides, to the extent possible, humanitarian help in the Czech Republic and abroad, in the course of which it is prepared to co-operate with governmental and non-governmental organisations of the Czech Republic. (2) Charitable institutions of the Catholic Church in the Czech Republic are operated in accordance with their own by-laws in compliance with the legal order of the Czech Republic and have the right to receive funding for these services from the State budget under the same conditions as other institutions of the same or similar nature. (3) In institutions providing social services, the Catholic Church may provide spiritual and pastoral ministry to those who request it. (4) Further conditions for the exercise and provision of spiritual and pastoral ministry in institutions providing social services may be regulated in an agreement between an authorised representative of the Church and the social welfare institution concerned.” As can be seen, item (2) contains a very important provision allowing church charities to provide social services financed from the state budget.

Since it is a traditional element of the Church’s charitable work to provide assistance in the area of healthcare, it is also worth noting Article 14 of the agreement. According to its provisions, “(1) The Catholic Church is entitled to establish and operate healthcare facilities under the conditions laid down in the legal order of the Czech Republic. (2) The Catholic Church has the right to provide spiritual and pastoral ministry in healthcare facilities for those who so request. (3) Further conditions for the exercise and provision of spiritual and pastoral ministry in healthcare facilities may be regulated in an agreement between a representative of the Church and the healthcare facility concerned.”

The agreement of 2002 therefore appears to be a typical concordat agreement, i.e. one that regulates “the position and the charitable activities of the Catholic Church within a particular country” (Kaczmarek 2016, 205). From the point of view of the formal and legal conditions of the

Church's charitable activities, it should be noted that the document devotes an exceptional amount of space to this sphere. The proposed regulations may be seen as consolidating the position of church entities as providers of assistance to the needy. The fact the agreement has not been ratified despite the fact so much time has elapsed since it was signed is certainly surprising, but the practical effect is that "the main framework of Czech religious law is based on Act 308/1991, replaced by Act No 3/2002 of 7 January 2002 on the Freedom of Religious Expression and the Status of Churches and Religious Associations" (Tretera 2007, 72).

Act 308/1991 of 4 July 1991 on Religious Freedom and the Status of Churches and Religious Associations was adopted on the basis of the Charter of Fundamental Rights and Freedoms mentioned above (Orzeszyna 2007, 172). Article 4 of the Act defines churches and religious societies as voluntary associations of "persons professing the same religion in an organisation with its own structure, bodies, internal regulations and rites (...). Churches and religious societies are legal entities (...) The government recognises only those churches and religious societies that are registered in compliance with this Act." Among the powers of churches and religious associations, vested in them to carry out their own mission, Article 6 Section 1 item k mentions the right to establish and operate their own healthcare and social welfare facilities and to participate in "the provision of such services in government-run facilities in compliance with general binding legal regulations." Thus, the Act provided for the presence of religious institutions (religious entities) in the welfare system and their cooperation with the state in providing for the social needs of citizens. It was adopted before the so-called Velvet Revolution, but the legal order of the Czech Republic, which came into existence on 1 January 1993, incorporated the principles of religious law contained in the Act and, according to Tretera, "the period when it was in force (1991-2002) may be seen as the best period of religious freedom in Czech history" (Tretera 2007, 71). In the summer of 1998, first works began on developing a new act regulating the status of churches and religious associations (Kaczmarek 2016, 161).

The new Act on Religious Freedom and the Status of Churches and Religious Associations was passed on 27 November 2001. Although President Vaclav Havel refused to sign it, on 18 December 2001 his veto was rejected by the votes of the Civic Democratic Party (ODS) and the Czech Social Democratic Party (ČSSD), and the Act could enter into force. Soon, however, "a group of twenty one Senators filed a motion with the Constitutional Court demanding that the Act be repealed. The Court, however, did not do so, but introduced many amendments applicable to church legal persons" (Kaczmarek 2016, 162). The Act defined churches and religious associations as institutions whose sole purpose was to promote religion and practice rituals, and did not mention their charitable activity at all (Tretera 2007, 74). Although it was five times longer than the

previous one, it focused mainly on a catalogue of obligations imposed on Churches. The previous Act of 1991 contained, apart from obligations, a catalogue of the rights of Churches and religious associations (Kaczmarek 2016, 162). The new regulations stipulated that “individual church organisations which had legal personality were to be entered in the register kept by the Ministry of Culture within a year, or else would lose their status. This put the existence of church charities at risk (...). In September 2002, the [Constitutional Court in Brno - TK] repealed Article 6.2 of the Act which limited the activity of religious associations to acts of worship and evangelisation” (Tretera 2007, 74). The authorities of a registered church or religious association may thus apply for the registration of charitable organisations and facilities they have set up. They may also operate and earn income from business activity. Entities established by churches and religious associations for the purpose of providing social, medical, charitable/diakonia services which are to be registered under the Act should be specified in the statutes of the church or religious association concerned.

