

THE EU MEMBER STATES AND THE REFUGEE. WHO SHOULD (NOT) TRUST THE OTHER?

A few from the shadow of the razor-fence

Presentation by

Boldizsár Nagy at the

SYMPOSION DÜRNSTEIN 2016

„Vertrauen in unsicheren Zeiten. Optionen für die Zukunft“

PHOTO OF JAVIER BALAUZ



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CNN REPORTS, 28 AUGUST, 2015



Fleeing war to be left dead in truck

Austria says 71 bodies likely those of Syrians who suffocated
Tide of death: Migrants' bodies wash in | One migrant's journey | 'Better bombed in my homeland than die here'

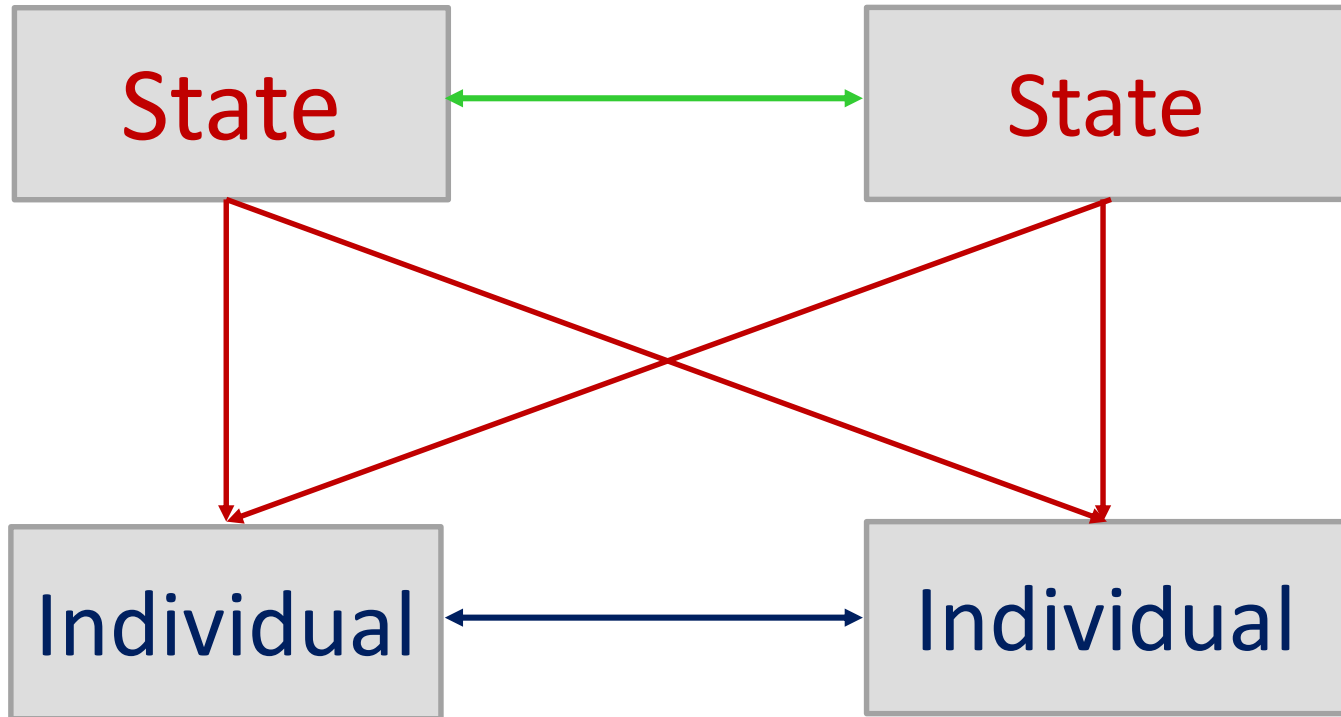
TRUST IN THE REFUGEE CONTEXT

Interpersonal – between the person and an institution –
between institutions (see next slide)

