



# ICAC ACTIVITIES 2020



## Mykola Selivon

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



### International arbitration in Ukraine and the world in times of COVID-19

Arbitration is one of the most flexible instruments of resolving commercial disputes, offering parties access to effective dispute resolution even amidst the covid chaos. However, even the instruments as flexible as international arbitration, require flawless regulation.

The International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry (the ICAC) quickly adopted its operations and processes to the covid-world realia. We are delighted to have been able not only to streamline the arbitration processes and procedures with the covid requirements, but also to improve the effectiveness, comfort, inclusivity and access to arbitration for all users.

- ◆ The Presidium of the Ukrainian Chamber of Commerce and Industry approved the amendments to the Rules of the ICAC and the UMAC, which regulate the increased use of technology in remote arbitral proceedings.
- ◆ The number of cases registered with the ICAC in 2020 was up by 28,7%.
- ◆ The number of female-arbitrators engaged to consider cases at the ICAC increased to 42,4%.
- ◆ The geography of parties, using the ICAC services, broadened from 52 countries in 2019 to 58 countries in 2020.
- ◆ The number of cases considered in the English language grew by 31%.

While the fundamentals of international arbitration remain unchanged, the tremendous and wholistic integration of technology into the practice of considering cases in 2020, is very unlikely to go down after the pandemic is over. Covid revolutionized international arbitration with changes that would have taken decades under normal circumstances.

Year 2020 reconfirmed that the fundamental values of the ICAC ensure the resilience of the institution to external challenges, reestablish the unprecedented trust of the users and reenforce flawless reputation amongst business, investment and legal communities.



## IMPROVED ARBITRATION PROCEEDINGS

On 17 September 2020 amendments to the Rules of the ICAC were approved, coming into force on 1 November 2020.

The amendments to the Rules of the ICAC and UMAC aim at addressing impacts of the quarantine restrictions on business processes, which have been changed irreversibly around the world, and at enhancing the effectiveness of arbitrating disputes and the enforceability of arbitral awards. The amendments refer to four categories of issues:



#### AMENDMENTS TO REGULATE RESORTING TO VIDEOCONFERENCING FOR ORAL HEARINGS (Article 47)

Participation of the Arbitration Court or one of the arbitrators in oral hearings by videoconference, making it possible to involve more arbitrators from foreign countries and save costs related to appointing of a foreign arbitrator

FIRST TIME

The Arbitration Panel was given jurisdiction to establish the procedure for oral hearings, including the form of oral hearings (offline, online or mixed)

FIRST TIME

Detailed procedure of participation in oral hearings by videoconference

IMPROVED



#### AMENDMENTS, SHAPED BY THE COURT PRACTICE OF CHALLENGING AND ENFORCEMENT OF ARBITRAL AWARDS

Amendments to Article 11 of the Rules in part of sending/delivering documents to a party

IMPROVED

Amendments to Article 22 in part of the engagement of the third party

IMPROVED

Amendments to Article 31 in part of the procedure of composing the Arbitral Tribunal

IMPROVED



#### AMENDMENTS AIMED AT GRADUAL TRANSITION OF ARBITRATION INTO A 100% DIGITAL ENVIRONMENT (Article 11)

It was made mandatory for the parties to send documents in electronic form

IMPROVED

Time frames when arbitration institutions must receive emails from the parties were set

FIRST TIME



#### AMENDMENTS DESIGNED TO INCREASE THE EFFICIENCY AND COMFORT OF ARBITRATION PROCEEDINGS

Amendments were made to Articles 3 and 4 and expanded with an additional part in correspondence with Article 22 of the Commercial Procedure Code of Ukraine

IMPROVED

Amendments were made to Article 36, enabling parties to engage representative, including foreign nationals and representatives of foreign organizations; setting forth the terms, stipulating a replacement of the representative, and establishing the liability of representatives for abusing procedural rights or arbitration Rules.

IMPROVED

Revision of Article 52 on evidence and discovery

IMPROVED

Improvement of the process of taking Arbitration Award on review

IMPROVED

The approach to distribution of additional arbitration proceedings costs was changed

IMPROVED

EFFICIENCY

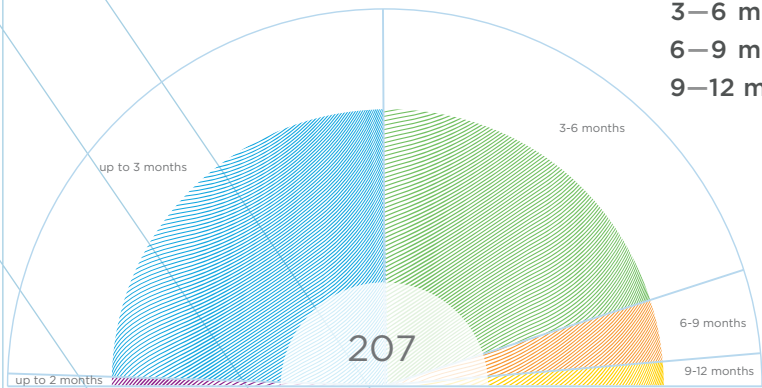


During the period from 1 January to 31 December the ICAC registered 341 cases. 207 cases were considered by the Arbitral Tribunals and proceedings on 30 cases were terminated by the orders of the ICAC President

DURATION OF ARBITRAL PROCEEDINGS IN THE ICAC

Traditionally, the ICAC provides quick and efficient consideration of cases – 91% of cases were considered within a period which does not not exceed 6 months from the date of the Arbitral Tribunal formation, 2 cases were considered under the expedited procedure.

Expedited procedure (up to 2 months from the date of filing a Statement of Claim): 1%  
up to 3 months: 97 cases (46,8%)  
3–6 months: 88 cases (42,5%)  
6–9 months: 13 cases (6,3%)  
9–12 months: 7 cases (3,4%)



In 36 cases, the parties managed to save 20% of the arbitration fee.