The regulations presented above create a framework within which church charities may not only operate on their own account, but also perform the tasks of the public social welfare system. Among all NGOs operating in the Czech Republic, the largest provider of social services is the Catholic Caritas (Lábrová 2011, 76). It provides caregiving, healthcare, social prevention, counselling, and other services. Church charities provide almost half of all services for the homeless and 15-25% of all services for the elderly and disabled (Opatrný and Morongová 2016, 117–120). It is worth noting the activities of the Silesian Evangelical-Augsburg Church (Slezská církev evangelická augsburské vyznání), whose Diakonia was originally established as a civic association in 1990. Today, it operates more than fifty centres, mainly providing services for the homeless in the Silesia-Moravia region (Hradecký 2008, 183).

It may thus be concluded that the strongly secularised Czech Republic has a religious policy in place which operates in the model of cooperation between the state and Churches (Tretera 2007, 73), while maintaining the principle of the state not identifying with any religion or ideology, i.e. state neutrality (Orzeszyna 2007, 172). The sphere of the Churches’ charitable activity is a particularly good illustration of the practical implementation of this cooperation (Kamiński 2020).

4. Hungarian Religious Policy and the Charitable Work of Churches

The relationship between the state and Churches and other religious associations in Hungary is regulated primarily by the Constitution. Until 1 January 2012, the Constitution of 18 August 1949 was in force. Of course, already after 1989 it was amended several times due to the ongoing

process of systemic transformation in Hungary (Hörcher 2014, 22). Of particular importance from the point of these reflections was Article 60 pursuant to which the Republic of Hungary guaranteed everyone freedom of thought, conscience and religion, and declared that the Church remains separate from the state (Schanda 2007, 376). More detailed rules on the relationship between the state and Churches are laid down in Act IV/1990 on the Freedom of Conscience and Religion and on Churches. It was passed on 24 January 1990 by 304 votes for and 1 vote against, with 12 abstentions (Adriányi 2004, 292). The Preamble to the Act emphasises that Churches, religious and denominational associations in Hungary are of great social significance. They play an important role in the life of the state because, in addition to strictly religious activities, they are involved in cultural, educational, social welfare and healthcare activities, as well as the cultivation of national identity. Particularly important in the context of these analyses was Article 17.1. of the Act which stipulated that church legal persons could perform all kinds of educational, cultural, social, healthcare, sporting and child and youth care activities, to the extent not reserved exclusively for the state or its institutions. In order to carry out these types of activities, legal entities established by Churches were allowed to set up and operate their own institutions. As a result these regulations, when performing public tasks, including those in the field of social welfare, Churches became entitled to receive funding from the state budget on the same principles as state institutions serving the same purposes (Schanda 2007, 384; Adriányi 2004, 292–293). This solution has undoubtedly contributed, among other things, to the creation of a framework for the revival and development of the charitable work of denominational entities in Hungary.

According to Krzysztof Orzeszyna, the “principle of separation and the secular character of the state” was introduced into the Hungarian system with full deliberation (Orzeszyna 2007, 213). In discussing the most important categories of this system, Balazs Schanda points to neutrality, separation and cooperation. He distinguishes between neutrality and indifference and secularism, but points out that the state should not be institutionally linked to any ideology, whether religious or secular. Separation is designed, on the one hand, to respect the autonomy of Churches and, on the other, to prohibit the use of the instruments of state power by religious associations. He concludes that “the Hungarian system established in the 1990s may be described as a voluntary separation, respecting religious freedom and the freedom of Churches, developing their activities and open to cooperation for the common good, especially in the area of public services” (Schanda 2007, 378).

On 1 January 2012, a new Constitution entered into force, and a new Act on Religious Freedom and the Rights of Churches, Religious Associations and Religious Communities was passed. The adoption of a new Constitution of Hungary was made possible by the unprecedented

outcome of the parliamentary elections of 2010. The fact that Fidesz and the Christian Democrats obtained a constitutional majority opened up the possibility of changing the state system. Ferenc Hörcher writes that “the process that led to the official adoption of the new Constitution by the parliamentary *supermajority* was unexpectedly calm and easy, even though it caused an unprecedented wave of international criticism and humiliation of the Hungarian Government” (Hörcher 2014, 20). An important, but above all symbolic proof of a major change was the return to the traditional name of the state: Hungary instead of the Republic of Hungary, which according to some commentators caused “a fury of the opposition and the European left” (Wołek 2014, 12). As far as the content of the new Constitution is concerned, “about 80% of the provisions of the previous Constitution were incorporated without any comment (...). This means that important provisions on fundamental rights, such as the rights of the individual in relation to state authorities, were taken from the predecessor Constitution” (Hörcher 2014, 21). It should also be noted that in a fairly short period of time, several changes were made to this newly adopted Constitution: five amendments in 2012-2013 and another one in 2016. The fifth amendment, dated 16 August 2013, resulted, among other things, in the current wording of Article VII relating to the situation of religious associations in Hungary (Trócsányi 2017, 69-72).

