UKRAINE ARBITRATION - FRIENDLY

2013- 2014 STATISTICAL AND ANALYTICAL REPORT

AAA/ICDR HKIAC LCIA CIETAC SIAC DIS SCC DIAC ICC HKIAC Vienna Rules ICAC UCCI Vienna Rules UNCITRAL Swiss Chambers LMAA CRCICA SCC DIAC SCC LCIA ICC CIETAC DIS HKIAC AAA/ICDR ICAC UCCI AAA/ICDR SIAC

Ukraine. Arbitration-friendly jurisdiction: statistical and analytical report, 2013-2014. Konstantin Pilkov . – Kyiv: Cai & Lenard, 2014. – 27 pages.

This statistical and analytical report is based on the study of the practice of Ukrainian common, commercial and administrative courts in matters of recognition of arbitration agreements and recognition and enforcement of arbitral awards. The study covers 2013 and the first half of 2014.

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Introduction

Ukraine has a reputation of a country with an imperfect justice system which also creates the image of a jurisdiction unfriendly to arbitration, although refusals to grant the leave for enforcement of arbitral awards in Ukraine are relatively rare - 10% and 18% of all requests considered in 2013 and 2014 respectively.

In matters of setting aside arbitral awards Ukraine only seeks to enter the league of countries with arbitration-friendly court practice (20-30% of arbitral awards are successfully challenged, while in Switzerland only 6.5%[1]).

In general, as shown by the practice analyzed in this study, Ukrainian courts have developed a friendly approach to arbitration and do not create significant barriers for arbitration agreements to be recognized and arbitral awards to be recognized and enforced. However, as in previous years, in 2013-2014 practice of economic courts still remains rather unfriendly to arbitration. On the other hand, the progress of local common courts (they are empowered to decide on requests for enforcement) in their adherence to the arbitration-friendly approach is impressive.

Common courts rarely refuse to enforce arbitral awards. At the same time, the further stages of the enforcement usually became time consuming. However, as problems of enforcement are peculiar to all court decisions and do not show any specific negative approach to arbitral awards, we do not analyze them in this report. It is worth mentioning that the Ukrainian courts grant interim measures in support of enforcement of arbitral awards in rare cases which certainly does not help the enforcement. At the same time, if compared with 2011-2012, in recent years there has been some progress in this matter - the courts have begun to impose seizure on the debtor's property in support of the enforcement of arbitral awards.

This report is a summary of the research of court practice in matters related to international commercial arbitration. The detailed overview of other findings of the study will be presented in subsequent publications. While preparing this report, we did not tend to provide any guidance or recommendations to arbitration practitioners. We believe our colleagues are aware of the risks and specific aspects of the enforcement procedure in Ukraine. The data presented in this report may only help in assessment of the materiality of those risks. We hope this report will be useful to judges, public officers, especially those of state tax service, scholars and our colleagues from other countries[2].

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[1] Felix Dasser, *International Arbitration and Setting Aside Proceedings in Switzerland - An Updated Statistical Analysis*, in 28 ASA Bulletin 1/2010

[2] The report is published in Ukrainian, English and Russian.

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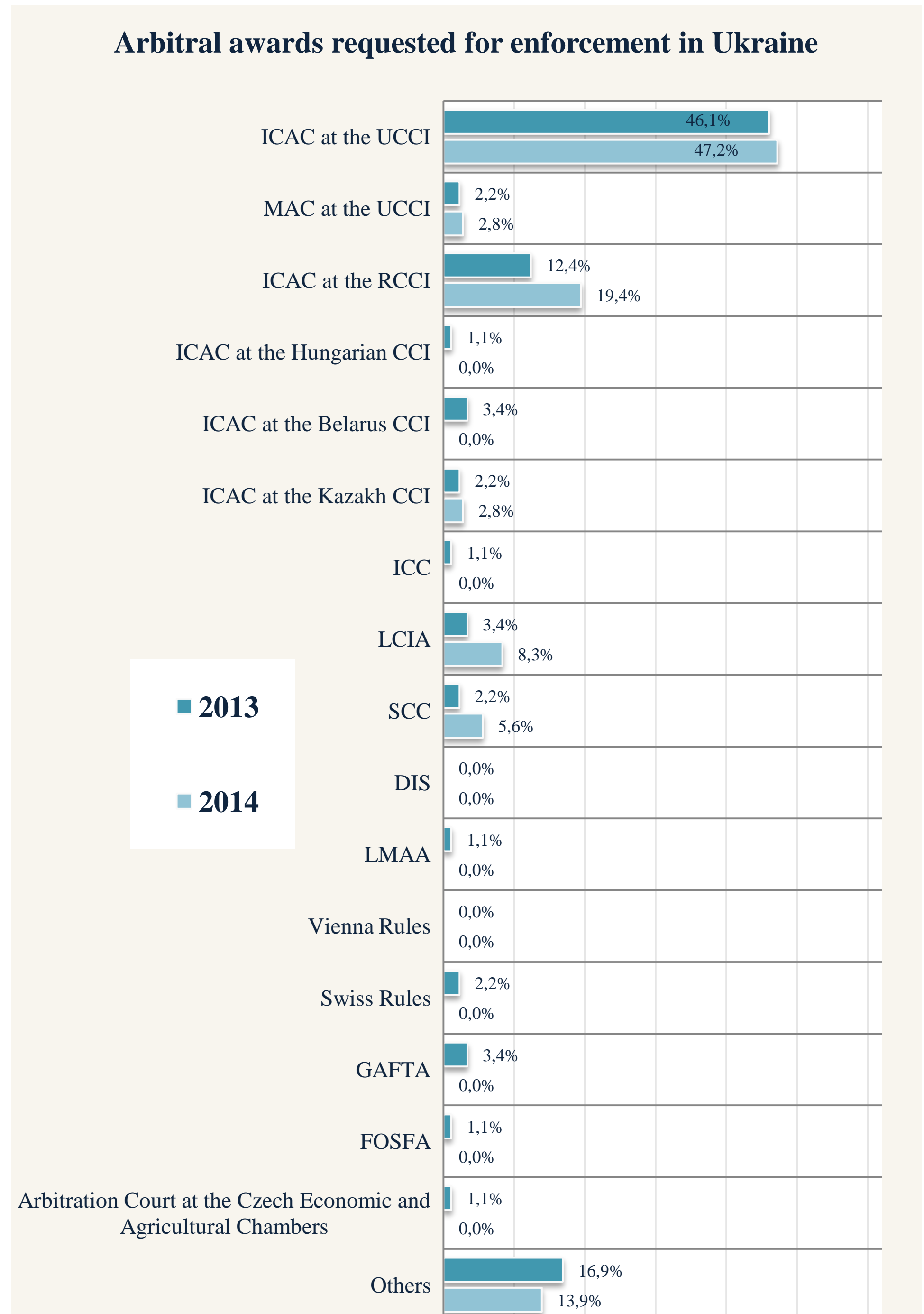
I. Statistics of recognition and enforcement of arbitral awards

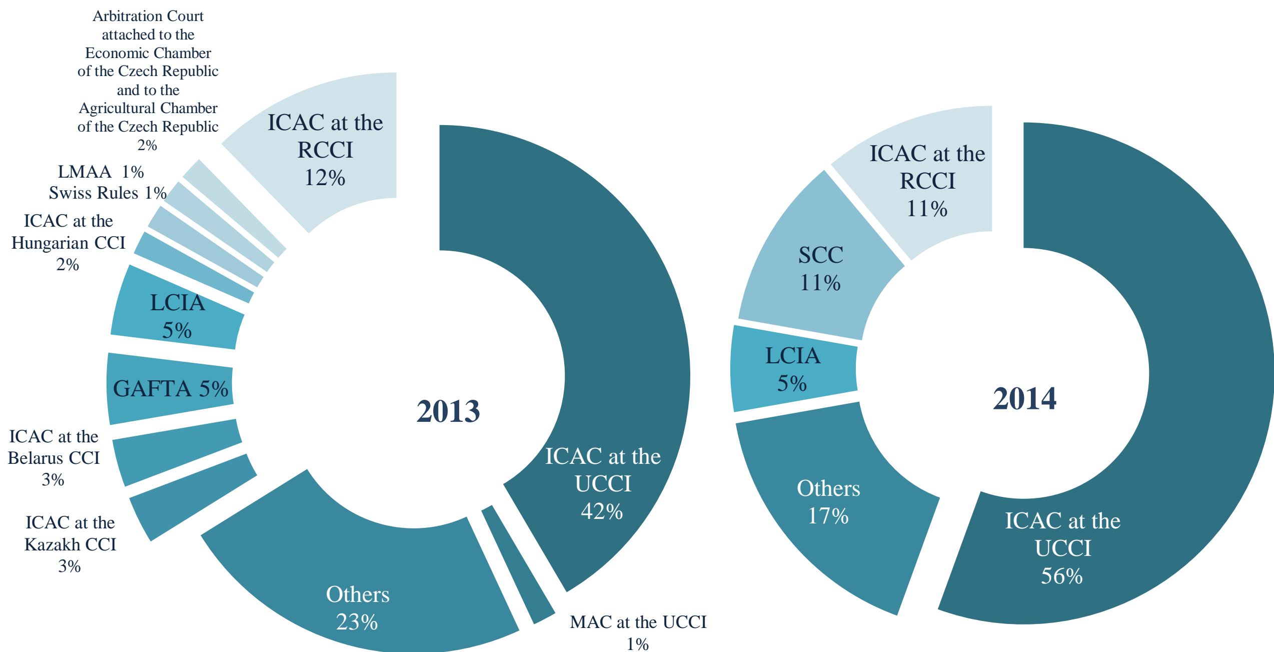
An arbitral award shall be recognized as binding and enforced in Ukraine upon application to the competent court as it follows from paragraph 1 of Article 35 of the Law of Ukraine "On International Commercial Arbitration".

