

Georgia East-West Highway

Complaint SG/E/2017/02

Complaints Mechanism - Complaints Mechanism - Complaints Mechanism - Complaints Mechanism

CONCLUSIONS REPORT

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Prepared by

Complaints Mechanism:

Valentina Stoeva

Alfredo Abad

Deputy Head of Division

Sonja Derkum

Head of Division

Complaints Mechanism

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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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EXECUTIVE SUMMARY

On 9 January 2017, the EIB Complaints Mechanism received a complaint lodged by e-mail concerning resettlement within the framework of the EIB's "Georgia East-West Highway" project. The complainant stated that he had a lease agreement with the local government for a plot of land in the village of Chkonagora and was using the land for farming. According to the complainant, the "Georgia East-West Highway" was planned to pass through the plot in question but no one had contacted him to inform him about the project. He also stated that he had contacted the Georgian Department of Roads to ask for compensation but that his request had not produced results. The complainant asked the EIB to support him in order to receive the appropriate compensation that he deserved.

The EIB-CM reviewed the project documentation, the documents received from the complainant and the promoter, and the relevant regulatory framework. The complainant's request for compensation was refused by the Roads Department of Georgia's Ministry of Regional Development and Infrastructure (the promoter) but later the Ministry set aside that refusal by its Roads Department, finding that there was not sufficient evidence for why the complainant was ineligible for compensation. The Ministry sent the case back to its Department, requesting that the factual circumstances of the case be thoroughly investigated. In 2017 the Roads Department sent a letter to the complainant asking him to present documents regarding his business activity and his rights over the land. As a result of this request, the complainant started court proceedings with a view to obtaining a judgment to support his alleged land rights. In 2018, the court rejected his claim

The EIB-CM's review of the case found that while efforts had been made by the promoter to investigate the complainant's situation with a view to establishing whether he is eligible for compensation, additional steps should be taken in this regard to ensure compliance with the relevant EIB standards and the RAP. . In this regard, the EIB-CM recalls that the EIB social standards in the field of involuntary resettlement are applicable to affected persons regardless of the legality of their existing situation.

The EIB-CM acknowledges the practical challenge of determining eligibility for compensation in the absence of a legal title and documents concerning business activity and income. The Bank's services should guide the promoter's Roads Department to reply to the complainant, taking into account the most recent developments in 2018 and the full scope of the relevant EIB standards, and considering the undocumented nature of his alleged business activities. In this regard, appropriate methods of inquiry should be applied. The EIB-CM also notes that the complainant has a responsibility to cooperate with the authorities, to respond to requests for documentation, and to provide any necessary clarifications in order to enable the assessment of his claim.

CONCLUSIONS REPORT

Complainant

Date received: 9 January 2017

Confidentiality requested: no, confidentiality waived

Subject of complaint: Resettlement due to building of road - lack of compensation

1. THE COMPLAINT

1.1 On 9 January 2017, the EIB Complaints Mechanism (hereinafter the EIB-CM) received a complaint lodged by e-mail concerning resettlement within the framework of the EIB's "Georgia East-West Highway" project. The complainant stated that he had a lease agreement with the local government for a plot of land in the village of Chkonagora. The complainant was using the land for farming. According to the complainant, the "Georgia East-West Highway" was planned to pass through the plot in issue but no one had contacted him to inform him about the project. He also stated that he had contacted the Georgian Department of Roads to ask for compensation but that his request had not produced results. The complainant further submitted that the highway construction company had entered the property and started road construction without prior notice. The complainant asked the EIB to support him in order to receive the appropriate compensation that in his view he deserved.

1.2 The complainant provided further clarifications concerning his situation. According to him, since 1997 he had been using the fish pond located on the plot, harvesting each year about 3000-4000 kg of fish from the pond. He had been selling the fish to market traders. According to the complainant, because of the works related to the construction, he had not released any fish in the pond in 2018. In addition, the water supply to the pond had been cut three times by road construction workers in the course of 2016 and 2017.

