



# ICAC ACTIVITIES 2022



## Mykola Selivon

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



The year 2022 was a year of challenges, which the ICAC and the UMAC at the UCCI overcame and showed that the arbitration institutions have enough capacities to work effectively even under the martial law. Throughout the year, the Presidiums of the ICAC and the UMAC held 12 joint meetings, developed a set of measures for the work of arbitration institutions and recommendations for the arbitral tribunals on the organization of arbitration proceedings and the enforcement of arbitral awards. In their turn, the ICAC and UMAC Secretariats took every possible measure to continue administering cases in these conditions and expedited the digitalization of arbitration proceedings. The main task was to ensure full-fledged arbitration proceedings and provide the parties with the opportunity to fully exercise their procedural rights, regardless of their location, as well as to ensure the safety of life and health of representatives of the parties, arbitration compositions, employees of the ICAC and UMAC Secretariats.

Having streamlined the work of the arbitration institutions in the first quarter of 2022, the Presidiums of the ICAC and the UMAC continued to work on the implementation of the plans announced in our 2020-2021 reports, namely approved important documents on the introduction of mediation services to dispute resolution through the combined Arbitration-Mediation-Arbitration procedures at the ICAC and the UMAC, formed the Registers of Mediators and developed a number of amendments to the Rules, which were subsequently approved by the Decisions of the Presidium of the UCCI dated July 01 and December 22, 2022. Also, for the first time, the Presidiums of the ICAC and the UMAC, based on the results of the analysis and generalization of arbitration practice, approved the Recommendations regarding the reimbursement of legal costs of the parties and the Recommendations regarding submission of documents in electronic format. Thus, the work on improving the arbitration proceedings did not stop for a single day.

As a result, the ICAC accepted 373 cases for consideration, which is 25% more than in 2021 (298 cases), and received positive feedback on its work not only from the Presidium of the UCCI and foreign colleagues, but, crucially, from the users of our services. I am convinced that we managed to achieve such results thanks to the cohesion and dedication of the arbitrators and staff of the ICAC and the UMAC. I am sincerely grateful for that. I would also like to thank the international arbitration community, especially my Polish, Bulgarian and Swedish colleagues, who demonstrated their solidarity and support in this difficult time, as well as those arbitrators who had donated their fees to support Ukraine and the Ukrainian army.

During the extremely hard year of 2022, we felt and realized the importance of the jurisdictional mission of the ICAC and UMAC - which is to be reliable instruments for protecting the legitimate rights and interests of both Ukrainian and foreign businesses. That is why we are constantly introducing novelties, including new technologies, and expanding our range of services. I would like to announce that a new service, which is currently being implemented, will be the consideration of investment disputes by the ICAC, and the main areas of our work in 2023 will be the development of a new edition of the Arbitration Rules and Rules for the consideration of investment disputes, as well as the formation and approval of new Recommendatory Lists of Arbitrators.

I would also like to remind you that in 2022, the ICAC was supposed to celebrate its 30th anniversary, and in this regard, the Organizational Committee planned a number of activities. Unfortunately, we were unable to realize those plans due to the imposed martial law, but I hope that in 2023, together with the celebration of the 100th anniversary of the birth of the ICAC's first President, Academician Igor Pobirchenko, we will summarize the first 30 years of the institution's activities in the circle of our Ukrainian and foreign friends and colleagues.





# INSTITUTIONAL STABILITY

The martial law required the adjustments to the ICAC's and the UMAC's activities at the organizational, communications, and regulatory levels. The adequate response to operational challenges was found quickly and efficiently.

## IMMEDIATE RESPONSE TO CHALLENGES

On March 18, 2022, at the initiative of the President of the ICAC and the UMAC Mykola Selivon, the work of the arbitration institutions, whose was suspended on February 24 due to the military aggression of Russia against Ukraine, was resumed, and on March 21, 2022, the ICAC and the UMAC Presidiums approved the peculiarities of case administration under martial law and a set of measures to ensure safe working conditions for the arbitral tribunals, parties and employees of the Secretariats.

Mykola Selivon also released an open letter to all arbitrators of the ICAC asking them to communicate with the representatives of the parties, take measures to resume arbitration proceedings, schedule online hearings or consider cases based on written materials, and ensure timely decisions on arbitral awards.

## EXPEDITING DIGITALIZATION

The ICAC and the UMAC moved databases and information from the mail server to secure cloud storage facilities that are not at risk of being attacked by missile strikes.

On July 1, 2022, the Presidium of the UCCI approved amendments to the ICAC and the UMAC Rules, primarily due to the martial law and the need to improve the performance of arbitration institutions under . In particular, electronic communications was defined the main method of submitting documents and communicating with arbitrators and parties, and the procedure for conducting oral hearings online was simplified.

On 25 October 2022, the Presidiums of the ICAC and the UMAC approved the Recommendations for the preparation of documents submitted electronically to be followed by the parties to the arbitration proceedings in order to properly implement the new requirements of the ICAC Rules. This is the first Recommendation document out of the series of Recommendations on the organization of arbitration proceedings that will be provided as part of efforts towards full-fledged digitalization of arbitration proceedings.

# INSTITUTIONAL STABILITY

## STRENGTHENING THE MANAGEMENT TEAM

On December 22, 2022, the Presidium of the UCCI approved the ICAC President, his deputies and the composition of the ICAC Presidium for a 5-year term starting from January 01, 2023. Having highly appreciated the work of the ICAC in this difficult period of war and noting the continuous improvement of the arbitration institution's activities, as well as taking into account the expansion of the ICAC's service line, the Presidium approved the expansion of the ICAC's management team with additional positions of the ICAC Vice-Chairmen. Also, for the first time, a foreign arbitrator – a citizen of the Republic of Poland – Piotr Nowaczyk – was appointed to the Presidium.

