



INTERNATIONAL  
COMMERCIAL  
ARBITRATION  
COURT

# ICAC ACTIVITIES 2019



## Mykola Selivon

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



In 2019, the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry (the ICAC), as in previous years, performed jurisdictional activity aimed at foreign economic disputes resolution. The quantitative and qualitative outcomes of the ICAC activity can be found in this Report.

The arbitrators and the Secretariat of the ICAC improved in using all the elements of arbitral proceedings mentioned in the ICAC Rules; the Arbitral Tribunals used the stage of preparing the case for consideration more actively as well as performed additional activities for case preparation, e.g. amount of organizational meetings increased, procedural schedules were approved etc. Since 2019, the rule of urgent informing of the arbitrator about his appointment by a party, by the President of the UCCI or by two arbitrators was introduced. These and other measures as well as a new stage of rendering and verification of the arbitral award, introduced in the ICAC Rules 2018, contributed to the increase of the arbitration level and therefore the validity and legitimacy of arbitral awards.

It is important to mention that regardless of the current trend towards the growth of the number of complex disputes and the application of law other than Ukrainian, not a single ICAC award of 2019 was set aside, although unprecedentedly many awards were challenged (about 8% which is 15 applications). The number of cases considered in English tripled (7%) and the number of cases considered in Ukrainian increased by 10% (32%). Moreover, parties to 18 registered cases were exceptionally non-residents.

In 2019, like in previous years, the ICAC paid a lot of attention to popularization of arbitration as well as to participation in international events. VI International Arbitration Readings in memory of Academician Igor Pobirchenko were certainly the most important event, organized by the ICAC. Without any exaggeration the Readings shape key messages for business and arbitration community of Ukraine.

All the above, as well as the outcomes that can be found in the Report, indicate the ICAC's decent position in the global arbitration market, and this position is far from the last one.



## ABOUT THE ICAC

THE ICAC IS A FLAGSHIP INSTITUTION AMONG THE ARBITRATION INSTITUTIONS IN CENTRAL AND EASTERN EUROPE AND A RECOGNIZED ARBITRATION INSTITUTION WORLDWIDE

The ICAC offers the parties efficient and comfortable arbitration conditions.

- ◆ **Efficiency.** The ICAC arbitral awards are enforced across 110 countries. On average only 5% of the ICAC arbitral awards are challenged, and less than 1% of arbitral awards are set aside. The duration of considering 80% of the cases is no longer than 3 months, 96% of the cases are considered in less than half a year.
- ◆ **Experience.** The ICAC registers on average from 300 to 600 cases annually. The ICAC Recommendatory List of Arbitrators includes 122 arbitrators from 35 countries who are the recognized practitioners and most respectful scientists recommended in arbitration by the reputable international directories.
- ◆ **Focus.** More than 50% of the considered cases are related to the TOP-5 industries in terms of export and import structure: food industry, engineering, metallurgy, natural resources.

## THE ICAC UPDATES

### ◆ The updated Presidium.

The ICAC welcomes 2 new Vice Presidents and a new Member of the Presidium which now includes 11 members:



M. Selivon



I. Yemelianova



L. Vynokurova



Y. Chernykh



T. Zakharchenko



P. Krupko



O. Krupchan



E. Pashchenko



O. Podtserkovnyi



Y. Prytyka



M. Tepluk

### ◆ Work on the legal reform in Ukraine.

Vice President of the ICAC was appointed as the Deputy Head of the Working Group on the Development of Legislation on the Organization of the Judiciary and the Administration of Justice of the Legal Reform Commission under the President of Ukraine.

### ◆ Popularization of mediation in Ukraine.

The representatives of the ICAC were included in the Working Group on the drafting of the Law of Ukraine "On Mediation" and proposals for ratification of the UN Convention "On International Settlement Agreements Resulting from Mediation" under the Ministry of Justice of Ukraine.



# EFFICIENCY

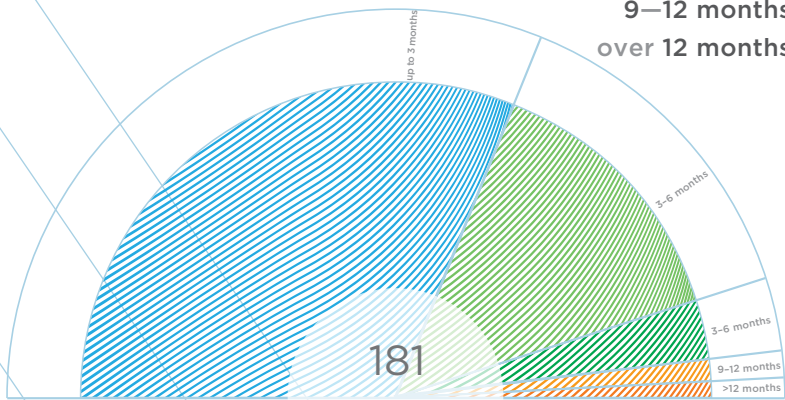


**During** the period from 1 January to 31 December 2019 the ICAC registered **243 cases**  
**181 cases were considered**

## DURATION OF ARBITRAL PROCEEDINGS IN THE ICAC

Traditionally, the ICAC provides for quick and efficient consideration of cases - **91% of cases were considered within a period not exceeding 6 months** from the date of the Arbitral Tribunal constitution.

up to 3 months: **113 cases (62,4%)**  
3—6 months: **51 cases (28,2%)**  
6—9 months: **11 cases (6,1%)**  
9—12 months: **3 cases (1,7%)**  
over 12 months: **3 cases (1,7%)**



In **35 cases** the parties managed to **save 20% of the arbitration fee**.