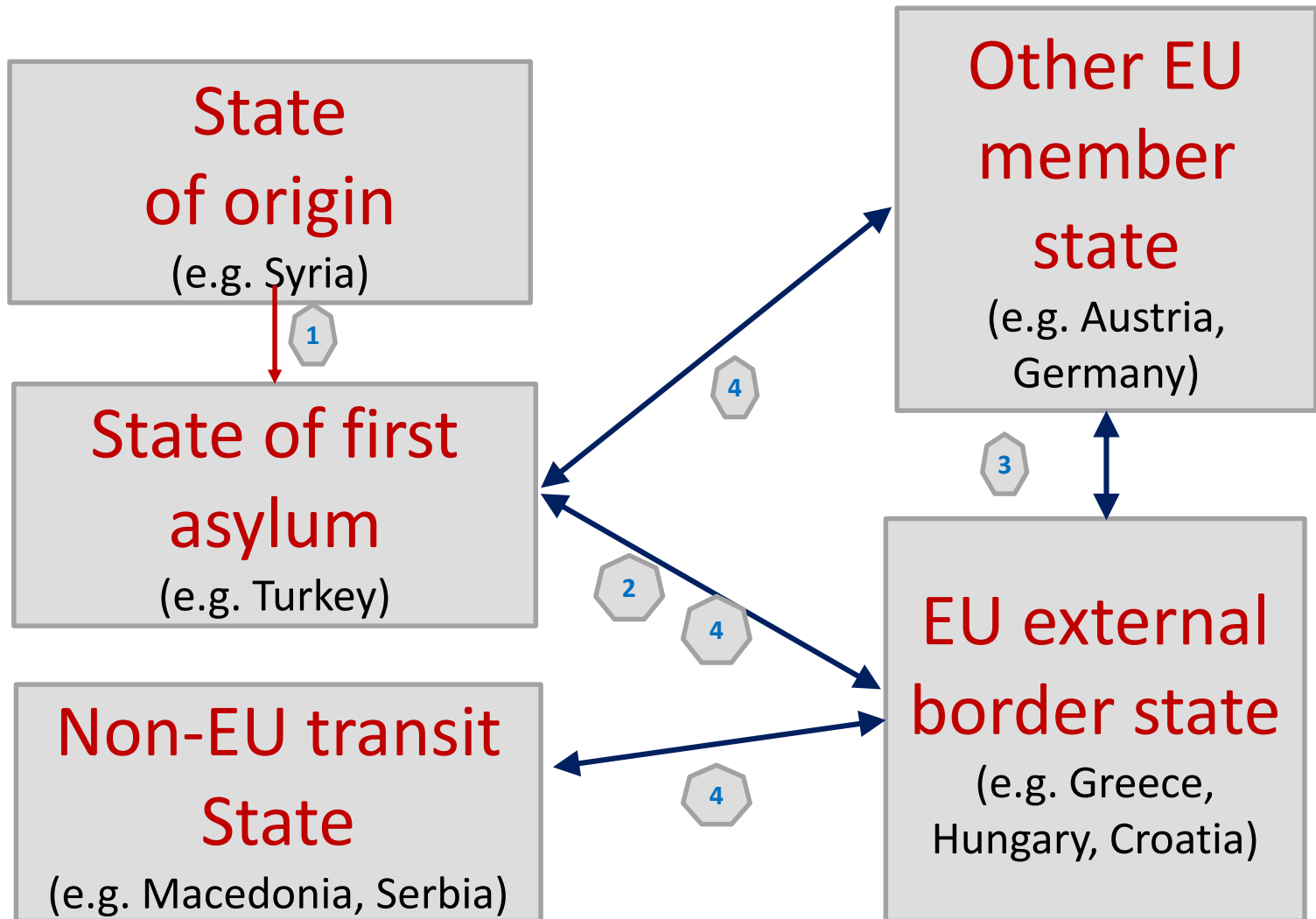
Trust – two fundamental forms/meanings

- 1) The (rational) expectation that the other (person, institution) will act as (s)he/it promised, as (s)he /it is supposed to act due to social norms/customs, professional instructions or merely due to the reasonability of reciprocity.
- 2) „Blind trust” – a reliance on the other without the social guarantees or the potential of sanctioning/punishing the abuser. A reliance based on non-verifiable, not rational-calculus-based components.

