

**International Commercial Arbitration Court  
at the Ukrainian Chamber of Commerce and Industry  
Activities  
2017**

In 2017 the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry (hereinafter referred to as - the ICAC at UCCI) celebrated the 25th anniversary of its activities. On 23 February 2017 the Presidium of the Ukrainian Chamber of Commerce and Industry supported the initiative of the ICAC Presidium to celebrate the 25th anniversary of the activities of the ICAC at the UCCI and **to announce the year 2017 in this connection - the year of international commercial arbitration in Ukraine**, within the framework of which the following activities were held:

- **international conference “International Arbitration: Emerging Changes“** held by the ICAC at the UCCI jointly with Vasil Kisil and Partners law firm in the premises of the UCCI on 17 March 2017. The conference was attended by leading experts in the field of international commercial arbitration from Austria, the United Kingdom, Germany, Norway, the USA, Finland, Sweden, Switzerland and Ukraine. The conference aroused considerable interest among the legal community and gathered more than 220 participants, including arbitrators of the ICAC and MAC at the UCCI, judges, leading Ukrainian practitioners, scholars, lecturers and students of higher education institutions. A particular importance to the conference was attached by the participation of Mrs. Corinne Montineri, Principal legal officer of International Trade Law Division of the United Nations Commission on International Trade Law (UNCITRAL) who in her report “Prospects of UNCITRAL in the light of new developments in international arbitration” highlighted the main directions of UNCITRAL future work in the field of international arbitration and conciliation, and invited the ICAC at the UCCI as an observer to join the work of the Commission. Four conference sessions were dedicated to the most important trends of international arbitration: CIS experience in the field of international investment arbitration, particularly a lively discussion aroused the issue of prospects of Ukrainian investors in investment arbitration against the Russian Federation in connection with the annexion of the Crimea; the interim measures in arbitration, the analysis of the experience of operation of institute of the emergency arbitrator; rights and duties of arbitration courts in the context of combating against the abuse of the parties of their procedural rights, current trends in understanding the autonomy of the parties in arbitration; substantive and procedural aspects of the interpretation of contracts; gender, cultural and ethnic diversity in international arbitration;

- **II Annual Ukrainian Vis Pre-Moot** held in the premises of the ICAC at the UCCI on 18 March 2017. Five student teams from universities of Ukraine and Turkey took part in the competition. In connection with the celebration of the 25<sup>th</sup> anniversary of the ICAC at the UCCI five cash prizes named after

Academician Igor Pobirchenko were set up in order to encourage the teams that participated in the moot. The lead was gained by the team of National University Kyiv-Mohyla Academy;

- **round table on “Arbitrability of disputes: moving in what direction?”** organized by the ICAC at the UCCI in order to professionally discuss the draft law No. 6232 of 23 March 2017 «On Amendments to the Economic Procedure Code of Ukraine, Civil Procedure Code of Ukraine, the Code of Administrative Procedure of Ukraine and other legislative acts». The participants of the round table - arbitrators, representatives of the judiciary, academics and leading practitioners - generally assessed positively the draft law and amendments to the procedural codes as a necessary element of judicial reform and efficiency of justice. At the same time the participants of the round table expressed a number of remarks regarding the wording of provisions relating to certain categories of disputes and their removal from the list of arbitrable ones as well as on the proposed by the authors draft law on the exclusion of Annexes No. 1 and No. 2 to the Law of Ukraine “On International Commercial Arbitration” by which the Statutes on the International Commercial Arbitration Court and the Maritime Arbitration Commission at the Ukrainian Chamber of Commerce and Industry are approved since such an exclusion will lead to the abolition of the legal framework for the activities of the ICAC and MAC at the UCCI, which will pose risks to the rights and interests of both domestic and foreign business entities the disputes of which are considered by these permanent arbitration institutions, and further significantly complicate the recognition and enforcement of arbitral awards of the ICAC and MAC at the UCCI, both on the territory of the state and abroad. Proposals and remarks on the draft law No.6232 of 23 March 2017 made by the participants of the round table were summarized and sent to Ruslan Knyazevich, Chairman of the Verkhovna Rada Committee on Legal Policy and Justice.

- **within the framework of the events dedicated to the 25th anniversary of the ICAC at the UCCI on 14 September 2017 the IV International Arbitration Readings in memory of Academician Igor Pobirchenko on the topic of: “International Commercial Arbitration: Modern Challenges” took place.** The first session of the Readings was dedicated to discussion of current requirements to arbitration, and the second - to open discussion concerning arbitration agreement and replacement of the parties in obligation, the effect of the arbitration agreement on non-signatories. Also, President of the ICAC at the UCCI Mykola Selivon presented the new Rules of the ICAC and MAC at the UCCI.

