EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF ZOLETIC AND OTHERS v. AZERBAIJAN

(Application no. 20116/12)

JUDGMENT

Art 4 • Positive obligations • Domestic authorities' failure to institute and conduct an effective investigation into migrant workers' arguable claims of cross-border human trafficking and forced labour

STRASBOURG

7 October 2021

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Zoletic and Others v. Azerbaijan,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Síofra O'Leary, *President,*
Mārtiņš Mits,
Ganna Yudkivska,
Lətif Hüseynov,
Jovan Ilievski,
Ivana Jelić,
Mattias Guyomar, *judges,*
and Victor Soloveytchik, *Section Registrar,*

Having regard to:

the application (no. 20116/12) against the Republic of Azerbaijan lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by thirty-three Bosnia and Herzegovina nationals whose names are listed in the Appendix ("the applicants"), on 22 March 2012;

the decision to give notice to the Azerbaijani Government ("the Government") of the complaints under Articles 4 § 2 and 6 of the Convention and Article 1 of Protocol No. 1 to the Convention and to declare inadmissible the remainder of the application;

the observations submitted by the respondent Government and the observations in reply submitted by the applicants;

the comments submitted by the Government of Bosnia and Herzegovina who had exercised their right to intervene in the case (under Article 36 § 1 of the Convention and Rule 44 § 1 (b) of the Rules of Court);

Having deliberated in private on 14 September 2021,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The case concerns the alleged failure by the respondent State to conduct an effective investigation into the applicants' complaints that they had been victims of forced or compulsory labour and trafficking in human beings and the alleged failure by the domestic authorities and courts to deliver reasoned decisions to protect the applicants' pecuniary interests, in breach of Articles 4 § 2 and 6 of the Convention and Article 1 of Protocol No. 1 to the Convention.

THE FACTS

2. The applicants' personal details are set out in the Appendix. The applicants were represented by Mr M. Bakhishov, a lawyer practising in Azerbaijan at the time of lodging the application.

3. The Government were represented by their Agent, Mr Ç. Əsgərov.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

A. The applicants' stay in Azerbaijan

1. The applicants' version of the events

5. According to the applicants, they were recruited in Bosnia and Herzegovina and taken to Azerbaijan, in groups of ten or more, as temporary foreign construction workers, by representatives of Serbaz Design and Construction LLC ("Serbaz"), which, according to the material in the case file, was a company registered in Azerbaijan in 2007 and active in the construction sector until approximately the end of 2009 (see paragraphs 25, 47, 57, 102-103 and 107 below). Most of the applicants stayed in Azerbaijan for periods of six months or longer. The applicants did not specify the exact dates of arrival in and departure from Azerbaijan of each applicant.

6. Serbaz arranged their travel to Azerbaijan by air on the basis of tourist visas, issued on arrival at the Baku airport for periods of thirty days or more. Once they entered Azerbaijan, their passports were taken away by representatives of Serbaz. No individual work permits for them were obtained from the authorities.

7. While in Baku, the applicants lived in five houses transformed into dormitories, in rooms with bunk beds shared by twelve to twenty-four people. The dormitories were not equipped with drinking water, running hot water, gas or heating. The conditions were unsanitary owing to the accumulation of garbage. The applicants were not provided with medical care. They had to comply with strict internal rules established by Serbaz. Notices about those rules, written in their native language, were posted on the walls and doors of the dormitories. While the applicants themselves did not provide a detailed account of all those rules, they noted that they had been taken to work and back by a bus and, at other times, had not been allowed to leave their accommodation without a special written permission issued by representatives of Serbaz. Violations of rules were punished by fines, beatings, detention in "a specially designated place" and physical threats.

8. The applicants worked in the construction of several buildings in Baku, including Buta Palace, the Baku Expo Centre and 28 Mall. Some people brought by Serbaz worked in the construction of the Kur Olympics educational and training centre in Mingechevir, commissioned by the Ministry of Youth and Sports.

9. As from May 2009 the applicants were not paid any wages and could not meet the necessities of life. According to them, each worker was deprived of approximately 10,000 US Dollars (USD) in wages.

10. In support of their submissions made to the Court, the applicants submitted a copy of a report prepared by three NGOs from different countries named ASTRA (Serbia), La Strada (Bosnia and Herzegovina) and Cooperation for Social Development (Croatia), in cooperation with an Azerbaijani NGO named the Azerbaijan Migration Centre (*Azərbaycan Miqrasiya Mərkəzi* – "AMC"), published on 27 November 2009 ("the ASTRA Report"). The contents of the ASTRA Report are summarised in paragraphs 101-117 below.

11. The applicants also submitted a copy of a letter by the Danish Refugee Council of 22 October 2010, addressed to AMC, which stated that in November 2009 the Danish Refugee Council had delivered humanitarian aid, including mostly groceries and other aid, the total value of which was 6,899 Azerbaijani manats (AZN), to migrants from Bosnia and Herzegovina, Serbia and North Macedonia. It specified that the aid had been funded by the International Organisation for Migration, whose representatives, along with the representatives of AMC, participated in the process of delivery of the aid to the migrants.

2. The Government's submissions concerning the events relating to the applicants' stay in Azerbaijan

12. Without presenting their own version of the events, the Government challenged the veracity of the applicants' factual statements, noting that there was no evidence substantiating their allegations and proving "the existence" of those facts.

3. The applicants' departure from Azerbaijan

13. Neither the applicants, nor the Government provided any account of the circumstances in which the applicants departed from Azerbaijan.

14. It appears from the material in the case file that in October 2009 several NGOs, including AMC and the three NGOs from the Balkans mentioned in paragraph 10 above, became aware of the applicants' alleged situation and their grievances concerning Serbaz.

15. It appears that on 22 October 2009 and at an unspecified later date AMC sent letters to the Ministry of Internal Affairs and the Prosecutor General's Office concerning the situation of Serbaz workers, but received no response (see paragraphs 36-39 below for more detail).

16. It further appears that in October and November 2009 Serbaz paid at least part of the accrued unpaid wages to the workers who were at that time in Azerbaijan, took them to the Baku international airport in groups, handed back their passports and arranged their return to their respective home countries by air. By the end of November 2009, all of the applicants had left Azerbaijan.

B. Judicial proceedings instituted by the applicants in Azerbaijan

17. After the applicants' return to Bosnia and Herzegovina, Mr M. Bakhishov was hired to act as their representative in Azerbaijan.

1. First-instance proceedings

18. On 19 July 2010 Mr Bakhishov lodged, on behalf of the applicants, a civil claim against Serbaz with the Sabail District Court seeking payment to each applicant of USD 10,000 in unpaid wages and USD 5,000 in respect of non-pecuniary damage caused by alleged "breaches of their rights and freedoms". In their claim, they cited a number of provisions of the Constitution, the Labour Code and the Civil Code on, *inter alia*, protection of human rights and labour rights of foreigners, and prohibition of forced labour and compensation for damages. They also referred to Article 4 of the Convention.

19. The length of the applicants' factual submissions spanned around one page of typed text. In particular, they made essentially the same submissions as those subsequently made before the Court (see paragraphs 5-9 above). In addition, they mentioned one alleged incident involving one Serbaz worker which had occurred in December 2008, noting that this particular worker, M.V., had been fined USD 500 by a Serbaz employee Y. (identified by first name only), for having brought some (apparently unauthorised) food items to Baku, and that subsequently Serbaz officials, B.V. and R.L., had confined him for three days inside a building under construction. The applicants further noted that, because they had not been paid their wages since May 2009, they had to buy groceries on credit and had thus become indebted to nearby shops and that "those of them who [had] objected to this situation [had been] punished". Owing to this situation, they had been provided various humanitarian aid by the Danish Refugee Council, the OSCE Baku office, the Baku office of the International Organisation for Migration, ASTRA and AMC.

20. It appears from the copy of the applicants' civil claim available in the case file that the documentary evidence submitted together with the claim consisted only of copies of passports of twenty-nine of the applicants (all applicants except applicants nos. 7, 10, 13 and 31 in the Appendix). All of those copies showed the main pages of the passports with the bearers' names, photographs and dates of birth, dates of issue and expiry of the passports, passport numbers and so on, while fourteen of the copies also showed the page with the legible Azerbaijani visa (those fourteen copies concerned applicants nos. 1, 2, 3, 5, 6, 14, 15, 16, 18, 20, 21, 22, 24 and 33 in the Appendix). Of these, the visas issued to applicants nos. 14, 21 and 24, Muamer Kahric, Fehret Mustafica and Drago Peric, were single-entry visas valid for three months and issued in May 2009 or later. The visas issued to applicants nos. 15 and 16, Miodrag Kaurin and Predrag Kaurin, were

multiple-entry visas valid for one year and issued in August 2009 and July 2009 respectively. All other visas were single-entry visas valid for one month. Out of these, the visa to applicant no. 18, Sabahudin Makic, was issued in October 2008, while all other visas were issued in May 2009 or later. In addition to the above fourteen copies, copies of two other passports also depicted what might have been an Azerbaijani visa, however these two copies were not fully legible. In so far as legible, a one-month visa to applicant no. 23, Elvedin Opardija, might have been issued in March 2009, while a one-month visa to applicant no. 32, Goran Vujatovic, might have been issued in June 2008. Out of the remaining thirteen copies of passports which did not include copies of visas, four included pages with Serbian or Croatian border exit and/or entry stamps, corresponding to various months of 2009. The remaining nine copies of passports did not include either copies of pages with visas or border entry or exit stamps.

21. No other evidence or documents, such as any NGOs reports, was listed as evidence submitted in support of the claim. In respect of such other evidence submitted before the first-instance court, the applicants' representative noted, in his submissions before the Court as well in his subsequent appeal before the Baku Court of Appeal (see paragraph 29 below), that during the first-instance proceedings he had attempted to present to the court a copy of the ASTRA Report and that he had also formally requested the court to send inquiries to the above-mentioned NGOs and international organisations which had provided aid to Serbaz workers before their departure from Azerbaijan. However, according to the lawyer, the court refused to admit the ASTRA Report and rejected his other request (no copies of any interim decisions concerning those requests are available in the case file).

22. The defendant, Serbaz, was represented by a lawyer who submitted that, for the purposes of several large-scale and important construction projects in Azerbaijan, Serbaz had invited a number of foreign workers pursuant to a secondment agreement concluded on 14 May 2007 with its parent company, Acora Business Ltd ("Acora"), a company registered in Anguilla, British West Indies. Seconded workers had been employees of Acora, which had been responsible for payment of their wages and all other employment-related matters. Under the secondment agreement, Serbaz had been responsible only for providing them with accommodation and meals. The lawyer of Serbaz argued that the applicants' claims against Serbaz in respect of pecuniary and non-pecuniary damage were unsubstantiated.

23. In support of its submissions, Serbaz presented to the court uncertified photocopies of its charter and the secondment agreement between Acora and Serbaz (not available in the case file). It explained that it was no longer in possession of the originals of those documents, because those documents had been "taken away" from Serbaz by the Acora management and had not been returned. In this connection, Serbaz also

submitted a copy of the announcement it had placed in the *Vergiler* newspaper, published on 28 July 2010 (several days after the applicants had lodged their claim – see paragraph 18 above). The announcement stated that the originals of Serbaz's founding document (charter) and tax identification certificate had been lost and were therefore no longer valid.

24. On 21 October 2010 the Sabail District Court dismissed the applicants' claim.

25. The court noted that, according to the registration certificate issued by the Ministry of Justice, Serbaz had been registered in Azerbaijan on 16 March 2007. According to the copy of its charter, it was a wholly-owned subsidiary of Acora, which had been registered in Anguilla on 30 June 2006. Following the loss of the original of the charter, on 11 August 2010 the Baku City Tax Department re-issued to Serbaz certified copies of its "founding documents". The court had further regard to the copy of the secondment agreement of 14 May 2007 between Acora and Serbaz, which stated that Acora undertook to second staff to Serbaz for maximum terms of three months. According to the secondment agreement, the seconded staff were considered to be employees of Acora, which was responsible for paying their wages.

26. The court further referred to letters by various authorities, in particular (as summarised in the court's judgment):

(i) a letter of 19 November 2009 of the Ministry of Taxes, addressed to AMC, where it was stated that Serbaz had submitted tax declarations in the years 2006 to 2009 in respect of the amounts paid for "hired labour". However, that form of declaration did not provide for a name-by-name breakdown of taxes paid in respect of each worker;

(ii) a letter of 17 December 2009 of the Department on Combating Trafficking in Human Beings of the Ministry of Internal Affairs ("the Anti-Trafficking Department"), where the latter stated that, at an unspecified time, it had reviewed a request by citizens of Bosnia and Herzegovina, Serbia and North Macedonia working at Serbaz, complaining that they had been subjected to human trafficking. However, because the last workers had left Azerbaijan by 26 November 2009, after having received from the company a final settlement of due wages, it had not been possible to investigate their complaints; and

(iii) a letter of 22 December 2009 by the Commissioner for Human Rights (Ombudsman), noting that Serbaz had carried out construction work at various development and construction projects of State significance, that according to information provided by Serbaz it had become necessary to lay off a number of workers owing to the company's difficult financial situation, and that those workers who had wished to return to their home countries had been paid accrued wages due to them and had been repatriated in a planned manner.

27. Based on the above, the court found that the applicants had been directly employed by Acora and could not be considered as employees of Serbaz, that their wages were to be paid by Acora, that they had been merely seconded to Serbaz, that there had been no employment contracts signed between the applicants and Serbaz, and that the applicants had not presented any evidence to the contrary. Therefore, Serbaz could not be liable for any alleged non-payment of wages or other employment-related complaints. As a limited liability company, neither was it liable for the obligations of its parent company before third persons. Accordingly, the applicants' claim against Serbaz had neither a statutory, nor a contractual basis, and the claim could be lodged only against Acora.

28. Lastly, the court held that the applicants' allegations concerning violations of their rights and freedoms were unsubstantiated. It noted that, as it had appeared from the above-mentioned letters of various State authorities, it had not been possible to establish that any rights or freedoms of foreign workers had been breached by Serbaz.

2. Appellate and cassation proceedings

29. On 1 December 2010 (with an addendum on 24 January 2011) the applicants' lawyer lodged an appeal against the first-instance judgment, essentially reiterating the previous submissions. In addition, he made, *inter alia*, the following factual and legal submissions:

(i) before the applicants' departure from Azerbaijan, they had received aid (foodstuffs and medical and other aid) from various international organisations and NGOs mentioned above. He noted that he had lodged a request with the first-instance court to send inquiries to those organisations in order to confirm this fact and to obtain information about the aid provided, however the request had been rejected;

(ii) he had attempted to submit the ASTRA Report to the first-instance court as evidence, but the court had refused to admit it without any substantiation;

(iii) the fact that the applicants had stayed and worked in Azerbaijan on the basis of tourist visas and without work permits had been in breach of the domestic law, in particular the legislation on tourism, and indicated that they had been subjected to forced labour;

(iv) in fact, the applicants had been employees of Serbaz, and not of Acora, and Serbaz had unlawfully subjected them to forced labour without having signed employment contracts in accordance with the requirements of the Constitution, the Labour Code, the Law on labour migration, other Azerbaijani legislation, as well as the international treaties to which Azerbaijan was a party. In this respect, AMC had also inquired from the Ministry of Justice (the authority responsible for registration of legal entities) whether Acora "had really existed" as a company, but had received no reply; and

(v) the first-instance court's reliance on copies of documents submitted by Serbaz, including the uncertified copy of the secondment agreement, was in breach of the requirements of Article 89 of the Code of Civil Procedure ("the CCP") as those documents were inadmissible as evidence.