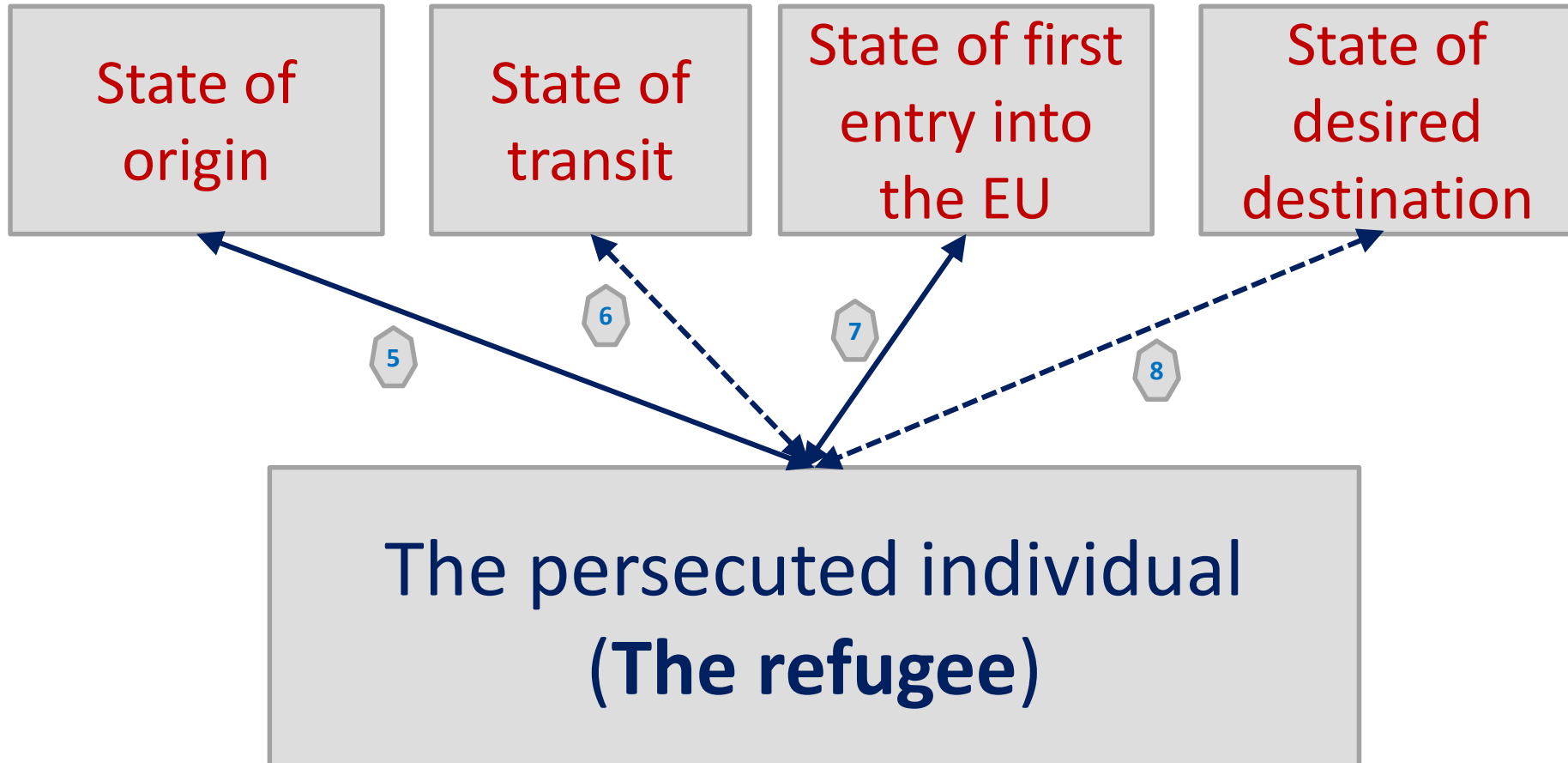
RELATIONSHIPS OF (DIS)TRUST



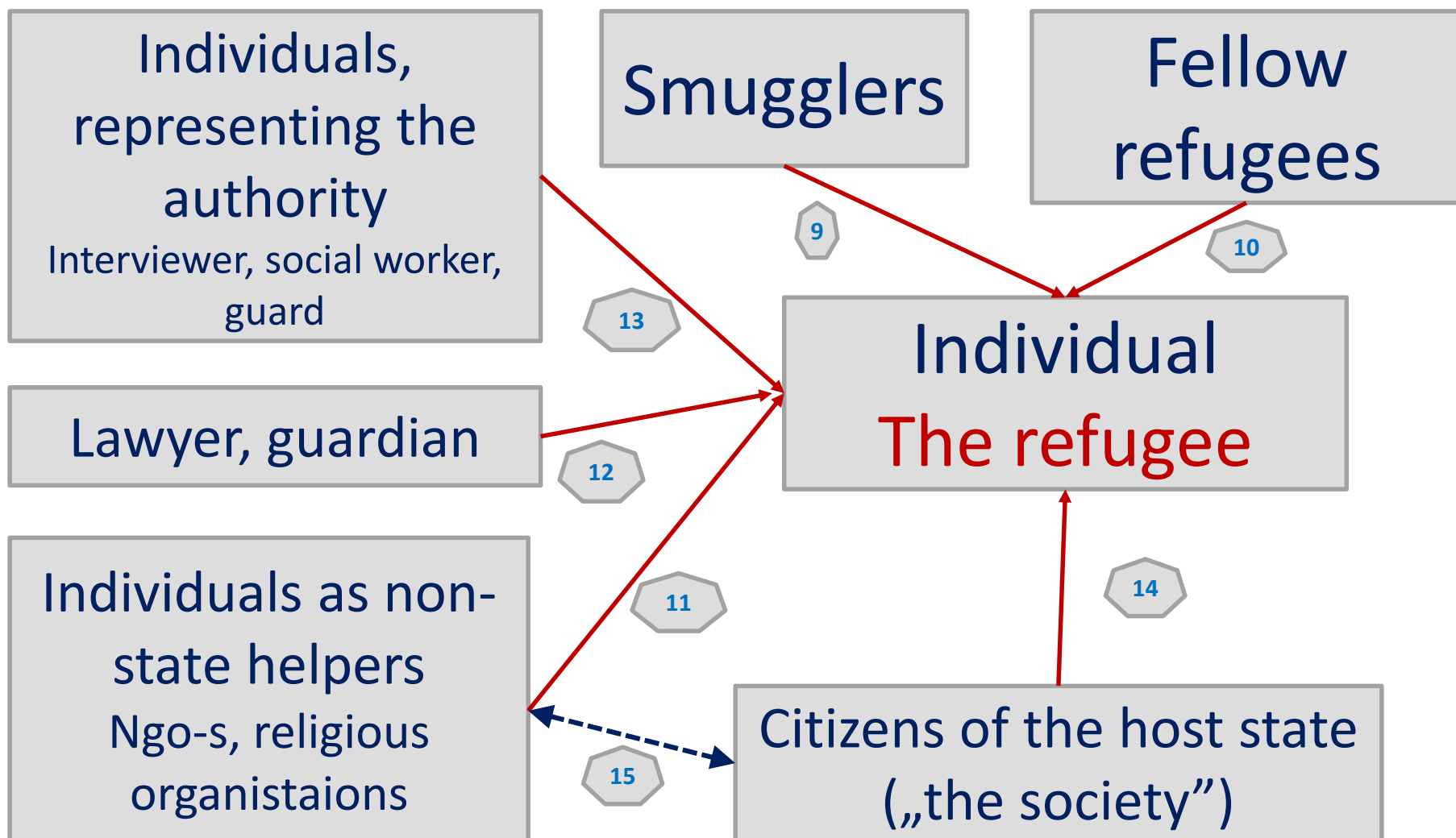
RELATIONSHIPS OF (DIS)TRUST



RELATIONSHIPS OF (DIS)TRUST

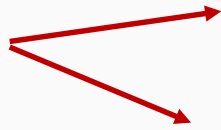


THE NET OF INDIVIDUAL RELATIONSHIPS



THOUGHTS ON THE TRUST/NO TRUST RELATIONSHIPS

Relationship (Rel) 1 (State of origin – State of first asylum)

State of first asylum:  de facto
de jure

De facto: Syria Turkey: ambivalent

opening/closing the border (refugees – „infiltrators”)

the Kurdish problem

safe zones planned in Syria (remember Srebrenica!)