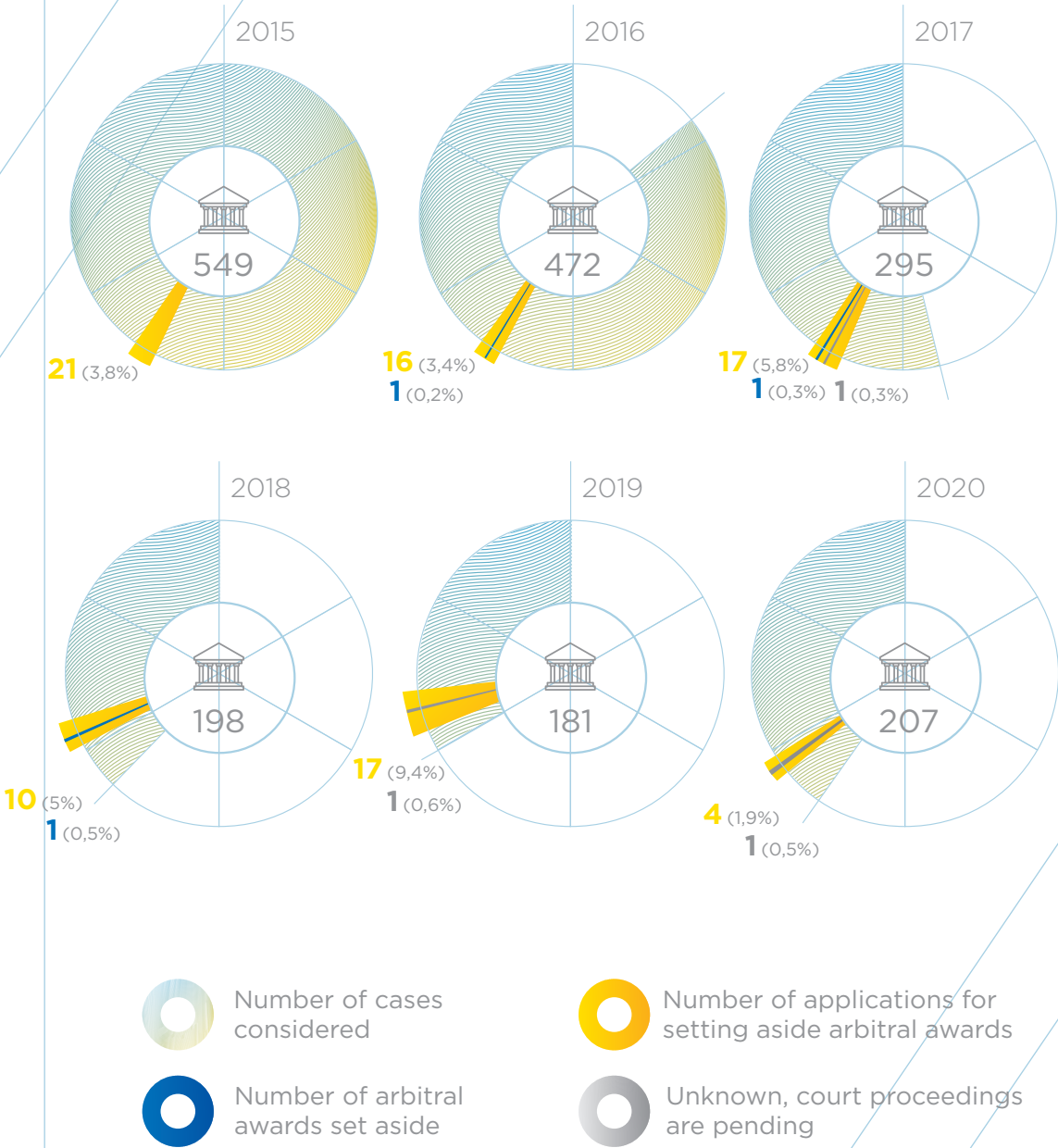
According to the provisions of Article 30 (1) of the Rules of the ICAC, given that there was no previous agreement between the parties on the number of arbitrators, the ICAC President in 36 cases, which is 14,4% of all registered cases, decided that the dispute is a subject to be resolved by a sole arbitrator. 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

As a result of the established pro-arbitration judicial practice in 2020, the number of applications for setting aside arbitration awards decreased significantly. The number of arbitration awards set aside does not exceed 1%.



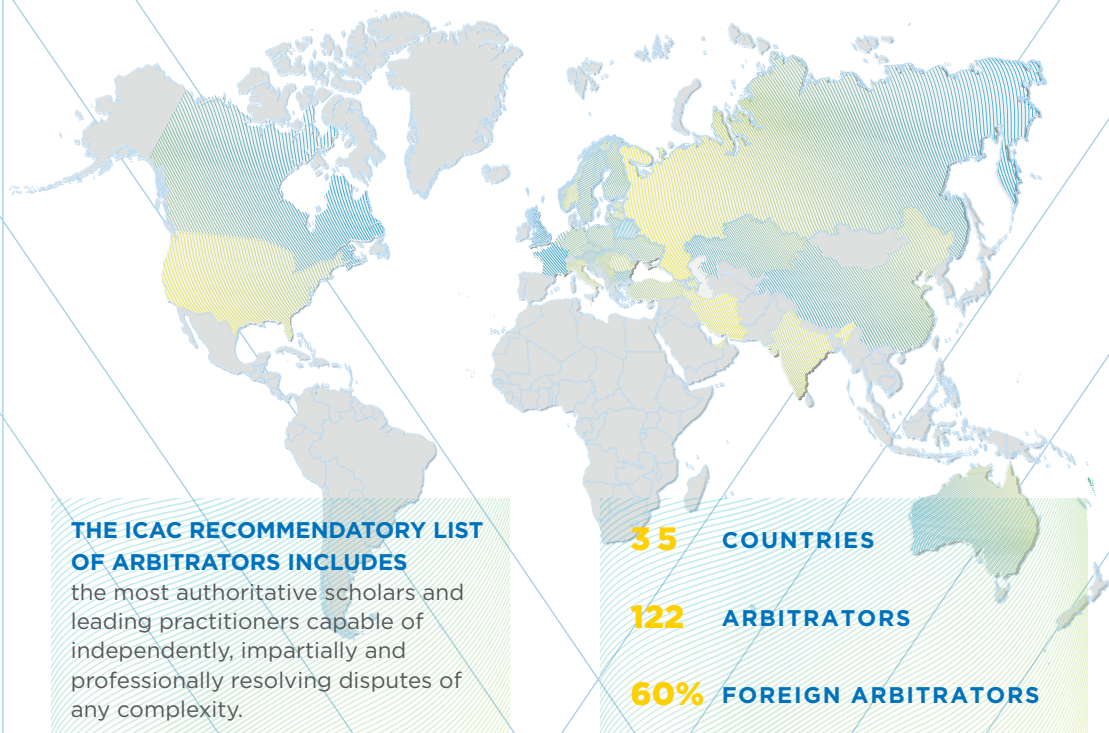


# EXPERIENCE

## THE ICAC RECOMMENDATORY LIST OF ARBITRATORS

The ICAC Recommendatory List of Arbitrators currently includes **122 arbitrators** from **35 countries**, including known scholars and practitioners, recommended by authoritative international rankings such as Chambers & Partners, Legal 500 and Who's Who Legal. **40%** of arbitrators come from Ukraine and the other **60%** are representatives of foreign countries.

