



## Problems for EU asylum and free movement law in the context of the current migration crisis

Joint Workshop London, United Kingdom  
22 & 23 September 2016

# *“The Greek Response to the Refugee Crisis”*

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Judge  
Administrative Court of First Instance of Athens  
Independent Appeals Committees

# Outline of the Presentation

- The refugee crisis in numbers
- Overview of the current legal framework
- Independent Appeals Committees
- Decision No 4159/2016, “Safe Third Country”

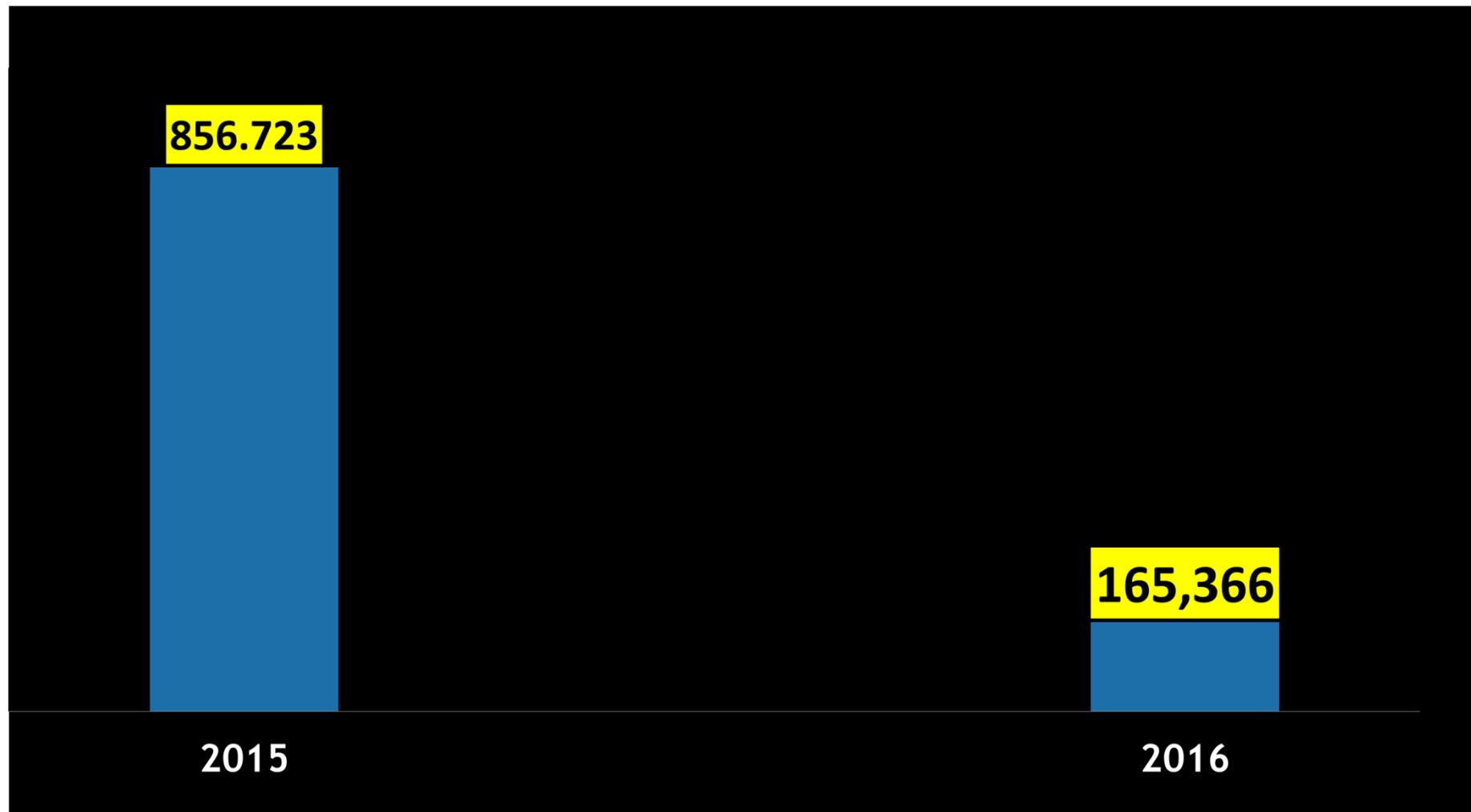
# The refugee crisis in numbers

*Greece  
A “mandatory” host  
country*



# Sea arrivals in Greece

Source: UNCHR data



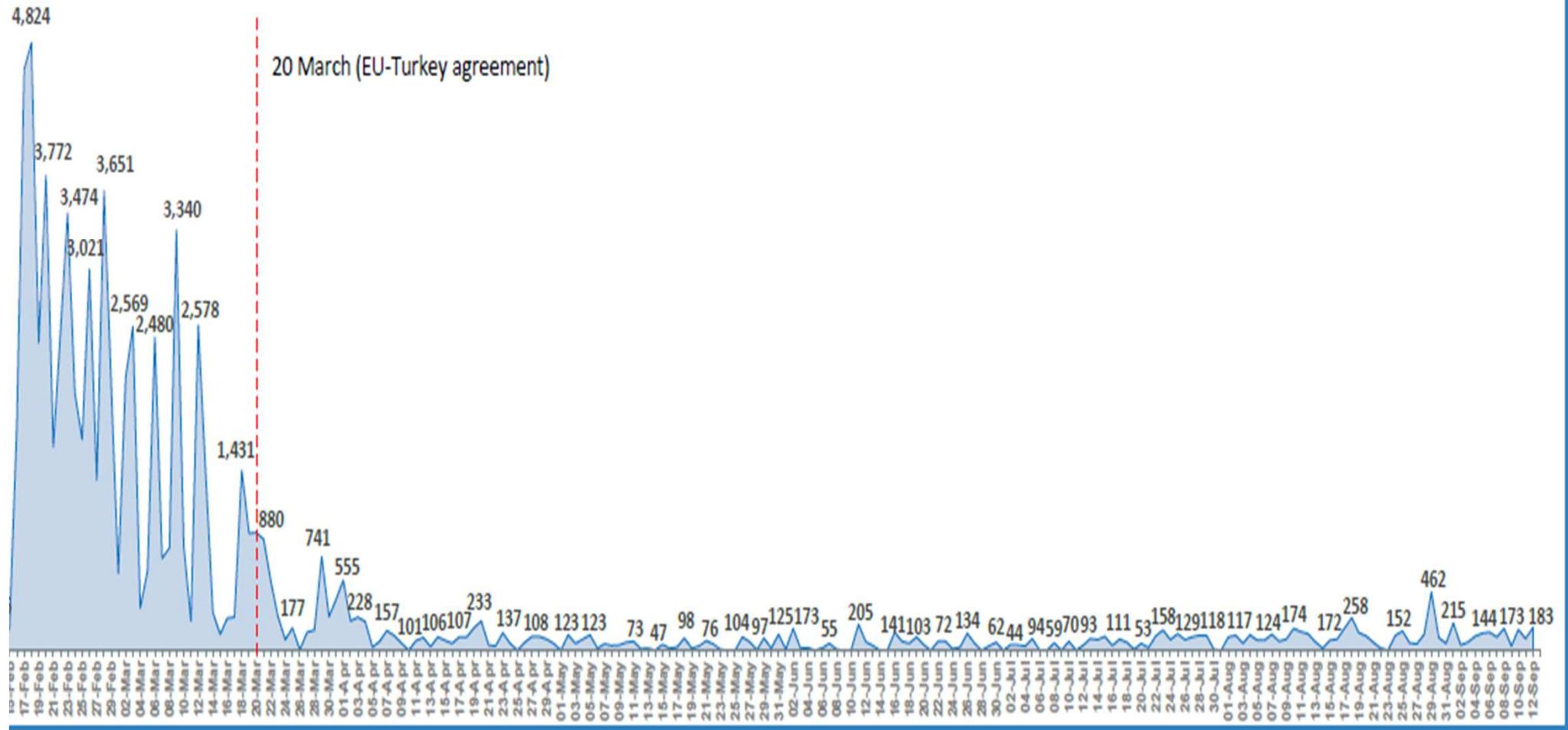
# September 2016/Sea arrivals

Source: UNCHR data

1.458

