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# Are Commercial Courts Really That Bad?

## *Insider View vs Outsider View*

Olena Kibenko,  
Supreme Court

Unlocking Investment in Ukraine  
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# Our strengths

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



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## 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)



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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.



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## Digitalization

- Videoconferencing
- Court communication via e-mail
- Electronic case management system
- Issuing judgments in electronic form, signed by e-signature (along with a paper form)
- Online register of court decisions open to public (more than 100 million decisions)
- E-filing
- Acceptability of e-evidences
- Easiness to get and to use of electronic signatures
- Online payment of court fees
- Publication of main court information on the website (hearing schedule, case docket)
- E-court (including court app in a smartphone)
- Mandatory electronic cabinet for all public authorities, legal professionals, and all legal persons
- Usage of DIIA and messengers by courts (delivering summons and court decisions)



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Application of foreign law:

**Companies Act 2006 was mentioned  
in 83 judgements**



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# Our weaknesses

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



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## 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 arguments of the parties;
- Judges are not capable of writing well (bad legal education system).



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# 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)



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Thank you for your attention!

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