

Length of Arbitration and Fast Track Procedures in Ukraine



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General information _1

There are two international arbitration institutions in Ukraine:

- International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry (ICAC at the UCCI).
- Maritime Arbitration Commission at the Ukrainian Chamber of Commerce and Industry (MAC at the UCCI).

Adopted international treaties:

- New York Convention of 1960.
- European Convention on International Commercial Arbitration of 1961. Its application is limited mostly to ad hoc arbitrations conducted in Ukraine, however, it was also referred to in several ICAC awards with regard to the matters of jurisdiction.
- Commonwealth of Independent States Treaty on Settling of Disputes Related to Commercial Activity of 1992.

General information _2

- Popularity of international arbitration growth significantly in Ukraine. It is becoming common practice to resolve international commercial disputes by arbitration. International arbitration is becoming the best option for solving international commercial disputes, inter alia, taking into account that Ukrainian courts are distrusted because of their inefficiency and high level of corruption.
- Domestic and international arbitration are regulated by different legal instruments. The Law of Ukraine “On International Commercial Arbitration” was adopted on the basis of UNCITRAL. Domestic arbitration is not popular and is subject to sharp criticism.
- Arbitration Institute of the Stockholm Chamber of Commerce historically is often prescribed as competent dispute resolution authority. Other most popular forums for international arbitration are the following: International Court of Arbitration at the International Chamber of Commerce, Vienna International Arbitral Centre and London Court of International Arbitration.
- High case-load in GAFTA and FOSFA arbitration. Construction arbitration, including under FIDIC contracts, is not popular so far.

Main problems

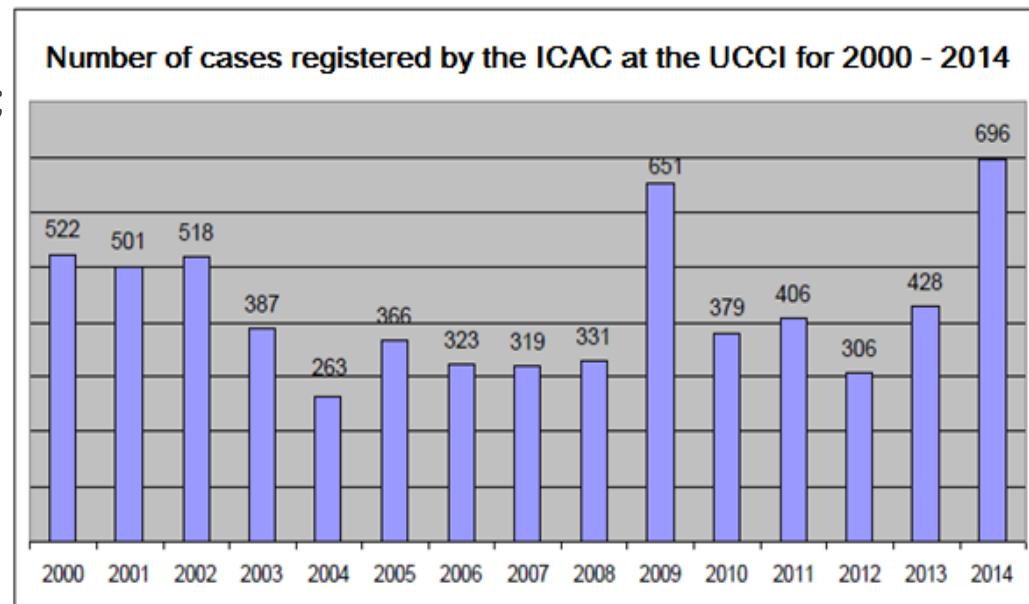
- Ukrainian law does not clearly determines the disputes which cannot be resolved by international commercial arbitration.
- Wide-spread use of guerilla and dilatory tactics by Ukrainian parties.
- High possibility of parallel proceedings and anti-arbitration injunctions.
- Hostile to arbitration attitude of Ukrainian courts.
- Enforcement of an international arbitral award in Ukraine is possible, but requires much efforts.
- Impossibility to enforce interim measures in support of a pending arbitral proceedings.
- Lack of separate expedited procedures.

However:

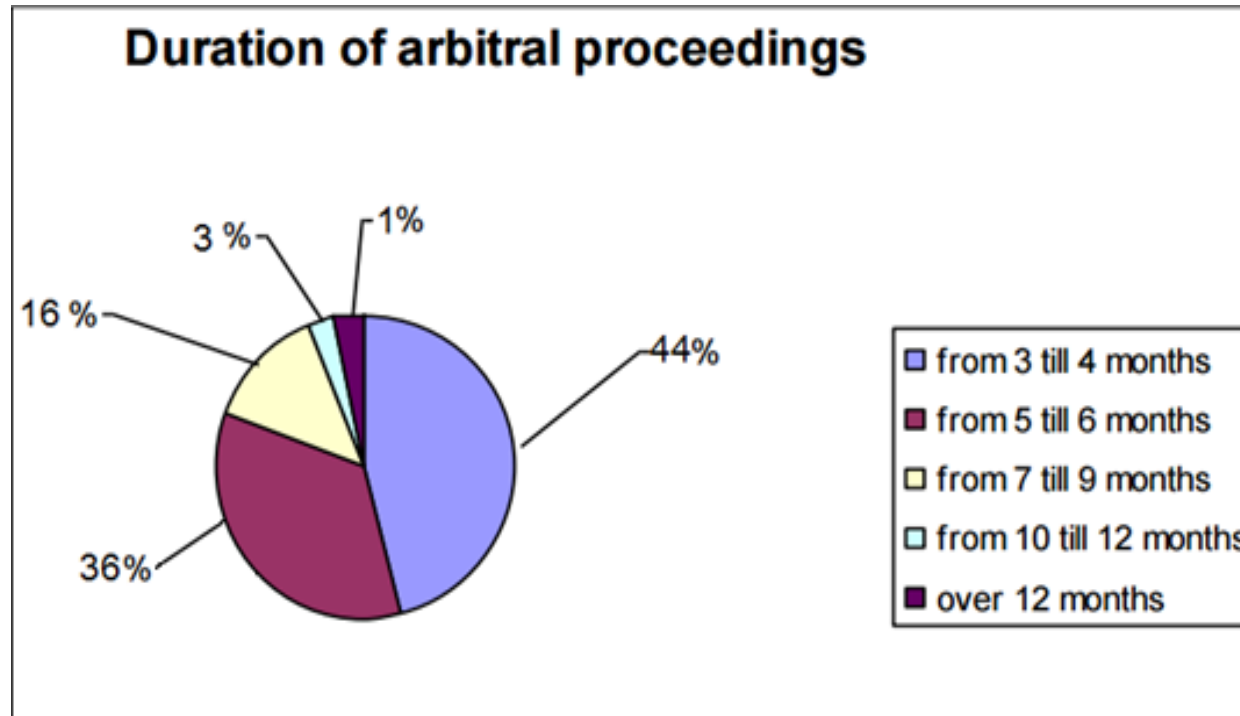
ICAC at the UCCI – expedited consideration of cases_1