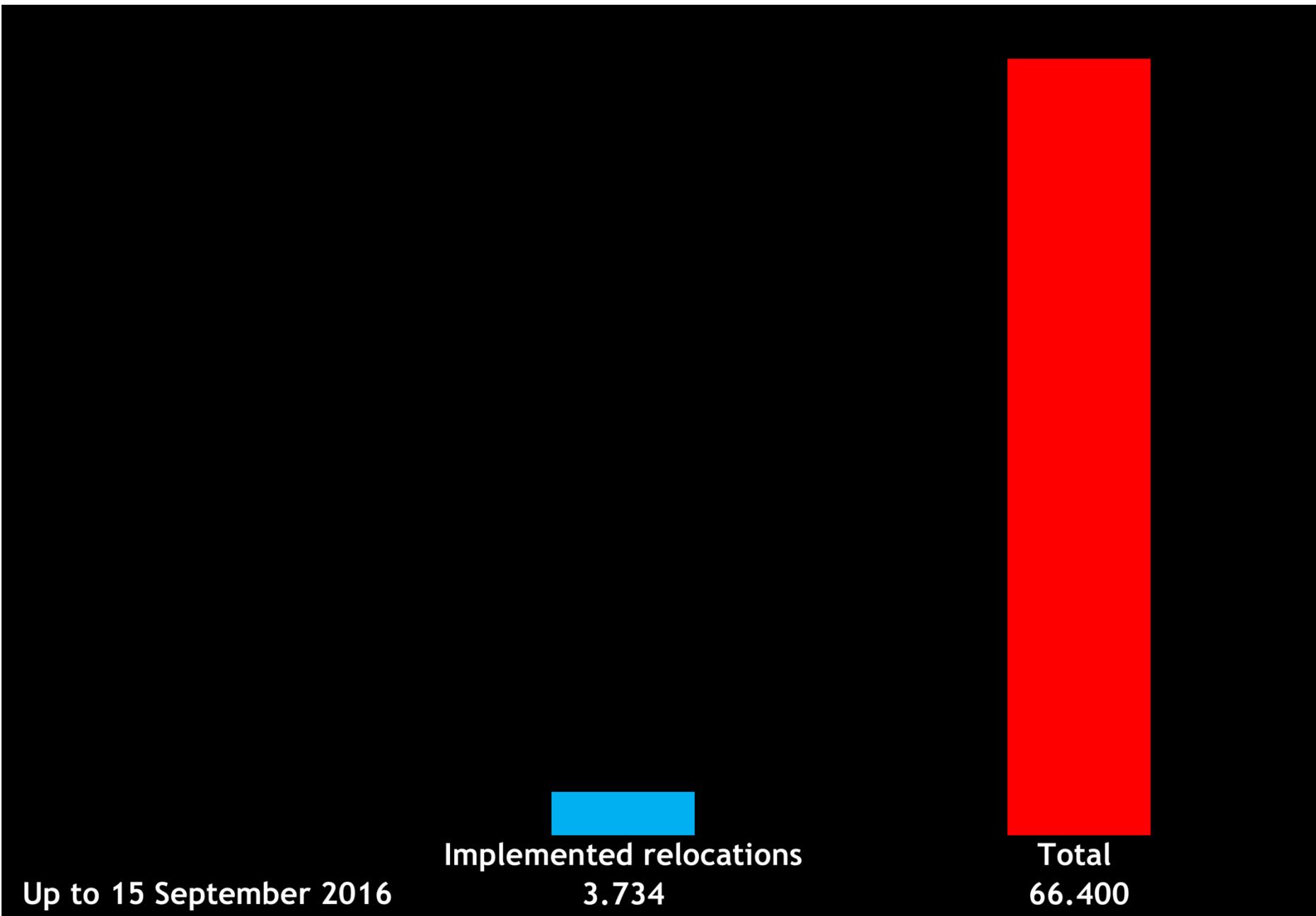


# EU-Turkey agreement



# Relocation procedures from Greece

Source: Ministry of Interior



# Residing in Greece

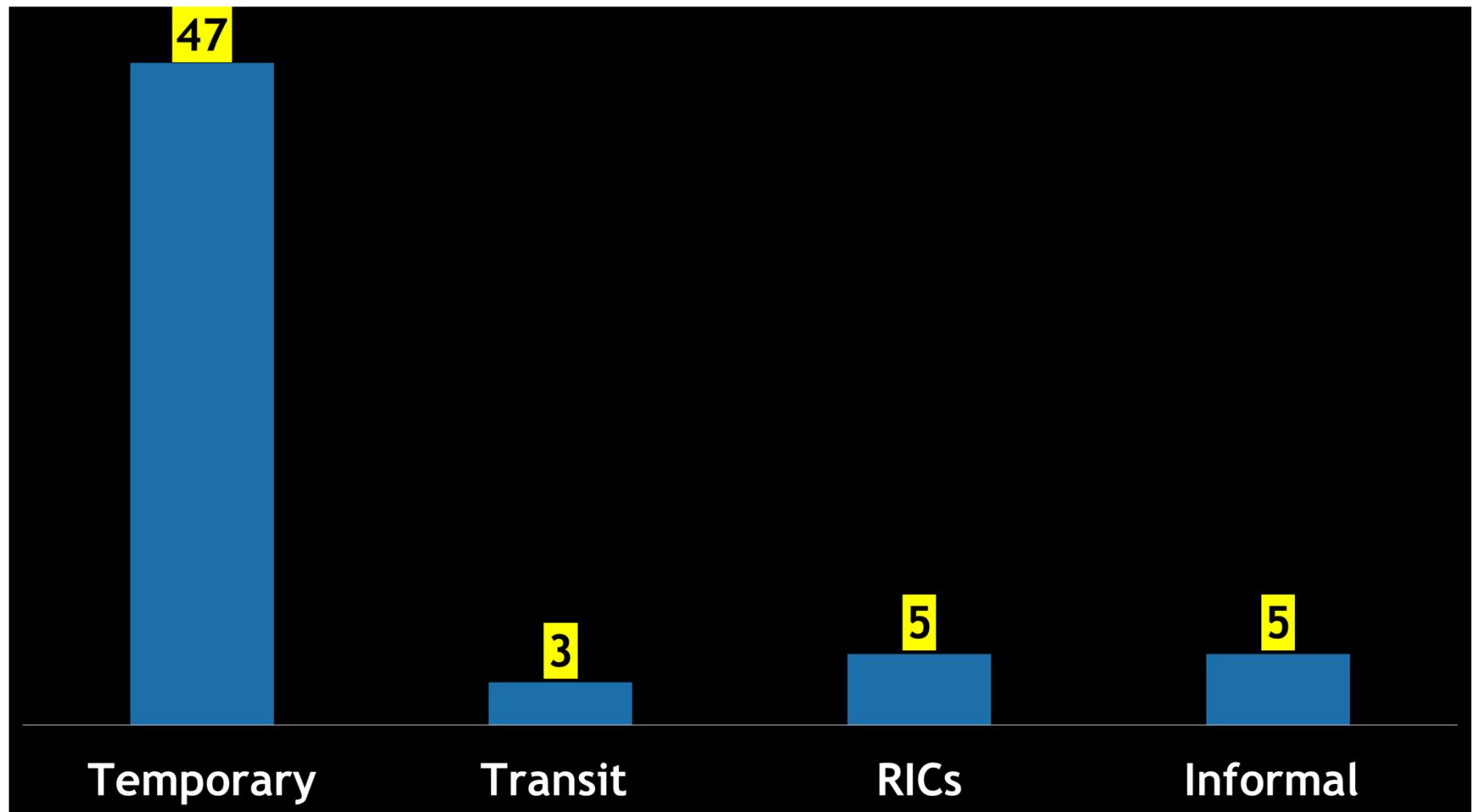
Source: Ministry of Interior and Administrative Reconstruction

