



INVESTIGATION TASK FORCE

**Allegations of Impropriety regarding
Airport Apartments (Case 0214-04)**

I - Introduction

1. When conducting investigations into alleged wrongdoings at the “Public Enterprise Airport Pristina” (PEAP) pursuant to UNMIK Executive Decision No. 2003/16, the Investigation Task Force (ITF) received numerous allegations of improprieties in relation to the procurement, construction and occupation of six apartments owned by the Airport, named Lamela IV.

II - Background Information

2. The ITF Investigators began their investigation with a thorough analysis of the development of the previously built twenty-two apartments (denominated Lamela I, II, and III). This analysis included fact finding as to the construction and ownership of Lamela I, II and III as well as inquiries into the reasons for the subsequent construction of Lamela IV, which is the subject matter of this investigation.
3. In the former Republic of Yugoslavia, under the Employee Housing Law, employees could contribute part of their salary to a general fund that would be used for benefits such as medical care, vacations and housing. Under that regime, workers were put on a list for the provision of apartments, according to seniority, job type, work record and other factors, with those at the head of the list eventually obtaining an apartment.
4. Therefore, under this Yugoslavian Law during the years 1996-1998, the then Managing Director of PEAP requested Municipality Authorities to grant Airport Pristina land to build apartments. The planned apartments were divided in three separate structures - Lamela I, II and III. Once the land had been identified and assigned, PEAP management commissioned the construction of a total of twenty-two apartments within these three structures.
5. The eligible employees competed for the assignment of an apartment or that of a credit value. The evaluation for apartment assignment was based on a points allocation scheme through Airport Pristina. Once the list of the twenty-two assigned persons had been decided and completed, a pre-decision was submitted, which would eventually – if no objections were raised - become the final decision.

6. At that point, the apartments would be assigned to the Airport employees for their use. The Government then decided to privatize these Airport apartments and the tenants were granted the chance to purchase their apartment – based on a court verified contract - under a stipulated estimation of the value of each apartment, including the options of lump-sum payments or monthly installments for up to 40 years.
7. The NATO actions in 1999 saw many Serbs flee Pristina and vacate their apartments. Some apartments were occupied by squatters, some were sold by the owners at a reduced price. Other owners rented their apartment to UNMIK International Staff. The current owners of the twenty-two Airport apartments consist of thirteen Serbians and nine Albanians who are all current Airport employees. The Divisional Manager owns one of these flats.
8. However, it must be noted that in 1998, thirteen Albanian Airport workers that should have received apartments under this system, were denied their apartments. They therefore filed appeals to Pristina’s Municipal Court.
9. Correspondence in the possession of the ITF shows that in 1999, under the new UNMIK regime, Official 1 of UNMIK Pillar II, in order to appease these staff, suggested to Airport officials that they commence building an additional six apartments on land adjacent to the existing twenty-two apartments. Four other apartments owned by the Airport were allocated to some of these staff with the remaining three other staff not returning to Kosovo after the war. The six top-ranking persons on the airport evaluation list, Staff member 1, Staff member 2, Staff member 3, Committee Chairman, Committee member 1 and Staff member 5, were allocated the apartments in Lamela IV.
10. In order to level the land and to construct the foundations and the concrete framework for the six new apartments, the Divisional Manager, after discussion with Official 2 of Transport in UNMIK Pillar II, and Official 3 of Civil Aviation, and in consultation with UNMIK Pillar II, decided to spend DEM 300,000.00 of Airport funds, derived from revenues of the Airport restaurant and car park.

III - Applicable Laws/Rules/Regulations

PROVISIONAL CRIMINAL CODE OF KOSOVO (PCCK)

1) Article 233 – Irresponsible Economic Activity

- (1) A responsible person within a business organization or legal person who, by consciously violating the law or other provision relating to business activities, acts in an irresponsible way and thereby causes substantial material damage to the business organization or legal person shall be punished by a fine or by imprisonment of up to three years.

2) Article 237 – Entering Into Harmful Contracts

- (1) A representative or an authorized person of a business organization or legal person which engages in an economic activity who enters into a contract that he or she knows to be harmful for the business organization or legal person, or enters into a contract contrary to his or her authorizations and thereby causes damage to the business organization or legal person shall be punished by imprisonment of three months to three years.
- (2) When the perpetrator of the offence provided for in paragraph 1 of the present article accepts a bribe or causes damage exceeding 100.000 EUR, the perpetrator shall be punished by imprisonment of one to ten years.

3) Article 257 – Misappropriation

- (1) Whoever, with the intent to obtain an unlawful material benefit for himself or herself or another person, appropriates the movable property of another person that has been entrusted to him or her shall be punished by a fine or by imprisonment of up to one year.
- (3) Whoever unlawfully appropriates the movable property of another person which he or she has found or accidentally came into possession of, with the intent to obtain an unlawful material benefit for himself or herself or another person shall be punished by a fine or by imprisonment of up to one year.
- (4) Criminal proceedings for the offence provided for in paragraph 1,2 or 5 of the present article shall be initiated following a motion.

4) Article 261 – Fraud

- (1) Whoever, with the intent to obtain a material benefit for himself, herself or another person, deceives another person or keeps such person in deception by means of a false representation or by concealing facts and thereby induces such person to do or abstain from doing an act to the detriment of his or her property or another person's property shall be punished by a fine or by imprisonment of up to three years.
- (2) When the offence provided for in paragraph 1 of the present article results in damage exceeding 15.000 EUR, the perpetrator shall be punished by imprisonment of six months to five years.

