



INTERNATIONAL  
COMMERCIAL  
ARBITRATION  
COURT

# ICAC ACTIVITIES 2018





## Mykola Selivon

*President of the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry*



The year 2018 was both interesting and special for the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry (ICAC). Continuing the jurisdictional work on consideration of disputes referred to ICAC, the main focus was put on unconditional compliance in the arbitral procedure with the provisions of the new ICAC Rules which came into effect on 1 January 2018 and the parties' use of all the opportunities of the Rules to ensure that their arbitration is time and cost efficient, comfortable and effective. The implementation of the novelties of the Rules, in particular, as regards the constitution of the Arbitral Tribunal number of arbitrators, is reflected in the Report. On the other hand, the new editions of the Civil Procedure Code of Ukraine and Economic Procedure Code of Ukraine, approved during the judicial reform, significantly expanded the ICAC jurisdictional possibilities, for the first time regulated in their entirety the fulfillment of assistance and control functions over arbitration by state courts, which gives every reason to characterize Ukraine as a pro-arbitration state.

Therefore, in 2018, unprecedented work was carried out to popularize the new arbitration legislation, the benefits of the Rules and the Ukrainian arbitration as a whole. The reader will also learn about this important direction from the Report. The stagnation of world foreign trade, well-known external and internal challenges could not but affect the activities of the ICAC, which was manifested, in particular, in a certain reduction in cases received in 2018. On the upside, the arbitrators and the staff of the ICAC Secretariat have significantly improved the quality of their functions, as evidenced by the fact that not a single award of the ICAC was set aside last year.



## ICAC EVENTS

### NEW YORK CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS: A 60-YEAR STORY OF SUCCESS

On 4 October 2018 one of the most important events in the field of international commercial arbitration – V International Arbitration Readings in memory of Academician Igor Pobirchenko – was held. This year Readings were dedicated to the 60th anniversary of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The event was organized by the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry under the auspices of the United Nations Commission on International Trade Law (UNCITRAL).

The Readings have brought together more than 200 participants from various sectors: lawyers, arbitrators, judges, business representatives and scientists.

The representatives of state authorities, the judiciary, heads of leading Ukrainian institutions, foreign and Ukrainian arbitration lawyers spoke at the event as speakers.

In particular, a welcoming speech at the opening of the anniversary Readings was delivered by:

- ◆ **Valentyna Danishevsk**a, Head of Supreme Court
- ◆ **Oleksiy Filatov**, Deputy Head at Presidential Administration of Ukraine, Coordinator at Judicial Reform Council
- ◆ **Jose Angelo Estrella-Faria**, Senior Legal Officer at UNCITRAL Secretariat, Former Secretary-General at UNIDROIT
- ◆ **Gennadiy Chyzhykov**, President of the Ukrainian Chamber of Commerce and Industry
- ◆ **Mykola Selivon**, President of the ICAC



4 sessions meeting the most topical issues of arbitration - application of the New York Convention and enforcement of arbitral awards - were held within the framework of the Readings.

#### Session I

Session I of the Readings was dedicated to the New York Convention as an effective multilateral instrument in the field of international commercial arbitration.

The speakers of the session were:

- ◆ **Jose Angelo Estrella-Faria**, Senior Legal Officer at UNCITRAL Secretariat, Former Secretary-General at UNIDROIT
- ◆ **Domenico Di Pietro**, International Arbitration Professional at Bryan Cave Leighton Paisner Law Firm
- ◆ **Alexandre Khrapoutski**, ICAC Arbitrator, Partner at Sysouev, Bondar, Khrapoutski Law Office
- ◆ The session was moderated by **Ergun Özsunay**, Professor of Civil Law at Istanbul University



#### Session II

The topic of Session II of the Readings was: “The Arbitration Agreement in the Context of the New York Convention”.

The speakers of the session were:

- ◆ **Olga Kostyshyna**, Advisor to the ICAC President
- ◆ **Gennadii Tsirat**, Partner at JURVNESHSERVICE Law Firm
- ◆ **Kostiantyn Pilkov**, Justice at Supreme Court of Ukraine
- ◆ **Gene M. Burd**, Partner at Arnall Golden Gregory Law Firm
- ◆ **Oleksander Droug**, Partner at Sayenko Kharenko Law Firm
- ◆ The session was moderated by **Mykola Selivon**, President of the ICAC



### Session III

**Session III** – Recognition and enforcement of arbitral awards: from theory to practice – brought together the following speakers:

- ◆ **Pavlo Byelousov**, ICAC Arbitrator, Counsel at Aequo Law Firm
- ◆ **Sergiy Gryshko**, ICAC Arbitrator, Partner at Redcliffe Partners
- ◆ **Tony Cole**, Independent Arbitrator and Adjudicator, Reader at Leicester Law School
- ◆ The session was moderated by **Piotr Nowaczyk**, ICAC Arbitrator, Managing Partner at Piotr Nowaczyk Law Firm



### Session IV

**Session IV** of the Readings was devoted to the experience in the application of the New York Convention around the world.

Experts from different countries acted as speakers in this session:

- ◆ **Ziedonis Udris**, ICAC Arbitrator, Managing Partner at Skudra & Udris Attorneys at Law
- ◆ **Olena Perepelynska**, Partner at Integrites Law Firm
- ◆ **Kostiantyn Pilkov**, Justice at Supreme Court of Ukraine
- ◆ **Olena Stasyk**, Associate at Curtis, Mallet-Prevost, Colt & Mosle Law Firm
- ◆ **Camila Gambarini**, Lawyer at Withersworldwide Law Firm
- ◆ **Guangjun Zhou**, ICAC Arbitrator, Managing Partner at XINDALI Law Firm
- ◆ **William Butler**, ICAC Arbitrator, Professor of Dickinson School of Law Pennsylvania State University
- ◆ **Yaroslav Petrov**, Partner at Asters Law Firm
- ◆ The session was moderated by **Valentina Sourjikova-Giebner**, ICAC Arbitrator, Advocate at Harald Giebner & Coll. Law Firm



## ENFORCEMENT OF THE ARBITRAL AWARDS – CASE LAW UPDATES AND PRACTICE OF SELECTED CIVIL AND COMMON LAW JURISDICTIONS

On 5 October 2018 a professional discussion on the enforcement of arbitral awards in selected civil and common law jurisdictions was held within the framework of the V International Arbitration Readings in memory of Academician Igor Pobirchenko. The main topics of the event were: third party funding, recognition and enforcement of arbitral awards in different countries, succession in arbitration and sanctions for non-compliance with the New York Convention.



### Key speakers:

- ◆ **Olga Kostyshyna**, Advisor to the ICAC President
- ◆ **Zoia Lytvynenko**, Secretary General of the ICAC
- ◆ **Yaroslav Petrov**, Partner at Asters
- ◆ **Camilla Gambarini**, Associate at Withersworldwide
- ◆ **Gene M. Burd**, Partner at Arnall Golden Gregory Law
- ◆ **Petro Krupko**, Vice President of the Maritime Arbitration Commission at the UCCI, ICAC Arbitrator
- ◆ **Zannis Mavrogordato**, Barrister at 20 Essex Street

The event was held with the assistance of Withersworldwide Law Firm and Young International Arbitration Group at London Court of International Arbitration.



