

PCA Case No. 2023-60

**IN THE MATTER OF AN ARBITRATION UNDER
THE CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE
AND NATURAL HABITATS OF 19 SEPTEMBER 1979**

- between -

THE REPUBLIC OF AZERBAIJAN

- and -

THE REPUBLIC OF ARMENIA

TERMS OF APPOINTMENT

Arbitral Tribunal

Dr. Václav Mikulka (Presiding Arbitrator)
Judge Bruno Simma
Judge Nicolas Michel

Registry

Permanent Court of Arbitration

15 September 2023

1. The Parties

- 1.1 The parties to the present proceedings are the Republic of Azerbaijan (“**Azerbaijan**”) and the Republic of Armenia (“**Armenia**”) (together, the “**Parties**”).
- 1.2 The contact details for the Parties’ respective Agents and Representatives are as follows:

The Republic of Azerbaijan	The Republic of Armenia
<p>Agent</p> <p>H.E. Elnur Mammadov Deputy Minister of Foreign Affairs, Ambassador Extraordinary and Plenipotentiary</p> <p>Address: [REDACTED]</p> <p>Email: [REDACTED]</p> <p>Telephone: [REDACTED]</p>	<p>Agent</p> <p>H.E. Dr. Yeghishe Kirakosyan Representative of the Republic of Armenia on International Legal Matters</p> <p>Address: [REDACTED]</p> <p>Email: [REDACTED]</p> <p>Telephone: [REDACTED]</p>
<p>Representatives</p> <p>Ms. Catherine Amirfar Ms. Ina Popova Mr. Justin R. Rassi Ms. Rhianna Hoover Debevoise & Plimpton LLP</p> <p>Address: [REDACTED]</p> <p>Email: [REDACTED]</p> <p>Telephone: [REDACTED]</p> <p style="text-align: center;">* * *</p> <p>Prof. Laurence Boisson de Chazournes Mr. Aditya Laddha University of Geneva</p> <p>Address: [REDACTED]</p> <p>Email: [REDACTED]</p> <p>Telephone: [REDACTED]</p>	<p>Representatives</p> <p>Mr. Liparit Drmeyan Mr. Aram Aramyan Ms. Kristine Khanazadyan Office of the Representative of the Republic of Armenia on International Legal Matters</p> <p>Address: [REDACTED]</p> <p>Email: [REDACTED]</p> <p>Telephone: [REDACTED]</p> <p style="text-align: center;">* * *</p> <p>Dr. Constantinos Salonidis Mr. Lawrence H. Martin Mr. Joseph Klingler Mr. Peter Tzeng Ms. Diem Huong Ho Foley Hoag LLP</p> <p>Address: [REDACTED]</p> <p>Email: [REDACTED]</p>

	<p>[REDACTED]</p> <p>Telephone: [REDACTED] * * *</p> <p>Prof. Pierre d'Argent Foley Hoag LLP</p> <p>Address: [REDACTED]</p> <p>Email: [REDACTED]</p> <p>Telephone: [REDACTED] * * *</p> <p>Ms. Alison Macdonald KC Essex Court Chambers</p> <p>Address: [REDACTED]</p> <p>Email: [REDACTED]</p> <p>Telephone: [REDACTED] * * *</p> <p>Professor Sean Murphy George Washington University</p> <p>Address: [REDACTED]</p> <p>Email: [REDACTED]</p> <p>Telephone: [REDACTED] * * *</p> <p>Professor Linos-Alexander Sicilianos Athens University</p> <p>Address: [REDACTED]</p> <p>Email: [REDACTED]</p> <p>Telephone: [REDACTED]</p>
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2. The Dispute and Commencement of Arbitration

2.1 According to Azerbaijan, a dispute has arisen between the Parties under the Convention on the Conservation of European Wildlife and Natural Habitats of 19 September 1979 (“**Bern Convention**”), in relation to certain alleged breaches by Armenia of its obligations under the Bern Convention.

2.2 Article 18(2) of the Bern Convention provides:

Any dispute between Contracting Parties concerning the interpretation or application of this Convention which has not been settled on the basis of the provisions of the preceding paragraph or by negotiation between the parties concerned shall, unless the said parties agree otherwise, be submitted, at the request of one of them, to arbitration. Each party shall designate an arbitrator and the two arbitrators shall designate a third arbitrator. Subject to the provisions of paragraph 3 of this article, if one of the parties has not designated its arbitrator within the three months following the request for arbitration, he shall be designated at the request of the other party by the President of the European Court of Human Rights within a further three months’ period. The same procedure shall be observed if the arbitrators cannot agree on the choice of the third arbitrator within the three months following the designation of the two first arbitrators.