30. The defendant's representative reiterated his submissions made before the first-instance court.

31. During the appellate hearing, the court questioned as a witness a representative of AMC. She stated, in general terms, that she had been in the houses where the applicants stayed in Azerbaijan. Workers staying in those houses had complained to her NGO about their living conditions, wages, lack of medical insurance and insufficient food. On an unspecified date she had written, on behalf of 272 of those workers, to the Prosecutor General's Office about their complaints. Generally, as a result of involvement of AMC, the workers' situation had improved and they had been provided with better meals and with medical assistance. Eventually, they had been paid their wages, given their documents back and returned to their home countries.

32. On 8 February 2011 the Baku Court of Appeal upheld the first-instance judgment. Besides reiterating the findings of the first-instance court, it also held that the provisions of the Law on labour migration and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families ("the ICRMW") were not applicable to the applicants, because they concerned lawful "migrant workers", whereas the applicants had not been "individuals who had migrated from one country to another on lawful grounds". Instead, the applicants had been "foreign employees" who had concluded employment contracts with a foreign company (Acora) abroad and had been temporarily seconded to Azerbaijan to work at the subsidiary of that company. According to Article 6 of the Labour Code, the provisions of that Code did not apply to such foreign employees.

33. The appellate court found that the applicants' complaints concerning breaches of their rights by Serbaz were unsubstantiated. It did not address the applicants' lawyer's submissions concerning the first-instance court's alleged refusal to admit the ASTRA Report and rejection of his other requests.

34. The applicants lodged a cassation appeal, reiterating their arguments. They also noted that, despite the argument by Serbaz and the lower courts' finding that they had been seconded to Azerbaijan for periods not exceeding three months, they had in fact stayed and worked in Azerbaijan for periods of six months and longer, and that this was reflected in the copies of their passports enclosed with their claim. On 23 September 2011 the Supreme Court upheld the appellate court's judgment, briefly reiterating the lower court's findings and reasoning.

C. Documents concerning other complaints and requests addressed to the authorities in Azerbaijan

35. Copies of the following documents were submitted by the Government of Bosnia and Herzegovina.

36. A copy of an email from AMC to several recipients, including ASTRA, dated 28 December 2010, stated that the president of AMC was sending to the recipients "the translated version of [AMC's] letter to the Prosecutor General".

37. Moreover, an English translation of a letter, without a date, from the president of AMC to the Prosecutor General of Azerbaijan, which was apparently in attachment to the above email, provided essentially the same information about foreign workers of Serbaz as that given by the applicants to the domestic courts (see paragraphs 5-9 and 19 above). The letter further stated that, in AMC's view, Serbaz officials had committed criminal offences under various provisions of Article 144-1 (trafficking in human beings) of the Criminal Code. It further noted that, on 22 October 2009, AMC had sent a letter to the Ministry of Internal Affairs asking for an investigation of the mentioned circumstances, but that no measures had been taken. Lastly, the Prosecutor General was requested to supervise the matter and take measures.

38. Furthermore, the Government of Bosnia and Herzegovina also submitted an uncertified "unofficial translation" into English of a decision of the Supreme Court of Azerbaijan of 12 July 2010. According to the contents of this document, AMC had lodged a civil claim with the Sabail District Court against the Prosecutor General's Office and the Ministry of Foreign Affairs, asking the court to order the above authorities to "take a relevant procedural decision" in connection with AMC's letter of 22 October 2009. AMC was represented in the court proceedings by Mr M. Bakhishov. The claim was declared inadmissible by the Sabail District Court on 28 December 2009, which held that such a request could not have been made in the form of a civil claim, but should have been lodged under the procedure of judicial supervision in criminal proceedings under Article 449 of the Code of Criminal Procedure ("the CCrP"). This inadmissibility decision was upheld by the Baku Court of Appeal on 19 January 2010. By decision of 12 July 2010 the Supreme Court quashed the Baku Court of Appeal's decision and remitted the case for a new examination, finding that there were no procedural decisions delivered in criminal proceedings which could be challenged under Article 449 of the CCrP and that, in such circumstances, the plaintiff could challenge the alleged inactivity of the authorities in civil proceedings.

39. No other information is available in the case file as to the outcome of the proceedings mentioned in the unofficial translation of the above-mentioned decision.

40. The Azerbaijani Government and the applicants did not expressly and specifically comment on the above-mentioned documents and translations submitted by the Government of Bosnia and Herzegovina.

D. Criminal proceedings in Bosnia and Herzegovina concerning persons affiliated with Serbaz and the related legal-assistance correspondence between the authorities of Bosnia and Herzegovina and Azerbaijan

41. The factual circumstances described below transpire from the documents submitted by the Government of Bosnia and Herzegovina, unless otherwise indicated.

42. In late 2009 the Prosecutor's Office of Bosnia and Herzegovina initiated a criminal investigation in connection with the allegations of forced labour and trafficking by Serbaz management and employees, under Article 250(2) (organised crime), Article 185 (establishment of slavery and transport of slaves) and Article 186 (trafficking in human beings) of the Criminal Code of Bosnia and Herzegovina. Eventually, after completion of the investigation, on 7 July 2014 a total of thirteen nationals of Bosnia and Herzegovina were indicted in the framework of these proceedings. Eleven of them were charged with the criminal offences of organised crime in conjunction with trafficking in human beings, one with the organised crime in conjunction with trafficking in human beings and money laundering under Article 209(3) of the Criminal Code, and one with the organised crime in conjunction with money laundering.

1. Legal-assistance requests of the Bosnia and Herzegovina authorities and the information provided by the Azerbaijani authorities

(a) The first legal-assistance request

43. On 29 April 2010 the Prosecutor's Office of Bosnia and Herzegovina sent a legal-assistance request to the relevant authorities of the Republic of Azerbaijan under the European Convention on Mutual Legal Assistance in Criminal Matters ("the Mutual Assistance Convention"). It informed the Azerbaijani authorities that, at the time the request was made, eleven Bosnia and Herzegovina nationals, including one unidentified, and one unidentified Azerbaijani national (known only by first name, S.) were suspected of having committed the above-mentioned criminal offences. In particular, the Prosecutor's Office of Bosnia and Herzegovina had received information from former workers of Serbaz that, while they had worked in Azerbaijan, the above-mentioned suspected persons had taken away their travel documents, that the workers had been accommodated in places with inhumane living conditions, that they had been subjected to various unjustified punishments, that their freedom of movement had been

restricted, that they had been exposed to mental and sometimes even physical abuse, and that they had not been paid for their work.

44. The Prosecutor's Office of Bosnia and Herzegovina requested the Azerbaijani authorities to provide, *inter alia*, the following information:

(i) various information on the business activities of Serbaz in Azerbaijan;

(ii) whether workers from Bosnia and Herzegovina had been registered as foreigners with temporary residence in Azerbaijan and the list of those workers of Serbaz;

(iii) whether the Azerbaijani authorities had received any official reports of unlawful stay in Azerbaijan of any workers from Bosnia and Herzegovina or any complaints from Bosnia and Herzegovina nationals concerning any criminal or other offences or human rights violations and, if so, what action had been taken by the Azerbaijani authorities;

(iv) whether in late 2009 the Azerbaijani authorities had taken control of the construction sites where Serbaz had conducted its activities; and

(v) establishment of identity of the Azerbaijani national, S.

(b) The response to the first legal-assistance request

45. On 11 April 2011 the Embassy of Azerbaijan in Ankara transmitted the response of the Azerbaijani authorities to the Embassy of Bosnia and Herzegovina in Ankara. The response included the following documents:

(i) a letter of 21 October 2010 of the Baku City Prosecutor's Office forwarding the legal-assistance request, which it had received via the Ministry of Foreign Affairs, to the Baku City Main Police Office of the Ministry of Internal Affairs;

(ii) a letter of 10 November 2010 of the Baku City Main Police Office responding to the above-mentioned letter (informing that there was no information in the centralised database as to whether six of the mentioned Bosnia and Herzegovina nationals had crossed the Azerbaijani border and that one other, M.V., the "head" of Serbaz, had permanent residence in Moscow) and forwarding the request further to the Anti-Trafficking Department of the Ministry of Internal Affairs;

(iii) a letter of 11 November 2010 of the Baku City Prosecutor's Office addressed to the Operations and Statistical Information Department of the Ministry of Internal Affairs, requesting information on entry to and exit from the territory of Azerbaijan of the Bosnia and Herzegovina nationals mentioned in the legal-assistance request (no response to this letter is available in the case file); and

(iv) a letter of 18 November 2010 of the Anti-Trafficking Department responding to the letters mentioned in points (i) and (ii) above.

46. In the above-mentioned letter of 18 November 2010, the Anti-Trafficking Department provided, *inter alia*, the information summarised in paragraphs 47-54 below.

47. The Anti-Trafficking Department had examined "information and requests" received by it concerning nationals of Bosnia and Herzegovina, Serbia and North Macedonia having been victims of forced labour. It had determined that Serbaz, which was a subsidiary of Acora, had been contracted by certain State authorities and private companies to construct various buildings in Baku and Mingechevir. During the period from 2007 to 2009 around 750 workers from Bosnia and Herzegovina, Serbia and North Macedonia had been taken by Serbaz to Azerbaijan under tourist visas. They had been accommodated in seventeen flats in Baku and ten flats in Mingechevir. In order to save their own money, some of the workers had voluntarily agreed to be accommodated, free of charge, in larger dormitories at Serbaz's expense.

48. The workers had been provided with return flight tickets, four daily meals, transportation to work sites and back, and medical assistance. On average, each worker had been paid USD 2,000 to USD 2,500 per month. Since there were no embassies of their respective countries in Azerbaijan (the closest embassies being in Ankara) and since any loss of their identity documents in Azerbaijan would have created problems in such a situation, their passports had been taken away by the Serbaz official and Bosnia and Herzegovina national, S.L., for necessary registrations and for safeguarding purposes. Where necessary, the passports had been given back to specific workers and then returned for safeguarding. Several workers had travelled back to their countries for family reasons and had come back to Azerbaijan.

49. After working for a period of six months in Azerbaijan, each worker had the right to one-month's leave and, at this point, most workers had chosen simply to return to their countries. Two named workers had told the Anti-Trafficking Department that they had returned to work in Azerbaijan for a second time because they were content with the working conditions and wages. Eight named workers had married Azerbaijani women and eventually settled in Azerbaijan.

50. In August and October 2009, two named workers had died from heart problems.

51. As to the examination of alleged violations of some workers' rights by Serbaz, it was determined that those (unnamed) workers had been reprimanded for violating internal disciplinary rules by consuming alcohol during working hours and avoiding work and had been sent back to their home countries. Moreover, according to statements by the "majority of workers", two individuals, including M.V. (the same name as the worker mentioned in the applicants' civil claim – see paragraph 19 above), had been sent back for regularly consuming alcohol and breaking the relevant disciplinary rules applicable in the construction industry.

52. During their stay in Azerbaijan, all workers had been in possession of personal mobile phones and could have contacted any country in the world. By the end of 2009, Serbaz had exceeded its construction targets but

had found itself in a difficult financial situation as it had run out of available funds. Because of this, it had to lay off staff who had become redundant.

53. In October 2009 diplomats of Serbia and Bosnia and Herzegovina had visited Baku, met with Serbaz workers, inquired about their working and living conditions and had discussions with the Serbaz management concerning payment of due wages and other shortcomings. During those meetings, workers had given the diplomats a collectively signed statement that they had no grievances against the company. All workers who had expressed the wish to return to their countries had been paid their due wages accrued throughout the end of October 2009 and returned back to their countries in an organised manner.

54. Several unnamed "questioned workers" had stated that they had not been beaten, insulted, exploited or forced to do any work by Serbaz. Accordingly, referring to all of the above, the Anti-Trafficking Department had concluded that the allegations of foreign workers having been subjected to forced labour on the territory of Azerbaijan had not been confirmed.

(c) The second legal-assistance request and the response

55. It appears that in September 2011 the Bosnia and Herzegovina authorities requested further information from the Azerbaijani authorities concerning, apparently, the business relations between Serbaz and the Ministry of Youth and Sports of Azerbaijan.

56. In response, they were provided with a copy of a letter of 18 January 2012 of the Ministry of Youth and Sports addressed to the Nasimi District Prosecutor's Office of Azerbaijan, providing detailed information, which can be summarised as follows.

57. In March 2007 the Ministry of Youth and Sports concluded its first contract with Serbaz concerning the planned construction of a sports and exhibition complex. Subsequently, it commissioned Serbaz in connection with two other renovation and construction projects and, during the period between 2007 and 2009 inclusively, concluded several contracts with Serbaz concerning those projects and made a number of payments to Serbaz under those contracts. In total, the Ministry paid 54,257,447 Azerbaijani manats (AZN) to Serbaz under those contracts.

(d) The third legal-assistance request and the response

58. In November 2012 the Prosecutor's Office of Bosnia and Herzegovina sent a third request to the Azerbaijani authorities, informing them that, in addition to and in parallel with the criminal investigation, it was conducting a financial investigation of Serbaz's activities. It requested information on all transactions linked to the Serbaz account at the International Bank of Azerbaijan in 2009 and 2010. It also inquired whether

Serbaz had any other bank accounts in Azerbaijan and, if so, requested similar information on transactions linked to those accounts.

59. In January 2013 the Azerbaijani authorities provided the requested information in the form of printouts of bank statements.

2. Criminal convictions of four defendants in Bosnia and Herzegovina

60. According to copies of two judgments submitted by the Government of Bosnia and Herzegovina, on 28 February and 10 July 2017, respectively, the Court of Bosnia and Herzegovina convicted two of the thirteen accused persons (see paragraph 42 above), S.L. and N.T., based on plea bargain agreements. Those judgments have become final.

61. The Court of Bosnia and Herzegovina found that there was sufficient evidence on the basis of the guilty plea and evidence submitted by the prosecution to conclude that those two persons were guilty of the criminal offences of trafficking and organised crime under Articles 186(1) and 250(2) of the Criminal Code of Bosnia and Herzegovina. S.L. was sentenced to one year and nine months' imprisonment. N.T. received a conditional prison sentence. The facts established by the Court of Bosnia and Herzegovina in those two judgments were as follows.

62. Between August 2007 and November 2009, S.L. and N.T. were part of an organised crime group that exploited nationals of Bosnia and Herzegovina, Serbia and North Macedonia by forcing them to work on construction sites in Azerbaijan. The group carried out these acts under the guise of Serbaz, which was a branch of Acora, a company registered in a British oversees territory. Serbaz entered into contracts with the Ministry of Youth and Sports of Azerbaijan, providing that Serbaz would complete certain construction projects. Victims were told by employees of Serbaz that, if they moved to Azerbaijan for employment, they would receive good salaries, excellent accommodation, health insurance, and food expenses. In addition, their visas would be paid for and their stay in Azerbaijan would be regularised. Serbaz arranged the victims' flights to Azerbaijan. Once they arrived, the employees of Serbaz seized their travel documents, claiming that this was necessary in order to regularise their residence. The victims' travel documents were not returned to them, preventing them from leaving the country to return home. Serbaz placed victims in inadequate, overcrowded accommodation, and abused their alien status, their lack of knowledge of the local language and their dependence on Serbaz in order to exploit them for labour. The Serbaz management meted out both physical and psychological punishment on victims, for example, by forcing them to perform strenuous and prolonged physical labour and subjecting them to beatings. Victims were paid wages which were arbitrarily reduced and they were denied the employment benefits promised to them on the ground that they had committed "disciplinary violations". Victims were punished and fined for smoking cigarettes, for consuming alcohol outside working hours

and for leaving the accommodation. Victims were deprived of their liberty as they were prevented from leaving the accommodation outside of working hours. They were deprived of adequate food, only receiving small portions of low-calorie meals. Many workers lost significant weight while working for Serbaz. Victims were expected to work shifts from twelve hours to as many as twenty-four or thirty-six hours continuously, six or seven days per week. Victims were also deprived of access to adequate healthcare and some developed untreatable illnesses. An atmosphere of fear and dependency was created within Serbaz by those implicated, with the intention of fraudulently depriving the victims of their wages through deductions, fines and denial of adequate accommodation, food and healthcare in order to misappropriate the money transferred to the account of Serbaz for construction projects. It was calculated that at least 5,895,040.67 Bosnia and Herzegovina convertible marks (approximately 3,000,000 euros) had been appropriated by the organised members within Serbaz.