The tension between the duty to protect (non-refoulement)
and the state mission to minimise disruption/security threats

Turkey: still maintains geographic limitation to the 1951
Geneva Convention - Syrians, Afghans not in the „normal” regime
Specific legislation on temporary protection for Syrians

De jure: see Rel 2

THOUGHTS ON THE TRUST/NO TRUST RELATIONSHIPS –FIRST COUNTRY OF ASYLUM

Relationship (Rel) 2 (State of first asylum – EU State at the external border)

State of first asylum:  de jure

EU law („Procedures Directive”, /DIRECTIVE 2013/32/EU/):
Article 35

The concept of first country of asylum

A country can be considered to be a first country of asylum for a particular applicant if:

- (a) he or she **has been recognised** in that country **as a refugee** and he or she can still avail himself/herself of that protection; or
- (b) he or she **otherwise enjoys sufficient protection** in that country, **including** benefiting from the principle of **non-refoulement**, provided that **he or she will be readmitted** to that country.”

In applying the concept of first country ... Member States **may** take into account **the rules on safe third countries**. The applicant **shall be allowed** to **challenge** the application of the first country of asylum concept to his or her particular circumstances.

THOUGHTS ON THE TRUST/NO TRUST RELATIONSHIPS –FIRST COUNTRY OF ASYLUM

Is Turkey a first country of asylum?

Can EU MS trust in its performance?

The preliminary agreement of 7 March assumes that.

What should be the rights? When if protection effective?

- * Physical safety
- * Freedom of movement
- * Housing
- * Access to health care
- * Access to the labour market
- * Freedom to establish business (self-employment)
- * Access to schools

Are Jordan and Lebanon first countries of asylum? (No – e.g. no right to return)

THOUGHTS ON THE TRUST/NO TRUST RELATIONSHIPS – THE DUBLIN REGIME

Rel 3 EU external border state – other EU member state

1990 Convention – 2003 first regulation (Dublin II) -2013 second regulation (REGULATION (EU) No 604/2013)

Aim: guarantee **access to the procedure** – but **only one** procedure within the EU (+Iceland, Liechtenstein, Norway, Switzerland)

Fairness requirement: identical **substantive law** (homogenous interpretation), comparable **procedural rights** (appeals, legal representation) and **reception conditions**

Presumes **mutual trust** among MS: it ought to be indifferent which member states conducts the refugee status determination

THOUGHTS ON THE TRUST/NO TRUST RELATIONSHIPS – THE DUBLIN REGIME

Dublin is **virtually dead**

M.S.S. v. Belgium and Greece (application no. 30696/09), Judgment, 2011

NS contra Secretary of State /UK/ C-411/10 Joined with M.E. and Others v Refugee Applications Commissioner, Minister for Justice and Law Reform (Ireland) - CJEU judgment of 21 December 2011 → New Article + (2) of the regulation:

„Where **it is impossible to transfer** an applicant to the Member State primarily designated as responsible **because** there are substantial grounds for believing that **there are systemic flaws in the asylum procedure and reception conditions** for asylum applicants in that Member State **resulting in risk of inhuman or degrading treatment** within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union,...” the MS may seek another responsible state, but if none found must proceed itself.

THOUGHTS ON THE TRUST/NO TRUST RELATIONSHIPS – THE DUBLIN REGIME

Returns suspended systematically (E.g.. Denmark – Bulgaria, 2014, Sweden-Hungary, March 2016) or in individual instances (to Hungary, Italy, e.g.)

2015 Fall Hungary, Croatia, Slovenia, Austria – „waving through” the countries hundreds of thousands in violation of the Dublin system rules (Eurodac registration) - total collapse of the trust in the reliability of the asylum system of the other MS – there is no longer a Common European Asylum System

THOUGHTS ON THE TRUST/NO TRUST RELATIONSHIPS – THE SCHENGEN REGIME

Assumption: **any section of the Schengen external border** is surveyed (controlled) to the **same level of security**

Border crossings of third country nationals* at crossing points are subject to **systemic checks**

Aim: **to exclude persons** without the right to enter and to **prevent the departure** of persons thought after („Schengen alert”)