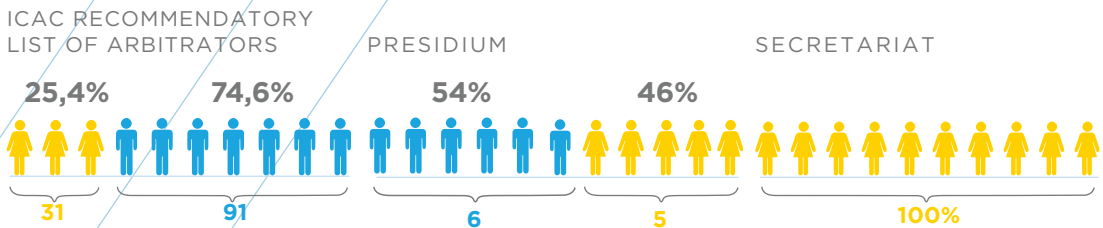
### OUR ARBITRATORS



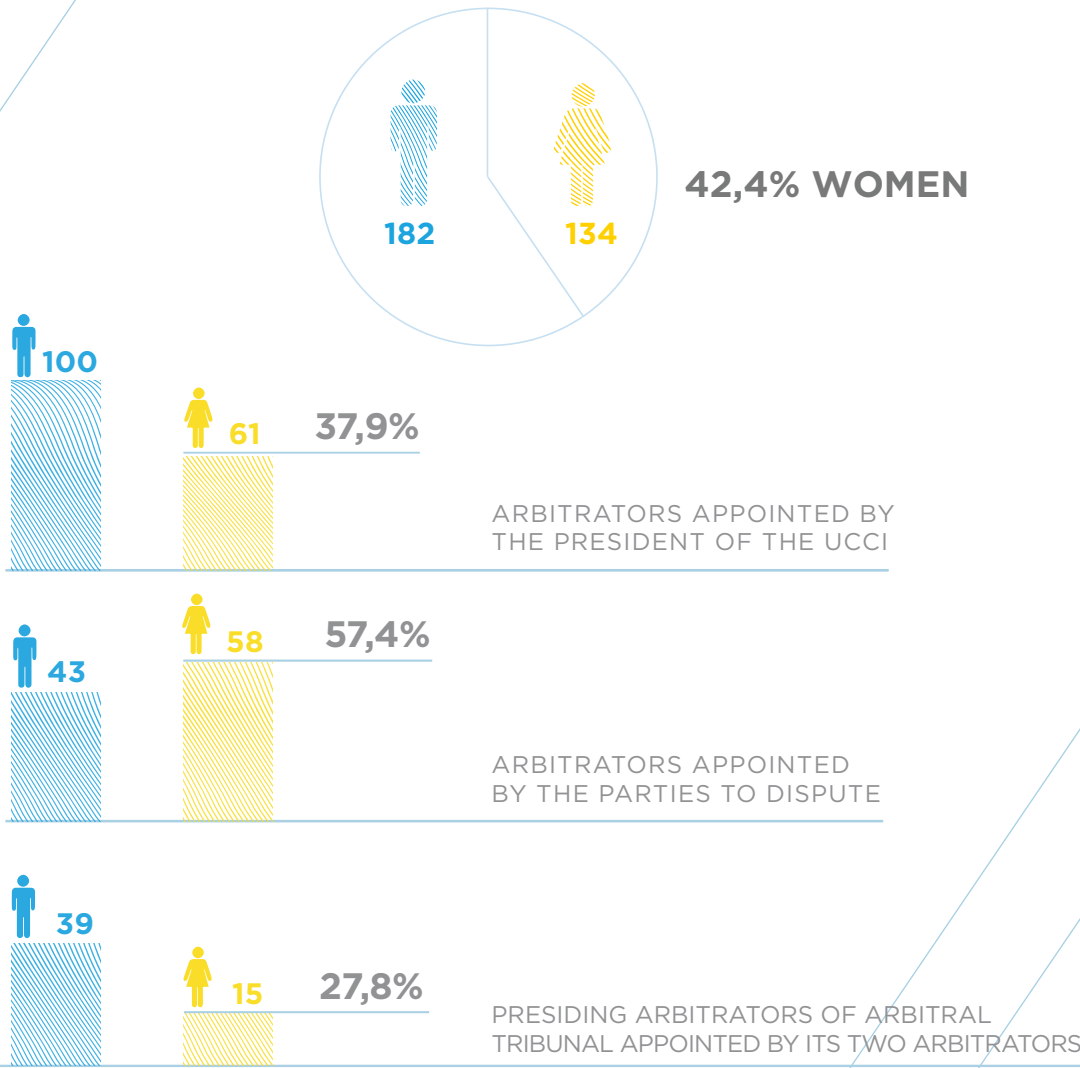
In 2020 arbitrators from **Belarus, Estonia, the Netherlands, Poland, the Russian Federation** and **the Czech Republic** repeatedly took part in resolution of the ICAC cases.

# EXPERIENCE

## GENDER POLICY



### WOMEN-ARBITRATORS INVOLVED IN THE CONSIDERATION OF THE ICAC CASES IN 2020



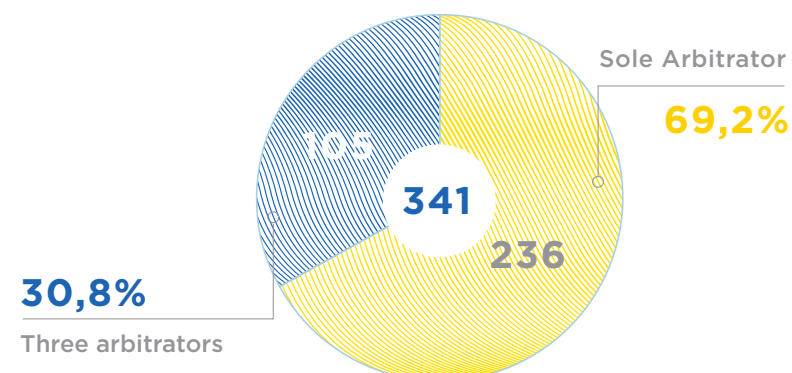
The ICAC fulfills its obligations within the framework of the **Equal Representation in Arbitration Pledge** initiative. In 2020 the number of female arbitrators, involved in the ICAC cases, increased by **5,9%**.