Within the framework of the Readings the agreements of cooperation between the ICAC at the UCCI and China International Economic and Trade Arbitration Commission (CIETAC) as well as between the ICAC at the UCCI and the Arbitration Court at the Bulgarian Chamber of Commerce and Industry were signed.

The 25<sup>th</sup> anniversary of the ICAC at the UCCI has become the most visited event of the ICAC over the past years bringing together over 300 participants from 16 countries, as well as an excellent opportunity for the representatives of all branches of government, Ukrainian and international experts, ICAC arbitrators, scientists and practitioners to exchange experience, get acquainted with the Ukrainian arbitration model, Ukrainian and foreign procedural legislation and celebrate the anniversary of the Court in a warm and friendly atmosphere.

- **business-brunch “International Commercial Arbitration - An Alternative to State Courts?”** which was held by the ICAC at the UCCI on 28 September 2017 and gathered judges, lawyers and counsels. More than 30 participants had the opportunity to discuss practical issues of interaction of international arbitration and state courts in Ukraine.

During the year, the ICAC at the UCCI conducted work on popularization of arbitration as an effective way of foreign economic disputes resolution and new arbitration opportunities in connection with the reform of Ukrainian procedural legislation. For that purpose, arbitrators and employees of the ICAC at the UCCI took part in topical conferences in the cities of **Kyiv, Zaporizhzhia, Lviv, Khmelnytskyi and Kherson**.

Articles of ICAC arbitrators and employees were published in the leading core publications: “Law of Ukraine”, “Legal practice”, “Legal newspaper”, “Ukrainian lawyer”, as well as in Internet publications “Law and Business” and “LigaZakon”.

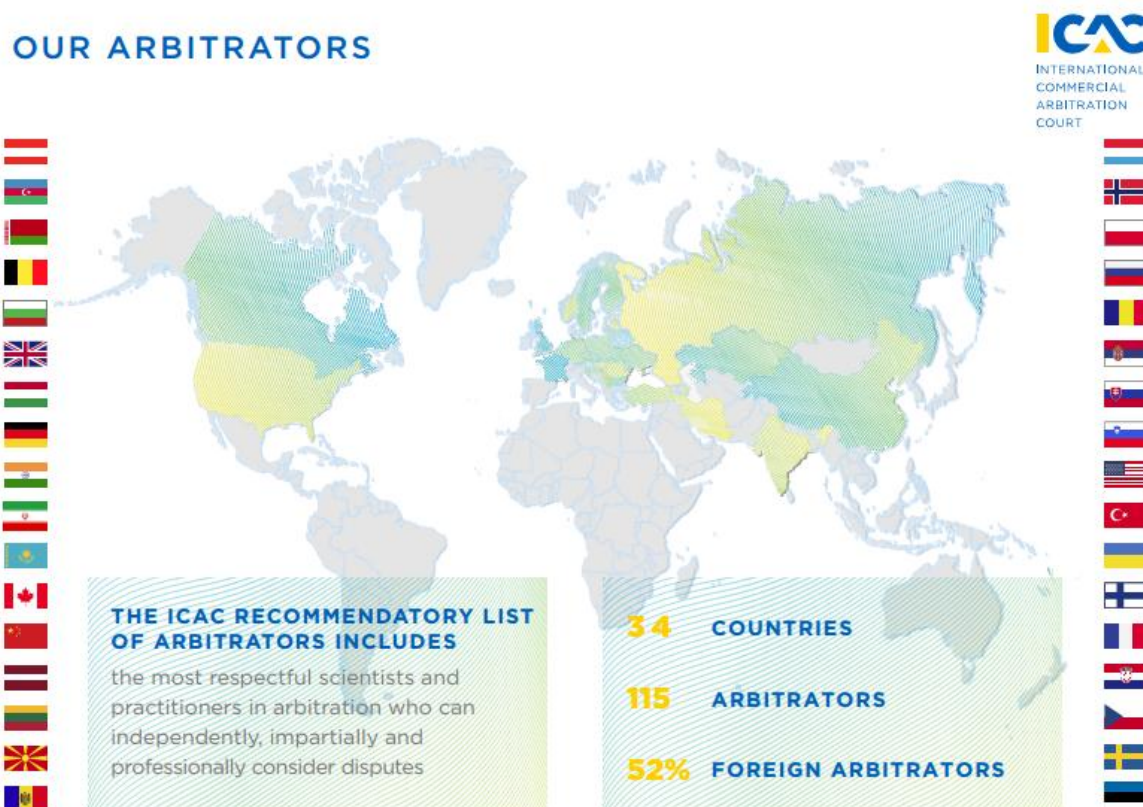
The ICAC at the UCCI actively supported international relations. Apart from the participation of the ICAC’s representatives **in international arbitration conferences**, in particular, **in Belarus (Minsk), Kyrgyzstan (Bishkek), Poland (Nowy Tomyśl), Serbia (Belgrade)**, the ICAC at the UCCI studied the experience of the Arbitration Court at Bulgarian Chamber of Commerce and Industry on conducting e-cases, launched the cooperation with the China International Economic and Trade Arbitration Commission and signed the agreement of cooperation with the International Arbitration Court at the Chamber of Commerce and Industry of the Kyrgyz Republic. As of the end of 2017, the ICAC at the UCCI has been actively cooperating **with 19 international arbitration institutions**.