Local common courts of Ukraine are the bodies authorized to decide on enforcement of arbitral awards. A decision on enforcement is the ground for an enforcement document to be issued by the same court.

The specified algorithm meets the requirements of the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) and the UNCITRAL Model Law on International Commercial Arbitration 1985, and therefore complies with the international practice. The Law of Ukraine "On International Commercial Arbitration" has contained in the appendixes the Regulations of the International Commercial Arbitration Court (ICAC at the UCCI) and the Maritime Arbitration Commission (MAC at the UCCI) at the Ukrainian Chamber of Commerce and Industry. That factor along with some other factors contributed to the obtaining of a special status of these arbitration institutions in Ukraine. However, despite the dominance of the share of the ICAC at the UCCI in the number of cases involving Ukrainian entities, local courts also deal with the awards rendered by other arbitration institutions or in *ad hoc* arbitration.

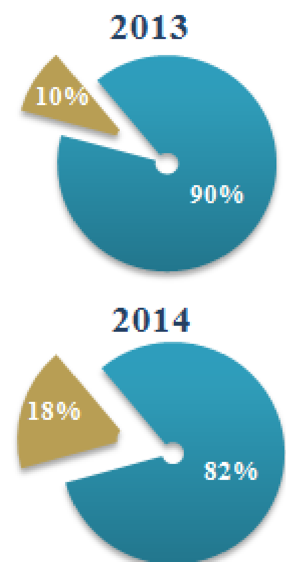


Arbitral awards left for enforcement[3]



What are the reasons for refusing the enforcement of arbitral awards?

Local common courts rarely refuse to grant the leave for enforcement of arbitral award (about 10% of the requests considered in 2013 and 18 %[4] in 2014) (*see the chart on the right*).



The most common reason for refusal to enforce arbitral awards in 2013-2014 were the following:

- the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present the case;
- the arbitral award is set aside on the date of requesting its enforcement;
- the arbitral procedure was not in accordance with the agreement of the parties[5].

In contrast with 2011 and 2012, in 2013 and 2014 refusals of granting the leave for enforcement on

[3] Statistics of local common courts.
[4] Those cases in which courts refused to grant the leave for enforcement because debtors had paid the debt voluntarily, have not been counted here.
[5]Cases of refusal on this ground are the most controversial. *E.g.*, Octoberskiy District Court of Poltava in its ruling of 10 June 2014 refused to grant the leave to enforce the LCIA award, issued by the sole arbitrator on the ground that the arbitration agreement contained the reference to an «arbitration panel», and, according to the court, *"the word "panel" always refers to the collegial body. There is no linguistic reason to believe that the terms "arbitration panel" and "arbitration tribunal" have similar* meaning "(case No. 1622/9934/2012).

the grounds of non-compliance by the parties with the pre-arbitration settlement procedure stipulated by the agreement of the parties became rare. Courts mostly took the approach that, in accordance with the Decision of the Constitutional Court of Ukraine of 9 July 2002 No 15-рп /2002 in the case upon the constitutional petition of the limited liability company "Trading house "Campus Cotton Club" for official interpretation of the provisions of Article 124 of Constitution of Ukraine (case on pre-trial settlement of disputes) provision of Article 124 of the Constitution of Ukraine concerning the inclusion into the jurisdiction of courts of any legal relationship arising in the state, in terms of the constitutional petition must be understood so that the right of a person (a citizen of Ukraine, foreigner and stateless person, as well as a legal entity) to apply to the court for resolution of a dispute cannot be restricted by law and bylaws. Establishment of any out-of-court dispute settlement procedures in law or agreement is not a limitation of jurisdiction of courts or limitation of the right to judicial protection. Thus, the absence of negotiation agreed by the parties in the contract in the event of a dispute relating to the non-fulfillment or improper fulfillment of obligations under the contract is not an obstacle to access to the courts. The same obviously applies to arbitration[6].

However, among the cases of refusal to enforce arbitral awards in 2013 were those wrongly justified by such facts:

- an arbitration tribunal did not submitted materials of an arbitration case to the competent court[7];
- a representative office of a debtor's non-resident in Ukraine is not liable for its debts[8];
- the debtor is in bankruptcy[9]. This position does not comply with the law, which stipulates the list of grounds for refusal, and is contrary to the practice of economic courts in bankruptcy proceedings, where the arbitral awards are recognized as the confirmation of the undisputed claims to the debtor only if they are left to enforcement in Ukraine (*see Section III*). If a local common court refuses to grant leave to enforce an award due to the institution of the debtor's bankruptcy proceedings, the court makes the creditor reach a stalemate because the economic court might refuse to recognize the claims confirmed with the award which is not left for enforcement in Ukraine. In 2013-2014, the practice changed: in the majority of cases the courts understood that "*the law does not envisage the institution of a bankruptcy proceeding against a debtor as a ground for refusal to grant the leave to enforce a foreign judgment*"[10].

In 2014, courts sometimes refused to grant leave to enforce an arbitral award on the basis of lack of evidence of the proper notice of a defendant of arbitration proceedings, although the party against whom the award was made did not raise that question in the court[11].

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[6] The following court decisions might serve as examples of taking this approach by common courts: ruling of the Court of Appeal of Kyiv of 5March 2013 (case No. 22-c /796/2930) and the ruling of the High Specialized Court of Ukraine for Civil and Criminal Cases of 29 January 2013.

[7] Courts sometimes mistakenly apply the procedure for consideration of applications for the issuance of a writ of enforcement of a domestic arbitral award to requests for leave to enforce international arbitral awards. *E.g.,* Shevchenko District Court of Kyiv in its ruling of 5 February 2013 refused to issue a writ of enforcement of the arbitral award with reference to clause 1(8) of Art. 389-10 of the Code of Civil Procedure (the CCP) because the ICAC at the UCCI refused to deliver materials of case AC No. 127y /2012 to the court (case No. 2610/29450/2012).

[8] *E.g.,* the ruling of Suvorov District Court of Odessa of 11 March 2013 (case No. 1527/19453/12) which was canceled by the Court of Appeal of Odessa Region (ruling of 18 June 2013).

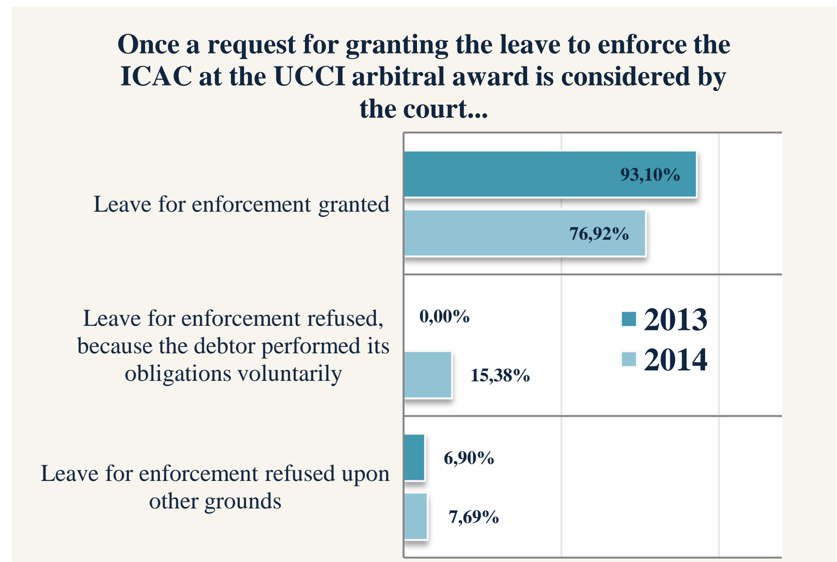
[9] Some courts having established this fact mistakenly address the case to be considered by commercial courts in bankruptcy proceedings (as did Novoukrainsky District Court of Kirovograd Region (ruling of 9 October 2013, case No. 396/2625/13- c)).

[10] *E.g.,* ruling of the Court of Appeal of Rivne Region of 14 February 2013 (case No. 2-1715/22191/12).

[11] *E.g.,* ruling of the Central District Court of Nikolaev of 17 April 2014 (case No. 490/8342/13-ц).