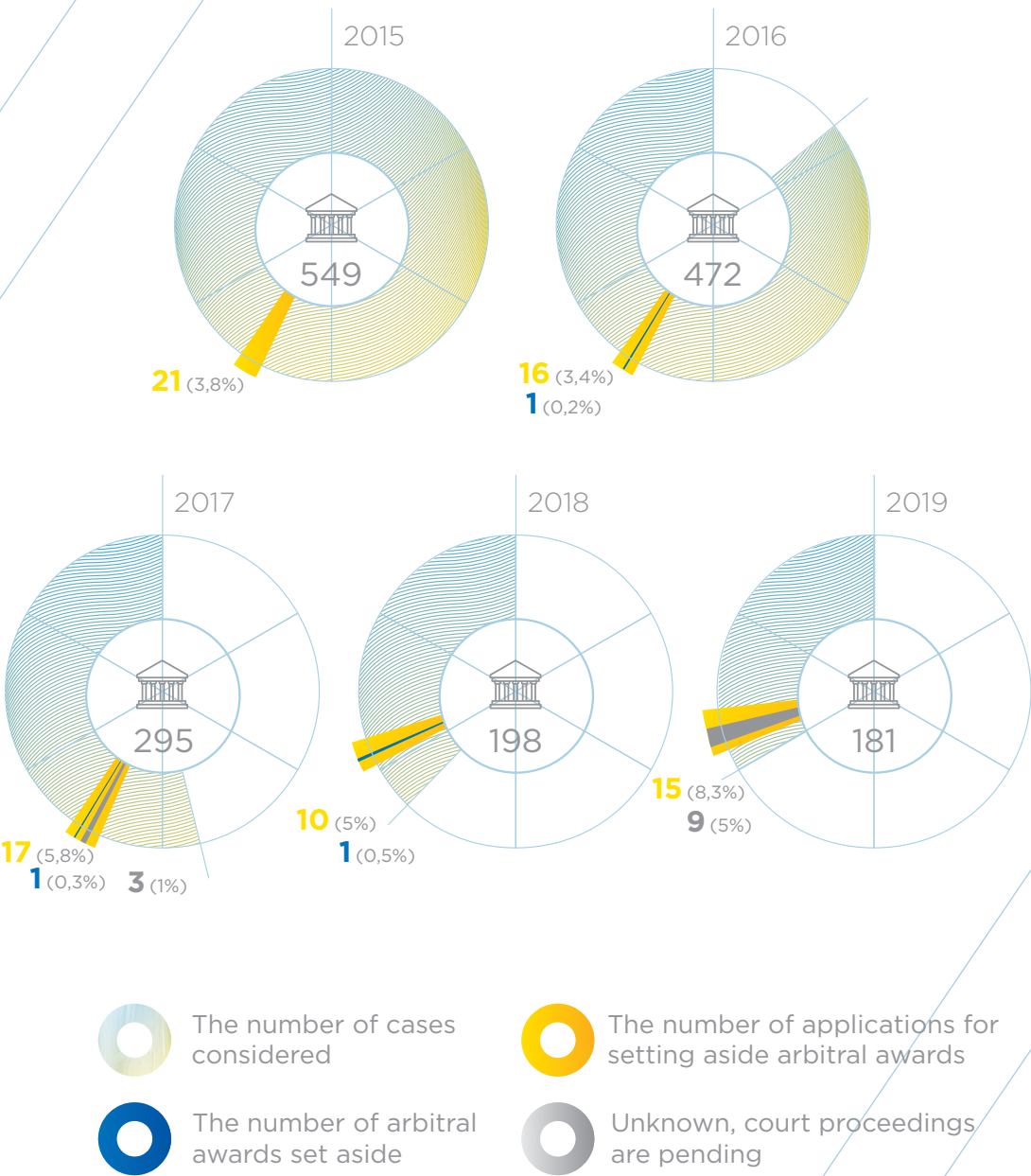
According to the provisions of Article 30 (1) of the Rules of the ICAC, given that there was no previous agreement on the number of arbitrators, **the ICAC President in 35 cases**, representing 14,4% of all registered cases, **decided that the dispute is a subject to be resolved by a sole arbitrator**. In these cases, the complexity of the case and the price of the claim were considered while making the said decision.



# EFFICIENCY

## CHALLENGING THE ICAC AWARDS

Over the past years it is observed an overall tendency of increasing the number of challenging applications. Nevertheless, the number of arbitration awards set aside **does not exceed 1%**.



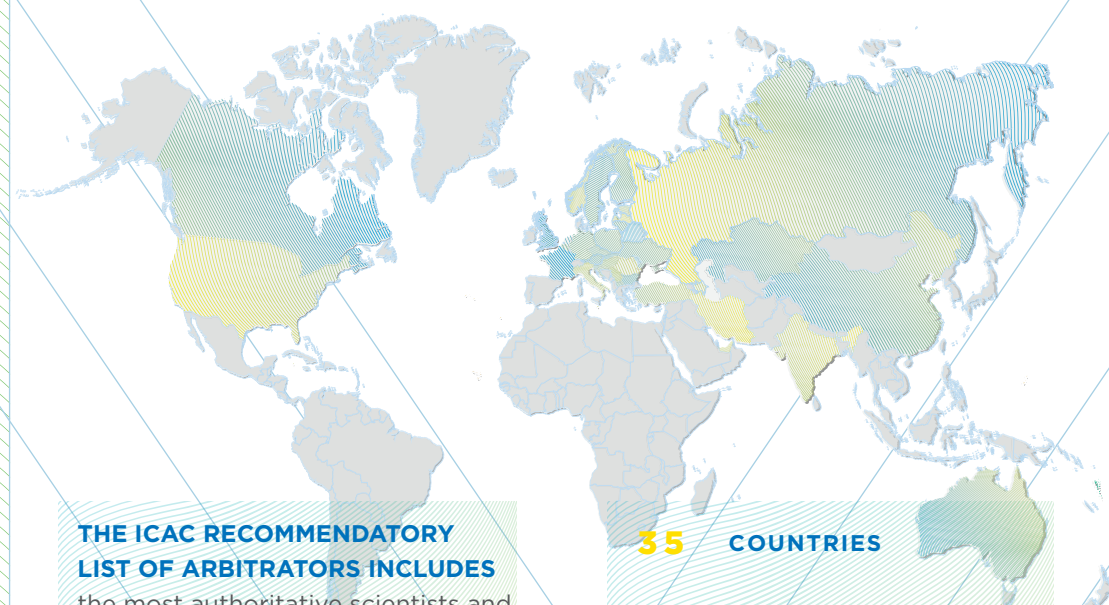


# EXPERIENCE

## THE UPDATED ICAC RECOMMENDATORY LIST OF ARBITRATORS

The ICAC Recommendatory List of Arbitrators currently includes **122 authoritative scientists and leading practitioners** from **35 countries of the world**, with **60%** of foreign specialists and **40%** 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