## FREE CHOICE OF GAME PLAYING: DO NOT FORFEIT YOUR RIGHT TO ARBITRATION

During **February-May 2018** the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry with the expert support of Sayenko Kharenko Law Firm held a series of roadshows aimed at presenting updated ICAC and UMAC Rules and related judicial procedures.

The presentations were held in 7 cities of Ukraine and gathered more than 300 participants. The program of each event was developed with due account for the specifics of the city and was adjusted depending on the needs and interests of the region.

The Ukrainian Chamber of Commerce and Industry and regional Chambers of Commerce and Industry were chosen as the hosts of the event and as the platforms for discussion, since just as the new procedural legislation ensures the interaction of the judicial system and arbitration as an institute of alternative dispute resolution so the CCI has always maintained dialogue and effective communication between business and government. It is the active role of the Ukrainian Chamber of Commerce and Industry and the regional chambers that contributed to the success of such presentations. In fact, a unique communication platform was created, within which everyone had the opportunity to understand the specifics of alternative dispute resolution methods, the procedural laws' innovations as well as acquire practical skills in drafting and implementing arbitration clauses when entering into foreign economic contracts. A dialogue was established with local Chambers of Commerce and Industry, public organizations and businesses in order to draw the attention of potential users of arbitration to the Ukrainian arbitration institutions and to provide insight into their advantages.



Judicial practice and application of legislation on international commercial arbitration were also monitored, since holding regional events and professional discussions with local judiciary and practicing lawyers, attorneys allowed not only to obtain information on the state of things in the field at the local level but also to convey the philosophy of the developers of the new Civil Procedure Code of Ukraine and Economic Procedure Code of Ukraine which they laid down in these norms in order to form correct law enforcement and judicial practice.

In Lviv, the event was held with the support of the independent law firm Arzinger, and in Odessa - on the basis of the National University "Odessa Law Academy".

On **20 September 2018** the hosts of the event at a press conference summed up the events held in the regions and also presented a corresponding report.





## ICAC PARTICIPATION IN FOREIGN PROFESSIONAL EVENTS

### PRESENTATION OF THE ICAC RULES IN NORWAY

On 13 April 2018 a workshop on international disputes organized by the Norwegian-Ukrainian Chamber of Commerce (NUCC) for entrepreneurs from Norway and Ukraine in cooperation with the Norwegian law firm Wikborg Rein was held in Oslo. The core discussion of the workshop was about the new edition of the Rules of the International Commercial Arbitration Court at the Ukrainian CCI and the Arbitration and Dispute Resolution Institute of the Oslo Chamber of Commerce. Upon the invitation of the organizers, a member of the Presidium of the ICAC – Juliya Chernykh presented the new Rules and peculiarities of the arbitral procedure at the ICAC.



### ARBITRATION AND MEDIATION IN THEORY AND PRACTICE: BUILDING TRUST IN ARBITRATION & ADR

On 8 June 2018 in Nowy Tomyśl (Poland) the conference “Arbitration and Mediation in Theory and Practice: Building Trust in Arbitration & ADR” was held. Tatiana Zakharchenko, ICAC Vice President, spoke at a session dedicated to building trust in arbitration, where she told about the ICAC’s way to achieving and increasing trust in alternative dispute resolution methods in Ukraine.

### IFCAI COUNCIL MEETING IN ROME

On 8 October 2018 the IFCAI Council held a meeting in Rome for the General Assembly. Mykola Selivon, President of the ICAC, and Olga Kostyshyna, Advisor to the ICAC President, took part in the meeting as representatives of the Ukrainian arbitration community.



**The key issues for discussion** were: the draft of the new Constitution of the organization, updated approaches to membership and future elections.

All players in the market for arbitration services have agreed to strengthen the role in the organization and develop joint program documents and recommendations.

It is worth mentioning that the members of the Council expressed a positive assessment of the key changes in the Ukrainian procedural legislation regarding arbitration.

### THE 120<sup>th</sup> ANNIVERSARY OF ARBITRATION IN THE SYSTEM OF THE BULGARIAN CHAMBER OF COMMERCE AND INDUSTRY

The delegation of the ICAC, including Mykola Selivon, President of the ICAC, and Galyna Baliuk, ICAC arbitrator, attended the solemn events on the occasion of the 120th anniversary of arbitration in the system of the Bulgarian Chamber of Commerce and Industry (BCCI) and 65 years from the establishment of the Arbitration Court at the BCCI. The President of the ICAC was honored to officially congratulate the participants of the conference.

As a part of the solemn program the international conference on international arbitration was held. Mykola Selivon made a report on Ukrainian arbitration legislation reforms and shared the ICAC experience in considering cases related to the doctrine of the autonomy of the arbitration agreement within the session “Issues of the autonomy of the arbitration agreement and the substantive contract to which it is included”.

The President of the ICAC had a chance to conduct working meetings with the Heads of Serbian and Bulgarian Arbitration Courts as well as the President of the BCCI.

## POPULARIZATION OF ARBITRATION

The International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry is actively working with educational institutions in order to popularize alternative dispute resolution methods, in particular arbitration, in Ukraine.

During the year 2018 the ICAC joined the organization and conduct of educational activities on the subject of arbitration:

- 1 Lectures at Legal High School on the following topics were delivered:
  - ◆ “Appointment of arbitrators in GAFTA and FOSFA arbitrations”, “Application of the UN Convention On Contracts for the International Sale of Goods (Vienna, 1980) in the ICAC practice”, “Novelties of the updated ICAC Rules”, Yuliya Chernykh, member of the ICAC Presidium;
  - ◆ “Rules of evidence in the ICAC”, “Setting aside of the awards of international arbitration in Ukraine”, Pavlo Byelousov, ICAC arbitrator;
  - ◆ “Expedited Arbitration” and “New Rules for Supporting International Arbitration in Ukraine”, Olga Kostyshyna, Advisor to the ICAC President;
  - ◆ “Definition of arbitrability of disputes”, Liudmyla Vynokurova, ICAC Vice President.

**7 WORKSHOPS** “The practice of drawing up and implementing arbitration clauses when concluding foreign economic contracts” within the framework of the series of regional events “Free choice of game playing: do not forfeit your right to arbitration”, developed by ICAC arbitrator **Volodymyr Nagnybida**.

- 2 Lecture on the topic “The role of the judicial branch of government in the context of resolving disputes between the state and foreign investors” was given at the National School of Judges of Ukraine by Olga Kostyshyna, Advisor to the ICAC President.
- 3 Workshop “International Commercial Arbitration: Novelties of Legislation, Practice and Peculiarities of Arbitration” with the participation of the ICAC Vice President, Secretary General and Arbitrators of the ICAC and with the support of the information platform for the training of judges “Legal workshops”.
- 4 Workshop “FOREIGN ECONOMIC CONTRACTS: conclusion, termination, execution. Minimization of risks and losses. Peculiarities of work with China, Canada, countries of Southeast Asia and the EU” with the participation of Olga Kostyshyna, Advisor to the ICAC President.

## INTERNATIONAL BUSINESS FORUM “INTERNATIONAL COOPERATION: CREATING THE FUTURE TOGETHER”

The International Business Forum “International Cooperation: Creating the Future Together” was held **on 10-11 May 2018 in the city of Kremenchuk** (Ukraine). Representatives of state and local authorities of Ukraine, delegations from twin cities, ambassadors of Canada, Lithuania, Poland and Indonesia, entrepreneurs, representatives of business and expert community of the countries participating in the forum were invited to participate in the forum.