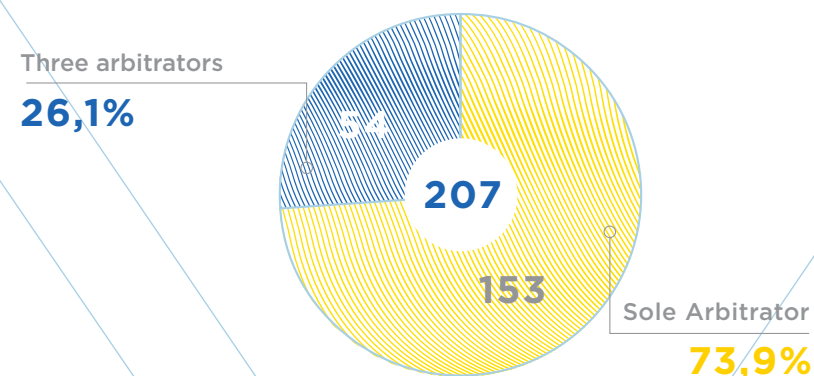
# EXPERIENCE

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

NUMBER OF ARBITRATORS OF THE ARBITRAL TRIBUNAL IN REGISTERED CASES



NUMBER OF ARBITRATORS OF THE ARBITRAL TRIBUNAL IN CONSIDERED CASES



## CHALLENGE OF AN ARBITRATOR

In 2020, parties to **3 cases** requested to **challenge an arbitrator**. Given that the arbitrators did not refuse to participate in case consideration, these requests were referred to the ICAC Presidium following Article 33 (3) of the ICAC Rules. The ICAC Presidium did not satisfy any of the requests. In 1 case the arbitrator withdrew voluntarily.

**The reporters were appointed in 160 cases**, representing 77% of the total number of cases considered, which is 11% more than in 2019.

# EXPERIENCE

## IN FACTS AND NUMBERS

### COUNTERCLAIMS

in **1** CASE  
according to Article 22 of the ICAC Rules

in **5** CASES

### THIRD PARTIES

in **5** **considered cases:**  
in **2** cases **2** respondents  
in **1** case **3** respondents  
in **2** cases **2** claimants

### MULTIPLE PARTIES

in **2** **considered cases:**  
in **1** case **2** respondents  
in **1** case **3** respondents

### disputes arised out of registered cases:

in **10** cases out of **2** contracts  
in **1** case out of **3** contracts  
in **1** case out of **4** contracts  
in **1** case out of **5** contracts

### MULTIPLE CONTRACTS

### AMICABLE AGREEMENTS

in **7** CASES  
the awards were issued on agreed terms

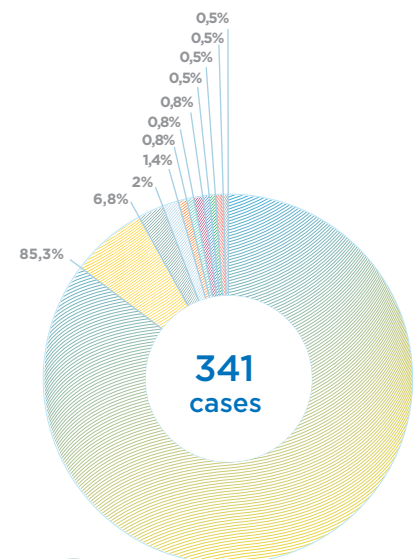
The ICAC awards are acknowledged

in **119** COUNTRIES

### EFFICIENCY

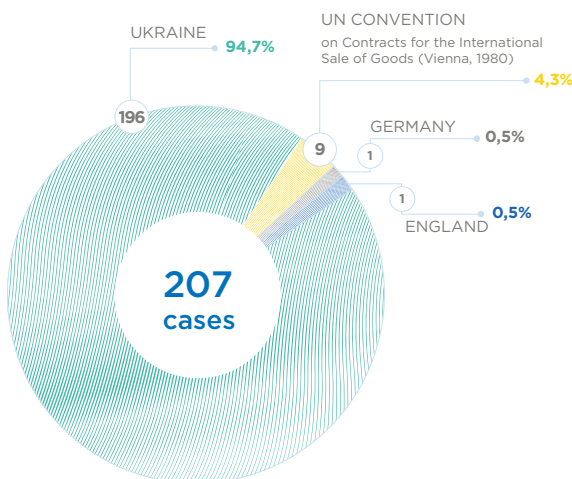


TYPES OF DISPUTED CONTRACTS

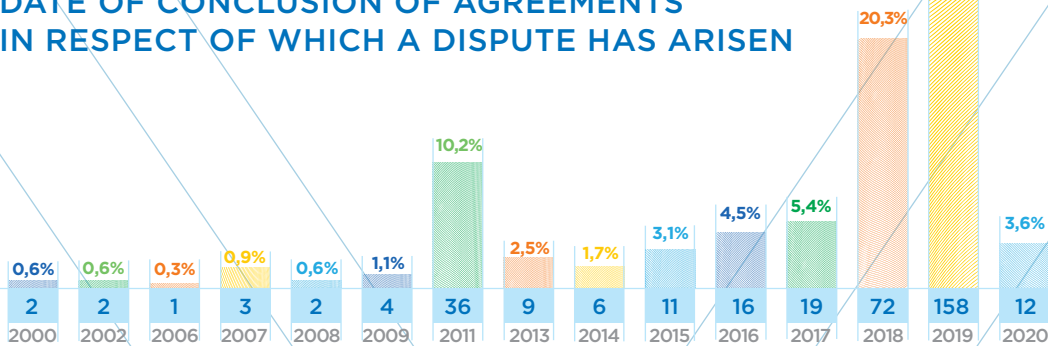


- 301 International purchase and sale agreements, supply agreements
- 24 Provision of services agreements
- 7 Loan agreements
- 5 Assignment agreements
- 3 Contractor agreements
- 3 Agency agreements
- 3 Other: freight forwarding agreement, commission agreement, recognition of documents
- 2 Property management agreements
- 2 Joint activities agreements
- 2 Rental & lease agreements
- 2 Guarantee agreements