63. The Government of Bosnia and Herzegovina also submitted a statement under oath given by applicant no. 1 in the Appendix, Mr Seudin Zoletic, to the Prosecutor of Bosnia and Herzegovina on 21 March 2012. His statement was essentially in line with the findings set out in the above-mentioned judgments.

64. According to the information publicly available on the internet site of the Court of Bosnia and Herzegovina, on 28 March 2018 the court convicted two other persons, N.C. and S.K., accused in the framework of the above-mentioned criminal proceedings, after a hearing for the pronouncement of criminal sanction pursuant to plea bargain agreements. The court found both of them guilty of the criminal offenses of organised crime and trafficking in human beings. Both defendants were sentenced to one year's imprisonment, which sentences were replaced at the same hearing with community service for ninety working days. The full text of the judgment was not published. It appears that the convictions have become final.

3. Acquittal of the remaining defendants by the Court of Bosnia and Herzegovina

65. According to the documents submitted by the Government of Bosnia and Herzegovina, by a judgment of 4 December 2019, following a trial, the Court of Bosnia and Herzegovina acquitted the remaining nine accused persons of all charges. Serbaz's workers who were heard as witnesses testified, for the most part, that promises given to them had mostly been kept, including those concerning the kind of labour they would be doing, their working hours and the salary they would receive. As concerns the salaries, the workers generally stated that they had received the promised payments. The only problematic period appeared to have been around 2009

when the company had encountered financial issues, as a result of which payments had been delayed during that period. The court found, however, that those payments had eventually been made, in some cases after the workers had returned home. The main source of workers' dissatisfaction had been the lack of increased salary for overtime work. While the court agreed that they had not received an increased compensation, such work had been neither forced nor unpaid. It was also established that several workers had been fined, mostly in relation to alcohol consumption. However, the court held that such fines had been justified given that sobriety was critically important in dangerous settings of construction labour.

66. The court also found that workers had lived in very good conditions in terms of their accommodation. The possibility remained that some workers had been accommodated differently, but there was no evidence that their conditions had been inadequate or that there had been any intent on part of the accused to abuse them. The court further held that workers' freedom of movement had not been restricted as evidenced by, *inter alia*, photographs showing them at dinners, barbecues and sporting events. Although the workers had handed over their passports once they had arrived in Azerbaijan, requests to have them back had been mostly allowed (for example, when they had wanted to send money to their families). Relying on copies of Azerbaijani "ID cards" of three specifically named workers, none of whom are the applicants in the present case, the court noted that workers had been issued Azerbaijani "ID cards" for moving around the country freely.

67. As to the allegations of inadequate food and health care, the court found them to be untrue, unproven or, at least, exaggerated. The majority of workers stated that they had not been subjected to violence or physical punishment. In rare examples where violence might have taken place, it remained undetermined whether it had been instigated by the accused or by workers themselves. The court found that, even if the accused were to be considered the instigators, there was no necessary *mens rea* for the crime of human trafficking.

68. On 29 January 2021 the Appeals Chamber of the Court of Bosnia and Herzegovina upheld the first-instance judgment and reiterated that, while the case could raise labour law issues, the elements of human trafficking had not been proven.

RELEVANT LEGAL FRAMEWORK AND INTERNATIONAL TREATIES AND OTHER DOCUMENTS

I. RELEVANT DOMESTIC LAW

A. The 1995 Constitution

69. Article 35 of the Constitution provides:

Article 35. Right to work

"III. No one may be subjected to forced labour ..."

70. Article 148 of the Constitution provides:

Article 148. Acts constituting the legislative system of the Republic of Azerbaijan

"II. International treaties to which the Republic of Azerbaijan is a party are an integral part of the legislative system of the Republic of Azerbaijan ..."

B. The Criminal Code

71. Article 144-1 of the Criminal Code, as in force at the material time, provided as follows:

Article 144-1. Trafficking in human beings

"144-1.1. Trafficking in persons, that is the recruitment, acquisition, apprehension, harbouring, transportation, transfer or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation –

is punishable by deprivation of liberty for a period of five to ten years.

144-1.2. The same acts:

144-1.2.1. committed against two or more persons;

144-1.2.2. committed repeatedly;

...

144-1.2.5. committed by a group of persons who conspired in advance, an organised group or a criminal network (criminal organisation);

144-1.2.6. committed by a perpetrator using his official authority;

144-1.2.7. committed by use or threat of violence which represents a danger to life and health;

144-1.2.8. committed by means of torture or cruel, inhuman or degrading treatment of the victim; ...

are punishable by deprivation of liberty for a period of eight to twelve years.

144-1.3. Acts referred to in Articles 144-1.1 and 144-1.2 causing the death of a victim or other grave consequences due to negligence –

are punishable by deprivation of liberty for a period of ten to fifteen years.

***Notes**:*

1. "Human exploitation" referred to in this Article shall mean forced labour (servitude), sexual exploitation, slavery and practices similar to slavery and the dependence resulting therefrom, illegal extraction of human organs and tissues, conduct of illegal biomedical research on a person, use of a woman as surrogate mother, engaging a person in illegal, including criminal, activities.

2. Any consent by a victim of human trafficking to being exploited, his or her lifestyle or immoral behaviour cannot be considered as a circumstance mitigating the punishment for the person found guilty of trafficking in human beings."

72. Article 144-2 of the Criminal Code, as in force at the material time, provided as follows:

Article 144-2. Forced labour

"144-2.1. Forcing a person to perform certain work (service) by means of intimidation, use or threat of force, or by means of confinement other than in the situations prescribed by the law –

is punishable by correctional labour for a period of up to two years or deprivation of liberty for the same period.

144-2.2. The same acts:

144-2.2.1. committed against two or more persons;

144-2.2.2. committed repeatedly;

...

144-2.2.5. committed by a perpetrator using his official authority;

144-2.2.6. committed by a group of persons who conspired in advance, an organised group or a criminal network (criminal organisation) –

are punishable by deprivation of liberty for a period of three to five years.

144-2.3. Acts referred to in Articles 144-2.1 and 144-2.2 causing the death of a victim or other grave consequences due to negligence –

are punishable by deprivation of liberty for a period of five to ten years."

C. The 2000 Code of Criminal Procedure ("the CCrP")

73. According to Article 37.1 of the CCrP, depending on the nature and severity of the offence, the criminal prosecution is carried out under procedures of private, semi-public or public criminal charges. According to Article 37.6 of the CCrP, the criminal offences under Articles 144-1 and 144-2 of the Criminal Code, among many others, are prosecuted under the procedure of public charges.

74. According to Article 38.1 of the CCrP, when the preliminary investigator, investigator or prosecutor receives information concerning the preparation or commission of a criminal offence or directly discovers such an offence, he or she shall take measures to protect and collect evidence and shall immediately conduct, within his or her powers, a preliminary investigation or investigation in accordance with the procedures provided by the CCrP.

75. Article 39 of the CCrP provides, in the relevant part:

Article 39. Circumstances excluding criminal prosecution

"39.1. Criminal prosecution cannot be commenced, and the commenced criminal prosecution must be terminated (and criminal proceedings cannot be instituted, and the instituted criminal proceedings must be terminated) in the following circumstances:

39.1.1. absence of a criminal event; ..."

D. The 2000 Code of Civil Procedure ("the CCP")

76. According Article 77.1 of the CCP, each party in civil proceedings bears the burden of proving the grounds for their respective claims and objections.

77. According to Article 89.1 of the CCP, written evidence is documents, deeds, contracts, statements, professional correspondence and other documents and material certified by a notary and providing information relevant to a case. According to Article 89.2, documentary material obtained by fax, electronically or by other communication means or by other methods can be accepted by a court on the condition that the authenticity of that material can be established. According to Article 89.3, either originals or duly certified copies of the necessary evidence shall be submitted to the court.

78. According to Article 265.4 of the CCP, if upon examination of a civil claim a court discloses an appearance of criminal elements in the actions of the parties to the case or other persons, it must deliver a special ruling (*xüsusi qərardad*) informing a public prosecutor thereof.

E. The Labour Code

79. According to Article 4 of the Labour Code, the provisions of the Code are applicable, with certain stipulations, to all enterprises, bodies and organisations founded by the Azerbaijani State authorities, individuals and legal entities and located on the territory of Azerbaijan. According to Article 5 of the Code, the Code is also applicable, with certain stipulations, to all workplaces registered and functioning in Azerbaijan, founded by foreign States, foreign individuals and legal entities, international

organisations or Stateless persons, unless it is provided otherwise in the treaties concluded by the Republic of Azerbaijan with foreign States or international organisations.

80. Article 6 of the Labour Code provides as follows:

Article 6. Persons to whom this Code is not applicable

> "This Code is not applicable to the following persons:
>
> ...
>
> (d) foreigners who have concluded employment contracts with a foreign country's legal entity in that foreign country and who perform their employment functions at an enterprise (branch or representative office) in the Republic of Azerbaijan; ..."

81. Articles 13.1-13.3 of the Code provides for the equality of labour rights and obligations of Azerbaijani citizens and of foreigners and stateless persons, unless otherwise provided by law or international treaties to which Azerbaijan is a party, and prohibits any restrictions of labour rights of foreigners and stateless persons, unless otherwise provided by law. Article 13.4 of the Code, as in force at the material time, provided as follows:

> "4. Employers may hire foreigners or stateless persons after obtaining in their respect individual work permits for performing remunerated labour activities on the territory of the Republic of Azerbaijan in accordance with the procedure established by law."

82. Article 17 of the Labour Code prohibits forced labour.

F. Legislation on foreign citizens' entry to and stay in Azerbaijan and on labour migration

1. The Law on departure from and arrival in the country and on passports of 14 June 1994

83. According to Article 12 of this Law, foreigners may enter and exit the territory of Azerbaijan on the basis of a passport and valid visa. The period of a foreigner's temporary stay in Azerbaijan is determined by the term indicated in the visa.

2. The Law on registration at the place of residence and place of stay of 4 April 1996

84. According to Article 6 of this Law, as in force at the material time, a foreigner wishing to reside in Azerbaijan for a period of more than thirty days was required to apply (to the Ministry of Internal Affairs and the State Migration Service), within three days of arrival at the place of residence, for registration at that place of residence, by presenting, *inter alia*, the passport and the visa. According to Article 11 of the Law, a foreigner wishing to stay

in Azerbaijan for a period of up to thirty days was required to apply for registration at the "place of stay" (such as a hotel, dormitory, and other places of temporary stay) at the time of arrival to that place, by, *inter alia*, filling out a questionnaire and submitting it together with other documents to the management or owner of the "place of stay".

3. The Law on legal status of foreigners and stateless persons of 13 March 1996

85. According to Article 5 of this Law, foreigners wishing to temporarily reside in Azerbaijan were to obtain a residence permit. A residence permit was issued if, *inter alia*, the foreigner had obtained an individual work permit for the purposes of working in Azerbaijan. Foreigners temporarily or permanently residing in Azerbaijan were required to be registered at their place of residence. Other foreigners who were temporarily in Azerbaijan were required to be registered at their "place of stay".

4. The Law on labour migration of 28 October 1999

86. The Law on labour migration of 28 October 1999, as in force at the material time (repealed as of 1 August 2013, in connection with adoption and entry into force of the new 2013 Migration Code), defined the "labour migration" as change by an individual of his or her place of residence for the purposes of performing labour activities, and defined the "migrant worker" as an individual who migrated from one country to another country for the purposes of performing remunerated labour activities (Article 1).

87. The provisions of the Law were not applicable to, *inter alia*, persons seconded for a period not exceeding three months (Article 3).

88. Legal entities, entrepreneurs and branches and representative offices of foreign legal entities wishing to employ foreigners in Azerbaijan were required to apply for a relevant permit from the relevant executive authority (Articles 5 and 16). Foreigners performing remunerated labour activities in Azerbaijan were required to obtain an individual work permit, by applying to the relevant executive authority through their employer (Articles 6 and 16).

89. A migrant worker was issued a temporary residence permit for a term of validity of the individual work permit. Upon the expiry of the term of the individual work permit or upon termination of the employment contract, the migrant worker was required to leave the territory of Azerbaijan. Where a migrant worker performed remunerated labour activities in Azerbaijan in breach of the requirements of this Law, he or she was to be expelled from the territory of Azerbaijan at the expense of his or her employer (Article 8).

5. The Law on State fee of 4 December 2001

90. According to Article 18.58 of this Law, as in force at the material time, the fee for an initial issuance of an individual work permit was 1,000 Azerbaijani manats (AZN) and the fee for prolongation of the permit was in the same amount.

G. The Law on combating trafficking in human beings of 28 June 2005

91. Article 1 of this Law provides definitions of "trafficking in human beings" and "forced labour" similar to those given in the Criminal Code (see paragraphs 71-72 above).

92. The Law provides, *inter alia*, for adoption of the National Action Plan on Combating Trafficking in Human Beings and for establishment of the office of the National Coordinator on Combating Trafficking in Human Beings and a special anti-trafficking police unit. It also contains provisions concerning prevention of human trafficking, rehabilitation and protection of victims, and criminal liability for and specifics of criminal cases concerning the offence of trafficking in human beings.

93. According to Article 26 of the Law, in combating trafficking in human beings, the Republic of Azerbaijan cooperates with other States, their law-enforcement authorities, as well as with international organisations combating trafficking in human beings, in accordance with the international treaties to which it is a party.

94. According to Article 27 of the Law, Azerbaijani citizens, foreign citizens and stateless persons who have committed criminal offences related to trafficking in human beings are criminally prosecuted under the Criminal Code of the Republic of Azerbaijan irrespective of the place where the offence was committed.

95. According to Article 28 of the Law, legal assistance in criminal cases concerning trafficking in human beings is provided in accordance with the international treaties to which Azerbaijan is a party and the Azerbaijani legislation on legal assistance in criminal cases.

II. RELEVANT INTERNATIONAL LAW

96. At the time of the events of the present case, Azerbaijan was a party to the following relevant international treaties:

- the Geneva Convention to Suppress the Slave Trade and Slavery of 25 September 1926;
- Convention no. 29 of the International Labour Organisation (the ILO) of 28 June 1930 on forced labour ("ILO Convention no. 29");
- the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 30 April 1956;

- the International Covenant on Civil and Political Rights ("the ICCPR");
- the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 18 December 1990 ("the ICRMW"); and
- the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children ("the Palermo Protocol"), supplementing the United Nations Convention against Transnational Organised Crime of December 2000.

As to the Council of Europe Convention on Action against Trafficking in Human Beings of 16 May 2005, Azerbaijan signed it on 25 February 2010 and ratified it on 23 June 2010, and that Convention entered into force in respect of Azerbaijan on 1 October 2010.

The relevant provisions of the above-mentioned treaties (except the ICRMW, the provisions of which are cited in paragraph 99 below) and the related material are cited in *Siliadin v. France* (no. 73316/01, §§ 50-51, ECHR 2005-VII); *Rantsev v. Cyprus and Russia* (no. 25965/04, §§ 137-41, 149-55 and 160-74, ECHR 2010 (extracts)); *Chowdury and Others v. Greece* (no. 21884/15, §§ 39-44, 30 March 2017); and *S.M. v. Croatia* ([GC], no. 60561/14, §§ 109-22 and 130-71, 25 June 2020).

