



Are Commercial Courts Really That Bad?

Insider View vs Outsider View Olena Kibenko, Supreme Court

Unlocking Investment in Ukraine London, April 24, 2024





Our strengths

- 1. Fast case handling
- 2. High level of digitalization of the judiciary
- 3. Growing capacity to apply foreign law



The average timeframe for consideration of cases in 2023:

First instance – 79 days

Second instance – 67 days

Third instance – 45 days

TOTAL – 191 days (about 6-7 months)



In 2023, commercial courts of first instance issued 127 974 decisions:

- -23 099 appeals (18%)
- 9 183 appeals to the cassation court (7%)

The Supreme Court overturned decisions in 16% of cases and sent them back for a new trial.



Digitalization

- Videoconferencing
- Court communication via e-mail \bullet
- ullet
- Electronic case management system Issuing judgments in electronic form, signed by e-signature \bullet (along with a paper form)
- Online register of court decisions open to public (more than ullet100 million decisions)
- E-filing ullet
- Acceptability of e-evidences •
- Easiness to get and to use of electronic signatures \bullet
- Online payment of court fees ullet
- Publication of main court information on the website \bullet (hearing schedule, case docket)
- \bullet
- È-court (including court app in á smartphone) Mandatory electronic cabinet for all public authorities, legal ightarrowprofessionals, and all legal persons Usage of DIIA and messengers by courts (delivering
- ightarrowsummons and court decisions)



Application of foreign law:

Companies Act 2006 was mentioned in 83 judgements



Our weaknesses

- 1. Corruption
- 2. Lack of uniformity of court practice
- 3. Bad quality of court decisions





Reasons for the poor quality of judgments:

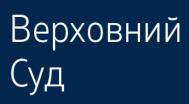
- Huge caseload (decisions drafted mainly by legal assistants, not by judges);
- The false presumption that the outcome of the case is important, not motivation (focus on outcomes versus the quality of decision motivation);
- Deciding on the outcome of the case immediately after oral augments of the parties;
- Judges are not capable of writing well (bad legal education system).



Bad quality of judgements

Court decision 1	Court decision 2
Similar claim	
Similar facts	
'Mess' (chaotic laws citations without applying to the facts)	'Mess' (chaotic laws citations without applying to the facts)
Outcome 1 (Court satisfied the claim)	Outcome 2 (Court dismissed the claim)





Thank you for your attention!

okibenko@supreme.court.gov.ua