1.3 The complainant explained that he did not have any documents concerning his commercial and farming activities. According to him, Georgian law does not require farmers to be registered as a business entity and local laws do not require farmers to pay local taxes if their annual turnover is lower than 200 000 GEL.

1.4 The complainant's name does not feature in the Resettlement Action Plan (RAP) for the relevant section of the project. The complainant alleges that he was not informed by the authorities about the road construction project and that he only learned in 2016 that a RAP document existed. According to the complainant, road construction has cut 0.5 hectares of land off from the fishpond. He did not receive notifications from the Roads Department. According to the complainant, a cattle farm was also situated on the plot. It was fully fenced until 6 August 2016. The construction company demolished parts of the fence. Due to road works and the demolition of the fence at the end of 2017 he had to sell the cows as it was impossible to run a farm on the land.

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 a sub-section of 52 km 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 in all lots as well as the associated Technical Assistance (TA). As of November 2018, the Bank's loan for the project was partially disbursed.

2.1.3 With respect to land 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". 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 requests for compensation

2.2.1 On 16 June 2016 the complainant wrote to the Roads Department informing them that he was farming the land where the construction was taking place and requesting valuation to be conducted to determine the extent of the loss of the farming activities and to calculate appropriate compensation. The complainant's request was refused. He filed a new request. The promoter refused the request for compensation stating as a reason that the land in question belonged to the state.

2.2.2 Subsequently, the Ministry of Regional Development and Infrastructure set aside this refusal by its Roads Department, finding that the Department had not provided sufficient evidence for why the complainant was not eligible for compensation under the RAP. The Ministry sent the case back to the Department, stating that the factual circumstances of the case needed to be thoroughly investigated.

2.2.3 Subsequently, the complainant unsuccessfully lodged a court case seeking to have acknowledged an unlimited lease right for the land. At the same time, he also filed the present complaint with the EIB-CM.

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 § 1 of the 2009 EIB Statement of Environmental and Social Principles and Standards¹ requires that financed projects be acceptable in environmental and social terms.

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

¹ http://www.eib.org/attachments/strategies/eib_statement_esps_en.pdf

in the context of resettlement, the Handbook provides for screening of social issues (§§ 40-44). One of the key screening questions that the Handbook specifies in this regard is the following: “Are there people without legal property titles living or earning their livelihood at the site or within the right-of-way?” (p. 25 of the Handbook).

3.2.3 § 172 of the Handbook states 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.”

3.2.4 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 regardless of the legality of existing land tenure arrangements...”

3.3 *The Resettlement Action Plan (RAP) for the project*

3.3.1 The RAP document for the Samtredia-Grigoleti section (11.5-30.0km) outlines certain differences between the provisions of Georgian legislation and the requirements of the EIB standards concerning resettlement. In particular, the RAP clarifies that whereas under Georgian law there is compensation only for titled owners, as well as in practice for legalisable owners, under EIB standards lack of title should not be a bar to compensation or rehabilitation. In addition, whereas under Georgian law and practice only registered buildings are compensated for damage/demolition caused by a project, under EIB standards all affected buildings are compensated (p.33 of the RAP).

3.3.2 The compensation entitlement matrix under the relevant RAP for the section of the project provides that non-legalisable owners (squatters/encroachers) will also be compensated (p. 39 of the RAP) or benefit from rehabilitation provisions. The RAP also provides for compensation with one-time self-relocation allowances in cash equal to one year of minimum subsistence income for informal settlers/affected persons with no registration/valid documentation who lose a non-legalisable land plot, which is the only land plot used for residence or providing the main source of income for affected persons (p. 39 of the RAP).

3.3.3 The RAP further provides that all affected families regardless of legal ownership/registration status (including legalisable and informal settlers) will be compensated for residential and non-residential structures/assets. All impacts on buildings and structures will be considered as full impacts regardless of the actual impact percentage. Impacts on buildings and structures will be compensated in cash at full replacement costs free of depreciation and transaction costs (p. 39 of the RAP). In respect of loss of income and livelihood, the RAP provides that all affected persons regardless of legal status (including legalisable and informal settlers) will be compensated or benefit from rehabilitation provisions.

