

## INVESTIGATION TASK FORCE

### Allegation of fraud in handling and accounting of Cargo at Pristina Airport (Case No. 0192/04)

#### **I. Introduction**

1. The Investigation Task Force (ITF) received a report that the Cargo Department at Pristina Airport had improperly sought payment for importation and storage of goods owned by the Company. It was further alleged that an amount of €8,000.00 was sought and received by an official (Official 1) of the Pristina Airport, which was illegal and therefore not recorded in the accounts of the Airport.
2. After the ITF conducted a preliminary investigation into this allegation, *prima facie* evidence of a crime was identified and the case was referred to the Department of Justice, Pillar I, UNMIK, on July 22<sup>nd</sup>, 2004 for further judicial action. This report is a summary of the information adduced during the investigation.

#### **II. Background**

3. ITF Investigators met with the Company Representative, who explained that a part of his business involves the importation and marketing of LED display equipment. The Company consists of 4 partners:
  - Partner 1
  - Partner 2
  - Partner 3
  - Partner 4
4. The above company partners agreed to the following regarding the various payments to be effected as follows:
  - Partner 2 and Partner 3 were to pay the total price of all the goods;
  - Partner 1 was to pay everything regarding VAT, Custom Duties, Local Taxes and Storage.

### **III. THE DUTIES AND RESPONSIBILITIES OF AIRPORT PRISTINA CARGO OFFICIALS**

5. In general terms, airport officials are required to act in the best interests of Airport Pristina, a Kosovo Publicly Owned Enterprise (POE), while performing their duties and establishing and maintaining a responsible and transparent business framework in which Airport Pristina can function. All Cargo Department officials are obliged to follow the applicable law, and internal Rules, Regulations and Instructions, when dealing with Airport Pristina assets, resources and facilities.

6. Official 2 was responsible for the daily control and management of the Cargo section, including its assets and resources. He had the responsibility to ensure that all contracts concluded on behalf of Airport Pristina regarding storage fees payable by importers complied with the applicable law, regulations and instructions, and that they were subject to full and fair competition, openness and transparency and free from conflict of interest and corruption. His/her duty was to conduct the affairs of Airport Pristina as a senior official with the utmost integrity and transparency and to be fully accountable to the Board of Airport Pristina.

7. It was Official 2's responsibility to ensure that storage fees were paid and a record of the payments be kept. The procedure for recording payments is that the airway bill with a customs stamp should have been provided to the Finance Officer whereby he/she then calculates the storage fees owed. Before individuals or companies were allowed to retrieve their goods, this fee had to be paid pursuant to an official invoice. In this instant case, there is no record of such an invoice or any such payment. The absence of such a record is highly unusual and establishes that monies owed to the airport were not received in this case.

8. Official 1 worked in the Cargo Handling Office at the Airport. As with Official 2, it was Official 1's duty to ensure that all payments made by customers of the airport complied with the applicable regulations and instructions.

### **III. INVESTIGATIVE DETAILS**

9. A consignment of "LED Display equipment and accessories" for the Company arrived at the airport via Airline 1 on 26 December 2003, and consisted of four pallets containing 27 packages with a total weight of 976 kg. These goods were imported from Beirut and were accompanied by an Air Waybill.

10. The Company Representative was advised by Partner 2 of the consignment's arrival. Partner 2 was also the person that handed over the Air Waybill to the Company Representative.

11. At the time the consignment arrived in Kosovo, the Company did not have permission to erect the LED screen on any city building for advertisement purposes as they had intended. This authorization was granted sometime later, circa March/April 2004.

12. The merchandise in question was paid for and cleared on the 15<sup>th</sup> of March 2004, by the nominated Shipping Agent. The same Agent, on behalf of the Company, paid a total amount of €11,581.00, VAT and Customs Duties included.

13. Once all the payments had been effected, the Company Representative went to the Cargo Building to pick up his goods, but according to his statements, he/she was approached by Official 1, who advised the Company Representative that he/she was now required to pay the amount of €32,800.00 that included a storage charge for the period 26 December 2003 to 15 March 2004.

14. Partner 2 was astonished at this excessive charge for storage. At this point, the Company management agreed to leave the goods in storage and decide on what action to take. They identified the possibility of returning the goods to their place of origin, due to the fact that the storage would have cost them nearly as much as the price of the screen (US\$54,000.00).

15. Official 1 then advised the Company Representative that he would do everything in his/her power to assist in settling this situation, including an offer to lower the storage charge. Sometime thereafter, Official 1 advised the Company Representative that he/she was able to decrease the storage charge to €8,000.00 based on his/her position and connections at the Airport.

16. The Company management accepted the new offer and agreed to pay the lower storage charge of €8,000.00. However, due to the fact that Partner 1 did not have €8,000.00 in cash, he/she commenced a search amongst his/her friends for the money. Subsequently, Partner 1 was able to raise the money to pay both the Custom Excise and Airport Storage fees.

17. On the 16<sup>th</sup> of March 2004, Partner 1 paid the €8,000.00 to the Company Representative, who then went to Pristina Airport to hand it to Official 1. The Company Representative stated that the hand-over of the cash to Official 1 took place outside the airport terminal gate. The Airport X-Ray Operator, who observed the meeting between the two men, corroborated the fact that the meeting took place as stated.

18. ITF Investigators visited the Cargo Department Finance Office to check official documentation in relation to the Company merchandise. No trace of the payment of the €8,000 could be found in the Cargo Department account books for 2003 or 2004.