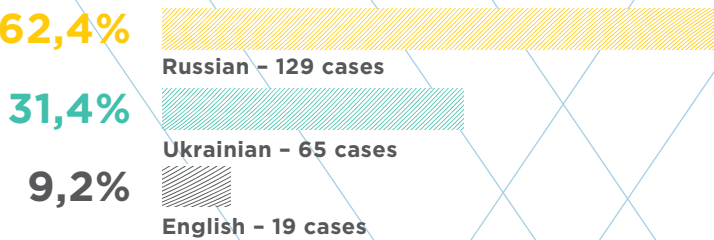
APPLICABLE LAW  
IN THE ICAC CASES



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



LANGUAGE OF ARBITRAL PROCEEDINGS IN 2020

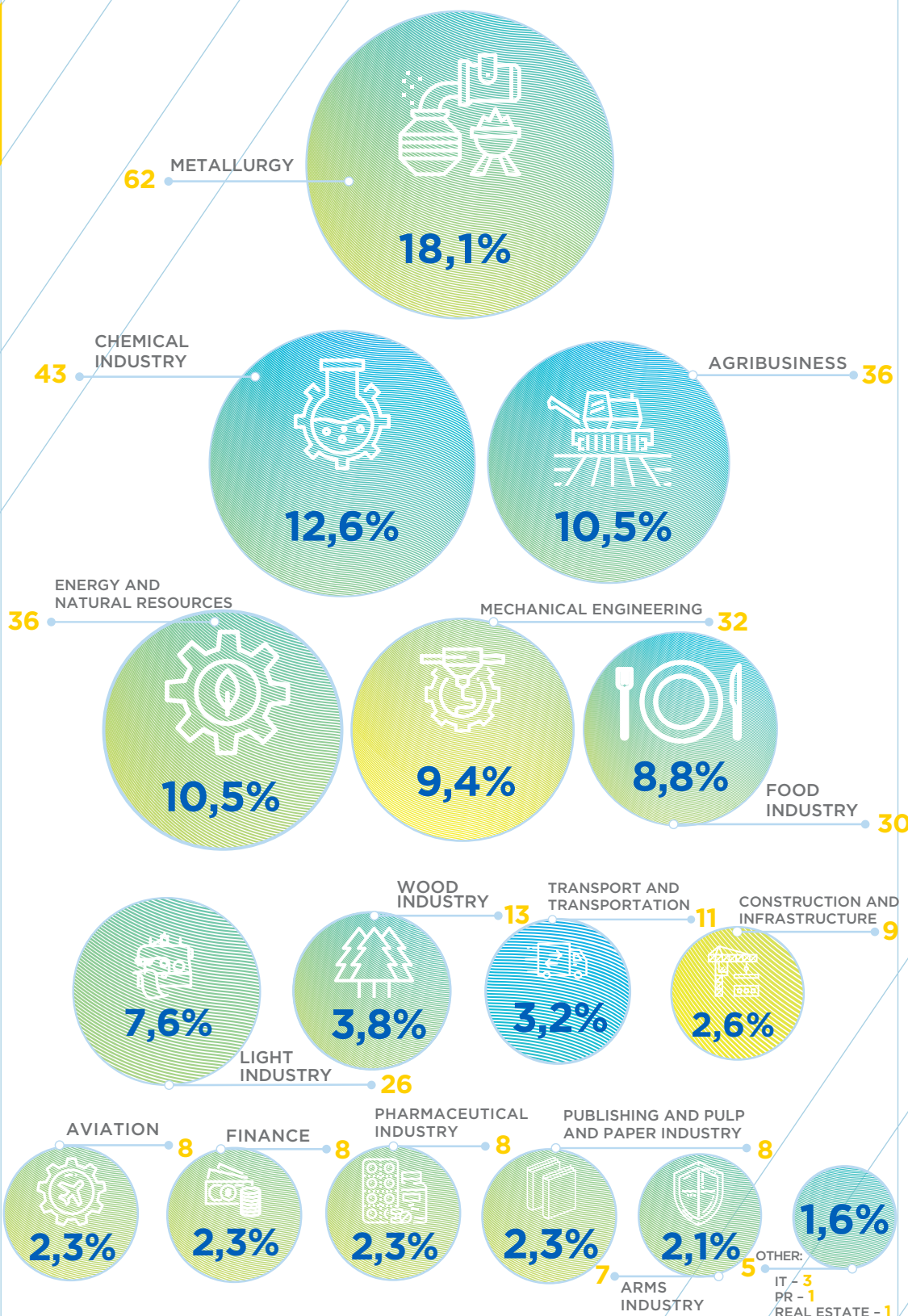


6 arbitral proceedings were conducted in 2 languages.

to 2019, the number of arbitral proceeding conducted in English increased by 31%

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.