Currently, the ICAC is the only arbitration institution in the world that has not only effectively overcome the challenges of the COVID-19 pandemic, but also continues to do business as usual under the martial law, as the entire team understands the importance of this work, which provides users of the ICAC services with opportunities to protect their violated rights and interests.

## THE ICAC PRESIDIUM





# THE WORLD STANDS IN SOLIDARITY WITH UKRAINE

The global arbitration community has demonstrated unprecedented support for Ukraine, its national unity and independence both during the escalation of the geopolitical situation around Ukraine in the fall of 2021 and after Russia's military invasion into the sovereign territory of Ukraine on February 24, 2022.

Two Polish arbitration institutions – the Arbitration Court at the Chamber of Commerce and Industry of Nowy Tomysl and the Lewiatan Arbitration Court approached the ICAC with a proposal to open the ICAC's branch in Poland for security reasons, and the ICAC arbitrator Włodzimierz Brych, demonstrating his personal position and support of the Polish people, took part in person in the ICAC General Meeting of Arbitrators in Kyiv a few days before the full-scale invasion – on 18 February 2022.

Also, foreign arbitrators of the ICAC have repeatedly requested the ICAC to credit their fees for the consideration of cases to the account of the Armed Forces of Ukraine and other funds supporting the Ukrainian Army.

On June 03, 2022, the UCCI and ICAC were personally visited by **John Denton**, Secretary General of the International Chamber of Commerce (ICC), and **Damien Brocard**, Head of the International Cooperation Department of the Office of the Secretary General of the ICC, in particular, to express their unequivocal support to Ukraine.



The Secretary General of the ICC noted that the ICAC has undoubtedly proved the institution's ability to administer continuous arbitration proceedings under martial law. **Mr. Denton** emphasized in particular that the ICAC, working as a full-time team from its office in Kyiv, as well as the entire Ukrainian people, demonstrate courage, dedication, and professionalism that impresses the entire civilized world today.

On November 17, 2022, **Mykola Selivon**, President of the ICAC, and **Natalia Petrik**, legal counsel at the Stockholm Chamber of Commerce Arbitration, signed the Agreement on Cooperation between the Arbitration Institutions in Poland. Swedish colleagues during the 30-year activity of the ICAC have always sincerely shared their experience and provided methodological assistance at the stage of formation of Ukrainian arbitration institutions.



The ICAC team, all of which continues to work from Ukraine, is deeply grateful for the support of its colleagues from around the world.

# THE WORLD STANDS IN SOLIDARITY WITH UKRAINE

On November 17-18, 2022, the international conference **Solidarity Arbitration and Mediation Days**, was held in Warsaw to demonstrate the support of the international arbitration, mediation and legal community for their Ukrainian colleagues and all those affected by the war in Ukraine. The event was attended by more than 200 people not only from Poland and Ukraine, but also from Austria, Lithuania, Germany, Romania, the United States, Switzerland, Sweden and the United Kingdom.



The delegation of the ICAC consisting of the President of the ICAC **Mykola Selivon**, the Deputy President of the ICAC **Inna Yemelianova**, and the Advisor to the President of the ICAC **Olga Kostyshyna** took active part in the conference.



**Mykola Selivon** moderated the first session of the conference **"The Future of Arbitration in a New Security Environment"** and shared the experience of the functioning of Ukrainian arbitration institutions during the martial law period. Mr. Selivon took the opportunity to thank the Polish people, who were the first to stand by Ukrainians and continue to care for the problems of the Ukrainians as if they were their own.

**Inna Yemelianova**, Vice President of the ICAC, spoke about the prospects of the new direction of the ICAC services – international commercial mediation within the session **"How to effectively use mediation in court and arbitration proceedings?"**.



The event was also attended by ICAC arbitrators **Sergiy Vovtovich**, **Galina Zukova**, **Piotr Nowaczyk**, **Olena Perepelynska**, **Asko Pohla** and **Tatyana Slipachuk**. Demonstrating support

and solidarity with Ukraine, the conference organizers created a special scholarship fund for Ukrainian students and junior practicing lawyers, and transferred all the funds raised during the conference to it.





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

The ICAC once again confirms its status of a leading professional platform for forming the vision of international arbitration development in Eastern Europe by holding the International Arbitration Readings in the extremely difficult year of 2022, which are traditionally the main event in the field of international arbitration in Ukraine. The event took place on November 04, 2022, in Kyiv despite the martial law and the threat of a missile attack from Russia. The event was held in a hybrid format – more than 50 participants took part in the event live and about 100 participants took part in the event online, the recording of the event was watched by more than 500 viewers.

In his welcoming remarks, the President of the ICAC **Mykola Selivon** noted that since the beginning of the full-scale invasion of Russia, the ICAC has returned to its task of ensuring the protection of the violated rights and interests of the users of services, including Ukrainian business, exporters and importers, within just a few weeks. At the same time, international arbitration must also respond to the latest political and economic circumstances, which are not yet sufficiently regulated by law, but are already affecting the users of the ICAC's services, in particular, the consideration of cases involving sanctioned persons.



**Andriy Yarmolskiy**, the Head of the Office of the National Security and Defense Council of Ukraine, elaborated on the principles of forming the state sanctions policy, which is a relatively new element that affects international arbitration.

Participants of the conference in a lively discussion of the decisions and legal positions of the Supreme Court in cases related to the imposition and lifting of economic sanctions. Mr. Pilkov also noted that the fact of imposing sanctions is not a force majeure and advised to include a separate sanctions clause in commercial contracts along with the force majeure clause.



In the second part of the session, the participants of the Readings had the opportunity to learn about the achievements and plans of the ICAC. **Zoia Lytvynenko**, Secretary General of the ICAC, spoke about the functioning of the arbitration institution during the martial law, and **Olga Kostyshyna**, Advisor to the President of the ICAC, informed about the expansion of the ICAC's services, the state of work on the legal support for the consideration of investment disputes in the ICAC.