3.3.4 The main objective of implementation of the RAP is to improve or at least restore the social and livelihood resources of the affected persons to their pre-project level (p. 71 of the RAP).

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 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 lack of compensation for the complainant in the framework of the resettlement related to the project

5.1.1 The EIB-CM inquiry identified the following sequence of events:

5.1.2 On 16 June 2016 the complainant wrote to the Roads Department informing them that he was farming the land where the construction was taking place and requesting valuation to be conducted to determine the extent of the loss of the farming activities and to calculate appropriate compensation.

5.1.3 On 15 August 2016 the complainant received the reply from the Roads Department stating that a RAP had been prepared on request by the Roads Department and in accordance with the European Investment Bank's rules and procedures. The Roads Department expressed full readiness to implement the procedure for calculation of compensation in case of the complainant submitting the documents required by legislation. The Roads Department attached to its reply a copy of the letter from the audit company responsible for carrying out the survey for the RAP. The letter stated that during the field surveys the land lot in issue was not registered in the public registry, was not cultivated, and that there were no signs of any other use. At the same time, they indicated that they did not find witnesses that could testify that the land was in use. According to the letter, in his request the complainant did not submit any documents to prove his right to use the land, therefore the audit company did not have any evidence to consider the complainant a rightful lessee of the land plot.

5.1.4 On 25 October 2016, the complainant submitted a new application to the Roads Department. The complainant also requested that the Roads Department adopt a reasoned decision in relation to his request. According to the text of the application, the complainant submitted supporting documents as follows: decision of Lanchkhuti district government of 2003 allocating the land plot to the complainant, 33 receipts of payment of lease fee, as well as a statement by three people, certified by a notary, that the fish-farm facility located on part of the land had been built by the complainant. In his application, the complainant explained that he had submitted the same document to the audit company. On 22 September 2016, the audit company had refused to consider these documents because the company indicated that it had neither the ability nor the competence to legally assess the documents. In support of his claim, the complainant further explained in the application that the land lot in question was fully fenced, had an iron gate, and that there was a fish-farming pond on it. The complainant also submitted references to conversations with witnesses in the area that would confirm the use of the land and the payment of the lease. This information would contradict what the audit company had reported.

5.1.5 The Roads Department replied to the complainant's request, stating that the complainant was not eligible for compensation because the land in question belonged to the state.

5.1.6 On 7 December 2016 the complainant appealed against the Roads Department's response before the Ministry of Regional Development and Infrastructure. The Ministry held a verbal hearing of the complainant's case and heard evidence from the parties.

5.1.7 On 28 December 2016 the Ministry issued a decision annulling the refusal by the Department of Roads and sending the complainant's case back to the Department of Roads for a new examination. In reaching its conclusion, the Ministry took the following into consideration:

- The land in question is registered as state property, and the complainant received the land lot as a lessee on 8 August 2003. Subsequently, the lease was not renewed;
- In relation to issues of eligibility for compensation and its calculation, for land lots located in impact zones of the project, the Roads Department is guided by the relevant RAP. The Ministry found that the refusal challenged by the complainant was not sufficiently justified. According to the Ministry, the Roads Department had not presented sufficient evidence as to why the complainant was not eligible for compensation under the RAP;
- The Ministry pointed out that the issue of whether the land conveyance zone passed through the fish farm of the complainant should be additionally investigated. The Ministry concluded that the factual circumstances of the case needed thorough investigation and that only after estimation and comparison of the circumstances, should the respective decision be adopted.

5.1.8 On 11 January 2017 the Roads Department sent a letter to the complainant. The text of the letter mentioned the RAP for the road section in issue and its compensation provisions. The letter also requested the complainant to provide within reasonable time “all necessary documents related to the fish farming and business activity carried out on the land”. The complainant was further requested to “provide the necessary documents within a reasonable timeframe to the National Agency of Public Registry to register the affected land in your name for further registration process...”.