ICAC at the UCCI awards

Statistics of granting leave for enforcement of the ICAC at the UCCI arbitral awards by local courts in 2013-2014 was impressive: when requests are considered by the courts of first instance (*i.e.,* not left without consideration, and the proceedings upon the request is not closed), in 2013 the claimant was granted with the leave to enforce in 93% of all cases; in 2014 the leave was granted in almost 77% of all cases. It should be noted that in 2014 when leave for enforcement was not granted, this was largely due to the fact that the award was executed voluntarily (in 2013 the courts usually closed the proceedings in such a situation). It means that almost 91% of requests satisfied in 2014.



Abandonment of the request without consideration and other obstacles in enforcement of arbitral awards

Compared to the refusal of the enforcement of arbitral awards, more common are situations in which a request for enforcement is left without consideration because required documents have not been provided, or because of the provision of documents which do not comply with the law or other procedural mistakes. In some cases, local common courts have pointed to as a reason for leaving a request without consideration the lack of evidence of proper notice to the party against whom an award was invoked. Courts usually are laying on claimants the duty to submit evidence of proper notification of a defendant of the arbitration proceeding together with the request.[12]

Does not help to make the situation easy for claimants also paragraph 15 of the Resolution of the Supreme Court of Ukraine of 24 December 1999 No. 12 "On the practice of courts in matters of consideration of requests for recognition and enforcement of foreign judgments and arbitral awards and while setting aside awards rendered by international commercial arbitration in Ukraine" which indicated that, if the document submitted as evidence of proper notice of the party did not indicate how and when that party was served and the party denied that it was served, the court should investigate the actual circumstances of the notice on the basis of other evidence and, if necessary, request from the court (arbitration) that adopted the decision (award) and inspect documents

[12] This practice was also supported by the High Specialized Court of Ukraine for Civil and Criminal Cases, which in the ruling of 11 September 2013 stated: "*The reference made in the ruling of the court that the decision of the London Court of International Arbitration of 6 January 2011 contains information about the official confirmation of the debtor's proper notification of the arbitration proceedings and the receipt of all necessary documents, can not be taken into account, since Art. 394 Code of Civil Procedure of Ukraine requires certain documents to be submitted as evidence of the fact that the party against whom the decision of a foreign court was entered, and who did not participate in the proceeding, was duly notified of the time and place of the proceeding*".

confirming the notification according to the law on which the proceedings were conducted. In fact, the Resolution requires such *prima facie* evidence of proper notice to be submitted by the party seeking enforcement.

Finally in 2014 the High Specialized Court of Ukraine for Civil and Criminal Cases left for revision by the Supreme Court of Ukraine of the case in which the leave for enforcement was refused because of the party's failure to provide *prima facie* evidence of notification of the party against whom the award was entered of the arbitral proceedings. The Supreme Court of Ukraine had to ultimately decide how to apply the rules of clause 2(2) of Art. 396 of the CCP (involving failure to notify as a reason for refusal, which the court applies without any statement on the matter from a party) and the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards (according to which the party against whom the arbitral award was entered without proper notification of the proceeding should refer to that fact for the court to have the ground for requesting evidence of proper notification). As a result, the Supreme Court of Ukraine (in the ruling of 23 April 2014) and, as a consequence, the High Specialized Court of Ukraine for Civil and Criminal Cases (in the ruling of 28 May 2014) made it clear that *"... clause 2(2) of Art. 396 of the CCP may be applied only if the international treaties do not apply, as well as that in the given case that matter on hand was regulated by international treaties*". As international treaties do apply, "***the burden of proof of improper notification of the arbitral proceeding lies on the party objecting recognition of a foreign award in Ukraine***".

Among other barriers to the enforcement of arbitral awards in 2013-2014 were mistaken redirections of requests by courts to other bodies, in particular to commercial courts. Common mistake was filing requests for enforcement to the local common court at the location of the arbitration (ICAC at the UCCI) instead of the court at the location of the debtor. The courts rightfully returned those requests in order for them to be submitted to the court at the debtor's location.

Assignment of benefits of arbitral awards

The question of whether a request for leave to enforce an arbitral award might be submitted by other person than the one in whose favor the award was made, if that person was assigned with benefits of the arbitral award, is still not settled in the jurisprudence. In 2014, the High Specialized Court of Ukraine for Civil and Criminal Cases canceled the decision of the lower court on leave to enforce the award and directed the case to the court of first instance for a new hearing, drew attention to the fact that "*the court of first instance ... did not find out whether the request was filed by the same legal entity which was a party to the arbitration agreement*".[13] In our opinion, this phrase indicates a rather formal approach demonstrated by the cassation court in deciding on this important matter.

Courts allow claimants to be replaced in already instituted enforcement proceedings.[14] According to Ukrainian civil law (Article 512 (1) of the Civil Code of Ukraine) the assignment of creditor's rights is one of the ways of substitution of a creditor in civil relations. The creditor's rights can be assigned unless otherwise is determined by the law or contract (Art.512 (3) of the Civil Code) or the relations are closely connected with the creditor's persona (e.g. in case of personal injury) (Art. 515 (1) of the Civil Code). Once assignment took place, it serves as a ground for procedural assignment which means that the assignee obtains the right to apply for enforcement of an arbitral award. The procedure

[13] Ruling of the High Specialized Court of Ukraine for Civil and Criminal Cases of 29 January 2014.
[14] Ruling of Zavodskiy District Court of Dneprodzerzhinsk City of Dnipropetrovsk Region of 15May 2014 (case No. 2-k-6/11), the ruling of the Central City District Court of Krivyi Rig, Dnepropetrovsk Region of 10 January 2014 (case No. 216/6807/13-ц).

of granting the leave for enforcement being one of the civil court procedures should be considered as regulated by general rules of civil procedure, in particular by Art. 37 of the CCP which allows legal succession and substitution of a party with its legal successor or, in case of assignment of rights in disputable relations, with an assignee. This rule is most certainly applicable to proceedings of recognition and enforcement of foreign and international arbitration awards. Hypothetically, if an application for leave for enforcement of an arbitral award was initially submitted by a party to arbitration that applicant could be substituted with the assignee upon a respective application and furnishing the court with evidence of assignment of rights in contractual or other relations which were subject of arbitration proceedings. Thus, as substitution of an applicant is possible during the court proceedings, we do not see any legal obstacle to that substitution to take place before submission of an application for enforcement. At least Ukrainian procedural law does not prohibit that.

Deferral and granting the right to pay by installments, change and establishing the manner and procedure of the enforcement

The practice of the courts in relation to the right of the court to defer the enforcement or allow to pay a debt by installments, change or establish the manner and procedure of enforcement of an arbitral award is not uniform.

The High Specialized Court of Ukraine for Civil and Criminal Cases in its Resolution of 15 February 2012 stated that Article 373 of the Code of Civil Procedure of Ukraine (the CCP) envisages the right to decide on suspension or deferral of enforcement, modification or setting manner and procedure of enforcement of the court decision, but not an arbitral award, because the arbitral award is final and signifies completion of any arbitration proceedings. Article 373 of the CCP provides that the power to change the manner and order of enforcement of a court’s decision is vested in the court that issued an enforcement document. According to the requirements of Article 368 of the CCP, issues related to enforcement of a decision should be resolved by the court that decided a case on the merits. Thus, the issue of changing the manner and procedure of enforcement of a decision is a responsibility of the court (arbitral tribunal) which adopted the decision on the merits, i.e. the arbitral award, but not a court ruling on the leave for its enforcement.

This approach of the cassation court, however, did not prevent the courts in some cases from changing the manner and procedure of enforcement of arbitral awards[15] and granting the right to pay by installments[16].

At the same time, some courts take the position that a decision to grant the leave for enforcement of an arbitral award is not the one that might involve deferral of enforcement[17].

In 2013, the High Specialized Court of Ukraine for Civil and Criminal Cases in the ruling of 23 January 2013 cemented its position that: "*Taking the decision to collect the debt [...], the court of first instance and the court of appeal essentially changed the decision of the international arbitration court, as London court of arbitration awarded to oblige to pay [...] the amount of debt, thus the courts violated the requirements of current legislation and rules of international law, as courts of Ukraine do not have the power to change the decision of a foreign court*". This approach of the

[15] *E.g.,* Ternopil City District Court of Ternopil Region in its ruling of 22 January 2013 (case No. 1915/20615/2012) changed the manner of enforcement of the ICAC at the UCCI award from obliging the debtor to pay the debt to the debt collection.
[16] Ruling of Desnyanskiy District Court of Kyiv of 1 March 2013 (case No. 2-к/2603/5016/11).
[17] Ruling of Kirov District Court of Kirovograd of 4 March 2014 (case No. 404/11146/13-ц).

cassation court creates the risk of reversing the enforcement of many arbitral awards in Ukraine, which obliged debtors to pay certain amounts according to the recognized international practice, while the corresponding rulings of Ukrainian courts granted the collection of these amounts from debtors.