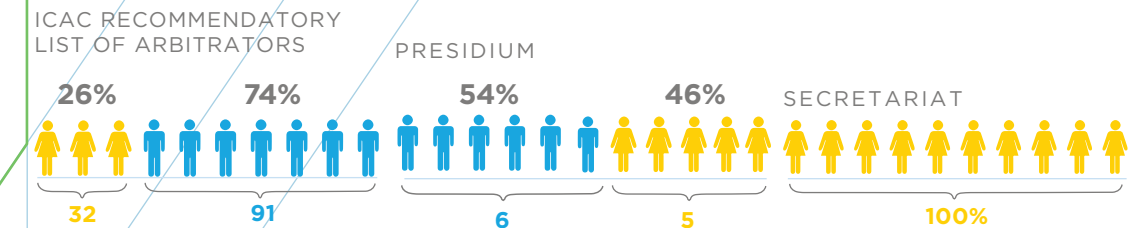
**THE ICAC RECOMMENDATORY LIST OF ARBITRATORS INCLUDES** the most authoritative scientists and leading practitioners able to independently, impartially and professionally consider disputes

**35 COUNTRIES**  
**122 ARBITRATORS**  
**60% OF FOREIGN ARBITRATORS**

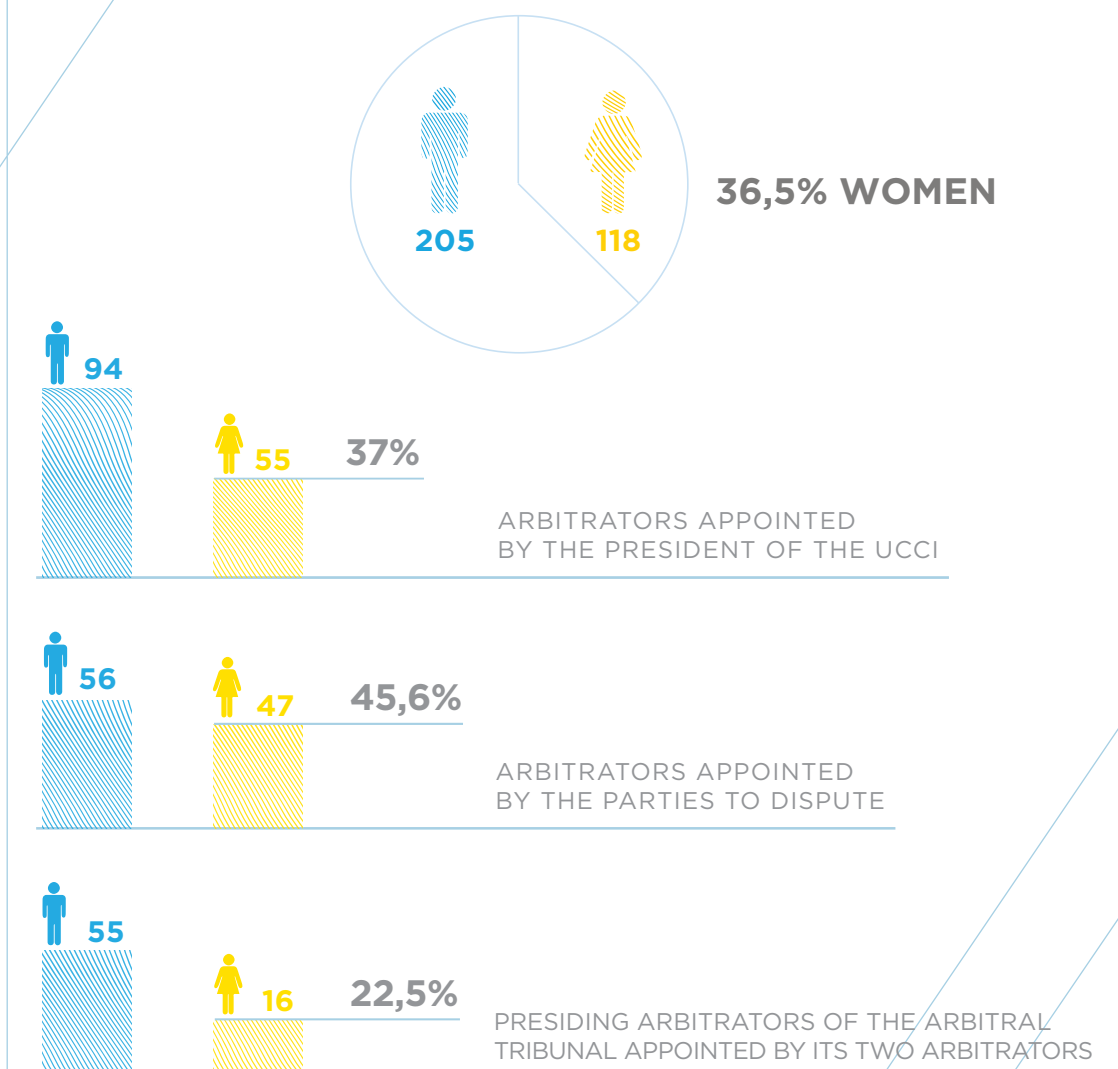
In 2019 arbitrators from **Belarus, Latvia, Poland, USA** and **Sweden** repeatedly took part in the consideration of cases in the ICAC.

