

# European Court of Human Rights Ruling: Azerbaijan To Pay Compensation For Failure To Investigate Forced Labour Claims

**Date :** October 21, 2021

## Introduction

Modern slavery compliance issues continue to be a hot topic, which we have recently written about here concerning greenwashing <https://www.corderycompliance.com/greenwashing-power-modernslavery-esg/>, here about the EU initiative to ban forced labour imports <https://www.corderycompliance.com/eu-proposed-ban-forced-labour-products/>, and here about the EU's forced labour guidance <https://www.corderycompliance.com/eu-modern-slavery-guidance/>.

A recent ruling from the European Court of Human Rights shows another dimension to this area, which we briefly examine in this article.

## What's this all about?

Thirty-three nationals from Bosnia and Herzegovina were recruited and taken to Azerbaijan as foreign construction workers for a construction company, Serbaz Design and Construction LLC ("Serbaz"). They stayed in Azerbaijan for periods of six months or longer between 2007 and 2009 and claimed that, amongst other things, during this period:

- They had been victims of forced labour and human trafficking;
- They had worked without contracts and work permits;
- They had their documents taken away and their freedom of movement restricted by their employer; and,
- They had not been paid their wages starting from May 2009 and until their departure from Azerbaijan.

More specifically, the individuals made a number of detailed allegations, as follows. Serbaz arranged travel for the individuals to Azerbaijan by air on the basis of tourist visas, issued on arrival at the airport in Baku (the capital) for periods of thirty days or more, and once they entered Azerbaijan, their passports were taken away by representatives of Serbaz. No individual work permits for them were obtained from the Azerbaijani authorities. While in Baku, the individuals 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 individuals were not provided with medical care. The individuals 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. The individuals were taken to work and back by bus and, at other times, had not been allowed to leave their accommodation without special written permission issued by Serbaz representatives. Violations of rules were punished by fines, beatings, detention in a specially designated place, and physical threats. As from May 2009, the individuals were not paid any wages and could not meet the necessities of life. According to them, each worker was deprived of approximately \$10,000 in wages.

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 Baku airport in groups, handed back their passports and arranged their return.

Following their return to Bosnia & Herzegovina, the individuals brought civil claims against Serbaz before the Azerbaijani courts seeking unpaid wages and damages for alleged "breaches of their rights and freedoms". These claims were unsuccessful as were the appeal cases that they brought afterwards. Issues concerning the individuals were also brought to the attention of the Azerbaijani authorities in other ways, including through official channels used by the government of Bosnia & Herzegovina.

The individuals finally brought a case before the European Court of Human Rights essentially concerning the alleged failure by Azerbaijan to conduct an effective investigation into the individuals' complaints that they had

been victims of forced or compulsory labour and trafficking in human beings.

### What was the court's ruling?

The court ruled as follows:

- The Azerbaijani authorities had been under an obligation to act on their own motion by instituting and conducting an effective investigation;
- The Azerbaijani authorities had apparently not conducted any effective investigation;
- Therefore, Azerbaijan had 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, thereby procedurally infringing the provision of the European Convention on Human Rights which prohibits forced or compulsory labour; and,
- The individuals were each awarded € 5,000 each (approximately US\$5,800) in respect of non-pecuniary damages.

### What are the takeaways?

Although this case is about the failings of the state it also serves as reminder to businesses that, with the ever-increasing growth of regulatory oversight into forced labour and other forms of modern slavery, its incumbent on businesses to have a clear compliance plan to ensure that no forced labour or other forms of modern slavery are taking place in the business or its supply chains. The facts of this case also show that compliance teams need to be on the lookout for and train staff to recognise the signs of forced labour or modern slavery, including:

- The vulnerability of some workers;
- Threats, coercion, deception and physical punishment carried out against workers;
- Working and living conditions;
- High recruitment fees;
- Withholding of wages;
- Salary deductions;
- Confiscation of documents;
- Absence of work permits;
- Absence of regular employment contracts; and,
- Limitations to freedom of movement.

See our film about spotting the signs of modern slavery here <https://www.corderycompliance.com/spotting-the-signs-of-modern-slavery/>.

### Resources

We write about modern slavery/ESG/supply chain due diligence and compliance issues here <https://www.corderycompliance.com/category/modern-slavery-supply-chain-management/>.

The European Court of Human Rights' judgment can be found here <https://hudoc.echr.coe.int/fre#%7B%22languageisocode%22:%5B%22ENG%22%5D,%22appno%22:%5B%2220116/12%22%5D,%22documentcollectionid%22:%5B%22CHAMBER%22%5D,%22itemid%22:%5B%22001-212040%22%5D%7D>.

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