## ADMINISTRATION OF CASES



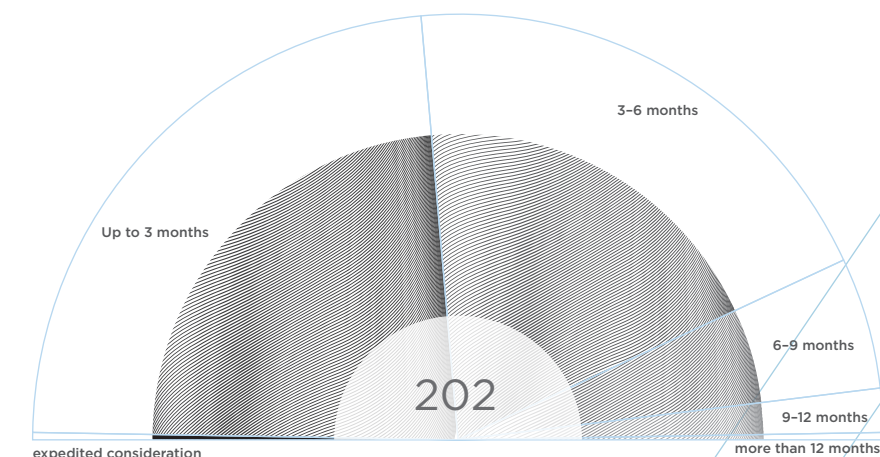
During

from January 01 to December 31, 2022, the ICAC registered **373 cases, which is 25% more than in 2021. 202 cases were considered** by arbitral tribunals during 2022.

## DURATION OF THE ARBITRAL PROCEEDINGS

Despite the martial law, the ICAC continues to ensure fast and efficient consideration of cases – **86.1% of cases were considered within half a year** from the date of formation of the Arbitral Tribunal.

expedited consideration: **2 cases (1%)**  
 up to 3 months: **94 cases (46,5%)**  
 3–6 months: **78 cases (38,6%)**  
 6–9 months: **21 cases (10,4%)**  
 9–12 months: **6 cases (3%)**  
 more than 12 months: **1 case (0,5%)**





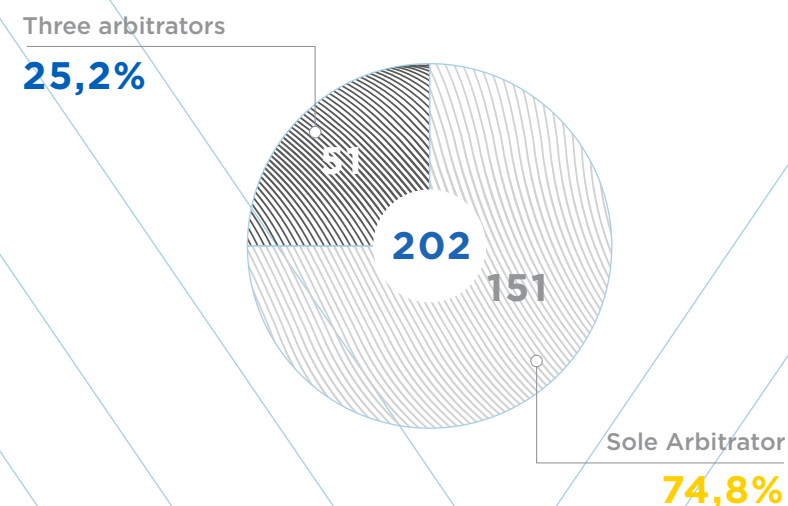
# ADMINISTRATION OF CASES

## ADMINISTRATION OF CASES THE ICAC RECOMMENDATORY LIST OF ARBITRATORS

The ICAC Recommendatory List of Arbitrators currently includes **114 arbitrators** from **33 foreign countries** and Ukraine, including known scholars and legal practitioners, recommended by authoritative international legal directories such as Chambers & Partners, Legal 500 and Who's Who Legal. **39%** of arbitrators come from Ukraine and the other **59%** are representatives of foreign countries.