97. In particular, Article 2 § 1 of ILO Convention no. 29 reads as follows:

> "... the term forced or compulsory labour shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily."

98. The Palermo Protocol defines trafficking in human beings as follows:

> "'Trafficking' in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs ..."

99. The following are, *inter alia*, the relevant provisions of the ICRMW (adopted by the United Nations General Assembly resolution 45/158 of 18 December 1990, ratified by Azerbaijan on 11 January 1999, entered into force on 1 July 2003):

Article 2

"For the purposes of the present Convention:

1. The term "migrant worker" refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.

2. ...

(f) The term "project-tied worker" refers to a migrant worker admitted to a State of employment for a defined period to work solely on a specific project being carried out in that State by his or her employer;

(g) The term "specified-employment worker" refers to a migrant worker:

(i) Who has been sent by his or her employer for a restricted and defined period of time to a State of employment to undertake a specific assignment or duty; or

(ii) Who engages for a restricted and defined period of time in work that requires professional, commercial, technical or other highly specialized skill; or

(iii) Who, upon the request of his or her employer in the State of employment, engages for a restricted and defined period of time in work whose nature is transitory or brief; and who is required to depart from the State of employment either at the expiration of his or her authorized period of stay, or earlier if he or she no longer undertakes that specific assignment or duty or engages in that work; ..."

Article 3

"The present Convention shall not apply to:

...

(b) Persons sent or employed by a State or on its behalf outside its territory who participate in development programmes and other co-operation programmes, whose admission and status are regulated by agreement with the State of employment and who, in accordance with that agreement, are not considered migrant workers; ..."

Article 11

"1. No migrant worker or member of his or her family shall be held in slavery or servitude.

2. No migrant worker or member of his or her family shall be required to perform forced or compulsory labour ..."

Article 16

"2. Migrant workers and members of their families shall be entitled to effective protection by the State against violence, physical injury, threats and intimidation, whether by public officials or by private individuals, groups or institutions ..."

Article 21

"It shall be unlawful for anyone, other than a public official duly authorized by law, to confiscate, destroy or attempt to destroy identity documents, documents authorizing entry to or stay, residence or establishment in the national territory or work permits. No authorized confiscation of such documents shall take place without delivery of a

detailed receipt. In no case shall it be permitted to destroy the passport or equivalent document of a migrant worker or a member of his or her family ...”

Article 69

“1. States Parties shall, when there are migrant workers and members of their families within their territory in an irregular situation, take appropriate measures to ensure that such a situation does not persist.

2. Whenever States Parties concerned consider the possibility of regularizing the situation of such persons in accordance with applicable national legislation and bilateral or multilateral agreements, appropriate account shall be taken of the circumstances of their entry, the duration of their stay in the States of employment and other relevant considerations, in particular those relating to their family situation.”

100. Both Azerbaijan and Bosnia and Herzegovina are parties to the European Convention on Mutual Assistance in Criminal Matters of 20 May 1959 of the Council of Europe (“the Mutual Assistance Convention”) (entry into force in respect of Azerbaijan on 2 October 2003 and in respect of Bosnia and Herzegovina on 24 July 2005), the relevant provisions of which provide as follows:

Article 1

“1. The Contracting Parties undertake to afford each other, in accordance with the provisions of this Convention, the widest measure of mutual assistance in proceedings in respect of offences the punishment of which, at the time of the request for assistance, falls within the jurisdiction of the judicial authorities of the requesting Party ...”

Article 3

“1. The requested Party shall execute in the manner provided for by its law any letters rogatory relating to a criminal matter and addressed to it by the judicial authorities of the requesting Party for the purpose of procuring evidence or transmitting articles to be produced in evidence, records or documents.

2. If the requesting Party desires witnesses or experts to give evidence on oath, it shall expressly so request, and the requested Party shall comply with the request if the law of its country does not prohibit it ...”

III. RELEVANT REPORTS CONCERNING THE SITUATION AT SERBAZ AND MIGRANT WORKERS IN AZERBAIJAN IN GENERAL

A. The ASTRA Report

101. As noted above, the ASTRA Report, dated 27 November 2009, was prepared jointly by three NGOs: ASTRA (Serbia), La Strada (Bosnia and Herzegovina) and Cooperation for Social Development (Croatia). The report is around twenty pages long. The report exists in Serbian (original) and Azerbaijani (translation). In preparation of the report, the authors also

cooperated, *inter alia*, with AMC. The report was largely based on the information given by workers who had returned to their home countries. According to the report, the grievances concerning Serbaz first appeared in some media in Bosnia and Herzegovina on 20 October 2009. In November 2009 the NGOs became involved in the matter, having also received information by email from an unidentified source and in a telephone call from the OSCE Warsaw office. The report noted that its contents constituted "initial information".

102. According to the report, by 2009, Serbaz had already been involved in construction projects in Azerbaijan, commissioned by the Azerbaijani authorities, for a period of two or three years. For this purpose, it hired nationals of Serbia, Bosnia and Herzegovina and North Macedonia and took them to Azerbaijan. It was not possible to determine the exact number of workers taken to Azerbaijan during that period. According to various estimates, the total number was several hundred people and perhaps around a thousand.

103. More workers were taken by Serbaz to Azerbaijan in 2009 than in previous years. Violence against workers intensified in the second half of 2009. Payment of wages was often delayed and workers were often paid less than promised. Deductions were made from the wages as punishment for breaching rules during and outside working hours. Payment of wages was completely stopped on 12 or 13 October 2009.

104. The report identified, by their full names, two persons who were presumably nationals of either Bosnia and Herzegovina or Serbia as possible owners of Serbaz. It further identified four individuals who formed the "management" of the company. These were three presumed Bosnia and Herzegovina nationals, identified by their full names, including S.L. (see paragraph 60 above), and one Azerbaijani national who was rumoured to be a former police officer and could only be identified by the nickname "Colonel", and who, the workers believed, acted as a liaison with the authorities. It further identified three chief "supervisors" who were also in charge of other supervisors: two presumed Bosnia and Herzegovina nationals, including N.T. (see paragraph 60 above), and one presumed Azerbaijani national who could be identified only by first name (R.). These individuals were described as cruel and violent.

105. Workers were hired in their home countries by representatives of Serbaz who asked them to sign "contracts", in the form of a questionnaire rather than a contract and only in one copy per worker (apparently kept by Serbaz). Travel expenses to Azerbaijan were paid partly by workers (local travel to the departure airport) and partly by Serbaz (airline tickets). The workers were also reportedly asked to pay some money upfront for, as they were told, visa and other expenses with a promise that those amounts would be reimbursed.

106. S.L. and other Serbaz representatives met workers at the Baku airport and immediately took away their passports with an explanation that that was necessary in order to regularise their residence. The passports were not returned to them until their eventual departure. Neither were they provided with work permits or residence permits and, accordingly, they stayed in Azerbaijan illegally after their visas had expired.

107. Those who worked in Baku lived in five houses and those who worked in Mingechevir in one house. The living conditions were poor: there were a lack of enough toilets, water outages, lack of hot running water, frequent lack of drinking water and lack of sufficient heating. There were strict internal disciplinary rules, forbidding workers to leave the houses during non-working hours without permission. Food was bad, monotonous and insufficient, as a result of which many workers lost considerable weight. After Serbaz "stopped" operations in October 2009, food portions became even smaller. In Mingechevir, workers had to buy additional food on credit in local shops, because they did not have money.

108. They worked shifts of twelve hours or longer, which could also be further extended by a supervisor's decision. On one occasion, N.T. prolonged one particular shift to thirty-six hours. There was either no or insufficient personal safety equipment given to them.

109. Workers were required to go to work even when they were sick. There was no doctor attending to them. There was only one nurse from North Macedonia who was not in a position to provide adequate care. Reportedly, three workers died from heart attacks and their bodies were returned by Serbaz to their home countries.

110. Before leaving for Azerbaijan, when signing "contracts", workers had been promised to be paid USD 5 to 7 per hour (USD 5 to 5.5 during the first month and more thereafter). However, in fact, they were paid USD 3 to 4 per hour. As a result, they received USD 1,000 to 3,000 less in wages. From May to August 2009 no wages were paid at all. As a result, those who arrived in Azerbaijan in April or May 2009 either received their first payment in August or did not receive anything until their return. The management advised workers to "entrust", for "their own good", their wages to the company for safekeeping until the end of their employment. Workers who followed this advice could not eventually recover their wages.

111. Workers were often punished by fines, which usually ranged in the amounts between USD 100 and 500, and sometimes more, for coming back to the house later than permitted, leaving the house without permission, not making their bed, pausing at work or leaving work a couple minutes earlier, using toilets too often when at work, drinking alcohol during non-working hours, going to sleep early, and so on.

112. As to restrictions on leaving the houses without permission, the management told workers that these were necessary because they were not in possession of their passports and that they could be stopped and arrested

by the police, in which case Serbaz would have to pay large fines. On some occasions Serbaz also did not allow workers to travel back home for family reasons.

113. The report also contained several accounts of detentions of workers for periods of up to three days or physical force used on workers by the management and supervisors for such things as, for example, complaining about work and bringing alcohol and food to the house from outside.

114. In October 2009 "Colonel" told workers who were in Azerbaijan at that time that Serbaz was stopping its activity in Azerbaijan. Then they were flown back to their home countries in groups of ten to forty-five at Serbaz's expense. Before the flight, they were asked to sign papers stating that they had been paid their wages and had lived in good conditions, after which they were paid some amount of money, handed back their passports and taken to the airport. According to some workers, they had unspecified "problems" with airport or airline staff because their stay in Azerbaijan had not been regularised. According to one of them, he had to pay a bribe to airport staff to be allowed to depart from Baku. On some occasions, Colonel personally made phone calls to airport staff for workers to be allowed through.

115. According to the report, the Azerbaijani national coordinator on fight against human trafficking reported on the Serbaz case to the Parliament on 28 October 2009, noting that alleged working conditions of workers from Serbia and Bosnia and Herzegovina was not Azerbaijan's problem because they had been hired and had signed their contracts in those countries.

116. Furthermore, the report stated, without specifying dates or details, that workers had complained to the Azerbaijani police several times about threats against them, but to no avail. They also wrote a letter to the Chief Prosecutor's Office but received no reply. Also, according to some workers, no Azerbaijani State officials had ever visited them, even though the authorities "knew what was happening at Serbaz".

117. Workers told the NGOs that they sought assistance from the Bosnia and Herzegovina ambassador in Turkey, who sent the consul to meet with them in October 2009. The consul met with the Minister of Youth and Sport as well as with workers.

B. The Council of Europe: Group of Experts on Action against Trafficking in Human Beings (GRETA)

118. The following are extracts from the GRETA report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Azerbaijan, first evaluation round (adopted on 21 March 2014 and published on 23 May 2014) ("the GRETA Report"):

"12. ... Due to its rapid economic development, Azerbaijan has attracted a growing number of migrant workers in recent years. According to several reports, Azerbaijan is increasingly becoming a country of destination for people trafficked for the purpose of labour exploitation, in particular in the construction sector, and to a lesser extent in agriculture and domestic work. While the Azerbaijani authorities are conscious of the migration trends, they do not consider Azerbaijan to be a destination country for THB [trafficking in human beings] for labour exploitation ...

...

54. GRETA notes that the focus in Azerbaijan has been essentially on fighting THB for the purpose of sexual exploitation of Azerbaijani women abroad and not enough attention has been paid to THB for labour exploitation, particularly occurring in Azerbaijan ... The Azerbaijani authorities acknowledge the fact that labour exploitation can become a problem with the increase of migrant workers and the boom of the construction sector, in particular in the context of the First European Games to be organised in 2015 in Baku. Members of civil society consider that trafficking of migrant workers for labour exploitation has become a serious problem in Azerbaijan particularly in the sectors of construction and, to a lesser extent, agriculture and domestic work. In the absence of recent research on the topic, the scale of the problem of trafficking in human beings for the purpose of labour exploitation in Azerbaijan is yet unknown. Law enforcement officials and labour inspectors reportedly have a tendency to see potential cases of THB for labour exploitation as labour disputes between the worker and the employer. GRETA considers that the Azerbaijani authorities should acknowledge the phenomenon of THB for labour exploitation and adapt their policy and practical measures to the new situation in Azerbaijan.

...

101. GRETA notes that the 2005 Law on Combating THB does not refer to migrant workers as a group vulnerable to THB ... GRETA is concerned by reports according to which migrants' passports were taken away and migrants work and live in dire situations on some construction sites. In order to better prevent migrant workers from falling victim to THB for labour exploitation, more should be done to empower them by granting them a clear legal status and diminishing the precariousness of their stay in Azerbaijan. GRETA understands that the Migration Code, which entered into force on 1 August 2013, is a tool which should enhance the protection of migrants' rights. In particular, it simplifies the issuing of work permits for migrant workers and stateless persons. Prior to it, work permits were not extended more than four times ...

...

106. ... GRETA notes with concern that, according to ECRI's third report on Azerbaijan, migrants working in some sectors including construction, agriculture and domestic work are faced with difficulties making them vulnerable to serious forms of abuse, including to trafficking for the purpose of labour exploitation. The reasons for this state of affairs are the existence of very strict quotas applying to work permits for foreigners, the high cost of these work permits and the waiting time for obtaining or renewing them. The fact that the work permit can only be for one year and that the employer has to pay 1,000 AZN (approximately 1,000 euros) to the State to obtain the permit for the first year and for each following years is said to encourage illegal work and the vulnerability of migrant workers. In their comments on the draft report, the Azerbaijani authorities have underlined that under the new Migration Code, applications for a work permit must be processed within 20 days and the work permit must be presented to the employer within three days from the decision granting it

(Article 67). No additional fees will be paid in cases where a new permit is required for a migrant worker or stateless person who is moved from one post to another within the same company. According to GRETA, measures which could improve the situation by enabling legal migration for work to Azerbaijan include removing the dependence of the migrant workers from their employers who are the only one allowed to apply for the above mentioned one-year work permit and reducing the amount to pay to obtain a one-year work permit.

...

121. ... Raids and controls operated by the Department for Combating THB (occasionally together with the Labour Inspection Services and the Azerbaijan Entrepreneurs Confederation) in construction sites and other places employing migrant workers have so far hardly ever resulted in the detection of victims of THB. Reports of forced labour have been brought to the attention of the Department for Combating THB which has proceeded to inspect the premises, but no case of THB for forced labour has been identified ...

...

162. As indicated in paragraph 54, law enforcement officials and labour inspectors reportedly have a tendency to see potential cases of THB for labour exploitation as labour disputes between the worker and the employer. There seems to be confusion between cases of THB for labour exploitation and disputes on salaries or other aspects of working conditions. Recently, in some cases, the Azerbaijani authorities in co-operation with NGOs have successfully intervened (in out of court settlements) and obtained from employers that they pay the salaries due to migrant workers. However, GRETA stresses that where the situation corresponds to THB for forced labour and not just late payment of salaries, the reimbursement of salaries is to be ensured but would not be sufficient to compensate victims of this serious human rights violation for their moral and material damages.

...

