

Georgia East-West Highway

Complaint SG/E/2017/23

Complaints Mechanism - Complaints Mechanism - Complaints Mechanism - Complaints Mechanism

CONCLUSIONS REPORT

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The EIB Complaints Mechanism

The EIB Complaints Mechanism intends to provide the public with a tool enabling alternative and pre-emptive resolution of disputes in cases whereby the public feels that the EIB Group did something wrong, i.e. if they consider that the EIB Group committed an act of maladministration. When exercising the right to lodge a complaint against the EIB Group, any member of the public has access to a two-tier procedure, one internal – the Complaints Mechanism Division (EIB-CM) - and one external - the European Ombudsman (EO).

Complainants that are not satisfied with the EIB-CM's reply have the opportunity to submit a confirmatory complaint within 15 days of the receipt of that reply. In addition, complainants who are not satisfied with the outcome of the procedure before the EIB-CM and who do not wish to make a confirmatory complaint have the right to lodge a complaint of maladministration against the EIB Group with the European Ombudsman.

The EO was “created” by the Maastricht Treaty of 1992 as an EU institution to which any EU citizen or entity may appeal to investigate any EU institution or body on the grounds of maladministration. Maladministration means poor or failed administration. This occurs when the EIB Group fails to act in accordance with the applicable legislation and/or established policies, standards and procedures, fails to respect the principles of good administration or violates human rights. Some examples, as set by the European Ombudsman, are: administrative irregularities, unfairness, discrimination, abuse of power, failure to reply, refusal to provide information, unnecessary delay. Maladministration may also relate to the environmental or social impacts of EIB Group activities and to project cycle-related policies and other applicable policies of the EIB.

The EIB Complaints Mechanism intends to not only address non-compliance by the EIB Group with its policies and procedures but to endeavour to solve the problem(s) raised by complainants such as those regarding the implementation of projects.

For further and more detailed information regarding the EIB Complaints Mechanism please visit our website: <http://www.eib.org/about/accountability/complaints/index.htm>

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CONCLUSIONS REPORT

EXECUTIVE SUMMARY

On 27 June 2017 the EIB Complaints Mechanism (hereinafter the EIB-CM) received a complaint lodged by e-mail concerning the expropriation of the complainant's property within the framework of the "Georgia East-West Highway" project. The complainant stated that he received compensation for the part of his property that fell within the impact zone of the highway project. However, he claimed that the residual land area was practically unusable for agricultural activities, which caused a major loss to the income of his family. The complainant then requested the State to purchase the remaining land but his application was refused. Finally, the complainant explained that because the land had become completely unusable, it is not possible to sell it.

The EIB-CM analysis of (i) the cadastral map information, (ii) the information from the land register and (iii) the inspection made on site, confirm the complainant's allegation. The Residual Land Plots are surrounded by the lands of other owners and no right of way or servitude has been established to provide the complainant access to the Residual Land Plots. Neither a right of way nor servitude have been registered or identified in the relevant public registry.

The EIB-CM established that the complainant's allegation is founded and that the current situation of the complainant is not in line with the EIB's social standards. The EIB standards aim to mitigate any adverse impacts arising from the affected persons' loss of assets, or access to assets and/or restrictions of land use, whether temporary or permanent, direct or indirect, partial or in their totality. In addition, the present situation is not in line with the principle of improving or at least restoring the social and livelihood resources of the project-affected people at their pre-project level.

The EIB-CM recommends that the Bank's services work with the promoter in order to address the complainant's specific case and find an acceptable solution to his situation in line with the EIB's social standards.

It needs to be noted that the confidential nature of this complaint was making it difficult to engage with the promoter on the Bank's side. In order for the Bank to address this as a complaint with the promoter, it would be required from the complainant to waive confidentiality.

The EIB-CM will monitor the implementation of its recommendation within 12 months from the issuance of this Report.

CONCLUSIONS REPORT

Complainant: confidential
Date received: 27 June 2017
Confidentiality requested: yes
Subject of complaint: Expropriation – adequacy of compensation measures

1. THE COMPLAINT

On 27 June 2017, the EIB Complaints Mechanism (hereinafter the EIB-CM) received a complaint lodged by e-mail concerning the expropriation of the complainant's property within the framework of the EIB's "Georgia East-West Highway" project. The complainant stated that he received compensation for the part of his property that fell within the impact zone of the highway project. However, he claims that the residual land area was practically unusable for agricultural activities, which caused a major loss to the income of his family. The complainant then requested the State to purchase the residual land but his application was refused. Finally, the complainant explained that the remaining part of his land plot had become completely unusable to him and neither was it possible to sell it as nobody would buy it in its current state.