## COURT OF ARBITRATION

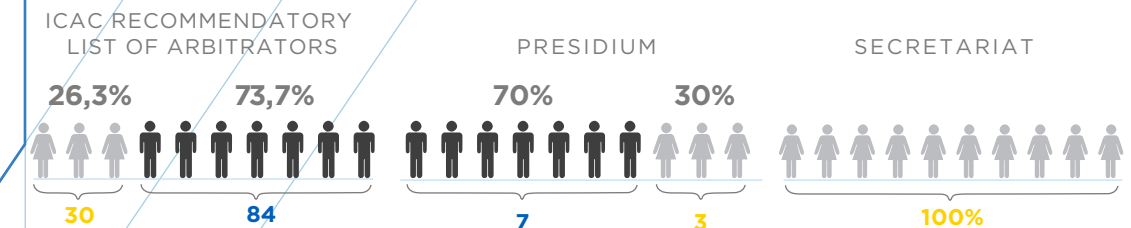
### NUMBER OF ARBITRATORS OF THE ARBITRAL TRIBUNAL IN CONSIDERED CASES



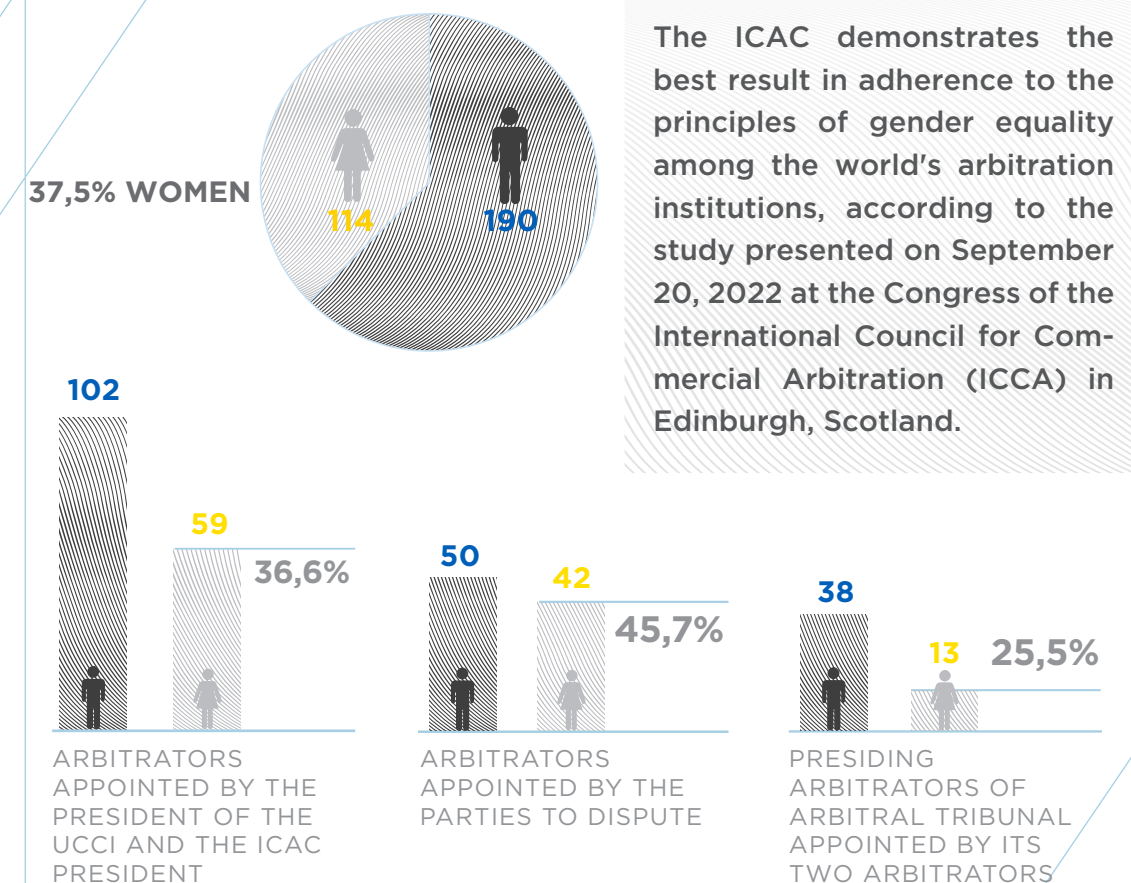
In 2022, arbitrators from **Bulgaria, China, Latvia, Poland, Serbia** and the **United States** repeatedly took part in the resolution of cases at the ICAC.

# ADMINISTRATION OF CASES

## GENDER POLICY



### WOMEN-ARBITRATORS INVOLVED IN THE CONSIDERATION OF CASES AT THE ICAC IN 2022



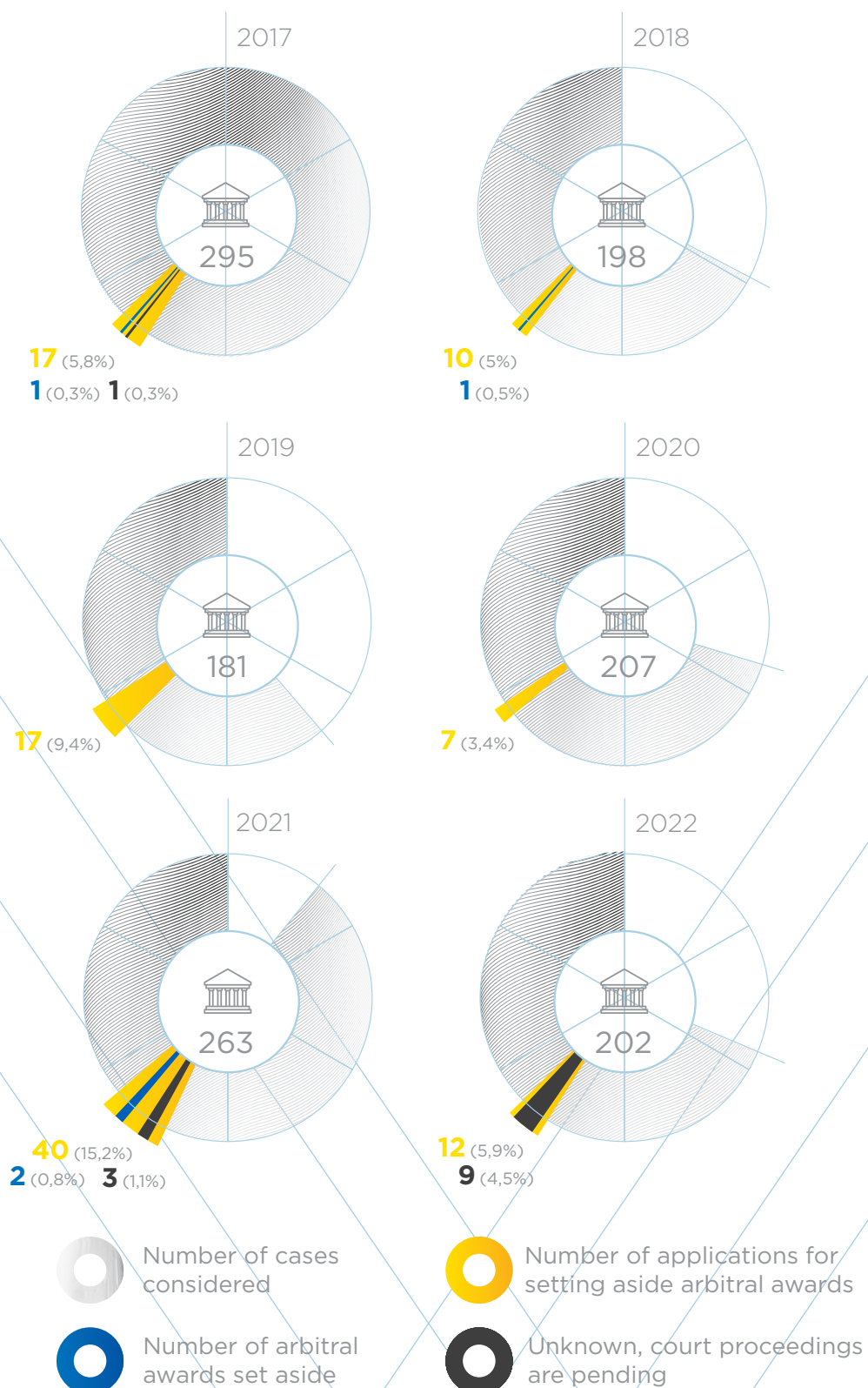
The ICAC demonstrates the best result in adherence to the principles of gender equality among the world's arbitration institutions, according to the study presented on September 20, 2022 at the Congress of the International Council for Commercial Arbitration (ICCA) in Edinburgh, Scotland.