195. GRETA was informed of the so-called “SerbAz” case of alleged transnational trafficking for labour exploitation in Azerbaijan, involving men from Bosnia and Herzegovina, Serbia and “the former Yugoslav Republic of Macedonia”. In 2009, the alleged victims responded to an employment offer as construction workers in Azerbaijan by the company “SerbAz Project Design and Construction LLC” registered in the Netherlands and Azerbaijan. It would appear that immediately upon their arrival in Azerbaijan, their passports were taken away and they were put to work on various construction sites guarded by armed people. They were locked up after working hours, accommodated in very poor conditions and their salaries were not paid. Moreover, the workers were allegedly subjected to heavy monetary fines for “disciplinary misconduct” and abused physically and psychologically. The Serbian NGO Astra has issued a report on the case, according to which three workers died from heart attack, which was apparently not followed by any investigation. According to Astra, no investigations have been initiated in Azerbaijan and all complaints against the police and the prosecution for failure to investigate have been dismissed.

196. During the visit to Azerbaijan, the GRETA delegation raised the case in question at meetings with representatives of the Ministry of Internal Affair and the State Prosecutor’s Office. The Azerbaijani authorities informed the delegation that after having interviewed a significant number of workers concerned, the Department on Combating Human Trafficking concluded that it could not identify any sign of trafficking or forced labour. None of the persons involved in this case were identified

as victims of trafficking in Azerbaijan. Some of them were paid the salaries which the company owed them (a total of four million euros were paid) thanks to the intervention of civil society and the Azerbaijani authorities. In their comments on the draft report, the Azerbaijani authorities have added that the case had been closed on 27 April 2011 as it had been considered that there was nothing to substantiate a criminal case against the company, in accordance with Article 39.1.1 of the Criminal Procedure Code. They have also stated that no complaint was subsequently lodged by the workers concerned and that the application filed on behalf of the workers by the NGO Azerbaijan Migration Centre was turned down by the Narimanov District Court and the Baku Court of Appeal, the decision of 27 April 2011 being upheld. GRETA recalls that effective investigation is a prerequisite for the successful implementation of the obligation of the Parties arising under the substantive criminal law (Chapter IV) and investigation, prosecution and procedural law (Chapter V) provisions of the Convention, and that it is not necessary to have a complaint lodged by a possible victim to start investigation or prosecution (see Article 27 of the Convention).

C. The Council of Europe: European Commission against Racism and Intolerance (ECRI)

119. The following are extracts from the third ECRI report on Azerbaijan (fourth monitoring cycle) (adopted on 23 March 2011 and published on 31 May 2011):

> "77. With specific regard to migrant workers, to be able to work legally they must be in possession of a valid work permit. Under the system established by law, it is for the employer to carry out the formalities for obtaining the required work permit and to pay the related fee, which amounts to AZN 1,000 per permit. Permits have a validity of one year and cannot be renewed more than four 25 times. The fee for renewing a permit is also AZN 1,000; in both cases, this amount reflects the authorities' aim to ensure that migrant workers only replace local workers where there exists a genuine need. Any employer in breach of these rules can incur heavy fines. ECRI notes that, although the system put in place has the merits of being clear and of making employers fully responsible for their acts, many civil society sources report that there are serious problems in practice. This is because, due in particular to the high cost of work permits and the waiting time for obtaining or renewing them, many employers have recourse to illegal employment practices. However, once migrant workers have become illegally employed they are vulnerable to serious forms of abuse. Cases have been reported where employers knowingly hired migrant workers without work permits and, for example, subsequently confiscated their passports and other identity documents, imposed extremely harsh working conditions, withheld workers' wages, failed to provide them with health insurance cover, or imposed restrictions on their freedom of movement – workers without legal documents having for instance been forced to live on the building sites where they are employed or in camps which they could leave only with the camp supervisor's permission. In this connection, ECRI underlines that migrant workers and members of their families, including those without regular status, must have the same rights as Azerbaijani citizens to file complaints and avail themselves of effective remedies before the courts. It is also important that labour inspectors should not be obliged under the applicable provisions to communicate the names of workers in an irregular situation to the immigration authorities, and should be able to focus on the measures necessary to remedy the abuses perpetrated by employers.

78. In addition, ECRI has been informed that any undocumented migrant who is stopped by the authorities can be deported immediately. The persons concerned are usually unaware of the substantive rules governing residence in Azerbaijan; even though the authority that delivers the deportation decision is required to inform the individuals concerned of the remedies available, without access to counselling or legal assistance, they have no real means of challenging the deportation measure in the courts before they are removed from the country. These problems are not confined to people who have recently entered the country but can also concern migrant workers who have been hired illegally and who do not dare to contact the labour inspectorate and even persons who have been living in Azerbaijan for several years and who, for some reason or another, find themselves in an irregular situation. In this last case, in particular, the lack of a means of effectively challenging the deportation measure can have serious implications for the private and family life of the persons concerned."

D. The International Labour Organisation

120. The Committee of Experts on the Application of Conventions and Recommendations (CEACR) made the following observation on the application of the ILO Convention no. 29 (adopted 2010, published 100th ILC session (2011)):

"*Articles 1(1), 2(1) and 25 of the Convention. Vulnerable situation of migrant workers in the construction sector.* The Committee notes the communication dated 1 September 2010 received from the International Trade Union Confederation (ITUC), which contains comments on the application of the Convention by Azerbaijan. It also notes the Government's reply to this communication received on 29 November 2010.

The Communication by the ITUC contains allegations concerning the situation of about 700 workers from Bosnia and Herzegovina, The former Yugoslav Republic of Macedonia and Serbia who were working on construction sites managed by the SerbAz Design and Construction Company in Azerbaijan. The ITUC refers in this connection to the reports received from the Office for Democratic Institutions and Human Rights (the ODIHR) of the Organization for Security and Co-operation in Europe (the OSCE) and from ASTRA (Anti-Trafficking Action), an NGO in Serbia. According to the allegations, workers had been recruited in Bosnia and Herzegovina and, once in Azerbaijan, were not provided with any legal work permits, but only with tourist visas, having also to hand over their passports to their employer. Without identification documents and residence permits, workers' freedom of movement was limited and their vulnerability was aggravated by the fact that they were obliged to live at the construction site, being strictly forbidden to leave, subject to threats of penalties, including physical punishment. The ITUC further alleged that workers had been living in appalling conditions, with insufficient food, water or proper medical services, which lead to two deaths.

The ITUC expressed the view that there have been indications of forced labour in this case, which include, *inter alia*, the use of threats and abuse of workers' vulnerability; coercion; deception regarding working and living conditions; physical punishment, high recruitment fees; withholding of wages; salary deductions; confiscation of documents; absence of work permits; limitations to freedom of movement; and absence of regular employment contracts.

The ITUC informs that the OSCE representative visited the constructions sites and confirmed the poor living conditions and apparent threats to workers. The Azeri Parliament was also informed of the situation and debated the issue, coinciding with

the submission of the annual report of the Azerbaijan National Anti-Trafficking Coordinator, which stated, however, that the situation of Serbian and Bosnian workers did not fall within Azerbaijan's jurisdiction, since the workers signed work agreements with SerbAz in their countries of origin. According to the above communication by the ITUC, some investigations have been initiated by national authorities in Bosnia and Herzegovina and Azerbaijan; ... A petition to the Ombudsman in Azerbaijan had also been prepared, and about 500 workers in Bosnia and Herzegovina were preparing to submit a case to the court in Azerbaijan to claim unpaid wages and other violations of workers' rights.

...

In its reply to the comments submitted by the ITUC, the Government denies the allegations, indicating that no direct appeals from workers employed by SerbAz regarding labour violations have been submitted to the Ministry of Labour and Social Protection of Population of the Republic of Azerbaijan. It further indicates that the only information concerning workers' rights violations had been received from the NGO "Azerbaijan Migration Centre", and that an appropriate investigation has been subsequently conducted by the State Labour Inspectorate, which did not confirm the allegations against the SerbAz company. According to the investigation, "it was defined that some specialists from a number of foreign countries were on their business trip" for that company. Finally, the Government informs that no individual work permits for foreign citizens have been obtained by the SerbAz company ..."

THE LAW

I. SCOPE OF THE CASE

121. At the outset, owing to the fact that the applicants did not articulate very clearly their grievances under the Convention in the initial application form (compare, *mutatis mutandis*, *S.M. v. Croatia* [GC], no. 60561/14, § 335, 25 June 2020) and that the Government raised objections relating to the scope of the case (see paragraphs 122-123 below), the Court considers it necessary to address these matters first.

122. In their comments to the applicants' observations, the respondent Government submitted that, while the Government's own submissions had been "based on the facts of the case as they appear[ed] in the materials of the case-file", the applicants had made new arguments in their observations that had not been "substantiated by the materials in the case file". The Court considers that this submission amounts to an argument that the applicants' observations went beyond the scope of the initial application.

123. Furthermore, in their comments on the observations of the third party, the Government of Bosnia and Herzegovina, the respondent Government argued that the third party's submissions "[had gone] beyond the scope of the present application and must be dismissed". The respondent Government considered, in particular, that the third party had "tried to replace the applicants' arguments with [their] own and to submit new facts and arguments allegedly related to the present case" and had "commented on the facts and merits of the case relying on the outcome of proceedings

conducted well after the date of lodging of the present application". The respondent Government noted that, while it appeared that some of the applicants had taken part in the proceedings conducted in Bosnia and Herzegovina, they must have had access to the documentary material relating to those proceedings and could have therefore submitted it to the Court themselves, which they had chosen not to do.

124. The Court reiterates that for the purpose of Article 32 of the Convention the scope of a case "referred to" the Court in the exercise of the right of individual application is determined by the applicant's complaint. A complaint consists of two elements: factual allegations and legal arguments (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018). By virtue of the *jura novit curia* principle the Court is not bound by the legal grounds adduced by the applicant under the Convention and the Protocols thereto and has the power to decide on the characterisation to be given in law to the facts of a complaint by examining it under Articles or provisions of the Convention that are different from those relied upon by the applicant (ibid., see also, among other authorities, *Molla Sali v. Greece* [GC], no. 20452/14, § 85, 19 December 2018).

125. The Court cannot, however, base its decision on facts that are not covered by the complaint, it being understood that, even if the Court has jurisdiction to review circumstances complained of in the light of the entirety of the Convention or to "view the facts in a different manner", it is nevertheless limited by the facts presented by the applicants in the light of national law. However, this does not prevent an applicant from clarifying or elaborating upon his or her initial submissions during the Convention proceedings. The Court has to take account not only of the original application but also of the additional documents intended to complete the latter by eliminating any initial omissions or obscurities. Likewise, the Court may clarify those facts *ex officio* (see *Radomilja and Others*, cited above, §§ 121-22 and 126).

126. In the case at hand in their initial application to the Court the applicants provided the description of their version of the events (as described in paragraphs 5-11 above) and submitted documents relating to the domestic civil proceedings instituted by them. They complained, *inter alia*, that they had been brought to Azerbaijan by Serbaz and had been "subjected to forced labour" in violation of domestic and international law, had worked without contracts and without work permits, had their documents taken away, had their freedom of movement restricted, and had not been paid their wages starting from May 2009. The applicants further complained that their grievances had not been properly assessed by the domestic courts whose judgments were unreasoned. They also complained that the domestic courts had failed to protect their pecuniary interests and address the issues of non-pecuniary damage suffered by them. They relied

on Article 6 of the Convention, Article 1 of Protocol No. 1 to the Convention and Article 2 of Protocol No. 4 to the Convention.

127. On 6 July 2017 the respondent Government were given notice of the applicants' complaints with the questions asked under Articles 4 § 2 and 6 of the Convention and Article 1 of Protocol No. 1 to the Convention, and the remainder of the application was declared inadmissible. In respect of Article 4 § 2 of the Convention, questions were put to the Government as to whether there had been a violation of that provision on account of a failure by the State to fulfil its positive obligations thereunder.

128. In this connection, as a master of characterisation to be given in law to the facts of the case, by virtue of the *jura novit curia* principle, the Court considers that the applicants' submissions in their initial application form, in substance, amounted to a complaint under Article 4 § 2 of the Convention, even though the applicants did not expressly refer to that provision. The Government has not made any express objections in this regard and, on the contrary, accepted that human trafficking and forced and compulsory labour constituted "the subject matter of the applicants' complaints".

129. Subsequently, in their comments to the Government's observations, the applicants noted that Article 4 of the Convention required member States to penalise and prosecute effectively any acts contrary to that Article, in addition to other positive obligations, such as putting in place a legislative and administrative framework to prohibit and punish those acts. Responding in particular to the Government's objection that the applicants had not exhausted the domestic remedies because they had not lodged a criminal complaint in respect of their grievances concerning forced labour and human trafficking (see paragraph 171 below), the applicants referred to Article 265.4 of the CCP, under which the civil courts were to inform the prosecuting authorities if, upon examination of a civil claim, they found an appearance of elements of a criminal offence in the actions of the parties to the case or other persons. They also noted that the domestic authorities had failed to duly investigate their allegations despite having been "well aware" of them (see paragraph 172 below).

130. In view of the above developments, the Court considers that the Government's objection summarised in paragraph 122 above can be understood as arguing that the scope of the applicants' in-substance complaint under Article 4 § 2 of the Convention, as originally argued in the initial application, had been limited to fairness of the civil proceedings only, and that the subsequently raised arguments concerning the respondent State's failure to apply criminal-law mechanisms of protection were new issues that fell outside the scope of the case, precluding the Court from examining them.

131. However, the Court cannot accept that argument in the present case. It is true that in their initial application the submissions made by the applicants concerned, *inter alia*, various circumstances relating to the

alleged forced or compulsory labour and human trafficking to which they had been subjected, and they complained expressly only of the decisions unfavourable to them taken by the domestic civil courts, without mentioning any criminal complaints or the State's duty to institute and conduct an effective criminal investigation. Nevertheless, the "factual submissions" constitutive of the in-substance complaint under Article 4 § 2, as argued by the applicants and as can be derived from the initial application assessed as a whole, referred, firstly, to the treatment allegedly amounting to forced labour and human trafficking and, secondly, in more general terms, to the alleged failure of the State to take effective steps in respect of their grievances concerning such treatment. In the Court's view, the applicants' subsequent submissions, albeit very brief, constituted an elaboration on this complaint whereby they also specified the failure of the domestic authorities to apply criminal-law mechanisms of protection. In other words, the additional legal arguments made in the applicants' observations constituted an elaboration of the arguments which had been made in connection with the original complaint based on the facts stated in the application form.

132. Moreover, in respect of the complaint under Article 4 § 2 of the Convention in particular, the Court notes that the general framework of positive obligations under that Article includes: (1) the duty to put in place a legislative and administrative framework to prohibit and punish treatment contrary to that provision; (2) the duty, in certain circumstances, to take operational measures to protect victims or potential victims of such treatment; and (3) a procedural obligation to investigate situations that may potentially amount to such treatment (see paragraphs 182 et seq. below). Having had regard to the applicants' submissions, the Court notes that, although they made a reference to the States' duty to put in place the relevant legislative and administrative framework, they did not make any specific arguments concerning any alleged shortcomings of the legislative and administrative network that was in place in the respondent State at the material time. Neither did they argue that there had been any alleged failure by the authorities to take any operational measures at the time when they had been subjected to the alleged treatment complained of. Their arguments, albeit brief, concerned only the domestic authorities' and courts' alleged failure to take steps to effectively examine and investigate their allegations.

133. Accordingly, the Court finds that the scope of the case before it, in terms of its legal characterisation, includes legal issues under Articles 4 § 2 and 6 of the Convention and Article 1 of Protocol No. 1 to the Convention. As to the complaint under Article 4 § 2 of the Convention in particular, its scope in the present case concerns the respondent State's alleged failure to comply with the procedural obligation to investigate the allegations of potential human trafficking and forced or compulsory labour. It is thus essentially of a procedural nature.