Suspension of the proceedings for leave for enforcement till the settlement of the case for setting aside the arbitral award

Article 36 of the Law of Ukraine "On International Commercial Arbitration" provides for a right of a court in which enforcement of an arbitral award is sought, to adjourn its decision, if an application for setting aside or suspension of the award has been made to a court competent to decide on setting aside the award. Filing of motions for adjournment often takes place. The CCP contains a list of cases when a court is obliged or has the right to suspend proceedings (adjourn its decision). The impossibility to resolve the case prior to resolution of the other connected civil case is a mandatory ground for suspension of the proceeding. However, the Ukrainian courts almost equally support the need to suspend the proceedings till the final decision on setting aside the arbitral award[18] and the opposite position that there is no such need (in these cases, according to the courts, a request for recognition and granting leave for enforcement of an arbitral award is not related to the consideration of a request for setting aside of the same arbitral tribunal, and even if the award is set aside this can only be a reason for the closure of the enforcement proceeding[19]). The submission of a request for setting aside of an award all the more may not serve as a ground for refusal of granting the leave for enforcement[20].

Courts do not interfere in arbitration, and even starting to help

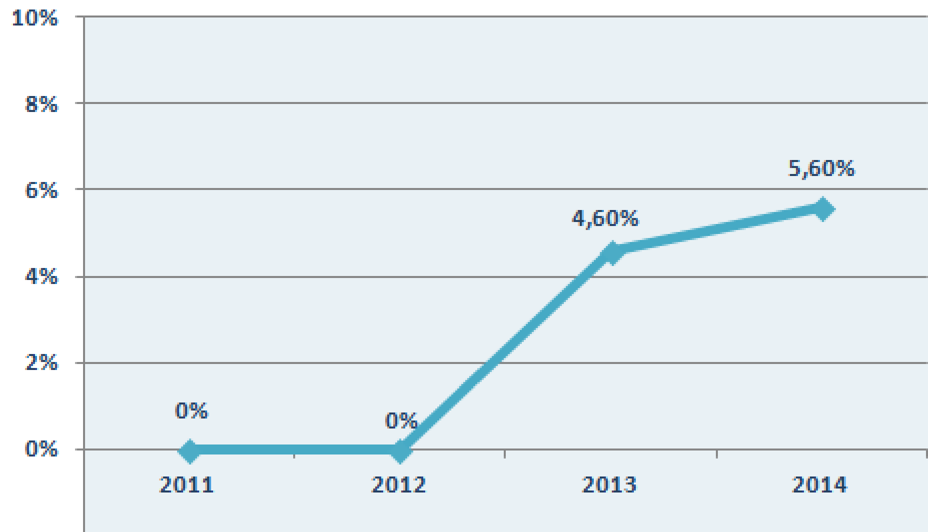
In 2011 – 2012, some claims were filed to Ukrainian courts in order to compel arbitration institutions to resume arbitral proceedings. The vast majority of these claims have been submitted due to the difficult situation for the parties, in whose favor awards were rendered, when the awards were set aside or courts refused the enforcement. Arbitral tribunals refuse to restore proceedings as the restoration is not envisaged by the rules. The courts also believe that they have no legal grounds for interference with arbitration. In 2013-2014, common courts did not deal with this category of cases, and did not interfere in the activities of arbitration courts on other grounds[21], as well as did not limit the right of parties to go to arbitration.

At the same time, courts are not inclined to secure the enforcement of arbitral awards.[22] Courts often refer to the party's failure to prove the threats to the enforcement.[23] The courts also require claimants to specify the property on which they ask to impose security measures, its value, as well as to provide

[18] For example, the ruling of the Court of Appeal of Ivano-Frankivsk Region of 2 July 2013 (case No. 0917/149/2012).
[19] Ruling of Suvorovskyi District Court of Odessa of 11 March, 2013 (case No. 1527/19453/12).
[20] Ruling of the High Specialized Court of Ukraine for Civil and Criminal Cases of 29 May 2013.
[21] An example of such non-interference is the ruling of Shevchenkivskiy District Court of Kyiv of 3 June 2014 (case No. 761/15766/14-ц), in which the court refused to take action to ensure the claim by prohibiting arbitrators of the ICAC at the UCCI to decide on the competence of the arbitral tribunal and / or to make an arbitral award.
[22] Among interesting exceptions is the ruling of Bilotserkivskyi City District Court of Kyiv Region of 11June 2014 (case No. 357/7546/14-ц), which seized the property of the debtor before the ruling on granting the leave to enforce the ICAC at the UCCI award was entered.
[23] Sometimes courts even return requests to claimants on that ground, as Stryiskyi City and District Court of Lviv Region in its ruling of 10 September 2013 did (case No. 456/4823/13-ц).

evidence of that property belongs to the debtor[24]. This led to the situation in which claimants usually not even made an application for security measures.

Appellate courts tend to confirm the legality of refusals by courts of first instance[25], and in those rare cases when measures had been taken by courts of first instance courts of appeal confirm their legality as well[26].



It should be recognized that the situation in 2013-2014 is significantly better than that in 2011, when there was not any court decision on interim measures found (either before or during arbitral proceedings or pursuant to an order of an arbitral tribunal on interim measures, or at a stage of enforcement).

In addition, in some cases courts satisfy requests of the State Enforcement Service and apply specific measures aimed at securing the enforcement[27].

[24] Ruling of Leninsky District Court of Dnipropetrovsk of 20 September 2013 (case No. 205/6695/13-ц).

[25] *E.g.*, ruling of the Court of Appeal of Kyiv Region of 20 June 2013 (case No. 368/675/13-ц).

[26] *E.g.*, ruling of the Court of Appeal of Kyiv of 18 April 2013 (case No. 22-ц/796/4015/2013).

[27] *E.g.*, according to the ruling of Rivne City Court of Rivne Region of 30 September 2013 (case No. 569/17647/13-ц) a CEO of a company was bared from traveling outside of Ukraine until the fulfillment of obligation of the company according to the ICAC at the UCCI award. According to the ruling of October District Court of Dnipropetrovsk of 10 December 2013 in case No. 201/2266 /13-ц similar restrictions were established with respect to a private entrepreneur Ukraine until he paid the debt according to the ICAC at the UCCI award.

II. Setting aside arbitral awards

The quantity of applications for setting aside arbitral awards considered by courts is insignificant if we compare it to the quantity of the awards of the ICAC at the UCCI left for enforcement[29].

In 2013-2014, courts generally refused to set aside awards (17% of the awards were challenged successfully in 2014, 83% of the requests for setting aside were dismissed, in 2013 the figures were respectively 40% and 60%).

In most cases when awards were set aside the reasons for setting aside appeared to be questionable.[30] Even if a local court sets aside an award the court of appeal carefully reviews the case and usually cancels the decision on setting aside the award.

How many awards of the ICAC at the UCCI were left for enforcement and set aside?[28]

in 2013

1 : 9

award set aside — **awards left for enforcement**

in 2014

1 : 11

award set aside — **awards left for enforcement**

In the vast majority of cases the court refused to set aside arbitral awards, which were challenged based on the following circumstances (*most popular reasons invoked by a party to challenge an award*):

- circumstances which, in the opinion of applicants, indicate that the arbitral procedure was not consistent with the agreement of the parties;
- circumstances which, in the opinion of applicants, indicate that an award is contrary to the public policy of Ukraine.

[28] This does not mean that every tenth or every twelfth ICAC at the UCCI award was canceled by a competent court. Not every ICAC awards was to be enforced in Ukraine, and not all of those which were to be enforced in Ukraine required leave for enforcement (many ICAC awards were voluntarily performed by parties). Thus, the ratio of effective awards to canceled ones is significantly higher.

[29] The study did not reveal any award rendered by any other arbitral tribunal seated in Ukraine and requested for enforcement in Ukraine. There have been no other arbitration institution except for the ICAC and the MAC at the UCCI which awards could fall under the jurisdiction of Ukrainian courts.

[30] Ruling of Shevchenkivskyi District Court of Kyiv of 15 January 2013 on setting aside the award of the ICAC at the UCCI of 13 February 2012 in case AC No. 321п /2011 was based on the following: the court concluded that the arbitration court, recognizing its jurisdiction according to the arbitration agreement, which envisaged the disputes to be decided by "Arbitration Court at the Ukrainian Chamber of Commerce Kyiv", actually interpreted the contract without being authorized to interpret the contract by the parties. At the same time, as can be seen from the ruling, the court did not find out whether the party that requested setting aside participated in the arbitration proceedings, and if yes whether that party expressed any objections to the arbitral tribunal as to its competence.
On the same grounds as in the previous case was based the ruling of Shevchenkivskyi District Court of Kyiv of 13 March 2013 on setting aside the award of the ICAC at the UCCI of 18 March 2011 in case AC No. 212г / 2010 (the name of the arbitral institution indicated in the agreement was "International Commercial Arbitration Court at the Chamber of Commerce in Kyiv").
Resolution of Shevchenkivskyi District Court of Kyiv of 8 May 2014 on setting aside the award of the ICAC at the UCCI of 22 February 2013 in case AC No. 185в /2012, which was issued on the terms agreed by the parties in the settlement agreement. The court set aside the award as it came to the conclusion that the arbitral tribunal did not invite all interested persons to participate in the proceeding. According to the court the arbitral tribunal was also obliged to "*evaluate the terms of the settlement agreement, and if they violate the law or violate the rights, freedoms and interests of others, it had to refuse to recognize the settlement agreement and should continue the arbitration proceeding*".