5) Article 269 – Breach of Trust

- (1) Whoever, in representing the property interests of another person or taking care of his or her property, fails to perform his or her duty or misuses his or her authorizations with the intent of obtaining an unlawful material benefit for himself, herself or another person or to cause damage to the person whose property interests he or she is representing or whose property is under his or her care shall be punished by a fine or by imprisonment of up to three years.

6) Article 332 – Falsifying Documents

- (1) Whoever draws up a false document, alters a genuine document with the intent to use such a document as genuine or knowingly uses a false or altered document as genuine shall be punished by a fine or by imprisonment of up to one year.

7) Article 339 – Abusing Official Position or Authority

- (1) An official person who, with the intent to obtain an unlawful material benefit for himself, herself or another person or a business organization or to cause any damage to another person or business organization, abuses his or her official position, exceeds the limits of his or her authorization or does not execute his or her official duties shall be punished by imprisonment of up to one year.
- (2) When the offence provided for in paragraph 1 of the present article results in a damage exceeding 2.500 EUR or a grave violation of the rights of another person, the perpetrator shall be punished by imprisonment of up to three years.
- (3) When the offence provided for in paragraph 1 of the present article results in a material benefit exceeding 5.000 EUR, the perpetrator shall be punished by imprisonment of one to eight years.

FINANCE ADMINISTRATIVE INSTRUCTION No. 2/1999
Revised 15 December 1999
PUBLIC PROCUREMENT
USING KOSOVO CONSOLIDATED BUDGET FUNDS

Art. 4 Procurement Principles

4.1 Full and Fair Competition.

Competition among and participation in the Procurement process by qualified Suppliers shall be maximized.

- 4.1.1 All Suppliers and Contractors and their Tenders shall be treated fairly, equally, and non discriminatorily, without favoritism or prejudice, and each Tender shall be judged on its merits.

4.3 Avoidance of Conflicts of Interest and Corruption.

No one may be given favorable consideration in any Public Procurement by virtue of conflicts of interest or corrupt influence, whether through collusion, nepotism, abuse of friendship, bribery, kickbacks, payoffs, or other illegal or unethical action. So that the Procurement system of Kosovo shall be free of conflicts of interest and corruption

Art. 6 Levels of Authority and Procurement Limits

6.1 Limits for Methods of Procurement

6.1.2 The method of Competitive Shopping, Selection Based on Consultants' Qualifications, or Least-Cost Selection of Consultants may be used when the estimated contract value does not exceed DM 50,000.

6.1.3 The method of Competitive Tendering, Restricted Competitive Tendering, or Two-Stage Competitive Tendering shall normally be used when the estimated contract value exceeds DM 50,000.

6.2 Approving Officer.

The authority to sign a Procurement contract, awarded (a) after a required method of Procurement has been followed without deviation from the normal procedures for that method of Procurement or (b) after an approval has been given under Section 6.3 for another method of Procurement or for a deviation, whose total value:

6.2.3 exceeds DM 1,000,000 is vested in a Deputy SRSG other than the Deputy SRSG who gave any approvals under Section 6.3.3 (a) or (b) in the same Procurement procedure.

Art. 13 Corrupt or Fraudulent Actions

After notice under Section 14.2 and, if required, a hearing under Section 14.3, unless the hearing has resulted in a determination favorable to the Supplier or Contractor in question, the Procuring Entity shall reject a Tender, proposal, or quotation or cancel a contract if the Supplier that submitted it or the Contractor is alleged to have

(a) [...] or

(b) misrepresented facts or colluded with other Suppliers in order to influence a Procurement process or the performance of a contract, establish Tender prices at artificial, non-competitive levels, or deprive the UNMIK Kosovo Interim Administration of the benefits of free and open competition to the detriment of the UNMIK Kosovo Interim Administration. [...]

Art. 15 Technical Specification

15.1 Technical specifications and descriptions of the Goods, Works, or Services to be procured shall be carefully prepared to foster fair and open competition among all Suppliers.

15.2 The technical specifications (a) shall clearly describe the Procuring Entity's requirements in detail, including quality, performance, safety, dimensions, symbols, terminology, packaging, marking, and labeling, the processes and methods for production, and methods for inspection and assessment of conformance to such requirements, but (b) shall not be used or included in any Tender Documents if they create unfair or discriminatory obstacles to any Supplier's participation in the Procurement process.