134. The above finding is without prejudice to the further assessment and conclusion as to the actual applicability and scope of protection guaranteed under the Convention for the acts complained of by the applicants (compare, *mutatis mutandis*, *S.M. v. Croatia*, cited above, § 229).

135. As to the Government's objection concerning the submissions made by the third party, the Court notes that the Government did not contest the veracity of the documents submitted by the third party, and instead merely objected to their examination by the Court. The Court reiterates, in this respect, that it has to take account not only of the original application but also of any additional documents and that it may even clarify facts *ex officio* (see paragraph 125 above). Moreover, in accordance with its broad margin of appreciation in this respect, the Court will draw conclusions supported by the free evaluation of all evidence, including such inferences as may flow from the facts and the parties' submissions (see *Merabishvili v. Georgia* [GC], no. 72508/13, § 315, 28 November 2017). The Court also takes note of the specific context of the present case, which involves matters concerning alleged cross-border trafficking in human beings, which give rise also to issues of effective cooperation between the relevant authorities of the States concerned (see paragraph 191 below). The Court considers that certain submissions and documents presented by the third party, in particular those described in paragraphs 35-59 above, are directly relevant to the factual and legal issues that fall within the scope of the case and, indeed, eliminate certain factual omissions and obscurities in the submissions by the applicants, as well as the submissions made by the respondent Government, which did not include any relevant documents. In particular, those submissions and documents clarify certain factual matters relating to the issue of the alleged failure by the respondent State to comply with its positive obligations under Article 4 § 2 of the Convention, a matter covered by the scope of the case. Accordingly, they must be taken into account.

136. Lastly, as to the information concerning the criminal proceedings conducted in Bosnia and Herzegovina and the judgments adopted in the framework of those proceedings after the present application had been lodged with the Court, the Court notes that, while those judgments contain references to relevant facts, the assessments made and conclusions reached in those proceedings are not the subject of the Court's examination in the present case. Within the scope of the present case, the Court is called upon to examine only the complaints raised against the respondent State which correspond to the time period prior to the date of lodging of the present application with the Court.

II. ALLEGED VIOLATION OF ARTICLE 4 § 2 OF THE CONVENTION

137. Relying on Article 6 of the Convention, Article 1 of Protocol No. 1 to the Convention and, in substance, on Article 4 § 2 of the Convention, the applicants complained that they had been victims of forced labour and human trafficking, that they had worked without contracts and work permits in Azerbaijan, that they had their passports taken away and their freedom of movement restricted by their employer, and that their wages had not been paid starting from May 2009 and until their departure from Azerbaijan. They further complained that the respondent State had failed to comply with its procedural obligation under the Convention and that the domestic courts examining their complaints had delivered unreasoned decisions.

138. Having regard to the circumstances complained of by the applicants and the manner in which their complaints were formulated, the Court considers it appropriate to examine the applicants' complaints under Article 4 § 2 of the Convention alone (for a similar approach, see, for example, *T.I. and Others v. Greece*, 40311/10, § 97, 18 July 2019). Article 4 § 2 provides as follows:

> "2. No one shall be required to perform forced or compulsory labour."

A. Admissibility

1. Victim status

139. The Court notes that the Government has not contested the applicants' victim status. However, this issue concerns a matter which goes to the Court's jurisdiction and which it is not prevented from examining of its own motion (see *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, § 93, 27 June 2017). In order to be able to lodge an application in accordance with Article 34, an applicant must be able to show that he or she was "directly affected" by the measure complained of (see *Tănase v. Moldova* [GC], no. 7/08, § 104, ECHR 2010, and *Lambert and Others v. France* [GC], no. 46043/14, § 89, ECHR 2015 (extracts)).

140. The Court notes that the copies of passport pages submitted by two of the applicants contained only illegible images of what might have been Azerbaijani visas, that four of the applicants did not submit any copies of their passports or any other travel documents and that thirteen other applicants submitted copies of their passports without any pages containing an Azerbaijani visa or Azerbaijani border entry or exit stamps. At no point in the Court proceedings did the nineteen applicants concerned provide any explanation for their failure to submit clear documentary proof that they had been in Azerbaijan or, at least, provide more concrete information as to

exact time periods during which each of them had worked in Azerbaijan. Therefore, a question arises as to whether those applicants have adequately substantiated their claims of having been victims of the alleged violation.

141. The Court notes in this respect that all of the applicants, including those nineteen mentioned above, provided a jointly summarised version of the events, even if brief and lacking individualised factual details (see paragraphs 5-9 above). At the domestic level, they were all parties to the relevant court proceedings (see paragraphs 18-34 above) and the domestic courts never called into question the applicants' submission that they all had worked in Azerbaijan. Moreover, the defendant in those proceedings, Serbaz, did not argue that any of the applicants had not been among those workers who had been "seconded" to Azerbaijan. Neither has the Government expressly argued that any of the applicants had not been in Azerbaijan.

142. Having regard to the above, the Court considers that all of the applicants can claim to be victims of the alleged violation.

2. Applicability of Article 4 § 2 of the Convention

(a) The parties' submissions

143. As noted above, the Government accepted that human trafficking and forced and compulsory labour constituted "the subject matter of the applicants' complaints". However, while not expressly raising any objections as to the applicability, the Government made submissions which, in their essence, can be understood as arguing that Article 4 § 2 of the Convention was not applicable to those complaints. In particular, the Government submitted that the applicants had not made out an "arguable claim" concerning the conditions of their work. The Government maintained that the applicants had not submitted any evidence concerning their allegations before either the domestic courts or the Court, at least in the form of photographs or video recordings of their alleged working and living conditions. Their complaints had been limited to vague and general statements and they had not provided a detailed account of the alleged events in order to "clarify the nature and extent of their problems". They had not even provided detailed information as to the dates of their arrival in and departure from Azerbaijan. As to the letter of the Danish Refugee Council, the Government argued that the time when that organisation had allegedly delivered humanitarian aid to migrants (November 2009) "did not correspond" to the allegation that, by November 2009, the applicants had left Azerbaijan and, moreover, did not specify the "category of migrants" and their names. Furthermore, the Government maintained that the applicants had not submitted a copy of the ASTRA Report to the domestic courts.

144. The applicants reiterated their assertion that they had been subjected to human trafficking and forced labour and noted that they had submitted relevant evidence, including the ASTRA report, to the Court and the domestic courts.

(b) The third party's comments

145. The third party, the Government of Bosnia and Herzegovina, submitted that the available materials and reports contained sufficient elements supporting the applicants' assertions. Moreover, taking into account the situation of vulnerability in which the applicants had found themselves, such as alleged restriction of their freedom of movement and allegedly limited contacts with the outside world, absence of passports or other documents in their possession which caused fear of the authorities, surveillance by security guards, and lack of money, it would have been objectively difficult for the applicants at the time to collect physical evidence to support their allegations.

(c) The Court's assessment

(i) The concepts of forced or compulsory labour and trafficking in human beings

146. The English word "labour" is often used in the narrow sense of manual work, but it also bears the broad meaning of the French word "travail" and it is the latter that should be adopted in the present context. The Court finds corroboration of this in the definition included in Article 2 § 1 of Convention no. 29 ("all work or service", "tout travail ou service"), in Article 4 § 3(d) of the European Convention ("any work or service", "tout travail ou service") and in the very name of the International Labour Organisation (Organisation Internationale du Travail), whose activities are in no way limited to the sphere of manual labour (see *Van der Mussele v. Belgium*, 23 November 1983, § 33, Series A no. 70, and *S.M. v. Croatia*, cited above, § 282).

147. The term "forced labour" brings to mind the idea of physical or mental coercion. As to the term "compulsory labour", it cannot refer just to any form of legal compulsion or obligation. For example, work to be carried out in pursuance of a freely negotiated contract cannot be regarded as falling within the scope of Article 4 of the Convention on the sole ground that one of the parties has undertaken with the other to do that work and will be subject to sanctions if he does not honour his promise. What there has to be is work "exacted under the menace of any penalty" and also performed against the will of the person concerned, that is, work for which he "has not offered himself voluntarily". In *Van der Mussele* (cited above) the Court found that "relative weight" was to be attached to the argument regarding the applicant's "prior consent" and thus opted for an approach which took account of all the circumstances of the case. In particular, it observed that,

in certain cases or circumstances, a given "service could not be treated as having been voluntarily accepted beforehand" by an individual. Accordingly, the validity of the consent had to be assessed in the light of all the circumstances of the case (see *Chowdury and Others v. Greece*, no. 21884/15, § 90, 30 March 2017).

148. The notion of "forced or compulsory labour" under Article 4 of the Convention aims to protect against instances of serious exploitation, irrespective of whether, in the particular circumstances of a case, they are related to the specific human trafficking context (see *S.M. v. Croatia*, cited above, § 300).

149. In the case of *Chowdury and Others* (cited above) the Court elaborated on the concept of "consent" stressing that "where an employer abuses his power or takes advantage of the vulnerability of his workers in order to exploit them, they do not offer themselves for work voluntarily". Thus, the Court further stressed that "[t]he prior consent of the victim is not sufficient to exclude the characterisation of work as forced labour" and that "[t]he question whether an individual offers himself for work voluntarily is a factual question which must be examined in the light of all the relevant circumstances of a case" (see *S.M. v. Croatia*, cited above, § 285).

150. In order to clarify the concept of "forced or compulsory labour" within the meaning of Article 4 § 2 of the Convention, the Court would point out that any work demanded from an individual under the threat of a "punishment" does not necessarily constitute "forced or compulsory labour" prohibited by that provision. It is necessary to take into account, in particular, the nature and volume of the activity in question. These circumstances make it possible to distinguish "forced labour" from work which can reasonably be required on the basis of family assistance or cohabitation. In this regard, the Court in *Van der Mussele* (cited above) relied in particular on the concept of "disproportionate burden" in determining whether a trainee lawyer had been subject to compulsory labour when he was required to act, free of charge, to defend clients as assigned counsel (see *Chowdury and Others*, cited above, § 91).

151. The notion of "penalty" is to be understood in the broad sense, as confirmed by the use of the term "any penalty". The "penalty" may go as far as physical violence or restraint, but it can also take subtler forms, of a psychological nature, such as threats to denounce victims to the police or immigration authorities when their employment status is illegal (see *C.N. and V. v. France*, no. 67724/09, § 77, 11 October 2012; *Tibet Menteş and Others v. Turkey*, nos. 57818/10 and 4 others, § 67, 24 October 2017; and *S.M. v. Croatia*, cited above, § 284).

152. The Court considers that trafficking in human beings, by its very nature and aim of exploitation, is based on the exercise of powers attaching to the right of ownership. It treats human beings as commodities to be bought and sold and put to forced labour, often for little or no payment,

usually in the sex industry but also elsewhere. It implies close surveillance of the activities of victims, whose movements are often circumscribed. It involves the use of violence and threats against victims, who live and work under poor conditions. It is described in the explanatory report accompanying the Council of Europe Convention on Action against Trafficking in Human Beings as the modern form of the old worldwide slave trade (see *Rantsev v. Cyprus and Russia*, no. 25965/04, § 281, ECHR 2010 (extracts), and *M. and Others v. Italy and Bulgaria*, no. 40020/03, § 151, 31 July 2012).

153. There can be no doubt that trafficking threatens the human dignity and fundamental freedoms of its victims and cannot be considered compatible with a democratic society and the values expounded in the Convention. Given the Convention's special features as a human rights treaty and the fact that it is a living instrument which should be interpreted in the light of present-day conditions there are good reasons to accept that the global phenomenon of trafficking in human beings runs counter to the spirit and purpose of Article 4 and thus falls within the scope of the guarantees offered by that provision (see *S.M. v. Croatia*, cited above, §§ 292 and 303).

154. While Article 4 of the Convention refers only to three concepts, namely slavery and servitude in Article 4 § 1 and forced or compulsory labour in Article 4 § 2, the Court reiterates that, as it has clarified in its Grand Chamber judgment of *S.M. v. Croatia*, the concept of trafficking in human beings, in all its possible forms, falls within the scope of Article 4 of the Convention taken as a whole (ibid., §§ 286-97 and 303). Accordingly, the concept of human trafficking for the purpose of forced or compulsory labour falls within the scope of Article 4 § 2 of the Convention.

155. Impugned conduct may give rise to an issue of human trafficking under Article 4 of the Convention only if all the constituent elements (action, means, purpose) of the international definition of human trafficking are present. In other words, in keeping with the principle of harmonious interpretation of the Convention and other instruments of international law, and in view of the fact that the Convention itself does not define the concept of human trafficking, it is not possible to characterise conduct or a situation as an issue of human trafficking unless it fulfils the criteria established for that phenomenon in international law. From the perspective of Article 4 of the Convention the concept of human trafficking covers trafficking in human beings, whether national or transnational, whether or not connected with organised crime, in so far as the constituent elements of the international definition of trafficking in human beings, under the Council of Europe Convention on Action against Trafficking in Human Beings and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children supplementing the United Nations Convention against Transnational Organised Crime, are present. Such conduct or such a

situation of human trafficking then falls within the scope of Article 4 of the Convention (ibid., §§ 289-90, 296-97 and 303).

(ii) Whether the circumstances of the present case gave rise to an issue under Article 4 § 2 of the Convention

156. As regards the applicability of the protection under Article 4 in relation to the matters complained of in the present case, the Court notes that when an applicant's complaint is essentially of a procedural nature as in the present case, it must examine whether, in the circumstances of a particular case, the applicants made an arguable claim or whether there was prima facie evidence of the applicants' having been subjected to such prohibited treatment. This corresponds in essence to the Court's approach in other cases concerning, in particular, Article 3 of the Convention. A conclusion as to whether the domestic authorities' procedural obligation arose has to be based on the circumstances prevailing at the time when the relevant allegations were made or when the prima facie evidence of treatment contrary to Article 4 was brought to the authorities' attention (see, *mutatis mutandis*, *S.M. v. Croatia*, cited above, §§ 324-25, with further references).

157. The Court also reiterates that the question whether a particular situation involved all the constituent elements of "human trafficking" and/or gives rise to a separate issue of forced or compulsory labour is a factual question which must be examined in the light of all the relevant circumstances of a case (see *S.M. v. Croatia*, cited above, § 303 (iv), and *Chowdury and Others*, cited above, § 101).

158. The Court notes that the grievances about the situation at Serbaz generally concern approximately the period from May to November 2009. Although the applicants did not provide the exact dates of their arrival in and departure from Azerbaijan, it appears from the documents available in the file (see paragraph 20 above), coupled with the applicants' assertion that most of them had stayed in Azerbaijan for periods of six months or longer and the corroborating information as to the length of stay (six months or longer) in the Anti-Trafficking Department's letter of 18 November 2010 (see paragraph 49 above), that the period during which the applicants worked in Azerbaijan coincides, either fully or at least partially, with the period in respect of which the grievances were raised.

159. The applicants complained before the domestic civil courts that their passports had been taken away from them for the period of their stay in Azerbaijan, that no work permits had been obtained for them, that their living conditions had been poor and unsanitary, that they had no access to adequate medical care, that their freedom of movement had been restricted by their employer, that they had not been paid their wages and that they had been subjected to punishments in the form of fines, beatings and detentions.

160. The Court notes that the applicants' factual submissions before the domestic courts and the Court were generally brief and did not provide details specific to each applicant, or at least some of the applicants. Nevertheless, the general description of the working and living conditions provided, however scant it might have been in the applicants' civil claim, pointed to several indicators of potential treatment contrary to Article 4 of the Convention.

161. Moreover, the applicants also referred, both before the domestic courts and the Court, to additional material supporting their submissions. In particular, they referred to the ASTRA Report, the contents of which provided a more detailed account of the allegations made concerning the treatment of workers by Serbaz and contained additional information as to the potential situation of forced or compulsory labour and human trafficking. The Court considers that the existence and contents of the ASTRA Report was sufficiently brought to the attention of the domestic courts.