The courts usually dismissed allegations concerning excess of competence by an arbitral tribunal if a party did not objected the excess during the arbitral proceedings.[31]

Challenging rulings on lack of jurisdiction

In 2013-2014, in contrast to previous years courts did not face requests for setting aside rulings of arbitral tribunals on termination of the proceedings based on tribunals' lack of jurisdiction over disputes. In our opinion, should those question arise the most well-grounded position would be that according to paragraph 5 of Article 389-1 of the CCP an arbitral award, if the place of arbitration is in Ukraine, could be challenged before a competent court by the parties in accordance with international agreements of Ukraine and / or the Law of Ukraine "On International Commercial Arbitration" , which allows in some cases setting aside of a final award and a ruling on jurisdiction, but not a ruling in which an arbitral tribunal declares that it has no jurisdiction over a dispute.

[31] Ruling of Shevchenkivskyi District Court of Kyiv of 25 November 2013 (case No. 761/26004/13-ц). Court of Appeal confirms the validity of the lower court's opinion of the absence of grounds for setting aside an award, and paid attention to the fact that "*the statement that the arbitral tribunal exceeded the limits of its authority when decided on a particular matter should be raised during the arbitral proceedings as soon as the questionable decision was made*"(ruling of the Court of Appeal of Kyiv of19 February 2014, case No. 22-ц/796/1465/2014).

III. Recognition of arbitration by Ukrainian economic courts

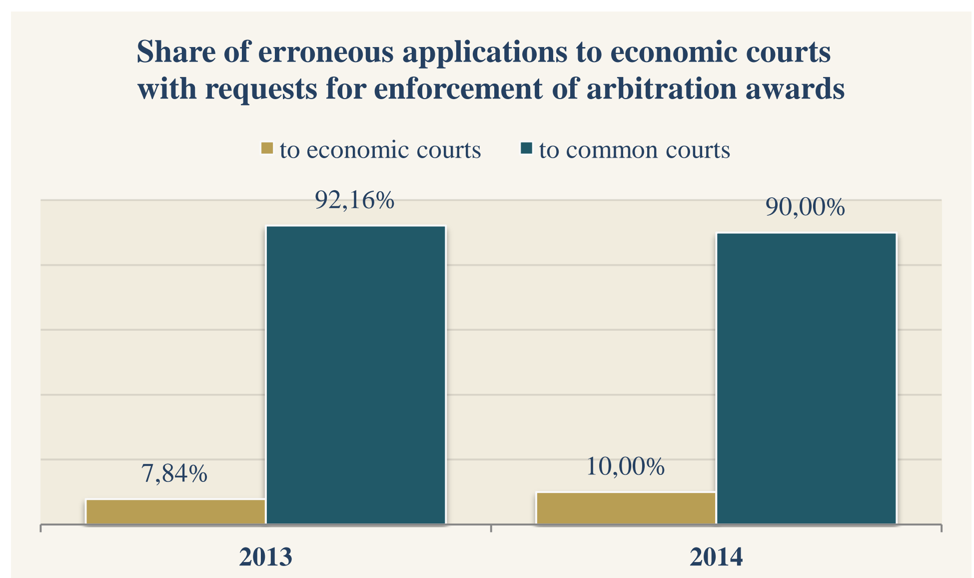
In 2013 and 2014, economic courts considered three major blocks of cases significantly related to international arbitration:

1. Proceedings upon requests for enforcement of arbitral awards, wrongfully filed with economic courts instead of common courts;
2. Commercial disputes arisen from contracts or in connection with contracts which contained arbitration clauses:
   - Cases of recognition of arbitration agreements null and void;
   - Cases upon claims related to improper performance of contracts;
3. Bankruptcy cases in which the undisputed status of claims confirmed by arbitral awards, was challenged.

How often do claimants apply to economic courts for enforcement of arbitral awards?

Erroneous submission of requests for enforcement of arbitral awards to economic courts took place in 2013 and 2014. The basis for those mistakes is the provision of the Economic Procedural Code of Ukraine (the EPC) according to which economic courts are empowered to issue orders on enforcement of awards rendered by domestic arbitral tribunals, established in accordance with the Law of Ukraine "On Arbitration Courts". Since every international commercial arbitration court is inherently an arbitration court, it leads to an obvious mistake because the Law of Ukraine "On Arbitration Courts" (Article 1) clearly states that it does not apply to international commercial arbitration.

The share of erroneous requests for enforcement of arbitration awards filed with economic courts was significant in 2013, and remained such in 2014: every nine requests to local common courts were followed by one mistaken request to an economic court.

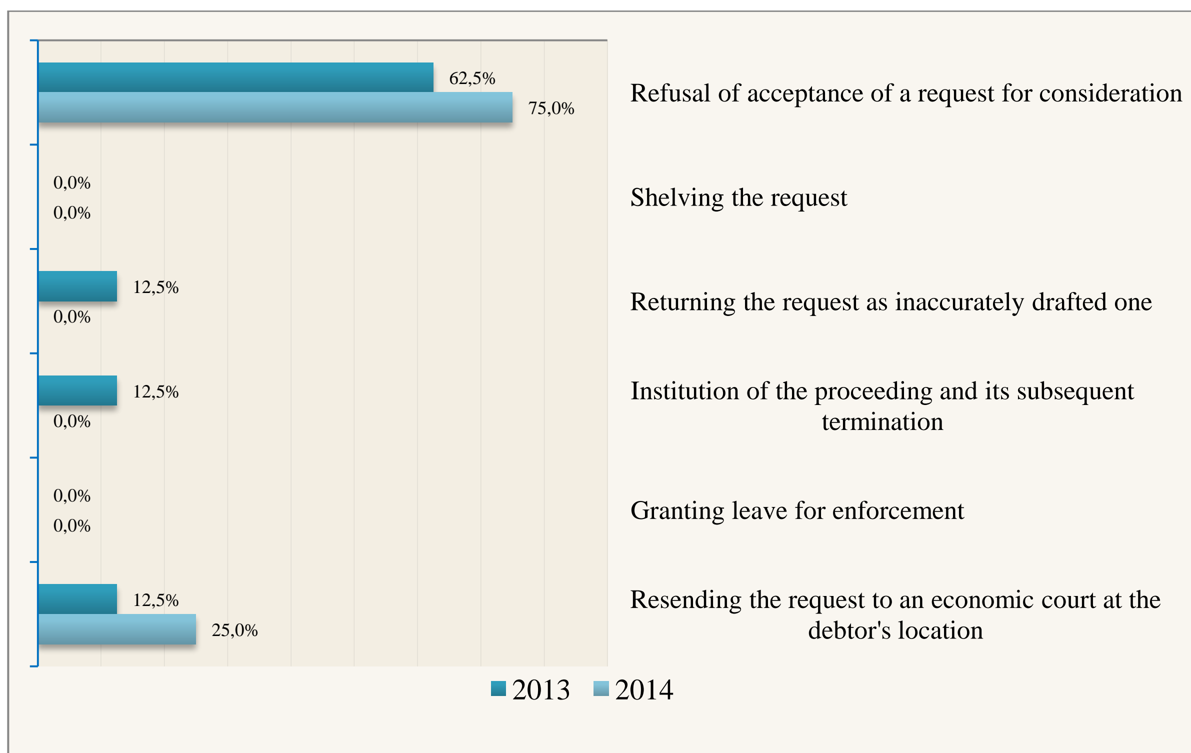


Cases when economic courts make similar mistakes and issue enforcement orders are extremely rare. They took place in 2011, but there were no such cases in 2012-2014. Although in some cases courts accepted applications for consideration and

requested materials of arbitration cases from the ICAC at the UCCI and demanded the ICAC to provide copies of the certificate of registration, the ICAC's bylaw and arbitration rules.[32]

Economic courts generally follow the correct interpretation that a competent court which has jurisdiction over matters related to enforcement of arbitral awards is a respective local common court.[33] In case a request for enforcement of an arbitration award is filed to an economic court, the court should refuse to accept it in accordance with paragraph 1 of Part 1 of Article 62 of the EPC and return the court fee to the applicant according to paragraph 2 of Part 1 Article 7 of the Law of Ukraine "On the Court Fee". If the request was erroneously admitted for consideration, the economic court has to terminate the proceedings in accordance with paragraph 1 of Part 1 of Article 80 of the EPC.

The below chart illustrates court decisions adopted by economic courts in cases upon requests for enforcement of arbitral awards in 2013-2014.



