



Mykola Selivon

President of the International Commercial
Arbitration Court at the Ukrainian Chamber of Com-

For the second consecutive year, international arbitration has been functioning under the constraints of the pandemic. During this period the majority of arbitration institutions, including the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry (the ICAC), adjusted its procedures to the new realities. In 2021 nearly half of all cases were considered online, which enabling the parties to save on arbitration costs, increased the engagement of foreign arbitrators in arbitral penals.

Though the 2017 reform of Ukraine's procedural legislation, which addressed a number of international arbitration issues, the 2021 witnessed more initiatives to improve the regulation of international arbitration. The focus of state authorities and experts was on the legal regulation of international investment arbitration. Later the Ukrainian Government initiated a comprehensive reform of arbitration in Ukraine. In 2021 the ICAC did not only participated in discussing the draft law developed by the Government, but also developed its own draft amends to the arbitration legislation, which are now being considered by representatives of all branches of power.

Simultaneously with the processes of reforming the arbitration legislation, the ICAC, based on the analysis of the practical implementation of the ICAC Rules of 2018, started to develop amends to those Rules. Therefore, in 2022, along with a series of events dedicated to the ICAC's 30th anniversary, the users of arbitration services will be offered a new edition of the ICAC Rules and the new ICAC Mediation Rules.

ACHIEVEMENTS

For the first time in history the ICAC was recommended by the most reputed international publication in the field of international arbitration – The Global Arbitration Review (GAR), which included the ICAC in the list of arbitration institutions worth a closer look in Eastern Europe.

According to GAR

The ICAC is user-friendly, its secretariat is accessible, polite and cooperative, and the hearing facilities are good. The ICAC demonstrates the hunger to improve – and be taken seriously on the global stage. It publishes summaries and redacted versions of its awards and organizes impressively attended events."

The ICAC also demonstrates a higher than average gender parity in the appointment of arbitrators – the number of female arbitrators appointed by the parties in 2019 is staggering at 46%

Despite the traditional focus on the effectiveness of arbitration, according to the President of the ICAC Mykola Selivon "The work of the institution is recognized among top five in Eastern Europe, particularly due to positioning efforts on the international arena, intensive communications with the arbitration services users and the arbitration community".

In 2019 the ICAC joined the initiative of equal representation of women in the international arbitration – ERA Arbitration Pledge. For the second consecutive year the ICAC is shortlisted for the prestigious international award GAR Pledge Awards for equal representation of women in arbitration.

In 2020 the ICAC improved its results by almost 6% and reached 42.4% representation of female arbitrators in ICAC cases. The organizers also noted that parties appointed female arbitrators in 57.4% of the ICAC cases, which is impressive given the global average of 13.9%.

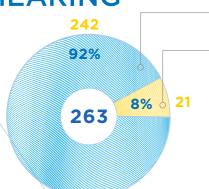
EFFICIENCY



the period from 1 January to 31 December 2021 the ICAC registered 298 cases. 263 cases were considered by

263 cases were considered by the Arbitral Tribunals and proceedings on 86 cases were terminated by the orders of the ICAC President

THE RESULT OF THE ARBITRATION HEARING



242 rulings have been rendered on the essence of the dispute

Proceedings in 21 cases have been terminated by the Court of Arbitration, of which:

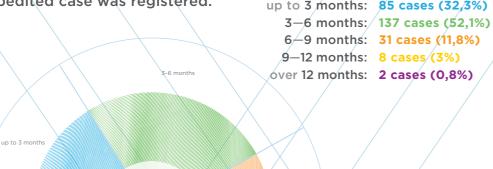
- 15 due to the claimant`s withdrawal from his demands;
- 4 due to the lack of competence;
- 1 the parties agreed on the arbitral proceedings to be terminated;
- 1 the proceedings in the case became impossible.