As noted in the Equal Representation in Arbitration Initiative's LinkedIn post, the **ICAC demonstrates strong leadership in the area of gender equality in arbitration and sets an example to the global arbitration community.**



# ADMINISTRATION OF CASES

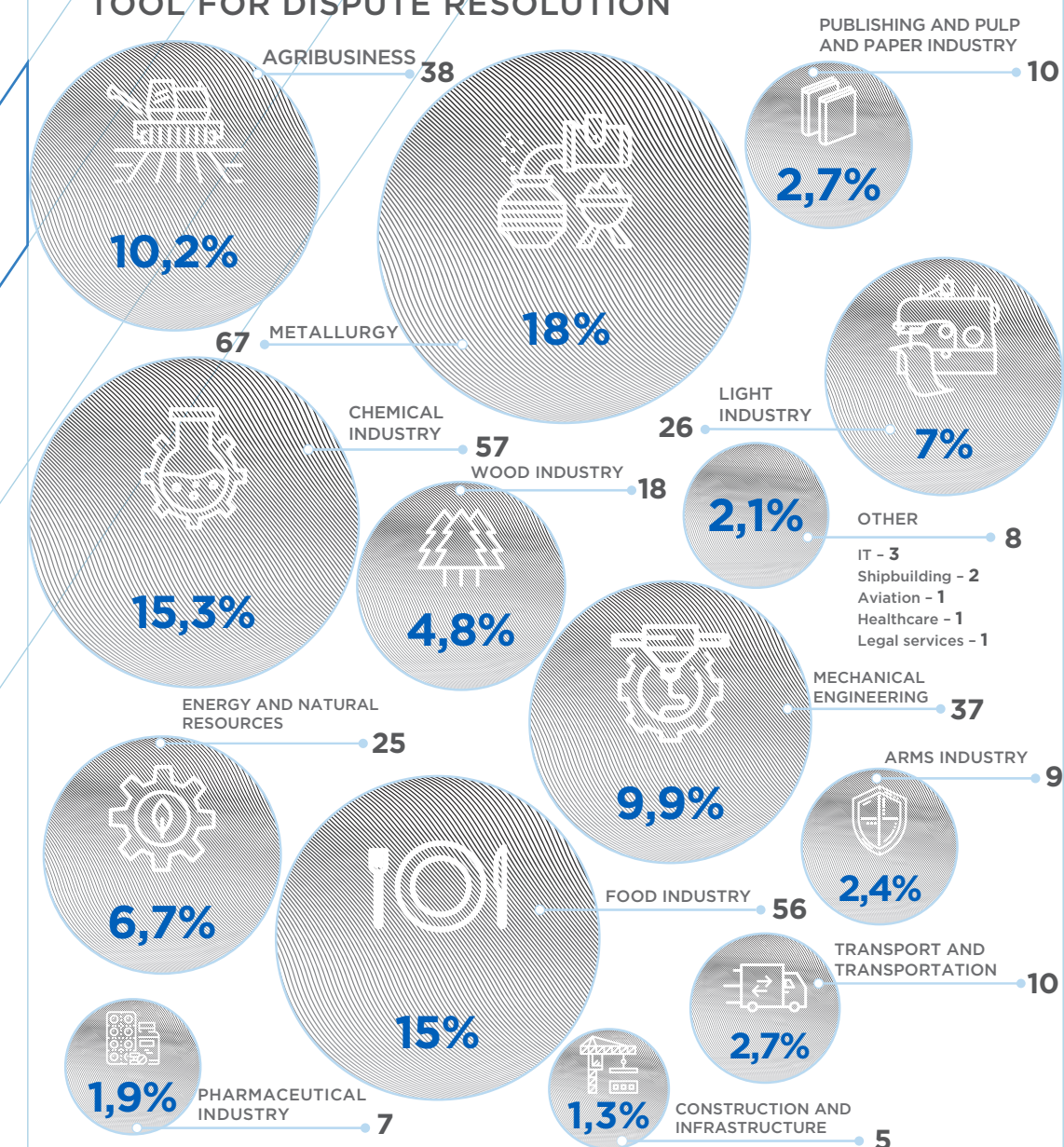
## CHALLENGING THE ICAC AWARDS



In 2022, for the first time in 4 years, 2 arbitral awards rendered in 2021 were set aside. The Presidium of the ICAC carefully analyzed the grounds for setting aside these arbitral awards and developed a number of recommendations for the arbitral tribunals in order to prevent such situations in the future.

