



Independent
Project
Accountability
Mechanism

Assessment Report

Business Ombudsman of the Kyrgyz Republic

EBRD Project Number 10698

Case 2023/03

September 2023

The Independent Project Accountability Mechanism (IPAM) is the European Bank for Reconstruction and Development's (EBRD) accountability mechanism. IPAM independently reviews issues raised by individuals or organisations concerning Bank-financed projects that are believed to have caused or be likely to cause harm. The purpose of the mechanism is to facilitate the resolution of social, environmental, and public disclosure issues among project stakeholders; to determine whether the Bank has complied with its Environmental and Social Policy and the project-specific provisions of its Access to Information Policy; and, where applicable, to address any existing noncompliance with these policies, while preventing future non-compliance by the Bank.

For more information about IPAM, contact us or visit www.ebrd.com/project-finance/ipam.html

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Unless otherwise indicated capitalised terms used in this report are those as set forth in the 2019 Project Accountability Policy.

LIST OF ABBREVIATIONS

Abbreviation	Long Form
Board	the Board of Directors of the European Bank for Reconstruction and Development
Case	the consideration of a Request under the Project Accountability Policy following its registration
CAO	the Chief Accountability Officer of the EBRD, and IPAM head
Case Registry	the registry of Cases created in accordance with Section III, Paragraph 3.1 of the Project Accountability Policy, which can be found on the IPAM Webpage
Compliance	the IPAM function which determines whether EBRD has complied with its Environmental and Social Policy or the Project-specific provisions of its Access to Information Policy in respect of a Project
EBRD (or Bank)	the European Bank for Reconstruction and Development
ESIA	Environmental and Social Impact Assessment
ESP	the EBRD's Environmental and Social Policy in force at the time of Project approval
IPAM	the Independent Project Accountability Mechanism of the EBRD established as per the 2019 Project Accountability Policy
IPAM Head	the EBRD managing director responsible for the running of IPAM, the implementation of the Project Accountability Policy and for making the decisions that are the responsibility of IPAM under said Policy
PAP	the 2019 Project Accountability Policy
Parties	the individuals, entities, and/or organisations with a direct interest in a Case. Parties may include (but are not limited to): the Requesters; their Representatives, if any; the relevant Bank department, team, or unit; the Client; and other Project financiers or other entities responsible for the implementation of a Project
Problem Solving	the IPAM function which supports voluntary dispute resolution engagement between Requesters and Clients to resolve the environmental, social, and information disclosure issues raised in a Request, without attributing blame or fault.
PSD	Project Summary Document
President	the President of the EBRD

Executive Summary

The Request¹

The [Independent Project Accountability Mechanism](#) (IPAM) received a [Request](#) on 10 February 2023 from two former employees of the [Business Ombudsman of the Kyrgyz Republic](#) (TCRS 10698). Ms Safarbek kyzy Aisanat and Mr Azamatov Aziz Azamatovich (Requesters) are residents of Bishkek and worked as specialists for the Business Ombudsman Institution until the end of January 2023. They raise allegations of unfair treatment as the contracts of all employees were extended at the beginning of February 2023 except theirs. They allege that the reasons for their contracts non-extension were the pregnancy of Ms Safarbek and personal distrust towards Mr Azamatov, rather than judgements based on objective skills, performance and competencies. In their communication with IPAM, the Requesters expressed interest in having their Request considered under the Problem Solving and Compliance functions.

The Project²

The [Business Ombudsman of the Kyrgyz Republic](#) (TCRS 10698) is a third-party recourse mechanism for businesses. The Project is funded by the EBRD's Shareholder Special Fund and was approved on 30 October 2018 to support the Business Ombudsman Institution in its start-up and operational phases. A separate legal entity was established and a grant agreement was signed by the EBRD on 13 December 2019 and grant amendments were signed in August 2021 and February 2023. At the end of April 2023 EBRD ended its financial support towards the Business Ombudsman Institution. The main Client/beneficiary of the Project is the Government of the Kyrgyz Republic.

IPAM Process

The Request was registered by IPAM on 22 March 2023 under [Case 2023/03](#), initiating the Assessment stage that was conducted until the beginning of September 2023 in accordance with the [2019 Project Accountability Policy \(PAP\)](#). IPAM undertook an in-depth analysis of the Request and reviewed the additional documentation provided by the Parties, held several online meetings with the Bank team responsible for the Project, the Client and the Requesters.