Art. 23 Tendering Procedures

23.9 Examination and Evaluation of Tenders

- 23.9.1 The Procuring Entity shall appoint an evaluator or a committee of evaluators ("evaluator(s)") to examine and evaluate all Tenders. The evaluator(s) shall have the necessary skills to examine the conformance of the Tenders to the requirements of the Tender Documents, including expertise in Procurement, the technology in question, legal matters, and financial matters.
- 23.9.2 For important Procurements and Procurements involving complex legal, financial, technological, and other issues, the evaluators' expertise should include highly skilled experts in such areas. To ensure that the level of expertise available is commensurate with the complexity or importance of the Procurement, such experts may, with the consent of their employers, be drawn from organizations external to the Procuring Entity. An approving officer specified in Section 6.2 should not serve as an evaluator for Procurements for which he/she will sign the eventual contract.
- 23.9.5 The evaluator(s) may ask in writing for written clarification of any Tender. No change in the price or substance of the Tender may be sought, offered, or permitted.
- 23.9.9 After the deadline for submission of Tenders, no Tenderer may offer to or, as a condition for award, be requested to undertake responsibilities not stipulated in the Tender Documents, change the Tender price, or otherwise modify its Tender.
- 23.9.10 Upon completion of the examination, evaluation, and comparison of the Tenders and the qualifications of the Tenderers in accordance with the procedures and criteria, including weighting, set forth in the Tender Documents, the evaluator(s) shall (a) prepare a report on the examination, comparison, and evaluation of the Tenders and the qualifications of the Tenderers and shall (b) recommend negotiation of the contract for Procurement with the Tenderer:
- 23.9.10.1 who meets all the qualification criteria specified in the Tender Documents;
- 23.9.10.2 whose Tender is responsive because it satisfied all the requirements of the Tender Documents without material deviation from any critical provision; and
- 23.9.10.3 whose Tender offered the lowest evaluated price after weighting pursuant to the weights for different criteria set forth in the Tender Documents

The report of the evaluator(s) shall specify the ranking of the remaining Tenderers who meet the requirements of 23.9.10.1 and 23.9.10.2 for negotiation of the contract in case negotiations with the first recommended Tenderer are unsuccessful.

Such report and recommendation shall constitute part of the Procurement record described in Section 8.2

23.9.11 Before a Procurement contract is negotiated, the Procuring Entity shall submit to the pertinent Approving Officer, a summary written report containing:

23.9.11.1 justification for the Procurement method and procedure used;

23.9.11.2 the report of the evaluator(s); and

23.9.11.3 the recommended Tenderer for negotiation of the contract.

The Approving Officer shall notify the Procuring Entity of his/her decision with respect to the negotiation of the contract. If such decision differs from the recommendation of the evaluator(s), the Approving Officer shall submit with his/her notification a detailed and reasoned explanation for and justification of his/her decision, which explanation and justification shall be included in the Procurement record required by Section 8.2.

IV - Methodology

11. ITF investigators conducted the investigation in accordance with the Executive Decision No. 2003/16. Investigators collected documents from PEAP, UNMIK Pillar II, The Kosovo Trust Agency (KTA) and private contractors. Interviews of witnesses and employees of UNMIK, the consulting company (funded by EAR) and PEAP were conducted in English and Albanian and records of these conversations were maintained. All pertinent documents relevant to the investigation, such as leases, building permits, land title and correspondence concerning the award, construction and payments were translated from Albanian to English. The ITF Investigators reviewed relevant UNMIK Rules and Regulations, the Provisional Criminal Code of Kosovo, as well as certain previous Rules and Regulations of the Yugoslav Republic.

V - Investigative details

12. ITF Investigators conducted the investigation in five phases. In phase-I they examined the proceedings that led to building the apartment foundations and frame. In phase-II, Investigators examined the award of a contract for the finishing works of Lamela IV. In phase-III the Investigators examined issues concerning the commercial rent of the ground floor. Phase-IV deals with the misappropriation of municipality fees paid for Lamela IV. In phase-V ITF Investigators identified additional expenses drawn from the PEAP budget for works not provided for in the bidding documents and contract.

Phase – I : Original bid and award of contract for the foundation and frame

13. ITF established from all parties concerned – including the Divisional Manager and Vendor 1 Representative – that the bidding exercise/tender for the Lamela IV

compound was conducted in two phases, phase-I covering the framework and foundations of the building whereas phase-II provided for the bulk of the remaining works. The Divisional Manager explained this split of operations to ITF Investigators by pointing out that the Airport did not immediately have DEM 1,2 million readily available to launch one full tender for the entire contract while at the same time being heavily pressured by Airport employees to commence the construction of Lamela IV.

14. ITF Investigators obtained and reviewed the contract for the construction of the apartment building foundations and frame. The Divisional Manager told ITF Investigators that he had selected a Committee consisting of Staff Member 3, Staff Member 4 and Committee Member 1 that conducted a Selective Shopping exercise, notwithstanding the estimated contract value exceeding DEM 50,000 as foreseen in Article 6.1.3 of the Finance Administrative Instruction 2/1999. The Divisional Manager explained this contravention by pointing out that until 2002, PEAP did not have a procurement officer. According to him, the procurement rules were not clear. He therefore sought the advice of an experienced Kosovo lawyer, who advised him to proceed as planned.
15. Vendor 1 Representative told ITF Investigators that his company had done work at the Airport for years and that the Divisional Manager and Staff Member 2 had approached him and asked if he would be interested in building the apartments for the Airport. Vendor 1 Representative replied that he was very interested. Vendor 1 Representative went on to say that he was contacted by a member of the Committee - he did not recall who - and was asked for a "per square meter price" for the work. Vendor 1 Representative gave his price of DEM 275 per square meter.
16. The Divisional Manager stated that he/she was familiar with the construction company "Vendor 1", because of previous work they had done at the Airport. Moreover, he/she knew that "Vendor 1" would accept being paid when the Divisional Manager raised the money as opposed to when it was due.
17. Vendor 1 Representative told the ITF that the Divisional Manager had asked him/her to supply the prices of two other competitors. Vendor 1 Representative admitted that he/she approached two construction companies known to him/her, Vendor 2 and Vendor 3, in order to obtain their offers. Consequently, as requested by Vendor 1 Representative and premeditated by the Divisional Manager, these companies gave their offers at a higher price than Vendor 1, namely at DEM 295 and DEM 300 per square meter respectively. Vendor 1 Representative added that he/she did not know if either of these companies was ever contacted by the Divisional Manager or Staff Member 2.
18. On 1 July 2000, "Vendor 1" was selected as the successful bidder by the Evaluation Committee and on 2 July 2000 the contract was drawn and signed between PEAP and "Vendor 1", stipulating costs of DEM 300,000.00 for the construction of the building framework and foundations.
19. Immediately thereafter, "Vendor 1" began the first part of the construction works: foundations, concrete frame and site leveling even though PEAP was still not in