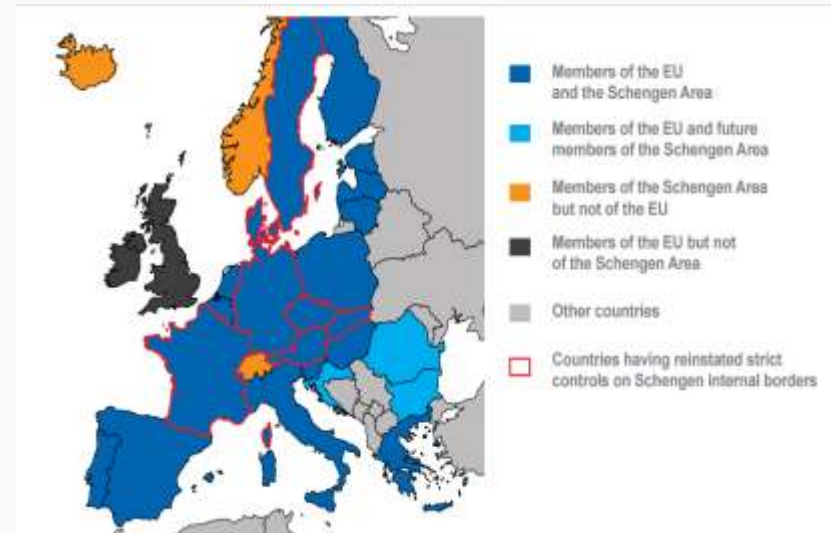
The **security** and the law-enforcement efficiency **of each MS is dependent on the reliability of the border guards** serving at the external borders (land –sea –air)

2015: Greece, Hungary, Croatia, Italy
– all **fail**

Tendency to restore internal border controls

2015 December: Commission proposes the setting up of an EU Border and Coast Guard

2016: Restoration of the functioning of Schengen – or collapse
(See: COM (2016)20)



*strictly speaking: persons without the free movement rights within the EU

Source of chart: France Stratégie: The Economic Cost of Rolling Back Schengen http://blog.en.strategie.gouv.fr/wp-content/uploads/2016/02/FS_-NA39_Schengen-english.pdf

THOUGHTS ON THE TRUST/NO TRUST RELATIONSHIPS

THE SAFE THIRD COUNTRY RULE

Safe third country rule – **allocation of competence to conduct a**
refugee status determination **procedure**

Procedures Directive (DIRECTIVE 2013/32/EU) 27 §

- **life and liberty are not threatened** on account of 5 Geneva Convention grounds; and no risk of serious harm
- the principle of **non-refoulement** is respected; and
- the prohibition on removal in breach of the right to freedom from **torture and cruel, inhuman or degrading treatment** as laid down in international law is respected; and
- the **possibility exists to request refugee status** and, if found to be a refugee, **to receive protection in accordance** with the Geneva Convention.

THOUGHTS ON THE TRUST/NO TRUST RELATIONSHIPS THE SAFE THIRD COUNTRY RULE

meaningful link between applicant and s.t.c.

investigation if a particular country is safe for the particular a.s.(or national designation of s.t.c.)

a right of the asylum seeker to challenge the safety

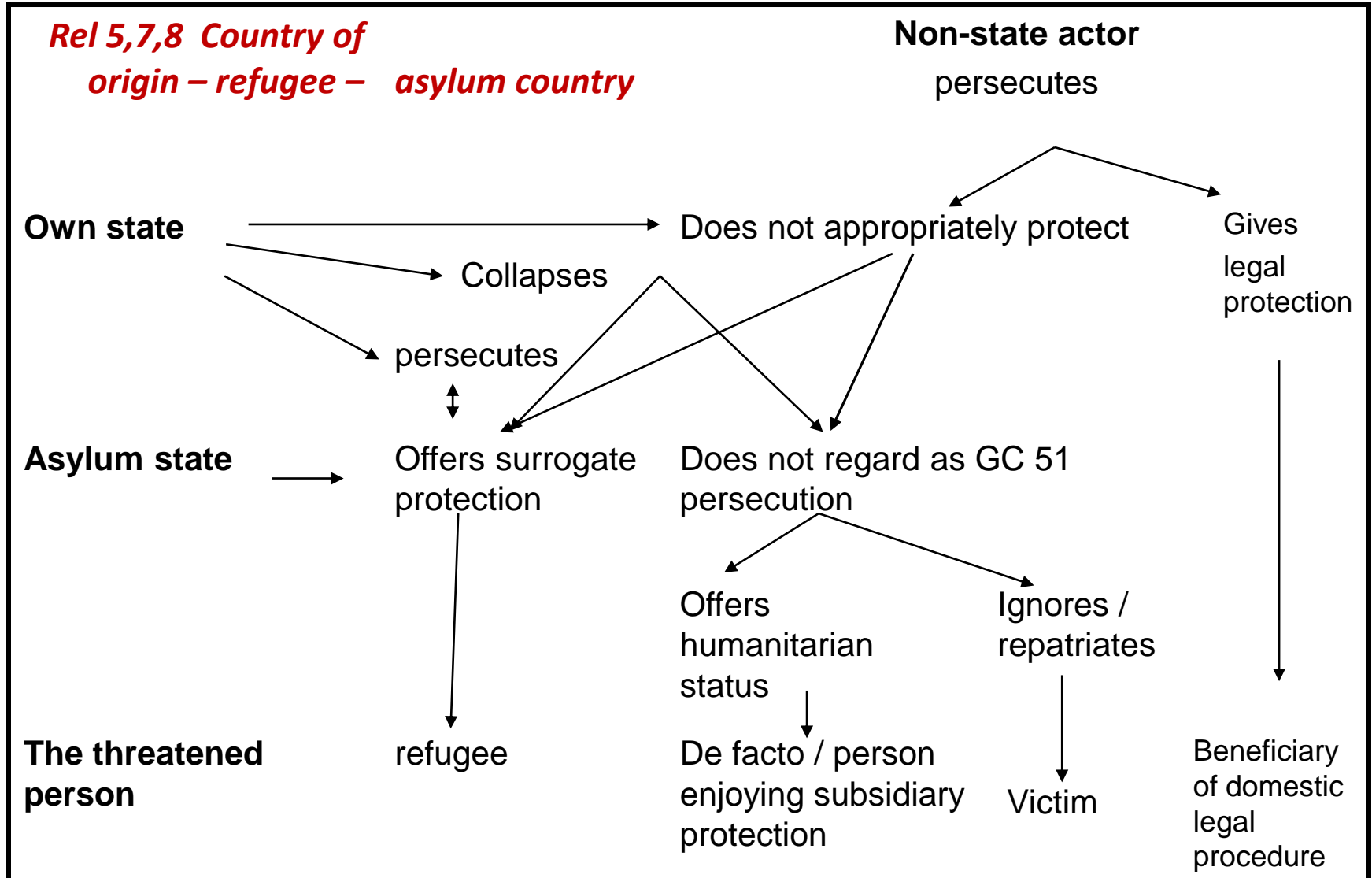
If application inadmissible because of s.t.c. :