Pursuant to Article VII of the Hungarian Constitution, persons professing the same faith may establish religious communities in order to practise their religion. Their organisation is regulated by an organic law. Religious communities are guaranteed autonomy and should act independently of the state. Most relevant from the point of view of the issues analysed in this study is the fourth paragraph of Article VII which states that “[t]he State and religious communities may cooperate to achieve community goals. At the request of a religious community, the National Assembly shall decide on such cooperation. The religious communities participating in such cooperation shall operate as established churches. The State shall provide specific privileges to established churches with regard to their participation in the fulfilment of tasks that serve to achieve community goals.” The conditions of this cooperation, as well as the detailed rules of the operation of all religious communities in Hungary, are laid down in an organic law.

Currently the issues mentioned above are regulated by Act CCVI/2011 on the Freedom of Conscience and Religion and the Legal Status of Churches and Religious Communities, amended in 2013 in order to adjust its provisions to the current wording of Article VII of the Constitution. The Act opens with a Preamble which emphasises the special value of religious communities for the Hungarian society. This is due to the fact that, in addition to their religious activities, they are also active in the fields of education, upbringing, higher education, healthcare, social and charitable work, support for the family, children and young people, as

well as sports and cultural activities. The Preamble declares that Hungary recognises and supports the functioning of religious communities, which play a crucial role in the life of the Hungarian society. Pursuant to Article 6 of the Act, religious communities are established and operate primarily for religious purposes. The fourth paragraph of the same Article lists a catalogue of activities which are not of religious nature in themselves, but which may be carried out by registered religious communities. The catalogue includes charitable and welfare activities, as well as health care. Furthermore, pursuant to Article 19 religious communities may carry out socially beneficial tasks on their own or through entities they establish for these purposes, to the extent not reserved exclusively for the state and its institutions. Article 20 stipulates that in connection with activities performed for the benefit of the society, church legal persons are entitled to receive support from the state on the same principles as state and local government institutions conducting similar activities. Equal treatment also applies to the conditions of employment in church entities performing public tasks. A church legal person may, in connection with cooperation with the community, benefit from a tax relief and other allowances. It should be noted that the aforementioned principle of equal treatment of church social (as well as educational or cultural) entities was previously adopted and confirmed in the agreement between Hungary and the Holy See of 20 June 1997 (Adriányi 2004, 296). Hungary does not have a comprehensive concordat in place, but three agreements on specific issues (so-called “partial concordats”), among others the agreement of 1997, cited above, on the financing of church activities for public benefit and other matters of the religious life of the Catholic Church (Krukowski 2010, 98–99).

As results from the above regulations, the Hungarian state provides opportunities for church charity activities also in the area of public tasks. Much competition to strictly religious entities in Hungary comes from the exceptionally well-developed Maltese Aid Service (Magyar Máltai Szeretetszolgálat), which receives significant financial support from the state. The Catholic Caritas Hungarica, being a church organisation, did not receive any significant state funding for a long time and relied on the generosity of the faithful and contracts for the provision of services, as long as it was able to make a more favourable offer than other competing NGOs. As pointed out by Peter Török *et al.* (Török, Nagy and Joób 2010, 267), at the end of the first decade of this century, it was characteristic that of the four largest non-public relief organisations in Hungary (the Hungarian Red Cross, the Maltese Aid Service, Caritas Hungarica and the Ecumenical Aid Service), only the latter two, directly related to Churches, did not receive any regular funding from the state budget, which was an expression of religious policy as such rather than any special treatment of relief and aid organisations.

Some commentators point out that after 2010 the situation of the Church improved significantly compared to the earlier period, especially in comparison with the years of post-Communist and liberal rule (Nowak, 2016). This may apply in particular to the practical dimension of relations between the state and the Church, including the treatment of church providers of social services. The very foundations of the model of relations between the state and the Church were, after all, developed in the 1990s, but it is significant that the Constitution currently in force refers to the independence of the state and religious communities, rather than their separation.

5. Conclusions

In all of the countries under study, church charities benefit from legal regulations providing for their involvement in the area of social welfare, in cooperation with central and local administration. Relevant guarantees are contained in their Constitutions, and in the case of Poland and Hungary also in international agreements with the Holy See. In the case of the Czech Republic, such an agreement has been drawn up, but has not yet been ratified or entered into force. More detailed norms concerning the functioning of church-run charitable organisations are contained in the ordinary legislation regulating state-church relations and particular areas of social life. The main area of activity in which the involvement of religious entities is supported by the state is the provision of broadly understood social services.

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