162. The ASTRA Report provided more details and additional information concerning the allegations raised by the applicants, in particular concerning, *inter alia*, the circumstances in which workers were hired in their home countries, absence of not only work permits but also residence permits, alleged compulsory work even when workers were sick, alleged threats that workers would be arrested by the local police if they left the accommodation without their passports and the employer's permission, alleged lack of proper nutrition, alleged excessive overtime work, and several alleged incidents of alleged use of force and detentions.

163. While the ASTRA Report expressly stated that its contents constituted "initial information", those contents were based on statements of workers who were reportedly in the same or similar situation as the applicants during the same period (see paragraphs 103 et seq. above), and those statements may have even included statements by some of the applicants. It is true that an NGO report would not, in itself, have significant evidentiary value without further investigation. However, given the area of expertise of the NGOs involved in preparation of the report, which was assistance to migrant workers and combating human trafficking, the prima facie information provided in it constituted material corroborating the applicants' submissions.

164. The Court observes that there are some apparent potential inconsistencies between the applicants' statements and statements reported in the ASTRA Report, as well as some internal inconsistencies within the statements in the ASTRA Report. For example, while the applicants noted that they had not been paid at all since May 2009, the ASTRA Report noted in one section that the complete stoppage of payments had occurred in October 2009, but later stated that it had occurred in May 2009 (see paragraphs 103 and 110 above). The latter also noted, in various parts, that

workers had been paid but less than promised, that some workers "could not eventually recover their wages" at all, but that nonetheless, upon their departure from Azerbaijan, workers had been paid some amount of money. Nevertheless, the Court considers that circumstances might have varied with regard to each worker's individual situation and, that despite some inconsistencies in statement summaries, the overall content of the applicants' allegations and the allegations contained in the ASTRA Report were, on the whole, mutually consistent as to possible non-payment or delayed payment of wages and reduced wages at various time periods starting from May 2009.

165. Furthermore, the Court notes that there was other information referred to by the applicants or otherwise apparently brought to the attention of the domestic courts and other authorities, such as the letter by the Danish Refugee Council (see paragraph 11 above), information contained in the AMC's letters to the law-enforcement authorities (see paragraph 37 above), the witness statement of the AMC representative before the Baku Court of Appeal (see paragraph 31 above), and the information contained in the legal assistance requests by the Prosecutor's Office of Bosnia and Herzegovina (see paragraphs 43-44 above). All of the above provided corroborating information concerning workers who had reportedly been in the same or similar situation as the applicants during the same time period. As to the Government's argument about inconsistency between the time period mentioned in the letter by the Danish Refugee Council and the date of departure of the last Serbaz workers from Azerbaijan, the Court, having had regard to other information and documents in the case file (see paragraphs 16, 26 (ii) and 114 above), notes that various sources provided different or inexact information as to the date of departure of the last workers and that, therefore, the time period mentioned in the letter was not necessarily inconsistent with that information.

166. The Court considers that the above-mentioned allegations concerning physical and other forms of punishments, retention of documents and restriction of movement explained by threats of possible arrests of the applicants by the local police because of their irregular stay in Azerbaijan (without work and residence permits) were indicative of possible physical and mental coercion and work extracted under the menace of penalty. Moreover, allegations concerning non-payment of wages and "fines" in the form of deductions from wages, in conjunction with the absence of work and residence permits, disclosed a potential situation of the applicants' particular vulnerability as irregular migrants without resources.

167. Moreover, even assuming that, at the time of their recruitment, the applicants had offered themselves for work voluntarily and believed in good faith that they would receive their wages, the above-mentioned allegations suggest that the situation might have subsequently changed as a result of their employer's conduct. In this connection, the Court reiterates that where

an employer abuses his power or takes advantage of the vulnerability of his workers in order to exploit them, they do not offer themselves for work voluntarily. The prior consent of the victim is not sufficient to exclude the characterisation of work as forced labour (compare *Chowdury and Others*, cited above, §§ 96-97). The Court also takes note of the allegations of forced excessively long work shifts, lack of proper nutrition and medical care, and the general picture of the coercive and intimidating atmosphere within Serbaz. It considers that all of the above allegations, taken together, amounted to an arguable claim that the applicants were subjected to work or service which was exacted from them under the menace of penalty and for which they had not offered themselves voluntarily. There was accordingly an arguable claim of "forced or compulsory labour" within the meaning of Article 4 § 2 of the Convention.

168. As to whether there was an issue of human trafficking, the Court reiterates that for such an issue to arise all the constituent elements of human trafficking (action, means, purpose) must be present (see paragraph 155 above). As to the "action", the fact that the applicants were recruited in Bosnia and Herzegovina, brought in groups to Azerbaijan by a private company and settled collectively in designated accommodation, which they allegedly could not leave without permission by the employer, could have constituted "recruitment, transportation, transfer, harbouring or receipt of persons". As for the "means", the information in the ASTRA Report concerning the circumstances of recruitment, in particular lack of proper employment contracts (which instead were replaced by questionnaires signed in one copy and kept by the employer) and promises of higher wages than actually paid, disclosed an alleged situation that may have amounted to recruitment by means of deception or fraud. As for the "purpose", the conclusion reached in paragraph 167 above discloses also the potential purpose of exploitation in the form of forced labour.

169. Having regard to the above, the Court finds that, in their submissions before the domestic courts and the Court, the applicants have demonstrated the existence of an "arguable claim" that they had been subjected to cross-border human trafficking and to forced or compulsory labour on the territory of Azerbaijan by, among others, some alleged perpetrators who were resident in Azerbaijan. In due course below, the Court will further assess whether the applicants availed themselves of the proper domestic avenues of redress and whether their arguable claim could be considered to have been "sufficiently drawn to the attention" of, *inter alia*, relevant law-enforcement authorities.

170. For the reasons stated above, Article 4 § 2 is applicable.

3. Exhaustion of domestic remedies

171. The Government further argued that the applicants had failed to exhaust the relevant domestic remedies by failing to lodge a criminal

complaint in relation to their allegations of forced or compulsory labour and trafficking or by failing to lodge a civil claim concerning their property-related claims against the proper defendant. In particular, the Government submitted that forced or compulsory labour and trafficking were phenomena that could not be combatted solely through civil action and required criminal sanctions in order to be suppressed. Despite these criminal offences being punishable under the relevant provisions of the Criminal Code, the applicants had failed to raise their grievances before the prosecuting authorities. As to the civil-law component of their grievances relating to the alleged material damages, the civil action brought by the applicants had been directed against the wrong defendant, Serbaz, whereas, as established by the domestic courts, they had been employed by Acora. Despite this finding, the applicants failed to lodge any civil claims against Acora either in Azerbaijan or elsewhere. Lastly, the applicants never raised before the national authorities a complaint concerning the alleged failure by the respondent State to comply with its positive obligations under Article 4 § 2 of the Convention.

172. The applicants argued that the civil action was a "sufficient legal mechanism" for redressing their grievances. They also noted, in particular, that, under Article 265.4 of the CCP, the civil courts were to inform the prosecuting authorities if, upon examination of a civil claim, they found an appearance of elements of a criminal offence in the actions of the parties to the case or other persons. However, the domestic courts had not applied this measure despite the seriousness of the applicants' allegations. Lastly, the applicants submitted that the domestic authorities had been "well aware" about the content of their allegations but had failed to adequately investigate them.

173. The third party, the Government of Bosnia and Herzegovina, submitted that, in the circumstances of the case, the applicants had both directly and indirectly raised their grievances before the domestic authorities, providing them with an opportunity to remedy any alleged violations. In particular, in their civil claim, the applicants had complained about the alleged retention of their passports, restriction of their freedom of movement by their employer, non-payment of wages, physical punishments, poor living conditions, and so on. The third party appeared to suggest that, in the context of the respondent State's international obligations as to prevention of human trafficking and forced labour and as to appropriate regulatory measures and immigration rules to be applied to businesses which might be used as a "cover for human smuggling", the domestic civil courts in the present case had not adequately examined the above-mentioned submissions by the applicants.

174. Moreover, the third party noted that the applicants' grievances had been notified to both the Ministry of Internal Affairs and the Prosecutor General's Office by AMC, which had argued that they had been subjected

to forced labour and human trafficking and requested to initiate a criminal investigation in that respect. AMC had subsequently challenged the law-enforcement authorities' inactivity before the domestic courts. Lastly, the Azerbaijani authorities had been informed about the applicants' and other workers' grievances concerning the situation at Serbaz by way of the request for mutual legal assistance submitted by the Prosecutor's Office of Bosnia and Herzegovina in April 2010. According to the third party, in such circumstances, the matter had been sufficiently brought to the attention of the authorities and they must have acted of their own motion to investigate it and could not leave it to the initiative of the victims to lodge a formal criminal complaint.

175. The Court reiterates that, in principle, for complaints concerning treatment contrary to Article 4, the adequate remedy to be pursued is a criminal complaint (see *L.E. v. Greece*, no. 71545/12, § 56, 21 January 2016; see also paragraphs 185-187 below). In the present case, the Court considers that the question of exhaustion of domestic remedies as argued by the parties should be joined to the merits, since it is closely linked to the substance of the applicants' complaints concerning the alleged failure by the respondent State to comply with its positive obligations.

4. Conclusion as to admissibility

176. The Court considers that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicants

177. The applicants reiterated their complaints (see paragraphs 126 and 137 above). They further elaborated on those complaints by arguing that the domestic courts had failed to notify the prosecuting authorities of the elements of a criminal offence that could be detected in their civil claim and that the authorities had generally failed to comply with their positive obligations under Article 4 of the Convention, including the duty to penalise and prosecute effectively any acts constituting treatment contrary to that Article (see paragraphs 129 and 172 above).

(b) The Government

178. The Government's submissions were essentially limited to their objections concerning the scope of the case and admissibility of the complaints as summarised above.

2. *The third party's comments*

179. The Government of Bosnia and Herzegovina, which intervened under Article 36 § 1 of the Convention, noted that, even accepting that the legal framework which was in place in the respondent State was compliant with the requirements of Article 4 of the Convention, that legal framework had not been effectively applied in practice. The very fact that workers worked on construction of the public buildings commissioned by the State while staying in the country on the basis of tourist visas raised the question of the effectiveness of the legal framework governing the situation of foreign workers. Moreover, the domestic authorities had not taken any concrete steps to investigate the relevant allegations even though they were aware of them from multiple sources, including international organisations and the US Department of State. Furthermore, the domestic civil courts examining the applicants' claim had failed to protect property-related interests stemming from a legitimate expectation to receive their wages and delivered unreasoned decisions ignoring the arguments concerning forced labour and the realities of the situation. The third party considered that one of the reasons for the above outcome might have been the quality of the domestic laws on tourism, migrant workers and employment rights, the provisions of which were broad and imprecise.

3. *The Court's assessment*

(a) General principles

180. The Court reiterates that under Article 4 of the Convention the State may be held responsible not only for its direct actions but also for its failure to effectively protect the victims of slavery, servitude, or forced or compulsory labour by virtue of its positive obligations (see *C.N. and V. v. France*, cited above, § 69, with further references).

181. Cases relating to human trafficking under Article 4 typically involve an issue of the States' positive obligations under the Convention. Indeed, the applicants in these cases are normally victims of trafficking or trafficking-related conduct by another private party, whose actions cannot attract the direct responsibility of the State (see *J. and Others v. Austria*, no. 58216/12, §§ 108-09, 17 January 2017, and *S.M. v. Croatia*, cited above, § 304).

182. The general framework of positive obligations under Article 4 includes: (1) the duty to put in place a legislative and administrative framework to prohibit and punish trafficking; (2) the duty, in certain circumstances, to take operational measures to protect victims, or potential victims, of trafficking; and (3) a procedural obligation to investigate situations of potential trafficking. In general, the first two aspects of the positive obligations can be denoted as substantive, whereas the third aspect

designates the States' (positive) procedural obligation (see *S.M. v. Croatia*, cited above, § 306).

(i) Substantive aspects of the positive obligations

183. In order to comply with their positive obligation to penalise and effectively prosecute the practices referred to in Article 4 of the Convention, member States are required to put in place a legislative and administrative framework that prohibit and punish forced or compulsory labour, servitude and slavery (see *Chowdury and Others*, cited above, § 105). So, in order to determine whether there has been a violation of Article 4, the relevant legal or regulatory framework in place must be taken into account (see *Rantsev*, cited above, § 284; *C.N. and V. v. France*, cited above, § 105; and *S.M. v. Croatia*, cited above, § 305).

184. As with Articles 2 and 3 of the Convention, Article 4 may, in certain circumstances, require a State to take operational measures to protect victims, or potential victims, of treatment in breach of that Article. In order for a positive obligation to take operational measures to arise in the circumstances of a particular case, it must be demonstrated that the State authorities were aware, or ought to have been aware that an identified individual had been, or was at real and immediate risk of being subjected to such treatment. In the case of an answer in the affirmative, there will be a violation of Article 4 of the Convention where the authorities fail to take appropriate measures within the scope of their powers to remove the individual from that situation or risk. Bearing in mind the difficulties involved in policing modern societies and the operational choices which must be made in terms of priorities and resources, the obligation to take operational measures must, however, be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities (see *C.N. v. the United Kingdom*, no. 4239/08, §§ 67-68, 13 November 2012).

(ii) Positive procedural obligation

185. Like Articles 2 and 3, Article 4 also entails a procedural obligation to investigate where there is a credible suspicion that an individual's rights under that Article have been violated (see *C.N. v. the United Kingdom*, cited above, § 69, and *S.M. v. Croatia*, cited above, §§ 324-25). The procedural obligation under Article 4 of the Convention, as an element of the broader concept of positive obligations, essentially relates to the domestic authorities' duty to apply in practice the relevant criminal-law mechanisms put in place to prohibit and punish conduct contrary to that provision. This entails the requirements of an effective investigation concerning allegations of treatment contrary to Article 4 of the Convention. The procedural obligation under the converging principles of Articles 2 and 3 of the

Convention informs the specific content of the procedural obligation under Article 4 of the Convention (see *S.M. v. Croatia*, cited above, §§ 308-11).

186. Whereas the general scope of the State's positive obligations might differ between cases where the treatment contrary to the Convention has been inflicted through the involvement of State agents and cases where violence is inflicted by private individuals, the procedural requirements are similar (ibid., § 312).

187. These procedural requirements primarily concern the authorities' duty to institute and conduct an effective investigation. As explained in the Court's case-law, that means instituting and conducting an investigation capable of leading to the establishment of the facts and of identifying and – if appropriate – punishing those responsible (ibid., § 313, and *Rantsev*, cited above, § 288). The authorities must act of their own motion once the matter has come to their attention. In particular, they cannot leave it to the initiative of the victim to take responsibility for the conduct of any investigatory procedures (see *S.M. v. Croatia*, cited above, § 314). For an investigation to be effective, it must be independent from those implicated in the events. A requirement of promptness and reasonable expedition is implicit in all cases but where the possibility of removing the individual from the harmful situation is available, the investigation must be undertaken as a matter of urgency. The victim or the next-of-kin must be involved in the procedure to the extent necessary to safeguard their legitimate interests (*Rantsev*, cited above, § 288; *L.E. v. Greece*, cited above, § 68; and *C.N. v. the United Kingdom*, cited above, § 69).