Conclusion and Next Steps

IPAM determined that there are no conditions to initiate a Problem Solving initiative. The Parties are notified that the Case will be transferred to the Compliance function to determine if it is eligible for a Compliance Review. IPAM wishes to thank the Requesters, the Client and Bank management for their time and inputs provided during the Assessment stage.

As per 2.3 (c) of the 2019 PAP, the Assessment Report shall be submitted to the Board and the President for information. The Case will be transferred to Compliance once the Assessment Report is disclosed to the Parties and in the virtual case file at [Case 2023/03](#).

¹ The Request is available in the case summary for [Case 2023/03](#)

² EBRD's Project Summary Document is available [here](#)

1. Background

1.1. The Request³

On 10 February 2023 the [Independent Project Accountability Mechanism](#) (IPAM) received a [Request](#) from Ms Safarbek kyzy Aisanat and Mr Azamatov Aziz Azamatovich (Requesters), residents of Bishkek and employed by the Business Ombudsman Institution until the end of January 2023. The institution was set under the [Business Ombudsman of the Kyrgyz Republic](#) (TCRS 10698), an EBRD grant.

They allege that they have been treated unfairly by their employer, as their contracts were the only two not renewed. The Request cites as reasons for this being the fact that Ms Safarbek was pregnant and personal distrust towards Mr Azamatov. The Requesters have asked for their concerns to be considered under the Problem Solving and Compliance functions.

1.2. The Project and its Current Status⁴

The [Business Ombudsman of the Kyrgyz Republic](#) (TCRS 10698) is a third-party recourse mechanism to protect the rights of businessmen. The Project is a technical cooperation (TC) under the EBRD's Shareholder Special Fund approved on 30 October 2018 to support the Business Ombudsman Institution (BOI) in its start-up phase covering, inter alia, project design, physical establishment of the office, identifying and mobilising professional and support staff and commencing operations.

The TC Project envisaged three stages:

A. Start-up period. During the start-up period the following TC activities were required: (1) Project design, planning and coordination of the Ombudsman and Deputies' recruitment process; the preparation of the BOI statute and key procedures (e.g., the Charter) among all key parties. This stage also includes integrity investigations on specific candidates and legal advice in connection with the establishment and legal structure of the BOI; (2) Physical establishment of the BOI including finding, renting and equipping the BOI; (3) Identifying and mobilising professional and support staff and commencing operations.

B. Initial operational period. The following TC activities were required for the implementation phase: (1) Financing and providing support for the operational activities of the BOI; (2) Drafting of the implementing rules and procedures relating to BOI's governance, duties and responsibilities, rules for investigations etc. to be approved by the BOI Supervisory Board, which will cover, inter alia: (i) BOI detailed governance (e.g., the role of the Supervisory Board, its powers, relationship between the Ombudsman/Deputies and the Supervisory Board; duties and responsibilities of the Ombudsman and Deputies, rules relevant to staff recruitment and employment, etc.); (ii) Detailed rules for conducting investigations, including clear eligibility criteria for a claim to be investigated by the BOI and the types of matters that are not handled by the BOI (such as review of court decisions), rules relevant to the processing of a claim, guidance on how to conduct investigations and the procedure for requesting a further investigation by the relevant authorities in cases where the initial investigation by the BOI determines that there are reasonable grounds that a business malpractice may have occurred; (iii) Rules relevant to the periodic Reports to be issued by the BOI – to the Supervisory Board and to the public at large; (iv) Confidentiality issues; (v) Files and archives of the BOI. The Rules of Procedure will be available to the public via the BOI website. (3) Launching a media campaign including a BOI webpage, to help raising public awareness of the BOI and its activities. (4)

³ The Request is available in the case summary for [Case 2023/03](#)

⁴ The information is sourced from the EBRD's [Project Summary Document](#)

Carrying out the functions of the BOI as per rules of procedures and mandate as approved by the Supervisory Board.

C. Phase 3-continuation of funding for BOI. Continuation of the BOI operation for additional 27 months, from February 2023 to April 2025, as the continuation of the operational phase and the expenses related to the recruitment process of new Business Ombudsman.