To the 25th anniversary of the ICAC at the UCCI in September 2017:

- **two books** were published: Collection of articles and reports “International Commercial Arbitration: Modern Challenges” and Practice of the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry for consideration of foreign economic disputes for 2011 - 2016;
- **a documentary film and a promo video** about the ICAC at the UCCI;
- the ICAC at the UCCI restyled the logo and corporate identity, strengthened media ties, partnership with relevant legal and business associations.

In 2017 the ICAC at the UCCI **extended its Recommendation List of Arbitrators** by including 6 new arbitrators from Austria, Germany, Turkey and

China. Thus, the ICAC Recommendation List of Arbitrators currently includes 115 arbitrators, 55 among which are Ukrainian arbitrators and 60 are foreign ones.



During the year the ICAC arbitrators and employees actively participated in the preparation by the working group of the Judicial Reform Council under the President of Ukraine of a draft law on amendments to the procedural codes of Ukraine and other legislative acts concerning international arbitration and arbitration courts, as well as in its finalization in the Verkhovna Rada of Ukraine until the second reading. The ICAC employees spoke on procedural legislation reform in the part concerning international arbitration at the V Annual Forum of Legal Counsels (on 25 October 2017) and on promotion of arbitration at the II Ukrainian Silk Road Forum (on 16 November 2017).

In 2017 the preparation of **the new Rules of the ICAC and MAC at the UCCI** was completed. In accordance with the established procedure the Rules were submitted to the consideration of the Presidium of the UCCI and approved by its Decision No. 25 (6) of 27 July 2017. The new Rules will **be brought into effect on 1 January 2018**.

The new Rules have been developed taking into account the world tendencies in arbitration and the reform of the procedural legislation of Ukraine as well as maintenance of their own exclusive experience in disputes resolution, which allows for effective settlement of foreign economic disputes that fall within the competence of the ICAC at the UCCI. The provisions of the Rules are aimed at increasing the effectiveness of arbitration, in order to make arbitration proceedings faster, more cost efficient and comfortable for the parties.

On 14 December 2017 the International Commercial Arbitration Court and the Maritime Arbitration Commission at the Ukrainian Chamber of Commerce and Industry held **the General Meeting of Arbitrators** in which 47 arbitrators from Kyiv, Odesa, Khmelnytskyi and Baku (Azerbaijan) took part. Mykola Selivon, President of the ICAC and the MAC at the UCCI, informed of the current results of the activities of the arbitration institutions, outlined the directions for the further work of the arbitrators and the Secretariat in the context of the judicial reform carried out, updates of the procedural legislation and current challenges. The arbitrators also discussed practical issues related to the entry into force on 1 January 2018 of the new ICAC and MAC Rules and the conduct of arbitral proceedings in accordance with the requirements of the Rules. Based on the results of the practice analysis of the ICAC at the UCCI for 2007-2017, Tetiana Zakharchenko, Vice President of the ICAC at the UCCI, made a presentation on the topic: “Application of the UN Convention on Contracts for the International Sale of Goods (Vienna, 1980) in the ICAC Practice” and Petro Krupko, a member of the MAC Presidium and the ICAC arbitrator, made a presentation on “Practice of application of Article 625 of the Civil Code of Ukraine by the ICAC at the Ukrainian CCI when considering cases of return of prepayment.”

The General Meetings positively evaluated the results of the activities of arbitration institutions in the anniversary year and the work on promotion of the ICAC at the UCCI.