Court practice in cases upon claims out of or in connection with contracts containing arbitration clauses

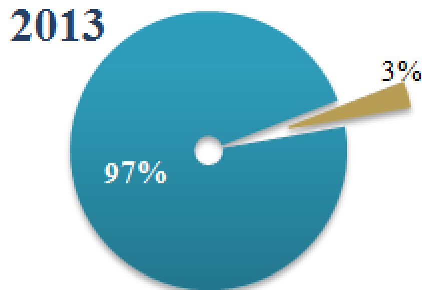
A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so requests not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, ineffective or incapable of being performed (Part 1 of Article 8 of the Law of Ukraine "On International Commercial Arbitration").

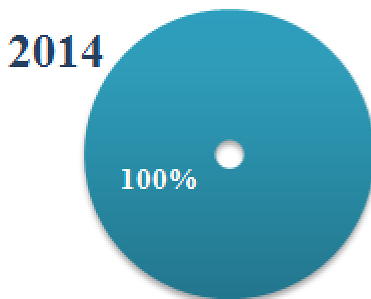
[32] Ruling of the Economic Court of Kyiv of 29 October 2013 (case No. 910/20829/13).

[33] This follows from the content of paragraph 5 of Article 389-1, paragraph 4 of Article 389-7, Chapter 1 "Recognition and enforcement of foreign judgments" of Section VIII of the CCP (articles 390-398), paragraph 2 of Article 34, paragraph 2 of Article 6 of the Law of Ukraine "On International Commercial Arbitration".

If a contract contains an arbitration clause...

(% of claims accepted for consideration)





■ Institution of proceedings
■ Refusal

Refusal to accept a statement of claim (including those cases when from a statement of claim follows that the parties entered into an arbitration agreement) is possible if an action is brought against a foreign entity, and the Ukrainian legislation does not provide for a right to apply to courts of Ukraine (in particular, when jurisdiction of a court at the respondent's domicile is stipulated in the law). At the same time, the refusal to accept the statement of claim based solely on the fact of existence of an arbitration agreement between the parties is illegal.

In 2013, only in 3% of the cases economic courts refused to initiate the proceedings when a claim was related to a contract with an arbitration clause, in 2014 the courts did not make this mistake. By accepting a statement of claim for consideration, a court presumes that a respondent is not deprived of a right to file a request to stop the proceedings, which should be satisfied unless the court finds that the agreement is null and void, inoperative or incapable of being performed. This thesis is set out in the letter of the High Economic Court of Ukraine of 1 January 2009, "On summarizing of economic courts practice with respect to certain categories of disputes involving non-residents", which states that courts must accept cases for consideration even if arbitration agreements are signed (and not refuse to accept statements of claim in accordance with paragraph 1 of Part 1 of Article 62 of the EPC) and, after deciding on validity and enforceability of an arbitration agreement, decide on termination of the proceedings pursuant to paragraph 1 of Part 1 Article 80 of the EPC if the respective request is filed.

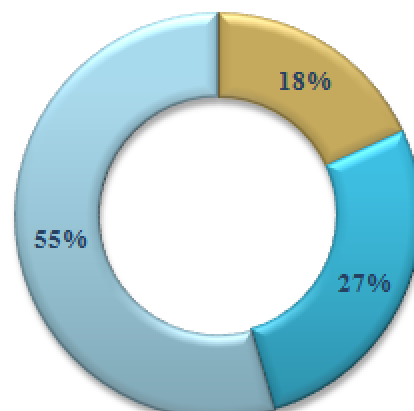
Once a case upon a statement of claim has been instituted its termination upon a respective motion of a respondent because of existence of an arbitration agreement takes place not very often (in 2014, in 55% of cases defendants did not submit motions, and in 27% of cases when motions were filed, courts did not satisfy them[34]). It is also worth noting that the High Economic Court of Ukraine in one of the cases considered in 2013 found that if an arbitration clause allowed a claimant to submit a claim to arbitration or to state courts, the economic court

2014: How often did economic courts decide cases on the merits if disputes had arisen out of or in connection with contracts with arbitration clauses?

■ Cases where courts satisfied requests for termination of proceedings

■ Cases where courts dismissed requests for termination of proceedings and decided on the merits

■ Cases considered on the merits because no request for termination had been filed

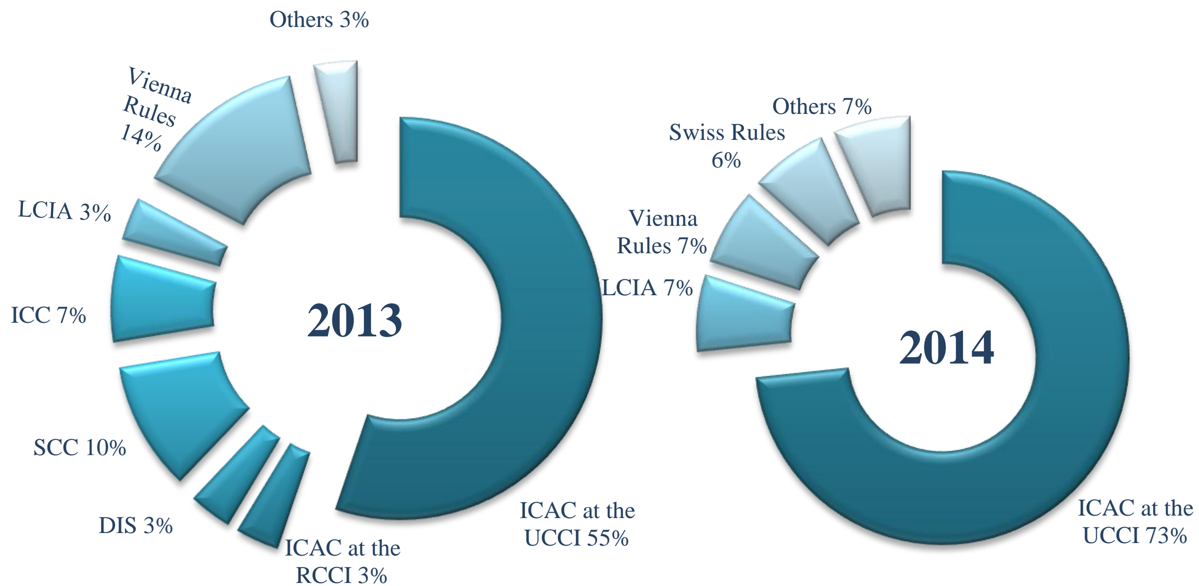


[34] This usually occurred in corporate disputes which cannot be submitted to arbitration.

should not terminate proceedings even if a respondent filed a motion.[35]

Arbitration institutions and rules known to economic courts

In 2013 and 2014, economic courts considered cases upon claims out of or in connection with contracts containing arbitration clauses referring to the following arbitration institutions and rules:



Courts sometimes "restore" arbitration agreements

Indication of a nonexistent arbitration institution in an arbitration agreement is one of the most common grounds for such agreement to be recognized unenforceable by an economic court. This ground has been, often unreasonably, applied to the cases where the parties made a mistake in the name of an arbitration institution, which, however, does not preclude from the possibility to reveal the intention of the parties to submit the dispute to the particular arbitration institution.

Economic courts are rather formalistic (although not in the vast majority of cases, as it was in 2011-2012) in implementation of paragraph 5 of the Clarifications of the Presidium of the High Economic Court of Ukraine of 31 May 2002 No. 04-5/608 "On some issues of court practice in cases with participation of foreign enterprises and organizations" according to which an arbitration agreement should **clearly** identify the dispute settlement body elected by the parties: the International Commercial Arbitration Court, the Maritime Arbitration Commission at the Ukrainian Chamber of Commerce and Industry or other arbitration court in Ukraine or abroad.

In our opinion the grounded position (which is also reinforced by court decisions) is that, in case of filing a request for termination of the court proceeding by the respondent, the claimant who objected to the request due to non-existence of the arbitration court must prove the impossibility of the

[35] Resolution of the High Economic Court of Ukraine of 6 March 2013 (case No. 3/5027/496/2011).

arbitration agreement to be performed. The court may also request proofs of existence of the arbitration court from the respondent.[36]

Furthermore, it should be borne in mind that the arbitration agreement has to make it possible to establish an arbitration institution or rules of arbitration according to which the parties agreed to resolve the dispute, rather than contain the name of a particular institution. This conclusion is confirmed by the practice of recognition of alternative arbitration and multijurisdictional agreements.[37]

Below we present some examples of how courts deal with arbitration agreements with defects.