# ADMINISTRATION OF CASES

## MAJOR INDUSTRIES, USING ARBITRATION AS A TOOL FOR DISPUTE RESOLUTION



## LANGUAGE OF ARBITRAL PROCEEDINGS IN 2022



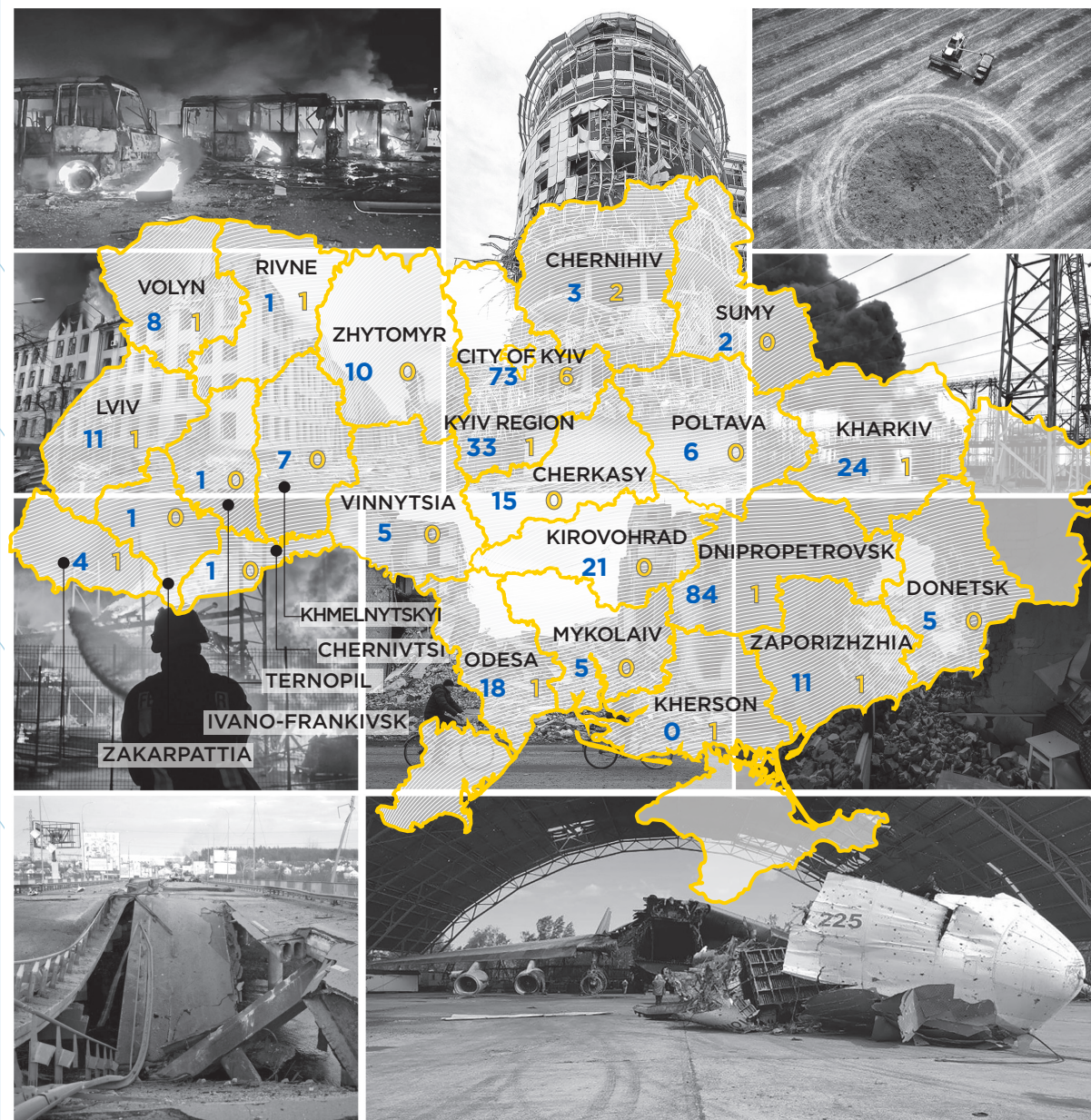
In 2022, the ICAC heard cases under the laws of **Ukraine, England, Hong Kong, Georgia, the Republic of Latvia, the Republic of Belarus**, as well as under the **United Nations Convention** on Contracts for the International Sale of Goods (1980, Vienna).



# ADMINISTRATION OF CASES

## ORIGIN OF THE PARTIES BY REGIONS OF UKRAINE

**During** the period from 01 January to 31 December 2022 the parties to cases **registered** by the ICAC were representatives from **23 regions** of Ukraine and the city of Kyiv.