**59.778**



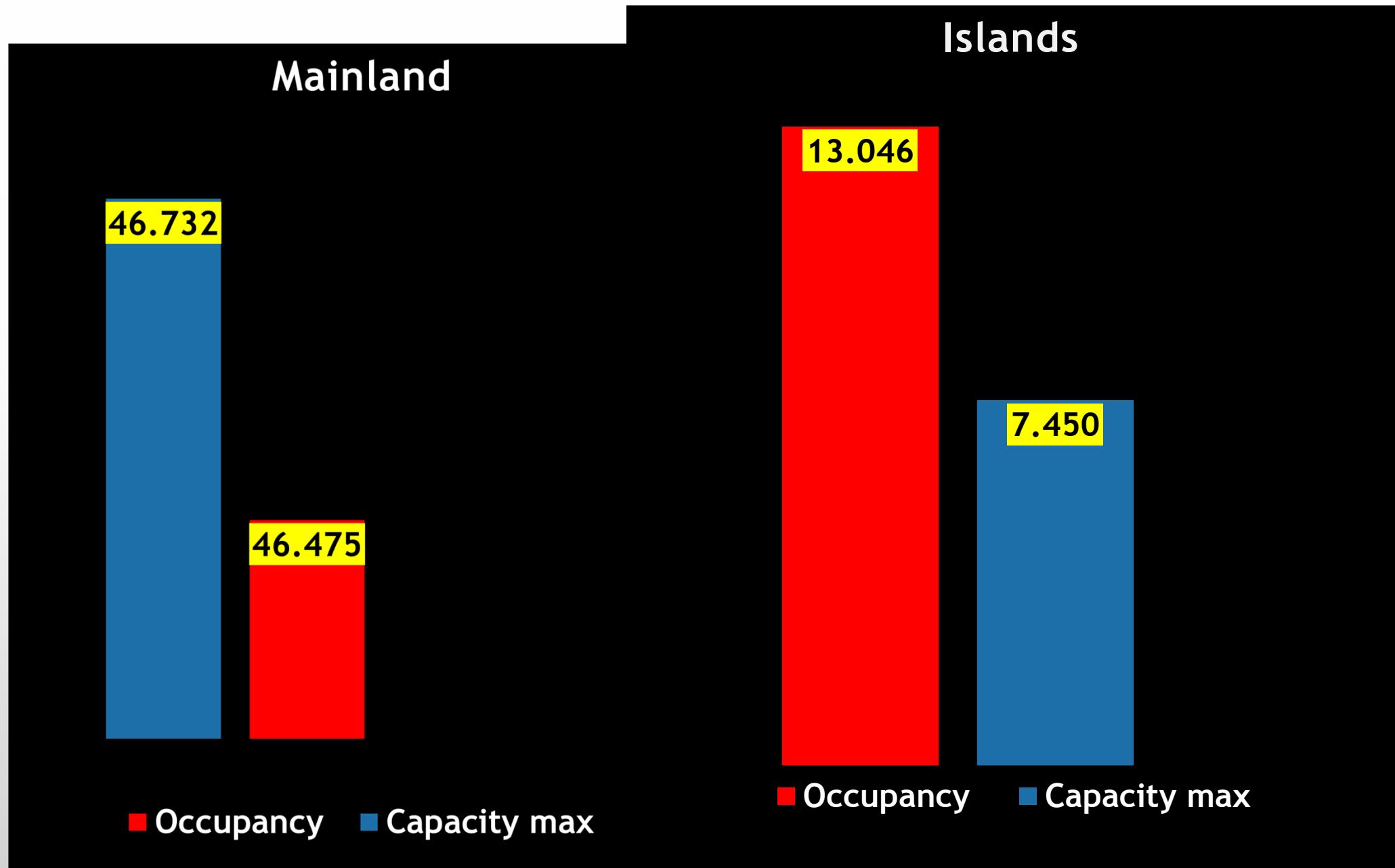
# Typology of Sites

Source: UNCHR data



# People on sites

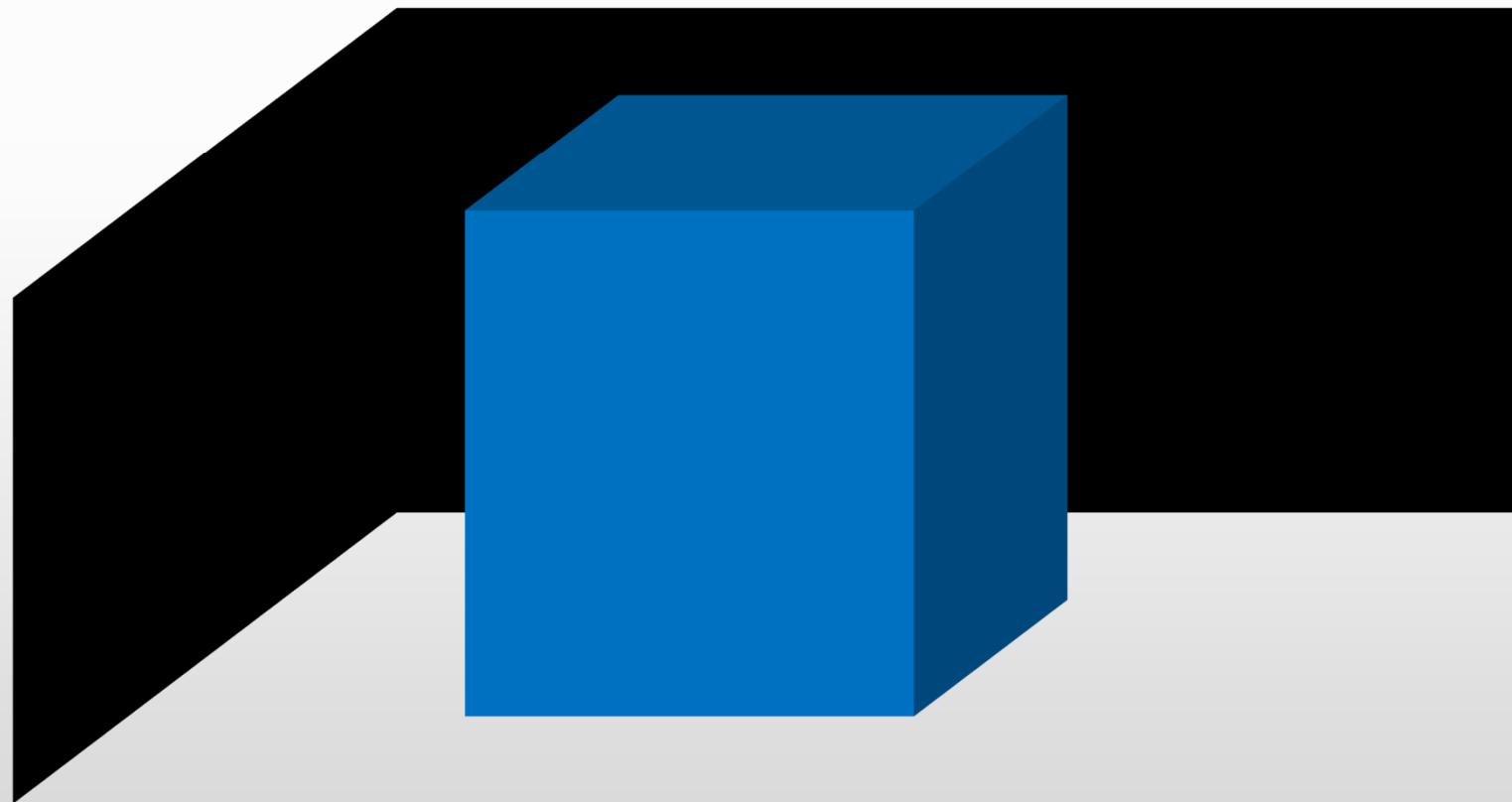
Source: UNCHR data



# Informal Sites and Settlements

Source: UNCHR data

**9.932**



# Overview of the legal framework

*“A controversial  
asylum reform in the  
wake of the  
EU-Turkey deal”*

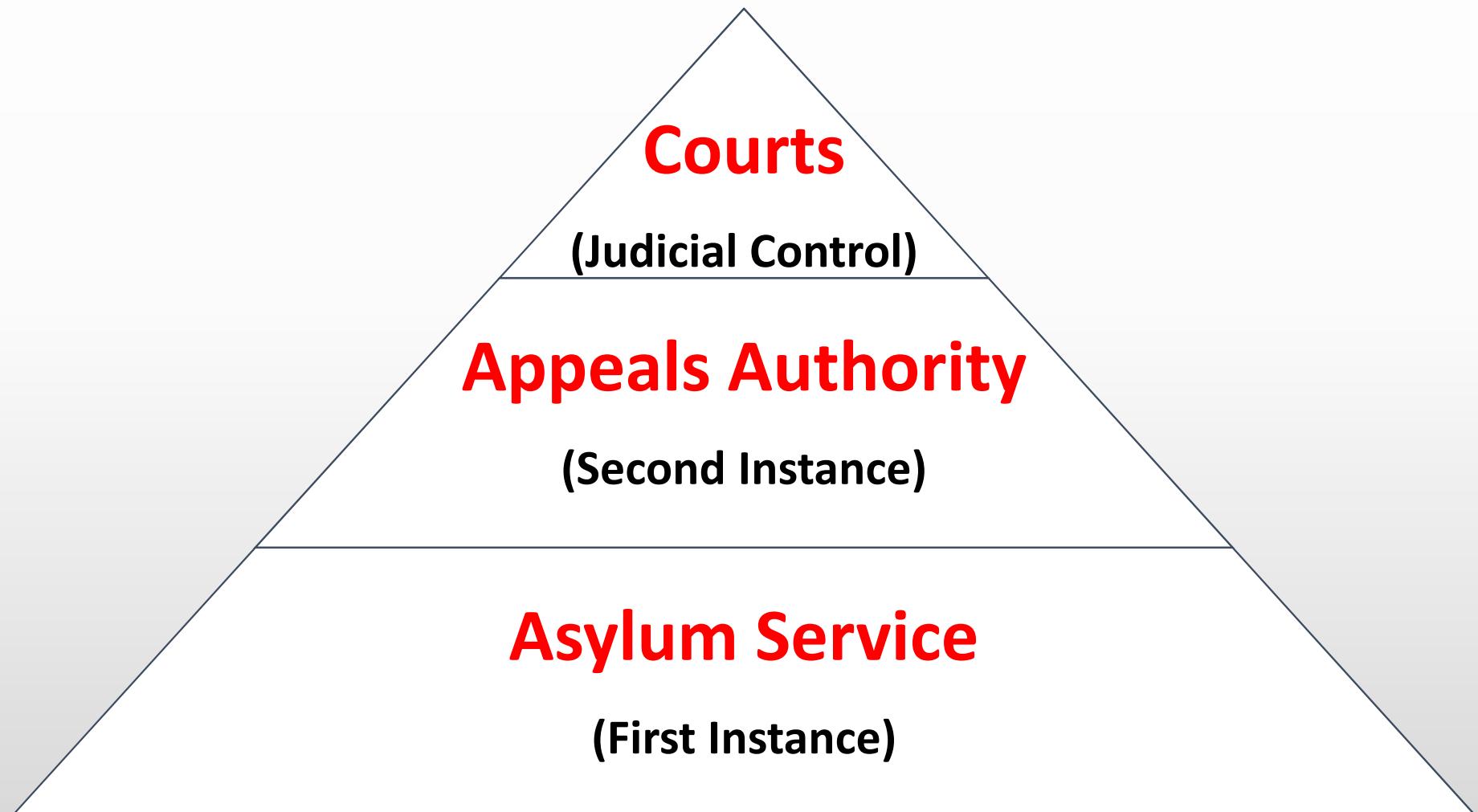


# The New Asylum Law (L. 4375/2016)

- Regularization process ["old" procedure ceases]
- Transposition of the APD recast
- Detention grounds-Duration—"objections" against extension before the Court
- Safe country concepts
- Border procedure

# The New Asylum Law 4375/2016

## Institutional Framework



# Asylum Service (AS)

Mission: to apply legislation  
on asylum/other forms of  
international  
protection/Convention 1954  
on stateless persons

Composed of the Central  
Office (CO) + Regional Asylum  
Services (Regional Asylum  
Offices-RAOs and Autonomous  
Asylum Units-AAUs).