# EXPERIENCE

## GENDER POLITICS



### WOMEN-ARBITRATORS INVOLVED IN THE CONSIDERATION OF THE ICAC CASES IN 2019



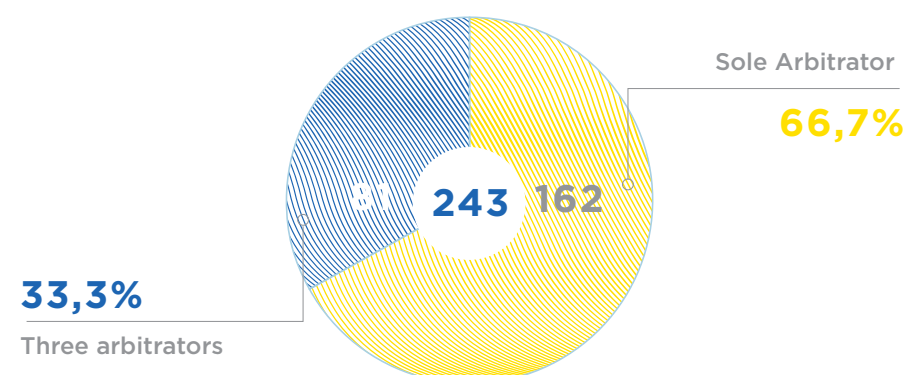
In 2019 the ICAC joined the global initiative aimed at achieving the equal representation of women in the international arbitration - **Equal Representation in Arbitration Pledge**.



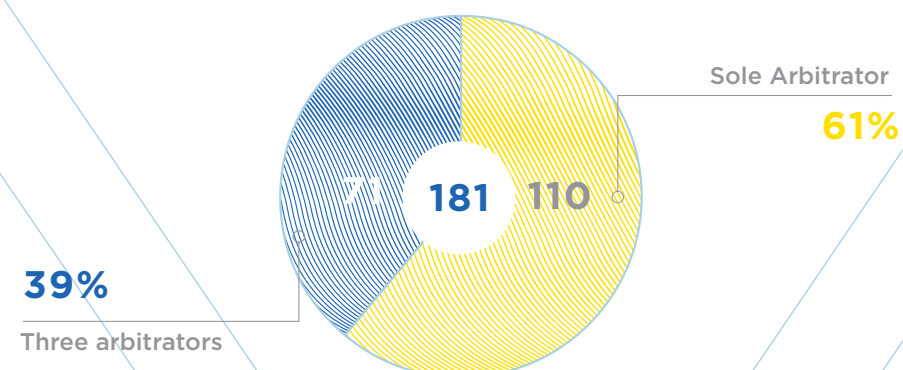
# EXPERIENCE

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

THE NUMBER OF ARBITRATORS OF THE ARBITRAL TRIBUNAL IN CASES REGISTERED



THE NUMBER OF ARBITRATORS OF THE ARBITRAL TRIBUNAL IN CASES CONSIDERED



## CHALLENGE OF AN ARBITRATOR

In 2019, the ICAC received **3 statements on the challenge of an arbitrator from the parties**. Given that the arbitrators did not refuse to participate in the case consideration, these issues were referred to the ICAC Presidium following Article 33 (3) of the ICAC Rules. The ICAC Presidium did not satisfy any of the statements. In 2 cases the arbitrators withdrew voluntarily.

**The reporters were appointed in 119 cases,** representing 66% of the total number of cases considered.

# EXPERIENCE

## IN FIGURES AND FACTS

### COUNTERCLAIMS

in **6** CASES

in **5** cases  
according to Article 22 of the ICAC Rules

### THIRD PARTIES

in **1,7%** OF CASES **considered**  
3 cases involved **2** RESPONDENTS

### MULTIPLE PARTIES

in **3,7%** OF CASES **registered**  
in **1-3** Claimants  
in **1-3** Respondents  
in **7-2** Respondents

in **4** CASES  
the awards were issued  
on agreed terms

### AMICABLE AGREEMENTS

**4** PETITIONS  
to the ICAC President

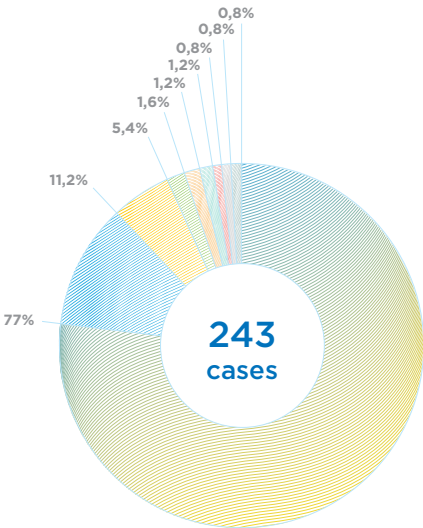
**1** - partially satisfied  
**3** - refused in determining the size  
and the form of the claim security

### INTERIM MEASURES

The parties received positive  
decisions of the state courts  
regarding the interim measures of the  
cases considered by the ICAC.

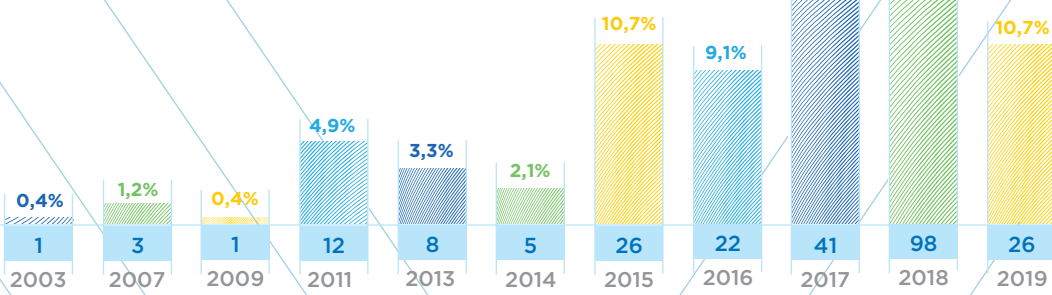


TYPES OF DISPUTED AGREEMENTS



- 187 International purchase and sale agreements
- 27 Supply agreements
- 13 Agreements for the provision of services
- 4 Others (commission, representation, loan transfer agreements etc.)
- 3 Work and labor agreements
- 3 Consignment agreements
- 2 License agreements
- 2 Guarantee agreements
- 2 Transportation agreements