PROCEEDINGS IN THE ICAC

263

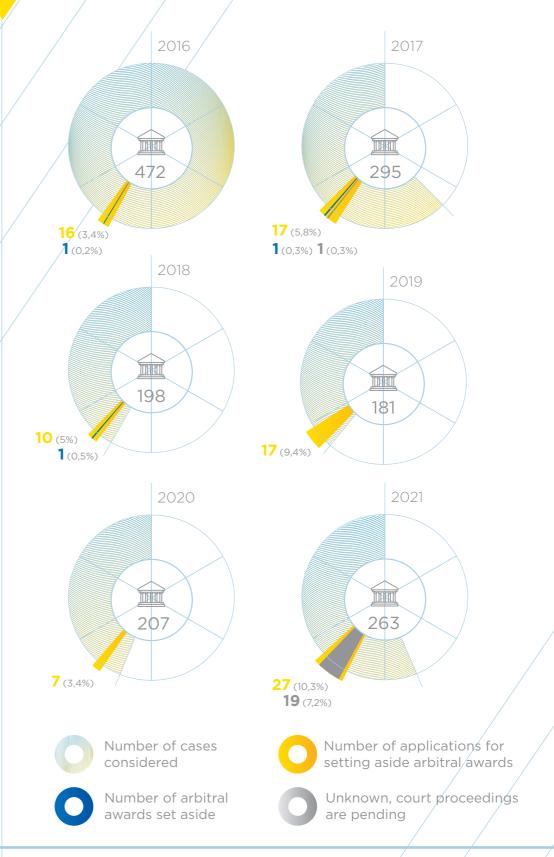
Although due to quarantine restrictions caused by COVID-19, the case consideration time has slightly increased, the ICAC continues to provide a quick and efficient consideration of cases - 84,4% of cases were considered in a period which does not exceed 6 months from the date of the Arbitral Tribunal constitution. No expedited case was registered.

up to 3 months: 85 cases (32,3%)



EFFICIENCY

CHALLENGING THE ICAC AWARDS



Despite the fact that in 2021 the number of applications for setting aside arbitration awards increased, as of January 2022, no decision made in the last 3 years was set aside.

EXPERIENCE

THE ICAC RECOMMENDATORY LIST OF ARBITRATORS

The ICAC Recommendatory List of Arbitrators currently includes 120 arbitrators from 35 foreign countries and Ukraine, including known scholars and practitioners, recommended by authoritative international rankings such as Chambers & Partners, Legal 500 and Who's Who Legal. 39% of arbitrators come from Ukraine and the other 61% are representatives of foreign countries.

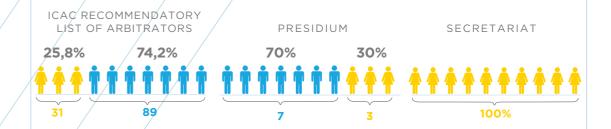
OUR ARBITRATORS



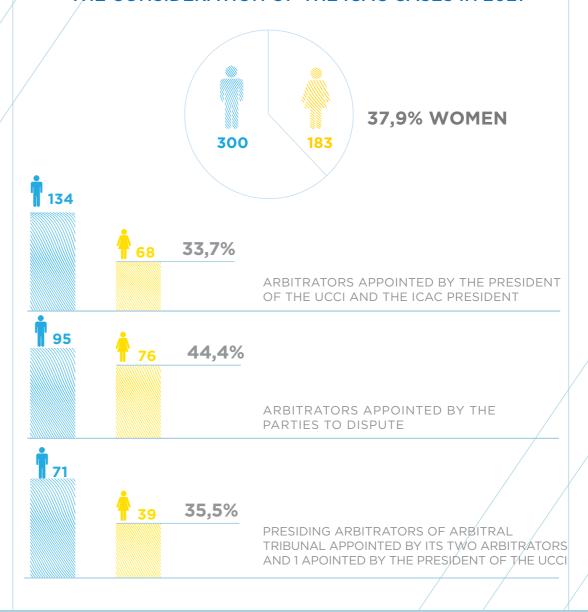
In 2021 arbitrators from Belarus, Great Britain, Latvia, the Netherlands, Germany, Poland, the United States of America, the Czech Republic and Sweden repeatedly took part in resolution of the ICAC cases.