possession of the main technical project with specified quantity calculations, the required Municipality building permit/authorization and the document of ownership for the construction lot. Nevertheless, Vendor 1 Representative continued to work as both the Divisional Manager and Staff Member 2 assured him/her that this documentation would be ready shortly.

20. The Divisional Manager told ITF Investigators that the architectural firm had prepared the architectural drawings and had indicated the construction quantities that would be used for the project. The Divisional Manager informed ITF Investigators that an engineer working for the Airport as a contractor (Airport Engineer), was tasked by him/her to review and monitor the project works and drawings of the Architectural Firm as well as the works of "Vendor 1".
21. Vendor 1 Representative told ITF Investigators that in spite of this lack of documents, he/she did not stop the Airport works because in the stipulated contract, Article 4 guaranteed that DEM 300,000.00 was only a down-payment and the final price would be based on the final calculated quantity. The finished frame costs ended up DEM 484,001.03.

Phase – II : Contract for finishing the airport apartments

22. On 11 November 2000, PEAP placed an advertisement in the local newspaper asking for contractors to pick up bid packages for the completion of the Airport apartments. The contractors had seven days to pick up the bid packages and another seven days to return their bid proposals. The Divisional Manager selected as Evaluation Committee members:

- Committee Chairman ;
- Committee Member 1 ;
- Committee Member 2 ;
- Committee Member 3 ;
- Committee Member 4 ;
- Committee Member 5 .

Deleted:)

None of the Committee members had any experience in evaluating bid proposals for construction contracts. Both the Committee Chairman and Committee Member 1 were to be awarded an apartment in Lamela IV. Committee Member 1 was not present at the Evaluation Committee meeting. He/She stated that the following day, the Committee Chairman told him/her to sign the approval to award the tender to "Vendor 1". Committee Member 4 is Staff Member 2's daughter.

23. ITF Investigators established that the bid documents contained a description of the works already completed in phase-I and asked the bidders to price these items, as the framework and foundation works had not been properly tendered for – in contravention of Finance Administration Instruction No. 2/1999, Article 6.1.3. It appears that the Divisional Manager and Staff Member 2 had designed this strategy in order to conceal the non-transparent award of the framework and foundations

contract. At this time, the Municipality had not authorized the construction license for the already accomplished works.

24. The Divisional Manager then undertook an unorthodox procedure regarding the payment for these works. ITF Investigators established that the bidding terms called for an upfront payment of DEM 320,000.00 at the signing of the contract. Both the Divisional Manager and Vendor 1 Representative stated that the upfront payment was intended to cover the work performed under the previous contract. The Divisional Manager stated that the bidders were told that DEM 300,000.00 would be deducted from their bid, as the frame/foundation work had already been finished under the previous contract. The Divisional Manager could not recall who had advised the bidders accordingly. The ITF Investigators found no evidence that he advised any of the bidders other than "Vendor 1".
25. Vendor 1 Representative told ITF Investigators that during the conclusion of the works in phase-I, he/she was approached by the Divisional Manager and Staff Member 2, who advised him/her that an Airport tender would be published in regard to the continuation of Lamela IV. The Divisional Manager and Staff Member 2 advised him/her that - should he participate - they would make sure that he/she would be awarded the second contract, even if he/she was not the lowest bidder.
26. Fifteen bids were presented of which four were considered incomplete. Of the remaining eleven the committee selected the fourth highest bidder, "Vendor 1", the same company that had already constructed the original frame for the apartments. In its summary written report under Article 23.9.11.2 of Finance Administrative Instruction No. 2/1999 – giving reason for this selection – the Evaluation Committee stated: "Analyzing all the offers the commission agrees that the work to be performed by Vendor 1, the general price DEM 1,339,755.80. Vendor 1 from Prishtina has performed important construction works on Airport Prishtina and it has always performed than with success that is why so again this round they entrusted the work performance on this enterprise."
27. Consequently, as premeditated by the Divisional Manager, Staff Member 2 and Vendor 1 Representative, "Vendor 1" was awarded the contract with a bid of DEM 1,339,775.80. Nevertheless, the Divisional Manager presented a contract totaling DEM 1,200,000.00 to Vendor 1 Representative. The Divisional Manager told ITF Investigators that there was only DEM 1.2 million in the budget for the apartments and he/she accordingly advised Vendor 1 Representative that if he/she wanted the contract he/she would have to accept a price of DEM 1,2 million. Vendor 1 Representative replied that he/she had officially won the bid at DEM 1,339,775.80 but the Divisional Manager explicitly threatened Vendor 1 Representative to withdraw the award of the tender if he/she did not comply with the price of DEM 1,200,000.00. By that time, Vendor 1 Representative stated that he/she had already spent a large amount of company funds on the project and therefore he/she complied.
28. The Divisional Manager admitted that he/she had not sought the DSRSG's approval for this contract although the amount of money allocated exceeded DEM 1,000,000.00 as required by Article 6.2.3 of Finance Administrative Instruction

2/1999. The Divisional Manager stated that from his point of view such approval was not necessary as the funds allocated for this tender belonged to PEAP.