MAJOR INDUSTRIES, USING ARBITRATION  
AS A TOOL FOR DISPUTE RESOLUTION

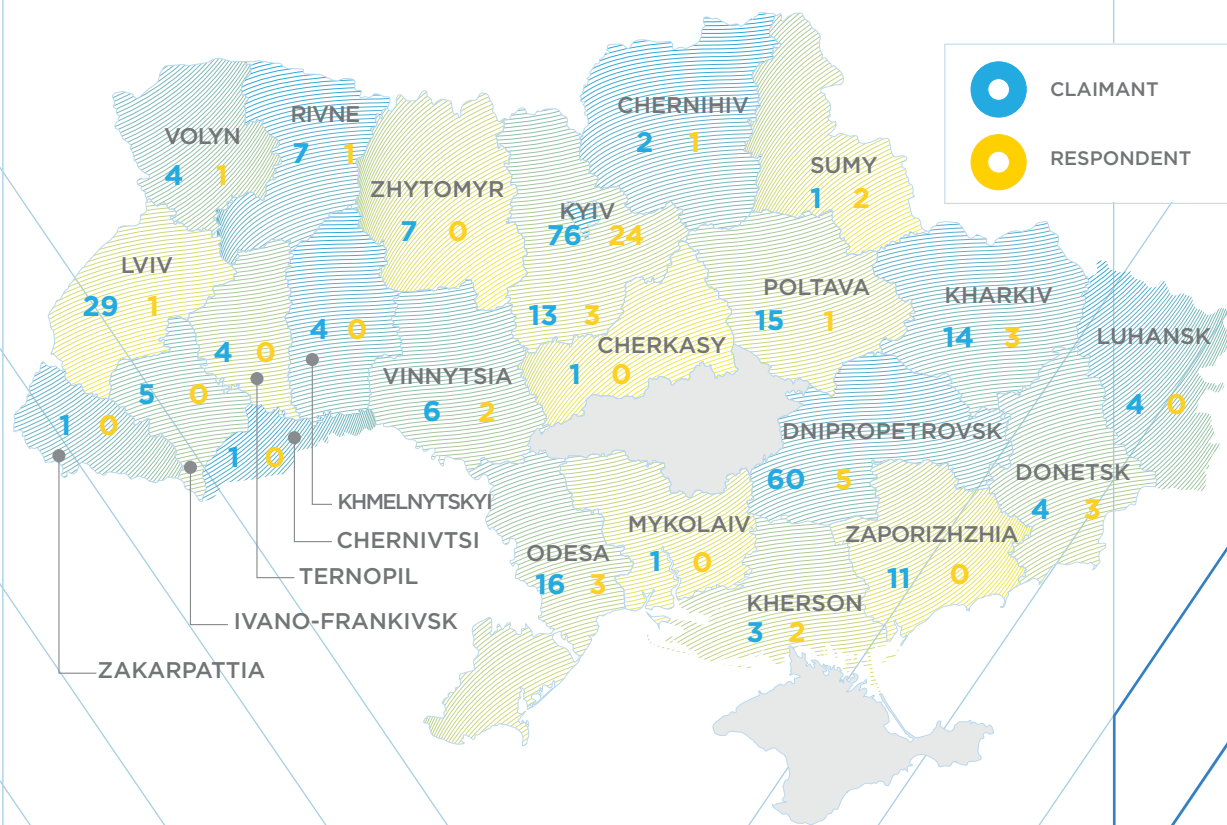




# ORIGIN OF THE PARTIES

## BY REGIONS OF UKRAINE

**During** the period from 1 January to 31 December the parties to cases registered by the ICAC were representatives from 23 regions of Ukraine and the city of Kyiv.



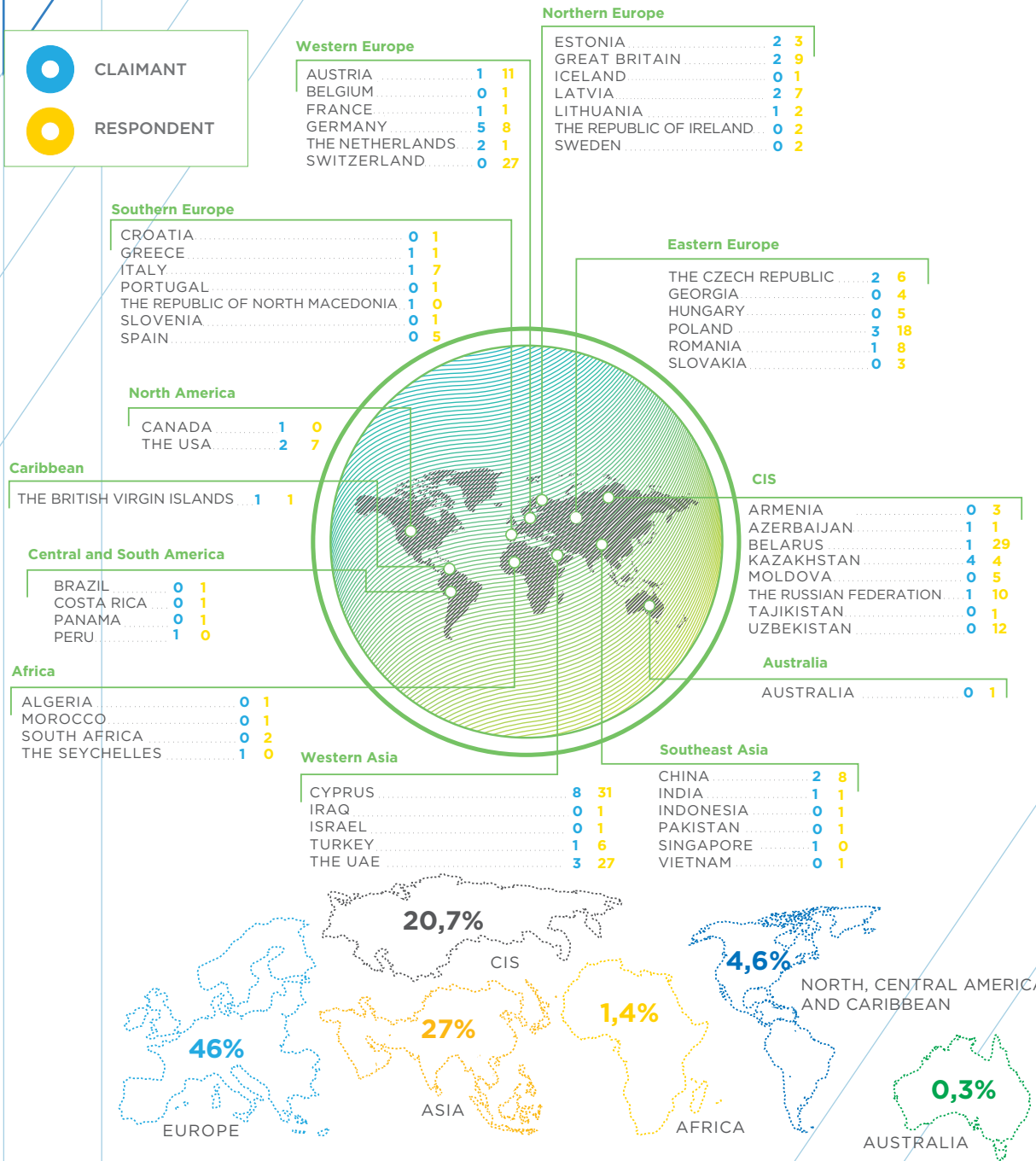
State-owned enterprises were the parties to every 10th registered case: in 25 cases as claimants and in 9 cases as respondents.

For the first time the list of TOP-5 most active regions included Lviv, Odesa and Poltava regions.

# ORIGIN OF THE PARTIES

## FOREIGN PARTIES

**During** the period from 1 January to 31 December, parties to cases, registered, by the ICAC, were representatives of 58 countries: 49 foreign countries and 8 countries form the Commonwealth Independent States and Ukraine.



In 2020 the majority of cases were initiated by businesses from Belarus, Cyprus, Germany, Poland, Switzerland and the UAE.



# KEY EVENTS OF THE ICAC

## UKRAINE IS THE PREFERRED SEAT FOR ARBITRATION IN EASTERN EUROPE

The mission of the ICAC is to **transform Ukraine into the preferred seat for arbitration in Eastern Europe**. During the past 27 years the ICAC has contributed to the improvement of the arbitration-related national legislation, adhered to the highest international arbitration standards, brought the best international arbitration practices to Ukraine, continued to serve as a platform for professional discussion as well as to promote and advocate for international arbitration among the legal and business community.