EXPERIENCE

GENDER POLICY



WOMEN-ARBITRATORS INVOLVED IN THE CONSIDERATION OF THE ICAC CASES IN 2021

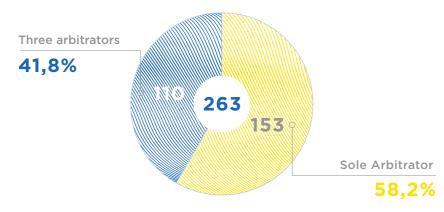


Although the overall rate of **female arbitrators** involved in the consideration of the ICAC cases has slightly declined, the number of female arbitrators, involved in the ICAC cases, increased by **7,7%**.

EXPERIENCE

COURT OF ARBITRATION

NUMBER OF ARBITRATORS OF THE ARBITRAL TRIBUNAL IN CONSIDERED CASES



In 34 cases, the parties were able to recover 20% of the arbitration fee.

According to the provisions of Article 30 (1) of the ICAC Rules, given that there was no previous agreement between the parties on the number of arbitrators, in 34 cases, amounting to 11.4% of the total number of registered cases, the ICAC President determined that the dispute is a subject to be resolved by a sole arbitrator. In these cases, the complexity of the case and the value of the claim were taken into account while reaching the said decision.

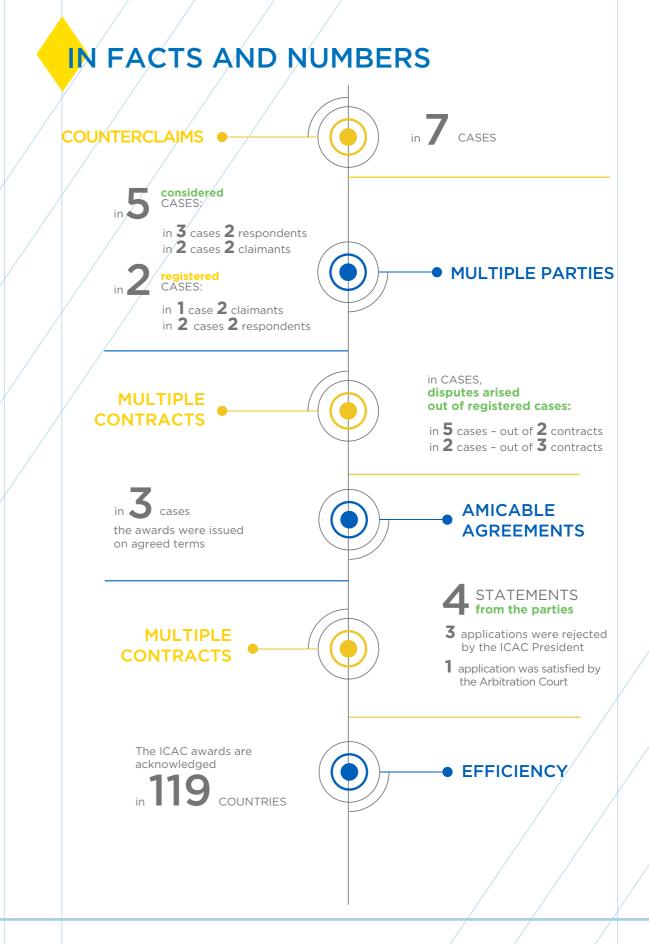


CHALLENGE OF AN ARBITRATOR

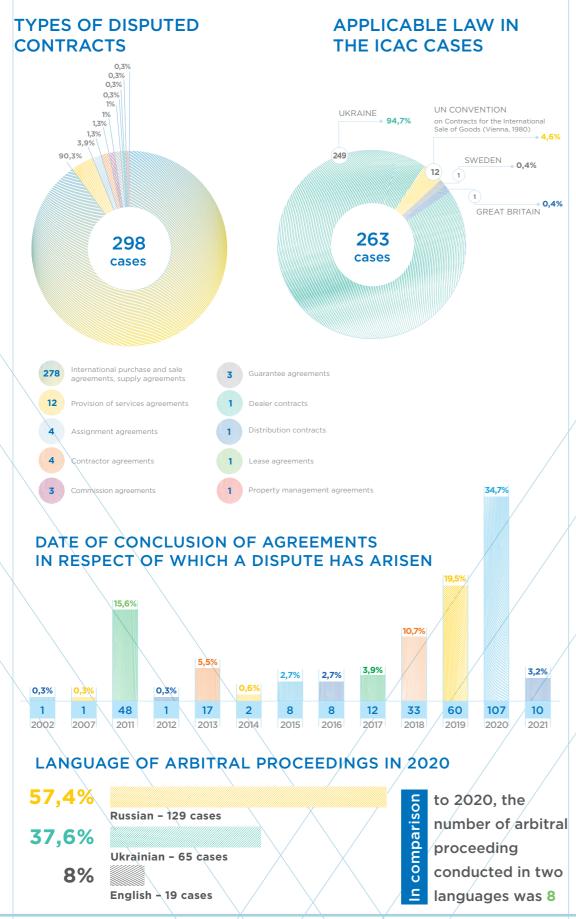
In 2021, parties to 6 cases requested to challenge an arbitrator. In 4 cases, the arbitrators withdrew voluntarily. Two arbitrators did not refuse to participate in the consideration of the cases. Thus in accordance with Article 33(3) of the ICAC Rules these issues were referred to the ICAC Presidium which approved one request for the arbitrator's challenge, and left the other without satisfaction. In 1 case the arbitrator withdrew voluntarily.

The reporters were appointed in 210 cases, representing 79,8% of the total number of cases considered, which is 2.8% more than in 2020 and 13.8% more than in 2019.

EXPERIENCE

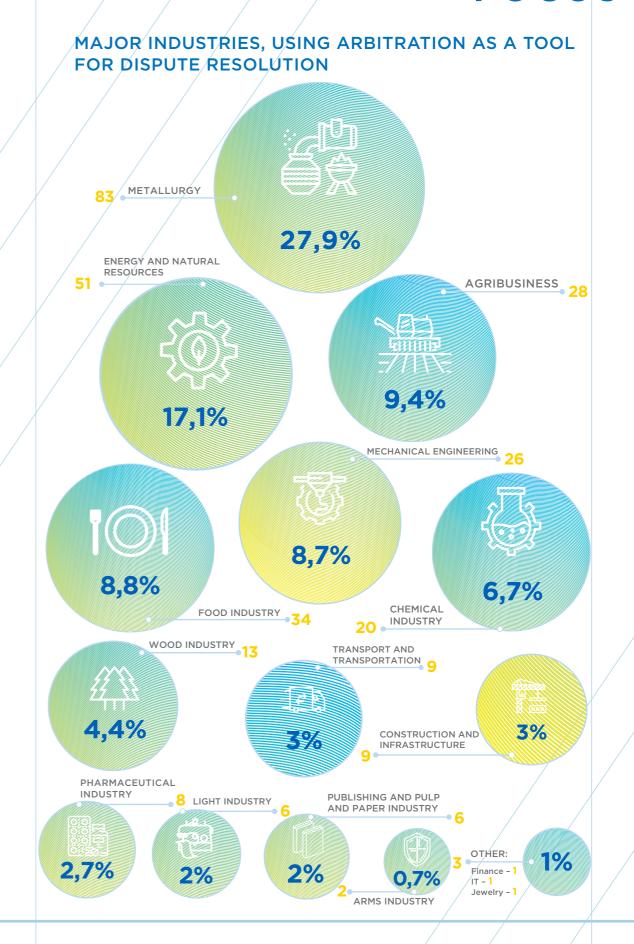


FOCUS



From 1 November 2020, if arbitration proceeding is conducted in two laguages, the parties must pay an additional fee of 400 USD in accordance with Section VII (6) of the Rules on Arbitration Fees and Costs.