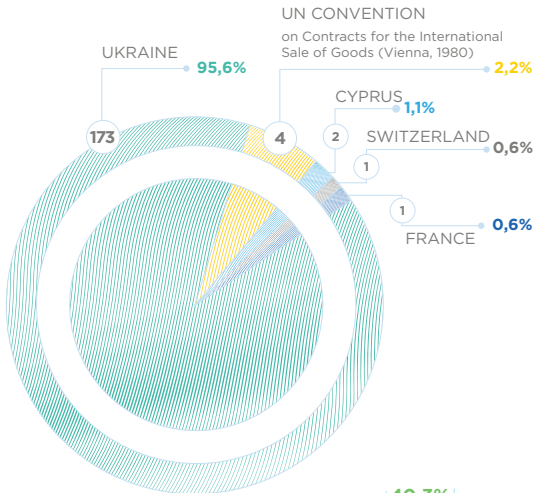
DATE OF CONCLUSION OF AGREEMENTS IN RESPECT OF WHICH A DISPUTE HAS ARISEN



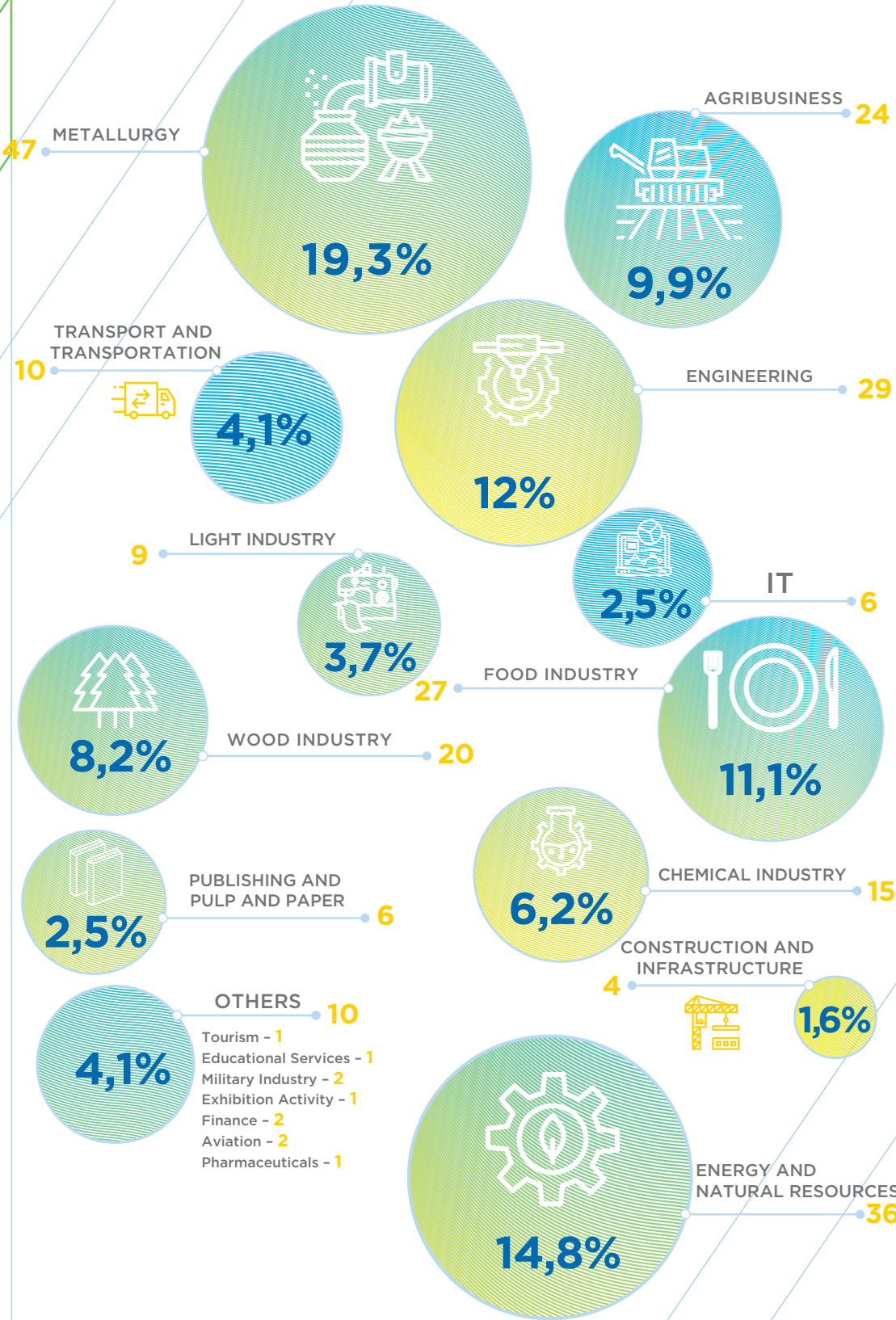
LANGUAGE OF THE ARBITRAL PROCEEDINGS IN 2019



APPLICABLE LAW IN THE ICAC CASES



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

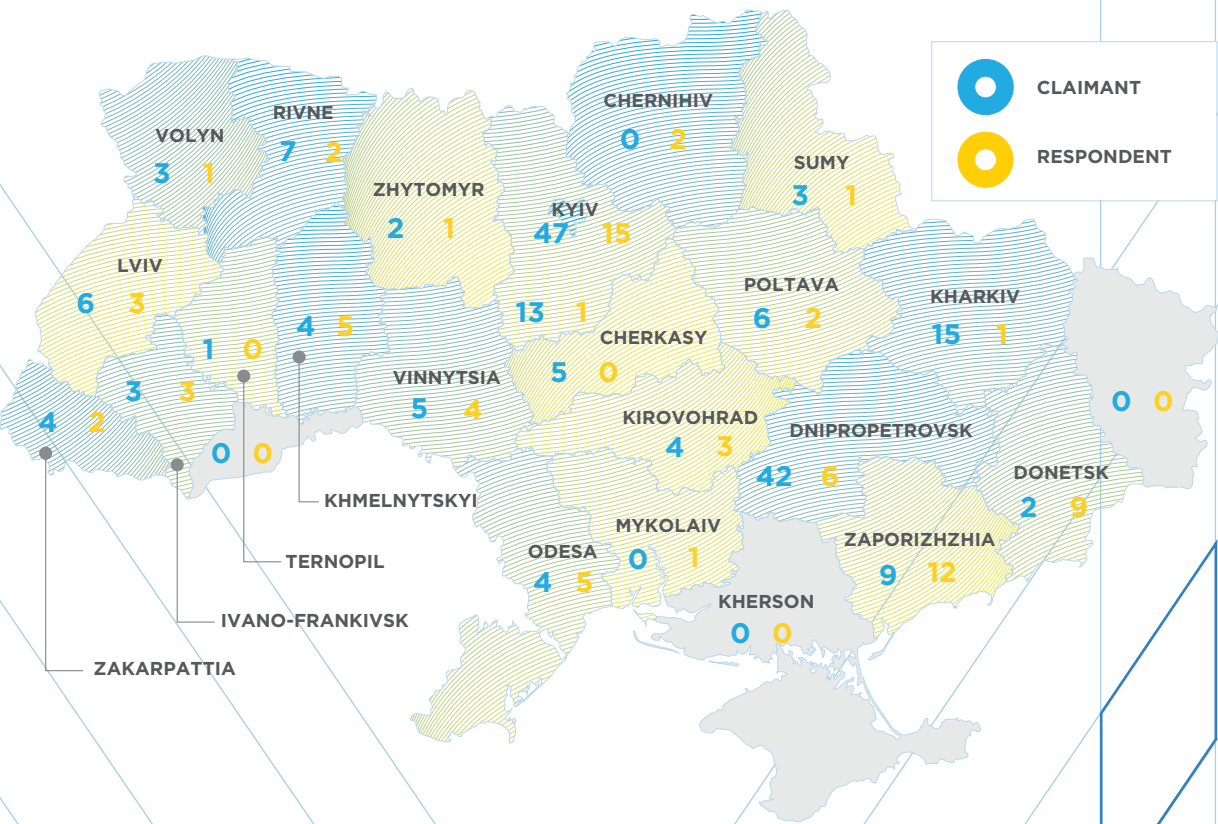