19. According to the tariff list that the Finance Officer of the Cargo Section provided to the ITF, the Company should have paid an amount of approximately €32,000.00 for storage fees from the 23<sup>rd</sup> of December 2003 to 15<sup>th</sup> of March 2004.

20. In view of the above, ITF Investigators interviewed Official 2 who offered no justifiable explanation as to why no payment had been effected with respect to the Company goods. He/she simply repeated that the goods were confiscated from the Customs Service and that just a minor payment of storage fees should have occurred. Unfortunately, no trace of payment (current official storage price list payment or the minor payment that Official 2 declared in his/her official interview) was detected by the ITF nor provided by Official 2. Further inquiries carried out by the ITF on 6 July 2004 at Pristina Airport Customs Offices and at Pristina Customs Services Headquarters, disclosed that the merchandise did indeed enter the airport storage on 26 December 2003 and left on 15 March 2004. According to two staff members, the Company merchandise was not confiscated based on a request from Customs. The ITF found that the Company paid a total amount of €11,581.00 for VAT and Customs Duties.

21. On July 12<sup>th</sup> 2004, ITF Investigators interviewed Partner 4 confirmed that the first requested amount was €32,000.00, which was later changed to the agreed sum of €8,000.00. He/she added that he/she received a strange phone call from a staff member of Airline 2 Pristina Office on 9 July 2004, advising him/her to urgently make contact with Official 2 on his/her mobile telephone, because Official 2 urgently needed to speak with Partner 4. According to Partner 4's statement, he/she called Official 2, who asked for an appointment in order to discuss "a certain issue". Partner 4 said he/she replied that there was no need to continue this conversation, as he/she knew that Official 2 was trying to influence any statements by Partner 4 that he/she may provide to any future inquiries from an investigative body. Partner 4 stated to the ITF that he/she advised the staff member of Airline 2 of his already scheduled appointment with ITF Investigators on the following Monday and that he/she was prepared to tell all he knew on the matter. In view of all the collected data and evidence, the ITF decided to refer the case to the Department of Justice.

#### **IV. CRIMINAL VIOLATIONS**

22. Based on the referral from the ITF to the Department of Justice on 26 July 2004, arrest warrants were issued against Official 1 and Official 2. Each charge is detailed below:

##### **Count 1**

That between the dates 14<sup>th</sup> March 2004 and 16<sup>th</sup> March 2004 inclusive, Official 1 and Official 2 acting in their capacity as officials of Airport Pristina, and acting in complicity with the intention to obtain an unlawful material benefit, presented a representative of the Company with a false statement of account claiming reduced storage fees, and in so doing, misled an authorized person to carry out an unlawful payment, thereby committing

the offence of ***Fraud in Service*** in violation of Article 215, (1) and (2) of the Kosovo Criminal Code (KCC) punishable by imprisonment of one to ten years

{equivalent to ***Fraud in Office*** contrary to Article 341 (1) and (2) of Provisional Kosovo Criminal Code (PCCK)};

and ***Complicity***, in violation of Article 22 of Criminal Code of SFRY,( equivalent to ***Co-Perpetration***, in violation of PCCK Article 23)

## **Count 2**

That between the dates 14<sup>th</sup> March 2004 and 16<sup>th</sup> March 2004 inclusive Official 1 and Official 2 with the intent to obtain an unlawful material benefit for themselves appropriated money (approx. 8,000.00 Euros) from the Company, amount which was allegedly decreased from an initial sum of 32,800.00 Euros to be paid to the Airport for storage fees for goods kept in the Cargo section of the Airport from 24.12.03 until 15.3.2004, thereby committing the offence of ***Embezzlement***, in violation of Article 219 para. 1 and 3 of the KCC punishable by imprisonment of one to ten years

(equivalent to ***Misappropriation in Office***, in violation of Article 340, (1) and (3) of the PCCK)

and ***Complicity***, in violation of Article 22 of Criminal Code of SFRY ( equivalent ***Co-Perpetration***, in violation of PCCK Article 23.)

## **Count 3**

That between the dates 14<sup>th</sup> March 2004 and 16<sup>th</sup> March 2004 inclusive Official 1 and Official 2 acting in complicity, with the intention to inflict damage to a business organization, abused their official position and exceeded the limits of their authorization and did not execute their official duties, by failing to collect, on behalf of their employer, the appropriate storage fee from the Company , and depriving the airport of that amount , thereby committing the criminal offence of ***Abusing Official Position of Authority*** in violation of Article 339 para. 1 and 3 of PCCK, punishable by imprisonment of one to eight years

(equivalent to ***Abuse of Office*** in violation of Article 210 (1) and (3)

and ***Co-Perpetration***, in violation of PCCK Article 23.

## **V. CONCLUSION**

23. Given that the judicial process is ongoing and now rests with the Department of Justice, it is highly recommended that the information contained in this report be carefully protected from inappropriate disclosure. The two Pristina Airport staff members are under suspension and awaiting trial. Therefore, this information is to be treated as

highly confidential and should not be disseminated to any other party without the consent of the competent Judicial Authorities.

## **VI. RECOMMENDATIONS**

24. The ITF offers the following recommendations:

Recommendation 1: The ITF recommends that UNMIK Pillar IV take no administrative action against Official 1 and Official 2 pending the resolution of their respective cases by the Department of Justice (IV04/192/01).

Recommendation 2: The ITF recommends that UNMIK Pillar IV take appropriate disciplinary action against Official 1 if he/she is not criminally charged or sentenced by the competent authorities (IV04/192/02).

Recommendation 3: The ITF recommends that UNMIK Pillar IV take appropriate disciplinary action against Official 2 if he/she is not criminally charged or sentenced by the competent authorities (IV04/192/03).