5.1.9 Following the above, the complainant submitted an application to the relevant Georgian court to have acknowledged an unlimited lease right for the land. On 24 April 2017 the first-instance court ruled in favour of the complainant, taking into consideration payment receipts presented as evidence. The decision was appealed by the other party, the LEPL National Agency of State Property. The relevant Court of Appeal found that the payments made by the complainant in the period 2005-2015 did not lead to the conclusion that there was an existing lease agreement for the land in issue. In a final judgment of 20 April 2018 the Supreme Court of Georgia decided not to consider the appeal of the complainant.

5.1.10 According to documents made available to the EIB-CM, the promoter was aware of the court case lodged by the complainant. The promoter’s position, as communicated to the EIB-CM by the Bank’s services, is that the complainant did not provide any documentation for further investigation, which precluded the promoter’s ability to pay compensation.

5.1.11 The EIB-CM takes into account that the complainant was not included in the census of the affected people and that when he approached the promoter in 2016 to request compensation, he was informed that compensation procedures could take place if he provided supporting documents to prove his right to use the land (the details of the communication between the complainant and the promoter are outlined in §§ 5.1.2 – 5.1.5 above). The EIB-CM further observes that following the decision of the Ministry requiring that the factual circumstances of the case be thoroughly investigated, the Roads Department sent a letter to the complainant requesting “necessary documents” related to the fish farming and business activity and asking him to provide them in order to have the land registered in his name (see § 5.1.8 above).

5.1.12 The EIB-CM recalls that the EIB social standards in the field of involuntary resettlement are applicable to affected persons regardless of the legality of their existing situation (see § 3.2.4 above). The EIB-CM further observes, that the relevant RAP is in line with this requirement of the EIB standards and captures this in the compensation entitlement matrix (see §§ 3.3.1-3.3.4 above).

5.1.13 The EIB-CM notes that the responsibility for the implementation of the RAP lies with the promoter. In this regard, the EIB-CM observes that the Roads Department made efforts to investigate the complainant’s case, most recently in 2017 by requesting him to present documents regarding his business activities and his right over the land (see § 5.1.8 above). The EIB-CM takes note that as a result of this request, the complainant

started court proceedings with a view to obtaining a judgment to support his alleged land rights. In 2018, the court rejected his claim (see § 5.1.9 above).

5.1.14 The EIB-CM acknowledges the practical challenge of determining eligibility for compensation as required by the EIB standards in the absence of legal title and documents concerning business activity and income. The EIB-CM considers that despite these difficulties, all efforts should be made on the part of the promoter and the EIB to ensure compliance with the relevant standards and with the RAP, which apply to affected persons regardless of the legality of their existing situation. The Bank's services should guide the promoter's Roads Department to reply to the complainant, taking into account the recent developments (see § 5.1.9 above) and the full scope of the relevant EIB standards, and considering the undocumented nature of his alleged business activities. Moreover, this action would be fully in line with the decision of 28 December 2016 by the promoter – the Georgian Ministry of Regional Development and Infrastructure (see § 5.1.7 above) - which specifically required thorough investigation of the factual circumstances of the case on the basis of which a decision should be adopted.

6. CONCLUSIONS

6.1. The EIB-CM's review of the case has found that while efforts were made by the promoter to investigate the complainant's situation with a view to establishing whether he is eligible for compensation, additional steps should be taken in this regard to ensure compliance with the relevant EIB standards and the RAP, which apply to affected persons regardless of the legality of their existing situation.

6.2 The Bank's services should guide the promoter's Roads Department to reply to the complainant, taking into account the recent developments in 2018 and the full scope of the EIB relevant standards, and considering the undocumented nature of his alleged business activities. In this regard, appropriate methods of inquiry should be applied. The EIB-CM also notes that the complainant has a responsibility to cooperate with the authorities, to respond to requests for documentation, and to provide any necessary clarifications in order to enable the assessment of his claim.

S. Derkum
Head of Division
Complaints Mechanism
03.12.2018

V. Stoeva
Complaints Officer
03.12.2018