# ORIGIN OF THE PARTIES

## BY REGIONS OF UKRAINE

The parties to cases registered by the ICAC from were representatives from **21 regions** of Ukraine and the city of Kyiv

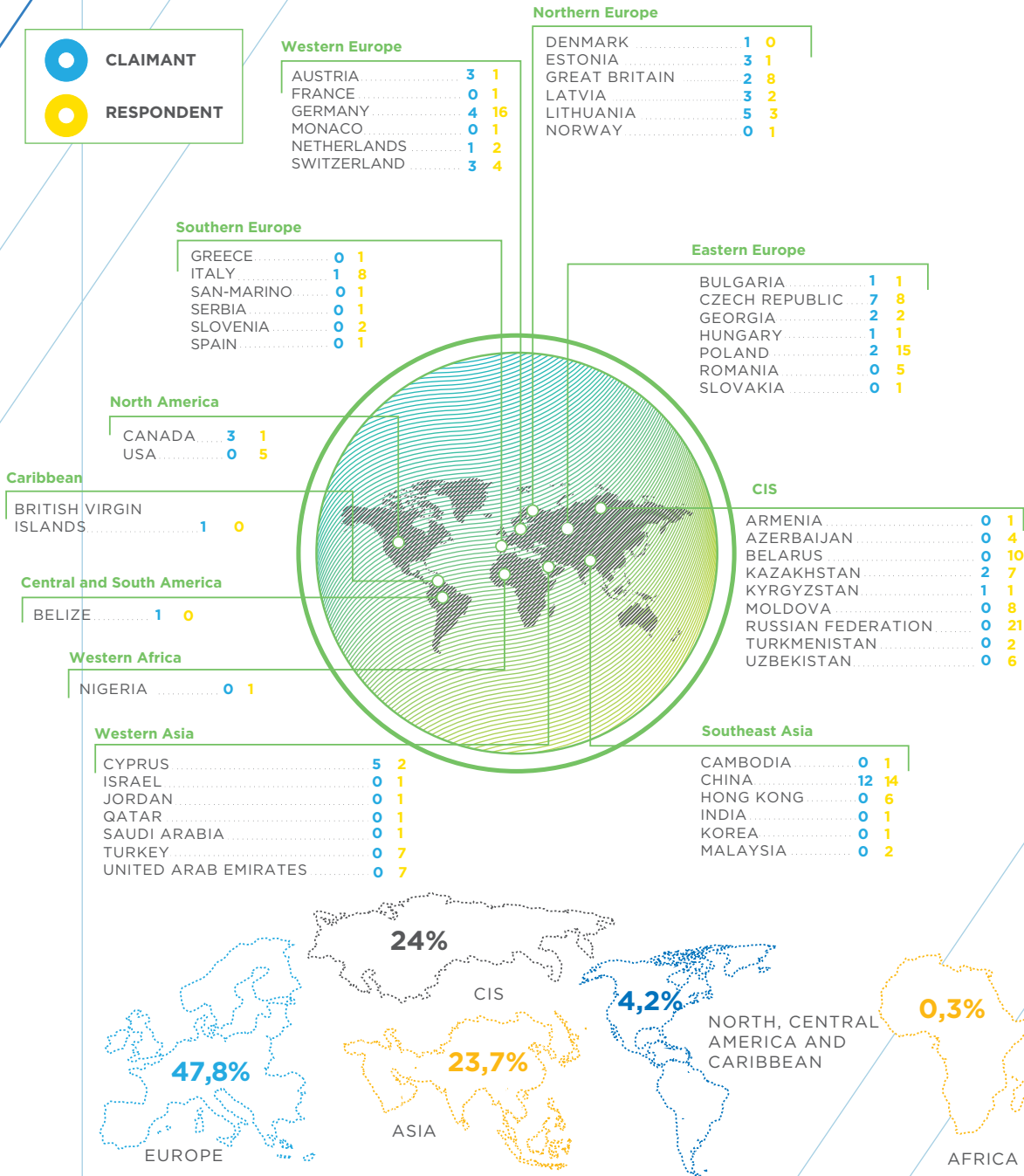


State-owned enterprises were the parties to **17,7% of the registered cases**: claimants in **29 cases**, and respondents in **14 cases**.  
Parties to **18 registered cases** were exceptionally **non-residents**.