Provision of the arbitration agreement	Correct name	Court decision	Our comments
"… International Trade Arbitration Court at the Ukrainian Chamber of Commerce and Industry (Kyiv)."	International **Commercial** Arbitration Court at the Ukrainian Chamber of Commerce and Industry	The court recognized the clause null and void[38].	Insignificant mistake that did not preclude from establishment of the parties' intention to submit the dispute to the ICAC at the UCCI. The defect may not serve a reasonable ground for recognition of the arbitration clause void.
"… the International Commercial Arbitration Court of the Chamber of Commerce and Industry of Russian Federation (Moscow, Russia)." (missing "-" in the Ukrainian version of the name)	International Commercial Arbitration Court of the Chamber of Commerce and Industry of Russian Federation	The court dismissed the claim for recognition of the arbitration agreement null and void.[39]	The court's position is justified. Insignificant mistake did not preclude from establishment of the parties' intention to submit the dispute to the ICAC at the RCCI.
"… according to Arbitration Rules of the Arbitration Court at Vienna Chamber of Commerce and Industry (Austria)."	Vienna International Arbitral Centre	The court recognized well-grounded the dismissal of the request for termination of the proceedings[40].	Insignificant mistake that did not preclude from the establishment of the parties' intention to submit the dispute to arbitration. The court mentioned in its ruling that "*according to the letter of the Ministry of Justice of Ukraine International Arbitral Court at the Austrian Federal Economic Chamber (VIAC) is the arbitration institution in Austria*" Actually VIAC means Vienna International Arbitral Centre and the name indicated by the parties is not far from the correct one.
".. Arbitration Tribunal of the Arbitration Institute at the Stockholm Chamber of Commerce"	Arbitration Institute of the Stockholm Chamber of Commerce, Sweden	The court dismissed the request for termination of the proceedings and decided on the merits of the case[41].	Insignificant addition that did not preclude from the establishment of the parties' intention to submit the dispute to the unique arbitration institution that functions at Stockholm Chamber of Com-

[36] *E.g.,* Economic Court of Dnipropetrovsk Region in its ruling of 10 January 2013 (case No 14/5005/10182/2012) requested from the parties "*documentary evidence of state registration of the International Commercial Arbitration - Arbitration Court of the Stockholm Chamber of Commerce and its postal address; duly certified copy of the arbitration rules*."

[37] *E.g.,* Economic Court of Volyn Region terminated proceedings due to the existence of alternative arbitration clause, which allowed the claimant to apply to the International Commercial Arbitration at the Chamber of Commerce in the country of the seller or buyer chosen by the claimant (ruling of 29 October 2013, case No. 903/1055/13).

[38] Ruling of the Economic Court of Kyiv of 14 February 2013 (case No. 5011-10/13371-2012).

[39] Ruling of the Economic Court of Lviv region of 29 October 2013 (case No. 5015/1538/12). The findings of the ruling were supported by the appeal court (ruling of Lviv Appeal Commercial Court of 21 January 2014).

[40] Ruling of the High Economic Court of Ukraine of 28 May 2014 (case No. 916/1897/13).

[41] Rulings of Donetsk Appeal Economic Court of 11 March 2014 (cases No. 5006/7/187пд/2012 and 5006/7/188пд/2012).

			merce.
"… Arbitration of International Chamber of Commerce and industry of Paris."	International Court of Arbitration of the International Chamber of Commerce	The court terminated the proceedings.[42]	The court's position is justified. Insignificant mistake that did not preclude from the establishment of the parties' intention to submit the dispute to arbitration.
"… all questions must be resolved in arbitration..."		The court dismissed the request for termination of the proceedings and decided on the merits of the case[43].	The court's position is justified.

Nullification of an arbitration agreement

The share of judgments of economic courts of first instance on recognition of arbitration agreements void was insignificant in the total number of cases involving arbitration in 2013 and 2014 (the courts usually dismissed claims on invalidation of arbitration agreements).
Along with the well-grounded decisions on recognition of arbitration agreements null and void (*e.g.,* courts recognized invalid arbitration agreement between Ukrainian companies with no foreign investment) there were some questionable decisions (*e.g.,* the court recognized invalid the arbitration agreement on settlement of disputes according the rules of the German Arbitration Institution (DIS) as it found that the agreement did not contain the correct name of the arbitral institution[44]).

"Non-arbitrability" of corporate disputes

Economic courts tend to support the position that disputes out of or in relation to contracts of sale of shares in Ukrainian companies cannot be submitted to arbitration.[45] This practice is generally consistent with the approach of common courts in cases upon requests for setting aside arbitral awards in disputes related to corporate rights in Ukrainian legal entities.[46] However, the position of the High Economic Court of Ukraine expressed in its resolution of 15 April 2013 (case No. 07/5026/1561/2012), that disputes in connection with contracts of sale of shares in capital of limited liability companies are not corporate, and therefore may be resolved in arbitration, creates the basis for the practice to turn "180 degrees."

[42] Ruling of the Economic Court of Lviv Region of 20 March 2013 (case No. 5015/4845/12) upheld by the ruling of Lviv Economic Court of Appeal of 16 May 2013 ("*Ukrainian Chamber of Commerce and Industry [...] reported that in the city of Paris there was the Chamber of Commerce of Paris, which is the local Chamber, and the International Chamber of Commerce, which has the International Court of Arbitration. The defendant in its first statement on the substance of the dispute (objections against the statement of claim) and subsequent motions requested to discontinue the proceedings, as the dispute is to be resolved by the International Court of Arbitration of the International Chamber of Commerce in Paris and cannot be settled in court. The court of appeal agreed with the opinion of the court of first instance that the plaintiff presented no evidence to support that it tried to submit the claim to an international arbitration institution specified in the contract, and the submission was rejected because the arbitration clause was ineffective*".
[43] Decision of the Economic court of Lviv Region of 23 March 2013 (case No. 5015/5430/12).
[44] Decision of the Economic court of Kyiv of 18 July 2013 (case No. 910/8259/13).
[45] Ruling of the Kharkov Economic Court of Appeal of 2 April 2014 (case No. 917/429/13-r).
[46] The High Specialized Court of Ukraine for Civil and Criminal Cases in its ruling of 5 February 2014 recognized that an award, in which the claimant's title to corporate rights in a Ukrainian legal entity was recognized was an award made in a corporate dispute.

Arbitration agreement, surety and cession

The courts in 2013 and 2014 had no clear position whether the arbitration agreement signed by the creditor and the debtor, is binding for the guarantor.

The courts in some cases stated that surety creates a new security obligation which is accessory, i.e. it always arises from the primary obligation and depends on it. However, in most cases the courts take the position that a guarantor is not a party to the arbitration agreement signed by the parties to the primary obligation.

A similar problem relates to whether the person, to whom the right to claim was assigned, was bound by the arbitration agreement (arbitration clause) contained in the contract out of which such claim had arisen. In most cases, the courts tend to give a negative response indicating that the arbitration agreement is a separate agreement placed into the text of the contract only for convenience.[47]

Arbitral awards in bankruptcy procedures

Economic courts in most cases refused to recognize as indisputable the claims to a debtor in bankruptcy confirmed by arbitration awards not left for enforcement in Ukraine[48]. In some cases courts supported the opposite approach.[49]

[47] Ruling of Rivne Economic Court of Appeal of 26 November 2013 (case № 903/1055/13), upheld by the High Economic Court of Ukraine (ruling of 29 January 2014).
[48] *E.g.,* ruling of the Economic Court of Volyn Region of 27 May 2014 (case No. 903/471/13).
[49] The Economic Court of Nikolaev Region recognized the creditor's claim, confirmed by the ICAC at the UCCI award which was not left for enforcement (ruling of 29 April 2014, case No. 915/2328/13).

IV. International commercial arbitration and administrative court proceedings

Administrative courts in 2013-2014 considered two blocks of cases involving international arbitration:

- Cases upon claims of taxpayers against tax authorities' decisions on imposing sanctions for violation of the legislation on foreign currency payments (when taxpayers have taken measures to recover non-resident counterparty's debt in foreign currency by submitting a statement of claim to arbitration);
- Cases upon claims of the Ukrainian importers and exporters on the abolition of sanctions in the form of individual licensing regime (when they fixed the violation of the legislation on foreign currency payments by submitting statements of claim to arbitration).

Penalties for violation of the terms of return of foreign currency and arbitration

The violation of the terms of return of foreign currency earnings entails the sanctions provided for by the Law of Ukraine "On Payments in Foreign Currency". However, in case the claim of a resident on recovery of a debt from a non-resident is accepted for consideration by the court or arbitration court, the penalties (fines) are not payable during the proceedings and, in the case the claim is successful, no fines shall be payable from the date the claim was accepted for consideration. If a court decision denies the claim in whole or in part as well as in case of termination (closing) of the proceedings or abandonment of the claim, the terms stipulated in Articles 1 and 2 of the above Law have to be restored, and the fines for violations are to be paid for each day, including the period of suspension.

The contradictory interpretation of the above provisions by the regulatory agencies forced taxpayers to challenge in courts the decisions on sanctions.

What arbitration shoud be referred to in order to stop payment of the fines?

The Law of Ukraine "On Payments in Foreign Currency" specifies only two arbitration institutions, the International Commercial Arbitration Court and the Maritime Arbitration Commission at the Ukrainian Chamber of Commerce and Industry. The tax authorities often use that fact as an argument against the resident that submitted a claim to any other arbitration. [50] In 2011, the courts affirmed the position that the list of arbitration institutions represented in the Law cannot be exhaustive. The courts also recognize a right to submit the claim to ad hoc arbitration (the date of the request for arbitration or the date of the appointment of an arbitrator or other date, which can be considered as the date of institution of the procedure under the appropriate rules defined by the parties to an arbitration agreement, should be the date of suspension of the sanctions).[51]

[50] The High Administrative Court of Ukraine recognized that opinion wrongful in its resolution of 16 November 2011 (case No. K-219/08).