- inform asylum seeker accordingly,
- provide asylum seeker with document informing the s.t.c. that the application has not been examined in substance

Transfer of responsibility for the protection of the refugee - trust in the system of a non-EU country – it should provide protection comparable to that of the MS – genuine refuge

Serbia, Macedonia: UNHCR, NGOs – they are not safe third countries

THOUGHTS ON THE TRUST/NO TRUST RELATIONSHIPS PERSECUTORS AND PROTECTORS



THOUGHTS ON THE TRUST/NO TRUST RELATIONSHIPS

CONCEPTUAL SCHEME

International protection

Refugee status

new

Subsidiary protection status

means the recognition of a third country national or stateless person
(Not EU citizen!)

As a „refugee”

as a „person eligible
for subsidiary protection”

THOUGHTS ON THE TRUST/NO TRUST RELATIONSHIPS

THE GENEVA CONVENTION DEFINITION

Geneva Convention relating to the status of refugees – 1951

Article 1. *Definition of the term “refugee”*

A. For the purposes of the present Convention, the term “refugee” shall apply to any person who:

- (1) Has been considered a refugee ...[according to the interwar arrangements and the IRO constitution]
- (2) As a result of events occurring before 1 January 1951 and owing to **well-founded fear of being persecuted** for reasons of **race, religion, nationality, membership of a particular social group or political opinion**, is **outside** the country of his nationality and is **unable, or** owing to such fear, is **unwilling to avail himself of the protection of that country;** or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

THOUGHTS ON THE TRUST/NO TRUST RELATIONSHIPS

DEFINITIONS – EU

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 (OJ L 304/12 2004 09 30,)

EU Qualification Directive

2004/2011

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

Art 2 2004:(e) 2011: (f)

„person eligible for subsidiary protection” [means someone], „who **does not qualify as a refugee** but in respect of whom **substantial grounds have been shown for believing** that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, **would face a real risk of suffering serious harm** as defined in Article 15,is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country;

Art 15 (in both)

Serious harm consists of:

- (a) **death penalty or execution**; or
- (b) **torture or inhuman or degrading treatment or punishment** of an applicant in the country of origin; or
- (c) **serious and individual threat** to a civilian's life or person by reason of **indiscriminate violence in situations of international or internal armed conflict**”

THOUGHTS ON THE TRUST/NO TRUST RELATIONSHIPS THE INDIVIDUAL AND THE TRANSIT COUNTRY

Rel 6 Refugee – transit country

Editors

Neža Kogovšek Šalamon & Veronika Bajt

Razor-wired

Reflections on Migration

Movements Through Slovenia, 2015

Peace institute, Institute for Contemporary Social and Political Studies, Ljubljana, 2015

Slovenia's Response to Increased Arrivals of Refugees: We Don't Want Them, But We Also Don't Understand Why They Don't Want to Stay


Maja Ladić and Katarina Vučko

Mutual distrust: the refugees and others do not want to stay,

- because of **detering conditions**
- **unwillingness to deal with the merit** of their case
- **better life chances** in the desired destination country (Germany, Sweden)

The **states do not believe in the genuity of claims** or simply wish to avoid dealing with them. Complete **denial of reality** in case of **Hungary**

Security checks: superficial or nil – no real fear from terrorists!

Structural **novelty: giving up state („sovereign”) control on entry and exit**
- „humanitarian corridor”  **still punishing human smugglers,**
if transporting on individual basis

Hungary: No genuine response to the increased flows with a view to protection

Instead of protection

DENIAL

DETERRENCE

OBSTRUCTION

PUNISHMENT

<p>„Hungary does not need livelihood immigrants” title of the parliamentary debate day on 22 February 2015</p>	<p>Reluctant reception and transport to reception centers</p>	<p>No creation of new reception and processing capacities</p>	<p>Unauthorised crossing the „border closure” is a crime</p>
<p>„National consultation on terrorism and immigration” (May 2015)</p>	<p>Fence at the border</p>	<p>„Transit zones” with 100/day capacity</p>	<p>Ineligible applicants are banned from the EU and detained even if removal is hopeless</p>
<p>“Waves of illegal immigration threaten Europe with explosion...The European Union is responsible for the emergence of this situation... We have the right to defend our culture, language, values....” Parliament’s resolution 22.11.2015</p>	<p>Systemic detention of asylum seekers</p>	<p>Serbia declared safe third country</p>	<p>Applying to people-smuggler rules to volunteers transporting refugees</p>
	<p>Non-access to basic services / inhuman treatment</p>	<p>Attacking the relocation decisions Court procedure for annulment (December 2015)</p>	<p>Unlawful detention of applicants in the transit zone (w/out court control)</p>
	<p>Unpredictable denial/permission to move on to Austria</p>	<p>Resisting resettlement from Turkey</p>	
	<p>Crisis situation caused by mass immigration, renewed without legal ground in March 2016</p>		