In 2020 the ICAC continued to make efforts to complete all of the above tasks towards to fulfillment of its mission.

## COOPERATION WITH THE STATE

The ICAC continuously cooperates with its stakeholders among the state authorities to shape and implement the pro-arbitration state policy.

The ICAC's Vice President I. Yemelianova is the **deputy head of the Working Group**, established by the Presidential Decree No. 584/2019 dated 7 August 2019, tasked with the development of the proposals for amendments to the Law of Ukraine "On International Commercial Arbitration", procedural codes and other regulatory documents. In 2020 the **Working Group** prepared the **draft Concept** of Legislation Improvement on Judicature, the Status of Judges, Judiciary and Related Legal Institution. A separate section of the Concept includes detailed recommendations on the reform of the arbitration related legislation.

The ICAC continues cooperation with the specialized Committee of the Ukrainian Parliament aiming at developing draft laws, which would shape pro-arbitration regulatory environment in Ukraine.



# KEY EVENTS OF THE ICAC

## UKRAINE IS THE PREFERRED SEAT FOR ARBITRATION IN EASTERN EUROPE



On **23 January 2020** the ICAC and the UMAC held the **General Meeting** of arbitrators, gathering over 30 delegates. The General Meeting defined the goals of the ICAC for 2021 and ruled on the creation and staffing of three Working Groups:

Working Group tasked with the development of recommendations on amends to the Law of Ukraine "On International Commercial Arbitration", procedural codes and other regulations. **The Working Group is currently finalizing** the developing of the text of **the draft Law**, aimed at better arbitration and procedural regulations which will enhance the attractiveness of Ukraine as the seat for international arbitration.

The Working Group on developing a unified template of arbitral award. **The Working Group** developed **improved templates** of arbitral award and order for the termination of the arbitral proceedings, based on the best international standards. The developed templates will be applied by the end of Q1 of 2021 and will be used by the Arbitral Tribunal of the ICAC and the UMAC.

Working Group tasked with analyzing the feasibility of development **specialized ICAC Rules** for different types of disputes. Currently the Working Group finalizes the development of the **specialized Rules for consideration of investment disputes** as well as of relevant amends to the current ICAC Rules.



# KEY EVENTS OF THE ICAC

## PROFESSIONAL DISCUSSIONS ON ARBITRATION ORGANIZED BY THE ICAC

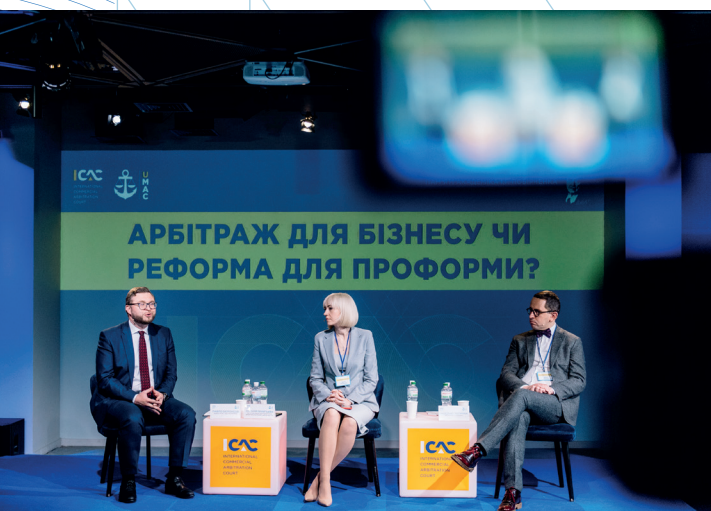
Videos of all events organized by the ICAC in 2020 are available on the official YouTube channel of the UCCI and official website of the ICAC.

## VII INTERNATIONAL ARBITRATION READINGS IN MEMORY OF ACADEMICIAN IGOR POBIRCHENKO

On 17 November 2020 Kyiv hosted VII International Arbitration Readings in memory of academician Igor Pobirchenko “Arbitration for business, or reforms for reforms sake?”. The readings were devoted to an open dialogue between public authorities, business, and legal community on the development of international arbitration in Ukraine in 2020. The conference was organized in a new hybrid format, consisting of offline dialogues with high-quality online broadcast. **More than 440 delegates** watched the Readings live, and the other 960 spectators watched the recording of the event, which is a record breaking number of viewers, interested in the event. This year, the Readings were accredited by the **National Bar Association of Ukraine** for the first time.



Summarizing the key takeaways of VII International Arbitration Readings Mr. Mykola Selivon noted that the ICAC is moving towards the specialization of arbitrators, state courts employ a more progressive and modern approach towards international arbitration, which proves a pro-arbitration regulatory environment in Ukraine. Additionally, The ICAC is ready to expand and develop its services to fulfill the demand of business for efficient and timely dispute resolution in Ukraine.

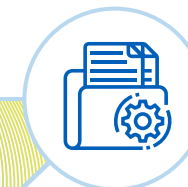


# KEY EVENTS OF THE ICAC

## LAUNCH OF NEW ONLINE PROJECTS

FREE WEBINAR SESSIONS  
ICAC Webinars

NEW INTERNATIONAL PROJECT  
Inside Arbitration



1400+ VIEWS

## ICAC WEBINARS

During **May 2020**, the ICAC held free webinar sessions “ICAC WEBINARS”. Their main purpose was to provide practical advice to users of arbitration services, their representatives, as well as lawyers practicing in the field of arbitration. In total, **4 online meetings took place**, and have been viewed by **more than 1400 users**.

## INTERNATIONAL ONLINE PROJECT INSIDE ARBITRATION

The ICAC has successfully launched a new international project – Inside Arbitration – a series of expert talks on arbitration moderated by the ICAC President Mykola Selivon. Guests of the first talk were the ICAC arbitrators:

Piotr Nowaczyk, Fellow of the Chartered Institute of Arbitrators – FCI Arb (London);  
Alexandre Khrapoutski, Partner at Lex Torre Law Firm;  
Asko Pohla, the Chairman of the Arbitration Court at the Estonian CCI.

## ARBITRATION IN FACES

Arbitration in Faces is a new joint media project of the ICAC and the legal newspaper Legal Practice. The project discusses the benefits of arbitration and arbitration as a career in a series of blitz interviews with leading international and Ukrainian ICAC arbitrators. Participants of the project are leading experts in the field of arbitration with many years of professional experience in Ukraine and abroad.