29. The Divisional Manager appointed Staff Member 2 to oversee the construction of the building. Staff Member 2 – who was also assigned an apartment in Lamela IV - readily admitted that he/she had no construction experience and that his/her function was to see how many men were on the site and how the works were progressing, as well as reporting his/her observations to the Divisional Manager.
30. Vendor 1 Representative told ITF Investigators that only during the finalization phase of the Lamela IV works, did he/she receive the building's volume and quantity calculations. He/she then realized that the already built frame was not in compliance with the tender document "Preliminary Measurements and Estimation" but was one-third larger. Vendor 1 Representative immediately contacted the Architectural firm who verified the error and subsequently provided Vendor 1 Representative a letter stating that in the project's fold-up, there had been a neglect of the dimensions, namely instead of Tender Extension 2, Tender Extension 3 had been submitted as the project to construct. This Tender had a smaller quantity because the specifications referred to a smaller complex.
31. Vendor 1 Representative stated that he/she had warned the Divisional Manager immediately of the problem and afterwards was contacted by Committee Chairman and Staff member 2 who both told him not to worry because at the end of the construction they would pay him according to his works. Vendor 1 Representative suspected that the Divisional Manager had always been aware of the smaller quantities as per the specifications of the tender.

Phase – III : Commercial use of the Ground Floor of Lamela IV

32. ITF Investigators reviewed the building plans against the actual building. The building plans for Lamela IV designated the ground floor as a storage area or a space that could be used for parking. The ITF Investigators thoroughly checked the main project designed by the Architectural Firm and deposited with the Municipality. The ITF found that no changes in the specifications were submitted. The ITF confirmed this in interviews of the Architectural Firm's project designer and former Managing Director.
33. ITF Investigators established that the ground floor areas of Lamela IV were converted into office spaces that have been rented to local businesses and international agencies. The Divisional Manager stated to the ITF that this had never been officially requested, therefore never authorized by PEAP. He agreed that this was an illegal procedure, as the apartments were given only for family use and there was/is no regulation/contract/clause that states that a tenant may sub-let or modify his/her apartment dwelling or any other facilities in Lamela-IV.
34. ITF Investigators interviewed the Project Manager – Consulting Company – Employment Regeneration. The Project Manager stated that he/she had been renting ground floor office space in Lamela IV from Staff Member 2 and the Committee

Chairman since November 2003 for a monthly sum respectively of € 900,00 and € 825,00, i.e. for a total amount of € 1,725.00 per month. The Project Manager remembered a third office, not under his responsibility, which had been rented out to another company.

35. Vendor 1 Representative confirmed to the ITF that Staff Member 2 and the Airport Engineer had verbally instructed him/her to change the ground floor area into offices space. He/she confirmed that the ground floor had been designated as garages/storage rooms but stated that Staff Member 2 had requested these modifications. After the finalization of Lamela IV, the Airport Engineer was given full time employment with PEAP. He/she is currently an Airport Pristina employee.

Phase – IV: Municipality Compensation Fee

36. The ITF determined that the payment of Municipality fees totaling DEM 41,708.40 was an indispensable pre-requisite for the Permit of Use of the Lamela IV apartments. The original receipt obtained from airport documentation shows that DEM 25,000.00 was paid, in cash, on 7 September 2000 by Staff member 2 to the Municipality. On 26 June 2002 the remaining sum of DEM 16,708.40 (€ 8,542.43) was paid by bank transfer and received in bank account MEB 10015960-01-01. However, the ITF checked the Municipality records and found no trace of the DEM 25,000.00 having been deposited in either of the two disclosed Municipality bank accounts MEB 10015960-00-01 (since 11 February 2000) and MEB 10015960-01-01 (since November 2000) or registered in any logbook during the years 1999-2000-2001.
37. A Staff Member at the Directorate of Finance and Property, Municipality of Pristina, stated to the ITF that the cash was, on a daily basis, initially put into the cash box and then deposited into the MEB account 10015960-00-01. He/she added that no receipt was found as proof of the DEM 25,000.00 being put into the cash box. The Municipality Accounting Office documentation dates back to 1999 and contains the names of persons who deposited cash into the bank and other specifics for each deposit transaction. After a thorough search, the Staff Member informed ITF Investigators that no evidence could be found to show the questioned amount (DEM 25,000.00 – receipt issued on 7 September 2000) was deposited into either of the Municipality bank accounts used for this purpose.
38. The information acquired and the signature on the only receipt document in possession of PEAP revealed that DEM 25,000.00 was indeed paid in cash by the Airport Authorities to an Official of the Municipality of Pristina. The Official, when interviewed by the ITF, clearly remembered the payment and stated that as no Municipality bank account existed at that time, he/she had collected the money together with another UN official. According to the Official of the Municipality of Pristina, they placed the sum of DEM 25,000.00 in the Municipality safe and subsequently used it for petty cash expenditures.
39. However, the Staff Member at the Directorate of Finance and Property stated that the possibility of using the money collected from taxes and other financial obligations as petty cash must be excluded. The maximum amount of petty cash – as authorized by