A separate section of the forum was dedicated to popularization of the international commercial arbitration, namely the new Rules of the ICAC and related judicial procedures. This section was moderated by Prof. Mykola Selivon, President of the ICAC and the UMAC, and Volodymyr Nagnybida, ICAC arbitrator and Olga Kostyshyna, Advisor to the ICAC President, were invited to share their professional knowledge and experience.

## UKRAINIAN VIS PRE-MOOT

By facilitating Ukrainian Vis Pre-Moot, the ICAC not only supports students in studying international commercial arbitration, but also introduces pro-arbitration culture in Ukraine, while demonstrating the possibilities and advantages of Ukrainian arbitration institutions.

On 17 February 2018 the III Ukrainian Vis Pre-Moot organized by Vasyl Kisil & Partners law firm with the support of the ICAC took place.

The participating teams include students of the leading Ukrainian universities: Lviv National I. Franko University, National University “Kyiv-Mohyla Academy”, Kyiv National Taras Shevchenko University, the Institute of International Relations at the Kyiv National Taras Shevchenko University, National University “Odesa Law Academy”.

Traditionally, the ICAC awarded the best teams with Academician Igor Pobirchenko Award.





# In 2018 the ICAC representatives participated with reports in the following events:

- 1 Mykola Selivon, President of the ICAC, took part in the VI International Judicial and Legal Forum with a report on “Procedural innovations of judicial assistance to arbitration in Ukraine”.
- 2 Olga Kostyshyna, Advisor to the ICAC President, took part in the III International Forum on Business Protection in session “Identification of business threats: what threatens businesses” with a report on “Doing business in Ukraine - rating of investors’ claims”.
- 3 Olga Kostyshyna, Advisor to the ICAC President, took part in session 1 of the VI Annual Forum of Legal Advisors dedicated to the topic “Legal support of business” with a presentation on “The role of in-house counsels in the process of preventing risks of disputes and new opportunities to work with such risks without involving external counsels”.

## INTERESTING EVENTS



Global Arbitration Review shortlisted the ICAC for the Best Developments Award



On 27 September 2018 the Memorandum of Cooperation between the ICAC and the Kyiv Regional Center of the National Academy of Legal Sciences of Ukraine was signed



On 4 October 2018 the Memorandum of Cooperation between the ICAC and the National School of Judges of Ukraine was signed



Updated ICAC website was launched



ICAC Facebook page was launched



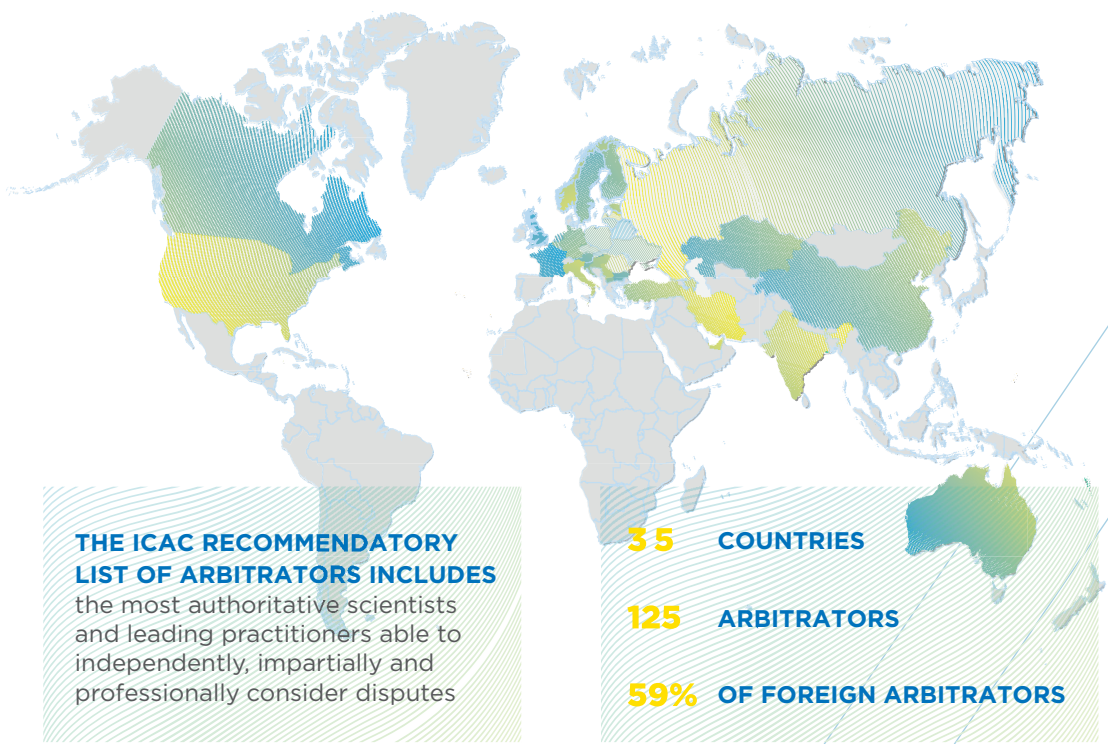
ICAC staff has written 7 articles and publications

# THE UPDATED ICAC RECOMMENDATORY LIST OF ARBITRATORS

By the Decision of the Presidium of the Ukrainian Chamber of Commerce and Industry “On Approval of the Recommendatory Lists of Arbitrators of the International Commercial Arbitration Court and the Maritime Arbitration Commission at the Ukrainian Chamber of Commerce and Industry” No. 40 (4) dated 20 December 2018, the updated ICAC Recommendatory List of Arbitrators was approved.

The ICAC Recommendatory List of Arbitrators currently includes 125 authoritative scientists and leading practitioners from 35 countries of the world with 59% of foreign specialists and 41% of experts from Ukraine recommended in the field of arbitration by the reputable international directories Chambers & Partners, Legal 500 and Who’s Who Legal.

## OUR ARBITRATORS



In 2018 arbitrators from Belarus, Bulgaria, Latvia, Moldova and Sweden repeatedly took part in the consideration of cases in the ICAC.