2. BACKGROUND INFORMATION

2.1. The Project

2.1.1 The project concerns the upgrading and improvement of the most western part of the Georgian East-West highway, which links the cities of Zestaponi and Batumi over a total length of 183 km. The borrower for the project is the Republic of Georgia and the promoter is Georgia's Ministry of Regional Development and Infrastructure. The Roads Department within the Ministry of Regional Development and Infrastructure is responsible for road construction and maintenance, including the monitoring of implemented resettlement activities.

2.1.2 The section financed by the EIB concerns the 52 km long sub-section between Samtredia and Grigoleti. This sub-section is divided into four lots. The Bank's financed component of the project comprises the design, supervision and works of all lots as well as the associated Technical Assistances (TAs). At present, the Bank's loan for the project is partially disbursed.

2.1.3 With respect to land ownership issues, the relevant project documentation explains that "a Roads Development and Resettlement Division [of the promoter] is responsible for monitoring of construction and implemented resettlement activities". Furthermore, the same documents reflect that the promoter for the project is required to agree with the EIB on a Land Acquisition and Resettlement Plan. The promoter is required to implement land acquisition and involuntary resettlement in accordance with this plan.

2.2 The complainant's land plots and his applications for compensation

2.2.1 Prior to commencement of the construction of the highway, the complainant owned (with full registration) two land plots of 5 422 sq.m. ("Land Plot 1") and 5 638 sq.m. ("Land Plot 2"). Land Plot 1 and Land Plot 2 together are referred to in this report as "the Original Land Plots". The construction partially affected both land plots, namely 3 696 sq.m. from Land Plot 1 and 2 234 sq.m. from Land Plot 2 ("Affected Lands"). The Roads Department of Georgia ("Roads Department") divided the Original Land Plots and registered the Affected Lands on the name of the State. The remaining parts of the Original Land Plots (1 726 sq.m. from Land Plot 1 and 3 404 sq.m. from Land Plot 2), totalling 5 130 sq.m, were registered separately on the name of the complainant ("Residual Land Plots").

2.2.2 Based on the project’s Resettlement Action Plan (RAP) concerning Lot 2 of the project, the Roads Department compensated the complainant for the Affected Lands, at a value of Georgian Lari (GEL) 4.5 per square metre (“Initial Compensation Price”). The total compensation paid to the complainant was GEL 26,685.00 (equivalent to approximately EUR 8, 945.74)¹.

2.2.3 On 16 June 2017 the complainant submitted an application to the Roads Department requesting the purchase of the Residual Land Plots by the State due to the lack of access to the land plots and therefore his inability to undertake any agricultural activities on the Residual Land Plots. On 21 June 2017 the Roads Department rejected the complainant’s request to purchase the Residual Land Plots. In its reply, the Roads Department did not state any reasons for the refusal to purchase the residual land, it did not consider any possibility for an alternative solution to the complainant’s situation and it did not indicate whether the refusal can be appealed against or whether another entity, project-based or otherwise, was responsible for handling the complainant’s grievance. It appears that subsequently, on 27 June 2017, the complainant filed another request with the Roads Department but that the second request was also unsuccessful.

2.2.4 Under the RAP a project level grievance redress mechanism is established to allow affected people to complain about any decision or activity regarding loss of land, assets or source of income and their compensation. The complainant has not used the project level grievance mechanism, as outlined in 2.2.3, the complainant directly made a request to the Roads Department. It is noted that it is not obligatory to use the project level grievance mechanism.

3. APPLICABLE REGULATORY FRAMEWORK

3.1 The EIB Complaints Mechanism mandate

3.1.1 The EIB Complaints Mechanism applies to complaints of maladministration lodged against the EIB Group (Article 4.1 of Title II “Principles” of the EIB Complaints Mechanism Principles, Terms of Reference and Rule of Procedure - CMPTR). Complaints may concern any alleged maladministration of the EIB Group in its actions and/or omissions (Article 4.1 of Title IV “Rules of Procedure” of the EIB CMPTR).