the Ministry of Finance – is DEM 5,000.00. Furthermore, whenever any petty cash is expended, the Directorate of Finance and Property would send the receipts of those expenses to the Ministry of Finance before obtaining the approval for additional petty cash. The Official of the Municipality of Pristina – when confronted with these facts – confessed that he/she had signed the receipt of DEM 25,000.00. However, he/she was unable to provide the ITF Investigators with any further information, documentation or explanation on that matter.

Phase – V: Extra Works

40. Vendor 1 Representative informed the ITF of an additional sum of DEM 50,473.50 spent by the Airport for extra works carried out in relation to Lamela IV. Vendor 1 Representative told the ITF that he/she was requested by the Divisional Manager and Staff member 2 to fictitiously make it look like certain extra works (heating, cable TV, sidewalk) had been completed by “Vendor 1” (through sub-contracting with other firms), when in fact Vendor 1 Representative had not executed these works. Vendor 1 Representative told the ITF that Staff Member 2 submitted a document to Vendor 1 Representative for signature stating the works and amounts conducted, as if his/her company was invoicing Airport Pristina. Vendor 1 Representative stated that he/she initially did not understand the reason for this scheme, but added that he/she later realized that the Divisional Manager and Staff Member 2 used him/her to deceive PEAP and obtain funds for private purposes from PEAP/KTA. Vendor 1 Representative added that the Divisional Manager and Staff Member 2 used the excuse of Vendor 1 Representative’s fictitious invoice of allegedly unpredicted extra works to have additional equipment installed in their apartments and also have – amongst other things - a sidewalk built around Lamela I, II, III and IV, a procedure clearly not covered by the PEAP/KTA budget authorization. According to Vendor 1 Representative, the three companies that conducted these extra works were Construction Company 1, Construction Company 2 and Construction Company 3.
41. Regarding the payment of DEM 50,473.50 out of the PEAP/KTA budget, Vendor 1 Representative told ITF Investigators that the Committee Chairman had called him/her to the bank to collect his/her outstanding money. Once at the bank, the Committee Chairman presented a money transfer authorization of € 95,515.54 to Vendor 1 Representative. The amount of € 95,515.54 contained the outstanding part of Vendor 1 Representative’s invoice to PEAP (DEM 136,338.66) as well as DEM 50,473.50 for the extra works. These sums had to be converted into Euros as – at the time of payment – the DEM had been replaced by the Euro as the official currency.
42. The Committee Chairman told Vendor 1 Representative that he/she would only hand over the money transfer to Vendor 1 Representative if Vendor 1 Representative – immediately upon withdrawal of the cash – returned the equivalent of DEM 50,473.50 (€ 25,806.69) for the extra works to the Committee Chairman. Therefore, and in order to receive the money of his/her outstanding bill, Vendor 1 Representative complied by cashing the entire money transfer and handing over the extra works amount of the money to the Committee Chairman. Consequently, the Committee Chairman received 50,473.50 DEM from the Airport budget.

43. Construction Company 1 Owner told ITF Investigators that he/she had received a sum of DEM 9,990.00 for accomplished works directly from Staff Member 2. Construction Company 1 Owner added that he/she was contacted directly by Staff Member 2 for the job. ITF Investigators confronted Construction Company 1 Owner with a copy of an internal Airport document/invoice, allegedly issued by “Vendor 1”, which instead represented the invoiced amount of DEM 14,240.00, suggesting additional expenses of DEM 4,250.00. Construction Company 1 Owner stated that he/she had never received DEM 14,240.00 but only DEM 9,990.00. Therefore, it appears that the Divisional Manager and Staff Member 2 withdrew DEM 4,250.00 from the KTA budget after having inflated Glob Company’s invoice to the amount of DEM 14,240.00 through the fictitious “Vendor 1” invoice. As for statements also supplied to the ITF Investigators by the other two companies, no invoice was ever issued on their behalf for the extra works.

VI - Conclusions

44. ITF concludes that the procurement process for the foundations and framework component of the Lamela IV apartment complex was conducted in a non-transparent manner in contravention of Articles 4.1.1, 4.3 and 13 of the Finance Administrative Instruction No. 2/1999. The Divisional Manager - who directed the procurement exercise – influenced the procurement process in favour of “Vendor 1” by asking Vendor 1 Representative to submit a bid and supply two false offers of two other companies.
45. Consequently - by obstructing a truly competitive bidding process – the Divisional Manager made PEAP enter into a harmful contract, prohibited by Article 237 PCCK. Moreover, by violating Articles 4.1.1, 4.3 and 13 of Finance Administrative Instruction No. 2/1999, the Divisional Manager consciously violated the law and caused substantial damage to the business operations of PEAP, thereby fulfilling the criteria of Article 233 PCCK (Irresponsible economic activity). Furthermore, the Divisional Manager abused his/her official position and authority to obtain an unlawful material benefit – the award of the contract – for “Vendor 1”, thereby abusing his/her official authority in contravention of Article 339 PCCK. In addition, the Divisional Manager failed to perform his/her duties to protect the PEAP funds with the intent of obtaining an unlawful benefit for “Vendor 1” (Breach of trust, Article 269 PCCK)
46. The Divisional Manager violated Article 6.2.3 of Finance Administrative Instruction No. 2/1999 by awarding a contract exceeding DEM 1,000,000.00 and lacking the requisite approval of the DSRSG.
47. The Divisional Manager disregarded Article 6.1.3 of Finance Administrative Instruction No. 2/1999 by conducting Selective Shopping for a procurement exercise of DEM 300,000.00 where a Competitive Tendering, Restricted Competitive Tendering or a Two-Stage Competitive Tendering process should have been conducted.