# ORIGIN OF THE PARTIES

## FOREIGN PARTIES

The parties to cases registered by the ICAC from 1 January to 31 December 2019 **were represented by 52 countries**, including **44 far-abroad countries**, **9 CIS countries** and **Ukraine**





# KEY ICAC EVENTS

## EFFICIENT ARBITRATION: WHAT DOES IT MEAN?

On 10 and 11 October 2019 the ICAC for the sixth time held one of the largest events in the field of international arbitration within Western Europe - VI International Arbitration Readings in memory of Academician Igor Pobirchenko (the Readings). For the second consecutive year, the Readings are a two-day event.

The participation of Iryna Venediktova, Head of the Committee on Legal Policy of the Verkhovna Rada of Ukraine; Andriy Smyrnov, Deputy Head of the Office of the President of Ukraine; Bohdan Lvov, Vice-President of the Supreme Court, President of the Commercial Cassation Court, indicates the joint efforts of all branches of the government aimed at popularization of arbitration in Ukraine.

The Readings brought together 38 speakers and more than 220 attendees from 10 countries of the world. The information support was provided by 14 partners including leading international arbitration focused media such as Global Arbitration Review, Wolters Kluwer, CEE Legal Matters, CIS Arbitration Forum.

### DAY I

The efficiency of the arbitration was the main topic of the first day of the Readings. The participants discussed to which extent commercial arbitration meets the key business request which is an efficient, impartial, rapid, predictable and priceworthy solution for business.

I SESSION was devoted to the jurisdiction as a key to ensure efficient arbitration and brought together the following speakers:

- ◆ **Loukas Mistelis**, Professor of Transnational Commercial Law and Arbitration at Queen Mary University of London
- ◆ **Iryna Moroz**, Partner at AVELLUM
- ◆ **Arthur Kiyan**, Associate Partner at Lavrynovych & Partners Law Firm
- ◆ **Vsevolod Volkov**, Partner at Everlegal
- ◆ **Kateryna Tsirat**, Associate at Jurvneshservice
- ◆ Moderator: **William B. Simons**, Partner at Timmermans and Simons International Business Lawyers.



# KEY ICAC EVENTS

II SESSION was focused on procedural efficiency of arbitration. The speakers of the session were as follows:

- ◆ **Galina Zukova**, Partner at Bélot Malan & Associés, Associate Professor at the University of Versailles Saint-Quentin-en-Yvelines
- ◆ **Piotr Nowaczyk**, Arbitrator at ICAC
- ◆ **Anna Guillard Sazhko**, Associate at Shearman & Sterling
- ◆ **Maria Kostytska**, Partner at Winston & Strawn
- ◆ **Eugene Blinov**, Partner at Eterna Law
- ◆ **Alexey Kot**, Managing Partner at Antika Law Firm
- ◆ Moderator: **Alexandre Khrapoutski**, Senior Lecturer of the Chair of Civil Law at the Law Faculty of Belarusian State University, Partner at Lex Torre Law Office.

III SESSION'S topic was "From the establishment of objective truth to the adversarial nature of the process: proof as a guarantee of effective protection". The session was attended by the following speakers:

- ◆ **Tetiana Zakharchenko**, Member of the ICAC Presidium
- ◆ **Ziya Akinci**, President of the ISTAC Board of Arbitration, Chairman of the International Private Law Department at the Law Faculty of Galatasaray University
- ◆ **Olga Hamama**, International commercial arbitration and complex cross-border litigation lawyer
- ◆ **Evgeniya Rubinina**, Partner at Enyo Law
- ◆ **Yuliya Chernykh**, Lecturer at the University of Oslo, Member of the ICAC Presidium, Counsel at ARBITRADE
- ◆ Moderator: **Olena Perepelynska**, President of the Ukrainian Arbitration Association, Partner at Integrites.

One of the innovations of the VI Readings was an online survey at the beginning and at the end of each session, which allowed to understand the opinion of the arbitration community on crucial issues.



# KEY ICAC EVENTS

DAY II  
(in partnership with an international law firm Shearman & Sterling)

The second day was focused on the mediation as the alternative dispute resolution method. In August 2019 Ukraine signed the UN Convention on International Settlement Agreements Resulting from Mediation, therefore this day of the Readings has started with the video address of Anna Joubin-Bret, Secretary of the UNCITRAL, to the participants. Among the speakers and moderators of the second day were the following experts:

- ◆ **Inna Yemelianova**, Vice President of the ICAC
- ◆ **Yuna Potomkina**, Senior Associate at Asters
- ◆ **Tamara Andriieva**, Director of the Department of International Law of Ministry of Justice of Ukraine
- ◆ **Tatiana Kyselova**, Associate Professor, Head of the Mediation and Dialogue Research Center, National University of “Kyiv-Mohyla Academy”
- ◆ **Anna Guillard Sazhko**, Associate at Shearman & Sterling
- ◆ **Maksym Zhukov**, Attorney at Lex Torre Law Office
- ◆ **Svitlana Lutsiuk**, Head of Pre-action Settlement at the International Disputes Department of the Ministry of Justice of Ukraine
- ◆ **Olha Tiutiun**, Deputy Director of the Ukrainian Mediation Center for regional development projects
- ◆ **Olga Khmaruk**, Co-founder of DecisionLab Mediation Agency
- ◆ **Oleksandra Wintrebert**, Manager of Alvarez & Marsal

The last session was held in the Oxford debate format, where the participants, **Galyna Yeromenko**, Manager at the Ukrainian Mediation Center and **Volodymyr Yaremko**, Counsel at Sayenko Kharenko, presented their arguments for and against mediation. The debate was moderated by **Yaroslav Petrov**, Partner at Asters and **Evgeniya Rubinina**, Partner at Enyo Law.



A two-day format of the **VI Readings** allowed the participants to improve their expertise in arbitration and mediation as alternative dispute resolution methods.

# KEY ICAC EVENTS

## GENERAL MEETING OF THE ICAC AND THE UMAC ARBITRATORS

On 13 February 2019 the ICAC held an important event for the institution development – General Meeting of Arbitrators. The event brought together 35 arbitrators from Kyiv, Khmelnytskyi, Lviv and Odessa.