### **§ 1. Number of cases registered by the ICAC at the UCCI in 2017**

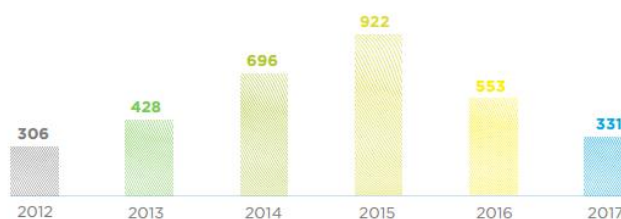
During the period from 1 January till 31 December 2017 the ICAC at the UCCI registered **331 cases**.

The dynamics of the number of cases registered in the ICAC at the UCCI during the period 2012-2017 is as follows:

THE NUMBER OF CASES REGISTERED IN 2017



IN THE LAST 6 YEARS THE ICAC HAS REGISTERED 3236 CASES



It is observed a steady dynamics in regard to claims submitted to the ICAC at the UCCI. The ICAC accepts for consideration on average 300-600 cases annually.

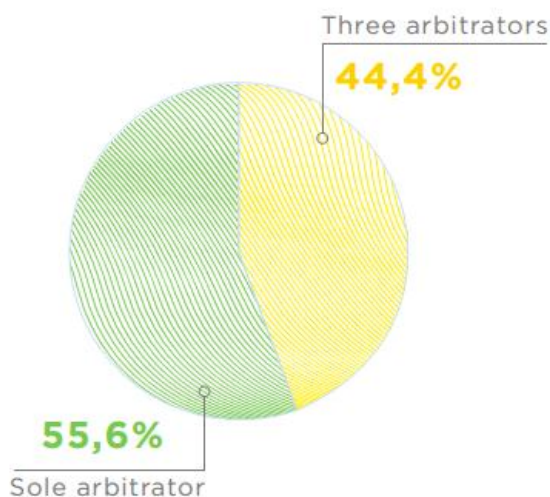
## § 2. Consideration of cases in 2017

In the period from 1 January till 31 December 2017 the ICAC at the UCCI considered 295 cases (in 280 cases the ICAC rendered the arbitral awards, and in 15 cases - the orders of the Arbitral Tribunal for the termination of the arbitral proceedings). At the same time, 164 cases were considered by the Arbitral Tribunal composed of a sole arbitrator, and 131 cases – by three arbitrators.

### THE ARBITRAL TRIBUNAL NUMBER OF ARBITRATORS



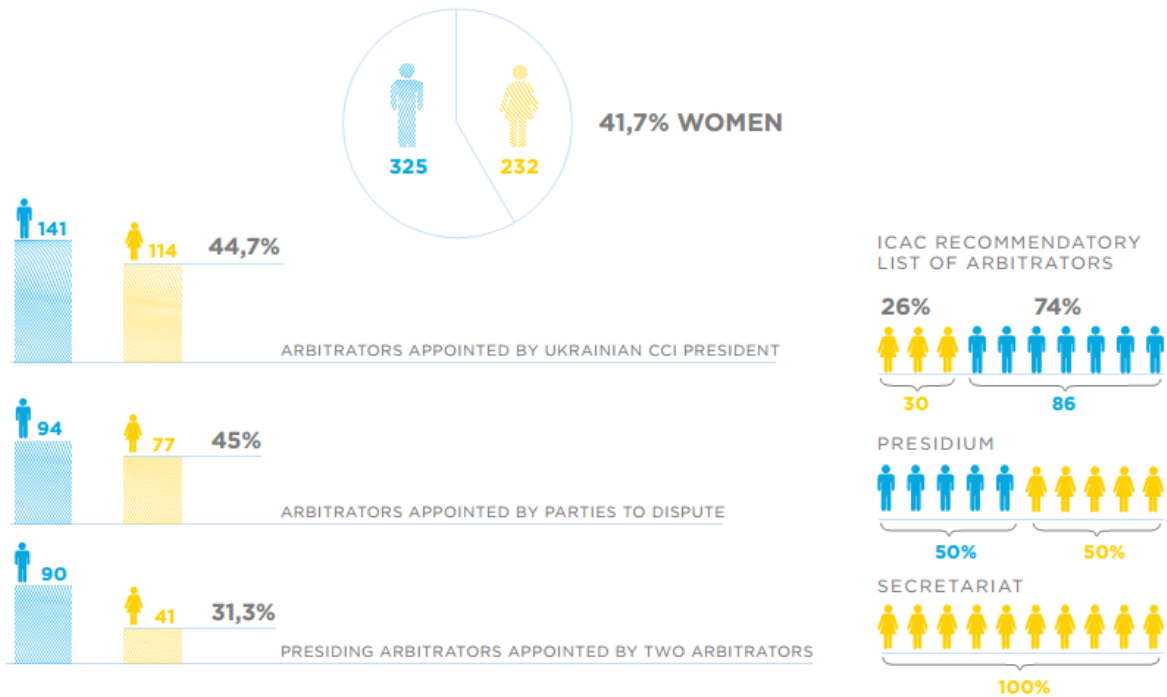
THE NUMBER OF ARBITRATORS OF THE ARBITRAL TRIBUNAL ON CASE CONSIDERATION IN 2017