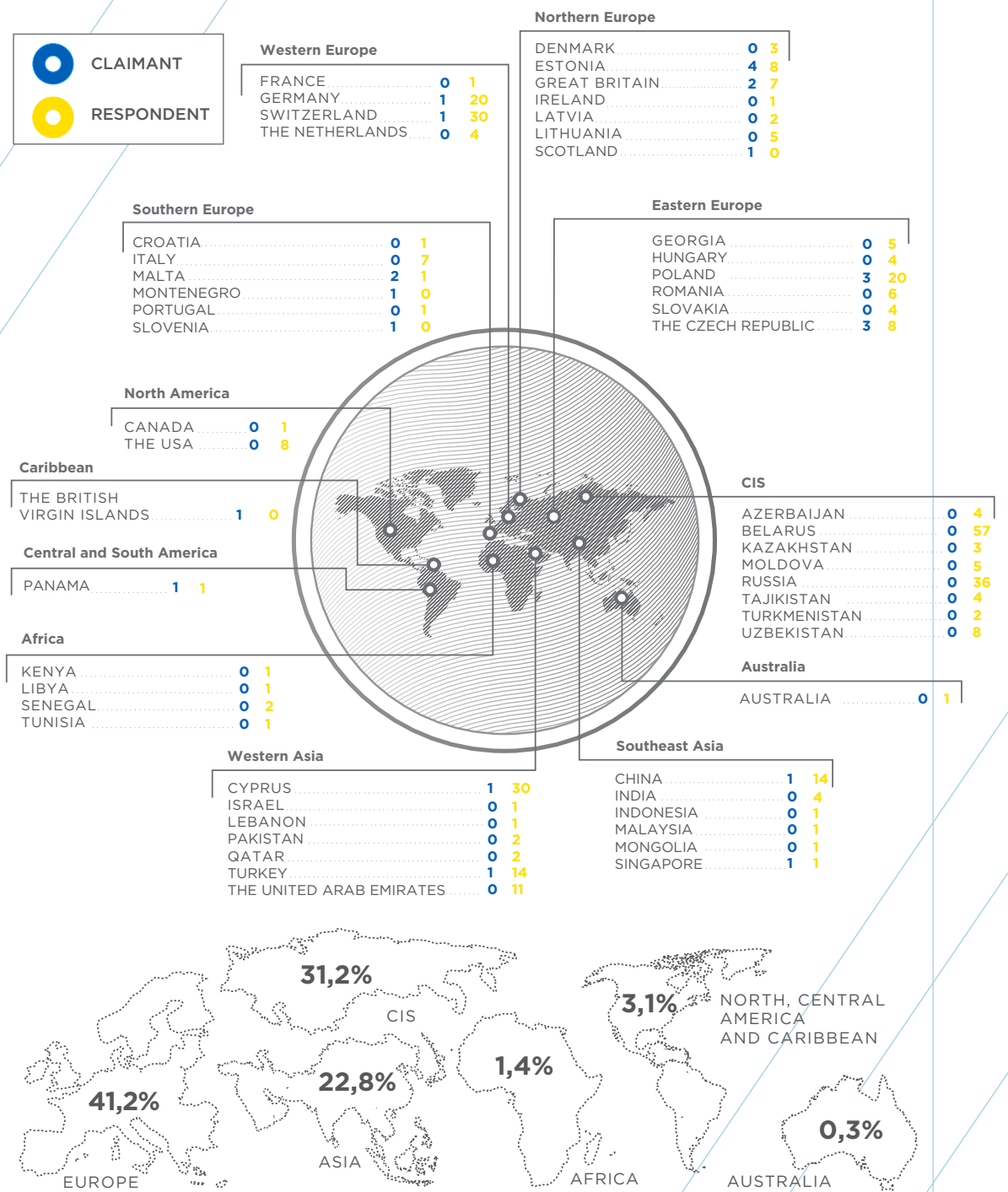
**CLAIMANT** **RESPONDENT**

Traditionally, most of the appeals were received from businesses of **Dnipropetrovsk region, Kyiv city and Kharkiv region**. In 2022, **Kyiv** and **Kirovohrad** regions were also among the top 5 regions whose businesses most often applied to the ICAC.

# ADMINISTRATION OF CASES

## FOREIGN PARTIES

**The period** from 01 January to 31 December, 2022, parties to cases, **registered** by the ICAC, were representatives of **49 countries: 42 foreign countries** and **7 countries** from the Commonwealth Independent States.



In 2022 most cases involved businesses from **Belarus, Russia, Cyprus, Switzerland, Poland, and Germany**.



# EXPANDING THE RANGE OF SERVICES

## PREREQUISITES

After Ukraine signed the UN Convention on **International Settlement Agreements** Resulting from **Mediation** (the "Singapore Mediation Convention") on August 07, 2019, which will promote the development of mediation in international commercial disputes by simplifying the recognition and enforcement of mediation agreements, the ICAC planned to introduce mediation and combined dispute resolution procedures.

However, such work became possible only after the Law of Ukraine "On Mediation" entered into force on December 15, 2021, in the development of which the ICAC representatives were also involved.

## WORK ON THE IMPLEMENTATION OF NEW SERVICES

In 2022, despite all the challenges faced by the institution, the Working Group consisting of the Vice President of the ICAC **Inna Yemelianova**, Member of the ICAC Presidium **Volodymyr Nagnybida**, and Advisor to the ICAC President **Olga Kostyshyna** developed and submitted for approval to the ICAC and the UMAC Presidiums the Mediation Rules and Annexes to them: Regulations on Mediation Fees and Peculiarities of Dispute Resolution Using the Combined Arbitration-Mediation-Arbitration and Mediation-Arbitration Procedures, as well as the Codes of ethics for the ICAC and the UMAC Mediators, which were approved by the decisions of the ICAC Presidium dated August 02 and December 07, 2022. In addition, the Working Group has developed a number of standard procedural documents to be used in the mediation process, as well as drafted amendments to the ICAC Rules.

On December 07, 2022, the Presidium of the ICAC approved the Register of Mediators, which will be in force from January 01, 2023 till January 01, 2028. The said Register includes 17 mediators from 5 countries.

On December 22, 2022, the **Presidium of the Ukrainian Chamber of Commerce and Industry** approved amendments to the ICAC and the UMAC Rules, which ensure the implementation of the combined Arbitration-Mediation-Arbitration and Mediation-Arbitration procedures.