48. The evidence adduced by the ITF investigation shows that the Divisional Manager and Staff Member 2 violated Rules 4.1.1 and 4.3 of Finance Administrative Instruction 2/1999 by manipulating the tender procedure concerning the contract for finishing the Airport apartments in favour of “Vendor 1”, the 4th highest bidder. Consequently, by obstructing a truly competitive bidding process and violating the abovementioned provisions, they engaged into irresponsible economic activity to the detriment of PEAP (Art. 233 PCCK). Furthermore, they made PEAP enter into a harmful contract – prohibited by Article 237 of the PCCK, as they prevented PEAP from entering into the “best value for money” contract. Both Staff Member 2 and the Divisional Manager also abused their authority to the detriment of PEAP and to the benefit of “Vendor 1” (Art. 339 PCCK). In addition they failed to perform their duties to protect the PEAP funds with the intent of obtaining an unlawful benefit for “Vendor 1” (Breach of trust, Article 269 PCCK).
49. The ITF concludes that the Divisional Manager contravened Articles 4.1.1. and 4.3 of Finance Administrative Instruction No. 2/1999 by selecting the Committee Chairman and Committee Member 1 to be members of the Evaluation Committee for the tender procedure for the finishing contract. Given that the Committee Chairman and Committee Member 1 had already been assigned apartments in Lamela IV, a tender involving them as members of the Evaluation Committee could not guarantee full impartiality – as required by Articles 4.1.1 and 4.3. of Finance Administrative Instruction No. 2/1999. Furthermore, the Divisional Manager violated Article 23.9.1. of Finance Administrative Instruction 2/1999 by selecting Evaluation Committee members who were lacking the expertise required in the area of building and construction, the core matter of this tender.
50. The ITF concludes that the Divisional Manager violated Articles 23.9.5. and 23.9.9. of Finance Administrative Instruction No. 2/1999 by ordering Vendor 1 Representative to change the tender price after submitting the final offer.
51. The ITF concludes that the Airport Engineer violated Finance Administrative Instruction 2/1999 Article 15.1 by not carefully checking the tender specifications and instead allowing the “framework” to be based on Tender Extension 3 instead of Tender Extension 2.
52. The ITF concludes that Staff Member 2 violated Rule 4.3. by not excusing himself/herself from participating in a bidding exercise that was for the construction of apartments – including one for himself/herself, thus violating the rules of impartiality and transparency which are of paramount importance in a bidding process.
53. The ITF concludes that Staff Member 2 and the Committee Chairman defrauded PEAP/Pillar II as they generated income (€ 900.00 and € 825.00 per month respectively since November 2003) from PEAP property by renting out office space on the ground floor of the Lamela IV apartment complex without authorization from PEAP. (Fraud – Article 261 PCCK). Staff Member 2 and the Committee Chairman deceived PEAP by concealing that they had the unauthorized office space built while

at the same time obtaining material benefit from this deception, namely the rent. Staff Member 2 and the Committee Chairman also failed to perform their duties as lessees of Airport apartments in order to generate an unlawful benefit for themselves (Art. 269 PCCK).

54. The ITF concludes that the Airport Engineer assisted Staff Member 2 and the Committee Chairman in defrauding the Airport by supporting them in planning the building of office space on the ground floor of Lamela IV, thereby generating unauthorized income from airport property that they were not authorized to receive (Fraud – Articles 25, 261 PCCK). In doing so, he also supported them in committing Breach of Trust (Articles 25, 269 PCCK).
55. The ITF concludes that the Official of the Municipality of Pristina illegally obtained a DEM 25,000.00 Municipality fee cash payment, neither declaring nor appropriating this fee to the correct recipient, the Municipality of Pristina (Misappropriation - Article 257 PCCK). At the same time he/she abused his/her official position as Municipality employee to the detriment of the Municipality in order to obtain material benefit for himself/herself (Art. 339 PCCK).
56. The ITF concludes that Staff Member 2, the Divisional Manager and the Committee Chairman defrauded PEAP/UNMIK Pillar-II by spending DEM 50,473.50 without authorization out of the PEAP/KTA budget for privately requested additional works at Lamela IV. These works were not covered by the original tender and not requested by the construction company. Staff Member 2, the Divisional Manager and the Committee Chairman deceived PEAP by pretending that the work had been requested by the construction company as being necessary and they obtained DEM 50,473.50 as an immediate consequence of this deception (Fraud – Article 261 PCCK). At the same time, they abused their official positions as Airport managers to the detriment of PEAP in order to obtain unlawful benefits for themselves (Art. 339 PCCK) and committed Breach of Trust (Art. 269 PCCK) by failing to perform their protective duties for PEAP funds.
57. The ITF concludes that Staff Member 2 and the Divisional Manager misappropriated DEM 4,250,00 from the PEAP/KTA budget for their own purposes by inflating the invoice of Construction Company 1 from DEM 9,990.00 to DEM 14,240.00 as specified in this report, thereby defrauding PEAP (Misappropriation - Article 257 PCCK and Fraud – Article 261 PCCK). They also failed to perform their duties towards PEAP (Art. 269 PCCK) and abused their official positions to the detriment of PEAP in order to obtain material benefit for themselves (Art. 339 PCCK). Moreover, by knowingly using an altered document – the inflated invoice - as genuine, Staff Member 2 and the Divisional Manager falsified documents, as prohibited by Article 332 PCCK.
58. The ITF concludes that Vendor 1 Representative, the owner of the construction company “Vendor 1”, by his/her actions in colluding with the Divisional Manager and Staff Member 2 in the submission of false offers and signing off on the false extra-works invoice, may have acted contrary to the Criminal Code of Kosovo, but