188. The procedural obligation is a requirement of means and not of results. There is no absolute right to obtain the prosecution or conviction of any particular person where there were no culpable failures in seeking to hold perpetrators of criminal offences accountable. Thus, the fact that an investigation ends without concrete, or with only limited, results is not indicative of any failings as such. Moreover, the procedural obligation must not be interpreted in such a way as to impose an impossible or disproportionate burden on the authorities. Nevertheless, the authorities must take whatever reasonable steps they can to collect evidence and elucidate the circumstances of the case. In particular, the investigation's conclusions must be based on thorough, objective and impartial analysis of all relevant elements. Failing to follow an obvious line of inquiry undermines to a decisive extent the investigation's ability to establish the circumstances of the case and the identity of those responsible. As to the level of scrutiny to be applied by the Court in this regard, it is important to stress that, although the Court has recognised that it must be cautious in taking on the role of a first-instance tribunal of fact where this is not rendered unavoidable by the circumstances of a particular case, it has to apply a "particularly thorough scrutiny" even if certain domestic

proceedings and investigations have already taken place (see *S.M. v. Croatia*, cited above, §§ 315-17, with further references).

189. Compliance with the procedural obligation must be assessed on the basis of several essential parameters. These elements are interrelated and each of them, taken separately, does not amount to an end in itself. They are criteria which, taken jointly, enable the degree of effectiveness of the investigation to be assessed. The possible defects in the relevant proceedings and the decision-making process must amount to significant flaws in order to raise an issue under Article 4. In other words, the Court is not concerned with allegations of errors or isolated omissions but only significant shortcomings in the proceedings and the relevant decision-making process, namely those that are capable of undermining the investigation's capability of establishing the circumstances of the case or the person responsible (ibid., §§ 319-20, with further references).

190. Moreover, and in general terms, the Court considers that the obligation to investigate effectively is binding, in such matters, on the law-enforcement and judicial authorities. Where those authorities establish that an employer has had recourse to human trafficking and forced labour, they should act accordingly, within their respective spheres of competence, pursuant to the relevant criminal-law provisions (see *Chowdury and Others*, cited above, § 116).

191. The Court reiterates that trafficking is a problem which is often not confined to the domestic arena. When a person is trafficked from one State to another, trafficking offences may occur in the State of origin, any State of transit and the State of destination. Relevant evidence and witnesses may be located in all States. Although the Palermo Protocol is silent on the question of jurisdiction, the Anti-Trafficking Convention explicitly requires each Member State to establish jurisdiction over any trafficking offence committed in its territory. Such an approach is, in the Court's view, only logical in light of the general obligation, incumbent on all States under Article 4 of the Convention to investigate alleged trafficking offences. In addition to the obligation to conduct a domestic investigation into events occurring on their own territories, member States are also subject to a duty in cross-border trafficking cases to cooperate effectively with the relevant authorities of other States concerned in the investigation of events which occurred outside their territories (see *Rantsev*, cited above, § 289).

(b) Application of the above principles to the present case

192. At the outset, having had regard to the relevant provisions of the domestic criminal law and the relevant international treaties ratified by Azerbaijan (see paragraphs 71-72 and 96-99 above) and other relevant domestic legal and regulatory framework (see, in particular, paragraphs 79-95 above), the Court notes that at the relevant time the domestic legal system provided for the criminal law mechanisms protecting

individuals from human trafficking and forced labour, as well as some legal framework regulating businesses that could potentially be used as a cover for human trafficking, and immigration rules that could arguably address relevant concerns relating to encouragement, facilitation or tolerance of trafficking. However, the Court need not examine the domestic legal framework further since the applicants did not complain specifically in that respect. As noted above, their complaint is rather of a procedural nature relating to a lack of an appropriate response of the domestic authorities to their allegations of having been subjected to forced or compulsory labour and human trafficking (see paragraphs 132-134 above). The Court will thus limit its assessment to this procedural aspect of the State's positive obligations.

(i) Whether an obligation to investigate arose in the present case

193. As the Court has found above, the totality of the applicants' arguments and submissions concerning their irregular situation and their working and living conditions, including those made in the domestic civil proceedings, constituted an "arguable claim" of treatment contrary to Article 4 of the Convention (see paragraph 169 above).

194. In addition, the Court considers, for the reasons specified below, that in the particular circumstances of this case the matter (that is, the applicants' "arguable claim") was "sufficiently drawn" to the attention of the relevant domestic authorities, in particular those responsible for applying criminal-law mechanisms of protection, and that, therefore, an obligation to investigate arose in the present case, even though the applicants themselves had not lodged a formal criminal complaint.

195. In particular, the Azerbaijani authorities were aware of the ECRI report of 2011 whose findings were later developed in the GRETA Report (see paragraphs 118-119 above), according to which many employers employing migrant workers in Azerbaijan, including in the construction sector, had recourse to illegal employment practices and, as a result, migrants employed illegally often found themselves vulnerable to serious forms of abuse. Furthermore, the GRETA Report later observed that law-enforcement officials in Azerbaijan reportedly had a tendency to see potential cases of human trafficking for labour exploitation as mere labour disputes between the worker and the employer and there seemed to be a confusion between cases of human trafficking for labour exploitation and disputes concerning salaries and other aspects of working conditions. In the Court's view, while far from being conclusive, the general context described in those reports is relevant in the assessment of the facts of the case.

196. The Court further notes that, according to the documents submitted by the third party, AMC sent two complaint letters to the Ministry of Internal Affairs on 22 October 2009 and to the Prosecutor General's Office at an unspecified later date. AMC complained about the situation at Serbaz

and claimed that it required an investigation under the criminal-law provisions on human trafficking. Moreover, according to the witness statement of the AMC representative made at a later date before the Baku Court of Appeal in the civil proceedings instituted by the applicants, she had written to the Prosecutor General's Office on behalf of 272 workers of Serbaz (see paragraph 31 above). It also appears that AMC challenged the law-enforcement authorities' inactivity before the domestic courts and their appeals concerning this matter reached the Supreme Court. The respondent Government did not expressly challenge the veracity of the third party's submissions concerning the above-mentioned letters, judicial complaint and related proceedings.

197. Subsequently, in April 2010 and again in 2011 and 2012 the Prosecutor's Office of Bosnia and Herzegovina applied to the Azerbaijani law-enforcement authorities with legal-assistance requests, in which it described the allegations made concerning the situation at Serbaz which had taken place on the territory of Azerbaijan (see paragraphs 43-59 above).

198. In this connection, the Court notes that, in the context of positive obligations under Article 3 of the Convention, which are similar to those under Article 4 of the Convention, sufficiently detailed information contained in an inter-State legal-assistance request concerning alleged grave criminal offences which may have been committed on the territory of the State receiving the request may amount to an "arguable claim" raised before the authorities of that State, triggering its duty to investigate those allegations further (see *X and Others v. Bulgaria* [GC], no. 22457/16, §§ 200-01, 2 February 2021).

199. Finally, in their civil claim lodged in July 2010 the applicants also provided an account of the relevant facts and the reasons why they considered that they had been the victims of forced labour.

200. Having regard to the above considerations, the Court finds that the applicants' "arguable claim" was sufficiently and repeatedly drawn to the attention of the domestic authorities in various ways, including AMC's letters to the law-enforcement authorities, legal-assistance requests addressed to the law-enforcement authorities by the Prosecutor's Office of Bosnia and Herzegovina, and the civil claim lodged by the applicants with the domestic courts, which must have informed the law-enforcement authorities of it in the particular circumstances of the present case. Since the authorities' attention was "sufficiently drawn" to the allegations in question, which constituted an arguable claim, they must have acted on their own motion by instituting and conducting an effective investigation, even though there was no formal criminal complaint made by the applicants themselves.

(ii) Whether there has been any effective investigation

201. The Court notes that no information or comments have been forthcoming from the Government about any investigation conducted by the

domestic law-enforcement authorities. Even after the submission by the third party of the documents demonstrating that there had been complaints made to the domestic law-enforcement authorities and the documents concerning the correspondence between the authorities of Bosnia and Herzegovina and Azerbaijan following the legal-assistance requests, the respondent Government, in their comments on the third-party observations, did not submit any information concerning any domestic investigations. As such, the Government have not demonstrated that any effective investigation has taken place.

202. For the sake of completeness, the Court will nevertheless have regard to the documents submitted by the third party, other material in the case file, and the relevant international reports, in order to determine whether there has been any effective investigation. However, it notes that the factual information given in this respect by various sources differs and is sometimes contradictory.

203. In particular, the letter of the Anti-Trafficking Department of 17 December 2009, examined by the first-instance court in the civil proceedings, stated that it had not been possible to investigate any grievances concerning Serbaz because all its workers had left the country by 26 November 2009. The contents of the letter implied that no investigation had been instituted.

204. However, in their submissions to GRETA, the Azerbaijani authorities provided information, which appeared to contradict the contents of the above-mentioned letter, that the Anti-Trafficking Department had "interviewed a significant number of workers concerned" but could not identify any sign of trafficking and forced labour, and that "the case had been closed" on 27 April 2011 in accordance with Article 39.1.1 of the CCrP (see paragraph 118 above). It follows from the above information that no criminal investigation was instituted owing to "absence of a criminal event".

205. More detailed information was provided in the letter of 18 November 2010 of the Anti-Trafficking Department, which was forwarded to the authorities of Bosnia and Herzegovina in response to their first legal-assistance request (see paragraphs 46-54 above). The contents of the letter appear to contradict the Anti-Trafficking Department's own letter of 17 December 2009. The letter stated that the Department had "examined" requests concerning workers of Serbaz. The letter provided mostly a very general summary of activities of Serbaz and the living and working conditions of its workers. It noted that it had questioned some workers who denied any allegations of any forced labour or trafficking and essentially stated that the entire problem was confined to some violations of disciplinary rules by several workers, some of whom had been sent home because of that.

206. It does not follow from the above-mentioned letter that any investigation or preliminary investigation was formally instituted by the Anti-Trafficking Department, or that any effective investigative steps have been taken. As to workers who had been questioned, they were unnamed in the letter and it was not mentioned when and how many of them were questioned. It does not appear that any potential victims, including the applicants, were informed of the "examination" conducted by the Anti-Trafficking Department. There is no information as to any attempts to identify and question any potential or already-identified alleged victims, including the applicants. The Court notes that, in so far as the Anti-Trafficking Department knew that many alleged victims had been sent back to Bosnia and Herzegovina and was informed about the criminal proceedings instituted in Bosnia and Herzegovina, it could have sent a formal legal-assistance request to the authorities of that country under the Mutual Assistance Convention, requesting the latter to identify and question such potential victims and to provide copies of their statements to the Azerbaijani law-enforcement authorities.

207. Furthermore, it has not been demonstrated that any attempts were made to identify and question any of the allegedly implicated persons who were nationals or residents of Azerbaijan. Despite a specific request in this regard by the authorities of Bosnia and Herzegovina, it appears that no steps were taken to identify the person named S. Similarly, no information is available as to any steps taken to identify at least two other Azerbaijani nationals mentioned in the ASTRA Report (see paragraph 104 above).

208. In sum, it does not follow from the parties' submissions or any other material in the case file that there has been any effective criminal investigation concerning the allegations of forced labour and human trafficking made by the applicants.

(iii) Conclusion

209. Having regard to the fact that there has not been an effective investigation although the matter had been sufficiently drawn to the attention of the domestic authorities, the Court rejects the Government's objection concerning the exhaustion of domestic remedies and finds that the respondent State has failed to comply with its procedural obligation to institute and conduct an effective investigation of the applicants' claims concerning the alleged forced labour and human trafficking.

210. There has accordingly been a violation of Article 4 § 2 of the Convention under its procedural limb.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

211. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

212. Each applicant claimed 10,000 Azebaijani manats (AZN) in respect of pecuniary damage, noting that each of them had not been paid this amount in wages. Each applicant also claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

213. The Government submitted that the applicants had not provided any evidence in support of their claims in respect of pecuniary damage and considered that they should be rejected. As to the claims in respect of non-pecuniary damage, the Government considered that they were excessive.

214. Under Rule 60 of the Rules of Court, any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents or vouchers, failing which the Chamber may reject the claim in whole or in part.

215. Having regard to the circumstances of the case, the Court considers that the applicants might not be in possession of any documents supporting their claims in respect of pecuniary damage. However, they could be expected to provide some explanatory details as to any amounts of wages that each of them had originally agreed on with their employer and what part of those agreed wages had not been paid in each individual situation. However, no such details have been provided. Moreover, the Court notes that, in principle, claims in respect of pecuniary damage are made on the basis of a precise calculation (see *Shukurov v. Azerbaijan*, no. 37614/11, § 32, 27 October 2016). Before the domestic courts, the applicants had claimed USD 10,000 each in respect of the same pecuniary damage (amounts of wages that each of them had not allegedly been paid), while before the Court they claimed the same nominal amount expressed in Azerbaijani manats. The Court notes that, these claims, having been expressed in different currencies, actually represent different amounts, which leads it to a conclusion that, in addition to lacking any relevant substantiation, the claims were not made on the basis of a precise calculation.

216. In such circumstances, the Court finds that the claims in respect of pecuniary damage are unsubstantiated and must be rejected.

217. As for the claims in respect of non-pecuniary damage, the Court considers that the applicants must have suffered non-pecuniary damage as a

result of the violation found. Making its assessment on an equitable basis, the Court awards each applicant a sum of EUR 5,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

218. The applicants did not make any claims in respect of costs and expenses. Accordingly, there is no call to make any award under this head.

C. Default interest

219. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 4 § 2 of the Convention under its procedural limb;

3. *Holds*
   (a) that the respondent State is to pay each applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Bosnia and Herzegovina convertible marks at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 7 October 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

{signature_p_2}

Victor Soloveytchik
Registrar

Síofra O'Leary
President

APPENDIX

List of applicants:

No.	Applicant's Name	Year of birth	Place of residence according to authority forms
1.	Seudin ZOLETIC	1973	Zivinice
2.	Amer ALIBASIC	1987	Zivinice
3.	Sakib ARSLANOVIC	1973	Zivinice
4.	Hajrudin BEGIC	1963	Zivinice
5.	Goran CATIC	1963	Gradiska
6.	Amir DELIBAJRIC	1989	Zivinice
7.	Radoslav DELIC	N/A	Gradiska
8.	Tihomir DUVNJAK	1962	Gradiska
9.	Miodrag GLISIC	1966	Gradiska
10.	Jasmin HASANOVIC	1988	Zivinice
11.	Ejub HODZIC	1965	Donji Vakuf
12.	Ramiz HODZIC	1962	Zivinice
13.	Ismail JUKIC	1983	Tuzla
14.	Muammer KAHRIC	1990	Jajce-Sibenica
15.	Miodrag KAURIN	1967	Gradiska
16.	Predrag KAURIN	1972	Gradiska
17.	Sveto LAZIC	1962	Gradiska
18.	Sabahuddin MAKIC	1975	Jajce
19.	Zeljko MATIC	1964	Gradiska
20.	Becir MUJIC	1961	Sapna
21.	Fehret MUSTAFICA	1968	Donji Vakuf
22.	Elvedin OPARDJA	1988	Donji Vakuf
23.	Resid OPARDIJA	1962	Donji Vakuf
24.	Drago PERIC	1951	Gradiska
25.	Suvad POTUROVIC	1968	Donji Vakuf
26.	Milorad PRERAD	1987	Gradiska
27.	Fadil SALKANOVIC	1953	Zivinice
28.	Ibro SARIC	1955	Zivinice
29.	Benjamin SILJAK	1985	Bugojno
30.	Ismet SILJAK	1958	Bugojno

No.	Applicant's Name	Year of birth	Place of residence according to authority forms
31.	Marco TAMINOZIJA (or Marko TAMINDZIJA)	N/A	Gradiska
32.	Goran VUJATOVIC	1966	Bos. Aleksandrovac
33.	Enis ZAHIROVIC	1989	Zivinice