2.3 By Notice of Arbitration dated 18 January 2023, Azerbaijan commenced arbitral proceedings against Armenia pursuant to Article 18(2) of the Bern Convention.

3. Constitution of the Tribunal

3.1 On 18 January 2023, in its Notice of Arbitration, Azerbaijan appointed Judge Bruno Simma, a national of Germany, as arbitrator. Judge Simma’s contact details are as follows:

Judge Bruno E. Simma

Address:

[REDACTED]

Email:

[REDACTED]

Telephone:

[REDACTED]

3.2 On 18 April 2023, Armenia appointed Judge Nicolas Michel, a national of Switzerland, as arbitrator. Judge Michel’s contact details are as follows:

Judge Nicolas Michel

Address:

[REDACTED]

Email:

[REDACTED]

Telephone:

[REDACTED]

- 3.3 On 5 July 2023, Judges Simma and Michel designated Dr. Václav Mikulka, a national of the Czech Republic, to serve as third arbitrator and invited him to serve as presiding arbitrator. Dr. Mikulka's contact details are as follows:

Dr. Václav Mikulka

Address:



Email:



Telephone:



- 3.4 The Parties confirm that the Members of the Tribunal have been validly appointed in accordance with the Bern Convention.
- 3.5 Further to the declarations of acceptance and statements of independence and impartiality provided to the Parties on 17 August 2023, the Members of the Tribunal confirm that they are and shall remain impartial and independent of the Parties. Each Member of the Tribunal confirms that he has disclosed, to the best of his knowledge, all circumstances likely to give rise to justifiable doubts as to his impartiality or independence and that he will without delay disclose any such circumstances that may arise in the future.
- 3.6 The Parties confirm that they have no objection to the appointment of any Member of the Tribunal on the grounds of conflict of interest or lack of independence or impartiality in respect of matters known to them as at the date of these Terms of Appointment.

4. Applicable Procedural Rules

- 4.1 Article 18(4) of the Bern Convention provides:

The arbitration tribunal shall draw up its own Rules of Procedure. Its decisions shall be taken by majority vote. Its award shall be final and binding.

- 4.2 Further to Article 18(4), the Tribunal will draw up its own Rules of Procedure, after consulting with the Parties.
- 4.3 For procedural matters not addressed by the Bern Convention or the Tribunal's Rules of Procedure, the Tribunal shall apply the rules it deems appropriate in the circumstances.
- 4.4 Procedural Orders may be signed and issued by the presiding arbitrator alone, after consultation with the co-arbitrators. In cases of urgency or if a co-arbitrator cannot be reached in a timely manner, the presiding arbitrator may take procedural decisions on his own, subject to revision, if any, by the full Tribunal.

5. Language of the Arbitration

- 5.1 The language of the arbitration shall be English.

6. Registry

- 6.1 Pursuant to the agreement of the Parties, the Permanent Court of Arbitration ("PCA") shall act as registry and administer these arbitral proceedings on the terms set forth in this section.

- 6.2 In consultation with the Tribunal, the Secretary-General of the PCA shall designate a legal officer from the International Bureau to act as Registrar. For this purpose, the Secretary-General has designated Mr. Bryce Williams, PCA Legal Counsel, to act as Registrar.
- 6.3 The PCA shall act as a channel of communication between the Parties and the Tribunal, maintain an archive of correspondence and submissions, administer the amounts deposited by the Parties to cover the costs of the arbitration, confirm the timing and completeness of submissions, produce certified copies of documents, and otherwise assist with the administrative conduct of the proceedings.
- 6.4 If needed, the PCA shall make its hearing and meeting rooms at the Peace Palace in The Hague or elsewhere available to the Parties and the Tribunal free of charge.¹ Costs of catering, court reporting, or other technical support associated with hearings or meetings shall be borne by the Parties.
- 6.5 The PCA shall provide such other registry services as the Tribunal may direct.
- 6.6 Work carried out by the PCA shall be billed in accordance with the PCA's Schedule of Fees.² The PCA's fees and expenses shall be paid in the same manner as the Tribunal's fees and expenses.
- 6.7 The contact details of the PCA are as follows:

Permanent Court of Arbitration

Attn: Mr. Bryce D. Williams (Legal Counsel)
Mr. Martin Doe (Deputy Secretary-General)
Mr. Benjamin Craddock (Case Manager)

Address: Peace Palace
Carnegieplein 2
2517 KJ The Hague
The Netherlands

Email:



Telephone:



7. Communications

- 7.1 Subject to any modification arising from future Procedural Orders, the following provisions shall apply to communications.
- 7.2 The Parties, their Agents and their Representatives, or anyone acting on their behalf, shall not engage, directly or indirectly, in any oral or written *ex parte* communications with any Member

¹ More information on PCA hearing facilities is available at: <https://pca-cpa.org/en/hearing-facilities/>.

² The PCA Schedule of Fees and Costs is available at: <https://pca-cpa.org/en/fees-and-costs/>.

of the Tribunal in connection with the subject matter of the arbitration or any procedural issues relating to the proceedings.

- 7.3 The Parties shall send all communications for the attention of the Tribunal by email simultaneously to the opposing Party and to the PCA, for onward transmission to the Tribunal.
- 7.4 Written pleadings and other formal submissions, along with documentary and other evidence, shall be sent in such manner and format as the Tribunal shall direct in its Rules of Procedure, after consulting with the Parties.
- 7.5 The Parties shall send copies of correspondence between them to the Tribunal and to the PCA only if such correspondence relates to a matter where the Tribunal or the PCA is required to take action or not to take action, or if it gives notice of a relevant event of which the Tribunal or the PCA should be apprised.
- 7.6 All written communications shall be deemed to have been validly made when they have been sent as follows:
- Tribunal: to the PCA, for onward transmission;
 - Parties: to the email addresses of the Agent and Representatives of the Party set forth in paragraph 1.2; and
 - Registry: to the email addresses set forth in paragraph 6.7.
- 7.7 In the event of any change by a Party of its Agent or Representatives, or of the contact details of its Agent or its Representatives, that change shall be notified immediately in writing to the opposing Party, to each Member of the Tribunal, and to the PCA. Failing such notification, communications sent in accordance with this section shall be valid.

8. Data Security

- 8.1 The Parties, their Agents and their Representatives shall ensure that the storage and exchange of the data processed in these arbitral proceedings is protected by way of appropriate technical and organisational safeguards, including through the use of secure servers and password-protected access, and taking into account the scope and risk of the processing, including the impact on data subjects, the capabilities and regulatory requirements of all those involved in these proceedings, the costs of implementation, and the nature of the information being processed or transferred, including the extent to which it includes personal data or sensitive commercial, proprietary or confidential information.

9. Disability Inclusion

- 9.1 The Parties have advised that they are not aware of any disability considerations as at the date of these Terms of Appointment.
- 9.2 Should any disability considerations among the Parties, witnesses, or other participants arise that need to be taken into account in the conduct of these arbitral proceedings, the Parties shall bring these matters to the attention of the Tribunal.

10. The Tribunal's Fees and Expenses

10.1 Article 18(5) of the Bern Convention provides:

Each party to the dispute shall bear the expenses of the arbitrator designated by it and the parties shall share equally the expenses of the third arbitrator, as well as other costs entailed by the arbitration.

10.2 Notwithstanding Article 18(5) of the Bern Convention, the Parties have agreed that all payments to the Tribunal shall be made from the deposit administered by the PCA, and shall be borne in equal shares, without prejudice to any decision by the Tribunal on the allocation of costs in accordance with the Bern Convention and the Rules of Procedure.

10.3 Each Member of the Tribunal shall be remunerated at the rate of EUR 600 per hour (plus VAT, if applicable) for all time spent in connection with these arbitral proceedings. Time spent on travel will be charged at 50 percent of the full rate.

10.4 The Members of the Tribunal may charge a cancellation fee, in the amount of 50 percent of their fees for each day reserved for a hearing or meeting, based on an eight hour day, in respect of any hearing or other meeting for which they are asked to reserve more than one day and that is cancelled, or postponed by more than one week, at the request of one or both of the Parties within four weeks from the first day of such hearing or meeting.