First  
Instance

Receives, examines,  
adjudicates on applications  
at first instance

Within the MIAR  
Staffed by civil servants

# Procedure before the AS

Submission in person  
+  
International Protection Applicant's Card

Interview  
+  
Audio recording  
+  
Report

**Procedures:**  
Regular  
Accelerated  
Prioritized  
Admissibility  
Dublin  
Border

# Appeals Authority (AA)

Central Administrative  
Service (CAS)

+

Appeals Committees (AA)

AA competent to examine,  
decide upon and issue  
decisions on quasi-judicial  
appeals against decision by  
the AS

Second  
Instance

3member, 5 years term  
(renewable), enjoy personal  
independence

Recruited after examination  
process  
No Judges

# Appeal before the ACs

Time limit for lodging and examination

Without the presence of the applicant  
Oral hearing

Examines both the legality of the act under appeal and the merits of the case

# Law 4399/2016

Appeals  
Authority

- Independent Appeals Committees (IACs)

# IACs

IACs

- 3 members
- Two (2) Administrative Judges
- One (1) Greek citizen indicated by UNCHR

# Administrative Judges

By the General  
Commissioner  
of the General  
Commission of  
the  
Administrative  
Judges

refugee law  
immigration  
law  
human rights  
law  
international  
law  
good  
knowledge of  
foreign  
languages

3 years term  
(renewable)

## President

- Senior among the 2 Judges

## Alternate Members

- (2) With the same qualifications as the corresponding

## Independence

- The members of the Committees, in the exercise of their functions, shall enjoy personal and functional independence

# Oral Procedure before the IACs

The appeal  
is lodged  
against a  
decision  
which  
withdraws  
the  
international  
protection  
status

Issues or  
doubts are  
raised  
relating to  
the  
thoroughness  
of the  
appellant's  
interview at  
first instance

The  
appellant  
has  
submitted  
new serious  
evidence  
relating to  
posterior  
claims