## NUMBER OF CASES REGISTERED AND CONSIDERED

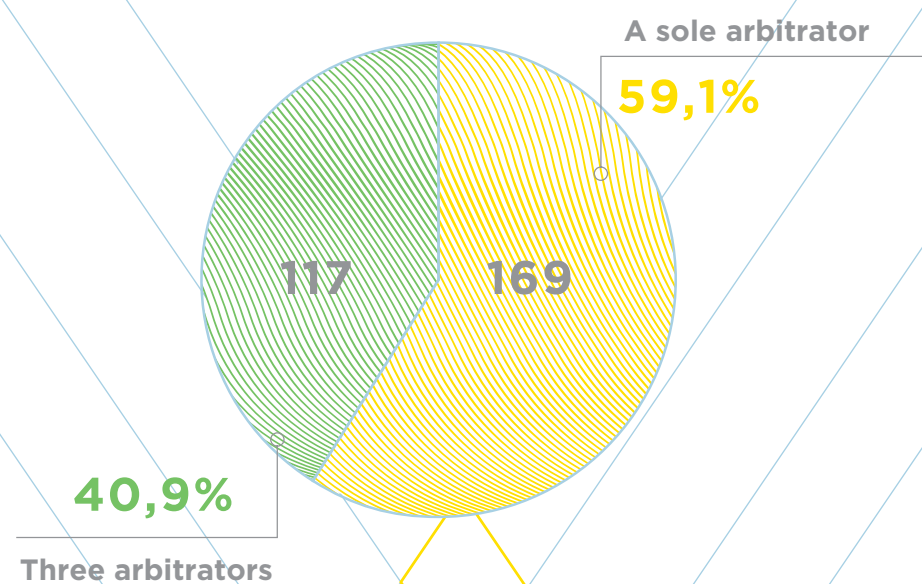
During the period

from **1 January** to **31 December 2018**  
the ICAC registered

**286 CASES**

In accordance with the provisions of Article 30 (1) of the ICAC Rules in the absence of the parties' agreement on the number of arbitrators of the Arbitral Tribunal, **the President of the ICAC in 21 cases**, which is 7.3% of the total number of cases registered, **decided that the dispute should be subject to be resolved by a sole arbitrator**. At this, when making such a decision, the complexity of the case and the price of the claim were taken into account. Thus, **the parties in these cases managed to save 20% of the arbitration fee**.

### THE NUMBER OF ARBITRATORS OF THE ARBITRAL TRIBUNAL IN CASES REGISTERED



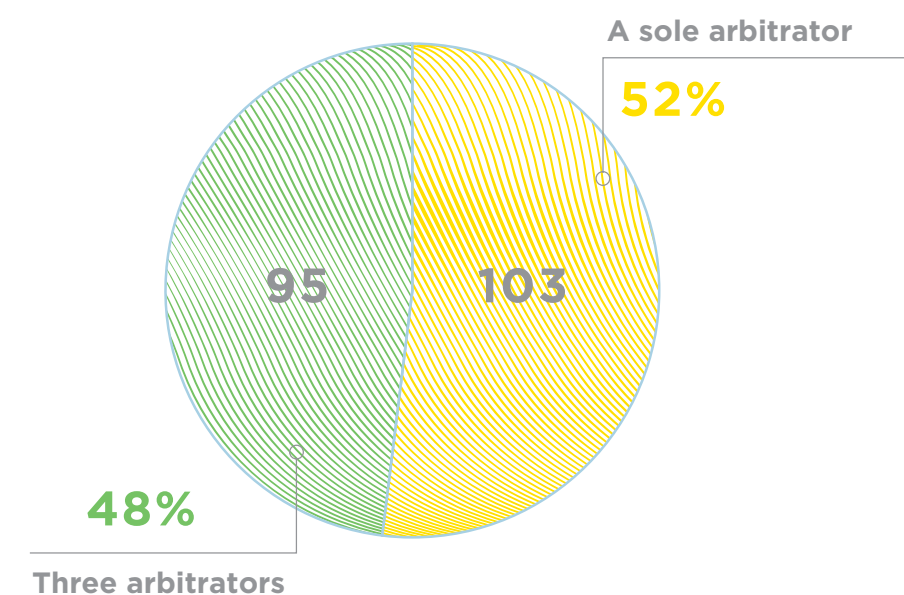
During the period

from **1 January** to **31 December 2018**  
the ICAC considered

**198 CASES**

In 4 cases, that is 2% of the total number of cases considered, the counter-claims were filed.

### THE NUMBER OF ARBITRATORS OF THE ARBITRAL TRIBUNAL IN CASES CONSIDERED



In **198 cases** considered by the ICAC, **185 awards** were made and **13 orders** of the Arbitral Tribunal for the termination of the arbitral proceedings were issued.



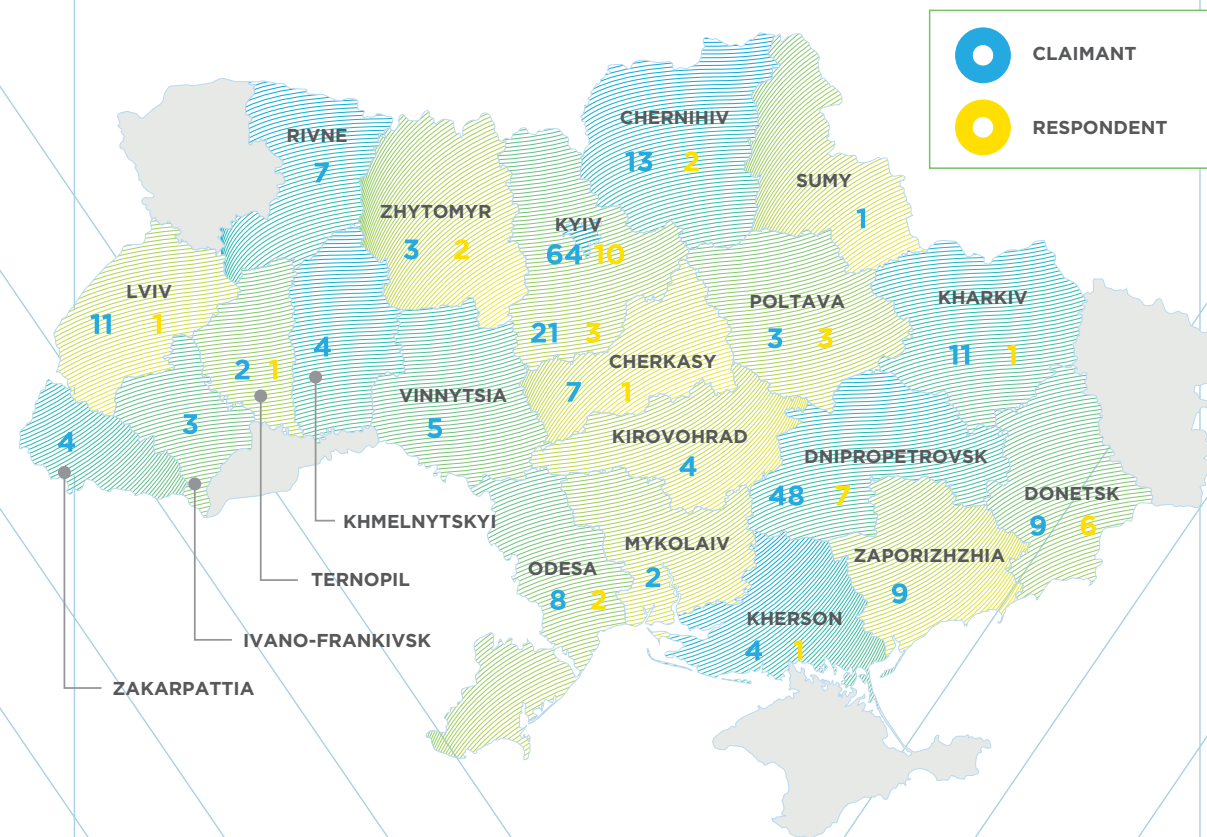
In 2018, **in 3 cases the parties came to an amicable agreement**, in this connection the arbitral awards were made on agreed terms in accordance with Article 61 of the ICAC Rules.