In 2017, 557 arbitrators took part in the consideration of cases, including 325 men (58.3%) and 232 women (41.7%). Thus, the ICAC's statistics on gender equality is among the best amongst world arbitration institutions.

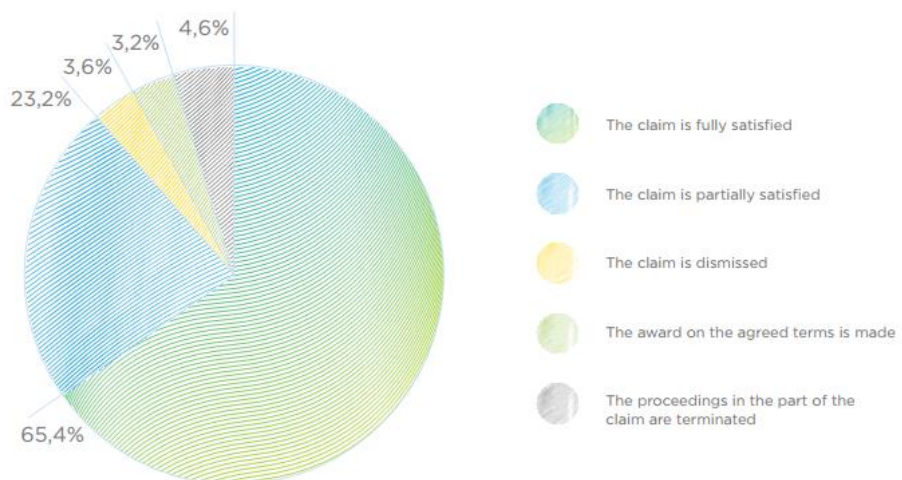
It is observed a positive dynamics in increasing of the representation of women-arbitrators in arbitration. Thus, during the last year, the number of women-presiding arbitrators of the Arbitral Tribunal increased significantly. If, for example, in 2016 every fifth woman headed the Arbitral Tribunal, then in 2017, every third.

WOMEN-ARBITRATORS INVOLVED IN THE CONSIDERATION OF THE ICAC CASES IN 2017



Of the total number of cases considered (295), in 183 cases the claim was fully satisfied, in 65 cases the claim was partially satisfied and 10 cases the claim was dismissed. In 13 cases, in part of recovery of the debt, the proceedings were terminated (in connection with the voluntary payment of the debt by the respondent after the claimant filed the statement of claim to the ICAC at the UCCI). In 9 cases, the arbitral awards were made on the agreed terms (in connection with the conclusion of the parties to the amicable agreement).