[51] This approach was supported by the High Administrative Court of Ukraine (in particular, in the rulings of 20 March 2013, case No. 12837-2a/08/0470 and of 17 June 2013, case No. 2a-6716/10/0470).

At the same time, some fiscal bodies continue to make mistakes indicating as an argument the statement of the High Arbitration Court of Ukraine made in 2000 that "the list of arbitration institutions placed in Article 4 of the Law is exhaustive and is not subject to extensive interpretation" (letter of the High Arbitration Court of Ukraine of 1 August 2000 No. 01-8/38).

Since what time does the payment of penalties to be suspended?

Administrative courts kept themselves within the following legal positions in 2013 - 2014:

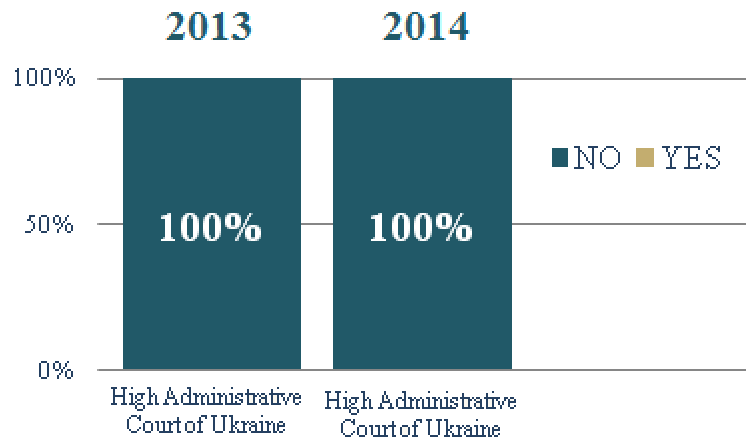
- The legal fact which establishes procedural relations between the parties to the dispute and the court is submission of the claim to the court, but not the fact of institution of the proceedings. Therefore, the date of acceptance of the statement of claim by the arbitration court in terms stipulated in Articles 1 and 2 of the Law of Ukraine "On Payments in Foreign Currency" is the date of filing the claim;
- If, at the time of a tax inspection, the resident files the claim to arbitration, there is no ground for the payment of penalties;
- Failure to provide evidence of submission of the claim to arbitration and its acceptance at the time of a tax inspection is a basis for imposition of the sanctions;
- Termination of the arbitration proceedings (closure of the case) is a ground for the sanctions to be imposed for the entire period of suspension unless the termination of the proceedings means a positive resolution of the case for the claimant (e.g., the result of a voluntary payment of the debt);
- In case an arbitral award is granted for recovery of a debt from a non-resident, the penalty has not be paid during the period from the date of the award until the date of its enforcement.

Penalties in the event of termination of arbitral proceedings

In 2013 and 2014, tax authorities have been adhering to the opinion that the fines for violation of the terms of return of foreign currency earnings or delivery of goods have to be paid in case a resident filed a claim to international arbitration, but before the award is rendered the respondent fulfills its obligations voluntarily, so that the arbitral proceedings are terminated. That opinion was supported by the High Administrative Court of Ukraine that noted in the letter of 17 March 2009 No. 359/13/13-09 “On the order of calculation of the penalties for violation of the terms of payment in foreign trade” that “*the Law of Ukraine "On Payments in Foreign Currency" provides the sole ground for release of a resident of the penalty for violation of the terms of return of foreign currency and de-livery of goods under import contracts, and this ground is a court's decision for recovering the debt*”[52].

[52] Although previously the High Economic Court of Ukraine noted that "the courts have to examine the circumstances that led to the termination of the arbitral proceedings. In order to determine the grounds for imposing fines the courts have to inspect not the formal circumstance (termination of the arbitral proceedings), but reveal the outcome for the resident (payment of the debt)” (Recommendations of 17 December 2004 No. 04-5/3360).

However, in 2011-2012, the courts changed the approach to such matters and now they believe that the voluntary payment of debts by a non-resident after the arbitral proceedings are instituted is a positive outcome for a resident which demonstrates the validity of its claims, which could have been met by an arbitration tribunal, so there is no reason for payment of the fines. This approach was supported by the courts also in 2013-2014.[53]



Individual licensing regime and international arbitration

In accordance with Article 37 of the Law of Ukraine "On Foreign Economic Activity", the Ministry of Economic Development and Trade of Ukraine may impose on violators of the Law of Ukraine "On Payments in Foreign Currency" a specific penalty - individual licensing regime of foreign economic activity (the order may be issued by the Ministry after the respective request of a tax authority)

In those cases when the violators are taking measures for return of foreign currency by submitting claims to arbitration, disputes often arise between them and the regulatory authorities as to whether the licensing regime has to be cancelled or not. Administrative courts believe that an arbitral award in favor of a resident is the ground for cancellation of the individual licensing regime, and if that regime is instituted when the resident already received the favorable award its institution is illegal[54].

[53] Rulings of the High Administrative Court of Ukraine of 9 October 2013 (case No. 2a-1670/11246/11) and 25 February 2014 (case No. 0870/3983/12).
[54] It was stated, for example, in the rulings of the High Administrative Court of Ukraine of 8 October 2013 (case No. K/9991/36552/12) and 6 February 2014 (case No. K/800/8618/13).

V. International commercial arbitration, administrative offence and criminal proceedings

In 2013-2014, there was a small number of criminal cases which were connected with the international commercial arbitration. No case of bringing arbitrators to criminal liability for their professional activities was revealed in the period covered by the study.

In case of violation by Ukrainian business entities terms of return of foreign currency earnings fiscal authorities are authorized to file to courts administrative offence materials against senior officials of such entities (according to Art. 162-1 of the Code of Administrative Offences). The courts developed stable practice in these cases – if a business entity filed a claim to arbitration in time, or if the arbitration tribunal terminated proceedings because of voluntary payment of a debt by a non-resident administrative proceedings are to be closed due to the absence of offense (100% of judgments of local courts were based on such approaches in 2013-2014).

Methodology

This report is based on a study of about 1,200 decisions issued by the courts of Ukraine in the period which covers 2013 and the first half of 2014 (up to 30 June). The court decisions were taken from publicly available sources, in particular the Unified State Register of Court Decisions after using search criteria that allowed to select decisions essentially related to the subject of the study.

Our findings, comments and calculations made in the study are based on the available texts of judgments, but not on case materials.

In some cases the figures are grouped into the "Others" category due to the small amount of data or inaccuracies in the names of arbitration institutions or rules that made impossible to precisely determine the institution or the rule in question.

The study does not cover issues related to investment arbitration and the arbitration under the Energy Charter Treaty.

The court decisions in which we clearly identified erroneous application of the rules of international arbitral awards enforcement to enforcement of the awards of domestic arbitration courts were left out of focus of the study. The majority of these wrongful decisions were made in administrative court cases.

The study also does not include court decisions which were allegedly politically motivated (according to the opinions expressed in numerous publications in the media).

Arbitration institutions, associations and rules

Arbitration Institute of the Stockholm Chamber of Commerce - SCC 5, 6, 18, 19

Rules of Arbitration of Grain and Feed Trade Association (GAFTA) 5, 6

Swiss Rules of International Arbitration of the Swiss Chambers' Arbitration Institution, Swiss Rules 5, 18

Rules of Arbitration of the Federation of Oils, Seeds and Fats Associations (FOSFA) 5

Arbitration Court attached to the Economic Chamber of the Czech Republic and to the Agricultural Chamber of the Czech Republic 5, 6

Court of Arbitration at the Hungarian Chamber of Commerce and Industry 5, 6

London Maritime Arbitrators Association – LMAA 5, 6

London Court of International Arbitration – LCIA 5, 6, 8, 11, 18

International Court of Arbitration of the International Chamber of Commerce, ICC) 5, 18, 20

International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry - ICAC at the UCCI 5, 6, 7, 8, 9,10, 12, 13, 15, 18, 19, 21, 22

International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation - ICAC at the RCCI 5, 6, 18, 19

International Commercial Arbitration Court at the Belarusian Chamber of Commerce and Industry - ICAC at the Belarus CCI 5, 6,

International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Republic of Kazakhstan – ICAC at the Kazakh CCI 5, 6,

Maritime Arbitration Commission at the Ukrainian Chamber of Commerce and Industry - MAC at the UCCI 5, 6, 13, 22

German Institution of Arbitration, Deutsche Institution für Schiedsgerichtsbarkeit, DIS 5, 18, 20

Rules of Arbitration and Conciliation of the International Arbitral Centre of the Austrian Federal Economic Chamber – Vienna International Arbitration Centre (VIAC), Vienna Rules 5, 18, 19