3.1.2 Maladministration occurs “*when the EIB Group fails to act in accordance with the applicable legislation and/or established policies, standards and procedures, fails to respect the principles of good administration or violates human rights.*” (Article 1.2 Principles of the EIB CMPTR).

3.2 EIB standards

3.2.1 The 2009 EIB Statement of Environmental and Social Principles and Standards² requires that financed projects be acceptable in environmental and social terms (§ 1 of the Statement). In line with § 2 of the Statement, “Promoters are responsible for preparing, implementing and operating projects financed by the Bank; they are also responsible for the fulfilment of Bank requirements, especially for legal compliance. The Bank will assist the promoter to fulfil these responsibilities.”

3.2.2 The 2010 EIB Environmental and Social Standards Handbook sets forth rules with regard to involuntary resettlement, including the issues of expropriation of land and compensation. With regard to the EIB’s role in the context of resettlement, the Handbook provides for screening for social issues (§§ 40-44) and specifically with regard to involuntary resettlement states that the screening process should, among others:

- “*identify the nature and magnitude of likely displacement and establish with the promoter the baseline data and a cut-off time where needed*”,

¹ The exchange rate as of 30 April 2018 was 1 GEL = 0.335329 EUR

² http://www.eib.org/attachments/strategies/eib_statement_esps_en.pdf

- “assess willingness of population to move/consultation processes developed”,
- “assess the promoter’s commitment and capacity to deal fairly with the issues”,
- “determine type and cost of any technical assistance that may be required”;
- “assess the capacity of public authorities to support the processes involved (e.g. approaches to issues of land acquisition and compulsory purchase, procedures for handling disputes, land registration, and the provision of social safety nets)”,
- “address the feasibility and appropriateness of the proposed measures for restoring and preferably improving livelihoods”,
- “assess the availability of adequate resources, including staff, time and funding, to appropriately carry out resettlement” and
- “address arrangements for internal and/or independent monitoring and evaluation”.

3.2.3 § 172 of the Handbook sets forth that “the Bank will determine in consultation with the promoter, the approach to be adapted (the production of a resettlement plan [...]), and arrangements for resettlement implementation. These respective agreements should be clearly recorded by the Project Team in the project documentation. Likewise, the Bank and the promoter will need to agree on resettlement implementation and monitoring details.” With regard to the purpose of the RAP, § 175 mentions, *inter alia*, the documentation of all compensation measures and the establishment of procedures to guarantee due process to the affected people.

3.2.4 § 51 of the 2009 EIB Statement of Environmental and Social Principles and Standard provides that people whose livelihoods are negatively affected by a project should have their livelihoods improved or at a minimum restored and/or adequately compensated for any losses incurred. In addition, Guidance Note 1 to the 2010 Handbook specifically provides that EIB investments involving the acquisition of land include the objective to “[m]itigate negative social impacts of those losing assets, through the provision of appropriate compensation and/or employment opportunities...”.

3.3 National standards

3.3.1 In Georgia, the legislative acts listed below³ regulate the issues of obtaining State ownership rights to privately owned land plots based on public needs because of road construction activities

- i. The Constitution of Georgia of 24 August 1995;
- ii. The Civil Code of Georgia of 26 June 1997;
- iii. The Law of Georgia on Protection of Cultural Heritage, 8 May 2007;
- iv. The Law of Georgia on Notary Actions, 4 December 2009;
- v. The Law of Georgia on State Property, 21 July 2010;
- vi. The Law of Georgia on Ownership Rights to Agricultural Land, 22 March 1996;
- vii. The Law of Georgia on Recognition of the Property Ownership Rights regarding Land Plots Owned (Used) by Physical Persons or Legal Entities, 11 July 2007;
- viii. The Law of Georgia on Public Register, 19 December 2008;
- ix. The Law of Georgia on the Rules of Expropriation of Ownership for Necessary Public Need, 23 July 1999;
- x. The Civil Procedural Code of Georgia, 14 November 1997

3.3.2 The existing laws provide that compensation for lost assets, including land, structures, trees and standing crops, should be based on the current market price without depreciation. Based on the national legal framework, the principle of replacement cost compensating at market value is reasonable and legally acceptable. The laws also identify the types of damages eligible for compensation and indicate that compensation is to be given both for loss of physical assets and for the loss of income. Income loss due to loss of harvest and business closure is compensated to cover net loss. Finally, the legal framework places a

³ This legal framework is outlined in the RAP document relevant to the complaint.

strong emphasis on consultation and notification to ensure that the affected persons participate in the process.