A separate legal entity was established and a grant agreement was signed by the EBRD with this legal entity on 13 December 2019 and grant amendments were signed in August 2021 and February 2023. The main Client/beneficiary of the Project is the Government of the Kyrgyz Republic. At the end of April 2023 EBRD ended its financial support towards the Business Ombudsman Institution.

1.3. Case Processing to Date

The Request was registered by IPAM on 22 March 2023 as it met the criteria for Registration established in Section 2.2 (b) of the PAP, and none of the exclusions set in Section 2.2 (c) of the PAP applied at that stage. The registration of a Request is an administrative step⁵ establishing that the following criteria have been met:

- all mandatory information has been provided;
- issues raised relate to specific obligations of the Bank under the Environmental and Social Policy and/or the project-specific provisions of the Access to Information Policy;
- it relates to a Project that the Bank has approved; and
- the Request has been submitted in relation with an active project, or within 24 months of the date in which the Bank has ceased to have a financial interest in the Project.

2. Assessment Stage

Immediately after registration, the Request was transferred to the Assessment Stage as established in para. 2.3 of the 2019 PAP, to:

- develop a clear understanding of the issues raised in the Request;
- discuss the Problem Solving and Compliance functions with the Parties, their scope, and outcomes;
- assess the Parties' willingness to engage in each function;
- consider the updated status of other grievance resolution efforts, if applicable; and
- make a final determination with three alternative outcomes:
 - the Case could proceed to Problem Solving, based on the agreement of the Requesters and the Client; or
 - the Case would be transferred to Compliance Assessment if no agreement to pursue Problem Solving is reached and the Requesters would have expressly asked for this; or
 - the Case would be closed.

The Assessment stage has a standard duration of 40 business days from the date of the Request Registration which might be extended to ensure robust processing or if translation of documents is required as per the PAP. The Assessment was initiated at the end of March 2023 and was finalised at the beginning of September 2023.

In line with the approach established in the PAP (see paragraph 2.3 (b)), IPAM determined that for the purposes of the Assessment of this particular Request, it deemed unnecessary to conduct a visit

⁵ Registration of a Request does not involve a judgement on the merits, truthfulness or correctness of its content. Nor does it have the effect of suspending the Bank's interest in a Project.

to the Project site in Kyrgyzstan and conducted a desk based review of relevant Project documents and supporting documentation provided by the Requesters, Bank management and the Client. In addition, IPAM engaged virtually with the Bank's Project team, the Client and the Requesters.

3. Summary of the Parties' Views

This section provides the views of the Requesters, the Client and Bank management as captured by IPAM during virtual meetings. Prior to finalising this Report, to ensure that the information included herein is accurate, IPAM shared with the Parties relevant sections and considered their comments when finalizing it.

3.1. Requesters

During the Registration and Assessment stages (February to September 2023), the IPAM team communicated frequently with Requesters and reviewed documentation provided by them.

During these engagements, the Requesters indicated that both of them had worked as specialists within the Business Ombudsman Institution. Ms Safarbek has worked for three years and Mr Azamatov for a year and a half under renewable fixed term contracts as all other staff.

The Requesters indicated that on 10 January 2023 the staff was informed that the Project would be scaled down, and on 30 January 2023 the two Requesters were notified that the following day would be their last day of work as their contracts would not be extended. The rest of the team (11 staff members) had their contracts extended at the beginning of February 2023.

The Requesters expressed to IPAM that this decision came as a surprise to both of them as they had good working performance. They were told that the reasons for not renewing their contracts was the fact that Ms Safarbek was pregnant and personal distrust towards Mr Azamatov.

In their view the decision not to extend was not based on objective criteria, it lacked transparency and clarity and wasn't in line with the EBRD's Environmental and Social Policy, Performance Requirements 2. Labour and Working Conditions.

The Requesters explained that they shared their concerns with the management of the Business Ombudsman Institution, its supervisory Board and with the EBRD Project team as they considered the decisions made by the institution non-compliant with the Bank's Environmental and Social Policy, but the responses they received were not to their satisfaction.

The Requesters further explained that they approached the local Labour Inspection who issued a recommendation expressing that there was no legal basis in the labour code of the Kyrgyz Republic to end their contracts.