THE RESULT OF CASE CONSIDERATION



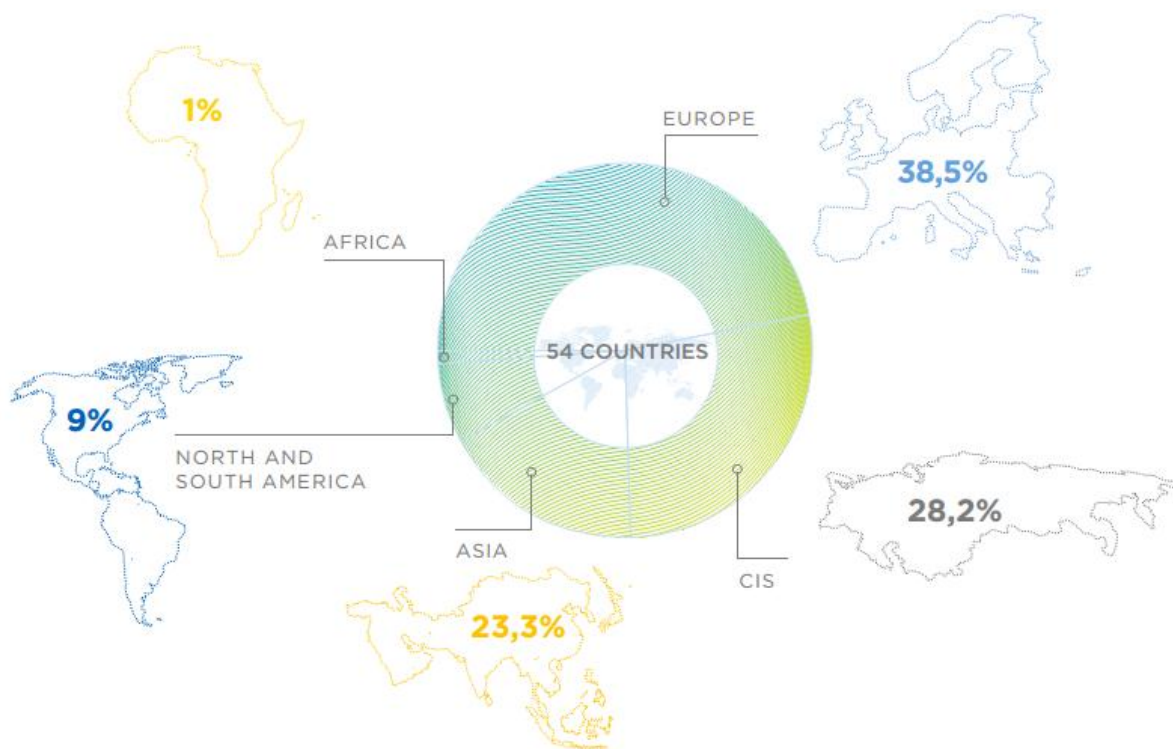
Of the total number of cases considered (295), 57 arbitral proceedings (19,3%) were conducted in Ukrainian, 9 (3,1%) - in English, 1 - in German and the remaining ones – in Russian.

In most cases (95,9%) the law applicable to the disputes was the substantive law of Ukraine, in 5 cases - the Vienna Convention (1980) only, in 5 cases - the substantive law of the Russian Federation, in 2 cases - the substantive law of the Republic of Belarus and 1 case - the law of England and Wales, Greece, Moldova and Romania.

In 2017 foreign arbitrators from Belarus, Serbia, the USA, France and Sweden participated in the consideration of cases of the ICAC at the UCCI on numerous occasions.

### § 3. Origin of the parties

The parties to cases considered by the ICAC in the period from 1 January till 31 December 2017 (295 cases) were represented by 54 countries, including 43 from far-abroad countries, 10 CIS countries and Ukraine.



The following **far-abroad countries** appeared as the Parties to the cases: Czech Republic – 31 cases, Cyprus – 26 cases, United Arab Emirates – 17 cases, British Virgin Islands and Germany – 15 cases from each country, China (including Hong Kong (3 cases)) – 12 cases, United Kingdom and Poland – 9 cases



from each country, Ireland and Switzerland – 8 cases from each country, the USA – 6 cases, Latvia and Turkey – 5 cases from each country, Estonia – 4 cases, Belize, Georgia, Spain, Italy and Lithuania – 3 cases from each country; Bulgaria, Greece, India, Pakistan, Panama, Romania – 2 cases from each country; Austria, Belgium, Egypt, Israel, Jordan, Libya, Liechtenstein, Malta, Netherlands, Republic of South Africa, Seychelles, Singapore, Tunisia, Hungary, Finland, France and Sweden – 1 case from each country.

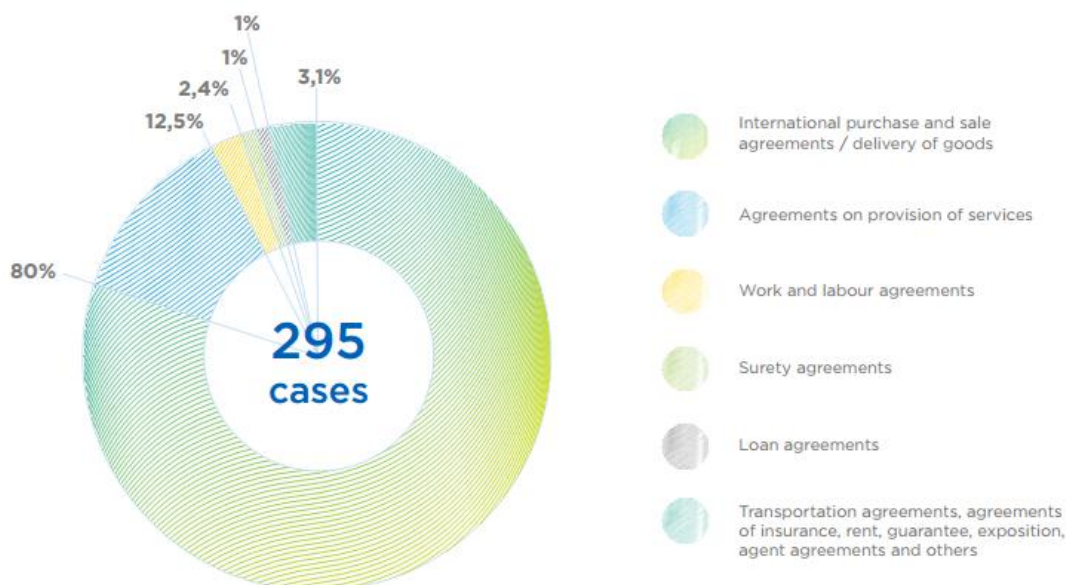
The following **CIS countries** appeared as the Parties to cases:

Russian Federation – 42 cases, Belarus – 16 cases, Moldova – 10 cases, Kazakhstan and Uzbekistan – 4 cases from each country, Azerbaijan – 3 cases, Armenia and Turkmenistan – 2 cases from each country, Kyrgyzstan and Tajikistan – 1 case from each country.

#### § 4. Types of disputed agreements

Most of the cases, considered by the ICAC at the UCCI in 2017, as in previous years, related to international purchase and sale agreements/agreements on delivery of goods and to violation of contractual obligations for the payment or delivery of goods. A significant number of disputes concerned the quality of the delivered goods, the provision of services, including banking. To a lesser extent, submitted disputes deal with work and labor, surety, rent, transportation.

#### THE TYPES OF DISPUTED AGREEMENTS

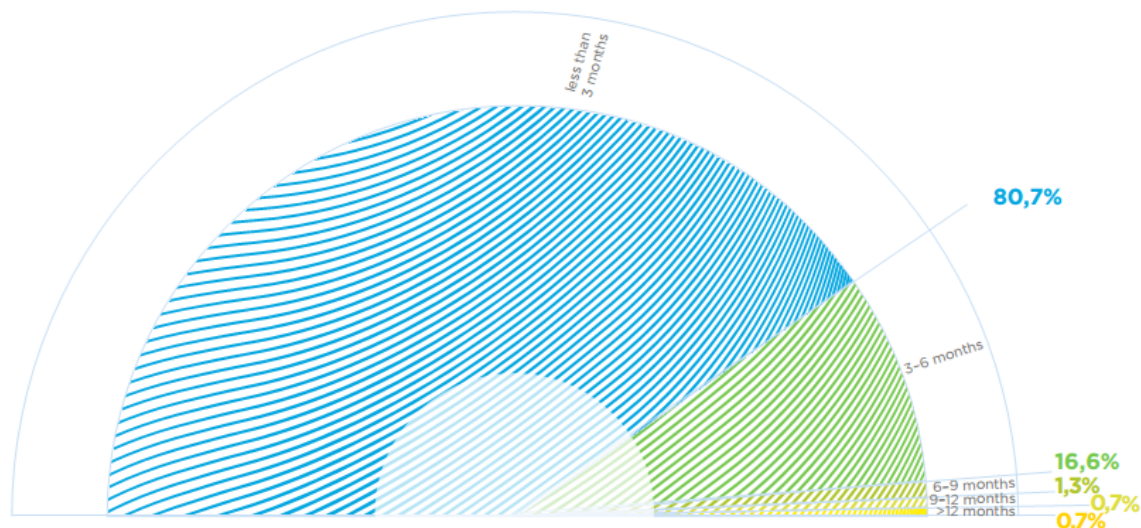


Of the total amount of cases considered by the ICAC at the UCCI in the period from 1 January till 31 December 2017 (295 cases), the vast majority of cases –

236 cases - related to international purchase and sale/delivery of goods, 37 cases – to agreements on the provision of services (including 2 cases - on the provision of banking services), 7 cases - with work and labor agreements, 3 cases - with surety agreements, 3 cases - with loan agreements, the remaining 9 cases related to transportation agreements, insurance, rent, guarantee, exhibitions, agency agreements, etc.

## § 5. Duration of arbitral proceedings

In the period from 1 January till 31 December 2017 the ICAC at the UCCI considered 295 cases. The terms of consideration of the above cases (from the date of constitution of the Arbitral Tribunal and till rendering of the arbitral award/order in the case) were as follows:



Traditionally, the ICAC at the UCCI is trying to resolve disputes between parties in the shortest possible timeframe - in 2017, 97% of cases were considered within a term not exceeding six months.