FOCUS



ORIGIN OF THE PARTIES

BY REGIONS OF UKRAINE

During

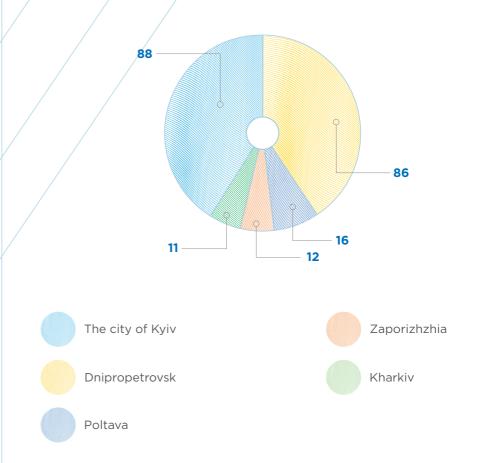
the period from 1 January to 31 December 2021 the parties to cases registered by the ICAC were representatives from 22 regions of Ukraine and the city of Kyiv.



ORIGIN OF THE PARTIES

BY REGIONS OF UKRAINE

TOP 5 OBLASTS, WHERE BUSINESSES TURN TO THE ICAC THE MOST

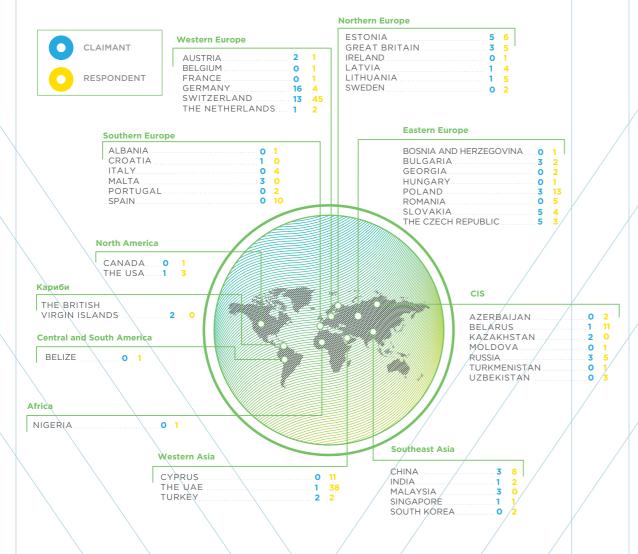


Also in 2021 there was a significant increase in the number of cases submitted for consideration in **Khmelnytskyi** and **Odesa** oblasts. State-owned enterprises were parties in 17.4% of cases accepted for the ICAC consideration in 2021, of which: in 13 cases the state-owned enterprises were claimants, and in 39 cases – respondents.

ORIGIN OF THE PARTIES

FOREIGN PARTIES

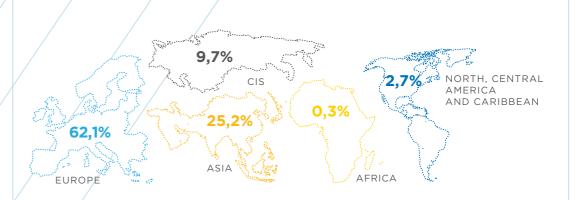
from 1 January to 31 December, 2021, parties to cases, registered, by the ICAC, were representative 46 countries: 39 foreign countries and registered, by the ICAC, were representatives of 7 countries form the Commonwealth Independent States and Ukraine.



In 2021 the majority of cases were initiated by businesses from Belarus, China, Cyprus, Estonia, Germany, Poland, Switzerland and the UAE.

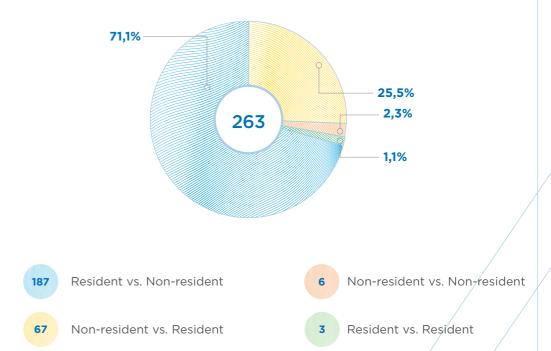
ORIGIN OF THE PARTIES

FOREIGN PARTIES



In 2021, the share of cases involving European business increased significantly - by 16.1%, and the share of cases involving representatives from the CIS countries decreased by 11%.