## ORIGIN OF THE PARTIES BY REGIONS OF UKRAINE

The parties to cases

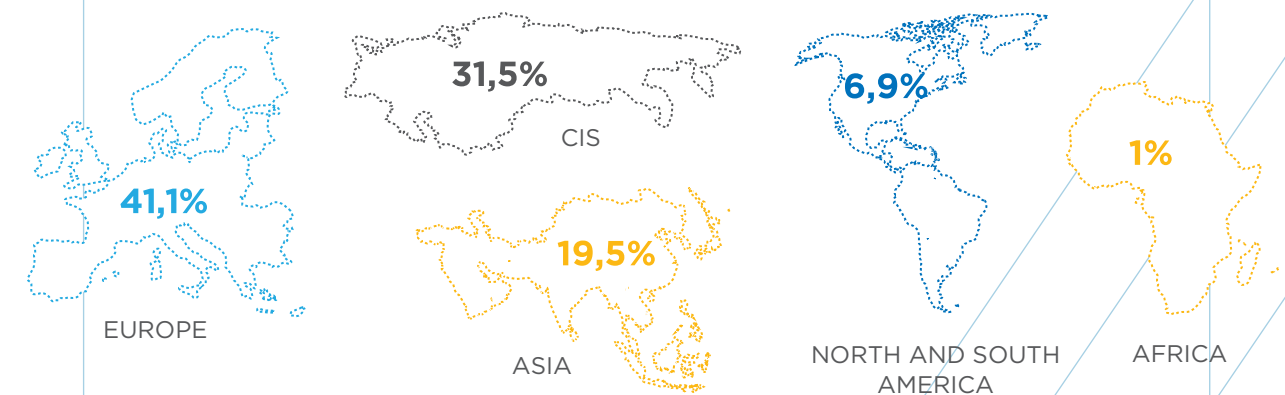
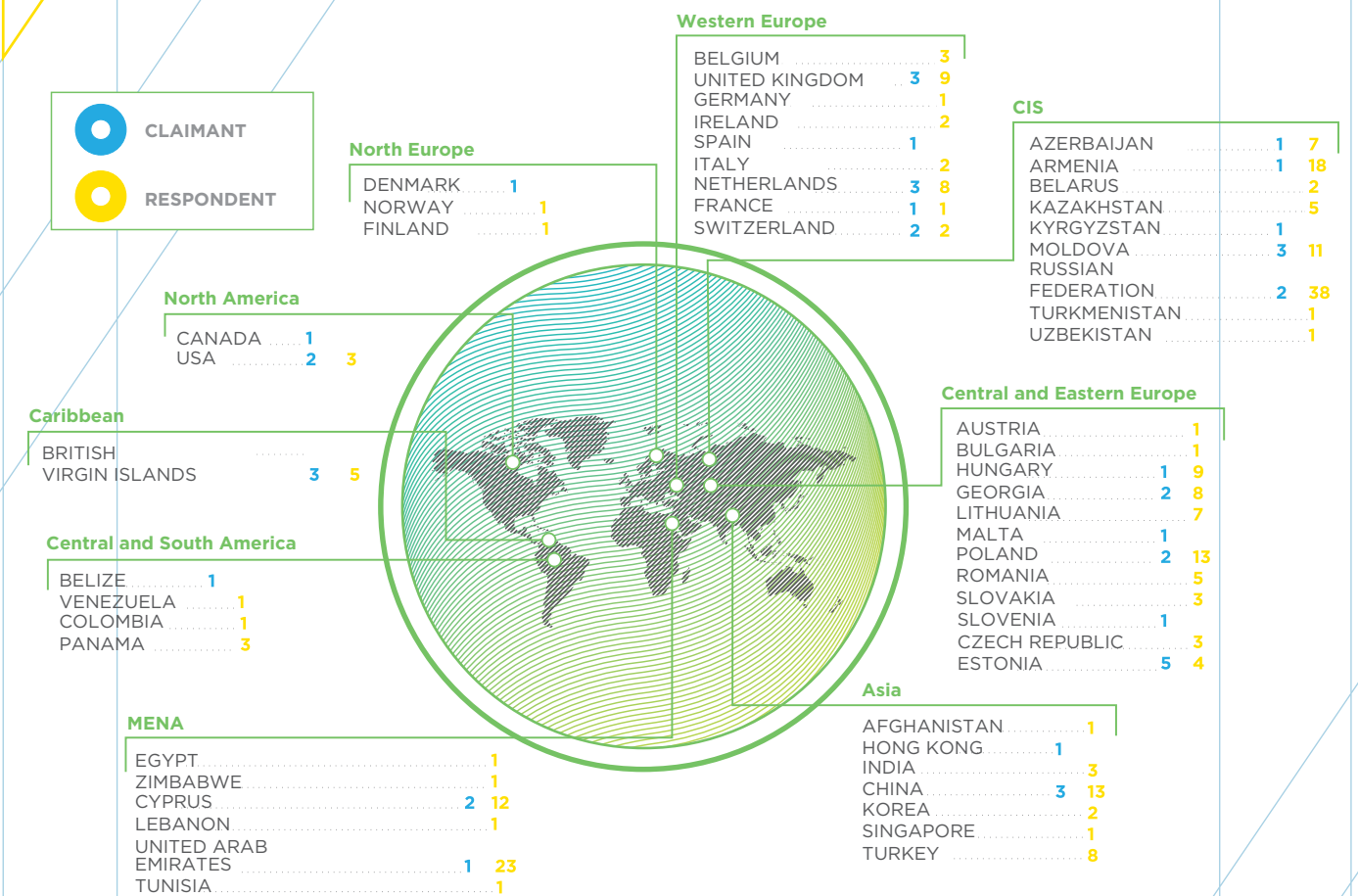
registered by the ICAC in the period from  
1 January to 31 December 2018  
were representatives from **21 REGIONS**  
of Ukraine and the city of Kyiv.



## ORIGIN OF FOREIGN PARTIES

The parties to cases

registered by the ICAC in the period from  
1 January to 31 December 2018 were represented  
**BY 54 COUNTRIES** including  
44 far-abroad countries, 9 CIS countries and Ukraine

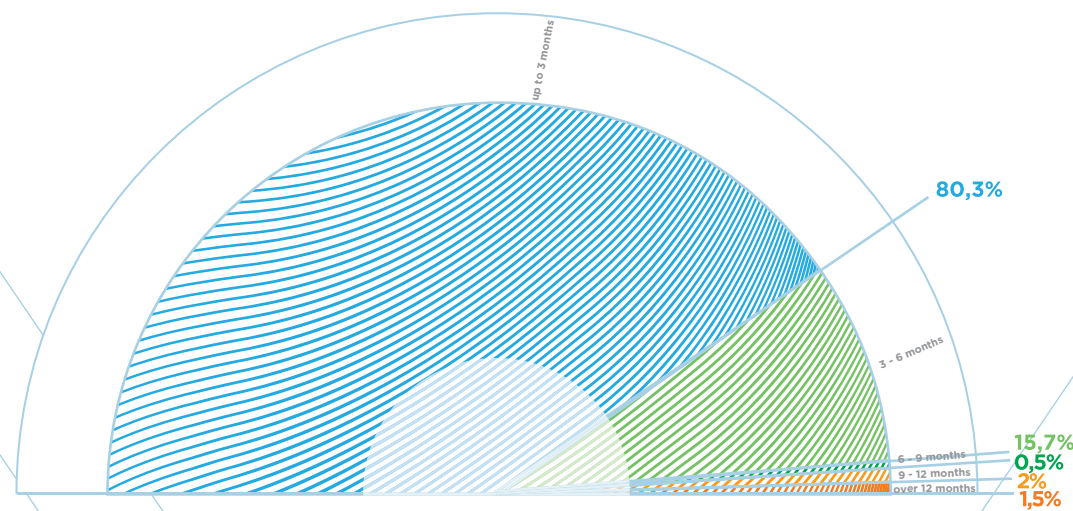




## DURATION OF ARBITRAL PROCEEDINGS IN THE ICAC

Traditionally, the ICAC provides for quick and efficient consideration of cases - in 2018 **96% of cases were considered within a period not exceeding six months** from the date of the Arbitral Tribunal constitution.