4. THE INQUIRY OF THE EIB-CM

4.1 In the course of its inquiry, the EIB-CM reviewed the project documentation, the documents received from the complainant and the relevant regulatory framework.

4.2 In line with § 5.6.3 of the EIB-CM Operating Procedures, the EIB-CM engaged external expertise, consisting of an international environmental and social due diligence expert, a Georgian lawyer and a Georgian valuer, to support the EIB-CM with the analysis of the allegations put forward by the complainant. As part of their assignment, the EIB-CM consultants visited the site of the land plots and met the complainant on 16 January 2018. The content and conclusions of this report remain the responsibility of the EIB-CM.

5. FINDINGS

5.1 Alleged inadequacy of the compensation measures related to the plots of land owned by the complainant

5.1.1 As already presented in § 1 above, the complainant alleges that because of the highway project, parts of his land plots have become practically unusable and that he cannot sell them. In addition, the relevant authorities have refused his application to be compensated for his loss and he was not provided with justification.

5.1.2 According to the RAP, its objectives include to mitigate the negative social impacts from asset loss and/or restriction of land use, through the provision of appropriate compensation and/or livelihood opportunities. Furthermore, under the RAP, the resettlement policy for the project has been designed to restore or enhance the livelihoods of all categories of affected people. RAP core involuntary resettlement principles include the development of fair and transparent procedures, as defined in the entitlement matrix to determine compensation for, among others, restrictions on use of land that may be applied to areas adjoining the corridor. Under the RAP, affected persons with titles to the lands are expected to be fully compensated. The RAP's entitlements provide that residual, non-affected sections of a plot that becomes inaccessible or unviable to use after acquisition will also be compensated (p.38 of the Final Resettlement action Plan "RAP"). According to the Compensation Entitlement Matrix of the RAP in respect of permanent loss of agricultural land for owners with full registration "if residual plot becomes unusable, the project will acquire it in full if so the AP desires"(p.5 of the RAP). The main objective of implementation of the RAP is to improve or at least restore the social and livelihood resources of the affected people at their pre-project level.

5.1.3 The RAP lists as one of its core principles to "keep affected people and communities fully informed about the project, the process that will be followed to acquire and compensate for land, and their related rights and avenues for redress" (p.35 of the RAP). The RAP also develops a number of processes and provisions which seek to ensure fairness throughout the involuntary resettlement. Those among others include the preparation of a census, including the detailed inventory of all impacts; the existence of a compensation entitlement matrix (determination of land cost and compensation), developing transparent procedures in the entitlement matrix to determine eligibility and compensation rates; providing participative consultation of the affected people and providing a grievance redress mechanism.

5.1.4 Figure 1 below shows the location of the Original Land Plots. The motorway will take up approximately 60% of the surface area of the Original Land Plots.

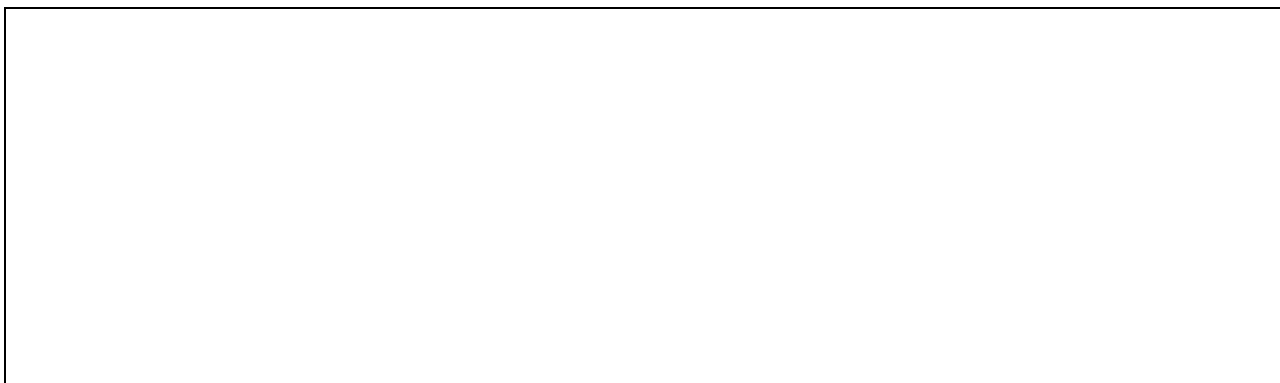


Figure 1. Cadastral Map of Affected Area. The blue corridor marks the highway and the red lines delineate the residual land of the complainant.