THOUGHTS ON THE TRUST/NO TRUST RELATIONSHIPS

THE DESIRED DESTINATION

Rel 8 Refugee – Desired destination

„Blind trust” - the power of images and of fragments of information - false expectations

Occasional return to previous EU MS or home

Odyssean – Rubicon type refugees (D. Joly)

The basic modes of the relationship between the refugees and the host society

Integration	Isolation
Assimilation	Segregation

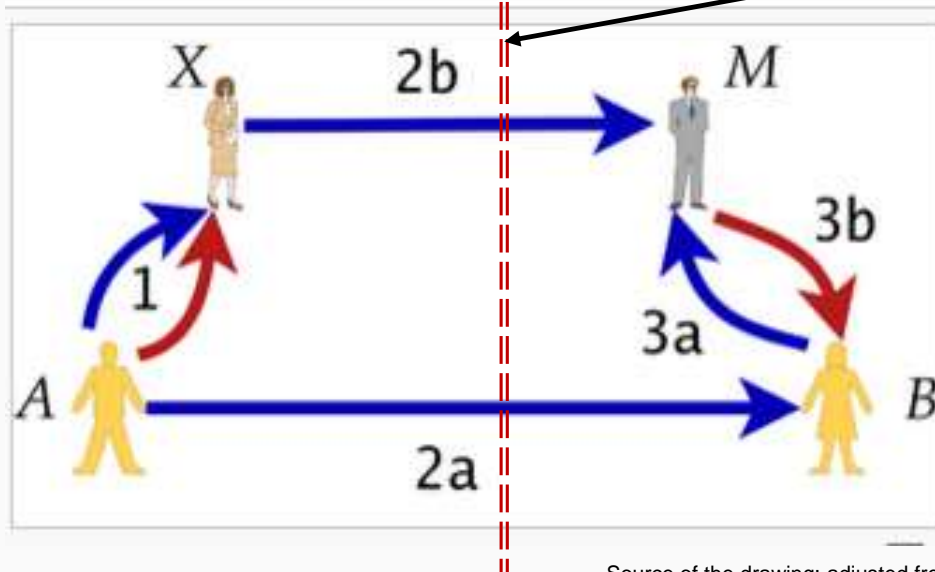
THOUGHTS ON THE TRUST/NO TRUST RELATIONSHIPS SMUGGLERS AND FELLOW REFUGEES

Rel 9,10 Refugee – smuggler and fellow refugee

Blind **trust** in the **smuggler**, she is running the show (frequent cheating)

(Blind) **trust** in the **fellow migrant**. Sharing confidential info, hidden money, hideout address, relying on pioneers' advice etc.

Moving money: **the hawala system** border



Source of the drawing: adjusted from Wikipedia

THOUGHTS ON THE TRUST/NO TRUST RELATIONSHIPS REFUGEE – HELPER – LOCAL SOCIETY AT LARGE

Rel 11 Refugee – helper NGO

Hungary: NGO-s volunteers: counter-narrative to government's denial
(Migration Aid, Menedék, Migszol, Hungarian Helsinki Committee,
Hungarian, Austrian and other volunteers)

Food, shelter, medical assistance, blankets, telephone charging stations,
wifi, info, etc. provided close to the border, in Szeged and at the railway
stations of Budapest

Mutual trust among „strangers” – many locals experience their own power

Trust within the helpers – need to professionalise, avoid duplication –
goodwill not enough

Some moving „down” the road – even to Greece, distributing food there
(Eating a meal an unknown civilian produced – sheer trust)

THOUGHTS ON THE TRUST/NO TRUST RELATIONSHIPS THE REFUGEE, HER LAWYER AND THE REPRESENTATIVES OF THE AUTHORITY

Rel 12, 13 the refugee - her lawyer, the officer of the authority

Lawyer: freely chosen – designated? Free of charge? Key to success, as essentially interpreter between the refugee's natural world and the law's artificial schemes and requirements. Delicate issues: persons with special needs, suspects of security concerns

The officer conducting the interview: goal: building up an environment of trust

Obstacles:

- inherent distrust in representatives of power (law enforcement, like police, border guards)

The example of a train hijacked to Bicske instead of Vienna

THOUGHTS ON THE TRUST/NO TRUST RELATIONSHIPS THE REFUGEE, HER LAWYER AND THE REPRESENTATIVES OF THE AUTHORITY

Rel 12, 13 the refugee - her lawyer, the officer of the authority

Obstacles continued

Difference in cultures – communication across cultural barriers (See the Procedures directive's requirements vis-avis the interviewer Art 10, 14,15)

Post Traumatic Stress Disorder (PTSD)