### DURATION OF ARBITRAL PROCEEDINGS IN THE ICAC FROM THE DATE OF THE ARBITRAL TRIBUNAL CONSTITUTION



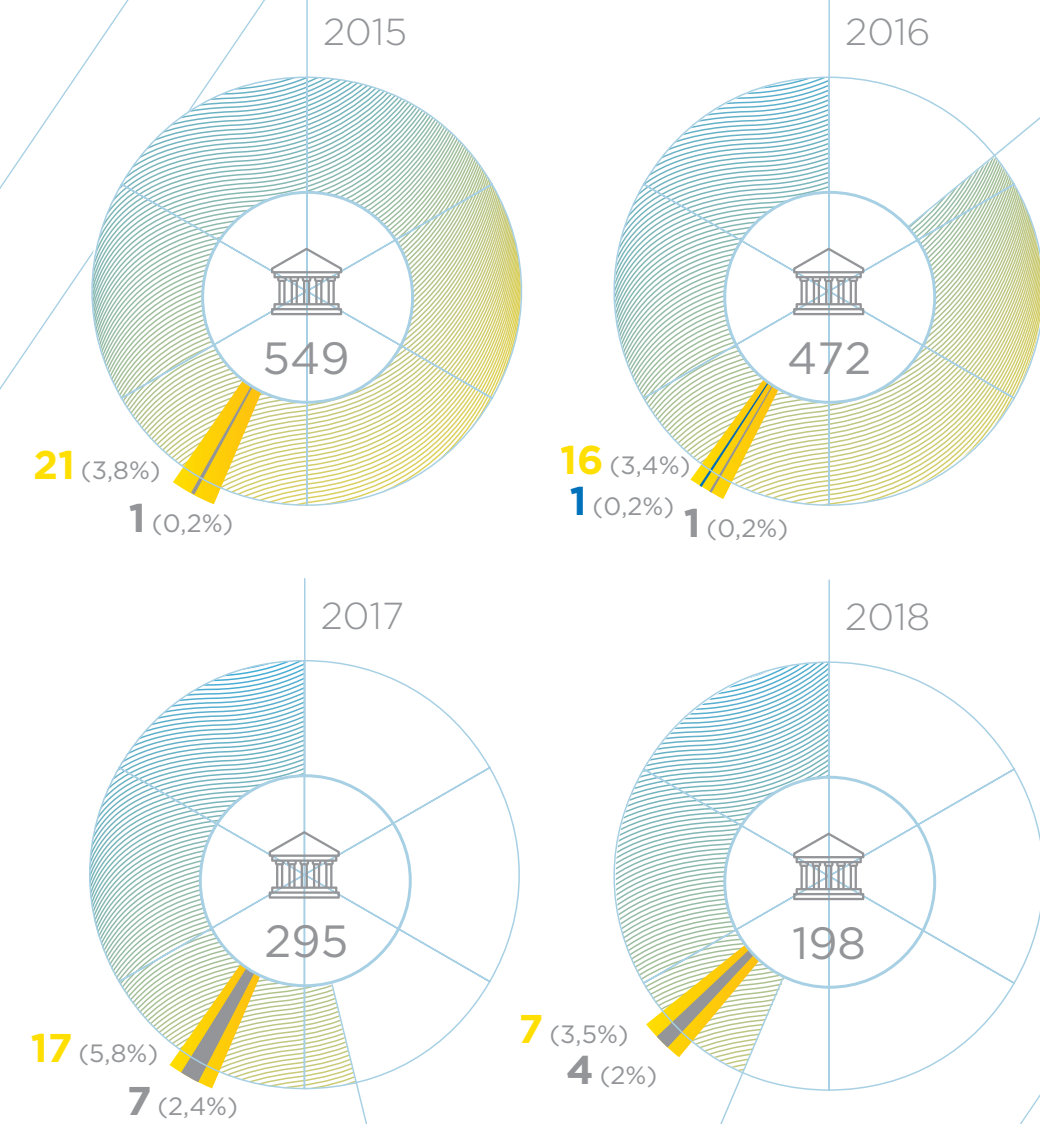
The terms of consideration of cases were as follows:

up to 3 months:	159 cases (80.3%)
3 - 6 months:	31 cases (15.7%)
6 - 9 months:	1 case (0.5%)
9 - 12 months:	4 cases (2%)
over 12 months:	3 cases (1.5%)

## CHALLENGING THE ICAC AWARDS

The overall index of challenging the ICAC awards has not changed: on average, applications for setting aside the arbitral award are filed in **approximately 4%** of the considered cases. At the same time, the index of the awards set aside does **not exceed 1%**.

## THE STATISTICS OF CHALLENGING AWARDS OF THE ICAC



In 2018

In cases considered in 2017, **2 arbitral awards were set aside** by the court of first instance. At the moment, the proceedings are pending in the appellate instance.

In cases considered in 2018, **none of the ICAC awards was set aside.**

## CHALLENGE OF AN ARBITRATOR

In 2018, the ICAC received **5 statements on challenge of an arbitrator** from the parties. In 2 cases the arbitrators withdrew voluntarily. In 3 cases the arbitrators did not refuse to participate in the consideration of the case, therefore in accordance with Article 33 (3) of the ICAC Rules these issues were referred to the ICAC Presidium which did not satisfy any of the statements.

**The reporters were appointed in 93 cases**, that is 47% of the total number of cases considered.

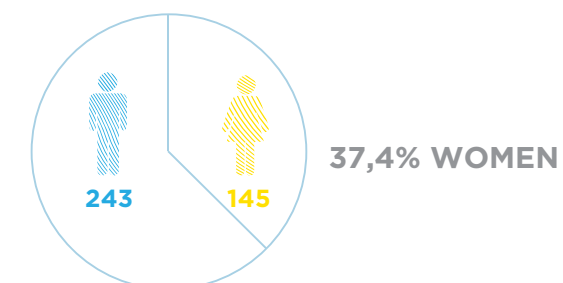
## INTERIM MEASURES

As it is known, in the ICAC, the ICAC President before the constitution of the Arbitral Tribunal, and the Arbitral Tribunal may determine the size and the form of the claim security.