THE COMPOSITION OF THE PARTIES TO THE CASES CONSIDERED BY THE ICAC



THE ICAC'S KEY EVENTS

VIII INTERNATIONAL ARBITRATION READINGS IN MEMORY OF ACADEMICIAN IGOR POBIRCHENKO

The ICAC hosted the VIII International Arbitration Readings in Memory of Academician Igor Pobirchenko on 7 October 2021.

Just like the previous year, the event was held in combine mode being broadcasted live on social media in **Ukrainian** and **English**. Stellar speakers from **five countries** and two continents presented at the Readings.



of Ukraine, noted that long before the pandemic outbreak, the ICAC had been working towards the digitalization of arbitration proceedings. COVID restrictions have accelerated the transformations which were already under way.



SESSION I. ADJUSTING TO WIN: INNOVATION AND TECHNOLOGY IN ARBITRATION

Session "Technologies and innovations in arbitration" was devoted to issues arising out of using new technologies and innovations in arbitration. The session was moderated by Aminat Suleymanova, the managing partner at AGA Partners.

Speakers:

- Dmytro Koba, international business developer at Jus Mundi
- Yasmine Lahlou, partner at Chaffetz Lindsey
- Oleksii Maslov, senior associate at Avellum
- Ksenia Koriukalova, senior associate at AEQUO

The delegates of the Readings were engaged into an interesting professional discussion on the most topical issues of the day – the impact of advanced technologies on arbitration. The speakers discussed the urge of creating a single point of access to arbitration awards, the confidentiality issues relating to the use of technologies, as well as the challenges of evidence and proof during virtual hearings.

THE/ICAC'S KEY EVENTS

SESSION II. FUTURE MAP OUT OF ARBITRATION AND UKRAINIAN PROSPECTS

Session II was moderated by Markian Malskyy, a partner at Arzinger. The speakers compared the experience of foreign countries and collected insights into the prospects of international commercial and investment arbitration in Ukraine.

Speakers:

- **Sergiy Gryshko**, partner at Redcliffe Partners
- ▲ **Artem Dudko**, partner at Osborne Clarke
- Julia Atamanova, partner at LCF Law Group
- Christopher Campbell-Holt, registrar and Chief Executive of the AIFC Court and International Arbitration Centre
- Sergiy Voitovych, partner at Grishchenko & Partners

The speakers discussed the impact of insolvency of a party to arbitration on arbitration proceedings, offered a detailed comparison of the British and the Ukrainian practices of resolving corporate disputes, and outlined the vectors of development of international arbitration in Ukraine to increase the investment attractiveness.

The Readings 2021 traditionally served as a forum for the arbitration community to discuss the most topical professional issues and trends and once again reconfirmed the reputation of the most anticipated event in the field of international arbitration in Ukraine. Nearly 100 participants viewed the Readings live, and over 400 people watched the recording.





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EVENTS FEATURING THE ICAC'S KEYNOTE SPEAKERS

PARTICIPATION IN THE WORK OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW (UNCITRAL)

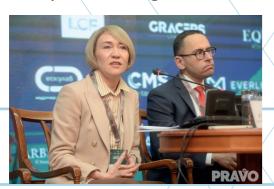
The ICAC Vice President Inna Yemelianova took part in the work of the 54th session of the United Nations Commission on International Trade Law (UNCITRAL). The 54th session of the Commission was tasked with developing documents, guides, and provisions relating to expedited arbitration consideration, mediation in commercial disputes. The participation of the ICAC in the development of international legal regulations of international arbitration signals not only of the ICAC's global reputation, but will ensure fast and efficient implementation of such regulations into the ICAC's practice.

THE ANNUAL INTERNATIONAL CONFERENCE "ARBITRATION AND MEDIATION IN THEORY AND PRACTICE"

The ICAC Vice President Inna Yemelianova took part in the international conference, organized by the Arbitration Court at the Chamber of Commerce and Industry of Nowy Tomyśl. The conference was traditionally dedicated to discussing strategic aspects of international arbitration and arbitration institutions' development. The ICAC shared Ukrainian experience in adapting international commercial arbitration to the new realities caused by the pandemic. According to Mrs. Yemelianova, the pandemic helped evaluate the process of administration of cases and improve its efficiency.