# EXPANDING THE RANGE OF SERVICES

## PRESENTATION OF NEW SERVICES OF MEDIATION AND DISPUTE RESOLUTION THROUGH THE COMBINED PROCEDURES "ARBITRATION-MEDIATION-ARBITRATION" AND "MEDIATION-ARBITRATION"

On December 21, 2022, the ICAC and the UMAC presented to business and arbitration communities the expansion of the range of its services. Opening the event, **Mykola Selivon**, President of the ICAC and the UMAC, expressed his hope that the expansion of the service line would be positively received by the legal and business community. At the same time, Mr. Selivon noted that arbitration institutions will provide mediation services for all disputes, the mediability of which is defined in the Law of Ukraine "On Mediation", while only disputes falling within the competence of the ICAC and the UMAC will be settled by means of combined procedures.



**Inna Yemelianova**, Vice President of the ICAC, familiarized the participants with the main provisions of the Mediation Rules, namely the grounds for referring a dispute to mediation, the mechanism for initiating mediation, the parties' ability to manage the mediation process, and the grounds for termination of mediation.

**Volodymyr Nagnybida**, arbitrator of the ICAC, focused on the possibilities and advantages of the combined dispute resolution procedures Arbitration-Mediation-Arbitration and Mediation-Arbitration.

**Olga Kostyshyna**, Advisor to the ICAC President, emphasized the advantages of the ICAC as an institutional arbitration in dispute resolution through mediation and combined procedures.



# RESULTS OF THE ICAC'S 30-YEAR HISTORY

## TOP 5 FACTS ABOUT THE ICAC ACTIVITIES

- ◆ **12,057 cases** registered in 1992–2022
- ◆ the ICAC awards are enforced in **110 countries**
- ◆ The quality of the ICAC services is **confirmed by both the national Arbitration Quality Survey in Ukraine** and the international **Global Arbitration Review** rating as well as by the record low percentage of arbitral awards set aside by courts
- ◆ The ICAC is a member of the **IFCAI** and an observer at the **UNCITRAL**, and has concluded 20 cooperation agreements with foreign arbitration institutions
- ◆ Held **9 International Arbitration Readings in memory of Academician Igor Pobirchenko**, which were attended by more than **110 speakers** and over **1900 participants**. The Readings have become the most authoritative event in the field of international arbitration in Ukraine.

### Extended meeting of the ICAC Presidium “The 30th Anniversary of the ICAC: A Look at the Future through the Prism of History”



On June 10, 2022, at the invitation of the President of the ICAC, the expanded meeting of the Presidium of the ICAC was attended by representatives of the legislative, judicial and executive branches of government, arbitrators, honored guests and true friends of the ICAC.



Mykola Selivon, President of the ICAC, reminded the participants about the approaches and principles of the ICAC's work - namely, the cost, the speed and the efficiency - that had made the ICAC one of the leading arbitration centers in Eastern Europe, emphasized: "30 years ago the founders of the ICAC unmistakably defined the trends that were key to international arbitration. For example, not before recently the principle of judicial integrity has been introduced into the Constitution of Ukraine, while the ICAC had been adhering to this principle for 30 years. Thanks to this, the ICAC is the only jurisdictional body in Ukraine that has never been accused of corruption." Congratulating the ICAC on its anniversary year, Andriy Kostin, Chairman of the Verkhovna Rada Committee on Legal Policy, noted that the Parliamentary Committee will support the development of the legislative framework to expand the powers of the international commercial arbitration to consider investment disputes. Iryna Mudra, Deputy Minister of Justice of Ukraine, expressed her support for the plans of the ICAC and the deepening of cooperation between the Ministry of Justice of Ukraine and the ICAC to implement pro-arbitration legal policy.



# PLANS FOR 2023

The representatives of the Supreme Court noted the competence and professionalism of the ICAC arbitrators, as well as the high quality of the arbitral awards rendered by them.

**Rustam Kolesnyk**, Editor in Chief of Yurydychna Praktyka, presented to the members of the ICAC Presidium and the honorary guests the results of the first-ever survey of the quality of arbitration services among businesses and legal market, according to which 88% of respondents are fully or mostly satisfied with the work of the ICAC.

## The future ahead

For 30 years of operation, the ICAC has become self-sufficient - financially, infrastructurally and intellectually. Over the past years, the ICAC has demonstrated sustainable development and improvement of its activities notwithstanding the constant reform of the legal framework and state authorities.

The ICAC will continue to make every effort to strengthen its position among the leading international arbitration institutions and plans to become a key arbitration institution in Eastern Europe and in the post-Soviet countries.

## PLANS FOR 2023

Confidently and consistently implementing its plans announced in previous years, the ICAC will continue to pursue the course of further improvement of arbitration proceedings in 2023.

- ◆ In 2023 the ICAC will actively work on expanding the Recommendatory List of Arbitrators, in particular, it is planned to expand the geography of arbitrators, as well as to attract arbitrators with qualifications and experience in resolving investment disputes, disputes in the field of IT, e-commerce, construction, etc. In addition, in response to user requests, the number of arbitrators capable of resolving disputes under the English law will be increased. The new Recommendatory List of Arbitrators will be approved by the Presidium of the Ukrainian Chamber of Commerce and Industry at the end of 2023. For convenience, arbitrator specialization filters will become available on the ICAC's website.
- ◆ As Ukraine rebuilds, it will be necessary to attract as much foreign investment as possible. If the volume of foreign investments increases, the number of investment disputes will objectively increase, and, as it is well known, international arbitration is the most effective tool in resolving investment disputes. Therefore, on the instructions of the President of the ICAC, the Working Group was established to prepare a new version of the ICAC Rules and the legal registration of investment proceedings in the ICAC disputes, since the arbitration institution will focus its work on the possibility of considering investment disputes in the coming years.
- ◆ In November 2023, the ICAC plans to hold the Xth International Arbitration Readings in memory of Academician Igor Pobirchenko, which will be dedicated to the 100th anniversary of his birth. The Organizing Committee is actively working on the event agenda and the selection of speakers, in particular those who had the honor to work with the first President of the ICAC or were his students.