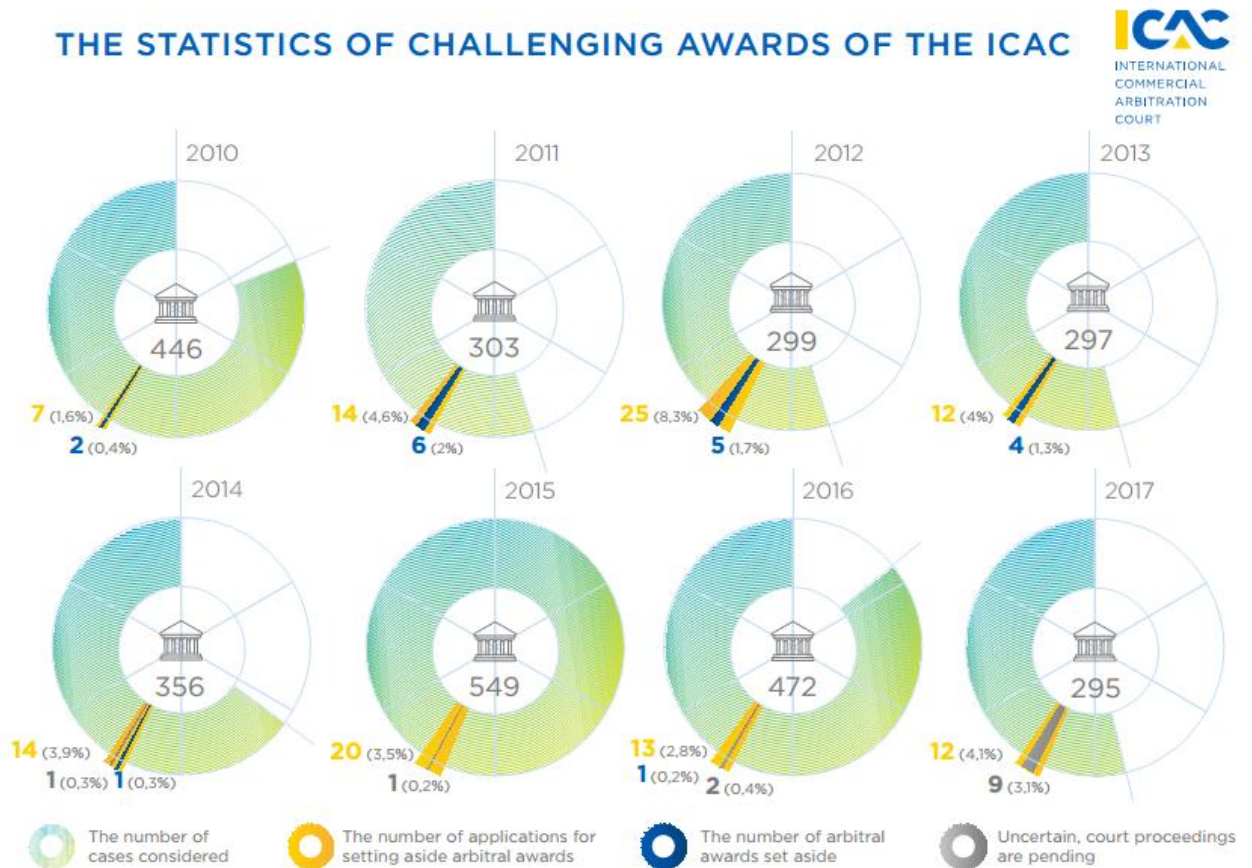
## § 6. Challenging arbitral awards

The awards of the ICAC at the UCCI are successfully executed in more than 110 countries of the world. On the average, about 4% of the awards of the ICAC at the UCCI are challenged, of which no more than 1% are set aside. Such a small number of challenged awards indicates the level of work of the court, as well as the fair and impartial consideration of cases where even the defeated party is morally satisfied with the arbitral proceedings.

In 2017, by the decision of the High Specialized Court of Ukraine dd. 9 November 2017, 1 award of the ICAC at the UCCI in the case considered in 2016 was set aside.

As of the beginning of 2018, none of the ICAC awards was set aside. Proceedings in 9 cases are pending.

The general statistics of challenging awards of the ICAC at the UCCI is as follows:



**Mykola Selivon**

**President  
of the ICAC at the UCCI**