II UKRAINIAN ARBITRATION FORUM

For the second consecutive year the ICAC takes part in the II Ukrainian Arbitration Forum, organized by Legal Practice Publishing House. During Session I Inna Yemelianova, Vice President of the ICAC, raised the issue of the prospects of investment arbitration in Ukraine. During Session II Olga Kostyshyna, Advisor to the President of the ICAC, joined the keynote speakers from other arbitration institutions in addressing the questions frequently asked by users of arbitration services and presented her report on the digitalization and virtualization of arbitration.





EVENTS FEATURING THE ICAC'S KEYNOTE SPEAKERS

ONLINE MEETING OF THE INTERNATIONAL ARBITRATION COMMITTEE OF THE UKRAINIAN ADVOCATES' ASSOCIATION

Olga Kostyshyna, Advisor to the President of the ICAC, took part in the online meeting of the International Arbitration Committee of the Ukrainian Advocates' Association. The topic of the discussion, which was joined online by 750 participants, was the changes that took place in arbitration proceedings globally because of the pandemic. Ms. Kostyshyna shared with the audience a brief overview of amends to the ICAC Rules and procedures, as well as outlined the positive and negative consequences of the pandemic for the international arbitration.

ONLINE LECTURE FOR THE HIGH SCHOOL OF THE NATIONAL BAR ASSOCIATION

Olga Kostyshyna, Advisor to the President of the ICAC, was a visiting lecturer on the topic "The practicalities of the consideration of cases by the ICAC" outlining the key provisions of the ICAC Rules 2020 and effective client representation at the ICAC.

ICAC WEBINARS

The President of the ICAC Mykola Selivon moderated a webinar "Practical Aspects of Parties Representation at the ICAC". Liudmyla Vynokurova, Vice President of the ICAC, Yaroslav Petrov, Partner at Asters law firm, and Eugene Blinov, partner at Eterna Law shared their practical experience with the audience.

The event was held within the framework of the ICAC educational initiative "ICAC Webinars".



POLICY SHAPING

ARBITRATION LAW REFORM

Inna Yemelianova, the ICAC Vice President, co-chaired the working group on the development of legislation on the judiciary and the administration of justice of the Legal Reform Commission under Ukraine's President Office. Based on the draft Concept of improvement of legislation on the judiciary, the status of judges, and related legal institutions, the Strategy for the Development of the Judiciary and Constitutional Justice for 2021–2023 was approved by Presidential Decree No. 231/2021 as of 11 June 2021. The Commission for Legal Reform was tasked with the development of an action plan for the implementation of the Strategy for 2021–2023. The Strategy outlines, in particular, the vectors for the development of international arbitration, third-party tribunal proceedings, and mediation in Ukraine.

The ICAC contributed to the discussion of the Draft Law No. 5347 on amendments to certain legislative acts of Ukraine on improving the functioning of arbitration institutions".

- Inna Yemelianova, the ICAC Vice President, took part in the meeting co-hosted by the ICAC and the Ukrainian Bar Association "Ways of developing arbitration in Ukraine: discussion of the Draft Law No. 5347". In the course of the discussion Ms. Yemelianova stated that in order to enhance the pro-arbitration policy of Ukraine it is necessary to improve the regulation of such issues as arbitrability of disputes; the recognition of interim measures that are commonly used in arbitration by state courts.
- Inna Yemelianova, the ICAC Vice President, took part in the roundtable "Draft Law No. 5347: What should the Arbitration Community expect?", organized by the Alternative Dispute Resolution Committee of the National Bar Association. The discussion was devoted to three main blocks of amends proposed by the Draft Law: transferring the functions of appointment and dismissal of arbitrators to state courts, registration of new arbitration institutions, and expanding the arbitrability of disputes.
- Oleg Podtserkovnyi, the ICAC's arbitrator, authored and published his analysis of the Draft Law No. 5347 in terms of compliance with the requirements and needs of the modern arbitration. He also substantiated his opinion on the realistic prospects of expanding the competence of the arbitral tribunal, touched upon the potential consequences of creating an unlimited number of arbitration institutions in Ukraine.