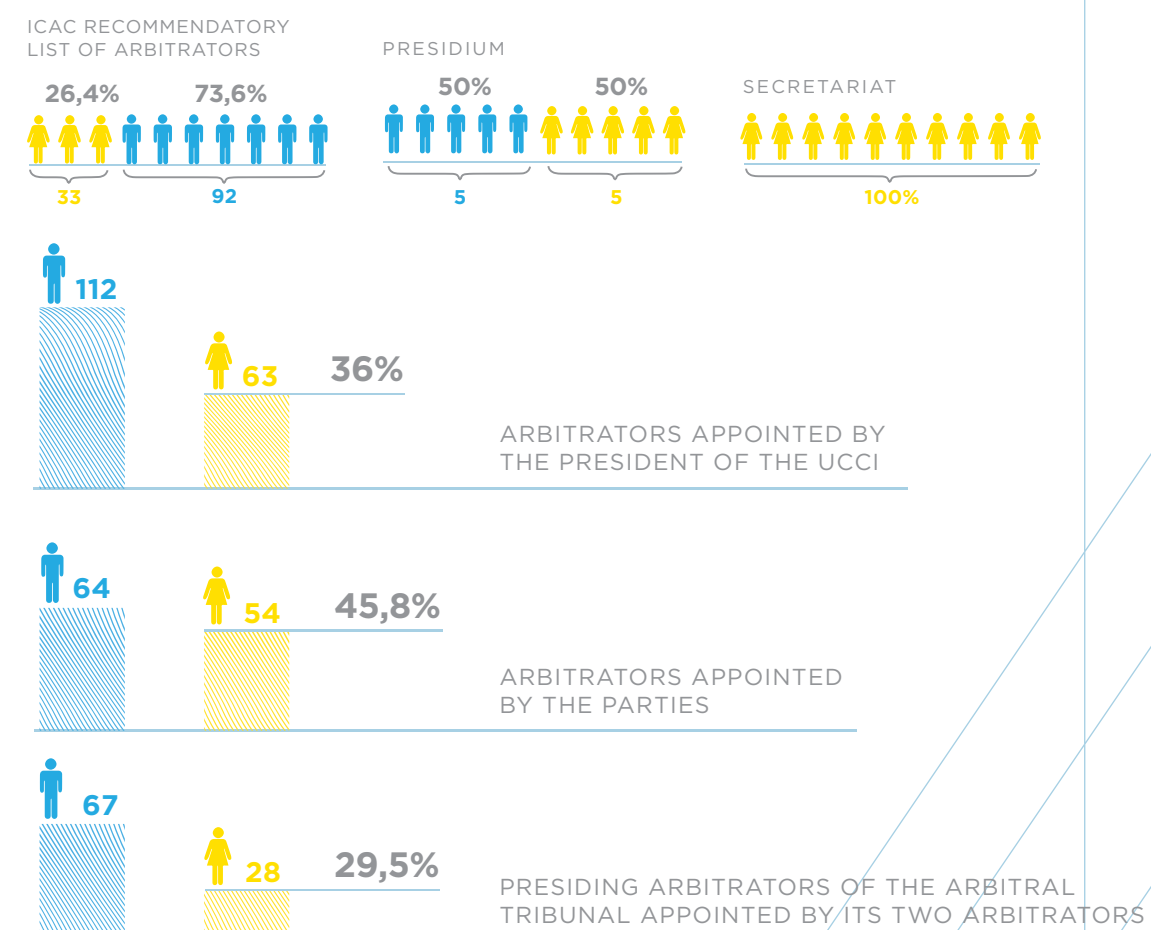
In 2018, the ICAC received 3 petitions for interim measures from the parties: **2 - addressed to the ICAC President, and 1 - to the Arbitral Tribunal**. The above-mentioned petitions were not satisfied. At the same time, in some cases that are considered in the ICAC, the interim measures were determined by state courts.

## GENDER POLITICS

The updated extended ICAC Recommendatory List of Arbitrators has preserved the gender proportion: still every fourth ICAC arbitrator is a woman. At this, as in 2017, among the Presiding arbitrators of the Arbitral Tribunal, **every third arbitrator is a woman**.