10.5 The Members of the Tribunal shall be reimbursed for all disbursements and charges reasonably incurred in connection with these arbitral proceedings, including but not limited to travel expenses, hotel accommodation and meals, communication expenses, and office expenses. Air travel will be business class. Train travel will be first class.

10.6 The Members of the Tribunal may apply for reimbursement of charges and expenses as and when these are incurred, and may submit periodic bills in respect of fees to the PCA.

11. Deposits

11.1 Advances towards the costs of arbitration shall be made to a deposit held by the PCA. The Parties shall contribute to this deposit in equal shares, without prejudice to any decision by the Tribunal on the allocation of costs in accordance with the Bern Convention and the Rules of Procedure.

11.2 The Tribunal requests the Parties to establish an initial deposit of EUR 250,000 (that is, EUR 125,000 from each side) as an advance for the costs of the arbitration, within 30 days of the date of these Terms of Appointment.

11.3 The PCA will review the adequacy of the deposit from time to time and, at the request of the Tribunal, may invite the Parties to make supplementary deposits.

11.4 Deposits shall be made by wire transfer to the following account:

[REDACTED]

11.5 Any transfer fees or other bank charges associated with the management of the deposit will be charged by the PCA to the deposit. No interest will be paid on the deposit.

11.6 The unused balance held on deposit at the end of the arbitration shall be returned to the Parties as directed by the Tribunal.

12. Privileges and Immunities

12.1 Neither Party shall seek to make any Member of the Tribunal, the PCA, or any official of the PCA liable in respect of any act or omission in connection with any matter related to the arbitration.

12.2 Neither Party shall require any Member of the Tribunal or official of the PCA to be a party or witness in any judicial or other proceedings arising out of or in connection with this arbitration.

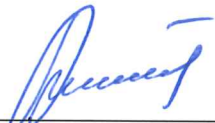
12.3 Each Party shall, within its territory, accord to the Members of the Tribunal, the staff of the PCA and any other persons engaged by the Tribunal, including technical experts, privileges and immunities that are the same as those accorded to diplomatic agents under the 1961 Vienna Convention on Diplomatic Relations.

13. Signature of the Terms of Appointment

13.1 These Terms of Appointment may be signed in counterparts that would collectively constitute a single signed agreement.

13.2 For the avoidance of doubt, by signing these Terms of Appointment, the Parties do not waive any jurisdictional or admissibility objections.

Signed:



For the Republic of Azerbaijan
Name: Elvin Mammadov
Dated: 08/09/2023

For the Republic of Armenia
Name: _____
Dated: _____

Judge Bruno E. Simma
Arbitrator
Dated: _____

Judge Nicolas Michel
Arbitrator
Dated: _____

Dr. Václav Mikulka
Presiding Arbitrator
Dated: _____

Signed:

For the Republic of Azerbaijan

Name: _____

Dated: _____

J. Kirakosyan

For the Republic of Armenia

Name: *Yeghische Kirakosyan*

Dated: *8 September 2023*

Judge Bruno E. Simma
Arbitrator

Dated: _____

Judge Nicolas Michel
Arbitrator

Dated: _____

Dr. Václav Mikulka
Presiding Arbitrator

Dated: _____

Signed:

For the Republic of Azerbaijan

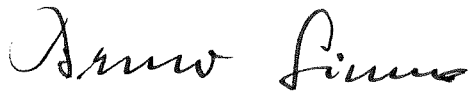
Name: _____

Dated: _____

For the Republic of Armenia

Name: _____

Dated: _____



Judge Bruno E. Simma
Arbitrator

Dated: 15 September 2023

Judge Nicolas Michel
Arbitrator

Dated: _____

Dr. Václav Mikulka
Presiding Arbitrator

Dated: _____

Signed:

For the Republic of Azerbaijan

Name: _____

Dated: _____


For the Republic of Armenia

Name: _____

Dated: _____

Judge Bruno E. Simma
Arbitrator

Dated: _____



Judge Nicolas Michel
Arbitrator

Dated: 11 September 2023

Dr. Václav Mikulka
Presiding Arbitrator

Dated: _____

Signed:

For the Republic of Azerbaijan

Name: _____

Dated: _____

For the Republic of Armenia

Name: _____

Dated: _____

Judge Bruno E. Simma
Arbitrator

Dated: _____

Judge Nicolas Michel
Arbitrator

Dated: _____



Dr. Václav Mikulka
Presiding Arbitrator

Dated: *10 September 2023*