In the year 2014 ICAC at the UCCI rendered 356 arbitral awards. Terms of those cases consideration constituted:

- from 3 till 4 months – 160 cases;
- from 5 till 6 months– 128 cases;
- from 7 till 9 months– 56 cases;
- from 10 till 12 months– 9 cases;
- over 12 months– 3 cases.



ICAC at the UCCI – expedited consideration of cases_2



Provisions of ICAC at the UCCI Rules_1

Rules of the ICAC at the UCCI prescribe:

- The duration of the proceedings in a case shall not exceed 6 months from the date of composition of the Arbitral Tribunal. If necessary, the ICAC Presidium may extend this period.
- The President of the ICAC, at the request of a party, if it considers the request to be justified, determine the amount and the form of the security for the claim. It is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, from a competent state court an interim measure of protection and for this court to grant such measure.
- After receipt of a duly filed Statement of claim, the Secretary General of the ICAC shall propose to the Claimant to communicate to the ICAC a full name of the arbitrator appointed by him as well as shall communicate the amount of the arbitration fee to be paid by the Claimant within 30 days from receipt of the proposal.

Provisions of ICAC at the UCCI Rules_2

- Upon receipt of the duly filed Statement of claim and after the full payment by the Claimant of the arbitration fee, the Secretary General of the ICAC within 10 days shall send to the Respondent the copies of claim materials, shall propose to the Respondent to communicate to the ICAC a full name of the arbitrator appointed by him as well as to submit in three copies his Statement of defense and documents supporting his objections to the Claimant's demands within a period of 30 days after receipt of the claim materials.
- A plea that the ICAC does not have jurisdiction shall be raised not later than the submission of the Statement of defense. If the Arbitral Tribunal rules as a preliminary question that it has jurisdiction, any party may request the Shevchenkovskiy District Court of Kyiv to decide the matter, which decision shall be subject to no appeal; while such a request is pending, the Arbitral Tribunal may continue the arbitral proceedings and make an award.

Provisions of ICAC at the UCCI Rules_3

- The parties are free to determine the number of arbitrators, including a sole arbitrator.
- If a challenge of arbitrator was not satisfied by ICAC Presidium, the challenging party may request the President of the Ukrainian Chamber of Commerce and Industry to decide on the challenge. While such a request is pending, the Arbitral Tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.
- The Arbitral Tribunal shall verify the progress in the preparation of the case materials and, if he deems necessary, take further measures to have the case materials prepared. If further measures are taken to prepare the case materials, the Arbitral Tribunal or the Secretary General of the ICAC according to its instructions shall set time limits for such measures to be carried out. If the Arbitral Tribunal finds the delay caused by either party to amend or supplement his claim or explanation thereof unjustified, it may impose on such party a payment of the additional costs and expenses incurred by the other party due to the delay.

Provisions of ICAC at the UCCI Rules_4

- The ICAC Secretariat shall ensure all documents in a case to be forwarded to the parties in time.
- The parties are free to agree on the procedure to be followed by the Arbitral Tribunal in conducting the proceedings. The parties may agree on arbitration of their dispute to be conducted on the basis of written materials only, without holding an oral hearing. Subject to any contrary agreement by the parties, the Arbitral Tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials only. However, unless the parties have agreed that no hearings shall be held, the Arbitral Tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.

Provisions of ICAC at the UCCI Rules_5

- The invitation of a third party may only be requested before the end of the period for the Statement of defense to be submitted.
- If, without showing sufficient cause, the Respondent fails to communicate his Statement of defense or any party being properly notified of the time and place of the hearing fails to appear at the hearing or to produce documentary evidence, the Arbitral Tribunal may continue the proceedings and make the award on the evidence before it.
- The ICAC Secretariat shall forward the arbitral award to the parties within 20 days from the date of rendering of the award. The ICAC President may, if it considers it necessary owing to exceptional circumstances, extend this term.

Duration of arbitral proceedings in some other countries*

Poland

Between 6 and 24 months.

**Czech
Republic**

About a year. The 2012 Rules of the Arbitration Court offer 4-months fast track arbitration.

Lithuania

Usually 7 months.

Hungary

Within 8 to 12 months.

Romania

About a year.

Russia

Within 6 to 18 months.

*According to IBA countries' guides

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We are looking forward to our future cooperation!

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Thank you!