In addition, the Requesters informed IPAM that they were hoping to settle this dispute in a constructive way, but since they couldn't reach an agreement with the Business Ombudsman Institution, they filed a lawsuit in the local court of Kyrgyzstan against the Business Ombudsman Institution as they considered that local legislation had not been followed. They further explained that a court decision was issued in their favour in May 2023, however, they indicated that the court decision was appealed by the Business Ombudsman Institution.

The Requesters shared with IPAM that they do not wish to be reinstated in their former jobs as they understand that EBRD has ended its funding for the Project, but would expect to be paid compensation as per the court decision. If their concerns cannot be resolved through Problem-Solving, the Requesters expressed their interest in IPAM's Compliance function to investigate the allegations of discrimination towards the Requesters.

3.2. Client

IPAM engaged with the Acting Business Ombudsman virtually several times during the Assessment stage. In addition, IPAM exchanged several email communications and reviewed Project documentation that was shared.

The Client confirmed to IPAM that the Business Ombudsman Institution was established in 2018 with the support of the EBRD as the only donor and that at the time the expectation was that EBRD would be supporting the institution at least for five years.

The Client explained that, due to the nature of the Grant Agreement, all staff members including the Requesters were working under fixed term contracts, which were extended several times as EBRD renewed its financial support.

The Client explained that in September 2022, EBRD decided to scale down the Project and reduced its financial support after 31 January 2023. They explained that an extension to the Grant Agreement was signed for the period February – April 2023 with reduced budget which required a reduction in staff head-count.

Based on the reduced budget, the Client explained that it was decided to reduce the number of specialists from four to two. The decision of who would have their contract extended was based on staff competencies and work efficiency.

The Client further explained that on 30 April 2023, EBRD ended its support for the Business Ombudsman Institution and due to this, the contracts of 11 remaining staff members have also ended as of that date. According to him, all staff related decisions and staff contracts were developed in line with local legislation.

3.3. EBRD Management

IPAM held two virtual meetings with EBRD management during the Assessment stage and communicated via email throughout. Bank management provided an update on the implementation of the Project and shared their perspective on the issues raised in the Request. The team also shared Project documents that were reviewed by IPAM.

Bank management explained that the Business Ombudsman Institution was set up in Kyrgyzstan with the objective to protect the interests of businesses against the abuse of state power. They added that the Government of the Kyrgyz Republic approached EBRD seeking support given the Bank's experience with the Business Ombudsman in Ukraine.

Bank management informed IPAM that EBRD's intention was to support the Business Ombudsman Institution for a longer period of time, but as it had been impossible to identify a suitable candidate for the role of Ombudsperson, they had to scale down the funding in early 2023 and end it on 30 April 2023.

Regarding the concerns raised by the Requesters, EBRD stated that they followed advice from local lawyers at every stage of the Project and all labour matters comply with Kyrgyz legislation. They also explained that all staff members were hired under local fixed term contracts and any extensions were subject to budget availability and business needs in accordance with applicable law.

Regarding the application of the Environmental and Social Policy in the Project activities, the team, stated that the Project complied with all applicable laws.⁶

⁶ The Bank management stated that the Environmental and Social Policy was revised in 2019 and the updated version is not applicable to advisory services, community initiative projects, policy dialogue and technical cooperation, financed

4. Assessment Determination

Based on the Assessment activities undertaken in relation to Case 2023/03, IPAM has made the following determinations:

- After an in-depth analysis of the concerns raised, IPAM determined that the Request meets the Registration criteria;
- After meeting with all Parties, IPAM finds that Problem Solving is not feasible as the Parties are involved in a legal dispute and the Bank has ceased its financial interest in the Project.

Due to these considerations, IPAM finds that there is no feasibility to address the concerns raised through Problem Solving. As the Requesters have asked for both Problem Solving and Compliance, the Case will be transferred to the Compliance function to determine if it is eligible for a Compliance Review.

5. Conclusion and Next Steps

IPAM determined that there are no conditions to initiate a Problem Solving initiative. The Parties are notified that the Case will be transferred to the Compliance function to determine if it is eligible for a Compliance Review. IPAM wishes to thank the Requesters, the Client and Bank management for their time and inputs provided during the Assessment stage.

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and/or implemented by the EBRD, or governance, administration and decision-making processes of the EBRD. At the same time, the Bank management stated that they will continue monitoring the implementation of Technical Cooperation projects (including on environmental and social grounds) and will identify available opportunities to improve the projects it finances.