The case is  
particularly  
complicated

# Safe 3d Country

Dec. 4159/2016

*“The hot potato”*



# The Facts

- Syrian applicant
- Turkey: 1,5 month without having applied for a work permit or residence permit or temporary protection
- “to arrive in Greece so that he would have a better future”
- His uncle's family arrived in Turkey
- He was arrested for 1 day without facing any problems during his detention and he was pushed back to Turkey
- He heard that the Turkish army shot some people so he returned to Syria
- He was bitten by the Turkish army
- Turkish authorities didn't harassed him
- His mobile was stolen by the “MAFIA” but he didn't refer to the police authorities

# Applicant's claims

- Conduct of interviews by EASO's experts is unconstitutional
- Violation of his right to a prior hearing. EASO's expert had a formalistic approach, the interview was conducted in English
- Obligation to refer a question for a preliminary ruling to the Court
- The EU-Turkey Statement is not legally binding and is null and void
- Art. 38 2013/33/EU criteria are not met in his case

# The Judgment

- “....the applicant has no personal interest in claiming that EASO’s conduct of interviews is against the Greek Constitution since he has suffered no damage. His registration and interview was conducted in ARABIC, with the presence of an interviewer. The applicant had confirmed that it is a language that he understands and that the information in the transcript of the interview is correct and complete...”

- “...No violation of his right to a prior hearing since he was notified in his language, he had been interviewed in a language he understands, he also had the right to file a recourse against the first instance decision and to provide new evident before the IAC...Moreover, the questions posed by the EASO’s expert were appropriate in view of the personal and general circumstances surrounding the application, in order to assess the facts and the individual circumstances of the applicant...(C-148/13,C-150/13,C-287/02,C-349/07,C-141/08,C-27/09)”

“...IAC is a “Court” according to EU Law (C-396/14, MT Højgaard A/S, Züblin A/S, C-175/2011, C-53/03, C-517/09, C-196/09)...”

“...the correct application of Article 38 of Directive 2013/32 / EU is so obvious as to leave no scope for any reasonable doubt and is neither desirable because it will cause unnecessarily delay of the proceedings...”

- “...in view of its content and taking under consideration the particular conditions and the context within which the parties issued the statement.....the EU-Turkey Statement is an agreement legally binding to everyone (both EU, member states, Turkey) and is not null and void...”
- “...its content is in line with the CEAS, since it is explicitly stated that the applications will be individually examined according to the Directives by the Greek authorities..”

- “...in order to assess that Art. 38 criteria are met in the particular case we have a 2 stage control:
  - a. Does the 3d country fulfills the criteria of Art.38 in view of its legislation and the practice ?
  - b. Are there personal circumstances that make the 3d country not safe to this particular applicant?...”

# “In accordance with the GC”

“interpret the fulfillment of the criteria in light of the GC and attribute a meaning to the terms similar but not identical to the meaning attributed by the GC....”

“.... The formal ratification of the GC from a third country is not an additional condition in order to be found to be safe. For this reason, the ratification of the Geneva Convention by a third country with geographical limitation does not result, without any further act, to an a priori exclusion of this country as a potential safe third country...”

# “link”

“...it is not required the applicant to have previously created in the third country strong biotic relationships (family, financial, etc.) and a real situation worthy of protection...”

“..acts or omissions of the applicant, which do not aim to organize his life in a third country for reasons unrelated to fear of persecution, in view of the time he stayed in that country, can not rule out a link to the third country...”

“... the very purpose of international protection of refugees, which is the direct protection of the latter from alleged persecution in their home country rather, than allowing them to choose which of the European countries will provide them with the best possible protection conditions (asylum shopping) turning them on that point, instead of persons in need of international protection to immigrants, namely persons fleeing their country of origin in search of a better living..."

- “...taking under consideration Turkey’s legal framework... diplomatic assurances from Turkey... EUCOM letters... UNCHR letters... CoE’s Report on Turkey... other available resources...”
- “....Given that the applicant has resided in Turkey for a period of 1.5 months and that he did not have any problem with the Turkish authorities...”

“...the described attacks, are not considered as systematic nor were intended to harm him individually and for this reason can not be considered to be sufficiently serious to affect him in a similar manner as mentioned in article 9 of Directive 2011/95/EC and moreover he did not plead any evidence even non-standard, from which it may be inferred that there are serious grounds for believing that he is a person of "sufficient interest" for the Turkish authorities...”

**TURKEY is a STC for the applicant**

*Thank you for your attention*