Mykola Selivon, the ICAC President, informed about the results of the activity of the arbitration institutions in 2018 and Zoia Lytvynenko, ICAC Secretary General, made a report on the analysis of the application of provisions of the new Rules of the ICAC. The arbitrators were involved in the discussion on creating an arbitration institutes development strategy for the next year.



## ROUND TABLE “RESULTS OF THE IMPLEMENTATION OF A NEW ARBITRATION LEGISLATION: ACHIEVEMENTS AND CHALLENGES”



On 1 March 2019 the ICAC and the National Academy of Legal Sciences of Ukraine with the support of the Supreme Court hosted a round table on practical issues of implementation of arbitration legislation.

The event brought together more than 70 participants including Supreme Court justices, judges of other state courts, ICAC arbitrators, leading lawyers and scientists from all over Ukraine. The aim of the event was not only to discuss the application of new arbitration legislation, but to propose possible effective steps to implement the pro-arbitration policy of Ukraine.



# POPULARIZATION OF ARBITRATION

## ICAC PARTICIPATION IN FOREIGN PROFESSIONAL EVENTS AND INTERNATIONAL INITIATIVES

MAY 2019

The President of the ICAC and the UMAC Mykola Selivon and Chief Legal International Affairs Officer Olena Vasylenko participated in the events devoted to the 70th anniversary of the Arbitration Court attached to the Czech Chamber of Commerce and the Agricultural Chamber of the Czech Republic.



SEPTEMBER 2019



Vice President of the ICAC Inna Yemelianova made a report during the Eastern European Dispute Resolution Forum (the EEDRF) in Minsk.

NOVEMBER 2019

Advisor to the ICAC President Olga Kostyshyna took part in the first Ukrainian-Turkish Infrastructure Forum "Creating Opportunities Together". The arbitrator of the ICAC Olena Perepelynska acted as the moderator of the session.



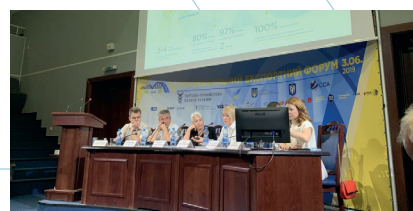
## ICAC PARTICIPATION IN UKRAINIAN PROFESSIONAL EVENTS AND INITIATIVES

MAY 2019

Olga Kostyshyna, Advisor to the ICAC President, and Tetiana Zakharchenko, Member of the ICAC Presidium, ICAC arbitrator, made a report during Kyiv Law & Trade Forum. A separate session of the forum was devoted to international arbitration as the key condition for the growth of export and investments in Ukraine.



JUNE 2019



Within the framework of the V National Export Forum, the ICAC organized the section "ABC of the foreign trade contract - advice of leading lawyers, international experts, arbitration practice". Member of the ICAC Presidium, ICAC arbitrator Tetiana Zakharchenko, ICAC arbitrator Volodymyr Nagnybida participated in the discussion. Vice President of the ICAC Inna Yemelianova moderated the session.

# POPULARIZATION OF ARBITRATION

JUNE 2019

Vice President of the ICAC Inna Yemelianova made a report during VII International Judicial and Legal Forum on professional comparative analysis of mediation and international commercial arbitration as alternative dispute resolution methods.



## THE ICAC REPRESENTATIVES PARTICIPATED WITH REPORT IN THE FOLLOWING EVENTS:

- 1 Advisor to the ICAC President Olga Kostyshyna, ICAC Secretary General Zoia Lytvynenko and ICAC arbitrator Volodymyr Nagnybida organized a workshop "International arbitration as a tool to protect business interests: the practice of preparing and signing foreign economic contracts and dispute resolution" in Khmelnytskyi.
- 2 The ICAC and the UMAC representatives, Dariana Denysova, Deputy Secretary General of the UMAC and Olga Kostyshyna, Advisor to the ICAC President, participated in the seminar on Resolving Shipping Disputes in Odessa.
- 3 Advisor to the ICAC President Olga Kostyshyna made a report during the special course for corporate lawyers from UkrGasVydobuvannya, organized by Legal High School. The separate section of this course was devoted to international arbitration.

## PROMOTING LEGAL EDUCATION

The ICAC invariably joins the development of a new generation of Ukrainian arbitration lawyers.

MARCH 2019



The ICAC has been supporting the Ukrainian round of the Willem C. Vis International Commercial Arbitration Moot for 4 years in a row already.

The ICAC awards the best teams with the Academician Igor Pobirchenko Prize.

MAY 2019

Meeting with the first-year students of the Law and International Relations Faculties of Borys Grinchenko Kyiv University.



NOVEMBER 2019

Meetings with the second-year master students of Taras Shevchenko National University of Kyiv with their teacher Yuriy Prytyka, Member of the ICAC Presidium, ICAC arbitrator.



# PLANS FOR 2020

- ◆ Further improvement on efficient dispute resolution of cases registered by the ICAC, applying the best arbitration practices.
- ◆ Providing the ICAC customers with the ability to resolve disputes using mediation or a mix of “arbitration-mediation-arbitration” or “mediation-arbitration” procedures.
- ◆ Further work within the Legal Reform Commission under the President of Ukraine aimed at enhancing the efficiency of the international arbitration and legal registering of the innovations in arbitration.
- ◆ Development of the mechanism of investment disputes consideration in the ICAC relying on the best international standards.
- ◆ Significant extension of the ICAC Recommendatory List of Arbitrators for account of international leading experts in corporate, investment, construction, IT and IP disputes resolution.
- ◆ Improvement of the ICAC Rules 2018 and development of the provisions aimed at considering highly specific disputes.
- ◆ Further cooperation with the judiciary to ensure constant pro-arbitration policy followed by the courts performing the functions of control and support of the international commercial arbitration.
- ◆ Further work in regions as well as with industry association to promote the advantages of international commercial arbitration for business.
- ◆ Upgrade of the electronic document management systems as well as arbitration procedures to comply with GDPR standards.
- ◆ Development and organization of workshops for attorneys and practicing lawyers on the ICAC arbitration procedures, procedural documents preparing and drafting arbitration clauses.