certainly failed to display the integrity and respect for the United Nations procurement rules essential for a potential vendor/partner of UN related contracts.

VII - Recommendations

59. The ITF offers the following recommendations:

Recommendation No. 1: ITF recommends that SRSG/UNMIK approve the referral of the matter to the Department of Justice for judicial review and investigation concerning the Divisional Manager's actions as detailed in paragraphs 45, 48, 56 and 57 of this report. (IV04/214/01)

Recommendation No. 2: ITF recommends that SRSG/UNMIK approve the referral of the matter to the Department of Justice for judicial review and further investigations concerning Staff Member 2's actions as detailed in paragraphs 48, 53, 56 and 57 of this report. (IV04/214/02)

Recommendation No. 3: ITF recommends that SRSG/UNMIK approve the referral of the matter to the Department of Justice for judicial review and further investigations concerning the Committee Chairman's actions as detailed in paragraphs 53 and 56 of this report. (IV04/214/03)

Recommendation No. 4: ITF recommends that SRSG/UNMIK approve the referral of the matter to the Department of Justice for judicial review and further investigations concerning the Official of the Municipality of Pristina's actions as detailed in paragraph 55 of this report. (IV04/214/04)

Recommendation No. 5: ITF recommends that SRSG/UNMIK approve the referral of the matter to the Department of Justice for judicial review and further investigations concerning the Airport Engineer's actions as detailed in paragraph 54 of this report. (IV04/214/05)

Recommendation No. 6: ITF recommends that UNMIK seek the advice of OLA and DPKO on the recovery of losses indicated in this report from the Divisional Manager, Staff Member 2, the Committee Chairman, the Official of the Municipality of Pristina, the Airport Engineer with a view to taking civil action against these persons. (IV04/214/06)

Recommendation No. 7: ITF recommends that UNMIK, Pillar-IV take appropriate disciplinary action against the Divisional Manager for the

various violations of Finance Administration Instruction No. 2/1999 – as detailed in paragraphs 44, 45, 46, 47, 48, 49 and 50 of this report. (IV04/214/07)

Recommendation No. 8: ITF recommends that UNMIK, Pillar-IV take appropriate disciplinary action against Staff Member 2 for the various violations of Finance Administration Instruction No. 2/1999 – as detailed in paragraphs 48 and 52 of this report. (IV04/214/08)

Recommendation No. 9: ITF recommends that UNMIK, Pillar-IV take appropriate disciplinary action against the Airport Engineer for the various violations of Finance Administration Instruction No. 2/1999 – as detailed in paragraph 51 of this report. (IV04/214/09)

Recommendation No. 10: ITF recommends that UNMIK Pillar IV reassess disciplinary action against the Divisional Manager for actions further investigated by the Department of Justice if the Department of Justice does not initiate criminal charges against him/her for these actions. (IV04/214/10)

Recommendation No. 11: ITF recommends that UNMIK Pillar IV reassess disciplinary action against Staff Member 2 for actions further investigated by the Department of Justice if the Department of Justice does not initiate criminal charges against him/her for these actions. (IV04/214/11)

Recommendation No. 12: ITF recommends that UNMIK Pillar IV reassess disciplinary action against the Committee Chairman for actions further investigated by the Department of Justice if the Department of Justice does not initiate criminal charges against him/her for these actions. (IV04/214/12)

Recommendation No. 13: ITF recommends that UNMIK Pillar IV reassess disciplinary action against the Airport Engineer for actions further investigated by the Department of Justice if the Department of Justice does not initiate criminal charges against him/her for these actions. (IV04/214/13)

Recommendation No. 14: ITF recommends that the SRSG/UNMIK approve the request of the ITF to refer the matter of Vendor 1 Representative to the Department of Justice for judicial review as to his role in falsifying bid information as detailed in this report of investigation. (IV04/214/14)

Recommendation No. 15: Failing any judicial action against Vendor 1 Representative as detailed in Recommendation No. 14,

ITF recommends that UNMIK Pillar IV take appropriate action against Vendor 1 Representative and his/her construction company “Vendor 1” especially with regard to their involvement in any future UNMIK/Pillar IV related contracts. (IV04/214/15)