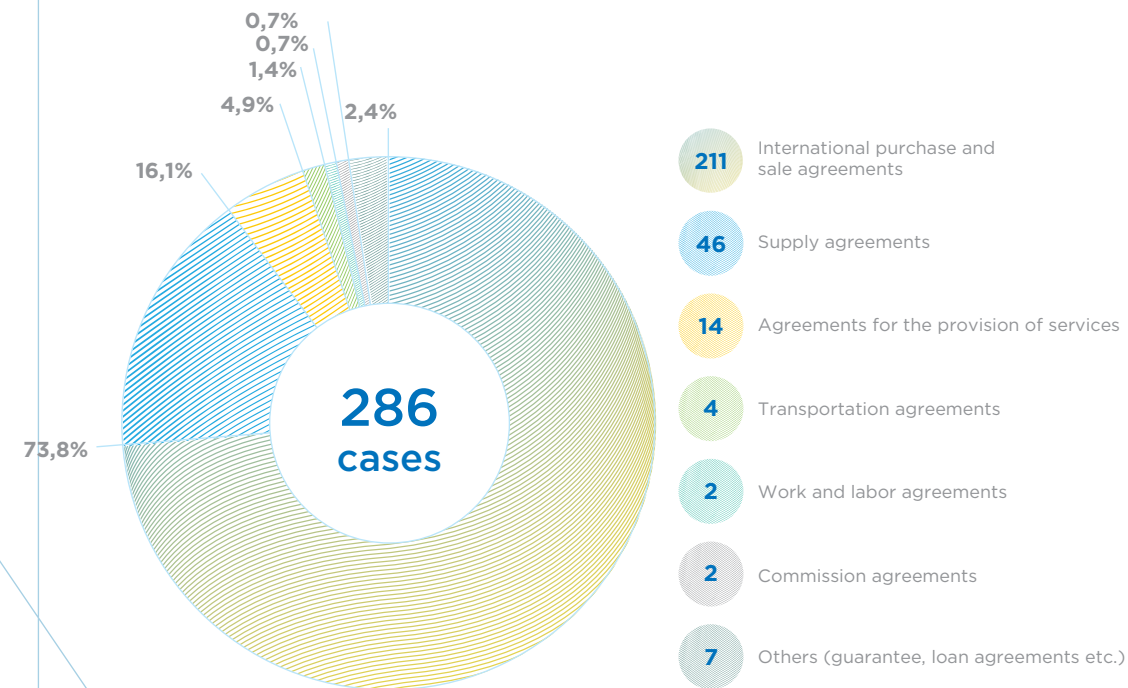


### WOMEN-ARBITRATORS INVOLVED IN THE CONSIDERATION OF THE ICAC CASES IN 2018





## TYPES OF DISPUTED AGREEMENTS

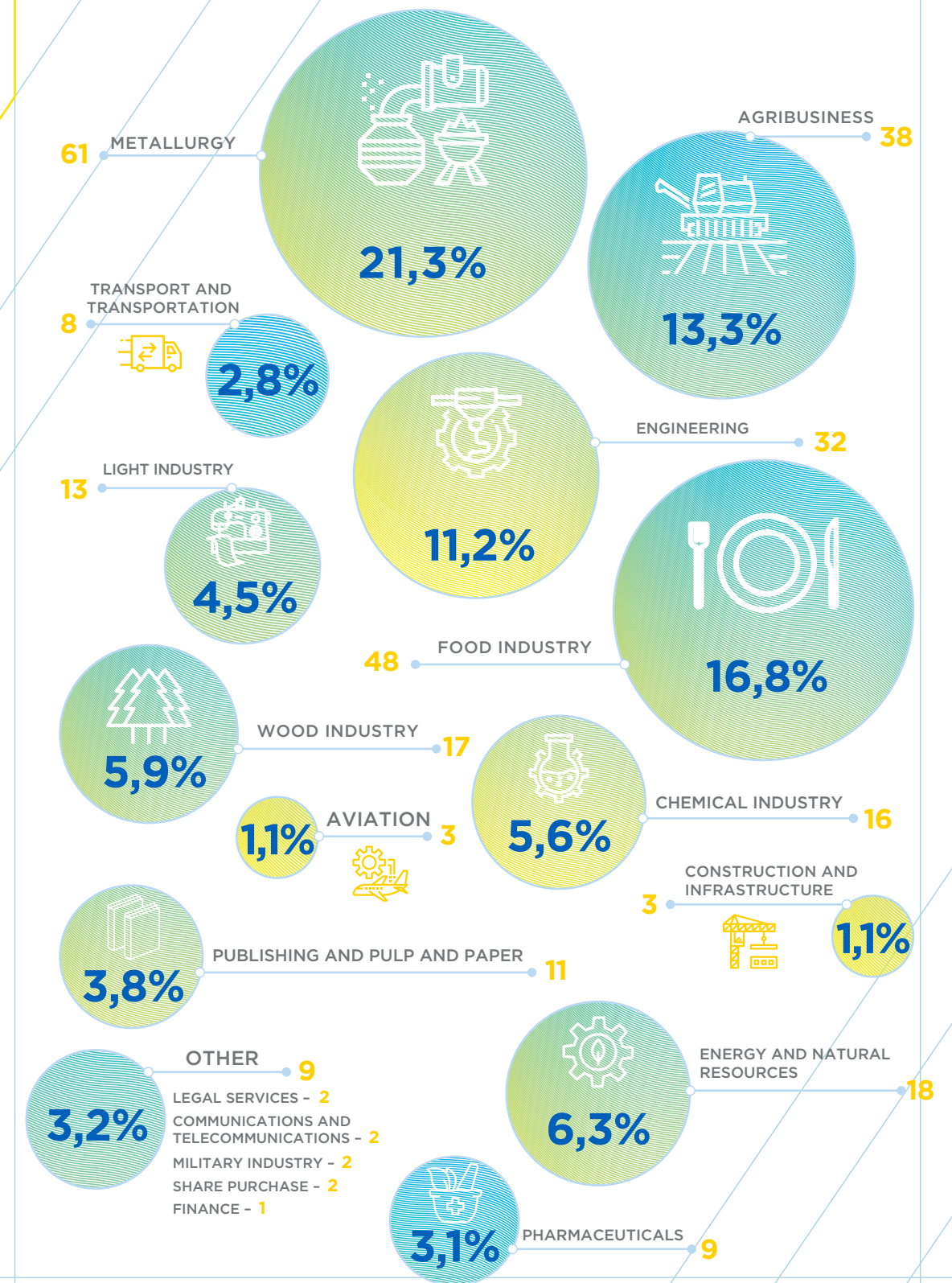


Most of cases registered by the ICAC in 2018, as in previous years, related to international purchase and sale agreements, including supply agreements, and concern the violation of contractual obligations to pay for the goods. To a lesser extent, submitted disputes related to agreements for the provision of services, transportation, work and labor, commission.

## DATE OF CONCLUSION OF AGREEMENTS IN RESPECT OF WHICH A DISPUTE HAS ARISEN

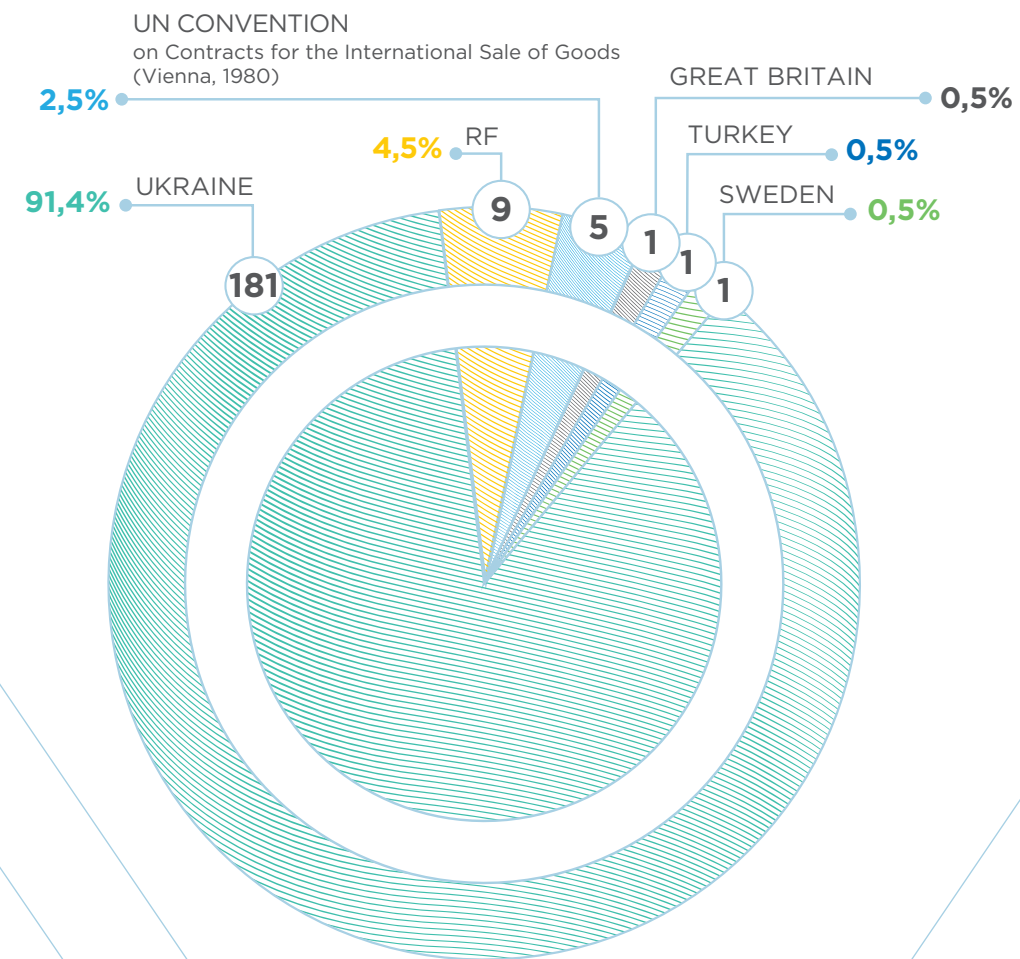


## BRANCHES, MOST ACTIVELY USING ARBITRATION AS A TOOL FOR DISPUTE RESOLUTION





## APPLICABLE LAW IN THE ICAC CASES



## LANGUAGE OF THE ARBITRAL PROCEEDINGS IN 2018



### MULTIPLE PARTIES:

in **2.5%** of cases considered:  
2 cases involved 2 Claimants,  
2 cases involved 2 Respondents,  
1 case involved 3 Respondents.

in **1%** of cases registered:  
1 case involved 2 Claimants,  
2 cases involved 2 Respondents.

In **7 cases** registered in 2018, arbitration fees were funded by a third party.