5.1.5 The EIB-CM analysis of (i) the cadastral map information, (ii) the information from the land register and (iii) the inspection made on site, confirm the complainant's allegation. The Residual Land Plots are surrounded by the land of other owners and no right of way or servitude has been established to provide the complainant with access to the Residual Land Plots. Neither a right of way nor servitude have been registered or identified in the relevant public registry.

5.1.6 Considering that the complainant has no access to the Residual Land Plots, the complainant's ability to undertake agricultural or any other activities is extremely limited or even inexistent. Therefore, the possibility to use the land of the Residual Land Plots has been lost, and this has also resulted in a significant decrease of the commercial value of the lands.

5.1.7 The complainant was the full registered owner of the Original Land Plots at the time of the RAP. For the purpose of construction of the highway, the Original Land Plots of the complainant were transformed and only the land falling within the impact zone of the highway was bought out and registered on the name of the state. The residual land was registered separately on the name of the complainant (see § 2.2.1 above). Despite being the registered owner of the residual land, the complainant was legally and factually left without access to it as a result of the project-driven land transformation process (see § 5.1.4 above). Furthermore, when the complainant approached the promoter with a request to purchase the residual land because it had become inaccessible, the promoter refused the request without stating any reasons, without considering any possibility for an alternative solution to the complainant's situation, without indicating whether the refusal can be appealed against and without indicating whether another entity, project-based or otherwise, was responsible for handling the complainant's grievance (see § 2.2.3 above). The EIB-CM considers that the current situation of the complainant is not in line with the EIB's social standards and with the requirements of the RAP for the project (see §§ 3.2, 5.1.2 and 5.1.3 above).

5.1.8 The EIB-CM notes that while the responsibility for the implementation of the RAP lies with the promoter, the promoter and the EIB need to agree on its implementation in order to ensure that the EIB's social standards are met. Based on the findings of the case, the EIB-CM considers that the Bank's services should work with the promoter in order to address the complainant's specific case and find an acceptable solution to his situation in line with the EIB's social standards.

5.1.9 In this context, the EIB-CM takes note of the fact that the present complaint is confidential. Therefore, if the Bank's services and the complainant accept the proposed way forward above, the EIB-CM will liaise with the complainant and with the Bank's services in order to revisit the question of confidentiality and have in place the information necessary for the resolution of the case in a manner satisfactory to all parties.

6. CONCLUSIONS AND RECOMMENDATIONS

6.1 In the present case, the EIB-CM found that the complainant was compensated only for the parts of his plots of land, which fell within the impact zone of the highway project. However, he was not compensated for the residual parts of the plots, which had become inaccessible because of the implementation of the project. He was not provided with a clear justification for the lack of compensation.

6.2 The EIB-CM considers that the current situation of the complainant is not in line with the EIB's social standards, which aim to mitigate any adverse impacts arising from the affected persons' loss of assets, or access to assets and/or restrictions of land use, whether temporary or permanent, direct or indirect, partial or in their totality. In addition, the present situation is not in line with the principle of improving or at least restoring the social and livelihood resources of the project-affected people at their pre-project level.

6.3 The EIB-CM recommends that the Bank's services work with the promoter in order to address the complainant's specific case and find an acceptable solution to his situation in line with the EIB's social standards. These arrangements could for example include reaching an agreement for the acquisition of the residual lands or reaching an agreement to compensate the complainant for loss of the purpose and decrease of commercial value of the Residual Land Plots or assisting the complainant to successfully regularise his right of way with the owners of the neighbouring land plots. It needs to be noted that in order for the Bank to address this as a complaint with the promoter, it would be required from the complainant to waive confidentiality.

6.4 The EIB-CM will monitor the implementation of its recommendation within 12 months from the issuance of this Report.

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16.07.2018

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