POLICY SHAPING

- Olexandr Krupchan, Volodymyr Nagnybida acting as the members of the ICAC Presidium and Kostiantyn Pilkov acting as a Justice of the Cassation Commercial Court under the Supreme Court of Ukraine, presented their views on the Government initiative, noting both positive pro-abortion amendments to the Civil Procedure Code of Ukraine, and critical remarks relating to granting state courts with the authority to appoint arbitrators and establish permanent arbitration institutions.
- A member of the Presidium of the ICAC Volodymyr Nagnybida presented an exclusive article for "The Sudovyi Visnyk" professional newspaper and offered an analytical overview of the Draft Law No. 5347 relating to the approaches to developing national investment arbitration.

In 2021 the ICAC Working Group tasked with developing proposed amendments to the Law of Ukraine "On International Commercial Arbitration", procedural codes, and other regulatory acts of Ukraine accomplished the assignment. Members of the Working Group: the ICAC Vice President Inna Yemelianova and Liudmyla Vynokurova, members of the ICAC's Presidium Tetiana Zakharchenko and Volodymyr Nagnybida, as well as the ICAC arbitrators Pavlo Byelousov, Sergiy Gryshko, and Olena Perepelynska developed a draft law "On amendments to certain legislative acts of Ukraine concerning the improvement of arbitration-related legislation, judicial supervision and support of international legislation". The draft law is now being discussed with representatives of all branches of power.

LEGAL REGULATION OF MEDIATION IN UKRAINE

After Ukraine had signed the United Nations Convention on International Settlement Agreements Resulting from Mediation, representatives of the ICAC actively participated in the development of the Draft Law "On Mediation" and proposals on the ratification of the UN Convention.

Inna Yemelianova and Olga Kostyshyna served as members of the working group at the Ministry of Justice of Ukraine and the relevant parliamentary committee tasked with developing the draft law. The President of the ICAC Mykola Selivon contributed to the work at the draft law preparing the draft law for the second reading in the Parliament. The Law of Ukraine "On Mediation" came into force on 15 December 2021.

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THE ICAC GOALS FOR 2022

ICAC 30th ANNIVERSARY

The ICAC Presidium on 27 May 2021 ruled to create an Organizational Committee to plan and coordinate special activities to mark the 30th anniversary of the ICAC at the UCCI.

On the 11th of November 2021, the ICAC Presidium approved the activities proposed by the Organizational Committee to mark the 30th anniversary of the ICAC, including:

- Holding a roundtable featuring the leaders of international arbitration institutions as well as the ICAC's 30th Anniversary Celebration event on 10 June 2022;
- Compiling a special limited edition publication "The Future of Arbitration" in Ukrainian and

English, featuring a set of analytical articles and bylines. Forming the editorial team of the ICAC arbitrators and practicing senior arbitration lawyers. Preparing the publication for print;

- Preparation of the ICAC Practice Book as of 2017-2021;
- Releasing a booklet dedicated to the 30th anniversary of the ICAC;
- Creating a video clip featuring Ukrainian and foreign representatives of the arbitration community, who have contributed to establishment and development of the ICAC;
- Creating an electronic version of the book "Memories, Documents.

 Thoughts." authored by the ICAC's first President, Academician Igor Pobirchenko. The e-version of the book will be available on the ICAC's web-site free of charge.

We sincerely hope that under the auspices of the ICAC, year 2022 will become a special year for international arbitration in Ukraine.



THE ICAC GOALS FOR 2022

IMPROVEMENT OF DISPUTE RESOLUTION PROCEDURE

- Implementation of mediation and hybrid dispute resolution procedures
- Developing new amendments to the ICAC Rules to improve arbitration proceedings, implementing new digital solutions for the parties and arbitrators, developing regulations of hybrid procedures
- Initiating cooperation with the largest business and industry associations to organize events promoting international arbitration as an effective dispute resolution mechanism
- Presentation of arbitration course under the ICAC leading arbitrators` authority accredited, as event for upgrading attorneys` qualification
- Presentation of the historic first Survey of the quality and effectiveness of international arbitration services in Ukraine