## WHY ICAC?

Why ICAC is a media video project which involved experienced arbitration lawyers and arbitrators who spoke about the benefits of dispute resolution in the ICAC, and shared their impressions about arbitrating in the most popular arbitration institutions in the world – SCC, LCIA, ICC, ICAC, VIAC .

All materials of the project are available on the official Facebook page of the ICAC.



# POPULARIZATION OF ARBITRATION

## THE ICAC IS A KEYNOTE SPEAKER AT MAJOR EVENTS IN THE FIELD OF INTERNATIONAL ARBITRATION IN UKRAINE

In addition to its own activities and initiatives, the ICAC representatives **participate in professional events** on international arbitration, take an active part in all key expert discussions, and participate as speakers at various business events.

President of the Ukrainian Chamber of Commerce and Industry **Gennadiy Chyzhykov** took part in the business forum Level Up Ukraine, where he noted that that ICAC could become a leading platform for resolving investment disputes in Ukraine.



The ICAC President **Mykola Selivon**, Vice President **Yulia Chernykh**, and the ICAC arbitrators **Laszlo Kecskes**, **Piotr Nowaczyk** and **Markian Malskyy** took part in an international conference under the patronage of the President of the Republic of Poland **"Arbitration and Mediation in Theory and Practice"** on behalf of the Ukrainian arbitration community.

# POPULARIZATION OF ARBITRATION

Adviser to the ICAC President **Olga Kostyshyna** – Speaker of the **Law & Trade A2B Forum**, a specialized conference for companies with business interests in international trade of goods and services.



The ICAC Vice President **Yulia Chernykh** was invited by **UNCITRAL** to share her experience in adjusting the ICAC daily activities to COVID-19 challenges.

Advisor to the ICAC President **Olga Kostyshyna** spoke about the steps the ICAC took to prepare the institution for the effective provision of mediation services in commercial disputes in the discussion **"Gap analysis of the implementation of the mediation institution in Ukraine"**, held by the EU Project "Pravo-Justice".

Advisor to the ICAC President **Olga Kostyshyna** shared practical experiences on the implementation of alternative dispute resolution methods with the participants of the seminar **"Study of the Lithuanian experience of ADR implementation in Ukraine"**.

**Inna Yemelyanova**, Vice President of the ICAC, took part in the professional discussion **"Fair Court for Business. Is it possible in Ukraine?"**



# POPULARIZATION OF ARBITRATION

- ◆ The ICAC was a partner of the **Ukrainian Arbitration Forum**. The ICAC President **Mykola Selivon** took part in the opening of the forum, talking about the progressive changes in the work of the Ukrainian arbitration institution and emphasizing the importance of strengthening the capacity of arbitration in Ukraine. Adviser to the ICAC President **Olga Kostyshyna** answered the most common questions of business community about the international commercial arbitration, along with the representatives of other famous arbitration institutions of the world, such as SCC, HKIAC, ICC.
- ◆ Adviser to the ICAC President **Olga Kostyshyna** – an invited speaker of the webinar "Foreign economic activities in times of COVID-19", organized by the **Ukrainian Chamber of Commerce and Industry** and the **Association of Exporters and Importers "ZED"**.
- ◆ The ICAC Vice President **Inna Yemelianova** moderated the final session of the **IX ANNUAL JUDICIAL FORUM "VECTOR FOR DEVELOPMENT 2020"**. The event was organized by the Ukrainian Bar Association together with the Council of Europe "Support to Judicial Reform in Ukraine" Project.



# POPULARIZATION OF ARBITRATION

## THE ICAC – THE LEADING EDUCATIONAL AND INFORMATION RESOURCE IN UKRAINE

In recent years, the ICAC started **active cooperation with educational platforms**, integrating lectures and courses on international arbitration in their programs.

- ◆ The ICAC traditionally co-organized Willem C. Vis court debates on international commercial arbitration – **V Ukrainian Vis Pre-Moot** and awarded the winners with Igor Pobirchenko Prize.



- ◆ Adviser to the ICAC President **Olga Kostyshyna** – lecturer of the online course on international arbitration at **Business Consulting Academy**.
- ◆ The ICAC representatives traditionally teach arbitration training courses at **Legal High School**.
- ◆ The ICAC Vice President **Yulia Chernykh** was invited to conduct a lecture to master students in International Commercial Arbitration at the **University of Stockholm**.
- ◆ Adviser to the ICAC President **Olga Kostyshyna** conducted a lecture "International Commercial Arbitration: From Arbitration Agreement to Recognition and Enforcement of Arbitration Award" to students of Yaroslav the Wise National University of Law.

# THE ICAC GOALS FOR 2021

On 17 January 2020 the ICAC Presidium approved the wholistic action plan for the improvement of the ICAC operations in 2021-2022, which includes:

- ◆ Enhanced use of technology and digitalization of arbitration;
- ◆ Improvement of arbitration proceedings;
- ◆ Introduction of mediation and hybrid procedures;
- ◆ Implementation of the ICAC brand image campaign; and
- ◆ Promotion of international arbitration.

The Presidium's Meeting also decided on the creation of a Working Group on developing recommendations to improve arbitration proceedings at the ICAC, based on the best arbitration practices, specifically in the part of composition of the Arbitral Tribunal in a particular case.

The ICAC is also committed to:

- ◆ Analyze the practice of application of the ICAC Rules as amended, that came into force on 1 November 2020.
- ◆ Continue to develop the ICAC's online projects.
- ◆ Develop a special education course on international arbitration to be accredited by the National Bar Association.

# THE ICAC GOALS FOR 2021

## LOOKING INTO THE FUTURE

Arbitrating commercial cases has been significantly impacted by the covid-19 pandemic. The Top-5 future transformations for international commercial arbitration, which are already on their way:

- ◆ The leading international arbitration institutions will become even more tech savvy and offer even better online platforms to ensure the protection of the rights of the parties during virtual hearings. The use of technology in arbitration will be sufficiently regulated.
- ◆ The Panel of Arbitrators will be vested with broader authorities as to defining the procedure and the format of arbitration consideration of cases.
- ◆ Arbitration institutions will offer expanded lists of the types of disputes that could be considered based on the written documents with no oral hearings involved.
- ◆ Arbitration proceedings will go hybrid. Considerable savings on travel expenses as well as the flexibility of virtual hearings will make them even more popular in future.
- ◆ Arbitration institutions will continue to improve their Rules allowing to use or unite all available arbitration formats for better protection of the rights and interests of the parties to arbitration.