The credibility game - benefit of the doubt

The interpreter's paramount role

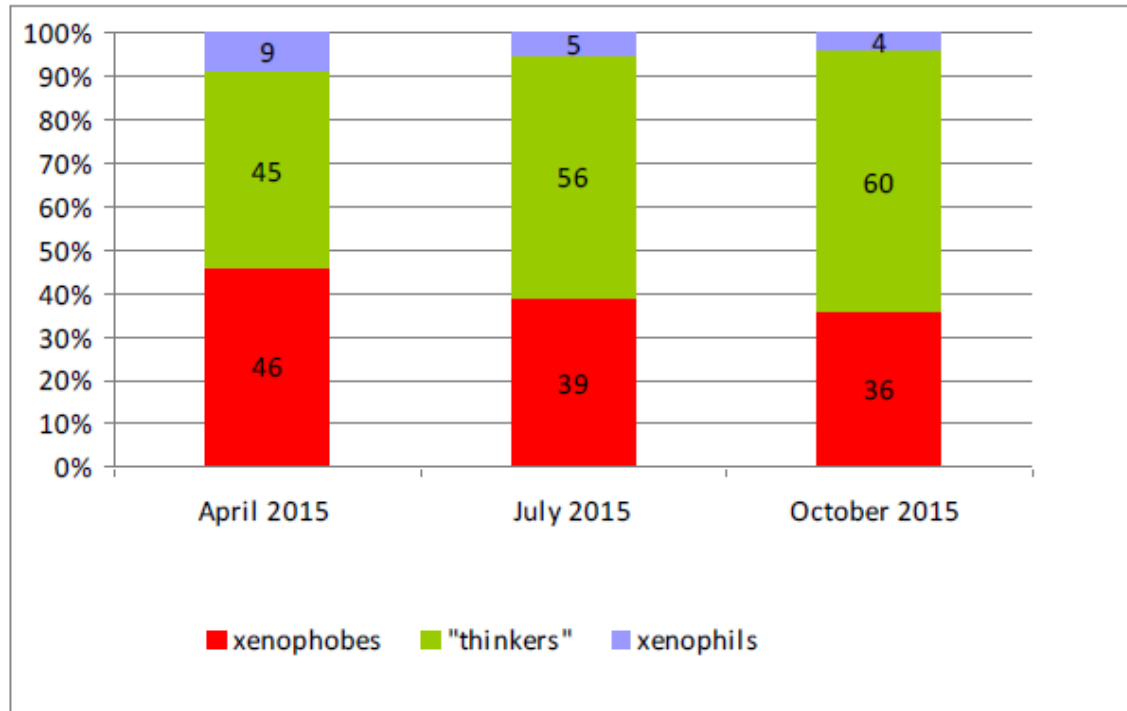
THOUGHTS ON THE TRUST/NO TRUST RELATIONSHIPS THE REFUGEE AND THE SOCIETY AT LARGE

Rel 14 The refugee and the society of the asylum state

The way how a society (its subgroups) relate to refugees is crucial in the construction/interpretation of its own identity

The „bank of history” and the „historic responsibility” arguments

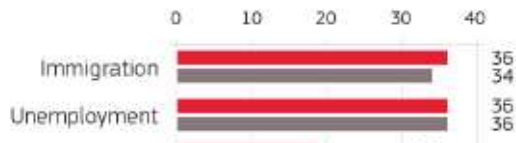
The painful impact of the government’s securitising discourse in Hungary and the healthy decrease of xenophobia, once actually encountering refugees



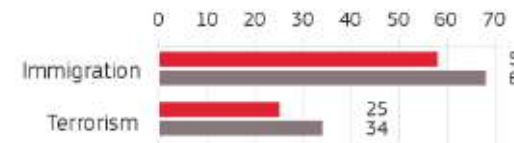
Source: TÁRKI Omnibus, 2015.

Source:
ATTITUDES TOWARDS REFUGEES, ASYLUM SEEKERS AND MIGRANTS
First results (October 2015) TÁRKI Social Research Institute

QA3a What do you think are the two most important issues facing (OUR COUNTRY) at the moment?
(%)



QA5 What do you think are the two most important issues facing the EU at the moment?
(%)



Source: Eurobarometer, 84 Country sheet Hungary, Autumn 2015

Presentation by Boldizsár Nagy

THOUGHTS ON THE TRUST/NO TRUST RELATIONSHIPS

THE HELPERS AND THE SOCIETY AT LARGE

Rel 15 - The helpers and the society at large

Serious verbal and written attacks against the helpers in social media and in the comment-pages of the websites

Government: depicts them as foreign agents whom one can not trust (Putinization)

UN Special Rapporteur on the Situation of Human Right Defenders (Michel Forst) – visit to Hungary, February 2016

“In the context of the refugee crisis and the excessively manipulated fear of the ‘other’ in society, **defenders face public criticism by government officials, stigmatisation in the media,** unwarranted inspections and reduction of state funding” the Special Rapporteur noted.

<https://www.protecting-defenders.org/en/news/un-expert-urges-hungary-not-stigmatise-and-intimidate-human-rights-defenders> (20160311)

CONCLUSION

The **mutual trust of member states** and their institutions, on which the EU is built, **is crumbling**.

The **resignation into national existence** is nothing but a mistake: measures which in themselves give the illusion of rationality and efficiency, in fact lead to collective failure. A classical **„tragedy of the commons“** situation.

At the individual level **retaining trust** in the other person (and her motivation) **requires autonomous judgment**, the critical refusal of much of the public policy and discourse pursued by the government and the mainstream media – especially in Hungary.

Danke schön!

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